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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AMBER MANNING,

APPELLANT.

APPELLATE CASE NO. 2023-001710

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

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 up-close gory photographs were unduly prejudicial?

STATEMENT OF THE CASE

On March 15, 2022, a Richland County grand jury indicted appellant for murder. R. 417-420. On October 23, 2023, appellant's case was called to trial before the Honorable Walton J. McLeod, IV, and a jury. R. 1. Appellant was represented by Megan Eigenbrot and Lindsay Adler. The state was represented by assistant attorney generals, John Meadors, Bethany Miles, and Scott Anders. R. 1.

On October 25, 2023, the jury found appellant not guilty of murder, not guilty of voluntary manslaughter, but guilty of involuntary manslaughter. R. 388, ll. 9-22. Judge McLeod sentenced appellant to four years' imprisonment. R. 415, ll. 8-11.

This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion.” *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). “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); *see also State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) (“A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances.” (citation omitted)). In exercising its discretion on a Rule 403 objection to the admissibility of autopsy photographs, the trial court “must balance the [unfair prejudice] of graphic photos against their probative value.” *Dial*, 405 S.C. at 260, 746 S.E.2d at 502 (citation omitted).

ARGUMENT

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 up-close gory photographs were unduly prejudicial.

Relevant facts

On October 1, 2019, appellant and her boyfriend Jamaine McFadden were arguing in the kitchen of appellant's home. R. 139, ll. 19-21; 141, ll. 1-10. During the argument Mr. McFadden's lower right leg was cut with a knife. Appellant called 911 and Mr. McFadden was transported to the hospital. In an effort to save his life Mr. Mcfadden had two separate surgeries on his leg. R. 112-13; 207, l. 2-208, l. 4. Mr. McFadden died the following day due loss of blood where his anterior artery was transected. R. 209, ll. 1-11. 216, ll. 13-17. At trial attorneys for the state alleged this was an intentional and malicious murder. Counsels for appellant asserted the defense of accident.

Attorney for the state sought to admit state's exhibits 28, 29, and 31, autopsy photographs. R. 191-95. Defense counsel objected to the admission of the photographs. R. 192, l. 1-194, l. 3. Counsel argued the photographs were inadmissible under Rule 403, SCRE. She contended the photographs were not probative because the photographs significantly misrepresented the wound. The photographs, taken after two surgeries, showed decedent's leg wound much larger than the original wound. Counsel asserted the photographs were unduly prejudicial and would be inflammatory because they depicted a "gory picture" of the wound, which the jury would not be able unsee. R. 192, l. 1-194, l. 3.

The trial court excluded state's exhibit 28 but admitted state's exhibits 29 and 31 over

defense counsel's objections. The court declared state's exhibits 29 and 31 were not gory and did not "shock[] the conscious[]." The court reasoned the pathologist's testimony would explain to the jury the photograph did not depict the "actual wound." R. 194, l. 9-195, l. 8.

Doctor Darren Monroe performed the autopsy. During his testimony Dr. Monroe stated when he observed decedent's body there were two incisions on the lower right leg that were made during two separate surgeries. Monroe testified the wound visible on decedent's leg in the photographs was "not the original wound." He testified the size of the original injury was "[two] centimeters long." Monroe described the photographs to the jury. State's exhibit 29, was a black and white photograph of the right leg of decedent. He reiterated the initial injury was not as large as the photograph represented. Monroe said the photograph depicted "inside the surgical area." State's exhibit 31, was the "inside of [decedent's] right lower leg" and showed the "injury to the artery." R. 211, l. 2-212, l. 12.

Discussion

"Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary 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)). Rule 403 of the South Carolina Rules of Evidence provides that even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Photographs are unfairly prejudicial when they have a "tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." *Id.* (citing *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995)).

State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009). In that case the defendant was convicted of homicide by child abuse for the death of her minor child. *Id.* at 281, 676 S.E.2d at

692. On appeal, Holder argued the trial court erred in admitting autopsy photographs showing the child's internal injuries. *Id.* at 290, 676 S.E.2d at 697. Holder's unconscious child was taken to the hospital and personnel was told that he had fallen off an All-Terrain Vehicle (ATV) earlier in the week. *Id.* at 281, 676 S.E.2d at 692. The child was pronounced dead at the hospital after unsuccessful efforts to resuscitate. *Id.* At trial the pathologist testified that the contested autopsy photographs would help him in "demonstrating the anatomic relationships and the disruption of those anatomic relationships" because the jury might not have knowledge of internal anatomy. *Id.* at 290, 676 S.E.2d at 697.

This case is distinguishable from *Holder*, where the Court held that the admission of the child victim autopsy photographs was not an abuse of discretion. *Id.* at 280, 676 S.E.2d at 691. In *Holder*, the Court noted that the pathologist testified regarding all of the ways, in which the photographs would aid in "demonstrating the anatomic relationships" because of the jury's "lack of knowledge of internal anatomy." *Id.* at 290, 676 S.E.2d at 697. The Court found that the photographs demonstrated the extent and nature of the injuries in a way that would not be as easily understood based on testimony alone. *Id.*

Here, the photographs were completely unnecessary for the jury to comprehend the injury sustained by decedent. The transection of a major artery and resulting loss of blood is well within the understanding of any juror. Additionally, the photographs were not needed to aid Dr. Monroe's testimony where they did not show the actual injury sustained by decedent. Instead, the photographs showed decedent's leg wound as significantly larger and more gruesome after *two* surgical interventions.

This case is also distinct from cases where our courts have found the photographs did not inflame the jury and were not prejudicial. In *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997),

the Court held three photographs of the victim's body at the crime scene were properly admitted. In that case, the photographs were not close-ups and accurately reflected the scene of the crime. Here, the autopsy photographs were not necessary to show the scene of the crime because that had been accomplished by crime scene photographs admitted without objection. These photographs were extremely close, almost inside the wound of decedent and were not probative of any fact at issue.

In *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014), autopsy photographs of a child who had been killed by defendant's dog were admitted. In that case, the Court found that the trial court did not abuse its discretion in admitting the photographs because the photographs were highly probative, corroborative, and material in establishing the elements of the offenses charged." *Collins*, 409 at 535, 763 at 28. *Collins* is distinguishable from the case at hand because neither state's exhibits 29 or 31 were necessary to substantiate a material fact or condition. The manner of death was not contested at appellant's trial. The issue at her trial was whether appellant intentionally killed decedent or his death was the result of an accident.

In *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986), the Court held the trial court erred in admitting three color autopsy photographs of one of the victims in this capital murder trial. Although the photographs were used to corroborate other evidence, the trial judge erred in permitting their introduction because they were unfairly prejudicial. "[T]he information contained within the photographs was not really at issue." Additionally, "any arguable evidentiary value of the photographs" was negated by the forensic pathologist's testimony. *Id.*

Like in *Middleton*, the evidence gleaned from the autopsy photographs was not at issue. The central issue at trial was whether this was an intentional act. The trial court reasoned the photographs were not gory. However, that is not the test. The test is whether the danger of

unfair prejudice substantially outweighs the probative value of the photographs. These photographs had zero probative value and while maybe not the worst photographs shown during a murder trial the danger of unfair prejudice substantially outweighed their negligent probative value.

Here as in *Middleton*, the erroneous admission of autopsy photographs at appellant's trial created "an undue tendency to suggest a decision on an improper basis." See *State v. Jackson*, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)). The trial court abused its discretion by admitting state's exhibits 29 and 31.

CONCLUSION

By reason of the foregoing argument, appellant requests this Court reverse his conviction and remand his case for a new trial.



Sarah E. Shipe
Appellate Defender

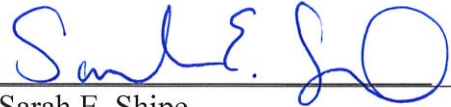
ATTORNEY FOR APPELLANT

This 13th of November, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

This 13th day of November, 2024.



Sarah E. Shipe
Appellate Defender

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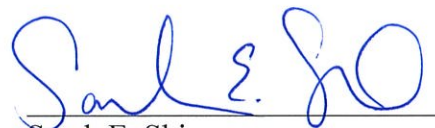
AMBER MANNING,

APPELLANT.

APPELLATE CASE NO. 2023-001710

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 13th day of November, 2024.



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From: [Warren, Kaylynn](#)
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Subject: 2023-001710 The State v. Amber Manning
Date: Wednesday, November 13, 2024 10:52:00 AM
Attachments: [2023-001710 The State v. Amber Manning Final Brief of Appellant.pdf](#)

Good Morning,

Attached for service in the above-referenced case is the Final Brief of Appellant which will be filed today, November 13, 2024, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

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