STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case Tracking No. 2014-001326

The State, Respondent,

vs.

Fred Jack Sanders, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The jury charge when read as a whole properly charged the jury on the required elements of manufacturing methamphetamine. Further, any error in the charge is entirely harmless in light of the overwhelming evidence presented by the State.

II. The trial court properly denied Appellant's motion for a mistrial and the two substantial curative instructions more than adequately cured any possible error in the testimony. Further, none of the testimony was improper, and therefore, Appellant suffered no prejudice and was not entitled to a mistrial.

STATEMENT OF THE CASE

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

ARGUMENT

I. The jury charge when read as a whole properly charged the jury on the required elements of manufacturing methamphetamine. Further, any error in the charge is entirely harmless in light of the overwhelming evidence presented by the State.

Appellant contends the trial court erred in the jury charge related to the manufacture of methamphetamine.[1] The jury charge when read as a whole correctly charged the jury on the required findings before it may convict Appellant. Further, any error in the charge is entirely harmless in light of the overwhelming evidence in the record presented by the State.

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Id. at 479, 697 S.E.2d at 583

A trial court is required to charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 73 (2004). A jury charge is correct if it contains the correct definition of the law when read as a whole. See Rayfield, 369 S.C. at 119, 631 S.E.2d at 251; Sheppard, 357 S.C. at 665, 594 S.E.2d at 473; State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006). "A jury charge is correct if, when

[1] Any error in the jury charge relates solely to the conviction for manufacturing methamphetamine and would not impact Appellant's other convictions for possession with intent to distribute heroin, possession of methamphetamine, possession of crack cocaine, and possession of a controlled substance.

the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted).

Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error. State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial. State v. Lee Grigg, 374 S.C. 388, 406, 649 S.E.2d 41, 50 (Ct. App. 2007).

The jury instructions given in this case clearly provided the jury with the correct road map to follow in determining Appellant's guilt or innocence. The trial court properly charged the jury regarding the presumption of innocence and the State's burden of proof beyond a reasonable doubt. (T.433-434; R.217-218). The trial court explained the jury's role as fact finder as juxtaposed to the court's role in giving the law. (T.435-436; R.219-220). The court then explained the jury must find criminal intent and defined it for the jury. (T.438-439; R.222-223).

Next, the specific elements of the crime of manufacturing methamphetamine were explained. The court announced: "The defendant is charged that he did manufacture, aid, abet, attempt, or conspire to manufacture a quantity of methamphetamine. Manufacture means to produce or prepare or process or to plant, cultivate a drug naturally or chemically." (T.439; R. 223). The trial court then defined attempt. He then gave the contested charge stating: "Now, our law provides under section 44-53-375(d) that possession of equipment or paraphernalia used in manufacture of methamphetamine

gives rise to what is called a permissive inference of a violation of manufacturing methamphetamine." (T.440; R. 224).

When read as a whole, the jury knew the State's burden to prove Appellant had the criminal intent necessary to commit the crime of manufacturing methamphetamine. They also knew in order to convict Appellant of the crime they had to find he produced, prepared, processed, or planted methamphetamine naturally or chemically. As a result, the permissive inference given by the court did not alter or affect the overall charge given, nor would it have caused the jury to improperly conclude Appellant's guilt. Accordingly, the charge given as a whole is correct.

Even if the charge given is in error because of the inference given by the trial court, any error is entirely harmless. "Errors, including erroneous jury instructions, are subject to harmless error analysis." State v. Belcher, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009); see also State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013) (conducting harmless error analysis to determine whether defendant prejudiced by improper jury charge). The Supreme Court announced the standard for determining whether the failure to give a jury instruction or the giving of an erroneous charge was harmless in State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014). The Court stated:

> When considering whether an error with respect to a jury instruction was harmless, [the Court] must "determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." Thus, whether or not the error was harmless is a fact-intensive inquiry.

Id. (Internal citations omitted).

In the instant case, the State presented overwhelming evidence of Appellant's guilt of manufacturing methamphetamine such that even if the jury charge was erroneous it had no effect on the jury's verdict of guilt. The State presented the testimony of several officers, Appellant's own statement, photographs of the equipment used in the manufacturing process, as well as the produced methamphetamine as evidence of Appellant's guilt.

Investigator Smith indicated a search warrant was obtained for Appellant's mother's residence where Appellant also resided. (T.173; R. 59). He indicated when the officers entered he proceeded to the garage area and located Appellant and two other individuals, including Sara Brassell, with what appeared to be crack cocaine and a crack pipe between them. (T.175-176; R. 61-62). During the execution of the search warrant, the officers took numerous photographs of the items discovered within the residence. (State's Exhibits 2-33; 35-36; Photographs Filed with the Court). Investigator Smith then detailed some of the materials necessary to manufacture methamphetamine which were found in Appellant's bedroom[2], including: Coleman fuel, lithium from lithium batteries, the pellets from inside freezer cold packs, and others. (T.181-183; R. 67-68). He further indicted the room smelled "God awful" and "like when you run into a meth lab." (T.183; R. 69).

Investigator Smith went through the photographs and explained the items found and how they all related to the manufacturing process of methamphetamine. (T.183-194; R. 69-80). He detailed the bottles with tubing, which were part of the bottles required for the process. He noted the Coleman fuel and packs of batteries in the room which are

[2] Appellant admitted in his statement the bedroom where the items were located belonged to him. (Appellant's Statement, State's Exhibit 45; R. 277).

used as part of the chemical reaction involved in manufacturing methamphetamine. He indicated batteries were already cut open and the necessary lithium removed. (T.185-186; R. 71-72). He explained there were cut open freezer packs or cold packs in the room. Investigator Smith testified the only reason to open a cold pack was to use the pellets inside in the manufacturing of methamphetamine. (T.187; R. 73).

Investigator Smith stated pseudoephedrine was located in Appellant's bedroom. It is the primary ingredient that is changed from a legal drug to methamphetamine. He stated pills of pseudoephedrine were found along with some that appeared to be crushed up in a grinder. (T.188-189; R. 74-75). Investigator Smith also testified syringes were found which Appellant admitted contained liquid methamphetamine. (T.189-190; State's Exhibits 24-25; Appellant's Statement, State's Exhibit 45; Photographs on File with the Court; R. 227).

Investigator Smith was concerned because some of the bottles necessary for the manufacturing of methamphetamine were not present in Appellant's bedroom and those bottles would contain the toxic chemicals from mixing the camp fuel, batteries and other items together. He asked Appellant where the other bottles needed were located and Appellant informed Investigator Smith the bottle was buried in the back near the power line. Investigator Smith testified a bottle with the precursor ingredients to methamphetamine was found in the backyard. (T.191-193; State's Exhibit 23; R. 77-79; Photograph on File with the Court). Investigator Smith testified wax paper was found, which is normally used to package narcotics. (T.194; R. 80). Based on Investigator Smith's experience and training the items found in the bedroom were indicative of manufacturing methamphetamine and the smell in the bedroom "as strong as it was,

indicated and was very indicative of a meth cook that had taken place very recently." (T.200; R. 86).

Investigator Gonzales also participated in the execution of the search warrant. He indicated he entered the bedroom and collected various items. He located and collected lithium batteries, including some which had been shredded; coffee filters, even though there was no coffee maker in the room; tubing; Coleman fuel; Drano; and a jar with cut up straws. (T.265-266; R. 109-110). Investigator Gonzales indicated the items he collected "[a]bsolutely" are found associated with methamphetamine manufacturing labs. (T.266; R. 110).

Investigator Ricard, who has specific training in methamphetamine labs, testified they located a meth lab at Appellant's residence. (T.287-288; R. 128-129). She indicated there was a "very strong chemical smell coming from [Appellant's] bedroom." (T. 287; R. 128). She testified: "The distinct odor is consistent with a recent manufacturing. Active meth lab is how we label it." She acknowledged there was not an active cooking of methamphetamine when they arrived, but stated "one had been cooked recently in the room." (T.289; R. 130). Investigator Ricard went through the manufacturing process for methamphetamine using the method employed by Appellant and explained the need for all of the items located in his bedroom including the Sudafed, cold packs, batteries, Coleman fuel, and bottles. (T.296-298; R. 137-139).

Finally, Tara Kinney, a drug chemist with the Richland County Sheriff's Department, explained she previously did research on methods of manufacturing methamphetamine. She also testified to her education, experience, and training. (T.315-316; R. 142-143). She was admitted as an expert in chemical analysis and clandestine

laboratory investigations. (T.317; R. 144). She testified to some of the chemical involved in the manufacturing of methamphetamine including drain cleaners or Coleman fuel. She explained the need for lithium batteries as well. She indicated the manufacturing process creates a "strong chemical odor." (T.319-320; R. 146-147). All of these were present in Appellant's bedroom.

The testimony, along with all the items found in Appellant's bedroom, clearly indicates he was involved in the manufacture of methamphetamine. The strong odor testified to by several witnesses indicates a cook of the drug recently happened. Finally, Appellant admitted in his statement all of the items were his and the syringes founded contained methamphetamine. Because of this overwhelming evidence of manufacturing methamphetamine, any possible error in the jury charge is harmless. Accordingly, this Court should affirm Appellant's convictions and sentences.

II. The trial court properly denied Appellant's motion for a mistrial and the two substantial curative instructions more than adequately cured any possible error in the testimony. Further, none of the testimony was improper, and therefore, Appellant suffered no prejudice and was not entitled to a mistrial.

Appellant maintains the trial court erred in denying his motion for a mistrial based on allegedly improper prior bad act testimony by one of the State's witnesses. First, the issue is not preserved for review on appeal. Next, the testimony was not improper, and even if it was improper the trial court gave an extensive curative instruction from which any possible error was cured. Finally, Appellant cannot demonstrate prejudice which necessitated the grant of a mistrial, especially in light of the two excessive curative instructions given by the trial court which not only struck the witness's testimony, but also required the jury to ignore any prior bad act evidence from any witness.

Preservation

First, the issue is blatantly not preserved for review on appeal, and even if it had been preserved any issue was waived by Appellant. Initially, Appellant did not contemporaneously make his objection or his motion for a mistrial. Appellant received a curative instruction he wrote and did not object to that curative instruction. Appellant's next request for a curative instruction he prepared for the court was after several additional witnesses testified and the court recessed for the day. Finally, Appellant received the relief he requested.

The State called Sara Brassell to testify. She was present with Appellant at the time of the search warrant and was also arrested in conjunction with the crack cocaine located in the middle of the three individuals. (T.277-278; 280; R. 118-119). During her testimony she was asked: "Tell me how you know [Appellant]." She responded: "I just

met him when I - - one day whenever I was going to there for drugs." She acknowledged this occurred the day before she was arrested with Appellant. (T.277; R. 118). Notably, Appellant did not object to this testimony in any way, though he now complains it was impermissible prior bad act testimony justifying a mistrial. The issue is not preserved for review on appeal. See State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005) (finding to preserve an issue for review there must be a contemporaneous objection that is ruled on by the lower court).

Appellant later objected to testimony by this witness when she was asked about the day the search warrant was executed and both she and Appellant were arrested. She was asked about the drugs she had been doing that day and who provided the drugs. She testified Appellant provided them and then Appellant objected for the first time. (T.277-278; R. 118-119). At this time, his primary argument related to the sufficiency of the notice given that the witness would testify about this case. After the trial court incorrectly[3] ruled in his favor that the State somehow did not give Appellant proper notice, he asked the court for a curative instruction. The court agreed. Appellant then said in passing and not in the nature of an objection: "And I believe she mentioned another prior bad act." (T.282; R. 123). This comment was never ruled on by the court or addressed in any way. Instead, the court asked for a proposed curative instruction. As a result, Appellant cannot now argue one ground on appeal when he raised a different ground at trial. See State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010)

[3] There is no rule, statute, or case which requires the State to provide Appellant anything more than what was turned over in the instant case. The State is not required to do the defense's job by providing them all the proposed testimony of a witness. See e.g., Rule 5(a)(2), SCRCrimP (providing the prosecution need not turn over statements made by prosecution witnesses until after the completion of direct examination and upon motion of the defense); State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105 (Ct. App. 2005) (finding "The State, however, is not required to provide its witness list to a criminal defendant"). As a result, the trial court's ruling on this ground is clear error of law and the defendant received a windfall by having the witness's testimony struck.

("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).

Further, the first time Appellant requested anything related to the prior bad act testimony came after the State presented two additional witnesses. Appellant apparently presented the trial court with another proposed curative instruction he sought to have given related to the prior bad act testimony. By waiting for two more witnesses to testify before raising any issue, Appellant waived his right to complain of the testimony or the failure to grant a mistrial on this issue.

Finally, Appellant received the relief he sought. He asked the trial court to read the gratuitous[4] curative instruction, and the court read the instruction he prepared. He cannot then complain of the relief he received. See State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) ("Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide."); see also State v. Thompson, 304 S.C. 85, 87, 403 S.E.2d 139, 140 (Ct. App. 1991) (Appellant obtained the only relief he sought and, therefore, the Court has no issue to decide).

Merits

On the merits, Appellant has not demonstrated the curative instructions given were insufficient to cure any possible error, nor has he shown the requisite prejudice necessary to justify the extreme relief of a mistrial. A mistrial should not be ordered in

[4] The testimony actually objected to by Appellant was not improper. The testimony related to who provided the drugs at the time of Appellant's and Brassell's arrest. The testimony was clearly part of the *res gestae* of the crime and not prior bad act testimony. See 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). Counsel on appeal attempts to tie it to other testimony provided by Brassell regarding how she met Appellant, but that testimony is clearly not objected to by trial counsel.

every case when incompetent evidence is received and later stricken out. State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996); State v. Moyd, 321 S.C. 256, 263, 468 S.E.2d 7, 11 (Ct. App. 1996) (holding a trial court should exhaust other available methods to cure prejudice before aborting a trial, and where the prejudicial effect is minimal, a mistrial need not be granted in every case where incompetent evidence is received and later stricken and a curative instruction is given). "Generally, a curative instruction is deemed to have cured any alleged error." State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999); State v. Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996); see also, State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) (instruction to disregard inadmissible evidence is usually viewed as having cured the error in its admission); State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996) (if trial judge sustains timely objection to testimony and gives jury curative instruction to disregard testimony, error is deemed to be cured); State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.").

The curative instructions in the instant case overwhelmingly cured any possible prejudice from the testimony even if it was inadmissible as improper prior bad act testimony.[5] In the first curative instruction given regarding Brassell's testimony, the trial court told the jury she was improperly brought as a witness by the State, and the jury was to disregard her testimony in total. (T.283; R. 124). The second instruction told the jury to "disregard **any and all** mention by **any** of the witnesses in this case which make

[5] As will be addressed in more detail below, it is the State's position the testimony was entirely proper and no curative instruction was warranted based on either the alleged "lack of notice" or the admission of "improper" bad act testimony.

reference to the prior conduct on the part of the defendant." (T.343; R. 161) (emphasis added).

The jury is expected to follow the instructions given to it, and in this case the jury was to strike the question and answer. See Conner v. City of Forest Acres, 363 S.C. 460, 471, 611 S.E.2d 905, 910 (2005) (finding the case should be analyzed "in light of the presumption the jury followed the trial courts instructions to ignore any evidence" excluded by the court); Foye v. State, 335 S.C. 586, 590 n.1, 518 S.E.2d 265, 267 n.1 (1999) (jury is presumed to follow instructions).

The two jury instructions not only struck all of Brassell's testimony and told the jury to disregard her entire testimony, but told the jury to disregard any statement by any witness—whether objected to or not by Appellant—regarding prior conduct of the defendant. These two jury instructions clearly eliminated any possibility of prejudice from the testimony of Brassell that she received drugs in the past from Appellant—testimony that was never objected to by Appellant.

Further, a trial judge's ruling on a motion for a mistrial will not be disturbed absent an abuse of discretion amounting to an error of law. State v. Sparkman, 358 S.C. 491, 495, 596 S.E.2d 375, 377 (2004); State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). This Court favors the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. See State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999).

A mistrial should be declared only when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice. Harris, 340 S.C. at 63, 530 S.E.2d at 628; State v. Ward, 374 S.C. 606, 612, 649 S.E.2d 145, 148 (Ct. App.

2007). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Patterson, 337 S.C. at 227, 522 S.E.2d at 851 (citing State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989); State v. Kirby, 269 S.C. 25, 236 S.E.2d 33 (1977) (power of court to declare mistrial ought to be used with greatest caution under urgent circumstances, and for very plain and obvious causes)). Granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005)).

In the instant case, Appellant could not possibly have been prejudiced by the testimony of Brassell. First, her testimony was not improper prior bad act testimony. Further, even if her testimony could be construed as prior bad act testimony the mere passing reference was not sufficient to prejudice Appellant.

The trial court first struck Brassell's testimony because he found the State violated the Rules of Evidence and failed to give Appellant proper notice of her testimony. First, nothing in the Rules of Evidence require her testimony, or even the fact she will testify, to be turned over to the defendant ahead of trial. The closest applicable Rule would be Rule 5 of the South Carolina Rule of Criminal Procedure. Pursuant to Rule 5(a)(2), the State is not required to disclose the statement of a witness until after the direct examination of the witness. Rule 5(a)(2), SCRCrimP. Nothing else is required to be turned over regarding a testifying witness. In the instant case, Brassell did not give a statement and so there was nothing for the State to turn over.

Additionally, there is no right to discovery in a criminal trial in South Carolina beyond what is provided by statute, case law, or court rule. See State v. Miller, 289 S.C. 316, 317, 345 S.E.2d 489, 490 (1986); State v. Flood, 257 S.C. 141, 184 S.E.2d 549 (1971) (holding there is no general discovery in criminal cases in South Carolina). Further, there is no requirement either side turn over a general witness to the other side prior to trial. See Miller, 289 S.C. at 317, S.E.2d at 490 (interpreting prior Circuit Court Rule 103, now Rule 5, SCRCrimP, and finding a defendant cannot be required to turn over a witness list prior to trial); State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105 (Ct. App. 2005) (finding "The State, however, is not required to provide its witness list to a criminal defendant"). Accordingly, there was no proper basis for the trial court to exclude Brassell's testimony and the exclusion and resulting curative instruction created a windfall for the defendant.

Further, the testimony by Brassell, to which Appellant objected, was not prior bad act testimony, but instead, the testimony was clearly part of the *res gestae* of the case at hand. Appellant objected when Brassell testified she received drugs from Appellant. The drugs they were doing when officers arrived to execute a search warrant and for which both Brassell and Appellant were arrested. Clearly, her testimony of where the drugs originated was part of the *res gestae* of the current case.

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 objected to evidence in this case was part of the crime charged and definitely furnished part of the context of the crime. Accordingly, it was error for the trial court to exclude the testimony and issue the curative instruction. Again Appellant did not suffer prejudice, but instead gained a significant windfall.[6] Because Appellant cannot demonstrate how he was prejudiced by any of the testimony, the trial court properly denied the motion for a mistrial.

[6] The windfall was exacerbated by the fact the trial court did not only tell the jury to disregard testimony by Brassell, but instructed the jury to disregard all testimony by all witnesses that related to prior bad acts by Appellant. The jury was to disregard the testimony even in Appellant never raised an objection to the testimony.

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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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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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:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 2nd day of November, 2015.

Sally Ellison

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