

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	DIVISION ONE
Respondent,)	
)	No. 67677-6-I
v.)	
)	UNPUBLISHED OPINION
CARL SAUNDERS,)	
a.k.a. CARL ARNS,)	
)	
Appellant.)	FILED: January 14, 2013
_____)	

Dwyer, J. — Carl Saunders appeals from the judgment entered on a jury’s verdict finding him guilty of felony violation of a no-contact order. Saunders contends that the trial court abused its discretion by denying his motion to preclude a key witness’s voice identification testimony because the witness lacked sufficient personal knowledge to identify the perpetrator’s voice. We find no abuse of discretion in admitting the witness’s identification testimony. Accordingly, we affirm.

I

Saunders was charged with violating an order prohibiting him from contacting Angelica Harmon, his former girl friend. The jury found that Saunders violated the order by going to Harmon’s house on March 31, 2011 at approximately 1:00 a.m. That morning, Omoro Jones was seated with Harmon

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on a couch close to the entryway inside Harmon's home. When Harmon left the room, Jones heard a man's voice from outside call out loudly and clearly for Harmon, asking her to open the front door. Jones did not see a person outside but recognized the voice to be that of Saunders. Jones called 911 shortly thereafter. The entire incident lasted about two to three minutes.

Jones and Saunders had never met one another prior to March 31, 2011. Further, Jones had never observed Saunders speak while in his presence. However, prior to March 31, Harmon had played for Jones to hear approximately 25 brief recordings that Saunders had left on Harmon's answering machine. Harmon had told Jones that it was Saunders' voice on those recordings.

At the prosecutor's office shortly before trial commenced, Jones listened to a recording of a telephone call made by Saunders from jail in which Saunders identifies himself and spells his name. Jones believed that the voice on the jail telephone recording was the same voice that he had heard outside of Harmon's home on March 31, 2011. During pretrial motions, the court ruled admissible part of this recording.

Prior to trial, Saunders moved to preclude Jones's voice identification testimony, contending that Jones was able to identify Saunders' voice solely because Harmon had told him that the voice mail messages belonged to Saunders. Thus, the defense argued, the identification was based on hearsay statements rendering the testimony inadmissible. The court ruled that Jones's

identification testimony—which would be based on the authenticated jail telephone recording—was admissible and that Saunders' arguments pertained to the weight of the evidence, not to its admissibility.

At trial, the prosecutor played the jail telephone recording for the jury. Jones identified the voice on the recording as Saunders' voice, testifying that it matched the voice that he had heard on March 31, 2011 and that he had heard on the numerous voice mail messages. Harmon did not testify at trial.

Sergeant Dean Owens, employed by the King County jail, testified to the authenticity of the jail telephone recording. Sergeant Owens is assigned to the jail's special investigations unit and keeps digital records of telephone calls made from the jail. He testified that inmates are identified by a personal identification number (PIN) that is assigned to each inmate. Jail staff also identify callers by the caller's housing location. Owens explained that Saunders' jail telephone call was made using his assigned PIN and that it was tracked through the housing unit in which Saunders resided.

The jury convicted Saunders of felony violation of the no-contact order and the court sentenced him to 46 months of incarceration.

Saunders appeals.

II

Saunders' principal contention is that the trial court erred by admitting Jones's voice recognition testimony because, Saunders asserts, Jones lacked

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personal knowledge of Saunders' voice. Saunders argues that Jones's voice recognition was based on hearsay because Harmon had told Jones that the numerous voice mail messages were left by Saunders. We disagree.

A trial court's admission of evidence is reviewed for abuse of discretion. State v. Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). Abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based on untenable grounds. Magers, 164 Wn.2d at 181.

Pursuant to Evidence Rules (ER) 602, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." ER 602 prohibits a witness from relating facts that are based solely on the reports of others; however, in some circumstances, a witness's testimony may be admissible even if partly based on others' reports. State v. Smith, 87 Wn. App. 345, 351-52, 941 P.2d 725 (1997). "When the witness testifies to facts that he knows partly at first hand and partly from reports, the judge, it seems, should admit or exclude according to the reasonable reliability of the evidence." Smith, 87 Wn. App. at 352 (quoting 1 John W. Strong, McCormick on Evidence § 10 (4th ed. 1992)).

Here, Jones had gained sufficient personal knowledge to provide voice identification testimony. His personal knowledge of Saunders' voice resulted from exposure to Jones's voice on three separate occasions: the voice he heard on the numerous voice mail messages left on Harmon's answering machine; the

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March 31 incident in which he heard Saunders calling from outside Harmon's house; and the jail telephone recording in which Saunders identifies himself and spells his name. Although a portion of Jones's personal knowledge of the sound of Saunders' voice may have been based on Harmon's statements to him that the voice mail messages were of Saunders' voice, Jones's testimony was nonetheless admissible. On two other occasions Saunders heard the same voice. Jones's initial inference—that the voice he heard on March 31 was Saunders' voice because it was the same voice that he had heard on the voice mail messages—was later confirmed by listening to Saunders speak on the jail telephone recording. This constituted sufficient exposure to Jones's voice to support an identification based upon personal knowledge. Thus, Jones's repeated exposure to Saunders' voice—before, during, and after the crime—is sufficient to meet the personal knowledge requirement of ER 602.

In addition, Jones's testimony comports with ER 701, which sets forth the standard of admissibility for opinion testimony by lay witnesses. This rule requires that such testimony be limited to opinions or inferences that are "rationally based on the perception of the witness" and "helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." ER 701. The trial court retains wide discretion in admitting testimony pursuant to ER 701. State v. Kinard, 39 Wn. App. 871, 874, 696 P.2d 603 (1985). Jones's testimony was rationally based upon his perceptions of Saunders' voice on the

voice mail recordings, during the March 31 incident, and on the jail telephone recording. Such testimony also tended to be helpful to the jury in determining a fact in issue—the identity of the person calling for Harmon from outside of her home on March 31. Finally, we note that admission of Jones’s testimony is consistent with ER 704; because the testimony is otherwise admissible, it “is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” ER 704.

Further, the jail telephone recording, on which Jones based his identification of Saunders, was properly authenticated pursuant to ER 901.¹ Sergeant Owens testified to the authenticity of the recording that was played for the jury by describing how the jail staff catalogue and track inmate telephone calls. He also explained that the telephone call recorded by the jail staff was made using Saunders’ PIN and that it originated from Saunders’ housing unit.

Additionally, admissibility of the jail telephone recording was consistent with ER 901(b)(5).² “A sound recording, in particular, need not be authenticated by a witness with personal knowledge of the events recorded. Rather, the trial court may consider any information sufficient to support the prima facie showing that the evidence is authentic.” State v. Williams, 136 Wn. App. 486, 500, 150

¹ ER 901(a) states: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

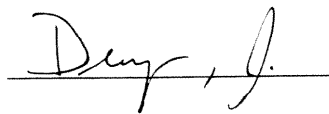
² ER 901 provides illustrations of authentication or identification methods in determining prima facie the authenticity of proffered evidence. This includes, but is not limited to, voice identification: “Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.” ER 901(b)(5).

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P.3d 111 (2007). When determining the authenticity of evidence, a trial court may rely upon lay opinions, hearsay, or the proffered evidence itself; the information supporting the determination need not be admissible but must be reliable. Williams, 136 Wn. App. at 500-01.

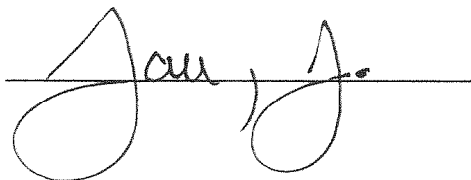
Jones's previous experiences of hearing an identical voice on Harmon's answering machine and on the jail telephone recording provided Jones with a reasonable basis from which to testify to the identification of the speaker on March 31. Thus, the trial court did not err in admitting Jones's identification testimony.

Affirmed.

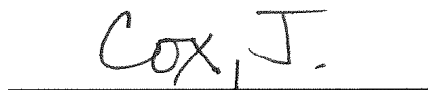


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We concur:



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A handwritten signature in cursive script, appearing to read "Cox, J.", written over a horizontal line.