IN THE COURT OF APPEALS
STATE OF GEORGIA

DEMOND EUGENE BECKETT, Appellant, v. STATE OF GEORGIA, Appellee.	DOCKET №: A24A0491 APPEAL FROM THE SUPERIOR COURT OF CLARKE COUNTY CASE №: SU-22-CR-0790

BRIEF OF APPELLEE
by the District Attorney

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—INTRODUCTION AND PROCEDURAL HISTORY—

On October 12, 2020 Appellant Demond Beckett was chasing Jennifer Stancil through the streets of Athens-Clarke County in a stolen vehicle (Transcript p.209; hereinafter T.209). They had been in a relationship for over six years (T.312). Stancil called 911 and LEO Hovie Lister, upon observing them, signaled for both of them to stop. Stancil did, but Appellant sped away (T.208). Four days later on October 16, 2020, Appellant was again involved in a police chase in Baldwin County, in the same stolen vehicle that he was driving on October 12th in Athens-

Clarke County (T.245-246). He was identified in that incident by Ms. Stancil (T.250).

The State charged Appellant with Aggravated Assault (Count 1) and Terroristic Threats (Count 2) against Ms. Stancil; Theft by Taking a vehicle (from Jerry Clary, owner of the stolen vehicle; Count 4); Hit and Run (for hitting and damaging Stancil's vehicle during the Athens chase; Count 5) and Felony Fleeing or Attempting to Elude Police (Count 3) (Record p.51-52; hereinafter R.51-52).

Appellant was tried by a jury in Superior Court of Athens-Clarke County from June 5th, 2023 – June 7th. 2023. The Court issued a Directed Verdict on Count 2, Terroristic Threats for the Appellant (T.467). The jury found the Appellant not-guilty for Counts 1, 4, and 5. The jury did find Appellant guilty of Count 3 – Felony Fleeing or Attempting to Elude Police (T.623).

A sentencing hearing was held on July 6, 2023. The Court sentenced Appellant to five (5) years to serve. (Sentencing Transcript p.14; hereinafter ST.14).

Appellant did not make a Motion for New Trial but directly appealed his conviction to the Court of Appeals.

—STATEMENT OF JURISDICTION—

The State agrees with Appellant that jurisdiction is proper before this Court under Georgia's Constitution of 1983, Article VI, Section V, Paragraph III. The jury convicted Beckett of Fleeing or Eluding Police, a charge that does not fall into any of the categories for which appellate jurisdiction is reserved to the Supreme Court of Georgia. *See Id., Collins v. State, 239 Ga. 400 (1977)*

—PART ONE—

STATEMENT OF FACTS

On October 20, 2020, law enforcement officer Hovie Lister (LEO) observed two vehicles speeding, running a red light, and weaving in and out of traffic in Athens-Clarke County while he was on duty in his patrol car (T.209). He turned on his blue lights and called out to the vehicles to stop. Both vehicles began braking slightly but continued straight without stopping. LEO initiated his sirens (T.210). Both vehicles turned right. The front vehicle, a white Toyota "4Runner," was driven by Victim Jennifer Stancil, and the back vehicle, a white Kia "Soul," was driven by Appellant Demond Beckett (T.209, 231).

Dispatch had notified LEO that the second vehicle driver, a male, was considered to have stolen the vehicle and was armed with a gun (T.210). LEO observed Appellant lean out of his driver side window and point his arm back at LEO's vehicle (T.210). LEO believed Appellant was pointing a gun at him. Appellant drove into oncoming traffic and attempted to collide with the victim's vehicle several times. Victim attempted to block the defendant from running her off of the road (T.209). Appellant swerved to the right, colliding with and striking the rear passenger side of the victim's car (T.211). Appellant then swerved into the oncoming lane and into the intersection at a high rate of speed (T.232). Appellant ran another red light and sped away. (T.209-227). Stancil stopped her car and Lister stopped behind her. Lister took Stancil's statement where she stated that Appellant had been chasing her in a stolen vehicle (T.208-11). Stancil also told Lister that she and Appellant had been in a relationship for almost six years until October 2020 (T.312) and that they had a child together. Although believed at the time, Appellant would later be declared not the biological father of Stancil's child when a DNA test was administered while Appellant was in custody for this matter. (T.313)

On October 16, 2020, in Milledgeville, Georgia, a police pursuit of a Kia SUV ensued after Baldwin County Deputy Shawn Isley (LEO Isley) attempted to make

a traffic stop of a Kia Soul after observing it make a U-turn in a gas station. (T.245-246). This is the same Kia Soul that Appellant drove in Athens when he was chasing Stancil. Isley had his emergency equipment on, but discontinued the chase after about a half a mile. Isley later saw the Kia again and followed. The Kia fled and crashed into a ditch. (T.247-48). Isley and other law enforcement officers began to investigate but the driver of the Kia was not located. (T.249).

Stancil arrived on the scene and screamed to LEO not to "kill him – he is my baby's daddy." (T.250). Stancil told police that Appellant was the driver of the crashed Kia (T.255). Stancil testified that she was in the area because she and Appellant had gone to Baldwin County together (in separate vehicles); that she went to see her children (T. 324); and that she went to the gas station before heading back to Athens. She then saw Appellant make the sudden U-turn and the police give chase. She followed them. (T. 325). When she spoke with LEO she first gave the name of "Derrick Beckett" as the driver of the Kia Soul, but later corrected it to "Demond Beckett." (T.255). The Kia was determined to have been the same vehicle reported stolen by its owner Jerry Clary (T.251-52) in Athens-Clarke County.

Based on these facts of the Athens-Clarke County incident, Clarke County law enforcement issued warrants (T. 212, 219) for Appellant, and the State charged him on October 12, 2020 with the crimes of Aggravated Assault and Terroristic Threats against Jennifer Stancil; Theft by Taking a Vehicle from Jerry Clay; Hit and Run; and Felony Fleeing or Attempting to Elude Police. (R 51-52).

—PART TWO—

—ARGUMENT & CITATION OF AUTHORITY—

1. There was sufficient evidence for the jury to conclude Appellant committed the offense of Felony Fleeing or Attempting to Elude Police in violation of O.C.G.A. 40-6-395(c)(4).

> It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle. *O.C.G.A. 40-6-395(c)(4)*

Officer Lister's body camera shows the manner in which Appellant was driving his vehicle – at a high speed, into on-going traffic, running a red light, attempting to crash into victim's car. (T. 214). LEO Lister gave various signals to the Appellant

to stop his vehicle – first using his voice and then putting on his emergency blue lights. (T. 210, 228) LEO Lister was on patrol duty in his LE marked vehicle, showing it to be an official police vehicle, when he made those signals for the Appellant to stop. (T. 208-209). The jury, after viewing the camera and listening to the testimony, determined that Appellant drove in a manner that put the general public at risk. According to *Rowland v. State, 349 Ga. App. 650 (2019),* after a conviction an appellate court views the evidence in the light most favorable to support the jury's verdict and only determines whether the evidence authorized the jury to find the defendant guilty. The evidence, as presented to the jury, authorized such a finding that Appellant fled from Officer Lister, after being given a visual and audible signal to pull over, refused to pull over, and did so in a manner that put the general public at risk with his high-speed and reckless driving. The victim Stancil did stop after receiving the same signals from LEO Lister, but the Appellant did not, and he sped away. (T.321)

2. **The Trial Court Properly Admitted Evidence of Subsequent Baldwin Incident as Intrinsic Evidence**

After a pretrial hearing, the Court correctly ruled that evidence of a subsequent fleeing or attempting to elude incident from Baldwin County on October 16, 2020 was intrinsic to the case (T.160), finding that the events were

necessary to complete the story of the charged crimes, of providing evidence to the jury that Appellant was still in possession of the same stolen vehicle, the Kia Soul, that he had used in the chase of Stancil in Athens-Clarke County. The Court noted *Freeman v State, 269 Ga. App. 435,* a 2004 case, quoting:

> "Similar transaction evidence notice requirements did not apply to evidence of subsequent difficulty between defendant and his daughter. The trial court was not required to hold a notice hearing before admitting the evidence." (T.161)

Although not required, the trial Court did in this case hold a hearing and determined that the evidence would be allowed in under "continued difficulties" as intrinsic evidence (T.162), as it continues the story. The Court said that the evidence would not be subject to 403 as argued by Defense, but if it was:

> "the law is whether probative value is substantially outweighed by its prejudicial factor, and I find that that is not the case." (T.162)

Appellant makes the argument that the State used the Baldwin County incident for a propensity purpose in violation of O.C.G.A. 24-4-403, by stating in the closing "In fact, Demond apparently is an expert in fleeing because he did so again in Baldwin County." (T.530).

The State argues this is incorrect. In *Jackson v State, 301 Ga. 774, 775 (2017)* the Court held that prosecutor's statement as to the truth of what happened was permissible because it was merely "the conclusion the prosecutor wished the jury to draw from the evidence and not a statement of prosecutor's personal belief…it is not improper for counsel to urge the jury to draw such a conclusion."

The Court was thorough in its evaluation of the evidence's admissibility, and did not err in allowing the evidence to be presented to the jury. The jury needed this evidence to complete the story of what had happened, in terms of the vehicle involved (the same stolen Kia Soul in both incidences), who was driving (the Appellant), and how the witness identified him (Stancil being at both incidences and communicating to LEO of her knowledge of who it was). These facts make it clear that the chase of Appellant in Baldwin County was inextricably intertwined with the chase of the Appellant in Clarke County. It permitted the jury to make allowable inferences on the evidence presented to them to determine if Appellant was guilty of fleeing or eluding police. The jury determined it was and that Appellant did flee, by returning a guilty verdict to the charge.

It is important to note that the defendant was also charged with Aggravated Assault, Terroristic Threats, Theft by Taking, and Hit and Run. Appellant wants to limit discussion to only the offense which he was convicted of, but the Court needed to consider all of the charges in front of it at the time of the evidentiary ruling.

According to *Hughes v. State, 312 Ga. 149 (2021),* admission of intrinsic evidence is subject to an abuse of discretion standard. *Hughes* describes intrinsic evidence as evidence that "pertains to the chain of events explaining the context, motive, and circumstances with the charged crime, and is necessary to complete the story of the crime for the jury." *Hughes* at 154. Intrinsic evidence is further described as part of an "(1) uncharged offense which arose out of the same transaction or series of transactions as the charged offense, (2) necessary to complete the story of the crime or (3) inextricably intertwined with the evidence regarding the charged offense." *Williams v. State, 302 Ga. 474 (2017).* According to *State v. Heade, 312 Ga. 19 (2021),* it is not a requirement for admissibility whether the evidence offered is enough to convict the defendant. If evidence is necessary to complete the story, where it offers context to witnesses accounts, the evidence to deemed intrinsic. If evidence is reasonably necessary to complete the story of events for the jury, it is admissible as intrinsic evidence.

In this case the evidence of the car chase in Baldwin County would be admissible as intrinsic evidence based on all three prongs of the test. On October 12, 2020, Hovie Lister, an officer from the Athens-Clarke County Police Department testified that he observed a white Kia Soul and a Toyota 4 Runner involved in an incident in Athens-Clarke County. (T. 209). After engaging both his lights and giving an audible signal to stop, the Toyota stopped but the Kia did not. (T. 210). According to the driver of the Toyota, Jennifer Stancil, the driver of the Kia Soul was Appellant, who was trying to chase her in a vehicle stolen from Jerry Clary (T. 211). Baldwin County Deputy Sheriff Shawn Isley then testified that on October 16, 2020, he observed a Kia Soul, who fled from him. (T. 247). Jennifer Stancil showed up at the scene and identified the Kia and stated that the Appellant was the driver of the Kia (T. 255). The Kia was reported stolen by its owner, Jerry Clary. (T. 252).

Under the first part of analysis, the actions of the Appellant in Baldwin showed he was still in possession of the stolen Kia four days after the initial incident reported in Athens- Clarke County. It is important to note that the Appellant was charged with the crime of theft by taking, so his continued possession of the stolen car was provided by the State as evidence for this crime. There is no authority that

suggests that the Appellant's continued possession of a stolen car would somehow preclude presenting evidence of a witness, Jennifer Stancil, identifying appellant as the driver in both incidents. Appellant focuses on the verdict in the trial, while not acknowledging that there were other charges in the indictment. The jury's eventual verdict on other charges does not make all or any evidence inadmissible.

The second part of the test is whether the evidence in Baldwin County is needed to complete the story of events. Appellant asserts that the charges are self-contained in the indictment, but that leaves out an important part of the explanation of the case. According to *Harris v. State, 310 Ga. 372 (2020),* "there is no bright line rule regarding how close in time evidence must be to the charged offense, or requiring evidence to pertain directly to the victims of the charged offense, for that evidence to be admitted properly as intrinsic evidence. We review a trial court's ruling for an abuse of discretion." The court considered the evidence and ruled it to be intrinsic, which would be within its sound discretion during a pretrial hearing.

The evidence can also be considered intrinsic under the third part of the test. It is important to the presentation of the State's case to show that Appellant was still in possession of the stolen car days after the first incident. To not allow such evidence would not be helpful to the jury in considering all of the charges

contained in the indictment. Although Appellant asserts that no law enforcement officer identifies him as the driver of the Kia, it is important that Jennifer Stancil would be allowed to testify that she identified Appellant as the driver of the Kia days later and such evidence is highly intertwined with the entire case. The Court did not abuse it's discretion by determining the evidence from Baldwin County as intrinsic to the case.

Appellant next claims that the Court should have excluded the Baldwin County incident based on Rule 403. While it is true that the Court could use O.C.G.A. 24-4-403 to determine admissibility, the Court determined it did not need to as it had determined admissibility as intrinsic evidence (T. 162) But the Court still determine correctly, that the probative value outweighed the prejudicial factor (T.162).

The Court did consider Rule 403. It is important to note that Rule 403 is balanced in favor of admissibility. *Carston v. State, 310 Ga. 797 (2021).* "Evidence is only excluded if it constitutes a matter of scant or cumulative probative force. We look at the evidence in a light most favorable to its admission. In a criminal trial, inculpatory evidence is inherently prejudicial." *Anglin v. State, 302 Ga. 333(2017).*

In this case, evidence that Appellant was in possession of the same stolen vehicle in Baldwin County that was involved in the Athens-Clarke County, case is admissible because it is intrinsic to the case. Appellant tries to assert that the evidence from the Baldwin County case was the reason for the conviction in the charged offense, but intrinsic evidence is not subject to any restrictions imposed by rule 24-4-404(b); therefore, Appellant's assertion of propensity evidence does not apply to the Baldwin County evidence, which was properly ruled intrinsic. *Williams* at 485.

3. The Statements Admitted Were Not Inadmissible Hearsay. Even if The Court Finds Some Were, the Fact the Witnesses Testified Made Any Error Harmless

Appellant asserts that the Court erroneously admitted several statements by several witnesses, claiming they are inadmissible hearsay. Appellant asserts that any statement made to another witness is inadmissible hearsay. Several statements would be covered by various exceptions to the hearsay rule.

Statements of Jennifer Stancil

The 911 call admitted into evidence was made by Ms. Stancil herself (T.318). It is admissible as a present sense impression as permitted by *Driskell v. State*, *333 Ga.*

App. 886 (2015). That statement was made during the events of the incident in question. (T. 171).

Appellant argues that none of the statements made by witnesses other than Ms. Stancil, regarding any of her statements made to police officers are inadmissible (specifically testimony and body camera video of Officers Lister, Isley and Sartain). The State argues that each of these are permitted based on exceptions to the hearsay rule. One such exception to the hearsay rule are statements that are considered "excited utterances" under O.C.G.A. 24-8-803(2). According to *Lopez v. State, 310 Ga. 269 (2021)* a statement is not inadmissible hearsay if it is made while the witness was under the stress of the current event, lacking time for reflection. Ms. Stancil's videotaped statement to Officer Hovie Lister is an excited utterance, made contemporaneously with the incident. Same can be said for the testimony given by LEO Isley as he relayed what Ms. Stancil had told him, at a moment when she believed they might shoot the Appellant. (T. 325).

Even if the other statements were hearsay, it is critical to note that Ms. Stancil testified and was subject to cross examination. According to *Hufstetler v. State 171 Ga. App. 106 (1984),* any error was harmless and cured by the subsequent testimony of Ms. Stancil.

Appellant also makes the argument that Ms. Stancil was the "only witness to identify Demond Beckett as the one who took the Kia Soul in the first place. And she is the only witness to link Demond Beckett to the Baldwin County incident." (Appellant Brief p.14; hereinafter AB.14). It is established law that the testimony of one witness is enough to sustain a conviction if the jury believes them. There is no obligation on the state to present multiple witnesses, and in some cases, multiple witnesses to a crime just do not exist[1].

Statements Of Jerry Clary

Appellant asserts that Jerry Clary's statements to Officer Mills and Officer Sartain were inadmissible hearsay and yet admits that Mr. Clary's in court testimony was quite different from the statements he made earlier to the officers listed. Under O.C.G.A. 24-6-613 these statements would be admissible as impeachment material. It is important to note that Mr. Clary was not called as a witness by the defense. Appellant had the opportunity and did cross-examine Mr. Clary during the trial (T. 271-292; 301-310).

[1] *OCGA § 24-14-8*, The testimony of a single witness is generally sufficient to establish a fact.

Statements of Police Dispatcher

Any statements made by the dispatcher were not offered for the truth of the matter asserted and would not be hearsay.

In *Stallings v State, 319 Ga. App. 587*, the Court stated that

> "Testimony is considered hearsay only if the witness is testifying to another party's statement in order to prove or demonstrate the truth of that statement" quoting *Howard v. State, 305 Ga. App. 159, 161 (2) (a) (699 SE2d 114) (2010).* "When, in a legal investigation, information, conversations, letters and replies, and similar evidence are facts to explain conduct and ascertain motives, they shall be admitted in evidence not as hearsay but as original evidence." The record shows that the dispatch description of the 911 call from the victim and the information received from the victim was admitted for the limited purpose of explaining the officer's conduct in responding to the dispatch call and attempting to stop the vehicles. As such, the admission of the dispatch description was not erroneous. See *Howard, supra, 305 Ga. App. at 161 (2) (a)* (officer's testimony about the radio call describing the suspect was admissible to explain the officer's actions in responding to the radio call); *Morrow v. State, 257 Ga. App. 707, 708 (2) (572 SE2d 58) (2002)* (ruling that the officer's testimony about the information he received

from the police radio dispatcher was admissible to explain the officer's reason for investigating the defendant).”

4. The Court Was Not Required to Grant a Mistrial Under the Circumstances of Jennifer Stancil Initially Asserted Her Fifth Amendment Privilege

Appellant cites *Parrott v. State, 206 Ga. App. 839 (1992)* suggesting the Court should have declared a mistrial and questions the process.

Ms. Stancil makes the statement “I have the right to remain silent” during a time in the trial when the jury was not present, and she was being questioned regarding a jail call between her and the Appellant. (T. 349). It was proffered by Appellant that the jail call contained information of Stancil having possession of cocaine. (T.353). Appellant was trying to refresh Ms. Stancil’s recollection of the jail call and the Court was holding a hearing outside the presence of the jury for Appellant to do so (T.351).

The Court correctly cites *David v State, 264 Ga. App. 128*, where the witness, not the defendant, invokes the right against self-incrimination, but is still subject to cross-examination. The Court also determined that the witness’s answers would

not incriminate her. After the Court discussed the distinction with Ms. Stancil between affirming that Stancil made a statement versus whether that statement was true and could be incriminating against her, Ms. Stancil testified (T.356, 373). Appellant continued with their cross-examination of Ms. Stancil and Ms. Stancil continued to answer questions. (T. 380-388, 396-398, 405-406). Ms. Stancil did invoke her right to remain silent again and was subject to a full and through cross-examination.

Appellant has failed to show how a mistrial would be necessary. The Court took curative action by speaking with Ms. Stancil (T. 355) outside the precense of the jury. The granting of a mistrial is within the sound discretion of the trial court and will not be disturbed unless a mistrial is essential to preserve the defendant's right to a fair trial, which has not been shown here. *Wilkerson v. State, 317 Ga. 242 (2023).*

5. Although Giving the Flight Instruction Is Disapproved, It Does Not Require Reversal

Although the State concedes that the instruction on flight is disapproved according to *Rawls v. State, 310 Ga. 209 (2020)*, the Supreme Court did not reverse the conviction based on the trial court's giving the flight instruction. There must be a

showing that the flight instruction confused the jury, and absent that, the error would be harmless. In this case, the charges themselves deal with flight, so there is no logical conclusion that the flight instruction would contribute in any way to confusion for the jury. The State argues that, given the fact that the charge of Fleeing entails flight, that any error is harmless. Had there been a guilty verdict based on a different charge, it could be argued that the jury possibly confused issues.

During the Charge Conference the Court addressed the potential of jury confusion on this charge by correctly finding that:

> "I didn't gather from the evidence at all that the jury would even be considering he [Appellant] was avoiding the jurisdiction of the court." (T.489)

And the Court continues by saying:

> "…to avoid arrest makes the most sense given the circumstances of the testimony." (T. 492)

Appellant then states: "I think that is the best solution." (T.492).

The jury submitted a number of questions during deliberation, none of which related to the flight instruction or the fleeing charge.

6. The Prosecutor's Arguments Made to The Jury Were Not Impermissible

A prosecutor is granted wide latitude in closing argument. Appellate asserts that his right to a fair trial was violated when the prosecutor made the comment that "innocent people don't need their attorneys to play these kinds of games" (T.542) and that this statement was a comment on Appellant's Sixth Amendment right to counsel, or that only guilty people need attorneys. The State asserts that this comment was not meant to be interpreted as that the Appellant is guilty only because he has a defense attorney or that all defense attorneys play games. It is a comment on the issue of Appellant bringing in information about the victim's drug use as a way to distract from the facts of what Appellant's actual conduct was and what the jury was to deliberate on, in determining Appellant's guilt or innocence of the charges for which he was indicted. This comports with the finding that Appellant presented in his brief from *United States ex rel. Macon v Yeager, 476 F.2 613, 614 (3rd Cir. 1973)* (AB. 26). It is certainly proper for a prosecutor to strongly suggest the guilt of a defendant, and to use strong language to do so, but that was not the statement made by the prosecutor in this case.

In *Clonts v. State, 200 Ga. App. 143,146 (2002),* the defendant was described as a "240-pound goon." The defense objected, and the trial court overruled the

objection. Rejecting defendant's claim, this court explained that inflammatory language is not a basis for reversal.

Appellant next claims that the prosecutor improperly shifted the burden by asking if appellant identified had anyone else who could have been in that car (T. 539). This is the identical argument made by the defendant in *Harper v. State, 248 Ga. App. 106 (2001).* This Court rejected that argument holding that since the prosecutor did not comment on the defendant's failure to testify, it was permissible.

We have a series of cases in Georgia where the Court found that the prosecutor is permitted to bring up Defense's failure to rebut evidence. In *Arrington v. State, 286 Ga. 335, 346 (2009*) the Court held "A prosecutor may argue that the defendant has not rebutted or explained the State's evidence. … It is also permissible for a prosecutor, in closing argument, to 'urge the jury to draw reasonable deductions from a defendant's failure to produce purportedly favorable witnesses.'" See also *Perry v State, 32 Ga. App. 484, 486-487 (1998); Volkova v State, 311 Ga. 187, 196-197 (2021).*

Appellant next argues that the prosecutor's argument that Appellant was a danger to the community was improper because it focused on the social injustice of domestic violence as a whole, but submits no authority for that proposition. The State submits that the closing by the prosecutor referred to all the charges Appellant was charged with, not just the one that the Appellant was ultimately found guilty of, and needs to be taken as a whole. The Prosecutor was expressing to the jury how their decisions could and would impact their community as a whole. Juries are often reminded of the importance of their decisions by the State and the Defense during closing arguments. It was hypothesizing in a general tone.

In *Campbell v. State, 359 Ga. App. 391, 407-408 (2021)* the court held that the prosecutor was permitted to argue that if they [the jury] did not convict the defendant, they would be condoning, and thus promoting, the conduct in question, and that while it did not occur on the jurors' streets, it occurred in their county and they should say "it's not okay." The arguments were not improper because they "did not reflect directly and immediately on [the defendant's] future dangerousness, but appear[ed] to be general appeals to enforce the criminal law for the safety of the community, [even if the jury found the victims in this particular case unsympathetic]."

Appellant's argument that the State's comment about "Demond can't take responsibility for his wrongdoings. He couldn't spare her [the victim] of having to come to court to be re-traumatized by the process of this criminal justice system." (T. 534-35), was a comment on Appellant's bad character or his right to not incriminate himself, is unfounded. It is a comment on what Appellant did or did not do in regards to the case and what occurred because of those decisions. Again, the State has great latitude in what they can say during their closing. It is not evidence. The ultimate verdict of the jury, finding Appellant not guilty of the family violence charges, is proof that the jury did not take them as such.

Appellant's argument that the jury did take them into account so they could find the defendant guilty of something because of the Prosecutor's speech against domestic violence is improper speculation by Appellant and unsubstantiated by the ultimate verdict of the jury.

7. The State Did Not Introduce Facts Not in Evidence During Its Closing Argument[2]

[2] The Court did instruct the jury that anything said by the attorneys is not to be considered evidence. (T. 197 and T. 570)

Appellant complains that the prosecutor introduced facts not in evidence. No attorney may introduce facts not in evidence during a closing argument, Beamon *v. State, 348 Ga. App. 732 (2019),* especially facts that are calculated to prejudice a party and thus render the trial unfair. But a prosecutor is allowed great discretion in commenting on inferences based on the evidence. In this case, it is a reasonable inference, based on the evidence heard at trial through the testimony of Jennifer Stancil, that because they "surfed together and she was homeless" (T. 313) they were in a relationship, lived together at times, and were both homeless. This is a reasonable inference and it was not designed to prejudice Appellant because of his status as an unhoused individual.

The second instance was admittedly brought out by the Appellant during his attorney's cross examination of Ms. Stancil when she stated that "she had to go to the hospital this morning because I had a panic attack for coming here." (T.387). Appellant states that the Prosecutor went beyond her testimony by telling the jury "I actually planned to call her first, and I couldn't…Stancil testified that she had a panic attack the morning she testified." (T.562-63). The comment is a reasonable response as to why Ms. Stancil did not testify first and was brought on by Appellant's attorney. The State fails to see why this is introducing new facts regarding a specific charge. It does not speak to any element of any crime that is to

be proven. The State was relaying to the jury the reason behind the sequence of witnesses. Stancil had already testified that she had the panic attack. This was not a comment on the witness or the Appellant's credibility nor on any element of a crime.

Finally Appellant claims that the prosecutor improperly vouched for the credibility of witnesses by telling a personal anecdote about her own experience regarding being pulled over for speeding and that both she and the car in front of her stopped. Unlike in the case Appellant uses, *Wyatt v State, 267 G. 860, 864* (1997), ("expressions of personal opinion by the prosecutor are improper in closing argument"), this was not the prosecutor's personal opinion, but her personal experience. This was also an invited response based on Appellant's closing statement "How is the driver that is not the vehicle the police officer is following supposed to know that they were the subject of a stop?" (T.551) and did not impermissibly vouch for any witness.

In *Powell v. State, 291 Ga. 743, 745-749 (2012)* the Defense counsel argued that the defendant was not originally charged in the case and speculated about the reasons the prosecutor had indicted him. In response, the prosecutor argued that charging decisions were within the district attorney's discretion, that they would

not indict someone if they did not think the evidence justified it, and then reminded the jury that it was for the jury to decide guilt. The Court characterized the comment that the prosecutor would not indict someone without evidence of guilt as improper, as had been the defense's speculation about why the case was indicted. The Court held: "[T]he prosecutor 'was entitled to respond to defense counsel's remarks,' … [although] the closing argument of the prosecuting attorney was improper, and two wrongs do not make a right. … [U]nder the 'invited response' or 'invited reply' doctrine, inappropriate prosecutorial comments ordinarily do not amount to prejudicial error if, taken in context, they were 'invited' by 'defense counsel's opening salvo' and 'did no more than respond substantially in order to 'right the scale.'" Thus, if this Court finds that the prosecutor's comments were improper, it does not amount to reversable error.

In *Arnold v. State, 309 Ga. 573, 577 (2020)* the Court found that the Prosecutor was permitted to refer to his own military service and bond with a fellow soldier as an analogy to codefendants' close relationship. "[T]he prosecutor is allowed to make illustrations that 'may be as various as are the resources of his genius.' … Such illustrations may include analogies that have some basis in evidence." LEO Lister had testified that he had made audio and visual signals to the Appellant to

stop his vehicle (T.209) and that Appellant was the front vehicle of the two, similar to the story the Prosecutor shared with the jury.

The State would argue that there is no cumulative effect of facts not in evidence, because there were no errors committed and if the Court was to find that some or all were, that they are harmless errors that did not rise to the level of a due process violation and do not merit reversal of the jury's findings.

—CONCLUSION—

This Court should AFFIRM the conviction and sentence of Demond Beckett for fleeing or attempting to elude police, based on sufficient evidence presented at trial.

Respectfully submitted this 29th day of January, 2024

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Western Judicial Circuit
Georgia Bar No. 432657

—WORD COUNT CERTIFICATION—

Undersigned counsel certifies that this submission does not exceed the word count limit imposed by Rule 24.

IN THE COURT OF APPEALS
STATE OF GEORGIA

DEMOND EUGENE BECKETT, Appellant,	DOCKET №: A24A0491
v.	APPEAL FROM THE SUPERIOR COURT OF CLARKE COUNTY
STATE OF GEORGIA, Appellee.	CASE №: SU-22-CR-0790

CERTIFICATE OF SERVICE

This is to certify that I have this date served the attorney of record for the Appellant with a copy of the foregoing Brief of Appellee by electronic mail. I certify that there is a prior agreement with Kaitlyn Beck to allow documents in a PDF format sent via email to suffice for service.

Kaitlyn Beck
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This 29th day of January, 2024.

/s/ *Deborah Gonzalez*
Deborah Gonzalez,
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