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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAKEEM J. J. WHITE,

APPELLANT

APPELLATE CASE NO. 2019-000403

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by admitting a recorded telephone call between Appellant and his girlfriend while Appellant was incarcerated pretrial where the evidence was not relevant and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE?

STATEMENT OF THE CASE

A Barnwell County Grand Jury indicted Appellant on September 6, 2018 for murder and armed robbery. R. *. A pretrial hearing was held on September 12, 2018 before the Honorable Doyet A. Early, III. Tr. 1. Deputy Solicitor David Miller and Assistant Solicitor Jackson Cooper represented the state. Tr. 1. Janek Kazmierski represented Appellant. Tr. 1.

Appellant's case was called to trial on October 15, 2018 before Judge Early, and a jury. Tr. 1. On October 17, 2018, the jury found Appellant guilty as indicted. Tr. 272, l. 24 – 273, l. 8. He was sentenced to forty years for murder and thirty years concurrent for armed robbery. Tr. 279, l. 18 – 280, l. 2.

This appeal follows.[1]

[1] The transcripts in this case are dated September 12, 2019 and October 15-17, 2019. However, the pretrial hearing took place on September 12, 2018 and the trial was held October 15-17, 2018. Undersigned counsel attempted to contact the court reporter to have the cover pages of the transcripts corrected. However, the original court reporter is now deceased. Court Administration informed counsel that since the court reporter is deceased, the date on the transcripts cannot be corrected.

STANDARD OF REVIEW

"In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." State v. King, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017) (quoting State v. Laney, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006)) (internal quotation marks omitted). "An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." Id. (citing State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012)).

ARGUMENT

The trial judge abused his discretion by admitting a recorded telephone call between Appellant and his girlfriend while Appellant was incarcerated pretrial where the evidence was not relevant and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

Relevant Facts

The state alleged at trial that Appellant shot and killed Kort Woodley during the early morning hours of December 15, 2016. Hours earlier, Appellant and Rayquan Clifton were at the Lucky Spot Club in Williston playing pool and drinking. Tr. 110, l. 9 – 111, l. 6. The two left the club and walked to Kitchens Trailer Park to meet Woodley to purchase crack cocaine. Tr. 111, l. 11 – 112, l. 8; Tr. 115, ll. 2-8. Shortly after they arrived at Chris Dunbar's trailer, Woodley pulled up in his car. He was the only occupant. Appellant and Clifton approached the driver's door and spoke to Woodley through the window. Tr. 74, l. 18 – 75, l. 11; Tr. 115, ll. 9-13. Harry Dukes, who was inside Dunbar's trailer, came outside and stood by the passenger side of the car. Tr. 75, ll. 6-8.

Dukes claimed Woodley, who never got out of the car, reached into the glove compartment, pulled out an ounce of crack, and handed it to Appellant. Tr. 75, ll. 3-20; Tr. 88, ll. 7-23; Tr. 115, l. 19 – 116, l. 9. Clifton immediately "snatched" the drugs from Appellant and "took off running." Tr. 75, ll. 20-24; Tr. 112, ll. 12-24; Tr. 116, ll. 10-18. In response, Woodley reached his hand out the window and grabbed Appellant's arm. According to Dukes, Appellant then shot Woodley in the chest and fled in the same direction as Clifton. Tr. 76, l. 2 – 77, l. 10; Tr. 95, ll. 9-24. Clifton maintained he did not see the shooting and did not hear a gunshot after he fled. Tr. 116, ll. 17-20.

After the shooting, Dukes asked Woodley if he was all right, but Woodley "wouldn't say nothing." Tr. 77, ll. 10-12. Woodley sped away in his car and shortly thereafter ran off the road. Tr. 77, ll. 13-14. His car traveled over railroad tracks and ultimately crashed into the parking lot of the local magistrate's court. Tr. 40, ll. 12-25; Tr. 125, ll. 14-18. The first responders initially believed Woodley was injured in a single vehicle accident. Tr. 56, ll. 3-17; Tr. 125, ll. 19-23; Tr. 204, ll. 4-10. However, the paramedics who treated Woodley observed a penetrating injury to his chest which they suspected to be a gunshot wound. Tr. 204, l. 13 – 205, l. 16.

The pathologist who conducted the autopsy determined Woodley died from blood loss caused by a through and through gunshot wound to the left back which exited through the chest. Tr. 195, l. 13 – 196, l. 8. Significantly, this differed from Harry Dukes' allegation that Appellant shot Woodley in the chest. See Tr. 95, ll. 9-24.

Appellant was arrested hours after the shooting. On December 24, 2016, nine days later, Appellant called his girlfriend, Maggie Aldrich, from the detention center. Their fifteen minute conversation was recorded. See Court's Exhibit No. 1 (DVD of Jail Call). During the call, Aldrich told Appellant that the pathologist determined Woodley died as a result of the car accident and not from a gunshot wound. Tr. 5, ll. 13-22 (September 12, 2018 Transcript). It was not known where Aldrich heard this false information. Nonetheless, Appellant's reaction was one of excitement or elation. He said, "That's the best Christmas present ever." Tr. 6, ll. 9-11 (September 12, 2018 Transcript). The deputy solicitor asserted during his closing argument that Appellant's reaction was evidence of consciousness of guilt. Tr. 235, ll. 5-11.

How the Issue was Presented Below

Appellant filed a written motion pretrial moving to suppress the recorded telephone call. R. * (Motion). In the motion, Appellant argued the recorded call contained inadmissible hearsay,

was not relevant, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. R. * (Motion). A pretrial hearing was held on Appellant's motion. During the hearing, Appellant expanded upon the arguments he made in his written motion. Defense counsel asserted the recorded call was not evidence of consciousness of guilt and therefore not probative. Tr. 6, ll. 15-21 (September 12, 2018 Transcript). He argued "nothing" in the call indicated Appellant was involved in the shooting and Appellant's reaction to the false information would have been the same regardless of whether he was involved or not given that he was incarcerated at the time for the alleged murder. Tr. 12, ll. 18-20 (September 12, 2018 Transcript).

Counsel further argued the evidence was unfairly prejudicial because it was essentially inadmissible character evidence. Tr. 6, ll. 11-21 (September 12, 2018 Transcript). He contended, "It shows that Mr. White [Appellant] is callous or indifferent to the fact that someone died." Tr. 6, ll. 14-15 (September 12, 2018 Transcript). He later continued, "[W]hat it [the recorded call] does show is Kort Woodley's life didn't have meaning to him [Appellant] at that time when he was sitting in jail." Tr. 12, ll. 21-23 (September 12, 2018 Transcript).

In response, the deputy solicitor argued the recorded call was not inadmissible hearsay because Aldrich told Appellant "something that we don't allege is true, so we can't be offering it for the truth of the matter asserted." Tr. 9, ll. 16-24(September 12, 2018 Transcript). Consequently, he concluded the evidence does not meet the definition of hearsay. Tr. 9, ll. 22-24 (September 12, 2018 Transcript). Significantly, the solicitor failed to address the remainder of the fifteen minute call.

As to relevance, the solicitor argued the recorded call was relevant and probative under the state's theory of the case. He asserted, "Mr. White [Appellant] may not have known he even

hit Kort Woodley when he [Appellant] ran away from the scene because he fired into the car and turned around and ran off, according to the witness [Harry Dukes]. So if, in fact, Kort Woodley had died in the car wreck and not from being shot, then that would be extremely important to his charges. And it would justify his reaction of jumping up and down and hollering and calling to one of his friends that was in the jail, D'Monte Pain, to tell him that . . . Hey, he didn't die from the gunshot." Tr. 9, l. 25 – 10, l. 17 (September 12, 2018 Transcript). Lastly, the solicitor maintained the probative value of this evidence was not outweighed by the danger of unfair prejudice. Tr. 11, ll. 5-10 (September 12, 2018 Transcript).

The trial judge took the motion under advisement. On the first day of trial, the judge filed a written order denying Appellant's motion to suppress the recorded telephone call. R. * (Order). In the order, the judge merely stated he was denying he motion after careful consideration of the recorded call and of the arguments of counsel at the pretrial hearing. R. * (Order).

When the state sought to admit the recorded telephone call during trial as State's Exhibit No. 2, Appellant renewed his prior objection. Before admitting the exhibit over Appellant's objection, the judge noted he had filed a written order addressing Appellant's objection and asserted Appellant was "protected." Tr. 152, ll. 6-17. The entirety of the fifteen minute call between Appellant and Maggie Aldrich was then published to the jury. Tr. 152, l. 18 – 153, l. 13.

Discussion

The trial judge abused his discretion by admitting the recorded telephone call between Appellant and Aldrich while Appellant was incarcerated pretrial since the evidence was not relevant and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

"All relevant evidence is admissible." Rule 402, SCRE; See State v. Pagan, 357 S.C. 132, 142, 591 S.E.2d 646, 651 (Ct. App. 2004). "Relevant evidence" is defined 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." Rule 401, SCRE. "Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." Pagan, 357 S.C. at 142, 591 S.E.2d at 651 (citing In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003)).

Appellant's reaction to the false information that Woodley died from injuries sustained during the car accident and not from a gunshot wound was not relevant because, as defense counsel argued below, Appellant's reaction would have been the same regardless of whether he was involved in the shooting or not. See Tr. 12, ll. 19-20 (September 12, 2018 Transcript). At the time Aldrich told Appellant the false information, Appellant was incarcerated in the local detention center for Woodley's murder. Whether he was innocent or guilty, Appellant would have been excited to learn Woodley was not murdered but died by other means because it would have resulted in his release from jail and the dismissal of his charges. Consequently, Appellant's reaction did not "make more or less probable" that he was involved in Woodley's murder. Moreover, the remainder of the fifteen minute telephone call was certainly not relevant to any matter in the case and should have been excluded.

Even if the evidence was relevant, it should have been excluded pursuant to Rule 403, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. For the same reasons the call was not relevant, it was also not probative. Nothing during the call, including Appellant's reaction to being told Woodley died from injuries sustained during the car accident and the

remainder of the conversation between Appellant and Aldrich, suggested Appellant was involved in Woodley's murder. However, the evidence was unfairly prejudicial to Appellant because it demonstrated he was callous and indifferent to the fact that Woodley had died. His excited reaction showed he lacked sympathy and suggested to the jury that they should find Appellant guilty merely because he did not care whether Woodley lived or died. Simply put, it reflected poorly on Appellant's character. Moreover, the extraneous conversation between Appellant and Aldrich for the remainder of the fifteen minute phone call was unfairly prejudicial because it included profanity and bickering.

In State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), our Supreme Court held the trial judge abused his discretion by admitting an entire fifteen minute telephone call King made while he was incarcerated pretrial in the local detention center. King was tried for the attempted murder and armed robbery of a Charleston cab driver. Id. at 50, 810 S.E.2d at 19. The state's purpose in introducing the recording was to establish King's ownership of the cellphone number used to contact the cab company. Id. at 68, 810 S.E.2d at 29. King argued this could have been accomplished by introducing detention center phone logs. Id. Further, King maintained that any probative value of the recording was outweighed by the danger of unfair prejudice created by the recording, which contained a profanity laced conversation between King and another individual that inferred King had been charged with prior crimes similar to those for which he was currently on trial. Id.

Our Supreme Court agreed. The Court emphasized that while the recording was relevant to the state establishing King's ownership of the cellphone that called the cab company, it was not the only evidence that could have served this purpose. Id. at 69, 810 S.E.2d at 29. "Rather, the testimony of Sergeant Kevia Heyward, who was employed at the detention center, and the

detention center call logs clearly established that King called this number sixty-three times in one month." Id. Moreover, the Court asserted the state could have agreed to the request that it stipulate to King's ownership of the cellphone. Id.

Lastly, the Court held the limited probative value of the fifteen minute recording was outweighed by the unfair prejudice to King since it was "riddled with profanity, racial slurs, and impermissible references to King's prior bad acts." Id. at 69, 810 S.E.2d at 29-30 (citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.")).

Like the Supreme Court in King, this Court should hold any probative value of the fifteen minute telephone call between Appellant and Aldrich was outweighed by the unfair prejudice to Appellant. Respectfully, this Court should hold the trial judge abused his discretion by admitting the telephone call, reverse Appellant's convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy______________
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of April, 2020.