STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STERLING MAYBIN

APPELLANT

APPELLATE CASE NO. 2015-001585

FINAL BRIEF OF APPELLANT

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[1] State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923).

STATEMENT OF THE CASE

On April 2, 2015, the Newberry County Grand Jury indicted Appellant for third degree burglary and petit larceny. Amd.R. 176 – 179. Appellant's case proceeded to a jury trial before the Honorable Donald B. Hocker. Amd.R. 1. Charles Verner represented Appellant. Dale Scott and Taylor Daniel represented the State. Amd.R. 1.

Appellant was found guilty and sentenced to ten years' imprisonment. Amd.R. 174. Appellant appealed his convictions and sentence. This appeal follows.

STATEMENT OF FACTS

At around 1:00 p.m. on December 23, 2014, Sam Glenn left his home in Newberry County, South Carolina to go to the store. Amd.R. 2, ll. 1-12. He claimed to see someone riding a green bicycle down the street with a black bag hanging on the handle bars. Amd.R. 2, ll. 13-18. When Glenn returned home about "20 or 30 minutes" later, he walked into his back yard and noticed a man in his neighbor's, Walter Cromer's, backyard. Amd.R. 3, l. 25 – Amd.R. 4, l. 8.

Glenn claimed he observed the man, who he finally thought was Cromer, standing at the back of Cromer's house "[b]etween the storage room door and the air-conditioning unit." Amd.R. 5, l. 22 – Amd.R. 6, l. 1. Glenn stated that the man "had his back turned" and was "fiddling with something." Amd.R. 6, ll. 11-16. When Glenn walked towards the man and realized he was not Cromer, Glenn walked back into his yard and called the police from his cellphone. Amd.R. 7, ll. 2-13.

The police responded to Cromer's house "about five minutes later." Amd.R. 7, ll. 15-17. Glenn told police that he was standing in his yard watching the man "attempting to bag up things that he knew weren't his." Amd.R.12, ll. 9-13. Glenn never identified the man as Appellant and was never shown a photographic lineup. Amd.R.15, l. 21 – Amd.R. 16, l. 5.

When officers from the Newberry Police Department arrived, the man dropped the bags and rode away on a green bicycle. Amd.R. 8, ll. 1 – 5, July 8, 2015. Officer Harold Malloy chased the suspect, who jumped off the bicycle and ran into the woods. Malloy claimed that he recognized the man on the bicycle and had "seen him before."

Amd.R. 23, ll. 10-14. However, Malloy only identified Appellant as the suspect at trial. Amd.R. 68, ll. 11-13.

After searching for the suspect in the woods where he was seen running, Malloy and the other responding officers ended the search. Amd.R. 79, ll. 3-11. The officers collected the abandoned bicycle from the roadway near the woods. A radio, a battery charger, an air compressor, and a leaf blower were located in Cromer's backyard inside four separate black plastic bags and were collected as evidence. Amd.R. 81, ll. 1-6. Cromer later verified the items belonged to him. Amd.R. 90, ll. 19-25.

Donnell Quarles, another neighbor, called Cromer at work that same day and told him that his storage building had been broken into. Amd.R. 95, ll. 2-7. Quarles was not a witness to the alleged burglary, but observed the police at Cromer's home. Amd.R. 98, ll. 4-24.

Cromer informed police that he thought Appellant was the suspect because he had seen Appellant in his front yard two days earlier, on December 21, 2014. Amd.R. 86, ll. 15-18. Cromer had known Appellant for years. Amd.R. 87, ll. 7 – 8.

Cromer asserted that when he returned home from work on December 21, 2014, he saw a green bicycle laying in his front yard. Amd.R. 86, ll. 15-18. After Cromer went into his house, he looked out the window and observed Appellant in his front yard. Amd.R. 86, l. 20 – Amd.R. 87, l. 22. Cromer walked onto his front porch and asked Appellant what he was doing in his yard, to which Appellant "mumbled something" and rode away on his bike. Amd.R. 87, ll. 17 – 25. Cromer told police that he had warned his neighbor, Glenn, that Appellant was in Cromer's yard on December 21, 2015. Amd.R. 88, l. 19 – Amd.R. 89, l. 3.

Based on Cromer's allegation that Appellant probably committed the alleged burglary of the storage building because Cromer had seen him two days earlier, Appellant became a suspect. Amd.R. 99, ll. 8-23. Appellant was arrested the next day, Christmas, December 25, 2015, and charged with third degree burglary and petit larceny.

Motion for a Mistrial

At trial, during cross-examination of Officer Malloy, defense counsel asked Malloy to read a portion of incident report that the officer approved on the day of the alleged burglary. Amd.R. 38, ll. 6-10. Malloy read:

> "The suspect . . . was not located but a possible identity (sic) was provided due to Cromer sees (sic) Sterling Maybin in the area recently, referred to case numbers 2014-11160 and 2014-11161, which were prior property crimes in that same area, on that same street."

Amd.R. 38, ll. 6-10.

Defense counsel asked the officer:

> "On the two reports that you just mentioned, was Sterling Maybin arrested on the other two crimes that you are talking about?"

Amd.R. 39, ll. 2-4.

Officer Malloy responded:

> "The two reports **[don't] show that Mr. Maybin was arrested** on either one of these reports."

Amd.R. 39, ll. 7-8. (emphasis added)

During redirect examination, the solicitor asked Officer Malloy whether the reports on file about the other two property crimes in the area involved Appellant.

Amd.R. 39, ll. 15-19. Malloy asserted that the reports did involve Appellant. Amd.R. 39, ll. 15-19.

The solicitor then asked the officer:

> "So that was one of the factors in identifying him."

The officer replied, "Yes sir, it was." Amd.R. 39, ll. 20-21.

Defense counsel objected and moved for a mistrial. Amd.R. 48, ll. 5-20. Counsel argued that there is no way the jury could disregard the testimony that Appellant was a suspect in the other two property crimes reported in the neighborhood around the time of the alleged burglary on December 23, 2015. Amd.R. 48, ll. 5-20. Counsel contended that the jury knew that there were two prior thefts in the neighborhood and that is why police considered Appellant a suspect in the December 23, 2015 incident. Amd.R. 47, ll. 1-7.

The trial judge ruled that the evidence would **not** have been admissible as a prior bad act "under a Lyle analysis." Amd.R. 46, ll. 13-15. However, the judge denied counsel's mistrial motion. The judge opined that defense counsel opened the door to redirect examination when counsel asked Officer Malloy to read the portion of the incident report regarding the two recent thefts. Amd.R. 59, ll. 9-12. The judge also stated that he would prohibit any additional testimony regarding the two thefts reported to police prior to the alleged burglary of Cromer's storage building on December 23, 2014. Amd.R. 59, l. 9 – Amd.R. 60, l. 7.

ARGUMENT

The trial judge erred by refusing to grant a mistrial where the jury heard evidence that Appellant was a suspect in two prior thefts which occurred in the same neighborhood as the alleged burglary, and the police identified Appellant as a suspect in the alleged burglary based on the reports of the two prior thefts, since Appellant was never arrested and charged for the two reported thefts and the trial judge ruled that evidence of the prior thefts would not have been admissible as a prior bad act under *State v. Lyle*.

Whether a mistrial is warranted by manifest necessity is a fact – specific inquiry. State v. Rowlands, 343 S.C. 454, 457, 539 S.E.2d 717, 719 (Ct. App. 2000). A defendant moving for a mistrial must show both error and prejudice resulting from the error. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000); State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct. App. 2002). Such an error must be so grievous that its prejudicial effect cannot be removed in any other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999); State v. Goodwin, 384 S.C. 588, 605, 683 S.E.2d 500, 509 (Ct. App. 2009).

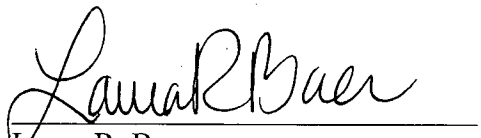
Here, the trial judge should have declared a mistrial. The jury heard inadmissible evidence that Appellant's identity as the suspect in the alleged burglary was based on reports of two prior thefts in the same neighborhood. Appellant's name was given to police as a suspect in the reported thefts. However, Appellant was neither arrested nor charged for the two thefts. Further, the trial judge ruled that even if the State sought to admit evidence of the two thefts as prior bad acts to prove identity, the evidence would not have passed the "Lyle analysis" and would have been inadmissible.

Because the jury heard inadmissible and unfairly prejudicial evidence which invited a guilty verdict on the improper basis that Appellant must have committed the alleged burglary since he was a suspect in two prior thefts, the trial judge should have declared a mistrial.

CONCLUSION

For the reasons argued above, Appellant Sterling Maybin respectfully requests this Court to reverse his convictions and sentence and remand to the lower court for a new trial.

Respectfully submitted,



Laura R. Baer
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ATTORNEY FOR APPELLANT

This 6th day of December, 2016.

CERTIFICATE OF COUNSEL

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

December 6, 2016

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