IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CAMERON A. HOLMES,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D10-4536

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed February 14, 2012.

An appeal from the Circuit Court for Duval County.
Mark H. Mahon, Judge.

Terry P. Roberts, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Donna A. Gerace, Assistant Attorney General, Tallahassee, for Appellee.

VAN NORTWICK, J.

Cameron A. Holmes appeals his conviction for manslaughter and carrying a concealed weapon. He raises six issues, five of which we affirm without

discussion. We write to address his contention that the trial court erred in denying his motions in limine and allowing evidence that he was a drug dealer and that police found drugs in his room on the date of his arrest. We hold this evidence of his drug dealing was inextricably intertwined with evidence of the crime and, further, that it was relevant to explain his state of mind when he returned armed to the scene of an earlier altercation with the victim. Accordingly, we affirm.

On May 17, 2006, Ronald Rawlinson, an admitted crack user, met appellant at the end of Sue Lane, where Rawlinson lived, and negotiated the purchase of some cocaine. Rawlinson could not pay the full price for the cocaine, and appellant agreed to take a small sum, accepting Rawlinson's promise that he would pay the remainder the next day. Appellant gave Rawlinson a piece of paper with the name T.Z. on it and two telephone numbers.

When Rawlinson did not call him the next day, appellant returned to Rawlinson's neighborhood. There was evidence that he was looking in the windows of the home belonging to Joe Lloyd, the victim. Lloyd confronted appellant, pushed him, and told him to get out of the neighborhood while picking up appellant's bicycle and throwing it. Matt Arnold, a neighbor, heard appellant tell Lloyd, "I'll be back with my boys." Rawlinson watched the encounter from his window, but did not come out and admit his involvement with appellant. Lloyd called the police. Approximately 15 minutes later, appellant returned on foot.

Lloyd, Arnold, and Rawlinson were standing together in Lloyd's driveway. Arnold testified that appellant asked Lloyd, "Why did you put your hands on me?"

Words were exchanged between Lloyd and appellant, with Lloyd being loud and aggressive. Lloyd told appellant that the police had arrived. When appellant turned his head, Lloyd wrapped his arms around appellant and appellant began to backpedal. They traveled approximately 30 feet. Appellant lost his footing and he and Lloyd fell into the bushes. Arnold turned to Rawlinson to inquire if they should intervene. He did not witness the actual shooting. The accounts of Lloyd, Rawlinson, and appellant differ about what happened next.

Arnold testified that Lloyd did not have any weapons and, when he tackled appellant, Lloyd did not punch him. He described Lloyd's move toward appellant as a "football tackle." He heard Rawlinson say that appellant had a gun and he looked at Rawlinson at that point and missed the actual shooting. He saw appellant slide out from under Lloyd, turn around like he was putting something in his back pocket, and run off.

Rawlinson testified that appellant was not underneath Lloyd, but was halfway up and shot Lloyd as he was in the process of standing up. He said appellant "reached around for his back pocket and shot the gun off, just that quick" and then "he trotted off." Lloyd was shot at pointblank range with the bullet entering near the top of the head and traveling front to back and downward. Both

men testified the shooter had short dreadlocks. Both men testified Lloyd had not taken any action that posed a threat of death to appellant.

A neighbor heard the gunshot and saw appellant jogging down the lane. His right hand was behind his back where she could not see it. He got within five feet of her and she got a good look at him. There was no blood on his clothes. She described appellant as "calm." He got on his bicycle which was concealed under a bush and rode off. The gun was never recovered.[1]

Although not immediately forthcoming, Rawlinson told the police that evening that "the same person that he observed shoot the victim was the same person that he had bought drugs from previously." Rawlinson placed two controlled calls to appellant. He identified appellant and someone else from a photo spread on May 31, 2006. Several months later, he picked appellant's picture from a photo spread.

Appellant was interviewed June 1 and, though admitting he had been a drug dealer in the past, repeatedly denied his involvement in this shooting. However, appellant's cell phone records placed him in the vicinity of the shooting on May 18 and were inconsistent with his explanation of where he was at the time of the shooting.

[1] Appellant admitted at trial that he threw the gun, a 357 magnum, into the dumpster at his apartment.

Appellant was arrested at an apartment approximately one-half mile from Sue Lane. When police arrested appellant, they found a bicycle, packaged substances they believed to be cocaine, bullets, cell phones, and a holster, but no gun. Appellant's driver's license which was recovered showed closely cut hair. Appellant was charged with second degree murder and carrying a concealed firearm.

For the next four years, appellant maintained his innocence, claimed an alibi, and wrote several letters to the judge and one to the state attorney, denying his involvement and claiming he did not meet the description of the shooter. He filed a petition in the Florida Supreme Court claiming that police had arrested the wrong person. On the eve of trial, he switched strategies and claimed self defense. He filed two motions in limine seeking to exclude the evidence of the alleged cocaine found in a drawer when he was arrested and evidence that he sold drugs at any point, particularly to state witness Rawlinson, or that he was attempting to collect a drug debt when the shooting occurred.

The trial court agreed with the State's argument that evidence of the alleged cocaine which was found when appellant was arrested, a few weeks after appellant claimed to have ceased his drug activity in his police interview, would be a factor which the jury could weigh in determining appellant's credibility. Further, the

court ruled the other drug evidence was inextricably intertwined with the evidence of the crime and the credibility of the State's principal witness Rawlinson.

At the subsequent trial, before the jury heard the police interview of the appellant and before the detective testified about the powdered substance which was found in appellant's drawer, the jury was instructed that appellant was not on trial for selling drugs and that the evidence of drug dealing should have no place in their deliberations but should "be considered by you for the limited purpose of proving either motive, opportunity, intent, preparation, plan, knowledge, identity, or the absence of mistake or accident on the part of the defendant and [you] should consider it only as it relates to those issues."[2]

Appellant testified in his defense that he went to Sue Lane to obtain the money he was owed. He testified that, though he had a gun in his front pocket, he did not use it in the first encounter because his life was not in danger and he could leave. When he returned the second time to collect his money, Lloyd tackled him into the bushes and he could not breathe or get him off. He said: "I tried to get his arms from around me but he was too strong and I pulled out the gun and shot him."

[2] This charge was given again before the jury retired to deliberate. The trial court recognized that the drug evidence was not so-called Williams rule evidence, Williams v. State, 110 So. 2d 654 (Fla. 1959), which is limited to "similar fact evidence" under section 90.404(2)(a), but was instead relevant evidence admissible under section 90.402, as explained infra at pages 8-9. The court stated that it gave the Williams rule instruction, however, to caution the jury that evidence of appellant's drug dealing should not be used for an impermissible purpose.

On cross-examination, he added that Lloyd tried to choke him. He admitted that he had denied any involvement in this shooting to family and friends and law enforcement for over four years. He acknowledged that his defense that he shot in self defense "depends completely on [his] word about . . . what's going through [his] mind."

This case came down to the credibility of two people: Ronald Rawlinson and appellant. Defense counsel argued that appellant, who was only 17, was faced with an older man who outweighed him by seventy-five pounds, who had been drinking (Lloyd had a blood alcohol level of .11), and who attacked him and tried to choke him. Only then did appellant shoot in self defense. Defense counsel argued that Rawlinson could not be believed because he was a drug user and was not initially forthcoming with the police about his part in this incident.

The State countered that, although appellant may have been young, he was a streetwise drug dealer, who brought a gun to a shoving match because he had been disrespected by Lloyd. The testimony concerning appellant's actions as a drug dealer, which comprises only a few pages in a nearly 700 page transcript, was elicited to prove that as a drug dealer, appellant would be armed, would expect payment when he fronted drugs, and would not tolerate being disrespected in front of his customers. Defense counsel did not object and did not argue that the relevance of this testimony was outweighed by its prejudicial effect. The State

argued that it was only after the considerable damaging evidence was elicited that appellant switched his strategy from arguing innocence to arguing self defense.

"A trial court has wide discretion concerning the admissibility of evidence, and a ruling on admissibility will not be disturbed unless there has been an abuse of discretion." Irving v. State, 627 So. 2d 92, 94 (Fla. 3d DCA 1993). Evidence of other crimes, wrongs or bad acts is admissible if it is relevant and probative of a material issue and not used for the purpose of demonstrating bad character or propensity. Williams v. State, 110 So. 2d 654, 662 (Fla. 1959).

Typically, there are three reasons for admitting inextricably intertwined collateral crime evidence: (1) it is necessary to establish the entire context out of which the charged crimes arose; (2) it is necessary to provide an intelligent account of the crimes charged; and (3) it is necessary to adequately describe the events leading up to the crimes. State v. Rambaran, 975 So. 2d 519, 524 (Fla. 3d DCA 2008). "[T]o prove its case, the State is entitled to present evidence which paints an accurate picture of the events surrounding the crimes charged." Griffin v. State, 639 So. 2d 966, 970 (Fla. 1994). As explained more fully in Griffin:

> Thus, evidence of uncharged crimes which are inseparable from the crime charged, or evidence which is inextricably intertwined with the crime charged, is not Williams rule evidence. It is admissible under section 90.402 because "it is a relevant and inseparable part of the act which is in issue. . . . [I]t is necessary to admit the evidence to adequately describe the deed."

Id. at 968. (Citations omitted). In short, "[i]nseparable crime evidence is admitted not under 90.404(2)(a) as similar fact evidence but under section 90.402 because it is relevant." Hunter v. State, 660 So. 2d 244, 251 (Fla. 1995). However, section 90.403, Florida Statutes (2010) requires exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice. . . ." (Emphasis added).

The evidence which appellant sought to exclude "showed a continuing chain of chronological events," Foster v. State, 679 So. 2d 747, 753 (Fla. 1996), without which "an intelligent account of the criminal episode could not have been given," Austin v. State, 500 So. 2d 262, 265 (Fla. 1st DCA 1986), and was necessary for the State to be able to show appellant's state of mind when he returned a second time to collect his drug debt. Specifically, it was the State's theory of the case that, after Lloyd disrespected appellant when he came to collect his drug debt, appellant went to his home, got his gun, and returned to the scene to settle his argument with Lloyd. Although this evidence was prejudicial to appellant, "almost all evidence introduced by the State in a criminal prosecution is prejudicial to the defense." Griffin, 639 So. 2d at 970. Appellant's credibility was at the heart of this case and it would have prevented the State from fairly and adequately making its case against appellant if the drug evidence was excluded. The State did not argue that appellant should be convicted because he was a drug dealer, but rather that his

credibility was undermined by his many lies and his version of the shooting should not be believed by the jury.

AFFIRMED.

DAVIS, J., CONCURS, and CLARK, J., DISSENTS WITH WRITTEN OPINION.

CLARK, J., dissenting.

I respectfully dissent. The admission of the irrelevant evidence of Appellant's involvement with drugs and the State's emphasis on this evidence at trial denied Appellant a fair trial on the charges. While Appellant was not entitled to a perfect trial, he was entitled to a fair one. See Matthews v. State, 772 So. 2d 600 (Fla. 5th DCA 2000).

A defendant is presumed innocent until proven guilty. In contrast to the legal systems of some nations, "[i]n this country, a person . . . must be tried for his conduct, not his character—i.e., for 'what he did, not for who he is.' United States v. Myers, 550 F.2d 1036, 1044 (5th Cir. 1977)." Jeffrey Cole, "Bad Acts" Evidence in Civil Cases Under Rule 404(b): It's Not Just For Prosecutors Anymore, 37 No. 3 Litigation, Spring 2011, at 47, 48. The trial court's denial of the motions in limine in this case allowed the State to try Appellant for his character -- as a gun-toting, drug-selling, juvenile delinquent evil-doer to whom ordinary rules of reasonableness and self-defense did not apply – rather than for what he did. The State proceeded on a theory that Appellant was not eligible to assert self-defense because he was a drug dealer with no legitimate business in the neighborhood and certainly no legitimate fear of the victim.

The trial court abused its discretion by denying the motions in limine. Dessaure v. State, 891 So. 2d 455 (Fla. 2004)(standard of review for rulings on

motions in limine is abuse of discretion); Leon v. State, 68 So. 3d 351(Fla. 1st DCA 2011). During the trial, it was reversible error to admit the evidence of possible drugs found at Appellant's residence weeks after the shooting; Appellant's sales of drugs at any time; and that Appellant was in the neighborhood at the time of the shooting in order to collect a drug debt from State's witness Rawlinson. This error, combined with the other improper character evidence allowed, amounted to fundamental error by depriving Appellant of a fair trial.

First, the evidence sought to be excluded was not relevant, and thus not admissible. Appellant was not charged with any drug offense. "Relevant evidence is evidence tending to prove or disprove a material fact." § 90.401, Fla. Stat. The evidence of white powder found in a drawer where Appellant resided approximately six weeks after the shooting was in no way connected to the murder or the defense of self-defense. Likewise, the evidence given by State's witness Rawlinson about his drug transaction with Appellant did not tend to prove or disprove a fact material to any element of murder of Mr. Lloyd or Appellant's claim of self-defense. Mr. Lloyd was not a drug customer and there was no evidence indicating that drugs were present or a factor during the shooting incident. Because Appellant's defense at trial was that he shot Lloyd in self-defense, his identity, motive, opportunity, knowledge, and lack of mistake or accident were effectively admitted, and thus ***not*** material facts at issue. The

evidence of Appellant's involvement in drug sales at times other than the day of the shooting, particularly several weeks after the shooting when the drawer was photographed, and evidence of Appellant's drug-related interaction with persons other than the deceased was offered solely to show Appellant's bad character and propensity to commit crimes. This evidence was thus not admissible. § 90.404(2)(a), Fla. Stat.; Agatheas v. State, ___ So. 3d ___, 36 Fla. L. Weekly S741, 2011 WL 6220761 (Fla. Dec. 15, 2011) (revolver found in defendant's backpack upon his arrest 5 yrs. after the murder not relevant to the crime or as corroboration of witness' testimony; State cannot rely on law of impeachment to introduce impermissible collateral crimes evidence).

Second, any minimal relevance of the evidence pertaining to Rawlinson's drug purchase and the general circumstances prior to Appellant's shooting of Mr. Lloyd was clearly outweighed by the "danger of unfair prejudice, confusion of issues, [or] misleading the jury." § 90.403, Fla. Stat. Actual confusion of the issues and misleading of the jury were demonstrated in the record of this case by the jury's mid-deliberation question about the legality of Appellant's pursuit of payment for a drug sale to the witness -- not the victim -- at the time of the incident. As noted above, the material facts at issue in the trial were not whether Appellant was a drug dealer or had committed other bad acts at other times with other people, but whether or not Appellant shot Mr. Lloyd in self-defense.

Third, neither the photograph of the drawer containing white powder nor the testimony about Rawlinson's earlier drug transaction with Appellant, constituted "similar fact evidence of other crimes, wrongs, or acts," commonly referred to as "Williams Rule" evidence,[3] admissible under section 90.404(2)(a), Florida Statutes. For evidence of other crimes to be admissible, the evidence must be relevant due to "a close similarity of facts, a unique or 'fingerprint' type of information." State v. Savino, 567 So. 2d 892, 894 (Fla. 1990). Evidence of Appellant's drug activity is not similar to the shooting charged here. See McCray v. State, 71 So. 3d 848 (Fla. 2011) (collateral crime evidence that McCray was a drug dealer arrested at murder site was *not* similar fact evidence, thus s. 90.404, Fla. Stat. did not apply; only general rule of relevancy applied). Because Appellant was not on trial for any drug offense, the evidence in question was not "Williams rule" evidence and the State's presentation of this evidence could not be remedied by the "Williams rule" instructions to the jury. Not only was the evidence of Appellant's drug activities *not* "similar fact" evidence in relation to the offenses charged, it was "relevant solely to prove bad character or propensity" and was thus inadmissible under section 90.404(2)(a), Florida Statutes.

The evidence pertaining to Appellant's drug activity generally and with witness Rawlinson in particular did not tend to prove or disprove Appellant's

[3] Williams v. State, 110 So. 2d 654 (Fla. 1959).

motive for shooting Mr. Lloyd. This case is not similar to those cases where motive for murder was a material issue and the victim's participation in the defendant's drug activities produced the motive. Jackson v. State, 25 So. 3d 518 (Fla. 2009) (evidence that defendant sold drugs was relevant to support motive; state's theory was that victim stole defendant's drugs and money); Jorgenson v. State, 714 So. 2d 423 (Fla. 1998) (evidence that victim assisted defendant in drug sales, stole from defendant, and threatened to turn defendant in if defendant cut off victim's drug supply was relevant and admissible to support motive under s. 90.402, Fla. Stat.); see also McCray v. State, 71 So. 3d 848 (Fla. 2011) (though s. 90.404, Fla. Stat. did not apply, evidence was relevant under s. 90.402 to prove McCray's motive for charged crimes – revenge for victims' role in his previous drug arrest).

Even if the evidence challenged here had any probative value to show the general circumstances of Appellant's presence in the neighborhood or his mental state at the time of the shooting, the evidence of Appellant's drug-related activities was impermissibly made a "feature of the trial" by the State. As explained in Peterson v. State, 2 So. 3d 146, 155 (Fla. 2009), relevant evidence of collateral crimes impermissibly becomes a feature of the trial when the evidence "transcends the bounds of relevancy to the charge being tried" and the prosecution "devolves from development of facts pertinent to the main issue of guilt or innocence into an

assault on the character of the defendant." The charges in this case were not drug-related offenses. Nonetheless, the State was allowed to introduce Appellant's statement to police, which, though partially redacted, retained references to Appellant's past drug activities. The State also introduced extensive testimony of Ronald Rawlinson about his arrangement with Appellant to obtain cocaine and pay Appellant afterwards. Finally, the State introduced the testimony of an investigator who searched Appellant's residence several weeks after the shooting and photographed a drawer containing a white powder and a gun which was never alleged to be the murder weapon. The investigator did not test the powder, but surmised in his testimony that it was cocaine.

In addition, the prosecutor's cross-examination of Appellant was dominated by questions regarding his drug business, as illustrated by the following excerpt:

> THE STATE: Sir, when you engage in the business of selling drugs, you have to be careful about who's the police and who's a customer?
> DEFENDANT: Yes, sir.
> DEFENSE COUNSEL: Objection, compound question.
> THE COURT: I'll overrule that.
> THE STATE: Is that a yes?
> DEFENDANT: Yes, sir.
> THE STATE: And when you met Mr. Rawlinson, obviously he would have been a potential customer?
> DEFENDANT: Yes, sir.
> THE STATE: And, of course, in that business you would need to get new customers when you can; right?
> DEFENDANT: Yes, sir.
> THE STATE: Okay. Because some of the old ones might get clean; right?

DEFENSE COUNSEL: Objection, speculation.
THE COURT: I'll overrule.
THE STATE: You lose customers because they get off crack, as Mr. Rawlinson did?
DEFENDANT: I mean, not necessarily.
THE STATE: Okay. Has that ever happened in your experience?
DEFENDANT: Yes, sir.
THE STATE: Okay. Some of them die; right?
DEFENDANT: I would guess so.
THE STATE: Some of them get arrested?
DEFENDANT: Yes, sir.
DEFENSE COUNSEL: Objection, calls for speculation, Judge.
THE COURT: I'll overrule.
THE STATE: Is that a yes?
DEFENDANT: Yes, sir.
THE STATE: And some of them occasionally might use a competitor of yours, right, they might get their cocaine somewhere else?
DEFENDANT: Yes, sir.
THE STATE: Would it be, then, sir, the good business plan to, as you did, front cocaine to someone like Mr. Rawlinson in the hopes that you could make them into a new customer?
DEFENDANT: Yes, sir.
THE STATE: Okay. Because the profit you might make from future sales might outweigh the risk of fronting him; right?
DEFENDANT: Yes, sir.
THE STATE: And the typical rock that you might sell someone weighs about what, a tenth of a gram?
DEFENDANT: Yes, sir.
THE STATE: Now, when you are in the business of selling drugs, though, you have to keep both the drugs and the money usually on your person or nearby; right?
DEFENDANT: In a sense.
THE STATE: Okay. And you also have to worry about getting robbed or jacked, you know, either by people who want the drugs, people who want the money, or other dealers and stuff like that, right, that's a concern?
DEFENDANT: Yes, sir.
THE STATE: Okay. So part of the making sure that you can be secure is having weapons and ammunition available or on you; right?

DEFENDANT: In a sense.
THE STATE: Okay. Part of it also is kind of having a reputation that will maybe keep you from getting messed with in the first place; right? People less likely to jack you if they are afraid? Yes? No? You don't know?
DEFENDANT: I don't know.
THE STATE: Okay. You would agree with me, though, that it is not sort of a good business model to front a drug user and then let him get away without paying you?
DEFENDANT: That depends on -- I don't know.
THE STATE: Depends on what?
DEFENDANT: It depends on the dealer.
THE STATE: Okay. Would you ever let that happen?
DEFENDANT: I mean, it has, it's happened.
THE STATE: Okay. And you just let them walk away and didn't care?
DEFENDANT: I mean, it depends on how much money it is. But what can I do?
THE STATE: Let me ask you, the only reason you went down Sue Lane the next day was in fact to do exactly that, collect the money that you had fronted?
DEFENDANT: Yes, sir.
THE STATE: Okay. And it's also not good business when you're in that line of work to let somebody embarrass you, kind of punk you, make you look bad in front of your customers; right?
DEFENDANT: Why would that be?
THE STATE: That would be bad for business?
DEFENDANT: I don't understand why.
THE STATE: You don't think that would be bad for business?
DEFENDANT: What does somebody punking you have to do with you—
THE STATE: Do you think that makes it more or less likely that you would have a reputation?
DEFENDANT: A reputation of --?
THE STATE: We talked about earlier, you don't think when something happens in front of your customers – never mind. You know what, we'll just go on.
THE STATE: You would agree with me that when you're dealing drugs it kind of makes sense to take some precautions in case you run into the police?

DEFENDANT: Yes, sir.
THE STATE: What sorts of precautions would be necessary?

While discounted by the majority as "only a few pages in a nearly 700 page transcript," the State was allowed to continue this line of questioning for several more pages as transcribed, without any reference to Appellant's interaction with the victim during the shooting incident. Finally, during closing argument, the State referenced Appellant's status and expertise as a drug dealer no less than fourteen times, arguing to the jury that self-defense was not available to law breakers and that the reasonable person standard did not equate to what was reasonable for a drug dealer. Defense counsel's objections to the argument were overruled.

I disagree with the majority's conclusion that the State's evidence of Cameron Holmes' drug activities was admissible as "inextricably intertwined" collateral crime evidence. The evidence sought to be excluded in the second motion in limine – that the defendant sold drugs at any point and that defendant was attempting to collect a drug debt from Mr. Rawlinson at the time he shot Mr. Lloyd – was not evidence of an inseparable crime "inextricably intertwined" with the charged crime. See Canion v. State, 793 So. 2d 80, 81 (Fla. 4th DCA 2001). This is not a case where the evidence of uncharged crimes is admissible because "it is a relevant and inseparable part of the act which is in issue" and "it is necessary to admit the evidence to adequately describe the deed." Griffin v. State, 639 So. 2d 966, 968 (Fla. 1994); see also, Thomas v. State, 959 So. 2d 427 (Fla. 2d DCA

2007); Dorsett v. State, 944 So. 2d 1207 (Fla. 3d DCA 2006). Here, the evidence of Appellant's involvement with drugs and his previous contact with witness Rawlinson was separate from and extraneous to the altercation with Mr. Lloyd and the crimes with which Appellant was charged. See Parker v. State, 20 So. 3d 966 (Fla. 3d DCA 2009) (reversing convictions for possession of drugs; evidence of prior drug transactions was not relevant to or inextricably intertwined with charged drug crimes). The evidence was not necessary to adequately describe the shooting or the moments immediately preceding it, when self-defense might have come into play. Mr. Rawlinson could easily have told his story without saying why he owed Appellant money, and Appellant's redacted statement to the police could easily have been further redacted to omit references to past bad acts not charged in this case. Appellant's credibility could easily have been challenged without reference to any drug activity and the State presented no link at all between the charge of murder of the victim and the powder found in a drawer at Appellant's residence several weeks after the shooting. The exclusion of the evidence at issue would not have "unreasonably hampered" the State in explaining how the charged crime took place. See McCall v. State, 941 So. 2d 1280 (Fla. 4th DCA 2006).

For all the foregoing reasons, Appellant is entitled to a new trial. I would reverse.