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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Colleton County
The Honorable Clifton Newman, Circuit Court Judge
Appellant Case No. 2023-001445

THE STATE,

RESPONDENT

v.

LARRY E. KING,

APPELLANT

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in admitting four photographs of the deceased child from the crime scene when any probative value of the photographs was substantially outweighed by the danger of unfair prejudice?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing relevant photographs of the victim into evidence as she appeared at the crime scene, and these photographs corroborated the testimony of the medical examiner and refuted the defense that the vehicle was running and the air conditioner was turned on at the time of the offense?
2. Since the possible error raised by the Appellant would not have changed the outcome of the trial, can it be considered harmless?

STATEMENT OF THE CASE

Larry E. King (Appellant), along with his co-defendant Rita A. Pangalangan, were arrested on August 5, 2019, charged with the offenses of murder, great bodily injury to a child and criminal conspiracy. On August 6, 2020, a Colleton County Grand Jury indicted the Appellant for murder, and great bodily injury to a child. (R. pp. 714-715; pp. 718-719). Appellant was later indicted on October 6, 2022, for the offense of criminal conspiracy. The co-defendant was indicted for these identical offenses.

On August 28, 2023, Appellant appeared before the Honorable Clifton Newman to stand trial for the above referenced offenses. Appellant was tried simultaneously along with his co-defendant. Appearing on behalf of the Appellant were his attorneys Jon Loy and Gil Gatch, representing the co-defendant was Dayne Phillips. The State of South Carolina was represented by Solicitor, I. McDuffie Stone, and Assistant Solicitor, Sean Thornton, of the Fourteenth Circuit Solicitor's Office.

After five days of testimony, a jury of their peers found both defendants guilty of murder and great bodily injury to a child, but not guilty of criminal conspiracy. (R. p. 665 l. 13 – 24). After the reciting of the verdict, Appellant appeared before the trial judge for sentencing. The trial judge sentenced the Appellant to a thirty-two-year period of incarceration for the offense of murder; and twenty years for great bodily injury to a child. The trial court ordered that these sentences were to be served concurrently. (R. p. 709 l. 14-20).

While serving his sentence, Appellant filed a timely notice of appeal before the South Carolina Court of Appeals. The initial brief of the Respondent follows.

STATEMENT OF THE FACTS

On August 5, 2019, at 11:16 am, Appellant, along with his co-defendant, placed the co-defendant's thirteen-year-old daughter (victim) into the Appellant's vehicle during a hot August South Carolina summer day. The victim suffered from cerebral palsy, and did not have the ability to walk nor talk. (R. p. 231 l. 10-15). The victim also wore a diaper and could only "gaggle like a baby." (R. p. 219 l. 7-12; p. 218 l. 7-14). The victim also did not have the use of her hands so she was unable to open any of the car doors. (R. p. 234 l. 1-3).

At the time of the incident, Appellant and his co-defendant were in a relationship. (R. p. 461 l. 20-25). The co-defendant and her daughter spent the night before at the Appellant's home. (R. p. 465 l. 23-25). After they placed the victim inside the co-defendant's vehicle they closed the door with the windows up in the hot August South Carolina heat. While the victim was in the car Appellant and his co-defendant had a conversation regarding the fact she was with another man. (R. p. 466 l. 18-19).

Appellant testified during the trial admitting that they used methamphetamine and were up all night due to this drug use. (R. p. 466 l. 2-7). During the trial Appellant also testified that the vehicle was running with the air conditioning turned on when they placed the child in the vehicle. (R. p. 469 l. 7-10). The surveillance video from the Appellant's home was placed into evidence. (State Exhibit #40). This video revealed the victim was placed inside the vehicle at 11:16am. (State Exhibit #40).

After placing the victim inside the vehicle, Appellant and co-defendant went inside the house. They stayed inside from 11:43am until they came out at 1:45pm. (State Exhibit #40). Appellant and co-defendant then continued talking as the victim sat in that extremely hot car. At 2:03pm Appellant and co-defendant went back into the house. (State Exhibit #40). They both came

back out at 3:00pm and that is when the co-defendant realized her keys were locked inside her vehicle. (State Exhibit #40). At 3:52pm they left the Appellant's house to go to the co-defendant's house and retrieve the spare key. (State Exhibit #40). They did not return until 4:42pm (State Exhibit #40). At that time, they still could not get the car door open. Appellant then called locksmith Robert Arabis in order for him to either open the car door or give him directions on how to get it open. (R. p. 477 l. 14-20). Mr. Arabis explained to Appellant that there was a key in the fob that could be used to get the door open. (R. p. 478 l. 20 – p. 577 l. 1). Appellant finally got the door open at 4:58pm. (State's Exhibit #40). At that time, they realized the victim had been in that hot car for over five hours, Appellant then dialed 911. (R. p. 479 l. 7-13).

During trial, agent Halley Godley of the South Carolina Law Enforcement Division (SLED) testified. As one of the first people to respond, she saw the victim lying on the ground. The Appellant was walking around while his co-defendant was inside the residence. (R. p. 175 l. 6-9; p. 190 l. 11-13). Paramedic Charles Jones also arrived at the scene. Mr. Jones testified that when he arrived, he found the victim lying on the ground beside the vehicle, she appeared not to be breathing. (R. p. 195 l. 7-10). Mr. Jones attached a cardiac monitor to the victim. The monitor revealed no registered heartbeat, so he declared the victim deceased. (R. p. 195 l. 19-21; p. 196 l. 12-15).

After the Appellant's arrest, his blood was drawn for drug testing. (R. p. 266 l. 15-21). The blood was delivered to SLED for testing. The preliminary test results were positive for methamphetamine and amphetamine. (R. p. 267 l. 2-4).

During trial, Dr. Andrew Grundstein also testified. Dr. Grundstein was found qualified as an expert in the field of climatology, specifically the effect that heat has on people. (T. p. 293 l. 13-16). Dr. Grundstein testified that he did a re-creation of the car temperature. During the re-

creation the temperature outside was hotter than on the incident date, however, it was less humid. (R. p. 305 l. 13-14). The result of Dr. Grundstein's re-creation was that the car temperature was at 118°. Dr. Grundstien's determination was that with the heat index the car's inside temperature was actually at 135°. (R. p. 309 l. 4-7).

During trial, Forensic Pathologist Dr. Nicolas Batalis testified. Dr. Batalis was found qualified as an expert in the field of forensic pathology. (R. p. 399 l. 15-23). Dr. Batalis performed the autopsy on the victim on August 7, 2019. (R. p. 400 l. 3). Dr. Batalis found the victim to be a thirteen-year-old female who was found unresponsive after being placed in a vehicle for several hours during very high temperatures. (R. p. 400 l. 10-14). The victim's body temperature was measured at 109.9° which is the maximum amount the thermometer could read. (R. p. 400 l. 18-22). Dr. Batalis testified that the body shuts down at temperatures around 105° to 106°. The victim's body was at 109° to 110° which would indicate that there is evidence of hyperthermia. (R. p. 401 l. 7-12). Dr. Batalis testified that if the brain is exposed to high temperatures, it is not able to function, and it is going to drive the other organs in the body to fail. (R. p. 402 l. 10-17). Dr. Batalis determined that the cause of death was hyperthermia due to neglect, the manner of death was homicide. (R. p. 404 l. 18-20).

During the trial the Appellant testified that the air conditioning was on for the entire period; however, Capitan Jason Chapman of the Colleton County Sheriff's Office, was called to testify in rebuttal. Capitan Chapman testified that when he responded to the crime scene, he looked inside the vehicle. He stated that the car was running, and the air conditioning was turned on blowing cold air, but inside the car was still hot. (R. p. 560 l. 24 – 561 l. 5).

ARGUMENTS

- 1. The trial court did not err in allowing relevant photographs of the victim as she appeared at the scene into evidence because these photographs corroborated the testimony of the medical examiner and also refuted the defense that the air conditioner was running while the victim was inside the vehicle.**

Relevant Facts

During the trial Appellant contested the introduction of four photographs. Each was of the victim at the crime scene right after she was taken out of the vehicle. These photos depicted the victim as she was when this crime occurred. She was wearing a diaper; her hair was wet and matted due to sweating, after being placed in a hot car for over five hours. There also were burn marks and welts on her legs due to heat exposure from the interior of the vehicle, and there was advanced decomposition due to the excessive heat. (R. p. 413 l. 21-25).

During the trial, Appellant argued that these photographs violated rule 403 of the South Carolina Rules of Evidence. Appellant believed these photos' prejudicial effect outweighed any probative value they may have had. The trial court ruled that the photos were relevant because they revealed bruising on the victim, and they further revealed her condition at the time the crime occurred. (R. p. 186 l. 17-20).

Standard of Review

The materiality, relevance and admissibility of evidence are within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion. *State v. Rosemond*, 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson*, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22, 28 (2014). The relevancy,

materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. *Id.* A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008)

Discussion

Appellant contends that four photographs showing the victim at the crime scene were prejudicial. These photographs revealed the victim's entire body as it was when it was removed from the vehicle. There were also close-ups of actual burn injuries sustained while having been in a vehicle reaching temperatures as high as 135°. (State Exhibits 1-4). Appellant argues that the prejudice in introducing these photographs outweighs any probative value they may have. Appellant believes these photographs were introduced only to arouse the sympathies and emotions of the jury, but that they have no evidentiary value. The Respondent argues these photographs definitely have evidentiary value, and the probative value outweighs any prejudice that might have been caused by their introduction. These photographs reveal the condition of the child when she was found. They reveal the wet matted hair and burns from being placed in a hot car for hours. These photos also reveal the advanced decomposition because of the heat, which was testified to by Medical Examiner Dr. Batalis.

“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.’” *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), quoting, *State v. Alexander*, 303 S.C. 377, 401 S.E.146, 149 (1991)(emphasis added). The evaluation of probative value cannot be made

in the abstract but should be made in the practical context of the issues at stake in the trial of each case. *State v. Gray*, 408 S.C. 610, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). The photographs presented were used to specifically demonstrate, explain, and corroborate evidence on how the victim died due to a disregard of human life by the Appellant as, well as his co-defendant. In discussing similar evidentiary rulings in their cases, the Pennsylvania courts have often quoted:

A criminal homicide trial is, by its very nature, unpleasant, and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt. Further, the condition of the victim's body provides evidence of the assailant's intent, and even where the body's condition can be described through testimony from a medical examiner, such testimony does not obviate the admissibility of photographs.

Com. v. Robinson, 864 A.2d 460, 502 (Pa. 2004), quoting, *Com. v. Rush*, 646 A.2d 557, 560 (Pa. 1994).

The Georgia courts have concisely rejected an argument on unfair prejudice on the basis of its own paradox, "a defendant cannot complain about photographs that simply 'portray the havoc wreaked by [his] own hand.'" *McKibbins v. State*, 750 S.E.2d 314, 322 (Ga. 2023), quoting, *Null v. State*, 402 S.E.2d 721 (Ga. 1991). Even the South Carolina Supreme Court established that photographs revealing the scene as the defendant left it are admissible. Photographs are relevant if they "depict the bodies of the murder victims in substantially the same condition in which the defendant left them." *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 185 (1986).

These photographs also corroborated testimony. During his testimony Dr. Batalis stated that the photos reveal skin slippage which is the breakdown process of the body or what is otherwise called decomposition. (R. p. 410 l. 11-13). Dr. Batalis also testified that when

temperatures are high, decomposition is going to occur much quicker than if the temperature were much lower. (R. p. 410 l. 17-19). Dr. Batalis also stated how there were “leathery type of lesions” this tell us that there was some sort of injury to the body, some sort of actual burn. (R. p. 410 l. 20-23). When reviewing the admitted photographs, Dr. Batalis explained how these photographs reveal the condition of the body when it was found. Dr. Batalis used these photographs to corroborate his testimony when he explained:

“So, this photograph here illustrates the kind of two different lesions that we’re talking about. So up on the upper aspect of the left thigh here, you can see that there’s a very thin appearance, kind of a wispy appearance to the skin. That would be more what I’m speaking of as the skin slippage, so part of the breakdown process of the body.” (R. p. 413 l. 7-14)

“But in addition to just that, you can see here on the lower part of the left leg we have this lesion, where the skin was more ulcerated away. You can see some areas on the knee on the leg that appear different than up here, where we don’t have an appearance of it.” (R. p. 413 l. 15-20).

So again, to me that would say these areas were likely in contact with something in the area that caused a direct burn or injury to the skin, and we also have areas that show that decomposition is there now.” (R. p. 511 l. 21-25).

The photographs of the condition of the body were also imperative due to the fact the Appellant testified that the air conditioner was turned on when the victim was placed in the vehicle. The burn marks on the body, as Dr. Batalis testified, were due to the victim’s leg being in contact with something that caused a direct burn or injury to the skin. (R. p. 511 l. 21-24). The photographs also revealed her hair was wet and matted due to the sweat generated from the heat inside the vehicle. These photographs prove that the air conditioning was not turned on during the time the victim was in that vehicle.

Appellant within her brief cites two recent South Carolina Supreme Court cases, *State v. Nelson*, and *State v. Jones*, In *Nelson*, the South Carolina Supreme Court reversed the decision of the Court of Appeals ruling:

The probative value of gruesome autopsy photographs was substantially outweighed by danger of unfair prejudice in guilt phase of murder trial, where information gained from photographs was not in question, only issue for jury to decide was whether defendant or her husband killed victim, photographs did not corroborate husband's testimony that defendant killed victim, and jury was informed that husband had also been charged in connection with victim's death but only faced a charge of accessory after the fact of murder.

State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023).

The present case is not identical to *Nelson*. The photographs were relevant to reveal the cause of death and establishing that the air conditioning was not turned on while the victim was placed inside the vehicle. In order to refute the allegation that the air conditioning was turned on, those photographs had to be allowed into evidence revealing the injuries from burns from the interior of the vehicle; and the early decomposition of the body after death due to the heat; and, the wetness and matting of the victim's hair due to the sweat of the victim brought on by the intense heat generated inside that vehicle.

In *Jones*, the South Carolina Supreme Court ruled that autopsy photographs of the victims that were allowed into evidence had no probative value. This was due to the fact they revealed the victim's bodies in an advanced state of decomposition. Since this was not the condition in which the Appellant left these bodies, those photos were prejudicial.¹ In the present case, photographs of the victim were taken on the same day of her death. These photos were taken merely hours after her death, thereby revealing the condition of the body at the time of death. This proves the Appellant and his co-defendant's total disregard of human life. The *Jones* decision does not apply.

Although the photographs were not pleasant to look at, they corroborated the testimony of Dr. Batalis as to the injuries sustained due to the heat, and they also refuted the testimony of the

¹ The Supreme Court determined that this as harmless error. *State v. Jones*, 440 S.C. 214, 264, 891 S.E.2d 347, 373 (2023).

Appellant. As the South Carolina Supreme Court stated in the *Collins* decision, “Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder.” *Collins*, 409 S.C. at 534, 763 S.E.2 at 28. If a photograph is not pleasing but still goes to prove the crime occurred, it cannot be considered a violation of Rule 403.

These photographs were offered to prove that the Appellant and his co-defendant committed these crimes. The photograph’s probative value did outweigh any prejudice they might have caused; therefore, admissible. The trial court committed no error in allowing these photographs into evidence. The decision of the trial court should be upheld.

- 2. There was plenty of evidence presented revealing Appellant had a total disregard of human life, so Appellant was guilty of murder. Any error that might have occurred should be considered harmless.**

Relevant Facts

The Appellant raised an issue that the photographs of the victim were allowed into evidence unlawfully in violation of Rule 403 of the South Carolina Rules of Evidence. Although Respondent continues to argue that no error was made by the trial judge, if this court finds an error was made it should be considered harmless. The video evidence revealed a total disregard of human life, which is considered implied malice. Other evidence exists not related to the photographs introduced. This evidence further proves Appellant’s guilt beyond a reasonable doubt. Any ruling by this court that the trial judge’s decision was in error would not have changed the final result, therefore, if there was error it should be considered harmless.

Standard of Review

Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018).

Discussion

The Respondent does not concede the argument made above. The Respondent remains positive that the decisions made by the trial court were correct and lawful; however, if this court finds any error in the trial court's decisions, they should be considered harmless.

During the trial the State argued that Appellant was guilty of murder due to the doctrine of implied malice.² In *State v. Mouzon*, the South Carolina Supreme Court defined malice as an essential element of murder. In *Mouzon* the Supreme Court decided,

Malice is an essential ingredient of murder, and it does not necessarily import ill-will toward the individual injured, "but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief."

State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675-676 (1957), quoting, *State v. Heyward*, 197 S.C. 371, 15 S.E.2d 669, 671 (1941).

In the present case, the Appellant's home surveillance video was introduced and allowed into evidence without objection. (R. p. 331 l. 2-5). This home surveillance video recorded the Appellant placing the victim inside the vehicle and then the agonizing five hour stretch afterwards as the Appellant and co-defendant stood right near this vehicle and did nothing as this poor child suffered in 130° heat. Upon viewing this video, there is no doubt that there was a total disregard of human life. The timeline of the video is as follows:

11:16am – Victim is placed in the vehicle.

11:43am – After a discussion on the porch near the vehicle Appellant and co-defendant go into the house.

1:45pm – Appellant and co-defendant come back outside, have another discussion on the porch right near the vehicle.

2:03pm – Appellant and co-defendant go back into the house.

² "Murder" is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10.

3:00pm – Appellant and co-defendant come back outside.

3:03pm – Co-defendant notices that she locked her keys inside the vehicle.

3:05pm – Appellant and co-defendant go back into the house.

3:11pm – Appellant and co-defendant come back out of the house to the yard.

3:14pm – They attempt to get the door of the vehicle open without any sense of urgency.

3:18pm – Appellant and co-defendant spend time sitting on the porch swing chatting.

3:32pm – Appellant and co-defendant go back into the house.

3:52pm – Appellant and co-defendant leave in the Appellant's vehicle going to the co-defendant's house to get the spare key.

4:42pm – Appellant and co-defendant arrive back at the co-defendant's house with the spare key.

4:56pm – Appellant gets on the phone calling Robert Arabis a local locksmith for instructions on how to get the car open. (R. p. 513 l. 12-15).

4:58pm – Appellant finally gets the car door open.

4:59pm – Appellant calls 911.

(State Exhibit #40 T. p. 330 l. 14 – p. 331 l. 5)

The victim spent five hours and forty-three minutes inside a vehicle with no air conditioning in South Carolina 90 plus degree heat. The video revealed no sense of urgency in getting the victim out of the car by the Appellant nor his co-defendant. There was a total disregard for her life. She was in that car all of those hours as they talked and spent time inside the house while the victim eventually died from heat exhaustion. That evidence alone reveals a total disregard for human life sufficient for a conviction of murder. As the Supreme Court stated in *Mouzon*,

Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

Id.

From watching that video there is absolutely no doubt that the Appellant and his co-defendant had a total disregard for the life of the victim. The jury definitely inferred implied malice in this case and convicted Appellant as well as his co-defendant for murder.

There was also evidence corroborating the video. Deputy Jason Chapman testified that when he arrived at the scene, he got into the car to turn it off, and the air conditioner was blowing but the car was still hot. (R. p. 560 l. 24 – p. 561 l. 5). SLED agent Brooklynn Molina who was found qualified as an expert in the field of forensic toxicology also testified. She tested the blood of the Appellant that was drawn the same day as the incident. Agent Molina testified that the Appellant's blood tested positive for methamphetamine and amphetamine. This reveals that the Appellant was so intoxicated that he failed to comprehend the fact that the victim was in a vehicle reaching temperatures as high as 130°. There was no sense of urgency to get the victim out of the car due to their drug intoxication. This further proves the total disregard of human life in the minds of the Appellant and his co-defendant.

It was obvious that implied malice existed in this case; therefore, even if the photographs were excluded, a jury would have sufficient evidence to convict the Appellant and his co-defendant for the offense of murder. The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promote public respect for the criminal process by focusing on the underlying fairness of the trial rather on the inevitable presence of immaterial error. *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S.Ct. 1431 (1986).

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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