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APR 03 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

SC Court of Appeals

Spartanburg

STATE

VS.

INDICTMENT/CASE#: 2016-GS-42-5129

Atraus Dorrell Styles

AW#: 2015A4210101245

AKA:

Date of Offense: August 28, 2014

Race: Black Sex: Male Age: 29

S.C. Code §: Common Law

DOB: [redacted] SS#: [redacted]

CDR Code #: 0819

Address: 1203 High St

City, State, Zip: Spartanburg, SC 29306

DL# SID#

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was

[] CONVICTED OF or [] PLEADS

TO: Misconduct in Office (0-10 years)

In violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0819

[x] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] §17-25-45

The charge is: [x] As indicted, [] Lesser Included Offense.

[] Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: [] Without Negotiations or Recommendation.

[] Negotiated Sentence. [] Recommendation by the State.

ATTEST: [Signature] 76983

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the [x] State Department of Corrections [] County Detention Center, for a determinate term of 2 days/months/years or [] under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[x] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED []

[] Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning Substance Abuse Counseling []

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	
3% to County (if paid in installments)		\$	3.75
TOTAL		\$	128.75

Random Drug/Alcohol Testing []
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

[] Appointed PD or appointed other counsel. §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

C. Poole

Court Reporter:

J. Ashbrook

Presiding Judge

Judge Code:

Sentence Date

A. Keith Kelly
3/16/17
14 December 2016

SCCA/217 (03/2011)

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CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: 3/30/17

1. SENTENCE MADE **COMPUTER**
 REPORT ENDED
 3. CARD PULLED SIA, J. Collins, SLED
 INDEXED
 CHECKED SIGNATURE SIA, J. Collins
 ASSESSMENT AND ONE CARD MADE **COMPUTER**
 TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER
 2015A4210101245

ACTION OF GRAND JURY

OCT 28 2016

True Bill

Foreperson of Grand Jury
 Date:

VERDICT

Guilty

[Signature]
 Foreperson of Petit Jury
 Date: *12/1/16*

DOCKET NO. 2016-GS-42- 5129

The State of South Carolina
 County of Spartanburg

COURT OF GENERAL SESSIONS

OCT 21 2016
 2016 TERM

THE STATE

v.

Atraus Dorrell Styles,
 203 High St
 Spartanburg, SC 29306

B/M

DOB: [REDACTED]

DEFENDANT

Indictment for

MISCONDUCT IN OFFICE

(Common Law)

CDR Code: 0819
 Unclassified Misdemeanor

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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CLERK OF COURT
 SPARTANBURG COUNTY
 BY: *[Signature]*
 DATED: *3/30/17*

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 SPARTANBURG COUNTY

CP

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
THE STATE)
)
vs.)
)
ATRAUS DORRELL STYLES,)
)
DEFENDANT.)
_____)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

RECEIVED

ORDER

APR 03 2017

SC Court of Appeals

INDICTMENT NO.: 2016-GS-42-5129

The Defendant was convicted of Misconduct in Office on December 1, 2016 and received a sentence of an active two years' incarceration. The Defendant filed timely motions for a new trial and reconsideration of sentence.

I. An inconsistent verdict of guilty for Misconduct in Office and not guilty for Assault and Battery Third Degree is allowed.

There is no rule against inconsistent verdicts. *See State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). The Defendant's reliance on *Alexander* is misplaced as *Alexander* recalled prior caselaw that rationalizes the policy by explaining that the jury could have merely been lenient on the defendant. *Id.* at 382; *United States v. Powell*, 469 U.S. at 65, 105 S.Ct. at 476-477.

I. A Due Process violation did not occur when the trial court allowed the jury to return a verdict of not guilty for the Assault and Battery 3rd Degree and a guilty verdict on Misconduct in Office.

Indictments are documents intended to give notice to criminal defendants. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2004). The sufficiency of the indictment depends on "(1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged." *State v. Wilkes*, 353 S.C. 462, 578 S.E.2d 717 (2003); *see also* S.C.Code Ann. § 17-19-20 (2003).

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Generally, for Misconduct in Office indictments, the State does not have to state the duty that has been breached because a duty of accountability "imposed by the common law on public officers and assumed by them as a matter of law upon entering public office." *State v. Hess*, 279 S.C. 14, 301 S.E.2d 547 (1983).

Additionally, the court must be practical and consider all of the circumstances. See *State v. Adams*, 277 S.C. 115, 283 S.E.2d 582 (1981). It does not matter if an indictment could have been more certain. See *State v. Knuckles*, 354 S.C. 626, 583 S.E.2d 51 (2003).

The misconduct indictment provides " Indictment for MISCONDUCT IN OFFICE (Common Law) CDR Code: 0819 Unclassified Misdemeanor." The code links to the 17-25-0030 penalty statute, allowing for a sentence of up to ten years imprisonment. Further the indictment states, Defendant "while serving as a [public official, did] willfully and unlawfully...by acts and omissions of malfeasance, misfeasance, and nonfeasance in breach of his duties to the public including this duty of good faith, honesty, and accountability,...to wit: intentionally committing battery upon the victim...by striking him in the face/head area with his hand."

No Due Process violation occurred, as the indictment gave notice to the defendant for what he was going to be tried. The indictment gave the court guidance as to how to sentence the defendant. And in addition to listing the other elements, the "misfeasance, malfeasance, nonfeasance" language was specifically stated. With these three elements, the State alleged the Defendant committed an unlawful act, improperly performed a lawful act, and/or did not perform a required act.

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III. A new trial should not be granted based off of attorney general's comment, "You don't have to take the defendant's word for it."

Defendant's allegation that improper comments to the jury require new trials is improper. "[E]ven improper comments on a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant." *Gill*, 346 S.C. at 221, 552 S.E.2d at 33 (citation omitted). "The defendant bears the burden of demonstrating that improper comments on his refusal to testify deprived him of a fair trial. Furthermore, even if the solicitor makes an improper comment on the defendant's failure to testify, a curative instructive emphasizing the jury cannot consider [the] defendant's failure to testify against him will cure any potential error." *Id.* (citations omitted).

South Carolina applies a harmless error analysis when a prosecutor references a defendant's silence. *State v. Truesdale* explains such comments are harmless error when, "the record must establish the reference to the defendant's right to silence was a single reference, which was not repeated or alluded to...[and] did not tie the defendant's silence directly to his exculpatory story; the exculpatory story was totally implausible; and the evidence of guilt was overwhelming. 285 S.C. at 18-19; 328 S.E.2d 53.

In this case, immediately following the comment, trial judge instructed the jury to disregard the statement. Additionally, the judge instructed the jury on the defendant's right against self-incrimination multiple times throughout the trial. First, before the trial, the judge explained that the defendant didn't have to testify and his failure to do so could not be used against him. Also, during the jury charge, it was instructed that "the fact the defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or innocence of the defendant." Thus, the instructions cured any error. Furthermore, the prosecutor's assertion was only made during closing

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cell

argument. Also, the comment involved no mention of the defendant's self-defense claim.

Finally, a number of officers testified that protocol and training dictated that Defendant did not have to open victim's jail cell and hit him in the head area, which is considered deadly force.

Moreover, witnesses testified to the defendant making multiple statements before the incident of his intent to commit the crime, and a video of the defendant opening the cell and attacking the victim was admitted into evidence.

The comments and evidence were not such that Defendant was not deprived of a fair trial, and he should not receive a new trial.

Having significantly reviewed and considered the Defendant's and State's memoranda and the testimony and rulings during the trial of the case, this Court finds that the motion for new trial should be denied. Defendant's actions meet all the elements of the offense of misconduct in office. Thus, there is no inconsistency between the conviction for misconduct and acquittal for assault and battery 3rd degree. As for the Attorney General's comments during closing, the Court gave a curative instruction at the time that is presumed to have resolved any potential issues. A new trial is not appropriate on that ground.

Further, the court declines to reconsider its sentence in this matter.

IT IS THEREFORE ORDERED that the motions are DENIED.

R. Keith Kelly
R. Keith Kelly
Presiding Judge

Spartanburg, South Carolina
March 15, 2017

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[Signature]
CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]*
DATED 3/30/17

M. HOPE BLACKLEY
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SPARTANBURG COUNTY