STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2015-002213

THE STATE, ...RESPONDENT

v.

RICHARD EARL TEDFORD,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly interpreted the phrase "two or more convictions" under Sections 16-11-311(A)(2) and 16-11-311(B)(2) of the Code by using its plain and unambiguous meaning rather than granting Appellant's request to graft language from the recidivist offender statute, S.C. Code Section 17-25-50, onto its interpretation.

STATEMENT OF THE CASE

Appellant was indicted at the October, 2014 term of the grand jury for Greenville County for two counts of first-degree burglary (2014-GS-23-596; 2014-GS-23-10427) and two counts of grand larceny (2014-GS-23-597; 2014-GS-23-10428). He was represented by Richard Warder, Esquire, of the Greenville County Bar. The State was represented by Assistant Solicitor Mark Moyer of the Thirteenth Circuit Solicitor's Office. On October 13, 2015, Appellant proceeded to trial by jury. At the close of the State's case, the trial court granted a directed verdict of not guilty on one count of first-degree burglary, allowing the State to amend the indictment to the lesser included offense of second-degree burglary because there was no evidence the building burglarized was a dwelling. The trial court also granted a directed verdict of not guilty on one charge of grand larceny, allowing the State to amend the indictment to the lesser included offense of petit larceny because there was no evidence proving the minimum value of the items stolen. (Tr.p.467-p.474). Ultimately, Appellant was found guilty of first-degree burglary (2014-GS-23-10427), second-degree burglary (2014-GS-23-596), grand larceny (2014-GS-23-10428), and petit larceny (2014-GS-23-597). (Tr.p.627-p.628). He was sentenced by the Honorable Perry H. Gravely to twenty-three (23) years' imprisonment for first-degree burglary, twelve (12) years' imprisonment for second-degree burglary, ten (10) years' imprisonment for grand larceny, and thirty (30) days' imprisonment for petit larceny, with all sentence to run concurrently for an aggregate sentence of twenty-three (23) years' imprisonment. (Tr.p.641-p.642; Sentencing Sheets). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Pre-Trial Motions

After the call of the case for trial, Appellant made a pretrial motion to have his two prior burglary convictions treated as one conviction for purposes of the State's attempts to prove the elements of first-degree burglary pursuant to S.C. Code Ann. § 16-11-311(A)(2). He noted the State was seeking to use the prior burglaries as two separate offenses, which would constitute aggravating factors and would satisfy the elements of first-degree burglary. Appellant argued that because the two burglaries were committed on the same day at houses next door to each other, and because he pled guilty to both pursuant to a single plea bargain, they should be treated as a single offense. (Tr.p.7-p.8). The State responded that the two prior convictions were for burglaries at two separate and distinct houses and therefore should count as two separate and distinct convictions under a plain reading of the statute. (Tr.p.8-p.9). The trial judge ruled that in considering legislative intent and the fact that the legislature chose not to limit the two convictions language in any particular way in the burglary statutes, he was not convinced by Appellant's argument and denied the motion. (Tr.p.9-p.10). Appellant then made a motion for a continuance to seek new counsel before the trial started; however, that motion was also denied. (Tr.p.12). Finally, the trial court granted Appellant's request for a Jackson v. Denno hearing on the admissibility of statements he had made to the police, and a Neil v. Biggers hearings on the identification procedure that led to his identification by several witnesses. (Tr.p.17-p.79).

Trial

After the jury was sworn, the trial court gave brief preliminary instructions and the parties made opening statements (Tr.p.107-p.126), the State presented its case-in-chief, calling the victim from the first burglary, Melody Wilbanks, to the stand. On the morning of August 13, 2013, Wilbanks was home alone with her fifteen-month-old daughter after her husband left for

work. Wilbanks was lying in bed when she heard the sound of glass breaking. Wilbanks initially thought maybe a lighting fixture fell, but when she continued hearing noises she went to check. Wilbanks headed into the living room, looked right, and saw a man stepping in the window sideways, with one leg coming into the house. Wilbanks testified she was unable to identify the man because it was still dark. (Tr.p.137-p.143).

Wilbanks ran to her bedroom and closed and locked the door behind her. Next, she grabbed a pistol her husband kept under the mattress, her glasses, and her phone. She proceeded to lock herself in the bathroom and then got inside the closet. Once in the bathroom, Wilbanks fumbled with the gun, trying to disable the safety. She testified she had never shot a gun before. Wilbanks heard the intruder kick in the bedroom door and then heard what sounded like the man messing with the television and opening drawers. Eventually, the intruder attempted to open the bathroom door where Wilbanks was located. In an effort to let the man know she had a gun, Wilbanks fired the gun in the shower stall. She heard the intruder saying "whoa whoa" or "stop" after the gunshot. Wilbanks testified she then heard the contents of her purse being dumped on the floor. Wilbanks stated she may have also heard a car door slam after she fired the gun; however, the ringing in her ear from the gunshot made it difficult to hear. (Tr.p.144-p.149).

Wilbanks, still in the closet in her bathroom, called the police. She stayed on the phone and in the closet until authorities arrived. During the burglary, Wilbanks's daughter was in a back room and did not cry. After the burglary, Wilbanks noticed missing items including her car keys, a bottle of Claritin, and a pair of sunglasses. She did not notice her car, a 2011 black Scion xB, was also missing until her mother-in-law brought it to her attention after noticing the garage was empty. Wilbanks's car was found later that afternoon behind a medical park in Greer. It was filled with stolen items and had been trashed, causing forty-four hundred dollars in damage.

(Tr.p.149-p.152). On cross- examination, Wilbanks testified she owned two keys to her car, one being on her key ring, the other she kept in the ignition in her locked garage. Wilbanks did not recall telling an officer the burglary sounded like he had a black voice. (Tr.p.168-p.174).

Next, the State called Gerald Lockhart to the stand. Lockhart explained his residence is located in an isolated area near Greer. He testified he encountered Appellant outside his house on August 13, 2013 around 6:30 in the morning. While looking out his kitchen window, Lockhart noticed a black Scion with all four doors and its trunk open, but did not see a person with the car. Knowing he lived at the end of the road, Lockhart figured someone was lost or something was up. He grabbed his pistol and went out through his basement where he saw Appellant with the car. (Tr.p.175-p.185).

Once outside, Lockhart hid behind his truck and watched as Appellant fumbled around with something in the trunk of the Scion. Lockhart pointed his gun at Appellant and asked him what he was doing. Appellant responded, "Well, I thought it was pretty out here." Lockhart said: "Listen, you need to get out of here and you need to get out of here now." After retrieving the keys from the trunk, Appellant drove away. Lockhart followed Appellant to the main road to make sure he left. Thinking the car was stolen, Lockhart noted the tag number of the Scion and contacted the Sheriff's Department. (Tr.p.185-p.191). Lockhart testified he was close enough to identify Appellant. A week after the encounter, Lockhart met with Detective Gary Gilstrap for the purpose of looking at a photographic lineup. After looking at the lineup, Lockhart chose a photo of Appellant and stated he was one hundred percent sure of the identification. (Tr.p.191-p.194; p.430).

The State then called Terry Bishop, the next person to encounter Appellant on August 13, 2013, to the stand. Bishop returned home from working the nightshift at BMW when he noticed

a black Scion sitting in front his house with its side door and hatch open. Bishop testified it was the same black Scion other witnesses had previously seen. Bishop pulled beside the car and asked Appellant if he could help and Appellant replied, "Naw, I'm just out riding around." Bishop then asked Appellant to leave his residence but Appellant did not respond and instead moved towards the back of the Scion. Bishop quickly went inside the home to grab his gun and told his wife to call the police. Bishop then went back outside and again demanded that Appellant leave and this time Appellant closed the door and hatch and left. Bishop pointed to Appellant when asked to identify the man he saw that morning at his house. (Tr.p.203-p.211).

Next, the State called Natalie Powell to the stand. She encountered Appellant on the morning of August 13, 2013, at her residence in Greer. Powell was home with her son when she heard Appellant ring the doorbell around eight in the morning. Before opening the door, Powell grabbed her gun. Once she opened the door, Appellant was already walking away from the porch. He turned and asked Powell if her parents were home. Powell replied it was her home, and asked Appellant what he wanted. Appellant asked for a "Dirk" or "Derek" and Powell replied by yelling: "Get off my property!" Appellant then walked to black Scion, cussing Powell as he left. (Tr.p.216-p.222).

]Powell testified it was the same black Scion all previous witnesses had seen. When Powell backed out to leave for work a little later that morning she hit a trailer tire outside her garage so she drove back in and called her husband. Powell's husband came home and called the police. Powell testified she identified Appellant for Detective Gary Gilstrap one week after the encounter and was one hundred percent sure she identified Appellant. (Tr.p.223-p.229; p.427).

Greenville County Sheriff's Office Officer Joe Seegars was working in August 2013 and responded to the burglary at the Wilbanks' residence. Officer Seegars and two other officers cleared the Wilbanks's residence and noticed there had been a forced break-in. He testified Wilbanks was terrified when he arrived and it took ten minutes to calm her down. After collecting the story from Wilbanks, Officer Seegars went around the neighborhood in an effort to find witnesses. Officer Seegars was also dispatched to Bishop residence where he spoke with Bishop and the Powell residence where he spoke with Powell's husband. (Tr.p.233-p.248).

The black Scion was discovered by Denise Crockett in back of her place of business. Crockett stated she saw the black Scion trying to get out of the mud and decided to call the police; however, she was unable to identify any persons involved. (Tr.p.324-p.326). Greer Police Department Officer Travis Stamey received a call about the black Scion on August 13, 2013 around 2:30 pm. He testified the black Scion was abandoned, stuck in the mud, and located behind a counseling center. Various items were found inside and were processed for evidence. (Tr.p.250-p.257).

The State also called Brian Walker, the victim of the second burglary and his wife Arlene Bruce to testify for the State. (Tr.p.260 & p.302). Walker testified that he and his family had purchased a home in Greer but were still living in their apartment at the time of the break-in. Walker arrived at the new house on August 14, 2003, around 8:30 am and immediately noticed someone had entered the home so he called the police. Walker stated it seemed as if someone had taken a shower in a bathroom and noted some items were missing such as a large box of matches. Those matches were later discovered in the black Scion. (Tr.p.261-p.270). Officer Jeff Hemric was the officer who made the connection between the box of matches found in the black Scion and the matches missing from Walker's residence. (Tr.p.296).

The State introduced testimony from two officers in forensics, Sergeant Dar Shaw and Officer Riley Hope. Both testified to the evidence collected including processing and taking photographs at the Wilbanks residence, the Walker residence, the business where the black Scion was found. (Tr.p.336; p.356; p.369). Chris Gray, the latent print examiner for the Greenville Department of Public Safety that testified as an expert witness. He said that of the ten latent lifts he was given from investigators, one matched Appellant. (Tr.p.379-p.389).

Investigator Jason Bash testified he received the print match from the latent print examiner and contacted Appellant to come in for questioning; however, Appellant initially a no show. (Tr.p.403-p.408). Bash subsequently made contact with Appellant at his home, where the Appellant lied about his name by giving Bash his brother's name. Bash and Spartanburg law enforcement officers nevertheless arrested Appellant and he eventually admitted to his name at the city jail. (Tr.p.411-p.413).

After presenting its last witness, the State noted there were matters the Court needed to address outside the presence of the jury. There was discussion as to whether the parties would stipulate as to Appellant's two prior convictions for burglary but ultimately agreed the two indictments for those convictions would be admitted as State's Exhibits 58 and 59. (Tr.p.444-p. ; State's Exhibits 58 & 59, prior convictions). The State rested. (Tr.p.456). Appellant then made several motions before the court, the first being that the Walker residence was not a dwelling. The judge agreed and the charge was amended to second-degree burglary. Appellant also moved for directed verdict, however, the judge stated in light of the circumstantial evidence the State has presented the motion must be denied. (Tr.p.457-p.472).

Lastly, Appellant testified in his own defense. (Tr.p.479-p.543) Appellant claimed he and his fiancé were heading to Greer to purchase drugs on the night of August 12, 2013;

however, at some point he got out the vehicle and his fiancé left him on Highway 101 because he attempted to prevent her from using drugs while she was driving. Appellant said he then attempted to call a ride and walked for hours before eventually being picked up by a man named "Derek or Dirk." Appellant testified he was picked up in the black Scion at the Walker residence. Appellant admitted he unlawfully entered the new Walker residence to take a shower and claimed he paid a worker twenty dollars for access. (Tr.p.481-p.486). Appellant claimed he had so much mud present on his clothes that it required a shower. (Tr.p.504).

Appellant admitted to the encounters described by Lockhart and Powell; however, he claimed that "Dirk or Derek" was present during both instances and did not know why the witnesses failed to see him. He claimed he parted ways with "Derek or Dirk" around ten or eleven that morning, meeting his fiancé at a store. Appellant testified he had never visited the Wilbanks residence. (Tr.p.491-p.493).

After Appellant rested, the State called three brief witnesses in reply. (Tr.p.546-p.554). The parties then gave closing arguments and the trial court charged the jury. (Tr.p.554-p.624). Following deliberations, the jury found Appellant guilty of first-degree burglary (2014-GS-23-10427), second-degree burglary (2014-GS-23-596), grand larceny (2014-GS-23-10428), and petit larceny (2014-GS-23-597). (Tr.p.627-p.628). He was sentenced by the Honorable Perry H. Gravely to twenty-three (23) years' imprisonment for first-degree burglary, twelve (12) years' imprisonment for second-degree burglary, ten (10) years' imprisonment for grand larceny, and thirty (30) days' imprisonment for petit larceny, with all sentence to run concurrently for an aggregate sentence of twenty-three (23) years' imprisonment. (Tr.p.641-p.642; Sentencing Sheets).

ARGUMENT

I.

The trial court properly interpreted the phrase "two or more convictions" under Sections 16-11-311(A)(2) and 16-11-311(B)(2) of the Code by using its plain and unambiguous meaning rather than granting Appellant's request to graft language from the recidivist offender statute, S.C. Code Section 17-25-50, onto its interpretation.

Appellant argues the trial court erred in denying his motion to consider his two prior burglary convictions as a single conviction for purposes of enhancing his current burglary offenses to first-degree burglary and second-degree burglary, because the prior burglary convictions "happened on the same day and were pled at the same time." Relying on Section 17-25-50 of the South Carolina Code and its language that, for purposes of our recidivist offender statute, two offenses which are "committed at times so closely connected in point of time" may be considered one offense "notwithstanding under the law they constitute separate and distinct offenses," Appellant contends that because his two 1992 burglaries occurred on the same day in houses next to each other, they "share an immediate temporal proximity" and therefore similarly should constitute only one offense for purposes of the relevant burglary statutes. (Brief of Appellant, p.9). The State disagrees and submits Appellant's argument is both unpreserved for review and without merit.

The basic issue before this Court is the meaning of "two or more convictions" under our first-degree burglary and second-degree burglary statutes, S.C. Code Ann. §§ 16-11-311(A)(2) & 16-11-311(B)(2). The State respectfully submits the trial court properly interpreted "two or more convictions" using the plain and unambiguous meaning of the phrase, properly declined to seek out and graft language from the recidivist offender statute (S.C. Code Ann. § 17-25-50) onto that plain and unambiguous meaning, and therefore Appellant's convictions should be affirmed.

Initially, the State submits that to the extent Appellant's argument depends on the contention that the trial Court's decision should have been controlled by Section 17-25-50 of the Code, that argument is not preserved for appellate review because it was never raised to or ruled upon by the trial court. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). If an error is not presented to and ruled upon by the trial court, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Indeed, the appellate court will not consider any issues that were not presented to or passed upon by the trial court. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). Thus, Appellant's argument is not preserved for appellate review. In any event, the State submits the argument is entirely without merit.

The basic rule of statutory construction is that a court must ascertain and give effect to the legislature's intention as expressed in the statute. State v. Zulfer, 345 S.C. 258, 262, 547 S.E.2d 885, 887 (Ct. App. 2001) (citing State v. Ramsy, 311 S.C. 555, 430 S.E.2d 511 (1993)). In construing a statute, a court cannot read into the statue something not within the manifest intention of the legislature as gathered from the statue itself. Id. If a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion of employing rules of statutory interpretation and the court has no right to look for or impose another meaning. Id.

Pursuant to S.C. Code Ann. § 16-11-311(A)(2), "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . the burglary is committed by a person with a prior record of **two or more convictions** for burglary or housebreaking or a combination of both." (emphasis added). Similarly, pursuant to S.C. Code Ann. § 16-11-311(B)(2), "A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime

therein, and . . . the burglary is committed by a person with a prior record of **two or more convictions** for burglary or housebreaking or a combination of both. (emphasis added). Under these statutes, "two or more convictions" is plain and unambiguous, requiring two or more judicial findings of guilt for prior burglaries or housebreakings, or a combination thereof. This Court has explained that S.C. Code Ann. § 16-11-311(A)(2) "allows the State to punish Defendant's recidivism by using his previous convictions to elevate actions that would normally constitute a charge to a charge of burglary, first degree." State v. Washington, 338 S.C. 392, 396, 526 S.E.2d 709, 711 (2000). The State is required to prove all elements of first-degree burglary beyond a reasonable doubt, and therefore, the jury must be informed of a defendant's prior convictions for burglary or housebreaking because it is an element of the offense. State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002). In Simmons, this Court held:

> To ensure that the defendant is not convicted on an improper basis while allowing the State to prove the elements of first degree burglary, the trial court should limit the evidence to the prior burglary and/or housebreaking convictions. Detailed, particular information about the prior burglaries and/or housebreaking convictions should not be admitted. In addition, the trial court should, on request, instruct the jury that the information should only be considered for the limited purpose of proving one of the elements of first degree burglary.

Id. at 357, 864 (internal citations omitted). The requirement for two or more prior convictions for burglary or housebreaking is an element of the offense pursuant to Section 16-11-311(A)(2). See State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (holding prior burglary convictions are elements of charged burglary in the first-degree offense, not merely a sentencing consideration for the court to consider); State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1998) (same). There is no such requirement that the two prior offenses **not** be closely connected in time.

In the present case, Appellant asked the trial court and now asks this Court to disregard the plain and ordinary meaning of "two or more convictions" and to improperly superimpose the requirements of S.C. Code Ann. § 17-25-50 onto our burglary statutes, so that the two or more convictions must be treated as a single conviction if the underlying offenses were closely connected in time. This improper application of Section 17-25-50 to the plain and ordinary reading of our first-degree and second-degree burglary statutes would constitute an abuse of discretion and was properly rejected by the trial court.

In enacting S.C. Code Ann. § 17-25-50, the South Carolina General Assembly instructed:

> **In determining the number of offenses for the purpose of imposition of sentence**, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses.

S.C. Code Ann. § 17-25-50 (emphasis added). Under the plain language of the statute, this section's applicability is limited solely to situations where it is necessary for the sentencing judge to determine the number of **offenses** for **sentencing purposes**, a function which is required under S.C. Code Ann. § 17-25-45, our recidivist offender statute. Indeed, the State submits to intended interplay between sections 17-25-45 and 17-25-50 is further evidenced by the fact that they are codified in succession, as part of Article 1 of Chapter 25 in Title 17. Accordingly, contrary to the position advanced by Appellant, Section 17-25-50 applies only in limited situations where it is necessary for a sentencing judge to make such a determination, and it in no way inhibits a sentencing judge's broad discretion in imposing sentences for individual offenses and in determining whether separate sentences should be served concurrently or consecutively. See State v. Legare, 333 S.C. 275, 282-283, 509 S.E.2d 472, 476 (1998) (recognizing S.C. Code

Ann. § 17-25-50 "is a recidivist statute" and finding a sentencing judge can properly impose concurrent or consecutive sentences for each count for which a defendant is convicted).

A review of Section 17-25-50 clearly shows application of it to Appellant's case would constitute an error of law. Section 17-25-50 explicitly states that it is exclusively applicable for the purpose of imposition of a sentence. Under the plain language of this statute, this section's applicability is limited solely to situations where it is necessary for the sentencing judge to determine the number of offenses for sentencing purposes as required under Section 17-25-45, our recidivist offender statute. Therefore, it logically follows that Section 17-25-50 is only applicable in the limited situations where it is necessary for a sentencing judge to make such a determination, not for the jury's use when determining whether the requisite number of **convictions** has been proven **to establish an element** of first-degree burglary pursuant to Section 16-11-311(A)(2) or second degree burglary pursuant to Section 16-11-311(B)(2).

Despite this clear purpose stated in the statutory language, Appellant asked the trial court to improperly apply Section 17-25-50 to the elements of the first-degree and second-degree burglary statutes. It is clear that "two or more convictions" is an element of the charged offense under Section 16-11-311(A)(2) through opinions such as Hamilton and Benton from both this Court and our Supreme Court. Accordingly, it is solely the jury's duty to determine if the number of prior convictions meets the two or more threshold as set forth in Sections 16-11-311(A)(2) & 16-11-311(B)(2). The jury is not responsible for sentencing a defendant and therefore, applying Section 17-25-50—a statute explicitly intended for use exclusively during sentencing under the recidivist offender statute—to an element of the offense for jury consideration, would be an error of law requiring reversal.

Additionally, Sections 16-11-311(A)(2) and 16-11-311(B)(2) do not place any limitations on the prior convictions which may be used to meet the requisite two convictions element. In State v. Zulfer, this Court rejected the appellant's argument that the legislature intended to limit the prior burglary convictions to only those occurring in South Carolina. 345 S.C. 258, 262, 547 S.E.2d 885, 887 (Ct. App. 2001). The Court held that "[t]o restrict the predicate offenses for a first-degree burglary charge . . . would give the statute a meaning that the legislature clearly did not intend." Id. at 262, 547 S.E.2d at 887. See also State v. Donahue, 400 S.C. 604, 607, 735 S.E.2d 547, 549 (Ct. App. 2012) (holding "nothing in the language of subsection 16–11–313(B) limits a circuit court to considering only South Carolina offenses"). This Court further held that "[t]o shift the focus to the fact that a defendant's prior offenses may have occurred in different jurisdictions would thwart the objective of requiring heightened accountability from repeat offenders for their subsequent crimes." Id. at 263-64, 547 S.E.2d at 887-88. It is clear that the legislative intent of Sections 16-11-311(A)(2) and 16-11-311(B)(2) is heightened accountability from repeat offenders, and therefore, the only logical conclusion is that Section 17-25-50 is not applicable.

Similarly, adopting Appellant's posited interpretation of "two or more convictions" would reach an absurd result not intended by the legislature that would greatly expand the efficacy of Section 17-25-50 beyond its intended applicability.[1] By precluding the possibility of an enhanced punishment for committing a subsequent burglary following a string of prior burglaries, Appellant's proposed statutory construction would effectively incentivize the commission of multiple burglaries in close succession because the offender could avoid the

[1] Tellingly, Section 17-25-50 was not applied in the manner Appellant asked the trial court to apply in one of the primary cases he now relies upon on appeal, because that case involved the imposition of a sentence under the recidivist offender statute. See Bryant v. State, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009) (finding multiple armed robberies committed over the course of three days did not constitute a single offense under Section 17-25-50 for purposes of sentencing under the recidivist offender statute).

enhanced punishment for all but a single burglary in his chain of crimes. This proposed result is entirely inconsistent with the purpose for which Section 17-25-50 was enacted, was clearly not intended by our General Assembly, and would serve no legitimate goal or purpose related to sentencing. See Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[A] court must reject a statute's interpretation leading to absurd results not intended by the Legislature.").

On appeal, Appellant references State v. Boyd, 288 S.C. 206, 341 S.E.2d 144 (Ct. App. 1986), for the proposition that "Section 17-25-50 has been construed to apply in other criminal statutes that enhance punishment for recidivism." He claims that: "the Court interpreted section 17-25-50 as applying to the defendant's charge of possession with intent to distribute marijuana." (Brief of Appellant, p.10). However, a review of Boyd demonstrates Appellant's claim is not accurate. In Boyd, this Court was considering whether "the trial judge should have treated as one Boyd's two prior convictions because they arose **out of a single incident** in which he was found in possession of two controlled substances and sentenced separately for each." Id. at 208, 341S.E.2d at 146. The Court did not "apply" section 17-25-50 to another criminal statute and instead made a point of noting: "We do not think the rule that statutes relating to the same subject are to be construed together and harmonized applies to the situation before us." Id. at 209, 341 S.E.2d at 146. Rather, the Court held: "that **the same logic and fairness** of these two statutes [Section 17-25-50 & Section 56-1-1020] require the adoption of Boyd's thesis that a conviction of two or more counts under the Controlled Substance Act **which arose out of acts committed in the course of a single incident** should count as one for the purpose of sentencing for conviction of a subsequent and separate violation of the Controlled Substance Act." Id. (emphasis added). Thus, rather than applying section 17-25-50, this Court made an equitable decision to follow the logic and fairness of the provision while adopt a new interpretation of a

sentencing provision in the Controlled Substance Act. A consideration of logic and fairness in regard to our burglary statutes supports the opposite result. Indeed, where two separate burglaries necessarily involve two different dwellings or buildings, they cannot have arisen out of acts committed **in the course of a single incident**, regardless of whether they were committed in close temporal proximity or weeks apart. Furthermore, there are necessarily multiple victims in multiple burglaries, a circumstance that distinguishes Appellant's case from the drug offenses analyzed in Boyd. Finally, the enhancement provision in Boyd implicated a sentencing decision by the trial court rather than an element of the offense, as is the case with the burglary statutes at issue.

Interestingly, Appellant also references State v. Pee Dee News Co., Inc., 286 S.C. 562, 336 S.E.2d 8 (1985), as an example of our Supreme Court construing 49 indictments for distribution of obscene material as one conviction for sentencing, because there was no evidence the distributions occurred as different times. However, a close reading of this case suggests the Court actually construed the 49 indictments as seven convictions because there were seven different stores. The Court found: "It is clear from the evidence that magazines were distributed by Appellant to seven stores. In the absence of proof by the state that there were several distributions to each store, the record can support but one count of distribution to each." Id. at 568, 336 S.E.2d at 11. (emphasis added). Thus, this opinion appears to support treating Appellant's prior burglaries as two convictions regardless of timing, because the record can support one count of burglary as to each residence.

Based on all the reasons set forth above, the State submits Appellant's proposed statutory interpretation of Sections 16-11-311(A)(2) and 16-11-311(B)(2), which would have integrated unrelated language from Section 17-25-50, was properly rejected by the trial court. Furthermore,

even if the trial court erred by not adopting the interpretation proposed by Appellant, he suffered no prejudice where there was absolutely no factual dispute as to whether the burglary of the Wilbanks' residence occurred in the nighttime. Appellant argues "[i]t was an issue of fact whether the burglary at the Wilbanks' residence occurred in the nighttime" and discussed how the jury was faced with "the difficult decision on the 'nighttime' element." (Brief of Appellant, p.10). Yet, Wilbanks testified it was dark when the burglar was climbing into her broken window and there was absolutely no testimony or evidence to the contrary. (Tr.p.137-p.143). Indeed, Appellant's defense was simply that he was not the person who committed that burglary and that he had never been to the Wilbanks' house. Appellant's current convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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In The Court of Appeals

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OCT 17 2016
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2015-002213

THE STATE, ...RESPONDENT

v.

RICHARD EARL TEDFORD,.....APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter* , both dated October 17, 2016, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served.
This 17th day of October, 2016.

Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

October 17, 2016

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

Re: The State v. Richard Earl Tedford
Appellate Case No. 2015-002213

Dear Mr. Alexander:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services