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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Horry County
The Honorable Thomas A. Russo, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

DAVID HAROLD CAMPBELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF 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 the stop was relevant to the case.

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL (ENCOMPASSING APPELLANT'S ISSUES I&II).

Testimony that the three plain clothes officers who were members of an ATF task force were in the neighborhood responding to a drug complaint was admissible to show why the officers were in that neighborhood, and the testimony was not unfairly prejudicial to Appellant because it did not refer to or target Appellant. The evidence failed to amount to even an oblique reference to prior crimes by Appellant, and evidence was overwhelming since law enforcement saw Campbell throw the narcotics after he fled on foot from law enforcement after a high speed chase.

STATEMENT OF THE CASE

A jury convicted Appellant Campbell as charged with failure to stop for a blue light and trafficking between ten and twenty-eight grams of cocaine following jury trial on May 15-17, 2017. His trial counsel conceded Appellant's guilt to the blue light charge during closing argument. R. pp. 243-44. The Honorable Judge Thomas A. Russo sentenced Campbell to thirty years imprisonment for trafficking, third offense, and a concurrent five year sentence for failure to stop for a blue light.

STATEMENT OF FACTS

Three members of the ATF Violent Crimes and Gang Task Force drove to the Ranchette Circle area to respond to a narcotics complaint. R. p. 128; p. 183. They rode in an undercover vehicle. They observed Appellant Campbell sitting in his car, which was backed up in a driveway. When they drove back around the circle, Campbell was still in the driveway. When Campbell saw them, he pulled out of the driveway and drove behind them. R. p. 129; p. 183. The officers were interested in Campbell based on his actions and decided to follow him, at which point he failed to turn his right hand turn signal on when he made a right turn. The officers called Officer Jeremy Crews, who drove a patrol car, to attempt to initiate a traffic stop. R. p. 87; p. 102; p. 130; p. 184.

Officer Crews responded and promptly and activated his blue lights while behind Campbell's vehicle. Campbell did not stop, but instead led law enforcement on a chase where he reached speeds up to 90 m.p.h. and hit a parked car. R. p. 95; pp. 130-31; p. 169. Campbell subsequently lost control of his vehicle and fled on foot into the breezeway of an apartment building. Officer Crews went to one entrance of the breezeway while Officer Neely ran to the other entrance. R. pp. 94-95; p. 132.

Officer Jeremy Neely, one of the task force members in the undercover vehicle, testified he

saw Officer Crews chase Campbell towards the breezeway. Officer Neely ran to the breezeway where he came face to face with Campbell running from the other direction. They stopped and looked at each other from about six or seven feet away before Campbell threw two bags of narcotics up over the rail of the second floor landing. Officer Neely testified he kept his eyes focused on the narcotics and yelled to the others "he threw it." R. pp. 133-36

A recording was in progress during Campbell's ride in the patrol car and he is heard twice on the recording saying, "he saw me throw that [expletive]." R. p. 172; p. 138.

Detective Robert Sauls got a delayed start jumping out of the undercover vehicle, but followed Office Neely into the breezeway. Officer Neely yelled "he threw it up there." So Detective Sauls ran up the stairs and found two baggies on the upper balcony. R. pp. 170-71. When someone opened the door to the apartment on the second floor, Detective Sauls yelled at them to shut the door and stay inside the house. R. p. 180.

The forensic chemist tested the powder in the two bags and determined the bags contained 11.2 grams of cocaine. R. pp. 197-99.

The defense presented two witnesses. Felicia Williams testified she lived on the first floor by the breezeway. She heard a noise, opened the door, saw Campbell being chased by an officer and was told to shut the door. She testified there was a lot of drug activity in the apartments. She claimed she ran upstairs, saw drugs, and told her upstairs neighbor who opened the door. Then Detective Sauls ran up the stairs and told her to go inside. She went into the neighbor's apartment. R. pp. 212-20.

Aliga Campbell was called by the defense. He is Campbell's second cousin. He lived on White Street. He claimed Sandygate is a "chill spot" while White Street is a "hot" neighborhood.

He explained that as far as Sandygate being a chill spot, that meant, "everybody go to chill and, you know, do your thing . . . ." R. p. 228. He claimed White Street is where you sell your drugs. R. p. 229. He claimed he was on a second floor with three other guys smoking marijuana when he heard a loud boom, and becoming scared and paranoid, he threw two bags of drugs on the balcony and closed the apartment door. He then heard somebody yell get in the house. R. pp. 228-30. He claimed the drugs were his and he was testifying because it was the right thing to do. R. p. 230.

The jury did not believe Aliga. The jury convicted Campbell. Supp.R. pp. 1-3.

Alleged concession

Appellant sophistically argues the State conceded the testimony that the plain clothes officers were in the neighborhood was not relevant. Context matters. During a suppression motion, the State argued that Fourth Amendment analysis began with the traffic violation – an obvious reference to the objective test found in Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.E.2d 89 (1996). R. pp. 10-11. The State was not conceding the relevance of the testimony to explain **to the jury** why plain clothes officers that were members of an ATF task force were asking for assistance in a traffic stop.

ARGUMENT

Testimony that the three undercover officers who were members of an ATF task force were in the neighborhood responding to a drug complaint was admissible to show why the officers were in that neighborhood, and the testimony was not unfairly prejudicial to Appellant because it did not refer to or target Appellant. The evidence failed to amount to even an oblique reference to prior crimes by Appellant, and evidence was overwhelming since law enforcement saw Campbell throw the narcotics after he fled on foot from law enforcement after a high speed chase.

Appellant Campbell complains that the three officers from the ATF task-force should not have been allowed to testify that the reason they drove by Campbell when he was parked in the drive-way was because they received a drug complaint from that neighborhood. The testimony was relevant to explain why three plain clothes officers were driving in an unmarked car in the area and was not unfairly prejudicial as they did not testify the complaint was about Campbell or the house where he was parked. Campbell attempts to stack inferences to reach an application of Rule 404(b), SCRE, but the three officers did not testify about any prior bad acts or at all hint Campbell had committed any prior crimes. Any conceivable error is harmless beyond a reasonable doubt since at the end of Campbell's flight, Officer Neely watched Campbell discard the narcotics.

Standard of Review

"It is a well-established rule of law that the trial judge has broad discretion concerning the admission of evidence. That discretion will not be overturned on appeal unless clearly abused." State v. Quillien, 263 S.C. 87, 91, 207 S.E.2d 814, 816 (1974). The admission or exclusion of evidence 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 error without prejudice

does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005).

"Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012).

The testimony was relevant and the probative value was not outweighed by the danger of unfair prejudice.

For evidence to be admissible, it must be relevant. Rule 402, SCRE. Relevant evidence is "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." Rule 401, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved." State v. Sweat, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App.2004). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006). A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App.2004).

In the instant case, the evidence was relevant to establish the reason plain clothes officers were in the neighborhood. Because the testimony did not target Campbell personally, it was not prejudicial. The State did not suggest that Campbell was the target of the complaint. State v. Brown, 317 S.C. 55, 451 S.E.2d 888 (1994) (finding testimony by officers that they received

complaints in the neighborhood was not for truth of the matter asserted but to explain why the officer's began surveillance).

Campbell argues the facts of this case are closer to German v. State, 325 S.C. 25, 478 S.E.2d 687 (1996) rather than Brown. In Brown, the officers provided testimony that they received complaints while in the neighborhood before setting up surveillance of Brown's residence. The Supreme Court rejected Brown's complaint that the statement constituted hearsay because it was not for the truth asserted but to explain why the officer's began surveillance. Brown, 317 S.C. at 63, 451 S.E.2d at 894. Like Brown, the complaint about drug activity in the area in the instant case was admitted to explain why three plainclothes officers from an ATF task force were driving in the area.

In German, the Supreme Court found trial counsel was found ineffective for failing to object to the prosecutor's opening argument that undercover officers "had several tips" that German "was distributing or selling crack cocaine." Counsel was also ineffective for failing to move to strike or request a curative instruction after objecting to testimony from an officer suggesting that he "had been receiving information for a little while" about German. The Supreme Court found the PCR court erred in denying relief based on Brown because in Brown, "the statements did not refer specifically to the defendant's character. The statements referred to drug activity in the apartment complex in which the defendant lived." German 325 S.C.at 27, 478 S.E.2d at 688. The Supreme Court concluded, "Here, the statements specifically refer to petitioner and are objectionable." Id.

Like Brown, the officers did not refer to Campbell or his character, but merely stated they received complaints about drug activity in the area where they drove. Unlike German, the officers never testified that Campbell was the subject of the complaints or information. Therefore, the testimony was not character evidence and was properly admitted to explain why the officers were

present in the area as in Brown.

As the trial court noted, the testimony was admissible as res gestae. State v. McGee, 408 S.C. 278, 288, 758 S.E.2d 730, 735-36 (Ct. App. 2014) ("When evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae.") (internal quotation marks omitted) (quoting State v. Preslar, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005)). It is understandable the prosecution would not want to leave gaps in evidence for the jury to question. Explaining why three plain clothes officers that were members of an ATF task force were in an unmarked vehicle in a residential neighborhood would have left a gap for the jury to ponder. Answering this question in a way that did not target Campbell specifically was reasonable and not prejudicial.

Rule 404(b), SCRE was not raised and is not applicable.

Campbell also includes a Rule 404(b), SCRE argument for good measure. But the prosecution did not provide any evidence of a prior bad act. See State v. Robinson, 238 S.C. 140, 150-51, 119 S.E.2d 671, 676 (1961) (finding testimony by a witness that Robinson told him that he was on the way to the probation office did not create an inference that Robinson was convicted of another crime) *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). To arrive at this conclusion requires a hefty inference the jury was unlikely to make: Campbell maybe recognized the officers even though they were in plain clothes because he knew them; and they reason he may know them is because of unspecified past dealings with them.

Also, because counsel never argued that the testimony amounted to evidence of a prior bad act, any argument as to the application of Rule 404(b) is not preserved for review. The ground asserted on appeal must be supported by the objection raised at trial. State v. Silver, 314 S.C. 483,

486, 431 S.E.2d 250, 251 (1993). An argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal). Campbell never argued Rule 404(b) applied, therefore the argument is not preserved for review.

But here is the irony: at trial defense counsel wanted the jury to believe Campbell had prior contacts with law enforcement as an alternate reason for Campbell to flee other than for the obvious reason he possessed trafficking levels of cocaine. Defense counsel asked Officer Crews if it would surprise him to know that when law enforcement turned their blue lights on and Campbell sped up, "he was wanted by the Horry County Police." R. p. 112, lines 18-20. Officer Crews agreed that if the incident report indicated Campbell had an outstanding warrant, he had a warrant for his arrest when he was being chased. R. p. 113, lines 6-9. Any inference that Campbell knew the officers would support his alternate explanation for his flight.

Mistrial was not warranted and any error is harmless.

The testimony did not warrant a mistrial and any error was harmless, as the testimony was not unfairly prejudicial. See State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (finding no prejudice resulted from the admission of testimony establishing that law enforcement already had Council's fingerprints on record at the time of his arrest for the charged offense: "In this case, it is questionable whether the jury even understood the implication of Count's statement."); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding an arresting officer's vague references to prior crimes in the jury's presence did not warrant the granting of a mistrial) *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] 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."). In the instant case, the testimony made no reference to Campbell, so it was not prejudicial and it certainly did not require a mistrial. The supposed error would be harmless in light of the overwhelming evidence of guilt since Campbell discarded the cocaine in front of law enforcement and he admitted he discarded the narcotics in front of law enforcement. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

Respectfully submitted

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