Third District Court of Appeal
State of Florida

Opinion filed September 23, 2020.
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-664
Lower Tribunal No. 17-16121

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Willie Hudson,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Charles K. Johnson, Judge.

Carlos J. Martinez, Public Defender, and Deborah Prager, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Brian H. Zack, Assistant Attorney General, for appellee.

Before EMAS, C.J., and FERNANDEZ and HENDON, JJ.

EMAS, C.J.

INTRODUCTION

Willie Hudson appeals from a conviction and sentence for burglary of an unoccupied conveyance. He contends that the trial court erred in admitting evidence that implicated Hudson as the person who had committed several earlier burglaries of the same victim's vehicle. This evidence was elicited by the State during its questioning of the victim, even though the defense had, before trial, filed a motion in limine to prohibit the admission of such evidence, the State had agreed to this defense request, and the trial court had granted the motion in limine. When the State elicited this testimony in violation of the order in limine, the defense objected, but the trial court overruled the objection. In so doing, the trial court erred. And because the State has failed to establish that the erroneous admission of this evidence was harmless beyond a reasonable doubt, we reverse and remand for a new trial.[1]

FACTS AND PROCEDURAL BACKGROUND

Hudson was charged with burglarizing an unoccupied car owned by Jorge Garcia. The following trial testimony is relevant to place the issue in proper context:

Garcia's car had been broken into several times over the months leading up to this incident. Garcia reported two of those prior burglaries, but the police had made

[1] Given our disposition of this issue, we do not reach Hudson's second claim on appeal, which relates to the trial court's denial of a motion for a downward departure sentence.

no arrest. As a result, Garcia installed several security cameras around the exterior of his home, allowing him to record and monitor activity on his property.

Garcia testified that in the months following installation of the security cameras, someone tried to break into his car several times. He testified that in these prior incidents "they pass by and they check to see, and if it's locked then they go . . . . They would come on the bicycle, but they would put a towel over their face so you couldn't see the face."

Garcia testified that on the day of the subject incident, he woke up at 4:00 a.m. and checked his security camera footage. His car was still parked in the driveway, but the interior light was on and someone was sitting in the driver's seat. Garcia jumped up, armed himself with a machete, left his house and chased after the person (Hudson). Garcia and Hudson struggled, ending up in a neighbor's yard across the street. One of the neighbors heard the commotion and called police. Garcia restrained Hudson until police arrived.

The police arrested Hudson for burglary of Garcia's vehicle. Although papers in Garcia's car were strewn about, nothing was missing from the car and there was no damage to the vehicle. A bicycle, a flashlight, and a pair of pliers were found near the car. Garcia did not see Hudson on the bicycle and could not say it was the same bicycle he had seen previously. Garcia asserts he provided his recorded security footage to the police, but the police represented it never had any such video recording.

No DNA, fingerprints, or other forensic evidence was collected at the scene, nor were any photographs taken. The case turned on Garcia's testimony, as only his testimony could place Hudson inside the car.

Prior to trial, the defense filed a motion in limine to exclude any testimony or evidence regarding the previous burglaries or attempted burglaries of Garcia's vehicle and, more to the point, to prohibit any argument or implication that Hudson was the individual who committed those prior burglaries or attempted burglaries. The State stipulated to this motion, as it was not the State's intention to prove Hudson was the person who committed those prior burglaries of Garcia's vehicle. In fact, if that had been the prosecution's intent, the State would have been required to file a "Williams Rule"[2] notice, pursuant to section 90.404(2)(d), Florida Statutes (2019), to place the defense on notice that the State intended to introduce evidence that Hudson engaged in these other crimes, wrongs or acts.[3] The State did not file this

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

[3] Section 90.404(2)(a), (b) and (c) provide the circumstances under which evidence of a defendant's other crimes, wrongs or acts may be introduced at trial. Section 90.404(2)(d)1. sets forth the notice requirement, providing in relevant part:

> When the state in a criminal action intends to offer evidence of other criminal offenses. . . , no fewer than 10 days before trial, the state shall furnish to the defendant or to the defendant's counsel a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information.

required notice. The defense's motion in limine, stipulated to by the State, was granted by the trial court.

In its opening statement, the State told the jury that it would show Garcia saw someone inside his car, ran out to confront the person, struggled with and restrained that person until police arrived. Garcia would testify that the person he saw, confronted and restrained, until police arrived, was the defendant Hudson.

Defense counsel told the jury in its opening statement that Hudson was merely bicycling back home from a friend's house when he was attacked by Garcia. Hudson contended that when Garcia saw Hudson on a bicycle near the car, Garcia overreacted to the situation and ran out of the house and grabbed Hudson without any basis.

During the cross-examination of Garcia, the defense brought out the fact that Garcia's car had been broken into on several previous occasions, prompting Garcia to place the security cameras around the house and maintain a watch of his car. This was part of the defense theory that Garcia's hypothesized overreaction to the incident was the result of the prior burglaries to his car and Garcia's acknowledged frustration with the police's inability to make an arrest. Thus, the fact that Garcia's car had been previously burglarized was a relevant issue, but not the contention or implication that Hudson was the person who committed those prior burglaries. In fact, Garcia acknowledged that he had never seen Hudson before, and that the person or persons who previously broke into his car concealed their face with a towel.

Nevertheless, during redirect examination of Garcia, the State elicited the following testimony:

> State: You mentioned earlier that you really couldn't see his face clearly. Was anything covering his face the day of the incident?
>
> Garcia: That day, he was wearing a coat with a thing like this.
>
> State: **<u>So, the person that you saw in the past incidents had their face covered and—was [on] a bicycle. And in this incident, you're saying that this matches the description of the defendant?</u>**
>
> Defense: Objection, pretrial motion.
>
> Garcia: **<u>Several times</u>.**
>
> Court: Overruled.
>
> Garcia: **<u>Several times it was with a towel. I got him. How can I not say?</u>**

(Emphases added.)

In closing argument, the State highlighted the inference that Hudson was involved in the prior burglaries to Garcia's car:

> He [Garcia] had been burglarized several times, in the past . . . he called the police twice; not once, but twice and they weren't able to find the person who did it . . . . And so, he took it upon himself to protect his property, to protect his home, where he has small children living, to—**<u>in order to be able to stop this defendant.</u>**
>
> He [Garcia]'s angry. He's upset. He's been having to live with the thought that while he's sleeping in his bed at night, somebody is coming to steal things from his car. Not only from his car, from his wife's car. He's upset, at this point, and he wants to protect his family, and he

> knows that the police have not been able to do anything about this.... **<u>And he tells you he finally found the person</u>**. He knows it's him, because he's inside of his car. . . . He's not letting go, because in his mind, this ends today.

(Emphases added).

And in characterizing as unreasonable the defense's theory that Garcia simply overreacted to the situation when he saw Hudson riding his bicycle near Garcia's car, the State again raised the inference that Hudson was involved in the prior burglaries to Garcia's car:

> If the defendant was just riding his bicycle and the victim is in bed, waiting and looking at his surveillance footage, and he sees the defendant riding his bicycle in front of his house.
>
> **<u>And as soon as he sees him, just because the victim says that must be the guy that's been robbing me</u>**, he gets up out of bed, grabs a machete runs outside.
>
> If someone is on a bicycle, someone on foot will not get there fast enough to catch up to them.

(Emphases added).

<u>ANALYSIS</u>

It is well established that evidence of uncharged crimes is inadmissible to prove an accused's bad character or criminal propensity. <u>Dorsett v. State</u>, 944 So. 2d 1207, 1212 (Fla. 3d DCA 2006); <u>Billie v. State</u>, 863 So. 2d 323, 328 (Fla. 3d DCA 2003). Indeed, because of the danger of undue prejudice inherent in admitting evidence of a defendant's prior bad acts, the State must provide written notice, no

fewer than ten days before trial, of its intent to rely on such evidence. § 90.404(2)(d)1. Such evidence is admissible when "relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity." § 90.404(2)(a). Moreover, when irrelevant character evidence is wrongly admitted, it "is presumed harmful error because of the danger that a jury will take the bad character or propensity to crime thus demonstrated as evidence of guilt of the crime charged." Straight v. State, 397 So. 2d 903 (Fla. 1981). See also Parker v. State, 20 So. 3d 966, 970 (Fla. 3d DCA 2009).

The trial court abused its discretion in overruling the defense's timely objection, thereby permitting the State to elicit and the jury to consider testimony tending to show that Hudson was the person who committed the prior burglaries of Garcia's car, "as it constituted evidence of collateral crimes neither charged in the information nor properly noticed and determined to be admissible pursuant to section 90.404(2)." Nunez v. State, 109 So. 3d 890, 892 n.6 (Fla. 3d DCA 2013). Indeed, by stipulating to the defense's pretrial motion in limine, the State agreed it would not seek to introduce evidence that Hudson was involved in the prior burglaries of Garcia's car.

The State compounded the error in its closing argument, which at the very least implied that Hudson was the person who had committed the prior burglaries. We reject the State's contention that the error was invited or that evidence was "inextricably intertwined." Prior bad acts or collateral crimes evidence is considered inextricably intertwined "[w]here it is impossible to give a complete or intelligent account of the criminal episode without reference to other uncharged crimes or bad conduct." Wright v. State, 19 So. 3d 277, 292 (Fla. 2009). However, when there is a "clear break between the prior conduct and the charged conduct or it is not necessary to describe the charged conduct by describing the prior conduct, evidence of the prior conduct is not admissible on this theory." Id. (quoting Charles W. Ehrhardt, *Florida Evidence* § 404.17, at 237 (2005 ed.))

Moreover, the State's argument conflates two very distinct propositions: that there had been prior burglaries to Garcia's car; and that Hudson was the person who committed those prior burglaries to Garcia's car. The first proposition was not disputed, and was relied upon by the defense as part of its theory that Garcia was so frustrated by the prior burglaries and the inability of the police to make an arrest that he overreacted to seeing Hudson on a bike near the car that night.

By contrast, any evidence or argument that Hudson was the person who committed the prior burglaries of Garcia's car was not an issue raised or invited by the defense, was not material, and was not inextricably intertwined with the State's

presentation of its case. Nor did the State file a Williams Rule notice of its intent to introduce such evidence at trial. To the contrary, by its stipulation to the defense's pretrial motion in limine, the State indicated its intent not to introduce evidence or argue to the jury that Hudson committed the prior burglaries of Garcia's vehicle. Given the nature of the evidence erroneously admitted, and the fact that the case essentially rested upon the testimony of a single witness, the error "must be considered harmful." Williams v. State, 662 So. 2d 419, 420 (Fla. 3d DCA 1995). See also Jackson v. State, 140 So. 3d 1067, 1073 (Fla. 1st DCA 2014); Gadson v. State, 941 So. 2d 573, 576 (Fla. 4th DCA 2006); Gray v. State, 873 So. 2d 374, 376-377 (Fla. 2d DCA 2004).

And while this error is subject to a harmless error analysis, the burden is "on the state, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986). Upon our review of the record, we conclude the State has failed to meet this burden. We therefore reverse and remand for a new trial.

Reversed and remanded.