

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODOLFO MCCANDLESS FALCON, IV

APPELLANT

VS.

NO. 2019-KA-00248-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: ABBIE EASON KOONCE
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 103632**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680
FACSIMILE: (601) 359-3796
EMAIL: akoon@ago.ms.us**

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUE.....	1
STATEMENT OF THE CASE.....	1
STATEMENTS OF THE FACTS.....	2
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	3
I. The trial court did not err in admitting photographs of Facebook messages between Falcon and confidential informant Jason Baker.....	3
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	8

TABLE OF AUTHORITIES

CASES

<i>Campbell v. State</i> , 382 S.W.3d 545 (Texas App. 2012).....	4
<i>Chapman v. California</i> , 386 U.S. 18, 87 S. Ct. 824, 17 L.Ed.2d. 705 (1967).....	5
<i>Clay v. State</i> , 151 So. 3d 1018 (Miss. Ct. App. 2014).....	3
<i>Smith v. State</i> , 136 So. 3d 424 (Miss. 2014).....	4, 5
<i>Williams v. State</i> , 512 So. 2d 666 (Miss. 1987).....	6

STATUTES

Mississippi Code Annotated Section 41-29-139.....	1
Mississippi Code Annotated Section 41-29-147.....	1
Mississippi Code Annotated Section 97-1-1.....	1
Mississippi Code Annotated Section 99-19-81.....	1

RULES

Mississippi Rule of Evidence 901.....	3
---------------------------------------	---

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODOLFO MCCANDLESS FALCON, IV

APPELLANT

VS.

NO. 2019-KA-00248-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUE

- I. The trial court did not err in admitting photographs of Facebook messages between Falcon and confidential informant Jason Baker.

STATEMENT OF THE CASE

In the Circuit Court of Rankin County, on April 30, 2018, Rodolfo McCandless Falcon, IV, was indicted on one count of sale of methamphetamine in violation of Mississippi Code Annotated Section 41-29-139 and conspiracy to sell a controlled substance in violation of Mississippi Code Annotated Section 97-1-1, both as a subsequent drug offender as codified in Mississippi Code Annotated Section 41-29-147 and as a habitual offender under Mississippi Code Annotated Section 99-19-81. (CP 5) Falcon was found guilty on both counts after a jury trial on December 4, 2018, before the Honorable Circuit Judge William E. Chapman, III. (CP 86) On December 10, 2018, Falcon was sentenced to forty (40) years with ten (10) years suspended for Count I and twenty (20) years for Count II. (TR 87-88) Both sentences were ordered to run concurrently to each other but consecutive to any other unrelated sentences Falcon might receive related to other pending litigation. (TR 88) Falcon filed a Motion for Judgment Notwithstanding the Verdict, Motion to Vacate

Judgment and Motion for New Trial on December 13, 2018. (CP 90) After this was denied on January 15, 2019, Falcon timely appealed. (CP 97, 104)

STATEMENTS OF THE FACTS

On September 21, 2017, officers from the Pearl Police Department kicked in the door of Jason Baker's apartment. (TR 95) They were there to arrest his son Brandon for selling methamphetamine. (TR 95) Jason had methamphetamine in his pocket when officers arrived so he was arrested, too. (TR 95-96) When Jason and Brandon got to jail, Brandon "broke down." Feeling sorry for his son, Jason offered to work as a confidential informant for the police, in hopes that his son's charges would be reduced. (TR 96-97)

Pearl Police Officer Greg Jones, who arrested Jason and Brandon, picked Jason up from his house later that day. (TR 97) Officer Jones brought Jason to the narcotics office where he used Facebook messenger to contact Falcon.¹ (TR 142) Facebook messenger was how the two men usually communicated. (TR 100) Jason asked Falcon if he could come buy an "8 ball" of methamphetamine from him. (TR 97) Officer Jones watched the messages between Jason and Falcon and took pictures of them with his phone. (TR 100, 113) Officer Jones gave Jason a watch to wear that was equipped with a camera and drove him to Falcon's house. (TR 101)

In the Facebook messages, Falcon told Jason that he had some speakers he wanted to show him. (TR 101-02, 115) When Jason went to Falcon's house, they discussed the speakers and Jason gave Falcon \$120 for what turned out to be 3.44 grams of crystal methamphetamine. (TR 101, 121, 175) Jason described for the jury how Falcon was sitting in a chair when he entered the house and eventually poured the methamphetamine into a baggie, weighed it on a scale, and handed it to him.

¹The name on the Facebook account was Rudy Falcon.

(TR 120) Jason was searched pre- and post-buy: “They patted me down from top to bottom and emptied my pockets out to make sure I didn’t have any weapons or any drugs or anything on me.” (TR 116, 143) A video of the “buy” was admitted into evidence and played for the jury as were still photographs taken from the video. (TR 119)

SUMMARY OF THE ARGUMENT

The circumstances surrounding the Facebook messages, specifically the mentioning of speakers, served to adequately authenticate them and the trial judge did not err when they were admitted. Since Falcon mentioned showing Jason speakers in the messages and then showed Jason the speakers when he arrived at his house, it was obvious that Falcon was the author of the messages. But if this Court determines that the trial judge did err in admitting the photographs of the messages, it would only be harmless error. Jason’s testimony and the video of the drug sale were enough to convict Falcon on both counts.

ARGUMENT

I. The trial court did not err in admitting photographs of Facebook messages between Falcon and confidential informant Jason Baker.

Falcon argues that the trial court reversibly erred in admitting photographs of Facebook messages between himself and Jason Baker. He claims that there was not enough evidence presented at trial to prove that he was the one who actually wrote the messages. Falcon alleges that Jason’s testimony was not credible and should not have served as a basis for authenticating the pictures of the Facebook messages.

“The standard of review regarding admission or exclusion of evidence is abuse of discretion.”

Clay v. State, 151 So. 3d 1018, 1020 (Miss. Ct. App. 2014). Mississippi Rule of Evidence 901(a)

states: “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” The Mississippi Supreme Court first examined the “unique” issue of authenticating social media messages in *Smith v. State*, 136 So. 3d 424, 432 (Miss. 2014):

Because of the special concerns regarding fabrication, “the fact that an electronic communication on its face purports to originate from a certain person’s social networking account is generally insufficient standing alone to authenticate that person as the author of the communications.”

Id. (quoting *Campbell v. State*, 382 S.W.3d 545, 550 (Texas App. 2012)).

The *Smith* Court went on to discuss ways in which social media messages could be adequately authenticated:

For example, the purported sender admits authorship, the purported sender is seen composing the communication, business records of an internet service provider or cell phone company show that the communication originated from the purported sender’s personal computer or cell phone under circumstances in which it is reasonable to believe that only the purported sender would have access to the computer or cell phone, the communication contains information that only the purported sender could be expected to know, the purported sender responds to an exchange in such a way as to indicate circumstantially that he was in fact the author of the communication, or other circumstances peculiar to the particular case may suffice to establish a prima facie showing of authenticity.

Id. at 433. Jason admitted that he obviously could not see Falcon responding to his messages because he was not with Falcon. But Jason told the jury that this was how he and Falcon always communicated. In his brief, Falcon tries to discredit Jason by misconstruing his testimony. Jason testified, while the jury was excused, that he had known for Falcon for sixteen years and had communicated with him by Facebook messenger for “as long as I can remember.” (TR 105) Jason did not tell the Court that he had been talking to Falcon via Facebook messenger for sixteen years.

Jason originally messaged Falcon asking to buy a “8 ball.” Falcon never directly mentioned

the 8 ball but said that he wanted to show Jason some speakers. Sure enough, when Jason went to Falcon's house, they looked at the speakers: "So after y'all were inside, you looked at speakers, right?" "Yes, sir." (TR 130) But most importantly, when Jason went to Falcon's house, he actually purchased an 8-ball of methamphetamine. Falcon was not surprised to see him and in the short time Jason was there, he purchased the drugs as planned. If Falcon had not been the one messaging Jason then he likely would have expressed some surprise on the video about Jason showing up ready to purchase an 8 ball.

The trial judge did not abuse his discretion in admitting the messages. The parties had a pre-trial discussion about the admissibility of the messages. (TR 10) The trial judge decided it would be best to "wait until I hear the CI's testimony and hear any objection at that time in addition to what you've already made and make a ruling on what's before me." (TR 19) Then during Jason's testimony, the judge sent the jury out so that the State could make a proffer of the evidence it wanted to introduce. (TR 98) After hearing Jason's testimony and actually questioning Jason himself, and hearing both parties' legal arguments, the trial judge determined that the messages were properly authenticated and admissible. (TR 112)

While the circumstances surrounding the messages were enough to authenticate them and prove that they were written by Falcon, if this Court disagrees, then the State would submit that the admission of the messages would be harmless error. "Errors in the admission of evidence are subject to a harmless-error analysis. Harmless-error analysis prevents 'setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial.'" *Id.* at 435 (quoting *Chapman v. California*, 386 U.S. 18, 22, 87 S. Ct. 824, 17 L.Ed.2d. 705 (1967)). Jason's testimony and the video of the drug sale were enough to sustain Falcon's convictions. Jason

testified unequivocally that he messaged Falcon about buying an 8 ball, went to Falcon's house, gave him \$120, and received crystal methamphetamine from Falcon who placed it in a baggie and weighed it out on a scale in front of him. The messages were not critical to the State's case. "The testimony of a single uncorroborated witness is sufficient to sustain a conviction[.]" *Williams v. State*, 512 So. 2d 666, 670 (Miss. 1987).

CONCLUSION

As discussed herein, the issue raised by Rodolfo McCandelss Falcon is without merit. Accordingly, the State of Mississippi respectfully requests that this Honorable Court affirm his conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: /s/ Abbie Eason Koonce
ABBIE EASON KOONCE
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 103632

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680
FACSIMILE: (601) 359-3796
EMAIL: akoon@ago.ms.us

CERTIFICATE OF SERVICE

I, ABBIE EASON KOONCE, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

W. Daniel Hinchcliff, Esq.
Indigent Appeals Division
Office of State Public Defender
Post Office Box 3510
Jackson, MS 39207-3510
dhinc@ospd.ms.gov

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Dewey Arthur
Circuit Court Judge
Post Office Box 1626
Canton, MS 39046

Honorable John K. Bramlett, Jr.
District Attorney
Post Office Box 68
Brandon, MS 39043

This, the 21st day of November, 2019.

/s/ Abbie Eason Koonce
ABBIE EASON KOONCE
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680
FACSIMILE: (601) 359-3796
EMAIL: akoon@ago.ms.us