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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2023-000288

THE STATE, Respondent,

v.

JUSTIN BRODIE GRANET, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge properly excluded evidence that Victim was "armed and dangerous" based off a statement in his rap sheet where the statement was inadmissible hearsay.

STATEMENT OF THE CASE

Appellant was indicted by a Beaufort County Grand Jury for two counts of kidnapping, one count of first-degree assault and battery, one count of possession of a weapon during the commission of a violent crime, and one count of possession with intent to distribute marijuana. The State called all of the counts for trial, but the court granted a motion made by Appellant's trial counsel to sever the trial of the drug charge. The State did not seek to try co-defendant, Chris Bliss, jointly with Appellant. Appellant proceeded to a jury trial February 13-16, 2023, in the Greenville County Court of General Sessions before the Honorable Robert J. Bonds. The jury found Appellant guilty as charged on each count. Appellant was sentenced to five years' incarceration for the weapons charge, ten years' incarceration for first-degree assault and battery, and twenty years' incarceration suspended to the service of fourteen with two years' probation on each of the kidnapping charges. The sentences were to run concurrently. This appeal follows.

STATEMENT OF FACTS

On March 11, 2019, law enforcement responded to the home of Justin Granet (Appellant) because dispatch had received a call for service and it was just an open line. (R. 228). Dustin Kline and Daniel Ireland with Beaufort County Sheriff's Office (BCSO) were the first to arrive on scene. (R. 228). Ireland advised Kline that when he arrived, he heard talking inside and the light went off but when he knocked on the door there was no response. (R. 228).

Kline approached the back of the residence and noticed that the left french door was shattered as well as he could see zip ties and droplets of blood on the floor. (R. 228-229). An out of place dining chair and bundles of white rope could also be seen from outside. (R. 229). The officers then entered the residence due to exigent circumstances. (R. 230). A protective sweep of the house was done by multiple officers, and Appellant and his co-defendant were removed from the house by officers. Officer Kline was one of the last officers to enter. Kline observed officers carrying out Lauren Eckles with duct tape on her face and her hands bound together. (R. 230). Corey Eckles was found laying in the middle of the hallway covered in blood. (R. 231). Kline testified that when he asked Corey who did this Corey stated "Justin and Chris". (R. 241). Justin Granet (Appellant) and Chris Bliss (Co-defendant) were ultimately arrested.

Both Lauren and Corey Eckles testified at trial. They testified that Appellant's wife, while visiting them at their home in Tennessee, slept with a man that was living with the Eckles at the time. (R. 256, 353-354). Corey was good friends with Appellant so he confronted Appellant's wife about it and told her to tell Appellant or that he would. (R. 355). Corey then told Appellant what had happened at their home and both Eckles testified that Appellant began making suicidal comments and seemed very distraught, so they made a plan for the Eckles to drive down to Fripp Island and visit with him. (R. 257, 356-357).

Before the Eckles stopped by their Airbnb, they stopped at Appellant's house. (R. 257, 358). When they arrived at Appellant's house Chris Bliss was also at the house. (R. 258, 358-359). The Eckles were familiar with Bliss but were unaware that he would be at the house that day. (R. 258, 358-359). Everyone greeted each other and began catching up. (R. 259, 359). As the group was about to leave for dinner, Appellant jumped Corey from behind and put him in a chokehold while Bliss pulled a gun on Lauren and told her to sit on the couch. (R. 261, 360). Corey continued to fight back while Appellant was trying to get him to pass out. (R. 263-264, 361-365). Lauren testified that Chris went to help Appellant and they were continuously hitting Corey with two guns and flashlights. (R. 265-266).

While both men were attacking Corey, Lauren was able to dial 911 and place the phone into the couch cushion. (R. 265-266). Lauren testified that Corey was going in and out of consciousness and they kept trying to contain him with zip ties, but when he regained consciousness he would break free of them. (R. 267). Bliss eventually tied Lauren to a chair and duct taped her mouth. (R. 269).

When the police arrived on scene, Appellant and Bliss moved Lauren and Corey into the hallway. (R. 271-274). Police took Appellant and Bliss into custody. Corey was taken by ambulance to the hospital. (R. 276). Corey suffered a brain bleed and a skull fracture. (R. 635-638).

STANDARD OF REVIEW

"In criminal cases, the Appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof." State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 336 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

ARGUMENT

The trial judge properly excluded evidence that Victim was "armed and dangerous" based off a statement in his rap sheet because it was inadmissible hearsay.

Appellant contends that the trial judge erred by excluding the statement "armed and dangerous" from Victim's rap sheet as inadmissible hearsay. Specifically, Appellant argues that he was not seeking to introduce this evidence for the truth of the matter asserted, but to discredit the caliber of the investigation or the decision to charge Appellant. Further, Appellant argues that the evidence falls under the reputation as to character exception to the hearsay rule. Appellant also argues in the alternative that the statement is not hearsay as an admission by a party opponent. This argument lacks merit because the statement was offered for the truth of the matter asserted and it does not fall under the reputation of character exception. This Court should affirm.

Relevant Facts

Prior to Corey Eckles testifying, a discussion between the attorneys and the trial judge was had. Attorney for Appellant stated that he had received two rap sheets from the solicitor's office regarding Corey Eckles. (R. 332). On both of the rap sheets next to the entries was something that said "Caution-20, known to abuse drugs, 00-armed and dangerous, 01 other." (R. 333, 1010-1028, 1029-1044). Appellant argued that "this information in here is essentially reputation or opinion testimony that has been decided, I guess, by the governmental entity who provides these documents to law enforcement." (R. 333). He further states "And it is our position that the armed and dangerous portion of that is an opinion. It is opinion offered in the document, and I think that it would be admissible under a couple different theories." (R. 334). He goes on to argue that the armed and dangerous is admissible under Rule 404(A)(2) as the character of the victim. He argued that it was relevant because Appellant was raising self defense and because one of the elements of

self defense is that the person claiming self defense either reasonably believed that they are in danger of imminent bodily harm, or they are actually in danger of imminent bodily harm. (R. 334). Attorney for Appellant also argued that it was admissible under Rule 405(a) under the theory the victim offered evidence of his good character regarding specific character traits relevant to the crime charged, then Appellant could cross examine the victim on the reputation for violence. (R. 333-336).

The State argued that it was hearsay and was purely propensity evidence that he was armed and dangerous on that day because he's always armed and dangerous. (R. 337-338). The State further argued that there was no evidence introduced that the Victim was armed that day. (R. 338). In its ruling the court stated:

> With all due respect, sir, I'm going to deny your motions. I do believe that it ends up being propensity evidence, and I think it goes to show or to give rise to the fact that he was armed then, he's armed now, he's always armed, and I think that the inference is strong.
>
> And the other this is, I do think it's hearsay. You know, it's one thing to go and to have basically a charge, a disposition. What the disposition was that is pretty factual, as far as I see it. You're either charged with this crime and you're convicted of that crime, and this is what your sentence is, a five-year sentence suspended until you get probation. Armed and dangerous is someone or something's opinion.
>
> And that to me is subjective, and, you know, I don't know what type of report this is. I don't know if the NCIC is a quasi-governmental. I don't know if the armed and dangerous is something that Ohio put out, or something that came around as a result of NCIC, they may have a criterion, we just don't know.
>
> And I also think that, you know, as it relates to business records, we did talk about business records briefly in the back, I do remember that, but I mean I really think that gets into opinions, and subjective opinions, and judgements found in business records are not admissible. I really think that this gets toward the subjective and an opinion. And as a result of that, I do think it is hearsay, and so I'm going to, with all due respect, as it relates to the issues that you brought up, I will deny that.

(R. 341-343).

Hearsay

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c) SCRE. The rule against hearsay prohibits the admission of evidence of an out of court statement by someone other than the person testifying which is used to prove the truth of the matter asserted. State v. Vick, 384 S.C. 189, 199, 582 S.E.2d 275, 280. (Ct. App. 2009).

Appellant argues that introducing the "armed and dangerous" from the rap sheet was not to show that he was armed and dangerous that day, but to discredit the caliber of the investigation or the decision to charge Appellant. This argument lacks merit. At trial, Appellant argued the statement should come in for two reasons. First, he argued the statement should come in under Rule 404(a)(2) because Appellant was raising self-defense and one of the elements of self defense is that the person claiming self-defense believed they were in imminent danger or that they were actually in imminent danger. Therefore, Appellant was trying to introduce the "armed and dangerous" for the truth that Victim was in fact armed and dangerous and that because of that Appellant believed he was in imminent danger. Second, Appellant argued it would come in under Rule 405(a) under the theory the victim offered evidence of his good character regarding specific character traits relevant to the crime charged, and so Appellant could cross-examine the victim on his reputation for violence. Therefore, Appellant was trying to introduce the "armed and dangerous" for the truth that he was always armed and dangerous and therefore was armed and dangerous that day. Nothing in Appellant's argument went to anything regarding the quality of the investigation or why they chose to charge Appellant and not the Victim. Further, Appellant could have used cross examination of the officers that investigated to discredit the caliber of the investigation or their decision to charge Appellant and not Victim.

Hearsay Exceptions

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. The rule against hearsay prohibits the admission of evidence of an out of court statement by someone other than the person testifying which is used to prove the truth of the matter asserted. State v. Vick, 384 S.C. 189, 199, 582 S.E.2d 275, 280 (Ct. App. 2009). Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute. Rule 802, SCRE. Rule 803, SCRE lays out the exceptions to the hearsay Rule. Rule 803(21) states "Reputation as to Character. Reputation of a person's character among associates or in the community." Rule 803(21), SCRE. The commentary on this rule indicates that there are no South Carolina cases interpreting this exception, but that Rules 404, 405, and 608 deal with when reputation evidence may be admissible. Rule 803(21), SCRE.

Rule 404(a) states "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Rule 404(a), SCRE. Rule 404(a)(2) gives an exception when evidence of a victim's character is admissible stating "evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor." Rule 404(a)(2), SCRE. The State never introduced evidence that Victim was a peaceful or nonviolent person. Nor did the State attempt to introduce any evidence that Appellant had a reputation for violence. The purpose of Victim's testimony was to explain the events that occurred on the day in question. Therefore, the evidence that Victim had a "violent reputation" because a

rap sheet stated he was "armed and dangerous" does not fall into the exception because there was nothing to rebut.

Even if there had been evidence to rebut, Rule 405 addresses the methods of proving character. "In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct." Rule 405(a), SCRE. Introducing the words "armed and dangerous" is not testimony to reputation for violence nor is it testimony in the form of an opinion. There is no indication on whether "armed and dangerous" is part of the NCIC and is attributed to certain charges or whether it was an opinion of a specific person. The statement "armed and dangerous" does not fall into any exception to the hearsay rule and therefore the trial judge did not err in finding it inadmissible.

Non-hearsay

Rule 801(d) addresses the statements that fall outside the definition of hearsay and are considered nonhearsay. Rule 801(d), SCRE. A statement that "is offered against a party and is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. Rule 801(d)(2), SCRE.

Appellant argues that "this evidence was in the form of a statement made not only by law enforcement but one expressly adopted by the State of South Carolina when this information was provided to Appellant's trial counsel." (Initial Brief of Appellant pg. 32). Appellant states that

because the Fourteenth Circuit Solicitor's Office sent the NCIC report with its own letterhead that it adopted the contents as truthful. (Initial Brief of Appellant pg. 32). This is simply not true. The charges in the rap sheet are from Ohio. Again, it is unclear whether NCIC provides "armed and dangerous" in its system based on the types of charges or whether law enforcement chooses to add it. Even if it was the opinion of law enforcement, it would be the law enforcement in the State of Ohio, who is not a party opponent in this case. Simply providing Appellant with the report on its own letterhead does not mean that the State of South Carolina adopted the statements as truthful. The statement does not fall into the not hearsay rule of statement by party opponent and therefore the trial judge did not err in ruling it inadmissible.

Harmless Error

Even if this court finds that the statement should have been admissible, it was harmless. Appellant wanted to introduce the statement "armed and dangerous" to show that the Victim had a reputation for violence, however Appellant testified extensively about Victim's reputation for violence. During Appellant's testimony, he was asked if he had ever known Victim to be "dangerous or aggressive" to which Appellant responded with "I mean I knew that he had told me stories of him being a part of different biker gang, and some of the violent things that they did as a whole." (R. 682-683). He further testified that he had seen Victim carry a gun multiple times and that it was common for him to carry a gun. (R. 683). Appellant was again asked "and at that point you'd said that you knew Corey had done some bad things and was dangerous and was a big dude. I mean at that point, were you concerned about any possible physical altercation that may happen?" to which Appellant responded "I was." (R. 695-696). Appellant further testified that Victim had "violent tendencies" and that Appellant felt threatened and was worried about his safety. (R. 709-

710, 727). This was ample evidence that was introduced to show Victim had a reputation for violence and excluding that the statement "armed and dangerous" was harmless.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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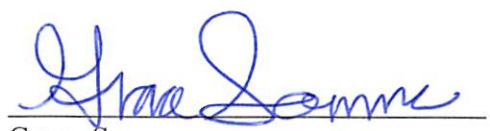
PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on James A. Brown, Jr., counsel of record for Appellant, by sending one copy 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 6th day of September, 2024.



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From: Grace Sommer
Sent: Friday, September 6, 2024 3:19 PM
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Attachments: GRANET Justin - FBOR.pdf

Good Afternoon,

Attached please find a Final Brief of Respondent in The State v. Justin Brodie Granet (2023-000288). This Brief will be filed today with the South Carolina Court of Appeals via AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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