

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

v.

FRED FREEMAN,

ORIGINAL
RECEIVED
MAY 24 2018
SC Court of Appeals
RESPONDENT,

APPELLANT

APPELLATE CASE NO 2017-001833

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

LAURA CAUDY
Appellate Defender

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The solicitor erred in his closing argument to the jury that appellant could be found guilty of burglary in the first degree because he had two or more prior convictions for burglary when there was ample evidence to find appellant guilty in the first degree by multiple other elements.....4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996)..... 3

STATEMENT OF ISSUE ON APPEAL

Whether the solicitor erred in his closing argument to the jury that appellant could be found guilty of burglary in the first degree because he had two or more prior convictions for burglary when there was ample evidence to find appellant guilty of burglary in the first degree by multiple other elements?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree and possession of a weapon during the commission of a violent crime after a jury trial held before the Honorable Maite Murphy on August 28-29, 2017, in Berkeley County. Respective sentences of forty-five (45) years and five (5) years were imposed. John Church, Esq. and Keisha White, Esq. represented appellant. Bryan Alfaro and Benjamin Dennis were the solicitors.

This appeal follows.

STANDARD OF REVIEW

“The trial court has broad discretion when dealing with the propriety of the solicitor’s argument, including the question of whether to grant a defendant’s mistrial motion.” State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). “The trial court’s discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant.” Id. “On appeal, the appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record.” Id. at 324, 468 S.E.2d at 625. “The appellate has the burden of proving she (he) did not receive a fair trial because of the alleged improper argument.” Id. at 324, 468 S.E.2d at 625.

ARGUMENT

The solicitor erred in his closing argument to the jury that appellant could be found guilty of burglary in the first degree because he had two or more prior convictions for burglary when there was ample evidence to find appellant guilty in the first degree by multiple other elements.

The indictment charging appellant with burglary in the first degree read as follows:

BURGLARY, FIRST DEGREE

That in Berkeley County, South Carolina on or about October 3, 2015, the Defendant Fred Freeman, did enter the dwelling of Ashley Mashea Kulas and Jeremiah Michael Kulas without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; and/or the defendant displayed what was appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

During closing argument the solicitor summed up the law on his first degree burglary case as follows:

That's what he did when he went in. He went in to steal and he stole. That's the basis for burglary, first degree. That's a burglary. What he did there, just that slide is a burglary.

That part there that says, and either, leads us to this. If that first slide, plus any of these three – any; not two, not three, just one. If any of those apply, he's guilty of burglary, first degree. I submit that he's guilty under all three of those things, but we only have to prove one.

The testimony that you heard and the stipulation that you heard means he's guilty of all three. Because while entering or while inside that house, he was armed with a deadly weapon, he had two of them; or caused physical injury to a person who is not a participant, we saw the injury to Mr. Kulas. That happened during the burglary.

Uses or threatens the use of a deadly weapon. You heard Mr. Kulas say when he got to the fence he turned and saw the gun.

And that also ties into these. All of those under Number 1 are or's. Any of those four prove that. All four of those do.

And, again, we just have to prove – we could stop there. That's enough for you to find him guilty of burglary first, but in this case you also have Number 2. Even though you don't need it, you have Number 2. The stipulation that the judge read to you, that these burglaries were committed by a person, Mr. Freeman, with two or more prior convictions on his record, burglary, got that.

Or Number 3. Again, you've already got one, you've got two. That's twice as much as you need; you only need one, but you have three. The entering or remaining occurred in the nighttime. Mr. Kulas, Mrs. Kulas, Mr. Porter, the responding officer all say that it was dark when this happened.

(R. p. 210, line 5- R. p. 211, line 18).

The solicitor did not need to add the fact that appellant had two prior burglaries. He was just gilding the lily by putting appellant's character into issue.

CONCLUSION

Appellant's convictions should be reversed.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRED FREEMAN,

APPELLANT

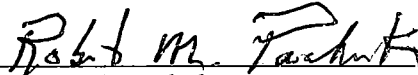
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Fred Freeman 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 Maite Murphy, which was held on August 28 - 29, 2017, 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 Fred Freeman.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 24th day of May, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRED FREEMAN,

APPELLANT

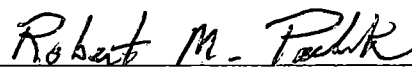
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Trial Transcript dated August 28-29, 2017

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

May 24, 2018


Robert M. Pachak
Appellate Defender

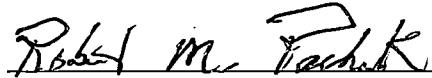
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 24, 2018.



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Maite Murphy, Circuit Court Judge

RECEIVED

MAY 24 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FRED FREEMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Fred Freeman, 235180, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 24th day of May, 2018.

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of May, 2018.

Maite Murphy (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.