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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PRINCE DEVEN SNIPES

APPELLANT

APPELLATE CASE NO. 2013-001651

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting evidence of appellant's prior convictions and failing to balance whether the convictions' probative value outweighed their prejudicial effect?

STATEMENT OF THE CASE

On July 19, 2012, a Cherokee County grand jury indicted appellant for murder and a related weapons charge. R. 339. On July 16, 2013, appellant was tried before the Honorable J. Derham Cole and a jury. R. 1. Barry J. Barnette represented the State. R. 1. Shawn M. Campbell represented appellant. R. 1. The jury convicted appellant. R. 332, ll. 1 – 6. Judge Cole sentenced appellant to life imprisonment for murder and vacated the weapons conviction. R. 336, l. 10 – 337, l. 3. This appeal follows.

ARGUMENT

The trial court erred in admitting evidence of appellant's prior convictions and failing to balance whether the convictions' probative value outweighed their prejudicial effect.

Relevant Facts

Credibility was the key issue in this self-defense case. Appellant Prince Devan Snipes ("Snipes") testified in his own defense. Snipes lived with his girlfriend, Nikita Hardy ("Hardy"). R. 211, ll. 16 – 18. Hardy's three sons also lived with them. R. 211, ll. 16 – 18. One of Hardy's three sons was named DH and his father was the decedent, Debris "Breezy" Houey. R. 211, ll. 16 – 18. R. 212, ll. 1 – 4. Hardy testified that she did not have a good relationship with Breezy because he was "crazy" and did "crazy stuff." R. 247, ll. 6 – 13. Breezy would visit DH "[E]very now and again." R. 247, ll. 6 – 16.

DH was epileptic. R. 248, l. 23 – 249, l. 3. After DH's second seizure, Hardy called DH's grandmother to inform her about the seizures. R. 249, ll. 4 – 13. Breezy formed the mistaken belief that the seizures were the result of Snipes mistreating DH. R. 248, ll. 12 – 249, l. 13. Breezy called Hardy's house in July 2010 to threaten Snipes. R. 248, ll. 12 – 16. R. 250, ll. 6 – 16. Breezy told Snipes "they could handle it like regular people handle it like gangsters, or something to that." R. 250, ll. 13 – 16. Breezy said "that he had a problem" and told Snipes "if you mistreated my son, I will come to your house and we are going – I will gangstered and we was going to bring it to your front door." R. 212, ll. 16 – 213, l. 5. Snipes was afraid and concerned for the safety of his family. R. 213, ll. 6 – 16. Hardy told Breezy not to call the house any more. R. 250, ll. 13 – 16.

Two or three weeks after this threat, Hardy ran into Breezy at a store. R. 250, l. 17 – 251, l. 8. Hardy was in Snipes' car. R. 250, l. 24 – 251, l. 8. Breezy came over to the car and told Hardy, "[T]ell your boyfriend I'm still going to get him." R. 250, l. 25 – 251, l. 8. Breezy tried to kick Snipes' car. R. 250, l. 24 – 251, l. 8. Hardy told him to stop and left. R. 250, l. 25 – 251, l. 8. Hardy told Snipes about the threat. R. 251, ll. 9 – 10.

On another occasion, Breezy approached Hardy at a gas station. R. 252, ll. 12 – 21. Hardy was with Snipes' daughter. R. 252, ll. 12 – 21. Breezy said, "[W]here is your boyfriend? Tell him I'm still going to kick his [. . . .]" when Hardy told him he needed "to go on." R. 252, ll. 16 – 21. Subsequently, Breezy's mother called Hardy's house. R. 252, l. 24 – 253, l. 16. Breezy's mother related a threat from Breezy: "she called the house and I answered the phone and she said 'girl, I had to stop Breezy from coming to your house killing up everybody. If it wasn't for BB being in there, he would have been down there.'" R. 253, ll. 10 – 16. Hardy told Snipes about both of these threats. R. 252, ll. 22 – 23. R. 253, ll. 17 – 18. Hardy was scared "because he had done it before." R. 253, ll. 23 – 24. She described Snipes as also being afraid and that he purchased a gun because of Breezy's threats. R. 253, l. 25 – 254, l. 10.

Hardy's son DM testified for the defense. On the day of the shooting, DM was walking back to his house from his car when Breezy called his name and told him to "come here." R. 197, ll. 10 – 16. Breezy asked DM, "is Prince still in there talking that big boy talk?" R. 197, ll. 18 – 19. Breezy told DM, "well, don't play with me, man. Your momma ain't here to save him this time." R. 197, ll. 21 – 22. When DM asked

Breezy what he meant, Breezy told him, "either you go in there and get him or I'm going in myself." R. 197, ll. 23 – 25.

DM went inside and told Snipes that someone outside wanted to talk to him. R. 198, ll. 3 – 8. DM described Breezy as having "a crazy look in his eye." R. 198, ll. 12 – 15. DM tried to stop Snipes from going outside. R. 203, ll. 1 – 4. Breezy had one of his hands in his pants. R. 204, ll. 12 – 14. After Snipes went outside, DM heard gunshots. R. 204, l. 19 – 285, l. 6. DM did not see the shooting. R. 205, ll. 7 – 10. Snipes left in his car. R. 206, ll. 5 – 11.

Snipes testified that DM told him that Breezy was outside and that if Snipes did not go outside, Breezy was going to enter the house. R. 216, ll. 12 – 19. Snipes looked out the window and saw Breezy in the back yard. R. 217, ll. 7 – 9. Breezy was smoking a cigarette and had his hand in his pants. R. 217, ll. 10 – 12. Snipes was afraid because Breezy had previously threatened to come to his house and attack him. R. 217, l. 17 – 24. Snipes took a gun from under his bed and went outside, "because I didn't want him coming in the house in putting my life and kids life in danger." R. 218, ll. 2 – 18.

Snipes was carrying his gun down by his side and not pointed at Breezy. R. 219, ll. 2 – 12. Breezy told him that Hardy "is not here to save you now." R. 219, ll. 22 – 23. Snipes said, "I know you didn't bring this to my street. I know you didn't come to my home." R. 219, l. 24 – 220, l. 1. Breezy then pulled a gun out of his waistband. R. 220, ll. 9 – 11. Snipes started shooting. R. 220, ll. 9 – 11. Breezy fell, but was still moving and was near his gun, so Snipes approached him and fired "one last round." R. 220, ll. 16 – 24. R. 235, ll. 14 – 23. Snipes went in the house, dropped his gun on the floor, grabbed

his keys, and left. R. 236, ll. 20 – 23. Breezy died from “at least seven” gunshot wounds, including a close range shot to the head. R. 153, ll. 16 – 23. R. 155, ll. 2 – 23.

Breezy’s mother, grandmother, and a close family friend testified for the State. Their accounts of the shooting differed from the defendant’s testimony. In their versions, Breezy was helping them move furniture. R. 70, l. 24 – 71, l. 3. R. 81, ll. 13 – 15. R. 99, ll. 6 – 100, l. 2. Breezy’s mother did not see the shooting, but heard gunshots. R. 72, l. 20 – 73, l. 7. She saw Snipes with a gun and said he almost ran her off the road as he drove away from the scene. R. 72, l. 20 – 73, l. 7. Breezy’s grandmother saw Hardy’s “oldest boy” call out and then speak with Breezy. R. 82, l. 19 – 83, l. 6. Breezy’s grandmother’s friend, Dorothy Boyd (“Boyd”) told her, “look at that boy shooting that boy,” and when she turned around, she saw Snipes shooting Breezy. R. 84, ll. 15 – 23. She got out of the truck and asked Snipes why he shot Breezy and claimed that Snipes said, “Breezy come to me. I didn’t go to him.” R. 86, ll. 4 – 6. Boyd said Breezy started running when he saw Snipes with a gun and Snipes started shooting. R. 101, ll. 5 – 17. Both the grandmother and Boyd describe Snipes’ firing a shot into Breezy’s head after Breezy was laying on the ground. R. 84, ll. 15 – 23. R. 102, ll. 2 – 6.

All three of the State’s witnesses denied Breezy had a gun that day. R. 76, ll. 1 – 6. R. 87, ll. 15 – 20. R. 102, ll. 12 – 15. No gun was found at the scene. R. 132, ll. 4 – 5. The police admitted that there was a “large crowd” present at the scene. R. 133, l. 25 – 134, l. 9.

Discussion

After jury selection, the defense moved to prevent the State from questioning Snipes about his criminal record. R. 49, ll. 6 – 9. In response, the trial judge asked the solicitor,

“have you got some 609 convictions you want to offer?” R. 49, ll. 10 – 11. The solicitor stated that he intended to introduce two North Carolina convictions from 2007. R. 49, l. 12 – 50, l. 5. The convictions were for “assault with a deadly weapon causing serious injury and discharge of a weapon into occupied property.” R. 49, ll. 13 – 19. The solicitor described them both as felonies. R. 49, ll. 13 – 19. The defense argued that the offenses did not “go to the veracity and truthfulness” of Snipes and that they should be excluded. The defense also argued that because of the similarity of the convictions to the charged crime, “we believe that it is more prejudicial for that to be entered into evidence than probative.” R. 50, ll. 7 – 13. The trial judge stated he would rule on their admissibility prior to the defendant’s testimony, but prohibited the State from mentioning the convictions until that time. R. 50, ll. 18 – 20.

Prior to the defendant testifying, the trial judge met with the attorneys in chambers. R. 210, l. 21 – 211, l. 4. Near the end of defense counsel’s direct examination, Snipes’ attorney asked Snipes whether he was a convicted felon and whether that played a role in why he fled the scene. R. 225, ll. 13 – 19. The solicitor objected and the court held a bench conference. R. 225, ll. 20 – 25. The defense asked no further questions regarding the felonies. R. 226, l. 2 – 227, l. 21. On cross-examination, the solicitor’s first questions were whether Snipes had been convicted of “two felonies.” R. 227, l. 23 – 228, l. 5. Snipes admitted that he had. R. 228, ll. 3 – 7.

The trial court erred in allowing Snipes’ convictions to be discussed before the jury. Since Snipes’ convictions were less than ten years old, Rule 609(a)(1) applies. Rule 609(a)(1), SCRE. This rule provides that “evidence that an accused has been convicted of

such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” Rule 609(a)(1), SCRE.

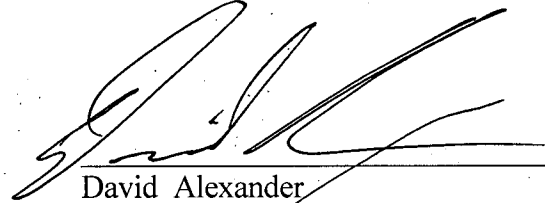
Even though a conviction is less than ten years old, its admissibility is not automatic. “The party attempting to introduce the prior conviction for impeachment purposes has the initial burden of establishing the basis for its admission.” State v. Scriven, 339 S.C. 333, 340, 529 S.E.2d 71, 74 (Ct. App. 2000). “Furthermore, the rule requires the trial judge to balance the probative value of the evidence for impeachment purposes against the prejudice to the accused. Id. at 340, 529 S.E.2d at 75. A trial court should “articulate its ruling and the basis for it, thereby clearly and easily informing the appellate courts that a meaningful balancing of the probative value and the prejudicial effect has taken place as required by Rule 609(a)(1).” Id. at 342, 529 S.E.2d at 75-76. See also State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) (articulating five factors to consider when balancing probity versus prejudice regarding an accused’s convictions).

In Scriven, the trial judge did not engage “in any meaningful analysis of the relevant factors.” Id. at 342, 529 S.E.2d at 76. This Court reversed and remanded for the trial judge to consider the prejudice to the defendant. The same problem exists in this case. The trial judge failed to consider the Colf factors on the record. The defense attorney was entitled to take the sting out of the convictions by mentioning them on direct examination. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013). The prejudice to the defendant was great because this case essentially boiled down to a swearing match. The jury had to believe Snipes’ testimony or the State’s witnesses. Since Snipes’ credibility was the key issue, the prejudice flowing from the jury hearing about these convictions was great and allowing their admission was error.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of January, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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J. Derham Cole, Circuit Court Judge

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Prince Snipes states:

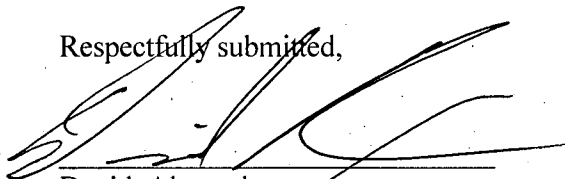
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on July 17, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for Prince Snipes.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of January, 2015.

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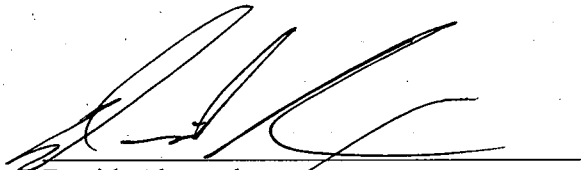
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript

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

January 14th, 2015



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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."

January 14th, 2015

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

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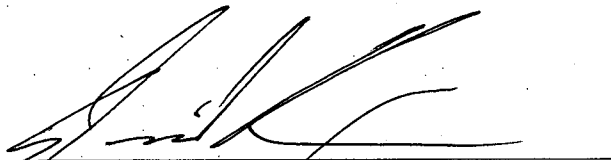
V.

PRINCE SNIPES,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Mr. Prince Snipes, #356225, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 14th day of January, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of January, 2015.

Maria Mendel (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.