

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

On Writ of Certiorari to the Court of Appeals
Appeal from Barnwell County
Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

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THE STATE,

S.C. SUPREME COURT

RESPONDENT/PETITIONER

v.

STEPHON ROBINSON,

PETITIONER/RESPONDENT

APPELLATE CASE NO 2017-000990

PETITIONER/RESPONDENT'S BRIEF OF PETITIONER

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ISSUES PRESENTED

I.

Whether the Court of Appeals 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?

II.

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

STATEMENT OF THE CASE

On October 25, 2011, Petitioner/Respondent Stephon Robinson was indicted by the Barnwell County Grand Jury for first-degree burglary and possession of a weapon during the commission of a violent crime. R. 232.

On November 1–2, 2011, Robinson proceeded to trial before the Honorable Doyet A. Early, III, and a jury. R. 1. Robinson was represented by Glen Walters, and the State was represented by assistant solicitors A. Keith McAlister and David Miller. The jury found Robinson guilty. R. 187, ll. 5-21. Judge Early sentenced Robinson to concurrent terms of twenty years imprisonment for first-degree burglary and five years imprisonment for the weapons offense. R. 197, ll. 8-12.

Robinson’s direct appeal was perfected by the filing of the brief of appellant by appellate defenders Dayne C. Phillips and Carmen V. Ganjehsani. On February 19, 2014, the South Carolina Court of Appeals issued an unpublished opinion remanding Robinson’s case to the trial court to “hold a hearing and carefully balance the probative value of his [Robinson’s] prior convictions for impeachment purposes against their prejudicial effect.” R. 199 (State v. Robinson, 2014-UP-068 (Ct. App. Feb. 19, 2014)).

The remand hearing was held before Judge Early on June 9, 2014. Robinson was represented by appellate defender Ganjehsani and the State was represented by assistant solicitor David Miller. R. 202. On November 11, 2014, the remand court issued its 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 (Nov. 11, 2014 Order).

Robinson filed and served a timely notice of appeal from the remand court’s order. Undersigned counsel perfected his appeal. On February 1, 2017, a three-judge panel of the Court of Appeals affirmed Robinson’s convictions and sentences in an unpublished, *per curiam*

opinion. App. 1 – 3 (State v. Stephon Robinson, Op. No. 2017-UP-065 (S.C. Ct. App. filed Feb. 1, 2017)). On February 13, 2017, Robinson filed a petition for rehearing. App. 4-20. The state filed a cross-petition for rehearing on February 16, 2017. App. 21-42. By order filed March 23, 2017, the Court of Appeals denied the petitions for rehearing. App. 43.

Robinson and the State both filed cross-petitions for writ of certiorari to the Court of Appeals in April 2017, followed by the filing of returns to the petitions. By Order filed December 13, 2017, this Court granted certiorari as to both petitions and ordered further briefing of the issues raised therein.

This is Robinson's Brief of Petitioner.

STATEMENT OF FACTS

Robinson's Trial

The basic facts presented at the trial were that Eddie Williams claimed that Robinson, Robinson's brother, and an unidentified third man entered his home on the afternoon of Sunday, February 20, 2011. Williams grabbed his own gun, started to shoot, and the intruders ran. Williams claimed that Robinson was one of the intruders, who turned and fired one shot back. R. 99-107. The initial call was dispatched to law enforcement around 2:17 or 2:20 that afternoon. R. 50. 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 initially did not tell the officer investigating the incident that Williams himself had shot his gun at the intruders. He claimed to be afraid to tell the truth because his gun was not registered and had been stolen out of Beaufort County. R. 60; R. 111. Instead, Williams told the officers that the bullet holes in his home were already there when he purchased it. R. 112-113. Williams also did not mention to police the fact that he sold marijuana out of his home. See R. 138, l. 17 – 139, l. 25.

At trial, Robinson testified that he was at home with his brother and cousin at the time that the incident occurred at Williams' house. Robinson woke up late that morning, took a shower, and returned the car that he had borrowed from Shelly Leanna Gunnels back to her house between noon and one o'clock. He then returned to his home, where he remained for the rest of the day. R. 130-132. Gunnels testified that Robinson did borrow her car on February 19th and then returned it on February 20th "around that afternoon." R. 96-97.

When Robinson informed the trial court of his decision to testify, the State requested to impeach him using prior convictions from 2009 for second-degree burglary and strong-arm robbery

and from 2007 for breaking into an automobile. Defense counsel argued that the prejudicial value of the convictions outweighed any probative value and that, with respect to the burglary offense, that “jurors may conclude that once a burglar, always a burglar.” R. 126, l. 19 – 129, l. 5.

Without providing any analysis, the trial court ruled that the prior convictions “come within the statute,” that the burglary conviction would be referred to as a felony conviction “in order to preclude any prejudicial value [sic],” and that the prosecution could use the other prior convictions for impeachment purposes. R. 129, ll. 6-11. Based upon the trial court’s ruling, the prosecutor elicited the following testimony during cross-examination of Robinson:

Q: Are you the same Stephon Robinson that was convicted of *strong-arm robbery* in 2009?

A: Yes, sir.

Q: And you’re the same Stephon Robinson that had another *felony conviction* in 2009 that carried more than a year, aren’t you?

A: Yes, sir.

Q: And you’re the same Stephon Robinson that in 2007 had *two convictions for breaking and entering automobiles* with the intent to commit a felony or theft?

A: Yes, sir.

...

Q: Let me ask you this, in 2007, was your brother with you whenever you *broke into the cars*?

A: Yes, sir.

Q: Did he plead guilty to his charges?

A: Yes, sir.

Q: And in 2009, with the *strong-arm robbery*, was your brother with you then?

A: Yes, sir.

...

Q: And that other *felony charge* from 2009, was your brother with you then?

A: No, sir.

R. 136, l. 21 – 138, l. 8 (emphasis added).

Without providing any prior notice, the prosecutor also impeached Robinson's brother, Reginald Felder, using the same convictions:

Q: Were you convicted in 2007 of *breaking into motor vehicles* to commit a felony or a theft in Georgia?

A: I was, but I didn't do it.

...

Q: Okay. Well, when you weren't *breaking into these motor vehicles* that you were later convicted of breaking into, were you with your brother?

...

A: My brother was doing community service at the time, but the guy that really did it said that me and my brother did it, which we didn't do it.

Q: [W]ere you convicted in 2007 of *breaking into motor vehicles*?

A: Yes, sir.

Q: Okay. And in 2009, were you convicted in July of a *strong-armed robbery*?

A: Yes, sir.

R. 148, l. 7 – 149, l. 7 (emphasis added). The prosecutor further questioned Robinson's brother regarding the prior convictions later on cross-examination. R. 153, l. 18 – 154, l. 7. Further, the prosecutor argued the following in its closing:

Now, let's talk about the defendant. . . . Just a coincidence that he's with his brother, Reginald Felder, and his cousin Jamal Wallace. What motive do they have to lie? Every motive. . . . And then Mr. Felder gets on up here, his brother. He admits, maybe the only thing he told the truth on, I don't know, about **the crimes he committed in the past. . . . He was convicted of crimes that he says he was wrongfully convicted of. He's facing these same charges. Obviously, he has a motivation to lie.**

R. 173, l. 16 – 174, l. 6 (emphasis added).

First Direct Appeal

On direct appeal, Robinson argued that the trial court erred in admitting his 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 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. On February 19, 2014, the Court of Appeals filed an unpublished opinion remanding the case back to the trial court.¹ R. 199 – 200. The Court concluded that “the trial court did not conduct a meaningful analysis balancing the impeachment value of Robinson's prior convictions against their prejudicial effect.” R. 200. Thus, the Court remanded the case with the following instructions:

On remand, the trial court should hold a hearing and carefully balance the probative value of his prior convictions for impeachment purposes against their prejudicial effect. If the trial court finds the prejudicial impact of the prior convictions outweighs their impeachment value, the trial court shall order a new trial. Otherwise, subject to further appellate review, the convictions and sentences are affirmed.

R. 200.

¹ Petitioner/Respondent notes that the state raised the same “harmless error” argument in its Brief filed in petitioner’s initial direct appeal as it did in its brief following the remand order. See Appellate Case No. 2011-202987, Final Brief of Respondent, pp. 19-21. If the Court of Appeals 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, the Court remanded Robinson’s case for a meaningful analysis of the impeachment value of his prior convictions versus their prejudicial effect. See R. 199 – 200.

Remand Hearing

At the remand hearing both defense counsel and the prosecutor presented argument regarding the probative value and prejudicial effect of Robinson's prior convictions. Defense counsel argued that the five Colf factors should have been applied to make this determination. These included the impeachment value of the crime, the point and time of the conviction and the witness' subsequent history, the similarity of the prior crimes and the charged crime, the importance of the defendant's testimony, and [the] centrality of the credibility issue. R. 206, l. 4 – 207, l. 12. Neither attempted robbery nor breaking and entering of an automobile are probative of truthfulness, such that they had no probative value. R. 207, l. 13 – 208, l. 7. Additionally, though the prior convictions were not for the identical crimes, they were very similar, having a common thread of theft. R. 208, l. 8 – 209, l. 16.

The prosecutor averred that there is “nothing similar” between a burglary and a robbery and that there is a “large difference” between breaking into someone's car and breaking into someone's home. R. 213, l. 10 – 215, l. 8. He further pointed to the fact that the prior convictions occurred within five years of the alleged offense. R. 215, l. 9 – 216, l. 2. He argued that the admission of the prior convictions were probative of truthfulness and “exceedingly important” because there was no physical evidence and credibility was “squarely . . . the deciding factor in the case.” 216, l. 3 – 219, l. 17. According to him, the only prejudice from the other convictions was their effect on Robinson's credibility, but the jury would not assume that “he was a bad guy who did bad things and therefore, he must have done this thing.” R. 218, l. 13 – 219, l. 2.

Defense counsel responded that the prosecutor failed to articulate any probative value for the prior convictions other than truthfulness, which is contradicted by case law. She also

reemphasized the similarity between the prior convictions and the alleged crimes and the prejudice in admitting crimes that have no purpose other than to show propensity. R. 219, l. 5 – 221, l. 14.

Remand Court's Order Denying Relief

Judge Early issued a written Order denying Robinson any relief and, not surprisingly, finding a sufficient basis for admitting the prior convictions that he originally admitted at trial. R. 224. With the exception of a passing reference to State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012), the remand court did not cite any of the cases referenced by defense counsel during the remand hearing, which included State v. Howard, 396 S.C. 173, 720 S.E.2d 511 (Ct. App. 2011); State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006); State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001); and State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013).

The remand court then considered all of the prior convictions together in addressing each of the Colf factors, purportedly “because the analysis remains the same for each conviction.” R. 228. Judge Early found that the the prior convictions all had impeachment value. He also found that the convicitons were sufficiently close in time to the trial and were not substanitally similar to the alleged crime with the exception of the redacted prior burglary charge. Further, he found that Robinson’s testimony was not important to advance the alibi defense and that the “credibility of all witnesses, for the State and the Defense, was an essential element of this trial, as it is with every trial.” Thus, Judge Early determined that the jury properly considered the prior convictions of Robinson within the confines of the court’s limiting intstruction and that Robinson was not entitled to a new trial. R. 230 – 231.

Court of Appeals Opinion

In its unpublished opinion affirming Robinson's convictions, the Court of Appeals found that remand court "erred in applying two of the five Colf factors – the impeachment value of the prior convictions and the centrality of the credibility issue." App. 2. The Court ruled that the remand court's finding that Robinson's prior convictions had impeachment value was inconsistent with the case law establishing that prior convictions for robbery, burglary, and theft are not probative of truthfulness. App. 2. The Court further found: "Despite correctly recognizing that credibility was central to the case, the circuit court erred in finding this factor weighed in favor of admitting Robinson's prior convictions because our courts are hesitant to admit evidence of prior convictions when credibility is central to the case." App. 3.

Nonetheless, the Court found that "the circuit court's error was harmless in view of the other competent evidence of Robinson's guilt." App. 3. Specifically, the Court cited Williams' "consistent" identification of Robinson as one of the perpetrators, noting Williams' claims that Robinson had been to his house on multiple occasions and his provision of Robinson's name to the investigating officer. The Court wrote that Williams identified Robinson in two different photo lineups and identified Robinson in court. The Court also cited the circumstantial evidence that Williams claimed the intruders drove a white Pontiac, which the Court determined was "the car" owned by Robinson's girlfriend and borrowed by him the night prior to the incident. The Court found that "Robinson likely had access to the car during the incident." App. 3. Thus, the Court ruled: "With this evidence in mind, any error in the admission of Robinson's prior convictions was harmless." App. 3.

ARGUMENT

- I. **The Court of Appeals 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.**

Introduction

This case involves the improper impeachment of Petitioner/Respondent Robinson with his prior convictions for strong-arm robbery and breaking into an automobile during his trial for first-degree burglary. R. 126, l. 19 – 129, l. 19; R. 136, l. 21 – 138, l. 8. The issue raised at the Court of Appeals was: “Whether the remand court erred in finding that the probative value of the admission of Appellant’s prior convictions for strong-arm robbery and breaking and entering into a motor vehicle with intent to commit a felony or theft, outweighed the prejudice to him under Rule 609(a)(1), SCRE?” Final Brief of Appellant, p. 1. In its unpublished opinion, the Court of Appeals properly ruled that the remand court erred in its application of two of the Colf² factors – impeachment value and centrality of credibility – in conducting its analysis on the admission of Robinson’s prior convictions. However, the Court of Appeals 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, the Court of Appeals erred in finding that the error was “harmless in view of the other competent evidence of Robinson’s guilt.” See App. 1 – 3.

² 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).

Discussion

The admissibility of a defendant's prior convictions weigh heavy in their determination of whether to exercise their right to testify at trial. However, when prior convictions are ruled admissible over defense objection, the defendant must testify in order to preserve the ruling for appellate review. State v. Glenn, 285 S.C. 384, 385, 330 S.E.2d 285, 286 (1985) (“[W]hen the trial judge chooses to make a preliminary ruling on the admissibility of prior convictions to impeach a defendant and the defendant does not testify at trial, the claim of improper impeachment is not preserved for review.”); State v. Elmore, 368 S.C. 230, 237-38, 628 S.E.2d 271, 274-75 (Ct. App. 2006) (applying preservation rule adopted in Glenn). In this case, Robinson testified in his own defense and was impeached with prior convictions, including one count of strong-arm robbery and two counts of breaking into an automobile, over defense counsel's objection. R. 126, l. 19 – 129, l. 19; R. 130, l. 12 – 141, l. 10.

The South Carolina Rules of Evidence provide:

For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and 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**; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609(a), SCRE (emphasis added). Our Courts have 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 under Rule 609, SCRE. See State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000); State v. Bryant, 369 S.C. 511, 517–18, 633

S.E.2d 152, 156 (2006); State v. Howard, 396 S.C. 173, 178, 720 S.E.2d 511, 514 (Ct. App. 2011); State v. Scriven, 339 S.C. 333, 341-42, 529 S.E.2d 71, 75-76 (Ct. App. 2000).

Thus, in conducting a Rule 609(a), SCRE, analysis, the trial court should consider the “[t]he following factors, along with any other relevant factors, . . . (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.” Howard, 396 S.C. at 178, 720 S.E.2d at 514 (citing Colf, 337 S.C. at 627, 525 S.E.2d at 248). In State v. Broadnax, 414 S.C. 468, 478, 779 S.E.2d 789, 794 (2015), this Court cautioned that “[u]ltimately, the Rule [609, SCRE] 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.”

Here, the Court of Appeals 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. App. 1 – 2. Additionally, the remand court erred in weighing the centrality of credibility in favor of the admission of the prior convictions rather than against it. App. 3. However, the Court of Appeals 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.

The Similarity between the Past Crimes and Charged Crime

The Court of Appeals should have ruled that the remand court erred in its analysis of the third Colf factor regarding the similarity between Robinson’s prior convictions and the charged

offense of burglary. The remand court 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. Specifically, Judge Early wrote: “As to the strong-arm robbery and breaking into motor vehicle charges, there is no indication that any of those charges involved the use of a deadly weapon (a crucial element of the burglary charge), or that they involved entering someone’s home (also an element of the burglary charge).” 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 in determining the admissibility of prior convictions.

In Colf, this Court explained that “evidence of similar offenses inevitably suggests to the jury the defendant’s propensity to commit the crime with which he is charged” and that this risk is not eliminated by limiting instructions. 337 S.C. at 628, 525 S.E.2d at 249 (citing United States v. Beahm, 664 F.2d 414, 418-19 (4th Cir. 1981) (“Admission of evidence of a similar offense often does little to impeach the credibility of a testifying defendant while undoubtedly prejudicing him. The jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged.”)); see also Green v. State, 338 S.C. 428, 434, 527 S.E.2d 98, 101 (2000). The trial judge in Colf erred by treating the prior crimes as if their similarity heightened their probative value when it actually increased their prejudicial effect. 337 S.C. at 628, 525 S.E.2d at 249. Notably, the defendant in Colf was on trial for burglary and larceny, though ultimately convicted of only third degree burglary. Id. at 624-25, 525 S.E.2d at 247. The prior convictions admitted against him were for attempted breaking and entering, attempted

larceny, breaking and entering, larceny, and larceny of a vehicle. Id. Under the remand court's analysis, Colf's prior convictions would not have been "similar" because they did not involve the same elements as the third degree burglary charge for which Colf was convicted.

Both this Court and the Court of Appeals have continued to emphasize the danger of admitting prior convictions that are the same or similar to a charged offense. In State v. Scriven, 339 S.C. 333, 343, 529 S.E.2d 71, 76 (Ct. App. 2000), the Court of Appeals found that Scriven's prior drug convictions were all either "similar or identical to charged offenses, and the likelihood of a high degree of prejudice to the accused is inescapable." The Court went on to rule "[t]he similarity between the prior convictions and the charged offenses cannot be denied, and they present a great likelihood of prejudice to the accused." 339 S.C. at 344, 529 S.E.2d at 77. Again, in State v. Dunlap, 353 S.C. 539, 542, 579 S.E.2d 318, 320 (2003), this Court wrote: "[W]hen 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."

In State v. Elmore, 368 S.C. 230, 239, 628 S.E.2d 271, 275 (2006), the Court Appeals took the opportunity "to remind and caution the bench and bar of the inherent prejudice that flows from the use of similar prior convictions for impeachment purposes under Rule 609(a)(1), SCRE." Later that same year, in State v. Bryant, 369 S.C. 511, 517-18, 633 S.E.2d 152, 156 (2006), this Court reiterated that "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." The defendant in Bryant was tried and convicted of murder and unlawful possession of a weapon by a convicted felon. 369 S.C. at 515, 633 S.E.2d at 154. The prior convictions improperly admitted against him included possession of an

unlawful weapon by a convicted felon and pointing and presenting a firearm. *Id.* at 515, 518, 633 S.E.2d at 154, 156. This Court ruled: “Petitioner’s prior firearms convictions had nothing to do with Petitioner’s credibility and, their admission was more prejudicial than probative, especially in light of the offenses for which he was on trial. Accordingly, we hold the trial court erred in admitting Petitioner’s prior firearms convictions.” *Id.* at 518, 633 S.E.2d at 156.

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, as alleged in this case, if he “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 prosecutor 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 prosecutor 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: “[H]e obviously came in to commit a crime. I don’t know if he’s coming in there to steal a TV -- I don’t know what he’s doing. We don’t have to prove that. He’s coming in to commit a crime because he’s got a gun in his hand.” R. 172, ll. 8-14. Even without the prosecutor’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. 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-arm 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 prosecutor 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 the Court of Appeals' opinion. The similarity of the prior convictions to charged burglary offense increased their prejudicial effect and should have weighed against their admission.

The Importance of the Defendant's Testimony

The Court of Appeals should have ruled that the remand court erred in its analysis of the fourth Colf factor regarding the importance of the defendant's testimony. The remand court reasoned that in light of his alibi witnesses, Robinson's testimony was "cumulative" and it was not necessary for Robinson to take the stand in his own defense. R. 230. 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 and the prosecution's substantial efforts to undermine his alibi defense.

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 (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).

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 are both constitutional and practical dimensions to a defendant’s testimony that the remand court should have considered in evaluating the importance of Robinson’s testimony and which weighed in favor of exclusion of the prior convictions.

It would be unusual for a defendant to testify, exposing himself to cross-examination and impeachment, unless his testimony was aimed at advancing some theory of mitigation or defense. In this case, Robinson’s tandem defenses were misidentification and alibi. Robinson testified on direct examination that he was home at the time of the incident at Williams’ house. He took a shower when he woke up, returned the car he borrowed, and was home with his brother and cousin for the remainder of the day. Robinson was cooperative with officer Croft when he came to his house and gave him the same information regarding where he had been that day. R. 130, l. 19 – 131, l. 13. Robinson knew Williams and had been to his house “a lot,” but did not have a personal relationship with him. R. 131, ll. 14-25. He reiterated his denial of any role in the incident at Williams’ home. R. 132, ll. 1-6.

On cross-examination, Robinson said that he returned the borrowed car to his girlfriend at approximately 1:00 or 2:00 p.m. R. 132, ll. 12-17. He had borrowed it the night before to go to a club with Reginald Felder and Jamal Wallace, his brother and his cousin. R. 133, ll. 14-25. He got home at approximately 3:00 or 3:30 a.m. but did not return the car immediately because he

was under the influence of alcohol and the club was located closer to his house than to his girlfriend's house. Robinson went to sleep and left the car parked in his yard. R. 134, l. 1 – 135, l. 2. Robinson's brother used the car to go to a store called "Shelton's" at around 10:00 a.m. and came back to the house. R. 135, l. 2 – 136, l. 3. Robinson again denied any involvement in the incident at Williams' house, maintaining that he had already returned his girlfriend's car by the time that Williams said the incident occurred. R. 136, ll. 4-20. It was then that the prosecutor raised Williams' prior convictions. R. 136, l. 21 – 137, l. 6.

Perhaps the most compelling portion of Robinson's testimony was his explanation that he had taken responsibility for his past crimes and recognized them as mistakes, as well as his lack of motive to steal. Robinson explained that he pled guilty to his prior charges because he knew he was guilty. He said that in the past he had done "stupid things to get a little money to do things because I didn't have [any]." R. 137, ll. 7-13. However, Robinson's parents had recently passed away, resulting in an insurance award, such that he did not have any reason to kick in Williams' door. R. 137, ll. 13-16. The prosecutor then asked if Robinson's brother was with him during those prior incidents that resulted in convictions, to which Robinson responded "yes, sir." R. 137, l. 17 – 138, l. 16. Robinson further explained that his prior visits to Williams' house were to purchase marijuana from both Williams and another resident of the home. He denied any sort of social relationship but said they had never had any problems in the past. R. 138, l. 17 – 140, 2. The prosecutor then began a litany of questions about what incentive Williams would have to lie and whether the circumstantial evidence was "just an incredible stroke of bad luck." R. 140, l. 3 – 141, l. 10.

To characterize Robinson's testimony as cumulative because he presented other alibi witnesses is far too simplistic. Similar to his attacks on Robinson, the prosecutor went to great

lengths to attack the testimony of Robinson's alibi witnesses. R. 143, l. 21 – 146, l. 1; R. 147, l. 25 – 154, l. 10. Arthur Jamal Wallace, Robinson's cousin, confirmed that he went out with Robinson and Felder and they all returned home and fell asleep. When Wallace woke up in the morning, he found Robinson asleep and Felder eating food he had bought at the store that morning. He recalled that Robinson took the car back to his girlfriend at "around twelve to one." R. 142, l. 4 – 143, l. 4. In addition to impeaching Wallace with his prior convictions, the prosecutor asked the following:

Q: Do you know why Mr. Williams would fabricate this story, would make this up?

A: No, sir.

Q: So it was you, Stephon Robinson, and your cousin, his brother, Reginald Felder all hanging out that day?

A: Yes, sir.

Q: How would Mr. Williams have known there were three of y'all there together?

A: I have no idea

Q: So that was just a coincidence?

A: I guess.

Q: Three black males came to the door, in the white car that y'all were in previously that night, earlier that day -- three black males came to him, one was Stephon Robinson, one was Reginald Felder and the other third one was one that couldn't be identified. That's just a coincidence?

A: It's -- I really don't know. You'll have to ask him. I really don't know.

R. 145, ll. 7-25.

Reginald Felder, Robinson's brother, agreed that the men were out together the night before and returned home to go to sleep. When he woke up in the morning, Felder went to the store for cigarettes. Robinson and Wallace were both asleep at that point. He recalled Robinson

waking up at 1:00 p.m. and taking the car back to Leanna Gunnels. R. 142, l. 4 – 143, l. 4. On cross-examination, the prosecutor asked Felder the following:

Q: And you're obviously incarcerated right now, aren't you?

A: Yes, sir.

Q: For this crime?

A: Yes, sir, but I didn't do it.

Q: So you're up here saying that your brother was with you and that's why this jury should believe that Mr. Williams didn't see what he testified to?

A: Yes, sir.

Q: But you're charged with being there too?

A: I am.

Q: Isn't it true that you and your brother were together on February 20th of 2011, and you and your brother and your other witness back there were the three people that went into that house?

A: No, sir, that's not true.

Q: So it's just a coincidence that Mr. Williams said or testified that three people came up to his house, two of whom he knew, you and your brother in a car owned by your brother's girlfriend, and he saw you and you knocked on the door and he didn't come to the door and ten or fifteen minutes later, the door gets kicked in, it's three black males and it's the same white car?

A: That's not true.

Q: That's just a coincidence?

A: It is, sir.

R. 150, l. 13 – 151, l. 15. Later he asked Felder:

Q: Well, if you didn't have anything to do with the break in, how do you know how long it was after the break in before Investigator Croft came and talked to you?

A: Sir?

Q: If you don't have anything to do with the break in, don't know anything about it –

A: I just was going by what Croft told me when he got to the house. I didn't do nothing.

Q: So Croft told you when he got to the house –

A: What time that it occurred.

Q: Did he tell you that before or after y'all said that the girlfriend had gotten her car back prior to that time?

A: Sir?

Q: Did you tell Investigator Croft, we took the car back to his girlfriend?

A: Yes, sir. He took the car back to his girlfriend. We didn't even have the car.

Q: Did you already know what time the burglary had occurred?

A: No, sir.

Q: You didn't?

A: (Witness shook head.)

Q: Isn't it true you knew exactly when the burglary occurred because you were standing right there?

A: No, sir.

Q: It's not?

A: No, sir.

Q: It's just a coincidence?

A: Yes, sir.

R. 152, l. 13 – 153, l. 17. When asked about his criminal history, unlike Robinson, Felder contended that he “didn't do it” despite his convictions. R. 148, l. 7 – 149, l. 5; R. 153, l. 18 – 154, l. 9. In his closing argument, the prosecutor argued that Wallace and Felder had “every

motive” to lie because they would be exposing themselves to criminal liability if they testified to what the prosecution asserted was “the truth.” R. 173, l. 16 – 174, l. 6.

The remand court erred in finding that the sole import of Robinson’s testimony was to establish an alibi defense, which was accomplished through other witnesses, rendering Robinson’s testimony cumulative. The judge’s failure to properly weigh the importance of Robinson’s testimony was just as egregious as the failures with respect to impeachment value and centrality of credibility that were discussed in the Court of Appeals’ opinion. The importance of Robinson’s testimony increased the potential prejudice of admitting his prior convictions and should have weighed against their admission.

The Timing 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, such that they undisputedly fell within the ten year period under subsection (a) of Rule 609, SCRE.³ 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.

³ The alleged offense occurred on February 20, 2011 and Robinson’s trial was held November 1-2, 2011. R. 1; R. 235.

The Unfair Prejudice Outweighs Any Probative Value

Considering all of the Colf factors, the remand court's ruling that the probative value of the admission of the prior convictions outweighed their prejudicial affect was error. 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." To that end, Robinson requested that the Court of Appeals 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)(1), SCRE." R. 231; App. 9. As discussed *supra*, the remand court erred in its analysis of the remaining three Colf factors, none of which were addressed in the Court of Appeals' 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, the Court's opinion stopped short of making that conclusion and, thus, did not rule on the ultimate issue raised in the case. Nonetheless, the petition for rehearing was denied. App. 43.

In the interest of judicial economy, Robinson does not request a remand to the Court of Appeals. Rather, he seeks either a ruling that the Court of Appeals' opinion contained an implicit finding that the remand court erred in determining that the probative value of Robinson's convictions outweighed the prejudice to him, or that such a finding should have been made had the Court of Appeals properly analyzed the remand court's decision on all of the Colf factors.

II. The Court of Appeals erred in ruling that any error was harmless, as such a ruling is inconsistent with the Court’s own finding that “credibility was central to the case” and the solicitor improperly elicited details of the offenses.

The Court of Appeals 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.” App. 3. The facts listed in support of that ruling noted that the victim, Eddie Williams, identified Robinson, who he “knew” from prior interactions, as one of the perpetrators. The 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. App. 3. However, the 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 the state. 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 the Court of Appeals’ own ruling that remand court “correctly recognize[ed] that credibility was central to the case.” App. 3; see State v. Morris, 289 S.C. 294, 297, 345 S.E.2d 477, 479 (1986) (holding that where the defendant’s credibility was of paramount importance to his defense, the Court could not hold beyond a reasonable doubt that the affirmative answer to the prosecutor’s impermissible question about his prior conviction for bookmaking did not irreparably damage the defendant’s credibility in each juror’s mind).

“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). “Error which substantially damages the defendant’s credibility cannot be held harmless where such credibility is essential to his defense.” State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) (citing Morris, 289 S.C. at 298, 345 S.E.2d at 479).

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 Pontiac owned by Shelly Leanna Gunnels, who was Robinson’s on-again/off-again girlfriend. 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 immediately. 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 prosecutor 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, as stated in the Court of Appeals’ opinion. See App. 3.

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 either of 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 Green v. State, 338 S.C. 428, 527 S.E.2d 98 (2000), this Court affirmed the lower court’s grant of post-conviction relief where the defendant was improperly impeached with his prior drug convictions. In discussing the prejudice prong of ineffective assistance of counsel, this Court noted “[the defendant’s] credibility was critical, as the jury had to choose between his version of events and that of the SLED agents.” 338 S.C. at 434, 527 S.E.2d at 101. This Court further found that limiting instructions alone do not make an erroneous admission of prior conviction evidence harmless, noting that “the jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant

committed the similar offense for which he is currently charged.” Id. (quoting United States v. Beahm, 664 F.2d 414, 418–19 (4th Cir.1981)).

In State v. Scriven, 339 S.C. 333, 344, 529 S.E.2d 71, 77 (Ct. App. 2000), the Court of Appeals remanded the case for a hearing on the admissibility of Scriven’s prior convictions under Rule 609(a)(1), SCRE. Scriven was impeached at his trial for distribution of cocaine and marijuana with five prior convictions for drug related offenses. 339 S.C. at 335, 529 S.E.2d at 72-73. The drug transactions for which he was on trial both occurred several months before Scriven was arrested and were captured on audio and video tape introduced into evidence by the State. Id. at 335, 529 at 72. The undercover narcotics officer involved in the transaction identified Scriven at trial. Id. Notwithstanding this evidence, Scriven denied involvement and asserted an alibi defense. Scriven’s alibi was corroborated by his ex-wife. Id. Noting the similarity between the prior convictions and the charged offenses, the Court of Appeals ruled: “On the basis of this record, we are unable to say that the admission of these prior convictions was harmless error.” Id. at 344, 529 S.E.2d at 77; see also United States v. Sanders, 964 F.2d 295, 299 (4th Cir. 1992) (“The admission of Sanders’ prior convictions was not harmless error as to his assault conviction. The assault prosecution turned essentially upon the jury’s assessment of the relative credibility of Sanders and Jenkins, the direct protagonists, who gave widely conflicting versions of the stabbing. In such a situation, evidence having no possible basis except to show a propensity for violence on the part of the defendant obviously has the capacity to tip the balance in such a swearing contest.”).

In State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), this 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 self-defense claim hinged entirely on his own testimony. 369 S.C. at 518, 633 S.E.2d at 156. The Bryant 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. Similarly, the prosecutor in this case 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.

Notably, the Court of Appeals ruled that the remand court "correctly recogniz[ed] that **credibility was central to the case.**" App. 3 (emphasis added). The impropriety of the admission of the prior convictions was compounded by the prosecutor'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 also charged with the Williams burglary. 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 prosecutor 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 improper admission of Robinson's prior convictions was not harmless beyond a reasonable doubt.

CONCLUSION

Based on the foregoing, Petitioner/Respondent Stephon Robinson respectfully requests that this Court reverse his convictions and sentences and remand his case for a new trial.

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 PETITIONER

This 12th day of January, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Barnwell County
Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT/PETITIONER

v.

STEPHON ROBINSON,

PETITIONER/RESPONDENT

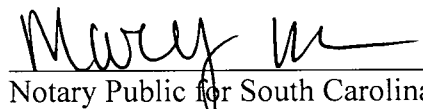
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petitioner/Respondent's Brief of Petitioner 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 upon Stephon Robinson, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 12th day of January, 2018.



Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2018.

 (L.S)
Notary Public for South Carolina

My Commission Expires: May 12, 2027