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Sep 26 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES CHARLIE HAWKINS,

APPELLANT

APPELLATE CASE NO. 2021-001233

ANDERS BRIEF OF APPELLANT

TAYLOR D. GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in admitting prejudicial, graphic photographs, where the photographs depicted injuries to a minor child?

STATEMENT OF THE CASE

Appellant was indicted by a Florence County grand jury on five counts of unlawful conduct towards a child and seven counts of inflicting great bodily injury upon a child. R. 315 – 319. On May 12, 2021, a competency hearing was held before the Honorable D. Craig Brown. R. 1. Christie Henderson represented Appellant, and David Richardson appeared on behalf of the state. Dr. Kaustubh Joshi evaluated Appellant and testified at the hearing. Judge Brown concluded Appellant was competent and allowed trial to be scheduled. R. 12, l. 16 – 14, l. 14.

Trial began on October 11, 2021, before Judge Brown and a jury. R. 24. Counsel Henderson was joined by Emily Crayton, and Danielle Leftridge tried the case with Solicitor Richardson. Appellant was found guilty on five counts of unlawful conduct towards a child and one count of inflicting great bodily injury on a child. R. 280, l. 20 – 282, l. 3.

Judge Brown sentenced Appellant to six years, seven years, eight years, nine years, and ten years on each of the unlawful neglect of a child charges. R. 310, l. 15 – 311, l. 6. He sentenced Appellant to twenty years on the great bodily injury of a child. R. 311, ll. 7 – 19. Each of these sentences were crafted to run consecutive to one another. R. 311, ll. 20 – 24.

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 judge erred in admitting prejudicial, graphic photographs, where the photographs depicted injuries to a minor child.

Relevant facts

Prior to trial, the prosecutor extended an offer of a time-served sentence to Appellant's counsel. R. 16, ll. 15 – 21; R. 85, ll. 5 – 24. As noted above, Appellant received an aggregate sentence of sixty years. Appellant's trial was marred by outbursts and interruptions;¹ his sentence was read via Facetime after Appellant refused to be transported to the courthouse. Appellant was the father of four children who were alleged to be malnourished and abused. R. 134, ll. 14 – 23.

During the state's case-in-chief, the prosecution sought to admit State's Exhibits 14, 15, 16, and 18. R. 129, l. 24 – 130, l. 19. Defense counsel objected on the grounds that the photographs were graphic and overly prejudicial. Id.

The state moved to admit the photographs during the testimony of Mica Griggs, a former employee of the Darlington County Sheriff's Office. R. 121, ll. 20 – 25. Griggs photographed four of Appellant's minor children and another child at the local DSS office. R. 121, l. 10 – 122, l. 17. The objectionable photographs were of Minor 5.

In response to the objection, the state argued that the photographs are part of the *res gestae* of the case. The solicitor admitted how the photographs are likely duplicative of the testimony of an expert:

¹ Appellant spoke during jury selection. R. 54, ll. 11 – 24. He claimed the President expunged prior offenses. R. 86, ll. 18 – 25. He claimed to hear whispers. R. 90, l. 12. Appellant claimed one of the witnesses was not actually his daughter. R. 151, ll. 3 – 16. His conduct caused him to be removed from the courtroom. R. 175, l. 8 – 176, l. 5.

They are the foundation upon which the case is built showing the nature of the injuries suffered by the children. Furthermore, they are necessary to - - well, tomorrow we'll have an expert witness who will - - a medical professional who will give testimony about the specific nature of the injuries, and it will be necessary for him to be able to use those photographs in his testimony.

R. 130, l. 25 – 131, l. 6.

Defense counsel pointed out the duplicative nature of the photographs. R. 131, ll. 15 – 18. The trial judge ultimately allowed the photographs to be admitted, finding that they were probative, corroborative, and material to the elements of the offense and that they show the extent and nature of the child's injuries. R. 133, ll. 6 – 15. Defense counsel renewed all previous motions and objections after resting. R. 247, ll. 11 – 12.

Discussion

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 relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Id. "When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case." State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct.App.2008).

In State v. Collins, the South Carolina Supreme Court considered the issue of seven graphic photographs in a case involving dog bites to a minor. 409 S.C. 524, 763 S.E.2d 22 (2014). The defendant in that case was charged with being the owner of a dangerous animal and involuntary manslaughter. The Court explored the elements of both offenses and noted what the state was required to prove. Id. at 530-31, 763 S.E.2d at 25-6. The state sought to admit a group of photographs taken prior to the autopsy “[i]n order to support its assertions about the dangerous propensities of the dogs, the manner and extent of the attack, and Collins’s criminal negligence.” Id. at 532, 763 S.E.2d at 27.

The Court concluded that the trial court did not abuse its discretion in admitting the pre-autopsy photographs. Id. at 534, 763 S.E.2d at 28. Holding that “[t]he evidence was highly probative, corroborative, and material in establishing the elements of the offenses charged,” the Court held that the probative value of the photographs outweighed the potential prejudice. Undertaking a discussion in the “substantial” requirement from Rule 403, SCRE, the Court held:

Where the State had the burden of proving the elements of the offenses charged and there were no eyewitnesses to the incident resulting in the victim’s death, the photos here provided concrete evidence as to that transpired on that fateful day.

Id. at 536, 763 S.E.2d at 28.

The Court reasoned that “[s]ince there was no one else present at the time of the event, the photos aided the jury in evaluating the testimony offered by both the State and the defendant, especially as to determining the dangerous propensities of the dogs and whether or not Collins’s conduct was criminally reckless.” Id. at 536, 763 S.E.2d at 29.

The photographs defense counsel objected to are graphic. They depict injuries to Minor 5, including scars, lacerations, scratches, and other wounds. They showed bandages from the rear areas of Minor 5. These photographs were designed to arouse feelings of anger and

sympathy of the jury. The probative value of the photographs was substantially outweighed by this danger of unfair prejudice; the jury likely convicted Appellant because of the graphic nature of the photographs. The photographs were duplicative of the testimony, as admitted by the solicitor.

Both the dissent and concurrence in Collins referenced State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010). In Torres, the state offered several autopsy photographs into evidence during the sentencing phase of a capital murder trial. Id. at 623, 703 S.E.2d at 229. Similar to the explanation in Collins, the prosecution contended that the photographs were properly admitted “because they corroborated witness testimony and were introduced to illustrate the circumstances of the crime and the character of the defendant.” Id. The Court held that the “net effects of the photographs was to show what Torres did to [the victims], which goes straight to the circumstances of the crime. Id. at 624, 703 S.E.2d at 229. Also relevant to this case was this admonition:

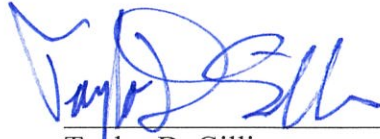
Although we affirm the admission of the photographs, we take this opportunity to address an area of growing concern to this Court. The photographs at issue in this case, while admissible, are at the outer limits of what our law permits a jury to consider. Moreover, the State also sought to introduce evidence in the form of an autopsy dissection photo at trial, which the trial judge wisely excluded. Today, we strongly encourage all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory which, in all likelihood, was already assured because of other substantial evidence in the case.

Id.

These prejudicial and graphic photographs appealed to the jury emotions, thus causing them to elevate this evidence above all else. The trial judge erred by admitting the photographs, and Appellant is entitled to a new trial.

CONCLUSION

Based on the foregoing, Appellant respectfully requests a new trial.



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of September, 2022.

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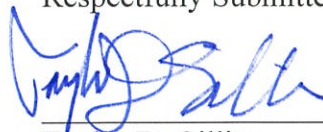
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Charlie Hawkins states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge D. Craig Brown, which was held on October 11 - 14, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for James Charlie Hawkins.

Respectfully Submitted,



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript of competency hearing dated May 12, 2021;
- (3) Transcript of trial dated October 11 – 14, 2021;
- (4) State's Exhibits 14, 15, 16, and 18; and
- (5) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.



Taylor D. Gilliam
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ATTORNEY FOR APPELLANT

This 26th day of September, 2022.

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."



Taylor D. Gilliam
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on James Charlie Hawkins, #274718, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 26th day of September, 2022.



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