STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000472

THE STATE, Respondent,

v.

MELANIE CROMER MCCLAIN, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant was indicted by the Pickens County Grand Jury for trafficking methamphetamine. Appellant proceeded to jury trial on February 5, 2024 before the Honorable Perry H. Gravely. The jury found Appellant guilty as indicted. Appellant was sentenced to 25 years' imprisonment. A timely motion for a new trial was filed on February 16, 2024. In a written order filed March 11, 2024, Judge Gravely denied the motion for a new trial. A timely notice of intent to appeal was served on March 19, 2024. This Appeal follows.

STATEMENT OF FACTS

On October 20, 2021, Officer Devin Daw with the Pickens County Sheriff's Office stopped a white minivan for crossing the yellow line. (R. 69). Melanie McClain (Appellant) was driving the vehicle, Albert Dustin Pace, a co-defendant, was in the passenger seat, and Shawna Marie Johnston, another co-defendant, was seated on the floor behind Pace. (R. 70). Two other officers, Officer Van Massingill and Officer Corey Cassell, arrived at the scene to assist with the stop. While Daw was running the names of the passengers, Massingill observed Appellant making movements as if she was trying to conceal something. (R. 129). Appellant was asked to get out of the car and Daw observed her clinging tightly to her phone. (R. 73). Daw asked Appellant if she had anything on her. She tried to conceal it, but ultimately Daw could see a plastic bag with a clear substance in her hand. (R. 73). The substance was tested by a drug analyst from the South Carolina State Law Enforcement Division (SLED), who testified that the substance was 1.26 grams of methamphetamine. (R. 207-226).

Officer Daw testified that between the driver's seat and passenger seat he found a brown camo bag that contained five bags of individually-packaged methamphetamine. (R. 75-76). The SLED drug analyst tested substances in three of the five bags, and the substances tested positive as 10.38 grams of methamphetamine, with each baggie containing 3.4 grams. (R. 209, 225). A scale and some cut straws were also found in the bag. (R. 79). Officers also found that Pace was sitting on a black zipper pouch that contained marijuana, a smoking pipe, and more individual baggies. (R. 77). None of the people in the van claimed ownership of the methamphetamine in the brown camo bag. All three were charged with trafficking and taken to the detention center.

STANDARD OF REVIEW

"In general, the admission or exclusion of evidence is a matter left to the sound discretion of the trial court, whose ruling will not be reversed on appeal absent an abuse of that discretion." Matter of Campbell, 427 S.C. 183, 190, 830 S.E.2d 14, 18 (2019). Likewise, the general range and extent of cross-examination of a witness is within the sound discretion of the trial judge and the exercise of his discretion is not subject to review except in the case of manifest abuse or injustice. State v. Maxey, 218 S.C. 106, 62 S.E. 2d 100 (1950). "An appellate court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self interest in testifying, absent a manifest abuse of discretion." Yoho v. Thompson, 345 S.C. 361, 365, 548 S.E.2d 584, 585 (2001). "A trial court is vested with broad discretion in dealing with the range of propriety of closing argument, and ordinarily its rulings on such matters will not be disturbed." State v. Condrey, 349 S.C. 184, 195-196, 562 S.E.2d 320, 325-326 (Ct. App. 2002). This court will not disturb a trial court's ruling regarding closing argument unless the trial court commits an abuse of discretion. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "To warrant the reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." State v. Commander, 396 S.C. 254, 263, 721 S.E.2d 413, 418 (2011).

ARGUMENT

1. The trial judge did not err in limiting cross-examination of a co-defendant regarding his pending charges in another county.

During trial, the State called co-defendant, Albert Dustin Pace, as a witness. (R. 226-263). Prior to his testimony, the assistant solicitor advised the trial judge that Pace, in addition to the trafficking charge, also had a pending distribution of methamphetamine charge from March 5, 2023, in Anderson County. (R. 227). The trial judge responded with "It doesn't sound like there's anything subject to cross-examination as far as criminal record." (R. 228). Counsel for Appellant replied "I guess it depends on his testimony, and how he would testify, and any responses to questions about it. Because you can get into charges that may not necessarily be convictions for purposes of impeachment, especially on cross, especially because this case entirely hinges on constructive possession within these three being charged and the circumstantial evidence that's, also, with the other two co-defendants as well." (R. 228). Counsel for appellant additionally cited State v. Whitner.[1] (R. 228). The trial judge instructed defense counsel that if he got to a point where he wanted to ask him any questions about his record he would have to proffer, and the trial judge would make a ruling at that point. (R. 228).

During cross-examination, Counsel for Appellant asked Pace "Okay. So is –is it just marijuana that's your thing? Is that just – is – you don't do meth?" (R. 251). Pace responded "I mean, I have before. But – I mean, in my younger days." (R. 251). Counsel for Appellant then asked, "You don't—you haven't been charged with any other kind of methamphetamine charge?" (R. 251). The assistant solicitor objected, and the judge sustained the objection. (R. 252). Counsel for Appellant stated he would like to be heard outside the presence of the jury. (R. 252). The judge stated that if he wanted to get into that he needed to proffer that question outside

[1] State v. Whitner, 380 S.C. 513, 670 S.E.2d 655 (Ct. App. 2008).

the presence of the jury. (R. 252). Counsel for Appellant again cited to State v. Whitner, saying that Pace opened the door by saying he did meth in his younger days. (R. 252). Counsel further argued:

> Judge, as far as – my understanding from what we were discussing with State vs. Whitner is that if this issue did come up that we were going to send the jury out, not that I can't get into a – a question that is absolutely relevant on impeachment of him when it is a co-defendant trial.
>
> He's on—his charge is still pending. He's got a pending charge as well in Anderson that's all the more important that I be able to cross him. Because a conviction here in Pickens necessarily enhances and can enhance that charge for it to be a second in Anderson as well.
>
> My understanding was that I was restricted from just bringing it up. It was just we're going to have to potentially litigate whether I can bring in the specific charge itself.

(R. 253). The prosecutor argued "No, Judge. The rules are clear, it's convictions. He just in front of the jury stated—asked him the question, Don't you have charges for methamphetamine? It's not charges. It's convictions." (R. 253-254). He further argued that Pace stating that he has done meth is not tantamount to having a conviction.

Counsel for Appellant responded:

> Judge, I've got State vs. Martin[2] here, too, that allows for impeachment establishing a motive to lie when—when somebody is denying the drug use, the knowledge. He just—he himself—I didn't bring that out. He said, in my younger days, I used to do meth. I had no idea what he was about to say, in my younger days.
>
> This charge is pending from March of 2023. At that point in time, it becomes directly relevant to his testimony and impeachment of his credibility. And that's exactly what the purpose of cross is to bring out.

(R. 254). The judge stated that he could proffer the testimony outside the presence of the jury so that they could go over the testimony and make a decision. (R. 254-255). The assistant solicitor argued again:

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[2] State v. Martin, 347 S.C. 522, 556 S.E.2d 706 (Ct. App. 2001).

> Judge, and I don't know the details of Whitner. But based on what he was explaining in the case law, if a witness gets on the stand and denies use of methamphetamine in the past and maybe we reach the question of talking about prior charges, it's my stance absolutely not if it's a non-conviction.
>
> And then he wants to now parlay that into a charge that took – after this incident that is still pending that he knows nothing about the details of, and neither do I. But it's completely irrelevant to the subject that took place on October 20th of 2021, talking about a pending charge from 2023, I believe it was. But absolutely not. And he's already talked about it in front of the jury.

(R. 255). The trial judge then let him proffer the testimony about the pending Anderson County possession with intent to distribute charge in March of 2023. (R. 255). After the proffer the judge ruled, "I'm ruling in my review of State v. Martin that his charges are not admissible or any questions regarding his charges are not admissible based on your case." (R. 259).

Appellant argues that the trial judge erred in refusing to allow cross-examination of Pace about his pending charges in another county. Specifically, the questioning of the pending charges was probative of bias. This argument lacks merit. First, the pending 2023 possession with intent to distribute methamphetamine charge was not admissible as substantive evidence and did not fall into any exceptions provided by the rules of evidence. Second, the pending charge was irrelevant to the guilt or innocence of Appellant or Co-defendant on the charges for which they were being tried and lacked impeachment value. Third, even if it was relevant, allowing cross-examination regarding the charge would have been more prejudicial than probative. This Court should affirm.

Confrontation Clause

"The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Mizzell, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002). The Sixth Amendment is

applicable to the states through the Fourteenth Amendment. Id. The confrontation clause provides that "in all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . ." U.S. Const. Amend. XIV; State v. Gracely, 399 S.C. 363, 372, 731 S.E.2d 880, 885 (2012). The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias. State v. Williams, 432 S.C. 515, 854 S.E.2d 166 (Ct. App. 2021). "A defendant demonstrates a Confrontation Clause violation when he is prohibited from 'engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias...from which jurors...could draw inferences relating to the reliability of the witness.'" State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994).

The trial judge retains discretion to impose reasonable limits on the scope of cross-examination. See Mizzell. "The Confrontation Clause does not . . . prevent a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994).

Possession With Intent to Distribute Charge

Appellant argues that the trial judge erred in not allowing him to cross-examine a co-defendant about his pending charges in another county. The trial judge correctly excluded the evidence because it was not admissible under the rules of evidence. "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. Rule 403, SCRE.

Further, the pending charge was not admissible under Rule 609, SCRE, because it is not a conviction. Pursuant to Rule 609(a)(1), SCRE, prior **convictions** punishable by more than one year's imprisonment "shall be admitted" for impeaching the credibility of a defendant who testifies if "the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." Rule 609(a)(1), SCRE. Because Co-defendant had not been convicted of the possession, it was not admissible as evidence of a prior conviction, and Appellant failed to prove by clear and convincing evidence that Co-defendant was guilty of the charge.

Rule 608(c), SCRE, provides that "bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c) "preserves South Carolina precedent holding that generally, 'anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.'" State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). Appellant cites to State v. Sims, arguing this case is similar because in Sims, the trial judge erred in limiting the cross-examination of a witness about his pending charges because the evidence was probative of bias. State v. Sims, 348

S.C. 16, 558 S.E.2d 518 (2002). In Sims, the trial judge ruled that he was allowed to question him generally about his pending charges and whether there was anything promised to him with regard to those pending charges in exchange for his testimony; however, he was not allowed to question him as to the crimes with which he was charged. Id. The co-defendant had 9 pending charges in the same county as the one he was being tried for his current charge. Id. Our Supreme Court held that because of the number of charges pending and the severity of the potential sentences, the evidence was probative on the issue of bias and should have been allowed. Id. The current case differs in many different ways. First, in Sims, the co-defendant testified that he had been told when he proceeded to trial on his pending charges, the solicitor may tell the judge that he cooperated. In this case, Appellant questioned Pace about the same charge that was pending for Appellant about whether he was expecting a benefit for testifying and he testified that he was not testifying for the benefit of any leniency nor was he aware of any plea offer. Appellant then tried to ask about any other pending meth charges.

His purpose for asking that question was not to make the point that he was biased and testifying in hopes of leniency, but to insinuate that the meth found in the car was his because he has another possession of meth charge pending in another county. Further, unlike Sims, where there were 9 pending charges in the same county, Pace had one pending charge that occurred after the 2021 incident. Appellant was on trial for and it was in another county. Furthermore, evidence of the pending possession with intent to distribute meth charge was not probative for impeachment purposes. Appellant did not say he had never done meth, in fact he stated that he had in his younger days. Evidence of the charge would only have served to introduce impermissible character evidence and raised the danger that the jury would have based its verdict on an improper basis.

Lastly, the limitation of cross-examination was harmless because Appellant was allowed to cross-examine Pace on the same pending charge as Appellant was being tried for and whether he was testifying in hopes of a deal on that charge. Also, the question about other meth charges was asked in front of the jury and while the trial judge struck the question from the record, the jury still heard the question. Therefore, the trial judge did not err in preventing Appellant from cross-examining Co-defendant about his pending charge.

2. The trial judge properly limited the cross-examination of co-defendant and mention of counterfeit bills in closing argument because it was impermissible evidence of third-party guilt.

At trial, Counsel for Appellant cross-examined Daw about the counterfeit money that was found during the search at the detention center. (R. 101). Daw testified, without objection, that an employee of the detention center found six hundred and sixty ($660.00) dollars of counterfeit twenty-dollar bills in co-defendant Johnston's purse and sixty ($60) dollars in counterfeit bills in co-defendant Pace's wallet. (R. 101, 110). Counsel also asked if there were any counterfeit bills found on Appellant and Daw testified there was not. (R. 110). During the cross-examination of Pace, Counsel for Appellant asked him if there were counterfeit bills found on him. (R. 240-241). The State objected and the trial judge sustained the objection. (R. 241).

Prior to closing argument Counsel for Appellant asked about the ability to mention the counterfeit bills in closing argument. (R. 300-305). The judge ruled that defense counsel could reference the counterfeit bills if he was not arguing third-party guilt. (R. 300-305). In closing argument Counsel for Appellant told the jury, "think about what was testified to that was found illegal in Melanie's purse. That's right, nothing, not a baggy, not a scale, not even a nickel. But in the car in the search, what did they find? This ain't real y'all. 36 counterfeit-" (R. 312-313).

The State objected and a bench conference was held. (R. 313). Nothing further was mentioned about the counterfeit bills.

In State v. Brown[3], the South Carolina Court of Appeals wrote:

> In State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941), the supreme court adopted the following rule regarding third-party guilt:
>
> > [E]vidence offered by accused as to the commission of the crime by another person 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; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible... "But before such testimony can be received, there 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."

Brown at 104-105, 16 S.E.2d at 534-535. Holmes v. South Carolina expanded Gregory by holding that "where there is strong evidence of defendant's guilty, especially under strong forensic evidence, proffered evidence about a third party's alleged guilt may (or perhaps must) be excluded." Holmes v. South Carolina, 547 U.S. 319, 320, 126 S. Ct. 1727, 1729 (2006). "The Gregory rule requires the trial judge to consider the probative value or the potential adverse effects of admitting proffered third-party guilt evidence." State v. Swafford, 375 S.C. 637, 641, 654 S.E.2d 297, 299 (Ct. App. 2007). "In Holmes, the United States Supreme Court characterized the Gregory rule's purpose as focusing "the trial on the central issues by excluding evidence that has only a weak logical connection to the central issues." State v. Brooks, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct. App. 2019). "The Holmes court recognized that evidence of

[3] State v. Brown, 437 S.C. 98, 16 S.E.2d 532 (1941).

third-party guilt is appropriately managed by evidentiary rules such as Rule, 403, SCRE." Id. Rule 403, SCRE, states "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

Appellant argues that the counterfeit bill evidence is not the type of third-party guilt evidence limited by Gregory because the evidence was part of the investigation and because all three co-defendants were charged with trafficking methamphetamine based on constructive possession. Appellant further argues that they had the right to present a defense that the counterfeit bills made it more likely that Pace and Johnston exercised dominion and control of the methamphetamine rather than Appellant because they both had counterfeit bills and Appellant did not. At best, this evidence raises the mere suspicion that Pace and Johnston rather than Appellant were dealing the meth rather than Appellant but does not offer reliable proof that the counterfeit bills were related to the meth at all because the bills were not found in the bag with the meth, they were found on their persons and neither had meth on their persons. Further, even if the trial judge did err on limiting the cross-examination of Pace regarding the counterfeit bills as well as limiting the mention of it in closing argument, it was harmless because the evidence was still presented to the jury.

Harmless Error

Generally, "[e]rror is harmless when it could not reasonably have affected the result of the trial." State v. Golson, 349 S.C. 421, 429, 562 S.E.2d 663, 667 (Ct. App. 2002). "In

determining whether error is harmless beyond a reasonable doubt, we often look to whether the 'defendant's guilt has been conclusively proven ... such that no other rational conclusion can be reached.'" State v. Ostrowski, 435 S.C. 364, 401, 867 S.E.2d 269, 288 (Ct. App. 2021) (quoting State v. Reyes, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020)) (citations omitted). "'[O]verwhelming evidence' of a defendant's guilt is a relevant consideration in the harmless error analysis." Id. (citations omitted).

In the present case, there is plenty of other competent evidence tending to show Appellant's guilt such that a failure to admit this requested evidence would be harmless beyond a reasonable doubt. It was Appellant's car that the bag of meth was found in. Appellant was driving and the bag was located directly beside the driver's seat. Appellant had meth on her person. Further, it wasn't that the evidence of the counterfeit bills was completely kept out. Daw testified that there were counterfeit bills, and they were found on Johnston and Pace and no counterfeit bills were found anywhere on Appellant or in her stuff. (R. 101, 110). Therefore, the trial judge did not err in limiting cross-examination and closing argument reference regarding the counterfeit bills.

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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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Kathrine H. Hudgins, Esquire, counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 16th day of September, 2025.

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