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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Patrick Cleburne Fant, III, Circuit Court Judge

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Appellate Case No. 2025-000139

THE STATE, Respondent,

v.

MATTHEW TIMOTHY MOON, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

I. **The Trial Judge properly allowed cross examination of Appellant regarding his false statement to officers about his military service because it was relevant to his consciousness of guilt and credibility.**

II. **The Trial Court did not unconstitutionally comment on a question of fact by listing examples of deadly weapons.**

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for threatening the life of a public official, assault and battery third-degree, malicious damage to personal property, burglary first-degree, arson second-degree Appellant proceeded to jury trial on January 13-15, 2025, before the Honorable Patrick Cleburne Fant, III. Appellant was convicted of burglary first-degree, malicious damage to personal property, threatening the life of a public official, and assault and battery third-degree. The jury acquitted him of arson. Appellant was sentenced to serve concurrent sentences: thirty-five years for burglary, ten years for malicious damage to personal property, five years for threatening the life of a public official, and thirty days for assault and battery third-degree. This appeal follows.

STATEMENT OF FACTS

On July 16, 2021, Storey Gilchrest and her friend Hannah Storey were sitting in Gilchrist's kitchen around 5pm. (R. 27-28). Hannah Storey saw a man, Appellant Matthew Moon, approaching the door from the back porch. (R. 28, 89). Gilchrist was not expecting any visitors and quickly locked the back door. (R. 28, 90). Gilchrist yelled at Appellant and told him to leave the property. (R. 31). Appellant got agitated and began screaming and kicking the door. (R. 31, 90). Storey had not planned to be there long and had left her car running with her dog in it so the two girls ran out the front door, got into her vehicle, and drove away from the house. (R. 32, 93). Gilchrist called 911 and Storey called Gilchrist's husband, Andrew. (R. 33, 93).

Deputy Marisa Bracken[1] of the Greenville County Sheriff's Department was dispatched to the scene for a potential burglary in progress with a brief description of a white male on a red bicycle. (R. 113). The State published State's Exhibit 22, a compilation of various bodycam recordings of the events following Bracken's arrival. On it, Appellant is seen coming from the rear of the house on a red bicycle and smoke coming from the rear of the house. (R. 113, State's Exhibit 22). Bracken instructed Appellant to get off of his bike to which he responded "Get the fuck away. Get the fuck away from me." (R. 115). Appellant then punched Bracken in the face and she, with help from Deputy Wesley Bird, took him to the ground and handcuffed him. (R. 115-116, 198). He continued yelling expletives at her. (R. 116). Appellant also stated that when he got out of jail he said something to the effect of "fucking you up so bad that you won't know what you're living with." (R. 121, State's Exhibit 22). Later in the video Appellant stated "I served in Iraq. I served in Iran. I've been shot four times." (State's Exhibit 22). He also stated "I've served this country in Iraq, Afghanistan [and you can] come around and look at the bullet

[1] Throughout trial she is referred to as Deputy Bracken although she had changed her name to Marisa Roberts.

holes in my arm." (State's Exhibit 22). Appellant was searched incident to arrest, and a cellphone, wallet, lighter, small cigars, a folding knife, some bottles of vodka, and a water bottle was found. (R. 117-118, 198-199).

Deputy Bird went to the rear of the home to determine whether there was a fire and saw a fire in the garage. (R. 202-203). Jeff Nelson, an expert in arson investigation testified that the fire started at the rear of the vehicle in the garage and was a petroleum-based fire. (R. 245-246). He further testified that the fire was started because an ignitable liquid was introduced into the rear of the jeep and ignited by an open flame. (R. 275). An expert in trace evidence testified that gasoline was found Appellant's shoes.

ARGUMENT

I. The Trial Judge properly allowed cross examination of Appellant regarding his false statement to officers about his military service because it was relevant to his consciousness of guilt and credibility

State's Exhibit 22 was a compilation of videos of body cameras on scene and was published to the jury. In this exhibit, Appellant is heard stating that he served in Iraq, Iran, and Afghanistan and been shot four times when being asked if he needed help. During the direct of Deputy Bird, he was questioned regarding Appellant's statements that he served in the U.S. Military. The following questions were asked:

> Q: Did you hear the defendant discuss having any prior military service?
>
> A: I do remember. At one point, he blurted out that he had served in Iraq and Iran and had been shot four times.
>
> Q: And as someone with military experience, did what the defendant appear to say, did it appear he was being truthful?
>
> A: It did not due to him saying that he had served in Iran which I have no knowledge of our military ever setting foot in.
>
> Q: And if someone had been shot while serving this country, let alone four times, would they be eligible for
>
> MR. JEREMY CRANE: Your Honor, objection. What's the relevance? Objection on relevance.
>
> THE COURT: Overruled.
>
> MS. SHUGARS: Thank you, Your Honor.
>
> Q: If someone was shot while serving this country let alone four times, would they be eligible for Veterans Affairs benefits?
>
> A: Absolutely.

Q: And what would it indicate to you if the VA had no record of this defendant?

A: It would seem incredulous that they would not seek whether it be disability or just further care for the injuries that they sustained. I served with a lot of men on deployments who had been shot, and every single one I know is a member of the VA as well as myself.

(R. 204-205).

Appellant testified at trial and gave his own version of events that stated he was riding by and smelt an electrical fire, so he went to the back of the house to determine where it was coming from. (R. 475-477). He testified that when he was in the rear of the home he could see there was a vehicle on fire in the garage and went on to the porch to alert the people inside the house that there was a fire. (R. 477-478). He stated he further flipped the grill over attempting to find a fire extinguisher to put out the fire. (R. 481-482). During the cross examination of Appellant, the State asked him about serving in the military. The following exchange occurred:

Q: You told Deputy Bird you served in the military; is that correct?

A: Yes, I did.

Q: What was your pay grade?

A: Huh? I didn't have one.

Q: You didn't have a pay grade?

A: No.

MR. JEREMY CRANE: Your Honor, objection. This is irrelevant whether or not he served.

THE COURT: Overruled.

Q: You didn't have a--- did you have a rank?

A: No.

Q: What branch of the military did you serve in?

A: No.

Q: You did not serve in the military?

A: No.

Q: But you did tell Deputy Bird that you served in the military?

A: Yes, I did.

Q: So you never served in Afghanistan or Iraq?

A: No.

Q: Like you previously stated?

A: Right? (sic)

Q: So you admit lying about having military experience?

A: Yes, ma'am.

(R. 505-506).

Appellant argues that the solicitor impermissibly impeached Appellant with evidence of an irrelevant falsehood. Specifically, Appellant argues that questioning him on whether he lied to officers about being in the military was irrelevant and was not a proper method of impeachment and therefore the testimony should have been excluded. This argument lacks merit because his false statement to police about being in the military was relevant to his consciousness of guilt and credibility.

"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). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. "To warrant reversal based on the admission or exclusion of evidence, the Appellant 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)).

"Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. "Although relevant, evidence may be excluded if its probative value is 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.

As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilty. State v. McDowell, 266 S.C. 508, 515 224 S.E.2d 889, 892 (1976). In State v. Martin, a masked gunman robbed a Bank of America. State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (2013). Several months later Martin was arrested in Atlanta, Georgia and when a police officer stopped him Martin gave a false name and date of birth. Id. At trial the state in closing argument talked about Martin giving misleading information and lying about his name and date of birth. Id. This court held that the trial court erred in

refusing to suppress evidence that Martin gave false identifying information because no nexus existed between the false information and the bank robbery. Id. This court further held that "We find the test previously articulated for determining the admissibility of evidence of flight applies to evidence of other forms of evasive conduct...As a result, insufficient evidence was presented to support an inference Martin lied to the officer to avoid prosecution for the Bank of America robbery." Id.

In the current case, there is a nexus between Appellant's false statement to Deputy Bird about being in the military and the charges he was being tried for. Appellant told Deputy Bird that he was in the military and had been shot four times in order to gain sympathy and attempt to evade the consequences of his actions. Therefore, that evidence was relevant as guilty conduct evidence.

Moreover, even if it wasn't somehow relevant, the admission of the testimony was still nevertheless harmless. "To warrant the reversal based on the admission or exclusion of evidence, the Appellant 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). Appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011). "Error is harmless where it could not reasonably have affected the result of the trial." State v. Martucci, 380 S.C. 232, 261, 669 S.E.2d 598, 613 (2008). "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." Id. Thus, an insubstantial error not affecting the result of the trial is harmless when guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." Id.

Here, Appellant's gps coordinates from his phone place him at the incident site. (R. 347). Appellant's palm print was found on the homeowner's grill. (R. 297-308). Gasoline was found on Appellant's shoes. (R. 436). A lighter was found on Appellant's person. (R. 118, 198). Lastly, an expert in arson investigation testified that the fire was started by an ignitable liquid being introduced into the rear of the vehicle and ignited by an open flame. (R. 275). This is all overwhelming evidence that Appellant was at the scene, he used the gasoline in the garage and poured it into the jeep and then ignited a fire using his lighter regardless of whether jury heard his false statement to police about serving in the military.

II. The Trial Court did not unconstitutionally comment on a question of fact by listing examples of deadly weapons.

The Trial Court instructed the jury on first-degree burglary as follows:

> Next, the State must prove beyond a reasonable doubt that the defendant intended to commit a crime, either a felony or a misdemeanor at the time of the entry....
>
> Finally, the State must prove beyond a reasonable doubt the existence of one of the following aggravating circumstances such as,... four, when entering while in the dwelling or in immediate flight, the defendant or an accomplice was armed with a deadly weapon or explosive.
>
> A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and the circumstances of each case.
>
> The following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a firebomb or Molotov cocktail and lighter fluid. A gun may be a deadly weapon even if it is not operating.

(R. 571-572). It then instructed the jury second-degree burglary is a lesser-included offense that does not require the state to establish an aggravating circumstance. (R. 572-573). During the charge conference Appellant objected that the list of examples of deadly weapons is a "statement of fact" because "you can have a knife and not have it be a deadly weapon or may have a jury be

able to consider it to not have been a deadly weapon." (R. 519). Appellant's objection was noted but denied. (R. 519).

Appellant argues that the trial court should not have provided the jury with examples of deadly weapons and identified a knife as a deadly weapon because it commented on the facts by directly listing examples. This argument lacks merit because illustrative examples as part of a jury charge is not a comment on the facts.

"In reviewing jury charges for error, [the Court of Appeals] must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 557 S.E.2d 460, 463 (Ct. App. 2003). "When reviewing a jury charge for error, an appellate court considers the charge as a whole; the charge must be prejudicial to the appellant to warrant a new trial." State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016). "But an instruction must be erroneous and prejudicial to warrant reversal" State v. Bowers, 428 S.C. 21, 28, 832 S.E.2d 623, 627 (2019). "'An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion.'" State v. Washington, 424 S.C. 374, 394, 818 S.E.2d 459, 469 (Ct. App. 2018) (citing State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)).

While it is unquestionably true a trial judge in South Carolina cannot properly make a comment on the facts when instructing the jury on the law, the usage of illustrative examples as part of a jury charge has *for more than a century* been recognized as proper in our state and not violative of the constitutional probation on comments on the facts. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law.") ("[A} judge does not violate this provision of the Constitution [prohibiting a jury charge on the facts] by the use of hypothetical or supposed facts for the purpose of illustrating some principle of

law."); Norris v. Clinkscales, 47 S.C. 486, 25 S.E. 797 (1896) (explaining an impermissible comment on the facts occurs when a trial judge "expresses in his charge his own opinion upon the force and effect of the testimony, or any part of it, or intimates his views of the sufficiency or insufficiency of the evidence in whole or in part" and instructing "statement used in illustration of some principle of law" do not violate the constitutional prohibition on a trial judge commenting on the facts). Here, the trial judge listing examples of deadly weapons was simply illustrative examples of weapons not on the sufficiency or insufficiency of evidence or his own opinion. Further, even if it had been a comment on the facts and not illustration it was not prejudicial to Appellant.

If a trial judge erroneously comments on the facts during trial a defendant is entitled to a new trial if the erroneous comment was prejudicial to the defendant. Litchfield Co. of South Carolina, Inc. v. Sur-Tech, Inc., 289 S.C. 247, 253, 345 S.E.2d 765, 768 (Ct. App. 1986). However, when a trial judge comments on a fact that is not in dispute during a jury instruction, the instruction is not erroneous and does not violate the mandates of the South Carolina Constitution. State v. Norris, 270 S.C. 552, 553, 243 S.E.2d 440, 440 (1978).

In this case, there is no dispute on whether a knife is a deadly weapon or that Appellant had a knife on him. See State v. Arther, 290 S.C. 291, 296, 350 S.E.2d 187, 190 (1986) ("[A]ppellant contends that the trial judge impermissibly commented on the facts in his jury charge by referring to appellant's statement as a 'confession.' Appellant's statement did constitute a confession that he stole money from the victim. **When facts stated in a charge are not in dispute, the instruction is not erroneous.**" (emphasis added)); See also Norris, 47 S.C. at 517-518, 25 S.E. at 808-808 (instructing that the constitutional provision prohibiting trial judges from commenting on the facts would not be violated by a trial judge commenting on an

undisputed fact or an admitted fact). Further, while this case is in reference to a burglary charge, the armed robbery statute does list examples of deadly weapons in its statute. See S.C. Code Ann. § 16-11-330(B). Therefore, the trial judge did not err in listing examples of deadly weapons in the jury charge.

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 Jordan M. Wayburn, 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 17th day of November, 2025.

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