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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOYCE STOVER,

APPELLANT

APPELLATE CASE NO. 2023-001242

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The circuit court erred in admitting an autopsy photograph of infant N.S. during trial where the probative value of the photograph was substantially outweighed by the danger of unfair prejudice and where any probative value was negated because N.S. died from an accidental drug overdose, had no external injuries, and the cause of death was not contested at trial.4

CONCLUSION.....10

TABLE OF AUTHORITIES

Cases

<u>State v. Brazell</u> , 325 S.C. 65, 480 S.E.2d 64 (1997).....	7
<u>State v. Bryant</u> , 372 S.C. 305, 642 S.E.2d 582 (2007)	3
<u>State v. Collins</u> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	8
<u>State v. Franklin</u> , 318 S.C. 47, 456 S.E.2d 357 (1995).....	7
<u>State v. Holder</u> , 382 S.C. 278, 676 S.E.2d 690 (2009)	7, 8
<u>State v. Lyles</u> , 379 S.C. 328, 665 S.E.2d. 201 (Ct. App. 2008).....	7
<u>State v. Middleton</u> , 288 S.C. 21, 339 S.E.2d 692 (1986).....	8, 9
<u>State v. Shuler</u> , 353 S.C. 176, 577 S.E.2d 438 (2003).....	3
<u>State v. Wise</u> , 359 S.C. 14, 596 S.E.2d 475 (2004)	3

Rules

Rule 401, SCRE.....	7
Rule 402, SCRE.....	7
Rule 403, SCRE.....	7

STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in admitting an autopsy photograph of infant N.S. during trial where the probative value of the photograph was substantially outweighed by the danger of unfair prejudice and where any probative value of the photograph was negated because N.S. died from an accidental drug overdose, had no external injuries, and the cause of death was not contested at trial?

STATEMENT OF THE CASE

Appellant was indicted by a Chester County grand jury in March of 2022 for one count of homicide by child abuse (HBCA). R. 435-436. On July 31-August 2, 2023, the State called the case to trial before the Honorable Brian Gibbons and a jury. The State was represented by Candice Lively. Appellant was represented by Mike Duncan. R. 1. Appellant was found guilty as indicted. R. 426, ll. 8-14. Judge Gibbons sentenced Appellant to thirty-five years of incarceration. R. 433, ll. 3-6; R. 437-438.

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). “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.” State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). “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. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004).

ARGUMENT

The circuit court erred in admitting an autopsy photograph of infant N.S. during trial where the probative value of the photograph was substantially outweighed by the danger of unfair prejudice and where any probative value was negated because N.S. died from an accidental drug overdose, had no external injuries, and the cause of death was not contested at trial.

Relevant Facts

In 2021, Appellant and her daughter, N.S., moved in with Appellant's mother Sharon Jordan. Jordan's other daughter, Melissa Yarborough, also lived in the home. Both Appellant and Yarborough had significant drug addictions involving the use of fentanyl. Appellant was in a treatment program taking daily doses of prescribed methadone at the time of the incident. She and N.S. were living with Jordan pursuant to a Department of Social Services (DSS) Safety Plan because of her addiction wherein Appellant was to be supervised by sight and sound at all times when she was with N.S. R. 93, l. 14-R. 98, l. 16; R. 100, ll. 4-13, R. 115, ll. 1-2.

On Sunday Morning, October 30, 2021, Jordan received a call from her brother that a space heater was for sale at the pawn shop. Jordan had been looking for space heaters because it was getting cold in the evenings, and she was concerned N.S. was too cold. Jordan left Appellant and N.S. at the home while she ran to the store to purchase the heater. When she returned, she said Appellant was leaned over the kitchen sink apparently passed out and N.S. was on the floor in the kitchen playing. She put N.S. down for a nap. When Appellant initially checked on N.S. the child was fine. Sometime later Appellant went to wake N.S. from her nap and she found the child unresponsive. R. 112, l. 13-R. 113, l. 7.

At approximately 3:22 in the afternoon, 911 received a call about an unconscious infant at the home of Jordan. R. 55, l. 24-R. 56, l. 23; R. 60, ll. 10-12; R. 63, ll. 16-20. Upon arriving on scene, Advanced EMT Ben Grant noted that N.S. was not breathing, had no pulse, and her limbs were cold to the touch. R. 59, ll. 10-12; R. 61, l. 8-R. 62, l. 17. Grant performed CPR for roughly eight minutes prior to EMS arriving on scene. R. 63, ll. 2-5. Once EMS was on scene, N.S. was placed on a 12-lead cardiac monitor. Tragically, no cardiac activity was detected and N.S. was declared deceased. R. 71, ll. 3-16.

Members of the Child Fatality Task Force investigated the cause of N.S.'s death. R. 303, ll. 7-24. On scene, investigators collected two used nasal spray bottles of NARCAN¹ from N.S.'s crib. R. 81, ll. 16-25. In Yarborough's bedroom a silver spoon with white residue was collected from the floor. R. 90, ll. 6-11. These items were tested by the SLED forensics department. The residue on the spoon tested positive for fentanyl and fluorofentanyl. R. 185, ll. 2-15. Both the spoon and the used NARCAN bottles contained the DNA of Appellant and N.S. R. 349-350; R. 357-358. Appellant told investigators that Yarborough had brought drugs into the home, and she thought N.S. might have gotten into the drugs which was why she used the NARCAN. Appellant also told investigators that she had previously found the silver spoon in the bathroom and picked it up to confront Yarborough about her drug use. She stated the last place she had put the spoon was in the top draw of her chest of drawers. R. 83, ll. 9-16; R. 315, ll. 2-10. The investigation determined that N.S. died from an overdose of fentanyl and fluorofentanyl – the same drugs found on the spoon. R. 295, ll. 18-21; R. 274, l. 20-R. 275, l. 2.

¹ NARCAN is an over-the-counter treatment for an opioid overdose. Appellant had the NARCAN because of her treatments with methadone and to help her sister if Yarborough overdosed. R. 82, ll. 16-22.; R. 83, ll. 18-21; R. 240, ll. 5-9.

In opening statements, defense counsel conceded that the N.S. had died due to the ingestion of fentanyl, but challenged whether the State could prove the time period in which N.S. had accessed the drugs or who was responsible for the drugs being in the home. The State alleged Appellant was the responsible party while defense counsel indicated that Yarborough was a more fitting suspect. R. 52-53.

Prior to the testimony of the forensic toxicologist and the forensic pathologist, the State requested the court rule on the admissibility of three autopsy photographs. One photograph was of the ID tag that accompanied the body to the morgue. The other two photographs were of N.S. on the autopsy table, her shirt cut off with lead pads on her abdomen and chest. The State sought to introduce the photographs to show the “resuscitative efforts” of the first responders and to show that there were no external injuries on N.S. R. 259, l. 21-R. 261, l. 22. Counsel Duncan objected to the two photographs of N.S. on the autopsy table as highly prejudicial and not relevant. He argued that the photographs did not add anything to the testimony of the pathologist and were just “pictures of a dead baby.” R. 262, ll. 7-16. After further discussion the Court allowed the State to admit one photograph of N.S. from the autopsy with her head cropped out of the picture. R. 262-265. Counsel Duncan objected to the admission of the photograph when the State presented it during the testimony of the forensic pathologist. R. 291, ll. 2-11; State’s Exhibit 78.²

Discussion

Not only was the autopsy photograph of N.S. highly prejudicial, but it was also not relevant to the issue at trial. N.S. tragically died from an overdose of fentanyl. This fact was never contested at trial. The jury was tasked with deciding who was responsible for N.S.’s death

² A copy of State’s Exhibit 78 is on file with this Court.

– Appellant, some other party, or no one. The photograph of N.S. from the autopsy in no way helped the jury determine “the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. The picture served no legitimate purpose other than to arouse the passions and prejudices of the jury.

All relevant evidence is generally admissible. Rule 402, SCRE. To be relevant, the evidence must have a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. However, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE.

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. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). To be classified as unfairly prejudicial, photographs must have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (internal quotation omitted). “When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d. 201, 206 (Ct. App. 2008).

In State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009), 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 hospital staff 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 him. 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. The Court upheld the admission of the photograph because they "clearly demonstrate the extent and nature of the injuries in a way that would not be easily understood based on the testimony alone" and aided the pathologist testimony. Id. at 290-291, 676 S.E.2d at 697.

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 Supreme 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.

Appellant's case is distinguishable from cases such as Holder and Collins, *supra*. There was no testimony in the record that the forensic pathologist needed the photograph to aid the jury in understanding her testimony. The photograph did not show N.S. at the scene or how she was discovered, and it was not necessary to establish any element of the offense of HBCA. The State conceded that N.S. had no external injuries that contributed to her death and therefore the relevance and probative value of the photograph was negligible.

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 a capital

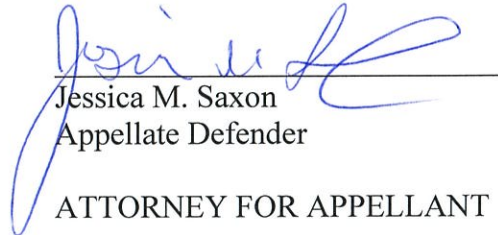
murder trial. Although the photographs were used to corroborate other evidence, the trial judge erred in permitting their introduction because they were unfairly prejudicial. The Court held that because it was clear the facts were not in dispute and because the testimony of a forensic pathologist “negated any arguable evidentiary value of the photographs[,]” the “prejudice created by the photographs clearly outweighed any evidentiary value.” *Id.* at 23-24, 339 S.E.2d at 693.

Appellant’s case is akin to Middleton in that the information presented through the photograph was not at issue during Appellant’s trial. There was never any allegation of physical abuse and the cause of death was never contested. The photograph was nothing more than “a picture of a dead baby”, which was highly, substantively prejudicial to Appellant. The trial court believed it lessened the prejudice by having the State remove N.S.’s face from the photograph. However, the photograph is still very clearly a dead infant. The forensic pathologist testified that there was no evidence of injury on the body of N.S. There was extensive testimony about the medical intervention performed on N.S., with some of the resuscitative efforts being caught on the body camera evidence that was presented to the jury. The image of N.S.’s chest and abdomen with lead pads framed by her cartoon puppy dog pajamas was nothing more than an emotional pull on the jury.

The appellate courts of this State often grapple with the propriety of autopsy photographs. While the question of admission often turns on the graphic nature of such photographs, there are other equally important considerations. The photograph admitted in Appellant’s case was not relevant and the only purpose it served was to arouse sympathy from the jury. It was a stark reminder that an infant had died but it did not add any evidentiary value to the case. While all evidence is prejudicial to a defendant, this evidence was unfairly prejudicial and should have been excluded.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse her conviction and sentence and remand the case to the Court of General Sessions of Chester County for a new trial.

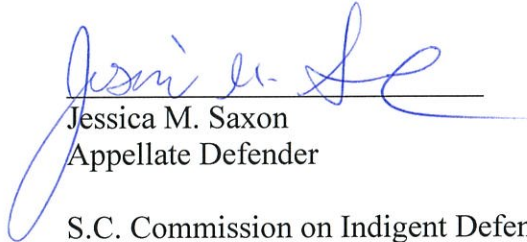

Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 13th day of December, 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."

December 13, 2024.



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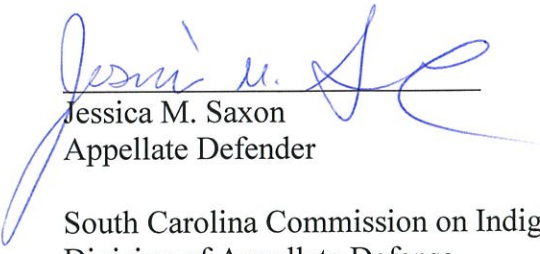
JOYCE STOVER,

APPELLANT

APPELLATE CASE NO. 2023-001242

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 December, 2024.



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Leverett, Scott

From: Leverett, Scott
Sent: Friday, December 13, 2024 1:45 PM
To: Brian Gibbs
Cc: Grace Sommer; Saxon, Jessica
Subject: 2023-001242 - State v. Joyce Stover - Final Brief of Appellant
Attachments: 2023-001242 - State v. Joyce Stover - Final Brief of Appellant.pdf; 2023-001242 - State v. Joyce Stover - Additional Copies ltr..pdf

Dear Mr. Gibbs,

Attached please find a copy of the Final Brief of Appellant and Additional Copies Letter that is being filed today with the Court of Appeals.

Scott Leverett
Admin. Asst. for Jessica Saxon
Appellate Defense