

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

DAVID ERIC HUGUE, JR.,
APPLICANT.

v.

STATE OF SOUTH CAROLINA
RESPONDENT.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-000238

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DEC 29 2020

SC Court of Appeals

THE APPLICANT (APPLICANT) MAKING ITS RETURN TO THE DIRECT APPEAL FILED BY DAVID ERIC HUGUE, JR., AND HE WOULD RESPECTFULLY SHOW THIS COURT:

I.

HOLDINGS: THE COURT OF APPEALS, DAVID ALEXANDER, APPELLATE DEFENDER, HELD THAT:

1) DID TRIAL COURT ERR IN ALLOWING PREJUDICIAL TEXT MESSAGE INTO EVIDENCE?

ARGUMENT

THE TRIAL COURT ERRED IN ADMITTING UNAUTHENTICATED TEXT MESSAGE WITHOUT EXAMINING IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, OR MISLEADING THE JURY, OR BY CONSIDERATION'S UNDOE DELAY, WAST OF TIME, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE.

~~II.~~

IN THIS CASE THE STATE ADMISSION OF THE TEXT MESSAGE WAS PURELY TO MISLEAD AND CONFUSE THE JURY.

THE TEXT MESSAGE MAKES "NO" MENTION OF THE CRIME AND WAS SOLELY USED TO MAKE OTHERWISE NORMAL ACTIVITY LOOKS DEVIANT.

THE COURT DID NOT MENTION HOW THE TEXT HAD ANY PROBATIVE VALUE WHILE THE SOLELY RELYING ON ITS PREJUDICIAL VALUE TO PERSUADE THE JURY.

I.

THERE THE APPELLANT ARGUES THAT THE TEXT MESSAGE WAS SO AMBIGUOUS AND CONFUSING THAT IT SHOULD HAVE BEEN EXCLUDED UNDER RULE 403.

IN SUPPORT OF THIS ARGUMENT "APPELLANT" AVERES THAT THIS TEXT MESSAGE DID NOT SUPPORT THE STATES ARGUMENT THAT HE COMMITTED THE CRIME, NOR IS IT RELEVANT TO THE CRIME.

"RELEVANT EVIDENCE MEANS" 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. ALTHOUGH 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 RULE 403, SCRE, SEE ALSO STATE V. CHEESEBORD, 346 S.C. 526, 547 S.E. 2D 300, 311 (2001). AL EVIDENCE IS MEANT TO BE PREJUDICIAL; IT IS ONLY UNFAIR PREJUDICE WHICH MUST BE AVOIDED. STATE V. BRATSCH, 413 S.C. 97, 115, 775 S.E. 2D 39, 49 (CT. APP. 2015) (QUOTING STATE V. GILCHRIST, 329 S.C. 621, 630, 496 S.E. 2D 424, 429 (CT. APP. 1998)). EVIDENCE IS UNFAIRLY PREJUDICIAL IF IT HAS AN UNDUE TENDENCY TO SUGGEST A DECISION ON AN IMPROPER BASIS, SUCH AS AN EMOTIONAL ONE. STATE V. WILSON, 345 S.C. 1, 7, 545 S.E. 2D 827, 830 (2001). THE BURDEN IS ON THE OPPONENT OF THE EVIDENCE TO ESTABLISH INADMISSIBILITY UNDER RULE 403. STATE V. KING, 424 S.C. 188, 200 N.6, 818 S.E. 2D 204 N.6 (2018). A TRIAL [COURT'S] DECISION REGARDING THE COMPARATIVE PROBATIVE VALUE AND PREJUDICIAL EFFECT OF EVIDENCE SHOULD BE REVERSED ONLY IN EXCEPTIONAL CIRCUMSTANCES. STATE V. SLEDGE, 428 S.C. 40, 55, 832 S.E. 2D 633, 641-42 (CT. APP. 2019). (ALTERATION IN ORIGINAL) (QUOTING STATE V. COLLINS, 409 S.C. 524, 763 S.E. 2D 22, 28 (2014)). CIRCUMSTANCE EVIDENCE, IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES FROM WHICH THE EXISTENCE OF A SEPARATE FACT MAY BE INFERRED. STATE V. ROGERS, 405 S.C. 554, 563, 748 S.E. 2D 265, 270 (CT. APP. 2013).

THE MINIMUM PROBATIVE VALUE OF THE TEXT MESSAGE MUST BE BALANCED AGAINST THE DANGER OF UNFAIR PREJUDICIAL, CONFUSION OF THE ISSUE, OR MISLEADING THE JURY RULE 403 SCRE THE APPELLANT ARGUES ALL THREE APPLY HERE:

UNFAIR PREJUDICE IS THE TENDENCY OF THE EVIDENCE TO SUGGEST A DECISION BASED ON SOMETHING OTHER THAN THE LEGITIMATE FORCE OF THE EVIDENCE. A TEXT MESSAGE ABOUT LAYING LOW WITHOUT MENTION OF THE CRIME HERE WAS INTRODUCED BY THE STATE AND ALLOWED BY THE COURT KNOWING IT WOULD PREJUDICE THE APPELLANT WITHOUT ITS VALUE BEING WEIGHED

THE PROBATIVE VALUE OF THE PHOTOS MUST BE BALANCED AGAINST THE DANGER OF UNFAIR PREJUDICE. PREJUDICE THAT IS UNFAIR IS DISTINGUISHED FROM THE LEGITIMATE IMPACT ALL EVIDENCE HAS ON THE OUTCOME OF A CASE. UNFAIR PREJUDICE DOES NOT MEAN THE DAMAGE TO A DEFENDANT'S CASE THAT RESULTS FROM THE LEGITIMATE PROBATIVE FORCE OF THE EVIDENCE; RATHER IT REFERS TO EVIDENCE WHICH TENDS TO SUGGEST DECISION ON AN IMPROPER BASIS. STATE V. GILCHRIST, 329 S.C. 621, 630, 496 S.E.2D 424, 429 (C.T. APP. 1998) (QUOTING UNITED STATES V. BONDS, 12 F.3D 540, 561 (6TH CIR. 1993)), ALL EVIDENCE IS MEANT TO BE PREJUDICIAL, IT IS ONLY UNFAIR PREJUDICE WHICH MUST BE [SCRUTINIZED UNDER RULE 403]. ID. (QUOTING UNITED STATES V. RODRIGUEZ - ESTRADA, 874 F.2D 153, 156 (1ST CIR. 1985)). SEE ALSO UNITED STATES V. MONR, 362 F.3D 613, 619-20 (4TH CIR. 2003) (RULE 403 ONLY REQUIRES SUPPRESSION OF EVIDENCE THAT RESULTS IN UNFAIR PREJUDICE - PREJUDICE THAT DAMAGES AN OPPONENT FOR REASON OTHER THAN ITS PROBATIVE VALUE, FOR INSTANCE, AN APPEAL TO MOTION. . . .).

THERE IS NO PROBATIVE VALUE TO THE TEXT MESSAGE BECAUSE IT TENDS TO SUGGEST A DECISION TO DELETE A FACE BOOK AND LAY LOW IS SOMETHING THAT EXHIBITS GUILT WHEN THERE IS NO EVIDENCE TO SUPPORT THAT THESE ACTIONS WOULD BE UNCOMMON OF ANY ONE ACCUSED OF A CRIME REGARDLESS OF GUILT OR INNOCENTS.

ROLE 403 PROVIDES THAT, [A]LTHOUGH RELEVANT EVIDENCE MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE. PROBATIVE MEANS [T]ENDING TO PROVE OR DISPROVE. BLACK'S LAW DICTIONARY 1323 (4TH ED. 2009).

PROBATIVE VALUE IS THE MEASURE OF THE IMPORTANCE OF THAT TENDENCY TO THE OUTCOME OF A CASE. IT IS WEIGHT THAT A PIECE OF RELEVANT EVIDENCE WILL CARRY IN HELPING THE TRIER OF FACT DECIDE THE ISSUES. [T]HE MORE ESSENTIAL THE EVIDENCE, THE GREATER ITS PROBATIVE VALUE. UNITED STATES V. STOUT, 509 F.3D 716, 2016 (6TH CIR 2009) (INTERNAL QUOTATION MARKS OMITTED). THUS, A COURT ANALYZING PROBATIVE VALUE CONSIDERS THE IMPORTANCE OF THE EVIDENCE AND THE SIGNIFICANCE OF THE ISSUES TO WHICH THE EVIDENCE RELATES. AS OUR SUPREME COURT STATED IN STATE V. TORRES, 390 S.C. 618, 703 S.E.2D 226 (2010), [P]HOTOGRAPHS CALCULATED TO AROUSE THE SYMPATHY OR PREJUDICE OF THE JURY SHOULD BE EXCLUDED IF THEY ARE ... NOT NECESSARY TO SUBSTANTIATE MATERIAL FACTS OR CONDITIONS. 390 S.C. AT 623; 703 S.E.2D AT 228 (EMPHASIS ADDED). THE EVALUATION OF PROBATIVE VALUE CANNOT BE MADE IN THE ABSTRACT, BUT SHOULD BE MADE IN THE PRACTICAL CONTEXT OF THE ISSUES AT STAKE IN THE TRIAL OF EACH CASE.

(WHEN I BALANCING THE DANGER OF UNFAIR PREJUDICE] AGAINST THE PROBATIVE VALUE, THE DETERMINATION MUST BE BASED ON THE ENTIRE RECORD AND WILL TURN ON THE FACTS OF EACH CASE. (CITING STATE V. GILLIAN, 373 S.C. 601, 609, 646 S.E. 2D 812, 816 (2007))).

CONCLUSION

BECAUSE THE COURT ERRED IN ALLOWING THESE PREJUDICIAL TEXT MESSAGE WITHOUT WEIGHING ITS PROBATIVE VALUE. THE APPELLANT SUFFERED WITHIN PREJUDICES AND THE STATE HAD NO OTHER EVIDENCE TYING THE APPELLANT TO THIS ~~CRIME~~ OTHER THAN THE CONTRADICTION AND EVERY CHARGING TESTIMONY OF AN UNCREDIBLE WITNESS WHO DID NOT ACTUALLY SEE THE SHOOTING.

THIS CASE SHOULD IMMEDIATELY BE OVERTURNED AND REMANDED FOR A NEW TRIAL.

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PERSONALLY APPEARED BEFORE ME THE UNDERSIGNED, DAVID E. HUGUE, JR.,
WHO BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS PRO SE ATTORNEY
FOR DAVID ERIC HUGUE, JR., IN THE ABOVE-CAPTIONED ACTION, AND THAT
HE HAS THIS 12th DAY OF 12-22-2020, 2020, SERVED UPON COURT OF
APPEALS. THE NOTICE OF MOTION OF "DID TRIAL COURT ERR IN ALLOWING
PREJUDICIAL TEXT MESSAGE INTO EVIDENCE, BY PLACING SAID MOTION
OF IN THE UNITED STATES MAIL WITH PROPER POSTAGE AFFIXED THERE
TO INSURE PROPER DELIVERY TO ADDRESS BELOW:

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 22nd DAY OF December, 2020

DAVID ERIC HUGUE, JR.,
PRO SE ATTORNEY

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 7-27-2026

TIME: 11:28 am

MR. David Eric Hogue JR. SOCV# 555411
Broad River Correctional Institute
Greenwood Unit #1065 Aside
1460 Broad River Road
Columbia S.C. 29210

To: South Carolina
P.O. Box 11629
Columbia, South Carolina
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