

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

RECEIVED

MAY 11 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

QUENTIN GAUSE,

APPELLANT

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS.....	5
ARGUMENT.....	10
CONCLUSION.....	12
PETITION TO BE RELIEVED AS COUNSEL.....	13

6TABLE OF AUTHORITIES

Cases

Hughes v. State, 346 S.C. 554, 552 S.E.2d 315 (2001)..... 11

State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999)..... 11

State v. Halcomb, 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009)..... 10

State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002) 10, 11

State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)..... 10

State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct.App.2002) 10

State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996)..... 10

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to grant appellant's severance motion when appellant was indicted as a principle for murder, armed robbery and burglary and the co-defendant was charged as an accessory before the fact to armed robbery and burglary?

STATEMENT OF THE CASE

In August of 2008, the Horry County Grand Jury indicted Gause for murder and burglary first degree, indictments #2008-GS-26-03133, 031335. In March of 2011, the Horry County Grand Jury indicted Gause for armed robbery, indictment #2011-GS-26-1274. On June 6, 2011, Gause proceeded to jury trial before the Honorable Steven H. John. One co-defendant, Ladorrean Chukell Collington, was tried at the same time for the charges of accessory before the fact to burglary first degree and accessory before the fact to armed robbery. Ronald Hazzard represented appellant Gause. H. Gregory McCollum represented Collington. The jury returned verdicts as charged. Judge John sentenced Collington to 22 years concurrent for each of her charges and sentenced Gause to 42 years for murder, 30 years concurrent for both burglary first degree and armed robbery. A timely notice of intent to appeal was filed on June 16, 2011. This appeal follows.

STATEMENT OF FACTS

During the course of a robbery and burglary of his home on April 14, 2008, Allen Smith was shot and killed. According to testimony presented by the State at trial, a co-defendant, Ladorrean Collington, was the master mind behind the plan to rob Smith for revenge. Ladorrean Collington claimed to be pregnant with Smith's child and was angry that Smith was living with another woman, Frankie Davis. (R. p. 986, lines 15-25). Anthony Graham and Frankie Davis were in the home at the time of the incident and both testified at trial.

Graham testified that on the Tuesday before the shooting, Smith and Ladorrean argued about Frankie Davis. (R. p. 431 lines 3—23). The verbal argument escalated into a physical confrontation. (R. p. 432 lines 1-7). Shortly after this argument, Graham saw Ladorrean near Smith's house in her vehicle. (R. p. 434 lines 10-20). Graham heard a window break, and then saw Ladorrean's vehicle driving away. (R. p. 436 line 25 – p. 437, lines 1-2). Graham testified that Ladorrean attached a note to the rock she threw through the window. (R. p. 437, lines 13-16). Officer Daniel Cradic of the Horry County Police Department arrived at the house. (R. p. 437 lines 23-24; p. 1120, lines 1-11). Graham testified that the officer joked with Smith that this was the second time "this girl done bust out your window . . ." (R. p. 438 lines 1-4).

Officer Cradic testified there was a note found at the scene and he read the note. He copied the contents down on the note in his report. (R. p. 1122 lines 1-10). Officer Cradic read to the jury the contents of the note: "bitch, I will be back, nigger, fuck you. F.Y. bitch ass, AIDS-infected bitch. Yeah, we all got it. D-baby." (R. p. 1124 lines 4-6). Additionally, the day before the shooting, Allen Smith showed Graham a text message he

received from Ladorrean that stated “something about you and your mama could get it.” (R. p. 444, lines 20- p. 445, lines 1-9).

Graham testified that on the day of the shooting three armed men came in the front door. (R. pp. 448-450). The men’s faces were covered. (R. p. 449, lines 12-16). According to Graham, the third guy who entered the house walked back to Smith’s bedroom. (R. p. 452, lines 6-25). Graham heard two shots and then the three men ran out of the house. (R. p. 455, lines 1-9).

Frankie Davis testified that she lived with Allen Smith. She testified that Ladorrean broke their living window twice and on April 11, 2008, prior to the shooting, she had a confrontation with Ladorrean at the Dollar Store. (R. p. 555, lines 1- p. 556, 557, lines 1-25). She testified that on the afternoon of the shooting she and Allen Smith were asleep when she awoke to three voices. (R. p. 560, lines 21-25). She got under the bed and then heard a big bang. (R. p. 561, lines 1-3). The fire alarm sounded and the men left. She crawled out from under the bed and found Allen Smith on the floor. (R. p. 562, lines 12-25).

Ladorrean Collington, Tiffany James, Andrew James, Donell James, Greg Floyd and the appellant Gause were all arrested in connection with the burglary, robbery and murder of Allen Smith. Tiffany James, Andrew James, Donell James and Greg Floyd were all called as State’s witnesses at trial. Andrew James testified that prior to the April 14th incident, Ladorrean Collington told him that robbing Allen Smith of drugs and money would be easy. (R. p. 598, lines 15-25). Andrew James testified that Tiffany James, his sister, drove him, Donell James, their cousin and Greg Floyd, the brother of the father of Tiffany’s baby, to Allen Smith’s house. (R. p. 602, lines 8-15). Andrew James admitted having a shotgun

and testified that Donell also had a gun. (R. p. 602, lines 16 – p. 584, lines 1-10). Andrew James testified that the plan was for the three men to rob Allen Smith and then run through the path back to Ladorrean’s house. (R. p. 603, lines 23 – p. 604, lines 1-2).

According to Andrew James, the three of them decided not to go through with the robbery plan and returned to Ladorrean’s house. (R. p. 605, lines 9 – p. 606, lines 1-9). Andrew James testified that later, on the day Allen Smith was shot, Andrew James had taken his 22 pistol and his shotgun to his cousin Donnell’s house. (R. pp. 608 – 610). Sometime after the shooting, he met his sister Tiffany and she had his 22 pistol. (R. p. 618, lines 18 – p. 619, lines 1-25). According to Andrew James, he took the gun back from his sister and it accidentally discharged. When the police questioned Andrew James on April 15, 2008, he admitted that they would find gun shot residue on his hands because of the “accidental discharge.” (R. p. 675, lines 7-14).

Tiffany James testified that on April 10, 2008, Ladorrean Collington, Tiffany’s brother, Andrew James, her cousin Donell James and Greg Floyd discussed robbing Allen Smith. (R. p. 992, lines 1-25). Tiffany admitted driving the three to Allen Smith’s house for the robbery. (R. p. 993, lines 1 – p. 994, lines 1-5). Tiffany testified that when she returned to Ladorrean’s house, the three men were there and had not robbed Allen Smith. (R. p. 994, lines 2-19).

Tiffany James testified that Ladorrean was still interested in a robbery of Allen Smith. (R. p. 994, lines 20-23). According to Tiffany, on April 14, 2008, she drove Donell James, Greg Floyd and this time, rather than her brother Andrew James, appellant Gause to Allen Smith’s house. (R. p. 1001, lines 5- p. 1002, lines 1-24). She testified that Greg Floyd kicked in the front door and the three men went inside. (R. p. 1003, lines 1-3). Tiffany

testified that she heard gun shots and then the three men ran out of the house and jumped in the car. (R. p. 1003, lines 19 – p. 1004, lines 1-8).

Donnell testified at trial that Ladorrean suggested that he rob Allen Smith. (R. pp. 702-703). Donnell admitted his involvement in the abandoned robbery attempt on April 10th involving his cousin, Andrew James and Greg Floyd. (R. pp. 738-742). Donnell admitted his involvement in the robbery that resulted in Allen Smith's death on April 14, 2008. According to Donnell, Greg Floyd kicked in the door, and he, Greg and appellant Gause, not his cousin Andrew James, went inside. (R. p. 755, lines 19-22). According to Donnell, Gause shot Smith first and then Greg Floyd shot Smith in the back. (R. p. 758, lines 6 – p. 759, lines 1-25).

Greg Floyd testified that Tiffany James called him and told him that Ladorrean Collington (Dorrea as he referred to her) had an "easy lick" for him. (R. p. 868, lines 2-12). Floyd admitted that around April 10, 2008, prior to the shooting, he met with Ladorrean, Donnell James and Andrew James and discussed the robbery of Allen Smith. (R. pp. 870-871). Floyd admitted his involvement in the abandoned robbery attempt on April 10th involving Andrew and Donnell James. (R. pp. 871 - 875). Floyd admitted his involvement in the April 14th robbery and shooting. Floyd admitted kicking in the front door. (R. p. 889, lines 21-25). Floyd admitted shooting Allen Smith. (R. p. 894, lines 20-25). According to Floyd, however, Allen Smith had already been shot when Floyd "mis-pulled" the trigger and shot. (R. p. 893, lines 1 – p. 894, line 1-25). Floyd did not see who shot Allen Smith first because he was in another room. (R. p. 891, lines 22 – p. 892, 893, lines 1 – 6). Floyd testified that Donnell and appellant Gause (Bait as he referred to him) were in Smith's bedroom when he heard gunshot blasts.

Appellant Gause and Ladorrean were tried together. The jury found Ladorrean guilty of accessory before the fact to burglary first degree and accessory before the fact to armed robbery. The jury found Gause guilty of murder, burglary first degree and armed robbery.

ARGUMENT

The trial judge erred in refusing to grant appellant's severance motion when appellant was indicted as a principle for murder, armed robbery and burglary and the co-defendant was charged as an accessory before the fact to armed robbery and burglary.

During a pre-trial motions hearing, counsel for the co-defendant moved for severance and counsel for appellant joined in that motion. (R. p. 181, lines 4- p. 181, lines 1-13). Counsel for appellant noted that he had additional grounds for severance that he wished to argue after the judge ruled on the admission of evidence of prior difficulties between the co-defendant and the deceased, Allen Smith. (R. p. 181, lines 3-13). The judge denied the motion to sever on the grounds stated but left open the motion as to any additional grounds. (R. p. 182, lines 23 – p. 183, lines 1-25).

During a later pre-trial motions hearing on June 2, 2011, counsel for appellant again moved for severance.¹ (Supp. R. p. 79, lines 22-25). The judge again denied the motion. The judge erred.

A motion for severance is addressed to the sound discretion of the trial court. State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002); State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct.App.2002). The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion. Tucker, 324 S.C. at 164, 478 S.E.2d at 265; State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); Simmons, 352 S.C. at 350, 573 S.E.2d at 860. "A defendant who alleges he was improperly tried jointly must show prejudice before an appellate court will reverse his conviction." State v. Halcomb, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (Ct. App. 2009). A severance should be granted only when there is a serious risk that a joint trial would

compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt. Harris, 351 S.C. at 652-53, 572 S.E.2d at 273; State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999). An appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial. Hughes v. State, 346 S.C. 554, 552 S.E.2d 315 (2001).

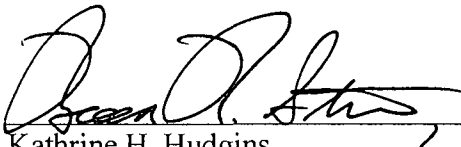
If appellant had been tried separately, there is a reasonable probability that the highly inflammatory contents of the note found on the rock thrown through Allen Smith's window by Ladorrean, her altercations with both Smith and Frankie Davis and her text message threat to Smith would have been excluded as irrelevant to a determination of the guilt or innocence of appellant Gause. This evidence was prejudicial to appellant because it was irrelevant to him and prevented the jury from making a reliable judgment about his guilt, apart from the guilt of the co-defendant. The refusal to grant appellant Gause a separate trial constitutes a prejudicial abuse of discretion requiring reversal.

¹ Counsel's argument is noted as not audible on tape by the court reporter.

CONCLUSION

Based on the above argument, the convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,

 For
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of May, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUENTIN GAUSE,

APPELLANT

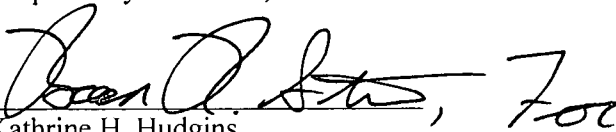
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quentin Gause states:

1. She is 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 Steven H. John, which was held on June 10, 2011, 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 Quentin Gause.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

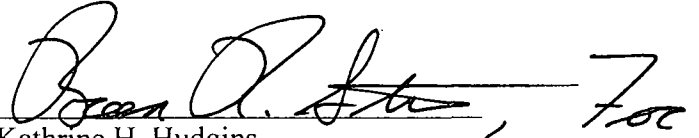
ATTORNEY FOR APPELLANT

This 11th day of May, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 11, 2012

A handwritten signature in black ink, appearing to read "Kathrine H. Hudgins", written over a horizontal line. To the right of the signature, the letters "For" are written in a cursive style.

Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

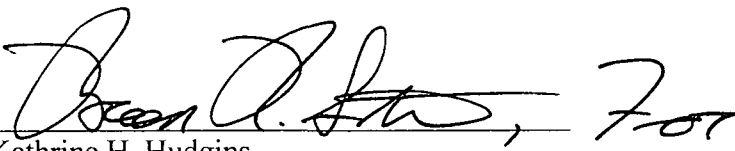
V.

QUENTIN GAUSE,

APPELLANT

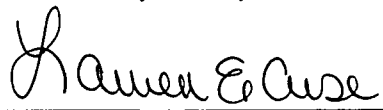
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Quentin Gause, # 300054 at Lieber Correctional Institution, this 11th day of May, 2012.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of May, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.