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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions  
Walton J. McLeod, IV, Circuit Court Judge

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Appellate Case No. 2024-001430  
Lower Case No 2023-GS-32-01924 and 2023-GS-32-01925

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The State, ..... Respondent,

vs.

Clint Arthur Walker ..... Appellant.

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INITIAL REPLY BRIEF OF APPELLANT

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## Argument

**Did the trial court err when it failed to permit defense counsel to question the investigating officer about two drug transactions that formed the basis for the search warrant for the residence of Clint Arthur Walker when Michael Sharpe made the two drug sales within two weeks of the search?**

The key holding in *Holmes v. South Carolina*, 547 U.S. 319 (2006) is that the strength of the case against a defendant cannot be a basis to exclude evidence of third-party guilt. As the Court said, “The point is that, by evaluating the strength of only one party’s evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt.” *Id.* at 331. To some extent, this analysis precludes this Court from finding the exclusion of the evidence to be harmless. If the third-part guilt evidence is admissible, then it is not harmless. Such evidence can only be harmless if the evidence is not admissible. In addition, the South Carolina Supreme Court has said, “The correct inquiry is whether, assuming that the damaging potential of the [proffered evidence] were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt.” *State v. Hart*, 306 S.C. 344, 346, 412 S.E.2d 380, 381 (1991)(internal citations omitted). The jury requested on two occasions that some of the testimony be replayed. ROA at 170, 1 25 to 173, 1 13. If the jury had heard the testimony that it was Mr. Sharpe who had been selling methamphetamine, no one could say beyond a reasonable doubt the verdict would not have been impacted by the evidence. The full impact of the testimony would have been the methamphetamine belonged to Mr. Sharpe.

Under the bare facts of this case, the State errs in saying the evidence was not admissible. The bare facts are that almost two thousand grams of methamphetamine were found in the home

belonging to Mr. Walker. The record shows that three people were living in the home. Upon the arrival of the officers, two were in the home and one was observed leaving the home upon the arrival of the officers. Under these bare facts, testimony that one of the other two people residing in the house had, within two weeks of the raid, sold methamphetamine and possessed \$10,000 in cash, does tend to exonerate Mr. Walker and point toward another individual as the guilty party. As such, this testimony, “[T]ends clearly to point out such person as the guilty party.” *State v. Gregory*, 198 S.C. 98, 105, 16 S.E.2d 532, 535 (1941). In fact, under these bare facts, a jury would have trouble convicting Mr. Walker as the evidence shows Mr. Sharpe was selling methamphetamine from the house. Thus, the evidence tends to exonerate Mr. Walker. The third-party guilt evidence tends to show Mr. Sharpe is guilty and Mr. Walker is not. The evidence is not speculative, remote or disconnected to the crime to which Mr. Walker is charged.

The State has argued the proposed third-party guilt, “[O]ffered no reliable proof that Sharpe was the sole possessor of the meth found in the search.” Br. of Resp. at 13. The State errs in two respects. The proposed evidence obviously suggests that Mr. Sharpe could be the sole possessor of the methamphetamine. Under Rule 401, this is all that is required. Secondly, to the extent the State suggests that other evidence lessens the strength of the third-party guilt evidence, then the State is urging this Court to accept what the *Holmes* court said should be rejected. Admissibility is determined solely by looking at the third-party guilt evidence and not weighing it as compared to the strength of the State’s complete case.

The evidence Mr. Walker sought to introduce is not disputed by the State. It should not be as the third-party guilt evidence came from the investigating officers. The fact that Mr. Sharpe made two methamphetamine sales is established by a video. ROA at 24, ll 3-9 (Feb. 16,

2024). The evidence is obviously clear and convincing. The only issue is, does the fact that a person living in the house who made two methamphetamine sales, make that person more likely to be the person who possessed the methamphetamine found in the house. The obvious answer is “yes.”

Another way of looking at this case is to assume that Mr. Sharpe had been the person arrested. The State would want to introduce the two drug sales as evidence of the knowledge of Mr. Sharpe as to his knowing the drugs were in the house. The prohibition against the introduction of the those two sales would not be based upon the fact they are not probative of Mr. Sharpe’s knowledge of the drugs being in the house, but on the ground it would be unduly prejudicial under Rule 403. If the evidence is excluded in Mr. Sharpe’s trial, it should have been admitted in Mr. Walker’s trial because it is not prejudicial to Mr. Walker.

In Mr. Sharpe’s trial, the State would argue against the defendant’s argument that, “[I]t was clear to the trial court that [the State] had not presented the requisite ‘train of facts or circumstances’ tending ‘clearly to point out [the] [defendant] as the guilty party.’” Br. of Resp. at 14. Of course the State would be arguing the evidence is essential to prove Mr. Sharpe’s knowledge and the probative value greatly exceeds its prejudicial impact. If the State would want to use the evidence in Mr. Sharpe’s trial, Mr. Walker should be able to use it in Mr. Walker’s trial.

The State has asserted, with no basis in fact, “[W]here the drugs found hidden in Appellant’s kitchen were **not** the same drugs possessed and sold by Sharpe on a completely separate occasion, the suggested inference is both weak and unreasonable.” Br. of Resp. at 16(emphasis in original). No evidence in this record suggests the drugs found were not part of

the drugs Mr. Sharpe sold. The State cites to no part of the record that factually establishes what they claim as to the drugs being different.

The State further argues that even if the third-party guilt evidence is relevant, it should be excluded because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Rule 403, SCRE.” Brief of Resp. at 17. The State claims the third-party guilt evidence would lead to the “confusion of the issues,” but fails to discuss how the evidence would be confusing of the issues. If the confusion of the issues comes from a confusion by the jury as to whom actually possessed the drugs found, that is the precise confusion third-party guilt evidence is suppose to raise.

The State further argues that the evidence is not admissible if it has, “[A]ny tendency to suggest a decision on an improper basis.” Br. of Resp. at 17(emphasis in original). A jury making a determination that because Mr. Sharpe sold the same type drug a short time before the search he possessed the methamphetamine is not an improper basis upon which the jury could make their decision. A defendant offering proof that a third party committed the crime is not an improper basis upon which a jury should make a decision. Again, that is the purpose of the third-party guilt evidence.

The State is critical of Mr. Walker’s reliance upon *Commonwealth v. Yale*, 665 Pa. 635, 249 A.3d 1001 (2021). The State contends, “Consequently, the appellate court’s decision focused *entirely* on whether the third-party guilt evidence was improperly excluded by the trial court under a Rule 404(b) analysis - *not* a Rule 403 analysis.” Br. of Resp. at 18(emphasis in original). This is not what the court held. The court said, “We hold that evidence of a third person’s guilt offered by a defendant is admissible if it is relevant pursuant to Pa.R.E. 401 and

not otherwise excludable pursuant to Pa.R.E. 403.” *Id.* at 641-642, 249 A.3d at 1004. The court in *Yale* did exactly what this court should do and determine if the evidence is admissible under Rule 401 as relevant evidence. The court in *Yale* does discuss the equivalent of South Carolina Rule 404(b) at some length. The primary purpose is to explain why the limitations of the rule do not apply to third-party guilt evidence.

To the extent the State has argued that *Yale* does not apply because the facts are different in this case, the State is relying upon the strength of the State’s case as a basis for excluding third-party guilt. As noted previously, this is specifically prohibited by *Holmes*. The strength of the State’s case cannot be a basis for excluding the evidence.

Finally, the State has argued that the fact that Mr. Sharpe might have possessed the methamphetamine does not mean Mr. Walker did not possess it and, therefore, the evidence is not admissible. The State improperly interprets the phrase, “[M]ust be inconsistent with his own guilt . . . .” *Gregory* at 104, 16 S.E.2d at 534. The drug sales by Mr. Sharpe were sought to be introduced to show Mr. Sharpe possessed the drugs, and not Mr. Walker. If Mr. Sharpe possessed the drugs alone, Mr. Walker did not possess them. The admission of the third-party guilt evidence would be inconsistent with Mr. Walker owning the drugs. The State seems to suggest that before third-party evidence can be admitted, the defense must eliminate any possibility that the defendant was not involved. The South Carolina Supreme Court in *Miller v. State*, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008) did not required a defendant to eliminate any possibility he was also involved in the crime. In holding that trial counsel was ineffective for not properly cross-examining a witness as to third-party guilt, the court said:

In view of this limited defense, it was crucial for trial counsel to elicit testimony

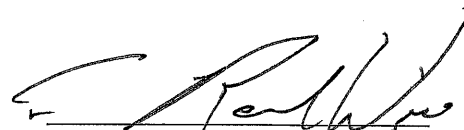
from Pauling that showed the similarities between the armed robberies for which she and Derrick Miller were charged and the one for which Bruce Miller was charged. Based on the proffer of Pauling's testimony and the transcript from the PCR hearing, it is clear that trial counsel could have established Derrick Miller's third-party guilt by showing that Pauling's vehicle was used as the "get away" car in each of the robberies and that a similar handgun was used. *Id.* at 116, 665 S.E.2d at 600.

The testimony of the witness would not have eliminated Mr. Miller as being a participant in the robbery. The testimony was that very similar robberies had been committed by Ms. Pauling and another individual under very similar circumstances. In *Holmes*, the testimony did not eliminate Mr. Holmes from being present when the crime was committed as his fingerprint was found at the scene. A speculative possibility a defendant was involved in the crime is not a sufficient basis to exclude evidence of third-party guilt.

## CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief, this Court should reverse the conviction of Clint Arthur Walker and remand the case for a new trial where the third-party evidence of guilt is to be admitted.

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