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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.

REPLY BRIEF OF PETITIONER

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Argument

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?

Is a trial fair when the state is permitted to bring two separate drug charges where one charge would allow the evidence to be admitted but the evidence would be inadmissible as to the other charge? The logical answer should be “no.” This question, in a sense, has been answered in two cases decided by our courts. *State v. Cross*, 427 S.C. 465, 832 S.E.2d 281 (2019) and *State v. Brooks*, 341 S.C. 57, 533 S.E.2d 325 (2000). In both cases the South Carolina Supreme Court has ruled that other relevant evidence should be excluded when the evidence deprives a defendant of a fair trial. Such a holding seems entirely logical.

The Respondent has suggested the that the confession as to the distribution of the drugs was relevant to prove knowledge and the power and the intent to control the use of the drugs. Br. of Resp. at 6. What the Respondent fails to appreciate is that in fact no evidence in this case shows that the drugs allegedly given away were the same as those seized. While they may have been the same type, no evidence remotely suggests they came from the same supply. The fact is equally logical that the drugs allegedly given away came from a personal supply of Mr. White. Had Mr. White actually gone to the floor vent to retrieve the drugs, his fingerprints or DNA logically would have been on the packaging. No such evidence existed in this case. As such, one can argue it was logical that he did not have access to the drugs found in the floor vent. All such testimony proved is Mr. White had some drugs to give away that were similar to the drugs found in the floor vent. One did not prove the other. The jury had to speculate as to the source of the

drugs he allegedly gave away. This speculation is more prejudicial than probative.

If Mr. White had given a statement he provided the crack cocaine to the woman at the house some miles away two days before the house of his girlfriend was searched, would the testimony have been admissible? The source of the crack cocaine is equally speculative in both cases.

The State has mentioned the intent to control the drugs and the power. The law requires more. As stated in *Goldsmith v. Witkowski*, 981 F.2d 697, 702 (4th Cir. 1992), “In this case, however, the prosecution presented only an evidentiary picture of an accused sitting at a table laden with narcotics and narcotic paraphernalia in an apartment where other drugs and paraphernalia were later discovered.” Thus, knowledge and easy access to the drugs is not by itself constructive possession. The State had to prove the defendant had the right to exercise dominion and control over the drugs. Knowing drugs may be in a floor vent is not sufficient to convict. And the ability to retrieve them from a floor vent is not enough.

To make the alleged prior drug distribution admissible, the trial judge must also do a weighing analysis under Rule 403. Had such an analysis been conducted, a judge should have excluded the evidence on two grounds. First, there is no evidence, beyond speculation, that the crack cocaine Mr. White allegedly gave away was from the same source found in the floor vent. Secondly, if the state sought to introduce the giving away of the crack cocaine to prove possession with intent to distribute, it was clearly more prejudicial than probative as to the which he was charged

As noted in the opening brief, in *State v. Ostrowski*, 435 S.C. 364, 867 S.E.2d 269 (Ct.

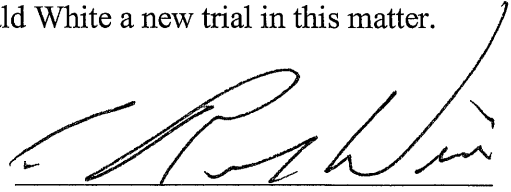
App. 2021) this court held text messages as to the defendant's involvement in prior drug transactions was not admissible in Mr. Ostrowski's trial for trafficking drugs. This court said, "Appellant was charged because he was allegedly in possession of a large enough quantity of the drugs to constitute trafficking. Therefore, whether Appellant was regularly involved in the sale or distribution of drugs was not crucial to the State's case" *Id.* at 392, 867 S.E.2d at 283. This court in making the determination that text messages as to prior drugs transactions was more prejudicial than probative stated, "Because Appellant did not need to have a subjective intent to traffic the drugs in order to be convicted under the statute, the probative value of the text message evidence is relatively small on that aspect of intent." *Id.* at 398, 867 S.E.2d at 286. The same principle applies in this case. The state did not need to prove Mr. White had a subjective intent to sell drugs in order to be convicted of trafficking. Even if Mr. White had testified and stated he had no intention of distributing the drugs, and the jury believed him, the jury would still have been required to convict him of trafficking as his intent to distribute was not an element of the crime of trafficking.

Based upon the above discussion, Mr. White was in fact prejudiced when his trial counsel, after initially making an objections, failed to renew the objection when the improper testimony was given in court. In this case, Mr. White has proven he was prejudiced by the improper admission of a prior drug sale. He has complied with the requirements of *Strickland v. Washington*, 466 U.S. 668 (1984).

CONCLUSION

For the foregoing reasons and for the reason set forth in the opening brief, this court should reverse the decision of the lower court grant Reginald White a new trial in this matter.

October 26, 2026



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