

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RASHEED DAEVON MCEACHERN,

APPELLANT

APPELLATE CASE NO 2017-002423

ANDERS BRIEF OF APPELLANT

RECEIVED
SEP 05 2018
SC Court of Appeals

TAYLOR D GILLIAM
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court erred in admitting evidence of Appellant's two prior burglaries, where fundamental fairness should have prevented their introduction, where Appellant's trial strategy did not involve contesting any of the other elements of burglary first degree, and where the burglary statute did not require proof of two priors for a conviction?

STATEMENT OF THE CASE

Appellant was indicted on May 5, 2016 by a Dorchester County grand jury for burglary in the first degree, kidnapping, and attempted murder. R. 324-329. He was subsequently indicted on November 2, 2017 for four additional counts of kidnapping, four additional attempted murder charges, armed robbery, and one count of possession of a weapon during the commission of a violent crime. R. 330-349.

He proceeded to trial on November 13, 2017 before the Honorable Maite Murphy and a jury. R. 1. Ash Chisholm and John Loy represented Appellant, and Glenn Justice and George Smythe represented the State. R. 1. Following a two-day trial, the jury found Appellant guilty as indicted. R. 310, l. 3 – R. 311, l. 5. Judge Murphy sentenced Appellant to thirty years' imprisonment on each of the attempted murder charges, thirty years on each of the kidnapping charges, thirty years on the armed robbery charge, five years on the possession of a weapon during a violent crime, and forty-five years for the first degree burglary charge. R. 318, l. 14 – R. 320, l. 6. Each of the sentences was crafted to run concurrent to each other. Id.

This brief follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). This court is bound by the trial court's factual findings unless they are clearly erroneous. Id. at 6, 545 S.E.2d at 829. On review, courts are limited to determining whether the trial judge abused his discretion. Id. The appellate courts do not re-evaluate the facts based on their own view of the preponderance of the evidence but simply determine whether the trial judge's ruling is supported by any evidence. Id. The admission and exclusion of evidence is largely a matter of trial judge discretion and his rulings will not be overturned on appeal unless he manifestly abuses his discretion and the defendant suffered prejudice as a result. State v. Thompson, 305 S.C. 496, 502, 409 S.E.2d 420, 424 (Ct.App.1991).

ARGUMENT

The trial court erred in admitting evidence of Appellant's two prior burglaries, where fundamental fairness should have prevented their introduction, where Appellant's trial strategy did not involve contesting any of the other elements of burglary first degree, and where the burglary statute did not require proof of two priors for a conviction.

Relevant facts

On July 17, 2015, Jessica McBride was at her house when a man named Tater Evans approached the front door and asked to buy some marijuana. R. 76, l. 1 – R. 96, l. 1. Soon thereafter, Evans and two other men entered the home in Dorchester County. Id. Evans was armed with a pistol and forced his way inside the home. Id. A scuffle between the residents of the home and the three men, two of which were masked, followed.¹ Id.

McBride was hit in the stomach and her boyfriend, Marshall Johnson, was struck with the pistol. Residents of the house, including McBride's sister-in-law Brittany Johnson and her boyfriend, barricaded themselves in a bedroom while the intruders ransacked the house. McBride was shot in the knee and foot. R. 80, l. 21 – R. 81, l. 17. The house was damaged and money was stolen, according to McBride. R. 84, l. 23 – R. 85, l. 24.

McBride, who does not know Appellant, was unable to identify him when she spoke with law enforcement. R. 93, l. 11 – R. 94, l. 1. Similarly, Marshall Johnson only saw Evans' face; he did not see either of the other two men's faces. R. 102, ll. 6 – 16. Marshall was unfamiliar with Appellant and stated that he had "[n]ever seen him in my life." R. 105, ll. 6 – 11. Marshall's sister, Brittany Johnson, likewise did not know Appellant. R. 112, ll. 12 – 13. Eric

¹ One man had a shirt tied around his face, and the other was wearing a ski mask. R. 79, ll. 6 – 10.

Mazo, a neighbor to McBride and the Johnson's, did not know Appellant either. R. 138, ll. 10 – 18; R. 144, ll. 8 – 15.

Brittany Johnson called 911 and law enforcement arrived. R. 86, ll. 18 – 21; R. 108, ll. 18 – 21; R. 113, l. 16 – R. 115, l. 7. Dwayne Peters, a lieutenant with the Dorchester County Sheriff's Office, located a palm print on a black Tahoe and requested that a crime scene technician process the print. R. 124, l. 12 – R. 127, l. 2; R. 152, ll. 2 – 7. The crime scene investigator, Derek Sauro, testified that the print came from Appellant. R. 172, l. 23 – R. 173, l. 4.

Appellant was subsequently arrested and charged with various crimes. R. 221, l. 18 – R. 222, l. 3; R. 324. At the beginning of the second day of trial, counsel for Appellant moved to prevent the introduction of two prior burglary convictions. R. 132, l. 15 – R. 134, l. 18. Based upon the following trial strategy, counsel sought to exclude the mention of these convictions:

It's my understanding that the State intends to introduce evidence Mr. McEachern has been convicted of two previous burglaries, and they want to introduce that in order to prove the burglary first in this case.

And it's kind of an unusual case in that the element of burglary first, the aggravating factors, pretty much every one of them that exists is met in this case: It happened at night, there was a gun involved, there was robbery, there was an assault, and obviously, the two previous convictions.

What's also unusual in this case is that *I'm not contesting any of that*. I pretty much told the jury in my opening, I haven't had any questions that go towards whatever during the daytime, whether these guys were armed. I'm not even arguing that. *My whole defense is that my client didn't do it*.

Id. (emphasis added). Counsel further argued that “the right of the Defendant and his right to fundamental fairness in the proceeding” should be weighed against the State's obligation to meet the statutory requirements. Id. He contended that “[t]his would basically be a backdoor way to get into evidence that the jury otherwise wouldn't be able to hear.” Id.

The trial court denied the motion and allowed introduction of the prior convictions. R. 136, ll. 1 – 11. One of the State’s next witnesses, Tonda Westbury, was an employee from the Dorchester County Clerk of Court’s Office. R. 209, l. 22 – R. 211, l. 9. Westbury served as the custodian of records and authenticated two certified copies of sentencing sheets relating to burglary convictions for Appellant. Id. Following Westbury’s testimony, the State rested. R. 211, ll. 17 – 18.

Counsel for Appellant then renewed his prior objection regarding the burglaries and moved for a directed verdict. R. 212, ll. 6 – 15. Following closing arguments and the trial court’s instructions to the jury, defense counsel renewed these prior objections once more. R. 305, ll. 10 – 11.

Discussion

The South Carolina General Assembly has defined first degree burglary as follows:

(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
 - (a) is armed with a deadly weapon or explosive; or
 - (b) causes physical injury to a person who is not a participant in the crime; or
 - (c) uses or threatens the use of a dangerous instrument; or
 - (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
- (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311.

In addition to being unnecessary following counsel’s concession that “pretty much every” element of first degree burglary was met at the time of his motion to exclude the prior

convictions, the burglary statute is fundamentally unfair and contravenes the South Carolina Rules of Evidence.

Unlike Rule 609 of the South Carolina Rules of Evidence, there is no limiting timeframe on S.C. Code Ann. § 16-11-311(2). The State could attempt to use decades-old convictions in order to enhance a burglary charge. Consider defense counsel's contention that Appellant was not at the home and did not participate in the burglary, coupled with the lack of evidence placing him inside the home, the admission of these prior convictions prejudiced Appellant and led the jury astray.

The State, in closing argument, noted the "or" from the burglary statute and advised the jury that only one of four aggravating circumstances must be proven. R. 258, l. 15 – R. 259, l. 16. The assistant solicitor alleged that the State proved all four but again noted that only one had to be shown. Id.

The State is required to prove all the elements of first degree burglary beyond a reasonable doubt. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000). The statute, as outlined above and as discussed by the assistant solicitor, only required that the State prove one of many possible aggravating circumstances. It was unnecessary for the prior burglary convictions to be discussed before the jury.

In the instant case, there is no overwhelming evidence of guilt of Appellant as there was in State v. Keenon, 356 S.C. 457, 590 S.E.2d 34 (2003). Therefore, the failure to exclude these prior convictions cannot be harmless. Appellant was convicted on an improper basis; as admitted by the State during closing arguments, it did not have to prove all of the aggravating circumstances, just one. Therefore, the admission of the unrelated prior burglary convictions was erroneous.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand this matter to the Dorchester County Court of General Sessions.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", is written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of September, 2018.

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Honorable Maite Murphy, Circuit Court Judge

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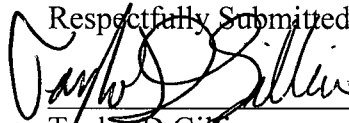
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rasheed Daevon McEachern 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 November 13 - 14, 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 Rasheed Daevon McEachern.

Respectfully Submitted,



Taylor D. Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of September, 2018.

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Honorable Maite Murphy, Circuit Court Judge

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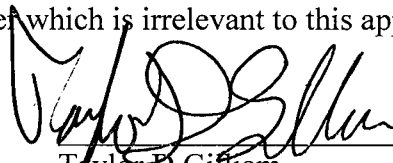
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire trial transcript;
- (3) State's Exhibits 1-22, 25, and 26;
- (4) Court's Exhibits 1 & 2.

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

September 5, 2018



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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."

September 5, 2018.



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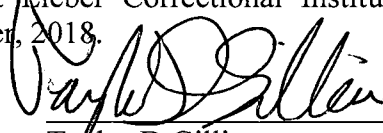
V.

RASHEED DAEVON MCEACHERN,

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 Rasheed Daevon McEachern, 356277, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of September, 2018.

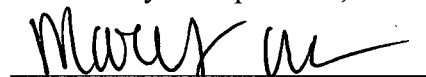


Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: May 12, 2027.