THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

The Honorable Thomas Anthony Russo, Circuit Court Judge

Appellate Case No. 2017-001229

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DAVID HAROLD CAMPBELL,

APPELLANT.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I.

The lower court erred in overruling Appellant's objection to the State's introduction of irrelevant and highly prejudicial testimony concerning matters which took place before the traffic stop in this case after the State conceded that this case began as a traffic violation and agreed that nothing prior to that stop was relevant to the case.

II.

The lower court erred in denying the Appellant's Motion for a Mistrial where the State introduced testimony concerning matters which took place before the traffic stop in this case after conceding that this case began with a traffic violation committed by Appellant and agreed that nothing prior to that stop was relevant to the case.

STATEMENT OF THE CASE

Appellant, David Harold Campbell, was indicted by the Horry County Grand Jury during the February, 2017 term for Failure to Stop for a Blue Light (2016-GS-26-00536) and for Trafficking in Cocaine, 10 – 28 g. (2017-GS-26-00942). He was represented in the trial court by L. Morgan Martin, Esquire, and Russell B. Long, Esquire. The Appellant proceeded to trial by jury on May 15-17, 2017 before the Honorable Thomas A. Russo. The State was represented at trial by David P. Caraker, Jr., Assistant Solicitor, and William Grayson Ervin, Assistant Solicitor. At the conclusion of this trial, the Appellant was found guilty as charged on both counts and was convicted of Failure to Stop for a Blue Light (2016-GS-26-00536) and Trafficking in Cocaine, 10 – 28 g. (2017-GS-26-00942).

Appellant was sentenced on May 17, 2017 to thirty (30) years for Trafficking in Cocaine, 10 grams or more, but less than 28 grams (2017-GS-26-00942), and to five (5) years for Failure to Stop for a Blue Light (2016-GS-26-00536). It was expressly ordered that these sentences be served concurrently.

The Appellant served and filed a timely Notice of Appeal from his judgment and sentence. This appeal follows.

ARGUMENT

Standard of Review

This Honorable Court's decision in *State v. Adams*, 354 S.C. 361, 377-78, 580 S.E.2d 785, 793-94 (Ct. App. 2003) , contains an excellent overview of South Carolina law on the standard of review in appeals addressing the admission, or exclusion, of evidence. "The admission or exclusion of evidence is left to the sound discretion of the trial judge. *State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002); *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001). Generally speaking, it is well established law in South Carolina that a court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. *State v. Hamilton*, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001); *State v. Mansfield*, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. *State v. McDonald*, 343 S.C. 319, 540 S.E.2d 464 (2000); *State v. Mattison*, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).

All relevant evidence is admissible. *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000); Rule 402, SCRE. Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. *State v. King*, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002); *see also* 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.").

It is equally well established, however, that relevant evidence may be "***excluded if its probative value is substantially outweighed by the danger of unfair prejudice***." Rule 403, SCRE; *see also State v. Cooley*, 342 S.C. 63, 536 S.E.2d 666 (2000) (although evidence is relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value). As this Honorable Court found in Hamilton, *supra*, a trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *Hamilton*, 344 S.C. at 357, 543 S.E.2d at 593. We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. *Id.* at 358, 543 S.E.2d at 593."

Issues on Appeal I and II

Discussion

In this case, the testimony of three Horry County Police Detectives indicates that on the date of Appellant's arrest they were conducting surveillance in response to a drug complaint in the area. They testified that as they were conducting surveillance in the Socastee area, they went to the Ranchette Circle where they saw Appellant sitting in a car backed into a drive at a house. They drove the circle and as they passed back by the vehicle again, they saw the driver and he saw them, prompting him to pull out behind them and left the area. Although it was not made clear how, these witnesses testified that they somehow managed to get behind Appellant's vehicle and one of the three testified to the group making the decision to follow him.

These officers, each members of a drug task force in their law enforcement agency, testified that they then witnessed Appellant fail to give a turn signal; a traffic violation. As

their testimony unfolded, they admitted that the day before this operation, they had communicated with a uniform patrol officer in their agency to be sure he would be in the area and available if they needed him to make a traffic stop. These officers, rather forthrightly admitted that their plan was to follow subjects as they were conducting surveillance and if they observed a traffic violation, to use that as a reason to stop the individual. According to these officers, they in fact subsequently witnessed Appellant make a traffic violation by failing to give a proper signal while negotiating a turn. They then called in the Patrol Officer they had on standby in the area, Jeremy Crews, and allowed him to fall in behind Appellant's vehicle. They testified that they remained in the area and joined in a high speed chase once Appellant failed to stop for that officer's blue light. *See*, testimony of **Patrol Officer Jeremy Crews**, Tr. p. 121, l. 18 – p. 155, l. 2; **Detective Jeremy Neely**, Tr.p. 155, l. 8 – p. 203, l.3; **Detective Robert Sauls**, Tr. p.203, l. 11 - 218, l. 6; **Detective Steven Rhew**, Tr.p. 218, l. 7 – 230, l. 11.

At the outset of this trial, during a hearing on a probable cause challenge to the stop and a jurisdictional issue, the prosecution acknowledges that this case began with the traffic stop and that anything that happened before that is not relevant to the case. The prosecutor specifically states that, ***" [a]nything that happened before that, I've had to delve into simply to answer their jurisdictional issue. But as far as the State's concerned, the probable cause to affect a seizure and subsequent stop and arrest of this defendant occurred when he did fail to signal, committed a traffic stop."*** **Tr.p. 43, l. 25- p. 44, l. 8.**

Subsequently, Jeremy Neely, was the first of the three narcotics agents to testify in the presence of the jury. When the state asked Detective Neely how he became involved in Applicant's case, just as they had asked Agent Rhew during the *in camera* proceeding,

Attorney Long immediately interjected an objection. Defense Counsel essentially repeated what the prosecutor had himself said previously, *in camera*. He argued, ***"[t]his is a –this is a traffic signal case. They made it clear that that's what it is".*** He then went on to argue that anything that happened before they are behind the defendant and observe him commit a traffic violation would be ***"prejudicial, super prejudicial in this case and we would object to the admission of any of that."*** **Tr.p. 156, l. 23 – p. 157, l. 20.** The prosecution, before the judge had ruled, told the judge what he intended to go into and that he would not say that they were watching Appellant. He noted that it was necessary for him to explain why ***"ATF Gang Task Force members were involved in a traffic stop and it's necessary to call in a uniformed police officer."*** The Court found this evidence to be relevant and overruled Appellant's objection. **Tr.p. 158, l. ll. 4 – 9.**

Defense Counsel then, with leave of court, continued to argue, that the prosecution could explain how these narcotics offers happened to witness a traffic stop, and why they called in a patrolman in uniform driving a marked car, to deal with it without going into having seen Appellant at this place they were investigating.[1] He argued that this evidence was not relevant to what happened after the traffic stop, was ***"not related one bit to this case"*** and was prejudicial and harmful. **Tr.p. 159, l..16 – 24.** Defense counsel additionally argued that the state had essentially made the evidence in question irrelevant by neglecting to include information about it in their documentation of this investigation and by failing to provide information concerning this back story to the traffic stop in the discovery materials provided to the defense.. **Tr.p. 158, l. 17 – p. 160, l. 11.** The prosecutor responded by

[1] Attorney Long actually overstated what the testimony the day before had been. In the *in camera* proceeding, Steven Rhew was the only one of the three narcotics agents to testify. He in fact testified that on the date in question his team was driving through the Socastee area and went to the Ranchette Circle area where they, "noticed Mr. Campbell was sitting in a car that was backed in to a house." He said nothing about that house being specifically connected in any way to the narcotics complaint they were investigating. Tr.p. 52, ll. 6 – 10.

arguing that the case law was clear that a pretext for a stop was not relevant, but did not respond to the relevance argument at all. He argued that this case law supported the view that the officers' intentions were not relevant to the question of probable cause for the stop. The prosecution essentially ignored defense counsel's position that this evidence was irrelevant and therefore, inherently more prejudicial than probative. Tr.p.160, 14 – 21. Nevertheless, the Court adhered to its ruling that this evidence could come in. Tr.p. 160, ll. 22-23.

Next, Defense Counsel asked the Court if they could determine exactly testimony the State was going to elicit concerning what occurred in Socastee before the jury came back in. The Court then said "[***wJhy don't we do that***?" Tr.p. 161, ll6 – 12. The prosecutor's response was to state,

> I don't want to speak for Detective Neely, but they were in Socastee responding to a narcotics complaint in a known drug area and they saw this Defendant exhibited behaviors that required further investigation. Tr.p. 161, ll. 13 – 16.

When the Court then inquired as to whether the behavior in question was Appellant, ***"backing up to the –to that residence where the complaint came from***?" The Prosecutor indicated that was correct. There had actually been no testimony that the house where Appellant was seen backed into the drive was the subject of the narcotics complaint they were investigating or that the house was otherwise known to them to be involved in drug activity. Attorney Martin then noted his concern was ***"if he's gonna say that he was in a known drug area."*** He said that if the State was willing to have him *say* ***" he was investigating a complaint and stops it at that"***, the defense would have no further objections. Tr.p. 161, ll. 5 – 24. The prosecutor then says he thinks they could ***"settle with a narcotics***

complaint." Tr.p. 161, l. 25 – p. 162, l. 1. Initially the Court agrees to that. Attorney Martin then objected for the record to anything that went beyond the fact that Appellant was stopped for a traffic violation. He argued that under Rule 602, SCRE, the line of testimony the state wished to introduce was purely speculative, was not relevant and was more prejudicial than probative.[2] He noted that such testimony assumed facts not in evidence, namely that at that point in time they knew they were dealing with a narcotics violation, and it called into question hearsay concerning where the complaint came from. Tr.p. 162, ll. 6 – 16.

The Court once again ruled in the State's favor, finding that the state needed to be allowed to explain why narcotics agents had gotten involved in a traffic stop. At the same time, the Court acknowledged that the prosecution needed to avoid trying to over-hype it as a high drug area and but, say they were responding to a narcotics complaint. Trp. 162, l.17 – p. 163, l. 2. after a moments reflection, however, the Court stated, ***"As a matter of fact—as a matter of fact, why can't they be there responding to a complaint?"*** Rather than offering for the Court consideration a valid reason why that solution would not work, the prosecution continued to argue that the fact that the testimony they sought to introduce was part of the *res gestae* of the offense; a curious position for someone who minutes earlier argued that anything that happened before Appellant was seen failing to make a traffic signal was irrelevant. Once again, rather than wait for the Court to rule on what it found to be appropriate, the prosecutor told the judge what the State would do, saying, ***"I'll stop at narcotics complaint. We don't need to talk about a known drug area or a high crime area or anything like that."*** Tr.p. 163, ll. 6 – 10, (Emphasis added). The Court's response was to

[2] While Attorney Martin did not specifically reference Rules 401, 403 and 404, SCRE, the trust of his arguments in opposition to the introduction of this testimony clearly addressed the substance of these rules.

grant the defense "***whatever leeway on cross obviously***". Tr.p. 163, ll. 11-12. Attorney Martin then pointed out for the record that if these officers had in fact seen Appellant in a known drug house, a known drug area, they could have stopped his car based upon a reasonable suspicion and/or probable cause. He argued that where they did not proceed on that basis, and rather chose to wait for a traffic stop, anything that came before than stop should be excluded. Tr.p. 163, ll. 13 – 23. The court responded by once again reemphasizing its intent to give the defense ***"every leeway on cross-examining them as to that issue."*** Appellant would now, most respectfully, submit that this was effectively granting Appellant the opportunity to unring a bell that could not be unrung. There was no further discussion concerning the permissible parameters of this line of testimony.

In the presence of the jury, Detective Neely testified that on the date in question they were in the Socastee area, specifically on Rachette Circle, investigating recent narcotics complaints. The state proceeded to ask him directly if he saw the Appellant there. Tr.p. 164, l.25. Neely said when they arrived at Rachette Circle , they saw Appellant backed into a driveway at a house. He noted that when they drove back past that house the Appellant was still there. He then stated that as they passed Appellant "***saw us and then pulled in behind us and left the area, which is behavior that would draw our attention."*** [3]

The next narcotics agent to testify was Agent Sauls. He expressly testified, ***"the involvement started as Detective Neely stated."*** Neely, he had testified that as they arrived at Ranchette Circle, they noticed ***"the Defendant in his vehicle backed into a house."*** Tr.p. 165, ll. 1 – 4. Agent Sauls was even more specific, he testified that upon their arrival at

[3] Given the fact that other testimony at trial would clearly inform the jury that these three narcotics officers were in plain clothes and an unmarked car, this testimony would have implied Appellant recognized them as narcotics agents and perhaps that they recognized him, otherwise, why would someone pulling out of a driveway onto a public road be suspicious?

Ranchette Circle they noticed a vehicle that was backed into a house. He however, testified that as they drove around the circle and came back by the car, ***"we noticed that the vehicle was occupied by the Defendant, Mr. David Campbell, solely."*** Like Neely, he testified that, ***"he saw us; we saw him, he pulled out behind us."*** Tr.p. 2014, ll. 23 – 24.

The testimony of Agent Rhew followed the same lines as that of Neely and Sauls. He testified that they ***"went to the Ranchette Circle area for a narcotics complaint, at which time, we noticed the Defendant's car backed into a house."*** Attorney Martin asked that his objection be noted for the record and the court agreed and overruled the objection. Tr.p. 219, l.12 – 19. Just like his teammates, he testified that as they passed back by the vehicle after driving around the circle, ***"he was still there. At which time, he saw us, we saw him and he was still in the vehicle. After we passed him, he pulled out behind us."*** Unlike Neely and Sauls, he added, ***"[d]ue to the circumstances, we decided to start following him."*** Tr.p. 219, ll. 20 – 24.

After the State rested its case, Attorney Martin made Motion for Directed Verdicts of Acquittal which were denied. Tr.p. 246, l. 13 – p. 247, l. 2. He then made a Motion for a Mistrial based upon the admission of the testimony from State's law enforcement witnesses concerning their having seen Appellant, just before the traffic stop, in the Socastee area on Ranchette Circle while they were investigating a narcotics complaint. Tr.p. 247, ll. 3 – 20. The prosecution responded by mirroring the comments made by the Court in the earlier discussion of this issue. He argued that these plainclothes, undercover, narcotics agents needed to explain why they got involved and why they got a marked patrol car involved. He claimed that he State had limited this testimony to the ***"narcotics complaint".*** As will be addressed *infra*, that statement was clearly inaccurate. Tr.p. 248, l. 18 – p. 249, l. 3.

Contrary to the findings of the Trial Court, and the arguments of the prosecutor, the testimony, in question was not relevant to a legitimate need demonstrated by the state. As presented, this testimony was not only irrelevant, it was extremely prejudicial. The State could have, as suggested by the trial judge himself, satisfied their desire to explain how these narcotics agents got involved in the traffic violation, and the subsequent high speed chase, by simply limiting their testimony to the fact that they were in the area investigating a complaint when they saw a uniformed officer in a marked patrol car attempting to initiate a traffic stop. They could easily have testified, as one of the officers mentioned, that they would ordinarily have gone on about their way after seeing a traffic stop in progress, but following their observation that the subject vehicle did not respond to the patrol car's blue light, and that a chase was underway, they joined in the chase to assist their fellow officer. They could have testified truthfully to all of this without exposing this jury to irrelevant and high prejudicial testimony clearly designed to enhance the prosecution's chances of convicting Appellant by testifying in a manner which strongly implied that these three narcotics agents already knew Appellant and recognized not only him, but his car by sight.

The State did not, as the prosecutor stated, limit this testimony to ***"a narcotics complain".*** Attorney Martin actually noted in his arguments on this issue, he would not have had any further objections if they had agreed to limit these officer's testimony to the fact that they were in the area investigating *a complaint.* Ultimately, they were not even content with limiting the testimony of these officers to saying they were in the area investigating a narcotics complaint. That was simply not enough to suit them. The reason was as obvious as it is improper. They wanted to tell this jury that they were not just investigating a narcotics complaint, but that Appellant had been spotted, acting suspiciously, in the very area they

were investigating because of the narcotics complaint. Even that was not good enough for them. They could not say they spotted someone they *now* know to be the Defendant, they had to strongly suggest they, as narcotics agents, already were so familiar with Appellant that recognized him and his car. But even that wasn't good enough. They had to orchestrate their testimony in such a way as to invite the inference that not only did they recognize him, *he recognized them and pulled off to leave the area immediately upon seeing them.* After all, why else would the sight of three guys in plain clothes driving through a neighborhood in an unmarked vehicle cause him to have a flight response? Even if Appellant may have been astute enough to notice they had driven round the circle past his location a second time, why would that trigger suspicion in Appellant since driving around a residential neighborhood in broad daylight could easily have been explained by many things such as them looking for an address, a lost dog or a lost child? Contrary to the expressed intent of the prosecution, the obvious answer is that they wanted this testimony to come in for the very reasons such testimony is inadmissible. It bolsters their chances of convicting the accused by convincing the jury that they "*got it right*" and that there is no room for reasonable doubt. A similar type testimony was addressed in a Sixth Amendment context, in ***German v. State***, 325 S.C. 25, 478 S.E.2d 687 (1996). In ***German***, the Court found that the PCR Courts, reliance upon ***State v. Brown***, 317 S.C. 55, 451 S.E.2d 888 (1994) was misplaced inasmuch as in ***Brown*** the testimony in question did not address his character, but rather referenced drug activity in the apartment complex in which the defendant lived. The statements about the defendant in *German* were found to be objectionable because they constituted improper comments on German's character. In Appellant's case, the admissibility of the testimony is question is particularly offensive because the State did not show any connection between Appellant and

the Narcotic Complaint these officers were investigating. The did not disclose the source of this tipster or complainant, and their sole basis for claiming Appellant was acting in a suspect manner was the questionable argument that Appellant exhibited behaviors that required further investigation by backing into a driveway at a house not connected by the law enforcement in anyway to the narcotics complaint that they were supposedly investigating or to any other drug activity buy pulling out of that driveway behind them as they drove by. Appellant submits that this testimony was not relevant and should have been excluded for that reason. He further submits, however, that this testimony was highly prejudicial because, though irrelevant to the charges before the Court, it attacked Appellant's character by implying he was a known drug dealer widely recognized by the narcotics officers in the area and that he was so familiar to them that they even recognized his vehicle. This testimony was not only irrelevant, it constituted an improper attack on his character ***"for the purpose of proving action in conformity therewith on a particular occasion."*** **Rule 404 (a)(b), SCRE.**

It is a fundamental principle of law that a defendant is presumed innocent until the State proves him guilty beyond a reasonable doubt. Furthermore, a defendant's conviction must be based on proof of the offense for which he is accused, rather than prior immoral acts. *State v. Lyle,* 125 S.C. 406, 118 S.E. 803 (1923). The decision in *Lyles*, although soon to be 100 years old, has stood as a cornerstone for one of our most basic principles, now embodied in Rule 403 (b), SCRE. Lyles, and its progeny, have long stood for the rule that evidence of other crimes or bad acts, as a general rule, is not admissible to prove the offense for which a defendant is on trial unless the submitted evidence tends to establish: (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to one another that proof of one tends to establish the other; or (5) the identity

of the person charged with the commission of the crime on trial. Id. Appellant respectfully submits that he State has failed to produce evidence that justified the admission of the testimony in question under one of the exceptions found in *Lyles* or Rule 404(b), SCRE.

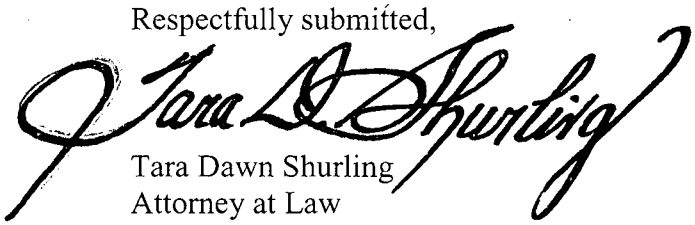
As the prosecutor himself argued, this case was a traffic stop case which began the instant Officer Crews says he saw Appellant fail to give a turn signal. As he conceded, when it suited him in arguing pretrial matters, nothing that came before that traffic violation was relevant to what happened afterward. Thus, Appellant argues that the State conceded that the evidence in question was not relevant to the charges before the Court. Assuming, *arguendo*, that there was some shred of relevance to this testimony, Appellant would submit that it's very limited probative value was substantially outweighed by the danger of unfair prejudice it created. Rule 403, SCRE. Furthermore, as even the trial judge recognized the stated reasons for allowing this testimony could have been readily met by limiting this line of testimony to explaining that these officers were in the area investigating a complaint; as the judge suggested, not a narcotics complaint, a complaint.

Counsel for Appellant objected the first time this subject matter was approached on the record following the *in camera* ruling and therefore, the objection was timely. Furthermore, Appellant would argue that his Motion for a Mistrial was timely in light of the fact that it was made in the wake of the State having failed to honor it's stated commitment to limit this line of testimony to the fact that these witnesses were investigating a narcotics complaint. As previously noted, the prosecutor surprisingly argued these witnesses for the State had confined their testimony to references to their investigation of a narcotics complaint. Appellant respectfully submits that the testimony at Appellant's trial, outlined herein, clearly shows they exceeded those parameters.

CONCLUSION

Based upon all the arguments and authorities set forth above, Appellant now most respectfully asks that his convictions and sentences be vacated and that his case be remanded to the Horry County Court of General Sessions for a new trial.

Respectfully submitted,



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This, 15th, day of August, 2019.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

EXTENSION REQUEST

Appellate Case No. 2018-001493

THE STATE OF SOUTH CAROLINA, **RESPONDENT,**

v.

JUSTIN BRADLEY CAMERON **APPELLANT.**

Certificate of Service
Initial Brief of Appellant

The undersigned hereby certifies that one copy of her Initial Brief of Appellant, and Designation of Matter, in the above captioned direct appeal, has been served on the opposing counsel, William M. Blitch, Jr., this 16th day of July, 2019, at 11:00 A.M., by placing one copy of the same in the U.S. Mail addressed to:

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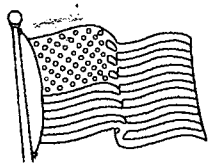

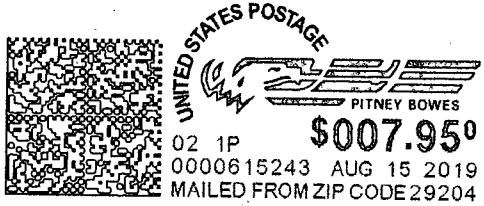

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