

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

William H. Seals, Jr., Circuit Court Judge

ORIGINAL

RECEIVED

JUN 26 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARVIN WILLIAMS, JR.,

APPELLANT

APPELLATE CASE NO. 2016-000545

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Did the court err by overruling Appellant's objections after the complainant testified in this criminal domestic violence case that Appellant had "hit" or "put his hands on" her "many of times" and that "this has happened so many times" before and she was "not going to let him get away with it again" since this evidence of alleged prior bad acts was inadmissible bad character evidence under Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 416, 118 S.E.2d 803, 807 (1923)?

2.

Did the court abuse its discretion by refusing to grant a mistrial after the complainant testified that Appellant had "hit" or "put his hands on" her "many of times" and that "this has happened so many times" before and she was "not going to let him get away with it again" since this evidence of alleged prior bad acts was inadmissible bad character evidence, unduly prejudicial to Appellant, and likely affected the outcome of the trial?

STATEMENT OF THE CASE

A Marion County Grand Jury indicted Appellant on February 12, 2015 for criminal domestic violence (CDV). R. 163-164. His case was called to trial on February 17, 2016 before the Honorable William H. Seals, Jr., and a jury. R. 1. Assistant Solicitor Lauren Hummel represented the state, and Marcus Woodson represented Appellant. R. 1.

On February 18, 2016, the jury found Appellant guilty as indicted. R. 159, ll. 11-21. Judge Seals sentenced Appellant to one year imprisonment. R. 162, ll. 15-17.

This appeal follows.

STATEMENT OF THE FACTS

Appellant and Tanita Pleasant dated many years before this incident after meeting at work. However, shortly after beginning a romantic relationship, the two realized that such a relationship did not “work” for them and they decided to “just be friends.” R. 98, ll. 19-23. For five or six years, Pleasant lived “two streets over” from Appellant and the two remained friends. Even while dating, Appellant and Pleasant always maintained separate residences, but occasionally spent the night at each other’s house. R. 99, l. 4 – 100, l. 2. However, about a month before this event occurred, Pleasant was evicted from her home after she could no longer pay the rent due to an illness or disability. Because Pleasant had no place to live, Appellant asked his mother if Pleasant could stay at their family home where Appellant lived until she could find another place to live. Appellant’s mother agreed. Appellant testified that “it was fine with me too” because he “was helping her [Pleasant] out as a friend.” R. 100, ll. 6-16.

Pleasant claimed that on the night of July 3, 2014, Appellant came home “already angry” about an “incident that happened earlier” in the day. She said they “sat down” and talked about what happened. Appellant “got angry with something [Pleasant] said” and asked her to leave the house. R. 16, ll. 1-11. Pleasant testified that she told Appellant, “I’m not leaving to go nowhere,” but Appellant “continued to keep arguing and arguing.” She ultimately claimed Appellant “slapped [her] or punched [her] in the face” and then, when she went to walk out the front door, “he pushed [her] out the door” causing her to fall down the steps onto the ground below. R. 17, l. 3 – 91, l. 3.

Appellant conversely testified that when he got home that evening, he and Pleasant got into “a fruitless argument about nothing.” She “kept making a molehill out of nothing” and “going on and on.” Appellant, who had moved on from the argument, was watching a movie and

not “paying her any attention” when Pleasant started “calling [him] a motherfucker” and saying “you need a dick.” R. 102, ll. 1-22. This angered Appellant because his two young nieces were in the house and he did not want Pleasant using profanity. He asked her to “please leave” and opened the front door for her. Pleasant eventually “got up and walked out the door.” Appellant closed the door behind her and locked it. Appellant denied physically touching Pleasant. R. 102, l. 22 – 104, l. 10.

Pleasant had no visible injuries when law enforcement arrived and there was no physical evidence to support her claim that Appellant struck her. This was essentially a “he said, she said” case. Moreover, whether Pleasant was Appellant’s “own household member” as required under the CDV statute was highly contested at trial. See S.C. Code Ann. § 16-25-10 and S.C. Code Ann. § 16-25-20.

Objection and Motion for a Mistrial

During Ms. Pleasant’s direct examination, the following exchange took place between her and the assistant solicitor:

A: As I walked towards the door, he [Appellant] was behind me. As soon as I opened the door, I was pushed out.

Q: Okay. **Did he ever hit you or put his hands on you?**

A: **Many of times.**

Q: **On this time**, did he - -

A: Yes, he did.

Q: - - slap you on the face?

R. 16, ll. 10-16 (emphasis added).

Immediately after this testimony, defense counsel asked to approach the bench and then subsequently asked if he could be heard outside the presence of the jury. The trial judge **refused to excuse the jury** from the courtroom, but held a bench conference off the record. For whatever reason, the contents of the bench conference were never directly placed on the record. After the bench conference concluded, the testimony continued: R. 16, l. 18 – 17, l. 3. Shortly thereafter, Ms. Pleasant testified:

First of all, they [the responding officers] asked me what happened. I told them what had happened. I told them that he [Appellant] was in the house. They went to try knocking on the door. They couldn't get in. I told them I know how to access [the house] because Marvin Williams [Appellant] showed me how I could get in through the side door. I said to the officer that you stick right here because **this has happened so many times I'm not going to let him get away with it again.**

R. 18, l. 24 – 19, l. 6 (emphasis added).

Defense counsel immediately objected and requested the court excuse the jury. Once the jury left the courtroom, counsel moved for a mistrial based on Pleasant's testimony concerning prior incidents of alleged domestic violence. He argued, "Your Honor, this is the **second time I objected**. The first time I was just going to let it go and go on because that [Ms. Pleasant's testimony] was I guess open to interpretation. This time, she [Pleasant] has specifically said he [Appellant] put his hands on me before and he wasn't going to get away with it this time. Your Honor, I think she's trying to bring up prior incidents. That's inadmissible and I'd ask for a mistrial at this point." R. 19, ll. 8-22 (emphasis added).

The assistant solicitor conceded Pleasant "can't talk about the prior . . . incidents where he's abused her before." She asserted, "She [Pleasant] can't talk about that. We know that. But she never clarified as to whether that was her getting locked out of the house or whether there

was arguing, if they had had arguments before and he locked her out. She never had said that he physically abused her in the past.” R. 20, ll. 1-7.

After the court reporter replayed the testimony, the trial court maintained that Pleasant’s testimony was unclear. The judge stated, “She [Pleasant] just said this happened so many times. It could be that she’d been locked out of the house so many times. She doesn’t say anything about being hit or bruised or slapped or anything.” However, the court cautioned Ms. Pleasant and instructed her not to “talk about anything from the past.” The court also made certain Pleasant understood that “[w]e’re talking about this night, July 4th, only.” Judge Seals ultimately **overruled the objection**. R. 20, l. 14 – 21, l. 9.

Defense counsel repeatedly renewed his motion for a mistrial throughout the remainder of the trial, but the trial court continued to deny the motion. See R. 130, ll. 15-22; R. 157, ll. 3-4; R. 160, ll. 13-18.

ARGUMENT

1.

The court erred by overruling Appellant's objections after the complainant testified in this criminal domestic violence case that Appellant had "hit" or "put his hands on" her "many of times" and that "this has happened so many times" before and she was "not going to let him get away with it again" since this evidence of alleged prior bad acts was inadmissible bad character evidence under Rule 404(b), SCRE, and *State v. Lyle*, 125 S.C. 406, 416, 118 S.E.2d 803, 807 (1923).

The court erred by failing to sustain Appellant's objections after Pleasant testified *twice* that Appellant had physically abused her in the past since this evidence of prior bad acts was inadmissible under Rule 404(b), SCRE and *State v. Lyle*, 125 S.C. 406, 416, 118 S.E.2d 803, 807 (1923). Significantly, as seen, **the assistant solicitor even conceded that this testimony was inadmissible**, but the court still overruled the objection. The court's ruling was error.

Generally, evidence of prior crimes or bad acts is not admissible to prove the crime for which the defendant is charged. *State v. Lyle*, 125 S.C. 406, 416, 118 S.E.2d 803, 807 (1923). Evidence of prior bad acts is admissible when it tends to establish motive, identity, a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE. In order to introduce evidence of some other act by the defendant under one of the exceptions, the prosecutor must lay a proper foundation. *State v. Smith*, 391 S.C. 353, 361, 705 S.E.2d 491, 495 (Ct. App. 2011), *overruled on other grounds by State v. Smith*, 406 S.C. 215, 750 S.E.2d 612 (2013). At the outset, the prosecutor must prove by clear and convincing evidence that the defendant committed the other act, if the defendant was not convicted of the act. *Id.* (citing *State v. Fletcher*, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008)). Next, the prosecutor must articulate

the logical connection between the other act and one of the five exceptions listed in Rule 404(b), SCRE. Id. (citing State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006)). This requires a showing of how the evidence of the other act will assist the fact-finder in understanding a material issue in the case related to one of the Rule 404(b), SCRE exceptions. Id. If the trial judge determines the prosecutor has satisfied both requirements, then the judge must determine whether the probative value outweighs the prejudicial effect pursuant to Rule 403, SCRE. Id. (citing State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009)).

When the prior bad acts are “strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced.” State v. Gore, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

The trial judge erred by overruling Appellant’s objections. Ms. Pleasant’s unmistakable testimony about prior allegations of physical abuse was inadmissible character evidence under Rule 404(b), SCRE and State v. Lyle, 125 S.C. 406, 118 S.E.2d 803. When the solicitor asked Pleasant if Appellant had ever hit her or put his hands on her, Pleasant said “[m]any of times.” R. 16, ll. 12-13. The assistant solicitor had to clarify, “*On this time . . .*” R. 16, ll. 14-16 (emphasis added). Pleasant later told the jury that “*this has happened so many times* I’m not going to let him get away with it again.” R. 19, ll. 4-6 (emphasis added). There is no other way to interpret this testimony other than Appellant had been physically abusive toward Ms. Pleasant in the past and had hit her before. The trial judge erred by ruling that Pleasant’s statements were ambiguous and that her statement could have meant “that she’d been locked out of the house so many times.” R. 20, ll. 19-25. Her statements were clearly improper.

Moreover, the assistant solicitor never argued this evidence of prior bad acts was admissible under one of the exceptions enumerated in Rule 404(b), SCRE, and even conceded it was not, nor

did the trial court make such a ruling. Instead, the solicitor conceded, “I know she can’t talk about the prior . . . incidents where he’s abused her before and that’s happened before. She can’t talk about that. We know that.” R. 20, ll. 1-3.

The trial court’s failure to sustain Appellant’s objections was evidentiary error and highly prejudicial because it is indisputable that Pleasant’s testimony was inadmissible bad character evidence under Rule 404(b) and Lyle. Even if the jury found Appellant did not strike Pleasant *this time*, this improper evidence allowed the jury to make the impermissible spurious inference that because Appellant physically abused Pleasant in the past, he should be punished even if they did not believe he was guilty. Respectfully, this Court should reverse the ruling of the trial court and remand for a new trial.

The court abused its discretion by refusing to grant a mistrial after the complainant testified that Appellant had “hit” or “put his hands on” her “many of times” and that “this has happened so many times” before and she was “not going to let him get away with it again” since this evidence of alleged prior bad acts was inadmissible bad character evidence, unduly prejudicial to Appellant, and likely affected the outcome of the trial.

The trial judge abused his discretion by refusing to grant a mistrial after Pleasant testified *twice* that Appellant had physically abused her in the past. This testimony was inadmissible character evidence and highly prejudicial to Appellant in this “he said, she said” case because it likely led the jury to convict Appellant on an improper basis. Appellant contemporaneously objected after each improper comment and moved for a mistrial after the second instance, which was denied. See R. 16, l. 19 – 17, l. 1 and R. 19, l. 8 – 21, l. 10.

“The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law.” State v. White, 371 S.C. 439, 443, 639 S.E.2d 160, 162 (Ct. App. 2006) (citing State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997)). In determining whether to grant a mistrial, our Supreme Court has stated that “[t]he 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, 33, 301 S.E.2d 471, 472 (1983). Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) “perhaps other matters.” State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976). Therefore, although the decision

to grant or deny a mistrial is within the trial court's discretion, such discretion is not unfettered. See State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

Here, the trial judge's failure to grant a mistrial was an abuse of discretion. Ms. Pleasant's unmistakable testimony about prior allegations of physical abuse was inadmissible character evidence as argued above. When the solicitor asked Pleasant if Appellant had ever hit her or put his hands on her, Pleasant said "[m]any of times." R. 16, ll. 12-13. The assistant solicitor had to clarify, "*On this time . . .*" R. 16, ll. 14-16 (emphasis added). Pleasant later told the jury that "*this has happened so many times* I'm not going to let him get away with it again." R. 19, ll. 4-6 (emphasis added). The trial judge abused his discretion by ruling these statements were ambiguous and that Pleasant could have meant "that she'd been locked out of the house so many times." R. 20, ll. 19-25. There is no other way to interpret this testimony other than Appellant had been physically abusive toward Ms. Pleasant in the past and had hit her before.

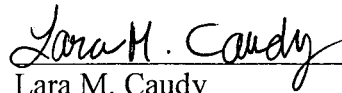
Appellant was prejudiced by Ms. Pleasant's improper testimony about alleged prior abuse because he was being tried for the same offense: criminal domestic violence against Pleasant. See Gore, 283 S.C. at 121, 322 S.E.2d at 13 (When the prior bad acts are "strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced."). Her statements in this "he said, she said" case likely led the jury to convict Appellant on an improper basis, namely because Appellant abused Pleasant before, he must have done it this time.¹ Because this inadmissible evidence affected the outcome of the trial, a mistrial should have been granted. See State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865-866 (Ct. App. 2010).

¹ The assistant solicitor admitted during a discussion on an unrelated issue that this was "a he said/she said" case and that the case came down to "what he's [Appellant is] going to say and what she [Ms. Pleasant] has said on the stand. She also argued, "The credibility of the defendant is very essential to this case. It's going to rest on really who the jury believes, the victim or the defendant." R. 93, l. 22 – 94, l. 5.

The judge erred in refusing to grant the mistrial. Respectfully, this Court should reverse the ruling of the trial court and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.



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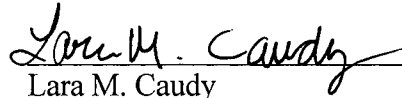
ATTORNEY FOR APPELLANT

This 26th day of June, 2017.

CERTIFICATE OF COUNSEL

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

June 26, 2017



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