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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2022-000716

THE STATE,

Respondent,

v.

ARIEL S. ROBINSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 E. North St.
Greenville, SC 29601
(864)- 467-8647

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse her discretion in admitting photographs of the victims' injuries.

STATEMENT OF THE CASE

Appellant was indicted by a Greenville County Grand Jury on one count of homicide by child abuse in the death of her foster daughter V.S. (Victim). A pretrial hearing to determine the admissibility of body camera footage containing statements made by Appellant and photographs of the injuries Victim sustained was held on April 14, 2022, before the Honorable Letitia H. Verdin. Appellant was represented by William Bouton, Esq. At the conclusion of the hearing, it was determined that most of the photos would be admissible. The Court reserved ruling on the admissibility of the body camera footage until it could review the unedited footage in chambers.

On May 9, 2022, Appellant proceeded to a jury trial before the Honorable Letitia H. Verdin. William Bouton represented the Appellant at trial also. The jury found Appellant guilty as charged. Appellant was sentenced to life imprisonment. This appeal follows.

STATEMENT OF FACTS

On January 14, 2021, emergency personnel responded to the home of Ariel (Appellant) and Austin Robinson (Husband). (R. 93). The Robinsons lived in this home with their 2 biological children and 3 foster children ages 7 (J.E), 5 (C.E.), and 3 (Victim). Emergency personnel were dispatched to the Robinson home for a possible child drowning. (R. 93). Jeff Jennings was the first to arrive on scene accompanied by the rest of his team from Simpsonville Fire Department. (R. 132). Husband directed Jennings upstairs where he observed Victim lying lifeless on the floor while Appellant was attempting CPR. (R. 150). Jennings took over and began lifesaving measures. (R. 150).

Simpsonville Firefighter Osmine Givens arrived upstairs shortly after Jennings and took over compressions and preparation for the AED machine. (R. 137). Victim's shirt was cut off to apply the AED pads for the defibrillator machine. (R. 154). When Victim's shirt was removed bruising was observed on her lower abdomen. (R. 138). Appellant was still in the room observing and stated that the bruising was from her attempting CPR. (R. 138).

Minutes later EMS arrived and established that Victim was in cardiac arrest and a Intraosseous (IO)¹ was needed to quickly administer medicine. (R. 168). Victim's pants were cut off to administer the IO. (R.168). When Victim's pants were removed, extensive bruising was observed all over her legs. (R. 170). When this bruising was observed Appellant stated that those bruises were from Victim's 7-year-old brother, that he hit her and had anger issues. (R. 140). Victim was loaded into the ambulance and rushed to the hospital. (R. 142). Later that evening Victim succumbed to her injuries. (R. 271).

¹ "IO stands for intraosseous, which means into the bone. And, basically, what we do is below the knee, you'll feel the big bump ...on the leg bone....which has an incredible capillary bed there. So it's a good spot to...administer medications." (R. 168).

The following day an autopsy was performed by Dr. Michael Ward on Victim. (R. 297). The autopsy revealed that Victim died from multiple blunt force injuries that caused severe internal bleeding and the death was classified as a homicide. (R. 315). Both Appellant and Husband were charged with homicide by child abuse. (R. 182). A few weeks after the arrest, Husband came forward and gave a statement to police implicating Appellant in the death of Victim. (R. 288-289). Based on the statement and Husband's agreement to testify against Appellant, the State allowed Husband to plead guilty to aiding and abetting homicide by child abuse with sentencing deferred until after Appellant's trial. (R. 183).

On April 14, 2022, the parties convened before the Honorable Letitia H. Verdin for pretrial motions. One of the matters addressed was the State's motion to admit photographs taken of Victim. Nine photographs were submitted to the court for consideration at the hearing. Seven photographs were of Victim in the hospital documenting the bruising on her back, abdomen, and legs. One photograph was from the autopsy and showed the internal injuries to Victim's legs. While the State sought to admit an edited autopsy photograph, it provided the court with the unedited autopsy to show the efforts made to make it less shocking. (R. 1-59).

The State argued that the purpose of admitting the photos was not to inflame the jury, but to prove the "extreme indifference to human life" element of the crime of homicide by child abuse. (R. 51). The State also argued that the photographs were admissible under Rule 404(b), SCRE, because Appellant had claimed she accidentally caused the bruising on Victim and the State was entitled to put in evidence that is contrary to that. (R. 52-53). Finally, the State also argued that because Appellant introduced third-party guilt by stating that the bruising on Victim's legs was caused by her 7-year-old brother, the photographs were necessary to show that the degree of the bruising could not possibly be caused by a 7-year-old. (R. 53). For the autopsy photo, the State

cited to State v. Martucci¹, holding that the internal photographs of the injuries to the victim's abdomen were admitted because it helped the jury understand exactly what happened to the child and for the State to prove an element of the crime, which was extreme indifference to human life. (R. 53-54).

Defense Counsel argued that the postmortem photographs were prejudicial because "they created undue tendencies to suggest a decision on an improper basis, an emotional one." (R. 54). He further argued that the photographs did not go to a substantial material fact and that the condition of Victim could be shown in other ways, such as the diagram of the injuries created by the medical examiner, and that the probative value was outweighed by the prejudicial effect that they would have on Appellant. (R. 54-56).

The circuit court ultimately ruled that six of the photographs were admissible. The court excluded² a close-up photograph of the side of Victim's face and ear as prejudicial and a photograph that showed the bruising along Victim's body as cumulative. The Court found that the diagrams by the medical examiner did not "fully depict the injuries and the absence of any mistake or certainly the ability of a child to do this type of thing." The court found the autopsy photograph relevant and necessary for the State to prove its case. (R. 56-57).

¹ State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (2008).

² The excluded photographs and the unedited autopsy photograph were admitted as Court's Exhibit 1-3 and were placed under seal. The Six photographs that were discussed during the pretrial was marked as State's 1-6, however during trial the three photographs that were admitted seem to be State's Exhibits 2-5 in addition to the autopsy photograph labeled State's 42. It is the States understanding that Pretrial State's Exhibits 1 and 6 are the same photographs labeled Court's Exhibits 1-3 and are the Sealed exhibits on file with this Court.

STANDARD OF REVIEW

“In criminal cases, the Appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion.” State v. Howard, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct. App. 2008). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law.” State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008).

“To warrant the reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice.” Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

ARGUMENT

The trial judge did not abuse her discretion in admitting photographs of victims' injuries.

Appellant contends that the trial judge abused her discretion by admitting six pictures of the external injuries Victim sustained and one autopsy photograph of the internal injuries Victim sustained because the probative value of the photographs was substantially outweighed by the danger of unfair prejudice and where any probative value was negated by the extensive descriptive medical testimony elicited during the trial.

“‘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 or less probable than it would be without the evidence.” Rule 401, SCRE. “Evidence which is not relevant is not admissible.” Rule 402, 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. “A trial court has a 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).

“Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues.” State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014). See State v. Martucci, 380 S.C. 232, 699 S.E.2d 598 (Ct. App. 2008) (holding autopsy photographs of child were admissible to corroborate the testimony regarding various injuries inflicted on child). “It is well settled in this state that if the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. In

addition, this Court has held that autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant.” State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010).

Similar to Torres, the photos of the injuries to Victim were material in corroborating testimony regarding the injuries as well as establishing an element of the crime. The judge charged the jury with homicide by child abuse. (R. 427). “A person is guilty of homicide by child abuse if the person causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting and extreme indifference to human life.” S.C. Code Ann. §16-3-85(A)(1).

State’s Exhibit 2 is a frontal picture taken from above that shows the overall bruising on Victims abdomen and legs. Firefighters Givens and Jennings both used this photo to explain that they have never seen bruises like this from CPR. (R. 139-141; 155). Dr. Jacqueline Granger, an expert in pediatric emergency medicine, as well as forensic pathologist, Michael Ward, used this photo to explain that an object was used because of the pattern. (R. 266-268; 298-307). State’s Exhibit 3 shows the bruising on the back of Victim. Husband testified that Victim did not have those bruises the night before when he was giving her a bath. (R. 201). State’s Exhibit 4 shows the bruising on the right side of Victim’s abdomen and her right thigh. This photo was used by Givens and paramedic, Ken Koehler, to explain the bruising on her legs. (R. 140; 171). This photo was also used by Dr. Ward to explain that the cause of this bruising was blunt force trauma. (R. 300-301). State’s Exhibit 5 shows the bruises on Victims inner thighs. Dr. Ward used this photo to explain that these were different blows than the other bruising on the body. (R. 301). State’s Exhibit 61 shows the bruising on the back of Victim’s legs. Granger used this photo to explain that due to the severity of the bruising it was inflicted on Victim and could not be accidental. (R. 257).

State's Exhibit 42 is an autopsy photo of the inside of the victim's legs. Ward used this photo to explain to the jury that Victim's cause of death was internal bleeding into the tissues of her legs. (R. 311-312). He further testified that the tissue inside the legs had been torn away from the underlying tissue and the blood collected within there could only be caused by forceful strong blows that could not possibly have been caused by Victim's seven-year-old brother. (R. 311-312).

"The standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of *unfair* prejudice that *substantially* outweighs the probative value of the evidence." State v. Heath, 433 S.C. 506, 515, 860 S.E.2d 673, 678 (Ct. App. 2021) (emphasis added). Although the photographs have some prejudicial value, it does not substantially outweigh the probative value of establishing an element of the crime charged.

"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. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010). Appellant argues that the purpose of showing the pictures to the jury was to create an emotional response in the jurors. In Rosemond, photos of murder victims taken at the crime scene and in autopsy were admitted over Appellant's objection that the pictures were unduly prejudicial and deprived him of a fair trial. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). Our Supreme Court held that the photographs were not unnecessarily gruesome, as the bodies had been cleaned of blood. Id. at 597, 518 S.E.2d at 590. See also State v. Franklin, 318 S.C. 56, 456 S.E.2d 361 (1995) (affirming admission of autopsy slides, noting they showed victim's wounds and body had been cleaned of blood). In State v. Hawes, the court held that admission of crime scene photographs of a victim who had been stabbed to death were not an abuse of discretion because the photographs were relevant in establishing the issue of malice, as they established the wounds that were inflicted on the victim and showed the

extent of the victim's injuries. State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018). Similar to Hawes, the photos of the Victim's bruising were necessary to show the extent of Victim's injuries and explain the force that was needed to inflict these injuries going to the indifference to human life element of the offense charged. The photos were also necessary to corroborate testimony that negated Appellant's claims that the bruising on Victim's abdomen was caused by doing CPR and the bruises to her legs were caused by her seven-year-old brother.

In State v. Martucci, this Court held that autopsy photos of a child's internal organs and other injuries were admissible in a homicide by child abuse case because the photographs were used to corroborate the testimony of the doctor who performed the autopsy regarding the various injuries inflicted on the child and the internal trauma that caused the child's death. State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008). This Court further held that the photos were "relevant to prove Child was abused, that the abuse was the cause of his death, and that the abuse manifested an extreme indifference to human life, all of which support the charge of homicide by child abuse." Id. at 250, 669 S.E.2d at 608. Similar to Martucci, Victim's cause of death was internal bleeding into the tissues of her leg caused by child abuse and that abuse manifested an extreme indifference to human life.

The prejudicial value of these photos does not substantially outweigh the probative value of corroborating testimony and establishing an element of the offense charged. Moreover, the question is whether the trial judge abused her discretion. As held in State v. Heyward, our supreme court held "when the trial court actually exercises its discretion in balancing the inherent danger of unfair prejudice posed by these photographs against "high" probative value, and puts its reasoning on the record for the appellate court to review the trial court's ruling...is a decision that we will almost always find within the trial court's discretion." State v. Heyward, S.C. Sup. Ct.

Order dated October 11, 2023 (Howard Adv. Sh. No. 40). The trial judge did not abuse her discretion, but properly exercised discretion by excluding Court's Exhibits 1-3, stating that Court's 1 showed Victim's face and would therefore be more prejudicial than probative, Court's 2 was redundant, and Court's 3 was the unedited zoomed out version of the autopsy photo. She then admitted the photos she believed were appropriate. Therefore, Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

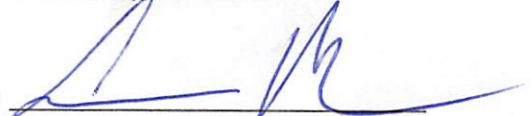
ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 E. North St.
Greenville, SC 29601

BY:



Ambree M. Muller
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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CERTIFICATE OF COUNSEL

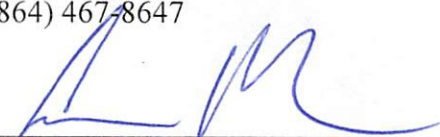
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 E. North St.
Greenville, SC 29601
(864) 467-8647

BY: 
Ambree M. Muller
Bar # 104213

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jessica M. Saxon, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 5th day of February, 2024.



Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3835