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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2021-000417

STATE OF SOUTH CAROLINA,

Respondent,

vs.

KAREEM KENYA STEVENSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On April 12, 2021, the jury convicted Appellant Stevenson of trafficking cocaine base and trafficking heroin. He was convicted of possession of cocaine as a lesser included offense of possession with intent to distribute cocaine. He was acquitted of possession of amphetamine. The presiding judge, the Honorable Carmen T. Mullen, sentenced Appellant to concurrent sentences of ten years' imprisonment on both trafficking charges and three years' imprisonment for possession of cocaine.

STATEMENT OF FACTS

Officer Raymond Davis testified he has been a law enforcement officer with different agencies since 2015. His focus was on narcotics and he testified he was familiar with controlled substances. Officer Davis confirmed that based on his experience, he is able to recognize different controlled substances such as heroin, cocaine base, cocaine, MDMA and methamphetamine pills. Officer Davis explained he has made well over a hundred narcotics arrests. R. pp. 44-46. He confirmed on cross-examination that a lot of his work involved drug-stop cases. R. p. 71.

Officer Davis testified he was at the station with Detective Kellermeyer when they received a call from Detective Godley to assist in a traffic stop. While they were in transit, Detective Godley called again emphatically imploring them to hurry. They arrived within five minutes and observed Appellant trying to climb out of the passenger side window of a BMW. Officer Davis grabbed Appellant and pulled him to the ground. When asked why he would not stay put, Appellant claimed he had a warrant and he apologized. R. pp. 46-52.

Officer Davis found heroin in Appellant's shirt pocket. Meanwhile, Detective Godley announced she found crack cocaine. Officer Davis explained "dog food" is a slang term for heroin. Appellant contended the crack cocaine was not his, but Appellant explained he ran because the "dog food" was his and he would own up to it. R. pp. 55-60; pp. 75-76.

By the time of trial, Detective Godley was Agent Godley with SLED. She spent her two and a half years since the arrest at SLED working on narcotics cases. Her law enforcement experience allowed her to become familiar with heroin, crack cocaine, cocaine, marijuana, and methamphetamine pills. At the time of trial, she was involved in conducting controlled purchases of narcotics and interacted with the buyers. R. pp. 78-80.

On June 11 at 3:15 p.m., Detective Godley testified she saw a BMW make a right turn onto Highway 17 South by turning into the outer lane of the two southbound lanes. She stopped the vehicle for an improper lane change. R. pp. 83-84. Detective Godley identified herself and explained the reason for the traffic stop. Appellant, the passenger, reached over and turned the vehicle off and used the key to unlock the glove compartment and retrieve the registration and insurance. R. pp. 84-86. Detective Godley smelled marijuana from inside the BMW. R. p. 87.

Detective Godley asked if she smelled any marijuana in the vehicle and Appellant responded that they smoked it earlier. Detective Godley advised the men she was calling for additional units based on the probable cause she gained from the odor of marijuana. R. p. 88.

At this point, Appellant's aspect changed to concern. Appellant unhooked his seatbelt and tried to get out. He told the driver to drive away. Detective Godley told the driver to stay put and the driver did. Appellant opened the door into Detective Godley's knee and they struggled as Appellant attempted to climb out the car window and Detective Godley tried to keep him in. R. pp. 89-91.

Officer Davis and Detective Kellermeyer arrived and Officer Davis pulled Appellant out of the car. Detective Godley then found crack cocaine, cocaine, and two methamphetamine pills. She testified officers also found a small amount of "weed." R. pp. 92-93. She found a digital scale underneath the passenger seat and the driver also had a digital scale. There was no drug paraphernalia associated with use. R. pp. 93-97. Appellant was holding $600 cash. R. p. 99. The car was registered in Appellant's mother's name. R. pp. 103-04.

Former Detective Nick Kellermeyer (now a fireman) testified similarly to Officer Davis. He confirmed Appellant was trying to get out of the BMW when the detective and Officer Davis arrived. Detective Kellermeyer testified, without objection, he found marijuana in a plastic bag in the car.

SLED chemist Willie Smith confirmed the substances found were 5.92 grams of heroin, 18.93 grams of cocaine base, 1.88 grams of cocaine, and .45 grams of methamphetamine. R. pp. 148-50.

The defense rested without presenting evidence. At sentencing, Appellant apologized and asked the trial court to get Appellant some help. R. p. 200.

STANDARD OF REVIEW

The first issue concerns a Fourth Amendment issue and the standard of review is discussed in Respondent's argument. The last two issues concern the admission of evidence. Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court.").

ARGUMENT

I.

Because the person driving Appellant's vehicle improperly turned onto the highway, the officer had probable cause to effect a traffic stop.

Appellant complains the trial court erred in denying Appellant's motion to suppress the multiple narcotics found during the traffic stop. Because the driver drove diagonally across the exterior lane into the interior lane of the highway, the driver violated the traffic statute that requires the vehicle to turn as close to the curb or edge of the road as practicable. Therefore, the officer made a reasonable determination that there was probable cause to believe she observed a traffic violation and made a legal traffic stop.

Motion in limine

Appellant made a motion in limine in which he assured the trial court that law enforcement's testimony was not needed because the matter was a question of law. Appellant asserted the traffic stop was in error because the car in which Appellant rode did not commit a traffic infraction. Appellant agreed the driver was issued a warning by the officer. R. pp. 4-7. Appellant, in his presentation, provided reasons he felt none of three statutes he cited applied, and then claimed the turn and lane change did not fit in any "of these statutes precisely." R. p. 9, lines 8-14.

In response, the prosecution asserted that the video depicts the vehicle cutting across the first lane diagonally. R. p. 10, lines 9-15. The prosecutor explained:

> So that would be violating roadway lanes for traffic. Failing to maintain a lane. Additionally, he did not put his turn signal on from the time he was in Lane 1 and going into the left-hand lane or the interior lane. He didn't signal when changing those lanes.

> Additionally, the standard would be probable cause if there was a traffic violation and certainly not beyond a reasonable doubt. The State would also contend – if you look at Section 56-5-2150. Look at Subsection B. It says a single unintentional [sic] to turn or move right or left with signal shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. He didn't use a turn signal at all going immediately from the exterior lane to the interior lane.

R. p. 10, line 16 - p. 11, line 4.

The trial court ruled as follows:

> Well, I actually think Section 56-5-170 [sic] Subsection A[1] in regard to right-hand turn, an appropriate right-turn shall be made as close as possible to the right-hand curb or edge of the roadway infers that you are turning into the nearest lane. Then once you are going, you can go into Lane 1 if necessary or preferred.
>
> I do think there was reasonable suspicion by the officer of a traffic violation. Therefore, I do find that the stop was constitutional. So respectfully, I will deny your motion to suppress.

R. p. 12, line 21 – p. 13, line 5.

Subsequently, the trial court heard Appellant's motion in limine and a Jackson v. Denno[2] hearing in which the patrol officer initiating the traffic stop – Detective Hallie Godley, testified. Detective Godley explained she observed the BMW approach a stop sign at US17, turn right southbound on Highway 17, and immediately entered the furthest lane. R. p. 19. She pulled over the BMW for an improper turn. R. p. 19. When she approached the car window, Detective Godley detected marijuana odor and asked the driver and Appellant if they had any marijuana in the vehicle. Appellant claimed they smoked it earlier. Detective Godley informed them she would request

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[1] As discussed later, the language the trial court is referring to is from section 56-5-2120(a).

[2] 378 U.S. 368, 376 (1964).

assistance and would search the vehicle. Appellant then tried to convince the driver to "crank up" the vehicle and leave. Appellant tried to climb out of the window when the driver failed to do his bidding. Afterwards, the drugs were found and Appellant was arrested. R. pp. 20-23.

Standard of review

"South Carolina appellate courts review Fourth Amendment determinations under a clear error standard." State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013). "When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011).

Fourth Amendment

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). "Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se." State v. Adams, 377 S.C. 334, 338, 659 S.E.2d 272, 274 (Ct. App. 2008) (citing Whren v. United States, 517 U.S. 806, 810 (1996)).

In Delaware v. Prouse, 440 U.S. 648 (1979), the United States Supreme Court stated a police officer has a duty, in the interest of highway safety, to stop vehicles for safety reasons: "Many violations of minimum vehicle/safety requirements are observable, and something can be done about them by the observing officer, directly and immediately." Id. at 660. The Court held as long as police officers suspect drivers of violating "any one of the multitude of applicable traffic and equipment regulations," they may legally stop these vehicles. Id. at 661.

"Assuming a lawful stop, an officer is entitled to some chance to gain his bearings and to acquire a fair understanding of the surrounding scene. Just as the officer may ask for the

identification of the driver of a lawfully stopped vehicle . . . so he may request identification of the passengers also lawfully stopped. No separate showing is required." United States v. Soriano-Jarquin, 492 F.3d 495, 500 (4th Cir. 2007); see also State v. Dobbins, 420 S.C. 583, 803 S.E.2d 876 (Ct. App. 2017) ("The distinctive odor of a drug alone is sufficient basis to establish probable cause when a law enforcement official, familiar with the unique smell of that drug, recognizes its odor.").

The absence of explanation by Appellant about how the trial court erred.

The entirety of Appellant's argument as to why the trial court erred follows:

> Officer Godley did not have probable cause to believe a traffic violation occurred in this case. The conduct shown in the dash camera video was not in violation of S.C. Code Ann. § 56-5-2120 or any other traffic law. In the dash camera video, court's exhibit 5, it is clear that the vehicle makes a complete stop at the stop sign, signals a right-hand turn, turns in to the exterior lane, and then enters the interior lane. Additionally, no other traffic violation occurred which would warrant the traffic stop made by officer Godley. Thus, all the evidence found during the search should have been suppressed.

Br. of App. p. 7.

The driver pulled diagonally through the exterior lane rather than pull as close to the curb or edge of the road as required by section 56-5-2120. The vehicle was never established in the exterior lane before pulling into the interior lane. As the trial court observed, in order to pull closest to the curb when turning, the vehicle needed to turn into the exterior lane before moving to the interior lane. Appellant neglects to assert an argument that the trial court's interpretation of the statute was wrong. State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding the argument was so conclusory that it was deemed abandoned).

Under S.C. Code Ann. § 56-5-1900: "Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith

shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety." Under S.C. Code Ann. § 56-5-2120: "The driver of a vehicle intending to turn shall do so as follows: (a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway." Under S.C. Code Ann. § 56-5-2150: "(A) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal as provided for in this section. (B) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning."

The vehicle violated section 56-5-1900 when cutting diagonally across both lanes of the southbound highway because the vehicle was not maintaining a single lane. See State v. Vinson, 400 S.C. 347, 734 S.E.2d 182 (Ct. App. 2012) (finding violation of S.C. Code 56-5-1900 provided justification for law enforcement stopping the vehicle). Further, the vehicle did not complete the right-hand turn as required under section 56-5-2120(a) because the vehicle moved diagonally across the exterior lane prior to completing the turn and therefore did not make the right turn as close to the curb or edge as practical. See generally Muhleck v. Tamanini, 271 S.C. 57, 60, 244 S.E.2d 535, 536-37 (1978) (analyzing 56-5-2120(b) governing left turns and finding evidence created "an inference that instead of making a 90 degree left hand turn as required by the statute, respondent 'cut the corner.'"). Therefore, Investigator Godley had reasonable suspicion of a traffic violation to effect a traffic stop.

Note that even if Investigator Godley's interpretation of traffic law is incorrect, this does not

alter the result because Detective Godley's interpretation of the traffic statutes was reasonable. As observed by the United States Supreme Court, the touchstone of the Fourth amendment is reasonableness and "[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection." Heien v. North Carolina, 574 U.S. 54, 60-61 (2014) (citation and internal quotation marks omitted). The Court found both mistakes of fact and mistakes of law may not defeat an objectively reasonable determination of reasonable suspicion to initiate a traffic stop. In Heien, the officer initiated a stop of a vehicle after observing its right brake light did not work. The North Carolina state court concluded its state traffic statutes required only one brake light to be working. However, the Supreme Court noted that some North Carolina statutory language suggested that all brake lights must be working, making law enforcement's understanding reasonable even if ultimately mistaken. Id. at 67-68. Finding that the mistake of law by the officer was reasonable, the Court concluded the officer had reasonable suspicion to justify the stop. Id.

In the present case, Investigator Godley had probable cause based on her observations and her reasonable interpretation of traffic laws. Accordingly, evidence supports the trial court's ruling.

II.

Testimony from the officers who seized the narcotics that the substances seized were narcotics was proper lay opinion testimony since the officers established they were familiar with the substances through their professional experience and any error was harmless since the illegality of the substances was established by the chemist.

Appellant complains the trial court erred in allowing Investigator Godley to testify without being qualified as an expert witness that she seized cocaine base and cocaine, and that additionally, marijuana was seized during the traffic stop. Likewise, Appellant complains Investigator Davis was impermissibly allowed to testify the substance in Appellant's shirt pocket was heroin and "dog food" was a slang term for heroin without being qualified as an expert. Both officers testified as to their experience and familiarity with the substances, so the testimony was proper lay opinion testimony based on their own experience. Further, any error was harmless considering the chemist confirmed the substances tested were cocaine, cocaine base, and heroin.

Lay witnesses are permitted to offer opinion testimony when the opinion or inference: (1) is rationally based on the witness' perception; (2) is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training. Rule 701, SCRE; see State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) ("The opinion or inference of a lay witness is admissible if it is a) rationally based on the perception of the witness, b) helpful to the determination of a fact in issue, and c) does not require special knowledge."). "Some statements are not mere opinions, but are impressions drawn from collected, observed facts." Williams, 321 S.C. at 464, 429 S.E.2d at 54. "A natural inference based on stated facts is not opinion evidence." Id.

Moreover, "just because [a lay witness's] position and experience could have qualified him for expert witness status does not mean that any testimony he gives at trial is considered 'expert testimony.'" United States v. LeCroy, 441 F.3d 914, 927 (11th Cir. 2006). "Lay witnesses may draw on their professional experiences to guide their opinions without necessarily being treated as expert witnesses." United States v. Jeri, 869 F.3d 1247, 1265 (11th Cir. 2017). "[L]aw enforcement officers may testify as lay witnesses even though their expertise often makes them more efficient or productive at their jobs." Id.

Appellant argues: "While they [Officer Davis and Investigator Godley] both testified that in the course of their employment, they had the opportunity to become familiar with certain drugs that was not sufficient to allow them to give expert opinion testimony regarding what the drugs were." Br. App. p. 10. Appellant fails to offer any authority for this proposition. Missing from Appellant's analysis is last years' decision in State v. Ostrowski, 435 S.C. 364, 867 S.E.2d 269 (Ct. App. 2021), which is necessary to analyze this issue.

In Ostrowski, this Court examined lay testimony from two different law enforcement witnesses – Investigator Harrelson and Investigator King. Law enforcement found trafficking levels of methamphetamine during the execution of a search warrant on Ostrowski's residence. Investigator Harrelson was involved in the search of Ostrowski's residence, and over objection, testified a box of razor blades found could be used to cut up drugs into smaller amounts and sandwich baggies were commonly used to package drugs. Id. at 375, 867 S.E.2d at 274-75. Investigator Harrelson testified the contents of the house indicated, "Clearly somebody who was using, and also selling methamphetamine, due to the methamphetamine pipes, and digital scales used to weigh out drugs, and also the sandwich baggies and tin foil used also to package drugs for sale to

another individual." Id. at 376, 867 S.E.2d at 275.

This Court observed:

> [I]n limited circumstances, law enforcement officers are allowed to draw on their experiences while testifying. The dividing line that many courts have drawn – and that our supreme court appears to have adopted – is that officers may provide lay opinions based on their observations, experience and training, but may not provide lay opinions on such matters if they did not either observe the events in question or actively participate in the investigation.

Id. at 385, 867 S.E.2d at 279. In reaching the conclusion that Investigator Harrelson's testimony was proper lay testimony based on his experiences, this Court explained:

> Courts have frequently held that law enforcement officers can offer their opinion on certain aspects of the drug trade based on their *personal experience or knowledge* regarding the *particular investigation* at issue, or how those experiences and knowledge shaped their contemporaneous perceptions of what they saw *while acting in the course of an investigation.*

Id. at 387, 867 S.E.2d at 281 (emphasis in the original).

In contrast, Investigator King was not present when the search warrant was executed on Ostrowski's residence and did not become involved in the investigation until after Ostrowski was arrested. The State did not seek to qualify Investigator King as an expert witness before eliciting testimony from Investigator King about the meaning of words constituting drug trade jargon found in Ostrowski's texts. This Court found because Investigator King did not have an active role in the investigation, but only extracted messages from Ostrowski's cell phone later in the investigation, his testimony constituted textbook expert testimony and his testimony should not have been admitted unless the trial judge first qualified Investigator King as an expert. Id. at 389-90, 867 S.E.2d at 282.

Ostrowski is controlling. In the present case, both Investigator Godley and Officer Davis

testified they were familiar with the appearance of narcotics and both were involved in the discovery of the narcotics during the traffic stop. They testified as to the substances they found during the investigation. Accordingly, the trial court did not err in allowing the lay testimony.

Appellant's complaint about Investigator Davis providing lay testimony that "dog food" is a slang term for heroin is also unavailing. In United States v. Malagon, 964 F.3d 657, 659 (7th Cir. 2020), an undercover agent accompanied an informant to meet Malagon for a controlled purchase of cocaine. Malagon asked them to wait and when the agent became impatient, Malagon explained, "[T]he next time he would know that they are safe or trusted people and would have 'the cars ready' so that [the agent] could arrive, check it, and leave." Id. at 659. At trial, the agent testified "cars" meant kilograms of cocaine and "next time" meant the next order of cocaine. The Seventh Circuit rejected the argument that this was an improper lay opinion, explaining, "[The agent's] understanding of the meaning of the words used in those conversations to which he was a party fall within the proper scope of lay testimony, and there was no error in allowing the admission of the testimony." Id. at 662.

Further, there was no mystery as to the nature of the substances. The chemist verified the "dog food" was heroin, and verified the substances in the cigarette pack were cocaine and crack cocaine. Appellant was not charged for the marijuana and the jury gave him the benefit of the doubt for the methamphetamine. "[I]n appellate procedure[,] an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him. Technical errors or defects, or mere irregularities which do not affect the substantial rights of the accused are generally disregarded. . . ." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947).

In the present case, the testimony was cumulative to the chemist's testimony which firmly

established the illegality of the substances seized. The introduction of allegedly inadmissible evidence is harmless when the evidence is merely cumulative to other evidence presented without objection. State v. Kirton, 381 S.C. 7, 37-38, 671 S.E.2d 107, 122-23 (Ct. App. 2008).

Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). In the instant case, Appellant attempted with haste to leave his own vehicle because he had heroin in his pocket. The jury knew for certain the substance was heroin because of the chemist's testimony. Guilt for possession of cocaine and trafficking levels of crack cocaine was firmly established by Appellant's guilty conduct and his constructive possession of the cigarette pack hiding the cocaine and crack. This Court should affirm the convictions.

III.

The trial court did not err in allowing testimony concerning marijuana found in the vehicle because it was res gestae and probative to corroborate the officer's testimony that she smelled marijuana when she approached the vehicle. Further, the marijuana evidence was not unfairly prejudicial because Appellant had heroin in his pocket, and crack cocaine, cocaine, and methamphetamine pills were all found in the vehicle. Any conceivable error was harmless beyond a reasonable doubt.

Appellant argues testimony about marijuana was unfairly prejudicial and warrants reversal. However, Appellant avoids attempting to explain how evidence of marijuana was prejudicial despite that heroin, crack cocaine, powder cocaine, and amphetamine pills all were found in the vehicle. Instead Appellant resorts to a conclusory statement that the danger of unfair prejudice outweighed the evidence's probative value.

It is well settled that in ruling on the admissibility of evidence, the trial judge has considerable latitude and his ruling will not be disturbed absent a showing of probable prejudice. State v. Kelly, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "An error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice." State v. Green, 397 S.C. 268, 287, 724 S.E.2d 664, 673 (2012).

"'Unfair prejudice means an undue tendency to suggest a decision on an improper basis.'" State v. Stephens, 398 S.C. 314, 728 S.E.2d 68, 71-72 (Ct. App. 2012) (*quoting* State v. Lyles, 379

BaiS.C. 328, 665 S.E.2d 201, 206 (Ct. App. 2008)). "**All** evidence is meant to be prejudicial; it is only **unfair** prejudice which must be [scrutinized under Rule 403]." State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424, 429 (Ct.App.1998) (emphasis added) (quoting United States v. Rodriguez–Estrada, 877 F.2d 153, 156 (1st Cir.1989)). In determining whether the danger of unfair prejudice outweighs the probative value of evidence, the court must consider the entire record, and the determination will turn on the facts of each case. Lyles, 665 S.E.2d at 206 (citing State v. Gillian, 373 S.C. 601, 646 S.E.2d 872, 876 (2007)). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Regardless of the enormous hurdle Appellant faces in explaining how the marijuana evidence was actually prejudicial to Appellant, it was nonetheless admissible as part of the res gestae of the crime. A prior bad act may be admissible under the res gestae theory where it is "an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); see State v. Crim, 327 S.C. 254, 489 S.E.2d 478 (1997) (Evidence of defendant's larceny of car defendant drove when the accident leading to the felony DUI charge occurred was admissible as *res gestae* in prosecution for felony DUI); State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997) (finding evidence that defendants purchased crack cocaine with proceeds of stolen items sold was necessary for full presentation of the case and admissible as *res gestae*); State v. Johnson, 306 S.C. 119, 410 S.E.2d 547, 552 (1991) (finding that evidence of a dead body in defendant's van tended to explain why the defendant shot the trooper when the trooper opened the van door).

In the present case, the marijuana evidence was admissible as res gestae of the charged drug offenses because Investigator Godley testified: (1) she smelled marijuana while speaking with the driver and Appellant; (2) Appellant admitted to smoking marijuana; and (3) as a result, she informed Appellant and the driver she was calling for back-up and would search the vehicle. In response to the latter, Appellant attempted to escape the scene, indicating consciousness of guilt. "As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976).

Additionally, any error is harmless beyond a reasonable doubt. "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). The harmless error doctrine preserves the central purpose of a criminal trial, which is to decide the factual question of a defendant's guilt or innocence. State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (citing Arizona v. Fulminante, 499 U.S. 279, 306-08 (1991)). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012) (citation and question marks omitted).

In the present case, Appellant was convicted for the heroin in his shirt pocket and both the cocaine and crack cocaine hidden in the cigarette pack. But the jury gave him the benefit of the doubt for the methamphetamine pills with an acquittal and the question of whether he possessed the cocaine with intent to distribute – convicting Appellant of simple possession instead. It is unlikely

the jury considered the marijuana for propensity or some other unmentioned improper purpose in finding him guilty for the trafficking charges. Any error is harmless beyond a reasonable doubt.

Finally, Detective Kellermeyer testified, without objection, that he found marijuana in the vehicle. Therefore, Investigator Godley's testimony was merely cumulative to Detective Kellermeyer's testimony. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (any error in admission of evidence cumulative to other evidence to which no objection was made is harmless) *overruled on other grounds by* State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

Respectfully submitted,

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