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STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

William Jeffrey Young, Circuit Court Judge

Appellate Case No. 2014-001921

THE STATE,

Respondent,

v.

IRADELLE JAMES,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not err in denying Appellant's motion to suppress his statement to police where the State was under no obligation to disclose the statement because it was not made in response to interrogation, Appellant failed to object when the solicitor continued to argue the matter after the trial judge made his preliminary ruling, and the trial judge's in limine ruling was not final and, thus, could be revisited at any time.

STATEMENT OF THE CASE

Appellant was indicted at the August 2013 term of the grand jury for Edgefield County for Possession with Intent to Distribute Crack Cocaine (2013-GS-19-452). (R.164-165) He proceeded to a trial by jury from September 3-4, 2014, in Edgefield, South Carolina. At the conclusion of trial, the jury found Appellant guilty of the lesser included offense of possession of crack cocaine. The Honorable W. Jeffrey Young sentenced him to imprisonment for a term of three years. Appellant timely filed a Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On May 11, 2013, Officer Richard Oxendine responded to a call regarding a disturbance where Appellant was yelling and throwing beer bottles. (R. p. 56, line 5-R. p. 57, line 5.) When Officer Oxendine arrived at the scene, he noted Appellant appeared to be visibly intoxicated and was shouting while standing in the road. (R. p. 58, line 24-R. p. 59, line 1.) The complainant informed Officer Oxendine that Appellant was intoxicated and causing a disturbance and that she wanted him to leave. (R. p. 61, lines 13-16.) Officer Oxendine initiated communication with Appellant, attempting to calm him down. (R. p. 62, lines 3-5.) Just as Officer Oxendine began speaking to Appellant, Officer Julian McCary arrived on the scene. (R. p. 63, lines 17-21.) Appellant remained in a volatile state, prompting Officer Oxendine to pat him down to ensure he was not armed. (R. p. 62, lines 12-20.)

As soon as Officer Oxendine reached toward Appellant to pat him down, Appellant began spinning and throwing objects out of his pocket. (R. p. 62, lines 24-25.) The items Officer Oxendine noticed thrown out of his pocket were a pack of cigarettes and some trash. (R. p. 63, lines 2-5.) Officer McCary had a different vantage point and noticed Appellant throw a small tin can out of his pocket. (R. p. 64, lines 9-11; R. p. 87, lines 18-19.) Officer McCary testified he was absolutely certain he saw Appellant throw the tin can. (R. p. 88, lines 8-11.) Once he was able to gain control of Appellant, Officer Oxendine put him in handcuffs and placed him under arrest for disorderly conduct. (R. p. 63, lines 13-16.) After Appellant was in handcuffs, Officer McCary retrieved the tin can from a ditch next to the road. (R. p. 88, lines 23-24.) Officer McCary placed the tin can on the trunk of the police car. (R. p.88, lines 24-25.) Once the tin can was placed on the car, without any questioning by the officers, Appellant spontaneously began repeatedly

stating, "It's not mine. I don't know what that is. It's not mine." (R. p. 70, lines 23-25.) After placing Appellant in the patrol car, Officers Oxendine and McCary opened the tin can to reveal a white, rock-like substance that they believed to be crack cocaine. (R. p. 89, lines 15-18.) Testing later revealed that the substance in the tin can was 8.0 grams of cocaine-based crack. (R. p. 106, lines 22-24.)

Pretrial, Appellant made a motion to suppress his statement that the drugs were not his. (R. p. 29, line 8.) Defense counsel argued, "There's nothing at all in the police report to indicate that [Appellant] made any statements whatsoever to law enforcement, and you know I found [out] about those last night. And, you know, we would move that they be suppressed." (R. p. 29, lines 9-12.) The solicitor responded that ". . . he said that it's not mine, two or three times. He said - - and that's the only statement - -." (R. p. 29, lines 14-16.) The Court then stated "I'm going to suppress him saying that. It makes no difference." (R. p. 29, lines 20-21.) The solicitor then gave the court a brief summation of the evidence of the statement, explaining that as soon as the officers placed the tin can on the trunk Appellant began saying it was not his. (R. p. 29, line 22-R. p. 30, line 13.) Additionally, he explained: "And for that reason, Your Honor, normally it's not of any import for somebody to issue a denial. But for an individual to take an innocuous item, a small metal tin, and begin to vigorously and immediately announced that he had no knowledge of it, that it was not his, Your Honor, we think it's indicative of guilt and would have --." (R. 30, lines 8-13.) Appellant made no objection to the solicitor continuing to argue against suppression following the trial judge's initial ruling. (R. pp. 29-30.) After hearing the solicitor's clarification of the evidence, the trial judge ruled, "I'm going to reverse myself. I'm going to allow them to say that he said 'It's not mine,'

because if he took the stand, I'm sure that's what he would say anyway, so . . . ." (R. p. 30, lines 14-17.)

ARGUMENT

The trial judge did not err in denying Appellant's motion to suppress his statement to police where the State was under no obligation to disclose the statement because it was not made in response to interrogation, Appellant failed to object when the solicitor continued to argue the matter after the trial judge made his preliminary ruling, and the trial judge's in limine ruling was not final and, thus, could be revisited at any time.

Appellant asserts the trial judge erred in denying his motion to exclude his statement to police where Appellant claimed, "That's not mine," when the officers put a nondescript tin can on the trunk of a police car. Specifically, Appellant notes two deficiencies in the trial judge's decision to allow the admission of Appellant's voluntary statement to Officers Oxendine and McCary. Appellant first contends the statement should have been suppressed because there was no indication in the police report that Appellant made the statement and the State did not inform defense counsel of the statement until the day before trial. Secondly, Appellant contends the statement should have been suppressed because the trial judge reversed his ruling in response to the State's continued argument on the matter that followed the judge's initial ruling. The State submits that both of these arguments are without merit, as the solicitor was under no obligation to turn over the statement to defense counsel, defense counsel failed to object when the State continued to argue against suppression, and the trial judge's in limine ruling was not final and could be revisited at any time.

As to Appellant's first argument, the State submits that the solicitor was not required to disclose Appellant's statement to defense counsel because the statement was not made in response to interrogation. Rule 5(a)(1)(A), SCRCrimP provides:

> Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any

> relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest **in response to interrogation by any person then known to the defendant to be a prosecution agent.**

(emphasis added).

Where a defendant does not make an oral statement **in response to interrogation**, the State is not required to disclose the statement, and no error is committed by allowing testimony regarding it. Clark v. State, 311 S.C. 314, 428 S.E.2d 870 (1993). Appellant's statement that the drugs were not his was given freely and was not the result of police interrogation. Thus, the solicitor was under no obligation to disclose the existence of the statement to the defense. Also, Appellant's allegation that the statement should have been excluded because it was absent from the police report is equally meritless, as no requirement exists that the police report contain every statement made by the arrested party.

As to Appellant's second argument, the State submits this issue is not preserved for appellate review. At trial, defense counsel failed to object when the solicitor continued to argue against suppression after the trial judge made his initial ruling. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). Even if Appellant's issue were preserved, the argument still lacks merit. A ruling in limine is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999).

Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pretrial ruling on the admissibility of evidence is preliminary, and is subject to change based on developments at trial. Id. The trial judge's in limine ruling was subject to change; therefore, the solicitor was free to reargue the matter at any time. The solicitor's further argument on the matter was allowed by the trial judge and was not met with an objection from defense counsel. The conduct of a criminal trial is left largely to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) (citing State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981)). The trial judge was well within his discretion to reverse his original ruling following the solicitor's further argument on the matter.

Finally, any alleged error in this case is harmless due to overwhelming evidence of Appellant's guilt. "Error is harmless when it could not reasonably have affected the result of the trial." State v. King, 412 S.C. 403, 416, 772 S.E.2d 189, 196 (Ct. App. 2015). "The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (citations and internal quotations omitted). The alleged error in this case did not contribute to the jury's verdict whatsoever. The evidence of Appellant's guilt was overwhelming. The jury heard unrebutted testimony that officers observed Appellant throw a tin can out of his pocket when confronted by the police, police retrieved it, and it contained eight grams of crack cocaine. The fact Appellant told police the drugs were not his had little bearing on the outcome where there was already overwhelming evidence of Appellant's guilt.

Appellant also argues the trial judge improperly commented on whether Appellant may testify when he stated, "I'm going to allow them to say that he said, 'It's not mine,' because if he took the stand, I'm sure that's what he would say anyway, so . . . ." Because the comment was made outside of the presence of the jury, certainly no error exists regarding the jury hearing the trial judge make the comment. And to the extent Appellant is arguing the comment was somehow improper despite being made outside the presence of the jury, the trial judge's comment did not rise to the level of the erroneous comments made in State v. Pierce, 289 S.C. 430, 434, 346 S.E.2d 707, 710 (1986) *rev'd on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), where the judge violated the Fifth Amendment by speaking directly to the defendant and telling him the jury would hold it against him if he did not testify.

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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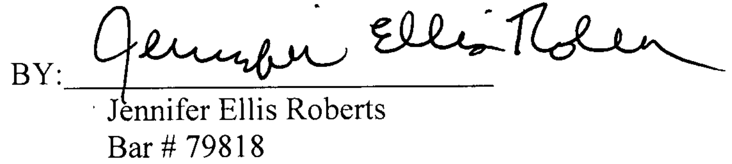
BY: 
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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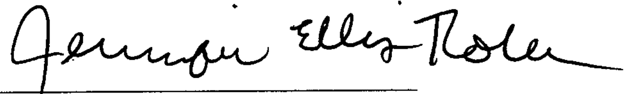
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PROOF OF SERVICE

I, Angela 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:

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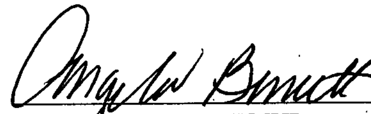
I further certify that all parties required by Rule to be served have been served.
This 7th day of December, 2015.



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