

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Case No. 2017-001236

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SC Court of Appeals

The State,

RESPONDENT,

v.

DERRICK Lamount Furtick, #340335,

APPELLANT

MOTION FOR SUBSTITUTION OF COUNSEL

Comes now, the Appellant Derrick Lamount Furtick, appearing under the liberal standard comoted in Haines v. Kerner, 404 U.S. 519 (1972), respectfully requesting "change of counsel whereas, there has been a total breakdown between appointed appellate defender [Mr. Taylor D. Gilliam], and himself. In regards to an issue raised in the trial court; which is reasonable to raise for effective appellate review. Yet, counsel on appeal fails to acknowledge, even after being enlightened of the issue merits".

On Tr. tr. p. 136, lines 10-18, although the trial court denied the motion for directed verdict on the kidnapping charge. It is Appellant's right to have requested appellate counsel to raise

"whether the trial court erred in denying the motion for the directed verdict". Especially based on the circumstances of this particular case.

Here, Appellant was being pursued by armed attackers that were trying to kill him. Or which he reasonably believed were trying to kill hi. He took refuge into a nearby home in which the door was open. The testimony of the victim demonstrated; "when Appellant was discovered to be unlawfully in the home, he, himself, turned on the lights so he could identify himself". He explained to the victim what was transpiring. The victim "heard the gunshots, for which woke her up". She was afraid, and attempted to put distance between herself and Appellant, to which appellant felt he stood a better chance keeping her close. The victim sent her son to call the police. Appellant was aware of that fact, "and remained on the scene rather than flee". He had a tight grip on her hair, which managed to come lose.

The police arrived and had no resistance in taking the Appellant into custody. In addition, Appellant had to spend six days in the hospital after his arrested for an expected overdose.

The point Appellant attempted to get across to his Appellate Defender (which became irate) during a normal discussion. "Was whether the trial court erred in denying the directed verdict on the kidnapping charge". Where "no circumstantial nor direct evidence supported the 'mens rea' requirement (the state of mind)", versus the issues counsel included within the appellate brief on record.

In ruling on a directed verdict motion, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Futch v. McAllister Towing, 335 S.C. 598 (1999).

An appellate court must apply the same standard when reviewing the trial judge's decision on such motions. See Weir v. Citicorp Nat'l Serv., Inc., 312 S.C. 511 (1993) And whether such denial constituted an "abuse of discretion" within such denial.

Thus, it was not unreasonable for the Appellant to request review of an issue raised in the lower court (under the circumstances of this case), To determine "whether the existence or nonexistence of the evidence was properly determined". See Long v. Norris & Assoc., (2000); and Jones v. General Elec. 331 S.C. 351, 503 S.E. 2d 173 (Ct App. 1998). Especially considering the following:


First, Appellant was acquitted of the First Degree Burglary, tied with the kidnapping. At first impression one might think such is irrelevant. However, that crime carries with it; "an attempt to commit a crime therein", once the unlawful entry is achieved".

So jurors did not believe "Appellant entered the home with the intent to commit a crime therein". Second, 'mens rea' is defined as "a guilty mind". i.e., "The state of mind that the prosecution must meet, to secure a conviction, which must be proved that a defendant had when committing the crime".

In this instance, the crime convicted of is kidnapping, "rather than simple assault or /and battery by pulling someone's hair".

But because Appellant counsel showed disrespect for such aid and assistance in Appellant's appeal. Such arrogance clearly demonstrate's his unwillingness to put forth an effective appeal brief on behalf of this Appellant. And for these reasons, Appellant humbly and respectfully request "his removal, and please appoint new counsel at minimum, willing to listen". As it is the Appellant that ultimately has to serve the time in the event he does not prevail through the appellate process.

Respectfully Submitted,

/s/ 
Derrick Lamount Furtick
Liber Corr. Institution
P.O. Box 205
Ridgeville, S.C. 29472

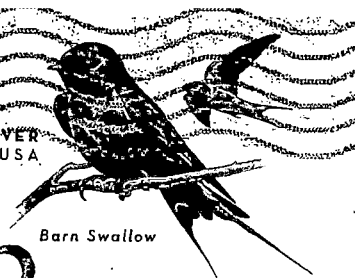
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T.D. Gilliam
4/12/2018

Derrick Lamont Furtick #340335
Lieber Correctional Institution AA-62
PO Box 205
Ridgeville, S.C. 29472

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