

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Mar 25 2021

SC Court of Appeals

APPEAL FROM Horry COUNTY
Court of General Sessions
The Honorable Thomas A. Russo, Circuit Court Judge

Case No. 20142017-001229

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

KATHY LEONARD REVAN,

APPELLANT.

PETITION FOR REHEARING

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ATTORNEY FOR APPELLANT

NOW COMES, Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. *The State v. David Harold Campbell* (S.C. Ct. App. filed March 10, 2021) Unpublished Opinion No. 2021-UP-074. Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by this Honorable Court in the opinion in question. In support of this position, the Appellant would show unto this Court the following.

Appellant's Issue I

Appellant respectfully submits that the opinion of this Court erroneously references the objectionable testimony as being solely "*Detective Jeremy Neely's testimony that he and another officer were investigating a narcotics complaint in the area prior to initiating the traffic stop.*" Unpublished Opinion No. 2021-UP-074, Section 1, page 2. The opinion goes on to state that, "*Detective Neely's testimony did pose a risk of undue prejudice because it did not reference Campbell and did not suggest a decision on an improper basis.*" Appellant respectfully submits that other portions of the testimony objected to by Appellant did specifically identify Appellant as some the officers recognized. Detective Neely expressly identified "the Defendant" as the person they observed with his car was backed into the driveway and as the individual who pulled in behind their car and left the area after "he saw us." Actions which were described by Detective Neely as, "*behavior that would draw our attention.*" Reap. 129, lines 6 – 9.

The record below clearly indicates that Defense Counsel objected not just to the reference to law enforcement being in the area to investigate a narcotics complaint, but also to the highly prejudicial testimony that Appellant was spotted in the area they were investigating a narcotics complaint backed into the driveway of a house and that after he "*saw us and then pulled in*

behind us and left the area, which is behavior that would draw our attention.” Appellant spotted them, he pulled behind them; behavior which Detective Neely was allowed to assert, “*which is behavior that would draw our attention.”* Thus, Appellant most respectfully asserts that the opinion in this case incorrectly concludes that the evidence objected to by Appellant, “*did not pose a risk of unfair prejudice because it did not reference Campbell and did not suggest a decision on an improper basis.*”

Furthermore, the objection at trial was not limited to the testimony of Detective Neely. As previously noted, and fully argued in the Brief of Appellant, Appellant objected to the State’s introduction of irrelevant and highly prejudicial testimony concerning matters which took place before the traffic stop in this case where the State conceded the stop, and this case, began as a traffic stop. Issue I, was presented in this appeal on that basis. This distinction is significant since, in addition to Detective Neely, Agent Sauls (ROA.p.129, lines 1-4; ROA.p.168, lines 13-24) and Agent Rhew (ROA.p.183, lines 12 – 24) both testified to the team recognizing Appellant, to him being backed up in the driveway at a house in the area where they were investigating a narcotics complaint, and to Appellant allegedly behaving in a manner that caused them to decide to follow him. As argued at length in Appellant’s Brief, all this testimony was both irrelevant and highly prejudicial especially since the State not only conceded, but argued vehemently that the reason for the stop was a traffic violation.

Appellant’s Issue II

Appellant respectfully asserts that the opinion of this Honorable Court on this issue relies solely on the broad discretion afforded Judges in deciding whether to take the extreme measure of granting a mistrial. The opinion completely overlooks the fact that the prosecution totally ignored its commitment, on the record, to limit the testimony they presented for the purpose of

explaining why the officers were in the area to testimony that established they were in the area because they were investigating a narcotics complaint. ROA. p.125, line 25 – p. 126, line 1. Appellant respectfully submits that the opinion issued in this suggests that the Court may have overlooked or misapprehended his argument that the Trial Judge abused his discretion in denying Appellant’s motion for a mistrial where the state failed to honor it’s agreement to limit testimony on the explanation for the presence of these offices in the area to a simple explanation that they were in the area investigating a narcotics complaint and where as discussed in detail in the Brief of Appellant. The trial judge clearly expressed his finding that all that was necessary to explain the presence in the area at the time they made what they clearly claimed was a traffic stop based solely on a traffic violation. As noted above, the testimony in question clearly did imply to the jury that Appellant, and his car, were recognized by these three narcotics officers, that he was perceived by them as acting suspiciously and that his behavior prompted them to follow him. All this testimony had nothing to do with the probable cause for the traffic stop, was irrelevant and breached the parameters of the testimony that the prosecutor had agreed to honor.

CONCLUSION

Based upon the foregoing, Appellant now respectfully asks that he be granted rehearing.

Respectfully submitted,

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DAVID HAROLD CAMPBELL,

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CERTIFICATE OF SERVICE

Undersigned Counsel hereby certifies that a copy of Appellant's Petition for Rehearing has been digitally served upon opposing Counsel, David A. Spencer, Senior Assistant Attorney General, at the email address set forth below on today's date, March 25, 2021.

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This the **25th** day of March, 2021