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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from York County
William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ISSAC MOBLEY,

PETITIONER

Opinion No. 2025-UP-140 (S.C. Ct. App. Filed April 23, 2025)

APPELLATE CASE NO. 2022-000450

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued in this case on April 23, 2025, a Petition for Rehearing was filed on May 8, 2025, which was denied by the South Carolina Court of Appeals on May, 22, 2025.

QUESTION PRESENTED

The Court of Appeals correctly held that the prior crimes evidence was erroneously admitted at trial as improper propensity evidence used to prove intent on the burglary charge; however, the Court incorrectly held that said error was harmless via the rationale that intent was proved by inference and ultimately circumstantial evidence because there was neither sufficient inference nor substantial circumstantial evidence presented establishing intent, and thus the error in question was not harmless error and thereby guilt was not proved.

STATEMENT OF THE CASE

Petitioner Michael Issac Mobley was convicted of second degree burglary (violent) pursuant to a bench trial held during the April, 2022 term of the York County General Sessions Court before Judge William A. McKinnon. Petitioner was sentenced to imprisonment for a period of six years. Assistant Solicitors Chris Epting and Peri Imler prosecuted the case on behalf of the state, and Attorney Geoffrey M. Dunn appeared on petitioner's behalf.

Petitioner appealed, but on April 23, 2025, his conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Michael Isaac Mobley, Unpublished Opinion No. 2025-UP-140 (S.C.App. April 23, 2025). A petition for rehearing was filed on May 8, 2025. On May 22, 2025, the petition for rehearing was denied by the South Carolina Court of Appeals. This Petition for Writ for Certiorari follows.

ARGUMENT

The Court of Appeals correctly held that the prior crimes evidence was erroneously admitted at trial as improper propensity evidence used to prove intent on the burglary charge; however, the Court incorrectly held that said error was harmless via the rationale that intent was proved by inference and ultimately circumstantial evidence because there was neither sufficient inference nor substantial circumstantial evidence presented establishing intent, and thus the error in question was not harmless error and thereby guilt was not proved.

Petitioner was on trial per an indictment containing the allegation that he entered a building at night without consent and with the intent to commit a crime therein.

Officer Thomas Austin testified that he was dispatched to Workman's Oil Company in York County after midnight on the morning of December 9, 2021, and that he arrived on the scene to find a slightly bent plexiglass window pane protruding out at the bottom level of the company's garage door. Officer Austin stated that he searched the garage minutes later and found petitioner lying underneath one of the vehicles inside. Petitioner was detained and arrested in connection with the break-in. Tr. 77, l.5-p. 91, l.16.

Petitioner testified at trial and explained that he was in effect homeless on the morning in question, and that he entered the building at issue to escape from the cold weather outside after his ex-wife made him leave her home around midnight. Petitioner added that this was why the police found him sleeping inside the garage, and that he had not taken anything from inside the garage. Tr. 114, l.16-p.123, l.11.

Building manager Wendy Shaner testified that there was a prior incident on March 20, 2020¹ when petitioner broke into the same building, “the same way, through the same window,” and that at that time, petitioner took cigarettes, sodas, and chips from inside the building. Tr. 60, 1.19-p. 69, 1.4. The state sought to introduce the prior burglary from March 20, 2020, into evidence in order to prove intent with respect to the instant burglary charge that occurred on December 9, 2021, for which petitioner was on trial. Tr. 6, 1.17-p. 8, 1.2.

The solicitor informed the trial judge prior to trial that evidence would be presented at trial in the form of a prior burglary crime where petitioner previously entered the same building (via a window pane), and took various canteen items (sodas, toilet paper), whereinafter he was apprehended, charged and convicted. The solicitor’s position was that petitioner intended to operate in the same manner in this burglary case as he did previously in the prior burglary case. Tr. 6, 1. 1 – p. 8, 1. 2. Defense counsel objected to the same as improper prior crimes evidence because in this case petitioner merely entered the garage because he needed a place to sleep and avoid outside cold weather. Tr. 37, 1.9-p.40, 1.3, Tr. 45, lines 14-19. Following an in camera hearing regarding the matter, the trial judge ruled that said burglary prior constituted admissible evidence at trial. Tr. 40, 1.24-p. 41, 1.15.

At the close of the state’s case, defense counsel argued for a directed verdict on the ground that intent had not been proved, and that the prior crimes evidence was improperly admitted into evidence at trial. Tr. 104, 1.20-p. 107, 1.2. The motions were denied. Tr. 108, 10-14. Counsel renewed the motions at the close of petitioner’s testimony after the defense rested its case, but the motions were denied. Tr. 130, 1.8- p.131, 1.16.

¹ Petitioner pled guilty to second degree burglary and received a two-year sentence for entering the same building Workman Oil on March 20, 2020. Tr. 6, 1.17-p. 7, 1.3.

On appeal, the following issues were presented in the case:

The trial judge erred in denying petitioner's directed verdict motion on the burglary charge because the state's evidence did not establish sufficient proof that petitioner possessed the requisite intent to commit a crime in the case.

The trial judge erred in admitting petitioner's prior burglary conviction into evidence because the prior 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).

The Court of Appeals agreed that a Lyle² violation occurred in the case and held as follows regarding the same:

We hold the trial court erred by admitting Mobley's prior conviction for second-degree burglary under Rule 404(b) of the South Carolina Rules of Evidence because it suggested Mobley had a propensity to commit burglary, was not logically relevant to any material fact at issue, and was insufficient to establish a pattern of conduct that could be probative of Mobley's intent.⁽²⁾ See *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* (An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 404(b), SCRE ("Evidence of other crimes...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...the existence of a common scheme or plan...or intent."); see also *State v. Robinson*, 438 S.C. 421, 435, 882 S.E.2d 883, 891 (Ct. App. 2023) ("The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, 'i.e., the evidence does something more than prove a person has propensity to commit crimes.'" (quoting *Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021)));

Although intent was a material fact at issue here, we hold evidence that Mobley broke into and stole items from the business in 2020 was not logically relevant to his state of mind when he entered the same business almost two years later in December 2021. See S.C. Code Ann. § 16-11-312(B)(3)(2015) ("A person is guilty of [second-degree] burglary...if the person enters a building without consent and with intent to commit a crime therein, and...[t]he entering or remaining occurs in the nighttime."); *State v. Ostrowski*, 435 S.C. 364, 392-97, 867 S.E.2d 269, 283-86 (Ct. App. 2021) (explaining text messages showing the defendant occasionally dealt drugs from his home, which were sent as far back as six weeks prior to his arrest, "should not have been admitted at trial because [they were] not probative of [his] intent as to the offense with which he was charged in the present case"). In addition, the State offered only one conviction, which was insufficient to establish a pattern of conduct probative of Mobley's intent in December 2021 under the common scheme or plan exception.

² State v. Lyle, 125 S.C. 406, 118 S.E.803 (1923).

Then, after the Court of Appeals held that the trial judge erred in allowing the inadmissible Lyle prior to be considered as evidence in the case, the subsequent ruling was that the Lyle error was harmless error because intent to commit a crime was inferred, which was proof of intent nonetheless per the following analysis:

Nevertheless, we hold the trial court's error in admitting Mobley's prior conviction was harmless because the trial court, sitting as the factfinder in this bench trial, could have inferred Mobley's intent to steal based upon his admission that he trespassed and entered a building that contained items of value. See *State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014) ("The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained."); *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006) ("[W]hether an error is harmless depends on the particular circumstances of the case."); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."); *State v. Haney*, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971) ("Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct."); *id.* at 92, 184 S.E.2d at 345 ("In the absence of inconsistent circumstances, proof of unlawful entry into a building which contains personal property that could be the subject o[f] larceny gives rise to an inference that will sustain a conviction of burglary." (quoting *People v. Rossi*, 250 N.E.2d 528, 530 (Ill. App. Ct. 1969)...[note that] snack items were kept for sale in the front office area and that the service bay where Mobley was found contained auto parts and tools. Thus, even though Mobley had not taken anything of value, he was found inside a building where items of value were kept. Such evidence gives rise to an inference that Mobley intended to commit a crime when he entered the building. See *Haney*, 257 S.C. at 91, 184 S.E.2d at 345 (holding the record contained evidence of intent to commit larceny when trial testimony "fully support[ed] a conclusion that the defendant gained access to the building through an unlocked window and entered the room where movie projectors and other visual aids were kept"). In addition, police found Mobley lying on a concrete floor partially underneath a vehicle when they arrived, which indicated he was hiding from police; Mobley refused to identify himself to police; and he falsely stated to police that he was an employee of the business. This evidence further demonstrated that he intended to commit a crime within the business when he entered. Because Mobley's prior conviction was cumulative to this inference of Mobley's intent to commit a crime when he entered the business and to the other evidence demonstrating that he held such intent, we hold its admission did not prejudice him and was harmless. See *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result.")...[and] that Mobley's trespass of the businessconstituted evidence he intended to commit a crime when he entered the business.

To the contrary, there was no inference or substantial circumstantial evidence establishing petitioner's intent to commit any crime while inside the building because the

evidence in the record clearly revealed that petitioner's intent was **not** to commit a crime in the building, but rather to seek shelter from the freezing night temperatures as he was homeless. Second degree burglary under S.C. Code Ann §16-11-312 (B) is committed if a person enters a building without consent and with the intent to commit a crime therein. Here, petitioner was in a building without consent at night, but there was no inference of intent or substantial circumstantial evidence of intent to commit a crime therein on petitioner's behalf (that being the crime of theft or any other crime) because petitioner's intent was not to steal, but rather to escape cold temperatures outside and find a place to sleep for the night. There was insufficient proof of intent in the instant case because the circumstances in this case included a single and distinct purpose, i.e., the purpose of lodging only.

Intent is defined as the state of mind required for the commission of a crime. State v. Shands 424 S.C. 106, 817, S.E.2d 524 (2018). Proof of intent rests on inferences from one's conduct. State v. Haney, 257 S.C. 89, 184 S.E.2d 344 (1971). Although the element of intent to commit a crime under the burglary statute must exist at the time the accused enters a dwelling/building, the jury may base its determination of that intent upon evidence of the accused's actions once inside the place. State v. Gilliland, 402 S.C. 389, 741, S.E.2d 521 (2012), citing to State v. Pinckney, 339 S.C.346, 529 S.E.2d, 526 (2000). In Gilliland, the Court held that the defendant entered the home in question with the intent to commit a crime therein 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. In Pinckney, where the defendant entered a home to escape people he believed were after him, the Court of Appeals held that there was no intent to commit a crime upon his entry;³ but the South Carolina Supreme Court held on further review that the

³ State v. Pinckney, Memorandum Op No. 98-UP-495 (Ct. App. Filed November 9, 1998).

defendant's actions after he entered the house by barricading himself in a bathroom and threatening to "light the place up" satisfied the element of the intent to commit a crime inside that home. Also, compare State v. Peterson, 336 S.C. 6, 518 S.E.2d 277 (1999), where the Court found proof of the defendant's intent at the time he entered a home without consent because he grabbed a female once inside and threw her on the bed before fleeing after a child woke, despite the fact that he was later not found guilty of sexual assault. See also McMillan v. State, 383 S.C. 480, 680 S.E.2d 905 (2009), where the Court held that intent to commit the offense of trespassing could be inferred where a defendant entered a home without consent for assistance because he said someone was chasing him and trying to kill him.

In the case at bar, there was insufficient evidence (neither by inference nor substantial circumstantial evidence) that supported proof on the element of intent to commit a crime on petitioner's behalf when he entered the garage in question. Petitioner entered as a homeless man to escape the cold weather and ended up falling asleep. The officer found no items on petitioner that would have been property of the garage, which meant theft was not an issue in the case. Also, petitioner was not engaged in fleeing the scene.

Furthermore, the same facts that negated any inference of intent to commit a crime by petitioner inside the building also simultaneously showed a lack of substantial circumstantial evidence that would have proven guilt in the case; and therefore, the directed verdict motion in the case should have been granted. The Court of Appeals erred in holding that the directed verdict motion was properly denied in the case. A case should only be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced. State

v. Bostick, 392 S.C.134, 708 S.E.2d 774 (2011)(quoting State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126(2000)).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issues.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

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ATTORNEY FOR PETITIONER

This 23rd day of June, 2025.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from York County
William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

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MICHAEL ISSAC MOBLEY,

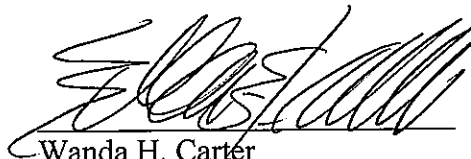
PETITIONER

Opinion No. 2025-UP-140 (S.C. Ct. App. Filed April 23, 2025)

APPELLATE CASE NO. 2022-000450

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Michael Issac Mobley, at 417 Highland Ave., Sumter, SC 29150, this 23rd day of June, 2025.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

Leverett, Scott

From: Leverett, Scott
Sent: Monday, June 23, 2025 4:48 PM
To: Ambree Muller
Cc: Grace Sommer; Carter, Wanda
Subject: 2022-000450 - State v. Michael Mobley - Petition for Writ of Certiorari to the Court of Appeals
Attachments: 2022-000450 - State v. Michael Mobley - Petition for Writ of Certiorari to the Court of Appeals.pdf

Dear Ms. Muller,

We noticed clerical error in our Petition for Writ of Certiorari to the Court of Appeals, and have attached a corrected Petition, which we are filing with the Supreme Court and the Court of Appeals. Please disregard the original filing.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense