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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARMIE JOSETTE NELSON,

PETITIONER.

APPELLATE CASE NO. 2021-001356

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether the Court of Appeals erred finding it was not an abuse of discretion for the trial court to admit gruesome autopsy photographs where the evidence was not needed to aid in the jury's understanding of the decedent's injuries and the probative value of the evidence was substantially outweighed by its potential for being unfairly prejudicial under Rule 403, SCRE?

STATEMENT

Procedural history

On October 17, 2017, a Charleston County grand jury indicted petitioner for murder (2017-GS-10-05922). R. 496. Petitioner's case was called to trial on May 6, 2019, before the Honorable J.C. Nicholson, Jr., and a jury. R. 1. William Smith, Jr. and Taylor Semen represented petitioner. R. 1. Assistant solicitor Douglas DuRant and assistant solicitor Daniel Cooper represented the state. R. 1.

On May 9, 2019, the jury found petitioner guilty of murder. R. 494, ll. 17-22. Judge Nicholson sentenced petitioner to life imprisonment. R. 495, ll. 2-6; R. 498.

The Court of Appeals affirmed petitioner's convictions in *State v. Nelson*, 2021-UP-330 (S.C. Ct. App. filed Sept. 15, 2021). Petitioner sought rehearing which was denied on October 22, 2021.

On November 19, 2021, petitioner filed the petition for writ of certiorari raising two issues for review. This Court granted certiorari as to Question 2 on September 7, 2022. This brief follows.

Introduction

Petitioner met Daniel Nelson at Fort Benning and they married in 2001. R. 44, ll. 9-24. In 2013, they moved to the Charleston area. In 2015, Daniel Nelson was convicted of criminal domestic violence after he attacked petitioner with a knife. After his arrest, petitioner and Nelson lived separately. R. 46, l. 10-93, l. 6; 162, ll. 17-25. However, Nelson would occasionally visit petitioner at the hotel where she lived. R. 52, ll. 6-17.

In January 2017, petitioner moved in with a woman, Jordan Lum, whom she befriended while they were patients at Palmetto Behavioral Health. R. 360, l. 13-361, l. 12. During this time petitioner and Nelson remained in touch, and she frequently allowed Nelson to use her

vehicle.

In the days leading up to the incident petitioner and Nelson texted and called each other several times. There are references to Lum throughout the text messages. Petitioner and Lum were not getting along and many of the text messages illustrated petitioner's irritation with Lum. R. 90-99.

On April 2, 2017, Nelson picked up petitioner's vehicle from a hotel where she left it parked and they arranged for him to pick her up at Lum's home. Nelson, grossly intoxicated, wrecked petitioner's vehicle and ended up taking a cab. R. 64, l. 3-66, l. 12; 67, l. 14-68, l. 25. Petitioner and Nelson had planned to go out together that evening but after the accident petitioner was upset with Nelson and instead made plans with Lum. When Nelson arrived at Lum's home petitioner went to get ready for the evening and while in the shower she heard "yelling." When petitioner emerged, she found Lum dead in the kitchen. R. 371-375.

Nelson held petitioner hostage in the home and would not allow her to access her cell phone for multiple days. R. 373, l. 24-375, l. 4. During that time, petitioner said Nelson forced her to make two recordings on his cell phone where she described the murder. R. 377, l. 17-378, l. 2. At trial, petitioner admitted she left the house to run errands for Nelson during the days between Lum's death and her arrest. R. 378, l. 7-379, l. 7. However, petitioner adamantly denied any involvement in Lum's death including helping Nelson in any way with moving the body or cleaning up the house. R. 377, ll. 13-17; 382, ll. 1-9; 385, l. 15-387, l. 12.

On April 4, 2017, Nelson called 911 and claimed petitioner killed Lum by hitting her with a hammer, slashing her throat, and stabbing her multiple times. R. 79, ll. 8-12; 168, ll. 11-14. When law enforcement arrived, Nelson directed them to where the body was located and where the murder weapons were. R. 166, l. 15-167, l. 5; 168, l. 15-169, l. 10. After changing his

story countless times, Nelson maintained Lum was dead when he arrived, and his involvement in the crime was limited to: conspiring to hurt and/or kill Lum, moving the body from the house to the garage, and cleaning up the house. R. 80-85; 125, l. 20-127, l. 11; 130-91; 172, ll. 8-21. Nelson was arrested and indicted for accessory after the fact of murder.¹ R. 81, ll. 13-21. Petitioner was arrested and indicted for murder. R. 496.

¹ At the time of trial Nelson had other pending charges including criminal domestic violence, unlawful use of 911, and filing a false report. R. 156, ll. 2-11.

STANDARD OF REVIEW

The admission of evidence is within the trial 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 Court of Appeals erred finding it was not an abuse of discretion for the trial court to admit gruesome autopsy photographs where the evidence was not needed to aid in the jury's understanding of the decedent's injuries and the probative value of the evidence was substantially outweighed by its potential for being unfairly prejudicial under Rule 403, SCRE.

Relevant facts

During the state's case, state's exhibits #23 and #24, photographs of decedent's body at the scene, were admitted over defense counsel's objection. R. 213, l. 17-214, l. 10 (These photographs are on file with this Court). State's witness Wade Rollings, responding officer, explained to the jury that the body was found in a large crate that had been stored in the garage for multiple days. R. 207-56; 222, ll. 9-18.

Later, state's witness Dr. Nicholas Batalis, the medical examiner who performed the autopsy, testified regarding the cause of death. Dr. Batalis testified there were two fatal wounds, one above the right ear where there was blunt and sharp force trauma, and one on the lower right side of the neck where there was sharp force trauma to the carotid artery. R. 305, ll. 9-19. During Batalis' testimony, the state offered state's exhibits #75-77, autopsy photographs. State's exhibit #75 is a close-up photograph of the top of decedent's head. State's exhibit #76 is close-up photograph of decedent's profile displaying the head and neck wounds.

Defense counsel objected to the autopsy photographs arguing the photographs were gruesome in nature and would inflame the passions of the jury. Defense counsel asserted Batalis' testimony in conjunction with his prepared diagram was an alternative to showing the jury autopsy photographs. The state countered the photographs were probative as to the cause of death and explained the injuries. The state further argued the photographs demonstrated malice.

The trial judge overruled the objection finding based on the testimony of Batalis the photographs would aid him in explaining the cause of death. The trial judge also found the photographs did have “some probative value” that outweighed the prejudicial value under Rule 403, SCRE. R. 308, l. 19-310, l. 13.

Discussion

“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary to substantiate material facts or conditions.” *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (citing *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)). Rule 403 of the South Carolina Rules of Evidence provides that even relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Photographs are unfairly prejudicial when they have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” *Id.* (citing *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995)).

The Court of Appeals held the trial court did not abuse its discretion in admitting gruesome autopsy photographs, state’s exhibits #75 and #76. The court found the photographs assisted the medical examiner, Dr. Nicholas Batalis, in his testimony regarding injuries to the decedent’s body, allowed the jury to better understand his testimony, and did not constitute unfair prejudice. The Court of Appeals cited *State v. Holder*, 382 S.C. 278, 676 S.E.2d 690 (2009), for the proposition that in order to constitute unfair prejudice, the photographs must create an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.

In that case the defendant was convicted of homicide by child abuse for the death of her minor child. *Id.* at 281, 676 S.E.2d at 692. On appeal, Holder argued the trial court erred in

admitting autopsy photographs showing the child's internal injuries. *Id.* at 290, 676 S.E.2d at 697. Holder's unconscious child was taken to the hospital and personnel was told that he had fallen off an All-Terrain Vehicle (ATV) earlier in the week. *Id.* at 281, 676 S.E.2d at 692. The child was pronounced dead at the hospital after unsuccessful efforts to resuscitate. *Id.* At trial the pathologist testified that the contested autopsy photographs would help him in "demonstrating the anatomic relationships and the disruption of those anatomic relationships" because the jury might not have knowledge of internal anatomy. *Id.* at 290, 676 S.E.2d at 697.

This case is distinguishable from *Holder*, where the Court held that the admission of the child victim autopsy photographs was not an abuse of discretion. *Id.* at 280, 676 S.E.2d at 691. In *Holder*, the Court noted that the pathologist testified regarding all of the ways, in which the photographs would aid in "demonstrating the anatomic relationships" because of the jury's "lack of knowledge of internal anatomy." *Id.* at 290, 676 S.E.2d at 697. The Court found that the photographs demonstrated the extent and nature of the injuries in a way that would not be as easily understood based on testimony alone. *Id.*

Here, the injuries, blunt force trauma and stab wounds, were not outside the knowledge of the average juror and thus the photographs were not needed to aid in the jury's understanding of the injuries. Batalis testified that the photographs would assist him in describing his findings to the jury because the photographs indicated the fatal wounds and showed characteristics of the wounds. However, Batalis admitted he could use his diagram to demonstrate to the jury the type and location of the injuries and that his testimony **would not change** even without the use of the autopsy photographs. R. 307, l. 21-308, l. 15.

This case is also distinct from cases where our courts have found the photographs did not inflame the jury and were not prejudicial. In *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997),

the Court held three photographs of the victim's body at the crime scene were properly admitted. In that case, the photographs were not close-ups and accurately reflected the scene of the crime. Here, the autopsy photographs were not necessary to show the scene of the crime because that had been accomplished by crime scene photographs of the body, state's exhibits #23 and #24. State's exhibit #75 and #76, autopsy photographs, were both taken close-up, did not reflect the crime scene, and have no probative value in this case.

In *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014), autopsy photographs of a child who had been killed by defendant's dog were admitted. In that case, the Court found that the trial court did not abuse its discretion in admitting the photographs because the photographs were highly probative, corroborative, and material in establishing the elements of the offenses charged." *Collins*, 409 at 535, 763 at 28. *Collins* is distinguishable from the case at hand because neither state's exhibits #75 or #76 were necessary to substantiate a material fact or condition. The issue at trial was whether petitioner or Nelson killed Lum, not the way she died.

In *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986), the Court held the trial court erred in admitting three color autopsy photographs of one of the victims in this capital murder trial. Although the photographs were used to corroborate other evidence, the trial judge erred in permitting their introduction because they were unfairly prejudicial. "[T]he information contained within the photographs was not really at issue." Additionally, "any arguable evidentiary value of the photographs" was negated by the forensic pathologist's testimony. *Id.*


The jury had already seen, state's #23 and #24, photographs of the body as it was found at the scene. Without even looking at the gruesome autopsy photographs, it was clear from Batalis' testimony that they were horrific. In Batalis' proffered testimony he described one of the photographs as follows, "[y]ou can actually see down to the brain there. So basically, the

skull has been shattered away.” Later he goes on to describe the photograph, “[t]his green coloration here . . . those are postmortem changes or decomposition; basically, the body breaking down.” R. 305, l. 9-306, l. 14.

The jury had likely never seen anything as disturbing as what these autopsy photographs depict and the erroneous admission of them at trial created “an undue tendency to suggest a decision on an improper basis.” *See State v. Jackson*, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)). The trial court abused its discretion by admitting state’s exhibits #75 and #76, autopsy photographs, because they were unnecessary to Batalis’ testimony and their only purpose was to create an emotional response in the jurors.

CONCLUSION

For the foregoing reasons, petitioner's conviction should be reversed, and this case remanded to the Charleston County Court of General Sessions for a new trial.


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ATTORNEY FOR PETITIONER

This 7th day of October, 2022.