STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2017-001571

THE STATE,

Respondent,

v.

BRIAN EVERETT PRINGLE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its broad discretion by admitting the testimony of Pamela Larson and the drug paraphernalia found in Appellant's car where the evidence was more probative than prejudicial, and where any possible error by the trial judge was harmless because of overwhelming evidence against Appellant.

STATEMENT OF THE CASE

In April 2016, the Richland County Grand Jury indicted Appellant for two counts of strong arm robbery. In March 2017, the Richland County Grand Jury indicted Appellant for an additional count of strong arm robbery. On July 10-12, 2017, Appellant proceeded to trial before a jury on all three counts of strong arm robbery in the Richland County Court of General Sessions with the Honorable DeAndrea G. Benjamin, presiding. Appellant was represented by Michael Duncan, Esq. Respondent (the State) was represented by Assistant Solicitors Richard Cathcart and Jeremiah Shellenberg of the Fifth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of all counts. Following the verdict, the trial judge sentenced Appellant to three concurrent terms of fourteen years' imprisonment. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On December 17-18, 2015, similar robberies occurred at three separate gas stations in Richland County. Each robbery followed the same basic pattern. A black male entered each store and attempted to either buy a food item or get change for a one dollar bill. (R. 88, 118, 143). When the cashier on duty opened the register drawer to retrieve change for the customer, the black male would reach into the drawer and take cash from it. (R. 89, 118, 144). The individual then fled the store.

The first robbery occurred on December 17, 2015 at the Pop's gas station at the corner of Parklane and Farrow road. (R. 86). A black male entered the store and attempted to buy a Little Debbie honey bun with a one dollar bill. (R. 88). When the cashier, Torah Craft, attempted to make change for the purchase, the customer reached into the register drawer and grabbed an unknown amount of cash. (R. 89). The individual then ran out of the store, leaving the honey bun behind. (R. 91). Investigator Yvonne Woods of the Richland County Sheriff's Department arrived shortly thereafter and swabbed the honey bun packet and other areas of the store for DNA. (R. 107). Craft subsequently met with Investigator Cris Truluck of the Richland County Sheriff's Department. Truluck asked Craft to pick the black male individual who robbed her store out of a six person photo lineup. Craft picked Appellant out of the lineup. (R. 96, 223-24). At trial, Craft stated she was "a thousand percent" sure she picked the correct person who robbed her. (R. 97, line 2).

The second robbery occurred on December 18, 2015 at the S-Mart gas station on Greystone Boulevard. (R.116). A black male individual entered the store and attempted to buy a honey bun with a one dollar bill. (R. 118). When the cashier, Kimbrell Sumter, opened the register the black male jumped across the counter and grabbed money out of the drawer. (R.

118). The individual then ran out of the store and got into a car. (R. 119). Sumter saw the individual's face and particularly noticed his beard and his eyes. (R. 118). Sumter described his eyes as being "Kind of big, like he was on something." (R. 118, line 16). Sumter opined, without objection from Appellant, that the individual was under the influence of drugs. (R. 118). Sumter saw the car as it left and described it as "A blue Jeep, little Geo." (R. 119, line 10). Sumter subsequently met with Investigator Allison Fitzgerald of the City of Columbia Police Department. Fitzgerald asked Sumter to pick the black male individual who robbed her store out of a six person photo lineup. Initially, Sumter was unable to do so, because the photo lineup provided by Fitzgerald didn't have any bearded individuals, which was inconsistent with the suspect's appearance at the time of the robbery. (R. 124). When Fitzgerald showed Sumter a second lineup with bearded men, Sumter picked Appellant out of the lineup. (R. 125). However, Sumter was only 50% sure she made the correct identification. (R. 126, 198).

The third robbery occurred on December 18, 2015 at Pop's gas station on Percival Road. (R. 142). A black male individual entered the store and asked for change to use the air machine outside the gas station. (R. 143). When the cashier, Kimberly Strother, opened the register drawer to provide the black male change, he forcibly reached into the drawer and took money out. (R. 144). Strother saw the individual get into a vehicle that she described as "a light blue small truck...Like a Suzuki or a small little Geo truck." (R. 144, lines 13-15). Strother was not able to identify the individual, because she didn't get a good look at his face. (R. 149).

Investigator Kevin Isenhoward of the Richland County Sheriff's Department recognized a similar pattern in the robberies based on his prior dealings with Appellant. (R. 188-89). Because of his prior experience with Appellant, Isenhoward contacted Investigator Fitzgerald and informed her of his suspicion that Appellant was responsible for the robberies. Isenhoward

viewed surveillance footage from the robbery on Greystone Boulevard and positively identified Appellant as the individual who robbed each location. (R. 189-90). Fitzgerald then initiated her investigation with Appellant as the primary suspect. Fitzgerald discovered that Appellant owned "a light blue Suzuki Sidekick, which looks very similar to a Geo Tracker." (R. 196, lines 1-2). Fitzgerald contacted Appellant's probation officer, Pamela Larson, and showed her still images of the robbery at the Greystone location. Larson positively identified Appellant as being the individual who robbed the store. (R. 199, 216-17). Investigator John Carwell of the Richland County Sheriff's Department, who also knew Appellant from prior interactions, viewed still images from each of the robberies and identified Appellant in each picture. (R. 209).

Appellant was arrested while driving a blue Suzuki Sidekick and a search warrant was executed on the vehicle by Investigator Truluck. (R. 225-26). Truluck found a camouflaged hat inside the vehicle that closely resembled the hat Appellant is seen wearing during the Percival Road robbery. (R. 226-27). Truluck also found a glass tube, a lighter, and a brillo pad that he testified are typically used to smoke crack cocaine (R. 228). Investigator John Barron of the Richland County Sheriff's Department had DNA swabs taken of the hat found in Appellant's car and from various locations at each crime scene. Barron affirmatively identified Appellant's DNA as being present inside the hat, but could only say that DNA from multiple individuals was present in the swabs from various locations inside the three gas stations. (R. 242-48). According to Barron, this finding was consistent with a typical analysis of items and surfaces that are touched by many people in a public place. (R. 244-46).

Prior to trial, the State attempted to introduce evidence of Appellant's prior similar robberies under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and rule 404(b) SCRE to prove Appellant's identity, and to show a common scheme or plan. (R. 32). The trial judge ultimately

ruled that law enforcement officers would be allowed to testify, for the limited purpose of identifying Appellant, that they had prior dealings with Appellant. (R. 61-64). However, the trial judge prohibited the State from asking law enforcement witnesses about Appellant's prior convictions or charges. (R. 61-64). The State was only allowed to ask law enforcement witnesses if they could identify Appellant by name and sight.

Appellant did not testify in his own defense, but he did call his girlfriend, Mary Seaburn, who provided an alibi for Appellant on the dates of the robberies. (R. 281). Seaburn claimed that Appellant slept at her house on the night of December 17 into the early morning hours of December 18. (R. 281). On cross examination, Seaburn claimed that Appellant was not using his telephone to call or text anyone while he was with her that evening. (R. 285-86). In rebuttal, the State called Linda Houck of the Richland County Sheriff's office who performed an electronic analysis of Appellant's phone. Houck testified that Appellant's phone was being used to make calls at 12:18 AM and 2:35 AM in the southeastern area of Columbia. (R. 303). This contradicted Seaburn's assertion that Appellant was with her during these times in the northeastern area of town near Bradbury Drive. (R. 303-04). From 9:00 PM on December 17 to 8:00 AM on December 18, Appellant's phone either received or made 19 calls. (R. 308-09). Each of the 19 calls made or received on Appellant's cell phone during the time period of the robberies used cell phone towers that were outside the vicinity of Seaburn's residence. (R. 308-10). At the conclusion of trial Appellant was convicted on all counts.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial courts have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial court's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. 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).

ARGUMENT

I.

The trial court did not abuse its broad discretion in admitting the testimony of Pamela Larson and the drug paraphernalia found in Appellant's car, because the evidence was more probative than prejudicial. Furthermore, any error that may have been committed by the trial judge was harmless because of the overwhelming evidence presented against Appellant at trial.

Appellant contends the trial judge erred in allowing Pamela Larson, formerly of the South Carolina Department of Probation, Pardon, and Parole Services (SCDPPPS), to identify Appellant in front of the jury. Additionally, Appellant alleges the trial judge erred by allowing drug paraphernalia found in Appellant's car to be entered into evidence. Appellant's arguments are without merit. The trial judge did not abuse her discretion by allowing Larson to identify Appellant in still images from the robberies when Appellant's only defense at trial was the State's witnesses had mistaken Appellant for someone else. Furthermore, the trial judge did not abuse her discretion in admitting the drug paraphernalia found in Appellant's car because the paraphernalia had significant probative value after Kimbrell Sumter offered her opinion that Appellant was under the influence of drugs when he robbed her. Even if the trial judge erred in admitting the contested evidence, any error was harmless because the evidence presented against Appellant at trial was overwhelming.

Probation Officer Testimony

Appellant initially contends the trial judge erred by allowing Pamela Larson to testify she could identify Appellant by name and sight. Appellant argues he was unduly prejudiced by Larson's testimony because of her previous employment with SCDPPPS. Appellant contends the jury may have inferred that "Appellant was already in the system at SCDPPPS with this agent and therefore probably had a criminal record, which meant he committed other crimes, and thus

held a criminal disposition, and hence was probably guilty of the crimes for which he was being tried." (Initial Brief of Appellant p. 9). Appellant's argument is without merit. The trial judge appropriately limited the testimony of Larson so as to allow the State to identify Appellant in the footage from the robberies without unduly prejudicing him.

The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). "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. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." McDonald, 343 S.C. at 325, 540 S.E.2d at 467. "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided" State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998) (quoting United States v. Rodriguez–Estrada, 877 F.2d 153, 156 (1st Cir.1989)).

Here, the identity of the individual who committed the robberies was the only issue of contention from the start of the trial. In his opening statement, counsel for Appellant stated "Somebody went out to these three stores that Mr. Shellenberg was talking about over a 6 hour time period, but it wasn't this gentlemen. It wasn't [Appellant]." (R. 83, lines 12-15). Again in his closing argument counsel for Appellant argued the same person robbed all three locations but "I just absolutely submit to you that that person is not [Appellant]." (R. 333, lines 8-10). The trial

judge appropriately recognized the State's need to prove Appellant was the individual from the gas station footage, but that it must be done in a limited way so as to not unduly prejudice Appellant. The trial judge summarized her ruling and her restrictions on Larson's testimony as follows:

> The Court: All right. I'm going to – and I understand your objection, but I'm going to – I think because identity is the issue in this case, I have to allow the State to present their case and attempt to prove their case. And because identity is the issue, at least from opening statements, that is being contested, I'm going to allow her to testify that she – in 2015, where were you working? Probation, Pardon, and Parole Services. Are you familiar with [Appellant]?
>
> Assistant Solicitor Cathcart: And the answer to that would be yes?
>
> The Court: Yes. Have you personally met him before? You can ask that. Have you personally met him before? She's got to identify him. She doesn't have to get into, he came to my office for a meeting. I think if you ask the question – I don't know if you want to lead, but have you personally met him before, and she can just say, yes, a few times. Or were you contacted – at some point in 2015, were you contacted by Ms. Fitzgerald -- Investigator Fitzgerald. And at that point she can say yes. And were you asked to identify [Appellant]. And she can say whatever. I think that's the cleanest way to probably do it.

(R. 211-12, lines 25-24). The State complied with the trial judge's restrictions in a brief direct examination of Larson. (R. 215-17). Thus, the trial judge appropriately exercised her discretion in allowing the State to prove their case without unduly prejudicing Appellant by not allowing Larson to say anything about the nature of her relationship with Appellant.

The lone case cited by Appellant is distinguishable from the facts of the current case. Appellant cites State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003) as an example of the State committing "overkill." In James, the State entered evidence of seven prior burglary or housebreaking convictions to prove that James was guilty of first degree burglary under S.C. Code Ann. § 16-11-311(A)(2). Because S.C. Code Ann. § 16-11-311(A)(2) only requires proof of two prior convictions for burglary or housebreaking, the Supreme Court held "the probative

value of all seven prior convictions was outweighed by the very great potential for prejudice to James." James, at 355 S.C. at 35, 583 S.E.2d at 750. Appellant argues this level of "overkill" by the State in James is analogous to the actions of the State in this case. This argument lacks merit. In James the State entered evidence of seven different convictions for the same crime which James was on trial for. Here, none of Appellant's prior convictions were mentioned either directly or indirectly. Appellant assumes, without any evidentiary basis, the jury made a nefarious conclusion about Appellant's criminal history based merely on Larson's past employment with SCDPPPS. On the contrary, other than asking Larson where she worked at the time of the robberies, the State did not reference Larson's previous employment or go into any detail about her prior interactions with Appellant. (R. 215-17). The State only asked Larson if she could identify Appellant. Larson's identification served a probative purpose which was necessary for the State to prove its case. Furthermore, Appellant claims Larson's testimony was unnecessary because of DNA swabs tying Appellant to the robbery scenes. Contrary to Appellant's odd claim, law enforcement did not find a DNA match for Appellant at any of the gas stations[1]. The only DNA match found by the State was from a hat found in Appellant's car. The trial judge did not abuse her discretion in admitting the testimony of Larson. Appellant's convictions and sentences should be affirmed.

Admission of Drug Paraphernalia

Appellant contends the trial judge erred by admitting the drug paraphernalia that was found inside Appellant's vehicle when he was arrested. Specifically, Appellant argues he was

[1] It is unclear how Appellant reached the conclusion that a positive DNA match was found inside the gas stations. (Initial Brief of Appellant, p. 9). John Barron testified that he didn't find Appellant's DNA on any of the swabs from the gas stations. Barron could only say there was DNA from multiple individuals present. (R. 242-48). In fact, Appellant argued multiple times in closing there was reasonable doubt in the State's case because they did not have a DNA match. (R. 336-38).

unduly prejudiced by this evidence because it "led the jury to believe that Appellant smoked drugs, which is illegal, and that as a result, Appellant possessed a criminal disposition to commit criminal acts, and was thus probably guilty of the robberies due to his 'obvious' criminal character." (Initial Brief of Appellant, p. 7). On the contrary, the trial judge did not abuse her discretion in admitting the drug paraphernalia because it was relevant to explain the testimony of Kimbrell Sumter who opined that Appellant was under the influence of drugs when he committed the robbery of Sumter's store.

"Evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad person." State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). However, evidence of prior bad acts may be admissible to show motive, intent, absence of mistake or accident, common scheme or plan, or the identity of the perpetrator. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In order to be admissible, evidence of a defendant's drug use must have some relevant connection to the crime charged. State v. Dickerson, 341 S.C. 391, 391, 535 S.E.2d 119, 122 (2000).

In order to determine whether the trial judge erred by admitting the drug paraphernalia, it is instructive to review the relevant portions of Sumter's testimony and the testimony of Investigator Truluck who found the drug paraphernalia. The following exchange took place during the State's direct examination of Sumter:

> Assistant Solicitor Shellenburg: Do you remember anything identifiable about him?
>
> Kimbrell Sumter: Yes, his beard and his eyes.
>
> Assistant Solicitor Shellenberg: What specifically about his eyes?
>
> Kimbrell Sumter: Kind of big, like he was on something.
>
> Assistant Solicitor Shellenberg: Like he was on drugs?

Kimbrell Sumter: Yes.

(R. 118, lines 13-18). Following this exchange, Investigator Truluck testified about the items he found inside Appellant's car:

> Assistant Solicitor Shellenburg: What else did you find in the vehicle that was of interest?
>
> Investigator Truluck: Also of interest, I located a brown paper bag. Inside this bag was a glass tube with a small little flower inside of it, a piece of Brillo, and a lighter.
>
> Assistant Solicitor Shellenberg: And what is the significance of that?
>
> Investigator Truluck: The significance of this is that throughout my career in law enforcement, I have worked narcotics, and this is what I used to refer to as what was called before as a crack pack. These items are used to smoke crack cocaine out of.

(R. 227-28, lines 22-8).

In deciding to admit the drug paraphernalia into evidence, the trial judge cited State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997) among other cases as authority for her decision. (R. 75). In Hough, the South Carolina Supreme Court held it was proper for the State to introduce evidence of Hough's drug use after the burglary for which he was on trial. Hough 325 S.C. at 95, 480 S.E.2d at 81. The Court reasoned "the testimony clearly provides a motive for Hough to have committed the crime and would therefore be admissible under Lyle." Hough 325 S.C. at 95-96, 480 S.E.2d at 81. However, the Court reversed Hough's conviction because the solicitor improperly told the jury in his opening statement that Hough had "a crack problem." Hough 325 S.C. at 96, 480 S.E.2d at 81. The Court ruled the statement by the solicitor could not be considered harmless error. Id.

Here, the State introduced the drug paraphernalia found in Appellant's car after Sumter testified Appellant appeared to be on drugs. The drug paraphernalia was relevant evidence which

served a probative purpose in light of Sumter's testimony. The identity of the perpetrator of the robberies was the sole issue of contention in this case from the beginning of the trial. Truluck's testimony regarding the drug paraphernalia found in Appellant's car served to further prove Appellant was the individual who robbed the gas station where Sumter worked. In reaching her decision, the trial judge cited Sumter's testimony describing Appellant looking like he was on drugs. (R. 76, lines 15-18). The drug paraphernalia was used for this limited purpose. The State did not reference Appellant's drug use in either their opening statement or their closing argument. (R. 79-82, 319-28). Thus, the State properly introduced evidence of Appellant's contemporaneous or subsequent drug use as allowed by Hough, but did not inappropriately comment on Appellant's drug use as the State did in Hough. The drug paraphernalia was more probative than prejudicial, and the trial judge appropriately exercised her discretion in admitting the evidence. Appellant's convictions and sentences should be affirmed.

Harmless Error

Even if this Court determines the trial judge erred in admitting the testimony of Pamela Larson and the drug paraphernalia found in Appellant's car, any error committed was harmless because the evidence presented against Appellant was overwhelming.

"Whether an error is harmless depends on the circumstances of the particular case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). "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. Two witnesses who were robbed by Appellant picked him out of a photo lineup. (R. 96, 125). Torah Craft was "a thousand percent" sure she correctly picked Appellant. (R. 97, line 2), Craft also identified Appellant in a still image from another store that was robbed. (R. 97). Kimbrell Sumter and Kimberly Strother were also able to identify the vehicle that Appellant drove away in. (R. 119, 144). The vehicle that Strother and Sumter described matched the vehicle that Appellant was arrested in. (R. 225-26). Three law enforcement witnesses who were familiar with Appellant were able to identify him in still images from one or more of the robbery locations. (R.189-90, 199, 209, 216-17). Appellant's lone witness, who was also his fiancée, claimed Appellant was at her house during the robberies and Appellant did not place or receive any phone calls while he was there. (R. 285-86). However, an analysis of Appellant's phone revealed that Appellant had made and received several phone calls during the time of the robberies and none of those phone calls took place in the vicinity of the residence where Appellant claimed to be. (R. 303-04, 308-10).

When considering the record as a whole, the prejudice to Appellant of a former probation officer identifying him in a still image and a piece of drug paraphernalia being entered into evidence pales in comparison to the remaining 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 eyewitness testimony of two store clerks, identification by three law enforcement officers and Appellant's discredited alibi. Therefore, any error resulting from the trial judge's decision to allow the identification testimony of Pamela

Larson or to receive Appellant's drug paraphernalia into evidence is harmless. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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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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