FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-1174

STEPHEN TRAHAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Suwannee County.
David W. Fina, Judge.

November 22, 2019

SHARRIT, MICHAEL S., ASSOCIATE JUDGE.

The Appellant, Stephen Trahan, challenges his burglary conviction, and contends the trial court improperly admitted evidence of a "collateral crime" or "other bad act." We agree, and accordingly reverse and remand for a new trial.

On the morning of August 16, 2017, the victim in this case (hereinafter "Victim") discovered that his truck while parked in his driveway had been broken into and ransacked. He quickly determined his backpack, left in the vehicle overnight, had been taken. A few days later, the Victim fortuitously saw the Appellant walking through his neighborhood wearing what he believed to be his stolen backpack. He confronted the Appellant and demanded he relinquish the backpack. The police were summoned, and an

investigation ultimately led to the Appellant's apprehension and burglary charges. The Victim's asserted ownership of the backpack became the dispositive fact issue and if proven would be the link between Appellant and the vehicle burglary. During the trial, the State introduced evidence that upon Appellant's arrest, a checkbook belonging to a third party, entirely unconnected to the charged crime, was found inside the backpack.

Evidence of other crimes or conduct is inadmissible where its only purpose is to show bad character or propensity to commit bad acts. *Williams v. State*, 110 So. 2d 654, 663 (Fla. 1959); §90.404(2)(a), Fla. Stat. (2017) (codifying *Williams* rule). Evidence of other crimes or bad acts may however, be admitted only if relevant to prove a material issue such as motive, opportunity intent or identity. *Williams*, 110 So. 2d at 659.

Although while presenting their case at trial, the prosecutor and State witness carefully avoided making the overt assertion that Appellant had stolen the checkbook, they might just as well have. The *Williams* rule is not limited to the exclusion of explicit crimes. Rather, the rule more broadly precludes *evidence of* other crimes, wrongs or misdeeds. § 90.404(2)(a), Fla. Stat. When the jury was told that in the course of a criminal investigation, the Appellant, an accused thief, was found to be in possession of a checkbook belonging to somebody else, the inescapable implication was that he stole it, and was a person prone to theft.

It is well established that gratuitous evidence of collateral conduct which may bear adversely on a defendant's character should be excluded. This Court has consistently held possession of *even potentially* incriminating items, not relevant to the charged crime, to be inadmissible. *See e.g., McCuin v. State*, 198 So. 3d 1066, 1068 (Fla. 1st DCA 2016) (fact that car burglar happened to be in possession of wallet belonging to person unrelated to charged crime constituted inadmissible collateral crime evidence); *Jackson v. State*, 570 So. 2d 1388, 1389 (Fla. 1st DCA 1990) (in cocaine possession prosecution, evidence of cash found with defendant, improperly invited conjecture that he was engaged in other bad acts or criminal conduct); *Slocum v. State*, 219 So. 3d 1014, 1015 (Fla. 1st DCA 2017) (in possession of cocaine trial, error to allow evidence regarding cash found in defendant's bedroom where not

relevant to any issue); *Richardson v. State*, 528 So. 2d 981, 982 (Fla. 1st DCA 1988) (evidence of matchbox containing cocaine residue found on defendant, but unrelated to charged crime – possession and sale of cocaine – was improperly admitted). Here, as in each of the cases above, the natural inference to be drawn from Appellant's unexplained possession of somebody else's checkbook is that he is involved in other illicit activity and is therefore probably guilty of the charged crime.

If Appellant being in possession of somebody else's checkbook was probative of any material issue, then the evidence would have been relevant and properly admitted. Evidence tending to prove or disprove a material fact is relevant and is admissible. §§ 90.401, 90.402 Fla. Stat. Here, the fact that Appellant was incidentally in possession of a complete stranger's checkbook held no probative value to the jury trying to discern ownership of the backpack. The checkbook had no inherent nexus to the Appellant nor his burglary victim (nor to anybody or anything associated with either of them). Furthermore, the rightful owner of the checkbook has no interest or claim on the backpack, nor any connection whatsoever, to the charged crime. Likewise, the checkbook was not a personalized accessory or identifying feature of the backpack's owner. Contrary to the State's contention, its presence makes it neither more likely nor less likely that either the Appellant or Victim is the backpack's legitimate owner. It is just as likely as not that a thief might legitimately own or acquire a backpack, and then proceed to fill it with stolen goods.

Even if, assuming *arguendo*, it could be said that the presence of the third-party's checkbook somehow made Appellant owning the backpack less likely, any ostensible probative-value would be slight and easily outweighed by the substantial risk of inferences based on propensity and undue prejudice or confusion. *See* § 90.403 Fla. Stat. Here, the prejudice and confusion introduced into the trial by the checkbook is apparent in the jury's question to the court during deliberation. After retiring to consider its verdict, the jury issued a hand-written note to the court with the following question: "How is the owner of the checkbook in the backpack connected to the Defendant or Plaintiff?" Understandably, the jury was unduly occupied with attempting to discern the elusive relevance of the *red herring* checkbook.

Moreover, introduction of the collateral checkbook evidence cannot be deemed harmless error. It was put squarely before the jury and referenced in the prosecutor's closing argument. Other evidence presented was largely circumstantial or controverted. We cannot say beyond a reasonable doubt that the not so subtle implication that Appellant committed the uncharged crime of stealing a checkbook did not contribute to the guilty verdict. *See McCuin v. State,* at 1068) (explaining that erroneous admission of irrelevant collateral crimes evidence is *presumed harmful* error because of the danger the jury will interpret bad character or propensity for crime as evidence of guilt of the crime charged) (emphasis added) (citing *Robertson v. State*, 829 So. 2d 901, 913–14 (Fla. 2002).

With regard to the remaining issue on appeal involving the State impeaching its own witness, we find no abuse of discretion or error and approve the trial court's ruling without further comment.

Accordingly, we reverse Appellant's conviction and remand this case to the circuit court for further proceedings and a new trial.

REVERSED and REMANDED, with directions.

RAY, C.J., concurs; OSTERHAUS, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

OSTERHAUS, J., dissenting.

I would affirm the judgment and sentence because the trial court did not abuse its discretion by allowing the investigator to testify that a random checkbook was found in the recovered

backpack. Trial courts have broad discretion on the admission of evidence and we only reverse an evidentiary ruling if that discretion is abused. *See Martin v. State*, 110 So. 3d 936, 938 (Fla. 1st DCA 2013). Here, the investigator testified that when he recovered the backpack, it contained a third-party-someone's checkbook. That was all. He didn't testify that Mr. Trahan stole the checkbook, nor connect the checkbook to either the victim or the defendant. And so, this evidence didn't cut either in favor of, or against, Mr. Trahan's conviction. It merely left the jury confused about its relevance and wondering: "How is the owner of the checkbook in the backpack connected to the Defendant or Plaintiff?" Because, like the trial court, I don't read the witness's reference to the checkbook as referring to a collateral crime, nor as creating any unfair prejudice, such as showing Appellant's bad character or propensity to commit a crime, I cannot conclude that the judgment and sentence must be reversed.

Andy Thomas, Public Defender, and Kevin Steiger, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Tabitha Rae Herrera, Assistant Attorney General, Tallahassee, for Appellee.