RECEIVED
Jan 30 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM HAMPTON COUNTY

Court of General Sessions
The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2023-000593

THE STATE,

Respondent,

v.

WILLISTON L. OWENS,

Appellant.

# FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

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

ISAAC MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit

Post Office Box 546
Hampton, SC 29924
(803) 914-8689

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Rules**

## STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court correctly admitted Owens's voluntary statement wherein an investigator falsely claimed the police had matched shell casings from the scene to Owens's gun where the State explained to the jury that the information was fabricated and only meant to elicit a response from Owens and the officer never told Owens to prove himself innocent.

II. Whether the trial court correctly admitted Owens's jail calls when Owens was warned multiple times the calls were being recorded and therefore had no reasonable expectation of privacy in their content.

## STATEMENT OF THE CASE

A Hampton County grand jury indicted Appellant Williston Owens for murder, attempted murder, two counts of discharging a firearm into a dwelling, and possession of a weapon during the commission of a violent crime. Owens's first trial ended in a mistrial and Owens was retried on April 3–5, 2023, before the Honorable Robert J. Bonds and a jury. Owens was convicted as charged and sentenced to concurrent terms of 52, 30, 10, 10, and 5 years, respectively. This direct appeal follows.

## STATEMENT OF FACTS

On January 6, 2019, an unidentified person fired shots at Williston Owens outside his home in Hampton. Owens returned fire and called the police. R.p.51–52. Owens told police he believed Blake Stokes was the shooter. R.p.53. Owens had insulted Stokes's brother, Donovan Riley, on social media. State's Exhibit #52. Ricky Fisk testified he was with Owens at the time, and that an unknown person fired at them from a wooded area across the road. He testified he returned fire with a 9mm handgun and he believed Owens fired a .40 caliber handgun. R.p.82.

Two days later, on the night of January 8, 2019, Owens shot at Riley as Riley stood outside his friend Mack Green's house in Hampton. Owens missed Riley but hit Green, killing him. Police collected shell casings from the scene and later determined the casings were fired from the same gun which fired the casings collected from the scene of the first shooting, which Owens had admitted firing. R.p.127, 330. The gun was not recovered.

Owens's mother was the first person to contact police with information that led them to develop Owens as a suspect, and she arranged for Owens to come speak with police on the day after the shooting. R.p.211–12. Owens agreed to an interview which was admitted as State's Exhibit #49. Owens denied involvement.

Several eyewitnesses testified. Jeantaviene Dobson was with Owens on the night of the 8th at Dobson's sister's house. R.p.157. Dobson, Owens, Treyvon Williams and Tori Delesline left to go to a gas station. R.p.159. After they left the gas station, Owens and Delestine got out of the car at a dirt road around the corner near Green's house and started walking. R.p. 163. Dobson heard sirens when he

got back to his sister's house. R.p.165. Wiliams testified consistently with Dobson, but added that he heard gunshots as he drove away. R.p.169–85. He added that someone dropped off Delestine and Owens at his sister's house after the shooting. R.p.186.

Delestine also testified and admitted he got out of the car with Owens. R.p.261. Delestine testified Owens spotted "them boys" and crouched down, then shots were exchanged. R.p.265–66. Afterwards, Owens told Delstine he was shooting at Donovan Riley. R.p.269.

The State entered recordings of phone calls Owens made from jail. In one call, Owens stated: "When we did that thing that night, it wasn't a planned thing. It was just we rolled through there and we seen him standing out there, one of the boys that came and shot at the house. That's what we seen. We ain't meant to kill that boy, we meant to kill the other boy." State's Exhibit #52. In another call, Owens admitted to having a gun and stated "they've got to find it first, and that's about six or seven feet in the dirt right now somewhere." State's Exhibit #52.

Owens did not present a defense.

## ARGUMENT

### I. The trial court correctly admitted Owens's video-recorded statement.

The trial court correctly admitted the video recording of Owens's interview with police. The interviewing officer's questions did not shift the burden of proof and did not violate Rule 702, SCRE, because the officer did not give expert testimony and did not tell Owens to prove himself innocent. The officer's misrepresentation that the shell casings at the scene matched known shell casings fired by Owens's gun was merely meant to elicit a response from Owens, not to convey expertise. The jury was well aware that the officer did not have any actual test results at the time of the interview and the trial court ordered the State to redact any technical language from the video. This Court should affirm.

#### A. Standard of review.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Brewer, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015).

#### B. Neither aspect of Owens's argument is preserved for review.

Owens's burden-shifting argument is not preserved for review. After originally stating he did not remember why he planned to object, counsel complained that the interview contained improper expert testimony and that the investigator improperly commented on Owens's right to remain silent. R.p.197–203. Counsel also briefly posited that the statements could constitute bolstering. R.p.202. Counsel further stated he understood the police were allowed to

misrepresent the State's evidence as an investigative technique. R.p.202. Counsel never argued the comments were burden-shifting. Later, the hard copy of the interview was entered without objection. R.p.216, 238–39. Thus Owens's burden-shifting argument is not preserved for review. See State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented and with sufficient specificity to inform the circuit court judge of the point being urged by the objector . . . .") (internal citation omitted); State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (issue not preserved for review where defense counsel stated he had no objection).

Owens's argument that the interview violated Rule 702, SCRE, is also not preserved for review. When Owens objected to the investigator's statements as improper expert testimony, the trial court in response ordered the State to redact the portions of the interview where the investigator used technical terms such as "striations." The State agreed to stop the video before it reached the portion where the investigator mentioned "striations," which occurs with approximately 1:25 left in the interview. R.p.205–06, State's Exhibit #49. This is apparently what happened, because defense counsel did not object at any point during or after the interview was published. Owens acquiesced in the ruling and did not object when the hard copy of the interview was entered into evidence. R.p.216, 238–39. See State v. Brewton, 437 S.C. 44, 60, 876 S.E.2d 141, 150 (Ct. App. 2022) (explaining

an appellant is barred from arguing an issue on appeal if trial counsel acquiesced in the ruling). The argument is not preserved for review.

### C. The trial court correctly admitted the redacted interview.

Owens voluntarily came to the police station to speak with police on the day after the shooting. The interview does not contain burden-shifting comments or improper expert testimony, and the trial court correctly admitted the redacted interview. This Court should affirm.

#### i. The investigator's questions did not shift the burden of proof.

When a defendant agrees to speak to law enforcement in order to explain his version of events, his statement becomes some of the most important evidence in the case and integral to the jury's determination of the truth of the matter. By initiating an interview with police, Owens knowingly exposed himself to questioning about the facts of the case. That is precisely why he gave the interview—to attempt to explain his innocence.

Owens complains that he was asked to explain why shell casings recovered at the scene matched known casings fired from his gun. After Owens denied being at the scene, the officer confronted him with the fabricated evidence regarding the shell casings matching. The investigator asked: "how is that possible?" State's Exhibit #49. As explained to the jury at trial, this information was made up by the investigator in order to elicit a response from Owens. When confronted with the made-up facts about the shell casings matching, Owens gave a general denial. This denial was crucial evidence. His verbal response is hard to make out on the

recording, but he appears to respond to the investigator's question with a question. State's Exhibit #49. Owens also appears to physically react to the officer's assertion, and his expression of surprise and concern was relevant to the jury's determination whether he was telling the truth. His response would make no sense if the jury was unable to hear the officer's question. See State v. Miller, 676 S.E.2d 546, 552 (N.C. App. 2009) (explaining officer's questions in recorded interview "gave context to defendant's responses"); State v. Garcia, 743 S.E.2d 74, 80 (N.C. App. 2013).

This case is nothing like State v. Brewer. In that case, investigators implored Brewer "ad nauseum" to "prove himself innocent." Brewer, 411 S.C. at 408, 768 S.E.2d at 659. Officers repeatedly accused Brewer after his denials, the only purpose of which was to force Brewer to "repeatedly deny shooting anyone." See also State v. Washington, 431 S.C. 619, 621, 848 S.E.2d 794, 795 (Ct. App. 2020) (in interview, defendant was asked to "prove his innocence"). On top of that, in Brewer investigators "repeatedly referenced and quoted" numerous hearsay statements from other purported eyewitnesses, statements which would not have otherwise been admissible. Brewer, 411 S.C. at 406, 768 S.E.2d at 659. In so doing, this hearsay was entered through the back door, circumventing the rules of evidence.

None of that happened here. At no point did law enforcement tell Owens to "prove himself innocent," and certainly did not do so "ad nauseum." An officer's repeated demands for an interviewee to "prove himself innocent," words which

mirror the phrasing of the burden of proof at a criminal trial while inverting the burden, are simply not comparable to the officer's question in this case.

Nor did the investigator improperly repeat any eyewitness hearsay statements, the other problem in Brewer. The officer's statements about the shell casings matching were not hearsay because they were not offered for the truth of the matter asserted. See Rule 801(c), SCRE. At the time of the interview, the shell casings had not been tested. The officer's statements regarding the casings were fabrications which, by definition, could not have been offered for their truth. See United States v. Tolliver, 454 F.3d 660, 666 (7th Cir. 2006) (explaining informant's recorded statements from conversation with defendant "were admissible to put Dunklin's admissions on the tapes into context"); United States v. McDowell, 918 F.2d 1004, 1007 (1st Cir. 1990) (in context of recorded conversation, explaining "other segments of the discussion reasonably required to place [defendant's] admissions into context" were not hearsay). This was a proper investigative technique, and it was fully explained to the jury. See Brewer, 411 S.C. at 406, 768 S.E.2d at 658 ("We acknowledge the propriety of law enforcement interrogation techniques, including misrepresenting the existence and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily."). As the officer explained, his misrepresentations were an "interview tactic" meant to "get a rise out of him, see if they're gonna say something, if anything, and see if they're gonna break down and say, 'you know what, I did do this.'" R.p.220.

What Owens attempts to portray as burden-shifting was run-of-the-mill—and completely proper—interrogation. Further, the evidence of his guilt was overwhelming. Owens admitted to the shooting in a jail call. Even without the confession, the other evidence conclusively proved his guilt. The State proved the shells recovered from the scene of the shooting matched the shells recovered from Owens's house two days earlier, which Owens admitted to firing. Owens had a well-established motive, was placed at the scene of the crime by three friends, and Delestine testified Owens fired the fatal shots. Finally, the jury was fully instructed on the proper burden of proof at the conclusion of trial. The inclusion of the officer's question asking Owens how it was possible that the shell casings matched could not reasonably have affected the outcome of the case. See State v. Mitchell, 378 S.C. 305, 316, 662 S.E.2d 493, 499 (Ct. App. 2008). This Court should affirm.

### ii. The interview did not contain improper expert testimony.

The officer's statements in the interview regarding the shell casings did not constitute improper expert testimony. The investigator was not testifying as an expert during the interview— he was not testifying at all. His recorded statements were offered solely to lay a foundation for Owens's statement. Further, the statements were not even true. The jury was fully aware of this fact because the officer explained it on the stand. R.p.217. For this same reason, the statements were not opinions. The solicitor never argued the investigator's statements in the interview carried any expert authority and the jury could not reasonably have

interpreted them as such. As discussed above, the trial court excluded any technical language from the interview, effectively sustaining Owens's objection.

Further, Owens was not prejudiced. The trial court prevented any potential prejudice by ordering the State to redact portions of the interview where the investigator used technical terms such as "striations," thereby removing any danger the jury would interpret the interview statements as intending to convey actual expertise. Further, as discussed above, evidence of Owens's guilt was overwhelming. This Court should affirm.

## II. The trial court correctly admitted Owens's jail calls because Owens had no reasonable expectation of privacy in his outgoing calls made after he was warned they were being recorded.

Owens was warned multiple times that his calls from jail were being recorded, yet chose to speak freely on the calls. Accordingly, he had no reasonable expectation of privacy in their content and impliedly consented to their being recorded. Because there were no federal or state constitutional violations, the calls were correctly admitted. This Court should affirm.

### A. Standard of review.

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis where the court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

### B. Discussion.

Jeffrey Maxwell was an intelligence officer at the Beaufort County jail, where he was in charge of the phone and video visitation system. R.p.9. For security and inmate safety purposes, Maxwell listened to certain inmate calls. He listened to Owens's calls when Owens was a new inmate after learning Owens was arrested for serious charges. R.p.9–10, 13. Maxwell subsequently alerted the Hampton County sheriff's office about incriminating statements on the calls. R.p.14. Two calls were admitted at trial. State's Exhibit #52.

Maxwell testified about the system the jail uses to record phone calls. R.p.11–12. He testified the system records all inmate calls, and that the sheriff's office has access to the calls. R.p.16. He testified that at the beginning of every call, inmates are warned that the call is being recorded and monitored. R.p.18, 354. This information is also included in the "inmate's handbook" that each inmate receives. R.p.18, 354.

At trial, defense counsel objected on state and federal constitutional grounds. Defense counsel recognized the jail had a legitimate purpose in listening to the calls and stated he did not have "any argument on that basis," but made a "general motion" to exclude the calls under the state and federal constitutions. R.p.20. The calls were admitted over objection.

Owens did not have a reasonable expectation of privacy in his outgoing calls made after being warned the calls were being recorded. See United States v. Van Poyck, 77 F.3d 285, 291 (9th Cir. 1996) (explaining "any expectation of privacy in outbound calls from prison is not objectively reasonable and that the Fourth Amendment is therefore not triggered by the routine taping of such calls"); United States v. Gangi, 57 F. App'x 809, 815 (10th Cir. 2003) (same); State v. Gilliland, 294 Kan. 519, 534, 276 P.3d 165, 177 (2012) (collecting cases). Even if Owens had a subjective expectation of privacy, such expectation would not be reasonable after warning and in consideration of the "institutional security concerns [which] justify such recordings and render them reasonable for Fourth Amendment purposes." Van Poyck, 77 F.3d at 291; see also Lanza v. State of N.Y., 370 U.S. 139, 143 (1962)

(explaining "it is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In prison, official surveillance has traditionally been the order of the day."). The inability of jails and prisons to monitor inmate calls would create an untenable danger to inmates, corrections workers, and the public.

Even if there was a privacy right in jail calls, by making calls after multiple warnings that they were being recorded, Owens impliedly consented to jail officials listening to his calls. See Van Poyck, 77 F.3d at 291; see also State v. Riley, 704 N.W.2d 635, 639 (Wis. 2005) (collecting cases and explaining "federal circuit courts that have addressed the consent exception in the prison setting have overwhelmingly concluded that an inmate has given implied consent to electronic surveillance when he or she is on notice that his or her telephone call is subject to monitoring and recording and nonetheless proceeds with the call."). This is especially true where Owens was warned at the outset of each call that it was being recorded.

Owens compares this to the facts in State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976), but the cases are distinguishable. There, an inmate's letters were seized by an investigator with no relationship to the jail for a purely investigative purpose. The court specifically found that no jail security or safety interests were at stake. Id. at 494, 500, 224 S.E.2d at 669. The Ellefson court relied on Procunier v. Martinez, 416 U.S. 396, 408 (1974), overruled by Thornburgh v. Abbott, 490 U.S. 401 (1989), a First Amendment case which addressed a policy of

censoring mail to root out immoral content. The Ellefson opinion does not even discuss the Katz Fourth Amendment "reasonable expectation of privacy" test. Katz v. United States, 389 U.S. 347 (1967). Finally, the consent analysis is markedly different in this case than in Ellefson, where the inmate's consent was based solely on his signature at intake, not individual warnings at the outset of each call.

Owens's focus on his status as a pre-trial detainee likewise misses the mark. The question is not whether Owens lost all of his constitutional rights while in pretrial incarceration; the question is whether he could reasonably expect his monitored calls would remain private when he was specifically told they would not.

Owens fails to cite any case holding an inmate has a reasonable expectation of privacy in outgoing jail calls after being warned they are being recorded. He fails to cite any cases addressing jail calls at all. This is likely because courts have overwhelmingly and seemingly uniformly rejected such claims. This Court should likewise hold that Owens had no reasonable expectation of privacy in his non-privileged calls when he was warned at the outset of the calls that they were being monitored. There was no Fourth Amendment or Article 1, § 10 violation. 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,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

ISAAC MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit

BY: 
Joshua A. Edwards
Bar # 101188

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

ATTORNEYS FOR RESPONDENT

January 30, 2025

RECEIVED
Jan 30 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM HAMPTON COUNTY

Court of General Sessions
The Honorable Robert J. Bonds, Circuit Court Judge

---

Appellate Case No. 2023-000593

---

THE STATE, Respondent,

v.

WILLISTON L. OWENS, Appellant.

---

**PROOF OF SERVICE**

---

I, Susan Spencer, certify that I have served the within Final Brief of Respondent on Jessica Saxon, 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 30th day of January, 2025.

Susan Spencer

Susan Spencer
Legal Assistant

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

## Susan Spencer

**From:** Susan Spencer
**Sent:** Thursday, January 30, 2025 10:05 AM
**To:** Saxon, Jessica
**Cc:** Josh Edwards; Leverett, Scott
**Subject:** The State v. Williston Owens (2023-000593)
**Attachments:** OWENS Williston - Final Brief of Respondent.pdf

Good Morning Ms. Saxon,

Attached please find the Final Brief of Respondent in The State v. Williston Owens (2023-000593). This document will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

**SUSAN SPENCER**, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3219 | susanspencer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov