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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2021-000674

THE STATE,

Respondent,

v.

NIKEEN D'AUNDRE JOHNSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENTS OF ISSUE ON APPEAL

The trial judge did not abuse her discretion in admitting photographs of the victims' injuries.

STATEMENT OF THE CASE

Appellant was indicted by a Sumter County Grand Jury on four counts of attempted murder. Appellant proceeded to a jury trial on three counts of attempted murder on June 21, 2021 before the Honorable Kristi Curtis. Timothy Griffith represented the Appellant. The jury found Appellant guilty of one count of attempted murder and two counts of assault and battery of a high and aggravated nature (ABHAN). Appellant was sentenced to thirty years imprisonment for attempted murder, and fifteen years for each count of ABHAN. The sentences were to run concurrently. This appeal follows.

STATEMENT OF FACTS

Willie Graham (Victim) lived in a mobile home park (park) with Shamika Bracey (Bracey) and their two minor children. (Tr. 141). Some days Kwodel Johnson (Kwodel) would come by the park and Victim, Kwodel and others in the park would grill out and socialize. (Tr. 144). On August 16, 2019, Victim had just gotten home from work when Kwodel arrived at the park this time accompanied by a man Victim did not know. (Tr. 145-146). Victim testified that the unidentified man wasn't saying much and was just walking around Victim's house. (Tr. 146). At some point it began to rain and the crowd began to disperse. (Tr. 149). After speaking with a neighbor for a few minutes, Victim went back to his house. (Tr. 150). Victim then went to check to see if Kwodel and the other man had left and testified that he had asked them to leave the yard. (Tr. 150). After asking them to leave, Victim and the unidentified man got into an altercation outside in front of the house because Kwodel would not leave. (Tr. 151). During the altercation, the unidentified man, began shooting at Victim. (Tr. 153).

Multiple officers were dispatched to the scene. At the time of the incident, Lenell Anthony Allen (Allen), was working an off-duty job as a security guard, at the bingo hall up the street when he heard a call on the radio. (Tr. 120). When he arrived on the scene he could hear yelling from the house. (Tr. 122). When he made entry into the house he could see an individual lying on the floor and blood coming from the lower part of his body. (Tr. 123). EMS had not yet arrived and Allen had medical training so he began triaging the individual in the house. (Tr. 124). He was able to determine the individual had been shot about four or five times and had injuries to his leg and arm. (Tr. 125). This individual was later determined to be Willie Graham. (Tr. 130).

Daren Avins, EMT, was dispatched to the park. (Tr. 190). He testified that when he arrived at the scene he and his partner split up and Avins went to the rear mobile home where there were two individuals inside. (Tr. 190). The first individual, later identified as Graham's minor daughter

(Minor Victim), was a young female with a gunshot wound in her right arm as well as injuries on her chest and under her armpit likely caused by shrapnel from the bullet. (Tr. 191). The second individual was an older female, later identified as Shamika Bracey. Bracey had a gunshot wound to the lower quadrant of her stomach. (Tr. 193).

Randall Stewart, a SLED investigator, was tasked with interviewing witnesses and investigating what happened. (Tr. 319). Throughout his investigation he learned that there were two individuals at the scene, one with long dreads and one that had short hair. (Tr. 320). One of the individuals had a name similar to Quontrel or Quordel, was friends with the Victim, and was driving a Ford Fusion. (Tr. 320) Stewart received a call from a person who identified himself as Kwodel Johnson stating that he didn't know how his name was involved in the investigation, but he wanted to get it out. (Tr. 321). Once Kwodel's information was verified he was placed in a photo lineup and shown to Victim. (Tr. 322). Victim confirmed Kwodel's identity and Stewart obtained warrants for Kwodel in an attempt to get the name of the unidentified man. (Tr. 324).

Kwodel was taken in to custody and Mirandized. (Tr. 324). During Stewart's interview of Kwodel, Kwodel identified the shooter as his cousin Nikeen Johnson (Appellant). Kwodel testified at trial, but was uncooperative and could not remember anything he told Stewart or anything about the day of the incident. (Tr. 259-294). Stewart testified that Kwodel said "that as he went down the steps he heard gunshots and he saw Nikeen coming out the door behind him firing multiple times and he heard six to seven shots." (Tr. 327). Stewart further testified Kwodel knew Appellant had a gun on his person. (Tr. 327).

Once Stewart got Appellant's name, he obtained a photo lineup to show to Victim. (Tr. 328). Victim identified Appellant from the photo lineup as the man who shot him. (Tr. 329). Warrants were obtained for Appellant as being the person responsible for the shooting of Victim.

(Tr. 331). Appellant was taken into custody by U.S. Marshalls in New York and extradited back to South Carolina.

During Victim's testimony at trial, the State attempted to introduce State's Exhibits 7 and 8, photographs of Victim's gunshot wounds taken at the hospital. (Tr. 160). Trial counsel previously objected to State's Exhibits 7-9, on the basis that they were unnecessarily graphic depictions not necessary to establish the fact that Victim was shot. (Tr. 137). Trial counsel further argued that the photos were unduly prejudicial to the defendant. (Tr. 137-138). The trial judge ruled that State's Exhibits 7 (photograph of Victim's arm injury) and 8 (photograph of Victim's leg injury) were admissible, but that State's Exhibit 9 (another photograph of Victim injury) was not. (Tr. 138).

Trial counsel also objected to the admission of State's Exhibits 17-19, photographs of Bracey's and Minor Victim's injuries. (Tr. 176). Trial counsel argued that due to their graphic nature they were prejudicial and that the witnesses could testify to their injuries themselves. (Tr. 176). The trial judge stated "there's some prejudicial value to it because they're difficult to look at, but they are probative and they do show the injuries." (Tr. 176-177). The trial judge ruled that State's Exhibits 17 (photograph of Minor Victim's injury) and 19 (photograph of Bracey's injury) were admissible, but not 18 (another photograph of Bracey's injury) was not.

STANDARD OF REVIEW

“In criminal cases, the Appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion.” State v. Howard, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct. App. 2008). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law.” State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). “To warrant the reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice.” Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

ARGUMENT

The trial judge did not abuse her discretion in admitting photographs of victims' injuries.

Appellant contends that the trial judge abused her discretion by admitting graphic photographs of the injuries of Victim, Bracey, and Minor Victim because the photographs were not necessary and were unduly prejudicial under Rule 403, SCRE.

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Rule 401, SCRE. “Evidence which is not relevant is not admissible.” Rule 402, SCRE. “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. “A trial court has a 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).

“Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues.” State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014). See State v. Martucci, 380 S.C. 232, 699 S.E.2d 598 (Ct. App. 2008) (holding autopsy photographs of child were admissible to corroborate the testimony regarding various injuries inflicted on child). “It is well settled in this state that if the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. In addition, this Court has held that autopsy photographs may be presented to the jury in

an effort to show the circumstances of the crime and character of the defendant.” State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010).

Similar to Torres, the photos of the injuries to Victim, Bracey and Minor Victim, were material in corroborating testimony regarding the injuries as well as establishing the elements of the crime. The judge charged the jury with assault and battery of a high and aggravated nature (ABHAN). (Tr. 391). “A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: great bodily injury to another person results; or the act is accomplished by means likely to produce death or great bodily injury.” S.C. Code Ann. §16-3-600(B)(1)(a) and (b). State’s Exhibit 7 is a black and white photograph of Victim’s gunshot wound in his arm. State’s Exhibit 8 is a black and white photograph of the injuries to Victim’s leg. State’s Exhibit 17 is a photograph of the injuries to Minor Victim’s chest and underarm. State’s Exhibit 19 is a photograph of the gunshot wound in Bracey’s lower abdomen. Although Victim and Minor Victim testified, these photographs were material in corroborating the testimony to establish the great bodily injury element of the offense charged. Bracey did not testify, therefore the photograph of her injury was necessary and material to establish her injury. “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.” State v. Heath, 433 S.C. 506, 515, 860 S.E.2d 673, 678 (Ct. App. 2021) (emphasis added). Although the photographs have some prejudicial value, it does not substantially outweigh the probative value of establishing an element of the crime charged.

“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” State

v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010). Appellant argues that the purpose of showing the pictures to the jury was to create an emotional response in the jurors. In Rosemond, photos of murder victims taken at the crime scene and in autopsy were admitted over Appellant's objection that the pictures were unduly prejudicial and deprived him of a fair trial. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). Our Supreme Court held that the photographs were not unnecessarily gruesome, as the bodies had been cleaned of blood. Id. at 597, 518 S.E.2d at 590. See also State v. Franklin, 318 S.C. 56, 456 S.E.2d 361 (1995) (affirming admission of autopsy slides, noting they showed victim's wounds and body had been cleaned of blood.) In State v. Hawes, the court held that admission of crime scene photographs of a victim who had been stabbed to death were not an abuse of discretion because the photographs were relevant in establishing the issue of malice, as they established the wounds that were inflicted on the victim and showed the extent of the victim's injuries. State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018). Unlike Hawes, the photos in this case are not gruesome and would not elicit an emotional response. State's Exhibits 7 and 8 are black and white photographs, therefore what little blood there is in the photos is not in color and not overly gruesome. Similarly, State's Exhibits 17 and 19, although in color, very little blood is depicted. Further, in State's Exhibit 17, the photo is very zoomed in to the injury where Minor Victim's face is partially depicted making it difficult to tell that the person in the picture is in fact a minor. The prejudicial value of these photos does not substantially outweigh the probative value of corroborating testimony and establishing an element of the offense charged. Moreover, the question is whether the trial judge abused her discretion. The trial judge did not abuse her discretion, but properly exercised discretion by excluding State's Exhibit 9 and 18, both of which were additional photos of

Victim's and Bracey's injuries, and admitted the photos she believed were appropriate.

Therefore, Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
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THE STATE,

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Appellant

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Sarah E. Shipe, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 3rd day of August, 2022.



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Date: Wednesday, August 3, 2022 11:15:00 AM
Attachments: [Johnson Nikeen - 2021-000674 - Initial Brief Of Respondent and Designation Of Matter \(03064953xD2C78\).PDF](#); [image001.png](#)

Good morning, Ms. Shipe.

Attached to this email is the State's Initial Brief Of Respondent and Designation Of Matter in the above criminal appeal matter. This brief will be filed with the Court electronically later today. If you would, please confirm your receipt of this email and brief by return email. We would appreciate your cooperation very much.

Sincerely,

Anne Mueller, Legal Assistant to Assistant Attorney General Ambree M. Muller

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