

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0694

STATE OF LOUISIANA

VERSUS

ALVIS NOLAND BAHAM

Judgment Rendered: DEC 27 2013

On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 524559

Honorable Martin E. Coady, Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

gdm Pettigrew, J. Concurs

McCLENDON, J.

The defendant, Alvis Noland Baham, was charged by bill of information with possession of a Schedule II controlled dangerous substance, methamphetamine, in violation of LSA-R.S. 40:967(C); see also LSA-R.S. 40:964. The defendant entered a plea of not guilty. Following a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for postverdict judgment of acquittal and motion for new trial and imposed a sentence of five years imprisonment at hard labor. The State filed a habitual offender bill of information and the defendant was adjudicated a fourth-felony habitual offender.¹ The trial court vacated the original sentence and resentenced the defendant to twenty-five years imprisonment at hard labor without the benefit of probation or suspension of sentence. The defendant now appeals, assigning error to the admission of other crimes evidence and to the constitutionality of the sentence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

On May 30, 2012, Sergeant John Morse of the St. Tammany Parish Sheriff's Office (Narcotics Task Force Supervisor) observed the defendant consuming what he believed to be an alcoholic beverage while riding as the front passenger in a vehicle. After the vehicle turned off the main highway onto Park Lane where police officers were posted, they effectuated a traffic stop. Sergeant Morse approached the passenger side of the vehicle and instructed the defendant to exit the vehicle while other officers confronted the driver. Sergeant Morse observed the defendant as he crouched down in the vehicle and began making evasive hand movements. Sergeant Morse again instructed the defendant to exit the vehicle and as he did so, he turned his body away from Sergeant Morse, who observed movement of his left hand. As Sergeant Morse

¹ The habitual offender adjudication is based on the following predicate convictions: a 2010 conviction of possession of methamphetamine, second offense; a 2007 conviction of possession of pseudoephedrine; a 2006 conviction of aggravated flight from an officer; a 2003 conviction of possession of methamphetamine; and a 2003 conviction of possession with intent to distribute methamphetamine.

moved over to get a better view of the defendant, he observed the defendant drop a plastic bag from his hand to the ground. At that point, Sergeant Morse instructed the defendant to step to the back of the vehicle and secured him with handcuffs. Sergeant Morse then retrieved the plastic bag. The plastic bag was later determined to contain methamphetamine by the St. Tammany Parish Sheriff's Office Crime Laboratory.

ASSIGNMENT OF ERROR NUMBER ONE

In the first assignment of error, the defendant contends that the trial court erred in allowing the State to introduce testimony that he was the target of a criminal investigation prior to his arrest on the instant offense. The defendant argues that the testimony alerted the jury that he had committed prior bad acts. The defendant notes that the State questioned Detective Morse regarding the narcotics investigation that was taking place at the time of the instant offense. The defendant argues that there was no probative value to the fact that he was the target of a criminal investigation prior to his arrest. The defendant further contends that the testimony was highly prejudicial.

Generally, evidence of other crimes, wrongs, or acts committed by the defendant is inadmissible due to the substantial risk of grave prejudice to the defendant. Under Louisiana Code of Evidence Article 404(B)(1), however, such evidence may be admitted for the purpose of showing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Evidence of other bad acts is not admissible simply to prove the bad character of the accused. LSA-C.E. art. 404(B)(1). Furthermore, the other crimes evidence must tend to prove a material fact genuinely at issue, and the probative value of the extraneous crimes evidence must outweigh its prejudicial effect. **State v. Williams**, 96-1023 (La. 1/21/98), 708 So.2d 703, 725, cert. denied, 525 U.S. 838, 119 S.Ct. 99, 142 L.Ed.2d 79 (1998). The underlying policy is not to prevent prejudice (since evidence of other crimes is always prejudicial), but to protect against unfair prejudice when the evidence is only marginally relevant to

the determination of guilt of the charged crime. **State v. Humphrey**, 412 So.2d 507, 520 (La. 1982) (on rehearing).

Under Louisiana Code of Evidence Article 404(B)(1), other crimes evidence is also admissible "when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding." For other crimes to be admissible under the integral act exception (formerly known as *res gestae*), they must bear such a close relationship with the charged crime that the indictment or information as to the charged crime can fairly be said to have given notice of the other crime as well. **State v. Schwartz**, 354 So.2d 1332, 1334 (La. 1978). Thus, evidence of other crimes forms part of the *res gestae* when said crimes are related and intertwined with the charged offense to such an extent that the State could not have accurately presented its case without reference to it. In such cases, the purpose served by admission of other crimes evidence is not to depict the defendant as a bad man, but rather to complete the story of the crime on trial by proving its immediate context of happenings near in time and place. Evidence of crimes committed in connection with the crime charged does not affect the accused's character because the offenses are committed as parts of a whole. **State v. Brewington**, 601 So.2d 656, 657 (La. 1992) (per curiam). Integral act evidence in Louisiana incorporates a rule of narrative completeness without which the State's case would lose its "narrative momentum and cohesiveness, 'with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict.'" **State v. Colomb**, 98-2813 (La. 10/1/99), 747 So.2d 1074, 1076 (per curiam) (quoting **Old Chief v. United States**, 519 U.S. 172, 187, 117 S.Ct. 644, 653, 136 L.Ed.2d 574 (1997)).

Herein, the defendant references the State's direct examination of Sergeant Morse regarding his initial contact with the defendant. The first defense objection came after the State asked, "Did you come into contact with him [the defendant] by chance or was there a narcotics investigation?" The trial

court overruled the objection and Sergeant Morse explained that at the time of the traffic stop, he and other officers were conducting an investigation involving methamphetamine. When the State asked if the defendant was the subject of the investigation, the defense entered another objection, prompting a bench conference. The defense attorney expressed concern that the line of questioning would reveal prior bad acts. The State replied that the line of questioning was specifically in regard to the instant offense/bad act. The trial court noted the objection before allowing the line of questioning to continue. Sergeant Morse then testified that he was looking for the defendant in particular and the vehicle in which he was riding at the time of the stop.

As argued by the State, the testimony in question seemingly refers to the instant offense as opposed to any other crime. At any rate, the testimony was *res gestae*, integral to the chain of events as they occurred in the course of the investigation as to complete the story of the crime. The officers received information regarding the defendant and the vehicle in question and were, on that basis, conducting a narcotics investigation when the vehicle and the defendant were spotted. Moreover, the trial court's ruling on the admissibility of the testimony is subject to a harmless error analysis. See Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). The test for determining harmless error is "whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." Sullivan v. Louisiana, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993). In this case the testimony at issue was very brief. Based on the evidence presented during the trial, the defendant was observed dropping the bag of methamphetamine to the ground, was immediately apprehended, and the bag was immediately recovered. Thus, the State's evidence clearly established beyond a reasonable doubt all of the essential elements of the charged offense. In light of the overwhelming evidence, the verdict was surely unattributable to any suggestion of prior bad acts. Any error in the jury hearing such testimony was harmless beyond a

reasonable doubt. See LSA-C.Cr.P. art. 921. Assignment of error number one is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant argues that the sentence is excessive because at the time of the sentencing he was a forty-year-old with a drug problem for which he never received rehabilitation treatment. The defendant notes that his prior convictions consist of mainly drug offenses beginning in 2003. The defendant further contends that the instant case is a worthy example of one of the primary reasons for the escalating growth of Louisiana's prison-industrial complex, further stating that his convictions are for non-violent offenses. The defendant argues that the twenty-five year sentence makes no meaningful contribution to acceptable goals of punishment and is nothing more than a needless imposition of punishment and a waste of scant economic and human resources. Finally, he also argues that the sentence is grossly out of proportion to the severity of the crime and his criminal history.

Louisiana Code of Criminal Procedure Article 881.1(A)(1) provides: "In felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence." The record before this Court does not contain a copy of a motion to reconsider sentence or evidence that the defendant orally moved for reconsideration of the sentence. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the State or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. LSA-C.Cr.P. art. 881.1(E). Thus, the defendant is barred procedurally from having the second assignment of error reviewed. See **State v. Duncan**, 94-1563 (La.App. 1 Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam); **State v. Myles**, 616 So.2d 754, 758-59 (La. App. 1st Cir.), writ denied, 629 So.2d 369 (La. 1993).

CONCLUSION

For the foregoing reasons, we affirm the conviction, habitual offender adjudication, and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.