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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEL'BREZ ANTRAIL J'AM STRINGER,

APPELLANT

APPELLATE CASE NO. 2025-002295

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by allowing the state to play the body-worn camera recording of the initial law enforcement contact with the complainant as well as the recording of the 911 call where the recordings were inadmissible hearsay and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

STATEMENT OF THE CASE

On October 30, 2023, the Spartanburg County grand jury indicted appellant for discharging a firearm into a dwelling. R *(Indictment). Then, on December 18, 2023, the Spartanburg County grand jury indicted appellant for attempted murder, possession of a weapon during the commission of a violent crime, and of discharging a firearm at or into a vehicle. R *(Indictments). On October 27, 2025, appellant's case was called to trial before the Honorable Patrick C. Fant, III, and a jury. Tr. 1. James E. Hunter prosecuted the case for the state. Tr. 1. J. Zachary Farr represented appellant. Tr. 1. Ultimately, the jury found appellant guilty as indicted. Tr. 300, l. 8 – 301, l. 2. Judge Fant imposed a total sentence of 35-years imprisonment comprised of 30 years as to the attempted murder charge, 5 years consecutive as to the weapons charge, and 10 years concurrent as to both discharging a firearm charges. Tr. 308, l. 14 – 309, l. 10.[1] Appellant filed a timely notice of appeal. R *(Notice of appeal).

This brief follows.

[1] Judge Fant also imposed a concurrent 5-year sentence for possession of a weapon by a convicted felon. Tr. 309, ll. 11-17. Appellant pled guilty to the possession of a weapon charge on the first day of trial. Tr. 8, l. 7 – 12, l. 25.

STANDARD OF REVIEW

"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. An abuse of discretion occurs when the trial court's ruling is based on an error of law." *State v. Washington*, 379 S.C. 120, 123–24, 665 S.E.2d 602, 604 (2008) (citing *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

The trial court erred by allowing the state to play the body worn camera recording of the initial law enforcement contact with the complainant as well as the recording of the 911 call where the recordings were inadmissible hearsay and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

Relevant facts

Trial

At trial, the state alleged that appellant attempted to kill Hannah Underwood. R *(Indictments). On April 18, 2023, officers responded to a call for a shooting incident. Tr. 67, ll. 23-25; 155, ll. 10-23. Officers recovered 41 shell casings from the roadway and pieces of red plastic which were later determined to be from the taillight of the car struck. Tr. 69, l. 1 – 72, l. 6; 74, ll. 10-18. The shell casings were all brand "Federal," and were located in front of a large house. Tr. 75, ll. 1-19. The red plastic was recovered within a few feet of the shell casings. Tr. 76, ll. 12-25.

Karen Hammerick testified that while she was taking a bath, she heard a loud boom and then a rapid succession of gunfire. Tr. 55, l. 14 – 56, l. 5. The next morning an officer came to her house, and she saw bullet holes in her house that were not previously there. Tr. 56, l. 6 – 57, l. 12. Michael Vella testified that he was in his house on the night of the incident and heard what he believed to be automatic gunfire. Tr. 143, ll. 2-18. He heard a ten to twelve round burst and went outside where he saw a white car down the road. Tr. 143, ll. 19-23. Vella testified that he did not see anyone running on foot. Tr. 151, ll. 16-22.

Officers executed a search warrant for a Hyundai Sonata, which was Underwood's. Tr. 83, l. 21 – 84, l. 8. Investigator Jeffrey Dial testified that there were five projectile holes in the

trunk area of the car, there were two projectile holes to the right of the license plate, the driver's side had a light busted out, there was a substantial amount of blood in the seat and door with numerous holes through the seat, and a projectile was found in the trunk along with fragments of projectiles in the spare tire area of the car. Tr. 86, l. 1 – 89, l. 24. Additional projectiles were found inside the car. Tr. 91, ll. 2-4; 94, ll. 5-9. Investigator Dial further testified that a search warrant was executed at the Proctor Road location. Tr. 96, ll. 17-25. An amazon package with appellant's name was at the residence. Tr. 100, ll. 3-10. Officers recovered a Glock 40 and a "40 cal magazine," on a couch behind a pillow. Tr. 100, ll. 11-14. Officers recovered an empty box of Federal .40 bullets in the laundry basket. Tr. 101, ll. 18-21. Dial further testified that a broken AR style magazine with 23 unfired bullets was found in a shoebox inside the bedroom. Tr. 102, ll. 12-21. Oficers recovered .40 shell casings in the trash can by the road along with a Sierra .40 caliber box. Tr. 103, l. 4 – 104, l. 15.

Objection to State's Exhibits 107 and 108[2]

As relevant, defense counsel moved to suppress the body-worn camera footage and the 911 call under Rule 801(d)(1), due to the prior consistent statements. Tr. 119, ll. 1-5.[3] He also raised bolstering and Rule 403 arguing that admission of the body-worn camera footage and the 911 call would be a needless presentation of cumulative evidence. Tr. 119, ll. 2-7. He cited *Davis v. Washington*, 547 U.S. 813 (2006), and noted that here had not been an allegation regarding Underwood's credibility, that she was coached, or that she was not telling the truth.

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[2] State's Exhibits 107 and 108 are on file with this Court.

[3] Defense counsel also moved to suppress the body-worn camera pursuant to *State v. Heyward*, 441 S.C. 484, 895 S.E.2d 658 (2023), because it was gruesome and only served to evoke an emotional reaction from the jury. Tr. 114, l. 19 – 115, l. 25. The trial court ultimately ruled that the evidence was highly relevant under Rule 401, and that under a 403 analysis the probative value was not substantially outweighed by the danger of unfair prejudice. Tr. 118, ll. 11-15. The trial court determined the evidence was contemporaneous, very reliable, and corroborated so it would come in. Tr. 118, ll. 15-17.

Tr. 119, l. 17 – 120, l. 1. Defense counsel then cited *State v. Jeffcoat*, 350 S.C. 392, 565 S.E.2d 321 (Ct. App. 2002), and argued that he had not opened the door by contending that Underwood had fabricated her statement, and thus, he maintained that the body-worn camera footage and 911 call were inadmissible. Tr. 120, ll. 2-12. He argued that because Underwood would testify the recordings would merely bolster her testimony. Tr. 120, ll. 10-16.

The state responded that the 911 call was admissible as a present sense impression and noted that it did corroborate Underwood's testimony. Tr. 121, ll. 4-9. The state argued the evidence was relevant under Rule 401, and that while it was prejudicial since it identified appellant as the shooter, the probative was not substantially outweighed by the danger of unfair prejudice. Tr. 121, ll. 9-14.

The trial court thus ruled that the 911 call would come in because it was "contemporaneous, it's reliable, it is present sense impression. And it is relevant. And I think it does under Rule 403, the probative value, again, is not substantially outweighed by the danger of unfair prejudice, confusion or misleading the jury." Tr. 121, l. 19 – 122, l. 1. The trial court also ruled it would allow the body-worn camera footage, which the court "already ruled," on. Tr. 121, ll. 19-20.

State's Exhibit 107

State's Exhibit 107 is body-worn camera footage from Officer Blanton which shows his interaction with Underwood on April 18, 2023. In the footage, the wound to Underwood's neck is visible and she is bleeding. R *(State's Exhibit 107, 0:03-0:19). Underwood stated that "he did it," while showing the officer something on her phone, confirmed her name, and told Blanton the incident happened up the street. R *(State's Exhibit 107, 1:01-1:20). The footage shows Blanton cleaning Underwood's wound and bleeding down her body. R *(State's Exhibit 107,

2:24-2:45). Later, Underwood's phone rings, which she answers, and speaks with appellant's other girlfriend. R *(State's Exhibit 107, 7:33). Underwood can be heard saying, "Girl, he shot me." R *(State's Exhibit 107, 7:55). Finally, at the end of the footage, Blanton directs other officers on the scene to write a name down because it was who Underwood said shot her. R *(State's Exhibit 107, 9:19).

State's Exhibit 108

State's Exhibit 108 is Underwoods 911 call. On the call, Underwood tells dispatch that she has been shot. R *(State's Exhibit 108, 0:00:01 – 0:006). She says she is bleeding out and gives dispatch her name. R *(State's Exhibit 108, 0:00:21 – 0:00:30). She says, "I'm dying bro." R *(State's Exhibit 108, 0:00:45 – 0:00:46). She tells dispatch appellant did it. R *(State's Exhibit 108, 0:01:02 – 0:01:07). She continues to tell dispatch she is bleeding and asks them to hurry. R *(State's Exhibit 108, 0:01:15 – 0:02:55). Underwood tells dispatch appellant did it and she has his ID. R *(State's Exhibit 108, 0:03:50).

Trial continued

Officer Michael Blanton testified that he responded to the scene where Underwood was located. Tr. 131, ll. 1-25. He observed several bullet holes in the trunk of the car and observed Underwood with bleeding surrounding her head and neck area. Tr. 132, ll. 2-23. He testified that Underwood handed him her cellphone which had a picture of appellant's work identification. Tr. 132, l. 24 – 133, l. 5. He testified that EMS arrived and he was wearing a body-worn camera. Tr. 134, ll. 14-22. His body-worn camera footage was entered into evidence over defense counsel's prior objection. Tr. 135, ll. 3-7.

Hannah Underwood testified that she was 19 years old when the incident occurred and that she met appellant through social media. Tr. 199, l. 5 – 200, l. 17. She considered herself to

be appellant's girlfriend but found out on April 18, 2023, that appellant had another girlfriend. Tr. 201, ll. 2-11. Underwood testified that on April 18, 2023, she was working at Chipotle when appellant arrived, and she agreed to let him borrow her car. Tr. 201, ll. 15-24. She then called appellant around 11:00 p.m. when her shift was ending. Tr. 202, ll. 13-21. Appellant and his little brother were in the car. Tr. 203, ll. 1-11. Underwood explained that before appellant picked her up, she received a call from his other girlfriend. Tr. 205, ll. 1-20. She testified that when she was in the car with appellant they were arguing. Tr. 206, ll. 7-9.

Appellant's little brother was driving the car, and she eventually asked him to pull the car over because she and appellant were arguing back and forth. Tr. 206, ll. 9-13. Appellant's brother pulled the car over. Tr. 207, ll. 2-8. Appellant and his brother got out of the car and Underwood explained that she got out of the passenger seat to get into the driver's seat. Tr. 207, l. 13 – 208, l. 11. She testified that she pulled out, heard what sounded like fireworks, and felt burning. Tr. 208, ll. 16-25.. When she was driving away she picked up her phone, which had blood on it, and noticed that her head hurt badly. Tr. 209, ll. 7-10. She pulled over. Tr. 209, ll. 11-20. She called 911. Tr. 210, ll. 2-3. State's Exhibit 108, her 911 call, was entered into evidence subject to defense counsel's prior objection. Tr. 210, ll. 15-24; *see also* R *(State's Exhibit 108). She identified the 911 call she made on her call log. Tr. 215, ll. 7-8. Underwood testified that appellant shot her. Tr. 218, ll. 1-7.

Discussion

The trial court erred by allowing the state to play the body worn camera footage of the initial law enforcement contact with Underwood as well as the recording of the 911 call Underwood made because the recordings were inadmissible pursuant to Rule 801(d)(1)(B) since the requirements of the rule were not met to allow admission as a prior consistent statement and the recordings improperly bolstered Underwood's testimony. In addition, the trial court abused its discretion by admitting the recordings because any probative value the recordings may have had were substantially outweighed by the risk of unfair prejudice and the recordings served only to inflame the passions of the jury. This Court should reverse.

a. The body-worn camera footage and 911 call were inadmissible hearsay, and allowed the state to improperly bolster Underwood's testimony

"Hearsay is not admissible." Rule 802, SCRE. "'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." Rule 801(c), SCRE.

Under Rule 801 of the South Carolina rules of evidence, "prior consistent statements of a witness are not inadmissible hearsay if: (1) the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement; (2) the statement is consistent with the declarant's testimony; (3) the statement is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; and (4) the statement was made before the alleged fabrication, or before the alleged improper influence or motive arose." *State v. Foster*, 354 S.C. 614, 621, 582 S.E.2d 426, 429 (2003) (citing Rule 801(d)(1)(B), SCRE, and *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001)). "[E]vidence of a prior consistent statement is *only* permitted when the elements of Rule 801(d)(1)(B) are met." *Id.* at 621, 582 S.E2d at 430 (citing *Saltz*, 346 S.C. at 124, 551 S.E.2d at 245) (emphasis in original). "Put

simply, a prior consistent statement offered for rehabilitation is either admissible under Rule 801(d)(1)(B) or it is not admissible at all." *Id.* (citing *State v. Fulton*, 333 S.C. 359, 369, 509 S.E.2d 819, 825 (Ct. App. 1998)) (internal quotation marks omitted). "This rule renders a hearsay statement potentially admissible if it is consistent with the declarant's trial testimony and is offered to rebut and express or implied charge against the declarant of recent fabrication or improper influence or motive." *Jeffcoat*, 350 S.C. at 396, 565 S.E.2d at 323 (quoting Rule 801(d)(1)(B), SCRE). "When all requirements of the rule are met, the whole of the prior statement, including specific details, is admissible in evidence." *Id.*

In appellant's case, the trial court abused its discretion by admitting the 911 call and body-worn camera footage. Tr. 118, ll. 15-17, 121, l. 19 – 122, l. 1. As defense counsel argued below, admission of the contested evidence was an error because no allegation was made concerning an improper motive by Underwood or that a recent fabrication was made. Tr. 119, l. 17 – 120, l. 16; *Jeffcoat*, 350 S.C. at 396, 565 S.E.2d at 323. The sole purpose of entering the body-worn camera footage and the 911 call was to influence the jury and bolster the impact of Underwood's testimony. *See Foster*, 354 S.C. at 622-623, 5823 S.E.2d at 430 (citing *Tome v. United States*, 513 U.S. 150, 157-58, 115 S. Ct. 696, 130 L.E.2d 574 (1995) ("discussing federal Rule 801(d)(1)(B) and stating that the purpose of the rule is to rebut an alleged fabrication or motive, not to bolster the veracity of the story told.") (internal quotation marks omitted). As appellant made no allegations of fabrication or improper motive, there was no basis for allowing the recordings to be played to influence the jury. *See State v. Russell*, 383 S.C. 447, 450, 679 S.E.2d 542, 543–44 (Ct. App. 2009) (holding "a prior consistent statement is not admissible unless the witness is charged with recent fabrication or improper motive or influence.").

The Rules of Evidence permit the introduction of statements "describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter" as an exception to the bar against hearsay. Rule 803(1), SCRE. "There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event." *State v. Parvin*, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2015) (quoting *State v. Hendricks*, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014)). "Our courts have not delineated a time frame that would constitute "immediately thereafter." *Id.* The contested recordings were not made by Underwood while she perceived the event. Rule 803(1), SCRE. Thus, for the present sense impression exception to apply, the statements must have been made "immediately thereafter." Rule 803(1), SCRE; *Parvin*, 413 S.C. at 503, 777 S.E.2d at 4. The 911 call was made after Underwood left the scene and pulled over at a separate location and the body-worn camera footage from Officer Blanton containing Underwood's statements occurred once Blanton arrived at Underwood's location several minutes after the dispatch call. R *(State's Exhibit 107). The passage of time and change in location remove the recordings from the present sense impression exception. In addition, Underwood's statements on the body-worn camera footage exceed describing or explaining an event or condition as she has a phone conversation with another individual and contains Blanton's actions to further the investigation. R *(State's Exhibit 107, 7:33 – 7:55, 9:19). The trial court's cursory ruling that the recordings were "contemporaneous" and a present sense impression was therefore in error.

The result is that the state was allowed to enter two recordings into evidence which served to influence the jury and bolster the impact of Underwood's testimony.

b. The body-worn camera footage and 911 call served only to inflame the passions of the jury

In any event, regardless of the trial court's ruling concerning whether the recordings were inadmissible hearsay or qualified under the present sense impression exception, the trial court erred by admitting the contested recordings because any probative value the recordings may have had was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE. "For evidence to be admissible, it must be relevant." *State v. Daise*, 421 S.C. 442, 464, 807 S.E.2d 710, 721 (Ct. App. 2017); *see also* Rule 402, SCRE ("Evidence which is not relevant is not admissible."). Generally, 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. However, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE.

When looking at Rule 403, SCRE, the starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. "'Probative' means '[t]ending to prove or disprove.'" *State v. Gray*, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). "'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis.'" *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir. 1993)). "Evidence is incompetent if it could create dangers such as prejudice, undue delay, confusion of the issues, tendency to mislead the jury, waste of time, or cumulative presentation." *State v. Lyles*, 379 S.C. 328, 337, 665 S.E.2d 201, 206 (Ct. App. 2008) (citing *State v. Pipkin*, 359 S.C. 322, 326, 597 S.E.2d 831, 833 (Ct. App. 2004) and Rule 403, SCRE). Specifically, "[c]umulative evidence has repeatedly been defined to be

additional evidence of the same kind to the same point." *State v. Funderburke*, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968). In addition, "[t]he determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." *State v. Henley*, 428 S.C. 649, 662, 837 S.E.2d 639, 646 (Ct. App. 2019) (quoting *State v. Gillian*, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)).

In appellant's case, the trial court made a conclusory ruling that both the 911 call and body-worn camera footage passed Rule 403 muster. Particularly, the trial court merely stated that the probative value was not substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury. Tr. 118, ll. 11-15; 121, l. 19 – 122, l. 1. However, the trial court failed to address the cumulative nature of the evidence as defense counsel argued below. Tr. 119, ll. 2-7. Nor did the trial court identify what probative value the evidence presented. In *State v. Gray*, 438 S.C. 130, 143-144, 882 S.E.2d 469, 476 (Ct. App. 2022), the South Carolina Court of Appeals wrote:

> 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 . . .." Rule 403, SCRE. " 'Probative value' is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). "[T]he more essential the evidence, the greater its probative value." *Id.* (alteration in original) (quoting *United States v. Stout*, 509 F.3d 796, 804 (6th Cir. 2007)). "Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates." *Id.* "[T]he burden [is] on the opponent of the evidence to establish [its] inadmissibility." *State v. King*, 424 S.C. 188, 200 n.6, 818 S.E.2d 204, 210 n.6 (2018).

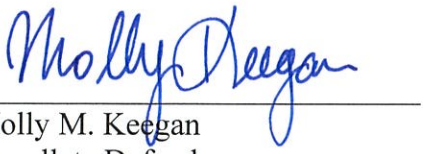
The recordings carried little weight in assisting the factfinder to decide appellant's case especially where the individual in those recordings, Underwood, provided testimony during trial.

At best, the content of the recordings was probative as to Underwood's identification of appellant. R *(State's Exhibit 107, 108). However, she testified at trial to that very fact as did law enforcement. Tr. 132, l. 24 – 133, l. 5; Tr. 218, ll. 1-7. The recordings therefore added no additional probative value given that Underwood testified about the 911 call that she made, her recollection of the incident, and explained how she identified appellant to law enforcement. Tr. 199, l. 5 – 218, l. 7. It cannot be said that the recordings were essential based on the record and facts of appellant's case. *Henley*, 428 S.C. at 662, 837 S.E.2d at 646.

Similarly, the prejudicial effect of the evidence was significant where the recordings were needlessly cumulative as they merely provided additional evidence of the same kind and to the same point. *Funderburke*, 251 S.C. at 540, 164 S.E.2d at 311. The result is that the recordings were needlessly cumulative of Underwood's trial testimony and served only to inflame the passions of the jury by placing Underwood's injuries before the jury. *See United States v. Mohr*, 318 F.3d 613, 619-620 (4th Cir. 2003) ("Rule 403 only requires suppression of evidence that results in unfair prejudice—prejudice that damages an opponent for reasons other than its probative value, for instance, an *appeal to emotion* . . .") (emphasis added). Therefore, any probative value the recordings may have had, which was nonessential and diminished by Underwood's trial testimony, was substantially outweighed by the danger of unfair prejudice and the presentation of cumulative evidence. Rule 403, SCRE. The trial court therefore abused its discretion by finding that the 911 call and body-worn camera footage were not unfairly prejudicial in light of Rule 403. Tr. 118, ll. 11-15; 121, l. 19 – 122, l. 1.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests that this Court reverse his convictions and sentence and remand to the Court of General Sessions of Spartanburg County for a new trial.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of September, 2026.