STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TEQUAN MARTRELL HOLMES,

APPELLANT

APPELLATE CASE NO 2019-001313

ANDERS BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in allowing an eyewitness to testify to hearsay statements made by the victim where the eyewitness claimed that the victim stated that two individuals associated with Appellant accused him of stealing money which was the alleged motivation for the shooting and such hearsay statement did not fall within a hearsay exception?

STATEMENT OF THE CASE

Appellant was indicted by the Aiken County grand jury for murder, possession of a firearm by a person convicted of a violent crime, and possession of a weapon during the commission of a violent crime. R. *544-549. Appellant's trial was held before the Honorable Thomas W. Cooper, Jr. and a jury from July 22 – 25, 2019. R. 1. Appellant was represented by Nicholas McCarley and Brianne Steiner. R. 1. The state was represented by Elizabeth Young and Cassie Hall. R. 1.

The jury found Appellant guilty as charged on all three counts. R. 197, ll. 9 – 21. The judge sentenced Appellant to forty-years imprisonment for murder, five-years imprisonment for the possession of a weapon during the commission of a violent crime, and "time served" for the possession of a firearm by a person convicted of a violent crime. R. 541, ll. 12 – 22.

This appeal follows.

STANDARD OF REVIEW

"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). "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. at 429–30, 632 S.E.2d at 848.

STATEMENT OF FACTS

DeMarco Richardson ("DeMarco") testified that on June 18, 2016, he was drinking at Kip Boyd's house, who was DeMarco's neighbor. R. 76, ll. 1 – 7. DeMarco's brothers, Rodrick Glover and Quinten Richardson were present, along with Dominick Paige, and Appellant. R. 79, ll. 4 – 17. According to DeMarco, Appellant, Paige and Glover left the house "two or three times" in Appellant's gold Audi that night. R. 80, ll. 2 – 22. The victim, Tiquan Oakman, arrived at Boyd's house after he got off work at approximately nine or ten p.m. R. 80, l. 23 – 81, l. 2.

DeMarco recalled that he was on Boyd's front porch with Oakman when Appellant pulled back up to the house with Paige and Glover. R. 83, ll. 5 – 14. DeMarco alleged that Appellant said to the victim that the victim "took his money." R. 84, ll. 2 – 3. According to DeMarco, the victim went down to Appellant's car and Appellant "told [the victim] it's a robbery now." When the victim pulled his cell phone out of his pocket, Appellant shot the victim in the chest killing him. R. 84, ll. 4 – 24. DeMarco then claimed that Appellant threatened to shoot the other individuals who were present before leaving the scene in his gold Audi. R. 87, ll. 3 – 25. However, on cross-examination, DeMarco admitted that the night of the shooting he gave a statement to police in which he denied seeing who the shooter was. R. 89, l. 17 – 90, l. 23.

Quentin Richardson ("Quentin") also testified that he was at Boyd's house the night of the shooting. R. 118, ll. 5 – 14. Quentin testified that he was speaking with the victim when Appellant arrived at Boyd's house with Paige and Glover. Quentin was permitted to testify over defense counsel's objection that the victim said Paige and Glover had accused him of stealing money. R. 122, ll. 1 – 25. When defense counsel objected to this hearsay testimony, the

assistant solicitor responded that it was not being offered for the truth of the matter and that the statement was admissible as "the victim's state of mind under Rule 803(3)." R. 122, ll. 13 – 16. The judge allowed the hearsay statement to be admitted. R. 122, ll. 17 – 18. Quentin then testified that when the victim went to confront Paige and Glover about them accusing him of stealing money, Appellant shot and killed the victim. R. 123, ll. 1 – 16. The assistant solicitor argued in closing argument that this dispute over money was what motivated Appellant to shoot the victim. R. 471, ll. 6 – 23

Kip Boyd testified that he was intoxicated the night of the shooting but remembered "glimpses" of the event. R. 95, ll. 4 – 8. Boyd claimed that he was with the victim on his front porch when Appellant arrived and asked the victim to walk over to Appellant's car. Boyd then claimed that he saw Appellant shoot the victim. R. 96, l. 20 – 97, l. 19.

Appellant's cousin, Raekwon Mathis, testified that Appellant came to his house on the night of the shooting and was cleaning blood out of his gold Audi. R. 138, l. 12 – 141, l. 8. Mathis then stated that he rode with Appellant in the gold Audi over to his Uncle Kelvin's house. R. 144, l. 5 – 145, l. 7. Mathis claimed that Appellant admitted to shooting the victim because he believed the victim stole money from him. R. 152, l. 18 – 153, l. 22. While Appellant and Mathis were at Kelvin's house, police arrived and arrested Appellant. R. 154, l. 21 – 157, l. 17.

ARGUMENT

The trial judge erred in allowing an eyewitness to testify to hearsay statements made by the victim because the eyewitness claimed that the victim stated that two individuals associated with Appellant accused him of stealing money which was the alleged motivation for the shooting and such hearsay statement did not fall within a hearsay exception.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801, SCRE. Hearsay is not admissible unless it falls within a recognized exception. Rule 802, SCRE. One exception to the inadmissibility of hearsay is "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition." Rule 803(3), SCRE.

Here, the hearsay statement that the state sought to introduce was a statement made by the victim to Quentin Richardson, a testifying eyewitness. The statement purportedly made by the victim claimed that the victim had been accused of stealing money by two associates who were with Appellant. In closing arguments, the assistant solicitor argued that Quentin "was in the best position to tell [the jury] what happened," because Quentin was the least intoxicated person at the scene. R. 470, ll. 13 – 17. The assistant solicitor continued:

> [Quentin] told you that prior to them coming back that last time from when they went to Wal-Mart and [Appellant] bought the bullets that *the victim had come over and told him there's some sort of argument between the victim and the Defendant over some missing money or stolen money and that the victim was upset about it and he was trying to call Roderick and Dominique and talk to them about why they said he took the money*.
>
> So when they came back he told you he saw -- Quentin saw the Defendant get out of the driver's seat, that *the Defendant and the victim had a conversation and he said it was kind of near the porch about this stolen money*, and then the victim heads over to the Audi, which is parked there in Mr. Kip's driveway, because he

> wants to confront Roderick and Dominique about why are they telling him he took this money. And on the way there before he could finish talking to them about that, the Defendant shouts out this is a robbery.

R. 471, ll. 6 – 23 (emphasis added).

The assistant solicitor's argument showed that the state's theory was that the disagreement about the stolen money was the motivation behind the shooting. However, the statement purportedly made by the victim regarding the stolen money was hearsay and should not have been admitted over defense counsel's objection. The trial judge erred in allowing Quentin to testify regarding the victim's hearsay statements which allowed the state to argue a motive which was not properly in evidence.

Contrary to what the state argued in response to defense counsel's hearsay objection, the hearsay statement by the victim was in fact offered for the truth of the matter asserted. The statement was relied on by the state in formulating its theory as to *why* Appellant allegedly shot the victim. The state's theory would have been incoherent without this statement and it was used by the state as being a true statement. Therefore, the hearsay statement made by the victim that he was being accused of stealing money was offered for the truth of the matter and should have been excluded as hearsay.

In State v. King, 412 S.C. 403, 411-412, 772 S.E.2d 189, 193-194 (Ct. App. 2015), this Court held that an officer's testimony that she "learned from the neighbors" that three or four shots had been fired was hearsay and should have been excluded. The state maintained that the officer's testimony was not hearsay because she merely testified as to what she learned during her investigation and not what any individual said. However, this Court noted that because the officer's testimony that there were three or four shots fired was based solely on hearsay

statements by witnesses, the officer had necessarily revealed what those witnesses' statements were. Id. at 412-413, 772 S.E.2d at 194.

In King, this Court also held that the officer's testimony to the hearsay statement regarding the number of gunshots was offered for the truth of the matter because the state was attempting to prove that more than one shot was fired. Id. at 415-416, 772 S.E.2d at 195-196. As in King, here, the state used the victim's alleged hearsay statement to seemingly prove an important fact – the motivation for the shooting.

Furthermore, the assistant solicitor's contention at trial that the victim's hearsay statement regarding the stolen money was admissible under Rule 803(3), SCRE because it was the victim's "state of mind" was incorrect. In State v. Garcia, 334 S.C. 71, 76, 512 S.E.2d 507, 509 (1999), the Supreme Court noted that "while the present state of the declarant's mind is admissible as an exception to hearsay, the reason for the declarant's state of mind is not. In relying on Garcia, this Court found in State v. Daise, 421 S.C. 442, 459-461, 807 S.E.2d 710, 718-719 (Ct. App. 2017) that it was error to allow a witness to testify that the deceased victim had made statements about being afraid of the defendant and wanting to end her relationship with him because he had threatened to kill her. This Court found that these hearsay statements did not fall within the state of mind exception because "they not only revealed [the victim's] fearful state of mind, they described the reason for it."

The hearsay statement in this case was not an expression of the victim's state of mind. The victim was alleged to have said that two of Appellant's associates had accused him of stealing money. This was not a state of mind but rather a factual statement regarding a dispute between the victim and Appellant. In Vail v. State, 402 S.C. 77, 87, 738 S.E.2d 503, 508-509 (Ct. App. 2013) this Court found that trial counsel was ineffective in failing to object to

testimony that the alleged victim in a criminal sexual conduct with a minor case had said that the defendant was mad at her because she had told others that she and the defendant had sex. In Vail, the PCR judge found this hearsay statement fell within the state of mind exception in Rule 803(3), SCRE, and therefore there was no deficiency in counsel's failure to object to it. The Vail Court disagreed and reversed, noting that "'[i]f the reservation in the text of [Rule 803(3)] is to have any effect, it must be understood to narrowly limit those admissible statements to declarations of condition—'I'm scared'—and not belief—'I'm scared because someone threatened me.'" Vail v. State, 402 S.C. 77, 87, 738 S.E.2d 503, 509 (Ct. App. 2013) (quoting State v. Tennant, 394 S.C. 5, 16, 714 S.E.2d 297, 303 (2011).

The trial court here erred in allowing the eyewitness to testify that two of Appellant's associates had accused him of stealing money. The state relied on this improperly admitted hearsay in its closing to urge that this statement revealed the motivation for Appellant to allegedly shoot the victim. This hearsay statement was offered for the truth of the matter asserted and it did not fall within the state of mind exception in Rule 803(3), SCRE. Appellant's convictions should be reversed. See State v. Garcia, 334 S.C. 71, 512 S.E.2d 507 (1999); State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015).

CONCLUSION

By reason of the foregoing argument, Appellant's convictions should be reversed, and this case remanded to the Aiken County Court of General Sessions for a new trial.

s/Adam Ruffin
Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of June, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Jun 24 2020
SC Court of Appeals

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THE STATE,

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APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tequan Martrell Holmes states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Thomas W. Cooper, which was held on July 22 - 25, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Tequan Martrell Holmes.

Respectfully Submitted,

s/Adam Ruffin
Adam Sinclair Ruffin
Appellate Defender
ATTORNEY FOR APPELLANT

This 24th day of June, 2020.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s):
(2) Entire trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 24, 2020

s/Adam Ruffin
Adam Sinclair Ruffin
Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 24, 2020.

s/Adam Ruffin
Adam Sinclair Ruffin
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