

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONDELL CARTER,

APPELLANT

APPELLATE CASE NO. 2011-195627

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in refusing to grant a mistrial after the solicitor elicited testimony from one of the victims that appellant gave her marijuana because that testimony placed appellant's character into issue and was unduly prejudicial especially when no curative charge was given?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree, two counts of kidnapping, two counts of armed robbery, assault and battery with intent to kill, and possession of a firearm after a jury trial held before the Honorable Benjamin H. Culbertson, on June 27-29, 2011 in Georgetown County. Appellant was sentenced to life imprisonment on all charges except possession of a firearm in which he was sentenced to five years imprisonment. James R. Felts, IV, Esquire and Gerald E. Harmon, Esquire represented appellant.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a mistrial after the solicitor elicited testimony from one of the victims that appellant gave her marijuana because that testimony placed appellant's character into issue and was unduly prejudicial especially when no curative charge was given.

Appellant was indicted for first degree burglary for entering the dwelling of William Douglas on January 23, 2009. He was indicted for kidnapping William Douglas and Christina Carroll on the same date. He was indicted for the armed robbery of both William Douglas and Christina Carroll. He was indicted for assault and battery with intent to kill for shooting Christina Carroll and for possession of a weapon during the commission of a violent crime. Three co-defendants, Herman McCray, Robert Richardson, and Matthew Cobb were also involved. Herman McCray testified for the State. Rosa Milton and Jamie Powell were witnesses at the scene who testified along with William Douglas and Christina Carroll. Rosa Milton admitted on cross-examination to being a user of crack cocaine. (R. p. 30, line 21 –p. 31, line 9). Jamie Powell testified that she was currently incarcerated for drug paraphernalia charges. (R. p. 86, lines 3-9). She was staying at the Douglas residence. She had been asleep for the past twelve hours because she had been up the last three or four days using drugs. (R. p. 89, lines 4-13). She testified that Christina Carroll had just come home from rehab. (R. p. 92, line 15). On cross-examination she admitted the drug she was using was crack cocaine. (R. p. 98, lines 8-10).

Christina Carroll admitted that on the evening of the burglary she had just gotten back from Columbia from drug rehab. (R. p. 106, lines 4-15). After being hit over the head with a pistol and being shot in the leg, she was asked if she was in a lot of pain. She said,

“Yes.” She was then asked if somebody offered her drugs. She said, “Yes.” She was asked if she took them. She again said, “Yes.” She was asked what kind. She replied, “I smoked weed and I was drinking alcohol.” (R. p. 119, lines 12-19). The solicitor could not leave it there. Later, she asked how she got the marijuana. Ms. Carroll said the “suspects gave it to us.” The solicitor asked which one. The answer was Rondell Carter, appellant. (R. p. 121, lines 17-22).

Defense counsel objected and said he had a matter to take up outside the presence of the jury. With the jury out, defense counsel said the testimony about the marijuana coming from his client was highly prejudicial, it was a bell that could not be un-rung, and he moved for a mistrial. (R. p. 121, line 23 – p. 122, line 12). The trial court said it was not going to grant a mistrial, it did think it was so prejudicial, and most of the drug use that was made part of the trial was brought out by the defense. (R. p. 123, lines 2-7). No curative charge was given to the jury. The trial court’s ruling was in error.

In Mitchell v. State, 298 S.C. 186, 379 S.E. 2d 123 (1989) this 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); 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). Counsel’s failure to object to the introduction of this character evidence constituted ineffectiveness.

The Court has ruled before that “character evidence is so highly prejudicial that it is usually excluded under the fast rules.” State v. Ross, 272 S.C. 56, 249 S.E. 2d 159 (1978),

citing State v. Britt, 235 S.C. 395, 111 S.E. 2d 669 (1959) overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E. 2d 315 (1991).

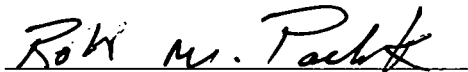
Testimony concerning extraneous drug usage or dealing has long been held to be reversible error. State v. Coleman, 301 S.C. 57, 389 S.E. 2d 659 (1990); State v. Peake, 302 S.C. 378, 396 S.E. 2d 362 (1990); State v. Bolden, 303 S.C. 41, 398 S.E. 2d 494 (1990); State v. Smith, 309 S.C. 442, 424 S.E. 2d 496 (1992); State v. Hough, 325 S.C. 88, 480 S.E. 2d 77 (1997).

Defense counsel had the right to cross-examine witnesses who took the stand about their use of drugs. The solicitor certainly did not object. Appellant in this case had not taken the stand and his character could not be placed into issue. Whether he distributed drugs to Christina Carroll was not relevant to the charges for which he was on trial. The solicitor deliberately brought out this testimony to prejudice appellant's case.

CONCLUSION

Appellant's conviction should be reversed and he should be given a new trial.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of November, 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."

November 2, 2012

Handwritten signature of Robert M. Pachak in cursive script, written over a horizontal line.

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THE STATE,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of November, 2012.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of November 2012.

Paul McKay (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022