STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYREEK L. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2022-000874

ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Constitutional Provisions

STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred in sustaining the State's objection during Appellant's closing argument that there was no intent to commit a crime when Appellant allegedly entered the complaining witness' home, and that if intent was formed to do something opportunistic after entry was made then it was not first degree burglary, yet where the State objected stating, "intent to commit a crime can be after entry"?

STATEMENT OF THE CASE

Appellant Tyreek Lorenzo Robinson was indicted by the Beaufort County grand jury on April 15, 2021, for first-degree burglary, first-degree assault and battery, aggravated voyeurism, and petit larceny. R. 45, ln. 1—R. 46, ln. 17; R. 499-500, 503-504, 507-508. The charges stem from an incident in the early morning hours of September 19, 2020. R. 499-500, 503-504, 507-508.

Appellant's case proceeded to trial from June 13th through 15th, 2022, before the Honorable Robert J. Bonds and a jury. R. 1; R. 207; R. 400. Juan Tolley represented Appellant, while Hunter Swanson represented the State. R. 1; R. 207; R. 400. Appellant was found guilty of first-degree burglary, first-degree assault and battery, and aggravated voyeurism, but acquitted of petit larceny. R. 474, ln. 17—R. 475, ln. 4. The trial court sentenced Appellant to consecutive terms of imprisonment as follows: sixteen (16) years for first-degree burglary; six (6) years for aggravated voyeurism; and five (5) years for first-degree assault and battery. The court also gave credit for 607 days of time-served, placed Appellant on the sex offender registry, and permanently restrained him from having contact with the complaining witness in the case. R. 496, ln. 7—R. 497, ln. 15.

STANDARD OF REVIEW

"A trial judge is vested with broad discretion in dealing with the range of propriety of closing argument, and ordinarily his rulings on such matters will not be disturbed." State v. Hart, 436 S.C. 153, 159, 871 S.E.2d 202, 205 (quoting State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). "The trial court's discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant." Id. (quoting State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996)).

STATEMENT OF THE FACTS

A.M.N. went to sleep around 10:00 p.m. on September 18, 2020, at her home in the Waterside by Tansyleaf neighborhood of Hilton Head, South Carolina. R. 272, ll. 7-11; R. 273, ll. 14-16. She awoke to a noise the next morning around 6:00 a.m. and saw a man at the end of her bed with a bright light pointing at her. When she screamed at him, the man responded, "I just wanted to let you know your garage door was open." R. 274, ln. 9—R. 275, ln. 11. A.M.N. got up, and the man ran out of the house through the garage door. R. 275, ll. 14-21.

A.M.N. called her boyfriend, and then 911. While speaking with 911, the stranger returned to her house and tried to open the front door. R. 277, ll. 3-22. A.M.N. put-in her contact lenses, and with the front porch light turned on she was able to get a "pretty good look" at the man. R. 278, ll. 1-14. Deputy Nicholas Whaling (Dep. Whaling) arrived at A.M.N.'s house by 6:19 a.m. and spoke with her. A.M.N. provided a description of the man in her house and indicated several items in her home were out of place, including *inter alia* an empty Crown Royal liquor bottle and breakfast sandwich with a bite eaten from it in the kitchen, $100 missing from her wallet, two footprints on the carpet at the end of her bed in the bedroom, and her car in the garage had been rummaged through. R. 278, ln. 15—R. 280, ln. 2. As a result, law enforcement collected swabs for testing DNA from the Crown Royal bottle, the wallet, and the garage doorknob entering the house. R. 256, ln. 16—R. 262, ln. 11.

The following day, Investigator William Wiech (Inv. Wiech) met with A.M.N. and showed her a photographic line-up that contained the picture of Appellant;[1] however, A.M.N. did not identify anyone from the line-up as the suspect in her case. R. 367, ln. 19—R. 368, ln. 16. On September 21, 2020, she went to the Beaufort County Sheriff's Office and met with Lara

[1] Based upon the description given, police had already listed Appellant as a person of interest. R. 368, ll. 7-13.

Gorick, a sketch artist from SLED who produced a sketch based upon the description given. R. 283, ll. 19-23; R. 295, ln. 24—R. 296, ln. 11; R. 298, ll. 5-7.

The case largely became stagnant until October 7th, 2020, when Deputy Adam Paul (Dep. Paul) responded to an abandoned vehicle wrecked on the roadside, inside of which he located and collected a cell phone. R. 322, ln. 21—R. 323, ln. 9. After finding some information on it that he believed would help identify the owner, Dep. Paul obtained a search warrant for the device. Investigator Derrick Nelson executed the warrant and extracted data from the phone, including text messages, phone numbers, and a video purportedly created on September 19, 2020, at 5:55 am. depicting a hand touching a woman's vagina while laying on her stomach in bed; shortly after, the camera drops toward the floor and the video showed a left hand with scars ostensibly of the person making the recording. R. 310, ln. 21—R 311, ln. 2; R. 315, ln. 24—R. 316, ln. 12; R. 323, ln. 10—R. 324, ln. 22; R. 327, ll. 5-16. When police later held Appellant in custody on October 15, 2020 for an unrelated matter, they took photographs of his hands and questioned him regarding the present case as well. R. 361, ln. 17—R. 365, ln. 6.

Appellant's case proceeded to trial beginning June 13, 2020. R. 1. The State mustered no evidence of DNA, fingerprints, or shoe prints linking Appellant to the incident. R. 382, ll. 6-12. During closing arguments, Appellant reminded the jury that, under A.M.N.'s version of events, the person who entered her home indicated his intent was to notify her that the garage door was open, and not for the purpose or intent committing a crime. Appellant further argued that for first degree burglary, "[y]ou have to have intent to commit a crime. And, in this case, we believe there is no intent to commit a crime when he entered the home." R. 433, ll. 2-24. Appellant highlighted the argument regarding the required element of intent as follows:

And the intent, if the intent is formed after he got inside the house—for example, if he went in to say, *Hey, your garage is open, an* then he got I there and he saw that she was asleep, saw an opportunity to do something, that would not be burglary in the first degree. That is an important point. R. 433, ll. 15-21 (emphasis in original).

The State objected, and before the jury argued, "I believe that's a misstatement of law." R. 433, ll. 22-23. Appellant began to argue in response that "there are other elements. That's—" before being cut off by the trial court. The State then stated in open court, "Because intent to commit a crime can be after entry." Appellant responded, "It wouldn't be burglary in the first degree if it was after entry," to which the State replied, "Yes it would." R. 433, ln. 24—R. 434, ln. 5. At the ensuing bench conference, the trial court did not entertain argument on the matter. Rather, the court sustained the State's objection and ruled as follows:

> What happens is this. I'm going to instruct them on what the law is. Now, to that extent, I think that you can look to—if you want to look to my charge[2] that I'm going to read them as it relates to what burglary is, then I think that's where you need to be

---

[2] Interestingly, the trial court's charge to the jury regarding first-degree burglary included the following language:

> Next, *the State must prove beyond a reasonable doubt the defendant intended to commit a crime*, either a felony or misdemeanor, *at the time of entry*. The mere entry into a dwelling without consent is not burglary. *If the intent to commit a crime is formed after the entry, it is not burglary.*
>
> On the other hand, if the defendant intended to commit a crime at the time of the entry, it is burglary, even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed.
>
> Intent may be shown by acts and contact of the defendant and other circumstances from which you may naturally and reasonably infer intent.

R. 453, ln. 12—R. 454, ln. 2 (emphasis added).

> looking and not provide an interpretation of what you understand the law to be. Because I'm going to instruct them that they are to listen to me on what the law is.
>
> I don't want to—I'm going to—I'm going to sustain the objection, and I'm going to ask that you move on from that. I'm going to tell them that—I'm going to tell them right now that I want them to understand that there have been some arguments by the State and made by the defense as it relates to what the law is. And I want them to understand that I am going to instruct them on what the law is. They need remember that.

R. 434, ln. 10—R. 435, ln. 4. After extracting agreement from both sides that it would be satisfactory, the trial court instructed the jury follows:

> Great, thank you. I'm going to sustain the objection.
>
> And one of the things that I want to mention very briefly to the jury is that when I read to you just a moment ago—and some of these things I read, ladies and gentlemen, is because they are very important and I want to make sure that I am saying and relaying to you exactly what needs to be said and relayed to you.
>
> So what I want you to know is, and one of the things that I told you, is that I'm the person who is in charge and finds and instructs you on the law. And that the law is what I explain to you at the close all of evidence and the arguments.
>
> The State, the solicitor has made some reference to the law. Miss Tolley has made some references to the law. I just want each of you to know that the law is going to be—the law of this case is going to be the law that I instruct you on when Miss Tolley is finished with her arguments.

R. 435, ln. 10—R. 436, ln. 6. The jury ultimately found Appellant guilty of first-degree burglary, first-degree assault and battery, and aggravated voyeurism, and the trial court imposed an aggregate sentence of twenty-nine (29) years. R. 474, ln. 17—R. 475, ln. 4.; R. 496, ln. 7—R. 497, ln. 15.

This appeal follows.

ARGUMENT

The trial court reversibly erred in sustaining the State's objection during Appellant's closing argument that there was no intent to commit a crime when Appellant allegedly entered the complaining witness' home, and that if intent was formed to do something opportunistic after entry was made then it was not first degree burglary, yet where the State objected stating, "intent to commit a crime can be after entry."

The trial court erred by improperly ruling in the State's favor curtailing Appellant's closing argument to the jury against a material element of first-degree burglary. Appellant's argument to the jury that an intent to commit a crime must be formed at the time of entry of the dwelling, not after, in order to satisfy the requirements of burglary was in accord with South Carolina law. Yet the trial court erred as a matter of law by sustaining the State's open-court objection to the contrary. In so doing, the trial court unfairly abridged Appellant's right to present a complete defense by essentially forbidding argument against the State's case regarding a material element of the most serious offense charged against him. Accordingly, Appellant was prejudiced by the court's error.

"There can be no doubt that closing argument for the defense is a basic element of the adversary factfinding process in a criminal trial." Herring v. New York, 422 U.S. 853, 858, 95 S.Ct. 2550, 2553, 45 L.Ed.2d 593 (1975). "It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. . . . And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt." Herring, 422 U.S. at 862, 95 S.Ct. at 2555, 45 L.Ed.2d 593 (citing In re: Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)).

The trial court's ruling in the present case deprived Appellant of this basic element of the factfinding process in his criminal trial by depriving him of the right to argue against a material

element in the State's case. For a person to be guilty of first-degree burglary, the State must prove *inter alia* that the defendant intended to commit a crime within the residence; it is an essential element of the offense. As provided by the General Assembly, the statute for first degree burglary includes the following:

> (A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent *and* with intent to commit a crime in the dwelling, . . .

S.C. Code Ann. § 16-11-311(A) (emphasis added). Importantly, this intent must have been formed when the defendant crossed the threshold into the dwelling. See, e.g., State v. Peterson, 336 S.C. 6, 7, 518 S.E.2d 277, 278 (Ct. App. 1999). "Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination *of that intent* upon evidence of the accused's actions once inside the dwelling." State v. Gilliland, 402 S.C. 389, 397, 741 S.E.2d 521, 526 (Ct. App. 2012) (emphasis added). In other words, while the jury may consider if a defendant's conduct occurring after entry showed he intended to commit a crime when he entered the dwelling, it still does not change the law of burglary that "[t]he only requirement is that there be intent to commit any crime *at the time of entry*." Pinckney v. State, 368 S.C. 502, 505, 629 S.E.2d 367, 369 (2006) (emphasis added). Succinctly stated, "*[t]he controlling intent is that of the time when the burglarious entry was committed.* . . . To constitute burglary it is not necessary that the intended crime shall be committed . . . as *the offense is complete as soon as the premises are broken and entered alone with the necessary intent*, and the success or failure of the venture is immaterial." Peterson, 336 S.C. at 7, 518 S.E.2d at 278 (emphasis added) (quoting in parenthetical 12A C.J.S. Burglary § 41, at 239, and § 42, at 239 (1980)).

Here, evidence was present indicating the person who entered the dwelling on September 19, 2020, may not have harbored any intent to commit a crime therein at the time of entry. Specifically, Narcia testified that the person who entered her home responded to her screams by saying, "I just wanted to let you know your garage door was open." R. 274, ln. 9—R. 275, ln. 11. As such, Appellant had both a legal and factual basis upon which to argue in support of his defense against first-degree burglary. Herring, 422 U.S. at 862, 95 S.Ct. at 2555, 45 L.Ed.2d 593. Yet the State nonetheless objected to Appellant's arguments on the basis of an erroneous understanding of the law regarding burglary. To wit, the State mistakenly conflated (a) the element of intent to commit a crime being formed by the time of entry into a dwelling with (b) the use of circumstantial evidence gleaned from a defendant's subsequent conduct in the dwelling to prove what his intent was at the time of entry. Accordingly, the trial court erred as a matter of law by sustaining the State's objection.[3] See, e.g., Gilliland, 402 S.C. at 397, 741 S.E.2d at 526; Peterson, 336 S.C. at 7, 518 S.E.2d at 278; Pinckney, 368 S.C. at 505, 629 S.E.2d at 369; Cf. State v. Beaty, 423 S.C. 26, 46, 813 S.E.2d 502, 513 (2018) (holding "trial judges must, on a case-by-case basis, ensure that a defendant's due process rights are not violated during the closing argument stage.").

The trial court's error also prejudiced Appellant as it impermissibly curtailed his ability to present a complete defense. The State bore the burden of proving every element of the

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[3] Moreover, the error is made especially clear in that the trial court specifically admonished Appellant at the bench conference "to look to my charge that I'm going to read them as it relates to what burglary is, then I think that's where you need to be looking and not provide an interpretation of what you understand the law to be." R. 434, ll. 13-17. Yet, when one reads the trial court's jury instruction on the matter, the court indicated precisely the point Appellant was making in closing argument: "Next, *the State must prove beyond a reasonable doubt the defendant intended to commit a crime*, either a felony or misdemeanor, *at the time of entry. . . . If the intent to commit a crime is formed after the entry, it is not burglary.*" R. 453, ll. 12-18. Nonetheless, the court inexplicably sustained the State's objection arguing the contrary.

charged offenses against Appellant, including the element if intent to commit a crime at the time he purportedly entered the dwelling for the charge of first-degree burglary. See Winship, 397 U.S. at 364, 90 S.Ct. at 1073, 25 L.Ed.2d 368 ("Lest there remain any doubt about the constitutional nature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); see also Peterson, 336 S.C. at 7, 518 S.E.2d at 278 (discussing the element of intent to commit a crime upon entry as an element of first-degree burglary). Appellant had a fundamental Due Process right to present a complete defense against the charged offenses under the Sixth and Fourteenth Amendments of the United States Constitution. See, e.g., Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 2146, 90 L.Ed.2d 636 (1986) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'") (internal citations omitted). Further, "an essential component of procedural fairness is an opportunity to be heard." Id. (citing In re: Oliver, 333 U.S. 257, 273, 68 S.Ct. 499, 507-08, 92 L.Ed. 682 (1948)); see also Herring, 422 U.S. at 858, 95 S.Ct. at 2553, 45 L.Ed.2d 593 ("Accordingly, it has universally been held that counsel for the defense has a right to make a closing summation to the jury, no matter how strong the case for the prosecution may appear . . . ."); S.C. Const. art. I, § 14.[4]

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[4] Article I, section 14 of the South Carolina Constitution provides as follows:

> The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against

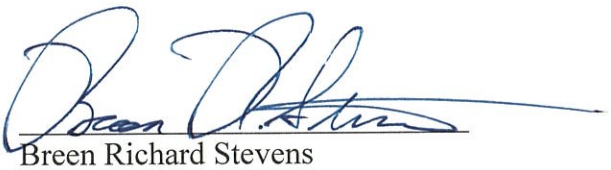
In the present matter, the trial court's ruling effectively prevented Appellant from arguing against the charge of first-degree burglary by preventing him from arguing that a material element required for first-degree burglary was disproven by the State's own evidence. As such, the court's ruling likewise deprived Appellant of the ability effectively present a complete defense or be heard in his defense on this critical issue. See Crane, 476 U.S. at 690, 106 S.Ct. at 2146, 90 L.Ed.2d 636; see also Herring, 422 U.S. at 858, 95 S.Ct. at 2553, 45 L.Ed.2d 593; S.C. Const. art. I, § 14. Accordingly, Appellant was prejudiced by the trial court's erroneous ruling.

> him; to have compulsory process for obtaining witnesses in his favor, *and to be fully heard in his defense by himself or by his counsel or by both.*

Id. (emphasis added).

CONCLUSION

For the foregoing reasons, Appellant Tyreek Lorenzo Robinson respectfully requests reversal of his convictions, and remand for a new trial.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of June, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYREEK L. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2022-000874

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyreek L. Robinson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Robert J. Bonds, which was held on June 13-15, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Tyreek L. Robinson.

Respectfully Submitted,

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of June, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Jun 06 2023
SC Court of Appeals

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Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYREEK L. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2022-000874

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Indictments;
(2) Sentence Sheets;
(3) Trial transcripts, June 13th through 15th, 2022 (Volumes I, II, and III)

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

Breen Richard Stevens
Appellate Defender

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ATTORNEY FOR APPELLANT

This 6th day of June, 2023.

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."

Breen Richard Stevens
Appellate Defender

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ATTORNEY FOR APPELLANT

This 6th day of June, 2023.

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STATE OF SOUTH CAROLINA

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APPELLATE CASE NO. 2022-000874

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Tyreek L. Robinson, #388321, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 6th day of June, 2023.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT