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APR 28 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JAMES GREGORY YOUNGER,

APPELLANT

APPELLATE CASE NO. 2014-001298

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in overruling defense counsel's objection to the victim's placing appellant's character into issue with a prior felony charge?

STATEMENT OF THE CASE

Appellant was convicted of criminal sexual conduct in the third degree after a jury trial held before the Honorable W. Jeffrey Young on June 9 – 11, 2014, in Sumter County. A ten (10) year sentence was imposed. James R. Snell, Esquire represented appellant. John P. Meadows, Esquire represented the State.

This appeal follows.

## ARGUMENT

The trial court erred in overruling defense counsel's objection to the victim's placing appellant's character into issue with a prior felony charge.

The indictment charging appellant with criminal sexual conduct alleged that on or about September 19, 2012, he committed a sexual battery upon the victim with knowledge or reason to have knowledge that the victim was physically helpless where aggravated force or coercion was not used in that appellant had anal sex against her consent.

During pretrial, defense counsel noted that the victim had alleged that appellant had told her about a prior allegation against him. The trial court said if "he says something about that, then she can state it." (R. p. 107, lines 1-7.) Later, the trial court said, "He made the statement then that can be used against him as far as from her, he made that statement." (R. p. 107, lines 21-23.)

During defense counsel's opening argument, it became apparent that the defense was one of consent. He and the victim met in March 2012. They began dating. He had a key to her house. September 19 was their last night together. They had sex and it got physical but it was consensual. (R. p. 118, line 7 – p. 121, line 1.)

On direct examination, the solicitor asked the victim the following questions:

Q And did he tell you why he had told you his wrong name?

A He did.

Q What did he say?

A He said he had done things in his past, and that people would always judge him. And if he would have disclosed his full name and age, then I could have google searched and seen these things from his past and he would have been immediately judged. And I would have not given him a chance to get to know him or anything. And, yes.

Q Was he specific?

A Yes. He said that he was – had a felony charge from when he was 19 or 20 years old. It was an assault.

MR. SNELL: Object.

THE COURT: Overruled.

Q Go ahead.

A It was an assault. I don't remember exactly what the legal term is as far as the – but he had beat up a guy really badly coming out of a restaurant. They had a disagreement and a fight, a really bad fight. And then an assault on a female; that he had a really aggressive girlfriend that cracked him over the head with a lamp. And that he put her in a choke hold, a sleeper hold because he knew jiu jitsu. And he was defending himself is what he said.

Q So those were his words to you as to why he had given you a false name.

A Yes.

(R p. 139, line 8 – p. 140, line 13.)

The trial court erred in overruling defense counsel's objection to this line of questioning because it placed appellant's character into issue.

In Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989), the Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280, S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person.

In State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978), the Court noted: "Character evidence is so highly prejudicial that it is usually excluded under hard and fast rules." (citation omitted). The mug shot also suggested prior bad acts. In State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), the Court elaborated on the subject:

It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. *See, e.g., State v. Gregory*, 191 S.C. 212, 4 S.E.2d 1 (1939). Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. *See, United States v. Johnson*, 610 F.2d 194 (4<sup>th</sup> Cir.1979); State v. Byers, 277 S.C. 176, 284 S.E.2d 360 (1981); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Even if evidence of other crimes is deemed relevant and admissible, the evidence may still

be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. *See, State v. Wilson*, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence which permit the introduction of prior bad acts or crimes into evidence is the prerequisite that they establish some element, i.e., intent or motive, of the crime charged. *See, e.g., State v. Lyle, supra; State v. South*, 285 S.C. 529, 331 S.E.2d 775 (1985); and *State v. Huggins*, 285 S.C. 361, 329 S.E.2d 759 (1985

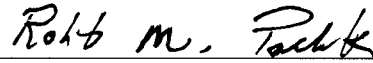
293 S.C. at 324-325, 360 S.E.2d at 319.

Credibility was a key issue in this case. It was the victim's word against appellant's word. In *State v. Reeves*, 301 S.C. 191, 391 S.E. 2d 241 (1990), the Court held that "error which substantially damages the defendant's credibility cannot be held harmless where such credibility is essential to his defense."

CONCLUSION

Appellant's conviction should be reversed and he should be given a new trial.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

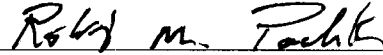
ATTORNEY FOR APPELLANT

This 28th day of April, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

April 28, 2015



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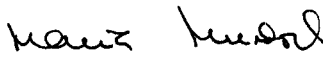
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer E. Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of April, 2015.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 28th day of April, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.