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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS ALEXANDER BROWN,

APPELLANT.

APPELLATE CASE NO. 2022-001360

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this self-defense case, did the trial court err in upholding the State's objection to evidence that contradicted the State's main witness's testimony that the decedent had a gun on the day of the shooting?

STATEMENT OF THE CASE

Appellant Demetrius Brown was indicted in Sumter County for murder and weapons charges and on February 14, 2022, he was tried before the Honorable Kristi F. Curtis and a jury. Tr. 1. Ernest A, Finney, Jr. represented the State. Tr. 1. Deborah J. Butcher and Robert J. Butcher represented appellant. Tr. 1. The jury convicted appellant of murder and on both weapons charges. Tr. 753-4. Judge Curtis sentenced appellant to the mandatory minimum sentence of thirty years' imprisonment for murder and concurrent sentences on the weapons charges. Tr. 760. This appeal follows.

STANDARD OF REVIEW

The evidentiary issue in this appeal is governed by the abuse of discretion standard. State v. Washington, 431 S.C. 394, 405–06, 848 S.E.2d 779, 785 (2020). “An abuse of discretion occurs when the trial court's ruling is based on an error of law.” Id. (internal quotations and citations omitted).

ARGUMENT

In this self-defense case, the trial court erred in upholding the State's objection to evidence that contradicted the State's main witness's testimony that the decedent had a gun on the day of the shooting.

Appellant Demetrius Brown ("Brown") shot the decedent, Lonnie Pack ("Pack") in self-defense. Tr. 592-95. Brown was at work at a garage when Pack and two other men pulled up in a Chrysler 300 sedan. Tr. 592. Brown was in his SUV. Tr. 592. Brown's SUV was blocked in. Tr. 595. Pack came up to the door of his SUV. Tr. 592. The two other men went to the back of Brown's SUV. Tr. 634.

Brown asked Pack what was going on and Pack told him to "hold up a second." Tr. 592. Pack pulled out his cell phone and made a call on speakerphone. Tr. 592. When the person on the other end answered, Pack said, "I got that nigga D. right here, what you want me to do with him?" Tr. 592. The other person said, "why the F you calling me. Do what I tell you to do." Tr. 592.

The man Brown heard on the other end of the phone was Seneca Moore. Tr. 646. Brown and Seneca had a disagreement over a car that Brown sold him. Tr. 615-17. Text messages between Brown and Seneca from the day before the shooting were admitted as Defendant's Exhibit 45. Brown texted Seneca a greeting and Seneca replied for Brown to call him "911." Def. Ex. 45. After the call, Brown sent a text to Seneca telling him not to call him with "that bullshit" and denying that he did any wrong in their business transaction. Def. Ex. 45. Seneca replied, "You broke Mother fucker you call me when you were in jam dude, I'm nobody bitch nigga I'm see you Tonight get ready." Def. Ex. 45. Brown replied that he had always been straight in business with him, asked him "where all the aggression coming from" and that he

needed to check who was feeding him the “bullshit because we never had any bad blood.” Def. Ex. 45.

When Pack hung up with Seneca, Pack told Brown to get out of his car. Tr. 593. Brown refused. Tr. 593. Pack tried to pull the car door open and Brown tried to hold it closed. Tr. 593. Pack then pulled a gun. Tr. 652. Brown grabbed for the gun and they “tussled” over it. Tr. 652. Tr. 593. The gun went off during the tussle. Tr. 593.

Pack started backpedaling towards the Chrysler 300. Tr. 653. Tr. 593. Brown had control of the gun. Tr. 593. Brown told Pack not to move because Brown was afraid that Pack was going for another gun in his car. Tr. 593. Tr. 626. Pack did not comply so Brown shot him. Tr. 593. Tr. 626. Pack died from two gunshot wounds. Tr. 349-50.

The other two men with Pack were gone and Brown was afraid they had guns. Tr. 594. Brown dropped Pack’s gun and left the scene in his SUV. Tr. 627. Brown texted Seneca right after the shooting, “So u put hit on a real bro huh.” Def. Ex. 45. Seneca replied, “Don’t text me dude I’m out here daily keep my name out your mouth.” Def. Ex. 45. Brown wrote, “Naw don’t try to back out now Lonnie just rolled on me n called u n asked what to do with me n I heard your voice stafallah.” Def. Ex. 45. Seneca wrote back: “I’m prepared for whatever dude stay there nigga. I’m not sucker. Otw.” Def. Ex. 45.

The police retrieved Pack’s cell phone and the contents of his instant messages were entered as Defendant’s Exhibit 40.¹ An incoming message said, “Got major lil job buddy for you fake Ass Muslim dude.” Def. Ex. 40, p. 37. Appellant is a practicing Muslim and Seneca and Pack knew this. Tr. 591. Pack wrote back, “Where and when.” Def. Ex. 40, p. 37. Seneca

¹ The court reporter’s index shows Defendant’s Ex. 40 marked, but not entered, but this is a mistake. Tr. 9. Appellant marked Exhibit 39 for identification on page 422. Tr. 422. Appellant moved Exhibit 40 into evidence along with several other exhibits and the solicitor objected to Exhibit 40. Tr. 440-41. Judge Curtis admitted Defendant’s Exhibit 40. Tr. 441.

wrote that it was about appellant selling a car that was stolen. Def. Ex. 40, p. 38. Pack wrote, “Ill get him now.” Def. Ex. 40, p. 38.

No gun was found at the scene or during the investigation. Tr. 518. The police did find a red iPhone belonging to Anfernee Bradley (“Bradley”), who was in the car with Pack. Tr. 166. Also in the car was a man named “D.V.” who the police did not identify. Tr. 533. The police found 37.2 grams of marijuana, a scale, and baggies in the car. Tr. 567. Tr. 315-19. The police did not enter any evidence from Bradley’s phone and did not allow the defense to examine the phone. Tr. 512-13. Instead, they gave Bradley back his phone per the elected Solicitor. Tr. 698-99. Tr. 534. Appellant asked for and received a spoliation charge from Judge Curtis because of the State’s actions regarding Bradley’s phone. Tr. 746-47.

Bradley testified for the State and said Pack did not have a gun on the day of the shooting. Tr. 183. Bradley said the three men got out of the car and he saw Pack talking on the phone. Tr. 171. After Pack hung up the phone, Bradley heard Pack and Brown talking which escalated to yelling. Tr. 173. Brown was sitting in his truck and the door was pushed. Tr. 173-75. Bradley saw Brown with a gun, heard gunshots, and ran. Tr. 175. Bradley claimed Brown got the gun from his SUV. Tr. 176. Bradley was impeached with a video statement in which he said he did not see the gun “until it was up in the air being fumbled.” Tr. 216-17.

During cross-examination, defense counsel asked Bradley if he ever told a man named Bennie Haynesworth that Pack brought the gun. Tr. 210. Bradley replied, “I don’t even know who that is.” Tr. 210. Defense counsel asked Bradley another question about Bennie Haynesworth and Bradley repeated, “I don’t even know who that is.” Tr. 210.

The defense called Bennie Haynesworth (“Haynesworth”) as a witness. Tr. 575. Tr. 577. Haynesworth said he knew Bradley as “A.J.” and had seen him a couple of times after the

shooting. Tr. 575. Defense counsel asked Haynesworth about his recall of something Bradley told him about Pack and the solicitor objected on hearsay grounds. Tr. 575-76. Defense counsel replied that the questioning was allowed by Rule 613(b), extrinsic evidence of a prior statement by a witness. Tr. 576. Judge Curtis excused the jury and heard a proffer. Tr. 576.

Defense counsel asked Haynesworth if Bradley told him that Pack had a gun when he got out of the car at the garage. Tr. 577. Haynesworth said no, and then added he had suffered “several head injuries since then.” Tr. 577. He again said he did not recall telling the police that Bradley saw Pack with a gun that day. Tr. 578. He denied remembering the policeman even though the policeman was in the courtroom. Tr. 578-79.

Defense counsel then played video clips from Defendant’s Exhibit 52 “to refresh his memory.” Tr. 579-81. When the clips were being played, Haynesworth asked to “state something for the record.” Tr. 580. He alluded to “an incident” regarding “a portion of my folk” and said he “really felt something against, against the family at the—at that particular time given that statement also.” Tr. 580. He then immediately denied remembering giving the statement. Tr. 580.

The video clips played to Haynesworth were Haynesworth being interviewed by two police officers. Def. Ex. 52. On Clip #1 of Exhibit 52, at approximately the 2:27 mark, one of the officers asks Haynesworth, “Did anybody ever say anything about [Pack] having any weapons?” Def. Ex. 52. Haynesworth replied, “They say Lonnie had a gun when he got out the car.” Def. Ex. 52. The officer asks, “Who said that?” Def. Ex. 52. Haynesworth said, “A.J.” Def. Ex. 52. The other officer clarified, “He told you that or that’s what you heard he was saying?” Def. Ex. 52. Haynesworth said, “That’s what he told me. He said [Pack] had the gun when he got out the car.” Def. Ex. 52.

Judge Curtis said she thought the statement was hearsay and was not a prior inconsistent statement. Tr. 581-82. Defense counsel argued that the questioning and extrinsic evidence were allowed under Rule 613 and was inconsistent with Bradley's testimony. Tr. 582. The court said she would agree if it were Bradley's statement, but that it was Haynesworth's statement. Tr. 582. Appellant continued to argue that it was the extrinsic evidence contemplated by Rule 613 and cited State v. Blalock, 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003). The court then said she only heard that Pack sometimes carried a gun but not that Pack had a gun that day. Tr. 583. Defense counsel offered to replay "those exact parts." Tr. 583. After hearing from the solicitor, the court said she had reviewed Blalock and was not allowing the evidence. Tr. 584-85. Appellant motion for a new trial on this issue was denied in a written order. R. ___ (Def. Mot. New Trial). R. ___ (Order Denying Mot. New Trial).

The court erred in not allowing this important impeachment evidence. Rule 613(b), SCRE, states:

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness.

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 613(b), SCRE. Two levels of Rule 613(b) evidence exist and both are admissible.

The first level is Bradley's denial of his statement to Haynesworth. Appellant asked Bradley if he ever told Haynesworth that Pack had a gun that day. Tr. 210. Bradley twice denied even knowing who Haynesworth was. Tr. 210. Bradley's denial made extrinsic evidence of his statement admissible under the rule.

The extrinsic evidence was Haynesworth's testimony. Had Haynesworth testified, "Yes, Bradley told me Pack had a gun that day," the trial judge likely would have had no trouble admitting it as a straightforward application of Rule 613(b). The problem was that Haynesworth either denied making the statement or said he couldn't remember it, even after the video was used to refresh his recollection.

Haynesworth's denial or inability to remember led to the second level of the Rule 613 issue—extrinsic evidence of Haynesworth's statement to the police. Defense counsel properly gave Haynesworth the chance to explain the statement, played it for him to refresh his recollection, and still Haynesworth persisted in claiming he did not remember or alluded to making it up. Tr. 580. At this point, the video became admissible as extrinsic evidence under Rule 613. Alternatively, defense counsel should have been able to refresh Haynesworth's recollection and had him admit making the statement on the video in front of the jury.

"[A] witness's failure to fully recall her prior statement has been found to be a sufficient denial to allow extrinsic evidence." Blalock at 80, 591 S.E.2d at 636. "Extrinsic evidence is also usually admitted when the witness simply avoids any direct answer." Id. "The rule does not require extrinsic evidence of the prior statement be admitted immediately. It merely authorizes the use of extrinsic evidence to prove the inconsistency. Because the impeaching evidence is "extrinsic," the avenue of its admissibility may not always run through the witness to be impeached by it, for that witness may not be competent to authenticate the extrinsic evidence." State v. Barnes, 421 S.C. 47, 58, 804 S.E.2d 301, 307 (Ct. App. 2017).

The statement by Bradley to Haynesworth was enormously relevant to two main issues in the trial: (1) who brought the gun, and (2) Bradley's credibility. Bradley testified that Brown had the gun and that he did not see Pack with a gun that day. Bradley's testimony was in direct

contradiction to Brown's, who said he wrestled the gun from Pack after Pack pulled the gun on him. Hearing the video recording of Haynesworth would have shown Bradley to be a liar. It would have shown that Bradley lied about the gun and about knowing Haynesworth. Allowing this important impeachment evidence was crucial to appellant's self-defense case. This Court should reverse and grant appellant a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of May, 2023.

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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 Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 8th day of May, 2023.

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