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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDY LEE CANTRELL,

APPELLANT

APPELLATE CASE NO. 2021-001144

FINAL BRIEF OF APPELLANT

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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?

STATEMENT OF THE CASE

During the October 2019 term, the Oconee County grand jury indicted appellant for possession of methamphetamine, third offense. R. 261.

On August 23 – 24, 2021, appellant proceeded to trial before the Honorable R. Scott Sprouse. R. 1. Bethany Ann Blundy represented appellant. Id. Kayla Michelle Porter represented the state. Id. As the first day of trial came to a close, appellant complained of chest pains and had to go to the hospital. R. 29, l. 12 – 30, l. 2. Appellant left the hospital and was not present for second day of trial. R. 69, l. 1 – 73, l. 5.

Appellant was found guilty of possession of methamphetamine, third offense, in his absence. R. 251, ll. 3 – 11. Judge Sprouse sealed appellant’s sentence. R. 252, l. 24 – 253, l. 5.

On September 23, 2021, the sentencing hearing proceeded before the Honorable J. Cordell Maddox. R. 255. Beth Ann Blundy represented appellant. R. 256. Kayla Michelle Porter represented the state. Id. Judge Maddox unsealed the sentence, and appellant was sentenced to ten years’ imprisonment for possession of methamphetamine, third offense. R. 258, ll. 6 – 19.

This brief follows.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (“quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

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.

Relevant Facts

On April 6, 2019, appellant was pulled over while he was driving his girlfriend's car. R. 102, ll. 2 – 9; R. 149, l. 22 – 151, l. 3. Officer Hernandez stated he pulled appellant over because of a broken taillight. Id. Appellant was forthcoming with the officer and told him right away that there was marijuana in the car. R. 123, l. 19 – 124, l. 6.

Officer Hernandez waited for the K-9 unit to arrive to perform a dog sniff search of the car. R. 124, l. 12 – 127, l. 10. The K-9 unit alerted to drugs at the driver side door. R. 92, l. 25 – 93, l. 10. Appellant's girlfriend's car was then searched. R. 124, l. 21 – 125, l. 2.

The search of the cabin of the car produced three pipes, a grinder and scales. R. 124, ll. 13 – 20; R. 128, l. 11 – 129, l. 24; R. 129, l. 25 – 132, l. 5. Officer Hernandez observed the pipes and concluded that two of the pipes were used for marijuana and one had a crystal-like substance in it. R. 128, l. 11 – 129, l. 14. Hernandez only sent the pipe with the crystal-like substance to the laboratory for analysis. Id. The search then went to the trunk of appellant's girlfriend's car, and inside a bag with someone else's initials stitched into it, a potpourri burner was found with a crystal-like substance inside of it. R. 46, l. 18 – 47, l. 12; R. 132, l. 6 – 133, l. 15. The potpourri burner was also sent to the laboratory for analysis. R. 141, ll. 15 – 19.

At appellant's trial, the lab tech Meredith Lanford testified to the tests she performed in this case. R. 196, ll. 2 – 9. She tested the potpourri burner and stated the results showed the

crystal-like substance was methamphetamine. R. 200, l. 1 – 201, l. 3; R. 204, l. 23 – 205, l. 19. However, she also explained she did not analyze the substance found in the pipe that was sent for testing. R. 206, l. 24 – 207, l. 10. Accordingly, the state did not prove that the pipe had methamphetamine in it such that the probative value of the pipe was minuscule.

Recognizing the highly prejudicial nature of the pipe and its small probative value, trial counsel properly made a pretrial motion to suppress it from being presented as evidence against appellant. R. 25, l. 12 – 26, l. 6. Trial counsel argued that because the pipe was never analyzed, “we don’t know if there was actually any [methamphetamine] in that pipe.” Id. The solicitor admitted that trial counsel was right, in that there was no way to be certain what was inside the pipe, because it was never analyzed. R. 26, ll. 8 – 23. However, even without testing the substance in the pipe, the solicitor argued that the pipe was still “super relevant.” Id.

During his proffered testimony, Officer Hernandez stated that he observed a “crystal like substance... on the [pipe taken into custody].” R. 38, ll. 12 – 22. Hernandez further stated that he charged appellant with possession of methamphetamine based on his observation of the crystal-like substance, *the pipes being in the car*, appellant being the only person in the car, and his personal items being in the car. R. 43, l. 21 – 44, l. 11. Accordingly, the fact that the pipes were found inside the car created a sufficient connection to appellant such that Hernandez levied charges against appellant because of it.

On cross-examination, Hernandez admitted that he could not say “for sure” that the substance in the pipe was methamphetamine. R. 44, l. 20 – 45, l. 3. He further admitted that the pipe could have been used to smoke anything, and that because no testing was done on the pipe, he does not know if it contained methamphetamine. R. 48, ll. 20 – 23; R. 51, ll. 7 – 16.

The trial court denied appellant's motion to suppress the untested pipe because Hernandez testified "that based on his training and experience [the substance] was most likely methamphetamine." R. 65, l. 25 – 66, l. 8. The trial court concluded the pipe was relevant despite the chemist not testing it and that appellant's arguments go to the weight of the evidence rather than its admissibility. R. 66, l. 9 – 67, l. 24. As a result, appellant's trial proceeded and he was convicted of possession of methamphetamine, third offense. R. 251, ll. 3 – 11.

Discussion

The trial court abused its discretion when it denied defense counsel's motion to suppress the untested pipe pursuant to Rules 401, 402, and 403,¹ SCRE, because the danger of unfair prejudice from admitting the untested pipe substantially outweighed its scant probative value. R. 25, l. 12 – 26, l. 6.

Generally, all relevant evidence is admissible. Rule 402, SCRE. Relevant evidence is evidence having the tendency to make some matter in issue more or less probable. Rule 401, SCRE; See State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see also State v. Crocker, 366 S.C. 394, 408, 621 S.E.2d 890, 898 (2005). However, even relevant evidence must "be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Thus, consideration of whether evidence is relevant and admissible requires consideration of the evidence's probative value, the danger of unfair prejudice posed by the evidence, and the balancing of those two.

"'Probative' means '[t]ending to prove or disprove.'" State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (2014). According to this Court, "'[p]robative value' is the measure of the importance of that tendency to the outcome of a case." Id. at 610, 759 S.E.2d at 165. The

¹ Trial counsel cited Rule 404, SCRE, but she stated the pipe was more prejudicial than probative, which is a direct reference to Rule 403, SCRE. R. 25, ll. 20 – 21.

probative value of evidence is directly related to how important that evidence is in assisting the jury in rendering a verdict. Id. When analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (2012). Specifically, regarding the probative value of evidence an appellate court, “considers the importance of the evidence and the significance of the issues to which the evidence relates.” State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (2014); see also State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010).

To determine the prejudicial effect of offered evidence, an appellate court must look at the entire record. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). The result will generally turn on the facts of each case. Id. ““Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis.”” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (1993)).

According to the United States Supreme Court, “[t]he 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.” Old Chief v. United States, 519 U.S. 172, 180 (1997). Evidence that merits suppression for undue prejudice to defendant is such that it, “damages an opponent for reasons other than its probative value, for instance, an appeal to emotion.” United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003).

Once a court has determined the probative value and the danger of unfair prejudice of the evidence, the court must balance the two. State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502

(2013). Only after balancing the probative value and the danger of unfair prejudice may the court determine if the danger of unfair prejudice substantially outweighs the probative value of the proffered evidence as required by Rule 403, SCRE.

Our Supreme Court's analysis of Rule 403, SCRE, in State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (2012) provided a four-step test to analyze if the danger of unfair prejudice from a piece of evidence substantially outweighed its probative value. The first step is a determination of the probative value of the evidence. The second is an evaluation of the danger of unfair prejudice resulting from the introduction of the evidence. The third is a balancing test the court must make between the probative value and unfair prejudice of the evidence in question. The fourth is the appellate court review of the decision of the trial court for an abuse of discretion. Id.

The aforementioned analytical framework, when applied to the present case, reveals that the low probative value of the pipe was substantially outweighed by the unfair prejudice posed to appellant. The first step of the Collins framework is to determine the probative value of the contested evidence. Here, the untested pipe had very little probative value, as Officer Hernandez admitted, since the pipe was never analyzed we have no way of knowing, or proving, that the substance in the untested pipe was methamphetamine. R. 178, ll. 10 – 21.

The second step is determining the danger of unfair prejudice to appellant by the admission of the untested pipe. Here, the danger of unfair prejudice from the admission of the untested pipe was high. In this case there were two key pieces of evidence. The potpourri burner found in the trunk, in a purse with someone else's initials monogrammed on it, and the untested pipe found in the passenger compartment of the car. R. 47, ll. 6 – 12; R. 80, l. 14 – 81, l. 2.

While the substance in the potpourri burner was tested and came back positive for methamphetamine, it was located in the trunk and in someone else's purse. Id.; Id. Therefore,

the probative value was reduced, as the link between the potpourri burner and appellant was tenuous. It is certainly reasonable to argue, as defense counsel did, that the potpourri burner belonged to a third party because of where it was found in the car. R. 47, ll. 6 – 12; R. 80, l. 14 – 81, l. 2.

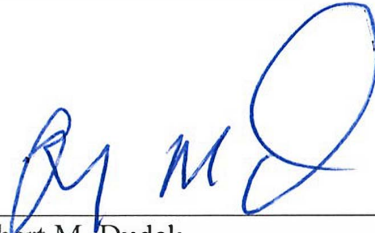
However, the untested pipe was beguiling because it was found in the passenger compartment of the car, within arm's reach of appellant, while appellant was in the car alone. R. 43, l. 24 – 44, l. 11; R. 111, ll. 7 – 20; R. 161, ll. 6 – 21. Therefore, the danger of unfair prejudice from the admission of the untested pipe was high, as it was used to lead the jury to believe appellant was guilty of possession of methamphetamine, despite the fact that the mystery substance in the pipe was never proven to be methamphetamine.

Thus, given the relatively low probative value and high danger of unfair prejudice from admitting the untested pipe into evidence, the third step in the Collins framework, the balancing test between the probative value and danger of unfair prejudice of admission of the untested pipe, naturally weighed in favor of suppression. The final inquiry for this Court, then, is whether the trial court abused its discretion when it admitted, over defense counsel's objection, the untested pipe into appellant's trial for possession of methamphetamine. R. 65, l. 25 – 67, l. 24.

The only dispute in this case was whether appellant possessed methamphetamine, and the admittance of the untested pipe into evidence did not make it more or less probable that appellant committed the crime charged against him. All the admission of the pipe did was invite the jury to speculate as to what the substance inside the pipe was and to convict appellant of possession of methamphetamine based on that speculative, improper basis. Therefore, the trial court abused its discretion when it denied defense counsel's motion to suppress the untested pipe with the mystery substance in it for being substantially more prejudicial than probative.

CONCLUSION

By reason of the foregoing arguments, appellant respectfully requests that this Court vacate appellant's conviction and remand his case for a new trial.



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ATTORNEY FOR APPELLANT

This 17th day of January, 2023.