

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

RECEIVED  
DEC 04 2017  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

JAMES ANTHONY HAYNES,

APPELLANT

APPELLATE CASE NO. 2017-001681

\_\_\_\_\_  
ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

VICTOR R SEEGER  
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

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred by ruling Appellant's right to remain silent was part of the res gestae to the alleged crime which allowed the prosecution to use Appellant's right to remain silent against him?

## STATEMENT OF THE CASE

Appellant was indicted for burglary in the first degree, unlawful carrying of a pistol, possession of a weapon during the commission of a violent crime, and possession of a stolen handgun by the Charleston County Grand Jury. R. 504 – 509. His case was called to trial July 10, 2017, before the Honorable Deadra Jefferson, and the jury. R. 1. Assistant Solicitors Mark Bourdon and Charles Condon represented the state. Id. Ben Lewis and Nick Smit represented Appellant. Id.

After a three-day trial the jury found Appellant guilty of burglary in the first degree, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime. R. 476, ll. 5 – 24. Appellant was sentenced imprisonment for one year for unlawful carrying of a pistol, five years for possession of a weapon during the commission of a violent crime, and fifteen years for burglary in the first degree. R. 502, ll. 1 – 16.

This appeal follows.

## ARGUMENT

The trial court erred by ruling Appellant's right to remain silent was part of the res gestae to the alleged crime which allowed the prosecution to use Appellant's right to remain silent against him.

On May 26, 2015 in Charleston County, appellant had the day off of work and walked to a dirt "bike park" to hang out. R. 334, l. 18. – R. 335, l. 1; R. 349, ll. 23 – 24. Appellant testified in his own defense, that while he walked down Ruff road he noticed a pickup truck following him. R. 333, ll. 15 – 22. Two to three weeks earlier, Appellant was shot at by people inside a pickup truck with a similar make, model, and color. R. 333, ll. 19 – 22. Due to this prior run in he feared for his life. He decided to find a safe place to hide. So he hopped Gary Franks' fence and entered Franks' empty house. R. 336, l. 1 – R. 338, l. 18.

While inside the house he noticed some cash and a jewelry box. R. 366, ll. 10 – 14. Appellant conceded he let temptation get the better of him. He took the cash and the jewelry box from Gary Franks' house, but his intent upon entering was purely self-preservation, and not to commit a crime. R. 340, l. 25 – R. 342, l. 8; R. 398, ll. 20 – 24.

After a few more moments in the house, Appellant heard a police radio outside. R. 365, l. 24 – R. 366, l. 3. Now that Appellant had taken some of the owner's property, he panicked and ran out of the house. R. 367, ll. 9 – 13. The police apprehended Appellant about twenty feet away. R. 63, l. 14. Appellant chose to exercise his constitutional right to remain silent.

During cross-examination of Appellant, the solicitor questioned Appellant about remaining silent rather than talk to police. R. 355, ll. 1 – 8. Appellant and police did not have any contact until the moment of arrest. R. 234, ll. 11-18.

During cross examination the following exchange took place:

[solicitor]: Okay. And at that point you don't tell them hey, I had to come in this house because someone is after me.

[Appellant]: No, I didn't.

[solicitor]: You didn't say any of that. You ran out the front door and you saw Officer Ranck standing at the front of the house, correct?

[Appellant]: Correct.

[solicitor]: And at that point you didn't say hey ---

[Defense Counsel]: --- objection, Your Honor.

[The Court]: Basis?

[Defense Counsel]: Commenting on his right to remain silent.

[The Court]: Please approach.

[Whereupon, an off the record bench conference is held]

[The Court]: Overruled. Res gestae. But be very careful, Mr. Boudon (solicitor).

[Solicitor]: Yes, Your Honor. Thank you, Your Honor.

[Solicitor]: Now Mr. Haynes when you came out the front door you knew the police were already on the scene.

[Appellant]: Yes sir, I did.

[Solicitor]: Okay and did you see Officer Ranck in front of you at the door.

[Appellant]: No I did not.

[Solicitor]: Okay and at some point he's telling you to stop isn't that correct?

[Appellant]: Yes.

[Solicitor]: And you don't tell him hey, I'm here because I'm being chased or I'm here because I'm seeking shelter in this house and some guys are after me in a truck.

[Appellant]: No sir... R. 355, l. 1 – 356, l. 7.

Defense counsel properly objected to the solicitor's improper question about Appellant's right to remain silent. R. 355, l. 9. However, the trial judge overruled the objection and stated that

the Appellant's silence was, "res gestae." R. 355, l. 16. Overruling that objection was an error, and that error prejudiced Appellant.

### DISCUSSION

The United States Supreme Court defined the initiation of an arrest as, "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 U.S. 1, 16, 88 S. Ct. 1868, 1877 (1968). Our Supreme Court followed the Terry court's definition in State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977). The Court held, "[i]t is only when the contract [sic] between the police officer and the citizen is such as to make the reasonable man aware that he may not just walk away, or refuse to cooperate, that a seizure has occurred. Id. at.380, 237 S.E.2d at 592.

Appellant's first contact with police was after he heard Officer Ranck yell, "stop" and "taser." R. 234, ll. 11 – 20. At that moment Officer Ranck arrested Appellant because Appellant reasonably believed that he could not just walk away or refuse to cooperate.

The seminal case regarding prosecutorial misconduct for commenting on an accused's right to remain silent is Doyle v. Ohio, 426 U.S. 610, 611 (1976). In Doyle, the United States Supreme Court held it is improper for the prosecution to comment or elicit testimony concerning a defendant's exercise of his right to remain silent post-arrest. (see also Griffin v. California, 380 U.S. 609 (1965); State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987)). "The obvious purpose is to try to prevent jurors from improperly inferring the accused is guilty simply because he exercised rights guaranteed to him by the state and federal constitutions." Edmond v. State, 341 S.C. 340, 346, 534 S.E.2d 682, 685 (2000).

In State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986), our Supreme Court held, "[a]n accused has the right to remain silent and the exercise of that right cannot be used against him. The

[s]tate cannot, through evidence or the solicitor's argument, comment on the accused's exercise of his right to remain silent." Id. at 394-395, 350 S.E.2d at 924.

Officer Ranck, the arresting officer, testified that his first interaction with Appellant was yelling, "stop," and, "taser," and that the Appellant, "just gave up." R. 234, ll. 15 – 17. Since the arrest was the initial contact between Appellant and police, Appellant's silence at that time cannot be called into question. However, the solicitor twice questioned Appellant's silence, one question specifically regarded Appellant's silence after Officer Ranck stopped him. R. 356, ll. 1-6. Moreover, that question implicated Appellant's post-Miranda<sup>1</sup> silence because experienced officers, such as those whom arrested Appellant, would not have questioned Appellant without first reading him his Miranda rights.

When the solicitor asked why Appellant did not explain to the police his reason for breaking into the house, the solicitor prejudiced Appellant by improperly commenting on his post-arrest right to remain silent.

"Res gestae," is an exception to the preclusion of hearsay evidence that our Supreme Court defined in State v. Long, 186 S.C. 439, 195 S.E.2d 624 (1938). A statement is res gestae when it is, "substantially contemporaneous with the litigated transactions, and be instinctive, spontaneous, utterance of the mind while under the active, immediate influences of the transaction; the circumstances precluding the idea that the utterances are the result of reflection or designed to make false or self-serving declarations." Id. at 445, 195 S.E.2d at 626.

The Court elaborated on the reasoning for the res gestae exception in State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996). The Court held, "[t]he rationale underlying the res gestae theory is that evidence of *other criminal conduct* that occurs contemporaneously with or is part and parcel of

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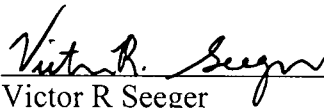
<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

the crime charged is considered part of the res gestae of the case.” *Id.* at 462, 469 S.E.2d at 53. (emphasis added) In *State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1998), the Court held, “the res gestae theory recognizes *evidence of other bad acts* may be an integral part of the crime with which the defendant is charged...” *Id.* at 512, 514 S.E.2d at 583. (emphasis added) Thus, the admittance of any evidence on a theory of res gestae must be in regards to *other criminal conduct or bad acts*.

In Appellant’s case, the evidence admitted as res gestae was not criminal conduct nor a bad act, it was merely Appellant’s silence. Therefore, the prejudice done to Appellant is two-fold. Not only did the solicitor improperly question Appellant’s post-arrest right to remain silent, but the judge further prejudiced Appellant because admittance on a res gestae exception implies that Appellant’s silence was a criminal act.

**CONCLUSION**

By reason of the foregoing arguments Appellant's conviction should be reversed, and this case remanded to the Charleston County Court of General Sessions for a new trial.

  
\_\_\_\_\_  
Victor R Seeger  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of December, 2017.

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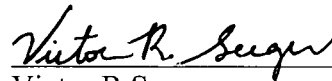
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for James Anthony Haynes states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on July 10 - 12, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for James Anthony Haynes.

Respectfully Submitted,



\_\_\_\_\_  
Victor R Seeger  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 4th day of December, 2017.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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THE STATE,

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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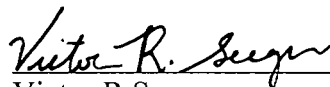
SC Court of Appeals

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

- (1) True-billed indictments:
- (2) Trial transcript

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

December 04, 2017



Victor R Seeger  
Appellate Defender

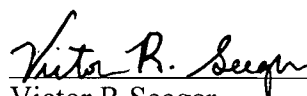
South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**CERTIFICATE OF COUNSEL**

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."

December 04, 2017.

  
\_\_\_\_\_  
Victor R Seeger  
Appellate Defender

South Carolina Commission on Indigent  
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Columbia, SC 29211-1589  
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APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on James Anthony Haynes, 320287, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 4th day of December, 2017.

Victor R. Seeger  
Victor R Seeger  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4th day of December, 2017.

Maria Kumbel (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023

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IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County  
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

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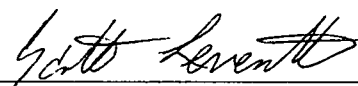
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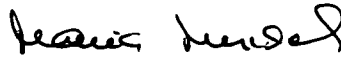
APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of December, 2017.

  
\_\_\_\_\_  
Scott Leverett  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 4th day of December, 2017.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires July 3, 2023.