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Mar 30 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2020-000250

THE STATE,

Respondent,

v.

MONTRELL GRAHAM,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge properly deny Appellant's motion for a directed verdict of acquittal when the State produced evidence that Appellant: participated in the physical assault of Victim, fired a weapon along with Codefendant, and drove Codefendant away from the scene of the crime after Appellant acknowledged Codefendant had a gun and shot it three times?

II.

Did the trial judge properly refuse to admit evidence of Victim's prior conviction for involuntary manslaughter when the conviction occurred outside the ten year time limit of Rule 609(b) SCRE and when Appellant failed to establish the probative value of the conviction substantially outweighed its prejudicial effect? Additionally, did the State v. Colf factors weigh in favor of excluding Victim's prior conviction when Victim's credibility was not central to the State's case against Appellant?

STATEMENT OF THE CASE

In April 2019, the Chester County Grand Jury indicted Appellant for one count of accessory after the fact to a felony. On February 3-7, 2020, a jury trial was held in the Chester County Court of General Sessions with the Honorable J. Derham Cole presiding. Appellant was represented by William Frick, Esq. The State was represented by Deputy Solicitor Candice Lively and Assistant Solicitor Kaitlyn Easler of the Sixth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant as indicted. The trial judge sentenced Appellant to a term of five years' imprisonment followed by five years' probation. Appellant filed a timely notice of appeal and an initial brief.

STATEMENT OF FACTS

On December 24, 2018 a birthday party was held at Club Images in Chester County for a man named “Chi Chi.” (R. 136, 164). The guests who attended the party included Appellant, Kochese Gregory (Victim), and Quinton McClinton (Codefendant). (R. 95, 101, 228). Codefendant went by the nickname “Tril.” (R. 92). In the early morning hours of December 25, 2018 as the club was about to close, CiCi Whitlock threw a drink in the face of George “Big Troy” Killian. (R. 42, 45, 105, 170, 414). After the drink was thrown, a large fight ensued between Whitlock, Killian, and others. (R. 124). During the melee, Appellant and Codefendant began to kick Victim and assault him with pool sticks. (R. 230-34). Victim managed to get to his feet and tried to seek refuge inside the club, but the doors were locked. (R. 231, 235). As he was attempting to get inside the club, Victim turned to see Codefendant shoot him with a gun. (R. 231, 235). Victim testified he was absolutely sure Codefendant was the shooter. (R. 238). After Victim was shot, Daverican “Chocolate Pudding” Gregory exited the club and witnessed Codefendant and Appellant shooting guns near the end of the parking lot. (R. 109). Gregory testified Appellant was shooting “straightforward” while Codefendant was shooting in the air. (R. 109).

After being shot, Victim was able get back inside the club and ask for help. (R. 231, 239). Victim was shot in his abdomen near the lower part of his ribcage. (R. 211-12). Victim was initially taken to the Chester Regional Medical Center for treatment. (R. 209-10). Because of the severity of his injuries, Victim was transported to Carolinas Medical Center in Charlotte. (R. 212, 261-62). Victim spent approximately two weeks in the intensive care unit and was discharged from the hospital on January 19, 2019. (R. 264).

Appellant voluntarily came to the Chester County Sheriff's Office to speak with an investigator on December 28, 2018. Appellant waived his Miranda rights and gave a statement to Investigator Wade Young. (R. 344, 510). Appellant admitted he was at Club Images on December 24th with Codefendant. (R. 346-47, State's Exhibit #1). Appellant acknowledged he saw Codefendant fighting Victim. (State's Exhibit #1). Appellant also admitted he saw Codefendant shoot a gun three times and that he drove Codefendant away from the club after the shooting. (State's Exhibit #1). Appellant also conceded Codefendant had a gun with him in the car after they left the club and described the gun as "some type of 9." (State's Exhibit #1). At the conclusion of trial, Appellant was convicted of accessory after the fact to a felony while Codefendant was convicted of attempted murder, assault and battery first degree, and possession of a weapon during the commission of a violent crime.

STANDARD OF REVIEW

I.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Morgan, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). “On an appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling.” State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court “views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

II.

“The admission of evidence concerning past convictions for impeachment purposes remains within the trial [court’s] discretion, provided the [trial court] conducts the analysis mandated by the evidence rules and case law.” State v. Dunlap, 346 S.C. 312, 324 550 S.E.2d 889, 896 (Ct. App. 2001). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I.

The trial judge properly denied Appellant's motion for a directed verdict of acquittal because the State produced evidence that Appellant: participated in the physical assault of Victim, fired a weapon along with Codefendant, and drove Codefendant away from the scene of the crime after Appellant acknowledged Codefendant had a gun and shot it three times.

Appellant argues the trial judge erred by refusing to grant Appellant a directed verdict of acquittal on the charge of accessory after the fact to a felony. In support of his argument, Appellant asserts it "was impossible to prove that appellant had knowledge that his codefendant committed attempted murder and assault or intended to assist with escape" because of the differing recollections of the shooting by various witnesses who testified at Appellant's trial. (Initial Brief of Appellant 9). On the contrary, the State produced evidence through the testimony of Victim, the testimony of Daverican Gregory, and Appellant's voluntary statement to law enforcement that Appellant: (1) participated in assaulting Victim, (2) fired a weapon along with Codefendant, and (3) drove Codefendant away from the scene after acknowledging he saw Codefendant shoot a gun three times. Therefore, evidence existed that Appellant knew Codefendant committed a felony and then helped Codefendant escape the scene shortly thereafter. Accordingly, the trial judge properly allowed the jury to determine the weight of the evidence presented when he denied Appellant's motion for a directed verdict of acquittal.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." Bennett, 415 S.C. at 235, 781 S.E.2d at 353. "On an appeal from the trial court's denial of a

motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." Lindsey, 355 S.C. at 20, 583 S.E.2d at 742. When an appellate court reviews the sufficiency of the evidence to support a criminal conviction, "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original).

In order to show a defendant is guilty of being an accessory after the fact, the State must prove "1) the felony has been completed, 2) the accused must have knowledge that the principal committed the felony, and 3) the accused must harbor or assist the principal felon." State v. Fuller, 346 S.C. 477, 480, 552 S.E.2d 282, 283 (2001). "The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence." State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). "Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct." State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971).

Here, the State presented evidence of Appellant's guilt through the testimony of Victim, the testimony of Daverican Gregory, and Appellant's voluntary statement to law enforcement. Victim testified Appellant was among the group of people who assaulted him outside of the club. (R. 233-34). Gregory testified Appellant and Codefendant were both firing guns in the immediate aftermath of Victim being shot. (R. 109). Finally, Appellant acknowledged in his interview with law enforcement that he witnessed Codefendant fire a gun three times and then drove Codefendant away from the club after the shooting. (State's Exhibit #1). When taken in

the light most favorable to the State, evidence was presented, both direct and circumstantial, that showed a felony had been completed, Appellant knew Codefendant committed the felony, and Appellant drove Codefendant away from the scene of the crime. Therefore, the trial judge did not err in refusing to grant Appellant a directed verdict of acquittal for the offense of accessory after the fact to a felony. Appellant's conviction and sentence should be affirmed.

II.

The trial judge properly refused to admit evidence of Victim's prior conviction for involuntary manslaughter because the conviction occurred outside the ten year time limit of Rule 609(b) SCRE and Appellant failed to establish the probative value of the conviction substantially outweighed its prejudicial effect. Finally, the State v. Colf factors weigh in favor of excluding Victim's prior conviction because Victim's credibility was not central to the State's case against Appellant.

Next, Appellant argues the trial judge erred in refusing to admit evidence of Victim's 2007 conviction for involuntary manslaughter. Specifically, Appellant asserts the conviction should have been admitted because "the event in question occurred the same year [Victim] was released from prison, and the interest of justice required [Victim]'s impeachment since the state's case hinged primarily on the credibility of [Victim] and his testimony." (Initial Brief of Appellant 10). Appellant's argument fails for three reasons. First, the shooting in question did not occur the same year Victim was released from prison, as Appellant asserts, but rather eleven years after Victim was released from custody. Thus, Victim's prior conviction occurred outside the ten year time limit of Rule 609(b) SCRE and was presumptively inadmissible. Second, Appellant failed to establish the probative value of Victim's conviction substantially outweighed its prejudicial effect. Finally, the State's case against Appellant did not hinge primarily on Victim's credibility but rather on the testimony of Daverican Gregory and Appellant's voluntary statement to law enforcement.

Rule 609(a)(1) of the South Carolina Rules of Evidence provides that when a party attacks the credibility of a witness, “Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted.” Rule 609(a)(1) SCRE. Similarly, Rule 609(a)(2) provides “evidence that any witness had been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” Rule 609(a)(2) SCRE. However, under Rule 609(b) SCRE, “Evidence of a conviction of any kind is not admissible if more than ten years has elapsed from the date of conviction or the release of the witness from confinement for that conviction...unless the proponent of the evidence establishes that the probative value of the conviction, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.” State v. Robinson, 426 S.C. 579, 594, 828 S.E.2d 203, 210 (2019). “Rule 609(b) establishes a presumption against the admissibility of a remote conviction and places the burden of establishing admissibility of the conviction upon the proponent of the evidence.” Robinson, 426 S.C. at 595, 828 S.E.2d at 211. “It is intended that convictions over 10 years old will be admitted very rarely and only in exceptional circumstances.” State v. Black, 400 S.C. 10, 18, 732 S.E.2d 880, 885 (2012) (quoting Clay v. State, 290 Ga. 822, 725 S.E.2d 260, 273 (2012)).

The South Carolina Supreme Court enumerated five factors that our state’s trial judges must consider in determining the admissibility of a witness’s prior conviction. The five factors are: (1) The impeachment value of the prior crime; (2) The point in time of the conviction and the witness’s 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. State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). Under Rule 609(b), “if the

conviction is a ‘remote’ conviction...the trial court must balance the Colf factors and determine whether the probative value of the conviction, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.” Robinson, 426 S.C. at 595, 828 S.E.2d at 211. When the witness being impeached is not the defendant “some of [the Colf] factors must, as a practical matter, be adjusted.” Black, 400 S.C. at 19, 732 S.E.2d at 885.

Here, Appellant attempted to impeach Victim with evidence of his prior conviction for involuntary manslaughter. Victim was convicted of involuntary manslaughter in 2007 (R. 20). Victim served an active sentence and was released from custody on May 2, 2009. (R. 157). Appellant’s trial took place from February 3-7, 2020. In support of his motion, Appellant argued he was prejudiced by his case not being called for trial before May 2, 2019 when Victim’s conviction would have been less than ten years old and that Victim’s credibility was important to the case. (R. 158-60). The trial judge made the following ruling in response to Appellant’s motion:

The Court: Of course, the purpose of the admission of prior convictions for impeachment purposes is to allow the jury to determine the credibility of a witness based on that prior conduct, based upon a conviction of it, ordinarily that involves convictions that involved the fault or dishonesty or deceit, lying under oath, of the like. So I understand the prior convictions are not (sic) involuntary manslaughter, which is not a crime involving dishonesty, fraud or deceit, and it has been agreed upon, outside the ten year period where the rule provides that it is presumptively more prejudicial than probative. And I’ve not been provided any factor or circumstance that will make me believe that now it becomes more probative than prejudicial, and because I cannot articulate any reason to permit it in conflict with the rule I sustain the State’s objection to the use of it for impeachment purposes by doing an examination of [Victim]. However, should something occur during the examination that would otherwise open that door or permit it we’ll address that at that time.

(R. 161, lines 22-25 –R. 162, lines 1-15).

The trial judge did not abuse his discretion by refusing to admit evidence of Victim’s prior conviction for involuntary manslaughter. Initially, the trial judge correctly noted Victim’s

conviction occurred outside the ten year time period under Rule 609(b) which makes the conviction presumptively inadmissible. Appellant was convicted of involuntary manslaughter in 2007 and released from custody in 2009. (R. 20, 157). Because Appellant's trial took place in 2020, Victim's prior conviction falls outside of the ten year period under Rule 609(b).

Despite the remote nature of Victim's conviction, the trial judge could have admitted evidence of the conviction if Appellant had demonstrated the probative value of the conviction substantially outweighed its' prejudicial effect. However, Appellant failed to meet this burden. In support of his motion, Appellant could only argue he was somehow prejudiced by the State not calling the case for trial within five months of the shooting. (R. 158-60). Appellant was unable to offer any specific facts or circumstances that made evidence of Victim's prior conviction substantially more probative than prejudicial. (R. 158-60). Indeed, when making his ruling, the trial judge astutely pointed to Appellant's failure to offer any specific facts or circumstances that would establish the probative value of Victim's prior conviction. (R. 162, lines 7-9).

On appeal, Appellant argues the interests of justice required the trial judge to admit evidence of Victim's prior conviction because the State's case hinged on Victim's credibility. In making this argument Appellant appears to suggest the Colf factors weigh in favor of the admission of Victim's conviction because of the centrality of Victim's credibility to the State's case. While the trial judge did not weigh the Colf factors on the record, an examination of the factors reveals they weigh against the admission of Victim's prior conviction. Because Appellant only addresses one of the five factors in his brief¹, the centrality of the credibility issue, it is instructive to closely examine that factor.

¹ Although Appellant only addresses one Colf factor in his brief, the other factors nonetheless weigh against admissibility. First, because involuntary manslaughter is not a crime of dishonesty, the prior conviction has little impeachment value. Second, the record indicates Victim had no

Victim's credibility was central to the State's case against Codefendant, but not against Appellant. Victim testified that Codefendant shot him (R. 230-31, 238). Victim was the only witness who identified Codefendant as the shooter. Thus, Victim's credibility was very important to the State's case against Codefendant. However, Victim's credibility was significantly less important to the State's case against Appellant. Victim testified that Appellant was among the individuals who physically assaulted him outside the club. (R. 234). However, Appellant was not indicted for being an accessory after the fact to first degree assault and battery, but rather attempted murder. (R. 511-12). The relevant evidence that proved Appellant was an accessory after the fact to attempted murder came from the testimony of Daverican Gregory and Appellant's voluntary statement to law enforcement. Gregory testified Appellant and Codefendant were shooting guns in the parking lot. (R. 109). Appellant admitted to law enforcement that he saw Codefendant shoot a gun three times and drove him away from the club after the shooting. (State's Exhibit #1). Gregory's testimony and Appellant's statement prove that Appellant knew there was a shooting and that he transported one of the shooters away from the scene of the crime. Victim's testimony only proved Appellant participated in the physical assault that preceded the shooting. Therefore, Victim's credibility was of little importance to the State's case against Appellant. Accordingly, the fifth Colf factor weighs against the admission of Victim's prior conviction.

The current case presents a similar factual scenario to that which was considered by our Supreme Court in State v. Black. In Black the Court considered whether the trial judge erred in allowing the State to impeach a defense witness with a manslaughter conviction that occurred

other convictions from the date of his release from prison until the date of trial. (R. 20-21). Third, while Victim was initially charged with attempted murder, his charge was dismissed before Appellant's trial, thus making the third Colf factor inapplicable. (R. 365, 377). The fourth Colf factor is also inapplicable, because Victim was not the defendant in this case.

outside the ten year time limit under Rule 609(b) SCRE. In determining the trial judge erred in admitting the prior manslaughter conviction, the Court noted “the manslaughter offenses, while crimes of violence, are not crimes of dishonesty or untruthfulness that directly impact the witness’s veracity.” Black, 400 S.C. at 21, 732 S.E.2d at 886. Additionally, the Court noted the relevant witness had not been convicted of any additional crimes since his release from custody fourteen years prior to trial. Id. Here, like in Black, the trial judge was called to consider the admissibility of a manslaughter conviction that occurred thirteen years prior to trial. Like the witness in Black, Victim had no convictions in the eleven year period between his release from confinement and the date of trial. (R. 20-21). However, unlike the trial judge in Black, the trial judge here appropriately refused to admit evidence of Victim’s prior manslaughter conviction. The trial judge did not abuse his discretion in refusing to admit evidence of the prior conviction because the conviction held little impeachment value, Victim did not have any additional convictions after his release from custody, and Victim’s credibility was of little importance to the State’s case against Appellant. Appellant’s conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.


Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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