

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL EUGENE REESE,

APPELLANT

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

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 failing to declare a mistrial after a State's key witness placed appellant's character in issue with evidence of a prior bad act?

STATEMENT OF THE CASE

Appellant was convicted of first degree burglary after a jury trial held before the Honorable R. Lawton McIntosh in Anderson County on December 15, 2011. A twenty (25) year sentence was imposed. Jennifer Johnson, Esquire was trial counsel.

This appeal follows.

ARGUMENT

The trial court erred in failing to declare a mistrial after a State's key witness placed appellant's character into issue with evidence of a prior bad act.

The indictment for first degree burglary in this case alleged:

That Michael Eugene Reese did an Anderson County, on or about October 9, 2010, willfully and unlawfully enter the dwelling of Douglas Nelson, located at 209 Briar Ridge East in Anderson County, without consent and with the intent to commit a crime therein and/or when, in effecting entry or while in the dwelling or in immediate fight he was armed with a deadly weapon and/or causes physical injury to a person who is not a participant in the crime and defendant committed said offense in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Ms. Nelson, the wife of Douglas Nelson testified first for the State. She said she and her husband got home about a quarter to nine at night. Her husband opened the door and appellant jerked the door open from inside the house, yelled, and then started cursing. Appellant was her son, but he did not have permission to be in her house. In fact, she had previously sent him a "no trespass" notice by registered mail. Mrs. Nelson ran out to the yard and dialed 911. (Tr. p. 36, line 19 – p. 37, line 18).

Mr. Nelson testified next. He said appellant screamed at his wife and cursed. He put a shotgun to his face and said, "You are going to die, mother." Mr. Nelson grabbed the gun and they wrestled with it. They hit walls, doors, pictures and Mr. Nelson still held onto the gun. Appellant tried to kick him and he tried to kick appellant. Finally, appellant said, "Let me go." Mr. Nelson said, "You let go of this gun and I will let you go." Appellant turned loose of the gun and ran. (Tr. p. 44, line 14 – p. 45, line 13).

On cross-examination, defense counsel asked Mr. Nelson if appellant was already living outside of his mother's house when Mr. Nelson met his mother. Mr. Nelson said, "Yes. When I dated his mother, he was in prison doing time for something else." Defense counsel said, "Your Honor, I would ask for an instruction to the jury to disregard that comment. It is not responsive." The trial court agreed and gave the requested instruction. (Tr. p. 47, line 14 – p. 48, line 5). The trial court, however, failed to declare a mistrial after the prejudicial comment.

In Mitchell v. State, 298 S.C. 186, 379 S.E. 2d 123 (1989) the Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); *189 State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person. State v. Johnson, 293 S. C. 321, 360 S.E.2d 317 (1987).

In State v. Ross, 272 S.C. 56, 249 S.E. 2d 159 (1978) the Court wrote:

Character evidence is so highly prejudicial it is usually excluded under hard and fast rules.

In State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987) the Court made the following

comments:

It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. See e.g., State v. Gregory, 191 S.C. 212, 4 S.E.2d 1 (1939). Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. See, United States v. Johnson, 610 F.2d 194 (4th Cir. 1979); State v. Byers, 277 S.C.176, 284 S.E.2d 360 (1981); State v. Lyle, 125 S.C.406, 118 S.E. 803 (1923). Even if evidence of other crimes is deemed relevant and admissible, the evidence may

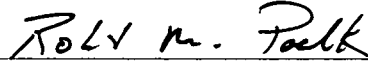
still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. See, State v. Wilson, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence *325 which permit the introduction of prior bad acts or crimes into evidence is the prerequisite that they establish some element, i.e., intent or motive, of the crime charged. See, e.g., State v. Lyle, supra; State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985); and State v. Huggins, 285 S.C. 361, 329 S.E.2d 759 (1985).

The trial courts failure to declare a mistrial denied appellant a fair trial.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of July, 2012.

STATE OF SOUTH CAROLINA

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Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

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V.

MICHAEL EUGENE REESE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Eugene Reese states:

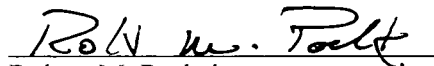
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on December 15, 2011, 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 Michael Eugene Reese.

Respectfully submitted,



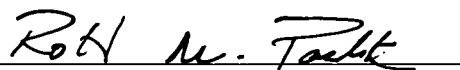
Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 5th day of July, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 5, 2012



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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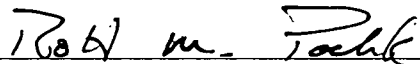
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript

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

July 5th, 2012



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
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Attorney for Appellant

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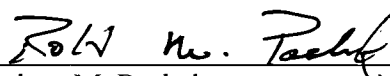
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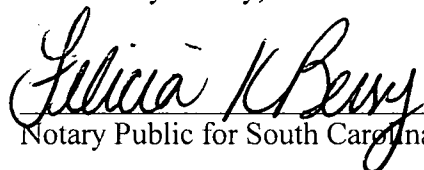
CERTIFICATE OF SERVICE

The undersigned attorney 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 Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Michael Eugene Reese, #121621 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899; this 5th day of July, 2012.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of July, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

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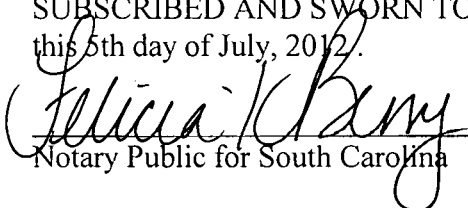
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 5th day of July, 2012 .



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of July, 2012 .

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020 .