THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2015-CP-38-00690

Appellate Case No. 2017-000911

State of South Carolina, ... Respondent,

v.

Jeanette Yvonne Glover, ... Appellant.

RETURN TO APPELLANT'S MOTION TO STRIKE ITEMS DESIGNATED BY RESPONDENT TO BE INCLUDED IN THE RECORD ON APPEAL AND MOTION TO STAY TIME TO FILE REPLY BRIEF

Pursuant to Rules 210 and 240(a) of the South Carolina Appellate Court Rules, Appellant has requested that this Court strike the following matters designated by Respondent for inclusion in the Record on Appeal:

1. Statement of Leroy Glover dated January 2, 2015

2. Request for Dismissal of Prosecution dated January 5, 2015.

Respondent opposes Appellant's Motion to Strike Items Designated by Respondent to be Included in the Record on Appeal with respect to Appellant's request to strike the Statement of Leroy Glover dated January 2, 2015. The statement was presented to the trial court, and as such, was properly designated for inclusion in the Record on Appeal. With respect to Appellant's request to strike the

Request for Dismissal of Prosecution dated January 5, 2015, Respondent does not oppose Appellant's motion..

ARGUMENT

First, the Statement of Leroy Glover dated January 2, 2015 ("Statement"), was properly designated by Respondent for inclusion in the Record on Appeal and should not be stricken. Rule 210 of the South Carolina Appellate Court Rules indicates that the Record on Appeal "shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. A written statement may be considered a "matter" presented to the lower court or tribunal if the substance of the statement is discussed or argued by counsel at trial even if the statement itself is not entered into evidence. *See, e.g., Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 417 S.E.2d 631 (Ct. App. 1992) (holding depositions discussed by counsel at a hearing were properly included in the Record on Appeal despite the fact that they had not been filed with the lower court); *see also Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (stating the arguments of counsel constitute a "relevant matter" in the Record on Appeal where necessary to understand an issue on appeal).

In this case, although Appellant is correct that the Statement was not entered as an exhibit, the Statement is a "matter" presented to the trial court because the content of the Statement was presented to the trial court during direct examination and closing argument. Further, the content of the Statement was presented to the circuit court on appeal.

At trial, Leroy Glover ("Glover") was questioned extensively regarding the contents of the Statement. On direct examination, trial counsel for Respondent asked Glover whether he provided the written statement.

Q. Did you give Officer Gill a written statement on the night of the incident?
A. Yes, I did.

(Trial Tr. 33:20-33:22, attached hereto as **Exhibit A.**) Trial counsel also asked Glover a number of questions regarding the representations he made in the Statement.

Q. Did that written statement or the photographs have anything to do with getting your keys?
A. No, it didn't.
Q. Let's talk about that written statement. Did your wife call you some foul names on the night of the incident?
A. Yes, she did, right before I hit her, and she scratched me in the face.
Q. Did you push her away to free yourself?
A. No, sir, I hit her, and then she came and clawed me in the face. She was trying to defend herself, I guess, like I was trying to get my keys.
Q. So just to be clear, your testimony is you did not push her away to free yourself.
A. After she -- after I hit her, she scratched me in the face, and then I pushed her away.
Q. Did you feel blood on your nose and chin?
A. Just a little bit of blood on my nose and right here on the chin. she was trying to get free when I hit her.

* * *

Q. When you gave that statement to Officer Gill the night -- that night, what happened was still pretty fresh in your mind, right?
A. Pretty much.
Q. And on your written statement, you didn't say anything about your wife -- about you hitting your wife first, did you?
A. No, I didn't, but I did.
Q. I'm sorry. I didn't quite understand your answer.
A. No, I didn't state it on the statement, but I did hit her first.
Q. But you didn't state it in the written statement that you gave that night, correct?
A. No, I didn't.

(Trial Tr. 34:2-35:1; 35:18-36:8, **Exhibit A.**)

Similarly, during closing argument, Respondent's trial counsel presented argument regarding the representations Glover made in the Statement as opposed to the representations Glover made during trial.

> [Respondent's trial counsel]: . . .On the night that the incident happened, he said that she attacked him and she grabbed him in the face. The written statement that he gave to the police said that she attacked him and she scratched him in the face. The statement he made to Officer Gill said that she attacked him. He never said, I hit her first on the night of the accident. Why? Y'all can probably figure that out. He changed his story when he got here 'cause now they're back together; he doesn't want to see his wife get in trouble. That's understandable.

(Trial Tr. 46:22-47:8, **Exhibit A.**) Additionally, on appeal, Respondent's brief submitted to the circuit court contained argument regarding Glover's Statement. *See* State's Memorandum of Law dated September 28, 2015, at 5, attached hereto as **Exhibit B** ("For example, the evidence at trial included . . . a sworn written statement given on the night of the incident, all indicating that Appellant initiated the altercation.") As such, because Glover was questioned extensively about the representations he made in the Statement, argument regarding the representations in the Statement was presented to the trial court, and argument regarding the representations in the Statement was presented to the circuit court on appeal, the substance of Glover's Statement constitutes "matter[s]" that were presented to the lower court at trial. Accordingly, Glover's statement is properly designated for inclusion in the Record on Appeal.

Finally, Respondent does not oppose Appellant's Motion to Strike with respect to Appellant's request to strike the Request for Dismissal. The Request for Dismissal of Prosecution dated January 5, 2015, was designated inadvertently. The undersigned did not serve as trial counsel in this matter and was under the mistaken belief that the document was presented to the lower

court. As such, Respondent agrees that the Request for Dismissal of Prosecution dated January 5, 2015, should not be included in the Record on Appeal.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny Appellant's Motion to Strike Items Designated by Respondent to be Included in the Record on Appeal to the extent Appellant seeks to strike the Statement of Leroy Glover dated January 2, 2015. Respondent does not oppose the remaining issues set forth in Appellant's motion.

Respectfully Submitted,

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October 2, 2017

Exhibit A
(Trial Transcript Pages)

TRANSCRIBED AUDIO FILE

State of South Carolina v. Glover

Trial Audio Transcript w Everett.zip

(Tracks 01-08)

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A. Yes, I did.

Q. Were those photographs representative of the injuries that you suffered on January 2nd?

A. Yes, sir.

Q. Did you call 911 on the night of January 2nd?

A. Yes, I did.

Q. Did the police come to your house as a result of that phone call?

A. Yes, they did.

Q. Did you speak with Officer Gill on the night of January 2nd?

A. Yes, I did.

Q. What was the purpose of your discussion with Officer Gill?

A. Just to get my keys.

Q. Just to get your keys.

A. Yes, sir.

Q. Did you give Officer Gill a written statement on the night of the incident?

A. Yes, I did.

Q. Did you allow Officer Gill to take the photographs of you on the night of the incident?

A. Yes, I did. He said he needed to take

the photograph of me.

Q. Did that written statement or the photographs have anything to do with getting your keys?

A. No, it didn't.

Q. Let's talk about that written statement. Did your wife call you some foul names on the night of the incident?

A. Yes, she did, right before I hit her, and she scratched me in the face.

Q. Did you push her away to free yourself?

A. No, sir, I hit her, and then she came and clawed me in the face. She was trying to defend herself, I guess, like I was trying to get my keys.

Q. So just to be clear, your testimony is you did not push her away to free yourself.

A. After she -- after I hit her, she scratched me in the face, and then I pushed her away.

Q. Did you feel blood on your nose and chin?

A. Just a little bit of blood on my nose and right here on the chin. She was trying to

get free when I hit her.

Q. And that's when you called 911, right?

A. No, I called 911 before this happened.

Q. Before the incident happened.

A. Right.

Q. So the fight happened after the phone call.

A. Yes. And it took them about maybe 45, 50 minutes to get to the house, so I went outside. I stood outside. She stayed in the house, and I stayed outside.

Q. But when you called 911, there was no fight to report, right?

A. No, sir, there wasn't.

Q. So there was no reason for them to rush to the house at that time, right?

A. No, sir.

Q. When you gave that statement to Officer Gill the night -- that night, what happened was still pretty fresh in your mind, right?

A. Pretty much.

Q. And on your written statement, you didn't say anything about your wife -- about you hitting your wife first, did you?

A. No, I didn't, but I did.

Q. I'm sorry. I didn't quite understand your answer.

A. No, I didn't state it on the statement, but I did hit her first.

Q. But you didn't state it in the written statement that you gave that night, correct?

A. No, I didn't.

Q. And you didn't state it -- you didn't tell it to Officer Gill that night, right?

A. No.

Q. You didn't tell it to Officer Daff.

A. No.

Q. Just to be clear, your wife caused a physical injury to you on the night of January 2nd, right?

A. Right, because I hit her first and she was trying to get away.

Q. Thank you.

A. She scratched me in the nose.

Q. Thank you.

MR. MCMILLIAN: No further questions at this time, Your Honor.

THE COURT: Ms. Wyman?

CROSS EXAMINATION

the jury room. I'm sorry you've haven't seen them before that.

As he admitted, the injuries aren't bad, but they're injuries. There's a bloody nose. There's a scratch and blood on the chin. The victim told you that, on the night this happened, he felt blood dripping from his nose. He had a bloody nose. She gave it to him. He testified to all that. That's really all you need to know.

Now, defense counsel brought up the fact that maybe he hit her first. Well, ladies and gentlemen, let's talk about that. Number one, she didn't have any injuries. Officer Gill testified to that. He took pictures to prove it. If she had a bruise on her face, we'd have a whole nother story here. She didn't. If her story was consistent with the photographs, was consistent with his story, then we'd have a different issue here. That's not the case.

On the night that the incident happened, he said that she attacked him and she grabbed him in the face. The written statement that he gave to the police said that she

attacked him and she scratched him in the face. The statement he made to Officer Gill said that she attacked him. He never said, I hit her first on the night of the accident. Why? Y'all can probably figure that out. He changed his story when he got here 'cause now they're back together; he doesn't want to see his wife get in trouble. That's understandable.

Again, that's up to the judge. The penalty is up to the judge. It's y'all's job to say was there an injury or harm to the household member. That's all your job is in this case. I'm not minimizing it. That's a very important job, and y'all are why the whole judicial system works, though we each have roles, and that's your role.

Any of these other mitigating circumstances, the fact that there's some he-said/she-said, the judge can consider that when he makes his rule. But he doesn't get that opportunity unless you say she was guilty.

At the beginning of the trial, I also told you this is not a traditional set of facts for a domestic violence case. We can all understand that. But the law is the law, y'all.

Exhibit B
(Filing: Defendant Failed To Present Evidence Of Self-Defense)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)))	IN THE COURT OF COMMON PLEAS CRIMINAL APPEAL
City of Orangeburg, Respondent, vs. Jeanette Yvonne Glover, Appellant.	))))))))))	Civil Action No. 2015-CP-38-690 Municipal Case No. 15-00013 Warrant No. 66501HC **DEFENDANT FAILED TO PRESENT EVIDENCE OF SELF-DEFENSE**

This Court should affirm the Defendant's conviction by an Orangeburg jury because the Honorable Barney M. Houser, Orangeburg Municipal Court, properly denied Defendant's request for a directed verdict and her request for a jury charge on the issue of self-defense when she failed to present evidence on all four elements of this defense.

FACTUAL BACKGROUND

On June 9, 2015, an Orangeburg jury convicted Defendant of Criminal Domestic Violence after a trial before Judge Houser. The evidence presented at trial consisted of testimony from two arresting officers, photographs of the Victim and Defendant, and testimony from the Victim (Defendant's husband). The Defendant did not testify or call any witnesses to the stand.

At the close of State's evidence, Defendant moved for a directed verdict on the issue of self-defense. Judge Houser denied Defendant's motion because she had not presented any evidence of, or claimed, self-defense. The Court explained that no duty to disprove the elements of self-defense had arisen because the State had no notice that the Defense was asserting this claim.

After Defendant stated that she would not put up a defense, the Court requested proposed jury charges from both parties. Judge Houser denied Defendant's request for a jury charge on self-defense because she did not present evidence on the elements of self-defense and, therefore, there was no evidence upon which that issue should be before the jury.

The jury returned a verdict of guilty and Defendant was sentenced to a state-approved batters' treatment program, with a suspended sentence of 30 days and a monetary fine.

ARGUMENT

The Defendant Failed to Present Evidence to support a Claim of Self-Defense

"A self-defense charge is not required unless the evidence supports it." *State v. Santiago*, 370 S.C. 153, 159, 643 S.E.2d 23, 26 (Ct. App. 2006). Under South Carolina law, there are four elements that must be established before self-defense can be considered by the court or charged to the jury:

- First, the defendant must be without fault in bringing on the difficulty.
- Second, the defendant must have actually believed she was in imminent danger of losing her life or sustaining serious bodily injury, or she actually was in such imminent danger.
- Third, if her defense is based upon her belief of imminent danger, a reasonably prudent woman of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a woman of ordinary prudence,

firmness and courage to strike the fatal blow in order to save herself from serious bodily harm or losing her own life.

- Fourth, the defendant had no other probable means of avoiding the danger of losing her own life or sustaining serious bodily injury than to act as she did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). When a defendant fails to present evidence on any one of these four elements, she is not entitled to a charge of self-defense. *See State v. Bruno*, 322 S.C. 534, 537, 473 S.E.2d 450, 452 (1996).

In this case, Defendant failed to present evidence on the "belief" element of self-defense. Defendant did not take the stand and she called no witnesses. The jury neither saw nor heard any evidence to prove that the Defendant "believed" she was in imminent danger. None of the witnesses called by the State (two responding officers and the Victim) offered testimony regarding Defendant's alleged "belief," much less did any witness testify that she believed she was "in imminent danger of losing [her] life or sustaining serious bodily injury." *Id.* Therefore, Defendant was not entitled to a self-defense charge because she presented no evidence on the "belief" element of this defense.

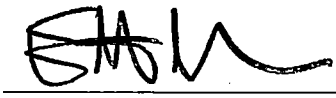
Additionally, Defendant failed to present evidence to support the other three elements. In fact, Defendant's claim of self-defense is founded on the recanting testimony of her husband (the Victim), who testified he was back together with her and sat with her during the trial. Contrary to his statements to responding officers, his statement made during his call to 911, and his sworn written statement given on the night of the incident, her husband testified at trial that "he hit her first." The fact that the

Victim recanted at trial in an apparent attempt to exonerate his wife does not entitle the defense to a charge on self-defense under well-settled South Carolina law.

CONCLUSION

This Court should affirm Judge Houser's denial of Defendant's request for a directed verdict and her request for a jury charge on the issue of self-defense because she failed to present evidence on all elements this defense.

Respectfully submitted:



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September 28, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Case No. 2015-CP-38-00690
Appellate Case No. 2017-000911

State of South Carolina, ... Respondent,

v.

Jeanette Tvonne Glover, ... Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Return to Appellant's Motion to Strike Items Designated by Respondent to be Included in the Record On Appeal and Motion to Stay Time to File Reply Brief

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October 2, 2017

Hand Delivered
The Honorable Jenny Abbott Kitchings
Clerk of Court
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RE: *State of South Carolina v. Jeanette Glover*
Appellate Case No. 2017-000911
Common Pleas Case No. 2015-CP-38-00690
Our File No.: 33044/01544

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the **Return to Appellant's Motion to Strike Items Designated by Respondent to be Included in the Record on Appeal and Motion to Stay Time to File Reply Brief** in the above-referenced matter.

We ask that you please file the original document and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of the document.

Very truly yours,

Jay T. Thompson

JTT:eh
Enclosure
cc: Minh L. Wyman