STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2017-002224

The State, Respondent,

vs.

Montrell Deshawn Troutman, Appellant.

INITIAL BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly restricted Appellant's ability to go on a fishing expedition in his cross-examination of the State's witness regarding bias, or speculate before the jury on possible bias, when the proffer of his cross-examination of the witness failed to reveal any evidence of bias.

STATEMENT OF THE CASE

The Edgefield County Grand Jury indicted Appellant on charges of murder, two counts of attempted murder, and possession of a weapon during the commission of a violent crime. (True-billed Indictments; R.___). He proceeded to trial before the Honorable D. Craig Brown and jury from October 16-20, 2017. The jury was charged with lesser included offenses related to the murder and attempted murder charges. The jury found Appellant guilty of voluntary manslaughter, assault and battery of a high and aggravated nature (ABHAN), assault and battery in the first degree, and possession of a weapon during the commission of a violent crime. (T. 723-724; R.___). The trial court sentenced Appellant to thirty years imprisonment for voluntary manslaughter; twenty years, concurrent, for ABHAN; ten years, consecutive, for assault and battery first degree, and time served for the possession charge. (Sentencing Sheets; R.___). Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

The victim, Leric Merriweather, got meat to have a cookout with some family and friends at his house. (T.259; R.___). Carlo Harris and Keith Mathis stopped by, but left after staying a short time. (T.261; R.___). While Merriweather was outside, Appellant came into the yard. After some talking, things escalated and Dwayne Jones, a cousin who was at the cookout, pulled a gun. Merriweather got upset and demanded Jones and Appellant leave. (T.262-263; R.___).

According to Retrell Chinn, when she arrived at the cookout, there was a lot of commotion going on. (T.287-288; R.___). She testified Appellant and Merriweather were in an argument. Darius Ross, a neighbor, also confirmed an argument occurred between Appellant and Merriweather in Merriweather's yard. He said there was lots of arguing and cussing. (T.304-305; R.___). Shortly after Ross went back home, he saw Appellant walking up the street. He testified Appellant was angry or upset. (T.308-309; R.___).

After Appellant left Merriweather's yard, he called Harris and Mathis. The two returned to Merriweather's house, where he explained what had transpired with Appellant. (T.356-357; R.___). Mathis tried to get Merriweather to calm down after the argument with Appellant, so they went in Merriweather's car to the store to buy beer. (T.358-359; R.___).

After stopping at the gas station for beer, Merriweather pulled his car up to Santonio Ryan's house to talk with him. Merriweather remained in the car along with Harris and Mathis. (T.319-320; 360; R.___). While they were talking, they saw Appellant walking down the road.[1] Appellant crossed the road and passed beside Merriweather's driver side window. He then went into Ryan's yard, before retracing his steps back past Merriweather's window. As he passed, Appellant pointed at Merriweather. (T.364; R.___).

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[1] Ryan did not indicate where Appellant came from, merely that he saw him walking toward the group at Merriweather's car. Mathis testified Appellant got out of a green Honda and headed towards them. (T.363; R.___).

After Appellant passed and pointed, Merriweather got out of his car. Appellant then pulled out a gun in front of victim and the other persons present, pulled the slide back to load a bullet in the chamber, and placed it back in his pocket. (T.326; 366; R.___). Merriweather indicated the gun Appellant had was the same one from Merriweather's house and that Merriweather did not believe it had any ammunition in it. (T.328; 367; R.___). Both Harris and Mathis got out of the car as Merriweather approached Appellant. (T.367; R.___).

Merriweather wanted to fight Appellant. He approached Appellant with his fists balled up ready to fight. (T.343; 368; R.___). Appellant pulled his gun back out and shot Merriweather in the chest. Only Appellant had a weapon at the time of the confrontation. (T. 346; 369; 398-399; 419-420; 652; R.___). Appellant continued firing at Harris, Mathis, and Merriweather until the gun ran out of ammunition. (T.330; 332; 370-372; R.___). Merriweather ran behind Ryan's house while Mathis and Harris both ran from Appellant. Harris ultimately was grazed in the leg. (T.332; 373; R.___). Appellant walked away from the scene and Merriweather came back around to the front of the house. (T. 332-333; R.___). Merriweather died as a result of his wound. As Appellant admitted, he "shot and killed an unarmed man." (T.651; R.___).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "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.

"A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "The trial judge retains discretion to impose reasonable limits on the scope of cross-examination." State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). "If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error." Id. "This 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 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).

ARGUMENT

I. The trial court properly restricted Appellant's ability to go on a fishing expedition in his cross-examination of the State's witness regarding bias, or speculate before the jury on possible bias, when the proffer of his cross-examination of the witness failed to reveal any evidence of bias.

Appellant contends the trial court erred in restricting his ability to cross-examine Keith Mathis regarding a prior 2011 conviction on the basis that the underlying facts of the conviction would demonstrate a bias in favor of Merriweather and a willingness to cover up for Merriweather. Appellant had the opportunity to proffer any testimony or evidence regarding the prior conviction for providing false information to police. He failed to establish any evidence of bias, so the trial court properly restricted his cross-examination of Mathis to include only reference to the conviction pursuant to Rule 609(a)(2), SCRE.

"The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) (quoting State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402 (1986)). "A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause." Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 (citing Davis v. Alaska, 415 U.S. 308 (1974)). "A defendant demonstrates a Confrontation Clause violation when he is prohibited from 'engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias . . . from which jurors . . . could draw inferences relating to the reliability of the witness.'" Gracely, 399 S.C. at 372, 731 S.E.2d at 885 (quoting State v. Stokes, 381 S.C. 390, 401–02, 673 S.E.2d 434, 439 (2009)).

Additionally, Rule 608(c), SCRE, provides that "bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c) "preserves South Carolina precedent holding that generally, 'anything 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.' " State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) (quoting State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976)).

In the instant case, Appellant sought to show that Mathis would remove evidence of the gun possessed by Merriweather because of his prior conviction for providing false information in prior a case involving Merriweather in a shooting. During the proffer, the following colloquy occurred:

> Q In 2011, you were convicted of giving false information to the police, correct?
>
> A Yes, sir.
>
> Q And that incident involved a shooting that -- and involved a shooting of Leric Merriweather, correct?
>
> A Yes, sir.
>
> Q And the false information that you were convicted of giving was covering up for Leric Merriweather being involved in that shooting, correct?
>
> A No, sir.
>
> Q Okay.
>
> [Appellant's Counsel]: That's pretty much all we intended to do.

(T.384-385; R.___).

Nothing in the information provided to the trial court by Appellant during his proffer of testimony established any basis to argue Mathis removed evidence or had a bias in favor of Merriweather. The only information that came out of the proffer was that the charge involved a shooting of Merriweather.[2] Mathis specifically denied covering anything up in that case and Appellant presented absolutely no evidence the false information related to a cover-up, removal of evidence, or anything similar to what he argues the testimony would have shown. Mathis' credibility was sufficiently impeached through the testimony regarding his conviction for providing false information, and the trial court properly denied Appellant's request to go on a fishing expedition in order to try and infuse rank speculation into the trial regarding whether Mathis covered up a gun no one—including Appellant—even saw in his possession. See State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000) ("[T]rial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of

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[2] On appeal, Appellant craves reference to Case No. 71827ED (Edgefield Cty. Magistrate), arguing this Court can take judicial notice of the record in that case. However, Appellant never presented the records to the trial court, never argued at trial the records were evidence demonstrating bias or that Mathis would conceal facts on behalf of Merriweather, nor established on appeal their relevancy to the issue of bias. As a result, it would be improper for this Court to consider the facts in the records to determine whether the trial court properly admitted the testimony at trial when the trial court was not given the opportunity to consider the records. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) ("An appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments."); Id. at 422, 526 S.E.2d at 724 ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. . . . It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.").

the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986))).

Additionally, any error in failing to allow the cross-examination is entirely harmless in light of the facts presented in this case. The South Carolina Supreme Court has recently reiterated that even a Confrontation Clause violation may be harmless and explained the analysis for determining harmless error:

> "A [C]onfrontation [C]lause error is harmless if the evidence is overwhelming and the violation so insignificant by comparison that we are persuaded, beyond a reasonable doubt, that the violation did not affect the verdict." State v. Holder, 382 S.C. 278, 285, 676 S.E.2d 690, 694 (2009) (quoting State v. Vincent, 131 Wash.App. 147, 120 P.3d 120, 124 (2005)). When determining whether an error is harmless, this Court considers, *inter alia*: "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." [Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)].

State v. Perez, 423 S.C. 491, 498, 816 S.E.2d 550, 554 (2018).

While Mathis' testimony was significant in the instant case, the remaining factors indicate any error was entirely harmless. The testimony that was presented in the proffer failed to expand upon the testimony solicited in front of the jury during cross-examination allowed by the trial court. Appellant was able to bring forth the fact Mathis was good friends with Merriweather and that he had previously been convicted of providing false information to police. As a result, his credibility was already damaged by the cross-examination.

Further, testimony presented during trial indicated no one saw Merriweather with a weapon. (T.346; 369; 398-399; 419; R.___). Appellant admitted he did not know whether Merriweather had a weapon on him. (T.604; 647; R.___). After first telling police Merriweather

had the gun and he got it away from Merriweather, Appellant later told the police that Merriweather did not have a gun. (T.643-644; 646; R.___). Others testified Merriweather was confronting Appellant with balled up fists ready to fight, but definitely without a gun. (T.343; 368-369; R.___). Appellant ultimately admitted he killed an unarmed man. (T.651; R.___).

Even if the testimony regarding possible bias had been admitted, it would not have had any impact on the jury's verdict because the only reason it was sought to be admitted was to try and contend Merriweather may have had a weapon that Mathis took from the scene. Appellant admitted at trial he never saw a gun and he shot an unarmed man. No cross-examination raising the mere speculation regarding Mathis' actions would alter the testimony from Appellant himself. As a result, any error in failing to allow the testimony before the jury was entirely harmless.

Accordingly, the trial court did not err in allowing the additional cross-examination of Mathis. Appellant's rank speculation is not a substitute for proof establishing the relevancy of the prior conviction in this case. He failed to demonstrate through his proffer that any meaningful information would be elicited from which the jury could derive a motive or bias beyond that already established through the testimony presented. Additionally, any possible error was entirely harmless as the basis for seeking to establish the bias was to show Mathis may have removed Merriweather's gun from the scene, but all evidence in the record indicates Merriweather was unarmed at the time of the shooting. Therefore, this Court should affirm Appellant's convictions and sentences.

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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January 14, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Edgefield County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2017-002224

The State, Respondent,

vs.

Montrell Deshawn Troutman, Appellant.

PROOF OF SERVICE

I, William M. Blitch, Jr., certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 14th day of January, 2019.

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RE: State v. Montrell Troutman
Appellate Case Tracking No. 2017-002224

Dear Mr. Lambert and Mr. Dudek:

I am enclosing copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
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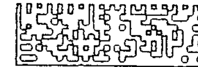

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