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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Appellate Case No. 2023-000126

The Honorable G.D. Morgan Jr., Circuit Court Judge

The State of South Carolina.....Appellee,

v.

Randy Lee Flower,.....Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENTS

I. The trial court committed reversible error by refusing to sever the charges against Flower where the charges could not be proved by the same evidence and trying them together prejudiced his right to a fair trial.

Given the extraordinary allegations of abuse in this case, it is unfathomable to believe the jury did not factor into its decision to convict the number of charges (and victims) Flower was alleged to have assaulted. Fundamentally, a defendant has the right to be tried by a fair and impartial jury and with the burden on the State to prove each element of each offense beyond a reasonable doubt. As argued in the initial brief, the State certainly could have tried the case with just one victim. It could have informed the court of the other victims at sentencing should it have believed there was a need to. Just because the State *could* try the cases together does not mean that doing so did not impact Flower's right to a fair trial. This was not a case where, for example, a defendant is charged with both bank robbery and larceny; that is where the one crime is integral to understanding the larger course of events. Here, each purported victim's case could have stood completely alone. The State's decision to try all three purported victims together rendered Flower's trial unfair due to the sheer numerosity of charges. Surely the jury must have found that *no one* with this number of charges and victims could be *not guilty* of some of the offenses.

In *State v. Cross*, 427 S.C. 465, 832 S.E.2d 281 (2019) the South Carolina Supreme Court reversed and remanded for a new trial where the trial court did not bifurcate, from the trial for first degree criminal sexual conduct and committing a lewd act on a minor, the defendant's prior sex-related conviction (which the jury had to agree occurred to support the 1st degree criminal sexual conduct conviction). The Court unhesitatingly concluded that the probative value of the previous conviction did not outweigh the danger of unfair prejudice to the

defendant. As the Court found in Cross's case: "Evidence of Cross's prior conviction was undoubtedly relevant, and evidence of Cross's prior conviction had insurmountable probative value; however, the prejudicial effect of that evidence was exceedingly high." *Id.* at 474, 286. The same analysis is true here—the evidence was relevant, but its prejudicial effect was inordinately high such that its introduction denied Flower his right to a fair trial. This Court should reverse Flower's conviction and sentence and remand for a new trial.

II. The trial court committed reversible error in refusing to quash several of the indictments against Flower where the indictments failed to provide adequate notice by incorporating expansive time frames and vague and broad language and therefore prejudiced his right to a fair trial.

Because there is no meaningful constitutional distinction between having to defend an accusation that occurred during a 6-year timeframe and a 4- 5-year timeframe, this Court should reverse and find the indictments were overly broad and vague. Flower lacked proper notice and he was prejudiced by the trial court's allowing the State to move forward with its "corrected" indictments after the trial court initially recognized the problem with the initial indictments. Both the corrected and the initial indictments suffer from the same constitutional flaw, and this Court should reverse. S.C. Const. art. I, §11; *State v. Tumbleston*, 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007); *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

CONCLUSION

Respectfully, this Court should reverse Flower's convictions and sentence and remand for a new trial.

July 25, 2024

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies she has served a copy of this reply brief on Joshua Edwards of the SC Attorney General's Office via email at jedwards@scag.gov on this date, July 25, 2024.

Respectfully submitted,

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