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Oct 06 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County

Honorable Diane Schafer Goodstein, Circuit Court Judge

MICHAEL BOYKIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-002057

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The lower court erred in allowing prior bad acts testimony involving appellant into evidence at trial because the prejudicial value of the same outweighed the probative value and thus denied appellant of his right to a fair trial.4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967)..... 7

Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989) 5

State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) 3

State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008)..... 5

State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007) 3

State v. King, 416 S.C. 92, 784 S.E.2d 252 (2016) 6

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)..... 5, 6

State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990)..... 5

State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992)..... 5

State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (2013)..... 5

State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013)..... 5

State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009) 3

State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012) 3

White v. State, 263 S.C. 110, 208 S.E.2d. 35 1975)..... 2

Rules

Rule 401, SCRE..... 6

Rule 403, SCRE..... 3, 6

Rule 404(b), SCRE 3, 6

STATEMENT OF ISSUE ON APPEAL

The lower court erred in allowing prior bad acts testimony involving appellant into evidence at trial because the prejudicial value of the same outweighed the probative value and thus denied appellant of his right to a fair trial.

STATEMENT OF THE CASE

Appellant Michael Boykin was convicted of possession of crack cocaine, possession of hydrocodone, and possession of oxycodone during the January 2018 term of the Kershaw County General Sessions Court before Judge G. Thomas Cooper, who sentenced appellant to an aggregate fifteen-year prison term. Appellant was represented at trial by Ronald W. Moak, and Assistant Solicitor Brett A. Perry appeared on behalf of the state. Appellant did not enjoy the benefit of a direct appeal in the case. App. 1-230.

On April 26, 2018, appellant filed a PCR application with the Kershaw County Office of the Clerk of Court. The respondent filed a return dated April 26, 2018. App. 262-273.

A PCR hearing was held on June 19, 2019, at the Richland County Courthouse before Judge Diane Schafer Goodstein. Appellant was present at the hearing and represented by Kristy G. Goldberg, and Assistant Attorney General Brianna L. Schill appeared on behalf of the state. App. 274-351. On August 30, 2019, Judge Goodstein issued an Order of Dismissal filed on September 19, 2019, denying appellant's allegations of ineffective assistance of trial counsel. App. 358-377.

A Rule 59(e), SCRCP, motion was filed by appellant on October 7, 2019, and the respondent filed a return on October 22, 2019, but on November 18, 2019, Judge Goodstein filed an Order denying the motion. App. 378-398. Appellant appealed and filed a petition for writ of certiorari with Court on November 20, 2020. The respondent filed a return dated April 5, 2021. On August 12, 2022, this Court issued an Order granting petitioner's request for a belated direct appeal per White v. State, 263 S.C. 110, 208 S.E.2d. 35 1975). This brief follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An 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.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” Clasby, 385 S.C. at 154, 682 S.E.2d at 895; see State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)” to show, *inter alia*, the existence of a common scheme or plan. Clasby, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”).

ARGUMENT

The lower court erred in allowing prior bad acts testimony involving appellant into evidence at trial because the prejudicial value of the same outweighed the probative value and thus denied appellant of his right to a fair trial.

At trial, Officers William Lee Young and Bradley Michael Lawson described the events that led to appellant's arrest in this case. Officer Young stated that on January 11, 2017, the police department received a complaint from the Plantation Motel in Kershaw County to the effect that a male was dealing in narcotics there. On January 12, 2017, Officer Young stated that as he and Officer Lawson drove near the motel in question, they observed two males standing outside one of the rooms so they turned to "check them out." Shortly thereafter, they saw one male entering a taxicab, which they decided to follow. Minutes later, the officers stopped the taxicab driver on a traffic violation (lane violation). Officer Young stated that he and Officer Lawson recognized appellant, who was a passenger in the backseat of the taxicab, and remembered that he (appellant) had active warrants for his arrest. Appellant was arrested immediately thereafter. Appellant was searched at the police station whereinafter one oxycodone pill and two hydrocodone pills were found in his possession along with a bag of crack cocaine. App. 67, l. 1 – p.83, l.9; App. 112, l.15 – p. 134, l.8.

The following testimony was heard by the jury at appellant's trial:

Office Young: "As we were talking to the occupants (in taxi), we realized that we recognized [appellant] and that we knew that he had active warrants. Lt. Lawson then verified that, and we went to arrest [appellant]. App. 71, lines 9-13.

Solicitor: How do you know [appellant] by face?

Officer Young: Through previous encounters.

Solicitor: So have you seen his mug shot before or something?

Officer Young: No, run into him out, I mean during work.

Solicitor: [Appellant] actually had a bench warrant, correct?

Officer Young: Yes

Solicitor: Y'all confirmed that by calling dispatch

Officer Young: Yes. App. 85, l.22-p. 86, l.6.

Officer Lawson: And then I look and I notice the subject in the rear seat...I immediately recognized him as [appellant]...I also noted [appellant] had warrants on [him]. App. 119, lines7-10.

Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis. State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013). Moreover, evidence of prior bad acts is inadmissible to suggest that the accused has the propensity to commit the crime charged. State v. Peake, 302 SC 378, 396 S.E. 2d 362 (1990). State v. Smith 309 SC 409, 419 S.E. 2d 816 (1992). Prior bad acts evidence is not admissible to show that the accused is a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Also, even if prior crimes are considered under the Lyle¹ exceptions; nonetheless, the value of the priors must outweigh the prejudicial value, i.e., the prior crimes cannot be used to show that the accused is a bad person. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). Prior crime evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (2013). Unfair prejudice results when there is an undue tendency to make a decision on improper basis, and also prejudice comes into play when jury's verdict influenced by the challenged evidence. State v. Stearns, supra. Also, to be admissible, the bad act must logically relate to the crime with which

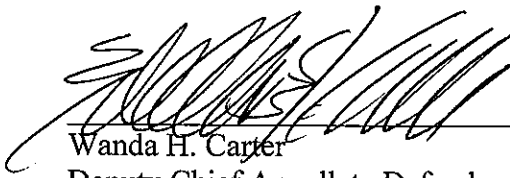
¹ Prior crimes can only be used in order to show motive, intent, identity, absence of mistake or accident or common scheme or plan. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

the defendant has been charged, and even if admissible as relevant under Rule 401, SCRE², and under the Lyle exceptions stated under Rule 404(b), SCRE (to show identity in this case); nonetheless, said evidence must be excluded if its probative value is outweighed by its prejudicial value under Rule 403, SCRE.³ See State v. King, 416 S.C. 92, 784 S.E.2d 252 (2016).

In the case at bar, the revelation to the jury by the police officers that appellant had active warrants for his arrest and that they (police officers) recognized him because of previous encounters with appellant constituted prejudicial prior bad act testimony that suggested appellant had a criminal disposition and was probably guilty of the crimes for which he was on trial. The trial judge erred in allowing this prejudicial testimony into evidence at trial. This error deprived appellant of his right to a fair trial guaranteed under the Fourteenth Amendment.

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that his convictions and sentences be reversed and his case remanded to the lower court for a new trial.


Wanda H. Carter
Deputy Chief Appellate Defender

This 6th day of October, 2022.

ATTORNEY FOR APPELLANT

² Relevant evidence under Rule 401, SCRE is evidence having any tendency to make the existence of any fact that it of consequence to the determination of the action more probable or less probable than it would be without the evidence.

³ Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, if the issues or misleading the jury, or by considerations of undue delay, waste of time, or needless combative evidence.

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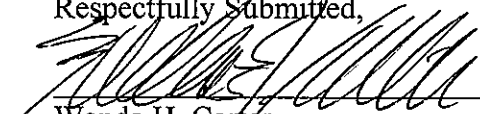
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Boykin states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Diane Schafer Goodstein, which was held on January 8-11, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Michael Boykin.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of October, 2022.

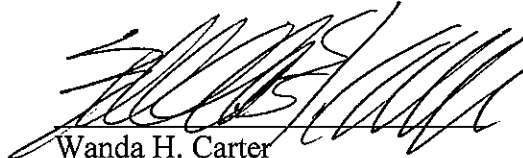
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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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