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JAN 11 2021

S.C. SUPREME COURT

State of South Carolina

In The Court of Appeals

Appeal From Charleston County

Honorable J.C. Buddy Nicholson

Circuit Court Judge

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JAN 13 2021

SC Court of Appeals

The State,

Respondent,

v.

Douglas Lavance Young,

Appellant Pro-Se.

Appellate Case No. 2019-002034

Pro-Se Brief of Appellant

Douglas Lavance Young  
MacDougall Correctional Inst.  
1516 Old Gilliard Rd.  
Ridgeville, S.C. 29472

MacDougall Correctional Inst.  
Mailroom

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TABLE OF AUTHORITIES

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11. State v. Mansfield 343 S.C. 66,538 S.E.2d 25
12. State v. Mattison 352 S.C. 577,575 S.E.2d 855
13. State v. McDonald 343 S.C. 319,540 S.E.2d 464
14. State v. Quattlebaum 338 S.C. 441,577 S.E.2d 105

Rule

SCRE 613(b)

SCRE 801(a)

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge abused his discretion when he allowed/let in hearsay testimony and witness prior inconsistent statement SCRE 613(b); SCRE 801(a) as admissible.

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County Grand Jury for murder and possession of a weapon during the commission of a violent crime. R. 452-455. Appellant's jury trial was held before the Honorable Edgar W. Dickson and a jury from December 2-4, 2019. R.1.

Appellant was represented by Nicholas D'Angelo and Benjamin Lewis. R.1. The State was represented by David Osborne and Shannon Elliott R.1.

The jury found Appellant guilty as charged on each count R. 441. 1.20-442 The judge sentenced Appellant to thirty-five years imprisonment for murder and five years imprisonment for the weapon charge, with both sentence to run concurrently. R. 450 11.2.14.

Appellate Defender Adam Sinclair Ruffin filed an Anders Brief November 12, 2020.

This pro-se Appeal follows Dated:

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STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 354 S.C. 545 S.E.2d 827 (2001); State v. Mattison, 352 S.C. 577,575 S.E.2d 852 (Ct. App. 2002). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441,527 S.E.2d 105 (2000), The Appellate Court does not re-evaluate the facts based on it's own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. mattison, 352 S.C. 577,546 S.E.2d 855.

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545,564 S.E.2d 87 (2000); State v. Horton, 359 S.C. 555,598 S.E.2d 279 (Ct. App. 2004). A Court's ruling on the admission or admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. State v. Hamilton, 344 S.C. 344,353,543 S.E.2d 586, 591 (Ct. App. 2001); State v. Mansfield, 343 S.C. 66,538 S.E.2d 257 (Ct. App.2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319,540 S.E.2d 464 (2000); State v. Adams, 354 S.C. 361,377-78, 580 S.E.2d 785. (Ct. App. 2003).

In order for an error to warrant reversal the error must result in prejudice to the appellant. See; State v. Wyatt, 317 S.C. 370,453 S.E.2d 890 (1995), error without prejudice does not warrant reversal.

STATEMENT OF FACTS

On August 12, 2018 at 8:41 am, Jacob Bradshaw of the Charleston Police Department responded to a "shots fired" call in East Charleston. when Bradshaw arrived, he found the decedant lying on the sidewalk and requested EMS to respond. Bradshaw began searching for a red SUV that was seen leaving the scene of the shooting. Bradshaw identified the driver of the SUV as Kathy Brisbane and recalled that she was distraught, erratic, and scared. Ms. Brisbane was an eye witness to the shooting it turned out to be. Ms. Brisbane testified at appellant trial and provided hearsay testimony ruled prior inconsistent statement and was impeached. R. Page 168 l 4-25. R. page 169, l-1-25, R. page, 176, l- 1-15.

Mr. D'Angelo:: Your Honor, briefly, can we take this opportunity to put my earlier objection on the record?

The Court: Yes. We are talking about prior statements. You objected to Ms. Rivers testimony.

Mr. D'Angelo: The only thing I might mention is Ms. Brisbane would be able to leave the Court room while placing this on the record.

The Court: Yes. Ms. Brisbane. I will ask you to step out because we need to discuss something. And you do not need to hear it.

If you don't mind waiting out in the hall. We will get you back in here in just a second.

(whereupon the witness exited the witness stand)

The Court: All right. Go ahead.

Mr. D'Angelo: So Your Honor, again, just in context. Ms. Rivers--Kim Rivers had been testifying and Mr. Osborne was seeking to ask her if she remembered a conversation that she had had with Ms. Kathy Brisbane that the Appellant had ask her to take the gun. She stated she did not--she remembered the conversation, but she did not remember saying that to Ms. Brisbane. I objected ultimately to relevance. Mr. Osborne stated that he was trying to refresh her recollection. Ultimately, I had stated because we didn't know what Ms. Brisbane is ultimately going to testify. I had suggested that that statement could be written on a piece of paper, given to her and they could have gone about refreshing her recollection that way. that was my suggestion in how to handle that.

Mr. Osborne: if I may, just for the record, just for a point of clarification. I was straight-up impeaching her under 613(b).

The Court: Does that change your argument any?

Mr. D'Angelo: Ultimately it wouldn't--Again, it's not impeaching her at that point. She is saying that she don't remember it. Furthermore, we don't know what Ms. Brisbane is going to say. If we wanted to show her that statement, I felt that could have been accomplished that way.

The Court: My ruling is based on the fact that under 613(b) it says that the witness must be advised of the substance of the statement, the time and place it was alleged to have been made and whom. 613(b) SCRE.

When I was checking back over the case law, one of the cases State v. McLeod indicates State rule differs from Federal Rule in that proper foundation must be laid before admitting prior inconsistent statement.

Another case State v. Baylock makes the example of a prior statement to a detective when the defendant's wife--it says that extrinsic evidence of a wife's prior inconsistent statement to detective was properly admitted when she denied making it. Also, extrinsic impeachment evidence of a prior inconsistent statement by a state's witness is admissible as the witness denied making that statement. State v. Fossick.

Trial Transcript page. 170, line 15. For those reasons I let it in. I did not think--and I want it on the record--I thought your idea was a good idea, but I just think it would carry what the law is presently right now, but it may later. Your objection is preserved.

## ARGUMENT

In this case, the circuit court erred in allowing in the challenged testimony because was not only inadmissible, but because the testimony was hearsay also neither witness could collectively admit to similar testimony without objection.

Further, and in closing the rule that the State may not impeach its own witness through a prior inconsistent statement is inapplicable when the witness is declared hostile. State v. Bendaly, 273 S.C. 47, 254 S.E.2d 287 (1979); State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976); A witness should not be declared hostile except upon a showing of both actual surprise and harm. State v. Bisette, 297 S.C. 98, 302 S.E.2d 344 (1983); Bendaly Supra. In Bendaly, the south carolina Supreme Court held:

The trial judge committed error in declaring the state witness hostile and in allowing his impeachment where the state made no showing and the trial judge made no finding of surprise. Here the Solicitor did not claim surprise nor did the trial judge make such a finding in regards to State's witness Ms. Brisbane or Ms. rivers. Accordingly, it was error to allow the impeachment of Ms. Rivers and Ms. Brisbane, neither had been declared hostile.

CONCLUSION

Based on the foregoing, the Appellant respectfully submit that he should be granted a new trial and that his case should be reversed and remanded to the Charleston County Court of General Sessions.

Respectfully submitted,

s/ Douglas L. Young  
Douglas Lavance Young

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AFFIDAVIT OF SERVICE

S.C. SUPREME COURT

I, Douglas L. Young, being duly sworn, disposes and swears under penalty of perjury that on this \_\_\_ day of January, 2021, did forward for filing, one(1) original Pro-se Brief of Appellant to the Honorable Clerk for the S.C. Supreme Court/Daniel E. Shearhouse on the above date. By U.S. postage prepaid 1st. Class.

Respectfully submitted,

S/ Douglas L. Young  
Douglas L. Young

MacDougal Correctional Inst.  
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SC Court of Appeals

Honorable Clerk/Daniel E. Shearhouse  
S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Mr. Douglas L. Young  
MacDougall Corr. Inst.  
1516 Old Gilliard Rd.  
Ridgeville, S.C. 29472  
Birch # 2 Unit D-7A

January 4, 2021

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Dear Honorable Clerk:

S.C. SUPREME COURT

Enclosed for filing, please find one(1) original Pro-se Brief of Appellant to be filed and considered by the Court on my behalf along with my Anders brief submitted by my attorney. upon receipt, please return to me a clocked copy of the cover form records indicating receipt and filing with the Court at the above listed address.

Thanking you in advance,

S/ *Douglas L. Young*  
Douglas L. Young.

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