STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST EDWARD VAUGHN, SR.,

APPELLANT

APPELLATE CASE NO 2016-002300

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to declare a mistrial based upon the mention of an active arrest warrant in Appellant's name which was unrelated to his trial and improperly influenced the jury to decide the case on prejudice instead of the evidence presented?

STATEMENT OF THE CASE

Appellant was indicted for trafficking methamphetamine, unlawful neglect of a child, and possession with intent to distribute marijuana by a grand jury in Greenwood County during the May 2016 term of court. R. 378 – 381. The State, represented by Elizabeth White and Micah Black, called the case for trial on October 31, 2016 before the Honorable Donald B. Hocker and a jury. R. 1. Jane Merrill represented Appellant. After a three-day trial, the jury found Appellant not guilty on the possession of marijuana with intent to distribute. R. 361, ll. 6 – 8. The jury found Appellant guilty on the trafficking methamphetamine and unlawful neglect of a child. R. 361, ll. 3 – 11.

Judge Hocker sentenced Appellant to thirty years' imprisonment on the trafficking methamphetamine charge and ten years' imprisonment on the unlawful neglect of a child charge. R. 369, ll. 1 – 9. The sentences were imposed to run consecutively. R. 369, ll. 7 – 8.

This brief follows.

ARGUMENT

The trial court erred in failing to declare a mistrial based upon the mention of an active arrest warrant in Appellant's name which was unrelated to his trial and improperly influenced the jury to decide the case on prejudice instead of the evidence presented.

Relevant facts

On January 27, 2016, Greenwood County Sheriff's Agent Whitfield Brooks had informant Debbie Tucker arrange a controlled buy. R. 85 – R. 89. Tucker arranged for the buy to take place at a car wash in Greenwood around 5:30 in the evening. R. 88, l. 19 – R. 89, l. 1. Brooks claimed that the individual who Tucker called, Brandy Wilson, was going to be driving a dark Chevrolet Tahoe. R. 88, ll. 2 – 7. Wilson was Appellant's girlfriend at the time. R. 169, ll. 2 - 8. According to Brooks, the Tahoe arrived at the car wash early. R. 90, ll. 7 – 10. The police pulled the Tahoe over and "cut [Tucker] loose." R. 90, l. 11 – R. 91, l. 8. Tucker never spoke with Appellant. R. 107, ll. 22 – 23.

Appellant was in the Tahoe, along with Brandy Wilson and Appellant's five-year-old grandchild, Minor. R. 91, ll. 9 – 24; R. 334, ll. 8 – 9. Also allegedly located in the Tahoe was a syringe, a spoon with drug residue, and four clear plastic bags containing drug residue. R. 92, l. 20 – R. 93, l. 3. Wilson and Appellant were arrested. R. 95, ll. 2 – 16; R. 125; ll. 3 – 5; R. 132, ll. 12 – 20; R. 174, ll. 11 – 12.

At Appellant's trial, Tucker testified that she set up the buy to purchase a half-ounce of "ice" from Brandy Wilson and Appellant.[1] R. 105, l. 20 – R. 106, l. 24. Tucker never spoke with Appellant. R. 107, ll. 22 – 23.

Following Tucker's testimony, the State called Officer Bryan Louis, a drug agent with the Greenwood County Sheriff's Office. R. 121. On direct examination, Louis was asked whether Ms. Wilson and Appellant were placed into custody following the traffic stop. He answered: "They were. I had an active arrest warrant for [Appellant] **from a previous incident**." R. 125, ll. 3 – 5. (emphasis added). Counsel for Appellant immediately objected. R. 125, l. 6. The jury was excused, and counsel again objected: "I object to there being any mention whatsoever of an active arrest warrant." R. 125, ll. 21 – 22. Counsel requested a mistrial due to the "highly prejudicial" nature of an arrest warrant from a previous incident being mentioned. R. 126, ll. 14 – 18.

> [G]iven the situation, the amount of time that [Appellant] is facing if he is convicted ... his right to have a fair trial is no different than anyone else. ... I think that giving that information to the jury certainly gives them reason to convict him other than the actual evidence and it's improper evidence to come in...

R. 127, ll. 4 – 14.

To support her request for a mistrial, counsel cited State v. Ravencraft, 222 S.C. 139, 71 S.E.2d 798 (1952), a case in which "the trial court did not abuse its discretion ordering a mistrial where the State introduced improper evidence." R. 127, ll. 16 – 21. Counsel also cited Rule 403, SCRE, and correctly asserted that the danger of unfair prejudice or misleading the jury greatly outweighed any probative value. R. 127, ll. 16 – 21.

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[1] "Ice" was described by Tucker as methamphetamine. R. 106, ll. 6 – 20.

The trial court denied the motion for a mistrial and offered a brief curative instruction. R. 128, l. 18 – R. 129, l. 5. The curative directive instructed the jury to disregard any testimony regarding an active arrest warrant:

> Ladies and gentlemen, the last testimony offered that was objected to by Defense that there was an active arrest warrant. The existence of that should not be considered by you at all. It should not even come up during your deliberations, and it should not even be discussed in the jury room when you begin your deliberations. That is not evidence for you to consider. We are here on three charges and three charges only, and it's those three charges that you are to consider and nothing else.

R. 129, ll. 8 – 19.

Defense counsel objected to the curative instruction. R. 152, ll. 16 – 19. The trial proceeded, and Appellant was found guilty on two out of three charges. R. 361, ll. 3 – 11. He was sentenced to a total of forty years' incarceration. R. 368, l. 25 – R. 369, l. 9.

Discussion

Appellant received a "mere presence" jury charge—namely, that "[m]ere presence at the scene where the drugs were found is not enough to prove possession." R. 350, ll. 10 – 11. The informant, Tucker, never talked to Appellant. R. 118, ll. 4 – 7. Tucker testified that she hoped her testimony was going to benefit her. R. 117, l. 23 – R. 118, l. 3. Agent Brooks indicated that Tucker was "attempting to cooperate with [him] to work off [potential pending charges.]" R. 98, ll. 20 – 25.

Wilson was charged with the same crimes as Appellant—trafficking methamphetamine possession of marijuana with intent to distribute, and unlawful conduct towards a child. R. 171, ll. 10 – 19. In total, Wilson had eleven charges pending during Appellant's trial, including possession of methamphetamine, burglary in the second degree, two counts of petit larceny, possession of a controlled substance, and various others. R. 210, l. 22 – R. 211, l. 22; R. 215, l. 21 – R. 216, l. 22.

If sentenced to the maximum, Wilson faced forty-eight years' worth of incarceration. R. 218, ll. 10 – 25. She had an offer from the State: plead guilty to three of the eleven pending charges, and the State would dismiss the rest. R. 219, ll. 11 – 14. In exchange, the State would recommend a maximum of five years' incarceration. R. 219, ll. 3 – 10.

"The right to a fair trial by an impartial jury in a criminal prosecution is guaranteed by the Sixth Amendment to the U.S. Constitution and by Article I, § 14, of the S.C. Constitution." State v. Stewart, 278 S.C. 296, 303, 295 S.E.2d 627, 630-631 (1982). "[T]he very heart of a 'fair trial' embodies a disciplined courtroom wherein an accused's fate is determined solely through the exercise of calm and informed judgment." Id. at 303, 295 S.E.2d at 631.

Although the decision to grant or deny a mistrial is within the sound discretion of the trial court, the appellate court must reverse the ruling if the decision was an abuse of discretion amounting to an error of law. State v. Dial, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013)(citing State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010). While a mistrial should be granted only when "absolutely necessary" and when a defendant can show error and resulting prejudice, a mistrial must be ordered when the incident "is so grievous that the prejudicial effect can be removed in no other way." Id.

Another way of describing when a mistrial must be granted is when there is "manifest necessity." State v. Bilton, 156 S.C. 324, 153 S.E. 269 (1930). "The less than lucid test is ... whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." State v. Prince, 279 S.C. 30, 32-33, 301 S.E.2d 471, 472 (1983).

Factors to be considered when a mistrial is requested include: the character of the testimony, the circumstances under which it was offered, the nature of the case, the other testimony in the case,

and "perhaps other matters." State v. Thompson, 276 S.C. 616, 620, 281 S.E.2d 216, 218, (1981) (citing State v. Singleton, 167 S.C. 543, 166 S.E.2d 725 (1932)).

In State v. Ravencraft, appellant "moved for a mistrial when the state produced testimony to the effect that the appellant had on the same night entered another home in the same community." 222 S.C. at 142, 71 S.E.2d at 800. Similarly, in Appellant's case, Officer Louis testified that he had an active arrest warrant for Appellant "from a previous incident" when simply asked whether Appellant was placed into custody. R. 125, ll. 3 – 5. In both instances, the State produced testimony which tended to paint a defendant as a criminal in unrelated manners.

As argued by defense counsel, Louis' testimony contained no probative value and therefore violated Rule 403, SCRE:

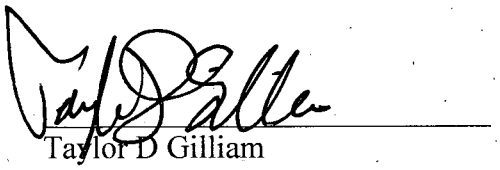
> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The probative value of an unrelated arrest warrant is substantially outweighed by the dangers of unfair prejudice and misleading the jury. Appellant had been referred to as a "dealer" on multiple occasions prior to Louis' mention of the arrest warrant. R. 90, ll. 9 – 10; R. 91, ll. 1 – 4. Therefore, the introduction of a prior arrest warrant only served to strengthen the notion that Appellant was a drug dealer.

The trial judge erred in failing to order a mistrial based on the gratuitous mention of an active arrest warrant for an incident unrelated to Appellant's trial. Furthermore, the dangers of unfair prejudice and misleading the jury substantially outweighed the probative value of the testimony.

CONCLUSION

For the reasons listed above, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



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ATTORNEY FOR APPELLANT

This 7th day of December, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief 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."

December 7, 2017

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