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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTUS DANTE FAISON

APPELLANT

APPELLATE CASE NO. 2021-001311

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

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.

STATEMENT OF THE CASE

Appellant 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 appellant. Appellant was sentenced to imprisonment for an aggregate period of twenty-five years.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827; State v. Butler, 353 S.C. 383 577 S.E.2d 498 (S.C. Ct. App. 2003). The admission of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C.201, 631 S.E.2d 262 (2006). An abuse of discretion occurs when the conclusion of the trial court either lacks evidentiary support or is controlled by error of law. State v. Pagan, supra; State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013).

ARGUMENT

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.

Appellant was on trial for charges emanating from two separate incidents occurring at two separate Horry County residences. At trial, Dawn and Barry Brooks both testified that three African American masked men toting guns entered their home on December 22, 2017, and took jewelry and money from them, and then drove away in one of their vehicles, which was later recovered. R. 7, l. 14 – p. 29, l. 3; R. 36 l. 15 – p. 37, l. 24; R. 58, l. 12 - p. 91, l. 14. Ralph Winnie testified that masked gunmen entered his home on December 28, 2017, and took jewelry and a wallet, and then departed by driving off in his vehicle, which was later recovered. R. 131, l. 4 -p. 145. l. 24.

The police arrested appellant, Dale Ford, and Maurice Bellamy in connection with both sets of crimes. Dawn Brooks testified that she remembered the voices of all three male perpetrators, and that during bond hearings held in January 2018 and February 2018, she recognized and identified appellant's voice, Maurice Bellamy's voice, and Dale Ford's voice as they spoke at the hearings as the voices of the men who entered her home without consent on the date in question.

Inmate Corey Stephens, who was jailed with appellant in December 2017, testified that appellant told him that he (appellant) and Dale Ford and Maurice Bellamy burglarized a home while armed and masked, and took jewelry, cash, and a vehicle. R. 238, l.15-p. 245, l.13.

State's witness Ladasha Green testified that she dated appellant briefly in December 2017, and that she bought appellant the cellular phone in question. R. 211, l.22-p.216, l.6.

Subsequently, the state extracted downloaded text messages from the cellular phone appellant used 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 appellant's cell phone that included messages to Ford and Bellamy from December 2017:

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 ruled the text extractions were admissible into evidence. R. 326, l.8-21.

There was also a picture of a mask that came from appellant's cellular phone (R. 349, l.6-8) and a short video clip of appellant (allegedly) in a mask and waiving a firearm found on the phone that were also entered into evidence over the defense's objections. R. 350, lines 17-p. 358, l. 22.

At closing, the solicitor repeatedly mentioned the cell phone excerpts to the jury, reiterating and reemphasizing the racial components as assigned to appellant in support of the

case against appellant. Relevant portions of the solicitor's argument follow:

> 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.

These posts were cumulative only. Rule 401, SCRE, states that 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 Text messages depicted a negative portrayal of appellant (even his cell name Macc Mane was unsettling) as potentially targeting people along racial lines, which was extremely unflattering and very uncomplimentary.

The evidence in the case revealed that the perpetrators wore masks and held guns during both entrances into the residences in question. Therefore, the extractions were cumulative and more prejudicial than probative. The jurors could plainly see the race of appellant (African American) and the race of the homeowners whose homes were invaded. The evidence violated Rule 403, SCRE. Furthermore, the solicitor's needless repetitive mentioning of appellant's targeting white people to violate ended up being very inflammatory since the text extractions were previously and plainly read and published to the jury during the state's case in chief.

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 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

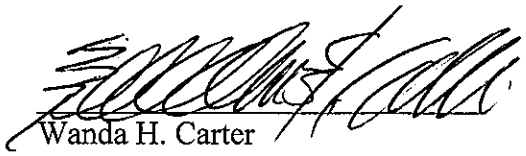
denied contacting the victim, but did not rise to the level of prejudicial impact. Again, the social media post was not inflammatory or more prejudicial than probative. In State v. Holcomb, 426 S.C. 537, 827 S.E.2d 367 (2019), there were social media posts that included negative comments about a daughter (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 appellant at trial.

Moreover, Brooks testified that one perpetrator had a distinctive mask that was goonish and rubbery, and when shown a photo of a person in a mask that came from appellant's cell phone extractions, Brooks literally identified appellant as the perpetrator by confirming that the mask shown to him from appellant's cell phone picture was the masked man. This was tantamount to an inadmissible identification of appellant, which counsel objected to (exhibit No. 8--phone image and testimony from Brooks) vehemently. R. 17, l. 10 – 23; R. 28, l. 5 - p, 29, l.3; R. 35, lines 20-25; R. 24, lines 2-3; R. 29, l. 4 – p. 31, l. 8; R. 33, l. 3 - p. 35, l.19. The trial judge's curative instruction was to no avail. R. 38, lines 2-9.

This error of admitting the cell phone information was exacerbated by the culmination of the solicitor's passion-arousing closing references to the inflammatory race-based messages assigned to appellant, which increased the prejudice. 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). The trial judge erred in allowing appellant's cellular text messages into evidence at trial because the great prejudicial value of the same denied him the right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1, section 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that appellant's case be reversed and remanded for a new proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

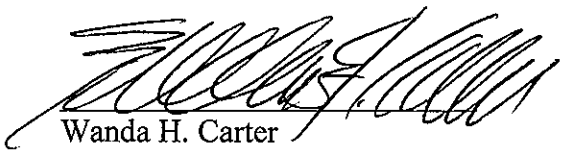
ATTORNEY FOR APPELLANT

This 19th day of August, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

August 19, 2022



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