STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2014-001052

The State, Respondent,

vs.

Timothy George Hobart, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. The trial court properly admitted a certified copy of the Rule to Show Cause Master Deputy Hendrix attempted to serve on Appellant when her tire was flattened by a booby trap device in Appellant's driveway. The prejudicial impact of the Rule to Show Cause did not substantially outweigh its probative value and it was properly admitted under either the res gestae theory or pursuant to Rule 404(b), SCRE.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On September 21, 2012, The Spartanburg Family Court issued a Rule to Show Cause Order for Appellant based on his failure to pay child support. (State's Exhibit 21; State's Exhibit 21B; R.238; 240). Master Deputy Hendrix attempted to serve Appellant with the Order on four different occasions. (State's Exhibit 21-B; T.164-165; R.240; 118-119). She was familiar with Appellant because she had served or attempted to serve him before. (T.183; R. 137).

Master Deputy Hendrix attempted to serve the Rule to Show Cause Order on October 10, 2012. As she was pulling into the driveway, she ran over cardboard Appellant spiked with nails and covered with leaves. (T.166; 172; R. 120; 126). Six nails punctured her front tire. (T.166; R. 120). After getting out of the vehicle to determine what happened, Master Deputy Hendrix returned to her vehicle and called for backup fearing she may be ambushed. (T.167; R. 121). She indicated Appellant had been hostile on prior occasions when she attempted to serve him. (T.167; R. 121). The total damage to Master Deputy Hendrix' car was $359.86.

Master Deputy Hyde served the arrest warrant on Appellant for the harm to the vehicle. When he and his partner arrived at Appellant's house, Appellant refused to open the door. They made entry into the house, and Appellant attempted to run to his bedroom. He was apprehended before he could get to his bedroom. (T.200-202; R. 154-156). Appellant was arrested for resisting arrest and malicious injury to property. (Indictments; R.241-244).

ARGUMENT

I. The trial court properly admitted a certified copy of the Rule to Show Cause Master Deputy Hendrix attempted to serve on Appellant when her tire was flattened by a booby trap device in Appellant's driveway. The prejudicial impact of the Rule to Show Cause did not substantially outweigh its probative value and it was properly admitted under either the res gestae theory or pursuant to Rule 404(b), SCRE.

Appellant contends the trial court erred in admitting a certified copy of a Rule to Show Cause Order because its prejudicial impact substantially outweighed its probative value. First, the Rule to Show Cause Order was properly admitted as part of the res gestae of the crimes for which Appellant was charged or either under Rule 404(b), SCRE, to show motive and intent.[1] Second, the Order's probative value in establishing the context or circumstances of Appellant's crimes, as well as providing the basis for his motive and intent to cause harm to the vehicle of Master Deputy Hendrix, greatly outweighs any prejudice from the jury knowing the Order was issued because of delinquency in paying child support or because of Master Deputy Hendrix's handwritten notations. Finally, any error is entirely harmless.

In criminal cases, the appellate court sits solely to review errors of law. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d

[1] Appellant did not object on the basis the Order was inadmissible under either res gestae or Rule 404(b). He only objected pursuant to Rule 403, SCRE, arguing the Order's prejudicial impact substantially outweighed its probative value.

892, 895 (2009). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008).

Rule 403, SCRE, states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir.1993)); see also, State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); United States v. Rodriguez–Estrada, 877 F.2d 153, 156 (1st Cir.1989) ("[A]ll evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided.").

"A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." "We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Fletcher, 363 S.C. 221, 246, 609 S.E.2d 572, 585 (Ct. App. 2005). "The res gestae theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." Fletcher, 363 S.C.

at 246, 609 S.E.2d at 585 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

> when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae' " or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... '[and is thus] part of the res gestae of the crime charged.' And where evidence is admissible to provide this 'full presentation' of the offense," [t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

State v. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)).

The need to serve the Rule to Show Cause Order after its issuance was the reason Master Deputy Hendrix entered Appellant's property multiple times, including the time at issue when her car tire was flattened by a booby trap device in the driveway. The jury needed to understand why Master Deputy Hendrix was on Appellant's property when the incident took place. Further, the fact she had been there several previous times while Appellant avoided the service of the Order is part of the circumstances of this case which the jury needed to understand to properly render its verdict. As a result of it forming part of the context of the underlying crime and explaining to the jury the reason Master Deputy Hendrix was on Appellant's property when the booby trap caused damage to her car, the Rule to Show Cause Order had a very high probative value.

Additionally, even if not part of the res gestae of the crime, the Rule to Show Cause Order was admissible under Rule 404(b), SCRE. Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. See Rule 404(b), SCRE. The Rule to Show Cause Order was properly entered to show Appellant's motive for planting the booby trap device and his intent that it cause harm to Master Deputy Hendrix' vehicle.

Appellant was avoiding service of the Order so he did not have to answer for his delinquency in paying child support. Master Deputy Hendrix attempted multiple times to effect service of process and was never successful. The Order provided the jury with the basis for Appellant's actions, and further corroborated the State's argument his intent was to cause harm or damage to Master Deputy Hendrix' vehicle because he knew she would return until the Rule to Show Cause Order was served. Again, the need to explain to the jury why Appellant would rig a booby trap in his driveway, as well as the fact it was intended for Master Deputy Hendrix and not just for anyone entering his driveway, provides the Rule to Show Cause Order with significant probative value.[2]

The probative value of the Rule to Show Cause Order greatly outweighed any potential of undue prejudice Appellant suffered as a result of its admission. First, Appellant complains about many items on the Order including handwritten notes which were not redacted. Appellant, however, asked for many redactions and many redactions were made on the Order. Much of what went before the jury that he now complains caused him undue prejudice Appellant never requested be redacted. He was content with

[2] This is especially true when Appellant's main argument as shown through his directed verdict motion was that the State did not establish his malicious intent. (T.207-212; R. 161-166).

allowing it before the jury if the entire Order was admissible so he cannot now complain that the individual items on the Order were the source of his prejudice.[3] See e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal); State v. Mitchell, 330 S.C. 189, 195, 498 S.E .2d 642, 645 (1998) (finding when an appellant acquiesces in the trial court's ruling, the issue is procedurally barred).

Second, Appellant maintains the admitted Rule to Show Cause Order constitutes prohibited propensity or character evidence. As discussed above, the Order was properly admitted as part of the res gestae of the crime for which Appellant was charged, or either admitted pursuant to Rule 404(b) showing his motive and intent for setting the booby trap in his driveway. At no time was the document entered as improper propensity or character evidence.

As the trial court found:

> Further, I do not find that the fact that it is for child support would cause it to be unduly prejudicial. I think its probative value would outweigh its unduly - - the probative value would outweigh undue prejudice. All evidence is prejudicial. It's just undue evidence that would lead the jury to a verdict on an improper - - on an improper basis.

[3] At trial, Appellant's counsel made it clear he was objecting to the Order being admitted "in toto" because it was unduly prejudicial. (T.113; R. 85). He never raised an issue regarding the prejudice created by individual notations in the document.

(T.107; R. 78). Given the great deference afforded the trial court's balancing of the probative value and potential for undue prejudice in admitting the Rule to Show Cause Order, this is certainly not one of the exceptional circumstances warranting reversal.[4]

Finally, even if an exceptional circumstance existed demonstrating the trial court erred in admitting the Order based on Rule 403, any error would be entirely harmless in light of the Order's cumulative nature to Master Deputy Hendrix testimony. See e.g., State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other un-objected to evidence is harmless).

[4] Additionally, the trial court's use of discretion is shown by his refusal to allow evidence of prior attempts to serve other Rules to Show Case on Appellant. (T.93-101; R. 64-72).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 7, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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August 7, 2015

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 7th day of August, 2015.

Sally Ellison

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SC Court of Appeals

August 7, 2015

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RE: State v. Timothy George Hobart
Appellate Case Tracking No. 2014-001052

Dear Ms. Hudgins:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Enclosures

cc: Honorable Jenny A. Kitchings (original and 9 copies enclosed)
Victim Services