

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

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AUG 27 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT STEVE JOLLY,

APPELLANT

Appellate Case No. 2011-190691

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by allowing attorney Robert Wood to testify about “other bad acts” appellant allegedly committed while assisting people who were facing foreclosure, and also to testify that appellant’s filings became so notorious in the law firm that they were called “Jolly Documents” since defense counsel correctly argued this testimony about alleged bad acts appellant committed during civil proceedings would only tend to confuse the issues in this criminal case and mislead the jury?

STATEMENT OF THE CASE

Appellant was indicted by the Horry County grand jury for two counts of obtaining property by false pretenses and one count of the unauthorized practice of law. R. *. His case was called to trial on April 12, 2011 before the Honorable Benjamin H. Culbertson, and a jury. J. Wesley Locklair, III, represented appellant. W. Allen Myrick represented the state. R. 1.

The jury was unable to reach a verdict on the unauthorized practice of law count and Judge Culbertson declared a mistrial. R. 382, ll. 7-17. However, the jury found appellant guilty on two counts of obtaining property by false pretenses. R. 383, l. 21 – p. 384, l. 6. Judge Culbertson sentenced appellant to concurrent terms of ten years imprisonment and a fine of five hundred dollars. R. 393, l. 24 – p. 394, l. 5.

This appeal follows.

ARGUMENT

The court abused its discretion by allowing attorney Robert Wood to testify about “other bad acts” appellant allegedly committed while assisting other people who were facing foreclosure, and also testifying that appellant’s filings became so notorious in the law firm that they were called “Jolly Documents” since defense counsel correctly argued this testimony about alleged bad acts appellant committed during civil proceedings would only tend to confuse the issues in this criminal case and mislead the jury

Relevant Facts

Appellant has another appeal pending in this court. It is State v. Robert Jolly, Appellate Case No. 2011-190688, wherein Judge Culbertson dismissed two indictments for obtaining property by false pretenses because Judge Baxley’s held appellant in criminal contempt for his actions regarding the foreclosure actions involving the homes of Esther Reinhardt and Ernest Mautk. Judge Culbertson ruled because appellant was jailed for his actions that the obtaining property by false pretenses indictments for the same actions constituted double jeopardy. The state has appealed Judge Culbertson’s finding of double jeopardy in that case.

In the present action, alleged victim Annie Bell Martin testified she was the assistant manager at an elementary school cafeteria. She lived at her present address for eleven years. In the summer of 2008, she had gotten behind on her mortgage payments and was facing foreclosure. She said: “I was seeking help on refinancing.” R. 100, ll. 1-19.

Martin stated that she was introduced to appellant in “the first part of July, 2009.” R. 101, ll. 1-3. She remembered appellant had an office in Horry County and “he told me that he could help me where I wouldn’t lose my home and I was under the impression that

he was refinancing my home for me so I wouldn't have to deal with the present mortgage company at that time." R. 101, ll. 4-21. Martin said she signed a "quitclaim deed," and she said her understanding of the situation was vague: "[I]'m not really sure exactly how he described it, more as to he was in charge of my home, I made my payments to him." R. 102, l. 9 – p. 103, l. 5. Martin said her understanding was that "he would own my home until I paid him for it." R. 105, ll. 11-15. Martin said she paid appellant five hundred dollars on April 4, 2009 for this mortgage agreement. R. 108, ll. 12-15.

Martin also testified that appellant instructed her to send a letter to Carrington Mortgage Company telling them to "cease and desist contacting me and calling me in any way at all and if I did receive anything from them I was to bring it to him and he would handle it." Martin said: "I was confident that he was the solution to my problem and that I would not lose my home."

Martin added that she followed appellant's advice about her mortgage. R. 115, l. 21 – p. 116, l. 10. Martin did not consult with a lawyer about her legal problems even though she admitted she did not understand the situation. R. 118, l. 2 – p. 120, l. 9.

On cross-examination Martin said her understanding was that when the mortgage company cashed her check for seven hundred and sixty one dollars that "meant that they would accept a deal that he had offered them on selling my mortgage to him and then he would be the one who owned my mortgage until I paid for it." R. 125, ll. 9-16.

Alleged victim Paulette Holmes testified she had lived in her home for twenty-two years. She fell behind on her mortgage and "I saw a sign about how we can get help if you're behind in your mortgage payments. . . it was Jolly and Associates." R. 136, ll. 3-16. Holmes testified appellant told her "he could save my house. It started I have to give a six

hundred dollar, pay him six hundred dollars. He was going to send it to the mortgage company. If they agreed to, if they cashed the check they agreed to the terms of his letter or whatever he sent them and I could keep my home and pay him.” R. 136, ll. 19-25. Holmes testified that she trusted appellant and she was surprised when she was summoned to court and learned her home was in foreclosure. She claimed appellant did not tell her that her house was in foreclosure and that she found out this fact on her own. R. 150, ll. 5-20.

On cross-examination Holmes admitted she was not aware of what actions appellant took to attempt to save her home from foreclosure. R. 162, l. 1 – p. 164, l. 16.

The state called Robert Wood as a witness. Wood was an attorney with the law firm of Rogers, Townsend and Thomas. His law firm did about a third of its practice in mortgage foreclosures and “complicated foreclosures.” Wood said he did not relish taking people’s homes and that their number one goal is to “let people stay in their homes as long as they can” and he offered that his firm would rather work out an agreement with the borrower rather than foreclose on the property. R. 244, ll. 4-24. Wood testified a quitclaim deed was “an unusual thing” because the person was giving up their interest in the property to someone else “but we do see them everyday, I suppose.” R. 246, ll. 2-18.

When the solicitor asked Wood about his past dealings with appellant, defense counsel objected to that line of questioning was irrelevant. It only had the potential to mislead the jury and confuse the issues because they involved civil proceedings that were outside the scope of this trial. R. 247, ll. 2-10. The judge overruled the objection and said “I’ll allow it.”

Wood then testified in detail about appellant having a quitclaim deed from Mr. Reinhardt, who was involved in the other case pending before this Court on the double

jeopardy issue, and another woman named “Ms. Johnson” and another family named “Utermark’s.” Wood explained his law firm was foreclosing on all three families and that appellant was involved in all three cases by getting the quitclaim deed from the owners. Wood explained his law firm got an answer to the foreclosure proceeding from appellant and “they all look alike. You can tell them instantly it was called [a] Jolly answer. The caption would look the same. He would call the document the same.” R. 247, ll. 5-23. Wood went on to say “my staff would instantly recognize this as a Jolly document, as we call them, and I recognize it too.” R. 250, ll. 12-20.

Wood told the jury that appellant was involved in foreclosure actions with other “clients” in Georgetown and Horry County. He guessed appellant was involved in ten to fifteen other cases. In short, Wood was allowed to impart that appellant was involved in a widespread “scam.” R. 252, ll. 8-12.

Discussion

It is elementary that evidence of other bad acts is not admissible to prove the defendant is likely guilty of the crime for which he is on trial and it is only admissible where it clearly shows motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. See Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E.2d 125 (1923).

In State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), our Supreme Court explained that the process of analyzing bad act evidence begins with Rule 401, SCRE as to whether the evidence is relevant. Here, defense counsel objected on the grounds of relevance, but also offered a Rule 403, SCRE objection that the evidence of appellant’s

“other bad acts” regarding mortgage foreclosures had the tendency to confuse and mislead the jury.

As seen above, Wood was allowed to testify as to ten to fifteen other “similar” mortgage foreclosure actions in Horry and Georgetown County that appellant was involved in. In State v. Sterling, 396 S.C. 599, 723 S.E.2d 176 (2012) the defendant’s sentence was determined by the amount of money lost. Therefore, our Supreme Court found that evidence about other investors losing money and the impact of those loses on their lives was not properly objected to by defense counsel because it appeared counsel sought to exclude these witnesses “from testifying at all.” State v. Sterling, 396 S.C. at 609, 723 S.E.2d at 182.

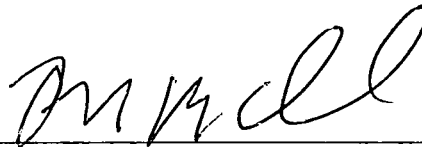
Here, conversely, defense counsel correctly objected that the testimony about appellant’s other mortgage dealings with other people only had the tendency to confuse the issue and mislead the jury in this criminal case. See Jamison v. Ford Motor Company, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007).¹ Evidence that appellant was allegedly involved in “representing” other people behind on their mortgage payments or in foreclosure was highly prejudicial and denied appellant his right to a fair trial on the two counts of obtaining property by false pretenses pending against him. It tended to paint him as a scam artist that needed to be in jail regardless of his guilt on these two counts.

¹ Certiorari dismissed as improvidently granted. Jamison v. Ford Motor Company, 385 S.C. 238, 683 S.E.2d 803 (2009).

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed in this case and remanded to the Horry County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of August, 2012.

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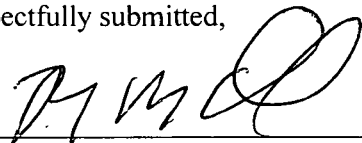
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Steve Jolly #1 states:

1. He is Chief 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 Benjamin H. Culbertson, which was held on April 14, 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 Robert Steve Jolly #1.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of August, 2012.

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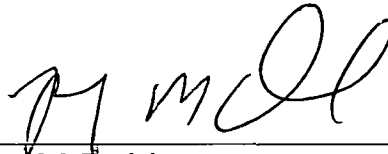
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Entire trial transcript

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

August 27th, 2012



Robert M. Dudek
Chief Appellate Defender

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PO Box 11589
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Attorney for Appellant

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."

August 27th, 2012

A handwritten signature in black ink, appearing to read "R. M. Dudek", written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

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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 Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Robert Steve Jolly, #345727 at Macdougall Correctional Institution, this 27th day of August, 2012.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.