

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1687

STATE OF LOUISIANA

VERSUS

ROGER D. WALLACE

Judgment Rendered: **MAY - 2 2012**

**Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 483758**

The Honorable Peter J. Garcia, Judge Presiding

**Walter P. Reed
District Attorney
Covington, Louisiana
Kathryn Landry
Special Appeals Counsel
Baton Rouge, Louisiana**

**Counsel for Appellee
State of Louisiana**

**Bertha M. Hillman
Thibodaux, Louisiana**

**Counsel for Defendant/Appellant
Roger D. Wallace**

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Handwritten signature and initials in the left margin, possibly reading 'MM' and a circled 'P'.

GAIDRY, J.

The defendant, Roger D. Wallace, was charged by bill of information with creation or operation of a clandestine laboratory for the unlawful manufacture of methamphetamine, a violation of La. R.S. 40:983. The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The State filed a habitual offender bill of information; the defendant admitted the allegations therein and was adjudicated a third-felony habitual offender.¹ The defendant was sentenced to twenty-five years imprisonment at hard labor. The defendant now appeals, assigning error to the trial court's admission of other crimes evidence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

As a result of communication with the Pearl River County Sheriff's Office in Mississippi, Detective Christopher Comeaux of the St. Tammany Parish Sheriff's Office (narcotics division) began an investigation of possible methamphetamine production activities taking place at a residence located at 215 Dogwood Street in Slidell. Detective Comeaux enlisted the assistance of other narcotics officers, and on December 12, 2009, Detective Brian Danigole began conducting surveillance of the residence. While conducting surveillance, Detective Comeaux contacted Detective Danigole and suggested that they relocate their surveillance to a nearby Wal-Mart and to be on the lookout for the defendant. The officers spotted a green Dodge pickup truck with a Mississippi license plate, the vehicle in which the

¹ The predicate convictions in support of the defendant's habitual offender status include 1994 Texas convictions of unauthorized use of a motor vehicle and robbery.

defendant was known to be travelling. As Detective Danigole was returning to the defendant's residence, the Dodge pickup truck passed his vehicle.

As the defendant pulled into his driveway and exited his vehicle, Detective Bill Johnson, who was travelling in an unmarked, silver Dodge Dakota and dressed in plain clothing, exited his vehicle and engaged the defendant at the driver's side of the vehicle. As Detective Johnson identified himself as a member of the sheriff's office, the defendant turned around to face him. The detective observed what he immediately identified as a crack pipe in the defendant's hand. Detective Johnson specifically described the object as a homemade crack pipe made out of a metal socket and a metal wool pad inserted into one of the ends of the pipe as a filter. Detective Johnson seized the object, advised the defendant of his *Miranda* rights, and placed him under arrest. Detective Johnson also seized \$944.00 from the defendant's pocket as a result of a pat-down search.

On the back driver's side of the floorboard of the defendant's vehicle, Detective Johnson located supplies and chemicals, in Wal-Mart grocery bags, that could be used in the creation or operation of a clandestine laboratory for the manufacture of methamphetamine. These items included coffee filters, a funnel, four boxes of table salt, fuel, drain cleaner, a lighter, a grinder, Zyrtec D, and batteries. The defendant told Detective Danigole that he purchased the items for another individual to cook methamphetamine.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in allowing the State to introduce evidence that he had a crack pipe in his hand when he was arrested. The defendant argues that the evidence is not an exception to the other crimes evidence prohibition of La.

Code of Evidence Article 404(B)(1). The defendant notes that he was not on trial for possession of cocaine or drug paraphernalia. The defendant contends that the crack pipe did not establish motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in this case. The defendant further contends that there was no independent relevance for the evidence and it did not consist of one of the elements of the crime charged. The defendant additionally notes that the evidence alerted the jury to the fact that he was involved with drugs. In response to the State's argument that the evidence was part of the *res gestae* in this case, the defendant notes that the police would have searched his truck even if he had not been arrested for possession of the crack pipe. In this regard, the defendant further notes that he was already under police surveillance because of the information of alleged criminal activity at his residence received from the Pearl River County Sheriff's Department. Finally, the defendant contends that he did not receive adequate notice of the details or the nature of the evidence.

Relevant evidence is any evidence tending to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. La. Code Evid. art. 401. Generally, all relevant evidence is admissible. La. Code Evid. art. 402. It may be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice. La. Code Evid. art. 403. A trial judge has broad discretion in determining the relevancy of evidence, and his ruling will not be overturned on appeal absent a clear showing of an abuse of that discretion. *State v. Miles*, 402 So.2d 644, 647 (La. 1981). 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 and that he acted in conformity with that character. La. Code Evid. 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).

Under Louisiana Code of Evidence Article 404(B), 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. See *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 the other crime. In such cases, the purpose served by admission of other crimes evidence is not to depict the defendant as a bad person, 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).

The *res gestae* doctrine in Louisiana is broad and includes not only spontaneous utterances and declarations made before or after the commission of the crime, but also testimony of witnesses and police officers pertaining to what they heard or observed before, during, or after the commission of the crime, if a continuous chain of events is evident under the circumstances. *State v. Kimble*, 407 So.2d 693, 698 (La. 1981). 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)).

In this case, the day before the trial began, the defendant filed a motion in limine to prevent the State (in pertinent part) from introducing any evidence concerning the metal pipe and its contents. Just before the trial began the defendant argued his motion, raising the same arguments as those raised in the instant appeal. The State argued that the evidence was admissible as *res gestae* of the offense. The State further contended that the defendant was given notice of the evidence in the police report. Finally, the State noted that while its notice of La. Code Evid. art. 404(B) evidence was not detailed, discovery was attached.

At the outset, we note that the State is not required to give notice to the defense of its intent to use other crimes evidence when such evidence was a part of the *res gestae*. *State v. Crochet*, 96–1666, p. 5 (La. App. 1st

Cir. 5/9/97), 693 So.2d 1300, 1304, writ denied, 97-1547 (La. 11/21/97), 703 So.2d 1305. The general prohibition against the use of other crimes evidence does not bar admission of criminal acts that are a part of the *res gestae*. *State v. Hall*, 558 So.2d 1186, 1189 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990). In this case the evidence at issue clearly constitutes an integral part of the transaction. La. Code Evid. art. 404(B)(1). The evidence forms an inseparable link in the continuous chain of events leading to the defendant's arrest and the discovery of the evidence that formed the basis for the instant conviction. It was used merely to complete the story of the crime on trial and allow the State to accurately present its case. The Louisiana Supreme Court has held that "evidence of multiple crimes committed in a single course of conduct is admissible as *res gestae* at the trial of the accused for the commission of one or more, but not all of the crimes committed in his course of conduct." *State v. Washington*, 407 So.2d 1138, 1145 (La. 1981). Accord *State v. Corkern*, 461 So.2d 1238, 1241 (La. App. 1st Cir. 1984). The trial court properly allowed the State to introduce evidence regarding the crack pipe, which formed an integral part of the discovery of the evidence in these proceedings, pursuant to La. Code Evid. art. 404(B)(1). The assignment of error lacks merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.