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Aug 11 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TIRRELL MEANS,

APPELLANT

APPELLATE CASE NO. 2021-000752

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial court erred admitting graphic photographs of decedent’s body found at the scene and an autopsy photograph of the gunshot wound under Rule 403, SCRE, because the photographs were a needless presentation of cumulative evidence and the probative value of the photographs was substantially outweighed by their potential for being unfairly prejudicial where there was no dispute as to the manner of death and the only issue at trial was appellant’s state of mind at the time of the incident.....4

Introduction.....4

Relevant Facts.....5

Discussion.....6

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997)..... 7

State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013)..... 3

State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895, (2011)..... 3

State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995)..... 7

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct.App.1998)..... 7

State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (Ct.App.2012)..... 3

Rules

Rule, 403 SCORE..... 4, 6, 7

STATEMENT OF ISSUE ON APPEAL

Did the trial court err admitting graphic photographs of decedent's body found at the scene and an autopsy photograph of the gunshot wound under Rule 403, SCRE, because the photographs were a needless presentation of cumulative evidence and the probative value of the photographs was substantially outweighed by their potential for being unfairly prejudicial where there was no dispute as to the manner of death and the only issue at trial was appellant's state of mind at the time of the incident?

STATEMENT OF THE CASE

In October 2019, appellant was indicted by an Edgefield County grand jury for murder and possession of a weapon during the commission of a violent crime. R. 484-485; R. 487-488. Appellant's case was called to trial on June 28, 2021, before the Honorable Debra R. McCaslin and a jury. R. 1. Robert Madsen and Erin Conroy represented appellant. R. 1. Deputy solicitor, Laura Mayes and assistant solicitor, Douglas Fender represented the state. R. 1.

On July 1, 2021, the jury found appellant guilty as indicted. R. 480. Judge McCaslin sentenced appellant to concurrent terms of life imprisonment for murder and five years' imprisonment for possession of a weapon during a violent crime. R. 483.

This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion.” *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). “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); *see also State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) (“A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances.” (citation omitted)). In exercising its discretion on a Rule 403 objection to the admissibility of autopsy photographs, the trial court “must balance the [unfair prejudice] of graphic photos against their probative value.” *Dial*, 405 S.C. at 260, 746 S.E.2d at 502 (citation omitted).

ARGUMENT

The trial court erred admitting graphic photographs of decedent's body found at the scene and an autopsy photograph of the gunshot wound under Rule 403, SCRE, because the photographs were a needless presentation of cumulative evidence and the probative value of the photographs was substantially outweighed by their potential for being unfairly prejudicial where there was no dispute as to the manner of death and the only issue at trial was appellant's state of mind at the time of the incident.

Introduction

By all accounts appellant and his wife, Yumonica Means, were having marital problems. R. 255, ll. 17-23; 259, ll. 9-25; 327-329; 361, ll. 14-19. The previous April appellant and Yumonica signed paperwork to legally separate, but they never filed it and continued their relationship. R. 255, ll. 17-23; 268, ll. 7-25; 365, l. 16-366, l. 3. At the time of the incident, they were still living as a married couple and sharing vehicles. The two communicated frequently via phone calls and text messages, having conversations about their day-to-day life. R. 159, l. 18-160, l. 1; 265, ll. 9-13; 266, l. 25-267, l. 9; 316-325.

In the days leading up to the incident appellant and Yumonica's relationship worsened exponentially. R. 160, ll. 2-17; 302-304. A few days before the incident appellant woke up and heard Yumonica having a sexually explicit conversation with another man. R. 160, ll. 2-10; 362, ll. 11-17. The afternoon before the incident, appellant went looking for Yumonica at her friend's apartment and as he walked to the door, he heard her and another man having sex. R. 160, ll. 13-17; 375-378.

Appellant tried knocking on the door of the apartment, but no one answered. He left and drove around, reeling from the stress of the past few days and all that happened between he an

Yumonica. R. 378, ll. 5-23. Appellant tried calling and texting Yumonica to no avail until eventually he made up a story to try to get her to speak to him. R. 379, ll. 10-12. Appellant told Yumonica that he and their young child had been in a car accident and asked her to come meet them. R. 296, ll. 3-13. Yumonica and her daughter, from another relationship, drove to meet appellant and their child. R. 81-84; 382, ll. 4-5. Appellant was on the side of the highway when she got to him and realized that there had not been an accident. They had a verbal argument and ultimately appellant shot and killed Yumonica. R. 383-386.

Appellant drove off taking their child to his mother's home. R. 387, ll. 4-21. He called his friend Lamaz Robinson, a law enforcement officer, and told him what happened. State's exhibit 17.¹ On the call to Robinson appellant explained how bad things had gotten with he and Yumonica. Appellant was upset and threatened his own life during the conversation. R. 150, ll. 8-20; 390, ll. 6-16. Ultimately appellant turned himself and the gun over to law enforcement and cooperated with its investigation. R. 153, l. 7-154, l. 18; 390, ll. 6-16.

Relevant facts

At trial, the state's case centered on appellant's mental state at the time of incident. R. 435, 24-25. The state alleged this was murder and that appellant lured Yumonica out to a remote area with the intention of killing her. Appellant's testimony and the recording of his conversation with Robinson, told a different story of appellant's mental state at the time of the incident. Appellant was upset, frantic from all that he had learned about his marriage in the days leading up to the incident. Appellant admitted he shot Yumonica but testified that it was in the heat of passion during a terrible argument after confirming her infidelity. R. 380, ll. 17-20; 383, l. 21-386, l. 7. The trial court instructed the jury on the lesser included offense of voluntary manslaughter. R.

¹ State's exhibit 17, recording of appellant's phone call, is on file with the Court.

463, l. 10-465, l. 19

During responding officer, James Morgan's, testimony the prosecutor sought to admit state's exhibits 7, 8, and 9, photographs of the decedent's body as it was found at the scene.² R. 53, l. 15-54, l. 6. Defense counsel objected under Rule 403, SCRE. The court overruled defense counsel's objection and allowed the photographs to be admitted. The court found that the photographs showed the condition of the crime scene, the condition of the body, and the location. The court also found that the photographs corroborated the testimony of Morgan. R. 59, ll. 2-13.

During the pathologist, Doctor Darren Monroe's, testimony the prosecutor introduced state's exhibit 65, autopsy photograph.³ R. 334, l. 18-335, l. 3. Defense counsel objected, again under Rule 403, SCRE. Counsel argued that the photograph was unnecessary in this case where there was no dispute regarding cause of death or the trajectory of the bullet. Counsel contended the autopsy photograph added nothing, and its only purpose was to "get a picture of [decedent] with a bullet hole in her head in front of the jury." R. 335, ll. 9-18. Without making any findings the court ruled, "I'm gonna allow it." R. 336, ll. 5-6.

Discussion

In this trial, where the only issue for the jury to determine was whether this was murder or voluntary manslaughter, the trial court erred by admitting graphic photographs of decedent's body at the scene and an autopsy photograph which were not necessary and were substantially more prejudicial than probative.

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

² State's exhibits 7-9, photographs, are on file with the Court.

³ State's exhibit 65, autopsy photograph, is on file with the Court.

by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule, 403 SCRE.

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. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). Under Rule 403, SCRE, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” To be classified as unfairly prejudicial, photographs must have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (internal quotation omitted).

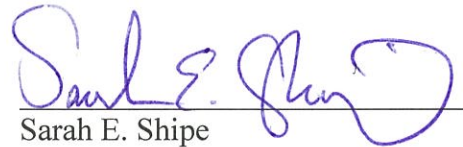
The photographs of decedent’s body at the scene and the autopsy photograph were not necessary in this case where appellant did not contest the fact that he shot and killed the decedent. *See State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). State’s exhibit 7, photograph of decedent as found at the scene is particularly graphic the photograph shows decedent with a large pool of blood around her head. State’s exhibit 65, autopsy photograph, is a close-up of decedent’s head depicting a close up look at the gunshot wound.

None of the contested photographs were necessary to corroborate the testimonies of Morgan or Monroe because the defense never disputed where and how the body was found or the manner of death. The only purpose these graphic photographs served was to create an emotional response in the jurors, which likely led to a decision on an improper basis. *See State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998).

Appellant’s murder conviction should be reversed, and he should be granted a new trial free of the prejudice of these graphic photographs.

CONCLUSION

By reason of the foregoing argument, appellant requests this Court reverse his conviction and remand his case for a new trial.



Sarah E. Shipe
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This 11th day of August, 2022.

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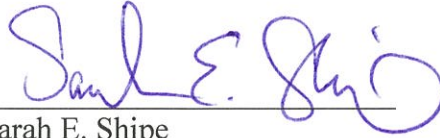
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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