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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2024-001430
Lower Case [1] 2023-GS-32-01924 and 2023-GS-32-01925

The State, ... Respondent,

vs.

Clint Arthur Walker . . . . . Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE PRESENTED

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?

Statement of the Case

Procedural History

On January 27, 2022, the residence of Clint Arthur Walker was searched. A trafficking amount of methamphetamine was found. Mr. Walker was charged with trafficking methamphetamine more than 400 grams. He was also charged with possession of a firearm while engaged in a violent crime.

On May 8, 2023 he was indicted on the two charges. He was tried before the Honorable Walton J. McLeod, IV and a jury on February 20-21, 2024. Mr. Walker did not appear for his trial. He was arrested on a bench warrant. On August 28, 2024 Judge McLeod sentenced him to 25 years imprisonment and ordered him to pay a total of $427,733.25 in fines, costs and assessments.

On September 6, 2024 he filed his Notice of Appeal.

Factual History

On January 13 and 20 of 2022, law enforcement officers with the County of Lexington made two purchases of methamphetamine from the residence of Mr. Walker. The two purchases were made from Michael Sharpe. The purchases were videotaped and audio recorded. ROA at 32, ll 3-7. Based upon those two purchases, a search warrant was obtained. ROA at 32, ll 11-18.

The search of the house was conducted on January 27, 2022. Present at the house were Michael Sharpe, Carmen Cruz and Clint Walker ROA at 108, l 22 to 109, l 2. When asked about whether any methamphetamine or firearms were in the house, Mr. Walker advised them a firearm was present. ROA at 109, ll 16-22. The firearm was a .22 caliber pistol. ROA at 151, ll 24-25.

Prior to entering the house, law enforcement stopped Tommy Noell as he was leaving the residence. From Mr. Noell, the officer received information as to the location of methamphetamine in a secret place. ROA at 176, ll 9-15.

Upon entering the residence, the officers searched the three bedrooms. In the bedroom used by Mr. Sharpe, the officers found a safe containing around $10,000 dollars. They also found needles that could be used for injecting drugs. ROA at 164, ll 4-7. The officer did not recall finding any drugs in Mr. Sharpe's room. ROA at 126, ll 22-24.

In the bedroom belonging to Mr. Walker, they found a purse belonging to Ms.Cruz. Inside the purse a small amount of methamphetamine. ROA at 114, l 21 to 115, l 12. They also found a pipe used for smoking methamphetamine. ROA at 113, ll 15-18. They also found the .22 caliber pistol. ROA at 114, ll 16-20. Upon his arrest, about $2,000 was found in his possession. ROA at 139, ll 17-24.

Based upon the information received from Mr. Noell, the officer located a secret or hidden safe in the kitchen cabinet above the kitchen sink. ROA at 127, ll 7-13. The amount of methamphetamine found in this location totaled 1,624 grams. ROA at 200, ll 13-15. The officer also found a key card in the possession of Mr. Walker that could be used to open the electronic safe.[1] ROA at 139, l 25 to 140, l 10. When Mr. Noell was stopped as he was leaving the premises, he was searched but no inventory was taken of his wallet or car. ROA at 176, ll 9-21. The officer further admitted that when he stopped Mr. Noell, he did not know to look for a key card. ROA at 176, ll 22-24.

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[1] The officer had broken into the safe before they found the key card in the possession of Mr. Walker.

Standard of Review

The standard of review is abuse of discretion as the case involves the admissibility of evidence. "In general, rulings on the admissibility of evidence are within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party." *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct. App. 2009)

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 United States Supreme Court has said, "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)(internal citations omitted). South Carolina has also recognized the right to present a complete defense. "Every person accused shall, at his trial, be allowed to be heard by counsel, may defend himself and shall have a right to produce witnesses and proofs in his favor and to meet the witnesses produced against him face to face." S.C. Code § 17-23-60. "Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully

heard in his defense by himself or by his counsel or by both." Art. I, § 14, Constitution of the State of South Carolina. *See, also* Mark J. Mahoney, *The Right to Present a Defense* at 122-139 (2024)[2]

In *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941) the South Carolina Supreme Court, in addressing the right to present testimony as to the guilt of a third party and quoting American Jurisprudence, stated:

> [T]here must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.
> *Id.* at ___, 16 S.E.2d at 535

As to third party guilt, this court has stated, "It is well-established that a criminal defendant's offer of evidence concerning a third party's commission of the charged crime 'must be limited to such facts as are inconsistent with his own guilt and to such facts as raise a reasonable inference or presumption as to his own innocence.'" *State v. Brooks*, 428 S.C. 618, 634, 837 S.E.2d 236, 244 (Ct. App. 2019). Under this standard, the trial judge erred as a matter of law in failing to admit the evidence as to Michael Sharpe twice selling methamphetamine from the residence of Clint Walker. These two sales were both within two weeks of the search of Mr. Walker's residence. The proof of the other drug sales is not left to speculation. The two

[2] This paper can be found at www.harringtonmahoney.com/content/Publications/Mahoney%20-%20Right%20to%20Present%20a%20Defense%2012-30-2024.pdf (visited February 19, 2025)

sales from the house of Mr. Walker is a reasonable inference that Mr. Sharpe possessed the drugs in question and not Mr. Walker. These two prior drug sales tend to prove the drugs belong to Michael Sharpe.

The right to present a defense as to the testimony as to Mr. Sharpe is a right Clint Walker had. This is true whether the theory of admitting the evidence is based upon a claim of third party guilt or to simply prove the officers were at the house because of the actions of Mr. Sharpe and not Mr. Walker, to simply make it less likely Mr. Walker is guilty or any other reasonable theory which would tend to exonerate Mr. Walker.

In this case, the defense counsel, at a pre-trial conference, sought to question the officers about the probable cause for the search warrant. The probable cause was that the officers had made two undercover purchases of methamphetamine from Michael Sharpe at the residence of Clint Walker. ROA at 32, ll 3-18.

The State in opposition stated, "I would argue that is not relevant to the case in chief." ROA at 33, ll 19-20. He further stated, "I'm saying I don't know what the relevance for it would be in cross to explain the probable cause of the search warrant." ROA at 34, ll 7-9. He also stated, "I mean it just gets to the point of confusing the jury. We're not talking about controlled buys from Michael Sharpe." ROA at 38, ll 7-10. In an attempt to explain his claim that the evidence was confusing to the jury, the assistant solicitor argued, "Therefore, successfully creating a very confusing situation for the jury about different buys on different dates not related to this indictment." ROA at 39, ll 23-25. The point, apparently not understood by the State, is that defense counsel was not proving probable cause for a search. He was wanting to prove Mr. Sharpe was recently selling methamphetamine from the house. This Could lead the jury to

conclude the methamphetamine belonged to Mr. Sharpe.

The Minnesota Supreme Court in discussing third party guilt has stated, "The purpose of evidence to show that another committed the homicide is not to prove the guilt of the other person, but to generate a reasonable doubt of the guilt of the defendant." *State v. Hawkins*, 260 N.W.2d 150, 158–59 (Minn. 1977). Introducing evidence that within two weeks before the search of the house another individual had actually sold methamphetamine from the house is some evidence that the methamphetamine found in the house did not belong to Clint Walker.

Rule 401 of the South Carolina Rules of Evidence defines relevant evidence as "[E]vidence 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." *See, also Assoc. Mgmt., Inc. v. E.D. Sauls Const. Co.*, 279 S.C. 219, 221, 305 S.E.2d 236, 237 (1983)('Evidence which tends to establish or to make more or less probable some matter in issue and to bear directly or indirectly thereon is relevant.") Under the facts of this case, the fact that Michael Sharpe, within two weeks before the search of the house and as the reason for the search of the house, twice sold methamphetamine, certainly makes it less likely or less probable that Clint Walker possessed the drugs. Who possessed the drugs was the sole issue in the case. The rule does not require that the evidence make a fact or the absence of that fact substantially more or less likely. The rule simply requires that the evidence have "any tendency" to make the possession of the methamphetamine by Clint Walker less likely. The evidence easily has some tendency to may it less likely.

Rule 401 is limited by Rule 403 which allows relevant evidence to be excluded on the basis that, "[I]ts probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury . . . ." The other exceptions in the Rule simply do not apply to the present case. The State sought to exclude the testimony primarily on the grounds that the evidence would confuse the issues or mislead the jury. Neither is applicable. The trial judge originally ruled that defense counsel could have asked the questions about Michael Sharpe. He stated, "[B]ut generally speaking I don't think what he's talking about in that limited context on cross-examination runs afoul." ROA at 38, ll 4-6. When the trial started, the trial judge changed his mind. He stated, "I don't want a direct reference to probable cause. Okay. And I don't want a direct reference to Mr. Sharpe being someone who purchased from a confidential informant at this time."[3] ROA at 83, ll 19-23.

In response to an extensive argument by defense counsel after this ruling, the State argued, "I think it confuses the issue to the jury to talk about any matter of law like probable cause for a search warrant that has already been ruled on. I think it confuses the issues because it is a different sale, not necessarily the same location of drugs, or anything like that. And I think it is fair cross-examination to say the search warrant was for the house and not for any individual. As for prejudice, because the jury is going to assume that something happened. Well, Mr. Stitely's client is on trial for trafficking methamphetamine." ROA at 86, ll 7-18. Apparently agreeing with the state, the trial judge then stated, "I do believe that there is an issue for confusion here should the jury hear the specifics about probable cause." ROA at 87, ll 9-11. The judge was apparently referring to the "confusion of the issues" provision of Rule 403. He never stated exactly how the testimony as to Michael Sharpe making two drug sales to an informant would confuse the issues

[3] The testimony had shown that Mr. Sharpe had not purchased from an informant, but had sold to the informant.

nor what the confusion would be.

The phrase "confusion of the issues" has not ever been defined. Our supreme court has defined the phrase "unfair prejudice" in Rule 403 as, "[A]n undue tendency to suggest decision on an improper basis." *State v. Dickerson*, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000). As used in the rule, "confusion of the issues" should have a similar meaning. If the evidence permits the jury to make a decision on an improper basis, obviously the jury was confused on the issues. The evidence defense counsel sought to introduce did not permit the jury to decide the case on an improper basis. The fact that Michael Sharpe, who stayed in the house, had twice sold methamphetamine from the house is some evidence that the drugs belonged to Mr. Sharpe. If the jury drew the same conclusion, it would be evidence that tended to prove the drugs did not belong to Mr. Walker. Even if one were to assume Mr. Walker knew the drugs were in the house that would not be sufficient to convict. Without the right to control the drugs, mere knowledge is not sufficient. *Goldsmith v. Witkowski*, 981 F.2d 697 (4th Cir. 1992)

If the jury believed because Mr. Sharpe twice sold drugs from the house and had a large sum of money at the house, they could believe that he possessed the drugs and not Mr. Walker. Finding Mr. Walker not guilty because there is evidence a third party is guilty is not deciding the case on an improper basis. In addition, the evidence of third party guilt does not have to prove the guilt of the third party beyond a reasonable doubt. The third party evidence need only create a doubt as to the guilt of Mr. Walker. The jury deciding the methamphetamine could have been Mr. Sharpe's could have been a the basis for a reasonable doubt.

The Supreme Court of Pennsylvania discussed the issue of third party guilt in a somewhat similar case. "On March 21, 2017, United States Marshalls went to the home of appellant Eric

Yale's mother where Yale resided to serve an arrest warrant on Larry Thompson." *Commonwealth v. Yale*, 665 Pa. 635, 642, 249 A.3d 1001, 1005 (2021). In the bedroom used by Yale, they found an operating methamphetamine lab. They also found Thompson hiding in a closet in the room. "The Commonwealth alleged that Yale and Thompson were liable under both principal and accomplice theories of liability." *Id.* At 642, 249 A.3d at 1005. At his trial, "Yale sought to introduce evidence of Thompson's previous arrests for methamphetamine-related offenses, including an October 12, 2016 arrest and a November 3, 2015 guilty plea. Both incidents involved Thompson's use of the 'one-pot' method to manufacture methamphetamine." *Id.* at 642–43, 249 A.3d at 1005. The trial judge excluded the evidence.

In reversing the conviction the Pennsylvania Supreme Court conducted a through analysis of the uses of crimes to prove third party guilt. The court noted that prejudice is not a factor in admitting the evidence of the guilt of a third person. First, the court noted undue prejudice to the case of the prosecuting agency is not the type of prejudice with which a court should be concerned. The court noted, "[P]ermitting a defendant to present evidence that tends to negate the Commonwealth's ability to prove the case beyond a reasonable doubt is a prejudice demanded by the Due Process Clause." *Id.* at 667, 249 A.3d at 1919. The court then stated, "If the defendant is successful in raising a reasonable doubt as to guilt, the defendant will be exonerated but the third person offered as the perpetrator will not suffer a consequence." *Id.* at 667, 249 A.3d at 1020. Thus, under the analysis of the Pennsylvania excluding evidence based upon confusion of the issues does not mean confusing the jury as to the strength of the state's case. Due process would also prohibit the exclusion of third party guilt on that basis. The fact should be noted that the third party guilt evidence did not conclusively exclude Mr. Yale from being guilty. The

innocence of Mr. Yale was simply one inference that could be drawn from the facts he sought to introduce.

None of the above discussed principles go against the law of third party guilt established in *Gregory*. The evidence as to the two prior drug sales included a video recording of the sale. The fact of the two prior drug sales is not a matter of speculation. The State knows the evidence is true. If Mr. Sharpe possessed the drugs, then Mr. Walker did not. If the evidence had been admitted, the State could have argued they both possessed the drugs. And the jury may have believed that argument. But the issue as to what inferences or conclusions should be drawn from the testimony is for the jury to decide and not the trial judge nor this court on appeal.

The Ninth Circuit, quoting from John Henry Wigmore, *Evidence in Trials at Common Law* § 139 (Tillers rev. 1983) said, "[I]f the evidence [that someone else committed the crime] is in truth calculated to cause the jury to doubt, the court should not attempt to decide for the jury that this doubt is purely speculative and fantastic but should afford the accused every opportunity to create that doubt." *United States v. Crosby*, 75 F.3d 1343, 1349 (9th Cir. 1996). Mr. Walker was not given every opportunity to create the doubt as to his guilt.

At the pre-trial hearing, the State cited to the trial judge *State v. Williams*, 321 S.C. 327, 468 S.E.2d 626 (1996). This case actually illustrates why the evidence in this case is admissible. In *Williams*, the court held, "After reviewing the record, we conclude that the evidence offered by Williams failed to establish that the persons arrested for growing marijuana had any connection whatsoever to the homicides. Hence, the drug offenses were isolated from the homicides, and evidence pertaining to them should not have been admitted to insinuate that someone other than Williams could have murdered the victims." *Id*. at 335, 468 S.E.2d at 631. Thus, third party guilt

evidence is excluded only when there is no connection whatsoever to the crime being tried. The evidence of the two drug transactions in the house by Mr. Sharpe is certainly some connection to the drugs found in the house. This court cannot state as a matter of law there is no connection whatsoever. The trial court erred in excluding evidence that had a tendency to prove Clint Walker did not possess the methamphetamine. This court should reverse the conviction of Clint Arthur Walker and remand for a new trial.

CONCLUSION

For the foregoing reasons, this court should reverse the convictions of Clint Arthur Walker and remand this case for a new trial.

July 1, 2025

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

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