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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS SHAWN BROWN,

APPELLANT

APPELLATE CASE NO. 2023-001482

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge commit reversible error by admitting a series of crime scene photographs, which graphically depicted the decedent's body, where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and where the only purpose of the photographs was to inflame the passions of the jury?

STATEMENT OF THE CASE

A Horry County grand jury indicted Appellant on November 6, 2019 for the offense of murder. R. 332-333. His case was called to trial on September 11, 2023 before the Honorable William H. Seals, Jr., and a jury. R. 1. Assistant Solicitor Mary-Ellen Walter represented the state. Kia Wilson represented Appellant. R. 1.

On September 13, 2023, the jury found Appellant guilty as indicted. R. 319, ll. 18-22. He was sentenced to life without parole. R. 331, ll. 9-11.

This appeal follows.

STATEMENT OF FACTS

The state alleged at trial that Appellant shot and killed Mark Verhasselt, also known as Chino, during the early morning hours of July 10, 2018. About a week before his death, Verhasselt came down to Myrtle Beach from Fayetteville, North Carolina, with a group of friends, including McKenna Reimers, Matthew Rivera, and Appellant. Reimers, the state's key witness, testified that the group sought to leave Fayetteville for "kind of a new life." Reimers quickly began working at Thee Dollhouse, a strip club in Myrtle Beach. R. 63, l. 6 – 66, l. 18.

On the night of July 9, 2018, Verhasselt, Appellant, and Carlos Rodriquez, who Verhasselt met in Myrtle Beach, picked Reimers up from Thee Dollhouse. Rodriquez was driving Verhasselt's Chevy Silverado truck. Verhasselt sat in the front passenger seat and Appellant and Reimers sat in the backseat. Reimers claimed Rodriquez drove to an apartment complex so the group could "make a sale."[1] When the group arrived, Rodriquez parked in a parking spot and Appellant allegedly got out of the truck. Reimers claimed that after a few minutes, she saw Appellant in her "peripheral" vision "coming from behind the truck." Appellant allegedly opened the front passenger door where Verhasselt was sitting. Rodriquez, who was in the driver's seat, then "took off running." Reimers testified that Appellant and Verhasselt were talking outside the truck. Verhasselt was "kind of telling him [Appellant] to stop." According to Reimers, Verhasselt thought Appellant "was playing around with him." Reimers claimed Appellant then shot Verhasselt twice. After he shot Verhasselt, Appellant pointed the gun at Reimers and ordered her to get out of the car. He then told Reimers to grab Verhasselt's "fanny pack." Reimers grabbed the bag and walked around the side of the

[1] Verhasselt was known to sell and use drugs.

apartment complex with Appellant to where Matthew Rivera was waiting in his car. Rivera then drove the three back to Fayetteville. R. 66, l. 19 – 76, l. 15.

Carlos Rodriguez testified that Verhasselt showed up at his house on the night of July 9, 2018. He left with Verhasselt and agreed to drive because Verhasselt "had been drinking or something." Around midnight, Rodriquez drove Reimers, Verhasselt, and Appellant to a subdivision in Myrtle Beach. The group was "trying to meet up with somebody." Rodriquez testified that after he parked the truck, Appellant got out. About five to ten minutes later, Rodriquez saw Appellant near the back of the truck. Verhasselt then said, "oh, he's ready to meet me, or something like that" and got out of the truck. Soon after that, Rodriquez heard Verhasselt say, "are you going to pull a gun on me?" Rodriquez immediately took "off running." As he was running, he claimed he also heard Verhasselt say, "Don't shoot me, don't shoot me." Then he heard gunshots and Verhasselt "in pain." Rodriquez did not come back to check on Verhasselt. R. 104, l. 15 -

Matthew Rivera testified that he met Appellant through Verhasselt. On the night of July 9, 2018, he agreed to "meet up" with Appellant. The two exchanged text messages throughout the night and agreed to meet at Bovardia Place in Myrtle Beach. Rivera was waiting for Appellant outside his truck when he heard gunshots. Rivera "hopped in his truck and started leaving." As he was driving away, he saw Appellant and Reimers in the roadway. Rivera claimed Appellant was holding Reimers with one hand and a pistol with the other hand. Appellant and Reimers got into Rivera's truck and he drove the three to Fayetteville. Rivera claimed Appellant had Verhasselt's small backpack when he got in his truck. Rivera ultimately pled guilty to accessory after the fact and was sentenced to eight years. R. 118, l. 15 – 125, l. 6.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Collins, 409 S.C. 524, 529-530, 763 S.E.2d 22, 25 (2014) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)) (internal quotation marks omitted). "This Court is bound by the trial court's factual findings unless they are clearly erroneous." Id. at 530, 763 S.E.2d at 25 (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220) (internal quotation marks omitted). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." Id. (quoting State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)) (internal quotation marks omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. (quoting Wise, 359 S.C. at 21, 596 S.E.2d at 478) (internal quotation marks omitted).

ARGUMENT

The trial judge committed reversible error by admitting a series of crime scene photographs, which graphically depicted the decedent's body, where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and where the only purpose of the photographs was to inflame the passions of the jury.

Relevant Facts

Appellant moved pretrial to exclude State's Exhibit Nos. 3, 5-7, which were photographs of the decedent's body where it was discovered by law enforcement on the ground outside of his vehicle, pursuant to Rule 403, SCRE. The assistant solicitor explained that State's Exhibit No. 3 was the only photograph the state sought to admit that showed the entire body. She argued the photograph was "important" to corroborate testimony about where the decedent "fell when he was shot." She maintained that the other three photographs, State's Exhibit Nos. 5-7, were "designed to show placement of evidence that was recovered." R. 13, ll. 8-21. The solicitor claimed the content of the photographs was "not bloody" and that there was "nothing that would inflame a juror's passion." R. 13, l. 22 – 14, l. 1.

Defense counsel objected to "the body being shown at all" because "we don't know how the jury is going to react to seeing a corpse" or whether the photographs would "inflame a juror or not." She argued the body should be cropped out of the photographs showing where the ballistics evidence was found since cropped photographs would be sufficient to show the location of where the cartridge cases were found. Counsel maintained that photographs of the body, however, were unnecessary since the defense was not planning to argue the body "miraculously was not on scene." R. 14, l. 3 – 15, l. 1.

The trial judge overruled the objection. He remarked that the photographs were not close ups of the body and the state has "to prove somebody was murdered." R. 15, ll. 2-19. Defense counsel contemporaneously objected when the photographs were admitted before the jury. R. 163, ll. 6-22; R. 165, l. 22 – 166, l. 13.

Discussion

The trial judge abused his discretion by admitting State's Exhibit Nos. 3, 5, 6, and 7, which were graphic photographs that showed the decedent's body, since the probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the only purpose of the photographs was to inflame the passions of the jury.

As a general rule, all relevant evidence is admissible. Rule 402, SCRE. "'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 probable or less probable than it would be without the evidence." Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." Rule 403, SCRE.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)) (internal quotation marks omitted). "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) (citing State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Collins, 409 S.C. at 534, 763

S.E.2d at 27 (quoting Nance, 320 S.C. at 508, 466 S.E.2d at 353) (internal quotation marks omitted).

"When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case." Id. at 534, 763 S.E.2d at 27-28 (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). "To be classified as unfairly prejudicial, photographs must have a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" Torres, 390 S.C. at 623, 703 S.E.2d at 228-229 (quoting State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995)).

In State v. Torres, 390 S.C. at 624, 703 S.E.2d at 229, our Supreme Court expressed to the bench and bar its concern over the admission of gruesome photographs, like the photographs admitted in this case. See Collins, 409 S.C. at 540, 763 S.E.2d at 30-31 (Pleicones, J., dissenting); see also State v. Jones, 440 S.C. 214, 891 S.E.2d 347 (2023); State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023). The Court stated:

> Although we affirm the admission of the photographs, we take this opportunity to address an area of growing concern to this Court. The photographs at issue in this case, while admissible, are at the outer limits of what our law permits a jury to consider. Moreover, the State also sought to introduce evidence in the form of an autopsy dissection photo at trial, which the trial judge wisely excluded. Today, we strongly encourage all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory which, in all likelihood, was already assured because of other substantial evidence in the case.

Torres, 390 S.C. at 624, 703 S.E.2d at 229.

Here, the detailed and graphic testimony of the pathologist was sufficient to inform the jury of the decedent's injuries and enable the state to establish the elements of the offense. Additionally, the testimony of the Rebecca Phillips, the crime scene investigator, was sufficient to inform the jury where the cartridge cases were found at the scene, which is what the solicitor

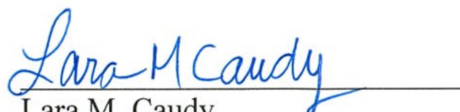
claimed was the purpose of the photographs. Accordingly, the photographs added little to the state's case. On the other hand, they were extremely prejudicial due to their gruesome nature, particularly State's Exhibit No. 3, which showed the decedent lying in a pool of blood. Therefore, the probative value of these photographs was greatly outweighed by the danger of unfair prejudice to Appellant. See Rule 403, SCRE. Consequently, the trial judge abused his discretion by admitting these gruesome photographs in violation of Rule 403.

Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectively requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of July, 2024.

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APPELLANT

APPELLATE CASE NO. 2023-001482

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marquis Shawn Brown states:

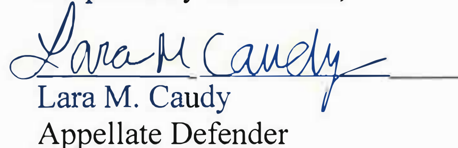
1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial, which was held September 11-13, 2023 before the Honorable William H. Seals, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Marquis Shawn Brown.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

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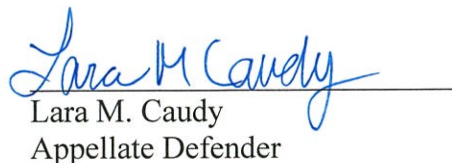
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Complete Trial Transcript dated September 11-13, 2023;
(2) State's Exhibit Nos. 3, 5, 6, 7 (Photographs);
(3) Indictment;
(4) Sentence Sheet.

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



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ATTORNEY FOR APPELLANT

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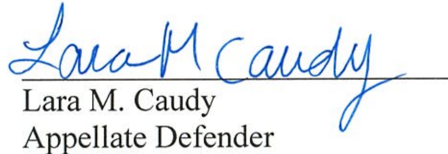
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."



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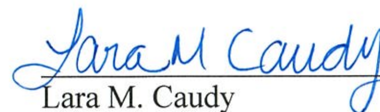
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at her primary email address listed in the Attorney Information System (AIS); and on Marquis Shawn Brown, #391998, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 10th day of July, 2024.



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