

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**ORIGINAL**

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DRAKE EDWARD CAMPBELL,

APPELLANT

APPELLATE CASE NO. 2018-001648

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ANDERS BRIEF OF APPELLANT

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**RECEIVED**  
JUL 16 2019  
SC Court of Appeals

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in refusing to sever Appellant's trial from the trial of his three co-defendants?

## STATEMENT OF THE CASE

In April of 2017, the Berkeley County Grand Jury indicted Appellant, Drake Edward Campbell, for burglary first degree, two counts of armed robbery, murder, attempted murder, two counts of kidnapping and possession of a weapon during the commission of a violent crime, indictments #2017-GS-08-783 – 790. On August 27, 2018, Appellant, with three other co-defendants, proceeded to jury trial before the Honorable Deadra Jefferson. Grant B. Smaldone represented Appellant at trial. Bryan A. Alfaro and Wilton McNelly prosecuted the case. The jury found Appellant not guilty of burglary first degree, not guilty of murder and not guilty of attempted murder. The jury found Appellant guilty of both counts of armed robbery, both counts of kidnapping and of possession of a weapon during the commission of a violent crime.

The jury found the alleged triggerman, co-defendant Jacob Mouzon, guilty on all counts. The jury found Appellant's brother and co-defendant, Kenneth Campbell, not guilty of burglary first degree, not guilty of murder and not guilty of attempted murder but found him guilty of both counts of armed robbery, both counts of kidnapping and of possession of a weapon during the commission of a violent crime, the same charges for which the jury returned verdicts of guilty for Appellant. The jury found co-defendant Sherrod Palmer not guilty on all counts.

Judge Jefferson sentenced Appellant to twenty (20) years concurrent for each of the armed robbery charges, twenty (20) years concurrent for each of the kidnapping charges and five (5) years concurrent for the weapon charge. A timely notice of intent to appeal was served on September 7, 2018. This appeal follows.

### **STANDARD OF REVIEW**

Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. State v. Boys, 302 S.C. 545, 397 S.E.2d 529 (1990). Motions for a severance and separate trial are addressed to the discretion of the trial court. Id. Absent a showing of an abuse of discretion, this Court will not disturb the trial court's ruling on appeal. Id.

State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997)

## ARGUMENT

**The trial judge erred in refusing to sever Appellant's trial from the trial of his three co-defendants.**

Kadgem Johnson and Krystal Snipe were robbed as they arrived home in the early morning hours of July 21, 2016. The two were forced inside of their home where Johnson was fatally shot and Snipe was shot in the hand. One of the items stolen was a red Hello Kitty bag that Johnson used to store the drugs he sold. (R. p. 247, lines 9-23). According to Snipe there were five men, two Hispanic and three black. (R. p. 310, lines 6-8). Snipe testified that only three of the men entered the house, one Hispanic and two black. (R. p. 310, lines 11-22). Snipe identified co-defendant Mouzon as the shooter. (R. p. 284, lines 8-22). Snipe picked Mouzon out of a photo line-up, indicating a fifty percent identification. (R. p. 303, lines 2-11). Snipe was unable to identify the other four men.

Darius Hamilton testified for the State. Hamilton gave various statements to the police minimizing his involvement but at trial testified that he and co-defendants Kenneth Campbell and Mouzon went in the house while Appellant and co-defendant Palmer remained outside. (R. p. 742, lines 1-25). Hamilton admitted taping the hands of Johnson and Snipe and taking a bracelet from Johnson. (R. p. 743, lines 5-22). Hamilton testified that he was outside in the yard with Appellant, Kenneth Campbell and Palmer when Mouzon shot Johnson and Snipe. (R. p. 747, line 23 – p. 748, lines 1-23). According to Hamilton, he and Palmer left in Johnson's gray Crown Victoria and Appellant, Kenneth Campbell and Mouzon left in Johnson's white Crown Victoria. (R. p. 749, lines 7-14). Both cars were found abandoned shortly after the incident. A money bandana with Appellant's DNA was found next to the white car. (R. p. 1062, lines 9-20).

Later the same day two witnesses reported seeing three males, one light skinned two dark skinned, near Eccles Church Road. (R. pp. 490-492; pp. 554-555). Both later identified Mouzon as one of the three men they saw. (R. pp. 499-500; pp. 558-559). The red Hello Kitty bag with cocaine was found near Eccles Church. (R. p. 400, lines 1-21; p. 411, lines 2-23). Law enforcement officers searched the area near Eccles Church Road and discovered Kenneth Campbell in the woods. (R. p. 545, lines 1-25). The next day officers found Appellant and Mouzon in the woods.

Of the four men who went to trial, Mouzon was the only one to testify. Mouzon testified that Hamilton and Appellant picked him up in Hamilton's truck and drove to a club in Huger, South Carolina where they met Kenneth Campbell and Palmer. (R. pp. 1098 – 1100). Mouzon testified that Hamilton left to "meet his cousin and score some weed." (R. p. 1100, lines 17-19). Several hours later, as the club was closing, Hamilton returned in his truck in a rush and told Mouzon, Appellant and Kenneth Campbell to get in the back. (R. p. 1101, line 17 – p. 1102, lines 1-14). After the three got in the bed of the truck, Hamilton took off speeding and then, when he heard sirens, pulled over on the side of the road and told the three of them to get out. (R. p. 1104, line 3 – p. 1105, lines 1-6). Hamilton took off in his truck and Mouzon, Appellant and Kenneth Campbell ran into the woods. (R. pp. 1106 – 1107). Mouzon testified that he, Appellant, Kenneth Campbell and Palmer were never at Johnson's house. (R. p. 1114, line 12 – p. 1115, lines 1-8).

Prior to trial Appellant and co-defendant, Kenneth Campbell, moved for severance. (R. pp. 50 – 69). Specifically, Appellant argued, "However, I will ask that my client, Drake Campbell's trial be severed because of the possibility and likelihood that antagonistic defenses will present themselves along the line. It's not a Bruton issue; it's a due process issue." (R. p.

62, lines 5-10). The trial judge denied both motions to sever. In regard to Appellant's motion to sever the trial judge stated, "So the mere allegation of an antagonistic defense is insufficient, and I have not heard anything specific in nature that would rise to the level of what would be required by case law to grant a severance; and, therefore the motion is denied." (R. p. 68, line 24 – p. 69, lines 1-4). The trial judge abused her discretion in refusing to grant the severance motion.

In State v. Smith, 359 S.C. 481, 489, 597 S.E.2d 888, 892–93 (Ct. App. 2004), the South Carolina Court of Appeals wrote:

Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997). A motion for severance is addressed to the discretion of the trial court and the court's ruling should not be disturbed on appeal absent an abuse of that discretion. Id. Further, "[t]he general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a codefendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime." State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). To successfully challenge the trial court's exercise of discretion in denying a motion to sever, the defendant must demonstrate some prejudice resulting from the joint trial. State v. Thompson, 279 S.C. 405, 408, 308 S.E.2d 364, 366 (1983).

In the present case, while Mouzon testified that he and Appellant and co-defendant, Kenneth Campbell remained at the club while Hamilton left, establishing an alibi for all three, the jury found Mouzon guilty on all counts, including the murder, attempted murder and burglary. The jury's guilty verdicts for Mouzon indicate that the jury did not find Mouzon to be a credible witness. The jury's credibility finding with regard to Mouzon prejudiced Appellant's case.

In State v. Dennis, 337 S.C. 275, 281–82, 523 S.E.2d 173, 176 (1999), the South Carolina Supreme Court wrote:

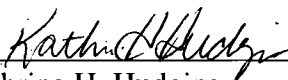
The trial judge, however, must act cautiously in allowing a joint trial. The judge must carefully consider problems that may arise from a joint trial, such as

redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C. 313, 315; 400 S.E.2d 487, 488 (1991). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. State v. Holland, 261 S.C. at 494, 201 S.E.2d at 121.

In the present case the judge, without objection, failed to give a cautionary instruction before testimony began and, without objection, gave a very brief cautionary instruction at the end of the trial. (R. pp. 155-165; P. 1295, lines 9-16). The brief cautionary instruction given did not cure the prejudice that resulted from the joint trial. The trial judge's abuse of discretion in refusing to sever Appellant's trial from the trial of his co-defendants requires a reversal of the conviction and sentence and remand for a new trial.

**CONCLUSION**

Based on the above argument this Court should reverse the conviction and sentence and remand the case for a new trial.

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 16<sup>th</sup> day of July, 2019.

STATE OF SOUTH CAROLINA  
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Counsel for Drake Edward Campbell 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 Deadra L. Jefferson, which was held on August 27 - 31, 2018, 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 Drake Edward Campbell.

Respectfully Submitted,

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 16<sup>th</sup> day of July, 2019.

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

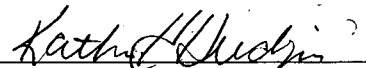
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Trial transcript pages 1-1343.

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

July 16, 2019

  
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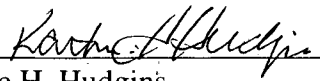
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**CERTIFICATE OF COUNSEL**

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."

July 16, 2019.

  
\_\_\_\_\_  
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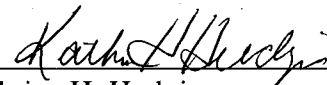
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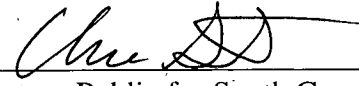
APPELLANT

\_\_\_\_\_  
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 William M. Blich, 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 Drake Edward Campbell, 377575, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16<sup>th</sup> day of July, 2019.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 16<sup>th</sup> day of July, 2019.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: October 26, 2019