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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BREANTE DEON STEVENS,

APPELLANT.

APPELLATE CASE NO. 2022-000019

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this self-defense case where appellant's testimony was critical, did the trial court err in refusing appellant's request to bifurcate this trial to separate the charge of possession of a firearm by a person convicted of a crime of violence?

STATEMENT OF THE CASE

A Lancaster County grand jury indicted appellant Breante Stevens for two counts of murder, eight counts of ABHAN, dependent weapons charges, and possession of a weapon by a person convicted of a crime of violence. Tr. 138, l. 6 – 140, l. 25. Appellant's co-defendant, Antonio Champion, was similarly charged. Tr. 138, l. 6 – 140, l. 25. On October 18, appellant and Champion were tried before the Honorable Brian M. Gibbons and a jury. Tr. 1. Luck Campbell, Melissa McGinnis, and Randy Newman represented the State. Tr. 1. Montrio Belton represented appellant. Tr. 1. Nathan Sheldon represented Champion.

The jury acquitted Champion. Tr. 1702, l. 3 – 1703, l. 24. The jury acquitted Stevens of one of the murders and all but one of the ABHANs. Tr. 1700, l. 10 – 1702, l. 2. The jury convicted Stevens of the lesser-included offense of voluntary manslaughter related to Lee Colvin ("Colvin"), ABHAN related to the shooting of LaShonda Barnes, and of the status crime of possession of a weapon by a person convicted of a crime of violence. Tr. 1700, l. 10 – 1702, l. 2. The jury also convicted Stevens on the firearms charges associated with the substantive counts. Tr. 1700, l. 10 – 1702, l. 2. Judge Gibbons sentenced appellant to five years' imprisonment on the weapons charges, thirty years' imprisonment for voluntary manslaughter and a consecutive twenty years' imprisonment for ABHAN for a total of fifty years' imprisonment. Tr. 1723, l. 6 – 1724, l. 12. This appeal follows.

STANDARD OF REVIEW

The legal issue raised in this case is governed by the abuse of discretion standard, which occurs when the trial court's conclusions lack evidentiary support or are controlled by an error of law. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019).

ARGUMENT

In this self-defense case where appellant's testimony was critical, the trial court erred in refusing appellant's request to bifurcate this trial to separate the charge of possession of a firearm by a person convicted of a crime of violence.

The jury rejected the State's attempt to lay all of the blame for the mayhem and violence of a shootout at a nightclub at the feet of the defendants. At approximately 2:30 AM on September 21, 2019, ten people were shot at Club Old Skool in Lancaster County. Tr. 260, l. 22 – 262, l. 2. R. ____ (Indictments). Two people died. R. _____. The State charged appellant Breante Stevens ("Stevens") and Antonio Champion ("Champion") with two counts of murder, eight counts of ABHAN, and dependent gun charges. Tr. 138, l. 6 – 140, l. 25. The State also charged Stevens with the standalone status crime of possession of a weapon by a person convicted of a crime of violence. Tr. 139, l. 14 – 16.

The jury acquitted Champion of the murders and the ABHANs. Tr. 1702, l. 3 – 1703, l. 24. The jury acquitted Stevens of one of the murders and all but one of the ABHANs. Tr. 1700, l. 10 – 1702, l. 2. The jury convicted Stevens of the lesser-included offense of voluntary manslaughter related to Lee Colvin ("Colvin"), ABHAN related to the shooting of LaShonda Barnes, and of the status crime of possession of a weapon by a person convicted of a crime of violence. Tr. 1700, l. 10 – 1702, l. 2.¹ Had the jury not heard the unfairly prejudicial fact that Stevens had previously been convicted of a crime of violence, he likely would have been acquitted of all charges.

¹ Confusingly, the jury convicted both Stevens and Champion of all of the associated gun charges even on counts where they were acquitted of the underlying crime. Judge Gibbons correctly dispatched those convictions as improper. Tr. 1706, l. 10 – 1709, l. 22.

At a pretrial hearing, the solicitor stated that Stevens' prior convictions would not be admissible for impeachment purposes if he testified. Oct. 13, 2021, Hearing Tr. 13, l. 1 – 16. Later in the hearing, Champion's attorney raised the issue of being a felon in possession of a firearm. Oct. 13, 2021, Hearing Tr. 29, l. 12 – 32, l. 10. Solicitor Campbell told the court that the case law on this subject was "clear." Oct. 13, 2021, Hearing Tr. 29, l. 24 – 25. Judge Gibbons brought up a prior trial where the defense moved to bifurcate a weapon charge from the substantive offense. Oct. 13, 2021, Hearing Tr. 29, l. 12 – 32, l. 10. The judge asked, "You're not doing that here?" and Stevens' attorney replied, "Can't, can't." Oct. 13, 2021, Hearing Tr. 29, l. 12 – 32, l. 10.

The next week, when the case was called for trial, Stevens' attorney changed course and asked Judge Gibbons to bifurcate the weapons charge. Tr. 10, l. 21 – 12, l. 7. Defense counsel told the court that "obviously during the substance of the trial I do not want it to come out that he was a felon in possession of a weapon" and asked for an opportunity to "do a little research to either bifurcate it, or what I'm going to ask is we just simply deal with that after the trial." Tr. 10, l. 21 – 12, l. 7. The trial judge moved on to other pretrial matters before hearing full argument on this issue. Tr. 10, l. 21 – 12, l. 7.

When the court returned to the issue of the charge related to appellant's prior conviction, defense counsel said, "I would ask Your Honor to allow us to bifurcate the case and deal with that particular charge after the major charge." Tr. 114, l. 1 – 118, l. 16. Appellant cited Rule 403 and argued that the jury hearing his prior conviction would "unfairly prejudice my client for a jury to hear that he's a convicted felon in possession of a gun who's then charged with murder. I believe that is as prejudicial as it comes." Tr. 114, l. 1 – 118, l. 16. Appellant cited the landmark case of State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019), which reversed a

conviction for failing to bifurcate a trial so that the jury would not learn of the defendant's prior conviction. Tr. 114, l. 1 – 118, l. 16. The judge replied, "So it's a motion to bifurcate," and appellant agreed. Tr. 114, l. 1 – 118, l. 16.

The State opposed the motion. Tr. 114, l. 1 – 118, l. 16. The solicitor said they had the right to present the prior crime because it was an element of the offense. Tr. 114, l. 1 – 118, l. 16. The solicitor cited two pre-Cross cases that were addressed in Cross, State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) and State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003). Tr. 114, l. 1 – 118, l. 16. Judge Gibbons denied the motion to bifurcate and said he did not see how it "was more prejudicial than probative." Tr. 114, l. 1 – 118, l. 16. The defense agreed to stipulate that Stevens had been convicted of a crime of violence to avoid the jury learning the name of the conviction (strong-arm robbery). Tr. 114, l. 1 – 118, l. 16. The jury heard the solicitor call the indictment for the status offense during voir dire. Tr. 139, l. 14 – 16.

The trial court erred in allowing the jury to hear that Stevens had previously been convicted of a crime of violence. The State would have suffered zero prejudice by trying the admitted crime after the trial on the shootings. Stevens suffered great prejudice from the State's insistence on the jury learning of his propensity for violence.

In Cross, the South Carolina Supreme Court addressed a trial judge's refusal to bifurcate the proceedings in a trial for first degree criminal sexual conduct with a minor charge where a prior conviction for criminal sexual conduct with a minor was an element of the offense, and wrote:

Rule 403, SCRE, provides the trial court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, etc. Here, the probative value of the evidence of the prior conviction is undeniable, as the State must prove the conviction as an element of the crime charged. However, even evidence with such significant probative value remains subject to the application of Rule 403, and the

trial court is duty-bound to determine whether the probative value of this evidence is substantially outweighed by one or more of the considerations identified in Rule 403. Evidence of the 1992 conviction is in no way probative of the threshold issue of whether Cross committed a sexual battery upon Minor in 2005. Necessarily, therefore, the question of when evidence of the prior conviction should be admitted comes sharply into focus. In this case, the integrity of Rule 403 and the obligation of the State to introduce necessary evidence are both salvaged by the application of Rule 611(a), SCRE, which provides in pertinent part: “The court *shall exercise reasonable control over the mode and order of* interrogating witnesses and *presenting evidence* so as to (1) make the interrogation and presentation effective for the ascertainment of the truth” (emphasis added). Under the facts before us, Rule 611(a) required the trial court to exercise control over the order of presenting evidence in such a way that (1) allowed the State to prove an element of the crime, and (2) at the same time guarded against a violation of Rule 403.

Cross at 479, 832 S.E.2d at 288-89. A majority of the Court found that the trial judge should have bifurcated the proceedings and reversed the conviction and remanded for a new trial.

While the underlying charges are different, the reasoning of Cross case applies to appellant’s case. Appellant was charged under S.C. Code Ann. § 16-23-30. R. ____ (Indictment). The only elements are whether appellant had been convicted of a crime of violence and whether he possessed a handgun. See S.C. Code Ann. § 16-23-30(A)(1) and (B). Stevens did not contest his guilt on this charge. Tr. 1185, l. 15 – 18.

Appellant’s prior conviction for a crime of violence is not probative of whether he committed any crimes at the nightclub or acted in self-defense. The trial court correctly acknowledged that a person can violate this statute and still lawfully arm himself in self-defense. Tr. 1556, l. 6 – 1557, l. 12. Tr. 1688, l. 6 – 8. Knowing about the prior crime did negatively affect appellant’s credibility and character in this self-defense case. Despite a two-week trial, the case turned on whether the jury believed Stevens’ testimony that he acted in self-defense. Hearing that Stevens had a violent disposition reduced the jury’s ability to assess the case and

Stevens' testimony on its own merit instead of the improper propensity evidence the State insisted on trying along with the nightclub case.

Stevens went to Club Old Skool with two friends. Tr. 1342, l. 4 – 8. He said everyone in his social circle carries a gun every day. Tr. 1346, l. 7 – 14. He acknowledged carrying his gun into the club. Tr. 1347, l. 9 – 21. Stevens was on a platform inside the club when Colvin approached him. Tr. 1354, l. 19 – 1355, l. 12. Colvin bounced up and down then elbowed Stevens. Tr. 1434, l. 14 – 6. Stevens pushed Colvin. Tr. 1434, l. 14 – 6. Colvin lifted his shirt, flashed a gun, and pulled the gun out. Tr. 1434, l. 14 – 6. Appellant ran outside of the club. Tr. 1434, l. 14 – 6. The surveillance video introduced by the State showed Colvin jumping up and down with a gun after Stevens left the club. Tr. 792, l. 16 – 793, l. 21. State's Ex. 13.

The video did not capture the next altercation between Colvin and Stevens. Tr. 797, l. 10 – 15. Stevens went back inside the club to retrieve one of the friends he brought with him so they could leave. Tr. 1360, l. 18 – 1361, l. 10. When Stevens got to the dance floor, the club played a song that Stevens wrote and performed. Tr. 1361, l. 2 – 7.

Stevens went to the stage to dance and promote his song. Tr. 1361, l. 18 – 1362, l. 1. He took out his phone and prepared to go on social media. Tr. 1361, l. 18 – 1362, l. 1. Instead, he saw "Colvin pull out a gun." Tr. 1361, l. 18 – 1362, l. 1. Stevens was afraid for his life. Tr. 1362, l. 11 – 15.

Colvin fired the first shot, shooting at Stevens. Tr. 1380, l. 8 – 15. Stevens pulled his .45 caliber gun from his hip and returned fire. Tr. 1362, l. 11 – 1363, l. 4. Tr. 1449, l. 13 – 23. Stevens ran out of the door. Tr. 1364, l. 2 – 5. When he got outside the club, Stevens heard more gunshots. Tr. 1365, l. 4 – 12. He ran into the woods, disposed of the gun in a culvert, and eventually made his way to a friend's house and got a ride home. Tr. 1365, l. 13 – 1368, l. 23.

Stevens was at a neighbor's house when he heard someone shoot up his house. Tr. 1370, l. 4 – 20. He fled to Charleston and then to Florida to give himself time to retain an attorney. Tr. 1372, l. 12 – 1377, l. 7.

The State attacked Stevens' credibility, accusing him of inventing the fact that Colvin fired first. Tr. 1456, l. 3 – 18. The solicitor cross-examined Stevens on telling law enforcement that he did not shoot anybody when he was arrested and never telling anyone in law enforcement the version from his testimony at trial. Tr. 1456, l. 3 – 18. In closing, the solicitor cited statements made by Stevens to other witnesses that Colvin only flashed the gun. Tr. 1594, l. 18 – 22.

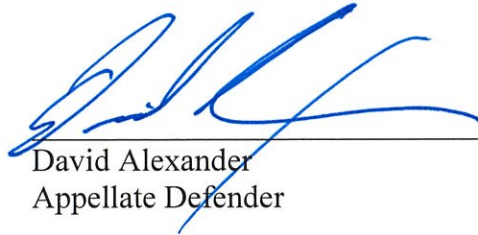
The prior conviction is only probative because it is an element of the weapon charge. Under Cross, the trial judge had the authority and duty under Rule 611 and Rule 403 to conduct the trial so that the State could prove the element of the weapon charge and prevent the unfair prejudice to Stevens of the jury learning he had a prior violent conviction when assessing Stevens' guilt for the shooting. See also Old Chief v. United States, 519 U.S. 172 (1997). The jury did not need knowledge of the prior crime of violence to assess Stevens' guilt. The jury's verdict—rejecting the State's murder charges and seven of the eight ABHAN charges—shows that this case was very close and depended upon whether the jury believed Stevens acted in self-defense.

The jury's multiple acquittals of Stevens and wholesale acquittal of Champion show they discarded the State's hand-of-one-hand-of-all theory. Champion gave a statement to the police and said he saw Colvin shooting and pointing the gun at him and Stevens. Tr. 1014, l. 8 – 1015, l. 2. The State's firearms expert admitted that at least six guns and possibly several more were present at the scene. Tr. 1253, l. 10 – 1254, l. 16. The trial judge erred in refusing to bifurcate

the proceedings to remove the unfairly prejudicial effect of the improper propensity and character evidence and the error requires reversal, as in Cross.

CONCLUSION

For the foregoing reasons, appellant's convictions for voluntary manslaughter and ABHAN should be reversed and remanded for a new trial.



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Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2023.