

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

STEPHON ROBINSON,

Defendant.

IN THE GENERAL SESSIONS COURT

SECOND JUDICIAL CIRCUIT

2011-GS-06-00245

2011-GS-06-00246

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SC Court of Appeals

This matter came before this Court on remand from the South Carolina Court of Appeals for a hearing to determine whether, under Rule 609(a)(1), SCRE, the prejudicial impact of admission of Defendant Stephon Robinson's prior convictions for burglary, attempted robbery, and breaking into an automobile with intent to commit a theft or felony outweighed their probative value.

The remand hearing was held in Aiken County on June 9, 2014. The Defendant was present for the hearing and was represented by Carmen V. Ganjehsani of the South Carolina Commission on Indigent Defense. Deputy Solicitor David W. Miller appeared on behalf of the State. This case was initially tried over two days beginning November 1, 2011 in Barnwell County. For the purposes of the remand hearing, the parties agreed to waive venue and have the matter heard in Aiken County.

**I. PROCEDURAL HISTORY**

On October 25, 2011, the Barnwell County Grand Jury indicted Robinson for first-degree burglary and possession of a weapon during the commission of a violent crime.

Robinson proceeded to trial before this Court and a jury in Barnwell County on both indictments. Glen Walters represented Robinson, and Assistant Solicitors A. Keith McAlister

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL  
I, Rhonda D. McEwen, Clerk of Court, Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.  
By: *Rhonda D. McEwen*  
Clerk of Court, Barnwell County, SC  
Date: 11-11-14

and David W. Miller represented the State. The jury found Robinson guilty as charged on November 2, 2011. Robinson was sentenced to twenty (20) years imprisonment on the first-degree burglary conviction and a concurrent five (5) years imprisonment for possession of a weapon during the commission of a violent crime.

Following his conviction, Robinson filed an appeal to the South Carolina Court of Appeals. In his appeal, Robinson presented the following issue to the Court of Appeals:

Did the trial court err in admitting [Robinson's] prior convictions for strong-arm robbery and breaking and entering into a motor vehicle under Rule 609(a)(1), SCRE when the trial court failed to conduct the required on-the-record balancing test set forth by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), and [Robinson] was prejudiced by the admission of his prior convictions given the similarity of his prior convictions to his charges for first-degree burglary and possession of a weapon during the commission of a violent crime?

The Court of Appeals issued its Opinion No. 2014-UP-068 on February 19, 2014, remanding the case to this Court to "hold a hearing and carefully balance the probative value of [Robinson's] prior convictions for impeachment purposes against their prejudicial effect." The Court of Appeals instructed that if this Court "finds the prejudicial impact of the prior convictions outweighs their impeachment value, [this Court] shall order a new trial. Otherwise, subject to further appellate review, the convictions and sentences are affirmed."

After considering the instructions of the Court of Appeals, reviewing the transcript of the trial in this matter, hearing the arguments of counsel, and conducting the balancing test set forth in State v. Colf, this Court hereby finds Robinson should not be granted a new trial for the reasons set forth below.

## II. RELEVANT FACTS OF TRIAL

Eddie Williams, a resident of Barnwell County, claimed that Robinson, Robinson's brother, and an unidentified third man entered his home on the afternoon of Sunday, February

20, 2011. Williams testified that he heard the door to his home broken in by someone while he [Williams] was in another part of the residence. Williams testified he retrieved a gun and went to investigate the disturbance. Williams confronted the intruders in the hallway of the residence and started to shoot at the intruders. As the intruders ran from the home, one of them, identified by Williams as Stephon Robinson, turned and fired a shot into the ceiling above Williams' head. Trial Tr. 99-107. Williams testified that Stephon Robinson was one of the intruders and the second intruder was Stephon Robinson's brother, Reginald Felder<sup>1</sup>. Williams was never able to identify the third individual that entered his home that day because, "they liked to ran over him going back out, so I couldn't make him out". Id. at 105. After the intruders fled the residence, Williams called law enforcement to report the burglary.

Williams initially did not tell the officer investigating the incident that Williams himself had shot his gun at the intruders. Williams testified he was afraid to tell the truth to law enforcement because the gun in his possession had not been registered. Trial Tr. 111. Subsequent investigation of the pistol Williams used determined that it had been reported stolen out of Beaufort County. Trial Tr. 60. Williams also told law enforcement on the date of the incident that the bullet holes in his home were already there when he purchased the home. Trial Tr. 112-113.

At trial, Robinson testified that he was at his home with his brother Reginald Felder and his cousin when the incident occurred at Williams' home. Robinson testified he woke up in the morning, took a shower, took a car he borrowed from Shelly Leanna Gunnels back to her house, and then came back home and was home for the rest of the day. Trial Tr. 130-132.

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<sup>1</sup> After testifying for the defense in this trial, Reginald Felder pled guilty to Burglary 2<sup>nd</sup> Degree (Violent) related to this incident on January 4, 2012. He was sentenced to twelve (12) years.



Gunnels testified that Robinson did borrow her car on February 19th and then returned it on February 20th “around that afternoon.” Trial Tr. 96-97.

### III. LAW AND ANALYSIS

During the trial, this Court heard from counsel for the State and the Defense outside the presence of the jury regarding what, if any, prior convictions of the Defendant should be allowed to be admitted for impeachment purposes if the Defendant chose to testify.

Under Rule 609(a)(1), SCRE, “evidence that an accused has been convicted of [a crime punishable by death or imprisonment in excess of one year under the law under which the witness was convicted] shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.”

Four prior convictions were discussed. The only prior conviction Defense counsel presented any argument on was a prior 2009 burglary conviction. Additionally, the Defendant had a prior conviction in 2009 for strong-arm robbery and two 2007 Georgia convictions for breaking and entering into an automobile with the intent to commit a felony or theft.

As to the 2009 burglary conviction, I find that the prior conviction was probative as to the believability of the Defendant and that any undue prejudice from introduction of the conviction would be diminished by this Court’s limiting instruction as well as the requirement that the State refer to the conviction only as a “conviction for a felony offense that carried more than a year”. The State was prohibited from mentioning to the jury that the conviction was for a prior burglary. Accordingly, the probative value of this conviction outweighs its prejudicial effect.

As to the 2009 strong-arm robbery conviction and the two 2007 Georgia convictions for breaking and entering into an automobile with the intent to commit a felony or theft, I likewise find that the probative value of these convictions outweighs their prejudicial effect.

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In conducting the Colf balancing test, each of the four convictions is considered together because the analysis remains the same for each conviction. In making this determination, this Court has considered:

1. The impeachment value of the prior convictions

“Impeachment value refers to how strongly the nature of the conviction bears on the veracity, or credibility, of the witness.” State v. Black, 400 S.C. 10, 21-22, 732 S.E.2d 880, 886-87 (2012). The only legitimate purpose for introducing evidence of past convictions is to impeach a witness’s credibility, not the witness’s general character. Id. at 23, 732 S.E.2d at 887. This Court finds the admission of the four prior convictions has value for impeachment purposes and that the prejudicial effect of the admission of the prior convictions, if any, is not outweighed by their admission. While no specific details of the prior convictions were provided to this Court or the jury in this case, the mere fact that the Defendant had twice been convicted of serious crimes within a few years of the alleged offense would tend to impact the Defendant’s credibility. Simply put, convictions for breaking into motor vehicles and strong-arm robbery don’t imply that the accused was an armed burglar, as was alleged in this case, but they do imply that the accused is not someone to be trusted - that he might not be credible. The Court’s instructions to the jury reflect this reality. After carefully weighing the prejudicial effect of these prior convictions with their probative value, I find that the probative value outweighs any prejudicial effect.

2. The point in time of the convictions and the witness’s subsequent history

Each of the prior convictions in this case were well within the ten (10) year boundary set forth by Rule 609(b). “Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness

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from the confinement imposed for that conviction, whichever is the later date...” Id. The Defendant’s 2007 convictions in Georgia resulted in a sentence of probation for a period of five (5) years commencing on February 20, 2007. His subsequent 2009 convictions for burglary and strong-arm robbery resulted in an active YOA sentence not to exceed six (6) years, commencing on May 18, 2009. The Defendant would have been released from confinement on the active YOA sentence less than one year before the February 20, 2011 burglary of the Williams’ home. At the time of this offense, and at the time of trial in November 2011, the Defendant was ostensibly still being supervised by Georgia and South Carolina authorities for these prior convictions. All of the Defendant’s prior convictions occurred within five (5) years of the trial, and were therefore well within the time frame provided for by the Rule.

3. The similarity between the past crimes and the charged crime

The Defendant claims that his prior convictions are so similar in nature to his current charge that they are unfairly prejudicial to him in this case. In fact, there is very little similarity between his prior convictions and the charge in this matter. As stated above, the State was prohibited from mentioning the Defendant’s 2009 burglary conviction during the trial. Instead, the State was required to simply refer to the conviction as “a felony conviction that carries more than a year”. There is nothing about that characterization of the prior conviction to make it similar to the offense that the Defendant faced. As to the strong-arm robbery and breaking into motor vehicle charges, there is no indication that any of those charges involved the use of a deadly weapon (a crucial element of the burglary charge), or that they involved entering someone’s home (also an element of the burglary charge). Despite Defense counsel’s claim, there is no similarity between the prior convictions and the offenses for which the Defendant was on trial in this case.

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4. The importance of the Defendant's testimony

The defense presented an alibi defense at trial. Specifically, testimony was offered that the Defendant was at his home with his brother, who had also been charged with first degree burglary in this case but was not being tried, and his cousin, who was not facing any charges from this incident. Reginald Felder and his cousin Arthur Wallace testified that the Defendant was with them at the time of the burglary and that none of them participated in the burglary of Mr. Williams' home. Given the fact the Defendant's testimony was entirely cumulative to the testimony of the two other defense witnesses, it was not necessary for the Defendant to take the stand in his defense. In fact, the only thing the Defendant testified to that his other witnesses did not confirm was that he [Robinson] had bought marijuana from Mr. Williams at the home prior to the date of the burglary. Trial Tr. 139.

5. The centrality of the credibility issue.

The credibility of Williams, Robinson, and Robinson's witnesses was central to the case. There was no physical evidence linking Robinson to the break-in at Williams' home. The only evidence linking Robinson to the crime was Williams' statement that Robinson was one of the three men who entered his home. The Defense called Williams' credibility into question in an effort to discredit his unwavering identification of Robinson and his brother as the perpetrators of the crime. Additionally, Robinson's brother and cousin testified consistently with Robinson that Robinson was with them and not at Williams' home on the day of the burglary.

Having weighed the admission of each prior conviction after applying the analysis set forth in Colf, I hereby find Robinson's prior convictions had impeachment value and that their admission was more probative than prejudicial. I further find the Defendant's prior convictions were sufficiently close in time to the trial in this matter. I find that the prior convictions were not


substantially similar to the crime for which the Defendant was being charged, except for the prior burglary conviction, and as to that conviction, the State was properly limited in the introduction of that matter. I additionally find that the Defendant's testimony was not important to advance his defense of an alibi in this matter, as he had two other witnesses that could, and did, corroborate his testimony. Finally, I find that credibility of *all* witnesses, for the State and the Defense, was an essential element of this trial, as it is with every trial.

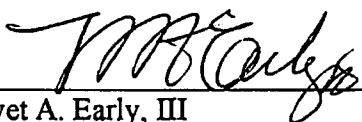
The defense strategy was to discredit the victim's identification of the Defendant and his brother as the perpetrators of this crime- in other words, to convince the jury that the victim was not credible. In an effort to that end, the jury was given the task of determining whether the victim really did see the Defendant and his brother breaking into his home or that the victim was lying. This could have been done even without the Defendant's testimony. Having offered his testimony in support of his defense and his own witnesses, I find the Defendant's prior record was properly presented to the jury for them to give it the consideration, within the confines of my instructions, they saw fit.

#### IV. CONCLUSION

BASED ON THE FOREGOING, I find that the probative value of the introduction of the Defendant's prior record outweighed any prejudice to him under Rule 609(a)(1), SCRE in this matter. Accordingly,

IT IS ORDERED that Defendant Stephon Robinson's motion for a new trial should be, and hereby is, DENIED.

  
~~Greenville~~, South Carolina  
November 10, 2014.

  
Doyet A. Early, III  
Resident Judge,  
Second Judicial Circuit