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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Appellate Case No. 2021-000967

The Honorable R. Keith Kelly, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Jaden Imarion Gary.....Appellant.

INITIAL REPLY BRIEF

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INTRODUCTION

Appellant respectfully submits this reply brief addressing Respondent's arguments.

ARGUMENTS

- I. **The trial court judge should have instructed the jury it could consider Burglary 2nd degree because there was evidence adduced at trial to support Appellant's belief that the residence was abandoned when he and his co-defendants entered the structure.**

Respondent argues that Appellant's belief that the structure was abandoned was not relevant to whether the trial court charged the jury with his requested jury charge of Burglary 2nd degree. Respondent's Brief, p. 5. Respondent additionally argues that since there was evidence presented at trial that the structure was not abandoned that the trial court did not err by refusing defense counsel's request for the jury instruction. Respondent's Brief, p. 8. Respectfully, that is not the standard the trial court was required to apply. Respondent is inaccurate as to both of those arguments.

Trial counsel elicited evidence at trial that Appellant believed the structure was uninhabited. The State introduced into evidence a statement that Appellant gave to law enforcement indicating he did not believe someone was living at the house. Counsel additionally elicited testimony from the officer to substantiate that point. Tr. 189-190; 192. Evidence in the record supported giving the jury charge.

"[T]he trial court is required to charge only the current and correct law of South Carolina." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011)). "If there is any evidence to support a jury charge, the trial [court] should grant the request." *State v.*

Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (2004). “To warrant reversal, a trial [court’s] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” *Id.*

Evidence supported the trial court’s giving the jury an instruction on Burglary 2nd degree because Appellant put forth evidence to support the jury instruction. The trial court’s failure to give that instruction left the jury unable to consider Appellant’s defense in this case, that he believed the structure he and his friends entered was uninhabited. Whether a jury agreed with the defense is not the relevant issue—only that the jury have been provided the opportunity to consider the defense that Appellant presented at trial. Appellant was prejudiced by the trial court’s legal error and he asks this Court to grant him a new trial.

II. This Court should remand for resentencing because the trial court improperly considered Appellant’s exercise of his right to a jury trial in sentencing him an additional 5 years over the State’s original plea offer.

Respondent appears to find it fatal to Appellant’s claim that the trial court did not indicate on the record why he increased Appellant’s sentence (“Unlike *Davis* and *Hazel*, the trial judge in this case did not make any comments regarding a guilty plea or exercising the right to trial.” Respondent’s Brief, p. 10, and “Again, in the present case the trial judge did not make any comments about Appellant pleading guilty or exercising his right to go to trial.” Respondent’s Brief, p. 11). Respondent does not remark in its brief on the State’s—on two occasions--improperly urging of the trial court to increase Appellant’s sentence based on his

exercise of his constitutional right to a jury trial which the trial court did not disavow.

Respectfully, a fair reading of the record in this case shows the State specifically asked the trial court, on two occasions, to give Appellant a higher sentence based on the exercise of his right to a trial. The trial court did not, *in any way*, appear to regard that request as inappropriate. Nor did the trial court articulate any other basis upon which he decided to increase the sentence. The trial court sentenced a young, 17-year-old, first-time offender to twenty years in prison. The trial court abused his discretion by imposing a trial tax on Appellant and respectfully Appellant asks this Court to remand for a new sentencing.

CONCLUSION

As to Issue I, Appellant asks this Court to remand his case for a new trial.

As to Issue 2, Appellant asks this Court to remand for resentencing.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Counsel hereby certifies she has served a copy of this reply brief on Ambree Muller of the Attorney General's Office by filing via email on this date, July 14, 2022.

/s/ Elizabeth Franklin-Best

Counsel for Appellant

July 14, 2022