

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Horry County

Honorable Bentley Price, Circuit Court Judge

Opinion No. 2024-UP-003 (S.C. Ct. App. Filed January 3, 2024)

THE STATE,

RESPONDENT,

V.

QUINTUS DANTE FAISON,

PETITIONER

APPELLATE CASE NO. 2021-001311

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued in the case on January 3, 2024, a Petition for Rehearing was filed on January 18, 2024, which was denied by the South Carolina Court of Appeals on February 21, 2024.

QUESTION PRESENTED

The Court of Appeals erred in holding that petitioner's race-based text messages constituted admissible evidence on the ground that the same contained probative value because to the contrary, the prejudicial value of the racialized text messages outweighed any probative value when analyzed in conjunction with the solicitor's repeated references to these texts during closing argument in order to raise undue inflammatory emphasis to the jury regarding the matter.

STATEMENT OF THE CASE

Petitioner Quintus Dante Faison was found guilty of two counts of first degree burglary, two counts of armed robbery, and two counts of kidnapping during the October 2021 term of the Horry County General Sessions Court before Judge Bentley Price. Assistant Solicitors Nancy Livesay and O'Bryan Martin prosecuted the case, and Brana Williams, Esquire, appeared on behalf of petitioner at trial. Petitioner was sentenced to imprisonment for an aggregate period of twenty-five years.

Petitioner appealed, and after briefing the South Carolina Court of Appeals affirmed his convictions and sentences. State v. Faison, Unpublished Opinion No. 2024-UP-003 (filed January 3, 2024). App. 1. A Petition for Rehearing was filed with the South Carolina Court of Appeals on January 18, 2024. App. 4. On February 21, 2024, the Petition for Rehearing was denied by the South Carolina Court of Appeals. App. 17. This petition for review of the South Carolina Court of Appeals' holding in the case follows.

ARGUMENT

The Court of Appeals erred in holding that petitioner's race-based text messages constituted admissible evidence on the ground that the same contained probative value because to the contrary, the prejudicial value of the racialized text messages outweighed any probative value when analyzed in conjunction with the solicitor's repeated references to these texts during closing argument in order to raise undue inflammatory emphasis to the jury regarding the matter.

Petitioner was convicted of burglary, robbery, and kidnapping at trial. During the trial, the state presented downloaded text messages from petitioner's cellular phone and admitted them into evidence over defense counsel's objections citing to relevancy and prejudice. R. 351, l.14-p. 355, l. 7; R. 223, l. 22 – p.224, l. 8; R. 328, lines 20-21; R. 322, l. 2 – p. 326, l.7. The following are extractions from petitioner's cellular phone that included messages to Ford and Bellamy:

1. ... a neighborhood behind Pixie Doodle "he stay in dem white peoples like before you get to Pixie Doodle" and "think they got sum cash an s _ _ _ in da crib with dem"
2. "I'm talkin bout the one he stay in" and "naah we need to scope him"
3. "Let me get to 40 for you leave"
4. "Imma gonne fucc around and catch one of dease white people neighborhood."
5. "Buck Creek Drive"
6. "Aye let me use ur ski mask"
7. "were the staps" (staps=guns)
8. "I think he said he was going....to get a blunt (marijuana)"

R. 335, l. 1 – p. 348, l.11.

The trial judge allowed the text messages into evidence at trial. R. 326, l.8-21.

On appeal, the following question was presented:

The trial judge erred in allowing appellant's cellular phone text messages into evidence at trial because of the great prejudice of the same, particularly since inflammatory racial references were included therein, which were repeated constantly by the solicitor at closing argument.

The Court of Appeals upheld the admissibility of the racial texts and ruled as follows:

We hold the trial court did not abuse its discretion in admitting Faison's text messages because the text messages were highly probative and any potential prejudice did not substantially outweigh the probative value. The dates of the text messages corresponded with the dates of the offenses, and the content of the text messages tended to show Faison planned and participated in the robberies. For example, one of the texts referenced a ski mask, and Faison's subsequent search history referenced the name brand of a watch stolen during one of the burglaries. Although the text messages contained references to race, the risk of unfair prejudice did not outweigh the high probative value of the text messages. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice"); *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) ("A trial [court]'s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003))); *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) ("'Probative value' is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues."); *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) ("Unfair prejudice means an undue tendency to suggest decision on an improper basis.").

However, it appeared as though the Court of Appeals apparently viewed the racially laced text messages in isolation without consideration of the inflammatory significance of the same when viewed in conjunction with the subsequent repeated references to them made by the solicitor at closing, which in turn placed undue emphasis on the racial component of the texts.

The racial texts and closing comments emphasizing the inflammatory nature of the messages surely negatively impacted the jurors, and thus added prejudice to the case. Note the solicitor's closing remarks below, which served to repeatedly highlight the inflammatory content of the racially tinged text messages in order to constantly remind the jury of petitioner's mindset:

Here...12/21 day before, he stated in white people's house before you get to dixie Doodle. Do you think they got some cash and shit in the crib with them. Now what would you think that is about. He is clearly looking for a house that has some cash in it, and not just any cash, but he's looking for white people that got case in the house.

Now, on 12/21/2017 he is talking about, No, we need to scope him. He's looking for white people. He's looking for cash, and he's looking to scope. This is the very—this ain't any day, this is the night and the day before. This ain't 12/20. This ain't 12/25. This is the day before they get Barry and Dawn.

Now, here, he's talking about what time you get out of work. Let me get your .40 before you leave. That's 2/21/2017. I'm going to suggest to you a "40" is a .40 caliber pistol. He's looking for cash, some white people and a pistol, and that is the very day before. R. 414, l.12-p. 415, l.15.

Six days later, 5 miles up the road, another white person gets robbed; Ralph Winnie. Same way. Same way. He says they come in with masks. This time he says they are wearing a ski mask you see through, right here is what he says. They are wearing ski masks. They want cash, jewelry, and a safe. Same style just like Dawn told you. They all had an assignment. Just like at Ralph's (sic) house, one held them down; two going through the house.

On 12/27, the day before—not just any day, but the day before he's over here, I'm going to fuck around and catch one of these white people's neighborhoods. Again, looking for some white people. R. 418, l.25-p. 419, l.19.

Hey Dale, I'm going to hit those white people. This message about hitting white people near Heather's house; look at that message. It was to Dale LaCurt Ford. He wasn't just talking to anybody, he was talking to Dale LaCurt Ford, the very individual whose DNA was on the steering wheel of both of these people's car. R. 421, l.10-16. But this guy (appellant) the very one sending

the messages the day before looking to scope a neighborhood, looking for cash...and white people; that's what he is looking for.
R. 444, lines 8-12.

Clearly, had the Court of Appeals analyzed the issue of the existence of the racially charged text messages in conjunction with the repeated reiteration of the same to the jury by the solicitor at closing argument, then such an evaluation of this matter would have yielded a different result, i.e., the conclusion that the prejudicial value of the inflammatory race-based texts, which were over-emphasized to the jury, clearly outweighed the probative value of the same and should not have been admitted as evidence.

Evidence is relevant if it tends to make the existence of any fact alleged more or less probable. See State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). Furthermore, even if evidence is relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. See Rule 403, SCRE. Evidence that is considered unfairly prejudicial, confuses the issues, or misleads the jury, will not be admissible. Here, these race-based text messages depicted a negative portrayal of petitioner as potentially targeting people along racial lines, which was extremely unflattering and very uncomplimentary.

The evidence revealed petitioner's race as African-American. Therefore, information of petitioner's targeting of white people was highly inflammatory information for the jury to process. In State v. Passio, 433, S.C. 666, 861 S.E.2d 785 (2021), the defendant's social media profile was introduced only for the limited purpose of impeaching his father's testimony regarding his knowledge of the defendant's activities by showing a screenshot of the defendant's listing on Craigslist, but the goal was to show biased testimony sans anything extraordinarily inflammatory or prejudicial. In Earley v. State, 418 S.C. 255, 792 S.E.2d 226 (2016), the Court held that two social media posts that merely said "see ya" on a website were relevant pieces of

information regarding the defendant's contact with the victim to intimidate after the defendant denied contacting the victim, but did not rise to the level of prejudicial impact. The social media post was not deemed inflammatory or more prejudicial than probative. In State v. Holcomb, 426 S.C. 537, 827 S.E.2d 367 (2019), there were social media posts that included negative comments about a daughter (meth mama references) which were not deemed critical in the case because the improper comments referenced by the solicitor were irrelevant as this was not a drug case and the daughter was not involved in the case. By contrast, the cell messages in this case were far from mild and inconsequential, and thus greatly prejudiced petitioner at trial.

This error of admitting petitioner's race-based cell phone information was exacerbated by the culmination of the solicitor's passion-arousing closing references to the same in order to increase the inflammatory nature of the texts and petitioner's mindset, which in turn prejudiced the case for the defense. A solicitor's argument must not appeal to the personal biases of the jurors or arouse their passions or prejudices. State v. Rudd, 355 S.C. 543, 586 S.E.2d 153 (Ct. App. 2003).

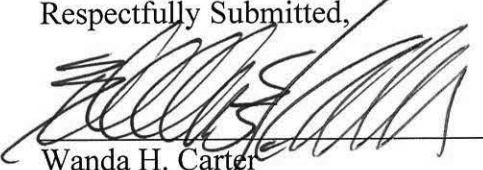
Summary

Thus, a review of the race-based text messages in conjunction with the solicitor's repeated references to the same at closing argument presented inflammatory evidentiary matters that contained more prejudicial value than probative value in the case. Therefore, the Court of Appeals erred in upholding the trial judge's ruling that petitioner's racialized text messages constituted admissible evidence in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant this petition and allow full briefing of the above-raised issue in the case.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of March, 2024.