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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

Respondent,

vs.

HERBERT BRUCE GADDY,

Appellant.

APPELLATE CASE NO 2024-001359

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The State presented evidence that Gaddy unlawfully entered a residence and vehicle, but Gaddy claimed he had no criminal intent. On the same night of the break-ins, the victims' truck was stolen from their property and items from the truck were discovered inside the burgled vehicle. Was evidence of the theft admissible?

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Appellant Herbert Gaddy for first-degree burglary and breaking into a motor vehicle. Gaddy proceeded to jury trial on August 12–14, 2024, before the Honorable Keith R. Kelly, Circuit Court Judge. He was convicted as charged and sentenced to concurrent terms of 20 and 5 years' incarceration. This direct appeal follows.

STATEMENT OF FACTS

Gail Trent testified she was at home watching TV at around midnight on a Friday night. Tr.p.49, 57. She heard a noise at the front door and the door began to open. Tr.p.49. She saw a stranger entering her home. Tr.49. She explained there is a storm door outside her front door, and the person would have had to open the storm door before opening the front door. Tr.p.50–52. The man came two or three steps into her home. Tr.p.54. She screamed for her husband and the man fled. Tr.p.138. She called the police and they responded. Ms. Trent testified she did not know Mr. Gaddy and did not give him permission to enter her home. Tr.p.54. She heard a vehicle in the driveway about 45 minutes after the last officer left. Tr.p.62.

The next day, Mr. Trent noticed his rollback truck was missing. Tr.p.55. The truck was not in its normal spot by the detached garage. Tr.p.139. He called the police back out to the property. The Trents further discovered their son's four-wheeler had been moved to a different spot on the property, closer to the road. Tr.p.56. The four-wheeler was not in working condition at the time, so it could not have been driven to the new spot. Tr.p.57. Mr. Trent later received an anonymous call informing him that his rollback truck was parked in the woods near Mr. Gaddy's house. Tr.p.145–49.

On Monday morning, Ms. Trent went to take their daughter to school in their Chevy Suburban and discovered the car had been ransacked. Tr.p.57. The seats had been laid all the way back and a baseball bat was in the back seat. Tr.p.57. The baseball bat had been moved from its normal spot in the garage. Tr.p.59, 141. In that same garage, there were tools scattered on the hood of Mr. Trent's 1955 Chevy Bel Air. Tr.p.143–44. There was a ball cap in the Suburban that was normally kept in the rollback truck, which was usually parked next to the same garage. Tr.p.60–61.

Police recovered Gaddy's fingerprint near the driver's door handle of the Suburban. Tr.p.91, 122. They interviewed him and Gaddy claimed he was "on drugs" and "wandered onto the property not knowing exactly where he was." Tr.p.186. He admitted he walked into the Trent home but left when Ms. Trent "started freaking out." Tr.p.186-87. He told police he didn't remember much, but thought he slept in the Suburban. Tr.p.187.

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. 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. The appellate court may affirm on any ground appearing in the record. Rule 220(c), SCACR.

ARGUMENT

In this prosecution for burglary and breaking into a motor vehicle, evidence of Gaddy's contemporaneous theft of a rollback truck was admissible to prove res gestae and criminal intent.

Evidence about the theft of the rollback truck was admissible as res gestae and to show criminal intent. Testimony regarding the rollback truck was not improper character evidence; it was not admitted to show Gaddy's evil character or propensity to commit crimes. See State v. Perry, 430 S.C. 24, 29, 842 S.E.2d 654, 657 (2020). Rather, it was directly relevant to what happened on the night of the burglary and automobile break-in because that is when the rollback truck went missing. This Court should affirm.

As an initial matter, this issue is not preserved for review. Early in the State's case, Gaddy failed to object to Ms. Trent's testimony that the rollback truck went missing on the same night Gaddy burglarized her home and broke into another vehicle. Tr.p.55. The rollback truck came up again during Mr. Trent's testimony. Tr.p.139. This time, Gaddy objected that the State should not be allowed to "discuss" the rollback truck because Gaddy had not been charged with stealing it. Tr.p.149. After argument, the court noted the jury had already heard evidence about the truck, but sustained Gaddy's objection, ruling the State would not be allowed to state that Gaddy "stole" the truck. Tr.p.156. For the reasons argued below, this ruling was erroneous. Later, defense counsel again objected when an officer testified he asked Gaddy about the rollback, and the court instructed the State not to "talk about the rollback" because Gaddy had not been charged with stealing it. Tr.p.184. Finally, during in camera discussion about what evidence the State would be able to discuss during closing arguments, the trial court acknowledged there was evidence in the record about the missing rollback and ruled the State could "talk about it just a little bit, that it went missing, but that's it." Tr.p.234.

This issue is not preserved for review because Gaddy did not object at the first opportunity. See State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993) (“To preserve an issue for appellate review, an appellant must object at his first opportunity.”). Further, the trial court effectively sustained Gaddy’s objections, instructing the State not to “talk about” the rollback truck, and Gaddy greatly benefitted from this erroneous ruling. On appeal, Gaddy argues the State did not prove by clear and convincing evidence that he stole the rollback, but he did not object on this basis at trial. Rather, his argument under Rule 403 was that the rollback should not be discussed because Gaddy wasn’t charged with stealing it. See State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (explaining an issue may not be raised for the first time on appeal and must have been raised on the same specific ground to the trial judge).

Regardless, evidence about the theft of the rollback truck was admissible res gestae and intent evidence. That Gaddy was not on trial for stealing the rollback had no bearing on its admissibility. 404(b) evidence always involves uncharged acts. If the State could only refer to crimes for which a defendant is currently on trial, there would be no need for the rule.

The Supreme Court explained the res gestae rule in State v. Johnson:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context or the res gestae or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other and is thus part of the res gestae of the crime charged. And where evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae.

State v. Johnson, 439 S.C. 331, 341–42, 887 S.E.2d 127, 132 (2023) (cleaned up). It is important that the temporal proximity of the prior bad act be closely related to the charged crime. Id.

Evidence regarding the stolen rollback could not be separated from the remainder of the case. All of these events happened on the same night. The evidence showed a ball cap was contemporaneously removed from the rollback truck and left in the ransacked Suburban. Gaddy's fingerprint was recovered from the Suburban and he was on trial for breaking into that vehicle. The rollback was ultimately discovered in the woods near Gaddy's house. Evidence that he entered and ultimately drove away in the rollback truck was directly relevant to show he broke into the Suburban and was admissible as *res gestae*.

Further, the theft of the rollback tended to prove Gaddy had the intent to commit a crime when he entered the Suburban and the Trent home. See State v. Lyle, 125 S.C. 406, 118 S.E. 803, 810 (1923) (in forgery prosecution, explaining “[i]ntent to defraud is of the essence of the crime, and previous offenses of a similar character by the same person may be proved to show such intent”). Gaddy admitted to entering the Suburban and the Trent home, and his entire defense at trial was that he did not have the intent to commit a crime. Thus, evidence about the theft of the rollback was highly probative because it involved the central issue in the case. Id. (admissibility depends in part on “whether such evidence may be considered reasonably necessary in the light of all the facts of the particular case to accomplish the purpose for which it is offered”). Evidence about the rollback truck was not cumulative, was not entered to show criminal propensity, and was not unfairly prejudicial to Gaddy.

Finally, Gaddy cannot show prejudice. The testimony in question was cumulative to previous, unobjected-to testimony that the rollback went missing on the same night the house and Suburban were broken into. Defense counsel later asked a witness again about a police report referencing the rollback. Tr.p.192–93. Further, Gaddy's objections were essentially sustained by the trial court, who limited the testimony throughout. The fact that Ms. Trent's

testimony regarding the rollback was admitted (and thus proper ground for argument) was due to Gaddy's failure to object to her testimony. As argued above, all of the testimony concerning the rollback was admissible, and the trial court's ruling limiting the testimony was erroneous. However, the trial court gave a limiting instruction emphasizing that Gaddy was not charged with stealing the rollback. Tr.p.186. Curative instructions are generally presumed to cure trial errors. See State v. Young, 420 S.C. 608, 623, 803 S.E.2d 888, 896 (Ct. App. 2017). Finally, Gaddy admitted to entering both the Suburban and the Trent home but claimed he had no criminal intent. The jury rightly rejected this non-credible testimony. Evidence about the rollback did not change the result of trial. See State v. Workman, 443 S.C. 369, 378, 905 S.E.2d 119, 123 (2024) (explaining error is harmless when it had "little, if any, likelihood of having changed the result of the trial"). This Court should affirm.

CONCLUSION

For the foregoing reasons, the convictions and sentences of the lower court should be affirmed.

Respectfully submitted,

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