STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANCISCO MALDANADO-MOLINA,

APPELLANT

APPELLATE CASE NO. 2023-001995

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing an agent to testify that when Appellant was arrested, over four years after the shooting, agents found a handgun and a large sum of cash in a backpack when the testimony was not evidence of flight and there was no nexus between the shooting and the items found in the backpack, rendering the testimony irrelevant?

STATEMENT OF THE CASE

In 2021, the Spartanburg County Grand Jury indicted Appellant, Francisco Maldanado-Molina, for attempted murder, murder, and possession of a weapon during the commission of a violent crime, and burglary first degree, indictments 2021-GS-42- 00695, 696, 697. On December 18, 2023, Appellant proceeded to jury trial before the Honorable J. Derham Cole. N. Douglas Brannon represented Appellant at trial. William G. Rhoden and Matthew McCauley Henderson prosecuted the case. The jury returned verdicts of guilty on all charges. Judge Cole sentenced Appellant to thirty (30) years for attempted murder, life for murder and fifteen (15) years for burglary first. A timely notice of intent to appeal was served on December 21, 2023. This appeal 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 judge erred in allowing an agent to testify that when Appellant was arrested, over four years after the shooting, agents found a handgun and a large sum of cash in a backpack when the testimony was not evidence of flight and there was no nexus between the shooting and the items found in the backpack, rendering the testimony irrelevant.

Appellant's former wife, Mary Martin, testified that in June of 2016, Appellant unexpectedly arrived at her house in Anderson, they argued, and she left with their youngest daughter and went to her boyfriend's house in Duncan where she spent the night. (Tr. pp. 179-181). Martin testified that the next morning she agreed to meet Appellant at a lake with their daughter so Appellant could fish with his daughter and their other two children. (Tr. p. 181, line 22 - 182, lines 1-21). Martin took her daughter to the lake and returned to her boyfriend's house in Duncan. (Tr. p. 182, lines 22-25). Later, while she was inside her boyfriend's house, she heard a knock on the door, the door opened, and she heard gun shots. (Tr. p. 173, lines 2-4). The boyfriend jumped out of a window. (Tr. p. 173, lines 5-7). According to Martin, Appellant walked in and shot two other men who were also in the house. One of the men, Edgar Ruben Cojon-Lopez, survived but the other man, Edilberto Flores-Palacio did not. (Tr. pp. 173-175). Martin called 911 and Appellant left. (Tr. p. 169, lines 8-19). Appellant was arrested over four years later in July of 2020, in Peoria, Illinois. (Tr. p. 241, lines 21-22; p. 237, lines 17-21).

Prior to trial Appellant moved to suppress testimony about a handgun and a large sum of money found in a backpack when Appellant was arrested over four years later in Illinois. (Tr. pp. 34-38). Appellant argued that the testimony about both the handgun and the money was irrelevant. (Tr. p. 34, lines 18-24). Appellant noted that the gun found was not the gun used in the shooting. (Tr. p. 34, line 25 – p. 35, lines 1-5). The State told the judge, "At this particular point in time when Mr. Molina was arrested he had been on the run for four years, been a fugitive from justice. When the U.S. Marshals finally tracked him down near Peoria, Illinois,

their operation, I think was somewhat compromised at one point. They – they did apprehend him. In the vehicle was a gun, a large sum of money, numerous documents that give rise to certainly indication that he was basically packing up and taking off again, So, that - -" (Tr. p. 35, lines 7-16). The judge asked, "Like what documents packing up?" (Tr. p. 35, line 17). The State answered, "Counterfeit documents, I.D.s. So, our position is that's evidence of flight, which is evidence of consciousness of guilt, Your Honor, so." (Tr. p. 35, lines 18-20). Appellant additionally argued, "And, Your Honor, it's – it's horribly prejudicial over any value of relevance whatsoever, . . ." (Tr. p. 37, lines 13-14).

Prior to ruling the judge asked the prosecutor, "Mr. Rhoden, are you going to be able to establish the fact that the defendant was aware that he was being looked for for arrest?" (Tr. p. 38, lines 5-7). The prosecutor told the judge that an eyewitness called 911 while Appellant was still at the house and fled when the call connected. (Tr. p. 38, lines 8-13). The judge ruled, "All right. I'll permit it once it's established." (Tr. p. 38, lines 14-15).

During the testimony of Deputy John Lindman, an agent with the Fugitive Task Force of the U.S. Marshal Service, Appellant renewed the pretrial objection stating, "Your Honor, at this point I would renew a pretrial objection as to the contents of the backpack." (Tr. p. 239, lines 19-20). The judge overruled the objection. (Tr. p. 239, line 21). The agent testified that he saw in the backpack a handgun and a large sum of money that turned out to be $59, 000. 00. (Tr. p. 240, lines 2-13). The agent did not testify about the counterfeit documents the prosecutor referenced in the pretrial motion. The judge erred in allowing the testimony about the handgun and the money because there was no nexus between the shooting in 2016 and the handgun and money found in a backpack over four years later in 2020, rendering the testimony irrelevant. The error was not harmless.

" '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." SCRE 401. During the pretrial hearing the State argued that the testimony about the handgun and the money was relevant as "evidence of flight which is evidence of consciousness of guilt." (Tr. p. 35, lines 19-20). The handgun was not connected to the shooting four years prior and was not evidence of flight. The money and counterfeit documents are not sufficient to show evidence of flight four years later when the record reflects that Appellant was undocumented. (Tr. p. 168, lines 12-25).

Evidence of flight is commonly introduced to show consciousness of guilt. See State v. Pagan, 357 S.C. 132, 140, 591 S.E.2d 646, 650 (Ct.App.2004); State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004). In State v. Middleton, 441 S.C. 55, 60–61, 893 S.E.2d 279, 282 (2023), the South Carolina Supreme Court wrote:

> In State v. McDowell, 266 S.C. 508, 224 S.E.2d 889 (1976), this Court stated, "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." 266 S.C. at 515, 224 S.E.2d at 892. In subsequent decisions, this Court and our court of appeals have clarified that for such an act by a defendant to be relevant as "consciousness of guilt" under Rule 401, "there [must be] a nexus between the [conduct] and the offense charged." State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (citing State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004)). In State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018), we held there must be "an unmistakable nexus ... by clear and convincing evidence linking the [conduct] to a guilty conscience derivative of the offense for which the defendant is on trial." 425 S.C. at 92, 819 S.E.2d at 762; see also State v. Martin, 403 S.C. 19, 28, 742 S.E.2d 42, 47 (Ct. App. 2013) (requiring "a nexus between the [conduct] and the offense charged").

In the present case the State introduced evidence of flight from the testimony of the agent with the Fugitive Task Force who testified that he arrested Appellant in Peoria, Illinois four years after the shooting. The State, however, went beyond evidence of flight by asking the agent about finding the handgun and the money in the backpack upon arrest. The handgun

found in the backpack was not connected to the shooting. The money was returned to Appellant's family indicating that it was lawfully earned. (Tr. p. 37, lines 2-12). The fact that an undocumented individual, who probably does not have a bank account, had a large amount of cash, without more, is insufficient to show evidence of further flight. The State failed to show a nexus linking the handgun and the money to a guilty conscience related to the shooting four years earlier. The testimony about the handgun and the money was not evidence of flight and was irrelevant. The judge abused his discretion in allowing the testimony.

The error was not harmless. Appellant was convicted of shooting two men. The irrelevant testimony about the handgun is analogous to inadmissible bad act evidence, pursuant to Rule 404(b), allowing the jury to improperly determine that Appellant was the shooter because he was in possession of a gun when he was arrested four years later. As noted by the South Carolina Supreme Court in State v. Perry, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020):

> In any criminal case, however, evidence the defendant committed similar criminal acts has the inherent tendency to show this propensity. In the words of Rule 404(b), it "prove[s] the character of [the] person" and "shows[s] action in conformity" with that character. We discussed this tendency in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). We stated, "Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty," and, "Its effect is to predispose the mind of the juror to believe the prisoner guilty." 125 S.C. at 416, 118 S.E. at 807. We described this type of evidence as having "the inevitable tendency ... to raise a legally spurious presumption of guilt in the minds of the jurors." 125 S.C. at 417, 118 S.E. at 807; see also 125 S.C. at 420, 118 S.E. at 808 (stating "such evidence strongly tends to induce the jury to believe that, merely because the defendant was guilty of the former crimes, he was also guilty of the latter"). Thus, evidence of a defendant's other crimes serves the prohibited purpose of showing he has a propensity to engage in criminal behavior.

The error in admitting the testimony about the handgun and the money requires reversal.

CONCLUSION

Based on the above argument this Court should reverse the convictions and remand for a new trial.

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ATTORNEY FOR APPELLANT

This 7th day of October, 2024.