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Oct 21 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2018-000989

THE STATE,RESPONDENT,

v.

TRAVIS LATRELL LAWRENCE,APPELLANT.

RESPONDENT’S PETITION FOR REHEARING

On October 6, 2021, this Court issued a published opinion in which it affirmed Appellant’s convictions for attempted murder. State v. Lawrence, Op. No. 5863 (S.C. Ct. App. Filed October 6, 2021). While it affirmed Appellant’s conviction, this Court found the trial court improperly admitted evidence pertaining to the codefendant’s ownership of a gold Cadillac through the testimony of an officer who stated he pulled over the codefendant in that vehicle during a routine traffic stop weeks before the charged crime took place. Finding error, the majority’s opinion concluded the probative value of such evidence weak and “not relative or probative.” Furthermore, and even more troublingly, the majority opinion assumed the State had sinister intentions in admitting the evidence.

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent, the State, respectfully petitions for rehearing because the Court’s opinion is incorrect on three

critical points: (1) it failed to defer to the trial judge’s discretion on its Rule 403, SCRE analysis and instead improperly relies upon its own de novo view of the evidence in reaching its conclusion; (2) it failed to recognize admission of the traffic stop was proper evidence corroborating the Victim’s testimony and identification of Appellant and codefendant as his attackers; and (3) it presupposed that the State sought to admit evidence of the traffic stop for what the characterizes as “spillover prejudicial effect” is incorrect, especially given the State’s decision to, without prompting, introduce the incident as a “simple traffic stop” and without any reference to the purpose or reasons for the stop.

Failure to Comply with the Highly Deferential Abuse of Discretion Standard

“The admission of evidence is within the circuit court’s discretion and will not be reversed on appeal absent an abuse of that discretion.” State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). “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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE (emphasis added). When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have “particularly wide discretion [.]” State v. Collins, 398 S.C. 197, 209, 727 S.E.2d 751, 757 (Ct. App. 2012), rev’d on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). As a result, a trial judge’s ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, “[a] trial judge’s balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented

by the evidence.” State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” Hamilton, 344 S.C. at 358, 543 S.E.2d at 594. See, e.g., Dickerson, 395 S.C. at 116, 716 S.E.2d at 903.

In this case, the Court’s analysis afforded no deference to the trial judge’s analysis comparing the probative value and prejudicial effect of the testimony regarding the gold Cadillac. By doing so, this Court failed to correctly apply the standard that must be applied to such issues on appellate review. Therefore, this Court should grant rehearing and defer to the trial judge’s ruling and defer to applicable standard of review under the applicable law. If it does so, the Court will correctly find the trial judge’s decision was not an abuse of discretion.

The Potential for Unfair Prejudice from Admitting the Evidence of the Traffic Stop Did Not Substantially Outweigh its Probative Value

“Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness. Evidence is admissible to corroborate the testimony of a previous witness, and whether it in fact corroborates the witness' testimony is a question for the jury.” State v. Stroman, 281 S.C. 508, 510, 316 S.E.2d 395, 397 (1984) (internal citations omitted). Such evidence includes identifying information about a defendant. See State v. Day, 341 S.C. 410, 422, 535 S.E.2d 431, 437 (2000) (“Evidence concerning a defendant’s tattoo or nickname is not prejudicial when used to prove something at issue in a trial, such as the identification of the defendant.”).

In Appellant’s case, the trial judge did not abuse his broad discretion by admitting the limited testimony regarding the traffic stop because the State omitted any reference for what

Bennett was pulled over. Deputy Williamson referred to his interaction with Bennett as a “simple traffic stop,” a common occurrence for citizens nationwide.¹ The trial judge, noting it was a “stretch” to believe a solo traffic stop, which could have an extremely innocent explanation for its occurrence, would lead the jury to assume Bennett was associated with serious criminal behavior prior to the attack on Victim. Notably, our courts have found far more offensive material, such as autopsy photographs, are more probative than prejudicial when used to corroborate a witness’s testimony. See State v. Jarrell, 350 S.C. 90, 106-107, 564 S.E.2d 362, 371 (Ct. App. 2002) (finding the trial judge did not abuse his discretion by admitting autopsy photographs because, even though the photographs were “graphic,” they corroborated testimony presented during trial by depicting the victim’s injuries and by showing the victim’s condition); see also State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.”); see generally State v. Allen, 839 P.2d 291, 302 (Utah 1992) (“Photographs of victims are always sobering and graphic, and indeed, they fit within the adage ‘a picture speaks a thousand words.’ ”).

While the potential for prejudice was minimal, the evidence possessed value to the State’s case: establishing Victim’s truthfulness and credibility was critical for the State because Victim’s testimony and identification of Appellant and Codefendant were the crux of the State’s

¹ For example, the U.S. Department of Justice’s data indicates that in 2018, U.S. citizens reported 33,250,600 interactions with police concerning traffic-related contacts. Of those, 18,666,000 people, or about 8.1% of the U.S. population 16 or older that year reported being stopped by police as a driver of a vehicle, like Appellant was in this case. Erika Harrell & Elizabeth Davis, Bureau of Justice Statistics, NCJ 255730, Contacts Between Police and the Public, 2018 (2020), p.4.

case. Trial counsel focused his defense of Appellant by impugning the credibility and character of Victim, putting into the record Victim's prior drug offenses and the fact hundreds of dollars were found by officers in his home. As early as his opening statement, trial counsel called Victim's recollection of the event into question, calling him an "alleged victim" and encouraging the jury to question whether Appellant was even at Victim's house on the day of the crime. Counsel did his best to challenge Victim's testimony and his recollection of the attack, questioning him about his history of marijuana usage and his prior conviction for possession of cocaine. Trial counsel also challenged Victim by cross-examining him about statements he believed were inconsistent with Victim's initial description of events to police and that hundreds of dollars in cash were not stolen by his attackers. During his closing, trial counsel continued to assail Victim's credibility and recollection of the events, emphasizing that if the jury did not believe Victim it should find Appellant not guilty because Victim's testimony was the only evidence of Appellant's guilt. Trial counsel noted it seemed ridiculous to believe Bennett would rob or attack someone who knew him so well. (R.pp.6-9; 50-52; 71-72; 202-09). Thus, contrary to the majority's belief, trial counsel's strategy focused on discrediting Victim and *the lack of evidence corroborating his story*. Given trial counsel's emphasis on the value of corroborating evidence, along with its historical importance², it was proper for the State to

² Notably, from a biblical standpoint, the concept of an absolute need for corroboration before a witness in a criminal case is to be believed could very well be familiar to many of South Carolina's citizens who are selected to serve on juries. See Deuteronomy 19:10 (New International Version) ("One witness is not enough to convict anyone accused of any crime or offense they may have committed. A matter must be established by the testimony of two or three witnesses."); see generally State v. Kelly, 331 S.C. 132, 140, 502 S.E.2d 99, 103 (1998) ("Two other members of the jury indicated they were reading their Bibles on their own."). Furthermore, from the standpoint of South Carolina law, the uncorroborated testimony of a witness has *not* always been legally sufficient to sustain a conviction throughout our state's history. See S.C. Code of 1912 § 389 (Crim. Code) ("[N]o conviction shall be had [for the offense of seduction under promise of marriage] on the uncorroborated testimony of the woman upon whom the

provide evidence corroborating Victim's account of the attack. Additionally, if the majority truly believes evidence of the traffic stop was so "feckless" it could not have prejudiced Appellant, it is illogical to find the probative value of the evidence, when used to corroborate Victim's testimony, was substantially outweighed by the miniscule prejudice to Appellant's case.

The Majority's Characterization of the State's Motives

Notably, the majority has the luxury of reviewing the entirety of the State's evidence and concluding, with the gift of hindsight, that evidence supporting Victim's identification of Bennett and Appellant was ultimately unimportant to the State's case. Not only does the majority's opinion fail to consider the points raised above, but the majority's opinion improperly impugns the State's motives and assumes a malicious motive for introducing evidence of the traffic stop. There is no evidence of any improper motive in the record and the State, from the moment it sought to introduce the traffic stop, removed all reference to the specifics of the traffic stop by its own volition. The majority's improper and unfounded allegations of impropriety stem solely from its own assumptions and conjecture.

Weighed against the probative value of the Williamson's testimony, which corroborated some aspects of the Victim's testimony, the trial judge acted within his discretion when finding the potential prejudicial effect of the evidence did not *substantially* outweigh its probative value.

seduction is charged; and no conviction shall be had if on trial it is proved that such woman was at the time of the alleged offense, lewd and unchaste[.]"); see also State v. Sharpe, 138 S.C. 58, ___, 135 S.E. 635, 640 (1926) (rejecting Sharpe's contention following his conviction for an abortion-related offense he was entitled to a new trial due to the fact the testimony of the "complaining witness" was not corroborated because "there was sufficient corroboration in this case of the complainant's testimony"); State v. Teal, 108 S.C. 455, ___, 95 S.E. 69, 72 (1918) (instructing a seduction case should not even be submitted to the jury if the victim's testimony is not corroborated); State v. Whitaker, 103 S.C. 210, ___, 87 S.E. 1001, 1001 (1916) (evaluating on appeal the question of "whether there was any testimony corroborating the testimony of the prosecutrix").

Accordingly, the majority opinion incorrectly found evidence pertaining to the traffic stop was improperly admitted at trial.

Conclusion

For the reasons stated above, Respondent petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court to reverse its finding that admission of evidence regarding codefendant Bennett's traffic stop was improper.

Respectfully submitted,

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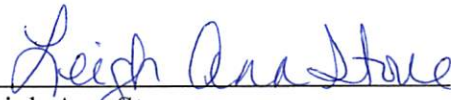
TRAVIS LATRELL LAWRENCE,APPELLANT.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Petition for Rehearing on Appellant via electronic email to the address listed by the attorney in AIS:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served this 21st day of October, 2020.



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From: Leigh Ann Stone
Sent: Thursday, October 21, 2021 10:58 AM
To: 'Hackett, Susan'
Cc: Bill Schumacher; William Blich; 'Kasperski, Katriel'
Subject: The State v. Travis Latrell Lawrence (2018-000989)
Attachments: LAWRENCE Travis - Respondent's Petition for Rehearing (02792271xD2C78).PDF

Good Morning Ms. Hackett,

Attached please find a copy of a Respondent's Petition for Rehearing in The State v. Travis Latrell Lawrence (2018-000989). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to this email to confirm receipt.

Thank you!

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