STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-002300

THE STATE,

Respondent,

v.

ERNEST EDWARD VAUGHN, SR.,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. SCOTT MATTHEWS
Assistant Attorney General

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

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29649
(864)-942-8800

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-002300

THE STATE,

Respondent,

v.

ERNEST EDWARD VAUGHN, SR.,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. SCOTT MATTHEWS
Assistant Attorney General

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

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29649
(864)-942-8800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his broad discretion in declining to grant a mistrial after a single mention was made of an active arrest warrant in Appellant's name which was unrelated to the Appellant's current trial, when the reference to the arrest warrant was vague and only mentioned once by a single witness, and was followed by a curative instruction to the jury immediately thereafter, and when overwhelming evidence of the Appellant's guilt was subsequently presented to the jury?

STATEMENT OF THE CASE

In May 2016, the Greenwood County Grand Jury indicted Appellant for one count of trafficking in methamphetamine greater than ten grams but less than twenty-eight grams, one count of possession with intent to distribute marijuana, and one count of unlawful neglect of a child. On October 31, 2016 to November 2, 2016, a jury trial was held in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. Appellant was represented by Jane Hawthorne Merrill, Esquire. The Respondent (the State) was represented by Assistant Solicitor Micah Black and Assistant Solicitor Elizabeth White of the Eighth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of one count of trafficking methamphetamine greater than ten grams but less than twenty eight grams and one count of unlawful neglect of a child, and acquitted Appellant of one count of possession with intent to distribute marijuana. Following the verdict, the trial judge deemed that Appellant's trafficking conviction would be his third offense and sentenced Appellant to a term of thirty years' imprisonment, as well as an additional consecutive term of ten years' imprisonment for Appellant's unlawful neglect of a child charge, for an aggregate sentence of forty years' imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On January 27, 2016, officers with the Greenwood County Sheriff's Office utilized the services of a confidential informant, Debbie Tucker, to arrange a controlled buy of methamphetamine. (R. 88). Tucker made a phone call to Brandy Wilson and arranged to purchase a half ounce of methamphetamine from Appellant and Wilson at a car wash in Greenwood that evening. (R. 105-6). Police were told by Tucker that they should be looking for a dark colored Chevrolet Tahoe. (R. 89). Law enforcement arrived early to set up surveillance at the buy location. Before Tucker could arrive, a dark colored Chevy Tahoe arrived driven by Wilson. (R. 90). Appellant was in the passenger seat, and Appellant's five-year-old grandchild was in the back. (R. 227). Law enforcement called off the controlled purchase and initiated a traffic stop on the Tahoe. (R. 90, 109). Appellant was seen "fidgeting" by law enforcement, and it appeared to Captain Jarvis Reeder that Appellant was attempting to hide something. (R. 226-27). Appellant was read his *Miranda* rights and made a statement to law enforcement admitting that he did have drugs in his pants near his testicles. (R. 229-31). Law enforcement then searched Appellant's person and located two plastic bags of suspected drugs underneath Appellant's testicles. (R. 233). Appellant was then placed under arrest.

At trial officers Josh Hood, Chad Cox, and Jarvis Reeder each testified about finding drugs in Appellant's crotch area. (R. 145-46, 158, 233). Furthermore, Captain Reeder testified that Appellant made a *Mirandized* statement admitting he had drugs inside his pants. (R. 229-31). Wilson also testified Appellant sent her a letter after the arrest encouraging her to make statements to Appellant's attorney regarding Appellant's lack of culpability. (R. 192-93). Appellant specifically urged Wilson to tell his attorney that Tucker had sold them a camper with drugs inside of it, and that they were merely returning Tucker's drugs to her. (R. 192-93).

Officer Bryan Louis testified about his involvement with the arrest as well. Louis was asked by the State: "Were Ms. Wilson and Mr. Vaughn placed into custody?" (R. 125, line 3). Louis responded: "They were. I had an active arrest warrant for Mr. Vaughn from a previous incident." (R. 125, line 4-5). Appellant immediately objected, and the objection was sustained. After a short conference outside the presence of the jury, the trial judge issued the following curative instruction:

> 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. This 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). The State did not mention the active arrest warrant for the rest of the trial nor did it attempt to do so. The jury found Appellant guilty on two of three counts. Appellant then filed his appeal.

ARGUMENT

I.

The trial judge did not abuse his broad discretion by declining to grant a mistrial in Appellant's case because the active arrest warrant was only mentioned one time and no details about the content of the arrest warrant were given, and the trial judge provided a thorough curative instruction that cured any possible prejudice to Appellant. Finally, any alleged error is harmless considering the overwhelming evidence of Appellant's guilt presented at trial.

A. Lack of prejudice to Appellant

Appellant contends that the trial judge abused his discretion by refusing to grant a mistrial after a witness made a single mention of an active arrest warrant for Appellant that was not related to the charges for which Appellant was on trial. Appellant contends the reference to the warrant improperly influenced the jury to decide the case based on prejudice instead of the evidence presented at trial. The State contends the trial judge did not abuse his discretion in declining to grant a mistrial because there was only one vague reference to an outstanding warrant, after which the trial judge provided an immediate curative instruction advising the jury not to consider the existence of the warrant in its deliberations. Additionally, any error that may have occurred is harmless in light of the overwhelming evidence presented against Appellate at trial.

Our appellate courts have consistently held that the standard of review for determining whether a mistrial should have been granted is an abuse of discretion. "The decision to grant or deny a mistrial is within the sound discretion of the trial judge." State v. Thompson, 352 S.C. 552, 560, 575 S.E.2d 77, 82 (Ct. App. 2003). "The court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for

very plain and obvious causes" stated into the record by the trial judge. Thompson, 352 S.C. at 560, 575 S.E.2d at 82, *citing* State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977). "A mistrial should not be granted unless absolutely necessary." State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial. Id. In order to receive a mistrial, the defendant must show error and resulting prejudice. Id.

In this case, the solicitor asked a yes or no question to a law enforcement witness, and the witness gave an unsolicited response that mentioned an unrelated active arrest warrant for Appellant. (R. 125). No details were given about the arrest warrant by the witness. The trial judge immediately sent the jury out in order to have an *in camera* conference with the attorneys. The trial judge remarked that "I'm confident that it was not intentional on the part of the State. It's just something that's come out." (R. 126, lines 9-11). The trial judge issued a curative instruction as soon as the jury returned. (R. 129). The arrest warrant was not mentioned again for the rest of the trial, and the State never attempted to introduce any evidence relating to it.

The facts in this case are very similar to the facts in State v. Thompson, 352 S.C. 552, 560, 575 S.E.2d 77, 82 (Ct. App. 2003). In Thompson, the solicitor asked an open ended question of a law enforcement witness about what police officers were trying to ascertain when they approached the defendant's residence. The witness answered, "We were trying to ascertain if the suspect, the defendant at the time that we knew had warrants, Mr. Thompson, if he was actually at the residence or not." Thompson, 352 S.C. at 560, 575 S.E.2d at 82. Like the current case before the Court, Thompson featured a single, vague reference to outstanding arrest warrants against the defendant. No details were given about the nature of the warrants, and the reference to the warrants was not solicited by the State. The Court found that "vague reference to

a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes." Id. at 561, 575 S.E.2d at 82. In the case at bar, the reference to the warrant was also vague, and there was no attempt by the State to introduce evidence of other crimes.

The facts of this case stand in contrast to the case cited by Appellant. In State v. Ravencraft, 222 S.C. 139, 71 S.E.2d 798 (1952), the defendant was on trial for a second time after a mistrial had already been declared on a previous occasion because the State introduced evidence of the defendant making entry to another house the same night as the incident for which he was on trial. Ravencraft, 222 S.C. at 140, 71 S.E.2d at 799. The State repeated the same error in the second trial. Our Supreme Court determined that the reference to the previous crime was clearly intentional on behalf of the State. The Court remarked: "It was clearly an attempt to get this testimony before the jury and the motive could hardly be said to be with the intention of aiding the appellant." Id. at 142, 71 S.E.2d at 800. In addition to the reference being intentional, it was also very specific. The State specifically mentioned the defendant had committed the same crime he was on trial for, just a few hours earlier.

The case currently before the Court is clearly different from the facts presented in Ravencraft. In our case, the trial judge acknowledged that he believed the reference was not intentional on the State's part. (R. 126, lines 9-11). Furthermore, the State did not provide any details about the pending warrant. The situation might have been different had the witness made clear reference to a drug related warrant or an unlawful neglect of a child warrant. However, without any detail about the nature of the warrant, there was no way for the jury to draw a clear correlation between the active warrant and the charges Appellant faced. Accordingly, Appellant

was not prejudiced by the single mention of a vague arrest warrant, and the trial judge was within his discretion not to declare a mistrial. Appellant's convictions and sentences should be affirmed.

B. Curative Instruction

Appellant contends that the single mention of an unrelated arrest warrant improperly influenced the jury to decide his guilt based on prejudice instead of the evidence presented at trial. However, the trial judge's curative instruction eliminated any possible prejudice to Appellant. "A curative instruction is generally deemed to have cured any alleged error." State v. Dial, 405 S.C. 247, 258, 746 S.E.2d 495, 500 (Ct. App. 2013). "If the trial judge sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured." State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996).

In the current case, the trial judge sustained Appellant's objection and issued a curative instruction. (R. 129). The trial judge clearly explained to the jurors that they were not to consider anything regarding the existence of another arrest warrant, nor were they to even discuss it in their deliberations. (R. 129).[1] Furthermore, in the trial judge's closing instructions to the jury, he instructed jurors to disregard any testimony that was stricken from the record. (R. 342, lines 13-16). Therefore, absent any showing to the contrary, any error that may have occurred is deemed to be cured. Appellant's convictions and sentences should be affirmed.

[1] It is worth noting that Appellant did not object to the sufficiency of the curative instruction until after another witness had testified. State v. Moyd, 321 S.C. 256, 263, 468 S.E.2d 7, 11 (Ct. App. 1996) (noting an objecting party is required to contemporaneously object to the sufficiency of a curative instruction or the issue is not preserved for appeal). Appellant eventually did provide an objection to the curative instruction later in the trial. (R. 152)

C. **Harmless Error**

Appellant contends that the single mention of an unrelated arrest warrant improperly influenced the jury to decide his guilt based on prejudice instead of the evidence presented at trial. However, considering the overwhelming evidence of Appellant's guilt, any error that resulted from the jury hearing about the unrelated arrest warrant which was not cured by the judge's instructions was harmless.

"Whether an error is harmless depends on the circumstances of the particular case." Thompson, 352 S.C. at 562, 575 S.E.2d at 83. "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." Thompson, 352 S.C. at 562, 575 S.E.2d at 83. "Error is harmless when it could not reasonably have affected the result of the trial." Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E. 2d 888 (1971)).

The evidence presented against Appellant at trial was overwhelming. Law enforcement utilized a confidential informant to set up a controlled purchase of methamphetamine from Appellant through his codefendant, Brandy Wilson. (R. 105-6). Law enforcement located Appellant with Wilson in the same vehicle that Tucker said they would be driving. (R. 227) Captain Reeder testified Appellant appeared to place something in his pants after police had stopped his vehicle. (R. 226-27). Captain Reeder also testified Appellant made a *Mirandized* statement admitting he had drugs in his pants. (R. 229-31). Multiple law enforcement witnesses testified Appellant had bags of methamphetamine in his crotch area near his testicles. (R. 145-46, 158, 233). Finally, Wilson read a letter to the jury from Appellant, in which Appellant

encouraged Wilson to claim that they were returning drugs to Tucker and that Appellant did not know his grandson would be in the car when they left to deliver the drugs. (R. 192-93).

When considering the record as a whole, the prejudice to Appellant of a single reference to an unrelated arrest warrant pales in comparison to the evidence against Appellant. There was abundant evidence in the record for a reasonable jury to conclude Appellant was guilty. The State submits the jury was convinced of Appellant's guilt by the Appellant's actual possession of drugs and Appellant's attempt to get his codefendant to lie about his culpability for the drugs, rather than by a single, vague reference to a warrant that the trial judge told it to ignore. Therefore, any error resulting from the witness' reference to an outstanding warrant is a harmless one. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. SCOTT MATTHEWS
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29649
(864)-942-8800

BY: Scott Matthews
J. SCOTT MATTHEWS
Bar # 101464

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

ATTORNEYS FOR RESPONDENT

December 11, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-002300

THE STATE,

Respondent,

v.

ERNEST EDWARD VAUGHN, SR.,

Appellant.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

J. SCOTT MATTHEWS
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: Scott Matthews
J. Scott Matthews
Bar # 101464

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

ATTORNEYS FOR RESPONDENT

December 11, 2017