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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER RYAN HOLLIDAY,

APPELLANT

Appellate Case No. 2012-212010

INITIAL BRIEF OF APPELLANT

WANDA H. CARTER
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the jury to hear evidence of the psychological impact that the obscene nature of this case had upon the prosecutrix because such information was not only prejudicial, but also irrelevant as her trauma had no bearing on the question of whether appellant was guilty of the crime of indecent exposure for which he was on trial.

STATEMENT OF THE CASE

Appellant Christopher Ryan Holliday was convicted of indecent exposure and possession of marijuana (second offense) during the May 2012 term of the York County General Sessions Court before Judge Lee S. Alford. Appellant was sentenced to imprisonment for a period of one year on each conviction. Phil Smith represented appellant at trial.

Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in allowing the jury to hear evidence of the psychological impact that the obscene nature of this case had upon the prosecutrix because such information was not only prejudicial, but also irrelevant as her trauma had no bearing on the question of whether appellant was guilty of the crime of indecent exposure for which he was on trial.

This state's case was comprised of the testimony of only two witnesses: the arresting officer and prosecutrix Catherine Holley. Police Officer Wesley Wiles testified that he was dispatched to Park Avenue at Winthrop University on August 29, 2011, upon receipt of a call reporting the presence of a male on campus who was exposing himself (presumably masturbating) while reclining in his parked car. The male, who was identified as appellant, was detained until the caller appeared for a show-up identification during which time she identified the detainee as the perpetrator. Appellant was arrested immediately thereafter. Subsequently, an inventory search of appellant's car yielded a finding of marijuana inside the center console area of the car. Thereafter, appellant indicated that the marijuana belonged to him. Tr. 88, l. 14 - p.92, l.18; App. 98, l.16 - p. 104, l. 7; Tr. 109, p. 25 - p. 110, l. 1.

Catherine Holley, a freshman who had just arrived on Winthrop's campus in August 2011, was the caller who reported appellant's behavior on the day in question. Holley stated that appellant smiled and eyed her at one point as he was manipulating his penis with his hand. Tr. 121, l. 14-p. 126, l. 13.

The solicitor elicited testimony from the prosecutrix suggesting that appellant's behavior apparently impacted her psychologically and had some bearing on her decision to leave Winthrop University and transfer to another university via the following testimony:

Prosecutrix: I mean I was really hoping that [appellant] didn't see me, and that's kind of what initiated me to run and call my mom and

the police, because at that point I didn't know if he was plotting something, or what was going on...[appellant] was doing that in his car...when I turned back to look the second time, he was looking directly at me...[so] I ran to my dorm and I called my mom and she told me to call Officer Scott...so I called Officer Scott and then he reported it to the police. Tr. 131, l. 21 – p. 132, l. 11.

Solicitor: Why did you call [your mom]?

Prosecutrix: Because it was my first week at college away from home and you guys – well, most people remember how Cherry Road is, and I was already scared to death living by myself for the first time, and then that happened to me. And I'm just like oh, what else could happen wrong, and it was – I don't know, it was just an emotional time. Tr. 137, l. 7- 13.

Solicitor: Now Catherine, earlier you said that you were no longer at Winthrop University, but you were still at a university.

Prosecutrix: Yes, ma'am.

Solicitor: --is that right? Why are you no longer at Winthrop?

Defense Counsel: Objection, relevance.

Solicitor: Withdrawn.

THE COURT: Sustained. Tr. 137, l. 19 –p. 138, l. 2.

The inference was that this event was so traumatic and life altering for the prosecutrix that she could not remain at Winthrop University to pursue her education. To the contrary, this psychological impact evidence was irrelevant as it had no bearing on whether appellant was guilty of exposing his private parts for public view. See S.C. Code Ann. § 16-15-130 (A) (I). This psychological evidence was prejudicial because it suggested to the jury that appellant should be punished for her psychological harm, which was presented as alarming and great, that the prosecutrix suffered as a result of appellant's alleged behavior.

Evidence is relevant and probative if it has any tendency to establish, or make more or less probable that the accused committed the crime charged against him. State v. Wiles, 383 S.C. 159;

679 S.E. 2d 172 (2009); State v. Rivera, 402 S.C. 225; 741 S.E. 2d 694 (2013); Rule 401, SCRC. Any evidence that presents an undue tendency to suggest that a decision be made on an improper basis results in unfair prejudice that damages the defense. State v. Rivera, *supra*, State v. Dickerson, 341 S.C. 391, 535 S.E. 2d 119 (2000). Rule 403, SCRE. See State v. Langley, 334 S.C. 643, 515 S.C. 2d 98 (1999), where the Court reversed and found that the admission of a high school photograph of the deceased while living into evidence was reversible error due to its prejudice and because it was not relevant in proving whether the defendant was guilty of the offense of murder charged against him.

Here, the solicitor began laying the foundation to play upon and tap into the jury's sympathy over the ordeal the prosecutrix experienced. For example, the solicitor's opening remarks follow:

Solicitor: On August 29, 2011, Catherine Holley was 18 years old. She had just started her freshman year at Winthrop University. It was her first time living away from home. She and her parents made the decision that she was going to live on campus at one of the dorms, and she literally started her first semester at college seven days before on August 22....So seven days after she started college [this happens]. Tr. 79, lines 4 – 11.

Solicitor: Before I sit down I have one thing that I would like to ask. When Catherine takes the stand later on today and you are listening her tell you what happened to her that day, what she observed, I just hope that you will remember that this is the first time that this girl has had to stand in front of a group of strangers and use this type of terminology, the first time that she's had to say things like this. And just remember that bravery, though she has a lot of that, does not always trump nervousness. Tr. 83, l. 15 – 23.

Also, the solicitor reminded the jurors during closing arguments of how uncomfortable this ugly situation was for the prosecutrix as follows:

Solicitor: You heard Catherine, and it was an uncomfortable conversation, but she said to you that she was sure that she saw his penis exposed...Tr. 147, l. 23 – p. 148, l. 1.

Solicitor: ...But I do want to make sure that we understand what it does to [a prosecutrix] who is exposed to that, and you heard from

her today. I think that it says a lot that she ran home and called her mom first thing; that she had been gone from home for seven days. Tr. 150, lines 5-9.

Solicitor: But I do ask that you look behind the reason why [prosecutrix] may have been nervous when she was sitting up here testifying; that you consider the fact that she did not choose to have a man doing this on her college campus; and that this was the first time that she had to stand in front of a group of strangers and use that terminology and describe the things that she saw. Tr. 153, l. 19-25.

Note that the trial judge bought into this pity for the prosecutrix as evidenced by the following statements made at sentencing:

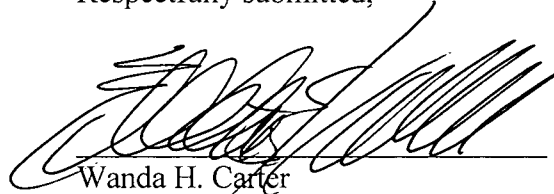
THE COURT: If you are so worried about your child and getting custody of your child, doing what you need to do, you wouldn't be down here doing that kind of stuff...you wouldn't be down here exposing yourself to these college students, little 18 year old college students....Tr. 187, lines 20 – 25.

In the case at bar, the injection of the prosecutrix's trauma endured based on the nature of the case had no bearing on whether appellant was guilty as charged. This trauma was not a fact that tended to prove or disprove appellant's guilt on the charge of indecent exposure. Thus, the trial judge erred in allowing the jury to hear the exaggerated psychological impact of appellant's alleged act of indecent exposure had upon the prosecutrix in the case because the same violated appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that this Court reverse his indecent exposure conviction and sentence and remand his case to the trial level for a new proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of July, 2013.

STATE OF SOUTH CAROLINA

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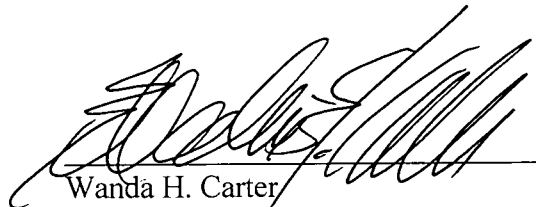
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Tr. 79-140, Tr. 145-162, Tr. 181-189

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

July 29th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

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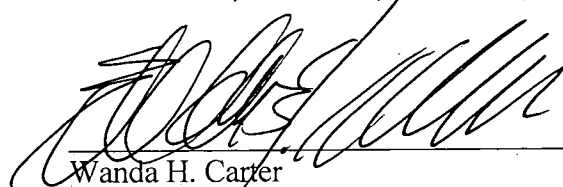
CHRISTOPHER RYAN HOLLIDAY,

APPELLANT

Appellate Case No. 2012-212010

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Christopher Ryan Holliday, at 1211 Meadow Lakes Road, Rock Hill, SC 29732, this 29th day of July, 2013.

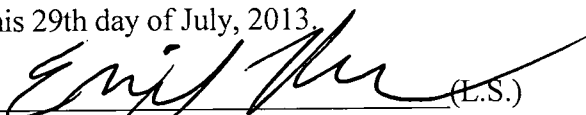


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of July, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.