

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

THE STATE,

RESPONDENT,

v.

RECEIVED

STEPHON ROBINSON,

FEB 13 2017

APPELLANT

SC Court of Appeals

APPELLATE CASE NO. 2014-002531

Appeal from Barnwell County

Honorable Doyet A. Early, Circuit Court Judge

Opinion No. 2017-UP-065

PETITION FOR REHEARING

On February 1, 2017, this Court affirmed Appellant Stephon Robinson's convictions for first-degree burglary and possession of a weapon during the commission of a violent crime. Robinson respectfully petitions this Court for a rehearing of its Opinion No. 2017-UP-065. This Court properly ruled that the trial court erred in its application of two of the Colf¹ factors in

¹ State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) (holding that in determining whether the probative value of a prior conviction outweighs its prejudicial effect, trial courts should consider: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue, along with the facts and circumstances of each particular case).

conducting its analysis on the admission of Robinson's prior convictions for strong-arm robbery and breaking and entering into a motor vehicle. However, pursuant to Rule 221(a), SCACR, Robinson respectfully that the following points were overlooked or misapprehended by the Court: This Court erred in failing to address the remand court's analysis of the other three Colf factors and failing to address the remand court's ultimate ruling on whether the prejudice from admitting the prior convictions outweighed their probative value. Additionally, this Court erred in finding that the error was "harmless in view of the other competent evidence of Robinson's guilt."

BRIEF PROCEDURAL HISTORY

As this Court will recall, Robinson's initial appeal in this case raised the following issue:

Did the trial court err in admitting Appellant'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 Appellant 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?

Appellate Case No. 2011-202987, Final Brief of Appellant. In an unpublished opinion, this Court ruled that the trial court failed to conduct a meaningful analysis balancing the impeachment value of Robinson's prior convictions against their prejudicial effect and remanded the case back to the trial court to hold a hearing and to conduct the proper balancing test.² R. 119 – 200; State v. Robinson, Opinion No. 2014-UP-068 (Ct. App. filed Feb. 19, 2014).

² Appellant notes that Respondent raised the same "harmless error" argument in its Brief filed in petitioner's initial direct appeal. See Appellate Case No. 2011-202987, Final Brief of Respondent, p. 19-21. If this Court had been persuaded by Respondent's argument, it could have found the error harmless and affirmed Robinson's conviction at that time. See, e.g. State v. Heller, 399 S.C. 157, 731 S.E.2d 312 (2012) (finding trial court "simply denied Heller's motion to exclude the prior convictions without performing an on-the-record Colf analysis" but determining any error in that failure harmless). Instead, this Court remanded Petitioner's case for a meaningful analysis of the impeachment value of Petitioner's prior convictions versus their prejudicial effect. See State v. Robinson, 2014-UP-068 (Ct. App. Feb. 19, 2014).

The remand hearing was held before the Honorable Doyet A. Early, III, on June 9, 2014. On November 11, 2014, Judge Early filed an order finding that the probative value of the introduction of Robinson's prior record outweighed any prejudice to him under Rule 609(a)(1) and denying Robinson a new trial. R. 224. Robinson appealed, arguing that the remand court erred in finding that the probative value of the admission of Appellant's prior convictions outweighed the prejudice to him under Rule 609(a)(1), SCRE, resulting from its misapplication of the Colf factors. Appellate Case No. 2014-00253, Final Brief of Appellant.

In its unpublished opinion, **this Court found that the remand court erred in the application of two of the Colf factors – the impeachment value of the prior convictions and the centrality of the credibility issue.** State v. Robinson, Opinion No. 2017-UP-065 (Ct. App. filed Feb. 1, 2017). However, this Court did not discuss the three remaining Colf factors or the remand court's ultimate determination that the prejudicial affect did not outweigh the probative value of the Robinson's prior convictions. Additionally, this Court ruled that "the circuit court's error was harmless in view of the other competent evidence of Robinson's guilt," citing the following the facts:

Williams, the victim, consistently identified Robinson as the perpetrator. Williams testified he knew Robinson because Robinson had been to his house on multiple occasions. Williams also identified Robinson by name when the investigating officer asked Williams who broke into his house, identified Robinson in two different photo lineups; and identified Robinson in court. Furthermore, the investigating officer testified Williams told him Robinson came to Williams' house in a white Pontiac. The investigating officer was able to identify Robinson's girlfriend as the owner of the car. Robinson's girlfriend testified at trial that Robinson had her car the night before the incident and returned the car sometime during the afternoon of the incident, meaning Robinson likely had access to the car during the incident.

Id. Thus, this Court affirmed Robinson's convictions. Id.

ARGUMENT

This Court erred in discussing only two of the *Colf* factors and failing to rule on the ultimate issue of whether the remand court erred in finding that the probative value of Robinson’s prior convictions outweighed their prejudicial affect under Rule 609(a), SCRE.

“According to Rule 609(a)(1), SCRE, prior convictions punishable by more than one year imprisonment are admissible for impeaching the credibility of a defendant who testifies when the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” State v. Howard, 396 S.C. 173, 178, 720 S.E.2d 511, 514 (Ct. App. 2011) (quotation marks omitted). “Our Supreme Court has approved the five-factor analysis generally employed by the federal courts for weighing the probative value for impeachment of prior convictions against the prejudice to the accused.” Id. (citing State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000)).

Howard made clear that even in a Rule 609(a) analysis, the Colf factors are applicable, stating: “The following factors, along with any other relevant factors, should be considered by the trial court: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness’s subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant’s testimony; and (5) the centrality of the credibility issue.” 396 S.C. at 178, 720 S.E.2d at 514; see also State v. Scriven, 339 S.C. 333, 341-42, 529 S.E.2d 71, 75-76 (Ct. App. 2000) (citing differences in Rule 609(a)(1) and 609(b), SCRE, but recognizing that regardless the trial judge should engage in a meaningful analysis of the relevant factors and balance the probative value against the prejudicial effect to the accused). “Ultimately, the Rule [609] is designed to help the jury discern the truth. It is not a tool for the State to bolster its case against the criminal defendant for the mere fact that the defendant has

engaged in prior criminal activity.” State v. Broadnax, 414 S.C. 468, 478, 779 S.E.2d 789, 794 (2015).

Here, this Court aptly ruled that the remand court erred its application of two of the Colf factors. Specifically, the remand court erred in finding that Robinson’s prior conviction for strong arm robbery and two prior convictions for breaking and entering a motor vehicle with intent to commit a felony or theft had impeachment value. State v. Robinson, Opinion No. 2017-UP-065 (Ct. App. filed Feb. 1, 2017). “[O]ur courts have found prior convictions for robbery, burglary, and theft are not probative of truthfulness.” Id. This court also found that the remand court erred in finding that the centrality of credibility weighed in favor of admission of the prior convictions because “our courts are hesitant to admit evidence of prior convictions when credibility is central to the case.” Id. However, this Court did not discuss the three remaining Colf factors or rule upon whether the trial judge erred in his ultimate determination that the probative value outweighed the prejudicial affect.

Regarding the **similarity between the prior convictions and charged offense of burglary**, Judge Early found that there was “no similarity” because the prior offenses did not require the use of a deadly weapon or entry into someone’s home. R. 229. The standard applied by the remand court was akin to the “elements test” used to determine lesser included offenses. See State v. Watson, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002) (“The elements test inquires whether the greater of the two offenses includes all the elements of the lesser offense.”). Such an “analysis” dilutes the purpose behind the consideration of similarity. See Colf, 337 S.C. at 628, 525 S.E.2d at 249 (explaining that “evidence of similar offenses inevitably suggests to the jury the defendant’s propensity to commit the crime with which he is charged” and is not eliminated by limiting instructions); State v. Bryant, 369 S.C. 511, 517-18, 633 S.E.2d 152, 156 (2006)

(“when the prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission.”); State v. Scriven, 339 S.C. 333, 343, 529 S.E.2d 71, 76 (Ct. App. 2000) (holding that when prior convictions are “similar or identical to charged offenses . . . the likelihood of a high degree of prejudice to the accused is inescapable”).

In the present case, Robinson was charged with first degree burglary and possession of a weapon during a crime of violence. R.232 (Indictment). A defendant is guilty of burglary in the first degree if the defendant “enters a dwelling without consent and with intent to commit a crime in the dwelling” and “when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime... is armed with a deadly weapon or explosive.” S.C. CODE ANN. § 16–11–311(A)(1)(a). “Strong arm robbery is defined under common law ‘as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.’” Abney v. State, 408 S.C. 41, 757 S.E.2d 544 (Ct. App. 2014) (quoting State v. Rosemond, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003)). The Georgia convictions appear to be for violations of GA. CODE ANN., § 16-8-18, which provides: “If any person shall enter any automobile or other motor vehicle with the intent to commit a theft or a felony, he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years, or, in the discretion of the trial judge, as for a misdemeanor.”

While they vary in degree, the common thread amongst the charged offense and the prior convictions is the taking of the property of another. The solicitor implied in his cross-examination of Robinson that he committed the alleged burglary in order steal marijuana from the residence. R. 139, ll. 6-9. Then, in his closing argument, the solicitor admitted that he did

not know what crime Robinson allegedly intended to commit once inside the home, but implied that it was a theft by saying “I don’t know if he’s coming in there to steal a TV.” R. 172, ll. 8-14. Even without the solicitor’s attempts to draw further similarity between Robinson’s prior convictions and the alleged offense, the similarities are plain. The only real difference in the breaking and entering of a motor vehicle with intent to commit a felony or theft and a first degree burglary is the location of the crime and that the burglary required some additional aggravator. Likewise, a first degree burglary can be essentially a strong arm robbery that occurs within the home and with some additional aggravator. In this case, the additional aggravator was the use of a deadly weapon, but that does not mean that a weapon may not have been used in the prior crimes. By admitting these prior convictions, the jury knew that Robinson had stolen before and seemingly had a pattern of escalating conduct. First, he broke into two vehicles with the intent to commit a felony or theft. Then, he took money, goods, or property from a person through the use of violence or fear. The jury would not think it unreasonable that Robinson, based on his prior conduct, would have entered a house, thinking that the owner was not there, either to steal drugs or other property.

Moreover, there was an overarching factual similarity between the charged offense and the strong armed robbery and breaking and entering a motor vehicle convictions – **Robinson’s brother**. Robinson was accused of committing the charged offense with his brother and a third party. The solicitor elicited testimony that Robinson committed the offenses underlying those prior convictions with his brother. R. 136, l. 21 – 138, l. 16; R. 148, l. 7 – 149, l. 7. At the end of the questioning, he asked: “So in three out of the four times when you committed a crime, your brother was with you?” R. 138, ll. 14-16. Despite all of this, the remand court incomprehensibly found that there was no similarity between the crimes. The judge’s failure to properly weigh the

similarity of the offenses was just as egregious as the failures with respect to impeachment value and centrality of credibility that were discussed in this Court's opinion.

Additionally, the remand court's evaluation of the **importance of Robinson's testimony** completely ignored the constitutional significance of Robinson's right to testify in his own defense. Judge Early improperly found that Robinson's testimony was cumulative to the alibi testimony of his two other defense witnesses such that it was not necessary for him to take the stand in his own defense. R. 230.

The right of a criminally accused to testify or not to testify is fundamental. State v. Rivera, 402 S.C. 225, 241, 741 S.E.2d 694, 702 (2013); Rock v. Arkansas, 483 U.S. 44, 52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (“[F]undamental to a personal defense ... is an accused's right to present his own version of the events *in his own words*.” (emphasis added)). “Every criminal defendant is privileged to testify in his own defense, or to refuse to do so.” Rivera, 402 S.C. at 241, 741 S.E.2d at 702. “The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution,” including the due process clause of the Fifth Amendment and the compulsory process clause of the Sixth Amendment, applicable to the states through the Fourteenth Amendment. Id. at 214-42, 741 S.E.2d at 703. “The opportunity to testify is also a necessary corollary to the Fifth Amendment's guarantee against compelled testimony.” Id. A person's right to be heard in his defense—a right to his day in court—is basic in our system of jurisprudence. Id. (citations omitted).

To characterize Robinson's testimony as cumulative because he presented other alibi witnesses is far too simplistic. The solicitor went to great lengths to undermine the testimony of Robinson's alibi witnesses. R. 143, l. 21 – 146, l. 1; R. 147, l. 25 – 154, l. 10. While a defendant is equally entitled to take the stand or remain silent at his trial, there is often no more powerful

witness for the defense than the defendant himself. It allows the jury an opportunity to view the defendant's demeanor, judge his credibility, and assess how he handles himself during cross-examination. Thus, there is a constitutional dimension to a defendant's testimony that the trial court should have considered in evaluating the importance of Robinson's testimony and which weighed in favor of exclusion of the prior convictions.

Lastly, regarding the **timing of the prior convictions**, the remand court found that the prior convictions all occurred within five years of the trial and "were therefore well within the time frame provided for by the Rule. R. 229. Robinsons' prior convictions were from 2007 and 2009 undisputedly fell within the ten year period under subsection (a) of Rule 609, SCRE. However, the remand court further pointed to the fact that "[a]t 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." R. 229. While that have been the case, the jury did not and should not have known what the sentences were for each of Robinson's prior convictions. Thus, it is difficult to fathom how Robinson's probationary status at the time of the alleged offense was a legitimate factor for consideration.

Rule 220(b), SCACR, provides: "In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Thus, Appellant must request that this Court rule specifically on whether the remand court erred in its determination that "the probative value of the introduction of the Defendant's prior record outweighed any prejudice to him under Rule 609(a)(I), SCRE." R. 231. As discussed *supra*, the remand court erred in its analysis of the remaining three Colf factors, none of which were

addressed in this Court's opinion. Given the significance of the lack of impeachment value and the centrality of credibility, a discussion of only two of the Colf factors may have been sufficient to support a finding that the remand court erred in determining that the probative value of Robinson's convictions outweighed the prejudice to him under Rule 609(a)(1), SCRE. However, this Court's opinion stopped short of making that conclusion and, thus, did not rule on the ultimate issue raised in the case. Robinson respectfully requests that this Court file an amended opinion.

This Court erred in ruling that any error was harmless, as such a ruling is inconsistent with this Court's finding that "credibility was central to the case" and the solicitor improperly elicited details of the offenses.

This Court ruled that any error, ostensibly in the admission of Robinson's prior convictions, "was harmless in view of the other competent evidence of Robinson's guilt." State v. Robinson, Opinion No. 2017-UP-065 (Ct. App. filed Feb. 1, 2017). The facts listed in support of that ruling noted that the victim identified Robinson, who he "knew" from prior interactions, as one of the perpetrators. This Court also noted that the victim described the perpetrators as driving a white Pontiac and that Robinson "likely" had access to "the car" at the time of the incident. Id. This Court overlooked the contrary evidence presented by the defense and overstated the evidence presented by the state, seemingly applying a directed verdict like standard, encouraged by Respondent. See State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011) ("On appeal of the denial of a directed verdict of acquittal, [the appellate] Court must look at the evidence in the light most favorable to the State."). Moreover, the finding of harmlessness is inconsistent with this Court's ruling that remand court "correctly recognize[ed] that credibility was central to the case." See State v. Robinson, Opinion No. 2017-UP-065 (Ct. App. filed Feb. 1, 2017).

“Before an error can be held harmless, a court must find the error harmless beyond a reasonable doubt. That requires a court to determine whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.” State v. Henson, 407 S.C. 154, 166-67, 754 S.E.2d 508, 515 (2014) (internal citations and quotations omitted). In determining whether an error is harmless, the circumstances of each individual case are to be considered. State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006). Thus, “[w]hether the improper introduction of [the] evidence is harmless requires [the appellate court] to look at the other evidence admitted at trial to determine whether the defendant’s guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached.” State v. Brooks, 341 S.C. 57, 62–63, 533 S.E.2d 325, 328 (2000) (quoting State v. Parker, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993)). The harmless error doctrine “should be employed guardedly . . . and on a case by case basis.” State v. Morris, 289 S.C. 294, 297, 345 S.E.2d 477, 479 (1986).

This case involved an alleged home invasion of Eddie Williams on February 19, 2011. According to Williams, Robinson, Robinson’s brother Reginald Felder, and an unidentified third man kicked in his door and entered his home. Williams grabbed his handgun, started to shoot, and the intruders ran. Robinson allegedly turned and fired one shot. R. 99-107. The initial call was dispatched to law enforcement around 2:17 or 2:20 that afternoon. R. 50, ll. 14-21. Williams told police that the men were driving a “white, four-door vehicle” he thought to be a Pontiac. R. 61, ll. 6-11.

Williams was not honest with police about the incident at first, telling them varying stories that his trailer was “shot up” and that the trailer had bullet holes in it when he purchased it. In fact, three of the four bullet holes were from the shots that Williams fired himself.

Williams claimed to be afraid to tell the truth because the gun in his possession had not been registered. R. 110, l. 14 – 114, l. 25. Williams did not mention to police the fact the he sold marijuana out of his home. See R. 138, l. 17 – 139, l. 25.

Robinson testified on his own behalf and presented two alibi witnesses, Arthur Wallace and Reginald Felder. R. 130, l. 12 – 154, l. 16. All three men testified consistently that they went to a club together on February 19, 2011 in the white Pontic owned by Shelly Leanna Gunnels, who was Robinson's on-again/off-again boyfriend. R. 133, ll. 14-25; R. 142, ll. 11-13; R. 147, ll. 6-8; see R. 95, ll. 12-24. They left the club late, around 3:00 a.m., and Robinson had been drinking, so they drove back to Robinson's home and went to sleep rather than taking the car back to Gunnels then. R. 134, ll. 1-22; R. 142, ll. 11-13; R. 147, ll. 8-12. At approximately 10:00 a.m. on February 20, 2011, Felder drove the car to "Shelton's" to buy cigarettes and food. R. 135, l. 12 – 136, l. 1; R. 142, l. 13-19; R. 147, ll. 12-17. Robinson woke up late morning or early afternoon, took a shower, and drove the car back to Gunnels between noon and 1:00 p.m. Since he went alone, Gunnels drove Robinson back home, where he remained the rest of the afternoon. R. 131, ll. 5-8; R. 135, l. 2-11; R. 141, ll. 1-4; R. 142, l. 19 – 143, l. 11; R. 147, ll. 17-19; R. 149, l. 14 – 150, l. 6.

Gunnels testified that Robinson borrowed her car on February 19th and returned it on the 20th at "I guess around that afternoon." R. 96, l. 22 – 97, l. 7. Gunnels said that she did not remember who was with Robinson when he returned the car. R. 97, ll. 8-10. Gunnels identified a picture of her own vehicle as the one borrowed by Robinson. R. 96, ll. 2-14. However, it is notable that the solicitor never showed the picture to Williams. R. 98, l. 5 – 110, l. 9; R. 121, l. 3 – 122, l. 2. Thus, there was no testimony that Gunnels' specific white Pontiac was the car seen by Williams.

While Robinson admitted that he had purchased marijuana at Williams' house over the past year and a half, Williams claimed that he had seen Robinson when Robinson came over to play videogames with Williams' nephew. R. 102, l. 10 – 103 l. 2; R. 131, ll. 17-25; R. 138, l. 17 – 139, l. 25. Williams also acknowledged that he knew Robinson's parents more so than he knew Robinson himself, stating:

Well, I really know his parents. I knowed [sic] his father and his mother. I knowed [sic] his grandmother also. **You know the kids, they get bigger and, you know, you don't recognize them.** You know their parents and then you'll know them. But I know him. Not personally, but I know him.

R. 103, ll. 3-11 (emphasis added). When Williams viewed the line-ups, he mixed up the names of Robinson and his brother, Reginald Felder, casting serious doubt on how well he knew them.

R. 69, ll. 11-16. Williams' ability to pick Stephon Robinson and Reginald Felder out of the photo array was hardly remarkable either, since he gave the officers their names prior to the identification procedure. R. 107, l. 6 – 109, l. 22; R. 120, ll. 13-20. If Williams misidentified Robinson as one of the perpetrators, his ability to select him from a photo array may well have been based on their prior interactions rather than any reliable memory of the incident itself. Likewise, his in-court identification of Robinson added nothing to his ability to perceive Robinson as the alleged burglar at the time of the incident. R. 109, l. 23 – 110, l. 9.

Additionally, the police failed to collect the bullet allegedly shot by the intruders and never located a weapon belonging to Robinson or the other suspects. They also failed to collect any fingerprints and did not perform any gunshot residue test on Robinson or his brother. R. 57, l. 21 – 59, l. 10; R. 73, ll. 10-16; R. 74, l. 5 – 78, l. 17. Thus, there was no physical evidence connecting Robinson to the crime scene or having fired a weapon on the date of the incident. Cf. State v. Broadnax, 414 S.C. 468, 478–79, 779 S.E.2d 789, 794 (2015) (holding admission of defendant's prior convictions harmless where there was overwhelming evidence of guilt,

including that defendant was positively identified by several employees who recalled his *distinctive facial features and clothing*, defendant was stopped in a dented gray truck like that driven by the robber's accomplice *only a short distance away within minutes* after the employees reported the robber, and *defendant was found crouching in the floorboard area of the truck with a gun and bag of money matching the employees' descriptions*).

In State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), our Supreme Court reversed the defendant's murder conviction, finding that the admission of the defendant's prior firearms conviction was improper under Colf and rejecting the state's argument that its admission was harmless error. Bryant's sole defense was self-defense, which hinged entirely on his own testimony. 369 S.C. at 518, 633 S.E.2d at 156. The Bryan Court found that: "Although, the record contains evidence which may undermine Petitioner's self-defense theory, the record also contains evidence which supports Petitioner's self-defense theory." Id. The Court ruled that **"the state should not be allowed to attack the defendant's credibility with inadmissible prior convictions; especially where the Petitioner's credibility was essential to his defense."** Id. at 518-19, 633 S.E.2d at 156. Thus, the Court held that the improper admission of Bryant's prior firearms convictions was not harmless. Id. at 519, 633 S.E.2d at 156.

Similar to Bryant, the solicitor should not have been allowed to attack Robinson's credibility with inadmissible prior convictions for strong-arm robberies and two breaking and entering into a motor vehicle. See also State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) ("Error which substantially damages the defendant's credibility cannot be held harmless where such credibility is essential to his defense." (citing State v. Morris, 289 S.C. 294, 297, 345 S.E.2d 477, 479 (1986))); Green v. State, 338 S.C. 428, 434, 527 S.E.2d 98, 101 (2000) (upholding finding of prejudice from failure of trial counsel to argue that the prejudicial effect of

the defendant's prior convictions outweighed their probative value where the defendant's "credibility was critical, as the jury had to choose between his version of events and that of the SLED agents").

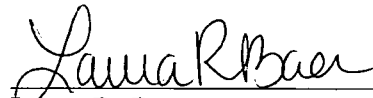
Notably, this Court ruled that the remand court "correctly recogniz[ed] that **credibility was central to the case.**" State v. Robinson, Opinion No. 2017-UP-065 (Ct. App. filed Feb. 1, 2017) (emphasis added). The impropriety of the admission of the prior convictions was compounded by the solicitor's improper inquiry into the details of the offense, specifically whether Robinson's prior offenses were committed in concert with his brother, Reginald Felder, who was charged as his co-defendant in the instant case. R. 136, l. 21 – 138, l. 16; see State v. Joseph, 328 S.C. 352, 361, 491 S.E.2d 275, 280 (Ct. App. 1997) ("[T]he details of the crime of which the witness has been convicted, whether the details could be considered mitigating or aggravating, are not admissible."). Thus, the solicitor used the prior convictions not for purposes of credibility, which was itself improper in light of the proper Colf evaluation, but to show that Robinson had a propensity to commit crimes with his brother.

In light of the totality of the evidence and the centrality of Robinson's credibility, the remand court's error in finding that his prior convictions were properly admitted was not harmless beyond a reasonable doubt.

CONCLUSION

For the reasons set forth herein, Appellant Stephon Robinson respectfully requests that the Opinion of the Court of Appeals be withdrawn and that this Court reverse his convictions.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Laura R. Baer". The signature is written in black ink and is positioned above a horizontal line.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Doyet A. Early, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

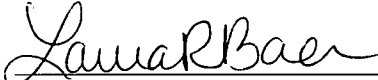
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STEPHON ROBINSON,

APPELLANT

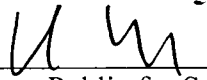
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Stephon Robinson, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 13th day of February, 2017.



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 13th day of
February, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2025