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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

PETITIONER

Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)

APPELLATE CASE NO. 2022-001227

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

REPLY TO RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS

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ARGUMENT

As an initial matter, the state's mischaracterization of the facts must be addressed. Although the statement of facts contained in the return to the petition for writ of certiorari is a simple three-plus page block quote from the opinion issued by the Court of Appeals, the state included various "facts" in its statement of the case that are not supported by the record. For example, the state claimed that "Petitioner burst into the apartment where the victim, Tyhira Harrington, lived and verbally berated her, then threw down a blue gang bandana, saying 'it's on the five.'" Ret. at 3. In support of this sentence, the state provided multiple citations; however, none support the state's mischaracterization of what occurred that day.

Nothing in the record supports the state's claim that Petitioner "burst" into the apartment. Marilyn Garvin, the deceased's mother, testified that after she heard a knock on the door and learned it was Petitioner knocking, the deceased "let him in." R. 73, ll. 7-8. In fact, Garvin claimed she argued with the deceased regarding her allowing Petitioner into her apartment, but the deceased insisted that it was her house and she would allow him in if she wanted to do so. R. 73, ll. 8-13. Yhantyse Priester testified that Petitioner entered the apartment to clear his name. R. 177, ll. 1-4. Priester made no suggestion or insinuation that Petitioner burst into the apartment.

Nothing in the record supports the state's claim that Petitioner "verbally berated" the deceased when he entered the apartment. According to Garvin, when Petitioner entered the apartment, other people "started asking him why would he lie and say that [the deceased] took him to Allendale to be robbed." R. 73, ll. 13-16. To this, Petitioner "responded," but Garvin did not "remember exactly what he said." R. 73, ll. 16-17. Later, the state asked Garvin if there had been an argument in the apartment. R. 88, l. 14. Garvin claimed the only conversation was: "like I said

before, they said why did [the deceased] - - he asked me why did you take me to Allendale to have me set up.” R. 88, ll. 15-17. This was the “only thing that was said.” R. 88, ll. 17-18.

Randy White testified there was no confrontation or argument. R. 136, ll. 15-17. Petitioner told the deceased that he wanted to “clear his name” and insisted he did not tell Garvin to wear a black dress.” R. 136, l. 12 – R. 137, l. 4. This conversation was “calm at first.” R. 137, ll. 19-21. Then, Petitioner and Garvin’s boyfriend began discussing gangs. R. 137, l. 22 – R. 138, l. 7. When the deceased told Petitioner to leave, he left. R. 147, ll. 8-14. Priester’s testimony was similar to White’s in that Priester stated Petitioner “talk[ed] about some stripes” with Garvin’s boyfriend. R. 177, ll. 5-9. According to Priester, Petitioner left when asked to do so. R. 178, ll. 12-19.

No one attributed “it’s on the five” to Petitioner. Garvin testified that Petitioner “threw a bandana down on the floor and said you put it all under whatever the gang names.” R. 73, ll. 18-19. She also claimed Petitioner “put it on that, and he put it on there.” R. 73, ll. 19-21. Another male allegedly asked Petitioner to pick up the bandana. R. 73, ll. 21-22. Using pronouns, Garvin claimed: “And he said, no, it’s on there on the five.” R. 73, ll. 22-23. Garvin did not identify this speaker, however, she claimed that thereafter, the other male said, “it’s on the five.” R. 73, l. 23.

The state’s mischaracterizations did not end there. According to the state, that although the deceased’s three friends got out of the car, Petitioner and the deceased were the only ones who approached each other. Ret. at 3. Yet, the testimony showed otherwise. Randy White testified that he was advancing on Petitioner and his girlfriend with the deceased. R. 111, ll. 20-24. When defense counsel asked if the deceased were going forward toward Petitioner and his girlfriend, White testified affirmatively. R. 111, ll. 20-22. Defense counsel then asked if White were “coming along” with the deceased, and White again testified affirmatively. R. 111, ll. 23-24. White also explained that Marquis Alston was “around us” referring to himself and the deceased while Priester

was standing near the car, which was a few steps away. R. 125, l. 19 – R. 126, l. 4. At one point White made it very clear: “As we start moving up, they kept going back, going back, going back.” R. 112, ll. 12-15.

Similarly, the state took more liberties with the record by claiming the deceased “had not threatened Petitioner, made no advances toward Petitioner, and had no weapon with her.” Ret. at 3. The record easily refutes these claims. Again, Randy White, the deceased’s boyfriend testified that when the deceased got out of the car, she wanted to fight Petitioner’s girlfriend and then she wanted to fight Petitioner. R. 111, ll. 5-9. Contrary to the state’s claim that the deceased made no advances toward Petitioner, White was clear that the deceased was going toward Petitioner and his girlfriend. R. 111, ll. 20-22. According to White, he heard the deceased “offer[ed] violent acts to those people, [Petitioner] and his girlfriend.” R. 117, ll. 18-20.

The state’s mischaracterization of the record must not be allowed to stand. The state may not claim ignorance or imprecision here in light of its choice to block quote the opinion issued by the Court of Appeals as its statement of facts. There, as re-typed by the state, the Court of Appeals recounted White’s testimony that White “followed [the deceased] as she advanced toward [Petitioner].” Ret. at 6 (quoting State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)).

Not only did the state incorrectly and inaccurately recite the facts in the case, the state also incorrectly and inaccurately relayed the law to this Court. The state claimed that “in order for this Court to grant Petitioner a writ of certiorari, he must prove one of the requires of Rule 242, SCACR, have been met.” Ret. at 10. This is categorically false. According to the Rule, “[a] writ of certiorari ... will granted only where there are special and important reasons.” Rule 242(b), SCACR. The Rule then provides a list that is “neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review.” Rule 242(b), SCACR. In fact, the list is an indication

of “the character of reasons” that this Court will consider in its certiorari decision. Rule 242(b), SCACR. As the text of the Rule makes clear, the Rule does not contain “requirements” a petitioner must “prove” in order for this Court to grant its constitutional, statutory, and inherent powers to grant writs.

I. The Court of Appeals erred in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed.

In its argument, the state asserts that in order for Petitioner “to obtain relief from this Court, he must prove the trial court manifestly abused its discretion by finding the text message was properly authenticated and that *but for the authentication error he would have been found not guilty.*” Ret. 10 (emphasis added). This is manifestly incorrect. Petitioner is not required to show that but for the error he would have been found not guilty. Such a bar is too high for anyone to meet. Rather, the law is abundantly clear that an appellant in a criminal case must show reversible error in most cases, it is not necessary for an appellant to show he would have been found not guilty but for the error. “In order to constitute reversible error, the reviewing court must be satisfied that there are reasonable grounds for supposing that the jury might have been misled to the prejudice of the appellant.” State v. Murphy, 214 S.C. 517, 523, 53 S.E.2d 402, 405 (1949). Put another way, “[t]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability that the jury’s verdict was influenced by the challenged evidence or the lack thereof.” Fields v. Reg’l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

In light of the actual law concerning reversible error, the state's issue statement becomes of preeminent importance. According to the state, the "jury could (and did) conclude the text message was what [Garvin] said it was." Ret. at 10. Thus, the state has conceded that if error in this case exists, then the error was reversible because the jury did conclude the text message was a message from Johnny McKnight insisting that Petitioner and his girlfriend were trying to break into the deceased's home.

Additionally, the state claimed "[t]he text only corroborated other evidence presented, which showed that Petitioner and his girlfriend were at the apartments half an hour before the shooting (a fact Petitioner does not dispute)." Ret. at 11. This statement is remarkable for its intent to mislead. The text message's purpose was not simply to corroborate other evidence that Petitioner and his girlfriend were at the apartment complex thirty minutes before the shooting. According to Garvin, the message read: "I just seen Hard girlfriend walking behind apartment. He's probably behind her to[o] trying something." R. 79, ll. 23-25. And, according to Garvin, the message meant: "that Hard was trying, him and his girlfriend, trying to lure [her] baby out the house." R. 80, ll. 1-5. The solicitor then had Garvin repeat that in response to receiving the text message, she called the deceased and said, "Johnny just text me and said that Hard and his girlfriend - - Mr. Sanders and his girlfriend was going back behind your apartment." R. 80, ll. 20-24. While Petitioner admitted he was at the apartment complex, he absolutely disputed that he was attempted to break into the deceased's apartment or "trying something" related to the deceased's apartment.

Further, the state's argument on appeal concerning the significance of the text message is undercut by the argument put forward by the state to the jury during closing argument. The state relied upon the text message in its closing argument to claim Petitioner was at fault for bringing

on the difficulty. R. 389, l. 24 – R. 390, l. 15. As the solicitor explained, the text message, which was communicated by Garvin to the deceased, showed that Petitioner was “behind the house, trying something.” R. 390, ll. 11-15; R. 390, ll. 19-24. According to the solicitor, this meant Petitioner “started the whole thing.” R. 390, l. 19; R. 390, l. 25 – R. 391, l. 2. The state went so far as to claim that Petitioner “started it” “when he was trying to get in her house” and the only evidence to support this contention was the text message allegedly sent by Johnny McKnight claiming that Petitioner and his girlfriend were near the apartment. R. 391, ll. 16-19.

II. The Court of Appeals erred in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense.

In arguing that Petitioner failed to establish prejudice, the state again misstated the law. According to the state, Petitioner would have to show “how the result of the trial would have been different but for the admission of this singular text.” Ret. at 12. As Petitioner has refuted this claim thoroughly supra, Petitioner will not belabor the argument here except to note that the case cited by the state for this proposition, State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), accurately conveys the law, but the state simply refused to put that into its return. This Court explained that the improper admission of hearsay “is deemed harmless when it could not have reasonably affected the result of the trial.” State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011). Notably, Jennings does not require an appellant to show “how the result of the trial would have been different but for the” error. See Ret. at 12.

The state also asserted that Petitioner was required to “show how the state failed to disprove each element [of self defense] apart from the text message” in order to establish prejudice in the admission of the text message. Ret. at 13. Again, this is not the test. To show reversible error, an appellant must show the reasonable likelihood that the error contributed to the jury’s verdict.

This portion of the state’s return is not without its own mischaracterizations of the record either. The state alleged that White testified that when the deceased received a phone call she “floored it back to her apartment and Petitioner and his girlfriend outside of it right before the shooting (about 20 minutes after the text was sent).” Ret. at 12. For this proposition, the state cites to pages one hundred and one hundred and one of the record. A review of those pages easily

shows the state's erroneous characterization of the testimony. White was clear the deceased hung up the phone "and stomped the car." R. 100, ll. 24-25. He clarified that she drove fast. R. 101, ll. 1-2. According to White, she drove to the projects, but he did not know the exact address or name of the apartment complex. R. 101, ll. 3-7.

White then said the occupants of the car saw Petitioner and his girlfriend "standing right there." R. 101, ll. 16-17. The solicitor asked for clarification: "Standing right where?" R. 101, l. 18. White explained that Petitioner and his girlfriend were standing by the "[d]ryer/washer," and agreed the location was the laundromat. R. 101, ll. 29-31. Thus, White testified that he, the deceased, and the others in the car found Petitioner and his girlfriend outside of the apartment complex, but he did not testify to finding them outside of the deceased's apartment, which was the mischaracterization given to his testimony by the state. The state hopes its mischaracterizations of the record convince this Court that any error in the admission of the hearsay text message was cumulative to other evidence in the record. The state's liberties with the record should not be allowed to misled this Court.

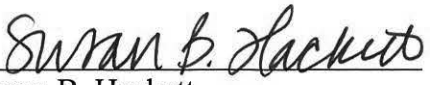
When discussing the elements of self-defense, the state asserted "only the victim approached the Petitioner – the other three stayed quiet in the background." Ret. at 13. At least, the state finally confessed the deceased approached Petitioner, but the state continued to misrepresent the record. As already discussed, White testified that he along with the deceased advanced toward Petitioner as Petitioner and his girlfriend backed up. Furthermore, White testified that Alston was very close to where he and the deceased were while the two advanced toward Petitioner.

Finally, the state inexplicably claimed Petitioner "was not justified in using deadly force under our stand your ground laws." Ret. at 14. The Protection of Persons and Property Act, S.C.

Code Ann. § 16-11-410, et seq., is often referred to as South Carolina’s “Stand Your Ground” law. See State v. Jones, 416 S.C. 283, 299, 786 S.E.2d 132, 140 (2016). Petitioner has never sought immunity from prosecution under the Act, and does not seek such on appeal. The Act is inapplicable to this Court’s consideration of Petitioner’s request for the issuance of a writ of certiorari.

CONCLUSION

Petitioner respectfully requests this Court issue a writ of certiorari to review the decision issued by the Court of Appeals in this case.



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This 24th day of October, 2022.