

SUPREME COURT OF SOUTH CAROLINA

State v. Johnson, 363 S.C. 53

609 S.E.2d 520 (2005) · No. No. 25945 · Decided February 22, 2005

SUMMARY

The Supreme Court of South Carolina considered whether the defendant's prior convictions were properly admitted for impeachment under South Carolina Rules of Evidence Rule 609. The court held that the trial court erred in calculating the ten-year limitation, applying the moral turpitude standard, and failing to conduct the required Colf balancing test, but concluded that the errors were harmless and affirmed.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Burnett; Acting Justice A. Victor Rawl
JURISDICTION	South Carolina
DECIDED	February 22, 2005
DOCKET	No. 25945
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of South Carolina granted certiorari to review the court of appeals' decision affirming Johnson's murder conviction while holding that the erroneous admission of his prior convictions was harmless.
STANDARD OF REVIEW	The court reviewed the legal and evidentiary issues presented on certiorari, including the interpretation and application of Rule 609, SCRE, and reviewed the admission of evidence for prejudice under the harmless-error standard.
PRECEDENTIAL VALUE	published and precedential opinion of the Supreme Court of South Carolina
PARTIES	Alexander Santee Johnson v. The State

TOPICS

- evidence
- criminal procedure
- preservation of error
- harmless error
- appellate procedure

PRACTICE AREAS

criminal law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court applied the proper ten-year time calculation under Rule 609(b), SCRE, when admitting Johnson's 1986 convictions.
2. Whether the trial court improperly used the common-law moral-turpitude standard to determine the admissibility of Johnson's prior convictions.
3. Whether the trial court failed to conduct and articulate the balancing test required by *State v. Colf* for remote convictions under Rule 609(b), SCRE.
4. Whether admission of Johnson's prior convictions constituted prejudicial error.

HOLDINGS

1. Under Rule 609(b), the ten-year period is measured from the later of the date of conviction or the date of release from confinement. Because both dates for Johnson's 1986 convictions were before 1990 and the trial occurred in 2000, the convictions were improperly admitted as a matter of timing.
2. The common-law moral-turpitude standard is no longer the proper test for determining the admissibility of prior convictions after South Carolina adopted Rule 609, SCRE.
3. The challenge to the trial court's use of the moral-turpitude standard was not preserved for appellate review because trial counsel objected on remoteness grounds rather than specifically objecting to the moral-turpitude analysis.
4. A trial judge must conduct the *State v. Colf* balancing test when considering admission of remote prior convictions under Rule 609(b), and must articulate on the record the specific reasons supporting the ruling.
5. Although the trial court erred in admitting Johnson's prior convictions and failed to perform the required balancing analysis, the error was harmless because it did not affect a substantial right or reasonably affect the trial's outcome.

KEY QUOTATIONS

“Evidence of a prior conviction is admissible to impeach a witness unless a period of more than ten years has elapsed since the date (1) of the conviction or (2) of the release of the witness from confinement for that conviction, whichever date is later.” (at 57)

“Rule 609(b) creates a presumption that remote convictions are inadmissible and places the burden on the State to overcome this presumption.” (at 59)

“We hold that a trial judge must conduct the Colf balancing test when considering the admission of remote prior convictions with reference to the factors enumerated in that opinion.” (at 60)

“Because there was overwhelming evidence of Petitioner's guilt, we do not believe the admission of the Petitioner's prior convictions could have reasonably affected the outcome of the trial, and therefore the error

was harmless.” (at 61)

FACTUAL BACKGROUND

Johnson was retried for murder in 2000 after his original conviction had been reversed. Before and during the retrial, the trial court admitted his 1986 convictions for second-degree burglary and grand larceny despite their age, and Johnson introduced them on direct examination to reduce their impact before the prosecution could emphasize them. The prosecution also presented evidence that Johnson gave police a false name after his arrest and that the fatal fight involved a stolen car.

PROCEDURAL HISTORY

Johnson was convicted of murder and sentenced to life imprisonment. The Supreme Court of South Carolina previously reversed the conviction and remanded for a new trial. After a 2000 retrial, the trial court admitted Johnson's 1986 burglary and grand-larceny convictions for impeachment, and the court of appeals affirmed, finding any error harmless. The Supreme Court granted certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998)
- State v. Johnson, Op. No. 2003-UP-188 (S.C. Ct. App. filed Mar. 12, 2003)
- State v. Harvey, 275 S.C. 225, 268 S.E.2d 587 (1980)
- Green v. State, 338 S.C. 428, 527 S.E.2d 98 (2000)
- State v. Johnson, 324 S.C. 38, 476 S.E.2d 681 (1996)
- State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001)
- State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996)
- State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000)
- State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985)

OPINION

State v. Johnson 609 S.E.2d 520

TOAL, J.

363 S.C. 53 (2005) 609 S.E.2d 520 The STATE, Respondent, v. Alexander Santee JOHNSON, Appellant. No. 25945. Supreme Court of South Carolina. Heard November 16, 2004. Decided February 22, 2005.

*55 Assistant Appellate Defender Robert M. Dudek, of SC Office of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh,

Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent. Chief Justice TOAL: A jury convicted Alexander Santee Johnson (Petitioner) of murder. At trial, the judge allowed evidence of Petitioner's prior convictions to be admitted. The court of appeals affirmed, *56 holding that, although the trial judge erred in admitting evidence of Petitioner's prior convictions, the error was harmless. *State v. Johnson*, Op. No.2003-UP-188 (S.C. Ct.App. filed March 12, 2003). This Court granted certiorari to review the decision of the court of appeals. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

Petitioner was convicted of murder and sentenced to life imprisonment. On direct appeal, this Court reversed the conviction and remanded the case for a new trial. *State v. Johnson*, 333 S.C. 62, 508 S.E.2d 29 (1998). Petitioner was retried for murder in 2000. At trial, Petitioner sought to have his 1986 convictions for second-degree burglary and grand larceny excluded from evidence on the basis that the convictions were more than ten years old. The trial judge ruled that the prior convictions were admissible because they were within ten years of the alleged offense and they were crimes of moral turpitude. On direct examination, Petitioner acknowledged the prior convictions and stated that he spent thirty days in a juvenile facility when he was twelve or thirteen years old.[1] Petitioner was not questioned about his prior convictions on cross examination. After closing argument, but before the judge charged the jury, the judge clarified his ruling on the admissibility of the prior convictions. The judge reasoned that the probative value of the prior convictions outweighed their prejudicial effect. The jury convicted Petitioner of murder, and he appealed. The court of appeals affirmed the decision of the trial court, holding that the admission of the prior convictions was harmless. *State v. Johnson*, Op. No. 2003-UP-188 (S.C. Ct.App. filed March 12, 2003). This Court granted certiorari, and Petitioner now raises the following issues for review:

*57 I. Did the trial court apply the proper legal standard in calculating the ten-year time limit under Rule 609(b), SCRE?

II. Did the trial court err by using the moral turpitude standard to determine the admissibility of Petitioner's prior convictions? III. Did the trial court err in failing to conduct the proper balancing test as set forth by *State v. Colf*? IV. Did the admission of Petitioner's prior convictions constitute prejudicial error?

LAW/ANALYSIS

I. Rule 609(b), SCRE Petitioner argues that the trial judge erred in admitting Petitioner's prior convictions because the trial judge did not apply the proper legal standard in calculating the ten-year time limit under Rule 609(b), SCRE. We agree. Evidence of a prior conviction is admissible to impeach a witness unless a period of more than ten years has elapsed since the date (1) of the conviction or (2) of the release of the witness from confinement for that conviction, whichever date is later. Rule 609(b), SCRE. The evidence is admissible, however, if the trial judge determines that the probative value of the conviction substantially outweighs its prejudicial effect. *Id.* In 1986,

Petitioner was sentenced to thirty days as a juvenile for grand larceny and burglary. The record does not reflect which date is later, the date of the conviction or the release from confinement. What is certain is that the time of release from confinement and the date of the conviction are both pre-1990. Because Petitioner's trial was in 2000, the 1986 conviction was improperly admitted. Therefore, we hold that the trial court erred in calculating the ten-year time period under Rule 609(b), SCRE.

II. Moral Turpitude Standard Petitioner argues that the trial judge erred by using the moral turpitude standard to determine that Petitioner's prior *58 convictions were admissible. We agree, but the issue is not preserved for review. Under prior common law, moral turpitude was described as "an act of baseness, vileness, or depravity in the social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule or right and duty between man and man." *State v. Harvey*, 275 S.C. 225, 227, 268 S.E.2d 587, 588 (1980). But the common law rule was replaced when South Carolina adopted Rule 609(a), SCRE. *Green v. State*, 338 S.C. 428, 432, 527 S.E.2d 98, 100 (2000). Today, the South Carolina Rules of Evidence provide that if the witness has been convicted of a crime that is punishable by death or imprisonment of more than one year, and the probative value of the conviction outweighs its prejudicial effect, the conviction is admissible to attack the witness's credibility. Rule 609(a)(1), SCRE. In addition, if the crime involved dishonesty or a false statement the conviction is admissible to attack the witness's credibility. Rule 609(a)(2), SCRE. In the present case, Petitioner had prior convictions of burglary and grand larceny. To determine whether Petitioner's prior convictions were admissible, the judge applied the common law moral turpitude test. Because the prior convictions were crimes of moral turpitude, the judge ruled that Petitioner's convictions were admissible. Since the adoption of Rule 609, the moral turpitude standard is no longer the proper test for determining the admission of remote prior convictions. Therefore, the trial court erred in using the moral turpitude standard to determine the admissibility of Petitioner's prior convictions. Although we hold that the trial judge erred in applying the moral turpitude standard, we find that Petitioner did not preserve the issue for appellate review. To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. *State v. Johnson*, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996). The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error. *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). If a party fails to properly object, the party is procedurally barred from *59 raising the issue on appeal. *State v. Pauling*, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996). In the present case, trial counsel did not specifically object to the application of the moral turpitude standard. Instead, trial counsel objected to the admissibility of Petitioner's prior convictions on the basis that the convictions were too remote. When objecting, counsel stated that "it's now 14 years later." Because the objection was clearly based on remoteness and not the use of the moral turpitude standard, we hold that the issue regarding the use of the moral turpitude standard is not preserved for appellate review.

III. Colf Balancing Test Petitioner argues that the trial court erred by failing to conduct the proper balancing test in determining whether Petitioner's

prior convictions were admissible. We agree. This Court has held that a trial judge must conduct a balancing test to determine whether remote convictions are admissible under Rule 609(b). *State v. Colf*, 337 S.C. 622, 626, 525 S.E.2d 246, 248 (2000). Rule 609(b) creates a presumption that remote convictions are inadmissible and places the burden on the State to overcome this presumption. *Id.* at 626-627, 525 S.E.2d at 248. When considering whether to admit prior convictions, a trial judge should consider the following factors:

- (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 of the past crime and the charged crime;
- (4) The importance of the defendant's testimony; and
- (5) The centrality of the credibility issue.

Id. at 627, 525 S.E.2d at 248. After the trial court conducts the balancing test, the judge must make a determination and articulate, on the record, the specific reasons for his ruling. *Id.* In the present case, the judge explained that the prior convictions were admissible because the probative value outweighed the prejudicial effect. However, the trial judge did not articulate why the probative value outweighed the prejudicial effect. We hold that a trial judge must conduct the *Colf* balancing test when considering the admission of remote prior convictions with reference to the factors enumerated in that opinion. Therefore, in the present case, the trial court erred by not conducting the proper balancing test. IV. Harmless Error Petitioner argues that the admission of the prior convictions constituted prejudicial error. We disagree. To constitute error, a ruling to admit or exclude evidence must affect a substantial right. Rule 103(a), SCRE. An error is harmless if the defendant's guilt has been conclusively proven by competent evidence, such that no other result could have been reached. *Prioleau*, 345 S.C. at 407-408, 548 S.E.2d at 214-215. The circumstances of each individual case are to be considered. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). In addition, the error is harmless if the error could not have reasonably affected the outcome of the trial. *Id.* In the present case, defense counsel strategically introduced Petitioner's prior convictions on direct examination to lessen the impact they might have on Petitioner's credibility. Furthermore, the prosecution placed no other emphasis on these prior convictions. Therefore, we find that the impact was minimal because other evidence introduced by the prosecution likely damaged Petitioner's credibility. For example, there was testimony that upon arrest, Petitioner gave the police a false name. In addition, there was testimony that the fight that led to the death of the victim was over a stolen car. We find that this testimony was more damaging to Petitioner's credibility than the introduction of the prior convictions. Therefore, the introduction of the prior convictions was not prejudicial to Petitioner's case. Because there was overwhelming evidence of Petitioner's guilt, we do not believe the admission of the Petitioner's prior convictions could have reasonably affected the outcome of the trial, and therefore the error was harmless.

*61 CONCLUSION

For the foregoing reasons, the decision of the court of appeals is AFFIRMED. MOORE, WALLER, BURNETT, JJ., and Acting Justice A. VICTOR RAWL, concur.

NOTES

[1] After the judge ruled against the motion to exclude the prior convictions, Petitioner decided to present evidence of the convictions on direct examination to lessen the impact that they might have on the jury.