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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO LAVAR BETHEL,

APPELLANT

APPELLATE CASE NO. 2023-001415

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether trial court reversibly erred by admitting photographs taken by an investigator depicting close-up images of a bloody gunshot wound to the head where the emergency room doctor already testified regarding the details of the injury, and the questions of how and where the victim was shot were not contested matters in the case where Appellant asserted self-defense?

STATEMENT OF THE CASE

On December 18, 2019, Appellant Antonio L. Bethel was indicted by the Richland County Grand Jury for attempted murder. The charge arose from a shooting incident on April 19, 2019. R. 4, ln. 22 — 5, ln. 4; R. 466.

Appellant's case proceeded to trial from August 7th through 9th, 2023, before the Honorable Daniel M. Coble and a jury. Tivis Sutherland represented Appellant, while the State was represented by Kathryn Cavanaugh and Joseph Kreush. R. 1; R. 122. The jury found Appellant guilty as charged, and the trial court imposed a sentence of fifteen (15) years. R. 449, ln. 25 — 450, ln. 6; R. 464, ll. 13-15.

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).

STATEMENT OF THE FACTS

After receiving a call from his girlfriend, Laqueen Jackson (Jackson), earlier in the evening, Appellant Antonio L. Bethel arrived as a passenger in a Toyota Camry at the Motel 6 on Nates Road at approximately 12:40 am on April 19, 2019. The Camry parked in front of the lobby near two other cars. (State's Ex. # 76, video @ 01:27).¹ Jackson was already at the hotel lobby with her friend, Mr. Duan Lane (Lane). R. 34, ll. 2-4. Shortly after Appellant's arrival, Lane came out of the lobby and moved his black Mercedes Benz from in front of the Camry to the sidewalk about fifteen feet behind it. (State's Ex. # 76, video @ 01:32—02:41). Lane then re-entered the Motel 6 lobby, while Appellant remained in the Camry. (State's Ex. # 76, video @ 03:11).

After coming back outside, Lane stood by the front of his car while Jackson was next to the passenger side of the Camry. Jackson walked over to the far side of Lane's Mercedes, and was followed by Appellant. (State's Ex. # 76, video @ 04:45—05:10). As Appellant approached the front of Lane's car, Lane lunged at Appellant, punching him in the face hard enough to knock out Appellant's tooth. The two scuffled; Appellant swung back, and then quickly went to the nearby Camry. R. 35, ll. 8-22; R. 54, ll. 3-5; (State's Ex. # 76, video @ 05:11—05:19). Jackson walked back between Lane and the Appellant as Appellant immediately came back towards Lane. Jackson got out of the way, whereupon the Appellant and Lane continued to fight. As Lane grabbed Appellant by the waist and hoisted him into the air, a shot was fired by Appellant striking Lane in the side of the head just before Appellant was slammed to the ground. (State's Ex. # 76, video @ 05:20—05:23).

¹ Video citation is to the time counter on the media player rather than to the time/date imbedded in the video.

Appellant and Jackson got into the Camry and left the Motel 6, only to return within a minute.² (State's Ex. # 76, video @ 05:27—06:21). The two made several attempts to get some of Jackson's belongings from Lane's locked Mercedes, and ultimately took two bags before leaving again in the Toyota. (State's Ex. # 76, video @ 06:23—08:23).

911 was called at 12:42 am, and deputies from the Richland County Sheriff's Office responded to the scene shortly thereafter. R. 114, ll. 2-8. Lane was found alive sitting on the ground while leaning against the front bumper of his Mercedes. He was somewhat responsive, but bleeding from the side of his head. R. 145, ln. 9 — 146, ln. 7; (State's Ex. # 4, BWC Hart @ 00:17—01:26). Officers began administering aid, and Lane was ultimately taken to the hospital. (State's Ex. # 4, BWC Hart @ 02:41—03:16); (State's Ex. # 5, BWC Laird @ 01:57—02:35).

Once at the emergency room, Lane was treated by Dr. Christopher Watson (Dr. Watson). Lane was struck by a single bullet in the head, which could not be removed due to its location. R. 316, ll. 15 - 319, ln. 5. He spent several weeks in the hospital and was visited there by Investigator Michael Laurita (Inv. Laurita) the morning after the incident; at that time, Inv. Laurita took close-up pictures of Lane's head. R. 319, ll. 6-8; R. 347, ln. 2—348, ln. 12; (State's Ex. # 90, photo); (State's Ex. # 91, photo).

Appellant was ultimately arrested on June 8, 2019. His case proceeded to a jury trial from August 7th through 9th before the Honorable Daniel M. Coble (Trial Court). R. 1; R. 122; R. 360, ll. 17-22. During the trial, Dr. Watson testified regarding the extent and severity of Lane's injury. Specifically, Dr. Watson told the jury that Lane "had a gunshot wound to his head" on "[t]he left side near the ear." R. 316, ll. 20-22. He further explained that the bullet

² The driver of the white Toyota Camry got out and stood by his car door shortly after fight began, and re-entered the vehicle when Appellant walked back to the car. (State's Ex. # 76, video @ 05:14—5:30).

“penetrated [Lane’s] skull” and “went into his brain.” R. 316, ln. 25—317, ln. 1. He then discussed the results imagery scans taken of Lane’s head:

He had a projectile from the left side that went basically straight in. Part of the—looked like the casing of the bullet separated from the lead core. The lead core continued into the brain and the casing looked like it shattered with the bone of the skull.

R. 317, ll. 7-11. Finally, Dr. Watson said the bullet in Lane’s brain was not removed, explained the effects on a person sustaining such an injury, and agreed that the injury definitely could have been life-threatening. R. 317, ln. 12—320, ln. 3.

Inv. Laurita testified as well, through which the State sought admission of two photographs depicting Lane’s headwound while in the hospital on April 19, 2019. R. 347, ln. 15-348, ln. 15. Over Appellant’s objections, the trial court admitted the pictures, stating, “I believe it goes to the elements of the crime. Its probative value is not substantially outweighed by the prejudicial effect. There has been video already submitted,³ but I think it is necessary for the elements.” R. 348, ll. 16-25.

During his closing argument, as in his opening statement, Appellant asserted self-defense. R. 105, ll. 8-15; R. 107, ll. 3-25; R. 111, ll. 3-24; R. 416, ln. 2—R. 419, ln. 14. The jury was instructed on self-defense as well. R. 343, ln. 5—436, ln. 16. After deliberations, the jury convicted Appellant as charged. He was sentenced to 15 years. This appeal follows.

³ The video referenced by the Trial Court were body worn cameras of responding deputies arriving at Motel 6. (State’s Ex. # 4, BWC Hart @ 02:41—03:16); (State’s Ex. # 5, BWC Laird @ 01:57—02:35).

ARGUMENT

The trial court reversibly erred by admitting photographs taken by an investigator depicting close-up images of a bloody gunshot wound to the head where the emergency room doctor already testified regarding the details of the injury, and the questions of how and where the victim was shot were not contested matters in the case where Appellant asserted self-defense.

The trial court erred by admitting two graphic photographs taken by Inv. Laurita depicting Lane's gunshot wound to the head as he lay on a hospital bed. First, the photographs were immaterial to the issues litigated at trial since Appellant's asserted defense was one of justification rather than denial of the elements of attempted murder. Moreover, even if relevant, the photographs were unnecessary to substantiate the issue of Lane's injury at trial due to the prior testimony of Dr. Watson. As such, any probative value of the photographs was extremely low. Thus, the only remaining effect of the two photographs of Lane's bloody head wound was to inflame the passions and prejudices of the jury.

"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 material facts or conditions.*” State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (emphasis added); see also State v. Jones, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023); State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023). For example, even photographs of murder victims are to be excluded during the guilt phase of trial “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) (citing Waitus, 224 S.C. at 12, 77 S.E.2d at 256).

In the present case, the two color photographs admitted into evidence were irrelevant and unnecessary to the issues at trial, and highly prejudicial due to the close-up images showing the bloody gunshot wound to Lane’s head. The defense in Appellant’s case was not to challenge whether Lane was shot in the head, or even to challenge whether Appellant shot Lane; rather, it was that Appellant was justified in shooting Lane either in self-defense or in defense of Jackson. As such, the photographs 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. In other words, contrary to the Trial Court’s ruling, the information presented by the close-up photographs of Lane’s headwound was unnecessary to prove elements of the charged offense, and irrelevant to the issues litigated. Middleton, 288 S.C. at 24, 339 S.E.2d at 693.

Additionally, even if the scope and extent of Lane’s headwound was relevant to the issues litigated, any probative value the photographs may have held was substantially outweighed by the danger of undue prejudice. 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 photographs 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. The South Carolina Supreme Court has “long warned the State not to overplay its hand in criminal trials by seeking to admit shockingly graphic photographs that have scant probative value in violation of Rule 403, SCRE, just to inflame the passions of the jury.” State v. Benton, Op. No. 28185 (S.C. Sup. Ct. filed Jan. 17, 2024) (Howard Adv.Sh. No. 2 at 27). In fact, the Court “has consistently recognized since at least 1986 that gruesome autopsy photographs carry the inherent tendency to cause an emotional reaction on the part of the jury.” State v. Heyward, 441 S.C. 484, 502, 895 S.E.2d 658, 667 (2023) (citing Middleton, 288 S.C. at 24, 339 S.E.2d at 693). “This potential for an emotional reaction is the essence of the danger of unfair prejudice.” Id. (citing State v. Jones, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023)).

In the case at bar, any probative value of the photographs was extremely limited due to the prior testimony of Dr. Watson explaining in-depth the scope of Lane’s headwound. Yet the State was still permitted to introduce two close-up graphic images of the gunshot wound to Lane’s head. State’s Exhibit #90 depicted a close-up image of the left side of Lane’s head laying in a hospital bed with a bullet wound above his left ear, and blood soaked into the sheets below; State’s Exhibit #91 depicted an even closer image of the same, both of which were admitted over objection. Further, when admitted, they were also being described by the testimony of Inv. Laurita. R.347, ln. 2—348, ln. 12; (State’s Ex. # 90, photo); (State’s Ex. # 91, photo).

However, as Appellant argued, witness testimony already established the injuries depicted in the videos. R. 348, ll. 21-25. Specifically, Dr. Watson testified extensively regarding the extent and severity of Lane’s injury from what was observed both outside and

inside Lane's head. R. 316, ll. 20-22. For example, he explained that the bullet "penetrated [Lane's] skull" and "went into his brain," and discussed the results imagery scans taken of Lane's head:

He had a projectile from the left side that went basically straight in. Part of the—looked like the casing of the bullet separated from the lead core. The lead core continued into the brain and the casing looked like it shattered with the bone of the skull.

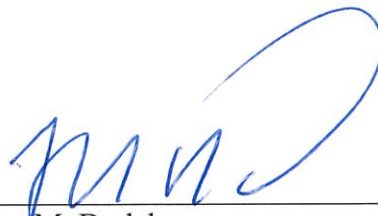
R. 316, ln. 25—317, ln. 11. Dr. Watson also said the bullet in Lane's brain was not removed, explained the effects on a person sustaining such an injury, and agreed that the injury definitely could have been life-threatening. R. 317, ln. 12—320, ln. 3. In other words, Dr. Watson's testimony legitimately supplied all the information necessary regarding the scope and severity of Lane's injury to satisfy whatever elemental requirements of attempted murder the State could have possibly sought from the photographs: Lane was undoubtedly shot in the head by a bullet, and he could have died from the wound. See, e.g., State v. Nelson, 440 S.C. 413, 425, 891 S.E.2d 508, 514 (2023) ("[W]e believe [the doctor's] testimony regarding the extent of Victim's injuries and Victim's cause of death established how both Victim was killed and that Victim was killed with malice.").

Under such circumstances the only remaining value of the two photographs depicting close-up images of the bloody wound to Lane's head was to arouse an emotional reaction. See Heyward, 441 S.C. at 502, 895 S.E.2d at 667 ("This potential for an emotional reaction is the essence of the danger of unfair prejudice.") (citing Jones, 440 S.C. at 259, 891 S.E.2d at 371); 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."). Thus, any probative value of the two photographs 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. Accordingly, the trial court erred in admitting them. Nelson, 440 S.C. at 426-27, 891 S.E.2d at 515 (“[H]ere, there was minimal probative value in the photos because the issues of malice and how Victim was killed were not in dispute. Other convincing evidence established malice and how Victim was killed, thereby eliminating the photos’ probative value. Thus, we believe the danger of unfair prejudice substantially outweighed any minimal probative value of the autopsy photos in this case.”).

CONCLUSION

Appellant Antonio L. Bethel respectfully requests reversal of his conviction and sentence,
and remand for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2024.

RECEIVED

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Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

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ANTONIO LAVAR BETHEL,

APPELLANT

APPELLATE CASE NO. 2023-001415

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Brian H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 16th of September, 2024.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

From: [Warren, Kaylynn](#)
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Subject: 2023-001415 The State v. Antonio Lavar Bethel
Date: Monday, September 16, 2024 10:14:00 AM
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Good Morning,

Attached for service in the above-referenced case is the Final Brief of Appellant which will be filed today, September 16, 2024, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

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