RECEIVED
May 08 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court Of General Sessions

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-000450

THE STATE, Respondent,

v.

MICHAEL ISAAC MOBLEY Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Hwy.
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

1. The trial judge correctly denied Appellant's directed verdict motion because there was sufficient evidence that Appellant possessed the requisite intent to commit a crime.

2. The trial judge properly admitted Appellant's prior burglary conviction into evidence because it fell within the common scheme or plan exception under Rule 404(b), SCRE.

STATEMENT OF THE CASE

Appellant was indicted by a York County Grand Jury for second-degree burglary. Appellant proceeded to a bench trial on April 7, 2022, in the York County Court of General Sessions before the Honorable William A. McKinnon. Geoffrey M. Dunn represented the Appellant. Appellant was found guilty and sentenced six years' imprisonment. This appeal follows.

STATEMENT OF FACTS

On December 9, 2021, Rock Hill Police Department received a call for an ongoing burglary to a business known as Workman's Oil. (R. 93). When Officers Thomas Austin and Taylor Adkins arrived at the scene, they observed a plexiglass window removed on the bay door. (R. 77, 84). Austin crawled through the removed window and, once inside, found Appellant hiding under a car. (R. 25). Appellant was detained and a knife removed from his person. (R. 83). Officers were eventually able to identify Appellant as Michael Mobley. (R. 95).

During pretrial, the State wanted to introduce Appellant's prior burglary conviction from March of 2020, where Appellant broke into the exact same business and in the exact same manner to show that Appellant knew that items of value were stored inside and that was the reason he broke in this time. (R. 6-7). In the form of a proffer, Detective Eric Olsen from the Rock Hill Police Department (RHPD), testified that in March 2020, Appellant entered into Workman's Oil by removing a plexiglass window. (R. 10-11). Appellant was later detained having taken an array of items including sodas, snacks, and toilet paper. (R. 12-13). Appellant ultimately pled guilty to second-degree burglary. (R. 6-7). Officer Thomas Austin also testified in a proffer to the similarities of this burglary to the one in March of 2020. (R. 23-35).

In arguing the Lyle issue, the State argued that this prior burglary was extremely probative because Appellant was arrested and pled guilty to breaking into the same business, at night, in the same manner. (R. 36-37). Appellant argued that there were dissimilarities between the prior burglary and the current burglary because the prior was a "smash and grab", but that the current offense was not the same because Appellant did not leave quickly, had no items in his possession when apprehended, and that in this case Appellant entered the business because he "needed a place to sleep and avoid the cold weather." (R. 37-40). The trial judge ruled that the evidence would come in because of the similarity, stating "I'm going to allow the evidence in. The basis for my

ruling is that this is – that the similarity is incredibly close. I mean it's the strongest connection nearly possible. They're both at night, it's the same business, the same person, the same manner of entry." (R. 40-41). Following the ruling, the trial proceeded forward and the evidence of both the prior burglary and most recent burglary was admitted.

After the State rested, Appellant moved for a directed verdict on the ground that the State had not proven the intent element of burglary and that the prior burglary used by the State to establish intent was inadmissible and prejudicial. (R. 104-107). Appellant's motion was denied. (R. 108). Appellant then testified in his own defense, that he entered into Workman's because he was kicked out of his girlfriend's house, it started getting cold and he needed somewhere to stay. (R. 117).

STANDARD OF REVIEW

Issue 1

In an appeal of a ruling involving a challenge to the sufficiency of the evidence in a criminal case, the appellate court must necessarily apply the same standard that should have been applied by the trial judge and view the evidence and all reasonable inferences in the light most favorable to the state. State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012). "In reviewing a refusal to grant a directed verdict, we must view the evidence in the light most favorable to the State and determine whether there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be logically deduced." State v. Pinckney, 339 S.C. 346, 348, 529 S.E.2d 526, 527 (2000). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Pinckney, 339 S.C. at 349, 529 S.E.2d at 527. The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

Issue 2

"A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C.

148, 154, 682 S.E.2d 892, 895 (2009). "A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. "If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008). '"To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof."' State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 335-336 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

ARGUMENT

1. **The trial judge correctly denied Appellant's directed verdict motion because there was sufficient evidence that Appellant possessed the requisite intent to commit a crime.**

Appellant argues that the trial court erred when it denied Appellant's motion for a directed verdict. Specifically, Appellant argues that the directed verdict should have been granted as to the second-degree burglary because Appellant's intent for being inside the building was not to steal, but rather to escape cold temperatures outside and find a place to sleep for the night. However, the trial judge correctly denied Appellant's directed verdict motion because there was sufficient evidence that Appellant possessed the intent to commit a crime inside the building.

"On appeal from the denial of a directed verdict, this court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). See also Rule 19(a) SCRCrimP. If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Pinckney, 339 S.C. at 349, 529 S.E.2d at 527.

The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016).

State law provides:

> (B)(2) A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both.

S.C. Code Ann §16-11-312(B)(2)(2003).

Intent is defined as the state of mind required for the commission of a crime. State v. Shands 424 S.C. 106, 131, 817 S.E.2d 524, 537 (2018). "Absent an admission by the defendant, proof of intent necessarily rests on the inference from conduct." State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971). In Haney, the defendants broke into a school. The court held evidence of intent to commit a crime was sufficient because the defendants broke into a room where movie projectors and other visual aids were kept. Id. The defendants tried to flee when police arrived. Id. A defendant's actions after entering the dwelling may be used to determine his intent to commit a crime in the dwelling. State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). In Pinckney, the Court of Appeals held that the only evidence in the record of intent was that the respondent entered the house to escape from the people that he believed were after him, but the South Carolina Supreme Court held that the defendant's actions after he entered the house by barricading himself in a bathroom and threatening to kill himself and others was enough for intent to commit a crime. Similarly in this case, Appellant hid under a car when police entered the building and would not identify himself to officers at first. While Appellant does claim that he used to work there and he was sleeping in the body camera footage of Officer Austin, Shaner, the part owner, testified she only "somewhat" knew him and that was because of a previous break in. (State's Exhibit 3, R. 65-68)

Appellant argues that there was insufficient evidence to support the element of intent to commit a crime on Appellant's behalf upon and after entering the garage in question because he "entered as a homeless man to escape the cold weather and ended up falling asleep. The officer found no items on his person that would have been property of the garage, which meant theft was not an issue in the case. Also, appellant was not engaged in fleeing the scene." (Initial Brief of

Appellant pg. 7). Appellant cites to State v. Gilliand, 402 S.C. 389, 741 S.E.2d 521 (2012). (holding that the defendant entered the home in question with the intent to commit a crime because his entrance was in violation of a prior protection order that concerned the female who resided there whom he was not allowed to contact) to differentiate this case stating that the scenario in this case was different.

However, similar to a prior protection order, Appellant had pled guilty to second-degree burglary of this same business and which he entered in the same manner. That fact itself supported a conclusion Appellant's intent was to commit the same crime to which he had previously pled guilty. Although Appellant was not "fleeing the scene" it took officers minutes to get there with only one exit from which Appellant could leave and he was found hiding from officers, refusing to identify himself. (R. 26). Further, Appellant argues that because of the lack of items found on his person, theft was not an issue her; however, the testimony that it took minutes for officers to arrive did not leave much time for Appellant to acquire any items. Appellant also testifies that while he did have a bag with him on the prior burglary, it contained his personal items, not the items he stole. (R. 123). Wendy Shaner, part owner of Workman's Oil, testified in the previous burglary Appellant got bags out from underneath the counter to put things in, therefore lack of items on his person or absence of a bag to carry things is not dispositive of his intent to steal items. (R. 67-68) In viewing the evidence presented in the light most favorable to the nonmoving party, which in this case is the State, the trial judge did not err in denying the motion for directed verdict when he found sufficient evidence to present the case to the trier of fact.

II. The trial judge properly admitted Appellant's prior burglary conviction into evidence because it fell within the common scheme or plan exception as well as motive and intent under Rule 404(b), SCRE.

Appellant contends the trial judge erred in admitting Appellant's prior burglary conviction into evidence because the prior conviction did not qualify as admissible under the intent or common scheme or plan exceptions outlined in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Specifically, Appellant argues that there was no proof that the prior burglary showed intent or common scheme or plan due to the dissimilarities between the prior burglary and the instant burglary.

"If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008). "'To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof.'" Singleton, 395 S.C. at 13, 716 S.E.2d at 336 (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. at 26, 609 S.E.2d at 509).

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. "To be admissible, a bad act must logically relate to the crime with which the defendant has been charged." State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). "If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." Id. Even if prior act evidence is clear and convincing and falls within an

exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE.

This prior conviction was admissible under the motive and intent exception under Rule 404(b), SCRE. Intent is defined as the state of mind required for the commission of a crime. State v. Shands 424 S.C. 106, 131, 817 S.E.2d 524, 537 (2018). "Absent an admission by the defendant, proof of intent necessarily rests on the inference from conduct." State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971). In Haney, the defendants broke into a school. The court held evidence of intent to commit a crime was sufficient because the defendants broke into a room where movie projectors and other visual aids were kept. Id. The defendants tried to flee when police arrived. Id. A defendant's actions after entering the dwelling may be used to determine his intent to commit a crime in the dwelling. State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). As mentioned above, similarly to Pinckney, Appellant's intent is clear. Despite his claims that he "was sleeping," he knew that there was items of value in this particular business because he had broken in previously and stolen those items. The only difference in this instance and the prior instance is that he did not have enough time to steal the items. Similar to State v. Weaverling, where the court held that victim's testimony regarding a pattern of sexual abuse he suffered by the defendant was admissible because it showed the same illicit conduct with the same victim under similar circumstances over a period of years. State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (1999). Here, we have the same person [Appellant] committing the same crime, using the same manner of entry, to the same victim [Workman's Oil] within a year period.

Further, this evidence is admissible in the common scheme or plan exception to Rule 404(b), SCRE. "When there is a close degree of similarity between a charged crime and a prior bad act, evidence of the prior bad act is admissible to demonstrate a common scheme or plan."

State v. Cope, 405 S.C. 317, 337, 748 S.E.2d 194, 204 (2013). "'When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity" State v. Clasby, 385 S.C. 155, 682 S.E.2d 893, 896 (2009) (quoting State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 278 (2009). "A close degree of similarity exists between prior bad acts and the charged offense when the similarities outweigh the dissimilarities." State v. Scott, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (2013). "A common scheme or plan involves more than the commission of two similar crimes; some connection between the two is necessary." State v. Tutton, 354 S.C. 319, 326, 580 S.E.2d 186, 189 (Ct. App. 2003). "In making similarity determination between prior acts evidence and the charged offense, focus is placed upon whether each particular bad evidence is sufficiently similar to the crime charged, not whether the different bad acts are sufficiently similar to each other." State v. Scott, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (2013).

Here, the crimes are almost identical. In March of 2020, Appellant, by himself, broke into Workman's Oil in the middle of the night by removing a panel of plexiglass, moving it to the side, and entering the business. (R. 11). In this case, Appellant, by himself, broke into Workman's Oil in the middle of the night by removing a panel of plexiglass, moving it to the side and entering the business. (Tr 24-28). Not only is this crime "sufficiently similar" to the instant burglary, it is identical. The only difference between the two crimes is that because officers arrived so quickly to the scene, Appellant did not have enough time to gather items to steal. This introduction of Appellant's prior conviction showed that Appellant knew that items of value were stored inside because he had stolen items from this exact place just under a year previously. This evidence showed a pattern of entering in to the same business, in the same manner, and for the same reason

and therefore falls under the common scheme or plan exception of Rule 404(b). This testimony was probative in showing this pattern and was not substantially outweighed by the risk of unfair prejudice to Appellant. Therefore, the trial judge did not abuse his discretion in admitting Appellant's prior conviction for burglary second degree.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
Ambree M. Muller
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 779-8477

ATTORNEYS FOR RESPONDENT

May 8, 2023

RECEIVED
May 08 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court Of General Sessions

The Honorable William A. McKinnon Circuit Court Judge

Appellate Case No. 2022-000450

THE STATE, Respondent,

v.

MICHAEL ISSAC MOBLEY, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
Ambree M. Muller
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3929

ATTORNEYS FOR RESPONDENT

May 8, 2023