

Court of Appeals of Georgia.

ELLIS

v.

The STATE.

No. A06A0006.

June 20, 2006.

> 633 S.E.2d 64

279 Ga.App. 902, 6 FCDR 2047

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ELLIS

v.

The STATE.

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> [1] 1. In related enumerations of error, Ellis contests the admissibility of an audiotape that recorded his attack on the victim. He asserts the State failed to lay an adequate foundation for its admission and that the trial court erred by giving the State two hearings on its admissibility.

> [2] (a) In order to establish the foundation for an audiotaped statement's admissibility the State must prove:

1) the mechanical device was capable of recording a statement; 2) the operator was competent; 3) the recording is [279 Ga.App. 903] authentic and correct; 4) no changes, additions, or deletions were made; 5) the manner of preservation; 6) the identity of the speakers; and 7) the statement was not elicited through duress.

(Citations omitted.) > Johnson v. State, 271 Ga. 375, 378(4), 519 S.E.2d 221 (1999). The record shows that Ellis's attack on the victim was recorded by her BellSouth voice mail service when he failed to hang up his cell phone after calling her from outside her door. The victim notified the district attorney's office of the recording and went to that office so the voice mail could be copied. The victim was present when the voice mail was copied onto a tape, and she watched the person operate the tape recorder. The victim testified that when they began to record the voice mail, she told the person operating the tape recorder, "That's him, kicking my door down." The tape recorder recorded this statement onto the audiotape of the voice mail that was played at trial. After this statement by the victim, the audiotape recorded Ellis stating repeatedly that he was going to beat the victim and calling her various expletives. The recording lasted 18-19 seconds and concluded with a third voice stating, "To save this message, press two. Message saved for one day."

The victim testified that her voice mail service accurately recorded messages for her, that she was familiar with Ellis's voice, that it was Ellis's voice on the recording, that the voice mail service accurately recorded a portion of Ellis's attack on her, that no one forced Ellis to make the recorded statements, that the

person operating the tape recorder operated it properly, that she observed this person place a sticker on the audiotape identifying it, that the audiotape submitted at trial was the same one onto which her voice mail recording was copied, and that she had listened to the audiotape and it accurately captured a portion of what Ellis had said during the incident.

> [3] We find the trial court did not abuse its discretion by admitting the audiotape. The record clearly established that the recording played for the jury was an authentic copy of the voice mail that captured Ellis's attack on the victim. See > Billings v. State, 278 Ga. 833, 834-835(3), 607 S.E.2d 595 (2005) (edited videotape admissible); Daker v. State, 243 Ga.App. 848, 850-851(3), 533 S.E.2d 393 (2000)> To view preceding link please click here (videotape with gaps caused by manner in which it was recorded admissible). Although an addition was made to the voice mail message, it was made inadvertently, was cumulative of the victim's testimony, and was disclosed to the jury. Additionally, the audiotape was not rendered inadmissible because the person who actually copied the voice mail did not testify. An audiotape is admissible if one who personally witnessed the events recorded testifies that the [279 Ga.App. 904] audiotape accurately recorded what the witness heard at the time the events occurred. > Hudson v. State, 273 Ga. 124, 127(3), 538 S.E.2d 751 (2000).