STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000726

The State, Respondent,

vs.

Desmond Green, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court properly found the recording of the victim's call to dispatch seeking law enforcement assistance was non-testimonial and a present sense impression. The recording was not hearsay and its admission did not violate the Confrontation Clause.

Appellant contends the trial court erred in admitting the victim's call to dispatch seeking law enforcement assistance to have Appellant removed from her property because he was violating a trespass notice and they were "having problems." He asserts the admission of the calls violated the Confrontation Clause because the victim did not testify at trial. Further, he maintains the calls were inadmissible hearsay. The admission of the calls did not violate the Confrontation Clause because they were non-testimonial in nature. Finally, the calls were a clear present sense impression by the victim, and so met an exception to the hearsay rule under Rule 803, SCRE.

The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000).

Confrontation Clause

"In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. Const. amend. VI. The constitutional 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. State v. Martin, 292 S.C. 437, 439, 357

S.E.2d 21, 22 (1987) (citing California v. Green, 399 U.S. 149 (1970); State v. LaBarge, 275 S.C. 168, 268 S.E.2d 278 (1980)).

The United States Supreme Court (USSC) explained the Confrontation Clause "applies to 'witnesses' against the accused—in other words, those who 'bear testimony.'" Crawford v. Washington, 541 U.S. 36, 51 (2004).The Court then defined testimony as "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact." Id.

Crawford prohibits the admission of testimonial, out-of-court statements unless two conditions are met: the witness is unavailable at trial and the defendant had a prior opportunity to cross-examine the witness. Crawford, 541 U.S. at 68. The USSC further articulated: "Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law." As a result, the Court "exempted [nontestimonial] statements from Confrontation Clause scrutiny altogether." Id. Only testimonial statements "cause the declarant to be a 'witness' within the meaning of the Confrontation Clause." Davis v. Washington, 547 U.S. 813, 821 (2006) (citing Crawford, 541 U.S. at 51). "It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause." Id.

In Davis, 547 U.S. 813 (2006), the USSC announced the "primary purpose" test for determining whether an out-of-court statement is testimonial in nature. The Court explained statements are testimonial where their primary purpose "is to establish or prove past events potentially relevant to later criminal prosecution." Id., at 822. This is an objective consideration and not based on the subjective intents involved. Id. at 826. In

Michigan v. Bryant, 562 U.S. 344 (2011), the USSC further expounded on the primary purpose test, indicating the Court must consider "all of the relevant circumstances." Id. at 369. The Court found where an out-of-court statement's primary purpose is "to create a record for trial" or "creating an out-of-court substitute for trial testimony" then the statement is testimonial and falls within the requirements of Crawford and the Confrontation Clause.

In Ohio v. Clark, ___ U.S. ___, 135 S. Ct. 2173 (2015), the USSC explained: "Our Confrontation Clause decisions . . . do not determine whether a statement is testimonial by examining whether a jury would view the statement as the equivalent of in-court testimony." Id. at 2183. The Court stated: "We have never suggested . . . that the Confrontation Clause bars the introduction of all out-of-court statements that support the prosecution's case. Instead, we ask whether a statement was given with the 'primary purpose of creating an out-of-court substitute for trial testimony.'" Id. (citing Bryant, 562 U.S. at 358).

The USSC's opinion in Davis is clearly instructive in this case. In Davis, an individual called 911 to report an ongoing situation. The Court found the difference between the facts of Crawford, where the statements were found to be testimonial, and Davis, where the 911 call was found to be non-testimonial, were "apparent on the face of things." Davis, 547 U.S. at 827. The Court noted some of the significant differences, adding specific emphasis to the fact in Davis the call "was speaking about events *as they were actually happening*, rather than 'describ[ing] past events.'" Id. (Emphasis in original) (citations omitted). The Court explained the call was one for help, and not to provide "provide a narrative report of a crime." Id. The Court articulated:

> [T]he nature of what was asked and answered in Davis, again viewed objectively, was such that the elicited statements were necessary to be able to resolve the present emergency, rather than simply to learn (as in Crawford) what had happened in the past. That is true even of the operator's effort to establish the identity of the assailant, so that the dispatched officers might know whether they would be encountering a violent felon.

Id. The USSC succinctly summarized Davis' call: "**She was seeking aid, not telling a story about the past.**" Id. at 831 (emphasis added).

At the same time as Davis, the USSC considered the companion case of Hammon v. Indiana. The Court found the statements, made after all events had ended, were testimonial in nature. The USSC explained the questioning was "seeking to determine (as in Davis) 'what is happening,' but rather 'what happened.' Objectively viewed, the primary, if not indeed the sole, purpose of the interrogation was to investigate a possible crime." Davis, 547 U.S. at 830. The Court noted the victim's "statements deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed. And both took place some time after the events described were over." Id. The USSC concluded: "Such statements under official interrogation are an obvious substitute for live testimony, because they do precisely *what a witness does* on direct examination; they are inherently testimonial." Id. (Emphasis in original).

Appellant seems to make significance out of the fact the victim is not yelling and screaming in a life threatening emergency during her phone call, and argues because it is not such a situation her statements become testimonial. The question to determine whether a statement is testimonial or non-testimonial is not the nature of the emergency the person faced at the time, but the purpose of the statement. If the statement is to describe a past event, give details of a crime, and serve in lieu of live testimony, the

statement is testimonial. If the purpose is to seek assistance and to provide direction to emergency responders regarding a presently occurring event, the statement is clearly non-testimonial. As the Fifth Circuit has observed: "Accordingly, the fact that the 911 calls were 'neither a cry for help nor the provision of information enabling officers immediately to end a threatening situation,' does not necessarily render the declarant's statements testimonial." United States v. Polidore, 690 F.3d 705, 716 (5th Cir. 2012).

The victim's statement in the instant case indubitably described a presently occurring event. Further, it is clear she is upset and in need of assistance based on the tone of her voice, particularly after the call back by the dispatcher. Her statement sought law enforcement assistance in removing an individual from her property and explained to the dispatcher that they were "having problems." (State's Exhibit 1) The victim in the recorded call never indicated she was describing a past situation as opposed to a present, ongoing situation in which she clearly believed she needed law enforcement assistance.[1] Her recorded statements were not those of a witness testifying on direct examination, but instead were the statements of someone under the present stress of a situation seeking law enforcement aid.

The questions by the dispatcher and answers on the recorded phone call were necessary to determine the nature and extent of the ongoing situation. The questions included whether the individual needing to be removed from the premises was still present, what was happening during the ongoing situation, and identifying the individual the police would encounter upon their arrival. All of this information, as in the questions described in Davis, was designed to determine the situation and not to prove facts for use

[1] She specifically asks during the call back to have an officer come to her house and escort Appellant from the premises because they were "having problems." (State's Exhibit 1).

at trial. The dispatcher needed to determine the nature of the situation, the parties involved, and whether it was still ongoing. She also needed to determine whether things escalated after the first hang-up occurred and then identified the individual so the responding officers would know who they were confronting. All of this information is necessary to investigate and address the ongoing situation and not for purposes of establishing a record for trial. Further, it is clear the "investigation" was not a formal questioning as present in Crawford, but more informal in the nature of the exchange found non-testimonial in Davis. See e.g., Bryant, 562 U.S. at 366 (USSC found both an ongoing emergency and the informality of the exchange to be important factors in determining the primary purpose of a statement). As a result, the recorded call was non-testimonial in nature and did not attempt to provide the testimony of a witness. Accordingly, the recorded call was properly admitted by the trial court.

Hearsay

Appellant contends the recorded calls, even if non-testimonial, were inadmissible hearsay. The calls fall under the present sense impression exception found in Rule 803(1), SCRE, and were therefore admissible.

Pursuant to Rule 801 of the South Carolina Rules of Evidence, hearsay is defined as "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, SCRE. Hearsay testimony is not admissible except as provided by the Rules of Evidence or statute. Rule 802, SCRE. One such exception is for a present sense impression under Rule 803(1), SCRE. A present sense impression is defined as "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or

condition, or immediately thereafter." Rule 803(1). This Court has enunciated three elements for a determination of whether a statement qualifies 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. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014). Emergency calls occurring at the time of an event or emergency situation have generally been held to be present sense impressions or excited utterances. See e.g., Navarrete v. California, —— U.S. ——, 134 S.Ct. 1683, 1689 (2014); State v. Robinson, 359 P.3d 874 (Wash. Ct. App. 2015); State v. Green, 174 So. 3d 714, 719 (La. App. Ct. 2015); Browning v. Hickman, 776 S.E.2d 142, 150 (W.Va. 2015); Owens v. State, 765 S.E.2d 653, 656 (Ga. Ct. App. 2014).

All three elements are present in the dispatch calls made by the victim in this case. The victim indicates she needs to have someone removed from her house and that the person is still there. Later on, she requests law enforcement assistance to her house. The victim indicates she and her "baby daddy" are "having problems" indicating the event is still ongoing. Additionally, she says "ain't even supposed to be here" also suggesting he was presently at the house. She finally asks for officers to come out to her house to escort Appellant away. (State's Exhibit 1)

The calls describe or explain an event, the victim and Appellant "having problems" and her current need to have him removed from her property. The calls are made contemporaneous with the event because she indicates they are ongoing and she is in current need of law enforcement assistance to have him removed. Finally, it is clear the victim calling dispatch perceives the event as she explains in the phone call that she is

one of the parties to the "problems" occurring. As a result, the calls qualify as a present sense impression, and the trial court properly found they fell into the exception to the hearsay rule. Accordingly, the recorded dispatch calls were properly admitted into evidence to be considered by the jury.

II. The trial court properly found the recording from the officer's body microphone was not hearsay. Further, any argument regarding relevance is not preserved for review on appeal.

Appellant maintains the trial court erred in allowing a portion of the recording from an officer's in car camera and body microphone to be admitted into evidence. Appellant contends the statements made in the recording are inadmissible hearsay and also are not relevant. He never questioned the relevance of the recordings at trial so the issue is not preserved for review on appeal. The recordings are part of an excited utterance emanating from the aftermath of Appellant's battery of the victim, and therefore, were admissible under an exception to hearsay.

Preservation

First, any issue raised regarding the relevance of the recordings is not preserved for review on appeal. Appellant specifically objected on the basis of hearsay as well as the confrontation clause. (T.95-96; R. 73-74). He never raised relevance, or Rules 401-402, SCRE, as a basis for his objection to the introduction of the recordings. As a result the issue is not preserved for review on appeal. See State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005) (finding to preserve an issue for review there must be a contemporaneous objection that is ruled on by the lower court); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

Merits

On the merits, the recordings were properly admitted. The recordings were an excited utterance emanating from the battery of the victim by Appellant. The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed

on appeal absent an abuse of that discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001); see also, State v. Washington, 379 S.C. 120, 123–24, 665 S.E.2d 602, 604 (2008) (stating the admission of an excited utterance "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. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000).

The South Carolina Supreme Court explained, "the intrinsic reliability of an excited utterance derives from the statement's spontaneity[,] which is determined by the totality of the circumstances surrounding the statement when it was uttered." State v. Ladner, 373 S.C. 103, 119–20, 644 S.E.2d 684, 693 (2007); see also State v. Sims, 348 S.C. 16, 20, 558 S.E.2d 518, 521 (2002) (explaining "[t]he rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication").

In Washington, the Supreme Court announced three factors to consider in determining whether a statement is an excited utterance:

> Three elements must be met in order for a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.

Washington, 379 S.C. at 124, 665 S.E.2d at 604.

In the present case, the statements made by the victim on the recording all relate to the domestic violence battery by Appellant. She was indicating whether he was still present, where he had gone, and the impact on the children. She was clearly in a state of distress and still under the stress of excitement related directly to the abuse by Appellant.

On the video, she is clearly upset and worried about the condition of her kids. (State's Exhibit 2). While the recording did not have significant details about the violent domestic battery by Appellant, it still was an excited utterance by the victim regarding the aftermath. The trial court properly admitted the recordings under the excited utterance exception to hearsay.

Further, the evidence was relevant to the State's case. Pursuant to Rule 401, SCRE: "'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 probable or less probable than it would be without the evidence." Additionally, under Rule 402, SCRE: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible."

The recordings in this case demonstrated the aftermath of Appellant's domestic abuse of the victim. It showed her condition—being upset and concerned about the impact on her children. It helped tell the story of what happened and presented the picture for the jury to consider. See e.g., Old Chief v. United States, 519 U.S. 172, 188 (1997) ("Thus, the prosecution may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant's legal fault.").

Further, the evidence established evidence of flight from the scene by Appellant. The flight could be used by the jury to infer Appellant's guilt. See e.g., State v. Pagan,

369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) ("Flight evidence is relevant when there is a nexus between the flight and the offense charged."); State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) ("[F]light ... is at least some evidence of guilt."); State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) (recognizing that flight has long been considered some evidence of guilt and referencing Solomon's proverbial wisdom that the "wicked flee when no man pursueth."). Even if the State failed to raise the inference in its closing argument, which certainly benefited Appellant, it does not change the relevance of the evidence admitted at trial.[2] The flight, along with other evidence, certainly indicated Appellant committed the domestic violence against the victim and her bleeding head wound was not the result of an accident or other innocent means. As a result, the trial court properly would have admitted the recordings even if Appellant challenged its relevancy at trial.

[2] Appellant attempts to argue an adverse inference from flight would not have been proper at trial because there was no evidence indicating Appellant knew he was being sought by authorities. The proposition is ludicrous in light of the fact the victim was on the phone with dispatch seeking law enforcement assistance to remove Appellant from her home while in the midst of difficulties with Appellant - immediately before he committed the domestic abuse.

III. The trial court properly found the State presented sufficient evidence to corroborate Appellant's statements during the recorded jail calls. Further, the State presented ample evidence warranting the court's decision to send the case to the jury.

Appellant contends the trial court erred in denying his motion for a directed verdict and in finding the State presented sufficient evidence of the *corpus delicti* of criminal domestic violence necessary to corroborate Appellant's statements on the jail calls. The State presented sufficient evidence of the *corpus delicti* of the crime through the photographs of the victim's head, the dispatch calls, and the testimony of the officer. Further, the State presented ample evidence necessary to warrant sending the case to the jury.

In the instant case, the victim, Shavon Michelle Robinson, is located by police after she called dispatch to have law enforcement assistance. When they arrive, she is found crying and with a laceration to her head. (T.92-93; R. 70-71). After he is arrested, Appellant made jail phone calls which were recorded. In his first call to the victim, Appellant tells the victim: "You got to make up something, man, and let them know I did not hit you in your head with a fucking chair." (State's Exhibit 3[3]). On the same recording, he then states: "You got to tell them you hit your head on something." (State's Exhibit 3). In one of the other jail calls, in which Appellant is talking to an unknown female, he can be heard saying: "Remember when I said I hit her in the head with that chair?" (State's Exhibit 3[4]).

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[3] The statement can be heard at approximately eight minutes and 5 seconds on the first recording on the CD, which has a title of 50416040_00237_11-12-2014_015936_1-843-226-4554_1105.spx.

[4] The statement can be heard on the eighth recording on the CD, which has a title of 50417410_00237_11-12-2014_172122_1-843-271-7085_1106.spx.

"On appeal from the denial of a directed verdict, [the Appellate] Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As the South Carolina Supreme Court recently reiterated: "[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)). "Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Id. "Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id.

The South Carolina Supreme Court originally explained its corroboration rule as requiring "**some evidence** of the *corpus delicti*." See State v. Brown, 103 S.C. 437, 442, 88 S.E. 21, 23 (1916) (emphasis added). The language in Brown clearly evidences a standard of "some evidence" as opposed to a standard requiring full proof of the *corpus delicti*. Many years later, the South Carolina Supreme Court clarified the corroboration rule as it is applied in this state by referencing the broader trustworthiness rule as articulated by the United States Supreme Court in Opper v. United States, 348 U.S. 84 (1954). See State v. Osborne, 335 S.C. 172, 179-80, 516 S.E.2d 201, 204-05 (1999).

The rule articulated by the United States Supreme Court does not require facts independent of the statement to prove the corpus delicti of the crime, but instead, requires corroborative evidence which establishes the trustworthiness of the statement:

> **[T]he corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti.** It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the **trustworthiness** of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.

Opper, 384 U.S. at 93 (emphasis added). The South Carolina Supreme Court, in adopting this rule, announced: "We clarify the law in this State that, consistently with Opper and its progeny, the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, **together with such statements**, permits a reasonable belief that the crime occurred." State v. Osborne, 335 S.C. 172, 179-80, 516 S.E.2d 201, 204-05 (1999) (emphasis added).[5] The Court explicitly did not require separately standing proof of the *corpus delicti* in order to consider the statements of the defendant.

Additionally, other courts have clearly construed the Osborne case as approving the trustworthiness rule and not requiring strict proof of the *corpus delicti* of the crime in

[5] The State acknowledges several cases, including unpublished cases, from the Court of Appeals appear to apply a stricter *corpus delicti* standard even after the holding in Osborne. See e.g., Hill v. State, ___ S.C. ___, 782 S.E.2d 414 (Ct. App. 2016). Additionally, the South Carolina Supreme Court considered the stricter standard in State v. Saltz, 346 S.C. 114, 138, 551 S.E.2d 240, 253 (2001). The Courts affirmed the defendant's convictions, finding the statements sufficiently corroborated to be considered as evidence for directed verdict, so a discussion of the different standards was not necessary.

order for confessions to be corroborated. See Miller v. State, 457 S.W.3d 919, 925 (Tex. Crim. App. 2015) (finding South Carolina among "[a] number of state courts have also adopted the trustworthiness standard explicated by the United States Supreme Court."); State v. Dern, 362 P.3d 566, 580 (Kan. 2015) (finding South Carolina among the states which "have abandoned or modified the [*corpus delicti*] rule"); State v. Plastow, 873 N.W.2d 222, 228 (S.D. 2015) (citing Osborne in stating: "many courts and scholars now agree: the *corpus delicti* rule may have outlived its usefulness"); State v. Bishop, 431 S.W.3d 22, 52 (Tenn. 2014), cert. denied, 135 S. Ct. 120 (2014) (citing Osborne and finding: "At least twelve states and the District of Columbia have followed the lead of the federal courts by adopting the 'trustworthiness' standard.").

The facts and the Court's holding in Osborne are significant because if Appellant's argument regarding the quantum of proof is accepted, the South Carolina Supreme Court could not have reinstated Osborne's conviction.[6] Osborne was convicted of DUI. The evidence, independent of Osborne's statement, showed: 1) he was involved in an accident; 2) he had the keys in his pocket; 3) he retracted a statement about the vehicle being stolen; 4) he was intoxicated when located over two and a half hours after the vehicle was found; and 5) he registered a .14 on his breath test three hours after the accident site was located. Id. at 174-175; 516 S.E.2d at 202. Part of the *corpus delicti* of DUI would require proof Osborne drove while intoxicated. Nothing in the facts presented, absent Osborne's statement that he had not had a drink since the accident, indicate he was intoxicated while driving. See id. at 181, 516 S.E.2d at 205 (Finney, C.J,

[6] The circuit court and Court of Appeals found the State failed to provide sufficient evidence, independent of Osborne's statements, to prove the *corpus delicti* and satisfy their view of the corroboration rule. As a result, Osborne's conviction was reversed by the lower appellate courts based on an argument similar to the one being made by Appellant in this case. See State v. Osborne, 321 S.C. 196, 467 S.E.2d 454 (Ct. App. 1996).

dissenting). Instead, the Supreme Court found: "Applying [its enunciated corroboration rule] to the facts at hand, we find the State **provided sufficient independent evidence to support the trustworthiness** of Respondent's statements to police." Id. at 180, 516 S.E.2d at 205 (emphasis added). The Court ultimately concluded: "We further find this independent evidence, **taken together with the statements**, allowed a reasonable inference that the crime of driving under the influence was committed." Id. (Emphasis added). The Court clearly found the corroboration rule satisfied by evidence which did not independently prove the *corpus delicti* of DUI. Instead, the Court required evidence establishing the defendant's statements were trustworthy and those statements combined with the independent evidence could satisfy the *corpus delicti*.

This Court reached a similar result in State v. Dodd, 354 S.C. 13, 579 S.E.2d 331 (Ct. App. 2003). In Dodd, the defendant was charged with armed robbery. Dodd confessed to having a gun at the time of the robbery. No other evidence directly established his possession of the weapon at the time of the robbery. This Court found: "Once Dodd confessed to having a gun during the commission of his robbery, the State only needed to present sufficient independent evidence to corroborate those statements so that a jury could reasonably believe an armed robbery occurred." Id. at 17, 579 S.E.2d at 333-34. The Court specifically held:

> Here, Dodd's confession to having a gun was corroborated by his threat to the clerk that he would kill her if she did not do as he told her. Although his threat, unaccompanied by any representation of a deadly weapon, would not *independently* be sufficient to establish the element of a deadly weapon, the threat *is* sufficient to corroborate Dodd's confession to being armed.

Id. at 18, 579 S.E.2d at 334 (emphasis in original). This Court found the confession by Dodd to be properly corroborated even though the evidence, independent of the statement, did not prove the *corpus delicti*. Consistent with Opper and Osborne, this Court did not require strict proof of the *corpus delicti*, but only required sufficient evidence to establish the reliability and trustworthiness of Dodd's statements.

In the instant case, the evidence presented to the jury, independent of Appellant's jail cell statements, sufficiently corroborates his statements to establish their trustworthiness. First, the dispatch phone calls establish a difficulty existed between the victim and Appellant requiring law enforcement assistance. (State's Exhibit 1). Next, when law enforcement arrived at the location from which dispatch was called, the victim was located crying and with a laceration to her head. (T.92-93; 96-97; State's Exhibit 2; R. 70-7; 74-75). Pictures were taken which documented the laceration as well as blood on the victim and her clothing. (State's Exhibits 5 and 6). This evidence establishes the trustworthiness of Appellant's confessions that he hit the victim in the head with a chair on the night of the incident.

The evidence presented by the State, coupled with the statements by Appellant on the jail calls, establishes the *corpus delicti* of the crime of criminal domestic violence. To establish the *corpus delicti* of criminal domestic violence, the State had to prove an injury occurred and the injury was not the result of an accident but was caused by a criminal act. Both were proven when the statements and corroborating evidence are considered together. Further, the State presented sufficient evidence of the remaining elements of criminal domestic violence by demonstrating the identity of the perpetrator as Appellant and by establishing his relationship to the victim through her use of the term "baby

daddy" in the dispatch phone call. The evidence presented is sufficient to allow a reasonable juror to find Appellant guilty beyond a reasonable doubt.

As a result, the trial court properly refused to direct a verdict of acquittal in this case, and instead correctly sent the question to the jury for consideration. See Bennett, 415 S.C. at 236-37, 781 S.E.2d at 354 ("the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced"); State v. Williams, 321 S.C. 381, 385, 468 S.E.2d 656, 658 (1996) (finding "if there is any evidence tending to establish the *corpus delicti*, then it is the duty of the trial court to pass that question on to the jury").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 13, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000726

The State, Respondent,

vs.

Desmond Green, Appellant.

CERTIFICATE OF COUNSE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Fillings."

ALAN WILSON
Attorney General

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served. This 13th day of May, 2016.

Sally Ellison

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