

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Oct 12 2020**

Appeal from Spartanburg County

**SC Court of Appeals**

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMINICK ANTONIO THOMPSON,

APPELLANT

APPELLATE CASE NO 2019-001034

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER  
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in denying defense counsel the opportunity to impeach the state's two main eyewitness on their prior convictions at appellant's trial.

## **STATEMENT OF THE CASE**

Appellant Dominick Thompson was convicted of first degree burglary, armed robbery, first degree assault and battery, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime during the June 2019 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole, who sentenced appellant to life without parole under S.C. Code Ann. {17-25-45.

Joshua Schultz represented appellant at trial and Assistant Solicitors Lauren Brown and Spencer Smith appeared on behalf of the state. Appellant appealed his convictions and LWOP sentence. This brief follows.

## **STANDARD OF REVIEW**

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 SC41, 625 S.E.2d 216 (2006). The admission of evidence concerning past convictions for impeachment purposes remains within the trial court's discretion provided that the trial courts conducts the analysis mandated by the evidence rules and case law. State v. Dunlap, 346 SC 312, 550 S.E.2d 889 (Ct. App. 2001). An abuse of discretion occurs if the ruling lacks evidentiary support or is controlled by error of law. State v. Douglas, 369 SC 424, 632 S.E.2d 845 (2006).

## ARGUMENT

The trial judge erred in denying defense counsel the opportunity to impeach the state's two main eyewitness on their prior convictions at appellant's trial.

At trial, Summer Hall testified that she was at a hotel in Spartanburg County on November 23, 2016, along with her husband (Russell Donahue), her sister-in-law (Christine Richard), and brother -in-law (Brandon Logan) when her sister-in-law received a message from Makayla Richard requesting marijuana. Apparently, a deal was reached. Shortly thereafter, Makayla Richard arrived at the hotel and Christine Richard went downstairs to meet her. Then, when Christine and Makayla came up to the hotel room, three men appeared and entered into the hotel room with Makayla and Christine. Hall stated that the men had guns and that one man whom she identified as appellant put a gun to her head and then went over to the area where her husband stood to search his pockets, and that when the men then began pistol whipping Brandon, the gun fired/discharged and a stray bullet struck Christine, who was later transported to the hospital. Hall testified that during the melee, the men were asking about and looking for the location of the marijuana. Hall added that before the men left, they took money from her husband's wallet and her cellular phone. Tr. 73, 1.1- p. 88, 1.22.

Christine Richard testified that after she left the hotel room to meet Makayla and they were headed to the hotel room, three black men with guns came running toward her. Christine Richard stated that one gunman, whom she identified as appellant, took her necklace and phone, and that the men ordered her to take them (and Makayla) to the hotel room in question. Christine Richard added that the men pistol whipped Brandon until the gun fired and struck her body. Tr. 101, 1.1-p. 111,1.17.

Makayla Richard testified that she and appellant and two other guys rode out to the hotel to get marijuana from Christine Richards, and that there was no intent to pay for the marijuana. Makayla stated that the men entered the room with guns and that they all exited when the gunshot fired. Tr. 139, l. 14 – p.163, l.24

Prior to trial, defense counsel stated his intent to question state's witness Summer Hall about her prior possession of methamphetamine conviction for the purpose of impeachment. The state argued that this was prejudicial in that it was a different drug than the drug identified in the instant case, and that Hall completed the discharge on her treatment program connected to her conviction, and that her prior happened before this case in 2017. The defense argued that Hall's prior conviction had not been expunged and was still on her rap sheet, which carried a three-year sentence; and that because there was some evidence of drug use by the occupants of the hotel room on that night, then this was probative on the issue of Hall's credibility as a witness. Tr. 65, l.8-p. 67, l.17. Tr. 67, lines 23-25.

The trial judge ruled that the use of Hall's prior to impeach her was too prejudicial as it "occurred prior to and [w]as unrelated [and] [w]as a different issue altogether." Tr. 67, l.18-22. Tr. 68, l.1-2. Tr. 68, l.12-25. Tr. 69, l.14-19. The trial judge denied the request by the defense to impeach Hall on her prior drug conviction. Defense also stated his intent to impeach Christine Richard on her prior child neglect charge, but the trial judge ruled against the admissibility of Richards' prior as well. Tr. 69, l.1-p.72, l.1.

On the matter of impeachment, Rule 609(a), SCRE, mandates that evidence that a witness other than the accused has been convicted of a crime shall be admitted if the judge determines that the probative value of admitting this evidence outweighs its prejudicial value (unless said conviction was annulled or pardoned per 609(c), SCRE). See State v. Stephen Robinson,

Opinion No. 27883 (S.Ct. filed May 8, 2019), where the Court balanced the probative value of the admissibility of a prior robbery and a prior breaking and entering under a Rule 403, SCRE, analysis by judging whether the probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence, and applied the rule that it is the opponent who has the burden of establishing inadmissibility. See also State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), where the Colf Court stated the following factors to be applied in the balancing test for the admissibility of priors:

- 1.) Impeachment value of the prior crime;
- 2.) Point in time of the conviction and the witness' subsequent history;
- 3.) The similarity between the past crime and the charged crime;
- 4.) The importance of the defendant's testimony; and
- 5.) The centrality of the credibility issue.

Clearly, priors must bear on the veracity or credibility of a witness. State v. Black, 400 S.C. 10, 732 S.E.2d 880(2012);and State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). The case at bar was a drug case. Both eyewitnesses had prior crimes, one of which had a drug prior, and the other a child neglect prior. Since the subject of the case was an event that emanated from a drug transaction gone awry, then the jury needed to assess the credibility of the eyewitness Hall and her drug prior as she was privy to activity surrounding a prior drug deal, especially since appellant presented alibi testimony and there was no corroborating evidence (no forensic evidence nor statement) presented in the case. Richards' prior bore on her credibility as well. Thus, the impeachment value was high and their testimony was important as eyewitnesses.

**CONCLUSION**

Based on the argument above, counsel for appellant requests that appellant's convictions and LWOP sentence be reversed and his case remanded to the lower court for a new trial.

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of October, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dominick Antonio Thompson states that:

1. She is Deputy Chief 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 J. Derham Cole, which was held on June 10-13, 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 Dominick Antonio Thompson.

Respectfully Submitted,

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 12th day of October, 2020.

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

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

- (1) True-billed indictment(s):
- (2) Transcripts Volumes I, II, III, IV

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

October 12, 2020

s/Wanda H. Carter  
Wanda H. Carter  
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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.”

October 12, 2020.

s/Wanda H. Carter  
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