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Dec 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JABYRON RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2022-001220

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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¹ Solicitor: “[Y]our honor, the state is not proceeding on the marijuana charge...no possession with intent to distribute marijuana...under indictment 2020-GS-22-00694,” R. 24, 1.24-p. 25, 1.3.

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the jury to hear and view inadmissible prior bad acts evidence regarding numerous references to the discovery of marijuana found at appellant's residence pursuant to a police search therein because the negative impact of such an unfavorable portrayal of appellant prejudiced his defense, particularly where the solicitor elected not to prosecute appellant on the marijuana charge filed against him in the case.²

² Solicitor: "[Y]our honor, the state is not proceeding on the marijuana charge...no possession with intent to distribute marijuana...under indictment 2020-GS-22-00694," R. 24, 1.24-p. 25, 1.3.

STATEMENT OF THE CASE

Appellant Jabyron T. Richardson was convicted of possession with intent to distribute oxycodone, possession with intent to distribute suboxone, trafficking in cocaine, and trafficking in crack cocaine per jury trial held during August 2022 term of the Georgetown County General Sessions Court before Judge Alison R. Lee. Appellant was sentenced to imprisonment for an aggregate period of twenty-five years. Appellant was represented at trial by Charles D. Barr, and Assistant Solicitor K. Elizabeth Smith prosecuted the case.

Appellant appealed his convictions and sentences. This brief follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion State v. Whitner 399 S.C. 547, 732 S.E.2d 861 (2012); State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusion, is without evidentiary support. Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

ARGUMENT

The trial judge erred in allowing the jury to hear and view inadmissible prior bad acts evidence regarding numerous references to the discovery of marijuana found at appellant's residence pursuant to a police search therein because the negative impact of such an unfavorable portrayal of appellant prejudiced his defense, particularly where the solicitor elected not to prosecute appellant on the marijuana charge filed against him in the case.³

On December 9, 2019, four police officers engaged in the execution of a search warrant at appellant's residence. The police confiscated cocaine, crack cocaine, oxycodone, marijuana, and flunitrazepam/subozone. Appellant was indicted on several drug offenses shortly thereafter. However, the state elected not to prosecute appellant on any marijuana offense despite the fact that he was indicted on a marijuana charge in the case. Nonetheless, the trial was replete with seemingly endless references to the presence of marijuana found inside appellant's residence. All four officers involved in the search referred to having seen and smelled marijuana during their search of appellant's residence.

Police Officer Michael Bishop testified that he detected a "strong" odor of marijuana inside the home and saw a bag of marijuana inside the dresser drawers in plain sight in appellant's room. R. 162, 1.3-17; R. 168, lines 1-5. Police Officer David Aswad testified that he smelled marijuana and took pictures inside the home, which he identified as state's exhibits #25, #22, #19, and #24, and that all of the pictures showed where marijuana was located inside appellant's residence. R. 182, 1.23-p. 183, 1.3; R. 185, 1.22, p. 186, 1.7., R. 189, 1. 14 – p. 190, 1. 7; R. 210, lines 14-15.

³ Solicitor: "[Y]our honor, the state is not proceeding on the marijuana charge...no possession with intent to distribute marijuana...under indictment 2020-GS-22-00694," R. 24, 1.24-p. 25, 1.3.

Police Officer Bryan McKay testified as follows:

“When we got to the door obviously there was a smell of and odor [of] marijuana, burnt marijuana coming outside the door. There was smoke, marijuana cigarette laying by the front door on the ground. When we went in there...in the kitchen there was a rolled partially smoked marijuana cigarette there...the house smelled of marijuana...[and in appellant’s] bedroom. I could see the dresser [and] a plastic bag with green substance believed to be marijuana on it. R. 246, lines 9-25.

Additionally, Officer McKay identified state’s exhibits #59 and #42 as a collection of what was taken from the dresser drawer of the residence including “suboxone strips,” and marijuana, which was on top of the drawer, and “maybe 50 pills of oxycodone,” and “compress white powder,” and a “rock-like substance that field tested positive for crack” found inside also. R. 256, lines 3-16. R. 273, lines 17-23. Furthermore, Officer McKay identified state’s exhibit #45 as a picture of the “green leafy plant-like substance” that tested positive for marijuana. R. 274, lines 8-11. Also, Officer McKay continually reminded the jury about the fact that he discovered marijuana in appellant’s room R. 287, lines 4-5.

Police Officer Donald Tempalsky testified that he participated in the execution of the search warrant in question, and that he obtained a video-recorded statement from appellant thereafter. Officer Tempalsky added that appellant “indicated that there was crack cocaine, marijuana/weed, and suboxone” in his (appellant’s) room. R. 314, 1.22-p. 299, 1.3, R. 318, 1.1-4. Also, Officer Tempalsky stated that this smell of marijuana was all through the house. R. 305, 1.24-p. 507, 1.23. Agent James T. Martin testified regarding the street value, packaging, and sale of certain drugs including marijuana as follows:

All right I’m showing – can you explain in exhibit number 8, can you explain what’s in this picture to the jury?

A: Front and center is two Pyrex measuring cups and a fork. All of those appear to have white residue on them. There's a bottle of water, a bag of green plant material packaged as if it were marijuana, a cell phone, digital scale with white powder residue on it, prescription pill bottles, and a box of ammunition, appears to be personal hygiene type things aside from that. Oh, there's a box of plastic bags.

Q: In your expert opinion what does that indicate to you?

A: That indicates a drug packaging station, and of course with the already packaged marijuana. Potentially the pills bring there for illicit distribution, possibly the area where they're storing drugs as well. R. 382, l. 10-24.

In the case at bar, the dominant testimony was characterized by repeated and countless references to the fact that marijuana was found during a search of appellant's residence. The effect of this testimony, which contained constant references to the presence of marijuana in appellant's residence, was so negatively impactful that the drug charges for which appellant was on trial seemed to linger in the background. All four officers connected to the case described their first recollection upon entering appellant's residence as an encounter with the strong odor of marijuana that permeated therein. This prior bad acts testimony resulted in extreme prejudice to the defense, particularly since appellant was not on trial for any marijuana charge, because the error translated into the portrayal of appellant as one who was heavily and deeply entrenched in marijuana possession and use, which in turn had the effect of inoculating the jury with the notion that appellant was probably guilty of the other drug charges raised against him as well. The introduction of this prior bad acts evidence at appellant's trial constituted evidence that was irrelevant and more prejudicial than probative in the case.

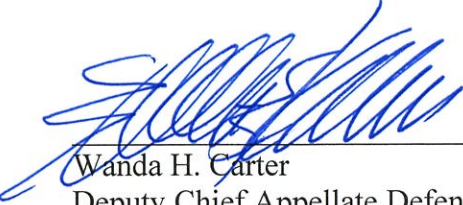
Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis. State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013). Moreover, evidence of prior bad acts is inadmissible to suggest that the accused has the propensity to commit

the crime charged. State v. Peake, 302 SC 378, 396 S.E. 2d 362 (1990). State v. Smith 309 SC 409, 419 S.E. 2d 816 (1992). Prior bad acts evidence is not admissible to show that the accused is a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Also, even if prior crimes are considered under any exception, the prior crimes still cannot be used to show that the accused is a bad person. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). The Peake Court reiterated the rule that evidence of prior bad acts that are independent of and unconnected to the crime for which the accused is on trial is inadmissible at trial. Prior crimes or bad acts cannot be presented to show that the defendant had the propensity to commit the crime charged, i.e. that he is a bad person, or to suggest that the accused has the propensity to commit the crime charged. State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990); State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992).

The prejudicial prior bad acts evidence presented at appellant's trial violated his right to a fair trial per the Fourteenth Amendment and Article 1, §3 of the South Carolina State Constitution, particularly where it was highly likely that the prior bad acts evidence contributed to the jury's guilty verdicts and could not be deemed harmless error. See State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1991), citing to Chapman v. California, 386 U.S. 18 (1967). The trial judge erred in allowing the jury to hear and view the prejudicial prior bad acts evidence at trial.

CONCLUSION

Based on the foregoing argument, counsel for appellant would ask that this Court reverse appellant's convictions and sentences, and remand his case to the lower court for a new proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2023.

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APPELLATE

CASE NO. 2022-001220

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jabyron Richardson states:

1. She is Deputy Chief 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 Alison Renee Lee, which was held on August 22-24, 2022, 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 Jabyron Richardson.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2023.

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

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

- (1) Pre-Trial Hearing Transcript dated July 14, 2022
- (2) Pre-Trial Hearing Transcript dated August 11, 2022
- (3) Entire Transcript dated August 22-24, 2022
- (4) Indictments
- (5) State's Exhibit Nos. 8, 19, 20, 23, 24 (Photos of residence)
- (6) State's Exhibit Nos. 42, 45, 47, 53 (Photos of evidence)

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


Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 13th day of December, 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."

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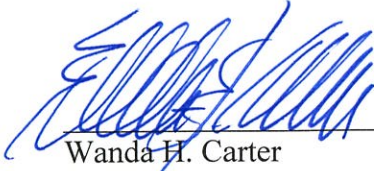
JABYRON RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2022-001220

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jabyron Richardson, #263058, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC, 29210, this 13th day of December, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT