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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of General Sessions
The Jocelyn J. Newman, Circuit Court Judge

Appellate Case No. 2019-001856

THE STATE,

Respondent,

v.

RICKEY DEAN TATE,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

An appellant may not complain on appeal about evidence introduced by his own attorney. Tate's lawyer published a portion of a body-worn camera video wherein a police dispatcher can be heard saying Tate was on "supervised release status." The parties originally agreed this part of the video would not be admitted, but defense counsel published it anyway. A witness then repeated the statement. Did the court abuse its discretion by not excluding this testimony?

STATEMENT OF THE CASE

A York County grand jury indicted Appellant Rickey Tate for four drug crimes: possession with intent to distribute (PWID) cocaine base, PWID cocaine base in proximity to a school, PWID heroin, and PWID heroin in proximity to a school. Tate proceeded to jury trial before the Honorable Jocelyn J. Newman on October 21–24, 2019. He was convicted on both PWID counts, acquitted on both proximity counts, and sentenced to mandatory life imprisonment due to prior convictions. (R.p.359). This direct appeal follows.

STATEMENT OF FACTS

On May 16, 2018, officers with the Rock Hill Police Department executed a search warrant on a mobile home on Leach Road in Rock Hill. (R.p.89). Police were conducting a narcotics distribution investigation and had made undercover drug purchases at the home. (R.p.48). Upon making entry into the mobile home, Officer Christopher Rowe saw Appellant Rickey Tate standing at the corner of the hallway and kitchen. (R.p.93). When Tate saw police, he ran down the hallway to the back bedroom. (R.p.93). Once in the bedroom, Tate attempted to throw something out of a window. (R.p.94). He then turned toward an officer and dropped a bag of marijuana onto the floor. (R.p.94). The officer's body-worn camera recorded the interaction. (State's Exhibit #3).

Brandi Eades, one of the occupants of the room, testified and corroborated Rowe's testimony. (R.p.239). She testified Tate was "doing something at the window" as officers came in. She testified there was no bag of crack on the floor before Tate ran in, and that she would have noticed if there had been. (R.p.239–40). On the incident date, she told police the crack belonged to Tate. (R.p.251).

Police recovered a bag containing 30 grams of crack cocaine near the spot by the window where Tate threw something. (R.p.95; 98; 117). The glass window was open, but there was a screen over the opening so that a small object thrown at the window would bounce back inside. (R.p.95). Three other people were in the room, but they were not by the window and did not throw anything. (R.p.96). Altogether, there were six people at the home when police executed the warrant. (R.p.150).

Police detained the occupants in the living room while officers searched the home. Police recovered a bottle of blue pills at the corner of the kitchen and hallway, where Tate had been standing when police entered the home. (R.p.113). The pills were later determined to contain heroin. (R.p.112–13). Tate was charged in connection with the heroin found in the hallway and the crack in the bedroom.

STANDARD OF REVIEW

A trial judge's evidentiary rulings are reviewed for an abuse of discretion. The appellate court reviews a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and is obligated to give great deference to the trial court's judgment. State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014). The scope of redirect rests in the discretion of the trial court. State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984).

ARGUMENT

Tate cannot complain on appeal about the admission of evidence introduced by his own lawyer at trial. Even if erroneously admitted, any error was harmless.

Tate cannot complain on appeal about evidence introduced by his own lawyer at trial. Because Tate opened the door to the content of the video by introducing it into evidence and publishing it to the jury, the officer's repetition of the statement was proper. Even if erroneously admitted, the isolated comment did not affect the result of trial. Accordingly, Tate suffered no prejudice. This Court should affirm.

A. Defense counsel opened the door to the contents of the video by publishing it to the jury.

The exhibit in question is a video taken on Officer Rowe's body-worn camera during the execution of the search warrant. The trial court convened a pretrial hearing concerning the admissibility of the video's contents. The video was relevant because it showed Tate throwing away drugs as officer's entered the home. The video went directly to the dispositive issue in the case: whether Tate had the drugs in his possession.

Tate objected to the publication of a portion of the video showing the six occupants of the home being detained while officers searched the home. In this section of the video, Tate admits to officers that he had just been in possession of marijuana. The prosecutor said she did not intend to introduce this portion of the video, including Tate's admission about the marijuana. (R.p.52–54). The State and defense agreed before trial that the video would be stopped at the point when the occupants of the home were detained together in the living room.

At trial, the State admitted the video without objection. The State published the video during Officer Rowe's direct examination while he narrated events. Before beginning his cross-examination, defense counsel back-tracked on his pretrial objection, informing the court that he now planned to show the entire video of the home's six occupants detained in the living room. The prosecutor noted that defense counsel had previously objected to the publication of this portion of the video. Defense counsel responded that "**if we show it, then, obviously, we've opened the door** and our objection is what it is." (R.p.139) (emphasis added).

During his cross-examination, defense counsel published the remainder of the video for the jury. He specifically highlighted and questioned Officer Rowe about communications between officers on scene and the police dispatcher. (R.p.197–98). During this portion, the dispatcher relayed to officers on scene which of the occupants had outstanding warrants or other outstanding legal issues. Among the dispatcher's statements was a comment that Tate was on "supervised release status." (State's Exhibit #3 around 31:30). Defense counsel questioned Officer Rowe specifically about the dispatcher's statements relating to the other occupants. He emphasized that some of them had pending arrest warrants, including warrants from the drug enforcement unit. (R.p.197–98). He inquired about the significance of those arrest warrants. The clear implication of defense counsel's questions was that those occupants with pending arrest warrants were more likely to possess drugs and that Tate was merely at the wrong place at the wrong time.

On re-direct, the prosecutor replayed the same portion of the video and asked Officer Rowe about "one significant portion that's relevant to Mr. Tate. . . . What did he just say?" Officer Rowe responded: "That was dispatch radioing back that Mr. Tate was on supervised release status." (R.p.211). Defense counsel objected.

The trial court later allowed defense counsel to put his objection on the record. Defense counsel stated he objected to "the testimony being highlighted about Mr. Tate's supervised release," arguing the question improperly put Tate's character into issue. (R.p.219). The trial court overruled the objection, but instructed the prosecutor not to inquire further, explaining:

> I find the defense waived any argument about that when it introduced— that's not something that was introduced by the State. There was great debate earlier abut which portions of the video would be introduced by the State in its case in chief. **That portion of the video was introduced by the defense.** The objection was previously overruled because it was an accurate depiction of what occurred on the video. Counsel was instructed not to ask the witness to editorialize in any way, to explain what supervised release is or ask him any questions whatsoever about the supervised release, but the fact that he was on supervised release was stated on the video.

(R.p.219) (emphasis added).

The trial court correctly ruled Tate waived any objection to the contents of the video by publishing it to the jury. Tate may not now be heard to complain of the admission of evidence elicited by his own counsel. State v. Washington, 315 S.C. 108, 110, 432 S.E.2d 448, 449 (1992); State v. McFadden, 318 S.C. 404, 410, 458 S.E.2d 61, 64–65 (Ct. App. 1995) (no error in admission of hearsay "because defense counsel, not the solicitor, elicited this testimony"). When defense counsel published the video to the jury, he opened the door to questions about its contents. State v.

Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) (explaining "[o]nce appellant's counsel initiated the questioning concerning McDowell's prior acts of theft, the State was free to question him as to the details of any prior crime involving the stealing of money"); State v. Sullivan, 277 S.C. 35, 45, 282 S.E.2d 838, 844 (1981) (explaining defense counsel's "question opened the door for [witness]'s response"). An appellant cannot be heard to complain on appeal of alleged error they voluntarily committed at trial. State v. Sullivan, 277 S.C. 35, 44, 282 S.E.2d 838, 843 (1981).

Tate complains that, even though his own lawyer published the comment to the jury, the prosecutor should not have been allowed to "highlight" the comment. But once defense counsel published the video, the cat was out of the bag; the jury could not "un-hear" the evidence. The trial court did not commit reversible error by allowing the witness to simply repeat what the jurors had just heard, especially when the court instructed the prosecutor not to elaborate on the meaning of "supervised release" or comment on the statement in any other way. Any prejudice that resulted was the fault of defense counsel.

Furthermore, defense counsel made the criminality of the detained suspects a jury issue. The obvious purpose of his questioning was to suggest that those with active warrants—not his client—were responsible for the drugs in the house. Tate should not be heard to complain about the simple repetition of the dispatcher's comment relating to him when he commented at length about the criminal history and warrant status others in the home. This Court should affirm.

B. The comment did not affect the result of trial.

Even if erroneous, the trial court's ruling does not rise to the level of reversible error. Error is harmless when it could not reasonably have affected the result of the trial. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150,151 (1985).

As discussed above, any prejudice to Tate resulted from defense counsel's publication of the comment in the first place. The prosecutor simply asked the witness to repeat the statement. The trial court instructed the prosecutor not to elicit any elaboration about the meaning of "supervised release status," and the prosecutor made no further comment about the statement.

Furthermore, even if the jurors equated Tate's "supervised release status" with a prior criminal history, this comment was insignificant to the disposition of the case. There was no indication that Tate's prior legal issue was drug-related, and no mention was made of Tate's prior drug convictions. More importantly, the material facts in dispute—whether Tate threw away drugs as officers entered the bedroom—were captured on video for all to see. The jury made their determination of guilt based on this evidence, not the vague, isolated comment Tate complains of. Any error was harmless. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court 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."

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