

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

ROBERT JACKSON,

APPELLANT.

APPELLATE CASE NO. 2019-001497

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by refusing to admit photographs of Appellant's left leg, which had been amputated from the knee down, and his right foot, which was infected with gangrene, to explain why Appellant was in possession of heroin, specifically that he used the substance for pain management, since the photographs were relevant to his defense that he was merely in possession of heroin for his personal use and not guilty of the offense of trafficking for which he was indicted?

STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant on August 24, 2017 for trafficking in heroin, second or subsequent offense, and possession of a controlled substance, second or subsequent offense. App. 431-432. His case was called to trial on September 14, 2017 before the Honorable Thomas A. Russo, and a jury. App. 1. Assistant Solicitor J. Ryan White represented the state, and B. Scott Suggs represented Appellant. App. 1.

On September 15, 2017, the jury found Appellant guilty as indicted. App. 342, ll. 15-25. He was sentenced to twenty-five years for trafficking heroin and one year concurrent for possession of a controlled substance. App. 349, l. 20 – 350, l. 4. Appellant's trial counsel failed to file a notice of appeal after his conviction.

On April 16, 2018, Appellant filed an application for post-conviction relief seeking *inter alia* a belated direct appeal. App. 352-356. The state filed a return to this application dated October 24, 2018. App. 357-363. With the assistance of counsel, Appellant filed an amended application on June 19, 2019. App. 364-365. An evidentiary hearing was convened on June 28, 2019 before the Honorable William H. Seals, Jr. App. 366. Assistant Attorney General Brianna Schill represented the state, and Jonathan D. Waller represented Appellant. App. 366.

By order filed September 4, 2019, the judge granted Appellant a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). App. 417-430. However, the judge denied Appellant's remaining PCR allegations. App. 417-430.

This brief of appellant follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Collins, 409 S.C. 524, 529-530, 763 S.E.2d 22, 25 (2014) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)) (internal quotation marks omitted). “This Court is bound by the trial court’s factual findings unless they are clearly erroneous.” Id. at 30, 763 S.E.2d at 25 (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220) (internal quotation marks omitted). “The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” Id. (quoting State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)) (internal quotation marks omitted). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. (quoting Wise, 359 S.C. at 21, 596 S.E.2d at 478) (internal quotation marks omitted).

ARGUMENT

The trial judge abused his discretion by refusing to admit photographs of Appellant's left leg, which had been amputated from the knee down, and his right foot, which was infected with gangrene, to explain why Appellant was in possession of heroin, specifically that he used the substance for pain management, since the photographs were relevant to his defense that he was merely in possession of heroin for his personal use and not guilty of the offense of trafficking for which he was indicted.

Relevant Facts

On June 2, 2015, the Florence County Sheriff's Office received a tip alleging possible drug activity at Cruizers, a local convenience store. The tip identified the suspect as an occupant of a burgundy Nissan Altima in the parking lot. App. 124, ll. 3-10. When Investigator Jason Pate arrived at the store, he immediately located a burgundy Nissan Altima. App. 124, ll. 11-13. The driver's door of the car was open and a man, who was later identified as Appellant, was sitting in the driver's seat with his legs out of the vehicle. App. 124, ll. 14-18. As Pate approached the car, he noticed a pill bottle with the label torn in the side compartment of the driver's door. App. 124, ll. 19-25; App. 136, l. 22 – 137, l. 17.

Pate asked Appellant for his driver's license. As Appellant "was fumbling around," Pate noticed a plastic bag in Appellant's shirt pocket. App. 125, ll. 1-3. He asked Appellant what was inside the bag and Appellant allegedly admitted it was heroin. App. 125, ll. 4-9. Appellant "voluntarily" handed the bag to Pate. App. 138, ll. 11-19. Pate ultimately determined there were fifty wax paper packages referred to as "bindles" containing a substance consistent with heroin inside the plastic bag. App. 128, ll. 10-16; App. 130, ll. 5-8.

Based on this finding, law enforcement searched Appellant's car. App. 150, ll. 9-24. In the center console, officers found a "bundle" of fifty "bindles" of a substance consistent with heroin and an addition ten "bindles" on the floorboard of the front passenger seat. App. 151, ll. 3-14.

The substance was later confirmed to be heroin with a total weight of 4.68 grams. App. 204, ll. 4-9; App. 204, l. 22 – 205, l. 2. Inside the pill bottle located in the pocket of the driver's door were thirty pills identified as alprazolam, also known as Xanax, and four pills identified as oxycodone. App. 204, l. 15 – 204, l. 3; App. 213, ll. 8-10.

Appellant testified in his own defense. He was seventy-six years old at the time of trial, has a fifth grade education, and cannot read or write. App. 261, l. 17 – 262, l. 1. Appellant explained that he has been disabled since 2002 and suffers from diabetes. App. 263, ll. 18-21; App. 265, l. 25 – 266, l. 9. He admitted to possessing the heroin found in his shirt pocket. App. 272, ll. 20-24. He testified that he has used heroin for pain management since his left leg from the knee down had to be amputated due to gangrene. App. 263, l. 22 – 264, l. 20. Since the amputation, Appellant has suffered from phantom pains. App. 266, ll. 14-19. His right foot, which is also infected with gangrene, always hurts and burns, and, at the time of trial, his doctor planned to amputate that foot soon. App. 267, ll. 5-23. For whatever reason, Appellant's doctor refused to prescribe him any pain medications so Appellant was forced to self-medicate. App. 267, l. 24 – 268, l. 9; App. 275, l. 12 – 276, l. 1.

While Appellant admitted the heroin found in his shirt pocket belonged to him, he denied possessing the heroin found in his car. App. 268, ll. 16-25. He testified that he had just purchased the heroin found in his pocket before law enforcement arrived at the convenience store. The man who he bought the heroin from was in Appellant's car and, shortly before the

officers arrived, had left the car and gone into Cruizers. App. 268, l. 16 – 269, l. 24; App. 272, l. 20 – 273, l. 7. Appellant believed the heroin found in his car belonged to this unidentified man. App. 273, l. 21 – 274, l. 20.

Appellant sought to introduce photographs of his left leg, which had been amputated, and his right foot, which was infected with gangrene, during his testimony. However, the state objected to the admission of these photographs based on relevance and unfair prejudice to the state. App. 231, ll. 20-22; App. 233, ll. 16-22. Defense counsel argued the photographs were relevant to Appellant’s defense that he only possessed the heroin found in his shirt pocket and that he used heroin to manage his pain. App. 232, l. 13 – 233, l. 15.

The trial judge ultimately refused to admit the photographs. App. 235, ll. 3-11. He found the reason Appellant possessed and used heroin was not “relevant to any issue in the case” and therefore the photographs were likewise not relevant. App. 233, l. 23 – 234, l. 11. The judge also asserted any probative value of the photographs was substantially outweighed by the danger of unfair prejudice to the state. App. 235, ll. 3-11. The photographs were marked as Court’s Exhibit No. 1 and are on file with this Court. App. 255, l. 24 – 256, l. 8.

Discussion

The trial judge abused his discretion by refusing to admit the photographs of Appellant’s left leg, which had been amputated from the knee down, and his right foot, which was infected with gangrene, to explain why he was in possession of heroin, specifically that he used the substance for pain management. The photographs were highly relevant to Appellant’s defense that he was merely in possession of heroin for his personal use and was only guilty of a lesser included offense, not the offense of trafficking for which he was indicted.

“All relevant evidence is admissible.” Rule 402, 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 probable than it would be without the evidence.” Rule 401, 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 . . .” Rule 403, SCRE.

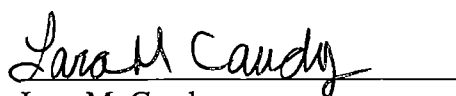
The photographs of Appellant’s amputated leg and gangrene infection were highly relevant to Appellant’s defense that he only possessed heroin for personal use and that it was essential to managing his pain. See State v. Brazell, 325 S.C. 65, 79, 480 S.E.2d 64, 72 (1997) (holding the trial judge properly admitted photographs of the crime scene and the decedent’s body because the photographs supported the testimony of several witnesses and were relevant to the nature of the crime). Moreover, the photographs were not unfairly prejudicial to the state given the trial judge’s instruction to the jury that its decision must be based only upon the evidence presented in the courtroom and that it must not be influenced in anyway by either sympathy for or prejudice against anyone. See App. 327, ll. 21-24.

Because the photographs were relevant to Appellant’s defense and not unfairly prejudicial, respectfully, this Court should hold the trial judge abused his discretion by refusing to admit the photographs, reverse Appellant’s convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of March, 2020.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Honorable Thomas A. Russo, Circuit Court Judge

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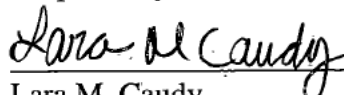
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Jackson states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on September 14-15, 2017 before the Honorable Thomas A. Russo, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Robert Jackson.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

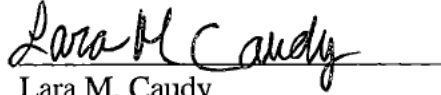
ATTORNEY FOR APPELLANT

This 26th day of March, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

March 26, 2020.

A handwritten signature in black ink that reads "Lara M. Caudy". The signature is written in a cursive style and is positioned above a horizontal line.

Lara M. Caudy
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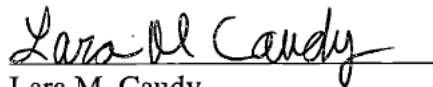
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CERTIFICATE OF SERVICE

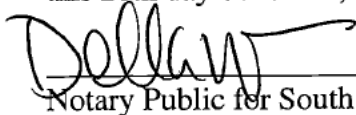
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon Briana L. Schill, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant Pursuant to White v. State has been served upon Robert Jackson, #138725, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 26th day of March, 2020.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of March, 2020.



(L.S)

Notary Public for South Carolina
My Commission Expires: March 10, 2025.