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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Walton J. McLeod IV, Circuit Court Judge

Appellate Case No. 2023-001710

THE STATE,

Respondent,

v.

AMBER MANNING,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Whether the trial court reversibly erred by admitting autopsy photographs in violation of Rule 403, SCRE, where the photographs were not probative because they did not represent the wound but instead showed the enlarged wound after two surgeries and where the close-up gory photographs were unduly prejudicial?

Respondent's Counterstatement

Whether the trial court abused its discretion by admitting black and white autopsy photographs where the probative value of the photographs to corroborate witness testimony was not substantially outweighed by the danger of unfair prejudice.

STATEMENT OF THE CASE

On October 12, 2022, a Richland County grand jury indicted Appellant for murder. (Indictment No. 2022-GS-40-02262). On October 23-26, 2023, Appellant proceeded to a jury trial before the Honorable Walton J. McLeod IV. (Tr. 1).

During trial, Raven Brewer, an investigator with the Columbia Police Department (“CPD”), testified that on October 1, 2019, she responded to a call at Appellant’s residence. (Tr. 113-17). Upon speaking with Appellant, she learned that Appellant and Jamaine McFadden (“Victim”) were hosting their neighbor, whose house had burned down earlier in the day. (Tr. 117). Appellant thought that Victim may have cut himself moving items out of the burnt house. (Tr. 117). Appellant had recalled how Victim “had been bleeding since earlier in the day and acting crazy.” (Tr. 117). Appellant told Investigator Brewer that she could never injure Victim in the way that he had been injured. (Tr. 117-18). Investigator Brewer testified that Appellant was coherent, without any cuts or marks on her, and with no tears or cuts in her clothing. (Tr. 118). However, Investigator Brewer smelt alcohol on Appellant. (Tr. 119).

Kevin Schmidt, a crime scene investigator with CPD, testified that most of the blood found at the scene was discovered in the kitchen area. (Tr. 123-26).

Rachel Manning, a relative of Appellant, testified that she lived with Appellant and Appellant’s mother, Vera Manning, at the time of the incident. (Tr. 137). On the day of the incident, she was in the kitchen making food for Appellant’s children when Appellant and Victim arrived. (Tr. 139-40). When both Appellant and Victim ended up in the kitchen, they were “fussing” because Appellant had gotten a knife. (Tr. 141). Appellant’s neighbor was passed out at the kitchen table. (Tr. 141). Rachel attempted to wake the neighbor when the children ran out of the room. (Tr. 141). Rachel saw blood and called Vera to help Appellant. (Tr. 141). According

to Rachel, Appellant cut Victim. (Tr. 141). Rachel did not know why Appellant cut Victim but stated that Appellant grabbed a knife from the stove. (Tr. 141). Rachel had been using that knife to prepare food for the children. (Tr. 141).

After Rachel's testimony, the trial court held an in camera discussion regarding the admissibility of autopsy photographs. (Tr. 191; State's Exhibits 28, 29, 30, 31). The State asserted that State's Exhibits 30 and 31 would help explain the depth of the injury even though the pictures were not indicative of the wound size. (Tr. 191). The State decided not to introduce State's Exhibit 30. (Tr. 191). Appellant expressed concerns over the enlarged size of the wound due to surgery, which made the photograph a "substantial misrepresentation." (Tr. 192). Appellant asserted that even though the photograph was a post-surgery photograph, "it is hard to get that image out of your head when you're talking about a stab wound and what is currently be[ing] described as a, you know, violent stabbing." (Tr. 193).

The trial court determined that State's Exhibit 28 would not be admitted. (Tr. 194). However, the trial court decided to allow the State to present State's Exhibit 29 because it was a black and white photograph and "more of a side view." (Tr. 194). The trial court stated that testimony would show what the photograph was and that it did not depict the actual wound size. (Tr. 194). The trial court determined that State's Exhibit 29 was not "a picture that's gory of a deceased person that shocks the consciousness. This is an anterior shot almost as if you were watching a, you know, a surgical procedure." (Tr. 194-95). The trial court stated that its intent was to allow the State to offer State's Exhibits 29 and 31 over Appellant's objection and allow the doctor who would subsequently testify to explain the photographs. (Tr. 195).

Darren Monroe, a medical doctor and expert in forensic pathology, testified that he performed an autopsy on Victim. (Tr. 199-203). Victim underwent two medical procedures to his

right leg before death that left two different incisions on his leg. (Tr. 205). Dr. Monroe reviewed Victim's medical record from the time Victim arrived at the hospital until death and also reviewed the EMS record. (Tr. 205-06). Dr. Monroe stated that Victim's medical record confirmed that Victim underwent two separate surgical procedures after arriving at the hospital "in an attempt to save his life." (Tr. 207). The medical record also indicated that the original wound was approximately two centimeters long. (Tr. 208). Dr. Monroe stated that the post-operation wound was four and a half inches long. (Tr. 220).

Surgical notes in the medical record stated that the surgeons discovered that the anterior tibial artery was transected. (Tr. 209). Dr. Monroe testified that the anterior tibial artery "goes through the outer side of the lower leg." (Tr. 209). "When an artery of that size is cut open, it is going to bleed profusely and only putting a large amount of pressure on the area is going to stop it, have any chance of stopping it from bleeding profusely." (Tr. 210). According to Dr. Monroe, the anterior tibial artery was fully cut in half. (Tr. 209). Dr. Monroe observed the transected artery and a graft that was applied during one of the surgeries. (Tr. 209).

Before showing State's Exhibits 29 and 31 to the jury, Dr. Monroe testified that the two photographs related to his testimony and were part of his examination. (Tr. 210). The trial court admitted both exhibits over Appellant's objection. (Tr. 211). Dr. Monroe discussed State's Exhibit 29, stating that it was a black and white photograph of Victim's right leg and that the initial injury was not as large as the injury depicted in the photograph. (Tr. 211). Dr. Monroe stated that State's Exhibit 31 was a close-up picture of the inside of Victim's injury, specifically showing the artery in question and how deep that artery is inside the leg. (Tr. 211-12). He testified that the anterior tibial artery is usually a "good inch, inch and a half or more deep." (Tr. 212).

The jury found Appellant not guilty of murder and not guilty of voluntary manslaughter. (Tr. 388). However, the jury found Appellant guilty of involuntary manslaughter. (Tr. 388). The trial court imposed a sentence of four years' imprisonment. (Tr. 415).

. This appeal follows.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). “A trial court has particularly wide discretion in ruling on Rule 403 objections.” *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

- I. **The trial court properly allowed the admission of the autopsy photographs of Victim's injury because the probative value of the photographs in assisting the jury to understand witness testimony of the victim's injuries as well as determine the nature and location of the victim's injuries does not substantially outweigh the danger of unfair prejudice.**

The State has the right to prove every element of the crime charged. *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000). Here, the photographs were relevant to the nature and extent of Victim's injury and tended to establish both malice and intent to kill given the nature of the injury, the depth of the anterior tibial artery, and Victim's lack of any weapon. *See State v. Haselden*, 353 S.C. 190, 199, 577 S.E.2d 445, 450 (2003) (holding that the relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion).

The trial court balanced the probative value of the photographs against their prejudicial effect and determined that the photographs were admissible. (Tr. 193-95). *See State v. Vang*, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003) (holding that a trial court must balance the prejudicial effect of graphic photographs against their probative value); *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) ("A trial [court's] decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances."). Here, the photographs drew probative force from their ability to show the relative placement of the stab wound and the transected artery, as well as the artery's depth in the leg. (State's Exhibit 29; State's Exhibit 31). The transected artery tends to show malice and intent because the artery was *at least* an inch deep in Victim's leg and was completely transected instead of nicked or partially cut. While State's Exhibit 29 does show an enlarged wound after two surgical interventions, Dr. Monroe specifically testified while the jury observed the photograph that State's Exhibit 29 did not show the initial size of the wound, but rather the size

of the wound after two surgeries. (Tr. 208, 211, 220). He also noted the initial size of the wound after the stabbing and the size of the wound post-surgery. (Tr. 208, 220). Therefore, the jury was properly informed that State's Exhibit 29 showed the wound in an enlarged state that was not solely the result of the stabbing.

The photographs also corroborated and gave important context to the testimony of Dr. Monroe. *See State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999) (admitting photographs which serve to corroborate testimony is not an abuse of discretion); *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (holding that 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. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995) ("To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991))). Dr. Monroe testified that Victim's stab wound was on the lower right leg, which the pictures corroborate. (Tr. 205; State's Exhibit 29; State's Exhibit 31). Dr. Monroe also testified that the anterior tibial artery is usually an inch or more deep in the leg, which the pictures also corroborate. (Tr. 212; State's Exhibit 31). Therefore, the pictures assisted the jury in determining the nature and location of Victim's stab wound and in understanding Dr. Monroe's testimony regarding the injury and its life-threatening nature. (Tr. 210).

Merely because the photographs can be described as unpleasant does not reduce their relevance to Appellant's charge of Victim's attempted murder. *See Davis v. Traylor*, 340 S.C. 150, 530 S.E.2d 385, 387 (Ct. App. 2000) (holding that a trial court is not required to exclude relevant evidence merely because it is unpleasant or offensive). After determining that State's Exhibit 28

was not admissible, the trial court stated that State's Exhibit 29 was not "a picture that's gory of a deceased person that shocks the consciousness. This is an anterior shot almost as if you were watching a, you know, a surgical procedure." (Tr. 194-95). Therefore, because the photographs substantiate material facts and corroborate witness testimony, the trial court did not abuse its discretion by allowing their admission.

However, should this court determine that the trial court abused its discretion in admitting either State's Exhibit 29 or State's Exhibit 31, or both, any error was harmless as the photographs' introduction did not affect the result of the trial. *See State v. Byers*, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011) ("Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006))); *id.* ("Where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,' an insubstantial error that does not affect the result of the trial is considered harmless." (quoting *Pagan*, 369 S.C. at 212, 631 S.E.2d at 267)).

Here, the record is replete with evidence incriminating Appellant of the crime for which the jury found her guilty—involuntary manslaughter. *See State v. Wigington*, 375 S.C. 25, 35, 649 S.E.2d 185, 190 (Ct. App. 2007) ("Involuntary manslaughter is defined as . . . the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others."); *State v. Crosby*, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003) ("To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others."). The record shows that, at minimum, Appellant wielded a knife in a reckless matter that resulted in a stab wound to Victim and Victim's subsequent death. (Tr. 141, 208-09, 216). Therefore, the photographs did not contribute to the jury's guilty verdict on involuntary manslaughter.

CONCLUSION

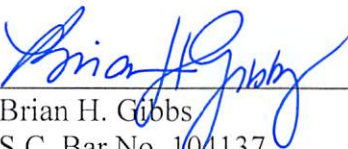
Based on the foregoing, the State requests that this Court affirm Appellant's conviction for attempted murder, as well as his associated sentence.

Respectfully submitted,

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