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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CAMRON EZEKIEL HYATT,

APPELLANT

APPELLATE CASE NO. 2025-001852

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by refusing to suppress call detail records obtained from Verizon because pursuant to S.C. Code Ann. § 19-5-520 the state failed to provide appellant with reasonable written notice of its intent to offer the evidence by certification?

STATEMENT OF THE CASE

In March of 2021, the Kershaw County grand jury indicted appellant for murder. R *(Indictment). On March 4, 2024, appellant's case was called to trial before the Honorable Robert E. Hood and a jury. Tr. 1. Jason D. Kirincich represented appellant. Tr. 1. Curtis A. Pauling, III, Donna Green, and Michael Bradbury represented the state. Tr. 1. The jury found appellant guilty as indicted. Tr. 674, ll. 15-20. On September 2, 2025, a sentencing hearing was held before the Honorable Heath P. Taylor. Sentencing Tr. 1.[1] Jason Kirincich represented appellant and Michael Bradbury represented the state. Sentencing Tr. 1. Judge Taylor imposed the negotiated 35-year sentence. Sentencing Tr. 6, ll. 4-7. Appellant filed a timely notice of appeal. R *(Notice of appeal).

This brief follows.

[1] At the sentencing hearing, defense counsel explained that while an *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), mitigation investigation was ongoing the parties agreed to a negotiated 35-year sentence. Sentencing Tr. 4, ll. 5-8. Counsel continued that life was not contemplated at this point and appellant waived his right to continue with any mitigation through *Aiken v. Byars*. Sentencing Tr. 4, l. 23 – 5, l. 1.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. English*, 443 S.C. 49, 55, 902 S.E.2d 385, 388 (2024). "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 a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* at 429–30, 632 S.E.2d at 848.

ARGUMENT

The trial court erred by refusing to suppress call detail records obtained from Verizon because pursuant to S.C. Code Ann. § 19-5-520 the state failed to provide appellant with reasonable written notice of its intent to offer the evidence by certification.

Relevant facts

Motion to suppress pursuant to § 19-5-520

Prior to trial, defense counsel moved to suppress the records obtained from Verizon pursuant to S.C. Code Ann. § 19-5-520. Tr. 127, ll. 15-17. Counsel argued that on 9:50 a.m. the morning of the first day of trial, the state served counsel with written notice pursuant to § 19-5-520 that it intended to use a business records exception to enter the Verizon phone data information. Tr. 125, ll. 17-21. He argued that § 19-5-520 required the state to provide reasonable notice if it intended to rely on the statute and 9:50 a.m. on the first day of a murder trial did not fit within the meaning of reasonable notice. Tr. 125, l. 22 – 126, l. 2. He also argued that he did not know exactly what the state was asking for and noted that the state informed him an affidavit was forthcoming. Tr. 127, ll. 10-12.

The state responded that the critical part of the statute was to ensure that the opposing party had the opportunity to inspect the information or records that were intended to be entered. Tr. 128, ll. 1-5. The state contended that defense counsel was in receipt of the records that were the fruit of a preservation letter sent by an investigator to Verizon. Tr. 128, ll. 6-10. The state asserted defense counsel received the self-affirming affidavit included in discovery. Tr. 128, ll. 10-12. The state clarified that there were two different pieces of evidence it intended to enter: (1) the phone records that were the fruit of the preservation letter and the subject of the business records exception; and (2) the full cellular extraction completed by Carol Tarte of the cellphone itself. Tr. 128, l. 16 – 129, l. 7. The state contended that all of the data was turned over to defense counsel with the cellphone extraction. Tr. 129, ll. 7-13. The state further clarified that the reports sent to defense counsel the night before contained data pulled both from the preservation letter and data obtained from the search warrant for the physical device itself. Tr. 134, ll. 8-13. The state argued that defense counsel had notice and the option to examine these records the entire time, and thus, appellant would not be unduly prejudiced by their admission. Tr. 134, l. 17 – 135, l. 2.

The court then inquired of defense counsel, "Your issue now is just [their] admissibility without the person from Verizon here saying they're legit." Tr. 136, ll. 18-20. Defense counsel confirmed that was correct. Tr. 136, l. 21. The trial court ultimately found that the state had complied with § 19-5-520. Tr. 137, l. 20. The court explained that the statute was enacted to eliminate the need for people from Verizon to fly all of the country to testify that they complied with turning over the documents especially given those individuals were rarely cross-examined. Tr. 137, ll. 10-20. The court continued that the records had been turned over for an extended period of time. Tr. 137, ll. 21-22. The trial court noted that the "big issue," was whether the other side had to opportunity to inspect the documents and determined that "in this case that has clearly occurred." Tr. 138, ll. 6-10.

Trial

On January 15, 2020, Thomas Keitt's body was discovered on Green Hill Road. *See generally* Tr. 165-169; 171-177. Albertina Jolera Bennett,[2] appellant's then-girlfriend, testified concerning her involvement in Keitt's death. She explained that Keitt was her dad's best friend and he let her borrow his car on the night he died. Tr. 349, ll. 2-8. After she returned the car to

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2 Bennett was also charged with murder in relation to Keitt's death. Tr. 345, ll. 20-22.

Keitt, he called her while she was on the phone with appellant. Tr. 351, ll. 1-10. She merged the calls. Tr. 351, ll. 9-10, 15. On the three-way call, Keitt said he was upset that his car was running hot and told Bennett she would owe him something. Tr. 351, ll. 19-23. Bennett testified that Keitt wanted sex. Tr. 351, l. 23. She explained that she did not take it seriously, but appellant got mad when he heard that. Tr. 351, ll. 23-25. After the call ended, Bennett testified that she and appellant argued and that appellant said he would kill Keitt. Tr. 352, ll. 19-23. She testified that appellant told her to call Keitt and have him meet her at Green Hill Road. Tr. 354, ll. 4-21. She and appellant went to Green Hill Road together to meet Keitt. Tr. 354, ll. 22-25. Bennett testified that she was driving a black Honda Odyssey van. Tr. 355, ll. 3-6. When they arrived, she backed the car in and Keitt backed in besides her. Tr. 356, ll. 12-13. Keitt came to her window, she told him to get in the back, and as he opened the van door appellant shot him. Tr. 356, ll. 14-17. She heard three gunshots. Tr. 356, l. 21.

The state also introduced the following evidence related to the investigation of Keitt's death: latent fingerprints from the Honda Odyssey, wherein a print from the front passenger door matched appellant, Tr. 196; Tr. 289, ll. 1-9; testimony from an expert in tire impression analysis that the impressions from the minivan were consistent with the tire marks from the scene and could have made the impression at Green Hill Road, Tr. 243-257; testimony from appellant's uncle that a 9mm Kel Tec gun and 9mm bullets went missing while appellant lived with him, Tr. 383-396; two spent 9mm shell casings recovered from the scene that were determined to be fired from the same firearm, Tr. 550-553; testimony from an expert in forensic pathology that Keitt sustained two gunshot injuries, a bullet remained in his head, Keitt's cause of death was a gunshot wound to the head, and his manner of death was homicide, Tr. 557-569.

Phone records testimony

The state called Carol Tarte to testify concerning appellant's phone records. The court qualified Tarte as an expert in digital forensics analysis. Tr. 435, l. 13 – 436, l. 25.[3] Tarte began testifying about the call detail records report, and defense counsel informed the trial court he had a matter of law. Tr. 438, l. 23 – 440, l. 20. He reiterated that he moved to suppress the call detail records under § 19-5-520, but the court found it was proper for the state to introduce the call detail records. Tr. 440, l. 24 – 441, l. 2. He argued that to satisfy § 19-5-520 the state must provide an affidavit but contended that the letter received was insufficient, which was entered as Court's Exhibit 1. Tr. 441, ll. 4-12; 442, ll. 11-12; *see also* R *(Court's Exhibit 1). The court responded that the text of § 19-5-520 did not contain the word affidavit and defense counsel agreed that the statute did not say affidavit. Tr. 442, ll. 13-19. Counsel argued the state represented that it was introducing these records by affidavit pursuant to § 19-5-520. Tr. 442, l. 19 – 443, l. 4. Counsel agreed with the court that the language of the certification letter was correct but asserted that an affidavit would normally require a notary or an official stating the person was under oath. Tr. 443, ll. 11-15. Counsel argued that the certification letter was "just a completely electronically generated letter." Tr. 443, ll. 15-16.

The trial court allowed the records to be introduced because the state substantially complied with § 19-5-520. Tr. 443, ll. 17-19. The court continued that the purpose of the statute

3 Defense counsel objected to Tarte's qualifications to provide the jury an expert opinion arguing that she had never testified as an expert before, and she did not testify that any of her methodology was peer reviewed. Tr. 429, ll. 5-14. After additional voir dire and arguments from the parties, the trial court applied the higher scientific standard and found that under Rule 702, SCRE, *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), and *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979), the evidence would assist the trier of fact, it had heard more than 10 different courses Tarte had completed, Tarte testified that there were peer reviewed publications and prior applications of the methodology, and Tarte testified that there were quality control measures to ensure reliability. Tr. 435, l. 13 – 436, l. 25.

was to curb the need to pay people to fly all over the country to say these are the accurate records. Tr. 444, ll. 7-15. The court explained that the certification letter provided that the custodian of records certified that the records were kept in the normal course of business. Tr. 444, ll. 16-21.

Tarte testified concerning the reports that she created both from a cellphone extraction and the cell tower mapping of the call detail records. Tr. 446, ll. 2-4. The state entered Tarte's digital forensics notes for appellant's cellphone over defense objection. Tr. 446, l. 15 – 447, l. 3; *see also* R *(State's Exhibit 71). She testified concerning numerous text messages obtained from appellant's cellphone. Tr. 449, l. 23 – 472, l. 24. Tarte testified that she reviewed the call detail records for appellant's phone. Tr. 472, l. 25 – 473, l. 4. From appellant and Keitt's call detail records she generated reports showing the tower locations of phone calls made between those two devices. Tr. 474, l. 25 – 475, l. 4. Those reports were entered into evidence over defense objection. Tr. 475, l. 20 – 478, l. 25; *see also* R *(State's Exhibits 84, 86, 87).

Tarte then testified that State's Exhibit 89 was the records detail report generated from the call detail records provided from Verizon compiled from Keitt's cellular device, which was entered over defense objection. Tr. 481, ll. 10-25; *see also* R *(State's Exhibit 89). State's Exhibit 90 was a summary report of the call detail records with an overview of map locations and how many calls were made between 2:00 a.m. and 8:00 a.m. on January 15, 2020, which was entered over defense objection. Tr. 485, ll. 3-25; *see also* R *(State's Exhibit 90). The state then entered several more reports generated from the information provided by Verizon over defense objection. Tr. 489, l. 3 – 493, l. 8; *see also* R *(State's Exhibits 91, 92, 94, 95). On cross-examination, Tarte agreed "to a degree," that she could only say appellant's device was in Camden at some point and then in Lugoff at some point. Tr. 498, ll. 2-9.

Discussion

The trial court abused its discretion by refusing to suppress the call detail records obtained from Verizon because the state provided untimely notice on the morning of the first day of trial of its intent to enter the records by certification rather than live testimony subject to cross-examination.

"It is black letter law that evidence must be authenticated or identified in order to be admissible." *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018) (citing *State v. Rich*, 293 S.C. 172, 173, 359 S.E.2d 281, 281 (1987)). "Upon adoption of the South Carolina Rules of Evidence, this common law rule was codified at Rule 901, SCRE." *Brown*, 424 S.C. at 488, 818 S.E.2d at 740 (citing *State v. Anderson*, 386 S.C. 120, 128-132, 687 S.E.2d 35, 39-41 (2009)). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." *Id.* (citing Rule 901(a), SCRE).

Rule 901(b) contains examples of "authentication or identification conforming with the requirements of this rule." Rule 901(b), SCRE. One way evidence may be authenticated is by testimony of a witness with knowledge: "Testimony that a matter is what it is claimed to be." Rule 901(b)(1), SCRE. Rule 902, SCRE provides that "[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following," and then lists ten categories of documents inapplicable here. However, S.C. Code Ann. § 19-5-520 (2015) provides, "In addition to those matters provided by Rule 902, South Carolina Rules of Evidence, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:"

> (A) The original or a copy of a domestic record that meets the requirements of Rule 803(6), South Carolina Rules of Evidence, as

> shown by a certification of the custodian or another qualified person that complies with a state statute or a court rule. Before the trial or hearing, the proponent shall give an adverse party reasonable written notice of the intent to offer the record and shall make the record and certification available for inspection so that the party has a fair opportunity to challenge the record.

Rule 902(A), SCRE.

Rule 803(6), SCRE provides that the following is not excluded by the hearsay rule, even though the declarant is available as a witness:

> Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

A panel of this Court addressed § 19-5-520 in an unpublished opinion in *State v. McNeil*, 2026 WL 103233 (Jan. 14, 2026) (unpublished).[4] There, McNeil argued that security videos from the hospital were improperly admitted because the state failed to properly authenticate the videos. *Id.* at *1. This Court held that the circuit court did not err by admitting the hospital videos because the certification of authenticity was executed by the hospital security manager who attested that the video was produced and maintained in the regular course of business and accurately depicted the original record for the time and date in question. *Id.* at *2.

Under the federal rules of evidence, Rule 902(11) provides that:

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4 At the time of filing this brief, appellant has found no published case law addressing § 19-5-520.

> The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

Rule 902(11), FRE. Moreover, "Rule 902(11) was added to create a procedure by which parties can authenticate certain records of regularly conducted activity, other than through the testimony of a foundation witness." *See United States v. Komasa*, 767 F.3d 151, 155 (2nd Cir. 2014) (internal quotation marks omitted). "Rule 902(11)'s notice requirement is intended to give the opponent of the evidence a full opportunity to test the adequacy of the foundation set forth in the declaration." *Id.* (internal quotation marks omitted).

Several federal circuits have addressed the "reasonable written notice," requirement in Federal Rule of Evidence 902(11). For example, in *United States v. Wood*, 109 F.4th 1253 (10th Cir. 2024), Wood objected to the use of the Authenticity Certificate to satisfy Rule 803(6)'s conditions because he did not receive the certificate until after the jury was chosen which did not allow him the fair opportunity to examine and verify the document and its contents. *Id.* at 1255. The Tenth Circuit determined that, considering all the facts and circumstances of the case, the district court's decision to allow the government to use the belated Authenticity Certificate for authentication was manifestly unreasonable. *Id.* at 1263. The Court concluded that "[t]here is simply no doubt the government provided Wood with untimely notice of the Authenticity Certificate by presenting that certificate after the jury was already seated." *Id.* at 1265. Moreover, the Court explained that the government did not offer any possible methods of remedying the prejudice to Wood flowing from the late notice and where the government did not state cause for its failure to comply with Rule 902(11)). *Id.*

In *United States v. Brown*, 553 F.3d 768 (5th Cir. 2008), the appellants argued that the district court erred by excluding certain business records from their pharmacy's computer systems. *Id.* at 792. After attempting to admit the records by several other methods, the appellants attempted to use a business records affidavit pursuant to 902(11), FRE, however, the government objected to the affidavit as untimely. *Id.* The Fifth Circuit determined that the district court did not abuse its discretion by refusing to give effect to the untimely affidavit. *Id.* at 793. Particularly, the Court explained that "[t]he notice requirements of Rule 902(11) are in place precisely to ensure that evidence to be accompanied by an affidavit can be vetted for objection or impeachment in advance." *Id.* Moreover, the Fifth Circuit determined that "while the exhibits in question were available in advance, the way in which the evidence was to be introduced forms part of the necessary notice . . . ." *Id.*

In *United States v. Daniels*, 723 F.3d 562 (5th Cir. 2013), on the second day of trial, the government produced attestation documents it intended to use under Rule 902(11) to authenticate business records. *Id.* at 579. During discussions concerning the admissibility of the attestation documents, the defendants acknowledged receipt of these records before trial and conceded that they had not filed a motion in limine to suppress or exclude these records. *Id.* at 580. In any event, the defendants argued that the attestation documents were untimely, in violation of Rule 902(11). *Id.* The government acknowledged that it had not sent a letter giving notice of the attestation documents. *Id.* The district court suggested two possible solutions for the lack of timely notice: 1) it could grant *instanter* subpoenas; or 2) it could grant a full day's continuance. *Id.* The government proposed that it could restructure its case to not use the attestations until three days after defense counsel raised the objection. *Id.* Defense counsel did not request either of the district court's proposed solutions and after three days the government introduced the business records along with the contested attestations. *Id.*

On appeal, citing *Brown*, the defendants argued that the three-day period was insufficient to investigate and, if necessary, challenge the declarations und underlying records. *Id.* The Fifth Circuit concluded that, "although the government failed to give timely pretrial notice of its intention to use attestations to introduce the business records, the district court crafted two suitable remedies so as to afford the defendants the opportunity to test the adequacy of the foundations established by the declarations." *Id.* at 581. The Court noted that the defendants did not avail themselves to the remedies and had three days to assess the records. *Id.* In sum, the Fifth Circuit explained that "[w]hile it might not be the best practice to admit records upon three days' review in the midst of trial, we cannot say it constitutes an abuse of discretion." *Id.*

In this case, appellant objected to the admission of call detail records obtained from Verizon because the state failed to properly comply with § 19-5-520. Tr. 127, ll. 15-17; Tr. 440, l. 24 – 441, l. 12. Specifically, the state only provided written notice of its intention to enter the records under the statute at 9:50 a.m. on the morning of the first day of trial. Tr. 125, ll. 17-21. However, the statute expressly provides that, "*Before the trial or hearing*, the proponent shall give an adverse party *reasonable written notice* of the intent to offer the record and shall make the record and certification *available for inspection so that the party has a fair opportunity to challenge the record.*" S.C. Code § 19-5-520 (emphasis added). The morning of the first day of trial cannot satisfy the statute's requirement for reasonable notice given that the notice was not provided "before the trial," and the untimely notice failed to provide appellant with necessary time for inspection to allow opportunity to challenge the records. *See e.g.*, *Wood*, 109 F.4th at 1255, 1263-65. In addition, unlike *Daniels*, the trial court did not offer appellant any remedies for the lack of timely notice, nor did the state offer to restructure its case to provide appellant time to assess the certification. *But see Daniels*, 723 F.3d at 579-81. Instead, as in *Wood*, the state provided its written notice after trial had already commenced. *See e.g.*, *Wood*, 109 F.4th at 1255, 1263-65. The untimely written notice prohibited appellant from vetting the certification for objection or impeachment in advance. *See Brown*, 553 F.3d at 793.

Although the trial court seems to rely on the fact that appellant had the opportunity to inspect the documents because the records had been turned over in discovery for an extended period of time, the trial court fails to consider that the statute requires reasonable written notice that the records would be entered by certification rather than by live testimony which would be subject to cross-examination. Tr. 137, ll. 21-22; 138, ll. 6-10; 444, ll. 16-21; *see also State v. Stokes*, 381 S.C 390, 399, 673 S.E.2d 434, 438 (2009) ("The Confrontation Clause guarantees that in all criminal prosecution, the accused shall enjoy the right . . . to be confronted with the witnesses against him. This right to confront and cross-examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial.") (internal citations and quotations marks omitted). Moreover, as the Fifth Circuit recognized in *Brown*, "while the exhibits in question were available in advance, the way in which the evidence was to be introduced forms part of the necessary notice . . .." *Brown*, 553 F.3d at 793. Accordingly, the trial court erred by finding that the state substantially complied with § 19-5-520 and thereby refusing to suppress the records obtained from Verizon. Tr. 137, l. 20; 443, ll. 17-17; *Douglas*, 369 S.C. at 429, 632 S.E.2d at 847–48.

CONCLUSION

Based on the foregoing argument, appellant respectfully asks this Court to reverse his conviction and sentence and remand to the Court of General Session of Kershaw County for a new trial.

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ATTORNEY FOR APPELLANT

This 10th day of July, 2026.