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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEE ANTHONY CORLEY,

APPELLANT.

APPELLATE CASE NO. 2020-000214

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Appellant did not abandon his argument on appeal that the drug use evidence was not admissible pursuant to the theory of *res gestae* because the evidence was not necessary to a full presentation of the state's case, nor did it explain appellant's alleged confessions, which appellant argued in his initial brief. Further, the improper drug use evidence was not probative of appellant's motivation or intent where there was no evidence presented that appellant's alleged use of methamphetamine motivated him to kill the decedent.

Respondent claims that appellant failed to cite authority about the inapplicability of *res gestae* and therefore abandoned this argument on appeal. IBOR at 23. Contrary to respondent's assertion, appellant did argue in his initial brief that the drug use evidence was inadmissible under the *res gestae* theory because the drug use was "totally unconnected" to the decedent's death and was not necessary to a full presentation of the state's case. IBOA at 18. Appellant cited to State v. Smith, 309 S.C. 442, 446, 424 S.E.2d 496, 498 (1992), in which the Supreme Court found that the defendant's alleged drug use was inadmissible for several reasons, including *res gestae*.

"An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011); see also State v. Howard, 384 S.C. 212, 217-18, 682 S.E.2d 42, 45 (Ct. App. 2009) (finding that appellant's argument that the trial court erred in refusing to grant a mistrial was abandoned on appeal because he failed to cite any authority to support that argument); State v. Tyndall, 336 S.C. 8, 16-17, 518 S.E.2d 278, 282-83 (Ct. App. 1999) (finding that appellant abandoned his reliance on several cases he cited in his brief because there was no discussion of the cases or of their applicability to his situation). "[S]hort, conclusory statements

made without supporting authority are deemed abandoned on appeal and therefore not presented for review.” Glasscock, Inc. v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691-92 (Ct. App. 2001).

As appellant argued in his initial brief, “[the] drug evidence was unnecessary to a full presentation of the state’s case because it was not required to explain why appellant knew the witnesses, and it was not required to explain why appellant allegedly confessed to Coleman and Rupert.” IBOA at 18. Appellant also detailed the other ways that he was connected to the state’s witnesses that did not pertain to drug use, e.g., friends, neighbors, and sexual partners. IBOA at 15. Appellant further explained the illogical position of the state that appellant’s alleged confession to the state’s witnesses was explained by their drug use. IBOA at 17. Appellant did not abandon his argument on appeal that the drug use evidence was not necessary to a full presentation of the state’s case and therefore not admissible pursuant to *res gestae*.

Respondent next argues that the trial judge correctly allowed the evidence of appellant’s drug use into evidence because the evidence was admissible under the *res gestae* theory. IBOR at 23. Respondent maintains that the drug use evidence was not used to attack appellant’s character but instead was used to “provide context for the events” and was “inextricably intertwined with appellant’s crimes.” IBOR at 26-27.

Contrary to respondent’s assertion in his initial brief, appellant’s case is markedly different from State v. Dickerson, 341 S.C. 391, 535 S.E.2d 119 (2000). As respondent failed to provide any details as to how Dickerson was like appellant’s case, it is difficult to discern in what way respondent believes appellant’s case to be similar to Dickerson. Nevertheless, in Dickerson, the state presented expert testimony that clearly connected the defendant’s drug use to the “overkill” of the victim who had been stabbed twenty-five times. Id. at 395, 535 S.E.2d at

120-21. The state's expert testified as to her own personal experience in "overkill" cases which she had only seen in "lover's quarrel" situations or where the assailant was under the influence of drugs. Id.

The Supreme Court in Dickerson held that the drug use evidence was admissible in light of the expert testimony because it served to identify the defendant as the murderer. Id. at 397, 535 S.E.2d at 122. The Court also noted in closing that the drug use evidence would have been admissible under the theory of *res gestae* even though the state had not argued that. The Court cited State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) which held that the temporal proximity of the defendant's drug use made the drug use "so much a part of the 'environment' of the crime that omitting the evidence of it would unnecessarily fragmentize the state's case." Dickerson, 341 S.C. at 400, 535 S.E.2d at 123, quoting Adams, 322 S.C. at 122, 470 S.E.2d at 371.

In Adams, the defendants were smoking crack together and when they ran out of crack, they committed an armed robbery and used the proceeds to buy more crack which they immediately smoked together. Adams, 322 S.C. at 116-17, 470 S.E.2d at 368. When the defendants ran out of crack a second time, they committed another armed robbery and a murder. The defendants again used the proceeds of the robbery to purchase more drugs. Id. at 117, 470 S.E.2d at 368. Thus, the Court found that the evidence showed the robberies were motivated by the defendants wanting to get more money to buy more drugs. Id. at 121, 470 S.E.2d at 370. The Court further found that the drug use was so intertwined with the commission of the robberies that it was admissible as part of the *res gestae*. Id. at 122, 470 S.E.2d at 371.

Appellant's case is readily distinguishable from the situation in Dickerson as there was no expert testimony connecting appellant's alleged drug use to the murder or to his alleged

delusions. As appellant argued in his initial brief, the theory that appellant's paranoid delusions were caused by his alleged drug use was pure speculation and not supported by probative evidence. IBOA at 15. Also, unlike Dickerson, appellant's identity was not in dispute and the evidence of drug use was not used to identify appellant as the murderer.

Appellant's case is also distinguishable from Adams where the drug use was "inextricably intertwined" with the robberies and murder because the defendants used drugs, committed a robbery to buy more drugs, ran out of drugs, and committed another robbery to buy more drugs. In appellant's case, the drug use evidence was not necessary to a full presentation of the state's case, nor was it necessary to furnish the context of the crime. Therefore, the drug use evidence was not admissible pursuant to the theory of *res gestae*.

Respondent next argues that the evidence of appellant's drug use was admissible under Rule 404(b), SCRE as evidence of appellant's motive and intent. IBOR at 29. Specifically, respondent maintains that appellant's motivation for killing the decedent was based upon his alleged paranoid delusions, which were allegedly the result of his drug use. IBOR at 30. Respondent's position is not supported by the record because there was never any expert testimony to connect appellant's alleged delusions to drug use as was the case in Dickerson. Furthermore, there was no testimony that appellant was motivated to kill the decedent because of his drug use or that he intended to kill her because of his drug use. These arguments are purely speculative by respondent and not supported by the record.

Finally, respondent argues that any error in the admission of evidence of appellant's drug use was harmless. Respondent claims that the state presented overwhelming evidence of appellant's guilt and that "no other rational conclusion could be drawn" from the evidence presented. IBOR at 30-31.

“An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result.” State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). “In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt.” State v. Watts, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996). In State v. Smith, 309 S.C. 442, 447, 424 S.E.2d 496, 499 (1992), the Supreme Court found that evidence of the defendant’s prior drug use was not harmless beyond a reasonable doubt because it was destructive to the defendant’s character, and therefore her credibility, and witness credibility was crucial to the outcome of the case since the state and defense had presented “diametrically opposite versions of what occurred.”

In appellant’s case, the state’s theory was that appellant strangled the decedent to death because he believed she was spying on him. Appellant’s codefendant, Haley Coleman, testified that she was at appellant’s house when he returned home from court and that appellant confessed to her and their friend Jake Rupert. R. 473, l. 15 – 474, l. 23. Coleman then said she helped appellant dispose of the decedent’s body. R. 480, l. 1 – 481, l. 19.

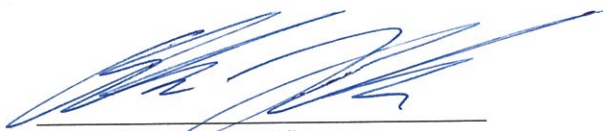
Appellant’s version of events was diametrically opposed to Coleman’s. Appellant’s defense was that Coleman killed the decedent in a jealous rage after arriving at appellant’s house to find him with another woman – the decedent. Specifically, appellant maintained that Coleman “football tackled” the decedent to the ground. Appellant heard a “crunch” when the decedent hit the ground and appellant left because he had to go to court. Appellant told Coleman that he wanted his house to look “like nothing happened” when he returned. When appellant returned from court, nobody was at his house. Appellant denied being involved in helping Coleman dispose of the decedent’s body. R. 163, l. 6 – 165, l. 23. Appellant also presented an expert

witness in forensic pathology, Nicholas Batalis, who testified that the decedent's injuries were most likely caused by blunt force trauma to her chest and that her injuries could be explained by having been forcefully tackled to the ground by a larger person. R. 601, ll. 11 – 14; R. 606, ll. 4 – 11.

Respondent misconstrues the record in arguing that “no other rational conclusion could be drawn” from the evidence other than appellant’s guilt. Appellant presented a coherent theory as to his innocence of murder, which was supported by an expert witness in forensic pathology. The drug use evidence, like in Smith, was destructive to appellant’s character and his credibility. The credibility of appellant and the state’s witnesses was the central factor in appellant’s case and therefore, the drug use evidence cannot be said to have been harmless beyond a reasonable doubt. Appellant’s convictions should be reversed given this extremely prejudicial evidence that was not part of the *res gestae* and was not relevant to appellant’s motive or intent.

CONCLUSION

For the reasons argued in appellant’s initial brief, and in this reply brief, this Court should reverse appellant’s convictions and remand this case to the Lexington County Court of General Sessions for a new trial.



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This 11th day of October, 2021.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant 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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