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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY L. SINGER,

APPELLANT

APPELLATE CASE NO. 2023-000820

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by admitting testimony that 650 images and 50 videos of child pornography were found on a computer where Appellant was on trial for only seven counts of sexual exploitation of a minor, and where the State acknowledged that Appellant was not charged for possessing or sharing the additional images or videos?

STATEMENT OF THE CASE

On October 29, 2020, Appellant Ricky Leroy Singer, Jr., was indicted by the Sumter County Grand Jury for one (1) count of second-degree sexual exploitation of a minor (S.E.M. 2nd), and six (6) counts of third-degree sexual exploitation of a minor (S.E.M. 3rd). The charges arose based upon images obtained by law enforcement from a laptop computer purportedly possessed by Appellant. Tr. * (Indictments); Tr. * (General Sessions tracking sheet).

Appellant's case proceeded to trial from May 8th through 11th, 2023, before the Honorable George M. McFaddin and a jury. Michael D. Routzong represented Appellant, while Stephen Ryan and Bethany Miles represented the State. Tr. I 1; Tr. II 1.

The jury found Appellant guilty on five (5) counts of S.E.M. 3rd, and one (1) count of S.E.M. 2nd.¹ The trial court imposed concurrent sentences of six (6) years on all counts, and credit was given for 1258 days of time served. Tr. II 61, ln. 22—Tr. II 62, ln. 6; Tr. * (Sentence Sheets). This appeal follows.

¹ The trial court directed a verdict of acquittal on one count of S.E.M. 3rd. Tr. II 11, ll. 9-17; Tr. * (General Sessions tracking sheet).

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).

ARGUMENT

The trial court erred by admitting testimony that 650 images and 50 videos of child pornography were found on a computer where Appellant was on trial for only seven counts of sexual exploitation of a minor, and where the State acknowledged that Appellant was not charged for possessing or sharing the additional images or videos.

Appellant was indicted and haled into court for seven specific forbidden images and videos. Yet the trial court erroneously permitted the State to inform the jury of an additional 650 images and 50 videos of contraband found on the computer for which he was not charged. The probative value alleged by the State of showing “intentional ongoing activity” to possess the indicted images and videos was substantially outweighed by the danger of unfair prejudice informing the jury that such voluminous quantities of child pornography also existed on the computer, especially where the jury already saw the images and videos for which Appellant was indicted, and where the expert explained what it was to them.

Relevant Facts

On July 24, 2017, Investigator Kevin Atkins of the internet crimes against children (ICAC) section at the South Carolina Attorney General’s Office (SCAG) located and downloaded files from a laptop computer through BitTorrent file sharing software. Tr. I 90, ll. 5-13; Tr. I 92, ll. 21-24; Tr. I 102, ln. 24—Tr. I 103, ln. 23; Tr. I 105, ll. 12-24. After finding the physical address associated with the internet account, a search warrant was obtained and executed by the Sumter County Sheriff’s Office on the home where Appellant lived with his sister, Brenda Quiroz (Sister), and her children. During the search, a black laptop computer was found in a bedroom with men’s clothing. Sister provided law enforcement with credentials to access the computer, in which files believed to contain child pornography were found. Tr. I 108, ln. 2—Tr. I 111, ln. 2; Tr. I 113, ln. 7—Tr. I 116, ln. 14.

The laptop was sent to the SCAG and forensically examined by Investigator Grubbs (Inv. Grubbs) at the ICAC section. Tr. I 119, ll. 6-16; Tr. I 121, ll. 7-18; Tr. I 128, ln. 128—Tr. I 129, ll. 11. Overall, Inv. Grubbs found approximately 650 pictures and 50 videos on the laptop. Tr. I 47, ln. 21—Tr. I 48, ln. 19; Tr. I 50, ll. 16-20.

Appellant was indicted with seven charges, each pertaining to a specific image or video from the laptop. Tr. * (Indictments). During pretrial motions at Appellant’s trial, Appellant argued to suppress mention of the voluminous images and videos not included in the indictments, pursuant to Rule 403 of the South Carolina Rules of Evidence, and State v. Simmons, 430 S.C. 1, 841 S.E.2d 845 (2020). He further asserted “the more these items that are piled on, . . . the more of the danger there is the jury makes a decision based on an improper basis. . . .” Tr. I 55, ll. 10-19. The State responded that it was not going to publish the images themselves, but refer to them “to show that this was an ongoing intentional activity or at least let the jury weigh that on whether or not they can make the infer[ence] of this was an intentional act.” Tr. I 55, ln. 21-Tr. I 56, ln. 21. The trial court allowed the State to discuss the numerous files, ruling as follows:

Mr. Routzong, I will agree you, it’s an odd call to make here based on relevance and whether it’s prejudicial. Obviously, this is not the first Court to deal with this based on the first case that you talked about, but I’m going to allow it so long as the State stays within their boundaries it said it would stay in in terms of it being overly prejudicial. That’s sort of an oxymoron-ish word to use, but that’s what I’m using.

Tr. I 57, ll. 10-17.

Before the jury, Inv. Grubbs testified to finding images of child pornography on the laptop, specifically regarding images and videos for which Appellant was indicted. Tr. I 130, ln. 1—Tr. I 132, ln. 12. Over Appellant’s objection, the State was also permitted to elicit testimony

that “[a]round 650 images and 50 videos” of child sexual material was also found during Inv. Grubbs’ examination of the laptop computer. Tr. I 132, ll. 15-25. These numbers were repeated to the jury not only by Inv. Grubbs, but also by the State in its closing argument: “You heard from the State’s expert Investigator Grubbs how he examine[d] the computers found approximately 700 additional files of child pornography.” Tr. I 132, ll. 24-25; Tr. II 20, ll. 17-19.

Argument

Evidence is relevant if it “ha[s] any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. All relevant evidence is admissible, unless constitutionally, statutorily, or otherwise provided. Rule 402, SCRE.

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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” 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.”). “The term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” Old Chief v. United States, 519 U.S. 172, 180, 117 S.Ct. 644, 650, 136 L.Ed.2d 574 (1997); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991). “For purposes of the Rule 403 weighing of the probative against the prejudicial, the functions of the competing evidence are distinguishable only by the risk inherent in the one and wholly absent from the other.” Id., 519 U.S. at 190, 117 S.Ct. at 655.

Here, the probative value of Inv. Grubbs' testimony regarding the vast amount of additional illicit images outside the indictments was substantially outweighed by the danger of unfair prejudice to Appellant. Neither S.E.M 2nd nor S.E.M. 3rd include an element requiring proof of "an ongoing intentional activity," or that it "was an intentional act," which were reasons the State sought admission of the testimony. S.C. Code Ann. §16-15-405 & -410 (West, current through 2024 Act. No. 120); Tr. I 55, ln. 21-Tr. I 56, ln. 21.² In other words, the probative value of such needlessly cumulative evidence was extremely low because it was not required for the elements of the charged offenses. Rule 403, SCRE. In fact, the State's expert had already established facts necessary to support the elements of the indicted offenses. Yet the State wanted more, and the trial court obliged it to guild the proverbial lily with nearly 700 additional files of child pornography.

Over Appellant's objection, the State was permitted to inform the jury that Appellant had not only the seven images and videos of child pornography on the computer that they just saw, but also possessed approximately 650 images and 50 videos of "child sexual abuse material." Tr. I 132, ll. 15-25. Thus, the prejudicial value against Appellant was exceedingly high as the jury now saw Appellant as a hoarder of vast quantities of the illicit materials. In short, Inv. Grubbs' testimony of the additional child pornography "speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." Old Chief, 519 U.S. at 180, 117 S.Ct. at 650.

² Both S.E.M. 2nd and S.E.M. 3rd include the requirement that a defendant know the character of the content of the materials possessed. S.C. Code Ann. §16-15-405 & -410 (West, current through 2024 Act. No. 120). The jury was shown all but one of the images and videos for which Appellant was indicted. Thus, the jury had all the information necessary to make what is inherently their determination based upon what they saw. As Justice Stewart explained in his concurrence when attempting to define pornography: "I know it when I see it...." Jacobellis v. Ohio, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683, 12 L. Ed. 2d 793 (1964) (J. Stewart, concurring).

In sum, the trial court's ruling violated Rule 403, SCRE, by permitting the State to admit testimonial evidence that Appellant possessed hundreds upon hundreds of additional child pornographic files; yet he was indicted on none of them. Thus, any probative value of such testimonial evidence was both outweighed by the danger of unfair prejudice to Appellant, and needlessly cumulative to the images and videos targeted in the indictments.

CONCLUSION

For the foregoing reasons, Appellant Ricky Leroy Singer, Jr., respectfully requests reversal of his convictions, and remand for a new trial.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of May, 2024.