

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ADRIAN JENKINS,

APPELLANT

APPELLATE CASE NO. 2016-000908

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting appellant's indictments containing highly prejudicial details about his previous crimes as proof of prior convictions for burglary under section 16-11-311(A)(2) of the South Carolina Code?

STATEMENT OF THE CASE

On January 21, 2016, a Beaufort County grand jury indicted appellant for first-degree burglary. R. 279. On April 18, 2016, appellant was tried before the Honorable Carmen T. Mullen and a jury. R. 1. Hunter Swanson represented the State. R. 1. Trasi Campbell represented appellant. R. 1. The jury convicted appellant. R. 255, ll. 13 – 24. Judge Mullen sentenced appellant to twenty years' imprisonment. R. 267, ll. 17 – 21. This appeal follows.

ARGUMENT

The trial court erred in admitting appellant's indictments containing highly prejudicial information about his previous crimes as proof of prior convictions for burglary under section 16-11-311(A)(2) of the South Carolina Code.

The sole aggravator used to enhance appellant's charges to first-degree burglary were his prior convictions. R. 279. Appellant argued the convictions were only relevant to sentencing, but the Court ultimately accepted the State's argument that the convictions were admissible pursuant to State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000). R. 68, l. 21 – 82, l. 20.

For proof of the convictions, the solicitor sought to admit appellant's sentencing sheets. R. 68, l. 21 – 74, l. 2. Appellant objected to the use of the sentencing sheets because of irrelevant and prejudicial material. R. 69, ll. 18 – 25. Judge Mullen expressed her skepticism about using sentencing sheets, stating that she did not think she had ever given a jury a sentencing sheet R. 70, l. 21 – 71, l. 10. Judge Mullen stated that the sentencing sheets would need to be redacted. R. 70, l. 21 – 71, l. 10. The solicitor offered to stipulate to the two prior burglaries, but appellant refused. R. 71, l. 11 – 72, l. 20.

Judge Mullen then ordered the solicitor to heavily redact the sentencing sheets. R. 72, l. 21 – 73, l. 2. The solicitor asked if she should detach the indictments. R. 73, ll. 3 – 6. Judge Mullen replied, "I think you'd want the indictment to go in." R. 73, l. 7. The solicitor stated that she would "rather have everything in. . . ." R. 73, ll. 11 – 12. Judge Mullen remarked that "in the olden days, they'd have written guilty on it—on the indictment, I mean, it's been like in the old, old days." R. 73, ll. 13 – 15. The court continued to review the documents and then took up another matter. R. 73, ll. 16 – 24. Judge Mullen briefly returned to the issue and ordered further redactions. R. 81, l. 14 – 82, l. 20. Court then adjourned for the evening. R. 82, ll. 21 – 24.

The next day, immediately after opening statements, the solicitor offered two sets of documents to prove appellant's prior convictions. R. 100, ll. 12 – 16. R. 272-77. Trial counsel stated she had reviewed them and they were "just subject to my prior objections." R. 100, ll. 17 – 18. Judge Mullen asked whether she needed to review the exhibits and trial counsel replied, "They're fine." R. 100, ll. 19 – 22. Judge Mullen then admitted State's Exhibits 1 and 2. R. 100, l. 22 – 101, l. 9. R. 272-77.

Both exhibits contain highly prejudicial material that should not have been admitted.¹ R. 272-77. In State's Exhibit 1, the sentencing sheet shows appellant was convicted of second-degree burglary. R. 272. However, from looking at the indictments, the jury learned appellant was originally indicted for first-degree burglary. R. 273-74. Far more prejudicial were the factual allegations contained in the indictment. R. 274. The jury learned the name of the victim, a female, and that appellant or his co-defendant was accused of causing her "physical injury." R. 274. The court redacted the classification of appellant's crime as violent or nonviolent. R. 81, l. 14 – 82, l. 1. R. 272. However, the specter of a violent home invasion as described in the indictment was far more prejudicial and the jury should have never learned this fact. R. 274.

Similarly, State's Exhibit 2 betrays that appellant was indicted for first-degree burglary, but only convicted of second-degree burglary. R. 275-76. The indictment discloses the victim's name, a female, and that appellant allegedly entered her home at night. R. 276. This information was unfairly prejudicial.

When the danger of unfair prejudice substantially outweighs the probative value, evidence is not admissible. Rule 403, SCRE. The detailed information about appellant's prior

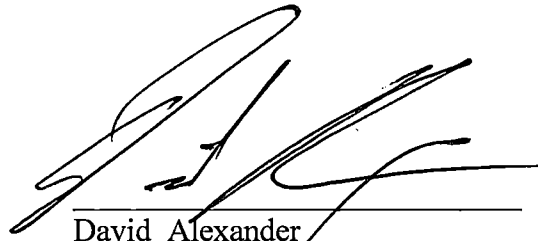
¹ Both State's Exhibit 1 and 2 are included in the Record on Appeal at pages 272 through 277. The trial court's redactions are in solid black. R. 272-77. To comply with this Court's redactions rules, counsel used handwritten crosshatches to redact appellant's date of birth, address, and social security number. R. 272, 275.

offenses was unfairly prejudicial because it improperly attacked his character and crossed over the line from proving an element of the crime into impermissible propensity evidence. Rule 404, SCRE. State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003). In James, the Court placed limits on the admission of prior convictions in burglary cases. James at 34-35, 583 S.E.2d at 750. The trial court allowed the state to admit seven prior burglary convictions instead of the required two. Id. The Court reversed, finding that admission of so many prior convictions was unfairly prejudicial under Rule 403 and became propensity evidence. Id.

The James Court relied on the United States Supreme Court's reasoning in Old Chief v. United States, 519 U.S. 172 (1997). In Old Chief, the Court held that when dealing with a defendant's status as an element of the offense, the "issue is not whether the concrete details of the prior crime should come to the jurors' attention, but whether the name or general character of that crime is to be disclosed." Id. at 190. Here, telling the jury the "concrete details" that appellant was accused of harming one woman during a burglary and entering another woman's home at night are precisely the unfairly prejudicial bad character evidence that James and Old Chief prohibit. The jury should never have learned that appellant was accused of the far more serious crimes of first-degree burglary when he was only convicted of second-degree burglaries. For these reasons, the trial court erred in admitting these documents into evidence and appellant's conviction should be reversed.

CONCLUSION

For the above-stated reasons, appellant's conviction should be reversed and this case remanded for a new trial.

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of January, 2017.

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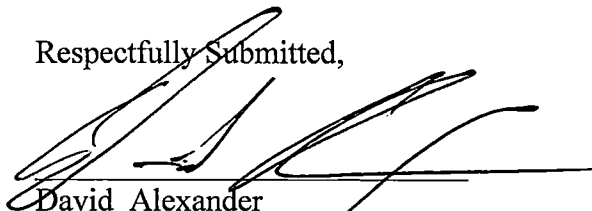
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Adrian Jenkins states:

1. He is an 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 the Honorable Carmen T. Mullen, which was held on April 18-20, 2016 (Trial), 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 Adrian Jenkins.

Respectfully Submitted,



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of January, 2017.

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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 (April 18-20, 2016)
- (3) State's Exhibit #1
- (4) State's Exhibit #2

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

January 27, 2017


David Alexander
Appellate Defender

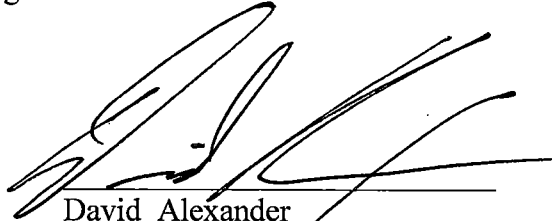
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ATTORNEY FOR APPELLANT

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 27, 2017.



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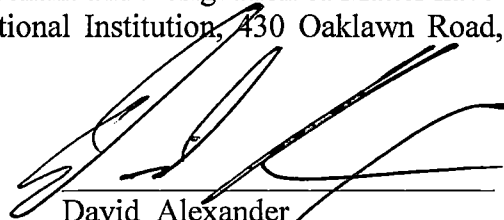
V.

ADRIAN JENKINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Adrian Jenkins, 273602, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 27th day of January, 2017.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2017.

Monica Henderson (L.S)

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