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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2018-002131

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SC Court of Appeals

THE STATE,

Respondent,

v.

JEREMY RENARD WEBB,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Assuming for argument's sake that prior bad act evidence was admitted in error by the trial judge, whether any error was harmless in light of the evidence produced against Appellant at trial?

STATEMENT OF THE CASE

In August 2018, the Pickens County Grand Jury indicted Appellant for one count of breaking and entering a motor vehicle. On November 26, 2018, a jury trial was held in the Pickens County Court of General Sessions with the Honorable R. Scott Sprouse, presiding. Appellant was represented by John DeJong, Esq. The State was represented by Assistant Solicitor Megan Owen of the Thirteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant. The trial judge sentenced Appellant to a term of five years' imprisonment. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

In the early morning hours of December 21, 2017, Benjamin Weeks was awakened by the sound of his dogs barking loudly. (R. 80). Weeks viewed security camera footage on his cell phone and witnessed a male individual entering his 2014 Chevrolet Equinox. (R. 80-81). Weeks called 911 and initially reported that it was a white male who entered his car. (R. 81). However, after reviewing the footage a second time, Weeks called 911 again and reported that the person who broke into his car could be a black male. (R. 81). Nothing was stolen from the vehicle. (R. 87). Officer Dakota Gray of the Clemson Police Department arrived at Weeks' residence and obtained the security video. (R. 95). Detective James Peppers of the Clemson Police Department was assigned the case the following morning. (R. 62). Peppers grew up in Clemson and knew Appellant for approximately ten years prior to the date of trial. (R. 67, 69). Therefore, Peppers was familiar with Appellant's appearance and was able to identify the light-skinned black male in the video as Appellant. (R. 62).

At trial the State sought to introduce evidence of a prior breaking and entering of a motor vehicle that Appellant committed in 2014. (R. 34-37). Appellant plead guilty to the 2014 charge, but the State did not seek to introduce evidence of the conviction. (R. 39). Instead, the State called the victim of the former crime, Karen Edwards, to testify that in 2014 an unknown male entered her garage at night and took money out of her car. (R. 35, 56-57). Edwards did not identify the male, but described him as "tall and thin." (R. 57, line 11). Like the incident at Weeks' home, the breaking and entering in Edwards' garage was recorded by a security camera. (R. 57). Peppers was also the investigating officer in the 2014 case and he identified Appellant after viewing Edwards' security footage. (R. 60). Peppers testified that he witnessed Appellant entering two vehicles parked outside of Edwards' residence as well as a third vehicle inside the

garage. (R. 60). The trial judge allowed Edwards and Peppers to testify about the 2014 breaking and entering. (R. 40). The 2014 security footage was not played for the jury. (R. 39). Appellant did not testify in his own defense. (R. 109). At the conclusion of trial, the jury returned a guilty verdict against Appellant.

STANDARD OF REVIEW

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). "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). In an appeal from a decision regarding the admission of prior bad act evidence, the appellate court is limited to determining whether the trial judge abused his discretion. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). "If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008).

ARGUMENT

I.

Even assuming for the sake of argument that prior bad act evidence was admitted in error by the trial judge, any error was harmless in light of the evidence produced against Appellant at trial.

Appellant contends the trial judge erred in admitting evidence of a prior automobile break in by Appellant from 2014 during his 2018 trial for the same offense. Specifically, Appellant argues the two offenses were not sufficiently similar to qualify for admission under the common scheme or plan exception in Rule 404(b) SCRE. Even assuming for the sake of argument that Appellant's argument is correct, any error by the trial judge in admitting evidence of Appellant's prior auto break in was harmless in light of the evidence presented against Appellant at trial¹.

"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); Rule 404(b) SCRE. "The process of analyzing bad act evidence begins with Rule 401, SCRE. Pursuant to Rule 401, the trial court must determine whether the evidence is relevant." State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). If the evidence is relevant, the trial judge must then determine whether the bad act evidence fits within an exception to Rule 404(b). Id.

"Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." 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

¹ Arguably, the evidence of Appellant's 2014 auto break in was properly admitted under the identity exception in Rule 404(b) SCRE.

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). “Error is harmless when it could not reasonably have affected the result of the trial.” State v. Reeves, 301 S.C. 191; 194, 391 S.E.2d 241, 243 (1990). “[W]here guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result.” State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d 129, 132 (1984).

Here, the evidence against Appellant was simple. A tall light-skinned male was caught on surveillance footage breaking into Weeks’ automobile. (State’s Exhibit #1). Weeks was unable to identify this individual, but Detective Peppers was able to identify the individual as Appellant after viewing the security footage. (R. 62). Peppers knew Appellant for ten years and was familiar with his appearance. (R. 69). Thus, the jury was presented with clear security camera footage of an individual breaking into a car and a police officer identifying that individual as Appellant based on Peppers’ knowing Appellant for ten years².

Meanwhile, the evidence presented by the State regarding Appellant’s 2014 automobile break in was minimal. Edwards testified that she too experienced an automobile break in in 2014. (R. 56-57). The break in at Edwards home was also caught on tape, but Edwards could not identify the person in the video. (R. 57). The 2014 tape was not played for the jury. (R. 39). However, Peppers testified that he reviewed the 2014 tape and identified Appellant in the video. (R. 59). The State did not introduce evidence of Appellant’s 2014 conviction or elicit any other information regarding the 2014 case.

² The jury would also have been able to view the security footage while seeing Appellant present at trial to make its own determination of whether Appellant was the perpetrator caught on video.

The jury was convinced of Appellant's guilt based on Pepper's identification of Appellant in the Weeks' security video and not Pepper's limited testimony regarding the 2014 break in. The jury was either going to believe the person breaking into Weeks' car was Appellant or it was someone else. Appellant recognized this when he argued in closing: "But nonetheless, it is still your decision to decide on the identity of who was in that video or even in those still pictures. That's your job. And, basically, that's what this whole case boils down to." (R. 116, lines 9-12). Appellant's closing argument accurately summarizes the question of fact before the jury. The jury ultimately determined that Appellant was the individual depicted in the Weeks' surveillance footage and their decision had little if anything to do with Pepper's identification of Appellant in different security camera footage that was not played before the jury. Thus, any error in the admission of evidence of prior bad act evidence against Appellant is harmless. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction 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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