

ORIGINAL

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2011-202546

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THE STATE, .....RESPONDENT

v.

RONALD EDWARD GOODEN, .....APPELLANT.

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**FINAL BRIEF OF RESPONDENT**

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ATTORNEYS FOR RESPONDENT

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## **RESPONDENT'S STATEMENT OF ISSUE ON APPEAL**

1. Whether the trial court properly admitted Appellant's prior strong arm robbery conviction for impeachment purposes under Rule 609, SCRE, without conducting a probative value/prejudicial impact analysis where the conviction met the ten year time limit under Rule 609(b) and where strong arm robbery is a crime of dishonesty under Rule 609(a)(2)?

## STATEMENT OF THE CASE

Appellant was indicted at the March, 2011, term of the grand jury for Georgetown County for attempted murder (2011-GS-22-54). He was represented by Reuben Goude, Esquire. On October 26-27, 2011, Appellant proceeded to trial by jury pursuant to which he was found guilty of the lesser included statutory offense of assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Benjamin H. Culbertson to twenty (20) years' imprisonment. Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted an Initial Brief. This Initial Brief of Respondent follows.

## STATEMENT OF FACTS

After jury selection but before the jury was sworn, counsel for Appellant made a motion in limine asking the trial court to rule on the admissibility of any prior offenses the State intended to use to impeach Appellant in the event he testified. The solicitor said she believed a 2007 North Carolina conviction for larceny of a firearm, and a 1992 South Carolina conviction for strong arm robbery would be admissible. Appellant objected to the 1992 conviction being used, and argued that at twenty years old it was too remote for admission despite technically falling within the ten year time frame. The trial court then asked for each party's position on the probative value of the conviction versus its prejudicial effect. After hearing from counsel, the court ruled the solicitor would not be able to use the strong arm robbery. However, the solicitor handed up a copy of this Court's published opinion in State v. Al-Amin.<sup>1</sup> After reviewing the opinion, the trial court reversed its ruling and decided the State could use the 1992 strong arm robbery to attack Appellant's credibility if he took the stand. (R. p.6, line 21-p.12, line 25).

On October 22, 2010, Appellant walked into Shaw's Corner Store in the city of Andrews in Georgetown County, threw something on a customer, and set him on fire. (R. p.16, line 17-p.17, line 64, line 19). Officer Timothy Harrelson of the Georgetown County Sheriff's Office responded to the scene when he was flagged down by a pedestrian who said she had seen a man on fire running across the road adjacent to the store. He went inside the store and found Curtis Anderson walking around in a daze. Mr. Anderson had burn injuries on his face, nose, mouth, throat, chest and arm. (R. p.18, line 10-p.19, line 14). Officer Harrelson said it was a gruesome scene and that Mr.

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<sup>1</sup> 353 S.C. 405, 414, 578 S.E.2d 32, 37 (Ct. App. 2003), cert. denied, (October 21, 2004).

Anderson's skin was peeling away from his face. (R. p.20, lines 9-17). Officer Matthew Hoeffler with the Andrews Police Department also responded to the scene and observed Mr. Anderson with severe third-degree burns to his chest, face and both of his arms. (R. p.21, line 23-p.22, line 15). When he exited the store, Officer Hoeffler saw Appellant standing on the edge of the roadway. Appellant put his hands in the air and stated: "It's me. I did it." (R. p.23, lines 17-25). Alphonso Giles, Sr., was standing beside Mr. Anderson in the store at the time of the incident. When Appellant entered the store, he said "like I told you," just before Mr. Anderson burst into flames. Mr. Giles helped extinguish the fire by patting it out. (R. p.24, lines 3-10; p.25, line 6-p.26, line 14).

Mr. Anderson testified he remembered being in the store when Appellant approached him, said "watch out," and doused him with gas. The next thing he remembers is being on fire. (R. p.27, line 10-p.28, line 7). He was flown by helicopter to the burn center in Augusta, Georgia, where he spent three months, followed by one month in a rehabilitation center in Florence, South Carolina. (R. p.28, line 18-p.29, line 15). Mr. Anderson described his ongoing treatment and the extent of his injuries. (R. p.30, line 15-p.31, line 25).

Appellant testified in his own defense. He described his poor living conditions and proximity to the store, and how he had been picked on by Mr. Anderson and two other patrons, Gerry Chandler and Greg Tisdale. Appellant said the three men accused him of being gay because he had let a man named Johnny Bradshaw live in his trailer. Appellant claimed he had been beaten up by the others in the past, that in the days leading up to the incident he had been threatened with swords and guns, and that someone had even fired shots into his trailer during the night. (R. p.32, line 4-p.45, line

9). He testified that he confronted the three men in the store the afternoon before the incident and told them if they kept “bothering ” him and “lying on” him, he was “going to set your ass on fire.” (R. p.46, line 5-p.47, line 6). Appellant claimed they responded that: “Yeah, and we’ll set your ass on fire.” Appellant testified that Mr. Tisdale said he was going to get a gun, and left the store. (R. p.47, lines 7-20). He testified he went home, but decided to return to the store later to get his cell phone, which was charging in the back room. Appellant claimed that as he approached the store, he picked up a jug of gas that was on top of a lawnmower next to the store. He testified that when he walked into the store Mr. Anderson made a motion with his hand, like he was shooting a pistol. (R. p.49, line 17-p.53, line 3). Appellant testified he threw the gas on Mr. Anderson and lit his lighter all in one motion, at which point both he and Mr. Anderson caught fire. (R. p.54, line 19-p.55, line 3).

On cross-examination, the solicitor asked Appellant about the 2007 North Carolina conviction for larceny of a firearm, as well as the 1992 South Carolina conviction for strong arm robbery. The solicitor did not question Appellant about the details of the prior crimes. (R. p.58, lines 7-17).

## ARGUMENT

### I.

Appellant contends the trial court erred in admitting his prior strong arm robbery<sup>2</sup> conviction for impeachment purposes without conducting a probative value/prejudicial effect analysis under Rules 403 & 609, SCRE. He argues the analysis was required because strong arm robbery, unlike armed robbery, is not a crime of dishonesty under Rule 609(a)(2), and because the prior offense was “too remote in time.” The State disagrees and submits these arguments are without merit.

First, the State submits Appellant’s prior strong arm robbery conviction fits squarely within the time limits for admission of impeachment evidence under the Rules of Evidence. Rule 609 provides:

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Rule 609(b), SCRE (emphasis added). Here, Appellant’s trial took place on October 26-27, 2011. His prior conviction for strong arm robbery was in 1992; however, in 1999, after Appellant’s release to parole, he violated parole and was returned to prison. Appellant was ultimately released from confinement on the strong arm robbery sentence on January 18, 2002. (R. p.7, lines 2-15). Since only nine years and nine months had elapsed since Appellant’s release from confinement on the prior conviction, that prior conviction clearly falls within the ten-year time limit provided by Rule 609(b), SCRE,

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<sup>2</sup> Common law or “strong arm” robbery was codified as “common law robbery” in Section 16-11-325 of the South Carolina Code with an effective date of January 1, 1994.

and it was admissible to impeach Appellant at trial. State v. Al-Amin, 353 S.C. 405, 414, 578 S.E.2d 32, 37 (Ct. App. 2003), cert. denied, (October 21, 2004). Appellant argues his case is distinguished from Al-Amin because Al-Amin's conviction was only twelve years old, while Appellant's conviction was almost twenty years old. Although this distinction is correct, the State submits Appellant has focused on a distinction without a difference. Rule 609 specifically hinges on the time elapsed between the witness's release from confinement and the date of trial. In both Appellant's case and Al-Amin's case, that time was less than ten years, so the trial court properly concluded it met the Rule 609(b) time limit.

Second, the State submits Appellant's prior strong arm robbery conviction fits squarely within the requirements for the admission of impeachment evidence as a "crime of dishonesty." Rule 609 provides in part that: "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)(2), SCRE. In Al-Amin, supra, this Court considered the novel question of whether armed robbery is a "crime of dishonesty" in South Carolina. After a thorough analysis of case law from other jurisdictions, the Court held that armed robbery is indeed a "crime of dishonesty" for purposes of Rule 609(a)(2), SCRE. Appellant argues his case is distinguished from Al-Amin because Al-Amin's conviction was for armed robbery, while Appellant's conviction was for strong arm robbery. Although this distinction is correct, the State submits Appellant has again focused on a distinction without a difference.

In Al-Amin, this Court noted that the common law offense of robbery is essentially the commission of larceny with force. Id. at 424, 578 S.E.2d at 42; State v.

Brown, 274 S.C. 48, 49; 260 S.E.2d 719, 720 (1979). The Court found: “It is the larcenous element of taking property of another which makes the action dishonest,” Al-Amin at 425, 578 S.E.2d at 43, and concluded armed robbery is a crime of dishonesty under rule 609(a)(2). This analysis clearly extends to strong arm robbery and larceny, which have the exact same “larcenous element” as armed robbery. Therefore, the State submits the trial court properly found Appellant’s prior strong arm robbery was a crime of dishonesty for impeachment purposes.

Since Appellant’s strong arm robbery conviction met the Rule 609(b) time limit and fit the description of a crime of dishonesty under Rule 609(a)(2), there was no requirement for a probative value/prejudicial impact analysis. As held by this Court, “Rule 609(a)(2) . . . clearly limits the discretion of the court by mandating the admission of crimes involving dishonesty without any determination as to a balancing test.” Al-Amin at 426, 578 S.E.2d at 43. Thus, the State submits Appellant’s prior strong arm robbery conviction was properly admitted as impeachment evidence by the trial court. In any event, to the extent the strong arm robbery should have been excluded, Appellant suffered no prejudice from its admission because it was cumulative to the evidence of the North Carolina conviction for larceny of a firearm, which was admitted under Rule 609 without objection.

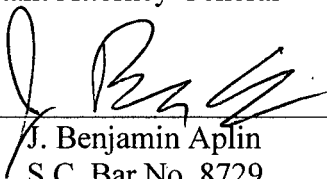
**CONCLUSION**

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina  
November 29, 2012

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**CERTIFICATE OF COUNSEL**

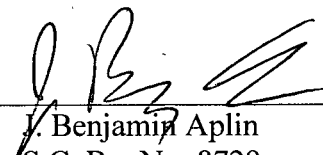
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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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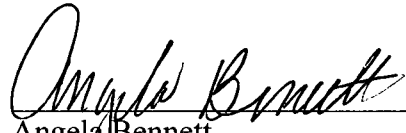
**PROOF OF SERVICE**

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I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated November 29, 2012, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Lanelle Cantey Durant, Appellate Defender  
S.C. Commission on Indigent Defense  
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I further certified that all parties required by Rule to be served have been served.  
This 29<sup>th</sup> day of November, 2012.

  
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