ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

RECEIVED
MAY 05 2015
SC Court of Appeals

Appellate Case No. 2014-000255

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000255

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 8

I. The trial court did not abuse its discretion in admitting evidence of Appellant's November 24, 2013 arrest for second-degree burglary during her trial for the November 24, 2013 first-degree burglary, where the evidence was relevant and admissible under the res gestae theory and as motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, even assuming the trial court erred in admitting the challenged evidence, any error was harmless in light of the overwhelming evidence conclusively establishing Appellant's guilt. 8

CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003) 9
State v. Adams, 322 S.C. 114470 S.E.2d 366 (1996) 9, 10
State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) 8
State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) 12
State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) 12, 13
State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978) 13
State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006) 15
State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011) 10
State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008) 12
State v. Forney, 321 S.C. 353, 468 S.E.2d 641 (1996) 14
State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2010) 15
State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) 10
State v. Gathers, 295 S.C. 476, 369 S.E.2d 140 (1988) 13
State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) 14
State v. Hough, 319 S.C. 104, 459 S.E.2d 863 (Ct. App. 1995) 9
State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) 10
State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008) 9, 10
State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) 10
State v. Oglesby, 384 S.C. 289, 681 S.E.2d 620 (Ct. App. 2009) 14, 15
State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (Ct. App. 2005) 9
State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986) 9
State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991) 12
State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) 12

Rules

Rule 401, SCRE 8
Rule 402, SCRE 8
Rule 404(b), SCRE .... passim

STATEMENT OF ISSUES ON APPEAL

I. The trial court did not abuse its discretion in admitting evidence of Appellant's November 24, 2013 arrest for second-degree burglary during her trial for the November 24, 2013 first-degree burglary, where the evidence was relevant and admissible under the res gestae theory and as motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, even assuming the trial court erred in admitting the challenged evidence, any error was harmless in light of the overwhelming evidence conclusively establishing Appellant's guilt.

STATEMENT OF THE CASE

Appellant was indicted during the December 2013 term of the Hampton County Grand Jury for first-degree burglary (2103-GS-25-0435) and second-degree burglary ((2013-GS-25-0434). Appellant was represented by Steve Plexico, Esquire. On February 3, 2014, Appellant proceeded to a jury trial before the Honorable Brooks P. Goldsmith alongside co-defendant Travis Hair, who was represented by Stephanie Smart-Gittings, Esquire. The State was represented by Assistant Solicitor Kelvin Wright. Before the jury was sworn, Appellant moved to quash the indictment for second-degree burglary, which the trial court granted. On February 4, 2014, the jury convicted Appellant and Hair as indicted for first-degree burglary. Judge Goldsmith sentenced Appellant and Hair to fifteen years imprisonment. Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On the evening of November 23, 2013, the Hampton Police Department received a complaint regarding a burglary in progress at the home of Charles DeLoach located at 108 Plywood Street in Hampton, South Carolina. (R. pp. 205, 210). DeLoach had passed away in September, 2013 and his daughter and other family members frequently stayed at the home while tending to DeLoach's affairs and closing his estate. (R. pp. 126-129; Sup.R. pp. 11-12). Lt. Cook from the Hampton Police Department completed an incident report and listed that multiple suspects were seen leaving the home with bags. (R. p. 210).

The following morning, November 24, 2013, law enforcement with the Hampton Police Department received another complaint regarding a home invasion at the DeLoach residence. (R. p. 128). Sergeant Bradford Drowdy responded to the home and heard movement inside. (R. p. 128). Drowdy requested backup from the Varnville Police Department. (R. p. 128). When back-up arrived, Drowdy let the occupant of the home know that law enforcement was on the scene and would be gaining entry into the home. (R. p. 129). One of the officers noticed that a rear door was open and law enforcement made entry through the opened door. (R. p. 129). Once inside, law enforcement found Appellant in a rear bedroom. (R. p. 129). She was taken into custody, read her rights, and placed in handcuffs. (R. pp. 129-30). As she was being cuffed, a men's watch fell out of her pocket. (R. p. 130). She was transported to the police station. (R. pp. 129-30).

Once at the station, Appellant was interviewed by Assistant Chief James Bolton. (R. p. 204). Bolton read Appellant her rights and she signed a waiver of rights acknowledgment. (R. pp. 204-05). Bolton noticed a bottle of prescription medication sticking out from Appellant's blouse and asked her what it was. (R. p. 205). Appellant replied that it was her medication, but upon closer inspection, Bolton noted that the

medicine was cough syrup prescribed to DeLoach. (R. p. 205). Bolton asked for permission to search Appellant's home and she gave consent. (R. p. 205). She memorialized her consent in by signing a consent to search form. (R. p. 205).

After receiving Appellant's consent, law enforcement proceeded to her home at 510 BobwhiteTrail. (R. p. 206). Appellant accompanied law enforcement and unlocked the door. (R. p. 206). Hair and Ricky Sauls were present at Appellant's home. (R. p. 206). Law enforcement asked Sauls where the items taken from DeLoach's residence were located. (R. p. 206). Sauls assisted law enforcement in recovering a bag, which contained mail addressed to DeLoach, jewelry, medication prescribed to DeLoach, Christmas decorations, and other household items. (R. pp. 206-07). Sauls also showed law enforcement where knives and liquor taken from DeLoach's home was located. (R. p. 207). Law enforcement also found more of Deloach's mail that had been burned or attempted to be burned. (Sup. R. 4). Thereafter, Hair, Appellant, and Sauls were indicted for first-degree burglary in connection with the November 23, 2013, home invasion. Appellant was also indicted for second-degree burglary from the November 24, 2014, home invasion.

Appellant and Hair proceeded to a joint trial before the Honorable Brooks P. Goldsmith and a jury. Before the jury was selected, the State moved to amend to amend Appellant's second-degree burglary indictment, arguing that the omission of "without consent" from the indictment's language was a scrivener's error. (R. pp. 38-39). In response, Appellant argued that failure to include a necessary element of the offense that must be contemplated by the grand jury and could not be a scrivener's error. (R. pp. 39-40). Appellant moved to quash the second-degree burglary indictment on this basis. (R. pp. 39-40). The Court granted Appellant's motion to quash the second-degree burglary

indictment. (R. p. 43). Appellant then moved for a continuance, arguing that because the State had already read both indictments to the venire, she was prejudiced as to the remaining indictment for first-degree burglary (R. p. 42). The trial court denied Appellant's motion to continue, but instructed the jury to disregard the earlier statements made by the State as to what indictments were being called for trial. (R. pp. 44, 50-51).

Appellant then moved to exclude any evidence or reference to the quashed second-degree burglary, arguing that it was not relevant and unduly prejudicial. (R. pp. 90-92, 94-95). Appellant argued that introduction of such evidence would also violate Rule 404(b), SCRE. The State replied that both indictments stemmed from one investigation that was interconnected and it would hamper the State's ability to prove its case if the relevant evidence from the second-degree burglary was excluded. (R. pp. 91-93). The trial court denied the motion, finding that the evidence was admissible under the common scheme or plan exceptions to Rule 404(b), SCRE.

Co-defendant Sauls testified as a State's witness against his two co-defendants. Sauls testified he was with Appellant, Hair, and Larry Crosby on the evening of November 23, 2013. (R. p. 156). Hair and Crosby worked for DeLoach's daughter and had been helping her move items out of the 108 Plywood Street residence. (R. p. 157; Sup. R. pp. 12-14). Larry Crosby informed the group that there were pills in the home and asked them to go into inside to retrieve prescription medications. (R. p. 157). Sauls testified he was romantically involved with Appellant and asked her not to participate. (R. p. 157). However, Appellant, Hair, and Sauls all entered DeLoach's home at approximately 7 p.m. (R. pp. 157-58, 177). Sauls testified Hair went to sleep inside the home, but testified that all three took items from the home. (R. pp. 159, 165-66, 200). He elaborated that all three, including Hair, were "plundering" the home for items to take.

(R. p. 200). He testified they took knives, liquor, medications, Christmas ornaments, documents, and other sundries from the home. (R. p. 159). Sauls testified that they knew they did not have permission to be in the home. (R. p. 202). After the "plundering" concluded, the three called Crosby to pick them up. (R. p. 165).

DeLoach's daughter, Amanda DeLoach Brown, also testified for the State. She testified that she and her children had been primarily living at her father's home since his passing so that she could manage his business and other affairs while closing his estate. (Sup. R. pp. 11-12, 16). She testified that the house was fully furnished with operation utilities and there was food in the refrigerator and clothing in the closets. (Sup. R. p. 15). She testified that she had been moving some of her grandmother's things out of the home, but the house was not being vacated. (Sup. R. p. 13). She testified that she left the home on Tuesday, November 19, 2013 to take her son to a dental appointment in Greenville and let employees, including Hair and Crosby, know she would be out of town for a few days. (Sup. R. pp. 12-13). She testified she intended to return to the home shortly. (Sup. R. p. 12). She did not give Appellant, Hair, Sauls, Crosby, or anyone else permission to be in the home. (Sup. R. p. 14). She testified that she secured the home as she always did when leaving. (Sup.R. p. 15).

DeLoach's sister, Roma Muller, also testified for the State. She testified that the 108 Plywood Street home was originally her mother's home and DeLoach had lived there alone after her mother's passing. (Sup.R. pp. 1-3). She testified that the house was used by various members of the family, but as of recent, was primarily used by DeLoach's daughter Amanda. (Sup. R. pp. 2-3). She testified that the house was currently in probate and she was a partial owner. (Sup. R. pp. 1-3). She was able to identify various

belongings taken from the DeLoach home. (Sup. R. pp. 4-5, 6-9). She testified that she did not give any of the co-defendants permission to be in the home. (Sup. R. p. 10).

At the conclusion of the State's case, Hair moved for a directed verdict, arguing that the State failed to establish that Hair had the intent to commit a crime when he entered the residence. (R. pp. 221-22). The State replied that intent can be inferred from his entry into the home at nighttime through a closed door without permission. (R. pp. 222-24). The Court denied Hair's motion and submitted the case to the jury. (R. pp. 224-25). Hair elected not to present a defense. The jury convicted Hair and Appellant of first degree burglary as indicted.

ARGUMENT

I. The trial court did not abuse its discretion in admitting evidence of Appellant's November 24, 2013 arrest for second-degree burglary during her trial for the November 24, 2013 first-degree burglary, where the evidence was relevant and admissible under the res gestae theory and as motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, even assuming the trial court erred in admitting the challenged evidence, any error was harmless in light of the overwhelming evidence conclusively establishing Appellant's guilt.

Appellant contends the trial court committed reversible error when it permitted testimony regarding Appellant's November 24, 2013 arrest for second-degree burglary at the same residence she was on trial for burglarizing the evening before. Appellant maintains that evidence of the burglary for the following morning was irrelevant and unfairly prejudicial. Furthermore, Appellant contends that "[t]here was no evidence that similar items were taken during both burglaries." (FBOA p. 11). Contrary to Appellant's contentions, the trial court properly admitted evidence regarding the November 24, 2013 second-degree burglary arrest because the evidence was relevant and admissible under the res gestae theory and as a motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, assuming arguendo that the trial court erred in admitting the contested evidence, any error was harmless in light of the overwhelming evidence establishing Appellant's guilt. Appellant's conviction should be affirmed.

A. Admissibility of Evidence Regarding the November 24, 2013 Arrest

Only evidence that is relevant should be admitted during trial. Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the evidence.'"). Evidence which could assist the jury in arriving at the truth of an issue is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

However, pursuant to Rule 404(b), SCRE, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." "This is so because under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than upon prior criminal or immoral acts." State v. Hough, 319 S.C. 104, 107, 459 S.E.2d 863, 865 (Ct. App. 1995). Evidence of a defendant's prior crimes or bad acts is limited to establish motive, intent, the absence of mistake or accident, the existence of a common scheme or plan, or the identity of the perpetrator. State v. Martucci, 380 S.C. 232, 251-252, 669 S.E.2d 598, 608 (Ct. App. 2008).

Furthermore, evidence of a defendant's prior crimes or bad acts may also properly be admitted if those acts form part of the res gestae of the charged offense. Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003). The res gestae theory recognizes that evidence of other bad acts may be an integral part of a charged crime or may be necessary to aid the fact finder in understanding the context in which the crime occurred. State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005). To constitute part of the res gestae of an offense, it is important that the prior bad acts have a close temporal proximity to the charged crime. Martucci, 380 S.C. at 258, 669 S.E.2d at 612. In State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996), the Supreme Court explained the res gestae theory:

> One of the accepted bases for the admissibility of evidence of other crimes arises 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."

(citations omitted and alteration in original). Thus, where a prior bad act is "inextricably intertwined" with a charged offense, the evidence of the prior bad act is admissible as part of the res gestae of the crime. Id. at 122, 470 S.E.2d at 371.

Significantly, "[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." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for a prejudicial abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "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). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

In the case at bar, the evidence presented regarding Appellant's November 24, 2013 arrest was an integral part of the offense for which she was on trial and was

necessary to aid the jury in understanding the context in which the burglary occurred. Appellant was arrested mere hours after the initial nighttime burglary at 108 Plywood Street. DeLoach's watch fell out of her pocket when she was taken into custody. Medication prescribed to DeLoach was also partially concealed in her blouse at the time of her arrest. Both medications and jewelry were the primary focus of the November 23, 2013 burglary according to the testimony of Sauls, which was corroborated by the search of Appellant's home subsequent to her November 24, 2013 arrest. Appellant's claim that "[t]here was no evidence that similar items were taken during both burglaries" is completely inaccurate and a gross mischaracterization of the record. Appellant was arrested with both prescription medications and jewelry on her person, the very items taken from the home the prior evening and found at her residence following her arrest. The testimony regarding her November 24, 2013 is highly pertinent to the charged crime of first degree burglary. Thus, the testimony was relevant to Appellant's case by helping to explain the circumstances and context of the crime and was necessary for a full presentation of the case. Accordingly, the challenged evidence was admissible as part of the res gestae of Appellant's crime. The trial court did not abuse its discretion in admitting the challenged evidence.

Furthermore, evidence of Appellant's November 24, 2014 arrest was admissible under Rule 404(b), SCRE, to establish motive or a common scheme or plan. Evidence of Appellant's November 24, 2013 arrest and the discovery of stolen jewelry and prescription medications on her person established her motive behind the home invasions. The jury could infer that her motive in entering the 108 Plywood Street residence was to steal medications and jewelry based on this evidence. The trial court properly admitted the challenged evidence to establish motive pursuant to Rule 404(b), SCRE.

Additionally, the evidence was also properly admitted to show a common scheme or plan. "When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." State v. Wallace, 384 S.C.428, 433, 683 S.E.2d 275, 277-78 (2009). In Appellant's case, the striking similarities between the two burglaries are abundant. Both involve the invasion of the same residence within mere hours with a primary objective of taking prescription medication and jewelry. Both jewelry and prescription medications were stolen during each burglary. The only difference between the two crimes (other than the obvious temporal difference) is that Appellant was alone when the second burglary was committed. The similarities in this case certainly outweigh the slight difference of being arrested alone rather than with co-defendants. The trial court properly admitted the evidence of her November 24, 2013 arrest under a common scheme or plan pursuant to Rule 404(b), SCRE.

B. Harmlessness of Any Error in the Admission of the Evidence

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). "When guilt has been conclusively proven by competent evidence such that no

other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented or when erroneously admitted evidence is merely cumulative to other properly admitted evidence, any trial error may be harmless. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) ("[I]n view of the overwhelming evidence of appellant's guilt, we hold any error harmless beyond a reasonable doubt."); State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence.").

In Appellant's case, the challenged evidence on appeal was regarding her November 24, 2013 arrest for second-degree burglary at the same residence she was indicted for burglarizing the night before. This testimony included her arrest at the residence and that she had a stolen men's watch and prescription medications for Charles Deloach on her person when she was taken into custody. This testimony had no bearing on the outcome of Appellant's trial in light of the overwhelming evidence of her guilt. Appellant's co-defendant Sauls testified that she actively participated in the burglary the night prior. Furthermore, an unchallenged search of Appellant's home conducted with her consent and cooperation yielded bags of items stolen from the 108 Plywood Street residence.

Viewing the challenged testimony in relation to the other evidence of Appellant's guilt presented during trial, any error that possibly could have resulted by virtue of the introduction of evidence pertaining to her November 24, 2013 arrest was entirely harmless. Most significantly, Appellant's co-defendant testified in detail about Appellant's involvement in the November 23, 2013 evening burglary, which was

corroborated by a search of Appellant's house, during which both of her co-defendants were present, resulting in the discovery of bags of stolen items from the 108 Plywood Street residence. This evidence alone overwhelmingly and conclusively established Appellant's guilty for first-degree burglary. Therefore, the November 24, 2013 arrest evidence was inconsequential when considered in relation to the other evidence presented during trial. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (erroneous admission of evidence is harmless beyond a reasonable doubt if its impact is minimal in the context of the entire record); see also State v. Forney, 321 S.C. 353, 358, 468 S.E.2d 641, 644 (1996) ("Evidence of the expressed threat to kill Beth Ann is of minimal impact in the context of the properly admitted evidence of appellant's use of a deadly weapon during the North Carolina armed robbery. Accordingly, even if evidence of the expressed threat was improper, its impact was minimal in the context of the entire record and any error is harmless beyond a reasonable doubt.").

Furthermore, the evidence of Appellant's November 24, 2013 arrest was cumulative to the other unchallenged evidence establishing Appellant's guilt. Sauls testified that the three entered the home with the intent to steal prescription medications and prescription medications were found during the search of Appellant's home. Additionally, Sauls testified that jewelry was stolen from the 108 Plywood Street residence and jewelry was found at a subsequent search of Appellant's home. Therefore, any evidence regarding Appellant's November 24, 2013 arrest was merely cumulative to the other evidence presented. Accordingly, assuming the evidence regarding the November 24, 2013 arrest was admitted in error, the challenged evidence was entirely cumulative to other properly admitted evidence. See State v. Oglesby, 384 S.C. 289, 293,

681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence.").

In light of the cumulative and inconsequential nature of the challenged evidence when viewed in relation to the other evidence presented during trial conclusively establishing Appellant's guilt, any error in the admission of the November 24, 2013 evidence was entirely harmless and could have had no impact on the ultimate outcome of Appellant's trial. See State v. Garner, 389 S.C. 61, 68, 697 S.E.2d 615, 618 (Ct. App. 2010) ("An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached or when the evidence is merely cumulative of other evidence."). Even assuming the trial court abused its discretion in admitting the challenged evidence, Appellant's conviction should not be reversed based on such an insignificant error. 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."). Appellant's conviction should be affirmed.

CONCLUSION

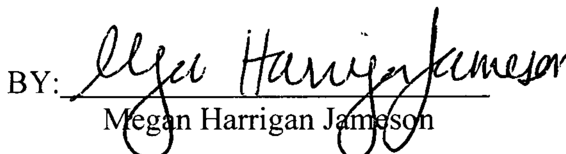
For all the foregoing reasons, Respondent respectfully submits that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880

BY: 
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 5, 2015

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 05 2015
SC Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000255

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

Appellant.

CERTIFICATE OF COUNSEL

Respondent agrees with the Designation of the Matter to be Included in the Record on Appeal set forth by Appellant. The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

BY:
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549

Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 5, 2015

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 05 2015
SC Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000255

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

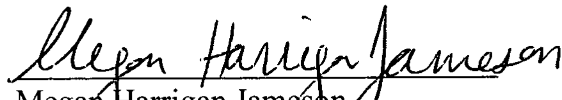
Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, 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:

Tiffany L. Butler, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 5th day of May, 2015.



Megan Harrigan Jameson
Assistant Attorney General
S.C. Bar No. 100108

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727