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Nov 18 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TOWODI TECUMSEH SHEQUOYAH,

APPELLANT

APPELLATE CASE NO. 2023-001846

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err, under Rule 403, in allowing the State to impeach appellant by asking whether he had falsified nursing records?

STATEMENT OF THE CASE

Appellant was indicted in Sumter County for attempted third-degree criminal sexual conduct, attempted abuse of a vulnerable adult, and indecent exposure and on November 13, 2023, was tried before the Honorable R. Kirk Griffin and a jury. R. 1. William Moore and Brandon Steen represented the State. R. 1. Michael Routzong represented appellant. R. 1. The jury convicted appellant. R. 388. Judge Griffin sentenced appellant to concurrent terms of imprisonment totaling eight years. R. 398-99. This appeal follows.

STANDARD OF REVIEW

The evidentiary issue in this case is reviewed for abuse of discretion.

ARGUMENT

The trial court erred, under Rule 403, in allowing the State to impeach appellant by asking whether he had falsified nursing records.

This case about whether an attempted rape of a nursing home patient with severe Alzheimers occurred depended wholly on credibility. R. 96. It pitted the word of appellant, a licensed practical nurse against the word of Burnette McCray, a certified nursing assistant. R. 287. R. 175. The solicitor told the jury in his opening that they would “ultimately have to render a verdict” based on credibility. R. 96.

Appellant and McCray both worked at a nursing home in Sumter. On the night of February 19, 2021, both McCray and appellant were on their shifts. R. 179. Early in her shift, McCray saw Patient trying to get out of the building. R. 179-80. Patient set off the alarm several times and McCray tried to get her back to her room. R. 180.

Later, around midnight, “the Lord told” McCray to go check on Patient. R. 181. Patient’s door was closed. R. 182. Covid protocols in place at the time required that patients’ doors remain closed. R. 311. McCray opened the door and saw appellant standing over Patient. R. 182-83. When appellant started backing up, McCray noticed that appellant’s pants were down all the way to the floor. R. 183. McCray saw appellant’s penis. R. 185. Appellant told McCray, “It’s not what you think.” R. 185. She ran into the hall “yelling and crying.” R. 186.

Appellant testified that nothing happened. R. 290-93. Like McCray, appellant said Patient had been trying to get out of the nursing home all evening. R. 289. He passed Patient’s room and saw her trying to leave again. R. 289-90. Appellant walked Patient back to her room and helped her back in the bed. R. 290-91. While he was helping Patient get into the bed, McCray entered. R. 291.

McCray asked him, “Whatchu doing.” R. 292. Appellant responded, “What does it look like?” R. 292. McCray then ran screaming from the room. R. 292. Appellant denied that his pants were ever down or that he was trying to have sex with Patient. R. 292-93. He said McCray “misinterpreted what she thought she saw.” R. 292-93.

Appellant’s manager at the nursing home testified on his behalf. R. 278. She said appellant’s scrubs were frequently ill-fitting. R. 280. Sometimes they were too tight. R. 280. Other times they were too loose and she could see his underwear, especially if he was bending over. R. 280-81.

McCray gave a wildly different version of events to an investigator that was captured on camera the night of the incident. She initially denied that she told an investigator that appellant had Patient’s legs up in the air and was actively having sex with Patient. R. 190-91. Trial counsel showed McCray the video. R. 192-93. Outside the jury’s presence, she was forced to admit that she told the officer that version and added, “Great day. Why did I say that?” R. 190. She admitted the different story when the jury returned. R. 194. As appellant put it during his testimony, “that’s two versions of the ten versions I have heard.” R. 322.

Before the defense presented its case, the parties placed on the record an in-chambers discussion about the impeachment of appellant. R. 272-75. The State intended to impeach appellant with evidence that he falsified records regarding whether medication had been administered to patients. R. 272-75. Defense counsel admitted that the impeachment was proper under Rule 608, but argued that the evidence should be excluded under Rule 403. R. 272-75. Judge Griffin ruled the questioning did not violate Rule 403 and forbid the State from using extrinsic evidence to prove the falsifications. R. 272-75.

The State asked early in its cross-examination whether appellant falsified nursing records on three separate occasions. R. 302. Appellant admitted that he had. R. 302. During its deliberations, the jury asked for the details about the falsifications. R. 383. The judge instructed them that the specifics were not in the record and they could only consider the evidence that was introduced during the trial. R. 383-85.

Rule 403 prohibits the admission of evidence when its unfair prejudice outweighs its probative value. Rule 403, SCRE. The falsification of whether patients got their medication had no bearing on the facts of this case. The limited probative value that appellant submitted false records about trivial matters was vastly outweighed by the unfair prejudice to his character.

In State v. Fuller, 425 S.C. 468, 822 S.E.2d 910 (Ct. App. 2019), the defendant attempted to impeach the complaining witness in a rape case with her prior DUI convictions. The defendant attempted to show that the witness, who had been drinking when a wreck occurred, had motive to fabricate her rape allegations to distract the police from investigating whether she was driving while intoxicated. Id. This Court held, in part, that “the probative value of this evidence was substantially outweighed by the danger of unfair prejudice.” Id.

Just as the prior DUIs were inadmissible in Fuller, the falsifications of medical records was too remote from the facts of this case. And, worse than in Fuller, the impeachment did not relate to prior convictions but merely workplace infractions. The jury’s note showed the State’s purpose was achieved—unfairly damaging appellant’s credibility. In this case that was only about credibility, the court erred in allowing this flawed impeachment. This Court should reverse and remand for a new trial.

CONCLUSION

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

s/David Alexander _____
David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 18th day of November, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Towodi Tecumseh Shequoyah 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 R. Kirk Griffin, which was held on Nov. 13-16, 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 Towodi Tecumseh Shequoyah.

Respectfully Submitted,

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 18th day of November, 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
- (3) State's Ex. 1 and 2 (to be transported)

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

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 18th day of November, 2024.

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 _____
David Alexander
Deputy Chief Attorney for Capital Appeals

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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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Towodi Tecumseh Shequoyah, #392585, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy., Turbeville, SC 29162, this 18th day of November, 2024.

s/David Alexander_____

David Alexander

Deputy Chief Attorney for Capital Appeals

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