STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2022-001474

THE STATE, ...RESPONDENT,

v.

CHANNON TALON PRESTON, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Rules

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred by admitting the contents of the 9-1-1 call since the caller, Ms. Stewart, was being questioned about the crime by the 9-1-1 official and Stewart was systematically relaying the answers of Corey Singleton since this was inadmissible hearsay evidence, and appellant was denied his Sixth Amendment right to confront and cross-examine Singleton?

2. Whether the court erred by admitting Corey Singleton's statements about the crime, including body camera videos, State's Exhibits 3, 4, and 5, where Corey Singleton was being questioned about the crimes by law enforcement since Singleton's hearsay answers were incriminatory of appellant, and they denied appellant his right of confrontation and cross-examination?

3. Whether the court erred by admitting a video clip, State's Exhibit 158, and still shots from it depicting appellant in the presence of an assault weapon and "drug" money since this video was taken five days before the shooting in this case, it was not relevant, and any relevance this evidence had was outweighed by its unduly prejudicial effect?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. and 2. Whether Judge Price rightly held Corey Singleton's statements on the 911 call (through his neighbor) and to officers directly after he was shot at 23 times were non-testimonial in nature and were firmly rooted in the excited utterance and present sense impression hearsay exceptions because they were made to assist police in an ongoing emergency while Singleton was still under the stress of the event.

3. Whether Judge Price reasonably exercised his discretion by admitting a video showing Appellant and his co-defendant wielding the same two extremely unique murder weapons in the same getaway vehicle a mere five days before their planned attack when the video was relevant, very probative, and went to proving identity.

STATEMENT OF THE CASE

Appellant Channon Talon Preston was indicted at the November 2021 term of the grand jury for Beaufort County for the murder of Steven Glover, the attempted murder of Cory Singleton, and possession of a weapon during the commission of a violent crime. (2020-GS-07-02183; -02311; -02184). He was prosecuted by Assistant Solicitor Mary C. Jones and represented by Ashley B. Cornwell, Esq. Appellant proceeded to trial by jury on October 10, 2022, and was found guilty as charged on October 12, 2022. Tr. 1, 621-622. The Honorable Bentley Price sentenced Appellant to an aggregate of 37 years' imprisonment.[1] Tr. 626-627.

Appellant had a co-defendant, Xavier Polite, who was tried separately by jury in June of 2023 and was also found guilty of murder, attempted murder, and possession of a weapon during the commission of a violent crime. (2020-GS-07-02185, -02186, -02312). His case is also pending on appeal before this Court. Case No. 2023-001026. Polite and Appellant received identical sentences. Appellant timely filed a notice of intent to appeal his convictions and sentences and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows.

[1] 37 years for murder, 30 concurrent years for attempted murder, and 5 concurrent years for the weapons indictment. Sentencing Sheets.

STATEMENT OF FACTS

On November 18, 2020, Steven Glover (murder victim) and Corey Singleton (attempted murder victim) were spending time at Singleton's home at 70 Stonewood on St. Helena Island. Tr. 133-134; Tr. 139. Channon Preston (Appellant, aka "Glizzy") drove his relative's white Toyota van to buy drugs from Glover with Xavier Polite (co-defendant tried separately) in the passenger seat. Tr. 205; Tr. 250-252. Glover was in the driver's seat of his car in Singleton's driveway with a jar of marijuana and a peach bag with pills in it when the van pulled up and Polite exited with a Draco rifle, and Appellant with a teal Taurus 9-mm pistol. Tr. 250-251; Tr. 334, 386; Tr. 402-403. Singleton was outside the front of his home, having just returned from the post office. State's Exhibits 3, 4, and 5 (body camera videos).

Both Appellant and Polite fired 23 total rounds at Glover, who was hit and killed by seven of them. Tr. 244-249; Tr. 483. Singleton hid behind a car, returned fire, then fled to his neighbor Cynthia Stewart's house, where she called 911 from her front porch. Tr. 133-139. He initially thought he had been shot and was so overwhelmed he could not talk to the 911 operator himself. State's Exhibit 1 (911 Call). Over 100 pieces of evidence were admitted against Appellant at trial. Tr. 2-4; Tr. 569.

Five days before the shooting, Appellant and his co-defendant videoed themselves with the same unique weapons they used to kill Glover while driving the same Toyota. Tr. 424-425; Tr. 453-456; State's Exhibit 158. Appellant eventually admitted to law enforcement to being at the scene to buy marijuana after he initially denied being there. Tr. 430-437. Corey Singleton immediately identified Appellant as the main shooter (via his street name "Glizzy") who drove a white Toyota van when law enforcement arrived, and his statements were caught on body cameras. The shooting itself was partially caught on surveillance video from the home. The name "Glizzy" matched the name on Appellant's bedroom wall, Facebook profile, and a video where

Appellant acknowledged he was “Glizzy.” Tr. 385-386; 452-453. Appellant was caught on video telling his co-defendant, “Man, who you ain’t get him?” and his co-defendant answered, “I ran out, I ran out.” Tr. 83; Tr. 574. Corey Singleton died from a drug overdose about a year after the crime and thus was unable to testify at trial. Tr. 570.

STANDARD OF REVIEW

"Admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (cleaned up). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *Id.*; *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I. and II. Judge Price rightly held Corey Singleton's statements on the 911 call (through his neighbor) and to officers directly after he was shot at 23 times were non-testimonial in nature and were firmly rooted in the excited utterance and present sense impression hearsay exceptions. The statements were made to assist police in an ongoing emergency.

Appellant argues the trial court erred by admitting the 911 call (State's Exhibit 1) and three short body camera clips into evidence (State's Exhibits 3-5) because of alleged hearsay and Confrontation Clause issues. The State disagrees and submits Appellant's arguments are without merit. The Sixth Amendment's Confrontation Clause is not triggered here because nothing the jury heard off any of the above from Singleton was testimonial. At best, as especially the body camera clips were extremely hard to hear, the jury heard there were two black male perpetrators who arrived in a white possibly Toyota van, one of whom was a "little guy with dreads" whose street name was "Glizzy." Singleton was identifying the perpetrators, describing what happened, and was, as the judge held, doing so directly after an event where two men showed up to kill him; and almost did. At the very least, the hearsay exception of excited utterance applied.

A trial judge has considerable latitude in its discretion to admit or exclude evidence. *State v. Bratschi*, 413 S.C. 97, 113, 775 S.E.2d 39, 47-48 (Ct. App. 2015). The defense moved pre-trial to exclude the 911 call and the three short body camera clips because first, Corey Singleton was not speaking directly to the 911 operator (but through his neighbor Cynthia Stewart), so his statements were hearsay within hearsay, and second, because the Confrontation Clause was allegedly violated: Singleton passed away from a drug overdose about a year before trial and was thus not available for cross-examination. Tr. 63-64, Tr. 75. They argued no hearsay exception was available under Rule 802 [likely meaning 803], and then cited and discussed *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). Tr. 65-71, Tr. 75-78. They argued there was no "investigative hearsay" exception, and that the statements were not reliable. Tr. 69-70.

The State then asserted the 911 call was not testimonial by definition, as the "primary purpose of that 911 call was for law enforcement to assist an ongoing emergency." Tr. 83. The solicitor continued, "At the time the 911 call [was] made, Mr. Singleton does not know if he has been shot or not. He knows that his friend and cousin is dead on the ground, two shooters were shooting at him, and they left. They tried to get him . . . ." Tr. 83. The solicitor continued:

> **At the time of the 911 call, there's still an ongoing threat to the public**. There's still an ongoing threat to Mr. Singleton. We have two armed shooters. One with a Draco and one with a Taurus 9-millimeter and we don't know where they are. **It's not for future prosecution. It is absolutely to assist an emergency**. That is coming straight from the *Davis*[2] case . . . .
>
> I'm also going to hand up *State v. Hendricks*[3] . . . The Court held that the victim's statement to the mother was admissible. It's an excited utterance and it was a present sense impression . . . .
>
> According to *Davis*, it's not testimony hearsay because the primary purpose was to assist an ongoing emergency and it falls under multiple exceptions to the hearsay rule, business record, as well as excited utterance 803(1), as well as 803(2), present sense impression.

Tr. 83-85 (emphasis added).

Regarding Singleton's statements to the police on the body camera clips, the solicitor asserted the same hearsay exceptions, as Singleton talked to law enforcement directly after the shooting where he was shot at 23 times. Tr. 85-88. She argued *Michigan v. Bryant*[4] held there

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[2] *Davis v. Washington*, 547 U.S. 813 (2006) (holding the Confrontation Clause does not apply to "non-testimonial" statements like those made in 911 calls for purposes of helping police resolve an ongoing emergency.)

[3] *State v. Hendricks*, 408 S.C. 525, 759 S.E.2d 434 (Ct. App. 2014) (holding the admission of the rape victim's statements to her mother (who then told 911) that the defendant beat, raped, and sodomized her was harmless error.)

[4] *Michigan v. Bryant*, 562 U.S. 344 (2011) (holding a shooting victim's identification, description, and possible location of the shooter was not testimonial because the statements had a primary purpose to enable police assistance to meet an ongoing emergency.)

was no *Crawford*[5] violation because "the officers were on scene, they didn't know where the shooters were, they had a living target, and the shooters were very likely to come back." Tr. 87. She also presented *State v. Sims*[6] that defined excited utterance: "*Sims* is very clear that 'excited' does not mean excited in the normal sense of the word. Someone could be excited and be more reserved in their speech because of shock, and that's exactly what Corey Singleton was experiencing that day." Tr. 88.

The trial court agreed with the solicitor and found the 911 call statements were non-testimonial under *Crawford*, and the hearsay exceptions of excited utterance and present sense impression applied. Tr. 108, Tr. 110. The court distinguished the 911 call from Singleton's later, formal statements taken by and given to law enforcement (noting everyone would agree they would violate the constitutional provision of *Crawford*), but then also ruled the statements Singleton gave to officers that were recorded on their body cameras were excited utterances due to the "adequate time line." Tr. 108.

Here, all of Corey Singleton's statements in the 911 call and the three short body camera clips (albeit as hard as they were to hear) were excited utterances by a totality of the circumstances. An excited utterance is a "statement relating to a startling event or condition made while the declarant was still under the stress of excitement caused by the event or condition" and may be admitted at trial. Rule 803(2), SCRE; *State v. Davis*, 371 S.C. 170, 178, 638 S.E.2d 57 (2006); *State v. Dennis*, 337 S.C. 275, 284, 523 S.E.2d 173, 177 (1999) (finding "the startling event suspends the declarant's process of reflective thought, reducing the

[5] *Crawford v. Washington*, 541 U.S. 36 (2004) (holding only testimonial statements by witnesses not available for cross-examination to be inadmissible under the Sixth Amendment's Confrontation Clause).

[6] *State v. Sims*, 348 S.C. 16, 558 S.E.2d 518 (2002) (holding that a trial court must look at the totality of the circumstances to determine when a statement(s) falls under Rule 803(2), excited utterance.)

likelihood of fabrication.") Corey Singleton is heard and seen on the 911 call and body camera clips to be under great stress, thinking at first he had actually been shot, and then likely being *in* shock directly after being shot at 23 times at close range and directly witnessing his cousin's murder. He was still under the stress of the shooting when he made all the statements.

The solicitor is correct – the statements Singleton made were very similar to those made in *State v. Hendricks*. The *Hendricks* victim told her mother about her boyfriend's sexual abuse, and her mother relayed her statements to 911. The mother told 911 that her daughter's "boyfriend just broke into her house and beat her up and raped her . . . sodomized her . . . and his name is Matthew Hendricks." *Id*. at 532, 759 S.E.2d at 438. However, unlike in *Hendricks*, where this Court found the excited utterance exception did not apply because the mother did not immediately call 911 after her daughter told her what happened (giving her time to reflect on what her daughter had said), Cynthia Stewart immediately called 911 while Corey Singleton was still under the stress of the event and relayed what he said directly to 911.

The statements Singleton made on the 911 call and on the body camera clips meet the three excited utterance elements. First, they related startling events and conditions. Second, they were made while he was still under the stress of excitement. Third, the stress of the excitement was caused by the startling event or condition. *State v. Sims*, 348 S.C. at 21, 558 S.E.2d at 521 (holding perpetrator identification statements made by a five-year old who witnessed his mother's throat being cut were admissible under the excited utterance exception.) Hearsay within hearsay statements are admissible as long as the offering party demonstrates each layer of hearsay would be admissible on its own. Rule 805, SCRE. Appellant has not plainly shown how Judge Price abused his discretion via an error of law or conclusion that was without evidentiary support, so this Court should affirm.

III. Judge Price reasonably exercised his discretion by admitting a video showing Appellant and his co-defendant wielding the same two murder weapons in the same getaway vehicle a mere five days before their planned attack. The video was relevant and very probative.

Appellant claims the trial court erred by admitting State's 158, which is a video exhibit showing Appellant wielding the same weapon he used to kill Steven Glover while driving the same vehicle he shot Glover from a mere five days before the shooting. He claims the evidence was not relevant and was more prejudicial than probative; that it was "outside of anything having to do with this case." Tr. 386-387. Respondent disagrees and submits Appellant's argument is without merit. Appellant's defense was, "I did not do it." The video was thus extremely relevant, and Judge Price rightly found the prejudicial effect did not outweigh the probative value.

The trial court ruled, after hearing Rule 403 and relevance arguments, the video was "extremely probative and nowhere near prejudicial enough to exclude the evidence of the guns five days prior." Tr. 388-390. The court noted, "just for the record, because obviously anybody that will take a look at this appeal on record will not realize until they see the picture what the guns – how unique they are." Tr. 388. The court continued:

> One they are both showing – one is showing a 9-millimeter, which of course has been – the crux of this trial, which is that the defendant allegedly always carried a 9-millimeter, which is why he had the nickname Glizzy. And also that it is teal in color.
>
> **A very, very, very specific style of 9-millimeter, and certainly a specific color as well with a very unique pattern on it.** And it matches the exact same gun that was found in the house hidden the day of under the trash bags. And also, the other gun that's associated is an assault rifle with … a boom?
>
> With the drum magazine, which, of course, goes back to the late '20 early '30's gangster movies, is essentially what it looks like. So it was a very detailed and a very specific style gun in this type case. And the fact that both of these were found hidden in the house on the day of the incident and these gentlemen were possessing these firearms for five days, I certainly believe is extremely probative and certainly outweighs any prejudicial effect.

Tr. 388-390.

The evidence was extremely relevant. Rule 401, SCRE. To law enforcement, Appellant initially claimed he was not at the scene, but then later changed his statement and admitted he was there. In the defense's opening statement, then, counsel told the jury, "[T]hey're not going to be able to prove that my client . . . is the person that did any of this gunfire, ambush, and murder . . . ." Tr. 124. Showing the jury that Appellant was proudly in possession of one of the very unique murder weapons a mere five days before the shooting certainly had a "tendency to make the existence of a fact that is of consequence to the determination of an action [whether Appellant was a shooter] more or less probable than it would be without the evidence." Rule 401, SCRE.

The video corroborated other evidence introduced at trial. The white Toyota van the two were driving in the video was the same one that the attempted murder victim Corey Singleton identified. It was found parked at Appellant's home right after the crime and was full of other inculpatory evidence. Tr. 296-308; State's Exhibits 119-121 (photographs of white van). An envelope with an earning statement with Appellant's name and address on it was inside the van along with a 9-millimenter bullet, a box for a 50-round 9-millimeter drum, and a 9-millimeter magazine. Tr. 308. Then, at least seven more 9-millimeter bullets, a gun holster, two 9-millimeter magazines, a box of 9-millimeter ammunition, and a box for a 9-millimeter Taurus handgun were found in Appellant's bedroom where he had written "G. Glizzy 6" on the wall. Tr. 319-328.

The two murder weapons (the same teal 9-millimeter Taurus and Draco pistol that Appellant and Polite were wielding in their video five days prior) were found in co-defendant Xavier Polite's bedroom, which was right next to Appellant's. Tr. 329-336; State's Exhibits 116-117, 182 (photographs of murder weapons and the bedroom). The video also corroborated Corey

Singleton's statements on State's Exhibits 3-5 about who the shooters were. In State's 3 and State's 5, Singleton identifies the vehicle the perpetrators (two black males) were driving as a white Toyota. In State's 4, He identifies one of the shooters as a "little guy with small dreads" who "left in a white Toyota van." A reasonable description of Appellant, as seen on State's 158, could be a "little guy with small dreads."

Evidence that is relevant to one party is necessarily prejudicial to the opposing party in every single trial. All relevant evidence is admissible *unless* the prejudicial effect substantially outweighs the probative value. Rule 403, SCRE. Evidence is unduly prejudicial if it has an undue tendency to suggest a decision on an improper basis, which must be determined through an examination of the entire record. *State v. Stokes*, 381 S.C. 390, 673 S.E.2d 434 (2009); *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). As long as the trial judge makes it clear on the record that they weighed and balanced both the prejudicial effect and probative value of the evidence and came to a clear conclusion one way or the other, his decision is entitled to extreme deference on appeal. *State v. Gray*, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014) (affirming the trial court's admission of three autopsy photos showing the victim's exposed skull and brain, as the probative value was not outweighed by the danger of unfair prejudice); *State v. Sweat*, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004). Judge Price did so. Therefore, as Appellant has not shown how Judge Price abused his discretion, this Court should affirm.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgments, convictions, and sentences of the lower court be affirmed.

Respectfully submitted,

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