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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYCHRISTIAN LADSON,

APPELLANT

APPELLATE CASE NO. 2023-000372

INITIAL BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting cellular mapping evidence over defense counsel's objections (1) where the state was in possession of the evidence for years but gave it to defense counsel days before trial in violation of Rule 5, SCRCrimP, which requires the prosecution disclose evidence it intends to use at trial and (2) where the records used to create the cellular mapping evidence were not reliable?

STATEMENT OF THE CASE

On May 10, 2022, a Pickens County Grand Jury indicted appellant for murder and attempted armed robbery. R. *(indictments). Pretrial motions were heard by the Honorable Perry H. Gravely on February 17, 2023. Tr. I, 1-52. Appellant was tried jointly with his codefendant, Quinton Collins, before Judge Gravely and a jury, from February 21 – 24, 2023. Appellant was represented by Ashaley Boatwright and Katelyn Williams. Kraig Pringle represented Ladson. Judith Munson and Katryna Owens prosecuted the case. Tr. II, 1.

Appellant was convicted as indicted. Tr. II, 673, ll. 13-21. He was sentenced to concurrent terms of life without the possibility of parole for murder and twenty years for attempted armed robbery. Tr. II, 682, ll. 4-6; R. *(sentence sheets).

This appeal follows.

STANDARD OF REVIEW

The appellate court analyzes "the circuit court's ruling under an abuse of discretion standard." *State v. Lawton*, 382 S.C. 122, 127, 675 S.E.2d 454, 457 (2009). "A violation of Rule 5 is not reversible unless prejudice is shown." *State v. Landon*, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006). "Admission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion." *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 (2000)).

ARGUMENT

The trial court erred in admitting cellular mapping evidence over defense counsel's objections where (1) the state was in possession of the evidence for years but gave it to defense counsel days before trial in violation of Rule 5, SCRCrimP, which requires the prosecution disclose evidence it intends to use at trial and (2) the records used to create the cellular mapping evidence were not reliable.

Introductory facts

On the evening of December 14, 2018, Stacey Branham was shot and killed during an attempted armed robbery at a convenience store in Easley. Tr. II, 95, ll. 11-22. Video from the business's surveillance cameras[1] showed, at approximately 8 p.m., two masked men entered the convenience store. Tr. II, 60, ll. 3-20; state's exhibit 12; state's exhibit 13. Immediately one of the men fired a shot. State's exhibit 12; state's exhibit 13. The other masked man reached over the counter and tried to grab the cash register. State's exhibit 12; state's exhibit 13. However, store clerk, Stacey Branham, grabbed her pistol and shot back, striking him. State's exhibit 12; state's exhibit 13. Both men ran out of the store but as they left one of them fired more shots. State's exhibit 12; state's exhibit 13. One of those shots hit Ms. Branham in the chest. Tr. II, 95, ll. 11-22. Branham died before help arrived. Tr. II, 130, l. 24-131, l. 3.

Motion to suppress

February 10, 2023, eleven days before appellant's trial, the state released several *new* items of discovery to the defense. Tr. I, 17, ll. 8-10. On February 17, defense counsel moved to suppress all newly released items of evidence including timing advance records and call detail record maps. Tr. I, 17, ll. 2-19. Defense counsel contended they requested all the cell phone records four times

1 State's exhibits 12 and 13, surveillance video from the business are on file with this Court.

unsuccessfully. Now, days before trial, the records and the cell phone mapping demonstratives had been dumped on the defense. Tr. I, 17-18. Counsel averred that because the state only disclosed the items *days* before trial, the defense did not have time to get an order for funding to have the records analyzed, reviewed, and verified. Tr. I, 19.

In response, the solicitor claimed none of the cell phone records were new and stated none of the recently released items were "previously unknown or unshared." Tr. I, 20, 12-22. The solicitor admitted none of the information, specifically the cell phone mapping demonstratives, was recently generated. Tr. I, 21, l. 22-22, l. 20. They went on to declare that in November of 2019, the prior prosecuting solicitor shared this information with previous defense counsels for both appellant and his co-defendant, Collins. Tr. I, 21, ll. 5-18. The solicitor maintained that the state had all of this evidence, including the cell phone mapping, in February, 2019. Tr. I, 24, ll. 1-13; 26, l. 15-27, l. 4.

Defense counsel took exception to the solicitor's explanation. Counsel argued regardless of whether the information was given to previous counsels for appellant and Collins, it was not shared with them. The evidence was in fact new to defense counsel. Additionally, the new evidence was significant where it appeared to show appellant, and Collins were together near the incident location at the time of the incident. Tr. I, 24, l. 17-26, l. 9. Counsel contended he filed motions for discovery in this case *numerous times* and this evidence was new to them days before trial. Tr. I, 26, ll. 5-9. Finally, defense counsel argued the maps were generated using information from timing advance records that T-Mobile, the cell phone company, would not verify and that no law enforcement officer would verify. Tr. I, 25, ll. 19-25.

The trial court ruled "based on the history" the cell phone mapping evidence had been provided and denied the motion to suppress the evidence. Tr. I, 28, ll. 12-16. The court also

denied the motion to suppress the timing advance records without further explanation. Tr. I, 40, ll. 7-24.

Evidence at trial

William Looper was nearby the convenience store, driving home from dinner with his wife, when he heard gunshots. Tr. II, 67, ll. 3-13. He testified he saw two men run out of the convenience store and get in a "little silver Subaru." Tr. II, 67, ll. 13-19. Mr. Looper described the men as two young black males who were athletically built. Tr. II, 70, l. 2-71, l. 25. He did not give any further description of the vehicle other than the Subaru appeared to have a vanity plate. Tr. II, 84, l. 9-13; 85, l. 24-86, l. 1.

Thomas Cloer testified that his vehicle, a silver Subaru Forrester, with vanity plate, "Cloer1" had been stolen in September of 2018. Tr. II, 97, l. 6-98, l. 10. Appellant and Collins stipulated their DNA was found in Mr. Cloer's stolen car. Tr. II, 125, l. 13-126, l. 12; state's exhibit 28. Ryan Collins testified that he saw appellant and Collins at a Spinx gas station in Easley in a 2018 silver Subaru the night before the incident. Tr. II, 278-83.

Darius Rhodes, a man claiming to have been a friend of appellant's, testified he saw the surveillance video of the incident and recognized appellant as the shooter.[2] He explained that he knew it was appellant because of appellant's shoes. Tr. II, 360, l. 12-361, l. 13. Rhodes described the shoes he recognized in the surveillance video as "black and white." Tr. II, 360, l. 22-361, l. 7. Rhodes admitted that in exchange for his testimony the state reduced his murder charge to voluntary manslaughter and that he had not yet been sentenced. Tr. II, 366, l. 6-367, l. 7.

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2 When the state first called Mr. Rhodes as a witness he was uncooperative. Tr. II, 302-303. The following day Rhodes was wondrously cooperative on direct examination. Tr. II, 359-363. Rhodes denied his change of heart had anything to do with the fact that sentencing for his prior guilty plea was contingent upon his cooperation in appellant's trial. Tr. II, 367, ll. 8-22; 373, ll. 3-22.

Evidentiary objection

Custodian of records for T-Mobile, Ricardo Leal, testified regarding the cell phone records and advanced timing reports for the phone numbers attributed to appellant and Collins. Tr. II, 381-411. Mr. Leal was *very clear* in his testimony that he was not an engineer and was only testifying to "speak about the records." Tr. II, 384, ll. 5-10; 396, ll. 3-7; 402, ll. 10-12. He explained the cell phone records showed the following information: outgoing/incoming calls and texts, including the calling/receiving phone number, and the latitude and longitude of the tower that the cell phone used for the transmission. Tr. II, 385, l. 25-386, l. 20.[3] Leal testified "typically, the tower that's open closest to communicate to the [cell phone] will conduct the transmission." Tr. II, 385, ll. 17-18. However, Leal acknowledged, there are other conditions that could affect what tower conducts the transmission including the closest tower could be overloaded, or another tower could be providing a better signal. Tr. II, 395, ll. 3-24; 396, l. 21-397, l. 14.

Mr. Leal testified that the cell phone records did not show the tower used for sent/received text messages. Tr. II, 390, ll. 8-12. He explained "it's data so it's different, [] [i]t gets funneled through a data component." Tr. II, 390, ll. 14-15. Leal testified timing advance records are records "created for network optimization," that show both data and calls. Tr. II, 390, l. 22-391, l. 2. He testified cell phones communicate constantly when turned on and are regularly trying to communicate with the network. The information shown in timing advance records is generated constantly, even when an individual is not actively using their cell phone. Like the cell phone records, timing advance records, record the latitude and longitude of the towers that the cell phone interacts with. Tr. II, 391, ll. 13-16. Leal stated "beyond that there isn't really anything more that

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3 State's exhibit 20, call detail record for appellant and state's exhibit 21, call detail record for Collins were admitted during Leal's testimony. Tr. II, 387, l. 23-388, l. 6; 388, l. 24-389, l. 10. State's exhibits 20 and 21 are on file with the Court.

I can say about timing events other than it's a record of T-Mobile . . . I can't really speak any further about the information within the [timing advance] record." Tr. II, 391, ll. 3-12.

Leal acknowledged he could not testify as to the accuracy of the timing advance records. Tr. II, 397, ll. 15-20; 408, ll. 10-16. He explained T-Mobile puts a disclaimer on the timing advanced records that warns that T-Mobile cannot testify to the accuracy of the information in the record because it gives an "accuracy format within the record itself, and it's part of the record." Tr. II, 397, l. 25-398, l. 5. He further stated timing advance records are "created by an engineer for engineering aspects and network optimization." Tr. II, 398, ll. 5-7. Leal reiterated there was a disclaimer on the records, and he could not testify regarding what "timing advance is other than it is a record of T-Mobile." Tr. II, 399, ll. 3-13. During Leal's testimony the state introduced state's exhibit 22, advance timing record appellant's phone and state's exhibit 23, advanced timing record Collins' phone.[4] An off the record bench conference was held. The court admitted both exhibits over defense counsel's objection. Tr. II, 391, l. 17-393, l. 15.

After Leal's testimony, outside of the presence of the jury, defense counsel put his objection to the advanced timing records for both phones on the record. Counsel argued the records should not be admitted because T-Mobile would not testify as to the accuracy of the information contained in the records. Without any response from the state, the court stated, "in our sidebar [I] indicated that I overrule" the objection the records are admissible. Tr. II, 419, l. 15-420, l. 5.

Officer Brian Swafford testified that he was contacted to review cell phone records in this case "through a program . . . called ZetX." Tr. II, 421, ll. 3-21. Swafford explained ZetX was a mapping program that used information from cell phone records and advance timing records to

4 State's exhibits 22 and 23 are on file with the Court.

show what tower the cell phone was using and where the tower is located at the time when the calls were made. Tr. II, 421, ll. 22-25; 425-26.

Swafford testified he used T-Mobile records and ZetX to determine the location of appellant and Collins on the day of the incident. Tr. II, 422, ll. 1-4; 444, ll. 21-25. Swafford used the appellant's and Collins' cell phone records to generate state's exhibit 25, maps. Tr. II, 423, ll. 12-24. Defense counsel objected to the exhibit because he argued the state relied on the timing advanced records to create the demonstrative exhibit. State's exhibit 25, cell phone mapping evidence, was admitted over defense counsel's objection. Tr. II, 424, ll. 3-25.

Swafford used ZetX to demonstrate on a map what towers appellant's and Collins' cell phones were using on the day of the incident from 12 am until "a little bit after the incident time." Tr. II, 426, ll. 10-14. ZetX mapped the information from call detail records and advanced timing records from both phones to depict what towers the phones were using on the same map. Tr. II, 428, ll. 3-14.

Officer Jon Hamby testified "the cell phone information that I got . . . showed the two cell phones traveling together to Easley from Greenville." Tr, II, 534, ll. 16-24. During the state's closing, the solicitor spent a great deal of time discussing the cell phone evidence and explaining to the jury what the evidence meant. Tr. II, 585-89. The solicitor contended, "Mr. Swafford's testimony yesterday was designed to help you visualize what these loads of records represent . . . the recorded location of those phones is represented on all of these maps." Tr. II, 585, ll. 4-8. She told the jury the evidence suggested the two were together around the time of the incident and that their cell phones used an Easley tower during the time of the incident. Tr. II, 585, ll. 14-20; 589, ll. 8-11.

Discussion

In this circumstantial case where no physical evidence tied appellant to the scene the admission of this misleading, unreliable cell phone mapping evidence was error.

Initially the evidence should have been suppressed pretrial where the state violated Rule 5, SRCrimP. Rule 5, SCRCrimP, governs the disclosure of evidence in criminal cases. A violation of Rule 5 is not reversible unless prejudice is shown. *See State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999). Rule 5(a)(1)(C) requires:

> Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

This rule applies to evidence within the actual possession of the prosecution and seems to also apply to evidence within the possession of other government agencies. *See State v. Gulledge*, 326 S.C. 220, 487 S.E.2d 590 (1997). The definition of "material" for purposes of Rule 5 is the same as the definition used in the *Brady* context. *See Fradella v. Town of Mount Pleasant*, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) (per curiam).

Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation. *State v. Trotter*, 322 S.C. 537, 473 S.E.2d 452 (1996); *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1992). *State v. Kennerly*, 331 S.C. 442, 453–54, 503 S.E.2d 214, 220 (Ct. App. 1998), aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999)

By its own admission the state had the timing advance records and the cellular mapping evidence in early 2019. Defense counsel requested all these items multiple times throughout their representation of appellant. However, the state waited *four years*, days before trial to send this evidence to defense counsel in violation of Rule 5, SCRCrimP. The evidence was "material"

where had the state timely disclosed the evidence to the defense, counsel could have obtained the necessary funding to review the records and potentially have an expert dispute the inferences the state made regarding what this evidence showed. Additionally, the evidence was not only "intended" for use but was actually used in the state's case in chief.

Appellant was prejudiced by the admission of the evidence. The state relied heavily on this evidence in the prosecution of appellant. The testimony of Mr. Leal and Mr. Swafford, regarding this evidence is one hundred pages long and the solicitor discussed the evidence at length during their closing arguments.

Additionally, the trial court erred allowing the state to introduce the misleading cell phone mapping evidence because the maps could not fairly and accurately represent the movements of appellant's phone where T-Mobile records custodian, Mr. Leal, admitted he could not testify as to the accuracy of the timing advance records.

"Demonstrative evidence includes items such as a photograph, chart, diagram, or video animation that explains or summarizes other evidence and testimony." *Clark v. Cantrell*, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000). "Such evidence has secondary relevance to the issues at hand; it is not directly relevant, but must rely on other material testimony for relevance." *Id*. "Demonstrative evidence is distinguishable from exhibits that comprise 'real' or substantive evidence, such as the actual murder weapon or a written document containing allegedly defamatory statements." *Id*.

In *Clark*, the South Carolina Supreme Court held the demonstrative, a computer-generated video animation, was inadmissible. *Id*. The Court stated a demonstrative was admissible "when the proponent shows that the animation is (1) authentic under Rule 901, SCRE; (2) relevant under Rules 401 and 402, SCRE; (3) a fair and accurate representation of the evidence to which it relates,

and (4) its probative value substantially outweighs the danger of unfair prejudice, confusing the issues, or misleading the jury under Rule 403, SCRE." 339 S.C. at 384, 529 S.E.2d at 536.

The cellular mapping evidence fails under the *Clark* test of admissibility. The maps could not be authenticated by Brian Swafford—who was not qualified as an expert—and could not explain how the ZetX program worked other than to say he dragged the information from the cell records and dropped it in the program and it created the maps. The maps might have been relevant to show the movements of appellant's and Collins' phones. However, they were not reliable to show what the state alleged they could because T-Mobile could not testify as to the accuracy of the input, the timing advance records. Swafford's testimony regarding what this evidence showed was misleading where he stated that the maps showed where the phone was instead of admitting it showed what towers the phones were communicating with and where he referred to the movement of the phone and appellant interchangeably. Thus, any probative value of the maps was substantially outweighed by the danger of prejudicial, confusing, misleading effect on the jury.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests this Court reverse his convictions and sentences and remand his case for a new trial.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of January, 2024.