STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHARLESTON COUNTY
Roger M. Young, Trial Judge

Appellate Case No. 2017-002269

DEONTE BROWN, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

BRIEF OF RESPONDENT PURSUANT TO WHITE v. STATE

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I.

Whether the trial judge erred in allowing Detective Barfield to testify about prior inconsistent statements made by Chavis Heyward pursuant to Rule 613(b) SCRE when Heyward was advised of the substance of his statement, the time and place it was made, and who he made the statement to and yet Heyward denied making the statement, thereby making extrinsic evidence of the statement admissible?

II.

Whether the trial judge erred in allowing the State to show the jury still frames from surveillance footage that had already been admitted into evidence without objection from Petitioner for demonstrative purposes, and where even if the still images were admitted in error whether they did not prejudice Petitioner because he used the same footage to argue for his innocence?

STATEMENT OF THE CASE

In February 2013, the Charleston County Grand Jury indicted Petitioner for one count of murder, one count of attempted murder, and one count of possession of a weapon during the commission of a violent crime (2013-GS-10-535, 2013-GS-10-536, 2013-GS-10-537). From September 15-19, 2014 a jury trial was held in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., presiding. Petitioner was represented by James Smiley, Esq. Respondent (the State) was represented by Assistant Solicitors Stephanie Linder and Jessica Baldwin of the Ninth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Petitioner of all counts. Following the verdict, the trial judge sentenced Petitioner to a term of thirty years' imprisonment for attempted murder, five years' imprisonment for possession of a weapon during the commission of a violent crime, and fifty years' imprisonment for murder. All sentences ran concurrently with each other resulting in an aggregate sentence of fifty years' imprisonment for Petitioner. Petitioner did not file a timely notice of appeal and subsequently petitioned this Court for a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). Petitioner has also filed a post-conviction relief claim that was denied by Judge Nettles on September 11, 2017. Judge Nettles also granted Petitioner's request for a belated appeal. (App. 761).The State consents to Petitioner's request for a belated appeal. This brief of Respondent now follows.

STATEMENT OF FACTS

In the late hours of July 14, 2012 and into the early hours of July 15, 2012, Petitioner went with some friends to Frazier's nightclub in Charleston. At approximately 4:00 AM on July 15th after the nightclub closed, Petitioner and his friends went to a Waffle House restaurant on Savannah Highway. At Waffle House, Petitioner began a verbal confrontation with Quinton Allen and threw a drink in his face. A scuffle began between Petitioner, Quinton Allen and other patrons of the restaurant. Waffle House employees attempted to remove Petitioner from the restaurant. As Petitioner was being pushed through the doorway of the restaurant, he fired one shot inside the restaurant that struck Quinton Allen in the arm. Petitioner fired a second shot into the restaurant that struck and killed Dontaye Reed.

At trial, the State's primary evidence against Petitioner was that he was wearing a red shirt that evening and multiple witnesses identified a black male with a red shirt as being the shooter. (App. 187, 262, 292). One such witness was Chavis Heyward. Prior to trial, Heyward told Investigator Barfield of the Solicitor's office that the person in the red shirt was the shooter. At trial, Heyward denied saying this. (App. 192). The State called Barfield as a witness to impeach Heyward's testimony with a prior inconsistent statement. Barfield maintained that Heyward would not give him the name of the shooter, but he told him the shooter was wearing a red shirt. (App. 203). The State also introduced enhanced surveillance footage from the Waffle House on the night of the shooting. The footage was entered without objection from Petitioner. (App. 95, 225). SLED agent Joseph West testified he did not alter the content of the video, but he added some brightness to the footage and slowed down the footage thirty five percent in some portions. (App. 226). Both Petitioner and the State used portions of the footage in their closing arguments. (App. 423, 450). At the conclusion of trial, Petitioner was convicted of all counts.

STANDARD OF REVIEW

"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." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I.

The trial judge properly allowed Detective Barfield to testify about prior inconsistent statements made by Chavis Heyward pursuant to Rule 613(b) SCRE, because Heyward was advised of the substance of his statement, the time and place it was made, and who he made the statement to and because Heyward denied making the statement, extrinsic evidence of the statement was therefore admissible.

Petitioner claims the trial judge erred in allowing the testimony of Investigator Barfield to impeach Chavis Heyward with a prior inconsistent statement. Petitioner's argument is without merit. The trial judge properly allowed Barfield's testimony after Heyward denied telling Barfield about the color of the shooter's shirt. Heyward was advised of the time and place of his statement and he was given an opportunity to explain or deny it. Heyward denied ever making the statement. Therefore, the State was entitled to introduce extrinsic evidence of the statement being made. Petitioner's convictions and sentences should be affirmed.

The South Carolina Rules of Evidence provide that extrinsic evidence of a prior inconsistent statement of a witness may be admissible under the following circumstances:

> Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible.

Rule 613 (b), SCRE.

Here, Heyward was notified of the substance of his statement, the times and places it was made, and the person to whom it was made. (App. 191-93). Heyward was notified that he was alleged to have told Barfield on August 19, 2014 at the solicitor's office that the shooter was

wearing a red shirt. (App. 191-92). Heyward was also notified that he made the same statement to Barfield in a phone conversation on September 8, 2014. (App. 192-93). Heyward denied making both statements. Therefore, the trial judge appropriately allowed the State to introduce extrinsic evidence through Barfield's testimony that Heyward did, in fact, say the shooter wore a red shirt. The trial judge's ruling was made in accordance with the requirements of Rule 613(b) SCRE and there was evidence in the record to support the trial judge's decision. Therefore, the trial judge did not abuse his discretion in admitting Barfield's testimony. Petitioner's convictions and sentences should be affirmed.

II.

The trial judge properly allowed the State to show the jury still frames from surveillance footage that had already been admitted into evidence without objection from Petitioner for demonstrative purposes. Even if the still frames were improperly shown to the jury, Petitioner was not prejudiced by the images because Petitioner used the same footage to argue for his innocence.

Next, Petitioner contends the trial judge erred in allowing the State to present still frames from the Waffle House surveillance footage to the jury in closing arguments. Petitioner's argument is without merit. The still frames were admissible as a summary of evidence that was already admitted without objection from Petitioner under Rule 1006 SCRE. However, even if the trial judge erred by allowing the still frames to be shown to the jury, Petitioner was not prejudiced by the surveillance footage because Petitioner used the surveillance footage to his advantage in closing argument to suggest he was not the shooter. Therefore, any error in allowing the frames to be presented to the jury was harmless.

The South Carolina Rules of Evidence provide that:

> The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation, provided the underlying data are admissible into evidence. The originals or

> duplicates shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1006, SCRE. "Demonstrative evidence includes items such as a photograph, chart, diagram, or video animation that explains or summarizes other evidence and testimony. Clark v. Cantrell, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000). An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). In ruling on the admissibility of evidence, the trial judge has considerable latitude and his ruling will not be disturbed absent a showing of probable prejudice. State v. Kelly, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005).

Here, the still frames presented by the State in closing argument were used for demonstrative purposes to summarize the entire surveillance video. The trial judge's decision to overrule Petitioner's objection is entirely consistent with Rule 1006 SCRE. In this case a voluminous recording from the Waffle House security cameras was used to isolate specific moments within the footage that would be relevant to the jury's deliberations. If Petitioner's argument is taken to its logical extreme, parties in future trials could not freeze or pause videos that both sides agree have already agreed are admissible. Such an interpretation would lead to an absurd result.

Petitioner asserts the still images were not used to clarify the factual matters at issue, but that is plainly not true. On the contrary, the State used the footage for the same reason Petitioner used the footage. Both sides argued the footage corroborated their version of events. Each side spoke about the footage and used it to their advantage in closing argument. Petitioner argued the footage corroborated his version of events and even requested the footage be paused so he could

make a specific points about particular still frames. (App. 422-23). Therefore, even if still frames from the surveillance footage were shown to the jury in error, the error did not prejudice Petitioner at all because he also used still frames of the footage to argue his innocence to the jury. Therefore, any error committed in admitting the footage was harmless. Petitioner's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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April 1, 2019

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent Pursuant to White v. State has been served upon the applicant by mailing two copies, postage prepaid, via United States mail, addressed to:

Tommy A. Thomas, Esquire
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This 1st day of April, 2019.

Jennifer Jennison
Legal Assistant for Respondent