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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case No. 2014-000958

THE STATE,

Respondent,

vs.

DOMINIQUE MAHOGANY ROSS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Due to the fact testimony and evidence was presented directly connecting Appellant's act of absconding to North Carolina shortly after the incident to her involvement in the charged crimes, the trial judge neither abused his broad discretion by admitting evidence of Appellant's flight nor committed any error by allowing the solicitor to reference the properly-admitted flight evidence during her opening statement and closing argument to the jury.

STATEMENT OF THE CASE

In February of 2012, Appellant Dominique Mahogany Ross was arrested following an investigation into a home invasion and shooting. In July of 2012, the Richland County Grand Jury indicted Appellant for one count of attempted murder and one count of armed robbery. In March of 2014, the Richland County Grand Jury additionally indicted Appellant for one count of first-degree burglary. On April 21, 2014, a jury trial was commenced in the Richland County Court of General Sessions with the Honorable Roger L. Couch, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of first-degree burglary and armed robbery while acquitting her of attempted murder. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of fifteen years for first-degree burglary and ten years for armed robbery. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In January of 2012, Jamie Sherman, the owner and operator of a car wash located on Broad River Road in Columbia, South Carolina, received a call from Appellant Dominique Mahogany Ross, a friend he had met a few months earlier. (R. p. 55; pp. 113-115; pp. 118-119). During the call, Appellant told him she missed him and indicated she wanted to come by and see him and a dog he was keeping at his house. (R. pp. 118-119). Wanting to see his friend, Sherman agreed to a visit, and Appellant subsequently stopped by Sherman's car wash on January 8, 2012, near closing time. (R. p. 119).

After Appellant arrived, Sherman closed the car wash for the day, and the two headed over to Sherman's residence, which was located directly next to his business. (R. p. 119). Once they were inside, Sherman locked the door, and Appellant quickly and repeatedly began to insist he take a shower while she sent text messages to someone from her phone. (R. pp. 120-121). Sherman then went into the bathroom, turned on the shower, and began brushing his teeth at the sink. (R. p. 121).

At that moment, Appellant ran over to the front door of the home, opened it, and let three men inside before fleeing into the backyard.[1] (R. p. 122). The men then immediately headed in Sherman's direction, and he quickly responded by trying to close the bathroom door to keep the men away from him. (R. pp. 123-124). Undeterred, the men tried to force their way into the bathroom, and, when they could not, one of the men fired a shot into the bathroom door, which struck Sherman in his left eye. (R. p. 123). After that, Sherman fell to the floor, and the men opened the door and shot him several more times. (R. p. 123). One of the men then demanded to know where Sherman's cash

[1] During trial, Sherman indicated he recognized one of the men as an individual Appellant had previously brought to his car wash and introduced as her uncle. (R. p. 122).

was located, and Sherman revealed it was in a green box in his bedroom. (R. p. 124). Thereafter, the men retrieved the green cash box, one of them stated Sherman was "done," and they all quickly fled from Sherman's home. (R. p. 124; p. 154; p. 169).

Once the men were gone, Appellant came back inside and began "plundering" the rooms of Sherman's home. (R. p. 125; p. 156). On her way into one of the bedrooms, Appellant stepped over Sherman, who was still on the floor, and remarked: "Oh, his eye is hanging out of his head." (R. p. 125; p. 156). Appellant then went into the kitchen, and Sherman got up, followed her, and found her going through his cabinets. (R. pp. 125-126). Thereafter, Sherman asked Appellant, who appeared to be startled by his presence, to call 911, and she eventually did so only after Sherman repeatedly pleaded with her to place the call.[2] (R. p. 126; p. 158; p. 258).

Minutes later, officers from the Richland County Sheriff's Office along with emergency medical personnel responded to Sherman's home and found him standing outside while bleeding profusely from his head. (R. pp. 48-52; p. 126; pp. 175-176). Sherman was then treated at the scene before being rapidly transported to the hospital by ambulance. (R. p. 52; p. 127; pp. 177-179). Meanwhile, the officers investigating the shooting and robbery spoke with Appellant about the incident and were advised three men, including an individual who identified himself as "Amp," entered Sherman's home, pointed a gun at her, threw her to the ground, and shot Sherman. (R. p. 55; pp. 505-506). A crime scene investigator then inspected Sherman's home, found no signs of damage or forced entry at the front door, and located a bullet hole through Sherman's bathroom

[2] Notably, Appellant first entered the numbers to place the 911 call into her phone but pressed a button to cancel the call instead of placing it, and Sherman perceived Appellant's actions in that regard to be intentional. (R. p. 126; p. 158).

door, a fired cartridge in the hallway, and a fired projectile near the bathtub and toilet. (R. pp. 190-191; pp. 203-205).

Subsequently, at the hospital, Sherman underwent emergency surgery for his injuries, which were potentially life-threatening and included a gunshot wound to the left side of his face, a gunshot wound to his left arm, an injury to his thumb, and a skull fracture. (R. pp. 353-357). Following surgery, Sherman was required to remain in the hospital for several more days while recovering from his injuries but was unable to make a formal statement to the investigating officers at that time. (R. p. 127; pp. 160-161; p. 251; p. 356).

Thereafter, once he was released from the hospital, Sherman provided the officers investigating the incident with information that led them to suspect Appellant was involved in the robbery and shooting. (R. pp. 251-252; pp. 278-280). The officers then obtained Appellant's phone records from the time of the incident and discovered Appellant engaged in a high volume of calls with several North Carolina phone numbers, including one connected to an individual named Felicia McNeil, on the date of the incident. (R. pp. 252-253; p. 255; pp. 280-281; pp. 314-318). Additionally, the officers discovered Appellant exchanged a flurry of text messages with a number later connected to an individual named Amber Richardson in the hours and minutes leading up to and shortly after the robbery and shooting. (R. pp. 318-319). Most significantly, the officers discovered a communication between Appellant and Richardson in which Appellant asked Richardson to erase everything on her phone and throw it away. (R. pp. 322-323).

Based on the information discovered during their investigation, the officers obtained arrest warrants for Appellant in connection with the incident. (R. pp. 370-371). The officers then unsuccessfully attempted to find Appellant in Columbia before learning

she had been located and arrested in North Carolina in February of 2012. (R. pp. 371-372). Investigator David Unger of the Richland County Sheriff's Office then travelled to North Carolina, spoke with Appellant, and decided to speak with Richardson based on that conversation. (R. pp. 372-376). Investigator Unger then interviewed Richardson, who implicated Appellant in the robbery and shooting and provided him with information about two of the other parties involved in the crimes. (R. pp. 372-379; p. 402). After that, the investigator obtained additional arrest warrants for Richardson, an individual named Raeford McNeil, and an individual named Dexter McNeil.[3] (R. pp. 379-384).

Subsequently, Appellant was indicted for first-degree burglary, armed robbery, and attempted murder, and she proceeded to trial. (R. pp. 3-4; pp. 580-587). At the outset of trial, defense counsel moved "to suppress any evidence of flight of the defendant." (R. p. 5). In support of that request, defense counsel argued evidence establishing Appellant fled to North Carolina shortly after the incident was allegedly not admissible because Appellant was initially believed to be a victim in the incident, was only later identified as one of the perpetrators by the actual victim, was not informed when she was under investigation by the authorities, and made her move to North Carolina because she wanted to be closer to family instead of because she was fleeing from prosecution. (R. pp. 5-7). For those reasons, defense counsel contended the evidence of flight would be unduly prejudicial and did not have a nexus to the charged crimes. (R. pp. 7-8). In response, the solicitor indicated the testimony of one of Appellant's accomplices would be introduced during trial establishing Appellant planned to go to North Carolina after the incident to "lay low" and get away from any criminal

[3] Significantly, Dexter McNeil was identified during trial as Appellant's aunt's boyfriend or husband, and Raeford McNeil was identified as one of Appellant's uncles. (R. p. 60; p. 379; pp. 496-497).

investigation that was undertaken into the incident, which she contended showed a direct connection and nexus between Appellant's flight and the indicted offenses. (R. pp. 8-9). After considering the arguments of counsel, the trial judge took the matter under advisement and elected to reserve ruling on the evidence of flight until after he had heard the relevant testimony. (R. pp. 11-13).

Thereafter, on the following morning, the trial judge conducted an in limine hearing on the matter, and the solicitor proffered the testimony of Richardson, Appellant's accomplice in the crimes. (R. p. 22). During her testimony, Richardson indicated she was aware of the incident in which Appellant and Appellant's uncles were involved on January 8, 2012. (R. pp. 24-25). She further confirmed she left Columbia and went to North Carolina with Appellant shortly after the incident for the specific purpose of avoiding and getting away from the police. (R. p. 26; p. 29). Furthermore, Richardson testified they left for North Carolina under the assumption the police might be after them and were aware Appellant was a suspect before they left. (R. p. 30).

At the conclusion of the proffer, the solicitor argued Richardson's testimony clearly established Appellant and Richardson left South Carolina because of their participation in the incident. (R. p. 31). In rebuttal, defense counsel argued evidence of flight could only be admitted if Appellant had knowledge she was being sought by authorities before she fled, which defense counsel asserted did not exist. (R. p. 31). After considering the matter, the trial judge determined the evidence of Appellant's flight could, at a minimum, be referenced during the opening statements of the parties in light of the fact Richardson's testimony established Appellant's travel to North Carolina was motivated by the assumption they were going to be investigated in connection to the incident. (R. p. 32).

The trial then proceeded forward, and the solicitor and defense counsel presented their opening statements to the jury. (R. pp. 35-47). During the solicitor's opening statement, the solicitor informed the jury Richardson would testify during trial about how she and Appellant fled to North Carolina approximately a week after the incident out of fear they might be sought by the police for the role in the crimes. (R. p. 39). At that time, defense counsel did not object to the solicitor's remarks. (R. p. 39).

Subsequently, during trial, Sherman testified about the details of the incident, including about the suspicious behavior exhibited by Appellant both before and after he was shot by the men she let into his home.[4] (R. pp. 118-131). Additionally, the investigating officers and other personnel who responded after the incident testified about the information they discovered during their investigation, including about the incriminating text message records, that led them to arrest Appellant for her involvement in the crimes. (R. pp. 49-52; pp. 176-179; pp. 185-191; pp. 203-205; pp. 251-256; pp. 278-281; pp. 314-324; pp. 355-357; pp. 369-384). Furthermore, Richardson testified for the prosecution, identified Appellant as the mastermind of the robbery and shooting, and directly indicated she and Appellant fled to North Carolina just days after the incident out of fear they were going to be captured by the police. (R. pp. 61-80). Significantly, defense counsel did not raise any objections or renew his pre-trial objection when Richardson discussed her and Appellant's flight to North Carolina after the crimes.[5] (R. pp. 69-70).

[4] During his testimony, Sherman testified he learned Appellant left South Carolina after the incident, and no objection was raised to his testimony. (R. p. 128).

[5] In addition to not objecting to the evidence of flight, defense counsel elicited cumulative testimony establishing Appellant fled to North Carolina after the crimes to avoid arrest during his cross-examination of Richardson. (R. p. 108).

Following the presentation of that testimony and evidence, the State rested its case, and Appellant testified in her own defense. (R. pp. 416-417). During her testimony, Appellant admitted she was at Sherman's residence on the night of the shooting and robbery, claimed he provided her with marijuana to smoke at that time, and denied any involvement in the ensuing crimes. (R. pp. 421-446). Furthermore, Appellant explained she went to North Carolina after the crimes for a variety of reasons, including because she was scared by the incident, was going to live with her aunt, and suddenly wanted to continue her education at a North Carolina school. (R. p. 448; pp. 454-455). However, Appellant insisted she did not flee to North Carolina to escape from the police. (R. p. 448; p. 455).

Thereafter, the defense rested its case, and, following the presentation of a reply witness for the State, defense counsel generally renewed his "motions in limine" and "any objections and motions made during trial." (R. p. 503; p. 505; p. 510). The trial judge then denied defense counsel's motions, and the parties presented their closing arguments to the jury. (R. p. 510; pp. 512-576). During his closing argument, defense counsel argued to the jury Appellant went to North Carolina to be with her family after experiencing a traumatic event, which he contended had wrongly been viewed by the police as evidence of flight. (R. p. 546). Likewise, during her closing argument, the solicitor briefly referenced the fact Appellant travelled to North Carolina after the incident without leaving a forwarding address for the police, and no objections were raised to the solicitor's remarks. (R. p. 568).

Subsequently, at the conclusion of trial, the jury convicted Appellant of first-degree burglary and armed robbery but acquitted her of attempted murder. (R. p. 577).

Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of fifteen years. (R. p. 579).

ARGUMENT

Due to the fact testimony and evidence was presented directly connecting Appellant's act of absconding to North Carolina shortly after the incident to her involvement in the charged crimes, the trial judge neither abused his broad discretion by admitting evidence of Appellant's flight nor committed any error by allowing the solicitor to reference the properly-admitted flight evidence during her opening statement and closing argument to the jury.

Appellant appears to be contending the trial judge committed reversible error by admitting evidence of Appellant's flight to North Carolina shortly after the incident and by permitting the solicitor to argue to the jury the flight evidence constituted evidence of Appellant's guilt for the charged crimes.[6] In support of that contention, Appellant maintains the flight evidence should not have been introduced or referenced during trial because there allegedly was not a sufficient nexus between her flight and the charged crimes in light of the facts her family lived in North Carolina, the incident was very stressful and traumatic for her, a warrant for her arrest was not obtained until several

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[6] Notably, the focus of Appellant's appellate argument is unclear because her statement of the issue on appeal is focused on the trial judge's alleged error in permitting the solicitor to refer to the flight evidence during her remarks to the jury while the substance of the argument contained in Appellant's appellate brief is focused on the alleged inadmissibility of the flight evidence itself. (App. Br. p. 3; pp. 14-17). To the extent Appellant is challenging the admission of the flight evidence on appeal, that issue is wholly unpreserved for appellate review because defense counsel did not contemporaneously object to the evidence of flight when it was introduced during trial, did not renew his pre-trial objection to the evidence at that time, and subsequently elicited cumulative evidence of Appellant's flight to North Carolina after the incident during his cross-examination of Richardson and direct examination of Appellant. See State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (instructing an issue must have been raised by the appellant in a timely manner with sufficient specificity to the trial judge and ruled upon by the trial judge in order to be preserved for appellate review); see also State v. Griffin, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) ("[A]n in limine ruling is not final and does not preserve the issue for appeal."); State v. McKinney, 258 S.C. 570, 571, 190 S.E.2d 30, 30 (1972) ("During the course the trial certain testimony was admitted over the objection of [McKinney's] counsel. Thereafter, counsel for [McKinney] cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby lost and if any error had been committed in the admission of the testimony it was cured."); State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) ("An objection to the admission of evidence is waived where the same or similar evidence has been elicited by the objector."). Similarly, to the extent Appellant is challenging the solicitor's remarks to the jury, that issue is likewise not properly preserved for appellate review in light of the fact defense counsel did not raise any objection to the solicitor's brief reference to Appellant's flight to North Carolina during her closing argument. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); see also State v. Stokes, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000) ("[T]he record reflects that this issue was only raised and ruled on in limine. Stokes never raised the issue again at any time during the trial. Merely raising an argument in limine does not preserve the issue for appellate review.").

weeks after the incident, and her accomplice, who offered direct testimony linking Appellant's flight to North Carolina with the incident, was biased and motivated by a desire to help herself. Contrary to Appellant's contentions, the evidence of flight was properly admitted during trial because the evidence and testimony presented during trial supported a strong and compelling inference Appellant absconded to North Carolina just days after the victim was shot and robbed to avoid being arrested for her role in the crimes. In fact, Appellant's confederate in the crimes, Richardson, directly testified she and Appellant fled to North Carolina shortly after the incident because they were afraid they would be captured by the police. Therefore, the trial judge did not abuse his broad discretion by admitting the evidence of Appellant's flight to North Carolina and committed no error by permitting the solicitor to reference that evidence during her opening statement and closing argument. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge and will not reverse a decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion

accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). Likewise, when reviewing a challenge to the propriety of an opening or closing statement, an appellate court will only reverse a trial judge's ruling for a clear abuse of discretion as trial judges are entitled to wide discretion in ruling on the appropriateness of an opening statement or closing argument. State v. Rudd, 355 S.C. 543, 548, 586 S.E.2d 153, 156 (Ct. App. 2003); see State v. Raffaldt, 318 S.C. 110, 114-115, 456 S.E.2d 390, 393 (1995) ("It is well settled that the trial court is vested with broad discretion in determining the propriety of the solicitor's argument, and his ruling will be upheld where there is not abuse of discretion."); State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961) ("It is sometimes difficult to draw the line between proper and improper argument, but counsel's remarks must be confined within the record. However, some latitude must necessarily be allowed and it must, to a large extent, be left to the wide discretion of the Circuit Judge."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

In South Carolina, courts have historically and consistently recognized "any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt" and is a circumstance that should be submitted for the jury to consider. State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); see State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) ("Flight or evasion of arrest is a circumstance to go to the jury."). Significantly, evidence of flight and other

guilty conduct is admissible because a defendant's act of making false or conflicting statements or attempting to flee after committing a crime supports an inference of guilty knowledge and intent on the part of the defendant. State v. Thompson, 278 S.C. 1, 10, 292 S.E.2d 581, 587 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (recognizing attempts to run away have always been regarded as some evidence of guilty knowledge and intent). Such an inference is appropriate because "it is not to be supposed that one who is innocent and conscious of that fact would flee." State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the 'wicked flee when no man pursueth;' and Shakespeare made guilty Hamlet to soliloquize that 'conscience does make cowards of us all.' ").

In determining whether evidence of flight or other guilty conduct is admissible, the critical consideration is whether the totality of the evidence supports an inference the defendant had knowledge he or she was being sought by authorities. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). Flight or other guilty conduct evidence is relevant so long as there is a nexus between the flight and the offense charged. Pagan, 369 S.C. at 209, 631 S.E.2d at 266. Importantly though, "[i]t is sufficient that circumstances justify **an inference** that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose." State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) (emphasis added). Thus, evidence of flight or other guilty conduct is admissible where the totality of the circumstances supports **an** inference the evidence is connected to the

charged offense and should only be excluded where the evidence is clearly linked to another offense in such a manner an inference of guilt regarding the charged offense could not legitimately be supported by the evidence. See State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) ("Evidence of flight should be excluded when the flight is **clearly** linked to a separate offense for which the defendant is not on trial." (emphasis added)); see also United States v. Lucas, 62 F. App'x 53, 58 (4th Cir. 2003) ("Evidence of flight is problematic **only** when the circumstances are such that a consciousness of guilt cannot be inferred with confidence from the fact of flight, as when it is not clear that the defendant actually fled, or when he fled in response to an investigation of an unrelated crime, or when it is not clear that he was aware when he fled that he was about to be charged with a crime." (emphasis added)).

In the case at bar, the evidence and testimony presented during trial established Appellant was unquestionably aware of the law enforcement investigation into the incident because she personally spoke with the officers who responded to the scene of the shooting and robbery. Furthermore and most importantly, Appellant's confederate directly testified during trial she and Appellant fled to North Carolina just days after the incident because they were afraid they were going to be apprehended by the police for their involvement in the crimes. Thus, in Appellant's case, **direct evidence** was presented connecting Appellant's sudden flight from the jurisdiction in which she lived with the crimes for which she was charged. See State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (holding an accomplice's testimony explaining why he went with Sherard and their other accomplices to North Carolina shortly after they were all involved in a shooting "was admissible on the issue of flight"); see also Walker, 366 S.C. at 656, 623 S.E.2d at 128 ("[I]t can be inferred from his sudden disappearance that Walker was

either expecting the police to arrest him or he was planning his escape."); cf. State v. Scott, 330 S.C. 125, 131, 497 S.E.2d 735, 738 (Ct. App. 1998) (finding Scott's failure to return to a store he managed after being questioned by a supervisor about missing validated deposits slips constituted legitimate evidence of flight and guilty knowledge).

In light of that evidence and testimony, there was a clear, logical, and substantial nexus between Appellant's act of absconding to North Carolina and her involvement in the robbery and shooting of the victim. See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 ("Flight evidence is relevant when there is a nexus between the flight and the offense charged."). As a result, that evidence of flight was unquestionably admissible as evidence of Appellant's guilt for the indicted offenses.[7] See Al-Amin, 353 S.C. at 413, 578 S.E.2d at 36 ("Flight from prosecution is admissible as evidence of guilt."); see also Walker, 366 S.C. at 655, 623 S.E.2d at 128 ("Flight or evasion of arrest is an issue for the jury to consider."); Crawford, 362 S.C. at 636, 608 S.E.2d at 891 ("It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose."); cf. Robinson, 360 S.C. at 195, 600 S.E.2d at 104 ("Evidence of flight

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[7] Significantly, although irrelevant to the admissibility of the flight evidence itself, Appellant was fully permitted to offer her own explanation for her flight to North Carolina during trial. See Robinson, 360 S.C. at 196, 600 S.E.2d at 104 ("We reject Robinson's claim that his statement of why he fled from police is dispositive on the question of admissibility. . . . [Robinson] was allowed to present to the jury his alternative explanation of his flight, without referencing the murder investigation."); see also Beckham, 334 S.C. at 315, 513 S.E.2d at 613 (finding the existence of another possible explanation for Beckham's flight that did not support an inference of guilty knowledge and intent "does not make the evidence of flight inadmissible" and, instead, "merely goes to its weight"). Such an opportunity greatly reduced the possibility any improper prejudice could have resulted from the admission of the flight evidence and fully allowed the jurors to carry out their roles in weighing the evidence, assessing the credibility of the witnesses, and drawing the most reasonable and logical inferences from testimony presented. See State v. Gerald, 261 S.C. 392, 395, 200 S.E.2d 243, 244 (1973) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."); State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."); see also Kansas v. Ventris, 556 U.S. 586, 594, n. * (2009) ("Our legal system . . . is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses[.]").

should be excluded when the flight is clearly linked to a separate offense for which the defendant is not on trial. **That, however, is not the case here.**" (emphasis added)). Accordingly, the trial judge did not abuse his broad discretion by admitting the evidence of Appellant's flight during trial and committed no conceivable error by permitting the solicitor to mention the properly-admitted flight evidence in her opening statement and closing argument to the jury.[8] See State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (recognizing "it is well-settled" evidence establishing a criminal defendant evaded arrest **or** absconded from the jurisdiction may be admissible as evidence of guilt and may be referenced in the solicitor's argument to the jury while further explaining "[i]t is always for the jury to determine the facts, and the inferences that are to be drawn from the facts"); see also State v. Pitts, 256 S.C. 420, 428, 182 S.E.2d 738, 742 (1971) ("The solicitor had a perfect right to state his version of the testimony and to comment on the weight that should be given to such."); cf. Walker, 366 S.C. at 656, 623 S.E.2d at 128 ("[I]t can be inferred from his sudden disappearance that Walker was either expecting the police to arrest him or he was planning his escape. . . . [T]he trial judge in the instant case did not abuse his discretion by allowing evidence of Walker's flight."). Appellant's convictions should be affirmed.

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[8] Assuming the trial judge's in limine ruling in regard to the flight evidence was somehow erroneous, any error was nonetheless entirely harmless because the evidence of Appellant's flight, which Appellant was afforded an opportunity to explain to the jury, was insignificant when considered in light of the other significant and overwhelming testimony and evidence establishing Appellant's guilt, which included the direct testimony of Appellant's accomplice, Sherman's testimony detailing Appellant's suspicious behavior both before and after the shooting and robbery, and the testimony regarding the incriminating text messages and phone records that demonstrated Appellant's involvement in the crimes. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record); cf. State v. Jenkins, 412 S.C. 643, 652, 773 S.E.2d 906, 910 (2015) ("Notwithstanding the DNA evidence, there was abundant, independent evidence in the record from which the jury could have found [Jenkins] guilty."); State v. Martin, 403 S.C. 19, 31, 742 S.E.2d 42, 48 (Ct. App. 2013) (finding any error in the improper admission of flight evidence to be harmless beyond a reasonable doubt in light of the other evidence of guilt presented during trial).

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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November 16, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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Appeal from Richland County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case No. 2014-000958

THE STATE,

Respondent,

vs.

DOMINIQUE MAHOGANY ROSS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Angela S. Bennett, 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 Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
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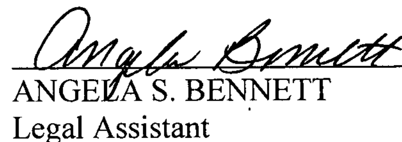
I further certify that all parties required by Rule to be served have been served.
This 16th day of November, 2015.



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