

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of General Sessions
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-001313

THE STATE,

Respondent,

v.

SHAQUILLE KAYSON BLAKELEY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

A criminal conviction is not reversible based on the admission of evidence unless a specific, timely objection is made to its introduction and the evidence reasonably affects the result of trial. The trial court admitted evidence that the victim called a friend shortly before he was robbed and kidnapped. The call had nothing to do with the robbery and was not probative of any material fact. Was Blakeley prejudiced?

STATEMENT OF THE CASE

An Horry County grand jury indicted Appellant Shaquille Blakeley for armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. Blakeley proceeded to trial on September 12–14, 2022, before the Honorable Paul M. Burch, circuit court judge. Blakeley was convicted as charged on all counts. He was sentenced to consecutive terms of 30, 10, and 5 years' incarceration, respectively. This direct appeal follows.

STATEMENT OF FACTS

On October 9, 2020, the victim in this case, Adam Powalie, decided to stop at the Taco Bell drive-through on his way home from watching football with a friend. As he was waiting for his food, a white SUV pulled in front of him, blocking his way forward. R.p.21-22. A woman exited the SUV and approached the victim's vehicle at the passenger's side window, demanding money. R.p.117-18. A man in the back seat of the SUV rolled down the window and pointed a gun at the victim. R.p.22, 26. The victim identified this man at trial as the appellant, Shaquille Blakeley. R.p.116. The woman who approached the victim's truck then got into the truck and instructed him to follow the white SUV. R.p.22.

The victim followed the SUV to an ATM across the street, where the assailants then forced him into their vehicle, where Blakeley was seated in the back seat holding the victim at gunpoint. R.p.119. They took him to another ATM where they forced him to withdraw \$500 in cash. R.p.123-25. The victim gave the money to Blakeley. R.p.125. Blakeley and his accomplices drove the victim to several other ATMs until the victim reached the withdrawal limit on his card. R.p.125-26. The State introduced surveillance video from a bank and gas station corroborating the victim's testimony. R.p.125-27.

Ms. Powalie, the victim's wife, received a call from her husband early the next morning. He was acting strange, asking Ms. Powalie odd questions, e.g. about transferring the title to their car, and telling her he needed two thousand dollars to pay a drug debt. R.p.42-43. She testified this was bizarre, and she could tell the

victim was in distress. The victim testified Blakeley pointed a gun at him, forced him to make the call, and told him what to say. R.p.133–34. The victim testified that he overheard Blakeley talking to someone on the phone, planning to "take [the victim] to North Carolina." R.p.137.

Police began searching for the victim's vehicle and the white SUV involved in the armed robbery. Police located the vehicles parked next to each other at a nearby Days Inn. R.p.53. There was a male asleep in the back seat of the White SUV. Police were able to wake him only after opening the door and physically removing him. R.p.55. Police discovered he was a runaway teenager and determined he was not involved in the robbery. R.p.55.

Hotel staff directed police to the room in which the occupants of the vehicles were staying. R.p.57. Police forced the door open. Inside, they discovered the victim laying on the floor next to the bed. R.p.59. Police detained two females. R.p.60. Police then discovered Blakeley hiding under one of the beds. R.p.62, 78. There was a rifle leaning on the wall near where Blakeley was hiding. R.p.62, 78. The victim identified the rifle as the one Blakeley had pointed at him at Taco Bell. R.p.119. Police also discovered a handgun on the bed under which Blakeley was hiding. R.p.83-84. Both guns were loaded. R.p.81–84. Inside Blakeley's pockets, police found various items belonging to the victim, including his vehicle registration, insurance card, key card, and debit card. R.p.86–88. Police also discovered over \$1,000 cash inside Blakeley's pocket. R.p.89, 92; State's Exhibit #19. Police also recovered a purse from the room, which contained items belonging

to the victim and his wife. R.p.88–89. Police arrested all three people that were in the bedroom with the victim. R.p.105.

The police also found the victim's cell phone in the room. R.p.103–04. Police ascertained Blakeley's cell phone number and confirmed there were no prior communications between Blakeley and the victim. R.p.104. There were no signs of drug-related activity on the victim's cell phone. R.p.104. The victim testified Blakeley and the driver of the SUV were "in charge" of the armed robbery and kidnapping. R.p.132.

STANDARD OF REVIEW

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014).

ARGUMENT

Blakeley was not prejudiced by evidence showing the victim called a friend shortly before he was robbed and kidnapped because the call had nothing to do with Blakeley's guilt or innocence and could not reasonably have affected the jury's determination whether the victim was credible.

Blakeley claims the trial court committed reversible error by admitting cell phone evidence showing the victim called a friend shortly before he was robbed and kidnapped. This argument is not preserved for review because Blakeley did not object on this specific basis at trial. Even if preserved, Blakeley was not prejudiced because the evidence in question had no bearing on his guilt or innocence and could not reasonably have affected the result of trial. This Court should affirm.

Issue preservation.

The "record" admitted in this case is simply an excerpt from the call log of the victim's cell phone showing he was on the phone with a friend when he arrived at the drive-through line at Taco Bell. R.p.113–14. Blakeley is correct that the call log did not meet the requirements for admission under the Uniform Business Records as Evidence Act, S.C. Code Ann. §19-5-510. However, Blakeley did not raise the business records act as the basis for his objection at trial. Rather, Blakeley made a generic objection to that the State had not laid a proper foundation. In response, the State pointed out that the victim testified he recognized the document as the call log from his cell phone because he reviewed it prior to trial. R.p.113. Blakeley made no argument in response.

The business records exception codified in §19-5-510 is essentially an exception to the rule against hearsay. Kershaw Cnty. Dep't of Soc. Servs. v. McCaskill, 276 S.C. 360, 362, 278 S.E.2d 771, 773 (1981) (discussing the "exceptions to the Hearsay Rule enumerated in Family Court Rule 18 and the Business Records as Evidence Act"). As Blakeley notes in his own brief, he made no hearsay objection at trial. Brief of Appellant at 7, n.4. Nor did he object that there was no "custodian" to authenticate the documents. See S.C. Code Ann. § 19-5-510 (requiring a "custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business"). In this case, the "custodian" would be an employee from the phone company who could testify these records were kept in the normal course of business. Part of the rationale of the rule is to guarantee the records' reliability. See Kershaw Cnty. Dep't of Soc. Servs. v. McCaskill, 276 S.C. at 362, 278 S.E.2d at 773 (noting act "gives some control to the trial judge to exclude or require additional proof, if the authority or veracity of the record were a genuine issue"). Blakeley did not contest the accuracy of the call log at trial, and does not do so on appeal. See State v. Young, 432 S.C. 535, 542–43, 854 S.E.2d 615, 618–19 (Ct. App. 2021) ("Young's arguments do not call into question the trustworthiness of Verizon's record keeping or the authenticity of the text messages.").

Instead, Blakeley argued that the person who "extracted" the records from the phone should have been required to lay a foundation for the call log. R.p.113. These are different objections. The trial court likely thought Blakeley sought to

require a police officer to testify to his methods of downloading the cell phone contents. Indeed, that is how the phone records were obtained in this case. R.p.103-04, 109. Investigator Sean Wydra testified that officers "did a full cell phone extraction" on the victim's cell phone and determined there were no prior communications between the victim and Blakeley, and that there was no evidence of illegal activity on the victim's phone. R.p.104. He further testified that such extractions are useful in criminal investigations to determine "what calls people are making, who they are talking to" R.p.103. On cross-examination, defense counsel asked whether Investigator Wydra was "the one who personally got the information off the phone," and Wydra responded that he was not. R.p.109.

Based on this testimony, the trial court would not have recognized the business records act as the basis for Blakeley's objection. Because Blakeley did not raise the business records act as the basis for his objection at trial, and this specific basis was not apparent from context at trial, he may not do so now on appeal. See State v. Crowley, 226 S.C. 472, 474, 85 S.E.2d 714, 715 (1955) (explaining an objection to the admission of evidence must be on a specific ground); State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (explaining an "objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error").

Prejudice.

Regardless, Blakeley was not prejudiced because the evidence could not possibly have affected the outcome of trial. "Whether an error is harmless depends

on the particular circumstances of the case. No definite rule of law governs this finding; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial." State v. Reeves, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990).

Blakeley claims he was prejudiced because the call records bolstered the victim's credibility. But no reasonable juror would have based his opinion of the victim's credibility on such an inconsequential fact. This information was unrelated to the substance of his testimony implicating Blakeley as one of the people who robbed and kidnapped him.

The victim's testimony was corroborated by other, more probative, evidence, such as the surveillance videos from the bank and gas station ATMs showing the victim attempting to retrieve money during the kidnapping. R.p.125–27. Even more obviously, the victim's testimony was corroborated by the fact that Blakeley was caught red-handed, hiding under a bed in the hotel room where he was actively kidnapping the victim, with the victim's belongings in his pocket and a rifle leaning against the wall next to the bed. R.p. 62–84. This evidence was much more corroborative than the record of the call to the victim's friend, which had little bearing on the victim's credibility.

The record of the victim's call to his friend on the way to Taco Bell was not important to the case, and would have been easily verifiable by simply looking at the cell phone itself. The victim had an independent recollection of calling the

friend, whom he had just been visiting to watch football. The victim even recalled which teams were playing. R.p.141. While Blakeley does not allege the timing of the call at issue was important to the case, the timing of the robbery was independently verifiable by the 911 calls made by the Taco Bell employee, and presumably by the Taco Bell surveillance video. As noted above, Blakeley did not contest the accuracy of the call log at trial, and does not do so on appeal.

Finally, evidence of Blakeley's guilt was overwhelming. See State v. Reyes, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (explaining error is harmless where a "defendant's guilt has been conclusively proven ... such that no other rational conclusion can be reached"). As noted above, Blakeley was caught red-handed, hours after the robbery, as he was still actively kidnapping the victim. A neutral eyewitness witnessed the robbery, and the State proved Blakeley had no prior connection with the victim. No reasonable juror could have reached a different conclusion as to Blakeley's guilt. Perhaps recognizing the overwhelming evidence of his guilt, Blakeley apologized to the victim and his own family at his sentencing hearing. R.p.183.

The call log showing the victim called a friend on his way to Taco Bell was utterly inconsequential. Blakeley was not prejudiced by its admission. 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 COUNSEL

The undersigned certifies that this 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.”

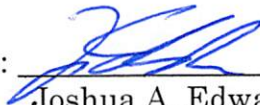
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