STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTUS DANTE PRICE,

PETITIONER

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

APPELLATE CASE NO. 2021-001311

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Quintus Dante Faison, Appellant.

Appellate Case No. 2021-001311

Appeal From Horry County
Bentley Price, Circuit Court Judge

Unpublished Opinion No. 2024-UP-003
Submitted November 1, 2023 – Filed January 3, 2024

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Joshua Abraham Edwards, both of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, all for Respondent.

PER CURIAM: Quintus Dante Faison appeals his convictions of two counts of first-degree burglary, two counts of armed robbery, and two counts of kidnapping and his aggregate sentence of twenty-five years' imprisonment. Faison argues the

trial court abused its discretion in allowing his text messages into evidence because the danger of unfair prejudice substantially outweighed their probative value as they contained inflammatory racial references and the State's repetitive mention of these messages during closing argument exacerbated the error by appealing to the personal biases of the jurors.[1] We affirm pursuant to Rule 220(b), SCACR.

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.").

AFFIRMED.[2]

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[1] To the extent Faison argues on appeal the trial court allowed an impermissible identification, we decline to consider it. *See* Rule 208(b)(1)(B), SCACR ("[Issue statements] shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

MCDONALD and VINSON, JJ., and LOCKEMY, A.J., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

QUINTUS DANTE FAISON,

APPELLANT

APPELLATE CASE NO. 2021-001311

Appeal from Horry County

Honorable Bentley Price, Circuit Court Judge

Opinion No. 2024-UP-003

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing regarding this Court's holding that appellant's raced-based text messages constituted admissible evidence on the ground that the same contained probative value. Clearly this Court might have viewed the text messages in isolation, and overlooked the fact that the text messages must be analyzed in conjunction with the solicitor's repeated references to the racial content of the text messages during closing remarks, which in turn placed undue emphasis on the same and created great prejudice. In support of this position, counsel would submit the following points.

Appellant was convicted of burglary, robbery, and kidnapping at trial. During the trial, the state presented downloaded text messages from appellant'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 appellant'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 ruled the text extractions were admissible into evidence. 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.

This Court upheld the admissibility of the racial text 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 appears as though this Court apparently viewed the racially laced text messages in isolation without consideration of the race-based texts in conjunction with the subsequent repeated references to them by the solicitor at closing, which in turn placed undue emphasis on the impact of the racial component of the texts, and surely negatively impacted the jurors, and thus added prejudice to the case. Note below the solicitor's calculated move to repeatedly highlight the racially tinged text messages by reminding the jury of the same per these following closing remarks:

> 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 this Court analyzed the issue on appeal via the racially charged text messages in conjunction along with the repeated reiteration of the same to the jury during the

solicitor's closing argument, then such an analysis of this matter would have yielded a different result, i.e., the conclusion that the prejudicial value of the race-based texts outweighed the probative value, and the same should not have been admitted as evidence at trial.

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 revealed appellant's race as African-American. Therefore, information of appellant's targeting white people was highly inflammatory information for the jury to process. The racial content of the same should not have been viewed in isolation, but rather in conjunction of the solicitor's seemingly needless and repetitive mentioning of appellant's planned targets in the case, which elevated what this Court found as probative, which appellant will not concede, to an obvious level of prejudice that cannot be ignored.

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.

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). This Court erred in upholding the trial judge's ruling that appellant's cellular text messages constituted admissible evidence at trial because to the contrary, the prejudicial value of the same outweighed any probative value and denied appellant 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.

Wherefore, based on the foregoing points, counsel for appellant would request a rehearing on the issue raised above in the case.

Respectfully Submitted,

WANDA H. CARTER
Deputy Chief Appellate Defender

This 18th day of January, 2024.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

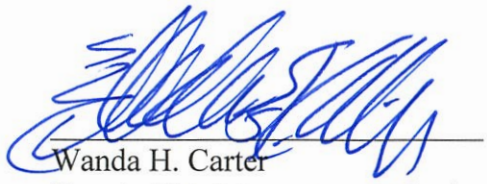
QUINTUS DANTE FAISON,

APPELLANT

APPELLATE CASE NO. 2021-001311

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Quintus Dante Faison, #359497, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 18th day of January, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

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ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Wanda H. Carter, Esquire
Joshua Abraham Edwards, Esquire
The Honorable Bentley Price

FILED
Feb 21 2024