

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Michael Antwon Fuller, Appellant.

Appellate Case No. 2016-000672

Appeal From Aiken County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5609
Submitted September 6, 2018 – Filed January 4, 2019

AFFIRMED

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General William M. Blich, Jr., both of Columbia; and Solicitor James Strom Thurmond, Jr., of Aiken, for Respondent.

SHORT, J.: Michael Antwon Fuller appeals his convictions on charges of kidnapping, unlawful carrying of a pistol, possession of a stolen pistol, and possession of a weapon during the commission of a violent crime, arguing the trial court erred in preventing him from cross-examining his accuser (the victim) about her prior convictions for driving under the influence (DUI). Fuller also appeals the trial court's directive that his name be placed on the South Carolina Sex Offender Registry (the registry) even though the same jury acquitted him on charges of first-

degree criminal sexual conduct (CSC) and first-degree assault and battery. We affirm.¹

FACTS AND PROCEDURAL HISTORY

In December 2013, the victim travelled from Florida to Aiken, where her brother was having surgery. The surgery went well, and the victim and her family went to the bar of the hotel where she was staying to celebrate. The victim admitted she had three alcoholic drinks during the celebration.

Later, the victim went to a convenience store, where she bought cigarettes and a four-pack of mini wine bottles. When she returned to the parking lot of the hotel, she remained in her car to smoke. Fuller approached her car to request a cigarette, and the two began talking. When the victim mentioned she was in town because of her brother's surgery, Fuller asked her to drive him to the hospital so he could visit an uncle who was a patient. Feeling she could trust him, the victim agreed to give Fuller a ride.

As they approached the hospital in the victim's car, Fuller directed the victim to pass both of the two entrances to the campus. The victim continued to drive, but soon realized there was no other entrance. As she turned to Fuller to tell him this, she felt a pistol in her cheek. Fuller then told the victim to "start driving" and hit the back of her head with the pistol. The victim became frantic and offered Fuller both her car and her money if he would let her go. Instead, however, Fuller hit the victim's head again, told her to "shut up and keep driving," and threatened to kill her. The victim started driving again, pushed on the accelerator as hard as she could, opened the door, and flung herself from the moving vehicle. She took off running, but Fuller managed to stop the car and get out. The two struggled, and Fuller demanded the victim perform oral sex on him. Instead of complying, the victim kept "spitting out" and crying. Fuller began unbuttoning the victim's pants, and the victim promised to withdraw money from an ATM to give him if he did not rape her. Fuller, apparently agreeing to the suggestion, dragged the victim back to her car and told her to drive. As they were proceeding, Fuller said he wanted to go to a friend's house first. Instead, the victim put her vehicle into reverse and continually sounded the horn while she drove backwards. Fuller told the victim to stop and drive forward, hit the back of her neck repeatedly, and again threatened to kill her. In an attempt to take control of the steering wheel, Fuller crawled onto the victim's lap. The victim hit the accelerator as hard as she could, causing the car to crash and come to a stop.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

After the crash, the victim noticed Fuller was draped across her body and alive but unconscious. She extricated herself and exited her car through a window. She attempted to walk to the hospital, but resorted to crawling because of her injuries. When her injuries made further movement impossible, she hid in some bushes until she saw a vehicle approach.

The approaching vehicle was operated by Betty Corley, an employee of the Aiken Council on Aging who was responsible for driving patients to appointments and dialysis treatments. Corley was on duty; however, she had no patients in her vehicle when she encountered the victim, so she drove the victim to the hospital. Corley did not see anything indicating the victim was intoxicated; however, she noticed the victim's arm and head were bleeding. The emergency room nurse who attended to the victim also observed lacerations on the back of the victim's head and abrasions on her hands and forearm area.

Master Corporal John Christopher Medlin, a uniform patrol officer with the Aiken Department of Public Safety, received a radio dispatch alerting him to the collision. The dispatch also advised of the possibility that a man with a gun was inside the wrecked vehicle. Master Corporal Medlin responded to the scene and noticed a dark SUV sitting sideways with fluids leaking from it. Using his flashlight to survey the scene, Master Corporal Medlin saw Fuller, who was apparently unconscious. Other officers arrived. Fuller, who apparently regained consciousness when lights were shone into the vehicle, was ordered to show his hands and get out of the car. Fuller exited the car unassisted by climbing from the back seat over the driver's seat, which appeared to have been broken. His pants were below his waistline, and his boxer shorts were visible. After he was placed into a patrol car, officers confiscated his pistol from the victim's vehicle.

During the drive to the police station, Fuller received *Miranda*² warnings even though he was not under arrest. Fuller gave the police several conflicting versions about why he was in the victim's car.

A detective administered *Miranda* warnings a second time when Fuller arrived at the police station. During a second interview, Fuller told the detective he came to the hotel to meet a woman who never showed up, so he struck up a conversation with the victim, who agreed to drive him home. Fuller further claimed he passed out in the victim's car during the drive and claimed the gun found in the car belonged to a friend who "happened to leave it right there with [Fuller] so [he] kept it right there in [his] pocket." Fuller denied he assaulted the victim or pulled the

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

gun on her. He also accused the victim of being "basically drunk herself." At the detective's request, Fuller agreed to provide a DNA sample. When the detective informed Fuller he would be charged with kidnapping, Fuller asked the police to "talk to [the victim] when she's sober."

The victim told emergency room personnel she had been drinking before the accident. Furthermore, although she denied drinking any of the wine she purchased at the convenience store that night, police found only one of the mini bottles at the site of the wreck. A blood sample taken about four hours after the victim was admitted to the hospital showed her blood alcohol level was 0.065. None of the officers who interviewed Fuller or the victim believed either individual was under the influence of alcohol or drugs. However, a sample of the victim's urine taken at the hospital about the same time her blood was drawn tested positive for amphetamine, marijuana, and opiates.

A CT scan of the victim's neck revealed a fracture of her third cervical vertebra on the left side and a burst fracture of her C-6 vertebra with bones from the vertebral body being pushed into the spinal canal and compressing the spinal cord. According to Dr. James Dillon, a neurosurgeon who examined the victim, the C-6 fracture "was more consistent with being in a car collision" and "the C-3 injury [was] consistent with blunt trauma." Dr. Dillon also noted the victim's scalp laceration and abrasions on her left arm and hand. The victim later travelled by ambulance to a trauma center in Augusta, Georgia, where she underwent extensive medical procedures, including two spinal surgeries, and then to a rehabilitation facility in Augusta where she stayed for ten days to work on her memory, speech, and basic motor skills. Upon leaving the rehabilitation center in Augusta, she returned to Florida to continue her rehabilitation.

On September 4, 2014, the Aiken County Grand Jury indicted Fuller for (1) first-degree CSC, (2) first-degree assault and battery, (3) kidnapping, (4) unlawful carrying of a pistol, (5) possession of a stolen pistol, and (6) possession of a weapon during the commission of a violent crime. A two-day jury trial on all charges took place in February 2016.

During the State's case-in-chief, Dr. Dillon was qualified as an expert witness and gave his opinion that to a reasonable degree of medical certainty the external bleeding from the victim's head and neck area was consistent with being hit with a pistol. The State also called Sergeant Daymon Lewis Spann, a police officer who met with the victim at the hospital on the night of the incident and testified that, based on his training and experience, he did not believe the victim was under the influence of alcohol or drugs. Spann confirmed that no DUI charges against the

victim were pending and that law enforcement would have investigated further if it had reason to believe a driver had consumed alcohol to excess before a collision.

During her direct examination, which followed the testimonies of Dr. Dillon and Sergeant Spann, the victim testified she drank alcohol when she celebrated with her family at the hotel bar. She specifically recalled she had two glasses of wine and a fireball shot. She also admitted she took random pieces of illegally obtained Adderal to stay awake during her brother's surgery.

On cross-examination, the victim admitted to purchasing a four-pack of wine. When defense counsel asked her what happened to the wine, she replied she did not know but heard "there was objects lodged everywhere thrown out of [her] car, debris everywhere." Without objection, defense counsel also elicited an admission from the victim that she "always had an issue with alcohol." Immediately after this admission by the victim, defense counsel then asked her, "And, in fact, you have two DUIs on your record don't you?" The State objected; however, before the trial court could entertain argument on the objection, the victim responded she had one DUI conviction from 2010. Nevertheless, the trial court rejected defense counsel's argument that the evidence went toward the victim's bias and her motive to tell a lie and ordered the response stricken from the record. The victim admitted on further cross-examination that she knew it was illegal to drive under the influence.

At defense counsel's request, the trial court held an in camera hearing regarding an evidentiary matter that is not at issue in Fuller's appeal. In the jury's absence, defense counsel again raised the issue of whether the victim could be asked about her prior DUI convictions. Defense counsel argued the prior convictions showed the victim had "a strong motive to tell a lie" about the circumstances leading to the accident. The trial court rejected the argument, saying it did not "see any connection between having two DUIs and a motive for lying about being raped." When cross-examination of the victim resumed, the victim testified without objection that she was a recovering alcoholic, had been diagnosed with depression and post-traumatic stress disorder, and was taking prescription medications for these conditions at the time of her encounter with Fuller.

Fuller did not testify on his own behalf. However, the defense presented a case-in-chief in which it presented expert testimony from a forensic toxicologist who performed a retrograde analysis of the blood sample taken from the victim several hours after the accident and opined her blood alcohol level at the time of the accident was at least 0.098. No further attempt was made on Fuller's behalf to revisit the issue of the victim's previous DUI convictions.

The jury found Fuller not guilty on the charges of CSC and assault and battery, but convicted him on the kidnapping and weapons charges. Before the trial court sentenced Fuller, defense counsel specifically requested the trial court "to make a finding that this was not in relation to a sexual assault" because the jury did not convict Fuller of either CSC or assault and battery. Defense counsel argued Fuller's acquittals on these charges warranted a finding by the trial court that Fuller would not have to register as a sex offender.³ The State opposed the request, arguing a conviction on a CSC charge was not a statutory prerequisite to placing a criminal defendant on the registry.

The trial court sentenced Fuller to consecutive terms of (1) thirty years' imprisonment on the kidnapping charge, (2) five years' imprisonment on the charge of possession of a weapon during a violent crime, (3) five years' imprisonment on the charge of possession of a stolen pistol, and (4) one year's imprisonment for unlawful carrying of a pistol. The trial court also ordered Fuller's name to be listed on the registry. This appeal followed.

LAW/ANALYSIS

I. EVIDENCE OF THE VICTIM'S PRIOR DUI CONVICTIONS

Fuller argues the trial court should have allowed him to impeach the victim by cross-examining her about two prior DUI convictions. Fuller contends this evidence would have shown her bias and motive to fabricate an account that she was the target of a sexual assault in order to escape prosecution for a car crash that occurred while she was driving in an intoxicated state. We affirm the trial court's exclusion of this evidence.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* The appellate court "will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible

³ See S.C. Code Ann. § 23-3-430(C)(15) (2007 & Supp. 2018) (requiring a defendant convicted of "kidnapping . . . of a person eighteen years of age or older" to register for the registry "except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense").

bias or self-interest in testifying, absent a manifest abuse of discretion." *State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012).

Under Rule 608(c), SCRE, "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." "Evidence of a witness's bias can be compelling impeachment evidence and for that reason 'considerable latitude is allowed' to defense counsel in criminal cases 'in the cross-examination of an adverse witness for the purpose of testing bias.'" *Smalls v. State*, 422 S.C. 174, 182, 810 S.E.2d 836, 840 (2018) (quoting *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991)). "[A]nything having a *legitimate* tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, and on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (emphasis added) (internal quotation marks and citation omitted).

We hold the trial court acted within its discretion in refusing to allow Fuller to present evidence of the victim's prior DUI convictions. Before the victim testified, the State had already called Sergeant Spann, who interviewed the victim in the hospital. Sergeant Spann testified he did not believe the victim was under the influence of alcohol when he interviewed her. Significantly, on cross-examination, Sergeant Spann stated that (1) law enforcement would "push forward with a case" if it had information that someone had been drinking before a collision, (2) law enforcement would investigate further if it "felt there was a case to work on" that involved DUI, and (3) there was no evidence here that any DUI charges against the victim were pending.⁴

It follows that if law enforcement had sufficient evidence to charge the victim with DUI, it could have done so regardless of whether it believed her accusations against Fuller. See S.C. Code Ann. § 56-5-2930(A) (2018) ("It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired . . ."). Here, there was no evidence

⁴ In addition, Master Corporal Medlin, whose testimony also preceded that of the victim, stated during his cross-examination that an impaired driver who caused an accident while operating a vehicle under the influence of alcohol or drugs could be charged with felony DUI if the accident resulted in severe injury or death to another person.

suggesting either that the victim fabricated her account of the incident to gain sympathy from law enforcement or that law enforcement refrained from prosecuting her for DUI because it believed her accusations against Fuller. Therefore, we hold the victim's prior DUI convictions did not have a "legitimate tendency to throw light on [her] accuracy, truthfulness, and sincerity." *Brewington*, 267 S.C. at 101, 226 S.E.2d at 250.

Furthermore, even if the victim's prior DUI convictions were relevant under Rule 608(c), SCRE, the trial court acted within its discretion in excluding this evidence as more prejudicial than probative. Here, the probative value of the victim's prior DUI convictions was limited in view of her admissions in court and to medical personnel that she had several alcoholic drinks on the evening of the incident. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice."). Such events would have been inadmissible to show the victim's behavior on the night in question was consistent with her prior misconduct. *See* Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."). Therefore, we hold the probative value of this evidence was substantially outweighed by the danger of unfair prejudice.

Finally, although the trial court barred Fuller from questioning the victim about her prior DUI convictions, evidence was presented both before and after defense counsel raised this issue that was relevant to the issues of whether the victim was drinking alcohol on the night of the accident and may have been apprehensive about being charged with DUI. This evidence included the victim's admissions that she had problems with alcohol abuse and had consumed alcohol shortly after her brother's surgery, her acknowledgment that driving under the influence was illegal, the unexplained absence of three of the four bottles of wine the victim purchased just before her encounter with Fuller, and an expert opinion that the victim's blood alcohol level was over the legal limit at the time of the accident. Although appellate review of the legal propriety of an evidentiary ruling is generally focused on the evidence and arguments that have hitherto been presented to the trial court, we must consider the entire record when determining whether a party was prejudiced by a questionable ruling. *See State v. King*, 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018) ("[T]he determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case." (quoting *State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009))). Therefore, even if the trial court should have permitted Fuller to cross-examine the victim about her prior DUI convictions pursuant to Rule 608(c), we hold, based on

our review of the record in its entirety, the trial court's exclusion of this evidence was not reversible error. *See State v. White*, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007) ("To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice.").

II. SEX OFFENDER REGISTRY

Fuller next argues that his acquittals on the charges of CSC and assault and battery warranted a finding by the trial court that would have excused him from having his name listed on the registry. We disagree.

"Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . ." *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)).

South Carolina law requires a defendant convicted of the "kidnapping . . . of a person eighteen years of age or older" to register as a sex offender "except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense." S.C. Code Ann. § 23-3-430 (2007 & Supp. 2018).

"A trial judge is allowed broad discretion in sentencing within statutory limits." *Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997). In 2010, the Supreme Court of South Carolina applied this deferential standard to the review of a requirement by the family court that a juvenile register as a sex offender following his admission of delinquency to two amended charges of assault and battery of a high and aggravated nature even though charges against him for lewd acts with a minor, assault with intent to commit sexual battery, and sexual battery were dismissed. In holding the family court had good cause to order the appellant to be placed on the private sex offender registry, the Court, after quoting the rule from *Brooks*, explained the applicable standard of review as follows:

A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant. A sentence will not be overturned absent an abuse of discretion when the

ruling is based on an error of law or a factual conclusion without evidentiary support.

In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (citations omitted).

Applying this standard of review, we hold the trial court acted within its discretion in declining to make the finding requested by Fuller that his kidnapping conviction did not include a criminal sexual offense or an attempted criminal sexual offense. In so holding, we agree with the State that if section 23-3-430(C)(15) were to be interpreted to require a defendant convicted of kidnapping to register as a sex offender only if the defendant was also convicted of a CSC offense, this section would be unnecessary because convictions for numerous CSC offenses automatically trigger the requirement of placement on the registry. *See* S.C. Code Ann. § 23-3-430(C)(1)-(6) (2007 & Supp. 2018) (listing CSC offenses for which a conviction requires registration as a sex offender).

Furthermore, a verdict of not-guilty of a crime does not preclude a finding that the defendant was guilty of attempt. The record included testimony that Fuller (1) tried to force the victim to perform fellatio on him but she kept "spitting out," (2) made an unsuccessful attempt at forced vaginal intercourse with the victim, and (3) was in a state of partial undress when he was apprehended. Therefore, even if the kidnapping offense of which Fuller was convicted did not include a criminal offense, there was probative evidence on the question of whether the kidnapping of which Fuller was convicted included "an attempted criminal sexual offense." *See* S.C. Code § 23-3-430(C)(15) (2007 & Supp. 2018) (requiring that for a defendant to be exempt from registering as a sex offender because of a kidnapping conviction, the trial court must "make[] a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense" (emphasis added)); *In re M.B.H.*, 387 S.C. at 326, 692 S.E.2d at 542 ("A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant.").

CONCLUSION

We hold the trial court acted within its discretion in barring Fuller from cross-examining the victim about her prior DUI convictions. Our decision to affirm this ruling is based on our determinations that (1) this evidence lacked a legitimate tendency to discredit the victim's credibility and (2) the danger of unfair prejudice from admission of this evidence substantially outweighed its probative value. To the extent the trial court should have allowed Fuller to pursue this cross-examination, we hold the error was not reversible in view of other evidence

in the record of this case. Finally, even though the jury acquitted Fuller on the charges of CSC and assault and battery, we hold the trial court acted within its discretion in ordering Fuller to register as a sex offender because of evidence that the kidnapping charge of which he was convicted included an attempted criminal sexual offense.

AFFIRMED.

HUFF and WILLIAMS, JJ., concur.