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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN C. TOBON,

APPELLANT

APPELLATE CASE NO. 2026-000080

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the State's deletion of a recorded jail call required exclusion of a brief portion of the call, selected and taken out of context by the State, which required appellant to explain this missing context from the stand rather than allow the jury to hear such context in the original form as dictated by Rule 106, SCRE?

STATEMENT OF THE CASE

Appellant was indicted by a Greenville County grand jury for murder and possession of a weapon during the commission of a violent crime arising from the death of Carolina Hall on or about February 2, 2024. R * (indictment). Appellant was tried before the Honorable Donald B. Hocker and a jury from December 8 – 10, 2025. R. *. During trial, appellant was represented by Michael A. Berry, Anthony P. Norris, and Jacob G. Misenhimer. R. *. Barry J. Barnette and Aubrey O'Brien appeared on behalf of the State.

The jury convicted appellant as charged in the indictments and Judge Hocker sentenced appellant to fifty years incarceration for murder and five years for the weapon offense. R. * (sentence sheets).

This appeal follows.

STANDARD OF REVIEW

> The standard of review for evidentiary rulings is typically very deferential. *In re Care & Treatment of Bilton*, 432 S.C. 157, 161, 851 S.E.2d 442, 444 (Ct. App. 2020). "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice." *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (cleaned up); *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005) ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove the error of the ruling and the resulting prejudice, i.e., there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Matter of Hyman, 447 S.C. 573, 588–89, 930 S.E.2d 1, 9 (2026).

ARGUMENT

The State's deletion of a recorded jail call required exclusion of a brief portion of the call, selected and taken out of context by the State, which required appellant to explain this missing context from the stand rather than allow the jury to hear such context in the original form as dictated by Rule 106, SCRE.

A. Relevant facts.

During trial, counsel for appellant moved to suppress the use of a portion of a recorded jail call that the State asserted involved a discussion of the circumstances surrounding the death of Hall. Tr. 182, l. 19 – 183, l. 15; Defendant's Ex. 4.[1] Initially, the trial court delayed ruling on the matter since the State indicated it did not intend to introduce the recording as part of the State's case.

> MR. BARNETTE: Your Honor, I'm not planning to put it in our direct. It would be on cross that I would ask him about it.
>
> THE COURT: Let's just do this: If the State is not planning to deal with it at all except possibly when -- if the defendant testifies, then we'll deal with it at that time, okay?

Tr. 184, ll. 6 – 12.

In arguing against allowing the State to use the limited clip of the longer recorded conversation, counsel for Appellant noted the State's role in placing the appellant in the position of having to explain the context without the benefit of the complete recording due to the action of the State in not preserving something it admitted possessing.

> The State had the obligation to [p]reserve it, even for use in impeachment. It does not matter if it's not being introduced into evidence, the jury is going to hear it, Your Honor.

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[1] Having lost the motion to suppress, appellant's counsel introduced the partial recording during appellant's direct examination.

> And anything that our client says in opposition to that has the chance to be heard as simply self-serving. The best evidence in this case would have been the full recording, Your Honor. And, again, the State had it. They did not preserve it, except for the one 15-second clip that miraculously appeared yesterday morning. That's why I'm asking that you keep that clip out. If the State wanted to use it, they should have made sure we knew about it a long time ago. They should have made sure we knew about it in October 2024. They should have provided us the full 15-minute conversation.

Tr. 243, l. 24 – 244, l. 12.

Despite the State's destruction of the complete recording, the trial court ruled that the State's selected portion of the recorded call would be available for impeachment purposes.

> And it's pretty elementary that there's a statement -- or a lot of times when we have, like, for example, body cam video and the State only wants to put in a portion of the video, certainly the defense has the right to put in the other portion or other portions of the video. This is a different situation insofar as it is being used solely for impeachment, and not evidence. It was evidence in the *Jackson* case. So, I think that's where the distinguishing factor lies. And I'm going to allow the State to use it.

Tr. 245, ll. 1 – 9.[2]

As noted, after the trial court's ruling appellant's counsel introduced the tainted recording during appellant's direct examination. Appellant provided the context surrounding the State's selective recording: appellant was describing a different case involving a friend who was also being accused of murder despite their innocence. Tr. 291, l. 15 – 293, l. 10. Taken outside this

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[2] "When part of a conversation is put into evidence, an adverse party is entitled to prove the remainder of the conversation, so long as it is relevant, particularly when it explains or gives new meaning to the part initially recited. 'All statements made in a conversation, in relation to the same subject or matter, are to be supposed to have been intended to explain or qualify each other, and therefore the plainest principles of justice requires that if one of the statements is to be used against the party, all of the other statements tending to explain it or to qualify this use should be shown and considered in connection with it.'" State v. Jackson, 265 S.C. 278, 284, 217 S.E.2d 794, 797 (1975).

appropriate context, Defendant's Exihibt 4 would be directly contradictory to the events surrounding Hall's death. As noted below, this impact was prejudicial.

B. Argument.

"When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." Rule 106, SCRE. Moreover, "[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." California v. Trombetta, 467 U.S. 479, 488 (1984) (emphasis added). When that evidence has "an exculpatory value that was apparent before the evidence was destroyed" and was "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means" then the accused has been deprived of due process and dismissal is the appropriate remedy. Id. at 489. Here, the context surrounding the State's selected retention was either a discussion about Hall's death, as the State asserted, or was about a different murder that Appellant was discussing due to the similarities with both being wrongly accused. That context would have been apparent to the State as they selected which portion of the call to preserve as they deleted the balance. Thus, its context as either exculpatory or inculpatory would have been readily apparent and under the control of the State when it was deleted.

The present case presents a distinctly different factual scenario than when, through no fault of either party, a portion of a longer recording (or document or other piece of evidence covered by Rule 103, SCRE) is admitted despite the lack of the entire recording being available. The scenario has been addressed by this Court in State v. Oglesby, 384 S.C. 289, 681 S.E.2d 620

(Ct. App. 2009). There, this Court noted that exclusion of portions of recorded events when the entire recording was unavailable would be contrary to the purpose behind Rule 103, SCRE. "According to Oglesby's reasoning, any time a portion of a recording is inaudible due to any interference, the entire recording should be excluded despite the quality of the remaining portion of the recording. We do not believe this was the purpose of Rule 106, SCRE." Oglesby, 384 S.C. at 294, 681 S.E.2d at 623.

While Appellant has found no case directly on point in South Carolina, this Court may look to federal authority in determining the appropriate scope of Rule 103, SCRE, when the State has made the context surrounding the disputed portion unavailable. *See* State v. Taylor, 333 S.C. 159, 170, 508 S.E.2d 870, 875 (1998) (noting "Rule 106, Fed. R. Evid., is based on the "'rule of completeness' and seeks to avoid the unfairness inherent in 'the misleading impression created by taking matters out of context'."). Guidance here may be found in United States v. Yevakpor, 419 F. Supp. 2d 242 (N.D.N.Y. 2006). The District Court in Yevakpor was faced with the question of whether or not the government could use portions of recordings after deletion of the full video. In finding Rule 106, Fed. R. Evid., would prohibit such protentional abuse, the District Court found:

> Simply put, the Government cannot make use of video segments that have been "cherry-picked" when the remainder of the recording has been erased or recorded-over subsequent to defendant's arrest.

Id., 419 F. Supp. 2d at 252; *see also* Taylor v. Hartley, 488 F. Supp. 3d 517, 527 (S.D. Tex. 2020) ("Indeed, federal courts have recognized in other contexts that parties cannot "make use of video segments that have been 'cherry-picked'" where the remainder is unavailable for the court's review.").

This combination of the rule of completeness under Rule 103, SCRE, and the concepts behind spoliation are at play here.

> Different results follow when the proponent of the evidence deliberately destroys those parts of a writing or recorded statement that might give it a different meaning. In such cases, Rule 106 operates in conjunction with the common law doctrine of 'spoliation' to provide a range of remedies from exclusion of the truncated evidence to a finding contrary to the facts purportedly proved by the truncated evidence.

§ 5086 Trial Procedures: *When, How, and By Whom is Completion Made*, 21 Fed. Prac. & Proc. Evid. § 5086 (2d ed.).

Since the recorded jail call was under the control of the State in its full context, and the State deleted that full context in favor of its "cherry picked" portion, the appropriate remedy for the trial court was to exclude all use of the tainted portion of Defendant's Exhibit 4. Nor did Appellant waive this argument by introducing the tainted portion of the call in an attempt to lessen its impact before the jury. When faced with the prospect that the tainted portion of the recorded call was going to be admissible as impeachment evidence, appellant's counsel attempted to take the sting out of the ruling by addressing the call directly. This does not implicate a waiver. "Brewton's attempt to lessen the impact of the two prior convictions by requesting they be referred to as crimes of dishonesty was not a waiver of his objection." State v. Brewton, 442 S.C. 169, 178, 898 S.E.2d 132, 136 (2024).

C. Prejudice

This selected portion of the recorded jail call played an important role in the State's closing argument to the jury.

> One other thing, and you've got this jail phone call back there, a partial of it. He's talking to his new girlfriend, the lady that works at the Super Clock. I would submit to you, reading this, or hearing

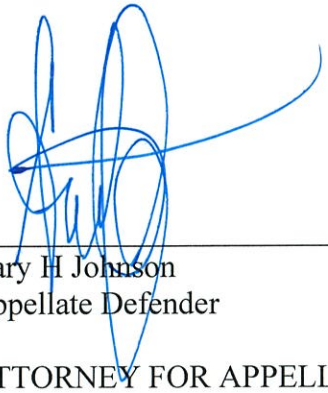
> it, doing anything they can to say, oh, we did our job. We're law enforcement. We did our job, you know. They are doing, we are serving justice, but they're not serving justice because the person who did this is on the loose right now. Maybe they're doing it again. Babe, it's very clear. It's very clear, Babe. The person that did this is a cold-blooded murderer because of the way they shot her. This wasn't some minor that did not know what they're doing. He claims that he was talking to another guy in the pod, from that standpoint. He's convincing his girlfriend that he had nothing to do with this, because obviously she don't want to be involved with somebody that would do something like this, as alleged and everything. He's trying to convince her. He's telling the person that did this is still out on the loose.
>
> I will agree with one thing he said in that. To do this, what he did to Caroline Hall, you are a cold-blooded murderer. To press it right between somebody's eyes and pull that trigger.

Tr. 326, l. 9 – 327, l. 5.

Appellant admitted struggling with Hall over control of a firearm when it discharged. Tr. 287, l. 25 – 288, l. 7. Appellant told the jury how Hall became angry and armed herself and threatened him with the firearm. Tr. 287, ll. 11 – 17. The State's version of events, based upon circumstantial evidence and Appellant's reaction to Hall's death (fleeing the area), was that Appellant fired the fatal shot with malice aforethought. Tr. 320, l. 3 – 322, l. 3. Since the sole issue before the jury turned on whether they believed Appellant's explanation that Hall's death was the result of an accidental discharge, the selected portion of the jail recording discussing a similar shooting as being done intentionally and by a "cold-blooded" murderer was highly prejudicial. If properly excluded, its admission would not have been harmless error.

CONCLUSION

Based upon the foregoing error, Appellant requests that this Court reverse his conviction and remand this matter to the Court of General Sessions for a new trial.



Gary H Johnson
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This 16th day of October, 2026.