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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2021-001311

THE STATE,

Respondent,

v.

QUINTUS DANTE FAISON,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUE ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	7
ARGUMENT.....	8
The trial court did not abuse its discretion by admitting Faison's incriminating text messages merely because the messages contained references to "white people."	8
CONCLUSION	13

TABLE OF AUTHORITIES

<u>McKissick v. J.F. Cleckley & Co.</u> , 325 S.C. 327, 479 S.E.2d 67 (Ct. App. 1996).....	9
<u>State v. Benton</u> , 435 S.C. 250, 865 S.E.2d 919 (Ct.App. 2021).....	8
<u>State v. Collins</u> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	7
<u>State v. Gray</u> , 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014)	10
<u>State v. Heath</u> , 433 S.C. 506, 860 S.E.2d 673 (Ct. App. 2021)	10
<u>State v. Lipka</u> , 289 Or. App. 829, 413 P.3d 993 (2018).....	11
<u>State v. Rogers</u> , 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004)	9
<u>State v. Russell</u> , 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001)	9
<u>United States v. Mohr</u> , 318 F.3d 613, 621 (4th Cir. 2003).....	9
Rules 401–403, SCORE	9

STATEMENT OF ISSUES ON APPEAL

Whether the trial court abused its discretion by admitting Faison's incriminating text messages containing references to "white people" where the references were not bigoted and Faison did not object on this basis at trial.

STATEMENT OF THE CASE

An Horry County grand jury indicted Appellant Quintus Faison for two counts of First Degree Burglary, two counts of Armed Robbery, and two counts of Kidnapping. Faison proceeded to jury trial on October 25, 2021, before the Honorable Bentley Price and was convicted as charged. Judge Price sentenced Faison to 25 years' incarceration on each charge, with the sentences to be served concurrently. This direct appeal follows.

STATEMENT OF FACTS

This appeal involves two home-invasion armed robberies that occurred six days apart in December 2017 in Horry County. On December 22, Barry and Dawn Brooks arrived at their home in Loris, near Myrtle Beach, at around 9:00 p.m.

(R.9–10). As Mr. Brooks was in the carport unloading the car, a man approached him wielding an assault rifle. (R.11). Two more men appeared and held Mr. Brooks against his car while they went through his pockets. (R.11). They then placed a gun to his head and forced him inside the home. (R.12). The men forced Mr. and Mrs. Brooks onto the floor, one of the intruders holding them at gun point while the other two ransacked the home. (R.12). All three men were African American and were wearing masks. (R.16–17).

The three men were in the home for around 30 minutes, and were talking to each other the entire time. (R.86). Ms. Brooks testified that one of the three sounded "younger" and "kinder" and spoke to her directly, asking where to find jewelry and how to open the safe. (R.84). After stealing jewelry and cash, the three men stole the Brookses' car and fled the scene. The car was recovered about an hour later in the nearby Longs community. (R.19; 124; 184). A narcotics officer was patrolling the neighborhood and recognized the Brookses' car at the home of a Mr. Goody on St. John's Circle. (R.182–184). Faison lived within 300 yards of the house where the vehicle was located. (R.187). Police recovered some of the Brookses' property from their stolen car at St. John's Circle. (R.70; 205).

Faison and two others were later arrested and charged. Ms. Brooks testified she observed the three men at their bond hearing following their arrest, and

recognized Faison's voice as the "younger, kinder" man. (R.88). She had zero doubt about her identification. (R.88). Faison's bond hearing was on January 4th. (R.106).

Another house in the area, the residence of Ralph Winnie, was also burglarized 6 nights later on December 28. (R.133–145). The robbery occurred in much the same way, with three masked African American males robbing Mr. Winnie and his roommate at gunpoint while they ransacked the house. The men also stole Mr. Winnie's car, which was recovered on the same night on nearby Elbow Rd. (R.148; 184). DNA evidence connected one of Faison's codefendants, Dale Ford, to both Mr. Winnie's and the Brookses' vehicles, his DNA having been found on both steering wheels. (R.293–298).

Faison's then-girlfriend, Ladasha Green, testified. She identified a cell phone that she gave to Faison, which police later searched following his arrest. (R.214). She testified Faison gave her a necklace as a gift that she later learned belonged to Dawn Brooks. (R.217). She further testified she deleted a video off Faison's snapchat account in an effort to "help him." (R.220). Faison contacted her after he was arrested and requested that she "get [the phone] shut off." (R.225). Green's grandmother testified that she accompanied Green to the police station to return the stolen jewelry. (R.234).

Police discovered numerous incriminating Facebook messages on Faison's phone, which will be discussed further in the argument section. In a message from December 21, Faison asks to borrow a .40 caliber pistol. (R.341). In others, he talks

about his plan to "scope" houses where there might be cash. (R.338–342). Another asks "we're da straps [sic]." (R.345). In a message from December 28, Faison asks to borrow a ski mask. (R.345). In another, he says "Imma gonna fucc around an catch one of dease white people naborhood by Heather [sic]." (R.343). Police also discovered photographs of Faison, one of which apparently depicts him wearing a black rubber mask. (R.349).

They also searched the phone's web history. A search from the early hours of December 23, just after the burglary of the Brooks' home, was for "Pulsar watches female." (R.342). Among the property stolen from Dawn Brooks was a Pulsar watch. Another search conducted on the afternoon of December 28 is for "905 Buck Creek houses." (R.344). Ralph Winnie's home has an address on Highway 905, and abuts Buck Creek Drive. (R.131; 344). Another search is for "home invasion 29568 area code Longs." (R.346).

Corey Stephens testified for the State. Stephens was incarcerated with Faison at J. Reuben Long Detention Center, and the two were roommates for three and a half weeks. (R.240). Faison told him he participated in a burglary in December of 2017, along with codefendants Maurice Bellamy and Dale Ford. (R.241). Faison described the burglary in detail, including the clothing he wore and the items he stole. Faison told him he tried to calm one of the victims of the robbery, and that he regretted taking part. (R.242–43).

STANDARD OF REVIEW

A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. The appellate court reviews a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and is obligated to give great deference to the trial court's judgment. State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

ARGUMENT

The trial court did not abuse its discretion by admitting Faison's incriminating text messages merely because the messages contained references to "white people."

Faison claims the trial court erroneously admitted incriminating Facebook messages recovered from his cell phone because his references to "white people" were "unflattering" and "uncomplimentary." This argument is not preserved for review because it was not raised and ruled on by the trial court. Even if preserved, the record supports a finding that the probative value of the messages was not substantially outweighed by the danger of unfair prejudice. This Court should affirm.

A. Error preservation.

Faison's argument that the trial court erroneously admitted his Facebook messages because of their alleged racial character is not preserved for review. In his brief, Faison complains that his text messages "depicted a negative portrayal of appellant . . . as potentially targeting people along racial lines, which was extremely unflattering and very uncomplimentary." Brief of Appellant at 7. This is not the same argument Faison presented at trial in objection to the messages. At trial, Faison made a blanket objection to all the messages, arguing there was not a proper foundation under State v. Benton¹ because there was evidence others had access to his phone and social media accounts. (R.322–326). Faison never argued that the

¹ State v. Benton, 435 S.C. 250, 865 S.E.2d 919 (Ct.App. 2021) (holding text messages were properly authenticated under Rule 901, SCRE, due to the "distinctive characteristics" and content of the messages).

messages showed racial targeting, and never even specifically mentioned the text messages that included the phrase "white people." When the individual messages were read into the record, he offered no specific objection to any of the messages that referenced "white people." Faison's argument on appeal is unpreserved for review because it was not raised to and ruled on by the trial court. See State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (explaining that in order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity); McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) (explaining a "specific objection to the admission of evidence must be made to preserve the issue for appeal" and the "same ground argued on appeal must have been argued to the trial judge"); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (explaining it must be clear that the appellate argument was presented to the trial court on the same ground).

Faison did not raise at trial, and does not raise in his brief, the possibility that the trial court could have redacted the messages to remove the references to "white people." Accordingly, this argument is not preserved for review and should not be considered by this Court. Even if the issue was preserved, it would fail because to redact the words "white people" would have unduly obscured the content of the messages, creating confusion and perhaps raising even more damning inferences from jurors forced to speculate which words were redacted. See United

States v. Mohr, 318 F.3d 613, 621 (4th Cir. 2003) (affirming admission of racial language where it "could not be redacted from the remainder of it without changing the meaning of that remark"). This Court should affirm.

B. Discussion.

Even if preserved, Faison's argument is meritless. The messages in question were highly probative and did not carry a substantial danger of unfair prejudice. This Court should affirm.

Generally, relevant evidence is admissible. See Rule 402, SCORE. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCORE. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCORE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gray, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014). The determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case. State v. Heath, 433 S.C. 506, 514, 860 S.E.2d 673, 677 (Ct. App. 2021).

The Facebook messages were highly probative of Faison's guilt because they explicitly show his preparation to commit these crimes. As discussed in the fact section of this brief, Faison's messages contain unmistakable references to guns, including his request to borrow a friend's .40 caliber handgun. (R.341–45). In one

message, Faison asks to borrow a ski mask. (R.345). He also refers to "scoping" out houses where there might be cash. (R.338–342). These messages were admitted in addition to contemporary web searches showing Faison's knowledge of the crimes. (R.344–346).

In his brief, Faison identifies two messages that refer to "white people." The first comes from an exchange where Faison asks, "you know where dat white boy Alex stay at [sic]?" (R.336). The response from Cantrell Bellamy was "Nah ask Mike." (R.336). Faison then asks another friend, "He stay in dem white peoples like before you get to Dixie Dutte [sic]?" (R.336). It would be hard to suggest this exchange shows any kind of racial prejudice. Rather, Faison is simply using race as an identifying characteristic in questions to his friends. Courts have allowed much more inflammatory language to come before juries, as long as the evidence is probative. See, e.g. State v. Lipka, 289 Or. App. 829, 834, 413 P.3d 993, 996 (2018).

Later, Faison states that he was "gonna fucc around an catch one of dease white people naborhood by Heather [sic]." (R.343). This message is extremely probative because it is essentially Faison's declaration of intent to commit burglary. Again, the message does not display bigotry or racism. Faison simply used race as an identifying characteristic to describe a neighborhood he planned to rob. (R.336–340; 347). There is no unfair prejudice here.

While Faison complains that the solicitor highlighted the messages in her closing argument, Faison did not object to the argument. Accordingly, any

argument along these lines is not preserved for review. Regardless, the solicitor was simply arguing for the legitimate probative force of properly admitted evidence.

The Facebook messages were highly probative of Faison's guilt because they showed his preparation, intent, and knowledge of the crime. By contrast, the messages were not unfairly prejudicial because that did not suggest racial bias or any other improper consideration. Rather, Faison was simply using race as an identifying characteristic when deciding which houses to burglarize. Evidence supports the trial court's ruling. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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