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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable J. Cordell Maddox, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCUS TYRONE GRANT,

APPELLANT

APPELLATE CASE NO. 2024-000370

INITIAL BRIEF OF APPELLANT

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The trial judge erred in allowing inadmissible hearsay testimony under the excited utterance exception into evidence at trial.

STATEMENT OF THE CASE

Appellant Marcus T. Grant was convicted of third degree assault and battery by a mob and kidnapping during the March 2024 term of the Laurens County General Sessions Court before Judge J. Cordell Maddox, Junior. Appellant was sentenced to imprisonment for a period of one year on the assault conviction and eighteen years (and five years probation) on the kidnapping conviction. Hunter Christopher Blouin represented appellant at trial, and Assistant Solicitors David Matthew Stumbo and Joshua L. Thomas prosecuted the case.

Appellant appealed his convictions and sentences. This brief follows.

STANDARD OF REVIEW

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 manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 636 S.E.2d 845 (2006). An abuse of discretion occurs when the conclusion of the trial court either lack evidentiary support or are controlled by an error of law State v. Douglas, supra.

ARGUMENT

The trial judge erred in allowing inadmissible hearsay testimony under the excited utterance exception into evidence at trial.

The facts of this case were described during the state's case-in-chief at trial. In 2009 and 2010, appellant was a confidential drug informant, and his work with local police (controlled drug buys) led to the arrest and conviction of appellant. Tr. 31, l.16-p. 32, l.3. On January 22, 2021, four men (appellant, Shykorie Grant, Swann Woodruft, and Antone Blakely[1]) entered Jarvis Byrd's apartment located on Spring Street in Laurens, South Carolina. The four men assaulted Jarvis Byrd whose birthname was Jarius Byrd. Tr. 168, l.8-23, Tr. 227, lines 16-22 Tr. 130, l.13-p. 131, l.1-14; Tr. 169, l. 9-p. 170, 1. 1-9; Tr. 192, l.6-p. 194, l.21.

At trial, the case hinged primarily on the words Jarvis Byrd spoke to David and Debra Little on the day that the alleged assault was perpetrated upon him. Shortly after that alleged assault occurred, Jarvis Byrd was fatally shot by Antone Blakely. Defense counsel objected to the trial testimony of David and Debra Little because the same violated the hearsay prohibition. Tr. 27. lines 10-12. An in-camera hearing into the matter was held in the case. A summary David Little's in-camera testimony follows:

1. David Little testified that the night of January 22, 2021, between 8:00 pm and 8:30 pm,[2] he received a telephone call from Byrd, who stated during the telephone call that he (Byrd) had been jumped by three or four guys while he was held hostage in a room by them. Tr. 68, l.24-p. 69, l.12; Tr. 72, l.19-20.

2. Little stated that Byrd was upset when he called because he had just taken a beating. Tr. 69, lines 21-25.

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[1] Previously, Antone Blakely was convicted on the offenses of third-degree assault and battery by a mob, murder, possession of a weapon during the commission of a crime, conspiracy, and kidnapping. Tr. 33, l.1-3. Tr. 194, l.1-20

[2] Previously, Little stated that the call at issue came in to him between 6:00 pm and 8:00 pm or between 6:00 pm and 9:00 pm on that evening. Tr. 80, l.14-15. Tr. 86, l.24-p. 87, l.4.

3. Little stated that he detected the upset tone of Byrd's voice as they conversed and surmised that the event had just recently occurred. Tr. 70, l.1-11.

4. Little stated that Byrd identified the assailants as appellant, appellant's son (Shykorie Grant) and Antone Blakely. Tr. 70, l.12-15.

5. After Byrd's call, Little stated that he drove to the crime scene in order to talk to Byrd, and that his wife (Debra Little) rode there with him. Little stated that the drive took approximately ten minutes. Tr. 70, l.16-p. 71, l.4. Tr. 72, lines 19-25.

6. Little stated that upon arriving, Byrd told him that appellant stomped him in his face. Tr. 73, l.7-p. 74, l.1. Also, Byrd told him also that Swann Woodruff and Antone Blakely were in the room when this happened. Tr. 74, l, 2-20.

7. Little stated that he gave Byrd a firearm at that time. (.22 revolver) Tr. 75, l.8-p.76, l.4

8. Little stated that he saw that Blakely, who was standing nearby at the time, and noticed that he (Blakely) was in possession of a weapon. Tr. 78, l.1-13.

9. Little stated that he learned that Byrd lay bleeding in the road afterward. Tr. 79, l.3-22.

Trial counsel renewed the hearsay objection after the in-camera hearing, and argued that this was not an excited utterance hearsay exception because Byrd's phone call was made after Byrd left the crime scene, and then went into other apartments and made other calls to other people (including a call to his girlfriend Putman and roommate Shameta). This meant that there was ample time for Byrd's reflective thoughts to brew regarding the incident, which would have cancelled out the excited utterance hearsay exception. In other words, there was a time lag between the event at issue and the time the call was made to David Little. Tr. 83, l.24-p. 85, l.2; Tr. 87, l.9-21; Tr. 87, l.9-21. The trial judge ruled that David Little's testimony was admissible evidence for presentation to the jury in the case. Tr. 88, lines 18-20. See Little's original statement, which established proof of the time lag between the event and the call at issue. Tr. 81,

l.24-p. 82, l.82; See state's exhibit No. 4. Tr. 115, lines 4-9. The video testimony was played in open court. Tr. 82, l.17-22.

At trial, Debra Little stated that she learned that Byrd had been jumped or involved in a scuffle on that night, but that she didn't find out what happened until she arrived on the scene. Tr. 103, l.22-p. 104, 23. Debra Little's testimony was practically identical to the testimony from David Little with respect to his communications with Byrd after the event.

At trial, David Little testified that between 8:00 pm to 9:00 pm, on the night of January 22, 2021, Byrd called him and claimed that he had been "jumped by some guy" and that some other guys "held the door" in the room where the event took place. Little stated that Byrd identified the perpetrators as appellant, who allegedly stomped his face, and Antone Blakely. Little stated that he drove to meet Byrd, gave Byrd a gun, and departed. Shortly after Little's departure, Byrd was shot and died from gunshot wounds. Little admitted that Byrd was previously a confidential drug informant. Tr. 90, l.2-p.103, l.1.

Debra Little testified at trial and stated that Byrd called her husband to say that he had been jumped by some boys in Laurens. Defense counsel objected to this hearsay testimony. Tr. 129, l.12-p. 130, l.11. Defense counsel entered a pre-trial objection to Debra Little's hearsay testimony as well. Tr. 88, l.24-p. 89, l.11. Debra Little testified that appellant told her that appellant, Shykorie Grant, Antone Blakely, and Swann Woodruff "jumped" him. Debra Little confirmed that appellant was a "snitch."[3] Tr. 128, l.15-p. 133, l.25. Debra Little stated that Byrd was scared on that night. Tr. 131, l.15-21.

Note that appellant's statement was presented wherein he admitted that Byrd was a snitch and that he beat him up because he was a snitch. Tr. 166, l.3-13; Tr. 169, l.12-p. 170, l.9.

[3] A snitch is defined as one who turns informer. American Heritage Dictionary (1980).

Byrd's girlfriend Jaquetrice Putman testified that she went to Shemia Workman's apartment where Byrd lived at the time of the incident and found Shykorie Grant in the area. Putman stated that Shykorie Grant surrendered Byrd's machete to her at that time, and added (over defense counsel's objection) that Shykorie Grant informed her that he took the machete from Byrd. Tr. 175, l.13-p.181, l.21.

Hearsay is 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. State v. Staten, 364 S.C. 7, 610 S.E.2d 823 (2005). See Rule 801(c), SCRE. The rule against hearsay prohibits the admission of evidence of an out-of-court statement offered to prove the truth of the matter asserted unless an exception to the rule applies. State v. Staten, supra, See Rule 802, SCRE. An excited utterance is an exception to the hearsay rule. State v. Staten, supra. See Rule 803 (2) (SCRE). An excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of the excitement caused by the event or condition. State v. Staten, supra. The rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, thereby reducing the likelihood of fabrication. State v. Sims, 348 S.C. 16, 558 S.E.2d 518(2022). The three elements that must be met to satisfy the excited utterance exception are as follows:

1.) The statement must relate to a startling event or condition;

2.) The statement must have been made while the declarant was under the stress of the excitement; and

3.) The stress of the excitement must be caused by the startling event or condition. State v. Sims, supra; Rule 803 (2)(SCRE).

The totality of the circumstances must be considered when ruling on whether an excited utterance exception applies in the case. State v. Mahoney, 344 S.C. 85, 544 S.E.2d 30 (2001).

Note that the passage of time between the startling event and the time that the statement was made is a factor to be analyzed, and a consideration of whether the utterance was made under the continuing stress is an additional a factor to be analyzed as well. State v. Staten, supra.

Under the totality of the circumstances in the case at bar, it is clear that the deceased's statements made to David Little did not qualify as admissible hearsay under the excited utterance exception due to what appeared to be a significant lag in time between the event in question and the conversation over the telephone and in person with David and Debra Little. After this incident, the deceased went to other apartment rooms, and made several calls to several people other than David Little.[4] There was an indication that the deceased even departed from the crime scene. Therefore, by the time the deceased called David Little, he was no longer operating under the stress of the event or under the continued stress of the event. This was proof that significant time lag and/or time lapse that occurred in the case before contact had been made with David Little. Additionally, note that by the time David Little drove fifteen minutes to the crime scene, the deceased was calm enough to request a weapon to defend himself and calculate mentally that it was not necessary to agree to Little's suggestion to remove himself from the area. David Little implored the deceased to come away with him (Little) as a safety precaution, but the deceased rejected the offer. Under an analysis per the totality of circumstances, it was obvious that the deceased was no longer operating under the stress of the event in question when he called David Little and during the subsequent in-person conversation between them. Thus, the excited utterance hearsay exception did not apply in this case:

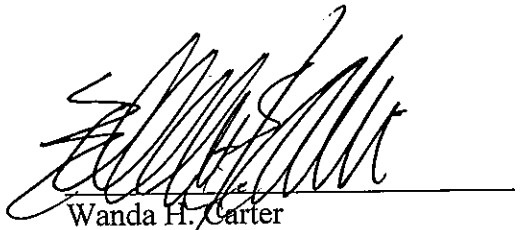
[4] Jaquetrice Putman and Shameia Workman heard from Byrd after the incident.

The prejudice of the error in admitting the hearsay testimony was not harmless because there was no other proof of appellant's guilt in the case (other than appellant's testimony from Antone Blakely's trial. Blakely was charged and convicted of murdering the deceased by gunfire. Nonetheless, the rule is that improper corroboration via hearsay testimony is cumulative and thereby prejudicial, which meant that the hearsay error here was not harmless error. State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. (1999); State v. Jolly, 314 S.C. 17, 443 S.E.2d 566 (1994).

The trial judge erred in allowing hearsay testimony into evidence at trial.

CONCLUSION

Based on the foregoing argument, counsel would request that appellant's convictions and sentences be reversed, and his case remanded to the lower court for a new trial.



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This 3rd day of December, 2024.