STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable R. Scott Sprouse, Circuit Court Judge
Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Appellate Case No. 2021-001144

THE STATE,

Respondent,

vs.

RANDY LEE CANTRELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Whether the trial court erred by denying Appellant's pretrial motion to suppress the unanalyzed pipe where the pipe was highly prejudicial evidence that had very little probative value because the substance in the pipe was never analyzed such that the state never proved that it was methamphetamine?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow abuse his broad discretion over evidentiary matters by denying defense counsel's motion seeking the suppression of a residue-covered glass pipe found in the same vehicle as the methamphetamine when: (1) the pipe constituted drug paraphernalia that was within reaching distance of Appellant and, thus, was relevant and probative on the issue of his constructive possession and knowledge of an also-nearby illegal substance that could be smoked with that pipe; and (2) the pipe's probative value was not substantially outweighed by its potential for unfair prejudice because the jury could be and was made fully aware of the relative strengths and weaknesses of that circumstantial evidence?

STATEMENT OF THE CASE

In April of 2019, Appellant Randy Lee Cantrell was arrested during a routine traffic stop after officers discovered suspected drugs and other incriminating items inside the vehicle he was driving at that time. In October of 2019, the Oconee County Grand Jury indicted Appellant for third-offense possession of methamphetamine. On August 23, 2021, a jury trial was commenced in the Oconee County Court of General Sessions with the Honorable R. Scott Sprouse, circuit court judge, presiding. At the outset of trial, Appellant was present in the courtroom, but he left when the proceedings recessed for lunch and did not return. On the following day, Appellant again failed to appear, and the trial proceeded forward in his absence. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant and sealed the sentence. Subsequently, Appellant was apprehended, and, on September 23, 2021, a sentencing hearing was conducted in the Oconee County Court of General Sessions with the Honorable J. Cordell Maddox, Jr., circuit court judge, presiding. During the hearing, the sentencing judge unsealed Appellant's sentence and imposed a ten-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 10:10 a.m. on the morning of April 6, 2019, Officer Juan Hernandez of the Walhalla Police Department initiated a traffic stop of a vehicle based on an equipment infraction, and the vehicle's driver and lone occupant—Appellant—pulled over into the parking lot of a laundromat and car wash in response. (R. pp. 32-33; p. 44; p. 60; pp. 119-120; p. 123; State's Ex. # 7 (Recording)). Officer Hernandez then approached the vehicle and immediately recognized Appellant, whom he knew as "Dirty." (R. p. 33; pp. 172-173; State's Ex. # 7). During their ensuing conversation, Officer Hernandez explained to Appellant why he was stopped, and Appellant—a habitual traffic offender—quickly admitted two problematic things: (1) he did not have a driver's license; and (2) there was a small quantity of "weed" inside the vehicle on the front passenger side. (R. pp. 33-34; p. 55; p. 121; State's Ex. # 5 (Recording); State's Ex. # 7).

Following Appellant's candid admissions, Officer Hernandez detained Appellant in his patrol vehicle while Officer Zachary McCall, a canine handler for the Walhalla Police Department who was assisting with the stop, retrieved his dog, Kimber, for a sniff search of the vehicle. (R. pp. 34-35; pp. 53-55; pp. 82-83; pp. 91-92; pp. 125-126; State's Ex. # 5; State's Ex. # 7). While Kimber was conducting that sniff search, Appellant begged Officer Hernandez not to arrest him, offered to do "something" for the officers in exchange for not being taken to jail, asserted the car—which was later confirmed to belong to his reported girlfriend—was not his, claimed its true owner let other people use it aside from him, and said he would help the officers if they would help him. (R. p. 35; p. 149; p. 172; State's Ex. # 7). Ultimately, Kimber alerted to the presence of drugs inside the vehicle. (R. pp. 34-35; p. 61; pp. 84-85; pp. 92-93; State's Ex. # 5; State's Ex. # 7).

Based on Kimber's alert, Officer McCall and Officer Hernandez began searching inside the vehicle. (R. p. 35; p. 94; State's Ex. # 5; State's Ex. # 7). During that search, the officers found Appellant's marijuana on the front passenger side of the vehicle just as Appellant had reported to them. (R. p. 103; p. 129; p. 150; State's Ex. # 5; State's Ex. # 7). Additionally, nearby in the front passenger seat, Officer McCall found a grocery bag containing what appeared to be fresh perishable groceries, including shredded lettuce and some ground meat. (R. p. 111; p. 154; State's Ex. # 5; State's Ex. # 7). Significantly, in that same bag, Officer McCall found a glass pipe he immediately recognized as one used for smoking methamphetamine along with another similar one nearby, and one of those pipes still contained white residue. (R. p. 36; p. 38; p. 47; pp. 56-57; pp. 97-98; pp. 107-108; p. 111; pp. 127-129; p. 154; State's Ex. # 5; State's Ex. # 7; State's Ex. # 11 (Photograph)). Furthermore, the officers located other items associated with drug activity inside the vehicle, including baggies, numerous cell phones, digital scales, a different type of pipe used for smoking marijuana, and a marijuana grinder. (R. p. 36; p. 39; pp. 56-59; pp. 97-100; p. 109; p. 124; p. 127; pp. 130-131; p. 136; p. 139; pp. 165-166; State's Ex. # 5; State's Ex. # 7; State's Ex. # 9 (Photograph); State's Ex. # 10 (Photograph); State's Ex. # 12 (Photograph); State's Ex. # 15 (Photograph); State's Ex. # 16 (Photograph)).

In light of those discoveries, Appellant was alerted he was going to be arrested for several offenses, including possession of methamphetamine. (R. pp. 184-185; State's Ex. # 7). Appellant responded by denying the "shit" was his and disclaiming any knowledge of methamphetamine inside the car. (R. pp. 151-152; pp. 184-185; State's Ex. # 5; State's Ex. # 7). However, Appellant followed that by attempting to bargain with the officers and offered multiple times to tell them where the "main shit" was coming from along with where it could be found

while requesting to speak with a narcotics agent.[1] (R. p. 41; pp. 151-152; State's Ex. # 5; State's Ex. # 7). Meanwhile, as the search of the vehicle continued, Officer McCall located a camouflaged burner inside a box on the vehicle's backseat that was situated *next to* a monogrammed bag.[2] [3] (R. p. 36; p. 58; p. 105; pp. 132-134; p. 154; State's Ex. # 5; State's Ex. # 13 (Photograph); State's Ex. # 14 (Photograph)). Notably, a dried crystal-like substance was on top of the burner, and that substance was later confirmed to be 0.19 grams of methamphetamine through forensic analysis. (R. pp. 96-97; p. 200; pp. 205-206; State's Ex. # 5; State's Ex. # 24 (Drug Analysis Report)).

Ultimately, based on what was uncovered during the traffic stop, Appellant was arrested and indicted for possession of methamphetamine, and he elected to proceed forward to trial. (R. p. 5; pp. 40-42; pp. 101-102; pp. 179-180; pp. 261-262). At the outset of trial, defense counsel moved to suppress the glass pipe as more prejudicial than probative. (R. p. 25). As support for that motion, defense counsel contended the pipe was not relevant to possession of methamphetamine because no analysis was performed on it and, thus, it was unclear what was inside it. (R. pp. 25-26). Conversely, the solicitor argued the glass pipe was a methamphetamine pipe and, therefore, was "super relevant" to the indicted offense. (R. p. 26). After listening to

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[1] Before offering to direct the officers to the "main shit," Appellant had already been alerted he was not going to be charged in connection to the marijuana. (State's Ex. # 7).

[2] Early on during trial, Officer Hernandez, who was not the one who actually found the burner, incorrectly stated—at one point during an in camera evidentiary proffer—the burner was found in the vehicle's trunk. (R. p. 46; State's Ex. # 5). However, he later corrected himself and confirmed the burner—like the glass pipe with residue on it—was found within reaching distance of Appellant. (R. p. 154).

[3] Throughout his appellate brief, Appellant repeatedly claims the burner was found in a "purse" in the vehicle's trunk, and he heavily relies on that supposed fact about where the burner was specifically located to support his appellate argument. (App. Br. p. 4; pp. 8-9). Importantly though, Appellant's assertion in that regard was and is completely incorrect as the burner was neither found in the vehicle's trunk nor concealed in a purse. (State's Ex. # 5).

those contentions, the trial judge indicated he did not have enough information to properly rule at that time and permitted the parties to proffer evidence on the matter. (R. p. 28).

During the ensuing proffer, Officer Hernandez and Officer McCall recounted what occurred during the traffic stop. (R. pp. 32-63). Notably, in doing so, Officer Hernandez identified the glass pipe with residue on it found during the stop as one he recognized to be a methamphetamine pipe. (R. p. 38; p. 52). However, Officer Hernandez acknowledged the pipe had not been analyzed, and both officers further confirmed a crystal-like substance could theoretically be something other than methamphetamine.[4] (R. p. 49; p. 51; p. 63).

Following that, defense counsel renewed her objection to the glass pipe while again contending its admission would be more prejudicial than probative since it remained unclear what substance was actually in the pipe. (R. p. 64). In rebuttal, the solicitor contended the pipe was relevant to the issue of constructive possession under the circumstances involved. (R. pp. 64-65). After considering those arguments, the trial judge overruled defense counsel's objection to the glass pipe. (R. p. 67). In doing so, the trial judge found the glass pipe was relevant and probative even without conclusive testing being conducted, and he further explained defense counsel's arguments concerned the weight of the evidence and could be presented to the jury. (R. p. 67).

Thereafter, the trial continued forward, and Officer McCall and Officer Hernandez testified before the jury about the traffic stop that led to the discovery of Appellant's methamphetamine and other incriminating items. (R. pp. 82-112; pp. 119-185). Notably, during

[4] Later on, Meredith Lanford, the expert forensic chemist who conducted the analysis in Appellant's case, explained she did not analyze the pipe pursuant to laboratory policy because a measurable amount of methamphetamine had already been discovered through the testing of the substance on the burner. (R. pp. 196-197; p. 200; p. 207). She further explained it would be difficult to recover residue from a glass pipe without breaking the glass. (R. p. 209).

Officer Hernandez's testimony, the solicitor sought to introduce photographs of the pipes found during the stop, and the photographs were admitted without objection after defense counsel expressly indicated she had no objection. (R. p. 128). Likewise, the recordings of the stop captured on the officers' body-worn cameras were admitted into evidence without objection and played for the jury after defense counsel expressly confirmed she had no objections. (R. p. 95; pp. 147-148). Furthermore, expert testimony was presented confirming: (1) the substance found on the burner was methamphetamine; and (2) the residue present on the glass pipe was *not* analyzed. (R. pp. 196-198; pp. 205-207; p. 209). Notably, during the expert's testimony, the sealed evidence kit containing the burner and glass pipe was "admitted without objection" after defense counsel once again indicated she had no objections to that evidence. (R. p. 204).

At the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury, and, consistent with the trial judge's earlier explanation when ruling on the admissibility of the glass pipe, defense counsel expressly pointed out to the jurors it remained unknown precisely what substance was in the glass pipe since it was not analyzed. (R. pp. 219-236). Following that, the trial judge instructed the jury on the applicable law, including on evaluating and weighing evidence and on the differences between direct and circumstantial evidence. (R. pp. 236-249). Thereafter, the case was submitted to the jury, and, following just under an hour of deliberations, the jury convicted Appellant as indicted. (R. pp. 250-251).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). 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."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Significantly, "[a]n abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); see United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The trial judge did not abuse his broad discretion over evidentiary matters by denying defense counsel's motion seeking the suppression of a residue-covered glass pipe found in the same vehicle as the methamphetamine because: (1) the pipe constituted drug paraphernalia that was within reaching distance of Appellant and, thus, was relevant and probative on the issue of his constructive possession and knowledge of an also-nearby illegal substance that could be smoked with that pipe; and (2) the pipe's probative value was not substantially outweighed by its potential for unfair prejudice because the jury could be and was made fully aware of the relative strengths and weaknesses of that circumstantial evidence.

Appellant contends the trial judge abused his discretion and reversibly erred by denying defense counsel's "pretrial" motion to suppress the glass pipe.[5] As support for that contention, Appellant maintains the probative value of the glass pipe was substantially outweighed by the danger of unfair prejudice. And, in so maintaining, Appellant premises his argument on an inaccurate assertion the burner with the methamphetamine on top was located inside a purse in

[5] Notably, Appellant's choice to frame the issue on appeal as alleging error in the trial judge's denial of a "pre-trial" suppression motion is a telling one. (App. Br. p. 1; p. 4). Although defense counsel moved for the glass pipe to be suppressed during an in camera hearing before the evidentiary phase of trial got underway, defense counsel indicated to the trial judge she had no objections to the glass pipe itself or any of the evidence related to it when the solicitor sought its admission into evidence during trial, and, resultantly, the trial judge admitted all that evidence without objection. (R. pp. 25-26; p. 64; p. 95; p. 128; pp. 147-148; p. 204). Under such circumstances, defense counsel's earlier objection was *abandoned* instead of simply not renewed, and any issue concerning the admission of the evidence concerning the glass pipe was not properly preserved for appellate review since that evidence was expressly admitted without objection during trial. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); see also State v. Jones, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021) ("[A] different approach is warranted where a court rules after a[n in limine] hearing on a constitutional issue. Under those circumstances, the ruling is final and, unless something changes during trial that may reasonably cause the trial judge to alter the pretrial ruling, no further objection is required to preserve the issue for appellate review.").

the vehicle's trunk while the glass pipe with the residue on it was found in the vehicle's passenger compartment.[6] Notwithstanding the fact Appellant's entire appellate argument rests on a fundamentally faulty and incorrect view of the facts, the trial judge did not abuse his broad discretion or otherwise by denying the suppression motion because: (1) the glass pipe with residue on it constituted drug paraphernalia that was within reaching distance of Appellant and, thus, was relevant and probative on the issue of his constructive possession and knowledge of an also-nearby illegal substance that could be smoked with that very pipe; and (2) the glass pipe's probative value was not substantially outweighed by its potential for unfair prejudice because the jury could be and was made fully aware of the relative strengths and weaknesses of that circumstantial evidence. Appellant's conviction should be affirmed.

All relevant evidence is admissible, and only relevant evidence should be admitted at trial. Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' ").

However, even if relevant, evidence must be excluded from trial if its probative value is *substantially* outweighed by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, SCRE ("Although relevant, evidence may be

[6] As supposed support for his assertion the burner was "found in the trunk" inside a "purse with someone else's initials monogramed on it[,]" Appellant cites to defense counsel's opening statement. (App. Br. p. 8). But, in the cited portion of the opening statement, defense counsel did *not* make an assertion consistent with the one Appellant has advanced on appeal. (R. p. 80). Instead, defense counsel advised the jury the burner was found "in the back seat" of the car inside a "box of clothes[.]" (R. p. 80).

excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see also New Oxford American Dictionary 1736 (3rd ed. 2010) (defining "substantially" as "to a great or significant extent"). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Meanwhile, unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see Old Chief v. United States, 519 U.S. 172, 181 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). However, unfair prejudice does *not* mean damage to a defendant's case that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). That is true because all evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant, and it is only unfair prejudice that must be avoided. Id.

When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have "particularly wide discretion[.]" Collins, 398 S.C. at 209, 727 S.E.2d at 757. As a result, a trial judge's ruling on such a matter should be afforded great deference on

appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Hamilton, 344 S.C. at 358, 543 S.E.2d at 594.

In the case sub judice, Appellant was indicted for possession of methamphetamine. To prove his guilt for that charge, the State was required to demonstrate to the jury beyond a reasonable doubt Appellant was in actual or constructive possession of the methamphetamine *and* had knowledge of its presence. See State v. Muhammed, 338 S.C. 22, 26, 524 S.E.2d 637, 639 (1999) ("Conviction of possession requires proof of possession, either actual or constructive, *coupled with knowledge of its presence*." (emphasis added)). As a result, any evidence—including circumstantial evidence—bearing on Appellant's knowledge of the methamphetamine was particularly relevant, probative, and important during his trial. See State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) ("In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially."); State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) ("Possession may be inferred from circumstances."); State v. Hudson, 294 S.C. 51, 202, 284 S.E.2d 773, 775 (1981) (recognizing constructive possession can be established by circumstantial evidence).

Significantly, one type of circumstantial evidence that can be relevant and probative for the purpose of establishing the knowledge necessary to prove an individual's possession of an illegal drug is the presence of drug paraphernalia, such as a glass pipe used for consuming the drug. See Parks v. State, 853 So. 2d 884, 887 (Miss. Ct. App. 2003) ("The fact of Parks's proximity to the paraphernalia that could be used in the purchase and consumption of marijuana was relevant in showing constructive possession."). That is true because items like glass pipes are well known and well recognized to be connected to drug usage and have little—if any—other non-illicit useful purposes. See United States v. Runner, 43 F.4th 417, 422 (4th Cir. 2022) ("[T]he *predominate* purpose of stem pipes has been—and continues to be—to smoke illegal substances. Despite the increased use of glass pipes to ingest legal substances such as CBD oil, it is still reasonable that a police officer would reach the belief that a glass pipe was evidence of a crime supporting probable cause.").

In light of that, the glass pipe with residue on it recovered during the traffic stop in Appellant's case was a relevant and probative piece of evidence supporting Appellant's knowledge of the presence of the methamphetamine found elsewhere in the vehicle's passenger compartment since the logical use of such a pipe was for consuming a substance just like the also-present methamphetamine. See State v. Lewis, 566 So. 2d 1120, 1124-1125 (La. Ct. App. 1990) (concluding the trial judge properly admitted evidence of a glass pipe found inside a vehicle during a prosecution for possession of cocaine because the pipe was drug paraphernalia and, thus, was "relevant to show the defendant's intent and guilty knowledge in the possession of cocaine" and further concluding any possible prejudice that could have resulted from the evidence of the pipe was substantially outweighed by its probative value). And, since the glass pipe was found to be within reaching distance of Appellant *and* close to both his candidly-

claimed marijuana and perishable groceries, its location in the vehicle strongly refuted any claim Appellant had no knowledge of it, and his knowledge of a residue-covered glass pipe typically used for smoking something like methamphetamine in turn constituted compelling evidence of his knowledge of the methamphetamine itself. See Flake v. State, 948 So. 2d 493, 498 (Miss. Ct. App. 2007) (explaining "possession of drug paraphernalia is relevant to possession of contraband" and noting glass pipes "are known and used in the drug culture for ingesting drugs, particularly methamphetamine"). Furthermore, its relevancy and probative value was only enhanced by the fact Appellant denied ownership of the vehicle, renounced any knowledge of the "shit" found inside it, and suggested others had access to the car, too. Cf. Buggs v. State, 738 So. 2d 1253, 1258 (Miss. Ct. App. 1999) ("Buggs presented evidence to overcome this presumption [of constructive possession], mentioning the fact that there were three other occupants of the home with him. It was the prosecution's duty to prove Buggs's guilt of possession, and rebut Buggs's argument that he was not in possession of the drugs. That is exactly why the State was allowed to offer the evidence of the crack cocaine found in a box in the kitchen closet, a matchbox containing over thirty pieces of crack cocaine at his feet, a crack pipe in Buggs's possession, and other paraphernalia. The paraphernalia was evidence for the jury to determine whether Buggs had possession and control over the crack cocaine."). Therefore, the trial judge correctly recognized the glass pipe with residue on it was relevant and probative in Appellant's case. Cf. Flake, 948 So. 2d at 498 (concluding the presence of drug paraphernalia was "highly relevant" for the purpose of showing Flake's knowledge of methamphetamine).

Meanwhile, the primary thing Appellant identified as potentially leading to unfair prejudice—the fact the residue on the pipe had not been conclusively determined to be

methamphetamine through forensic analysis—was something that could be *and was* called to the jury's attention, which ensured the jurors understood the relative strengths and weaknesses of the glass pipe evidence and helped prevent Appellant from suffering any prejudice aside from that caused by the evidence's legitimate probative force. Gilchrist, 329 S.C. at 630, 496 S.E.2d at 429; cf. People v. Alexander, 235 P.3d 873, 924 (Cal. 2010) ("The factors raised in defendant's challenge to this evidence—that the presumptive tests could not confirm the substance tested was human blood, that confirmatory tests failed to confirm the presence of blood, and that it is unknown when the jacket might have been exposed to the substance that created the positive results—do not mean the test results have *no* tendency in reason to establish that defendant shot Agent Cross. Those issues affect the probative weight of the evidence, not whether the test results meet the threshold requirement of relevancy. The trial court did not abuse its discretion in finding this evidence was relevant."). Under such circumstances, the jurors—who were fully aware the residue on the glass pipe had *not* been tested—could not have been improperly confused or misled by the evidence related to the glass pipe. Cf. Alexander, 235 P.3d at 924 ("The testimony regarding the presumptive blood tests had no particularly emotional component, nor did it consume an unjustified amount of time. Further, because the defense fully explored the limitations of the presumptive tests through cross-examination, there is no likelihood this evidence confused or misled the jury."). Therefore, just as the trial judge recognized, the glass pipe's potential for unfair prejudice did not substantially outweigh its probative value under the circumstances involved. See id. (explaining evidence need not be excluded when comparing its probative value to its potential prejudicial effect *unless* it poses an intolerable risk to the fairness of the proceedings or the reliability of the outcome).

Because the probative value of the glass pipe evidence was not substantially outweighed by the evidence's low potential to cause any improper prejudice to Appellant, the trial judge did not abuse his broad discretion by admitting the glass pipe evidence and leaving it to the jury to decide what weight—if any—to give it, and there are no exceptional circumstances present in Appellant's case that would warrant a reversal of that discretionary evidentiary ruling on appeal. See State v. Sweat, 362 S.C. 117, 129, 606 S.E.2d 508, 515 (Ct. App. 2004) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances."); see also State v. Robinson, 426 S.C. 579, 607, 828 S.E.2d 203, 217 (2019) (recognizing it is conceivable the discretionary rulings of two different trial judges who reached opposite conclusions from the same set of circumstances will both be affirmed on appeal due to the deferential nature of the abuse of discretion standard of review). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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December 29, 2022

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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies 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."

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PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

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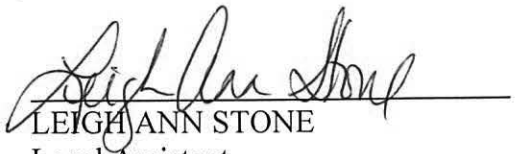
I further certify all parties required by Rule to be served have been served.
This 29th day of December, 2022.



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Cc: Mark Farthing; William Blitch; 'Warren, Kaylynn'
Subject: State v. Randy Lee Cantrell (2021-001144)
Attachments: Cantrell.FBOR (03184471xD2C78).PDF

Good Morning Mr. Dudek,

Attached please find a copy of the Final Brief of Respondent in The State v. Randy Lee Cantrell (2021-001144). This brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

Thank you,

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