

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Sep 16 2020
SC Court of Appeals

Appeal from York County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKEY DEAN TATE,

APPELLANT

APPELLATE CASE NO. 2019-001856

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial court erred by admitting evidence that appellant was on supervised release when he was arrested on these charges.....4

Relevant facts.....4

Discussion.....6

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

German v. State, 325, S.C. 25, 478 S.E.2d 687 (1996) 8

State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991)..... 7

State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009) 3

State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999)..... 7

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)..... 7

State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986)..... 7

State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012)..... 3

Rules

Rule 401, SCRE7

Rule 402, SCRE7

Rule 403, SCRE7

Rule 404(b), SCRE7, 8

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting evidence that appellant was on supervised release when he was arrested on these charges?

STATEMENT OF THE CASE

On February 7, 2019, a York County grand jury indicted appellant for possession with the intent to distribute (PWID) cocaine base, PWID cocaine base within the proximity of a school, PWID heroin, and PWID heroin within the proximity of a school. *R. Appellant was tried on October 21, 2019, before the Honorable Jocelyn J. Newman and a jury. Montrio Belton and Jim Morton represented appellant, and Marina Hamilton and Amber Holt represented the state. Tr. 1.

On October 24, 2019, the jury found appellant guilty of PWID cocaine base and not guilty of PWID cocaine base within the proximity of a school, PWID heroin, and PWID heroin within the proximity of a school. Tr. 359, ll. 3-14. Judge Newman sentenced appellant to life without the possibility of parole. Tr. 382, ll. 5-7.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. *State v. Whitner*, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Whitner*, 399 S.C. at 557, 732 S.E.2d at 866.

ARGUMENT

The trial court erred by admitting evidence that appellant was on supervised release when he was arrested on these charges.

Relevant facts

On May 16, 2018, officers with the York County Drug Enforcement Unit went to a known “drug house” for the purpose of executing a search warrant. Tr. 89, ll. 12-17. The entire event was captured on officer Christopher Rowe’s body camera. Tr. 98, l. 11-99, l. 1. Inside the home were residents Tyrequus Tolbert, Brandi Eades, and Herman Leach, as well as five other individuals including appellant.

When officer Rowe entered the residence, he saw appellant turn and go towards the back of the house. Rowe followed and discovered appellant, Eades, Tolbert, and another woman in the back bedroom of the home and proceeded to handcuff all of them. At trial, Rowe testified that when he entered the bedroom, appellant was turned away and appeared to be trying to throw something out of the window of the bedroom. When appellant turned towards Rowe a bag of marijuana fell from one of his hands, and he immediately told officers the marijuana belonged to him. Tr. 93, l. 13-95, l. 16.

After searching Rowe found no drug evidence outside of the window. Tr. 97, l. 24-98, l. 7. Rowe testified that later, after he left the room, another officer, Matthew Earls, found a clear bag on the floor near the window containing cocaine base. Although he did not notice the drugs when he entered the room, Rowe claimed that upon review of his body camera video he saw the bag of cocaine base that he believed appellant was trying to throw out of the window. Tr. 117, ll. 11-17. In addition, a bag of what appeared to be oxycodone was found in the hallway appellant had been seen going down. Tr. 111, ll. 3-5. The bag of oxycodone was analyzed and found to

be heroin. Tr. 119, ll. 8-9.

That day appellant was arrested and charged with possession of marijuana. Appellant was later charged with PWID cocaine base, PWID cocaine base within proximity of a school, PWID heroin, and PWID heroin with proximity of a school. Tolbert was charged with possessing cocaine base for a small amount of cocaine base that was found with a pipe on a dresser. None of the other six individuals were charged in relation to the drug evidence found that day in the home. Tr. 204, l. 15-205, l. 15.

During pre-trial motions, defense counsel asked how much of the body camera video, state's exhibit 3, the state intended to show at trial. Tr. 53, l. 15-55, l. 2. The state responded it only intended to introduce the beginning of the video as evidence. Tr. 55, ll. 3-7. Defense counsel also requested the state address any other prior bad act evidence. The solicitor responded the state did not intend to introduce any prior bad acts evidence unless appellant took the stand. Tr. 55, ll. 8-22.

During Officer Rowe's testimony, state's exhibit 3, the body camera video, was admitted.¹ Tr. 100, ll. 2-6. The video was paused and played for the jury so that Rowe could illustrate exactly what he saw appellant do when Rowe entered the bedroom. Several times the video was paused so that Rowe could point out what he alleged was the later discovered bag of cocaine base. Tr. 101-03.

On cross-examination, defense counsel replayed state's exhibit 3, the body camera video. Rowe was questioned extensively about what exactly he saw when he entered the bedroom where appellant and the other individuals were located. Rowe admitted he did not see the bag of cocaine base when he entered the bedroom. Tr. 175, ll. 2-19. Defense counsel played a later

¹ This exhibit is on file with the Court.

portion of the video for the jury that shows Officer Earls telling Rowe that he found a bag of cocaine base underneath a dresser in the bedroom. Tr. 173, ll. 7-16.

On re-direct, the solicitor stated, "I do want to highlight one other thing that was not highlighted." The solicitor then played a later portion of state's exhibit 3, the body camera video, and asked Rowe what he heard on the video. Over defense counsel's objection, Rowe replied that it was dispatch radioing back that appellant "was on supervised release status." Tr. 211, ll. 2-25.

Later, outside the presence of the jury, defense counsel argued that Rowe's testimony was objectionable because it needlessly referenced appellant's character and that the prejudicial effect of this testimony far outweighed any probative value the testimony might have. Without any response from the state, the court found defense counsel waived any argument regarding the objectionable nature of this portion of the video because the defense introduced the later portion of the video during its cross-examination of Rowe. The court also stated the objection was previously overruled because what the jury saw was an accurate depiction of what occurred on the video, and the solicitor was instructed not to ask the witness to editorialize regarding what supervised release was or ask any questions regarding supervised release. Tr. 219, l. 7-220, l. 1.

The state called Brandi Eades, a resident of the home, as a witness. She claimed that while she and Tolbert had previously used and sold cocaine base, the drugs found in her home that day belonged to appellant. Tr. 238, ll. 15-25; 240, ll. 15-23; 255, ll. 14-20

Discussion

Evidence is relevant if it "ha[s] 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; *State v. Schmidt*, 288 S.C. 301, 342 S.E.2d 401 (1986);

State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). All relevant evidence is admissible, unless constitutionally, statutorily, or otherwise provided. Rule 402, SCRE. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE.

South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan, or (5) the identity of the perpetrator. Rule 404(b), SCRE; *State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

The trial court erred in allowing the state to “highlight” the fact that appellant was on supervised release when he was arrested for these charges. At trial, appellant asserted his constitutional right to remain silent and did not introduce his character into evidence. There was no argument from the state about why appellant’s supervised release status was probative. Moreover, the trial court failed to conduct the required analysis for admitting evidence of appellant’s prior bad acts. The trial court simply concluded defense counsel had waived any argument about this portion of the body camera video because the defense had played additional portions of the body camera video during its cross-examination of Officer Rowe. However, defense counsel was not objecting to the body camera video but to Rowe’s testimony, which improperly emphasized to the jury what could be heard on the video.

The evidence that appellant was on supervised release had absolutely no probative value in this case and instead was used by the state to prejudice appellant. The case against appellant hinged on whether the jury believed appellant had attempted to throw the drugs out of the window when the police arrived to search the home. Appellant was not a resident of this “known

drug house” and was simply in the wrong place at the wrong time. Brandi Eades readily admitted she had used and sold cocaine base out of her home. The residents of the home were the more probable culprits. The jury, according to their verdict, declined to believe the other bag of drugs found at the house belonged to appellant. Thus, the state slipping in the fact that appellant had previously been convicted right at the end of Rowe’s testimony was extremely prejudicial to appellant. Rowe’s testimony improperly signaled to the jury that it should consider that appellant had already been convicted of a crime and had only recently been released, instead of focusing on the lack of evidence tying appellant to the drugs found in this case.

The testimony of Rowe specifically referred to appellant and was objectionable because it was an improper comment on appellant’s character. *See German v. State*, 325, S.C. 25, 27, 478 S.E.2d 687, 688 (1996). Evidence that appellant was previously convicted of a crime and was under supervised released when he was arrested on these charges was a violation of the evidentiary rule against presenting evidence of other crimes, wrongs, or acts. *See* Rule 404(b), SCRE. The trial court’s error prejudiced appellant, and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand for a new trial.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2020.

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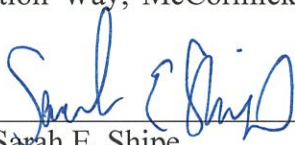
V.

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blicht, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 16th day of September, 2020; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Rickey Dean Tate, #261418, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 16th day of September, 2020.



Sarah E. Shipe
Appellate Defender
ATTORNEY FOR APPELLANT