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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARLOS LAMONTE MCJIMPSEY

APPELLANT

APPELLATE CASE NO. 2012-213007

ANDERS BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The Trial Court erred in admitting Appellant's prior 2000 conviction for second degree burglary where (1) the State did not present evidence that Appellant's release date from confinement was within the prior ten years; (2) the Trial Court failed to conduct the required on-the-record balancing test of whether the probative value outweighed its prejudicial effect under either Rule 609(a)(1) or 609(b); and (3) Appellant was prejudiced by the admission of this prior conviction where credibility of the witnesses was of extreme importance when there was no other evidence as to whether Appellant was driving a motor vehicle after having been declared a Habitual Offender.

STATEMENT OF THE CASE

On March 29, 2012, Appellant Carlos Lamonte McJimpsey was indicted by the Spartanburg County Grand Jury for operating a motor vehicle after having been declared a Habitual Offender by the S.C. Department of Public Safety in violation of S.C. CODE ANN. § 56-1-110. R. 139-40.

A trial was held before the Honorable Roger Couch and a jury on August 15, 2012.

R. 1. McJimpsey was represented by Roger Poole, and the State was represented by Jennifer Jordan. Id.

On August 15, 2012, the jury found McJimpsey guilty for the offense of habitual traffic offender. R. 125, l. 25 – 126, l. 4.

Judge Couch sentenced McJimpsey to five years to run consecutive with a four year sentence for his probation revocation. R. 133, ll. 2-6; 136, ll. 11-13.

McJimpsey timely filed and served his Notice of Appeal on August 21, 2012.

ARGUMENT

The Trial Court erred in admitting Appellant's prior 2000 conviction for second degree burglary where (1) the State did not present evidence that Appellant's release date from confinement was within the prior ten years; (2) the Trial Court failed to conduct the required on-the-record balancing test of whether the probative value outweighed its prejudicial effect under either Rule 609(a)(1) or 609(b); and (3) Appellant was prejudiced by the admission of this prior conviction where credibility of the witnesses was of extreme importance when there was no other evidence as to whether Appellant was driving a motor vehicle after having been declared a Habitual Offender.

On February 14, 2012, Officer Brendall Mathis and Officer Christopher Layton were patrolling the Howard Street area around Arch Street in Spartanburg. While patrolling, they passed a blue Chevrolet being driven in the opposite direction by a person Officer Mathis claimed he recognized as McJimpsey. Officer Mathis turned around to try to catch up with the blue Chevrolet. R. 41, ll. 3-18. Officer Mathis said he knew McJimpsey's license had been suspended. R. 41, ll. 19-24.

By the time Officer Mathis could get turned around, he said the blue Chevrolet had already gone through the intersection. R. 45, ll. 14-16. The officers eventually noticed the blue Chevrolet parked on the opposite side of the road. Officer Mathis testified that McJimpsey was sitting in the driver's seat, a female was in the passenger seat, and another male subject was in the back seat. R. 45, l. 17 – 46, l. 5.

McJimpsey testified that he never drove the vehicle. He testified that on the morning of February 14, 2012, he had assisted his fiancée to the eye doctor and on the way back from the eye doctor, McJimpsey's oldest son called the fiancée and asked her to come pick him up. R. 74, l. 22 – 75, l. 2.

After his fiancée picked up McJimpsey's oldest son, they stopped in front of McJimpsey's cousin's house. Both McJimpsey and his cousin worked for their mutual

uncle, and McJimpsey was going to obtain a ride back to work with his cousin. R. 75, l. 3-12.

When McJimpsey got out of the car, his fiancée slid to the passenger side to straighten her contact. Only the passenger side visor had a mirror. R. 75, l. 13 -17; 87, ll. 11-14. While she was doing this, McJimpsey sat back down in the car on the driver's side while the car was parked. R. 75, l. 21 – 76, l. 12. It was at this point that the officers arrived. R. 87, ll. 16-24.

During the trial, the State used a 2000 conviction for second degree burglary to impeach McJimpsey. R. 63, ll. 21 – 25. Defense counsel objected to the admissibility of this conviction, arguing that it was too remote in time. R. 65, ll. 9 – 13.

Rule 609(b), SCRE provides that “[e]vidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the date of the release of the witness from confinement imposed for that conviction, whichever is the later date”

More than ten years had obviously passed since the date of the conviction. Furthermore, the State presented no evidence as to the release date. The solicitor stated: “And his release date for that burglary second, Your Honor, he did two different stints on violations. It appears one was in '04 and, then, he had another one in '06.” R. 64, ll. 3-6.

The solicitor's statement as to McJimpsey's release date was never confirmed by any record showing when McJimpsey was released.

In addition, as to a remote conviction, the trial court is required to determine “whether the probative value of the conviction supported by specific facts and circumstances substantially outweigh[ed] its prejudicial effect” as required by Rule 609(b)

prior to admitting a remote conviction. See State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) (for test required by Rule 609(b)).

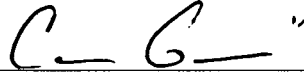
Furthermore, even if the conviction was not remote, the Trial Court also never made any determination as to whether “the probative value of admitting [the prior conviction] outweigh[ed] its prejudicial effect to the accused” as required by Rule 609(a)(1). See State v. Scriven, 339 S.C. 333, 340, 529 S.E.2d 71, 75 (Ct. App. 2000) (“[Rule 609(a)(1) requires the trial judge to balance the probative value of the evidence for impeachment purposes against the prejudice to the accused.”)

The credibility of the witnesses was essential in this case where there was no evidence otherwise as to whether McJimpsey was driving or not on February 14, 2012. The Trial Court’s error in admitting the remote burglary conviction was therefore not harmless, and McJimpsey was unfairly prejudiced by the admission of this remote burglary conviction.

CONCLUSION

Based on the foregoing arguments, Appellant Carlos Lamonte McJimpsey requests this Court to reverse his conviction and remand for a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of June, 2013.

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Roger L. Couch, Circuit Court Judge

THE STATE,

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V.

LAMONTE MCJIMPSEY,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Carlos Lamonte McJimpsey states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on August 15, 2012, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Carlos Lamonte McJimpsey.

Respectfully submitted,


Carmen V. Ganjehsani
Appellate Defender

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ATTORNEY FOR APPELLANT SC Court of Appeals

This 12th day of June, 2013.

STATE OF SOUTH CAROLINA

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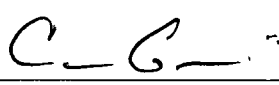
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Entire transcript of trial held August 15, 2012; and
- (3) Sentencing sheet.

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

June 12th, 2013


Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

June 12th, 2013



Carmen V. Ganjehsani
Appellate Defender

S.C. Commission on Indigent Defense
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1330 Lady Street, Suite 401
Post Office Box 11589
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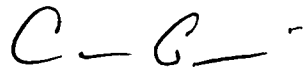
V.

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CERTIFICATE OF SERVICE

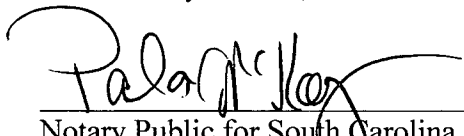
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Carlos Lamonte McJimpsey, #265743 at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 12th day of June, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of June, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

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