

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of General Sessions  
The Honorable J. Derham Cole, Circuit Court Judge

**RECEIVED**

**MAR 20 2020**

**SC Court of Appeals**

Appellate Case No. 2019-000065

THE STATE, .....RESPONDENT,

v.

SAMUEL JEREMIAH JETER, .....APPELLANT.

**INITIAL BRIEF OF RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge properly admitted the 9-1-1 recording of the phone call by the witnesses pursuant to Rule 403, SCRE and Rule 801(d)(1)(B), SCRE.

## STATEMENT OF THE CASE

On January 11, 2018, Appellant was indicted for first-degree burglary, attempted common law battery, and first-degree assault and battery. On January 7-9, 2018, a jury trial was held in front of Judge Cole. Paul Kreswell Neely, Esquire, represented Appellant; Assistant Solicitors Spenser Holloran Smith, Esquire, and Sara Bowsher Bozarth, Esquire, represented the State. The jury found Appellant guilty of first-degree burglary but acquitted him of the other charges. Due to Appellant's criminal history, he was sentenced to life in prison.

Appellant filed a timely notice of appeal and brief in support thereof. This Brief of Respondent now follows.

## STATEMENT OF FACTS

In October of 2017, Sharaia lived with her mother Katrina, sister Alexis, her two children, and Alexis's son at 476 Gentry Street in Spartanburg. Around 12:00 a.m. on October 25/26 2017, Sharaia Walker had recently entered the home through the front door, locking the door behind her and allowing her sleeping daughter to remain on the living room couch. Both the TV and light were on in the living room. Sharaia was on the phone, sitting in her bed when she noticed a "dark figure" poke its head into the room but quickly withdraw. At the time, she initially believed one of her family members had peeked into the door but thought it odd that the person had not said anything before exiting. Curious, she left the room to investigate and saw a strange man wearing a ski mask and gray hoodie, put his hand up to his mouth and say, "Shh, be quiet." She immediately began screaming, and the stranger kept trying to quiet her. Appellant's efforts were unsuccessful, and Katrina and Alexis were woken. (Tr.p.39, line 17–Tr.p.45, line 4; Tr.p.53, line 22; Tr.p.64, lines 17–21)

With all three women alarmed and in the hallway, Appellant ran down the hall, but ended up knocking over Katrina and standing over her, holding her arms and repeating, "Where's the money?" over and over. Sharaia used the opportunity to retrieve her gun and began firing at the man. Several shots hit the man as he fled throughout the house and out the front door. As he exited the house ahead of the women, the burglar turned right and disappeared from their sight. (Tr.p.49, line 24–Tr.p.53, line 1; Tr.p.53, line 23–Tr.p.57)

During Sharaia's testimony, the State sought to introduce the recording of her 9-1-1 call from the night of the burglary. Trial counsel objected to its admission, arguing: (1) Sharaia was unable to authenticate her phone call to 9-1-1; (2) the tape contained the same information as the witnesses' testimonies and was thus cumulative pursuant to Rule 403, SCRE; (3) the recording

would likely lead to unfair prejudice with the jury because Katrina is heard screaming in the background of the call. After a brief recess, trial counsel withdrew his authentication objection but maintained the recording was cumulative to other evidence and could unfairly impact the jury's determination of guilt. The trial judge overruled the objection and allowed the State to enter the recording into evidence. (Tr.p.45, line 5–Tr.p.49, line 17)

Alexus testified that she had been asleep for a few hours when she was woken by her sister's screaming. Looking into the hall, she saw the burglar, masked, and quickly retrieved her bat. When she looked into the hall a second time, she saw the burglar standing over her fallen mother. She recalled that after the burglary, Katrina's arm had significant bruising. She also overheard Katrina agree to guide the man to her purse (Tr.p.80, line 20–Tr.p.86, line 25)

Katrina jumped out of bed upon hearing Sharaia's screaming and ran into the hall. The next thing she remembered was lying on the floor and looking at the ceiling with the masked burglar standing over her and repeatedly asking Katrina, "Where is the money?" In an effort to diffuse the situation, she agreed to grab her purse when both she and the burglar heard Sharaia cock her gun. The burglar took off running and Sharaia began firing at him. Katrina also confirmed that after the event, she discovered significant bruising on her arm. (Tr.p.90, line 18–Tr.p.97, line 5)

On cross-examination, trial counsel attempted to discredit Sharaia's and Katrina's testimonies by questioning them about the main difference between their testimonies and written statements to police: in the written statements, neither witness mentioned that Appellant asked any of the women for money. Trial counsel emphasized that officers requested the women provide all the information pertaining to the events of that night in their written statements taken the day after the burglary, but neither witness included this information in these supposedly

complete and accurate description of the events of that night. Further, trial counsel made sure the women admitted that their memories of the burglary were more complete the day after it than at trial, at which point over a year had elapsed. (Tr.p.68, line 14–Tr.p.74, line 1; Tr.p.103, line 11–T.p.105, line 6).

On redirect for Sharaia, the State played the 9-1-1 recording, which contained Sharaia's statement to the dispatcher in which she claimed Appellant demanded money from the women. (Tr.p.74, line 6–Tr.p.77, line 9)

In response to trial counsel's cross-examinations, the State sought to introduce the recorded interview of Sharaia, conducted soon after the crime, in which she stated that the burglar repeatedly asked for money. The State argued the recorded statements could be used to rehabilitate Sharaia's testimony and demonstrate that portion of her testimony was not a fabrication. In response, trial counsel admitted to having possession of the recorded interviews and knowing that during them the witnesses stated Appellant demanded money from them. However, argued the recorded interviews should not be admitted into evidence because the 9-1-1 recording also contained such a statement and was already admitted into evidence. Further, trial counsel believed it would be inappropriate to introduce these recordings through the testimony of a law enforcement officer because the State failed to ask those witnesses on redirect whether they made such claims orally to officers while preparing the written statements. The trial judge noted that bolstering a witness is proper when the veracity of such a statement is challenged on cross-examination. The trial judge suggested that the parties agree to stipulate Sharaia told officers in a recorded interview that the burglar demanded money and remedy both parties' concerns. Both parties initially agreed to the stipulation; however trial counsel withdrew his consent after claiming he believed it would be better for "the record" if he did not consent to the

stipulation and maintained his objection to the admission of the segment of the recorded interview. Ultimately, the State did not play the recorded interview to the jury. (Tr.p.109, line 3–Tr.p.115, line 4; Tr.p.117, line 17–Tr.p.119, line 7)

Officer Shanetta Thompson with the Spartanburg Police Department was one of the first officers to arrive at the scene of the crime. She found shell casings inside and outside the home and a single shoe in front of the house. Before long, officers found the burglar behind the home next door. The burglar had a ski mask and gray hoodie and was bleeding from several bullet wounds. As EMS worked on the burglar, he told them his name was Calvin Jeter. “Calvin” did not have an ID on him, so officers were unable to confirm his identity at that time. Officers also discovered “Calvin” had pepper spray attached to a key chain in his pocket. (Tr.p.119, line 18–Tr.p.145, line 22)

Investigator Sonya McCullough responded to the hospital to investigate the crime and “Calvin.” Officer Thompson informed her that the burglar identified himself as Calvin Jeter and that his date of birth was November 27, 1981. When Investigator McCullough met with the burglar himself, he again identified himself as Calvin Jeter and claimed he was homeless, staying with friends, family, and wherever else he could. However, he provided a different birthdate; December 19, 1974. When she tried to investigate the name and birthday “Calvin” provided, Investigator McCullough discovered the burglar was not the man in the picture associated with the DMV’s records. She eventually discovered the burglar was actually Samuel Jeremiah Jeter. Over here several hours of interaction with Appellant, he did not appear intoxicated in any way and was “very talkative.” (Tr.p.154, line 21–Tr.p.167, line 4)

Appellant decided to testify at trial. He claimed he did not go to 476 Gentry with the intent to burglarize it. Rather, he had intended to go to a friend’s house to stay the night but, due

to drinking a case of strong beer, was very drunk and went into the wrong home. According to Appellant, his friend drove a green Crown Victoria vehicle and when he saw one outside 476 Gentry, he assumed he was at his friend's home. He testified he knocked on the door, but after receiving no response opened an unlocked front door and walked into an empty living room. Hearing voices towards the back of the house, he went towards them and opened a door to find Sharaia. Realizing he had the wrong house, he immediately shut the door. When confronted by Sharaia, he claimed he stated being in the home was "his bad" and started to leave, at which point Sharaia began chasing him with the gun and firing. (Tr.p.200, line 24–Tr.p.205, line 23)

On cross examination, Appellant conceded he was wearing a ski mask that night and wore it while interacting with the women; he only took it off as he was running at the door with bullets flying his direction. When asked whose house Appellant intended to enter that night, he claimed he was going to see his cousin Anthony Hollis who lived at 220 Gentry Street, over two blocks away from 476 Gentry. Appellant admitted the two areas had several distinct differences, such as the fact 476 Gentry was across the street from a church but 220 Gentry was surrounded only by houses. Appellant continued to wither on cross-examination; he eventually changed his story to that he did not believe he was entering his cousin's home, but merely a house his cousin was inside and knew he was walking into a stranger's residence. Also, despite claiming he was searching a strange location for his cousin, he claimed he did not look around the living room enough to see a child sleeping on the couch. (Tr.p.206, line 1–Tr.p.214, line 1)

When questioned about his interactions with police and why he provided officers with the wrong name, he claimed Calvin Jeter was his brother's name and could not remember why he told it to police because he was "unconscious." He also claimed he was still "unconscious" at the hospital and had no recollection of speaking with Investigator McCullough except that he

kept asking for the nurse. As to why he had pepper spray, Appellant claimed it was to protect him from unrestrained dogs. (Tr.p.214, line 2–Tr.p.217, line 21).

During closing arguments, the State does not play the portion of Sharaia's recorded interview in which she notes Appellant asked the women for money; instead, it again played the 9-1-1 recording to the jury and pointed out Sharaia, even then, was claiming Appellant tried to obtain money from the women. It also emphasized the various inconsistencies with Appellant's testimony which, combined with the other evidence of guilt, proved beyond a reasonable doubt that Appellant sought to burglarize the home that night. In his closing, trial counsel again emphasized that the three women's statements to police omitted any references to Appellant asking the women for money along with other details from their testimonies. He stated that the women could have feared prosecution for attempted murder after shooting Appellant from behind. Specifically, he asseverated:

Sometimes people get self-defense, sometimes they get prosecuted, and so there's fear. There's the Walkers' fear. What if what I did was wrong? What if I made a mistake? What if I'm the one that committed the crime . . . And you know what? A funny thing happened. Once they started talking to each other and they started thinking and they started realizing their fears, all of a sudden some stuff gets added to their statements.

All three of the Walkers sat on this witness stand and all three of them told you that they gave a statement when this incident was fresh in their mind right after it happened, and not a single one of those statements said that the man in their house pushed their mother down, not a single one of those statements said the man in the house asked for money, not a single one. And then overnight that story changes, except for Sharaia's, the one who did the shooting, she gave a four page statement. She told you that the first one she gave where she left out the part about the money and the part about the shooting, that was just enough in bulk, that she knew she was going to the police station the next day and that was when she was going to tell her whole story. So she spent an hour and a half with Investigator[] Hayes, gave a four page statement that she signed and she read over every page and that was exactly what happened, and again, she left out the part about the money and she left out the part about her mom being pushed.

(Tr.p.219, line 15–Tr.p.243, line 16)

## 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) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is 'any evidence' to support its findings.").

## ARGUMENT

**The trial judge properly admitted the 9-1-1 recording of the phone call by the witnesses pursuant to Rule 403, SCRE and Rule 801(d)(1)(B), SCRE.**

Appellant argues the trial court erred in allowing the State to introduce the 9-1-1 recording at trial because it was cumulative evidence, “so prejudicial as to inflame the passions of the jury,” and the trial judge failed to perform a Rule 403, SCRE analysis on the record before admitting it into evidence. The State disagrees with these allegations. Neither party disputed Appellant’s presence in the victims’ home that night. Thus, the 9-1-1 recording was important evidence regarding the only issue in the case: whether Appellant possessed a criminal intent when he entered the home. Additionally, Appellant’s repeated attacks on the victims’ veracity and recollection of events further increased the recording’s probative value and rendered it necessary evidence for the determination of Appellant’s guilt. Finally, admission of the 9-1-1 recording was proper because, pursuant to Rule 801(d)(1)(B), SCRE, it was used to rehabilitate the witnesses and counter the direct and indirect allegations that the victims fabricated their testimonies regarding Appellant’s demands for money.

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011).

“Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears.” State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (defining relevant evidence as “evidence having

any tendency 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”). If a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). However, even relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE.

Pursuant to Rule 801(d)(1)(B), SCRE a prior statement by a witness which is consistent with that witness’s testimony is admissible for the purposes of rebutting an express or implied charge against the witness of recent fabrication or improper influence or motive. However, the statement must have been made by the witness before the alleged fabrication or alleged improper influence or motive arose. Id.

In order to establish the statutory offense of first-degree burglary in South Carolina, the State must prove the defendant: (1) entered the dwelling of another; (2) without consent; (3) with the intent to commit a crime therein; and (4) with at least one aggravating circumstance present. S.C. Code Ann. § 16-11-311(A). To evaluate whether a defendant possessed a criminal intent at the time he or she enters a building, a jury may base its determination of that intent using evidence of defendant’s actions once inside the dwelling. State v. Gilliland, 402 S.C. 389, 741 S.E.2d 521 (S.C. App. 2012).

### **General Admissibility of 9-1-1 Recording**

Initially, the State notes Appellant does not dispute that 9-1-1 recordings are, absent evidentiary concerns with specific recordings, generally admissible as evidence at trial. In fact,

two cases cited by Appellant, State v. Bratschi, 413 S.C. 97, 755 S.E.2d 39 (Ct. App. 2015), and State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2003), both support this proposition. In Bratschi, this Court found admission of a 9-1-1 recording was proper even though the victim was audibly distressed within it because it provided evidence regarding an important issue at trial: the victim feared for his life. Id. at 118, 775 S.E.2d at 50. Further, the recording provided an explanation for some of the injuries found on his body. Id. Similarly, in Shuler the Supreme Court of South Carolina found admission of the deceased victim's recorded 9-1-1 call during the penalty phase of his capital trial was properly admitted because it described the crime scene immediately after her and her family were shot. Id. at 184, 577 S.E.2d at 442. Further, even though the decedent was audibly distressed, such distress was relevant to establishing the aggravating circumstance of physical torture which more "fully chronicle[d]" her suffering better than the pathologist's testimony describing her wounds as painful. Id. at 185, 577 S.E.2d at 442.

As demonstrated above, South Carolina law allows for the admission of 9-1-1 recordings are admissible even when they contain statements by audibly-distressed victims. In fact, the audible distress can itself be relevant evidence pertaining to the conviction and sentencing. See Id.; Bratschi, 413 S.C. at 118, 775 S.E.2d at 50.

#### **Rule 403, SCRE**

Initially, the State notes that Appellant compares his case to both State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013) and State v. King, 424 S.C. 188, 818 S.E.2d 204 (2018), in which our appellate courts found the failure to perform a Rule 403, SCRE analysis on the record constituted error. Appellant fails to recognize that both of these cases involved the admission of prior bad act evidence under Rule 404(b), SCRE, not evidence pertaining directly

to the admission of the crime. As discussed infra, the 9-1-1 recording was admissible as it was directly relevant to determination of the issues in this case.

In State v. Stephens, 398 S.C. 314, 728 S.E.2d 68 (2012), the named defendant challenged his conviction for murder claiming the trial court erred in admitting a photographic lineup of him because his “mug shot” unfairly prejudiced him, especially because introduction of the photo was “needlessly cumulative” given the witness who identified him in the line-up also identified him during trial. Id. at 319–320, 728 S.E.2d at 71–72. Ultimately, the State found introduction of the line-up was not error for several reasons. First Stephens’s trial strategy, seen through cross-examination and in his attorney’s closing arguments, was focused on discrediting the witness and her identification of him. As explained by the court, this strategy made it important for the jury to review the lineup to determine for itself whether the allegedly poor picture quality and other issues with the lineup influenced the witness’s identification. Thus, the defendant’s actions increased the lineup’s probative value and made it so that its introduction was not “needlessly” cumulative. Id. at 320–21, 728 S.E.2d at 72.

Second, Stephens failed to show that the admission of the lineup caused him unfair prejudice which outweighed the lineup’s probative value; his argument that his photo implied he had a prior criminal record, was unpersuasive on its face because: (1) photographic lineups have been regularly deemed admissible evidence, including photos suggestive of a criminal background; and (2) Stephens’s photo did not suggest a criminal history. Notably, Stephens’s photo was included in a lineup in which he and the other subjects were each wearing street clothes and each of the photographs could have been obtained from driver’s licenses, identification badges, or other sources. Id. at 321–22, 728 S.E.2d at 72.

Similar to the defendant in Stephens, trial counsel's strategy of impugning the character and veracity of the victims necessitated use of the 9-1-1 recording. As noted supra, the identity of the intruder in the victims' home was uncontested at trial. Instead, trial counsel's strategy was to discredit the witnesses' testimonies that Appellant demonstrated a criminal intent once inside the home by demanding money or harming Katrina. From the outset, trial counsel's efforts focused on discrediting their memories of the events and indicating their memories of that night could not be trusted. His leading questions all implied the victims never mentioned demands for money until sometime after their initial interviews and statements to law enforcement. By his closing statements, trial counsel's accusations progressed to direct claims that the witnesses' were intentionally lying about Appellant demanding money to avoid criminal prosecution for shooting Appellant. Notably, Appellant made these brash accusations knowing that they were untrue; both the 9-1-1 recording and the recorded police statements contained assertions by the witnesses that Appellant demanded money from the women.

Here, like in Stephens, Appellant's efforts to make Appellant's demands for money appear fabricated necessitated introduction of the 9-1-1 recording into evidence. The victims' responses in the recording directly contradicted trial counsel's assertions that they fabricated testimony regarding Appellant's criminal actions. Accordingly, because it was used to rehabilitate the victims' testimonies and demonstrate that Appellant possessed a criminal intent while in the home, the 9-1-1 recording was relevant and probative of guilt and outweighed any remote potential for unfair prejudice.

**Rule 801(d)(1)(B), SCRE**

Finally, pursuant to Rule 801(d)(1)(B), SCRE, the 9-1-1 recording was admissible because it contained a prior consistent statement by Sharaia used to rehabilitate her testimony.

Pursuant to Rule 801(d)(1)(B), SCRE, a prior statement by a witness which is consistent with that witness's testimony is admissible for the purposes of rebutting an express or implied charge against the witness of recent fabrication or improper influence or motive. Here, the 9-1-1 recording contained Sharaia's statements noting Appellant demanded money from her family. As noted above, trial counsel made express and implied charges against the victims that they fabricated the testimony concerning Appellant's demands for money in an effort to escape prosecution. Thus, admission of the recording was entirely appropriate through this rule to rebut trial counsel's allegations of impropriety.

**CONCLUSION**

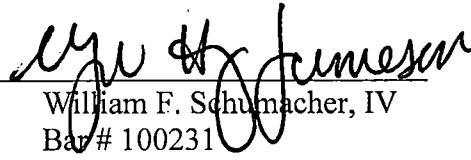

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 20, 2020

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**

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APPEAL FROM SPARTANBURG COUNTY  
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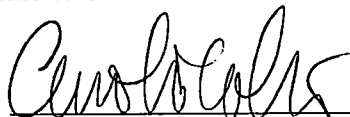
**PROOF OF SERVICE**

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I, Caroline Collins, 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:

Jessica M. Saxon, Esquire  
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I further certify that all parties required by Rule to be served have been served this 20th day of March, 2020.



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March 20, 2020

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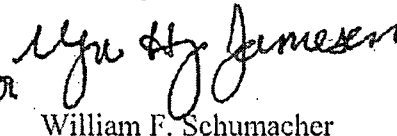
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MAR 20 2020  
SC Court of Appeals

RE: State v. Samuel J. Jeter – Appellate Case No. 2019-000065

Dear Ms. Saxon:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter, along with proof of service, in the above referenced case.

Sincerely,

*for* 

William F. Schumacher  
Assistant Attorney General  
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WFS/  
Enclosures

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