

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Court of General Sessions

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000624

THE STATE,

Respondent,

v.

JOHN ALEXANDER DARRIEUX,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

RECEIVED
MAY 04 2017
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Court of General Sessions

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000624

THE STATE,

Respondent,

v.

JOHN ALEXANDER DARRIEUX,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT.....10

I. The trial judge properly denied Appellant’s motion for a new trial based on after-discovered evidence where the CD of a phone call placed by Appellant from jail presented at trial was an original within the meaning of Rule 1001(3), SCRE. Even if the CD was found to not be an original, it was nonetheless admissible as a duplicate pursuant to Rule 1003, SCRE. Finally, any alleged error is harmless where Appellant suffered no prejudice from the playing of the particular CD presented at trial.....10

II. The trial judge properly admitted a recording of a phone call placed by Appellant while in prison where the recording was properly authenticated by the corrections officer in charge of the prison’s recording system13

CONCLUSION.....17

TABLE OF AUTHORITIES

Cases:

<u>Deep Keel, LLC v. Atlantic Private Equity Group, LLC</u> , 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).....	14
<u>State v. Aragon</u> , 354 S.C. 334, 579 S.E.2d 626 (Ct. App. 2003).....	14
<u>State v. Bixby</u> , 388 S.C. 528, 698 S.E.2d 572 (2010).....	13
<u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002).....	13
<u>State v. Groome</u> , 274 S.C. 189, 262 S.E.2d 31 (1980)	13
<u>State v. Halcomb</u> , 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009)	11
<u>State v. McDonald</u> , 343 S.C. 319, 540 S.E.2d 464 (2000)	13
<u>State v. Mitchell</u> , 399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012).....	11
<u>State v. Reeves</u> , 301 S.C. 191, 391 S.E.2d 241 (1990).....	15
<u>State v. Rich</u> , 293 S.C. 172, 359 S.E.2d 281 (1987).....	14
<u>State v. Tapp</u> , 398 S.C. 376, 728 S.E.2d 468 (2012).....	15
<u>United States v. Harris</u> , 338 Fed App’x 892 (11th Cir. 2009).....	14, 15
<u>Winburn v. Minnesota Mut. Life Ins. Co.</u> , 261 S.C. 568, 201 S.E.2d 372 (1973)	14

Rules:

Rule 1001(3), SCRE	i, 1, 10, 11
Rule 1002, SCRE.....	10, 11
Rule 1003, SCRE.....	i, 1, 10, 11
Rule 1004, SCRE.....	10
Rule 901(a), SCRE.....	14
Rule 901(b)(1)-(10), SCRE.....	14

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's motion for a new trial based on after-discovered evidence where the CD of a phone call placed by Appellant from jail presented at trial was an original within the meaning of Rule 1001(3), SCRE. Even if the CD was found to not be an original, it was nonetheless admissible as a duplicate pursuant to Rule 1003, SCRE. Finally, any alleged error is harmless where Appellant suffered no prejudice from the playing of the particular CD presented at trial.

II.

The trial judge properly admitted a recording of a phone call placed by Appellant while in prison where the recording was properly authenticated by the corrections officer in charge of the prison's recording system.

STATEMENT OF THE CASE

Appellant was indicted during the June 2015 term of the Grand Jury for Berkeley County for burglary in the third degree (2015-GS-08-1024), burglary in the first degree (2015-GS-08-1026), three counts of armed robbery (2015-GS-08-1027, 2015-GS-08-1028, 2015-GS-08-1029) three counts of kidnapping (2015-GS-08-1030, 2015-GS-08-1031, 2015-GS-08-1032), and possession of a weapon during the commission of a violent crime (2015-GS-08-1034). Appellant proceeded to a jury trial from January 26-29 in Moncks Corner, South Carolina. At the conclusion of trial, Appellant was found guilty of burglary in the first degree, three counts of armed robbery, three counts of kidnapping, and possession of a weapon during the commission of a violent crime. He was sentenced by the Honorable Benjamin H. Culbertson to imprisonment for a term of thirty years for burglary in the first degree, imprisonment for a term of thirty years for each count of armed robbery, imprisonment for a term of thirty years for each count of kidnapping, and imprisonment for a term of five years for possession of a weapon during the commission of a violent crime, with all sentences running concurrently. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Initial Robbery of the Home of Charles Roberts

On October 21, 2014, Charles Roberts went to sleep around 2 A.M. at the home he shared with his friend, Stephen Jones, and his girlfriend, Rose Simpson. R. pp. 108-09. At around 4:00 A.M., Roberts awoke to a man pointing a gun at him. R. p. 109. Roberts testified that while there were four people that broke into his home that evening, he only physically saw two of them. R. p. 118. Roberts stated the intruders kicked in the door to the home and knocked the door frame loose. R. pp. 109-10. Roberts was forced to stay inside his bedroom while the intruders were in the home. R. p. 119. While in his bedroom, Roberts observed the intruders carry out every item in his bedroom that they deemed to be of value, including tools, electronics, his wallet, cash, medicine, and a number of chess sets which were part of a collection Roberts acquired over the years. R. pp. 120-21. Roberts noticed one of the intruders was not wearing a mask, and that another intruder was a female with long black hair and a distinct accent. R. p. 118. Roberts noted that while he was being held in his bedroom, he did not know where Simpson and Davis were; however, they were later escorted into Roberts's bathroom. R. p. 125. Roberts testified the intruders were in the home for an hour or more. R. p. 125. When the four intruders finally left his home, Roberts ran to a neighbor's house to call 911 because he, Davis, and Simpson all had their cell phones stolen. R. p. 126. Roberts also noted he owned another home on Cindy Drive that was unoccupied at the time. R. pp. 126-27.

Rose Simpson testified she was asleep on the couch in the home's living room when she heard "a big bam." R. p. 54. Simpson stated three people came through the door and asked her, "where's the old man?" R. p. 55. Simpson explained that she believed they were referring to Roberts, because he was a lot older than anyone else in the house. R. p. 55. When the intruders entered the home, Simpson noticed all three were armed with handguns. R. pp. 55-56. Simpson

also noticed the robbers were wearing what appeared to be Halloween masks. R. p. 55. Simpson remained on the couch for around an hour. R. p. 57. Jones was removed from his bedroom by the intruders and placed on a loveseat in the living room. R. p. 57. One of the intruders told Simpson that if she moved, he would kill her. R. p. 57. Simpson testified she and Jones were later forced into a bedroom and ordered to stand against a vanity. R. p. 58. While in the bedroom, one of the intruders stood by the bedroom closet and pointed a gun at Simpson and Jones. R. p. 58. In the courtroom, Simpson identified Appellant as the individual who pointed the gun at them. R. p. 58. Simpson stated Appellant was not wearing a mask, as he had taken his off because it was too hot inside the home. R. p. 58. Simpson testified she was one-hundred percent sure Appellant was the unmasked intruder she observed in the home. R. p. 59. Simpson testified that while Appellant had his mask off, he told her “don’t look at me, put your head down.” R. p. 59. Simpson recalled the only thing that was personally taken from her during the robbery was her purse. R. p. 59. Simpson testified the female intruder taunted her, stating, “I got your purse, bitch.” R. pp. 60-61. Simpson estimated the intruders were in the home for an hour or more. R. p. 63. Simpson described Appellant as “very trigger-happy, went around pointing to make sure that Stephen and I knew he was the boss over the gun.” R. p. 64. Simpson stated Appellant took “just about anything he could get his hands on” from the house. R. p. 64. After loading their SUV with the goods stolen from the home, the intruders left the house. R. p. 65.

Stephen Jones recalled being awoken by a loud bang and a bunch of yelling during the early morning hours of October 21, 2014. R. p. 85. While hurriedly getting dressed, Jones turned and found two people behind him and a gun pointed at his head. R. p. 86. Jones stated the intruders were wearing masks and they ordered him to go into the living room. R. p. 86. Once in the living room, Jones was forced to sit down on a loveseat while the intruders ransacked the

house. R. p. 87. Jones testified one of the intruders was not wearing a mask. R. p. 89. Jones stated he got a “pretty good” look at that intruders face because there were several times during the robbery where he got in Jones’s face. R. p. 89. Jones then identified Appellant in the courtroom as the individual without a mask that robbed him on October 21, 2014. R. p. 89. Jones testified Appellant and the other intruders stole a TV from his bedroom, his wallet, and a number of other personal belongings including several car radios that were in his bedroom. R. p. 97. Jones lamented that the thieves were so thorough that they even stole his pillowcases. R. p. 97. Jones recalled that he was held in the living room for over an hour. R. p. 98. Jones testified that as the robbers left, they took him into the bathroom in Roberts’s bedroom and told him that if they were to call the cops, they would come back and kill them. R. p. 98.

Subsequent Burglary of Property Owned by Charles Roberts and Later Arrest of Culprits

In October of 2014, Courtney Pringle lived with her sister on Cindy Drive. R. pp. 196-97. On October 21, 2014, Pringle observed Natalia Chisolm, a woman she used to work with, drive up to a nearby residence in a Dodge Durango. R. p. 197. Pringle testified she saw “Natalia and a couple of men breaking in a home.” R. p. 197. Pringle observed the intruders carry a mattress and other items out of the home. R. p. 197. Pringle subsequently called the police. R. p. 199.

Sergeant Cassandra Drew of the Berkeley County Sheriff’s Office received a call from dispatch telling her to be on the lookout for a Dodge Durango with mattresses on top of the vehicle. R. p. 206. Sergeant Drew subsequently spotted two people loading a large TV into a Durango. R. p. 207. Sergeant Drew testified there were three males and one female in or around the Durango. R. p. 207. Sergeant Drew spoke with the occupants, who advised her that a friend told them they could have the TV. R. p. 207. Corporal Cody Graff of the Berkeley County Sheriff’s Office responded to the scene of the stop. R. pp. 209-10. Corporal Graff stated

Appellant was one of the four suspects that were stopped. R. p. 213. When he approached the vehicle, Corporal Graff noticed an open can of Bud Light Raz-Ber-Rita on the console. R. p. 211. Corporal Graff then searched the vehicle and found “a lot of things” including televisions, car radios, and tool boxes. R. p. 213. Corporal Graff recovered a firearm in the vehicle that was concealed inside of a black glove. R. p. 216. Corporal Graff subsequently placed all four individuals under arrest. R. pp. 217-18.

Detective Shane Cook of the Berkeley County Sheriff’s Office executed a search warrant at the home of Natalia Chisolm on October 21, 2014. R. p. 239. Inside the residence, officers recovered a tremendous amount of property including Roberts’s driver’s license, prescription bottles bearing the name “Charles Roberts,” Roberts’s social security card, miscellaneous tools, bank cards, jewelry, cell phones, numerous chess sets, and keys. R. pp. 240-41. Detectives also recovered masks from the master bedroom closet. R. p. 243. Detectives also recovered a BB gun, a Ruger SR-9C handgun, and a Lorcin 25 caliber pistol. R. pp. 243-44.

Tristen Brower’s Testimony

Tristen Brower is the adoptive nephew of Natalia Chisolm. R. p. 152. On the weekend of the robbery, Brower was staying at Natalia’s house. R. p. 152. Brower testified that Appellant and Joseph Arsenault were also staying with Chisholm that weekend. R. p. 153. Brower noted that Appellant went by the nickname “Chopper.” R. p. 154. On October 21, 2014, Brower got into a Dodge Durango with Chisholm, Appellant, and Arsenault. R. pp. 154-55. Brower testified he did not know where they were going until “the last moment.” R. p. 156. Brower stated it was his understanding that Arsenault knew the residents of the home they were traveling to. R. p. 156. Brower testified he did not know a robbery was about to happen until they reached the residence and Chisholm handed him a gun. R. p. 157.

Brower recalled that Appellant knocked down the door in order to allow them to enter the house. R. p. 159. Brower stated that everyone except for Appellant was wearing a mask throughout the robbery. R. p. 158. Brower testified the group members were all armed with semi-automatic handguns. R. p. 164. Once inside the house, Brower observed Appellant, Arsenault, and Chisolm carry electronics, tools, and jewelry out of the house. R. p. 162. Brower testified Natalia was in charge of the group. R. p. 163. Before entering the home, Brower recalled Appellant stating, "if there was kids in the house that fingers would be broken." R. p. 164. Brower described Appellant's demeanor inside Roberts's home as "energetic." R. p. 164.

Brower testified the group was in Roberts's house for "a very long time." R. p. 163. After leaving Roberts's home, Brower, Appellant, Arsenault, and Chisholm went back to Chisolm's apartment. R. p. 168. The stolen goods were subsequently unloaded into Chisolm's apartment. R. p. 168. Later in the day, Brower rode with Appellant, Chisolm and Arsenault to "a house that Natalia said she knew." R. p. 169. Brower observed Appellant walk to the back of the home. R. p. 170. Appellant and Chisolm later carried two mattresses out of the home and place them on top of the Durango. R. p. 170. After leaving the scene., the group was arrested and placed in separate police cars while picking up a TV by the side of the road. Brower testified there was no doubt in his mind that Appellant was the individual who committed the charged crimes.

Appellant's Jail Calls

At trial, the State called Sergeant Katie Shuler, an employee of Berkley County's Hill-Finklea detention center. R. p. 266. One of Sergeant Shuler's responsibilities at the detention center is overseeing the jail phone call system. R. p. 267. Sergeant Shuler explained:

Once an inmate is booked in they have their information in the computer and then they will have an actual PIN number that is connected to their information to their name. So every time they make a phone call they have to punch in that PIN number. Then they have to say their name and if it doesn't recognize it then they

can't make a phone call. It helps with people stealing their PIN numbers, and you know, other people using their phone account when they're not allowed to.

R. p. 267. The State subsequently introduced a phone call made by Appellant into evidence as State's Exhibit 123. R. p. 269. During the phone call, Appellant stated "I fucked up big time" and "I fucked up and I'm sorry." R. p. * (State's Exhibit 123). Appellant also stated "Fortunately no one got hurt real bad with this situation here." R. p. * (State's Exhibit 123).

Immediately after trial, the Solicitor discovered that the CD played at trial was not the initial copy given to him by Shuler, but was a duplicate. R. p. 396. The Solicitor informed Defense Counsel, who promptly made a motion for a new trial based on after-discovered evidence. R. p. 396, R. p. 445-46 (Motion for New Trial (After Discovered Evidence)). The trial judge subsequently held a hearing on Appellant's motion on February 26, 2016. R. pp. 393-419. At the hearing, the Solicitor made it clear that the two CDs were identical and that the only distinction was the labeling on the top of the CD. R. p. 396. For purposes of the hearing, the "original" CD was moved into the record as State's Exhibit 123A. R. p. 403.

At the hearing on Appellant's motion for a new trial, Sergeant Shuler testified regarding how the phone recordings are produced. R. p. 401. Sergeant Shuler stated that once she receives a subpoena, she downloads the files and burns them to a CD. R. p. 401. Sergeant Shuler was then asked whether there was any way to alter the contents of the CD. Sergeant Shuler testified that alterations were not possible, as the system she uses to burn the CD does not allow alterations or deletions. R. pp. 401-02.

Kevin McGowan, an investigator with the Ninth Circuit Solicitor's Office testified during the hearing. R. p. 413. Investigator McGowan testified that as part of his duties, he helps the attorneys in the office with various aspects of trial preparation, including making copies of CDs. R. p. 414. Investigator McGowan testified that in Appellant's case, he made a copy of State's

Exhibit 123A. R. p. 414. Investigator McGowan did not make any changes to the contents of the CD. R. p. 414. Investigator McGowan duplicated the writing on the top of the CD and added a triangle to indicate it was a copy. R. pp. 414-15.

After hearing arguments by the Solicitor and Defense Counsel, the trial judge denied the motion for a new trial. R. p. 419, R. p. 447 (Order Denying Defendant's Motion).

ARGUMENT

I.

The trial judge properly denied Appellant's motion for a new trial based on after-discovered evidence where the CD of a phone call placed by Appellant from jail presented at trial was an original within the meaning of Rule 1001(3), SCRE. Even if the CD was found to not be an original, it was nonetheless admissible as a duplicate pursuant to Rule 1003, SCRE. Finally, any alleged error is harmless where Appellant suffered no prejudice from the playing of the particular CD presented at trial.

Appellant asserts the trial judge erred in denying his motion for a new trial based on after-discovered evidence. Specifically, Appellant contends the motion should have been granted because the State violated Rule 1002, SCRE and Rule 1004, SCRE by presenting a CD of the jail phone call that was not the original when the original was available. Appellant further avers that because the Solicitor argued in his closing that the jail call was "critical evidence," Appellant was prejudiced and any error in the call's admission could not have been harmless. These arguments lack merit. While the State admitted inadvertently playing a different copy of the CD than was intended, the CD presented at trial still qualified as an original within the meaning of Rule 1001(3), SCRE. Further, even if the CD was found to not be an original, it would nonetheless be admissible as a duplicate pursuant to Rule 1003, SCRE. Finally, any alleged error in the playing of the version of the CD copied by Investigator McGowan was harmless, as Appellant suffered no prejudice from the playing of the "copy" burned by Investigator McGowan rather than the "original" CD burned by Shuler. The two CDs are identical in every regard; therefore the playing of what Appellant purports to be the "original" would not have impacted the presentation of evidence at trial.

"To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."

Rule 1002, SCRE (best evidence rule). The question of whether to admit evidence under the best evidence rule is addressed to the trial court's discretion. State v. Halcomb, 382 S.C. 432, 676 S.E.2d 149, 154 (Ct. App. 2009).

Rule 1001(3) defines "original" and states: "An 'original' of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it." In the instant case, Sergeant Shuler testified the CD was incapable of being modified. Investigator McGowan testified he took the CD made by Sergeant Shuler and burned another copy that was exactly the same as the version created by Sergeant Shuler. The fact that the two CDs are identical means the copy created by Investigator McGowan constitutes either "the recording itself" or a recording "intended to have the same effect."

The current case is very similar to State v. Mitchell, 399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012), in which this Court found digital photographs removed from a camera, placed into a computer, and then transferred to a disc for use at trial were the original photographs. A very similar sequence occurred in the instant case with the digital recording. Sergeant Shuler placed the jail phone calls onto a CD and provided them to the Solicitor's Office. Investigator McGowan later made a duplicate of that CD. The testimony by the law enforcement officers indicated nothing was altered when the data was copied from one disc to the other, nor was it even possible to alter the data. While the device holding the original recording may have changed (going from a server at the prison to a CD then to another CD), the data—the recording itself—did not change. As a result, as in Mitchell, the second CD qualifies as an original.

Even if the recording on the disc is considered a copy rather than an original, it was still admissible under Rule 1003, SCRE. Rule 1003 states: "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original

or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” In the instant case, there is no genuine question regarding the authenticity of the original recording. Further, there was no unfairness in admitting the recording on the disc. The effect of the recorded phone calls would be the same on the jury regardless of whether the recording was an original or a duplicate.

Finally, any alleged error in admitting the copy of the CD burned by Investigator McGowan rather than the initial copy is harmless where Appellant suffered no prejudice from the playing of that particular CD rather than the CD that was burned by Sergeant Shuler. The content of the CDs was identical, thus their effect on the jury would be identical. While Appellant contends the Solicitor’s comment during closing where he cited the jail call as “critical evidence” demonstrates the error could not be harmless, this argument fails. The call was indeed “critical evidence,” however this “critical evidence” would have been properly before the jury regardless of which particular copy of the CD was played. The only prejudice suffered from the playing of the jail phone calls was from the legitimate probative force of the evidence. Appellant, therefore, cannot prove any prejudice where the only result of playing the “original” would be that the jury would hear the exact same phone call they heard when the “copy” was played. Appellant’s convictions and sentences should be affirmed.

II.

The trial judge properly admitted a recording of a phone call placed by Appellant while in prison where the recording was properly authenticated by the corrections officer in charge of the prison's recording system.

Appellant asserts the trial judge erred in admitting the jail call because the State did not authenticate that he was the caller. Specifically, Appellant avers the State did not prove the caller was him because it did not call any witnesses to identify his voice. Appellant believes that because Sergeant Shuler admitted that another inmate could hypothetically take the phone after Appellant entered his PIN and identified his voice, her testimony was insufficient to authenticate the phone call. To the contrary, having a witness identify Appellant's voice was not necessary to authenticate the recording for purposes of admitting the call into evidence. Sergeant Shuler testified that in order for Appellant to make a phone call, he would have to enter his unique Personal Identification Number and verify his voice. This testimony laid a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.

The admission or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal, appellate courts give "great deference" to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Moreover, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) "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. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

In general, evidence must be authenticated before it can be admitted. State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003). In order for evidence to be authenticated, the party offering the evidence must establish that the evidence is what it is claimed to be. Id.; See Rule 901(a), SCRE ("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."). That requirement can be satisfied in a wide variety of ways. see Rule 901(b)(1)-(10), SCRE (providing examples of authentication or identification conforming with the requirements of the Rule). The burden to authenticate evidence is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic. Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015). Importantly, direct proof is **not** required in order to authenticate a particular piece of evidence, and, instead, evidence can be authenticated through indirect or circumstantial evidence. Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 576-577, 201 S.E.2d 372, 376 (1973). Once the threshold requirement of authentication has been met, the evidence can then properly be admitted during trial. State v. Rich, 293 S.C. 172, 173, 359 S.E.2d 281, 282 (1987).

In United States v. Harris, 338 Fed App'x 892 (11th Cir. 2009), Harris contended a recording of a phone call was not authenticated properly. Harris argued that without a witness identifying the voice as his, the government could not properly authenticate the recording. Id. at 895. Notably, the records custodian admitted on cross-examination that sometimes inmates stole or exchanged PIN numbers. Id. at 894. The Court found:

Although no witness identified the voice as Harris's, the evidence showed that the recording was associated with Harris's jail identification number, which corresponded with the unique I-PIN number assigned to Harris. Moreover, the speaker identified himself as "Michael," which is Harris's first name. The inmate

speaker in the recording also makes reference to the actual facts at the time of the motorcycle accident that were within the Defendant Harris's knowledge, further corroborating that the Defendant is the speaker. As such, the government met its burden of authentication by providing sufficient evidence to make out a *prima facie* case that the speaker in the recording is Michael Harris.

Id.

In Appellant's case, the calling of a witness to identify Appellant's voice was not necessary to authenticate the evidence because the State was able to otherwise authenticate that the recording was what it was purported to be. Sergeant Shuler's testimony established that Appellant's PIN number was used and that when prompted to verify his voice for the recognition software, the caller stated his name as "John Darrieux." Furthermore, during the phone call, the recipient of the call referred to the caller as "John." While Appellant's assertions that no witnesses actually identified the voice as Appellant's are suitable arguments for cross-examination or closing arguments to the jury, they do not change the fact that the State cleared the relatively low bar of authentication through the presentation of circumstantial evidence. The State therefore properly authenticated Appellant's jail call, as it presented sufficient evidence that the speaker in the recording was Appellant. Thus, the trial judge did not abuse his discretion in admitting the call.

Finally, even if the trial court somehow erred in admitting the jail call, any alleged error in this case was harmless due to overwhelming evidence of Appellant's guilt. Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (citations and internal quotations are omitted). Appellant was directly identified as a perpetrator of the crime by two of the victims who had a clear view of his face. Further, Appellant was

implicated as a participant in the robbery by Tristan Brower, one of his co-defendants. Further, Brower's version of events was corroborated by the finding of a litany of stolen goods in Chisolm's apartment, as well as the car Appellant was traveling in when they were arrested. While it was not inaccurate for the Solicitor to refer to the jail call as "critical evidence," the State presented an overwhelming amount of additional evidence of Appellant's guilt. Any alleged error is therefore harmless. Appellant's convictions and sentences should be affirmed.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 

V. Henry Gunter, Jr.
Bar # 102259

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 4, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000624

THE STATE,RESPONDENT

v.

JOHN ALEXANDER DARRIEUX,APPELLANT.

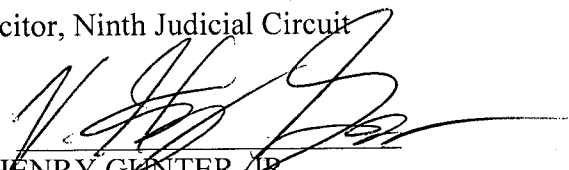
CERTIFICATE OF COUNSEL

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 Filings."

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 
V. HENRY GUNTER, JR.
S.C. Bar No. 102259

RECEIVED
MAY 04 2017
SC Court of Appeals

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 4, 2017