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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Orangeburg County
The Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

DAMION SHANTELL MAYERS.....APPELLANT

INITIAL BRIEF OF RESPONDENT

Appellate Case No. 2021-000927

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred where it admitted testimony from the only alleged eyewitness to the crime that the witness had received phone calls from Appellant's friends or family members prior to trial, since any probative value of such evidence was substantially outweighed by the danger of unfair prejudice?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing testimony from an eyewitness who was afraid to testify due to phone calls received from the Appellant's friends and family so he was incarcerated in order to assure his appearance in court and had to explain why he was dressed in jail attire and wearing shackles during his testimony?

STATEMENT OF THE CASE

On October 16, 2019, the Appellant was indicted by the Orangeburg Grand Jury for the offenses of possession of a handgun by a person convicted of a crime of violence, and murder. On August 16, 2021, Appellant's case was called for trial before the Honorable Edgar W. Dickson. Appearing on behalf of the Appellant was his counsel Thomas R. Sims, and for the State of South Carolina, Assistant Solicitors Thomas B. Scott, and Chelsea A. Glover of the First Circuit Solicitor's Office.

At the conclusion of two days of testimony a jury of his peers found the Appellant guilty of both offenses. (T. p. 365 lines 22 – p. 366 line 6). The trial judge sentenced the Appellant to a period of incarceration for the remainder of his natural life for the offense of murder, and five years for possession of a firearm by a person convicted of a violent felony. The trial court ordered that these sentences were to be served concurrently. (T. p. 373 lines 11-21).

While serving his sentence the Appellant filed a timely notice of appeal. Within this notice of appeal the Appellant alleges that the trial court erred in allowing an eyewitness to testify regarding receiving calls from the Appellant's friends and family members prior to trial. Appellant argues that allowing this evidence was extremely prejudicial, thereby violating Rule 403 of the South Carolina Rules of Evidence.

The Respondent will argue that the probative value overrode any prejudicial effect, therefore, no violation of Rule 403 exists. The Respondent will further argue that if this Court does find that an error occurred it should be considered harmless because it did not affect the final outcome. There was more than enough evidence proving the Appellant's guilt beyond a reasonable doubt. The brief of the Respondent supporting these arguments follows.

STATEMENT OF FACTS

On June 30, 2019, Wanneeshia Perry (Perry) met Damion Shantell Mayers (Appellant) at a convenience store in Orangeburg, South Carolina. (T. p. 95 lines 4-13). Perry knew the Appellant because they went to high school together. (T. p. 90 lines 16-22). She informed the Appellant that she and some friends were going to shoot dice at her house, and she wanted to know if he wanted join them. (T. p. 95 lines 4-13). He was interested so he agreed to follow her to her house. Perry was driving her green late model Camry, the Appellant followed her in his grey or silver Cadillac. (T. p. 94 lines 19-21, T. p. 95 lines 22-25).

When they arrived another friend Abraham Williams (Williams) also arrived in his white Ford Fusion. (T. p. 169 line 18). Harold Langley (victim) lived across the street, so he just walked over to Perry's residence. (T. p. 90 lines 18-20).

While gambling the Appellant was betting with hundreds of dollars. (T. p. 105 lines 2-8). Within an hour and a half he lost four to five hundred dollars. (T. p. 105 lines 9-13). Appellant told everyone that he was going to go to his car to get more money. (T. p. 106 lines 6-10). At that time Perry went into the bedroom, Williams and the victim stayed. The Appellant then came back into the house with a gun called a Draco.[1] (T. p. 173 lines 11-14). The Appellant told the victim to give him back his money, the victim dropped the money and told him he could have it. (T. p. 173 lines 1-4). The Appellant still shot him. After the first shot Williams and the victim knocked over tables attempting to get away. (T. p. 174 line 24 – p. 175 line 1). They ended up in a corner with the victim using Williams as a shield. Williams broke away and ran into the bedroom. Perry and Williams then heard more gunshots. (T. p. 175 lines 9-10, p. 175 line 25 – p. 176 line 12-16).

[1] A Draco is a smaller version of an AK-47.

After they heard the gunshots Perry and Williams left the bedroom to find the victim shot, and the Appellant gone. (T. p. 109 lines 3-14). The victim got up and told them he needed to go to the hospital, then ran outside. Perry told Williams to close the front door, however, Williams ran outside behind him. (T. p. 177 lines 7-14). By the time he got outside the victim was across the street sitting on the ground being cared for by neighbors. (T. p. 109 lines 18-25). Williams then decided to get into his car and leave because he was afraid. (T. p. 178 lines 1-11).

When the police arrived they found the victim sitting on the ground, shirt saturated in blood, eyes extremely large, and gasping for air. (T. p. 147 lines 4-8). They asked him who committed this crime and he said he didn't know. (T. p. 160 lines 5-9). The victim pointed at Perry's apartment and told them "its there where the green car is." (T. p. 163 lines 14-22). Law enforcement went in the direction of the apartment. They found blood outside leading up to Perry's apartment. (T. p. 161 lines 2-5). Officers then opened the door to find Perry inside. (T. p. 154 line 25 – p. 155 line 2). They asked her to come outside while they checked her apartment. They saw what looked like evidence of an altercation, chairs knocked over and blood stains on the wall. (T. p. 156 lines 6-12). Officers also found two cell phones and several hundred dollar bills. (T. p. 157 lines 24-25). Perry spoke to the police, she did not know the last name of the Appellant, however, she knew the last name of his brother. (T. p. 264 line 25 – p. 265 line 2). She told them that Williams was there also. (T. p. 265 line 23 – p. 266 line 1). They were informed by dispatch that the suspect vehicle was a gray Cadillac. (T. p. 153 lines 23-24).

The police phoned Williams and requested he come to headquarters for questioning. (T. p. 266 lines 12-14). Williams spoke to law enforcement for two and a half to three hours. After the interview police knew he was not telling the truth. (T. p. 269 lines 11-16, T. p. 271 lines 4-14). Later that day they met Perry who gave them a more detailed statement. (T. p. 270 line 22 – p. 271

line 16). The police invited Williams back to speak with him the next day. After speaking with him for another forty-five minutes they got a statement. (T. p. 273 lines 15-16). One of William's major concerns was that he was afraid. He talked about his family being in danger from him cooperating with the police. (T. p. 274 lines 8-13).

On June 2, 2019, an arrest warrant for the offense of murder was issued. (T. p. 253 line 19). The United States Marshall's office was requested to discover the Appellant's whereabouts. (T. p. 253 lines 12-20). He was later found at a trailer, where there was a two hour standoff. (T. p. 256 lines 10-11). The Appellant finally came out of the house, holding a child. (T. p. 256 lines 14-19). He was arrested and charged with the offense of murder.

Prior to trial Williams was subpoenaed to testify, and failed to report. The trial judge decided to have him incarcerated in order to assure his presence. During his testimony Williams was asked why he was wearing a jail outfit. At that time Appellant's counsel objected arguing that this testimony was highly prejudicial. The State argued that since Williams was sitting in the courtroom in shackles, it was fair to ask him if he received any phone calls from the Appellant, or the Appellant's family or friends. The trial court decided to allow the State to ask the question regarding the phone calls because "the witness is in here essentially locked down. He doesn't want to be here." (T. p. 185 line 17 – p. 189 line 8).

Another witness, an eighteen year old by the name of Demarcus Fields also testified. He lived across the street with his aunt, sisters and cousins. (T. p. 225 lines 18-19). He was sitting outside on the phone near the incident location. (T. p. 221 lines 21-23). He testified that he saw a person go into the trunk of a white or gray Cadillac and pull out what he called a "baby Draco." (T. p. 222 lines 5-17). He described the person as a black male but he was unable to see his face. (T. p. 222 lines 18-25). The person who grabbed the Draco went back inside the apartment. (T. p.

223 lines 3-5). After that he heard three or four shots, he ran into the house as his sister called 911. (T. p. 223 lines 6-11).

Investigator William McCormick a forensic investigator with the Orangeburg County Sherriff's Department also testified. He testified that when he arrived at the scene he observed blood on the driveway leading up to the apartment and collected two cell phones.[2] (T. p. 233 lines 6-8). He also located four spent cartridge casings. (T. p. 237 lines 21-25). Two of the cartridges were found in the center of the dining room, one was found in the center of the living room, and one was found along the edge of the wall of the dining room. (T. p. 240 lines 4-6, T. p. 241 lines 11-12, T. p. 241 lines 18-20). These cartridges are typically used in AK or SKS type rifles which are similar to a Draco. (T. p. 238 lines 16-19).

Investigator Jana Weaver a firearms examiner with the South Carolina Law Enforcement Division (SLED) also testified. Investigator Weaver testified that a Draco was a shorter firearm that fires the same caliber cartridges found at the scene. (T. p. 292 lines 8-11). In her expert opinion all four cartridges found at the scene was fired from the same firearm. (T. p. 292 lines 20-22).

Dr. Darren Monroe, the forensic pathologist who performed the autopsy, also testified. The autopsy was performed at the Newberry County hospital on July 2, 2019. (T. p. 298 lines 14-22). Dr. Monroe testified that there were a total of four gunshot wounds. (T. p. 300 line 13). The gunshot wound to the chest entered next to the armpit, went through the skin and the underlying soft tissue. It then went in between two of the ribs and then through the lung and through the victims back where it exited the body. (T. p. 302 lines 8-14). The main injury was due to the gunshot to the lung. This caused a massive hemorrhage in the chest. (T. p. 302 lines 15- 21). There were exit wounds, one in the mid-back region, the other closer to the side of the left back. (T. p.

[2] Appellant stipulated that one of the cell phones belonged him. (T. p. 112 lines 16-19).

301 lines 14-16). Dr. Monroe testified that the cause of death was a gunshot wound to the chest. (T. p. 304 lines 22-23).

ARGUMENT

There was no error in allowing an eyewitness who was jailed due to his failure to respond to a subpoena, to testify that he did not respond because he was afraid after receiving phone calls from the Appellant friends and family, thereby explaining as to why he was wearing a jail jumpsuit and shackles during his testimony, and if the court finds the trial court's decision in error, that error was harmless.

Relevant Facts

Prior to this case being called for trial, Williams was served a subpoena to appear in court to testify. He failed to show so the trial court issued a warrant for his arrest. (T. p. 166 lines 10-17). To assure his appearance the trial judge ordered he be placed in the county jail until he testified. (T. p. 205 lines 14-25). During trial Williams appeared wearing a county jail outfit and shackles. The Assistant Solicitor asked William to explain why he was wearing prison garb and shackles. (T. p. 166 line 20 – p. 167 line 4). He informed the jury that he did not respond to a subpoena to appear in court because he received calls from the Appellant's friends and family. (T. p. 189 lines 20-23). Defense counsel objected and argued that this form of questioning was unduly prejudicial in violation of Rule 403 of the South Carolina Rules of Evidence. (T. p. 186 lines 23 – p. 187 line 1). The Solicitor argued that since Williams was sitting in a courtroom in shackles it was fair to ask him why. (T. p. 187 line 24 – p. 188 line 1). After the parties completed their arguments the trial judge ruled to allow the Solicitor to ask this question. It was his opinion that there needed to be an explanation as to why the witness was in lockdown. (T. p. 189 lines 1-8).

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual rulings unless the findings are clearly erroneous. *State v. McEachern,* 399 S.C. 125, 135, 731 S.E.2d 604, 609 (Ct. App. 2012). A trial court has particularly wide discretion in ruling on Rule 403 objections. *State v. Lee,* 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Collins,* 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. *State v. Black,* 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Jennings,* 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011). The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained. *Arnold v. State,* 309 S.C. 157, 165, 420 S.E.2d 834, 838 (1992).

Discussion

Rule 403

The Appellant argues that the questioning of witness Williams regarding him receiving calls from the Appellant's family and friends prior to trial violated rule 403 of the South Carolina Rules of Evidence, which state:

> 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.

Rule 403 allows prejudicial evidence to be allowed as long as there probative value overrides any prejudicial effect. The standard is not simply whether the evidence is prejudicial; rather the standard under Rule 403 SCRE is whether there is a danger of *unfair* prejudice that *substantially* outweighs the probative value of the evidence. *Collins,* 409 S.C. at 536, 763 at 28(emphasis in original). The trial court made the decision that this testimony should be allowed in order to explain to the jury why Williams was presented in court to testify in a jail jumpsuit and shackles. This was done solely for the purpose to deter from the jury making assumptions regarding a possible prison sentence or pending charges, neither of which existed. The jury was never swayed by this testimony. Their verdict was based on the overwhelming evidence presented by the State against the Appellant, and not Williams' testimony concerning phone calls.

Williams declined to appear in court when originally subpoenaed. Once he was found the trial court ordered that he was to remain in custody until it was time for him to testify. Once on the stand Williams appeared in a jail outfit and shackles. In order to explain why he was dressed that way, the State decided to question him on the phone calls received from the Appellant's friends or family members. It was explained that these calls made him afraid to appear in court when subpoenaed. The trial judge allowed this testimony in order to explain why the witness was dressed as he was and wearing shackles. This explanation was necessary or the jury would assume the witness was either serving a sentence, or had pending charges. Either assumption would have affected his credibility.

The Appellant argues that this testimony was not necessary due to the fact Investigator John Stokes testified that it was his experience that witnesses in cases as serious as this do not wish to testify. (T. p. 273 line 24 – p. 274 line 4). Investigator Stokes never testified that Williams had

to be incarcerated due to his wish not to testify. Not wanting to testify is different than being brought in with shackles in order to testify. The State must have been given an opportunity to explain why Williams was in this state during his testimony.

Within their brief the Appellant argues this questioning caused him prejudice because it allowed the jury to speculate about this matter. This testimony created an insinuation that the Appellant attempted to intimidate the State's key witness. The Appellant argued that the trial judge's ruling demonstrated that he understood the testimony to indicate witness intimidation. Quite the contrary, the trial judge's ruling had to do with explaining to the jury why the witness, "is in here essentially in lock down." (T. p. 189 line 4). There was never any testimony denying that the witness received these calls. Any prejudicial effect was outweighed by its value to prove why Williams was in this state during his testimony. A trial court has particularly wide discretion in ruling on objections that the probative value of evidence is outweighed by the danger of unfair prejudice. *State v. Gray,* 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014).

The trial court did an on the record Rule 403 analysis.[3] At the time the question was asked, Appellant's counsel requested to be heard outside the presence of the jury. That request was granted. Both sides were allowed to make their arguments as to why this evidence should or should not be allowed. At the conclusion of these arguments the trial court ruled that he was going to allow the evidence because it would explain why the witness was essentially in lock down. (T. p. 185 line 17 – p. 189 line 8). Unlike what was portrayed in the Appellant's brief, the trial judge never demonstrated that he understood the testimony to indicate witness intimidation. It was clear by the ruling of the trial court, he was more concerned with the jury knowing that the witness was

[3] "an on the record Rule 403 analysis is required, [we] will not reverse the conviction if the trial judge's comments concerning the matter indicate he was cognizant of the evidentiary rule." *State v. Spears,* 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013), *quoting, State v. King,* 349 S.C. 142, 156, 561 S.E.2d 640, 647 (Ct. App. 2002).

in a jail jumpsuit and shackles because he did not come forth and testify when he was subpoenaed. The trial court was correct in ruling that jury needed to know Williams was in lockdown because he did not want to testify, not because he was serving a sentence or had pending charges.

The Appellant raises the crime of intimidating a witness within their brief. There was never an accusation that Williams was intimidated by the Appellant, his friends or family. The question that was asked, "during the last two years, have you ever received any phone calls from any of the Defendant's friends or family regarding your participation in this jury trial?" (T. p. 189 lines 20-23). There was never testimony as to who made the call or what the conversation was about. The only reason this was raised was to explain to the jury why Williams was in a jail outfit and shackles during his testimony. This information was more probative than prejudicial due to the fact there was never anything mentioned as to who made the call, nor what was said. This evidence was only revealed to explain to the jury why Williams appeared in prison garb during his testimony. There were never any accusations of witness intimidation. There exists no violation of Rule 403. The decision of the trial court should be upheld.

Harmless Error

If the court finds that there was an error in allowing this evidence it should be considered harmless. The Appellant argues that this evidence is not harmless due to the fact Williams was the main eyewitness that gave multiple statements; that the victim could not identify the Appellant as the person who shot him; that a gun was never recovered, and Demarcus Fields could not identify the Appellant as the shooter. If you look at the evidence as a whole the Court should find that there was more than sufficient evidence to convict the Appellant of murder. This testimony would not have changed the substantial amount of evidence proving the Appellant's guilt.

The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained. *Collins,* 409 S.C. at 537, 763 S.E.2d at 29. There was testimony that the Appellant drove to the Perry's house in a silver Cadillac. The Appellant stipulated that at the time of the offense he drove a gray Cadillac. (T. p. 94 lines 19-21). There were only four individuals in the home right before the offense occurred, Williams, Perry, Appellant and the victim. There was no evidence that anyone else entered or left the premises the entire time they were gambling.[4] While gambling the victim won most if not all of the Appellant's money. (T. p. 104 line 21 – p. 105 line 4). Appellant left the house to supposedly get more money, there is no testimony that anyone else entered the house while he was gone. However, there is testimony from Demarcus Fields that an individual went into the trunk of a white or gray Cadillac and pulled out a Draco. (T. p. 222 lines 5-14). Mr. Fields further testified that once the person went back into the apartment he heard three or four gunshots. (T. p. 223 lines 8-9). Williams testified that the Appellant came in asking for his money, after he was given the money he shot the victim. (T. p. 173 lines 1-4). Williams and Perry testified that Williams ran into the bedroom with Perry and heard two more shots. (T. p. 108 line 22 – p. 109 line 2, T. p. 176 lines 12-16). After they left the bedroom the Appellant and his car was gone, and the victim was shot twice.

The person who retrieved the Draco drove a gray or white Cadillac, the Appellant was the only one at the scene who drove a Cadillac. Mr. Fields testified that although he could not see the person's face, as soon as the individual entered the house he heard gunshots. (T. p. 223 lines 3-11). Mr. Fields was right across the street. (T. p. 225 lines 18-19). He did not see anyone leave or enter that residence except the person who went into the Cadillac, grabbed the Draco and returned

[4] There was evidence that another individual came to the house inquiring if they were playing cards. Once he was informed they were throwing dice, he quickly left. (T. p. 140 line 23 – p. 141 line 5).

back into the house. The murder weapon was never found because the Appellant was not apprehended until eleven days later. (T. p. 254 line 18). The United States Marshalls searched for the Appellant. He was finally found at a trailer where after a two hour standoff he finally surrendered to law enforcement. (T. p. 256 lines 10-11). Although they never found a murder weapon SLED ballistics experts testified that the shell casings found at the scene could be used in a Draco, and only one gun was used in this murder. (T. p. 292 lines 20-22).

Although Williams made several different statements until he ultimately told the truth, his testimony was corroborated by other evidence presented during trial. Williams testified that the Appellant left the house, at the same time Fields saw an individual go into a Cadillac and grab a Draco. There was no other Cadillac at the scene but the Appellant's. That person went back into the house and soon thereafter gunshots were fired. Williams testified that as soon as the Appellant came back in he asked the victim for his money, and then shot. There was no other person that came into that house or Fields would have seen him, and there were only four people in the house gambling. Williams went into the bedroom with Perry while the shooting continued. The only other people in the apartment were the Appellant and the victim. When Williams and Perry left the bedroom the Appellant and his vehicle were gone. (T. p. 109 lines 3-14). When looking at this case as a whole there is no doubt the Appellant committed this murder. If the trial court determines that allowing this evidence was done in error it must certainly be considered harmless. Whether an error in the admission of evidence is harmless generally depends upon its materiality in relation to the case as a whole. *State v. Brown,* 344 S.C. 70, 75, 543 S.E.2d 552, 554 (2001).

The Appellant argues he was prejudiced because this testimony suggested the Appellant attempted to intimidate a witness through this friend or family member. There was never an allegation that any intimidation was committed. This evidence was only presented to explain why

the witness was in court dressed in a prison outfit and shackles. This portion of testimony does not remove the fact that everything Williams said about the incident was corroborated by other eyewitnesses and forensic evidence. This portion of testimony does not overshadow all of the evidence presented by the State proving the Appellant's guilt beyond a reasonable doubt. "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having *changed the result* of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts,* 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996)(emphasis in original). There is no other reasoning as to who committed this murder but the Appellant; therefore, any error that could have occurred must be considered harmless. Error is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. *State v. Bryant,* 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006).

The testimony given by Williams regarding him receiving phone calls from the Appellant's friends or family members in no way prejudiced the Appellant. After this questioning regarding Williams' dress these phone calls were never again mentioned by the State for the remainder of the trial. However, in his closing argument, the Appellant's counsel repeatedly mentioned the fact that Williams came into the courtroom to testify in shackles, and made the argument that he only said what the state wanted him to say because he was in those shackles, making the assumption that Williams owed the State for his testimony, which was untrue. (T. p. 336 lines 1-4, p. 336 lines 5-7, p. 336 lines 11-12, p. 336 lines 19-20). This is why that it was important to present evidence of the phone calls in order for the jury not to assume Williams had pending charges, thereby testifying to receive leniency. That was never the case because no pending charges existed, he testified as to what he saw.

If this court believes the trial court committed an error in allowing this evidence it should be considered harmless. This is due to the fact that in looking at the entire case as a whole there was more than sufficient evidence presented revealing that the Appellant committed this murder.

CONCLUSION

For the above stated reasons the conviction of the Appellant Damion Shantell Mayers should be confirmed.

Respectfully submitted,

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