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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable James R. Barber, III, Circuit Court Judge
Honorable J. Derham Cole, Post-Conviction Relief Judge

ADONIS WILLIAMS,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001688

REPLY BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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ARGUMENT IN REPLY

The admission of the contents of text messages obtained by a warrantless search of Appellant's phone in violation of the Fourth Amendment is not harmless.

As argued in Appellant's amended brief, the trial judge erred in admitting the text messages obtained from Appellant's cell-phone without a warrant when the phone was not abandoned. Respondent argues that, "Even if the trial court improperly admitted text messages from Appellant's phone, any error was entirely harmless in light of the cumulative nature of the evidence and the overwhelming evidence of guilt such that the text messages could not have reasonable impacted the jury's verdict." (BOR p. 10). As discussed below, the error was not harmless. A portion of the text message that included a racial slur and a reference to Black power was not cumulative to the other evidence of flight presented by the State. The evidence presented by the State was not overwhelming. The error in admitting the text messages requires reversal.

Prior to trial Appellant moved to suppress text messages obtained from his cell phone. (App. pp. 84-91). The cell phone was found pursuant to the search of the home of Dawn Shea, a home where Petitioner would sometimes stay with Ms. Shea. (App. p. 85, line 13 – p. 86, lines 1-12). Sergeant Don Robinson, an investigator with the Richland County Sheriff's Department, testified, "This was a rekindled girlfriend situation. They had recently rekindled their affair shortly before this happened." (App. p. 489, lines 22-23). The investigator testified that they obtained consent to search the residence from Ms. Shea. (App. p. 492, lines 1-19). Sergeant Robinson testified that he took possession of the phone found at Ms. Shea's home and downloaded records from the phone. (App. p. 492, lines 8 – p. 493, lines 1-19). Sergeant Robinson testified that the phone belonged to Appellant. (App. p. 491, lines 20-23). Sergeant Robinson testified that after

he confirmed that the phone belonged to Appellant, he went through the phone and looked at text messages. (App. p. 493, lines 25 – p. 494, lines 1-3).

Sergeant Robinson was allowed to testify before the jury, over objection, as to the content of the text messages found on the phone. (App. pp. 494-496). As to one text message, Sergeant Robinson testified, "The police is looking for you. They came back one of a kind." (App. p. 497, lines 7-8). The prosecutor did not end her questioning with the one text message but went on to question the investigator about a second text message. (App. p. 497, lines 11-18). Sergeant Robinson testified about the second text message, "'Are you gonna let me get that weed, my N-I-G-G-A?' There's a question mark. And, 'I'm about to go into hiding.' Then, 'Black power.'" (App. p. 497, lines 19-22). Photographs of the text messages were also admitted in evidence as State's Exhibits #66, #67. (App. p. 496, line 8; pp. 1059-1060).

Prior to erroneously ruling that the phone had been abandoned, the judge questioned the prosecutor about the purpose of the text messages. (App. p. 88, lines 15-16). The prosecutor confirmed that the purpose of admitting the text messages was to show flight. (App. p. 88, line 17). The trial judge asked the prosecutor, "Don't y'all already have flight?" (App. p. 88, line 18). The prosecutor answered, "No, sir. We never have enough." (App. p. 88, line 19). The judge responded, "Well, sometimes you have too much, and that's generally what gets solicitors in trouble because they have too much and they don't need everything that they put in." (App. p. 88, lines 20-23). The prosecutor indicated the evidence was limited to two of the three exhibits. (App. p. 88, line 24 – p. 89, lines 1-2).

After the judge erroneously ruled pretrial that the text messages were admissible because the phone had been abandoned, trial counsel challenged the admission of the text messages as hearsay and a violation of the confrontation clause. (App. p. 90, lines 1-12). Trial counsel also

objected pursuant to Rule 403, SCRE, specifically referencing the "Black power" language in the text message. (App. p. 90, lines 13-17). At trial, counsel for Appellant again objected to the admission of the text messages. (App. p. 491, lines 6-16). The prosecutor told the judge, "We are only introducing those just to show evidence of flight." (App. p. 495, lines 8-9). Trial counsel additionally objected to the admission of the text messages based on hearsay and Rule 403. (App. p. 495, lines 12-18). The trial judge overruled the objections stating:

> All right. I'm going to admit it on the basis that it's not being offered for the truth of the matter of the matter asserted but being offered for the purpose of putting - - that this defendant may have known that the police were looking for him and - - whether that's true or not true, but hat he may have had information that the police were looking for him ither through t a text message to this phone or a message from this phone.
>
> Now, you can certainly question them - - I think it would go to the weight of the evidence, and you can cross-examine them about whether they have any information that he had the phone when there were – messages were either made or received but that will - - that's the purpose of - - I mean, the basis of admission. All right. Bring the jury in.

(App. p. 495, line 19 – p. 496, lines 1-7). The text messages, however, went beyond the purpose of showing evidence of flight. The text messages including the use of the words "my N-I-G-G-A" and "Black power" are not relevant to flight, not cumulative to other evidence introduced at trial and prejudicial to Appellant by inserting an arbitrary racial factor into the trial. The error in admitting the text messages was not harmless. Connecting the "I'm about to go into hiding" message with the "my N-I-G-G-A" and "Black power" is far more prejudicial than the other evidence of flight introduced by the State at trial.

In State v. White, 410 S.C. 56, 59, 762 S.E.2d 726, 728 (Ct. App. 2014), the South Carolina Court of Appeals wrote:

> In State v. Creech, 314 S.C. 76, 441 S.E.2d 635 (Ct.App.1993), this court reiterated the Supreme Court of the United States' holding in Chapman v. California[4] that error of even constitutional magnitude may be deemed harmless if, "considering

> the entire record on appeal, the reviewing court finds beyond a reasonable doubt that the error did not contribute to the verdict." Id. at 86, 441 S.E.2d at 640 (citing Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)); see also Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993).

Considering the entire record on appeal, the constitutional error in admitting the illegally obtained text messages was not harmless. At trial Appellant admitted that he heard there were warrants for him and testified that, "I mean, basically I didn't want to get arrested." (App. p. 599, line 10). Appellant's testimony at trial and the evidence of flight leading up to Appellant's arrest were far less prejudicial than the improperly admitted text message, "I'm about to go into hiding." The text messages including the use of the words "my N-I-G-G-A" and "Black power" are not cumulative to other evidence introduced at trial. The admission of the text messages that included racially charged words was prejudicial.

Additionally, the State's evidence linking Appellant to the burglary and armed robbery was not overwhelming. This was the second trial after the first jury was unable to reach a verdict. A mixture of DNA evidence was found on a cigarette butt that was found on the grassy area near a driveway on Patricia Drive where the witness testified the suspect got out of her truck. (App. pp. 305-307). The DNA expert testified that neither the witness, nor Appellant could be eliminated as contributors to the mixture of DNA found on the cigarette butt. (App. p. 386, lines 3-19). Appellant's DNA was not found inside the truck or the house that was burglarized. The fingerprint evidence was found on the outside of the house on a telephone box where the wires had been cut. (App. p. 173, lines 14-23). Appellant's fingerprints were not found inside the house or the truck. Although the witness described the suspect as having a chickenpox scar near his left eye, (App. p. 195, line 24 – p. 196, line 1), and Appellant admitted having a mark on his temple, (App. p. 652, lines 13-18), the witness did not identify Appellant. The State's evidence was not overwhelming. The error was not harmless.

CONCLUSION

Based on the arguments presented in Appellant's amended brief and in this reply brief, this Court should reverse Petitioner's convictions and sentences and remand for a new trial.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of February, 2022.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Reply Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is, wblitch@scag.gov; and Adonis K. Williams, #274626, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 22nd day of February, 2022.

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