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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of General Sessions
The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-000119

THE STATE,

Respondent,

v.

DESMOND LAMAR GREEN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court was required to bifurcate Green's domestic violence trial.

STATEMENT OF THE CASE

A Beaufort County grand jury indicted Appellant Desmond Green for First-Degree Domestic Violence. Green proceeded to trial on January 16–17, 2024, before the Honorable Jennifer B. McCoy and a jury. Green was convicted as charged and sentenced to 10 years' imprisonment, suspended on service of five years' imprisonment followed by five years' probation. This direct appeal follows.

STATEMENT OF FACTS

The victim's sister testified Green chased the victim into her yard and started "punching her in the back of the head." (Tr.p.115). She called the police. She testified the victim was covered in liquid and smelled like gasoline. (Tr.p.111). A responding officer testified the victim was wet and smelled like lighter fluid, and he observed a bottle of lighter fluid by the house. (Tr.p.132-38). In his report, the officer wrote that he was told Green had thrown a bottle of lighter fluid at the victim. (Tr.p.146).

STANDARD OF REVIEW

The admission of evidence and conduct of a criminal trial are reviewed for an abuse of discretion. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019).

ARGUMENT

The trial court properly refused to bifurcate Green's domestic violence trial because bifurcation is an exceptional procedure reserved for child sex abuse cases.

The trial court properly refused to bifurcate Green's domestic violence trial because bifurcation is an exceptional procedure reserved for child sex abuse cases. This Court should affirm.

Green was tried for First-Degree Domestic Violence, S.C. Code §16-25-20(B). The pertinent aggravating factor was that Green had two prior convictions for domestic violence. Green moved to bifurcate his trial, first requiring the State to prove the "harm or injury" element of §20(A), then, after the jury returned a verdict on that issue, hold an additional proceeding where the State would prove the aggravating factor of §20(B)(3). The trial court properly refused to bifurcate the trial.

In the criminal context, bifurcation is an exceptional procedure originally reserved for death penalty cases. The legislature established the procedure by statute following a series of opinions by the United States Supreme Court addressing the constitutionality of the death penalty. See Gregg v. Georgia, 428 U.S. 153 (1976). Generally, "a bifurcated proceeding is not required in a non-capital case." Chubb v. State, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991).

There is one exception to this rule, established in State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). There, the supreme court held that in child sex abuse cases where the State must prove a prior criminal sexual conduct with a minor (CSCM) conviction as an element for First-Degree CSCM, the trial court should

bifurcate the trial upon request. The court, while recognizing that “[t]wo-part jury trials are rare,” held that CSCM cases are exceptional “because of the inherently prejudicial stigma a prior sex-related offense undoubtedly carries.” Cross at 478, 832 S.E.2d at 288.

In no other class of cases has this Court or the supreme court required bifurcation of a non-capital criminal trial. In State v. Benton, 338 S.C.151, 526 S.E.2d. 228 (2000), the supreme court held that bifurcation is not required in a First-Degree Burglary case where the element of aggravation is a record of two prior burglary convictions. Citing Spencer v. Texas, 385 U.S. 554 (1967), the court noted the legitimate deterrent purpose in statutes requiring proof of prior convictions as an element of the charged offense. The Cross court left this holding undisturbed, choosing instead to carve out an exception for CSCM cases.

Likewise, this Court recently rejected an argument that a trial court abused its discretion by refusing to bifurcate the trial of a defendant accused of possession of a firearm by a person convicted of a violent crime. State v. Gleaton, 444 S.C. 394, 408, 906 S.E.2d 630, 637 (Ct. App. 2024). This Court held that, even after Cross, bifurcation was not required because “Gleaton was neither on trial for a sex-related offense nor was his prior conviction related to a sex crime.” Id. at 410, 906 S.E.2d at 638.

Thus child sex abuse cases are the exception to the rule that bifurcation is not required in a non-capital criminal trial, even when prior convictions are an element of the charged offense. This Court should not create an additional

exception for domestic violence cases. Domestic violence does not carry the same stigma as child sexual abuse, which is uniquely associated with recidivism.

McKune v. Lile, 536 U.S. 24, 33 (2002) (observing that sex offenders are “much more likely than any other type of offender to be rearrested for a new rape or sexual assault”). Because of the notorious recidivism of sex offenders, and the general stigma associated with child sexual abuse, a defendant on trial for CSCM is much more likely to be prejudiced by the introduction of prior CSCM convictions than defendants charged with other offenses. Domestic violence is more like burglary in that while it is condemned by society, it does not invoke the universal outrage and moral condemnation associated with child sexual abuse. Further, while domestic violence offenders may reoffend, the propensity to commit domestic violence is not viewed as an immutable personality trait as is pedophilia. Bifurcation was not required.

Finally, any error would be harmless in this case. The jury was unlikely to base its verdict on Green’s prior convictions because they occurred nearly ten years prior to this trial. (Tr.p.166). Green stipulated to the convictions. Further, the jury heard no details about the facts of those cases. See Benton, 338 S.C. at 156, 526 S.E.2d at 231 (“To ensure a defendant is not convicted on an improper basis while allowing the State to prove the elements of first degree burglary, the trial court should limit evidence to the prior burglary and/or housebreaking convictions Particular information regarding the prior crimes should not be admitted”). Most importantly, there was uncontroverted evidence that Green chased the victim into

her sister's yard and punched her several times in the head. Green did nothing to cast any doubt on this testimony. Bifurcation would not have changed the result of the trial. See State v. Workman, 443 S.C. 369, 377–78, 905 S.E.2d 119, 123 (2024) (“To say an error did not contribute to the verdict is to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record, and that the error had little, if any, likelihood of having changed the result of the trial.”) (internal citations and quotation marks omitted). This Court should affirm.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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