STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL LEE TROTTER,

APPELLANT

APPELLATE CASE NO. 2019-000378

RECEIVED
FEB 03 2020
SC Court of Appeals

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to quash the burglary indictment because it was obtained only after Appellant refused to plead guilty and exercised his constitutional right to a jury trial?

STATEMENT OF THE CASE

On March 19, 2018, the Oconee County Grand Jury indicted Appellant, Michael Lee Trotter, for possession of tools used in the commission of a crime, grand larceny and petit larceny, indictments #2018-GS-37-466, 467, 468. (R. pp. 209-214). On October 18, 2018, Appellant appeared before the Honorable R. Scott Sprouse and moved for a bond reduction and a speedy trial. (R. pp. 1-6). W. Wilson Barr represented Appellant at the hearing. Jason Alderman represented the State. Judge Sprouse denied the bond reduction motion but ordered that if the case was not resolved by January 1, 2019, Appellant could revisit the motion. (R. p. 5). On February 11, 2019, the Oconee County Grand Jury indicted Appellant for burglary second degree violent, indictment #2019-GS-37-266. (R. pp. 207, 208). On February 25, 2019, Appellant appeared before the Honorable R. Scott Sprouse and proceeded to jury trial. Again, W. Wilson Barr represented Appellant and Jason Alderman represented the State. the jury returned verdicts of guilty on all four indictments. Judge Sprouse sentenced Appellant to fifteen (15) years for burglary, ten (10) years concurrent for both larceny charges and five (5) years concurrent for the possession of tools during the commission of a crime. A timely notice of intent to appeal was served on March 5, 2019. (R. pp. 215-218). This appeal follows.

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." State v. Banda, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). Thus, "this [c]ourt is limited to determining whether the trial court abused its discretion." State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Accordingly, "[t]his [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." Id. State v. Davis, 422 S.C. 472, 480–81, 812 S.E.2d 423, 428 (Ct. App. 2018).

ARGUMENT

The trial judge erred in refusing to quash the burglary indictment because it was obtained only after Appellant refused to plead guilty and exercised his constitutional right to a jury trial.

The jury found Appellant guilty of stealing two trailers from a business called Universal Services 101, located on Shiloh Road in Seneca and owned by Roderick Moon. The jury also found Appellant guilty of the burglary of a building on Stephens Farm Road. The property on Stephens Farm Road was vacant and in foreclosure. (R. p. 90, lines 1-13). All four indictments allege that the crimes took place on November 28, 2017. The property on Stephens Farm Road is next door to where Appellant lived. (R. p. 129, line 20 – p. 130, lines 1-13). The police found the missing trailers on the Stephens Farm property. (R. p. 133, lines 1-8). When they found the trailers, they also found Appellant and Ariel Roach trespassing on the property. (R. p. 97, lines 17-23). Both Appellant and Roach were arrested and charged with trespassing on November 28, 2017. (R. p. 142, lines 1-8; p. 120, lines 18-20). Appellant was indicted for possession of tools used in the commission of a crime, grand larceny and petit larceny in March of 2018. (R. pp. 209-214). Appellant was later indicted for burglary in February of 2019. (R. pp. 207, 208).

Prior to trial on October 18, 2018, Appellant appeared before Judge Sprouse and moved for a bond reduction and a speedy trial. (R. pp. 1-6). Judge Sprouse denied the bond reduction motion but ordered that if the case was not resolved by January 1, 2019, Appellant could revisit the motion. (R. p. 5). The trial took place in February of 2019.

Prior to trial Appellant moved to quash the burglary indicment. (R. p. 44, lines 10-21). Appellant argued:

> Your Honor, we would also ask that these charges be severed. The burglary and the grand larceny are separate charges. The dates of the indictment are actually different, the elements, the witnesses. In fact, there was no mention of burglary until, I think, the 18th of this month. This case was already on the docket when

> they got the indictment for burglary, served a week later on the Defendant. So not only is it a separate charge, I think it should be washed [sic] completely. It was done in anticipation of just trying to make this case look more egregious to the jury.

(R. p. 44, lines 10-21). The State responded, "Judge, we had conversations, Mr. Burr and I, that if Mr. Trotter were not inclined to plead that if the facts supported the charge of burglary and at that point we would pursue that charge. I sent Mr. Burr, before the case was on the docket, a draft of the indictment we intended to submit to the grand jury so that there was fair warning." (R. p. 44, line 22 – p. 45, lines 1-3).

The State then argued:

> And, Judge, I think it would be – it would be impossible to separate the two factually. There's just not way to present the burglary without presenting why the police are there recovering the stolen trailers. It's the whole premise upon which they come to the scene that day. I think it would be factually – it would be impossible to separate the two, Your Honor. And the witnesses are, in fact, all the same. Save the two victims, one of the larceny, one of the burglary, all the other witnesses are the same.

(R. p. 45, lines 4-13). The judge denied the motion stating, "All right. I'll deny your motion on that." (R. p. 45, line 14). The trial judge erred. The burglary indictment should have been quashed because it was obtained only after Appellant refused to plead guilty and exercised his constitutional right to a jury trial.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . ." U.S. Const. amend VI. An accused has the right to put the State to its proof. See Griffin v. California, 380 U.S. 609, 85 S.Ct.1229, 14 L.Ed.2d 106 (1965). An accused cannot be punished for exercising a constitutional right. See Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (comment upon accused's post arrest silence); Griffin v. California, supra. (comment upon

accused's failure to testify at trial). In the present case the State punished Appellant for exercising his constitutional right to a jury trial by seeking the belated burglary indictment.

In State v. Hazel, 317 S.C. 368, 370 453 S.E.2d 879, 880 (1995), this Court recognized that " '[C]ourts have long adhered to the principle forbidding a trial court from improperly considering the defendant's exercise of his constitutional right to a jury trial as an influential factor in determining the appropriate sentence.'" (citation omitted). In Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999), this Court found that Davis was entitled to post conviction relief based on trial counsel's failure to object when the judge considered Davis's exercise of his constitutional right to a jury trial in imposing sentence. In State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (Ct.App.2001) the South Carolina Court of Appeals found that the trial judge violated Davis by improperly considering the assertion of the right to trial by jury in determining sentence.

In Brouwer, the South Carolina Court of Appeal wrote:

> We find the trial court's comments in this instance indistinguishable from those expressly disapproved in Davis. Although the court herein also stated it had never, and never would, "punish someone for exercising their right to a jury trial," we believe the mere disavowal of wrongful intent cannot remove the taint inherent in the court's commentary, especially since the record fails to reflect an otherwise appropriate basis for Brouwer's disparate sentence. *See id.* at 322, 520 S.E.2d at 802 (finding trial court's sentencing rationale impermissible, despite fact that court concluded comments by stating "and when a fellow wants a trial [-] which he's entitled to as a matter of law-[ ] that's fine").

Brouwer 346 S.C. at 388, 550 S.E.2d at 922. In the same way a judge should not punish a defendant for exercising the constitutional right to a jury trial, the State should not punish a defendant for exercising that right.

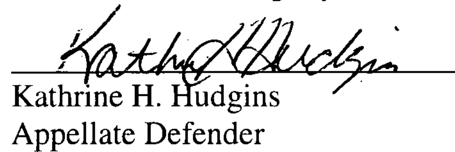
The State argued trial counsel was warned about the burglary indictment and argued that joinder was proper. In State v. Davis, 422 S.C. 472, 481, 812 S.E.2d 423, 428 (Ct. App. 2018), the South Carolina Court of Appeals wrote:

> The appellate court considers several factors when deciding whether the trial court's consolidation of charges was proper." Id. at 614, 629 S.E.2d at 395. "[J]oinder of offenses in one trial is 'proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof.' " State v. Simmons, 352 S.C. 342, 351, 573 S.E.2d 856, 861 (Ct. App. 2002) (quoting State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996)). "Offenses are considered to be of the same general nature where they are interconnected." *Id.* at 350, 573 S.E.2d at 860. "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." Rice, 368 S.C. at 614, 629 S.E.2d at 395.

Joinder is only proper if the defendant's substantive rights would not be prejudiced. Appellant's substantive rights were prejudiced in the present case because he was punished for exercising the constitutional right to a jury trial. Appellant was arrested on November 28, 2017. He was indicted for possession of tools used in the commission of a crime, grand larceny and petit larceny on March 19, 2018. He was not indicted for burglary until February of 2019, after he had moved for a speedy trial in October of 2018, and after he refused to plead guilty and exercised his right to a jury trial. The burglary indictment was sought the same month the State called the case for trial, fifteen months after arrest and almost a year after the original indictments were obtained. The prosecutor admitted warning trial counsel that if Appellant did not plead guilty, he would be indicted for burglary. (R. p. 44, line 22 – p. 45, lines 1-3). The trial judge erred in refusing to quash the burglary indictment.

CONCLUSION

Based on the above argument, this Court should reverse the burglary conviction.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Lee Trotter states:

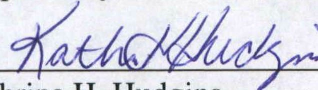
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge R. Scott Sprouse, which was held on February 26, 2019, 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 Michael Lee Trotter.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

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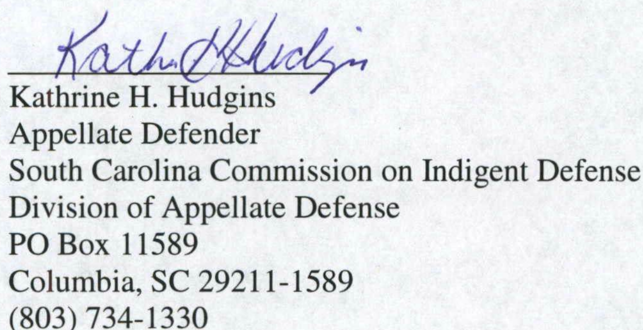
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictments and sentencing sheets;
(2) October 18, 2018, Transcript of bond reduction and speedy trial motions;
(3) February 25-26, 2019, transcript of jury selection and pre-trial motions;
(4) February 27, 2019, trial transcript;
(5) State's Exhibit #1 – DVD of body cam footage – **TO BE TRANSPORTED TO THE COURT.**

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

February 3, 2020



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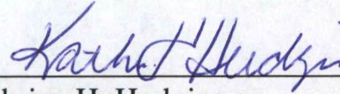
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the 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."

February 3, 2020.



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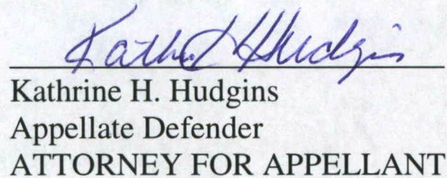
APPELLANT

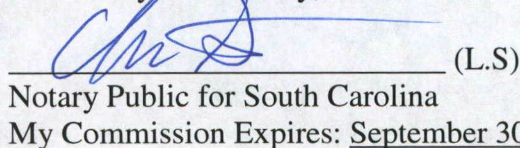
CERTIFICATE OF SERVICE

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 William M. Blitch, 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 Michael Lee Trotter, 285172, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 3rd day of February, 2020.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me this 3rd day of February, 2020.



________________________ (L.S)
Notary Public for South Carolina
My Commission Expires: September 30, 2029