

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

RECEIVED

Honorable R. Ferrell Cothran, Circuit Court Judge

JUN 05 2017

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

KELVINISHA LATOYA GREEN,

APPELLANT

APPELLATE CASE NO 2016-001956

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The trial judge erred in allowing Officer Johnson to testify that her medical retirement was a direct result of the injuries she suffered per the alleged assault upon her by appellant because this was irrelevant and ultimately prejudicial sympathy information that most likely contributed to the guilty verdict, especially since the level of injury was a question of fact at trial which led to charges on ABHAN and the lesser offense of assault and battery in the first degree.....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

TABLE OF AUTHORITIES

Cases

State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004) 4

Constitutional Provisions

S.C. Const. art. 1 § 3 5

U.S. Const. amend. XIV 5

Statutes

S.C. Code Ann. § 16-3-600..... 4

S.C. Code Ann. § 16-3-600 (C) 4

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing Officer Johnson to testify that her medical retirement was a direct result of the injuries she suffered per the alleged assault upon her by appellant because this was irrelevant and ultimately prejudicial sympathy information that most likely contributed to the guilty verdict, especially since the level of injury was a question of fact at trial which led to charges on ABHAN and the lesser offense of assault and battery in the first degree.

STATEMENT OF THE CASE

Appellant Kelvinisha Latoya Green was tried in absentia and convicted of assault and battery of a high and aggravated nature and two counts of shoplifting per jury trial held during the February 2016 term of the Charleston County General Sessions Court before Judge R. Ferrell Cothran, who issued a sealed sentence in the case. Judge Cothran's sealed sentence was published by Judge Kristi Lea Harrington on September 13, 2016. Appellant was sentenced to imprisonment for an aggregate period of twelve years.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in allowing Officer Johnson to testify that her medical retirement was a direct result of the injuries she suffered per the alleged assault upon her by appellant because this was irrelevant and ultimately prejudicial sympathy information that most likely contributed to the guilty verdict, especially since the level of injury was a question of fact at trial which led to charges on ABHAN and the lesser offense of assault and battery in the first degree.

At trial, Lachavia Brownlee testified that she and Shannay Walker and appellant drove up from Florida (Miami) to Charleston, South Carolina, on January 22, 2013, for the express purpose of shoplifting at shopping malls. Brownlee explained that on January 23, 2013, they shoplifted at Northwoods Mall, Citadel Mall, and Mount Pleasant Mall. At some point, all store managers in Mount Pleasant Mall were alerted to the activities of the shoplifters. They were caught on camera stealing at Ulta and observed by the manager of stealing from Victoria's Secret. R. 38, l. 5 – R. 64, l. 3.

Brownlee explained that they saw Officer Michelle Johnson standing at their vehicle as they made their exit from an American Eagle store. Accordingly, the girls stayed seated upon Officer Johnson's initial demand, but fled when she called in for back-up assistance. Then, Officer Johnson followed the girls to their vehicle where a struggle ensued between them. Brownlee stated that she was attempting to drive the vehicle away from the scene after appellant placed the car in gear. Brownlee added that they were able to drive away eventually. A high speed chase followed, but ended when the vehicle crashed into the garage of a private home. R. 64, l. 7 – R. 76, l. 19.

Meanwhile, Officer Johnson was caught in the apex of the front door of the driver's side of the vehicle as she struggled with the girls in the vehicle who were attempting to drive off.

Officer Johnson landed on the pavement after the vehicle moved forward and suffered from a torn ACL (knee) and a head concussion as a result. R. 172, l. 17 – R. 188, l. 5.

At trial, Officer Johnson testified regarding the injuries she sustained in an attempt to apprehend the three girls inside their vehicle before they were able to drive away. Officer Johnson explained that her fall to the pavement in the process resulted in a head concussion and injuries to her knee. R. 209, l. 20 – R. 213, l. 21. Additionally, Officer Johnson explained that after knee surgery she was “PTed” for almost a year and placed on light duty (desk work), and that she “couldn’t perform as a police officer;” and that after two more surgeries, she ended up being “medically retired” because of her bad knees. R. 214, l. 2 – R. 220, l. 3.

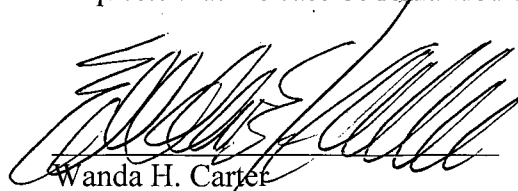
The trial judge charged that jury that assault and battery of a high and aggravated nature is committed if the defendant unlawfully injures another person and great bodily injury to the other person results or the act is accomplished by means likely to produce great bodily injury and great bodily injury is that which causes a substantial risk of death or permanent disfigurement or protracted or loss or impairment of the function of a body member. S.C. Code Ann. § 16-3-600 (B). R. 287, lines 13-23. The trial judge also charged the jury on the lesser offense of assault and battery in the first degree (S.C. Code Ann. § 16-3-600 (C)) in the event they believed there was insufficient evidence of assault and battery of a high and aggravated nature. R. 287, l. 24 – R. 288, l. 21.

In the case at bar, there was no relevance to Officer Johnson’s medical retirement status with respect to the issues in the case as the same had no bearing on the issue of whether she suffered great bodily injury. The status of her knee injury and her ultimate retirement were two separate issues. Relevant evidence is defined as having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it

would be without the evidence. State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004). Here, Officer Johnson's medical retirement had no relevance with respect to the analysis regarding the level of body injury that existed and whether appellant was guilty of assault and battery of a high and aggravated nature or assault and battery in the first degree or not guilty of either offense. Again, note that the trial judge charged the lesser included offense of assault and battery in the first degree in the case. R. 287, l. 24 – R. 288, l. 21. Appellant was found guilty of assault and battery of high and aggravated nature. The prejudice that resulted from the revelation that Officer Johnson had to retire medically due to the injuries emanating from her involvement in this case, which was also irrelevant evidence, was painfully obvious as this injected a sympathy factor that most likely led the jurors to convict appellant on the demise of Officer Johnson's career rather than the facts of the case surrounding the characterization of her injury. This error violated appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that his case be remanded to the lower court for a new trial.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of June, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Charleston County

JUN 05 2017

Honorable R. Ferrell Cothran, Circuit Court Judge **SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

KELVINISHA LATOYA GREEN,

APPELLANT

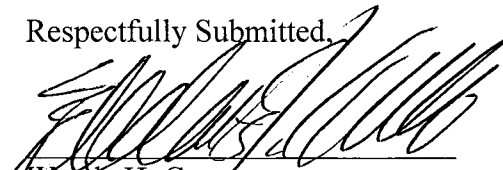
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kelvinisha Green states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Ferrell Cothran, which was held on February 1-4, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Kelvinisha Green.

Respectfully Submitted,


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 5th day of June, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Charleston County
Honorable R. Ferrell Cothran, Circuit Court Judge

JUN 05 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KELVINISHA LATOYA GREEN,

APPELLANT

DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Pretrial Transcript Information
- (3) Entire Motion to be Relieved Transcript dated Nov. 2, 2015
- (4) Entire Trial Transcript dated Feb. 1-4, 2016
- (5) Entire Sentencing Transcript dated Sept. 13, 2016

I certify that this designation contains no matter which is irrelevant to this appeal.

June 5, 2017



Wanda H. Carter

Deputy Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
ATTORNEY FOR APPELLANT

RECEIVED

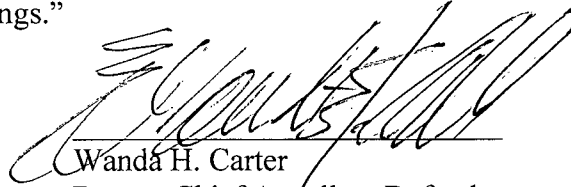
JUN 05 2017

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 5, 2017.



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT