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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court Of General Sessions
The Honorable Deandra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-000418

THE STATE,

Respondent,

v.

RAHEEM OQUENDAL GRANT,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court correctly admitted the recording of Appellant's phone call because it concerned the credibility of a witness, and its probative value was not substantially outweighed by the danger of unfair prejudice.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant Raheem Grant for carjacking and first degree assault and battery. He proceeded to a jury trial on February 27, 2023, before the Honorable Deadra L. Jefferson. Appellant was convicted of carjacking but was acquitted of assault and battery. Appellant was sentenced to six years' incarceration. This direct appeal follows.

STATEMENT OF FACTS

On Saturday, December 7, 2019, April Ross took her two children and boyfriend, Jorge Fuentes, to the Festival of Lights at James Island. (R. 54). April's daughter was around eleven at the time and her son was not even a month old. (R. 54). After they drove around and looked at lights, they parked their 2013 brown Kia Optima. (R. 55; 58). April and her daughter got out of the car to get a stroller out of the trunk, while Jorge stayed in the car to change the baby's diaper. (R. 55). April testified that as she and her daughter were getting the stroller, a man ran past them, jumped in the driver's seat of the car, and locked the doors. (R. 56). She stated that she told him he was in the wrong car, to which he replied, "this is my car now." (R. 57). Appellant testified he mistakenly got into the wrong vehicle. (R. 187). April stated Appellant was able to push start the car and put it in reverse. (R. 57). She testified that Jorge attempted to stop the car and was punched by the intruder. (R. 61). April stated she was able to unlock and open a door. (R. 59). April further testified that a good Samaritan came over and was able to remove Appellant from the vehicle, even though he held on to the steering wheel. (R. 60). Two other witnesses observed Appellant resist removal from the vehicle. (R. 24; 38). She stated Jorge's face was "messed up" and that his glasses were broken. (R. 62).

When Officer Haslip arrived at the scene, Appellant was laying on the ground. Haslip stated that Appellant was conscious and able to roll himself over. (R. 50). Appellant was not in possession of either a driver's license or keys. (R. 51). Appellant was arrested the night of the incident. (R. 3). Detective Michael Galka testified he searched multiple databases and was not able find a connection between Appellant and a Kia Optima or similar make or model. (R. 138).

Appellant testified that he went to the Festival of Lights with his friend Tutu. (R. 185). Appellant also stated that his phone was "supposed to be" inside Tutu's car and that he was

unable to call her after the incident because it was in her car. (R. 187-188). Appellant testified that he did not have a friend named Tony. (R. 208). For the purpose of impeachment, the State sought to admit a recording of Appellant's call from jail. (R. 218-219). On the call, Appellant stated "you need to call him ASAP. He's got my phone." (State's Exhibit 27; R. 220). The call also references an individual named Tony. (State's Exhibit 27; R. 220). The State argued that the call should be admitted for the purpose of impeaching the inconsistent statements made by Appellant, because credibility is always a relevant matter. (R. 228). Appellant argued that it was not relevant, and it was difficult to hear if the name "Tony" was used. (R. 223). The court found the call contradicted Appellant's testimony, making it relevant. (R. 229). The court also found that the probative value of the evidence was not outweighed by the danger of unfair prejudice. (R. 229).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law. State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845 (2006). Broad discretion is given to the trial court's judgment and the ruling will only be reversed if there is a clear abuse of discretion. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000).

ARGUMENT

The trial court correctly admitted the recording of Appellant’s phone call because it concerned the credibility of a witness, and its probative value was not substantially outweighed by the danger of unfair prejudice.

The trial court correctly admitted the recording of Appellant’s call from jail because the credibility of a witness is always relevant, and the State properly used the call to impeach Appellant. Also, the probative value of the call was not substantially outweighed by the danger of unfair prejudice. The call had probative value in that it contradicted Appellant’s testimony at trial. That probative value was not substantially outweighed by the danger of unfair prejudice because the call posed a minimal risk that the jury would reach a verdict on an improper basis. This Court should affirm.

“All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina.” Rule 402, SCRE. Evidence is relevant if it “make[s] more or less probable the matter in controversy.” State v. Preslar, 364 S.C. 466, 476, 613 S.E.2d 381, 386 (Ct. App. 2005). Anytime a witness testifies, their credibility becomes relevant. State v. Brewton, Op. No. 28191 (S.C. Sup. Ct. filed Jan. 31, 2024) (Adv. Sh. at 30). When it comes to credibility, “the test of relevancy is not whether the answer sought will expound any of the main issues, but whether it will aid the court or jury in appraising the credibility of the witness and assessing the probative value of the direct testimony.” Walker v. State, 300 S.W.3d 836, 844 (Tex. App. 2009). Any evidence that shows the testimony is accurate, truthful, or sincere may be admissible to help the jury determine whether a witness is credible. State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001).

Several courts have admitted recordings for the purpose of impeaching a witness. State v. Knight, 134 S.E.2d 101 (NC. 1964) (television recording was admissible for the purpose of impeaching witness' statements made during trial); Hutson v. State, 296 S.W.2d 245 (Tx. Ct. App. 1956) (affirming the admission of a recording showing inconsistent statements made regarding the defendant's level of intoxication); State v. Porter, 242 P2d 984 (Mont. 1952) (holding the court erred by not permitting defendant to introduce recordings to impeach credibility of witnesses by showing statements that were contradictory to their sworn testimony).

Here, the evidence presented by the State is relevant because it attacks the accuracy and truthfulness of Appellant's testimony. Appellant testified that his phone was "supposed to be" inside Tutu's car and that he did not call her after the incident because it was in her car. (R. 187-188). Yet, in the recording, Appellant stated "you need to call him ASAP. He's got my phone." (State's Exhibit 27; R. 220). Appellant testified that he did not have a friend named Tony. (R. 208). Yet, the call references someone named Tony. (State's Exhibit 27; R. 220). The recording plainly contradicts the testimony given at trial and thus is relevant to determine the truthfulness and accuracy of Appellant's statements. As stated in Walker, the test for relevancy is not whether the evidence introduced concerns the elements of carjacking, but whether it will aid the court or jury in determining the credibility of a witness. Here, the recording was properly admitted for the jury to determine Appellant's credibility.

Next, probative value is the tendency of evidence to establish the proposition it is offered to prove. State v. Thompson, 420 S.C. 386, 398 803 S.E.2d 44, 50 (Ct. App. 2017). It is the weight that a piece of evidence will carry in helping the jury make a determination. "The more essential the evidence, the greater its probative value." Id.

Low probative value alone does not exclude evidence; the probative value must be substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 403, SCRE. Unfair prejudice refers to evidence which tends to suggest a decision on an improper basis. State v. Lee, 399 S.C. 521, 529, 732 S.E.2d 225 (Ct. App. 2012) (quoting State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690 (2009)). “All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided.” State v. Bratschi, 413 S.C. 97, 115, 775 S.E.2d 39, 49 (Ct. App. 2015). Evidence that is unfairly prejudicial is evidence that suggests a decision on an improper basis. State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

In State v. King, our Supreme Court found that the court technically erred in the admission of a recording because the call was riddled with profanity, contained racial slurs, was fifteen minutes long, and contained references to Appellant’s prior bad acts. State v. King, 422 S.C. 47, 69, 810 S.E.2d 18, 30 (2017). The State sought to introduce the recording to show ownership of a phone; even though ownership could have been proven in various other ways. Id. The call’s limited probative value coupled with the danger of unfair prejudice made its admission an error.

In State v. Davis-Kocsis, this Court upheld the admission of a 911 call recording for the purposes of corroborating a witness’ testimony. State v. Davis-Kocsis, 436 S.C. 468, 474, 872 S.E.2d 415, 418 (Ct. App. 2022). In Davis-Kocsis, defendant was charged with murder, kidnapping, and burglary. Id. Defense moved to suppress a recording of the 911 call of victim requesting emergency services. Id. Defense raised Rule 403, SCRE arguing that the call would

stir up the passions of the jury. This Court found that the trial court did not abuse its discretion in admitting the call for purposes of corroboration. State v. Davis-Kocsis, 436 S.C. at 475 872 S.E.2d at 418.

The recording is probative for the same reason it was relevant – it was inconsistent with the testimony offered by Appellant. The credibility of a witness is always a relevant matter, and the evidence presented speaks to the credibility of Appellant. Turning to the danger of unfair prejudice, the call is under a minute, much shorter than the call in King. The call also does not pose nearly the risk that the calls in either King or Davis-Kocsis did. There is some profanity at the beginning of the call, but the call does not contain evidence of prior bad acts and is not “riddled” with foul language. The brief use of profanity at the beginning of this call does not pose risk of inflaming the passions of the jury. The call poses a minimal risk because unlike Davis-Kocsis, this call was not made shortly after a traumatic experience. Nonetheless, the call in Davis-Kocsis was admitted to corroborate the testimony of a witness. Here, the call also concerns the credibility of a witness. The court did not abuse its discretion in admitting the call for the purpose of impeaching the credibility of Appellant.

Even if the court erred in admitting the recording, the error is harmless. An error is deemed harmless when “it could not reasonably have affected the result of the trial.” State v. Reeves, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990). The error is to be considered with respect to the context and circumstances related to the specific case. State v. Byers, 392 S.C. 438, 447, 447–48, 710 S.E.2d 55, 60 (2011). Here, the recording was only a small part of the State’s case in chief. The call did not prove an element of the crime; it simply was used to contradict testimony of Appellant. The State produced sufficient evidence to support the conviction, and it should not be reversed given the minimal risk of any error. This Court should affirm.

CONCLUSION

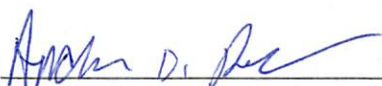
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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."

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Lara Caudy, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 11th day of April, 2024.



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