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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF WALTER VAUGHN,

APPELLANT

APPELLATE CASE NO. 2023-001992

ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in denying appellant's motion to suppress the testimony of a jail guard because it was cumulative and more unfairly prejudicial than probative under Rule 403, SCRE?

STATEMENT OF THE CASE

After appellant Walter Vaughn finished serving his time for a criminal conviction, the Attorney General sought his continued confinement as a sexually violent predator and on December 4, 2023, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Christopher S. Runyan and James Fisher appeared for the Attorney General. R. 1. Don A. Thompson represented appellant. R. 1. The jury found appellant was an SVP and Judge Jefferson ordered him committed. R. 441. This appeal follows.

STANDARD OF REVIEW

The standard of review is abuse of discretion. State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023).

ARGUMENT

The trial judge erred in denying appellant's motion to suppress the testimony of a jail guard because it was cumulative and more unfairly prejudicial than probative under Rule 403, SCRE.

In this SVP case, the Attorney General ("AG") sought a second opinion from MUSC's Dr. Emily Gottfried after the DMH evaluator determined appellant should not be committed. R. 65-66. The AG paid MUSC $5,600.00 for Dr. Gottfried's services. R. 66. Dr. Gottfried testified "I have an annual salary that's paid by MUSC, and it has nothing to do with the results of the evaluation." R. 66.

Dr. Gottfried testified that appellant was an SVP and should be committed. R. 158-60. Appellant had a brain injury when he was sixteen that required a craniotomy. R. 75. A brain scan seven years later showed he had a softening of his brain tissue as a result of the injury. R. 75-76. His qualifying criminal offense under the SVP Act was first-degree criminal sexual conduct involving a fifteen-year-old girl when he was eighteen. R. 85-91. He had no other sexually violent offenses. R. 92.

Dr. Gottfried could not diagnose appellant with any paraphilic disorders, so she gave appellant a diagnosis of antisocial personality disorder. R. 128-29. She also said appellant had a "major neurocognitive disorder due to a traumatic brain injury" and "mild cannabis-use disorder." R. 135, 141. Appellant's score on an actuarial table showed that his risk to reoffend within the next twenty years was 31.2%.

The Court's expert from DMH, Dr. Gehle, agreed with Dr. Gottfried on the scoring of the actuarial table, but said his five-year risk of reoffending was only 17.6% on one rubric and 13.8% on another. R. 240-41. She found no mental abnormality. R. 244. She did not find a

personality disorder. R. 244-45. Dr. Gehle explained that appellant's brain injury when he was younger made any diagnosis of antisocial personality disorder "very complicated because the symptoms can overlap." R. 246. His IQ was in the low 70s even before his accident and that interfered with his behavior, functioning, and kept him "very immature and childlike." R. 250. She determined appellant was not an SVP because he lacked a mental abnormality or personality disorder. R. 246.

The AG's hired expert Dr. Gottfried also testified about appellant's disciplinary history while he was confined. R. 94-98. She opined that his jail infractions for masturbating in front of guards were important because "he was zeroing in on a person" and "repeatedly doing it." R. 94-95. Even though the doctor admitted these were not sexually violent offenses under the statute, she claimed it showed appellant "already has reoffended." R. 98.

After Dr. Gottfried testified, appellant objected to the AG's next witness, a jail guard. R. 190-98. The AG wanted the guard to testify about appellant masturbating and speaking roughly to her at the Charleston County jail. R. 190-98. Appellant did not contest it happened and offered to stipulate that it occurred. R. 190-98. But appellant argued that putting the guard on the stand would be cumulative because Dr. Gottfried already discussed the behavior. R. 190-98. Appellant also argued that the guard's testimony would violate Rule 403, SCRE. R. 190-98. Defense counsel explained it ran the risk of "putting Mr. Vaughn on trial for the events that happened in the jail, in the eyes of the jury." R. 190-98. The trial judge ruled the testimony was admissible. R. 190-98. The guard then testified about the lurid details of jail masturbation. R. 199-214.

The trial court erred in allowing this graphic and unnecessary testimony. See State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023). Relevant evidence can be excluded under Rule

403 where the probative value is outweighed by the danger of unfair prejudice. Id. In Nelson, the Court reversed because the admission of gruesome autopsy photographs had little probative value, but "unnecessarily created the potential for the jury to convict [the defendant] of the murder based on inflamed emotions. . . ." Id. The photographs "were not needed to prove an issue in the case. . . ." Id.

The guard's testimony was unneeded because of appellant's offer to stipulate. The hired expert had already testified about the exposure incidents in the jail. The DMH expert also testified about the incidents. Therefore, the probative value of the guard's testimony was nonexistent because it did not concern a fact in dispute. However, hearing from a sympathetic witness undoubtedly provoked an emotional reaction. The guard also testified that she had never seen anyone else in four years masturbate in their cell, which the defense attorney found incredible. R. 214-15. While law enforcement and members of the legal system know such behavior is common in our jails, the members of the jury would not. The unfair prejudice caused by the guard's unnecessary and gratuitous testimony likely caused the jury to accept the hired expert's testimony and find appellant was an SVP. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's commitment and remand for a new trial.

S/David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 11th day of September, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Walter Vaughn states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on Dec. 4-6, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Walter Vaughn.

Respectfully Submitted,

S/David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 11th day of September, 2024.

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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) Trial transcript

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

S/David Alexander
Deputy Chief Attorney for Capital Appeals

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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."

S/David Alexander
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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 Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Walter Vaughn, #, at 4546 Broad River Road, , Columbia, SC 29210, this 11th day of September, 2024.

S/David Alexander
Deputy Chief Attorney for Capital Appeals

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