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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRADLEY W. WALKER,

APPELLANT

APPELLATE CASE NO. 2023-000139

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by admitting body cam footage of a bloody gunshot victim at the crime scene where the injuries were already established in-depth by other testimony, and where the fact that person was shot was not a contested issue at trial?

STATEMENT OF THE CASE

Appellant Bradley W. Walker was indicted by the Lexington County grand jury for murder, and three counts of attempted murder. The charges stemmed from Appellant's alleged involvement in a shooting inside a singlewide trailer on Sandspur Road on July 23, 2018. Tr. 14, ln. 16—Tr. 16, ln. 7; Tr. * (Indictments).

Appellant's case proceeded to a jury trial from January 9th through 13th, 2023, before the Honorable Walton J. McCleod, IV. Appellant was represented by Debra B. Moore,[1] while the State was represented by Sutania A. Fuller and Robert L. McNair, III. Tr. 1. The jury found Appellant guilty on all counts. Tr. 827, ln. 18—Tr 828, ln. 5. The trial court imposed concurrent sentences upon Appellant of forty-five (45) years for murder, and thirty (30) years for each of the three counts of attempted murder. Credit was given for 1,558 days of time served Tr. 849, ll. 9-15; Tr. * (Sentence sheets).

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1 Appellant initially represented himself *pro se* in his case. However, he eventually obtained Counsel who ultimately represented him at trial. Tr. 833, ll. 14-19.

STATEMENT OF THE FACTS

Appellant Bradley Walker met Elizabeth Peterson (Mrs. Peterson) and her husband Aaron Peterson (Mr. Peterson) in May 2018 through a dating app called "3Fun." Although the Petersons were married at the time, Mrs. Peterson lived with her mother in Winnsboro, South Carolina, while Mr. Peterson was still in their mobile home on Sandspur Road in Lexington County. Appellant moved in with Mrs. Peterson, and the three leased a new apartment together on Broad River Road in July, 2018. Tr. 225, ln 13–Tr. 229, ln. 25. However, problems developed in the relationship, the Petersons desired to move on from Appellant. Tr. 230, ln. 17—Tr. 233, ln. 24. In the meantime, Mrs. Peterson had been talking with her friend from the flea market, David Hawkins (Hawkins), since at least June 2018, to bring him into their relationship instead. According to Mrs. Peterson, Appellant had no idea about Hawkins. Tr. 136, ln. 24–Tr. 139, ln. 5; Tr. 235, ln. 6–Tr. 237, ln. 24; Tr. 266, ll. 1-19; Tr. 271, ll. 8-21.

On the late morning of July 23, 2018, the Petersons and Hawkins awoke at the mobile home on Sandspur Road to begin moving to the apartment on Broad River Road. The trio left along with the Petersons' three-year-old child (Minor). Mr. Peterson was dropped-off at U-Haul to get the moving truck, and on the way back the others stopped at the liquor store for boxes. According to both Mrs. Peterson and Hawkins, when they arrived back at the trailer on Sandspur Road between 12:00 pm to 1:00 pm, the U-Haul was already there, as was the gold Prius of Appellant. Tr. 142, ln. 12–Tr. 144, ln. 2; Tr. 241, ln. 18–Tr. 244, ln. 7; Tr. 528, ll. 5-23. For three to four hours, everyone—to allegedly include Appellant—worked together helping move with no problems or issues.[2] Tr. 144, ln.3 –Tr. 145, ln. 18; Tr. 244, ln. 8—Tr. 245, ln. 9.

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[2] At trial, Appellant's defense was that he was not at the mobile home on Sandspur Road. Tr. 58, ll. 20-25; Tr. 61, ll. 2-5; Tr. 796, ll. 8-9; Tr. 800, ll. 24-25.

Appellant purportedly left at one point to get Chinese food. Tr. 145, ln. 18–Tr. 146, ln. 6. Upon returning about 45 minutes later, he allegedly went inside and to the back bedroom, while Mrs. Peterson was asleep on the couch with Minor on her chest. Mr. Peterson and Hawkins were in the back bedroom to move a large cabinet, and told Appellant to get something in another room. Tr. 146, ln. 7–Tr. 147, ln. 7; Tr. 245, ll. 10-16.

Appellant purportedly returned to the back bedroom while Mr. Peterson and Hawkins stood shoulder to shoulder facing away. Appellant then allegedly shot Mr. Peterson multiple times, and Hawkins once. He then purportedly walked up the hallway; Mrs. Peterson rolled off the couch and kneeled on the floor while looking for her gun in her purse. She was shot once in the face, but two shots were allegedly fired. After walking back to the bedroom and firing another shot, Appellant then left out of the front door. Tr. 147, ln. 3–Tr. 149, ln. 5; 245, ln. 17–Tr. 247, ln. 5.

Hawkins called 911 from Mrs. Peterson's phone at 5:43 pm, and law enforcement arrived shortly after. Tr. 150, ll. 1-13; Tr. 209, ln. 23–Tr. 210, ln. 12; Tr. 247, ll. 9-17. Emergency medical services also arrived at the mobile home on Sandspur Road. Hawkins survived with a gunshot wound to his arm, as did Mrs. Peterson with her wound to the face, and Minor with shrapnel in his chest. Mr. Peterson succumbed to his wounds.[3] Tr. 151, ll. 15-16; Tr. 248, ll. 1-20; Tr. 297, ln. 23–Tr. 303, ln. 17; Tr. 328, ll. 11-25; Tr. 436, ln. 13–Tr. 442, ln. 25; Tr. 487, ln. 20–Tr. 490, ln. 25. After speaking with Hawkins and Mrs. Peterson, a BOLO was issued by law enforcement for Appellant and his car. Tr. 69, ll. 11-21.

At 6:21 pm, 911 dispatch received a call regarding a vehicle on fire on Pooles Mill Road approximately 8.2 to 10.4 miles away from the trailer on Sandspur Road. Tr. 211, ll. 3-5; Tr. 531,

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[3] Peterson was shot a total of four times. Cause of death was determined to be laceration of the brain, and exsanguination due to gunshot wounds to the head and back. Tr. 437, ln. 19–Tr. 438, ln. 2.

ll. 1-9. At 7:00 pm, yet another call was received by a resident on Pooles Mill Road that a burned, naked man was at the front door. Tr. 87, ll. 3-7; Tr. 211, ln. 6—Tr. 212, ln. 15. Firefighters arrived and put out the fire. They also put a burn blanket and oxygen mask on the man—Appellant—who was severely burned from his waist up and wearing only his socks. Tr. 87, ll. 10-15; Tr. 316, ln. 7–Tr. 323, ln. 8. He appeared in a state of shock, was nonresponsive to any questioning, and was ultimately taken to the Augusta Burn Center where he was treated until his release on October 8, 2018. Tr. 87, ln. 15–Tr. 90, ln. 3.

Evidence collected from the mobile home included multiple .40 caliber Smith & Wesson (.40 S&W) fired shell casings, as well as bullets and fragments. Tr. 374, ln. 7–Tr. 376, ln. 18; Tr. 413, ln. 4—Tr. 416, ln. 5; Tr. 466, ll. 13-19; Tr. 471, ll. 10-25. Although multiple firearms were located inside the trailer, none were collected. Tr. 352, ln. 13–Tr. 353, ln. 20. No physical evidence placed Appellant in the mobile home on Sandspur Road. Tr. 423, ll. 15-19.

Police later collected a bag and shoebox purported to be Appellant's items from the mother of Mrs. Peterson that she claimed to have taken from a closet in the apartment on Broad River Road. Tr. 335, ln. 1–Tr. 336, ln. 10. Inside was a blue gun box for a Smith and Wesson SD40 VE and .40 S&W ammunition.[4] Tr. 90, ln. 6—Tr. 91, ln. 8; Tr. 402, ll. 10-21.

Appellant was arrested upon his release from the Augusta Burn Center. Tr. 89, ln. 19–Tr. 90, ln. 5. His case proceeded to trial from January 9th through 13th, 2023. Tr. 1. After the jury found him guilty on all counts, the trial court sentenced Appellant to forty-five (45) years for murder, and to thirty (30) years for each of the three counts of attempted murder. Tr. 827, ln. 18—Tr. 828, ln. 5. ; Tr. 849, ll. 9-15; Tr. * (Sentence sheets). This appeal follows.

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[4] Although the State's firearms identification expert indicated a Smith and Wesson SD40 VE was on the list of possible guns that fired the bullets tested, no .40 S&W pistol was ever recovered. Tr. 478, ll. 1-9.

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kornahrens, 290 S.C. 281, 288, 350 S.E.2d 180 (1986). "The relevancy and materiality of a photograph is left to the sound discretion of the trial judge." State v. Edwards, 194 S.C. 410, 10 S.E.2d 587, 588 (1940).

ARGUMENT

The trial court reversibly erred by admitting body cam footage of a bloody gunshot victim at the crime scene where the injuries were already established in-depth by other testimony, and where the fact that person was shot was not a contested issue at trial.

The trial court erroneously admitted three highly prejudicial body cam videos into evidence depicting bloody injuries in the present case. Counsel timely objected[5] and was overruled by the trial court pursuant to Rule 403, SCRE. Tr. 290, ln. 14—Tr. 293, ln. 3. This was error as the photographs were not necessary to substantiate material facts or conditions, and their probative value was substantially outweighed by the danger of unfair prejudice by creating a tendency to suggest a decision on an improper basis.

"Although photographs may be used to corroborate other evidence, it is well established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial." State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (internal citations omitted) (reversing and remanding where the information contained in the photographs was not really at issue, and other testimony negated any arguable evidentiary value of the photographs); see State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (agreeing with the same evidentiary principles, but factually different); State v. Waitus, 224 S.C. 12, 77 S.E.2d 256, 263 (1953); State v. Elders, 386 S.C. 474, 483, 688 S.E.2d 857, 862 (Ct. App. 2010) (agreeing with the same evidentiary principles, but factually different); see also Rule 401, SCRE (defining relevant evidence); Rule 402, SCRE (prohibiting admission of irrelevant evidence). Stated differently, "[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded *if they are irrelevant or not necessary to substantiate*

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[5] Counsel withdrew an additional objection on the basis of a violation of Rule 5, SCRE, to one of the three videos. Tr. 287, ln. 8—Tr. 290, ln. 6; Tr. 293, ll. 11-14.

material facts or conditions." State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (emphasis added). Moreover, "[i]n the *guilt* phase of a trial, photographs of the murder victims should be excluded where the facts they are intended to show have been fully established by competent testimony." Kornahrens, 290 S.C. 281, 288-89, 350 S.E.2d 180, 185 (1986) (emphasis in original) (citing Waitus, 224 S.C. at 12, 77 S.E.2d at 256).

Additionally, Rule 403 of the South Carolina Rules of Evidence allows for even relevant evidence to be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 370 (1995) ("It is well settled that evidence should be excluded when its probative value is outweighed by its prejudicial effect."). In order to constitute unfair prejudice, the images "must create a tendency to suggest a decision on an improper basis, commonly, although not necessarily, an emotional one." Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71 (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

In the present case, the body cam video footage admitted was irrelevant and unnecessary to the issues at trial, and highly prejudicial due to the blood present in them on Mrs. Peterson. State's Exhibit #79 depicted Mrs. Peterson covered in blood and being taken out from the room by paramedics; State's Exhibit #80 depicted Mrs. Peterson covered in blood outside the mobile home being put on a gurney by paramedics; and State's Exhibit #81 depicted Mrs. Peterson being loaded into the back of the ambulance, all of which was published to the jury over objection. Further, when it was published, it was also being described by the testimony of paramedic Nathan Rehm (Rehm). Tr. 303, ln. 21—Tr. 309, ln. 14; Tr. * (State's exhibit #79); Tr. * (State's exhibit #80); Tr. * (State's exhibit #81). As Counsel argued, witness testimony already established the injuries depicted in the videos. Tr. 291, ll. 5-15. For example, prior testimony included details of

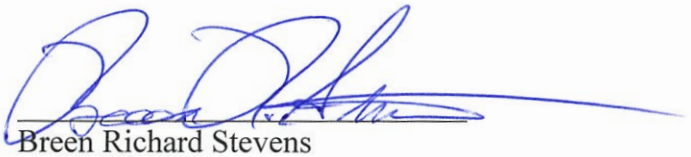
the injuries not only from Rehm, but also from Mrs. Peterson, as well as a more cursory description by Hawkins. Tr. 151, ll. 15-16; Tr. 248, ll. 1-20; Tr. 297, ln. 23–Tr. 303, ln. 17. Thus, the videos were "irrelevant or not necessary to substantiate material facts or conditions." Torres, 390 S.C. at 623, 703 S.E.2d at 228; see also Rules 401 and 402, SCRE.

Moreover, the defense in Appellant's case was not to challenge whether anyone was shot; rather, it was that he was not at the incident location. As such, the information presented to the jury in the body cam footage was unnecessary to prove elements of the charged offenses, and irrelevant to the issues litigated. Middleton, 288 S.C. at 24, 339 S.E.2d at 693; see also Rule 401, SCRE (defining relevant evidence); Rule 402, SCRE (prohibiting admission of irrelevant evidence). Under such circumstances the only remaining value of the video imagery was to arouse the sympathies and prejudice of the jury. Torres, 390 S.C. at 623, 703 S.E.2d at 228 ("[p]hotographs 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."). Accordingly, the probative value of the videos was substantially outweighed by the danger of their undue prejudicial effect. Rule 403, SCRE; see also Kelley, 319 S.C. at 177, 460 S.E.2d 370.

Appellant was also prejudiced by the trial court's erroneous admission of the videos. As previously indicated, the imagery was unnecessary to prove elements of the charged offenses, and irrelevant to the issues litigated. Further, no physical evidence placed Appellant at the crime scene. Finally, the State acknowledged the bloody contents of the imagery to the court. Tr. 291, ll. 5-15. Thus, Appellant was unfairly prejudiced by the trial court's erroneous admission of the videos, as they were unnecessary and "create[d] a tendency to suggest a decision on an improper basis, . . . an emotional one." Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71 (quoting Alexander, 303 S.C. at 382, 401 S.E.2d at 149); see also Rule 403, SCRE. Accordingly, Appellant was prejudiced.

CONCLUSION

For the foregoing reasons, Appellant Bradley W. Walker respectfully requests reversal of his convictions and sentences, and remand for new trial.



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This 4th day of March, 2024.