STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2018-001658

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LAWRENCE ORLANDO POSTELL,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial judge properly refused to redact the challenged portions of Appellant's recorded interview with police because the statements in question were probative of his guilt for at least one of his charged crimes.

II. The trial judge properly refused to charge the jury on spoliation because law enforcement did not destroy the evidence, but returned it to Appellant. Regardless, the evidence in question had no overt probative value and would not have possessed any exculpatory evidence.

STATEMENT OF THE CASE

In July 2017, an Abbeville County grand jury indicted Appellant for first-degree criminal sexual conduct, attempted murder, first-degree burglary, kidnapping, and possession of a weapon during the commission of a violent crime. On September 4–6, 2018, Appellant proceeded to a jury trial before the Honorable Frank R. Addy. Aaron Van Taylor, Esquire, represented Appellant; Assistant Solicitors Micah E. Black, Esquire, and Demetrios G. Andrews, Esquire, represented the State. The trial judge granted a directed verdict on the possession of a weapon charge. The jury ultimately found Appellant guilty of second-degree criminal sexual conduct, burglary, first-degree assault and battery, and kidnapping. The trial judge sentenced Appellant to concurrent sentences of twenty-years' incarceration for second-degree criminal sexual conduct, two sentences of twenty-five years' imprisonment for burglary and kidnapping, and ten years' incarceration for the assault and battery charge.

Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On the morning of May 4, 2017, Victim spoke with her boyfriend, Quintavias Calhoun, who had been incarcerated at the Abbeville Detention Center for several weeks. Calhoun sought her help in obtaining money for bail by having her pick up crack-cocaine from his brother and selling it to a few people in the area. After making approximately four sales that day, Victim returned home, took an Ambien pill to help her sleep, and went to bed around 9:00 p.m. In the middle of the night, she was startled awake by a sound and went to the end of her bed to look into the hallway. She saw Appellant, an associate of Calhoun's who often obtained drugs from him, down the hall and immediately tried to put on a pair of pants and flee from her home. Appellant grabbed her and the two wrestled. Eventually, Victim was able to make it outside, but Victim lost her keys and was unable to open her car. Appellant hit her "with something," putting her into a daze and allowing him to drag her into the house by her hair. (Tr.I.p.85, line 4–Tr.I.p.93, line 4)

Victim continued to struggle, trying to get to her closet which could lock from the inside. However, Appellant continued his relentless assault, stripping Victim and penetrating her vaginally and orally with this penis. Appellant used his hands to restrain Victim by her hair and choke her, biting her as he continued his assault. At one point, Victim observed items fall out of Appellant's pants, including a bag of crack-cocaine he had taken from her home and a gun. On several occasions, Victim also broke free of Appellant but he would always grab her hair and pull her back, using enough force that it felt like Appellant "was pulling [Victim's] scalp out." Victim pled with Appellant to end the assault, telling him he would be in serious trouble for the attack, but Appellant only responded by telling her, "[D]o you think I'm going to let you live?" (Tr.I.p.93, line 5–Tr.I.p.100, line 2)

Eventually, after constantly struggling against Appellant, including grabbing an umbrella and hitting him with it, Victim was able to escape her home and ran to the house beside her. After beating on their door and screaming without receiving a response, Victim took off to another home, beating on the door and asking for help. Amy Batagglia, the owner of the home, heard the noises around 4:00 a.m. on May 5. She looked outside her door and saw Victim, who was completely naked, obviously beaten and covered in blood. Batagglia called 9-1-1 and had the operator send police as well as EMS. (Tr.I.p.100, line 3–Tr.I.p.102, line 1; Tr.I.p.139, line 20–Tr.I.p.146, line 8)

Officer Brittany Gambrell responded to the call and found Victim on Appellant's porch, naked, upset, and covered in blood; Victim had so much blood on her body Officer Gambrell had difficulty determining the extent of her injuries, but Gambrell quickly noticed swelling in Victim's eyes, bruising around her neck and face, and that clumps of Victim's hair were missing. She stayed with Victim while other officers investigated her home and escorted Victim to the hospital and stayed with her during her initial medical evaluations. While at the hospital, Officer Gambrell took two statements from Victim which were nearly identical in their descriptions of the assault. (Tr.II.p.10, line 7–Tr.II.p.32, line 10)

Dr. Robert Kellett was the first physician to treat Victim. He immediately noticed "she looked brutalized, unlike anyone [he'd] ever seen in all the years that [he'd] practiced medicine. She was bloody and had bruising all over her head, body, and face. Dr. Kellett also found multiple bite marks on her back and shoulders, a fracture to her nose. He testified that brusing behind Victim's ears was likely the result of pressure from the fingers during strangulation. Drug testing at the hospital indicated Victim tested negative for cocaine and amphetamines, but positive for opiates (which she was given at the hospital for pain). Dr. Kellett also aided nurses

in the collection of physical evidence from Victim's body. (Tr.II.p.127, line 21–Tr.II.p.142, line 16)

Kevin Selinsky, a forensic toxicologist with SLED, performed an expanded analysis on blood samples collected from Victim at the hospital. Again, the samples were negative for traces of cocaine, which Selinsky testified should have been positive if Victim had consumed the cocaine within twelve hours of the samples being collected. However, Victim's blood tested positive for Ambien. (Tr.II.p.142, line 24–Tr.II.p.149, line 16)

Paul Meeh, a forensic scientist with SLED's DNA department, tested the various samples of DNA collected by law enforcement. DNA recovered from the bite marks on Victim matched Appellant. DNA samples collected from the bloody shirt found at Appellant's home contained DNA from both Victim and Appellant. Blood samples revered from Victim's porch unsurprisingly matched Victim. Male DNA was also recovered from Victim's vagina, but it was the sample was insufficient for further analysis. (Tr.II.p.169, line 24–Tr.II.p.186, line 4)

Anquetta Wideman-Thomas, Victim's neighbor, thought she heard knocking on her door around 3:00 a.m. on May 5, but by the time she and her husband reached the door no one was there. Confused, they went back to sleep. When they woke, they observed the police cars and police tape surrounding Victim's house. At approximately 7:00 a.m., Wideman-Thomas went to start her car when Appellant came from behind the corner edge of her house and approached her. She easily recognized Appellant, having had prior interactions with him. She immediately noticed Appellant had blood on his nose and his white T-Shirt, the latter of which was also very dirty. Wideman-Thomas asked Appellant what had happened, and he said "he had done messed up" and "done f-cked up," but did not provide details of what occurred. (Tr.I.p.162, line 21–Tr.I.p.169, line 23)

Officer Patrick Thompson of the Abbeville County Sheriff's Office processed the evidence found at Victim's home. Notably, he found an umbrella in the front yard, clumps of hair from the front yard and several places within the home, and a bag of crack-cocaine found in Victim's closet. The home also showed clear signs of a break-in; the striker plate from the front door had been forcefully removed and was in the living room area. He also obtained the sexual assault kits performed on Victim at the hospital. (Tr.I.p.178, line 23–Tr.I.p.185, line 25)

Detective Jeffrey Hines and Officer Joshua Monts also went to Victim's home and viewed the crime scene and helped search for the evidence processed by Officer Thompson. Both noticed the striker plate to the door had been forcefully removed, indicating a break-in. Detective Hines and Officer Monts, after receiving information that Appellant was the person attacked Victim, went to Appellant's home to search for him. They were joined by Officer Doug Partain. When they knocked on the door, no one answered. Officer Partain observed two men near the home, and decided to question them regarding Appellant's whereabouts. He noticed one of the men had a tattoo on his neck which appeared to match the neck tattoo Appellant had in the picture Officer Partain possessed. Suspicious, he asked both men for their identification. The man with a neck tattoo claimed he did not have identification with him and told Officer Partain his name was Clarence Tucker. Officer Partain knew Detective Hines had met Appellant before, and asked him to come speak with the men. Immediately, Detective Hines recognized "Tucker" was actually Appellant and placed him under arrest. A subsequent search of the home uncovered a bloodied and dirty white shirt in a cabinet within Appellant's home. (Tr.II.p.41, line 24–Tr.II.p.92, line 6)

Appellant's Recorded Statement

Detective Hines also Appellant on May 8, 2017. During that interview, Appellant gave varying accounts of what happened to Victim. He claimed Victim invited him to her home that night and that the two of them smoked crack together. He did admit to physically assaulting Victim, as well as having sexual intercourse w/ Victim after she told him to stop. Appellant denied kidnapping Victim. (Tr.II.p.92, line 20–Tr.II.p.97, line 17; Tr.II.p.99, line 23–Tr.p.101, line 20; Tr.II.p.123, line 11–Tr.p.125, line 13; State's Exhibit 124)

Prior to trial, the parties discussed redacting portions of Appellant's video recorded statement to police. While the parties agreed on redacting several portions of the video, there were three redactions sought by the defense with which the State did not agree: (1) a two second clip in which Appellant stated, "I f-cked up, I'm going to get life"; (2) a quick statement of, "About to be gone for the rest of my life"; and (3) a specific statement of, "F-cked up. Going to get life," followed by assorted comments about prison. The State sought to admit these statements, arguing they were admissions of guilt. Trial counsel challenged their admission, claiming his statements failed to specify which crime or crimes to which he was admitting guilt, the statements could have been interpreted as questions, and their admission would be prejudicial to Appellant. The trial judge informed the parties he intended to delay a final ruling on the issue, but would give the parties enough time to make the necessary edits to the recording before it was played the following day in court. (Tr.I.p.58, line 9–Tr.I.p.62, line 13)

Later, the trial judge revisited the issue and clarified trial counsel's objection was that the prejudicial effect of the three statements outweighed their probative value. The trial judge he, like the State, believed Appellant's statements were very probative because they could be interpreted as him admitting culpability to the assaults and was "one of those inference

questions" which could be argued to the jury. The following day, the State presented a "dry run" of the recording before introducing it through Detective Hines. (Tr.I.p.151, line 5–Tr.I.p.153, line 16; Tr.II.p.97, line 20–Tr.II.p.98, line 3)

Bloody Money

During the search of Appellant incident to his arrest, bloody money was found in his pockets totaling $221.00. The money was not submitted to SLED for testing. Appellant inquired about the money, wishing for it to be returned. Detective Hines took the cash to the detention center holding Appellant and counted it out in front of him and detention center guards. Later, with Appellant's approval, the jail released the money to Gloria Clark, Appellant's mother. Detective Hines testified the money was not tested for DNA because officers had already gathered a substantial amount of DNA evidence from Victim herself and both her and Appellant's residences. (Tr.II.p.46, lines 3–11; Tr.II.p.102, line 15–Tr.II.p.104, line 7; Tr.II.p.117, line 9–Tr.II.p.118, line 17).

At the conclusion of the case, trial counsel requested a spoliation charge concerning the bloody money returned to Appellant. Trial counsel conceded the State returned the money to Appellant so that it wasn't lost or destroyed. He was unsure of what happened to happened to the money, believing it was deposited or a check was written to Appellant's mother. Whatever the case, trial counsel argued the evidence might have been beneficial to the defense. The State disagreed, believing the charge to apply primarily in civil cases. While the State paused to find relevant case law to the issue, the trial judge noted his familiarity with spoliation law. He found the bloody money was not "terribly material" and actually "relatively collateral to the question of Appellant's guilt." The State did encourage trial counsel to argue the money issue to the jury. (Tr.II.p.216, line 11–Tr.II.218, line 18)

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id.

ARGUMENT

I.

The trial judge properly refused to redact the challenged portions of Appellant's recorded interview with police because the statements in question were probative of his guilt for at least one of his charged.

Appellant argues the trial judge erred in refusing to redact portions of Appellant's recorded interview in which Appellant claimed he "f-cked up" and appeared to admit some degree of guilt for his actions. The State disagrees: Appellant's statements were relevant to his charges because they were made in direct response to questions posed by law enforcement in regards to his charged crimes. Therefore, they were properly submitted to the jury who in turn interpreted these statements and the inferences to be drawn therefrom.

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006).

All relevant evidence is admissible except as otherwise limited by the United States Constitution, South Carolina law, the rules of evidence, and other guidelines. Rule 402, SCRE. "Relevant evidence" means evidence which tends 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." Rule 401, SCRE. However, "[relevant] [e]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Evidence is unfairly prejudicial if it suggests a decision on an improper basis. State v. Huckabee, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (Ct. App. 2017) (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). When weighing the prejudicial effect of

such evidence against the probative value, the entire record must be considered and great deference must be given to the trial court. Id.

"It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts." State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013); also State v. Pruitt, 187 S.C. 58, 196 S.E. 371 (1938) ("[F]or the jury are the sole judge of the facts and the credibility of the witnesses . . . ."). "Intent is a question of fact and is ordinarily for jury determination." State v. Lee-Grigg, 374 S.C. 388, 403, 649 S.E.2d 41, 49 (Ct. App. 2007).

In the instant case, the trial judge did not err in admitting the statements because they were relevant to the question of Appellant's guilt: Appellant's statements were made in response to Detective Hines confronting Appellant with the evidence against him and were acknowledgements that he acted inappropriately that night. See Rule 401, SCRE Admittedly, those isolated statements do not describe in what specific ways Appellant "f-cked up"; however, the remainder of Appellant's police interview provide context for the statements in question. Appellant openly admitted to physically attacking Victim, claimed they engaged in sexual relations in which Victim told him to stop but he ignored her, and denied kidnapping Victim. The disputed statements, considered in tandem with the rest of the recorded interview, are relevant to and probative of Appellant's guilt for the charged crimes. See Rule 401, SCRE; Rule 402, SCRE.

The State also notes Appellant accuses the State and the jury of misinterpreting his comments while submitting his own interpretation of his statements which he argues is the correct one. (Br. of Appellant, p.6). Appellant's argument ignores the established principle that the jury, not the parties or the trial judge, are charged with evaluating the evidence and the inferences to be drawn from said evidence. See Cheeks, 401 S.C. at 328, 737 S.E.2d at 484. The

jury's interpretation of the evidence is not invalid simply because it disagrees with Appellant's. The jury watched the entirety of the edited interview, including Appellant's recollection of events and claims of innocence. It was jury's responsibility, and its alone, to interpret the recording and the rest of the State's evidence and determine Appellant's guilt for the charged crimes. See Pruitt, 187 S.C. 58, 196 S.E. 371.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008).

Even if the trial judge erred in admitting the challenged statements, such error is trivial and harmless given the overwhelming evidence of Appellant's guilt. Based on Victim's testimony, the physical evidence collected, and the testimonies of various law enforcement officers and medical personnel, the only reasonable conclusion from the evidence is that Victim was subjected to a lengthy and brutal physical attack in and around her home. Victim showed up at a neighbor's house bloody, battered, and missing chunks of hair. The evidence collected, including her own bloodwork, supported her description of the events of that night. Appellant's DNA was recovered from the bite marks on Victim's body and Victim's DNA was recovered from a bloody shirt found at Appellant's home. Appellant was also spotted near the crime scene mere hours after Victim's escape, at which time he told Victim's neighbor he "messed up."

Accordingly, the only logical conclusion, even without the challenged statements from the recording, was that Appellant was guilty of the charged crimes and any alleged error must be harmless. See Sherard, 303 S.C. at 176, 399 S.E.2d at 597.

II.

The trial judge properly refused to charge the jury on spoliation because law enforcement did not destroy the evidence, but returned it to Appellant. Regardless, the evidence in question had no overt probative value and would not have possessed any exculpatory evidence.

Appellant argues the trial judge erred refusing to charge the jury on spoliation. The State disagrees with this allegation. Notably there was no evidence the State "destroyed" the bloody money; the evidence at trial indicated the State turned over the cash to the detention center holding Appellant and had no control over it after that and trial counsel had no idea who, including Appellant and his family, ultimately had the bloody money after that. Further, there is no indication of what, if any, exculpatory value the bloody money had to Appellant's defense, especially considering the overwhelming evidence of Appellant's guilt.

The trial court is only required to charge the current and correct law in South Carolina. State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (citing State v. Brandt, 393 S.C. 526, 713 S.E.2d 591, 603 (2011)). The law to be charged must be determined from the evidence presented at trial. Id.

The State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: (1) the State destroyed evidence in bad faith; or (2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300, 307 (2001); State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991)) (same). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence

could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

Finally, other than speculative, conclusory claims, Appellant did not, and cannot, establish a spoliation charge was proper or that he experienced any prejudice from the court's failure to give said charge. Notably, the record indicates the State did not destroy the money; Detective Hines returned the bloody currency to Appellant at the detention center, counting out the bills in front of him and placing it with his personal effects. Appellant then released that money, still in the possession of the detention center, to his mother. It was at this point, when the money was in Appellant's custody, that it "disappeared." When requesting the spoliation charge, trial counsel admitted he was not sure what happened with the money and was unsure of who deposited the cash. Because the State was not responsible was not responsible for the disappearance of the money, a spoliation charge was entirely inappropriate.

Further, even if the bloody money's disappearance could be attributed to the State, a spoliation charge was improper because there is no allegation the evidence was "destroyed" in bad faith and there was no apparent exculpatory value to the evidence. See Cheeseboro, 346 S.C. at 552 S.E.2d at 307. Here, DNA recovered from the money would have fallen into one or more of three legally significant categories: Victim's, Appellant's, and anyone else. If Victim's DNA was recovered from Appellant, it would actually be more evidence of Appellant's guilt. Appellant's DNA on the money would be irrelevant for the charged crimes and if the DNA did not belong to Victim or Appellant it would be unrelated to the charged crimes but potentially related to other, unknown crimes which could be connected to Appellant. In any situation, the DNA had no actual or apparent exculpatory value to Appellant. See id.

Accordingly, the trial judge did not err in refusing to charge the jury on spoliation.

Harmless Error

As noted in Issue I, the State presented overwhelming evidence of Appellant's guilt, including DNA evidence which linked Appellant to the brutal attack on Victim. Accordingly, any alleged error in failing to charge the jury on spoliation is harmless given the overwhelming evidence of Appellant's guilt. See Sherard, 303 S.C. at 176, 399 S.E.2d at 597.

CONCLUSION

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

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February 3, 2020

STATE OF SOUTH CAROLINA
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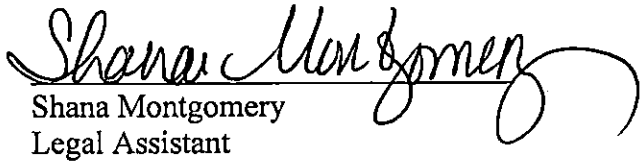
APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Taylor D. Gilliam, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served this 3rd day of February, 2020.



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RE: State v. Lawrence Orlando Postell – Appellate Case No. 2018-001658

Dear Mr. Gilliam:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

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WFS/ssm
Enclosures

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

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