RECEIVED
Jun 18 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court Of General Sessions
The Honorable Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No. 2023-000799

THE STATE, Respondent,

v.

JOSEPH EUGENE EDMOND, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

JOHN WILLIAM WEEKS
Solicitor, Second Judicial Circuit

Post Office Drawer 3368
Aiken, SC 29802
(803)-642-1557

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

Other Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I. The trial court's exclusion of extrinsic impeachment evidence did not constitute a reversible error.

II. The trial court properly admitted Appellant's prior conviction.

STATEMENT OF THE CASE

The Aiken County Grand Jury indicted Appellant Joseph Eugene Edmond for criminal sexual conduct with a minor first degree and criminal sexual conduct with a minor third degree. He proceeded to a jury trial on May 8, 2023, before the Honorable Courtney Clyburn-Pope. Edmond was convicted as indicted and sentenced to thirty-two years' incarceration for criminal sexual conduct first degree and fifteen years' concurrent incarceration for criminal sexual conduct third degree. This direct appeal follows.

STATEMENT OF FACTS

On March 7, 2021, Rachel Fulton drove to pick up Appellant and bring him back for dinner. (R. 74). Rachel's daughter (Minor), who was five, stayed at the home with her grandmother. (R. 72; 78). Rachel was in a relationship with Appellant at the time. (R. 76). Minor knew Appellant, sometimes even referring to him as "stepfather." (R. 76). The group planned to eat supper together. (R. 77). Once they arrived at grandmother's house, Appellant stayed in the car while Rachel went inside to help Minor get ready. (R. 75). Rachel got Minor ready for dinner and walked her out to the car. (R. 75). Rachel then walked back inside. (R. 76).

Minor testified that at this time Appellant told her to get in the bottom of the car, unzipped his pants, and forced her to perform oral sex. (R. 89-90). Minor stated Appellant did not ejaculate. (R. 91). When Rachel returned to the car, she saw Minor in the front seat facing Appellant. (R. 76). Rachel testified that Minor was in shock, pale, and had red cheeks. (R. 76). Rachel stated Minor crawled across the front seat and came out the car crying. (R. 77). She stated Minor no longer wanted to eat and ran back inside. (R. 77). Rachel took Appellant back home and grandmother took Minor to the hospital. (R. 78).

The DNA report did not contain a match for Appellant. (R. 99-100; 106). Appellant wrote a statement concerning his version of events. In his written statement, Appellant recalled: "I stuck my fingers in [Minor's] mouth. She got in the floor. I pulled my penis out. Told her to suck it, but she didn't have time. I zipped my pants back up before she could." (R. 130). At trial, Appellant testified that he did nothing inappropriate with Minor. (R. 173-174). Ultimately, the jury found Appellant guilty as charged. (R. 281-282).

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion." Id. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id. "The admission of evidence concerning past convictions for impeachment purposes remains within the trial [court's] discretion, provided the [trial court] conducts the analysis mandated by the evidence rules and case law." State v. Robinson, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003).

ARGUMENT

I. **The trial court's exclusion of extrinsic impeachment evidence did not constitute reversible error.**

Any error the court made in excluding Rachel's statement to Investigator Sullivan was harmless because of the nature of Rachel's testimony, the evidence presented by the State, and the minimal risk of excluding the statement.

Relevant Facts

At trial, Appellant's counsel cross-examined Rachel about Appellant's demeanor after the incident. Counsel asked Rachel "How did he seem on the way back home?" (R. 81). Rachel stated Appellant was "[k]ind of confused and anxious at the same time." (R. 81). Counsel then asked her if she recalled telling Investigator Sullivan that Appellant seemed like everything was normal. (R. 81). She replied that she did not. (R. 82). Counsel also asked Rachel other questions relating to whether or not she noticed if Appellant had an erection and whether Appellant had a piercing on his penis.[1] (R. 81-82).

Investigator Sullivan was asked about the statement he received from Rachel. (R. 140). The State argued that the statement was hearsay. (R. 140). Appellant argued the statement should be admitted as a prior inconsistent statement. (R. 140). The State argued that the proper foundation had not been laid since Rachel did not deny making the statement in question. (R. 140). After a sidebar, the court then sustained the objection. (R. 140).

Appellant proffered the following testimony from Investigator Sullivan that in her statement "[Rachel] said [Appellant] was normal acting." (R. 156, lines 16-23).

---

[1] Minor testified that there was not a large "earring" on Appellant's penis, while Rachel and Appellant testified Appellant did in fact have a piercing. (R. 82; 93; 175).

Extrinsic evidence of a prior inconsistent statement is admissible if the witness is advised of the substance, time and place of the statement and either denies making the statement, states he does not fully recall, or does not unequivocally admit he made the statement. State v. Blalock, 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003); State v. Bottoms, 260 S.C. 187, 195 S.E.2d 116 (1973).

Here, Rachel did not unequivocally admit she made the statement to Investigator Sullivan. Any error in the exclusion of her prior inconsistent statement is harmless. The "harmless error rule" embodies the commonsense principle that whatever does not make a difference does not matter. State v. Ostrowski, 435 S.C. 364, 401, 867 S.E.2d 269, 288 (Ct. App. 2021). "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." State v. White, 372 S.C. 364, 386, 642 S.E.2d 607, 618 (Ct. App. 2007), overruled on other grounds by State v. Wallace, 440 S.C. 537, 892 S.E.2d 310 (2023).

In State v. Fossick, our Supreme Court found a trial court's exclusion of extrinsic impeachment evidence was erroneous but nonetheless harmless. State v. Fossick, 333 S.C. 66, 508 S.E.2d 32 (1998). The Fossick Court determined the error was harmless by examining the importance of witness testimony, whether the testimony was cumulative, whether other evidence corroborated or contradicted the witness's testimony, the extent of cross examination, and overall strength of the State's case. Fossick, 333 S.C. 70, 508 S.E.2d. 34.

Here the factors outlined in Fossick support a finding that any error was harmless. The majority of Rachel's testimony concerned the timeline and general events of the day. Her testimony did not speak to whether or not Minor was assaulted, because she was not at the vehicle during the time in question. Minor's testimony concerned the act in question. The State presented not only Rachel's testimony, but also the testimony of Minor and Appellant's written

statement. Appellant was able to cross examine Rachel on other topics as well, including whether she noticed Appellant's erection and relating to his piercing. Further, Appellant put himself at the scene and admitted to exposing himself to Minor in a statement to police. Under these circumstances any error in the exclusion of the testimony is harmless. This Court should affirm.

II. The trial court properly admitted Appellant's prior conviction.

The court properly admitted Appellant's prior conviction because it carried a punishment of over a year imprisonment, was within the last ten years, contained probative value in the form of determining Appellant's credibility, and posed minimal risk of unfair prejudice.

The State sought to admit evidence of Appellant's prior conviction for assault and battery second degree from 2018. (R. 162). The State argued it was admissible because it "carries over a year and is within the last ten years." (R. 162). Appellant argued that the probative value was outweighed by prejudicial effect. (R. 163). The court overruled Appellant's objection. (R. 163). On direct examination defense counsel asked whether Appellant had ever been convicted of assault and battery second degree, to which he replied that he had. (R. 179). During the jury charge, the court instructed the jury: "[y]ou must not consider the defendant's prior record as any evidence of the defendant's guilt of the charges we are trying today." (R. 278-279).

"The use of prior criminal convictions to impeach the credibility of a witness or criminal defendant is generally permitted by nearly every American jurisdiction." 36 Am. Jur. Proof of Facts 2d 747 (1983). Rule 609, SCRE allows for the admission of convictions if they are punishable by a year or more imprisonment and within the last ten years.[2]

A complete on-the-record analysis is preferred. State v. Heyward, 441 S.C. 484, 493, 895 S.E.2d 658, 663 (2023); State v. Phillips, 430 S.C. 319, 341, 844 S.E.2d 651, 662 (2020). Even so, a trial court's failure to conduct an on-the-record 403 analysis is not dispositive. State v.

---

[2] "[E]vidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted". . . "Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date." Rule 609, SCRE.

King, 349 S.C. 142, 156, 561 S.E.2d 640, 647 (Ct. App. 2002). (affirming conviction where the trial judge's comments concerning the matter indicate he was cognizant of the evidentiary rule when making a ruling).

In State v. Collins, the trial court's 403 ruling did not constitute a reversible error. In his plurality opinion Justice Beatty found the analysis proper because the record showed the court thoroughly considered the arguments of both parties and it examined each piece of evidence while also conducting an examination of the photograph before making its decision. State v. Collins, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (plurality).

In State v. Spears, a prior bad act was admitted into evidence after an improper 403 prejudice analysis. State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878 (Ct. App. 2013). In Spears, the trial court admitted statements and video evidence as a prior bad act and pursuant to a hearsay exception. Id. The court made findings related to the clear and convincing standard for evidence pertaining to a prior bad act but nothing else. Id. The court found the balancing test to be improper because they found nothing implicit or apparent in the record that the trial court considered the probative value of the evidence and if it was substantially outweighed by unfair prejudice. Id. at 254, 792 S.E.2d at 881.

"The appellate court may affirm any ruling upon any grounds that appears in the record." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 418, 526 S.E.2d 722 (2000). The "appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." Id.

Probative value is "the measure of the importance of that tendency to prove or disprove 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. Thompson, 420 S.C. 386, 399, 803 S.E.2d 44 (Ct. App. 2017). In State v. Colf, our Supreme Court noted five factors commonly used by courts in determining whether probative value of a prior conviction substantially outweighs prejudicial effect. State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). The Colf Court examined (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. 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)).

Specifically, a trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. "We ... are obligated to give great deference to the trial court's judgment." State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (citing State v. Hamilton, 344 S.C. at 357, 543 S.E.2d at 593(2001)). Because the trial court did not abuse its discretion, the ruling should not be reversed.

Here, unlike Spears, the court considered the probative value and danger of unfair prejudice. At the time of the ruling, the probative value and prejudicial effect were the only items

before the court. Next, the evidence is central to determining whether Appellant is a credible witness. Cf. State v. Robinson, 426 S.C. 579, 606, 828 S.E.2d 203, 217 (2019) (When the jury must choose between the defendant's credibility and that of another witness, there is high probative value in admitting evidence of prior convictions to impeach the defendant's credibility). Appellant's convictions show a continuous pattern of criminal behavior that could impact Appellant's credibility in the eyes of the jury.[3] The prior crime has impeachment value in establishing Appellant's credibility. See State v. Hill, 801 N.W.2d 646, 651 (Minn. 2011) (commission of an intentional felony has inherent value because "disregard for the law may suggest to the fact finder similar disregard for the courtroom oath"). The conviction named in testimony was from 2018, recent to the trial in question. (R. 297). Further, the difference in offenses coupled with the court's limiting instruction posed a minimal risk the jury would use the prior conviction as evidence of Appellant's propensity in the present case. Because Appellant was one of the two persons that perceived the entire incident, his credibility was a central component of the case.

Next, the danger of unfair prejudice is low. Appellant's criminal history included a 1998 conviction for assault and battery, a 2003 conviction for a fraudulent check, a 2006 conviction for assault and battery, a 2014 conviction for disorderly conduct, a 2018 conviction for malicious injury to personal property, and the 2018 conviction admitted for assault and battery in the second degree. (R. 297). The conviction admitted was the result of a plea agreement where Appellant avoided a possible assault and battery of a high and aggravated nature conviction. (R. 297).

---

[3] A history of prior convictions may reveal "a continuing pattern of criminal behavior that could legitimately impact [the defendant's] credibility in the eyes of the jury." Robinson, 426 S.C. at 600, 828 S.E.2d at 214.

The testimony relating to Appellant's most recent conviction did not encourage a decision based upon an improper basis because only the most recent conviction was discussed, the jury was not made aware of the original ABHAN charge, and defense counsel elicited the testimony, not the State. Further, the court's limiting instruction clearly states the jury is not to use Appellant's prior record as evidence of his guilt in the present case. (R. 278-279).[4] Under these circumstance, the probative value of Appellant's prior conviction was not substantially outweighed by the danger of unfair prejudice.

This Court should affirm.

[4] The Court instructed the jury: "You have heard evidence that the defendant was convicted of a crime other than the one for which the defendant is now on trial. This evidence may be considered by you, if you conclude it is true, only in deciding whether the defendant's testimony is believable, and for no other purpose. You must not consider the defendant's prior record as any evidence of the defendant's guilt of the charges we are trying today." (R. 278-279).

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

JOHN WILLIAM WEEKS
Solicitor, Second Judicial Circuit

BY: _____
Andrew D. Powell
Bar # 106415

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 18, 2024

RECEIVED
Jun 18 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court Of General Sessions
The Honorable Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No. 2023-000799

THE STATE, Respondent,

v.

JOSEPH EUGENE EDMOND, Appellant.

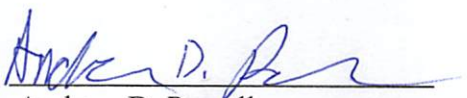
CERTIFICATE OF COUNSEL

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."

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

JOHN WILLIAM WEEKS
Solicitor, Second Judicial Circuit

By: 
Andrew D. Powell
Bar # 106415

Office of the Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 743-3727

ATTORNEYS FOR RESPONDENT

June 18, 2024

RECEIVED
Jun 18 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court Of General Sessions
The Honorable Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No. 2023-000799

THE STATE, Respondent,

v.

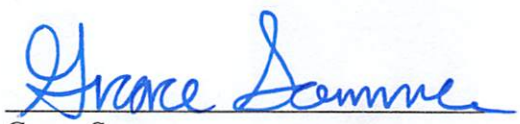
JOSEPH EUGENE EDMOND, Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Katherine H. Hudgins, 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 18th day of June, 2024.



Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Grace Sommer

From: Grace Sommer
Sent: Tuesday, June 18, 2024 12:22 PM
To: Hudgins, Kathrine
Cc: Andrew Powell; Stock, Chris
Subject: The State v. Joseph Eugene Edmond (2023-000799)
Attachments: EDMOND Joseph - FBOR (03609329xD2C78).PDF

Good Afternoon Ms. Hudgins,

Attached please find a Final Brief of Respondent in The State v. Joseph Eugene Edmond (2023-000799). This brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you,

Grace Sommer, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov