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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

CERTIORARI-PCR
APPEAL FROM YORK COUNTY
Court of Common Pleas
Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2023-001400

Reginald Raynard White, Jr. Petitioner,

vs.

State. Respondent.

BRIEF OF PETITIONER

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 06188

Attorney for Petitioner

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Statement of Issues on Appeal

Did the Post Conviction Relief Judge err in failing to find trial counsel was not ineffective for his failure to object to the prior drug crimes which were more prejudicial than probative?

Statement of the Case

Procedural History

Reginald Raynard White was arrested on February 26, 2014 and charged with trafficking cocaine between 10 and 28 grams, possession with intent to distribute crack cocaine, and possession with intent to distribute Oxycodone. App. 608-615. On May 29, 2014 the York County grand jury indicted him on the charges of trafficking cocaine and possession with intent to distribute crack cocaine. App. at 455-459. On August 29, 2014 the State served upon Mr. White a notice to seek life without parole. App. at 448, ll 4-10

Mr. White proceeded to trial on January 12-14, 2015. The jury convicted Mr. White on January 14, 2015. He was sentenced to life without parole. Mr. White appealed his conviction. The South Carolina Court of Appeals affirmed his conviction in an unpublished opinion on October 26, 2016. App. at 495-496.

Mr. White filed his initial Post Conviction Relief Hearing on May 17, 2017. App. at 498. A Motion to Amend the Application was filed on January 23, 2019. App. at 505. A hearing was conducted on this Post Conviction Relief Application on January 30, 2019. App. at 1. Judge Thomas Russo issued an order on June 20, 2019 denying Mr. White relief. App. at 515-534. No Appeal was filed from this order.

Mr. White filed his second Post Conviction Relief application on November 1, 2019 in which he sought relief on numerous grounds. App. at 535-717. Mr. White filed an Amended Post Conviction Relief Application of August 20, 2020. App. at 689-695. His sole relief requested in the Amended Post Conviction Relief application was to be able to appeal the initial denial of his Post Conviction Relief application and to be permitted to file a Rule 59 motion to alter or amend the order

denying him relief. A hearing was held on this Post Conviction Relief petition on August 14, 2023. Judge Heath Taylor, on August 31, 2023 issued an order granting Mr. White the right to file an appeal from the previous order denying him relief. Mr. White filed his Notice of Appeal on September 6, 2023.

Factual History

On February 26, 2014, at approximately 11 AM Officer Carson Neely took a statement from a complaining witness concerning a claim by her that Reginald Raynard White raped her on February 24, 2014, when she and her boyfriend went to a trailer on Silver Creek Road in Clover, SC. Her boyfriend was an acquaintance of Mr. White. When they arrived at the trailer they met Mr. White and another individual who lived across the street from the trailer. After the other individual left at about 8 PM, she, her boyfriend and Mr. White used crack cocaine. After using the crack cocaine, she went to the bathroom. She claimed Mr. White followed her and raped her in the bedroom. App. at 585.

Based upon this information, a search warrant was obtained for the residence on Silver Creek Road. The search warrant was issued shortly before 2:30 PM on February 26, 2014. App. at 579-589. The search of the Silver Creek Road property occurred on February 26, 2014. Based upon the papers found at the residence, the officers were able to determine the man the complaining witness had referred to as “Reggie” was Reginald Raynard White. During the search on February 26, 2014, the officer also found the drugs in question. They were found in the air conditioning vent in the master bedroom. App. at 223, 1 23 to 224, 1 4.

After midnight on the day of the search, the officer arrested Mr. White at a residence on Hudson Street in York. App. at 103, 1 20 to 104, 1 1. Mr. White was subsequently interrogated by

officer McGarity. The officer testified he asked Mr. White what drugs would be found in the Silver Creek Road residence. The officer's testimony was Mr. White said "The crack, cocaine and Oxycodone." App. at 107, 1 22; Officer McGarity was the officer who found the illegal drugs in the initial search of the residence. App. at 182, 1 13 to 183, 1 9.

In the search of the house, in addition to the drugs, the officer found two bank statements in the name of Reginald White. These appear to be cash withdrawal documents from a bank ATM machine. They were dated February 3, 2024. App. at 182, 11 1-10. They also found a pill bottle with Mr. White's name on it. The date of the pill bottle is not known as the bottle was not taken but a photograph of the bottle was taken. App. at 248, 1 3-25.

At the trial, Mr. White had three witnesses testify for him, Their testimony was Mr. White did not reside at the Silver Creek road residence. The witnesses were his sister, his grandmother and the mother of his children, who was renting the residence on Silver Pond Road. The testimony also established that Mr. White's vehicle and driver's license did not list Silver Pond Road as his residence.

Standard of Review

“We review questions of law de novo, with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018). “While we defer to the PCR court’s credibility findings as to witnesses who testified before the PCR court, we do not defer to the PCR court’s credibility findings as to witnesses who did not testify before the PCR court.” *Thompson v. State*, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). As the Post Conviction Relief Judge ruled the trial court did not err in admitting the evidence, this ruling is not a credibility issue. It is a ruling as a matter of law and should be reviewed de novo.

Argument

Question I

Did the Post Conviction Relief Judge err in failing to find trial counsel was not ineffective for his failure to object to the prior drug crimes which were more prejudicial than probative?

Reginald White was charged and convicted of trafficking in cocaine and possession with intend to distribute crack cocaine. App. at 455-460. The facts giving rise to these charges arose from a report by a woman that Reginald White had on February 24, 2014, committed a sexual assault on her.¹ When the investigating officers questioned Mr. White about the incident, he admitted that he had sexual relations with the woman, but stated that the sexual relations was consensual. Mr. Williams had told the officers that he had given the woman and her boyfriend crack cocaine. After giving them crack cocaine, he engaged in consensual sex with the woman. After that, both people

¹ This case was dismissed on March 19, 2015. The allegations against Mr. White are found in the Appendix at 661-664. A reading of the allegations makes this a suspicious case.

left. App. at 117, 13 to 118, 18.

At the pre-trial motion hearing, counsel for Mr. Williams objected to the introduction of the proposed testimony based upon *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Upon hearing the objection, the trial judge said, “The question is whether or not it would qualify as Lyle evidence and whether it appears to be part of a common plan, scheme, course of conduct. We will weigh all those things.” App. at 138, 124 to 139, 12. Trial counsel then set forth his basis for the objection of the other bad acts. He advised the court the only contested issue was whether the crack cocaine and other drugs were in fact Mr. White’s. App. at 141, 11 10-13. Trial counsel argued, “That makes whatever value this is on intent is far outweighed by the prejudice to my client” App. at 141, 11 7-9. Further, trial counsel advised the court, “I am certainly not going to argue personal use.” App. at 140, 1 24. The sole defense established at trial was that the drugs found in the residence belonging to Jessica Collins, his girlfriend at the time, were not his. No usable fingerprints were found on the bags. No DNA analysis was done to the bags containing the drugs. The trial judge ruled that based upon the representations and testimony at the pre-trial hearing, he would admit the testimony as to other drug transactions as other bad acts. App. at 149, 11 6-9. The trial judge admitted the other bad act on the issue of intent which defense counsel had conceded to the court. Intent to distribute was not a contested issue. Based upon the admission of trial counsel that he was not going to argue personal use, the probative value of the statement by Mr. White that he gave two small pieces of crack cocaine to two individuals simply did not exist. Had a proper objection been made, an appellate court could have ruled upon the issue of whether the probative value outweighed the prejudice. Under the law, the appellate court should have reversed the conviction.

At the trial, the officer testified as to the other two alleged drug distributions without any

objection from defense counsel. App. at 265, ll 20-25. Mr. White appealed his case raising this issue. The South Carolina Court of Appeals affirmed the conviction on October 26, 2016. As to the issue of the other bad acts, the Court stated, “Because a ruling in an *in limine* motion is not final, the losing party must renew his objection at trial when the evidence is presented in order to preserve the issue for appeal.” App. at 496.

The trial counsel erred in failing to object to the introduction of the other bad act of giving away two small amounts of crack cocaine. At the post conviction relief hearing, trial counsel admitted he failed to make a proper objection. App. at 17, ll 11-19. Trial counsel committed error. The only question to decide is whether Mr. White was prejudiced. As the Court of Appeals declined to rule on the issue as it was not preserved, this Court should acknowledge that trial counsel was ineffective.

The South Carolina Supreme Court has held that when intent is conceded by the defendant, evidence of intent is not admissible. The court said:

Appellant does not contend to the contrary, but does contend that criminal intent or guilty knowledge was not such a disputed and issuable fact in the case at bar as would authorize the admission of this evidence merely to establish such fact. When this class of evidence was offered by the state the defendant through his counsel caused to be spread upon the record an admission to the effect that his defense was an alibi, and that for the purposes of the trial the criminal intent or guilty knowledge of the person who uttered the forged check, as charged, would be freely and fully conceded.” *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 810 (1923).

The same rule is applicable here. Mr. White, through his counsel, admitted intent was not an issue. His trial counsel “caused to be spread upon the record an admission” that he was not going to argue simple possession. His sole argument was that the drugs were not his client’s. The State was put on notice that they could argue the inference from the amount without fear of any contrary

argument by the defendant. The State did not need the other unduly prejudicial evidence to obtain its conviction, if they proved the crack cocaine and other drugs belonged to Mr. White. The State could have even argued the intent to distribute was not contested. The state elected to engage in the proverbial “gilding of the lily.”² And as applied to the law of this case, the evidence is the excess that ruins the case by permitting the jury to decide the case on an improper basis. Without the other bad act, the trial is fair as to the issue of to whom did the drugs belong. The “gilding of the lily” made the trial unfair. The fact Mr. White may have given crack cocaine to two other individuals does not mean he knew the drugs were in the air conditioning vent in the home he sometimes occupied. The other bad act permitted the jury to decide the case on an improper basis. The jury could have concluded, because he gave away a small amount of crack cocaine, he knew of a larger amount of crack cocaine and other drugs. They may have even concluded that he gives away drugs and is a bad person. “Unfair prejudice means an undue tendency to suggest decision on an improper basis, such as an emotional one.” *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001).

As noted above, the giving of crack cocaine was only marginally relevant to the issue of an intent to distribute. If the State had testimony that Mr. White had been found in possession of crack cocaine the day before the raid, such testimony would not have been admissible. The possession of

² The exact quote is:
“To gild refined gold, to paint the lily,
To throw a perfume on the violet,
To smooth the ice, or add another hue
Unto the rainbow, or with taper-light
To seek the beauteous eye of heaven to garnish,
Is wasteful and ridiculous excess.”
Shakespeare, King John, Act II

crack cocaine the day before would be another bad act used by the state to support the claim that Mr. White knew the drugs were in the home. The use of the other bad act for that purpose would not make it admissible. In the present case, the other bad act serves two purposes. One is to prove Mr. White had an intent to distribute the crack cocaine when this intent was not contested. The other would be to prove he knew the crack cocaine was in the house because he gave some away in the house. The second purpose is an improper purpose. The second purpose makes the evidence more prejudicial than probative. The act of giving away a small amount of crack cocaine was also prejudicial to the trafficking charge

The trial judge abused his discretion in this case in admitting the other bad act evidence. The Court has held, “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). As defense counsel stated on the record he was not disputing the intent part of possession with intent to distribute crack cocaine, the trial court had no factual basis to conclude the giving away of the crack cocaine was probative of any disputed fact. At the very least, the trial judge erred in failing to consider that defense counsel’s statement greatly lessened the need for the State to use the other bad act to prove intent.

Furthermore, the trial judge erred in failing to weigh the prejudice to Mr. White on the trafficking charge by admitting the giving away of the crack cocaine.³ The giving away of two small

³ There will virtually always be prejudice to a defendant when the state has two charges one of which would make the other bad act admissible and one of which would not make it admissible. The State should not be permitted to combine two charges for the purpose of admitting prejudicial evidence as to one when the evidence would not otherwise be admissible. The fact that the State proved Mr. White gave away a small amount of crack cocaine would be prejudicial to the trafficking cocaine charge.

amounts of crack cocaine is not admissible had the trafficking charge been tried alone. The South Carolina Supreme Court has said, “As we have stressed on more than one occasion, the Constitution entitles a criminal defendant to a fair trial, not a perfect one.” *State v. Mitchell*, 330 S.C. 189, 199, 498 S.E.2d 642, 647–48 (1998)(internal citations omitted). When a defendant charged with trafficking drugs has to dispute a giving away of drugs or the possession of drugs on another occasion, the trial is not fair. This court has said, “The inference that the State clearly wanted jurors to draw was that because some of the text messages indicated Appellant was dealing drugs earlier—sometimes weeks before the incident at issue—then he must have owned the drugs found on January 25, 2017.” *State v. Ostrowski*, 435 S.C. 364, 392–93, 867 S.E.2d 269, 283–84 (Ct. App. 2021). In this case the State wanted the jury to draw the inference that because Mr. White gave away a small amount of crack cocaine a day before the raid, he knew the trafficking amount of drugs were in the house. This is not permissible.

As this has also said in reference to the introduction of another drug sale:

There is no legal connection between these two purchases sufficient to come within the framework of the common scheme or plan exception. Indeed, the purpose of the State’s use of the evidence appears similar to that articulated by this Court in *Campbell* in that the State was not trying to prove a common scheme or plan, but was instead trying to convince the jury that because Carter sold crack cocaine to Stamps on January 14th, he was selling crack cocaine on January 18th. This is the precise type of inference prohibited by *Lyle*.

State v. Carter, 323 S.C. 465, 468, 476 S.E.2d 916, 918 (Ct. App. 1996)

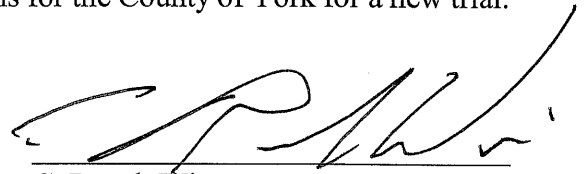
Had the state wanted to give Mr. White a truly fair trial, they would have either tried him twice on two separate charges or not buttressed their trafficking case by seeking to admit the giving away of a small amount of crack cocaine. Had an objection been raised by trial counsel, there is a reasonable probability that this case would have been reversed on appeal. The other two

distributions of crack cocaine were improperly admitted and prejudicial to Reginald White as to both charges for which he was convicted. The conviction in this case should be reversed and remanded for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse the ruling of the Post Conviction Relief judge and remand the case to the Court of General Sessions for the County of York for a new trial.

June 5, 2026



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 6188

Attorney for Reginald Raynard White