STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Matie Murphy, Circuit Court Judge

The State,

Respondent,

Derrick Lamount Furtick,

Appellant.

Appellate Case No. 2017-001236

Pro-Se Appellant Brief

By: Derrick Lamount Furtick
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STATEMENT OF THE CASE

Here, Appellant was "questionably indicted for kidnapping;" and first degree burglary. And maintained his innocence, and proceeded to trial on May 23, 2017, before the Honorable Maite Murphy, and a jury of Orangeburg County.

Breen Stevens and Peggy Hinds, represented Appellant, and Ashley Cornwell appeared on behalf of the State. The jury found Appellant "not guilty" of the first-degree burglary charge and "guilty" of the kidnapping charge. Tr. tr. p. 216, lines 14-22. Judge Murphy sentenced Appellant to the maximum sentence of thirty (30) years. Tr. tr. p. 223, lines 2-5.

A timely notice of intent to appeal was filed. And Mr. Taylor D. Gilliam, of the S.C. Commission on Indigent Defense was appointed to perfect Appellant's appeal. Because Appellant has a right to effective assistance of counsel on direct appeal, to also "aid and assist". Appellant respectfully requested Appeal counsel to include for appellate review, "the trial court's denial of the motion for directed verdict (with good reason) as to the kidnapping charge".

Appellant verbally and in writing explained and expressed his legal and logical view relating to such issue. But appeal counsel refused to supplement to brief to include, and this caused a irreconcilable conflict in representation of the instant appeal. And is reason Appellant request leave to include such issue(s).

STATEMENT OF ISSUE(S) on appeal

1. Whether the lower court erred in denying the motion for directed verdict based primarily on "whether the state lacked sufficient facts of evidence to establish mens rea requirement (guilty mind and guilty hand) to satisfy Kidnapping"?

a. Secondly, "whether Murray v. Carrier, 477 U.S. 478, 106 S. Ct. 2639 pursuades this court to consider a defaulted claim on appeal where Appellant can establish "cause and prejudice", or that he is actually innocent of the kidnapping charge. Since Appellant could be barred from raising such claim on collateral review if it was not first challenged on direct appeal. 106 S. Ct. at 2649.

b. And finally, "whether the law of Duress renders Appellant's actions excusable", even though it may not negate the elements of the crime charged?

c. And, "whether appellate counsel correctly found it unreasonable in omitting the above central concerns stemming from failure to raise the 'requested' directed verdict denial"?

RELEVANT FACTS OF THE CASE.

Appellant Derrick Furtick was at a friend's house playing poker on August 19, 2016. Tr. tr. 154, II. 5-11. At some point in the night, Appellant heard voices outside and cheked the back door. Tr. 155, I 13.-Tr. 156, I.21. Upon returning to the poker table, the people who Appellant had been playing cards with had placed guns on the table. ID. Appellant was informed that he needed to leave the house. **Id.** As he began to leave, one of the individuals began "cocking a gun" so Appellant ran. Id. As he ran, shots were fired. Id.

Appellant ran to the nearest house and knocked on the door. Tr. 156, lines 1-22, Tr. 160, lines 1-15. Due to the impending danger, he turned the doornob as he knocked. Scared, he entered the dwelling to hide from the gunman. Id. He hid inside one of the rooms. Id. As he testified at trial, "he didn't know what was going on". Id. He was "just scared". Id.

After he entered the home, he heard a female inquire about his presence and identity. Id. He told her he needed help because someone was trying to kill him. Id. The woman, Danielle Monroe, opened the door to let her son out so that he could go get help. Id. Appellant, fearful that the shooters were chasing him, closed the door. Id.

Appellant and Monroe ended up in the front yard after Monroe followed her son outside. Id. Appellant held Monroe close to him because "he just felt safe around her", and also, "he knew it was

less chance and opportunity for the shooters to get him in front of a witness". Id. He held her close until police arrived. Id.

Appellant was then detained without incident, placed in a police car, and driven to the hospital. Tr. tr. p. 160, lines 1-18, Tr. 161, 1-6. Appellant almost died in the hospital following a drug overdose; where he remained for approximately six days. Tr. 169, II. 5-22.

Danielle Monroe's Testimony in Relevant Part.

The most damaging (if damaging at all) testimony came from the alleged victim, Ms. Danielle Monroe. On direct Ms. Monroe carved out virtually the identical theory on the necessary points in order to determine "whether Appellant's crime should be excused", thereby rendering him "actually innocent." Which commands court's to take notice even where such issue was not properly preserved.

Tr. tr. p. 70, lines 1-12. Ms. Monroe testified that "while she was sleeping she was awaken by gunshots around four or five, in the morning.

That she got up looked out the window to see if anybody was laying on the ground or something like that because of the gunshots was pretty close. That's what woke her up. Id.

After she didn't see anything, she laid down a little bit. Then as soon as I put the cover back over me, I saw my living room light come on and heard the front door close. Id. I thought it was my brother and I shouted calling his name and he didn't answer. I laid back down, he would just go straight down the hall to his room. Id.

Tr. tr. p. 71, lines 13-25. Something told me to get up and look out the window for his car. I went to walk to the window, th-at's when I saw him standing in the hallway, I was like; "this person is too short". That's not my brother. lines 14-18 Id.

So [He the Appellant] hit the light and that's when I seen him and I was like, "oh no, you got to go". Tr. tr. p. 71, lines 19-25, p. 72.

In a brief pause; "Monroe was planning on sending Appellant back outside to be shot or killed by the gunman". Thus, the "law on **'self-preservation'** kicked into the mind of Appellant. See State v. New, 640 S.E.2d 871 (S.C. 2007)

In New, The S.C. Supreme Court found the rationale of Dixon persuasive. Duress 'excuses the crime' but does not negate any element of the offense. See State v. Rocheville, 310 S.C. 20, 425 S. E.2d 32 (1993)(duress does not negate element of malice in murder charge); State v. Robinson, 294 S.C. 120, 363 S.E.2d 104 (1987)(duress envisions a third party compelling another to commit a crime). Self-defense, on the other hand, goes to the element of the crime. See State v. Taylor, 356 S.C. 277, 589 S.E.2d 1 (2003)

Exactly what Appellant is trying to say here is "DURESS", in the event this court so finds, and in the event the above remains "good law". Renders his actions 'excusable', although his actions conforms to kidnapping. Yet, "such excuse results in his actions being deemed innocent behavior".

Such is why the constitutional prerequisite "mens rea" cannot be shrinked from consideration in criminal trials. Because it means to address the specific state of mind of the offender when charged, or on trial for a criminal offense.

Trial Counsel's Motion for Direct Verdict.

Regarding kidnapping, State v. Jeffries, from 1994. In that case, the South Carolina Supreme Court readily indicated that the mens rea or the intent element was "knowledge" and they gave us a definition of knowledge when it comes to proving kidnapping charge. Tr. tr. p. 136, lines 1-14.

Our position, Judge, is the State does not have any direct or substantial circumstancial evidence regarding that element and, as such, we would move for directed verdict of acquittal on that charge as well. Tr. tr. p. 136, lines 15-18.

Here, pertaining to "the state of mind". Jeffries and the instant case at bar is significantly distinguisable. Jefferies was on escape from the South Carolina Department of Corrections, and was bent on finding the fastest way to place distance between him and the place he just recently escaped from. Jefferies seen a car with the keys still in it. When he initially got in, he was unaware of the baby in the back, but within the first six-tenths of a mile he became aware, and kept going. In affirming Jeffries, the

Supreme Court carefully carved out these noted facts, in regards to Jeffries "mens rea" challenge.

In the instant case at bar however, "the evidence clearly and irrefutably demonstrated Furtick entered Ms. Monroe's home under **DURESS!"**

Cross Exam of Ms. Monroe.

On cross examination. Ms. Monroe also testified that after she noticed Appellant in her house. He did not attack her, he did not charge at her, that is; "until she went to open up the door". Tr. tr. p. 88, lines 4-11.

Ms. Monroe, also explained Appellant "was breathing hard like he had been running, and his eyes were big as golf balls". Tr. tr. p. 88, lines 19-25. That "Appellant turned on the light so she could see exactly who he was". Tr. tr. p. 87, lines 1-7.

The basis of Appellant "not wanting Ms. Monroe to open the outside door was not to kidnap her". In Ms. Monroe's own words; "Tr. tr. p. 84, lines 22-25; Tr.p. 85, lines 1-2.

Q: Okay. Do you remember whether it was one shot or more than one shot?

A: It was more than one, but I just don't remember how many. It was more than one.

Q: But it was more than one?

A: Yes ma'am.

Rather, the basis of Appellant not wanting Ms. Monroe to open the outside door was because he believed the shooters were still out there, and reasonably could have been. Which establishes the necessary "DURESS", legally required to 'excuse' the crime of kidnapping, although, as the State contends, "does not negate the elements of the offense" See again, State v. New, 640 S.E.2d 871 (S. C. 2007) This Court found the rationale of Dixon persuasive. "DURESS" 'excuses' the crime but does not negate any elements of the offense.

If there ever is a case clearly entitled to this defense under the theory of duress. This is the picture perfect case. To where this court may apply the actual innocence exception, where the failure to correct the trial error would amount to a fundamental miscarriage of justice. Where the resulting prejudice is incarcerating a person, when his basis for breaking the law was **self-preservation.** See State v. Robinson, 294 S.C. 120 (1987)(duress envisions a third person compelling another to commit a crime).

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. Spears, 403 S.C. 247, 742 S.E.2d 878, 880 (Ct. App. 2013). The error of law is apparent and warrants review in this case, "whether or not it

was artfully raised and ruled on by the trial court". Because to ignore its significance, would be to turn this court's back on a person unlawfully imprisoned. And call such result justice. See for instance, Sawyer v. Whitley, 505 U.S. ___, 112 S. Ct. 2514, whereas the threshold showing of "actual innocence" requires a petitioner to demonstrate by clear and convincing evidence; "that but for a constitutional error, no reasonable juror would have found him guilty". See also State v. Lane, 406 S.C. 118, 749 S. E.2d 165 (S.C. 2013); U.S. v. Maybeck, 186 F.3d 490 (4th Cir. 1999); and United States v. Frady, 456 U.S. 152 (1982)

These cases, most of which represent the clear fact, comity, finality of procedural bars must yield to the imperative of correcting a constitutional error which has resulted in the unfair incarceration of a person that is actually innocent. See also Murray v. Carrier, supra.

Wherefore, under the liberal standard of Haines v. Kerner, 404 U.S. 519 (1972). Appellant respectfully request to admit this issue where appellate counsel deliberately omitted (after being requested) the issue dealing with the denial of the directed verdict ruling. Where such could later be barred on collateral review for failing to raise it in this court. And reverse and remand this case back to the trial court (if at minimum), for a finding of whether the facts of this case "entitles Appellant's crime as charged, to be excused. Thereby clearing him of kidnapping.

Or remand for a new trial altogether, or any other justifable relief this Honorable Court deems just and proper. Withstanding the State's bolstered, fabricated response brief which tends to distort the facts. When we have the victim's own testimony.

Respectfully Submitted,

/s/_____

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