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Apr 12 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court Of General Sessions

The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2021-001536

THE STATE, Respondent,

v.

WILLIAM CORNELIUS SANDERS Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly admitted evidence of an incident between Appellant and Victim that occurred ten days before the shooting for which Appellant was tried and convicted of because it fell within the motive and intent exceptions of Rule 404(b) and was admissible under the res gestae theory.

STATEMENT OF THE CASE

Appellant was indicted by a Colleton County Grand Jury for attempted murder and possession of a weapon during the commission of a violent crime. Appellant proceeded to a jury trial on December 13-16, 2021, in the Colleton County Court of General Sessions before the Honorable Robert J. Bonds. Matthew Walker represented the Appellant. Appellant was found guilty as indicted and sentenced to twenty years for attempted murder and eighteen months for the weapons offense to be served consecutively. This appeal follows.

STATEMENT OF FACTS

In August of 2018, William Sanders (Appellant) and Channta Kelly (Victim) began dating. (Tr. 393). Victim and her children moved into Appellant's home with him shortly thereafter. (Tr. 395). They continued living together until an incident occurred on April 14, 2019. After that incident, Appellant began living with his father.

On April 24, 2019, Appellant and Victim met at Appellant's house, where they had previously lived together. (Tr. 488). On April 24, 2019, Appellant and Victim met at Appellant's house to retrieve some tools that he had left in Victim's car. (Tr. 404). When Appellant arrived at the home and began moving the tools to his truck from her vehicle. (Tr. 406). Victim and Appellant were having a conversation that then escalated into an argument. (Tr. 406). Victim was angry because Appellant had told "a girl" that Victim was going to tell the Department of Social Services that the girl was selling food stamps. (Tr. 426). Eventually this argument ended and transitioned into Appellant asking Victim "to be with him." (Tr. 426). The pair talked outside for about an hour until Victim made it clear that their relationship was over. (Tr. 406). She told Appellant she was not going "to lay down with no man who called DSS on me." (Tr. 409).

Appellant was sitting in the driver's seat of his truck when Victim turned around and began to walk back toward the house. (Tr. 489). As she was walking, she heard a "boom" and fell to the ground. (Tr. 410). Victim testified as she tried to push herself up "[she] looked to the left, William Sanders had already backed up and was dead in eyes. Without a shadow of a doubt, not going crazy, I seen him on the side of the road, I looked this man in the eyes and excuse my language, I said 'Oh Shit. You Shot me.' And he pulled out of the yard." (Tr. 411). Victim testified she did not see or hear another vehicle around other than Appellant's (Tr. 412).

Multiple people testified that the wound on Victim's back came from a shotgun. (Tr. 216, 223-224, 389). Victim was airlifted to Trident Hospital. (Tr. 389). Dr. Christian Graf, an expert in

emergency medicine, testified that she had severe injuries to her internal organs, bullet fragments, a hole in her intestine, and injury to her lung. (Tr. 391). Graf testified that without medical treatment she would have died that night. (Tr. 391). Victim remained in the hospital for roughly 2 months and was unable to walk for a over a year. (T. 415).

Appellant was arrested shortly after, at his father's house located less than a mile from where the shooting occurred. (Tr. 303). Appellant's truck was hidden up in the woods behind the residence "not like someone would park their car if they were just returning home." (Tr. 234). A search warrant was executed, but no shotgun was found. (Tr. 241). There were, however, shotgun shells found in the truck. (Tr. 336-337). A gun shot residue test was performed on Appellant. (Tr. 277). Jennifer Nates, an expert in trace evidence and gunshot residue, testified that the results of Appellant's GSR Kit was one particle characteristic of primer gunshot residue. (Tr. 464). She testified that while it was a low number, residue was still present. (Tr. 464). She further explained that gunshot residue is so easily transferable that they don't even test for it after six hours. (Tr. 454-465).

Appellant moved pretrial to exclude any evidence related to the event that occurred on April 14, 2019, ten days before the shooting pursuant to Rule 404(b), SCRE. (Tr. 3). The Assistant Solicitor explained that Appellant was arrested on April 14, 2019, ten days before the shooting for domestic violence of a high and aggravated nature (DVHAN) regarding Victim. (Tr. 3). Citing to State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), the solicitor argued the April 14, 2019 incident should be admitted as evidence of motive and intent, two exceptions found in Rule 404(b). The Solicitor argued that because, in his interview, Appellant told Kelly Padgett, from Colleton County Sherriff's Office, that it was a drive-by shooting that occurred the April 14 incident showed his intent and motive. (Tr. 3-7 332-342, State's Exhibit 45). The Solicitor also

made a res gestae argument stating that the April 14th incident gives the jury the full picture of the ongoing problems. (Tr. 7-8). The trial judge ruled that while the incident would come in, the DVHAN charge and no contact order would not come in. (T. 145-150).

Victim was then allowed to testify at trial regarding the April 14 incident. Victim testified at trial that on April 14, 2019, ten days before she was shot, She and Appellant got into an altercation over sex. (Tr. 397). Appellant woke Victim up in the middle of the night, but when Victim told him no, Appellant got irritated and left to go to his niece's house. (Tr. 397). Victim later called Appellant to bring the car back so that she could retrieve items out of the car before she went to work. (Tr. 397-398).

Victim was smoking a cigarette on the front porch when Appellant returned to the house. (Tr. 398). Victim testified that when he arrived, she walked past him to go get her things out of the vehicle and when she approached the car, they had an altercation. (Tr. 398). Victim testified that as she was retrieving her items from the car, Appellant came to the car and began yelling vulgar words at her and then walked away from the car. (Tr. 399). When Appellant returned to the car, he had a revolver in the waistband of his pants. (Tr. 399). When Victim asked why he had a gun, Appellant pulled the gun out and said "B-I-T-C-H I'll bury you in this backyard." (Tr. 399).

Victim testified she closed the door in an attempt t get away from Appellant. (Tr. 400). She then climbed into the driver's seat and attempted to start the vehicle, but the keys weren't in the ignition. Appellant then opened the driver side door and "began to hit [her] continuously with an open hand." (Tr. 400). Appellant also testified that he hit her with an open hand four times. (Tr. 486). Victim laid on the horn and Appellant stopped hitting her and walked off. (Tr. 401).

Appellant testified in his own defense. (Tr. 485-502). Appellant agreed that there was an incident that occurred on April 14, 2019, but testified that it did not involve a gun or a threat to

kill and bury her. (Tr. 487). He also testified that he did not shoot Victim on April 24. (Tr. 488). He testified at first that there was no one else around when she was shot and that it came out of nowhere, but then stated that he saw a white truck go by the residence and he left right after the shot because he was scared. (Tr. 492-493).

STANDARD OF REVIEW

"A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. "If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008). '"To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof."' State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 335-336 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

ARGUMENT

The trial judge properly admitted evidence of an incident between Appellant and Victim that occurred ten days before the shooting for which Appellant was tried and convicted of because it fell within the motive and intent exceptions of Rule 404(b) and was admissible under the res gestae theory.

Appellant contends the trial judge abused his discretion by admitting evidence of an altercation between Appellant and Victim that occurred ten days before the shooting. Specifically, Appellant argues that evidence that Appellant displayed a gun and threatened "to bury [Victim] in this backyard" and striking her with an open hand was improper propensity evidence and was not admissible pursuant to Rule 404(b), SCRE, was not part of the res gestae, and any probative value was substantially outweighed by the danger of unfair prejudice.

"If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008). "'To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof.'" Singleton, 395 S.C. at 13, 716 S.E.2d at 336 (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. at 26, 609 S.E.2d at 509).

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. "To be admissible, a bad act must logically relate to the crime with which the defendant has been charged." State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). "If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." Id. Even if prior act evidence is clear and convincing and falls within an

exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE.

In State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), the victim reported Sweat for criminal domestic violence in October 2001. Sweat was released from jail after the victim signed a statement indicating the October incident did not actually occur. Id. On December 11, 2001, eleven days after being released from jail, Sweat invaded victim's home with a knife, ultimately cutting an individual that was also in the home. Id. The Court of Appeals found that the criminal domestic violence from October was admissible because it showed his motive and intent. Id. "Generally Motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence...of the intent to commit the crime when intent or state of mind is in issue." Id. at 125, 606 S.E.2d at 512.

Here, this prior incident was admissible under the motive and intent exception under Rule 404(b), SCRE. Intent is defined as the state of mind required for the commission of a crime. State v. Shands, 424 S.C. 106, 131, 817 S.E.2d 524, 537 (2018). Similarly, Appellant was arrested for Domestic Violence of a High and Aggravated Nature. (Tr. 3) He threatened "to bury [Victim] in the back yard." (Tr. 399). He called her nonstop for 10 days following this incident trying to get her back. (Tr. 403-404). Then on April 24, when Victim made it clear that she wasn't going to be with him, Appellant shot her in the back. Further, he also told the officers that it was not him and but a drive-by shooting and while his intent was already in question because of being charged with attempted murder, the story of it being a drive-by shooting brings his intent into question. This April 14 incident shows Appellant's motive was anger that she would not be with him, and that Appellant intended to inflict harm on Victim because of this. Even if this court finds that the prior

domestic violence did not go to Appellant's motive or intent, introducing the evidence was necessary for the jury to have the full presentation of the case under the *res gestae* theory.

"The res gestae theory recognizes evidence of other bad acts may be 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. King, 334 S.C. 504, 512, 514, S.E.2d 578, 582 (1999). "Evidence of other crimes is admissible under the res gestae theory when the other actions are so intimately connected with the crime charged that their admission is necessary for a full presentation of the case." Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003). "Under this theory, the temporal proximity of the prior bad act should be closely related to the charged crime." State v. McGee, 408 S.C. 278, 289, 758 S.E.2d 730, 736 (2014). "Evidence considered for admission under the res gestae theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence." State v. Dennis, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013). Rule 403 provides that even if evidence is relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE.

In Sweat, the court held that prior incident of Sweat's domestic violence charge from October was admissible under the res gestae theory. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004) The court held that the "October incident was properly admitted to 'complete the story of the crime on trial.'...Sweat was upset, and eleven days after his release, these crimes occurred. The October abuse, and the events that followed, provided the fact finder with an appropriate context in which to place the December 11 attack." Id. at 133, 606 S.E.2d at 517. The court further held that this evidence was highly probative because it tended to show motive and intent and completed the State's theory of the case. Id. at 129, 606 S.E.2d at 515. "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, and it is not required that the inference sought should necessarily follow from the fact proved." Id. at 126-127, 606 S.E.2d at 513.

Similarly, and perhaps more importantly Appellants prior domestic violence occurred just ten days before the incident for which Appellant is charged which is in even closer proximity to the forty-five days Sweat spent in jail and the eleven days he was released. Appellant argues that this case is distinguished from Sweat because he did not go to the house to harm Victim. While maybe that is true, he did consistently become angry at her for not wanting to get back together with him or be with him sexually. Just like in Sweat, Appellant also called Victim numerous times a day trying to get back with her. The prior incident, including the phone calls, were needed to show the complete story, that this was not an isolated event but a culmination of ongoing events between Appellant and Victim. Without the jury understanding that, the case would have been unnecessarily fragmentized, and the jury would not have a clear picture of what was going on between the two. Appellant was upset about not being with Victim and he was not going to accept them not being together and that was logically related to whether Appellant shot Victim.

Finally, the trial judge did use his discretion in admitting the evidence. In his ruling he stated

> There was some type of prior event that occurred 10 days or 12 days earlier. And I think testimony as it relates to that event, depending on what it is, is relevant. But saying somebody is charged with something, I don't know that that's going to be appropriate. And so, as it relates to an event or something that happened or that, in fact, even law enforcement was contacted, I don't have a problem with that. I think that's relevant. I think that that is permissible under the rules as it relates to an event. As it relates to the --- she can certainly testify if he threatened her. I don't know if—I don't know what the testimony is going to be. If law enforcement was called, I think that's fair—I think that's fair game. Beyond that, getting into what law enforcement did, or charges that came up, I think that becomes unduly prejudicial under the analysis and for the reasons I've set forth. As it relates to him continuing to contact her, I think its completely permissible for her to testify that she—that the contact was unwarranted, that she didn't want him to call, that she told him not to call, or whatever the testimony may be. I don't know what that

> testimony is. But, certainly – but to then get into the fact that he's violating an order or some type of bond requirement, I think for the reasons that I set forth earlier that that would not be admissible, and I think that the unfair prejudice basically, would outweigh any benefit there. (sic).

(Tr. 145-152). He went through the analysis and allowed the evidence of the altercation between the Appellant and Victim to come in, but felt that the charge and any police involvement would be prejudicial instead of allowing all of it in. Appellant was able to cross examine Victim about the altercation. Further, Appellant testified in his own defense and was able to explain the altercation in his own words. He testified that the altercation did not involve a gun or threats to bury her and was only a verbal altercation. (Tr. 487). He also testified that he went to the house because Victim's mom told him to come grab some fish and he had to grab tools from Victim's car. (Tr. 488-489). The trial judge used his discretion in admitting some of the evidence and not all. Further, the evidence was properly admitted under the motive and intent exceptions of Rule 404 as well as under the res gestae theory. Therefore, the trial judge did not abuse his discretion in admitting the evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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