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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

Appellate Case No. 2022-001360

THE STATE,……RESPONDENT

v.

DEMETRIUS ALEXANDER BROWN,……APPELLANT

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S 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?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Did the trial court err in not allowing hearsay evidence due to the fact it was not included under one of the hearsay exceptions found in the rules of evidence thereby not admissible under Rule 613(b) of the South Carolina Rules of Evidence?

STATEMENT OF THE CASE

On August 11, 2018, Demetruis Brown (Appellant) was in a possible partnership with George McClain at a place called Auto Doctors. (Tr. p. 113). The deal was that the Appellant would help repair the cars that were at the shop. (Tr. p. 113). On this date, when Mr. McClain was working on another vehicle, Mr. Lonnie Pack (victim) came to the business. Riding with him was Anfernee Bradley and another individual whose nickname was DV.[1] (Tr. p. 166). When they got to the business, they found the Appellant sitting in his black Ford Expedition. (Tr. p. 174). The victim was talking on the phone, and when he got off of the phone he got out of his vehicle and walked up to Appellant. The victim was then shot twice by Appellant. (Tr. p. 174-175). Both Mr. Bradley and DV ran from the scene. The Appellant also took off and fled the scene, in his truck. (Tr. p. 137).

When the shots rang out Mr. McClain ran inside the business and made his daughter go into the office for her safety. (Tr. p. 119). Mr. McClain then dialed 911. (Tr. p. 120). During the trial Mr. McClain testified that he looked out of the window and saw the Appellant with a gun. Mr. McClain told him "Don't shoot." Mr. McClain saw the Appellant shoot two more times then drove off in his Expedition. (Tr. p. 137).

Investigator Charles Bonner of the Sumter County Sheriff's Department arrived at the scene. During the investigation he was informed that Mr. Bradley's I.D. was found in the back seat of the victim's vehicle, this was a good indicator that he was at the crime scene. (Tr. p. 484). Investigator Bonner spoke with Mr. McClain and his daughter who informed him that Appellant was involved in the shooting and left in his Ford Expedition. (Tr. p. 485). The Sumter County Sheriff's Department working with other agencies later found Appellant in Florida. (Tr. p. 479).

[1] D.V. was never found by law enforcement; therefore, his actual identity was never discovered.

Appellant was later charged with the offenses of murder and possession of a firearm during the commission of a violent crime.

During the September 2019 term, the Sumter County Grand Jury indicted Appellant both for murder and possession of a weapon during the commission of a violent crime. On December 14, 2022, his case was called for trial before the Honorable Kristi F. Curtis. Representing the State of South Carolina was Third Circuit Solicitor Ernest A. Finney, III, representing the Appellant was attorney Deborah J. Butcher.

Mr. Anfernee Bradley testified that the victim came by his house and told him to come ride with him. (Tr. p. 16-17). When he got to the victim's car D.V. was in the passenger seat, so he got into the back seat. (Tr. p. 166). While they were riding the victim was on the phone and when they got to the garage the victim got off the phone. The victim began speaking with the Appellant who was sitting in his truck. (Tr. p. 173). Mr. Bradley then testified that he heard gunshots and saw the Appellant with a gun. (Tr. p. 175). Mr. Bradley and D.V. got out of the car and ran. Mr. Bradley also testified that he never saw the victim with a gun. (Tr. p. 183).

During the trial Dr. Janice Ross testified. She was found to be an expert in forensic pathology by the trial court. (Tr. p. 347). Dr. Ross was the person who performed the autopsy on the victim. Dr. Ross testified that the victim suffered two gunshot wounds. (Tr. p. 349). One shot entered just above the right nipple traveling right to left downward coming out under his armpit. (Tr. p. 349). This bullet went through the victim's heart and the lower lobe of the right lung. (Tr. p. 349). The second bullet went into the right abdomen, traveled right to left downward through the liver and blood vessels around the stomach and intestines. This bullet was found lodged inside the victim's pelvic bone. (Tr. p. 350).

Dr. Ross testified that the victim died due to the laceration of the organs causing them to hemorrhage into the chest cavity. (Tr. p. 350). Dr. Ross determined that the cause of death was exsanguination due to a laceration of the heart, lung, and liver from the victim's gunshot wound to the chest. (Tr. p. 352). Dr. Ross found no soot or powder near the wounds, so she determined the victim was shot at a distance of about eighteen to twenty-four inches or further. (Tr. p. 352).

Also testifying was Agent Tracy Thrower of the South Carolina Law Enforcement Division. Agent Thrower was found to be an expert in firearms and tool mark examination by the trial court. (Tr. p. 391). Agent Thrower testified that he was given bullets for testing and they both were fired from the same firearm. (Tr. p. 394). Agent Thrower determined that these bullets were fired from a .380 auto-caliber cartridge. (Tr. p. 395).

After five days of testimony, Appellant was found guilty by a jury of his peers of murder and possession of a weapon during the commission of a violent crime. (Tr. p. 753). After the reading of the verdicts Appellant appeared before the trial judge for sentencing. Appellant was sentenced to a thirty-year term of incarceration for the offense of murder, and five years for possession of a weapon during the commission of a violent crime. The trial judge ordered that these sentences were to be served concurrently. (Tr. p. 760).

ARGUMENTS

1. **Trial court did not err in upholding the State's objection due to the fact the evidence being presented was hearsay, not within any of the exceptions; therefore, not admissible.**

Relevant Facts

During their case the defense called as a witness, Mr. Bennie Haynesworth, who testified that he knew of Mr. Bradley. (Tr. p. 575). Defense counsel then asked Mr. Haynesworth if he remembered Mr. Bradley telling him that the victim possessed a gun that day. That question was objected to by Solicitor Finney due to it being hearsay. At that time defense counsel argued that this line of questioning is proper pursuant to Rule 613(b) of the South Carolina Rules of Evidence. The trial judge excused the jury and allowed defense counsel to proffer this evidence.

During his testimony, Mr. Haynesworth testified that he didn't remember Mr. Bradley telling him that the victim had a gun in his possession that day. Mr. Haynesworth was also asked if he told police that the victim carries a gun at times when he wants to "get something done," (Tr. p. 577), Mr. Haynesworth did not remember that either. (Tr. p. 577). A statement that Mr. Haynesworth made to law enforcement was then played for the trial judge. Mr. Haynesworth then explained to the trial judge that he had some head injuries since this incident and also that he "felt something" against the victim's family, and that he does not remember giving this statement. (Tr. p. 580). Defense counsel continued their request to pursue this questioning before the jury pursuant to Rule 613(b). That request was denied due to the fact the trial court ruled that this statement is hearsay, not fitting under any of the exceptions; therefore, not admissible. The trial court ruled that in order for a statement to come into evidence under Rule 613(b) it had to be admissible first.

Standard of Review

In criminal cases the appellate court sits to review errors in law only. *State v. Wilson,* 345 S.C. 1, 545 S.E.2d 827, 829 (2001). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent an abuse of discretion. *State v. Tucker,* 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). An abuse of discretion occurs when the trial court's ruling is based on an error or law or, when grounded in factual conclusions, without evidentiary support. *Clark v. Cantrell,* 339 S.C. 389, 529 S.E.2d 528, 539 (2000).

Discussion

The Appellant argues that the trial court has been granted wide latitude to allow extrinsic evidence proving a statement. *State v. Blalock,* 357 S.C. 74, 80, 591 S.E.2d 632, 636 (2003). However, the trial court has never been allowed to ignore the rules of evidence, allowing hearsay testimony into evidence without it meeting one of the exceptions found under Rule 803 or 804 of the South Carolina rules of evidence.

The Appellant argues that Rule 613(b) allows for this testimony even though it is clearly hearsay. Rule 613(b) of the South Carolina Rules of Evidence states:

> 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.

However, this rule does not apply to hearsay testimony. Rule 613(b) also states, "This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2)." Rule 613(b)

SCRE. If all hearsay testimony was allowed, this rule would not have specifically mentioned one of the hearsay exceptions, it would have allowed all hearsay testimony. This one exception was carved out due to the fact this rule was not created to allow hearsay testimony into evidence. Hearsay is inadmissible except as provided by the South Carolina Rules of Evidence, by other court rule or by statute. *State v. Jennings,* 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011), *quoting,* Rule 802 SCRE. It is clear that if the Appellant was allowed to present hearsay evidence it would have been stated in Rule 613(b).

Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *State v. Simmons,* 423 S.C. 552. 564, 816 S.E.2d 566, 573 (2018), *quoting,* Rule 801(c) SCRE. The Appellant was attempting to enter into evidence a statement made by Mr. Haynesworth, that he does not even remember, of Mr. Bradley telling him that the victim possessed a gun that day. That is clearly hearsay, and this statement does not fall under any one of the exceptions. Appellant argues that the trial court has wide latitude to allow such extrinsic evidence proving a statement. The appellant courts nor the rules of evidence have ever given trial courts so much latitude that they can completely ignore those rules.

In previous decisions regarding Rule 613(b) it was a statement made by the witness himself or herself that was in question and not inadmissible hearsay testimony. *State v. Blalock,* 357 S.C. 74, 591 S.E.2d 632 (2003)(Defendant's wife did not make clear unequivocal admission that her prior statement was inconsistent with her trial testimony); *State v. Starnes,* 388 S.C. 590, 698 S.E.2d 604 (2010)(victims fiancée was impeached by providing a prior transcript from Appellant's first trial of her mentioning that the victim did have a gun on the night of the murder); *State v. Bixby,* 388 S.C. 528, 698 S.E.2d 572 (2010)(Appellant's wife was impeached twice due to her not

remembering incriminating statements previously given to law enforcement and her son's girlfriend); *State v. Fossick,* 333 S.C. 66, 508 S.E.2d 32 (1998)(witness impeached on prior statement made threatening his girlfriend). If the defense was attempting to enter extrinsic evidence of a previous statement made by Mr. Bradley that would have been allowed under Rule 613(b), once the proper foundation was laid. However, that is not what they were attempting. What they attempted to do was to get the trial court to allow evidence that was supposedly said by Mr. Bailey to Mr. Haynesworth. This is clearly hearsay which does not fall under any of the exceptions found in Rule 803 or 804. Therefore, these statements are clearly inadmissible. The trial court made the correct ruling in not allowing this evidence to be presented to the jury.

2. If this Court determines that the trial court erred in not allowing the evidence before the jury this error should be considered harmless.

Although the Respondent argues that the trial court made no error in not allowing the hearsay statement of Mr. Haynesworth, any error that might have been made by this decision should be considered harmless. If the statement of Mr. Haynesworth was allowed into evidence there was so much evidence submitted proving Appellant's guilt beyond a reasonable doubt, the outcome would not have changed. Error is harmless when it could not reasonably have affected the result of the trial. *Simmons,* 423 S.C. at 566, 816 S.E.2d at 573.

There were two eyewitnesses that testified that the Appellant fired a gun, one stated that he saw the Appellant actually shoot the victim, the other testified he witnessed him firing the weapon. There is also the fact that no gun was found on the victim nor in his vehicle. All of the individuals that were in the vehicle ran after the shooting and they did not take a gun with them. Appellant also fled to Florida which also reveals his guilt. Since there was ample evidence presented proving his guilt beyond a reasonable doubt, if there was any error it would not have changed the outcome of this trial, so it should be considered harmless.

CONCLUSION

The trial court made the proper decision regarding this matter and the State respectfully request this Court to affirm the decision of the trial court.

Respectfully submitted,

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