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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

XAVIER LAMAR HOLBROOKS,

APPELLANT

APPELLATE CASE NO. 2024-000473

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting a photograph of the live alleged victim, State's Exhibit 2, since the photograph was without probative value, irrelevant, particularly since the non-testifying alleged victim had been identified as being disabled and being in special needs classes to the jury and the photograph was prejudicial because it was meant to impermissibly garner sympathy for the alleged victim?

STATEMENT OF THE CASE

Appellant was indicted at the August 18, 2022, term of the York County grand jury for the offense of criminal sexual conduct with a minor in the second degree. R. 261-262. His case was called to trial on March 12, 2024, before the Honorable Daniel D. Hall and a jury. Mark McKinnon and Melissa Rogers represented appellant. Misty Sheldon and Landon Finnie were the assistant solicitors. R. 1-2.

On March 13, 2024, the jury found appellant guilty. R. 247, ll. 4-7. Judge Hall sentenced appellant to twenty-years' imprisonment. R. 252, ll. 20-24.

STANDARD OF REVIEW

"A trial judge is accorded broad discretion in ruling on the admissibility of the testimony. State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (holding the admissibility of evidence with little probative value was harmless where it did not affect the outcome of the trial), *cert. denied,* 508 U.S. 915 (1993). All relevant evidence is admissible. Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE; State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). Although evidence is relevant, it may be excluded if the danger of unfair prejudice substantially outweighs its probative value. Rule 403, SCRE; State v. Alexander, *supra.* Further, a photograph should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate facts. State v. Livingston, 327 S.C. 17, 488 S.E.2d 313 (1997)." State v. Langley, 334 S.C. 643, 647, 515 S.E.2d 98, 100 (1999).

ARGUMENT

The court erred by admitting a photograph of the live alleged victim, State's Exhibit 2, since the photograph was without probative value, irrelevant, particularly since the non-testifying alleged victim had been identified as being disabled and being in special needs classes to the jury and the photograph was prejudicial because it was meant to impermissibly garner sympathy for the alleged victim.

Relevant facts

As will be seen infra, the alleged female victim, Jada, was thirteen years old in June 2021 when appellant allegedly molested her inside her house with her cousin there, and two-family friends were outside in their cars. R. 38, ll. 9-16. Christiana Tabron was Jada's cousin and the primary caretaker and payee for Jada and her aunt, Kenika. "I'm over their finances and basically just responsible for everything in the household." R. 36, ll. 3-16. Jada and her aunt both received Social Security Disability Income. R. 36, l. 10 – 37, l. 17.

Tabron testified that Jada was disabled, developmentally delayed, and attended special needs classes. R. 37, l. 10 – 37, l. 17. At the time of the alleged incident in June of 2021, Tabron lived in Charlotte while Jada lived in Rock Hill with Kenika. R. 37, l. 16 - 38, l. 4.

Judge Hall had earlier ruled that Jada was not competent to testify during the trial, and the solicitor conceded, "We agree with the court's ruling." R. 19, l. 18 -21, l. 19. When the state moved to introduce a photograph of Jada before the jury, defense counsel objected that the photograph was without probative value. The judge overruled the objection. R. 38, l. 23 – 39, l. 16. That photograph, State's Exhibit 2, is before this Court for viewing.

Tabron testified that while she was living in Charlotte in June of 2021, her Aunt Kenika had a separate primary caregiver in South Carolina who also came to check on her about three times a week. R. 39, ll. 18-24.

Tabron knew appellant, and she remembered on June 3, 2021, she was sitting in her automobile outside of Jada's house smoking marijuana when appellant came by Jada's house. She described appellant as "a family friend, so he comes over quite often to check on them." R. 41, ll. 12-20; 48, l. 19 – 49, l. 2. Tabron said she was sitting in the car with a friend while Kenika and Jada were inside the house at the time. R. 42, ll. 1-17. Her cousin, Nevaeh, was inside the house with Jada. R. 43, ll. 7-11.

Tabron remembered that Nevaeh came back outside while appellant was in the house. Tabron was "blocked" in the driveway by appellant's car so she could not leave. Tabron asked Neveah to tell appellant to come and move his car so she could leave. "Xavier came out the house [sic] and he just got in his car and left." R. 44, l. 15 – 45, l. 3.

Tabron testified that after appellant left: "I got out [of] the car to go in the house to see what was going on … next, I asked everybody in the house what was going on and then I proceeded to call the police." R. 45, ll. 6-14. Tabron then took Jada to Piedmont Medical Center. R. 45, ll. 19-20.

On cross-examination, Tabron confirmed that appellant was a family friend and she maintained that she went inside Jada's house after appellant left because of "suspicious activity." R. 49, ll. 9-14. Tabron testified that appellant was always very friendly with her, and she believed appellant had been in a relationship with Kenika years before. R. 51, l. 11 – 52, l. 14.

Neveah N. was sixteen-years-old at the time of trial. She knew both Jada and Kenika. R. 53, ll. 17-24. Jada was her cousin and Kenika was her aunt. R. 54, ll. 2-5. She lived about four houses from them in Rock Hill. R. 54, ll. 13-14.

Neveah testified on June 3, 2021, she went inside Jada's house and found Kenika's bedroom door was locked. She said behind the locked door was "Jada and a man." R. 54, ll. 6-18. Neveah tried to open the door, but it was locked so she knocked. R. 57, ll. 15-16. She remembered that about a minute later, she saw appellant and Jada come from the bedroom both fully clothed. R. 57, l. 22 – 58, l. 6.

Detective Brooks Felman of the Rock Hill Police Department would later testify that Jada lived in a "fairly small house." The bedroom where the molestation was said to occur had damage to the blinds covering the window. Felman refused to admit on cross-examination that anyone outside the house could see into the bedroom. He contended they would have to walk up to window to see inside. R. 236, l. 3 – 236, l. 21.

Felman acknowledged the bedroom looked normal upon his inspection. It did not appear to have been cleaned up from the alleged molestation. R. 195, 1 - 196, l. 9.

Deborah Davis was a SANE nurse at Piedmont Medical Center. R. 59, l. 15 – 62, l. 21. She was not board certified, however. R. 63, ll. 4-5. Davis conducted a Sexual Assault Examination of Jada on June 3, 2021. R. 70, ll. 9-14. She remembered Jada was very nervous and shy, but she was wearing clean clothes and her hair "was nice and clean." R. 71, ll. 9-14.

Davis estimated Jada had the mentality of a six-or-seven-year-old. R. 71, ll. 15-21. She had no physical injuries. R. 73, ll. 1-4; 85, ll. 12-13. Davis took numerous swabs from Jada for DNA purposes. R. 85, l. 20 – 86, l. 21.

SLED agent Ryan Dwayne testified the alleged victim had a mixture of DNA in her underwear. R. 147, l. 17 – 148, l. 8. SLED agent Donna Money testified appellant's DNA was found on two different places on the alleged victim's body, but that appellant was excluded as a contributor from a saliva sample. R. 172, l. 12 – 176, l. 6; 178, ll. 15-18. No suspected semen was found during the swabbing process. R. 182, ll. 12-23.

Closing arguments

During her closing argument, the solicitor argued that the alleged victim was a thirteen-year-old with a "fairly severe disability, that is a fact. It is undisputed that DNA attributed to Xavier … was found in her rectum and a hair that has his DNA on it." R. 216, ll. 15-18.

Defense counsel argued that it did not make any sense for appellant to molest the alleged victim while her cousin was in the house and Tabron and another person were outside the house in a car. Defense counsel also argued the evidence showed anyone could have looked into the bedroom window due to the blinds being damaged and see what was occurring. Further, counsel argued appellant and the alleged victim were fully clothed when they came out of the bedroom, their hair was in place, and there was no evidence of any cleaning products being present to try to clean up the scene. "No bodily fluid on the bed, on the floor, anywhere, no used condoms, no gloves, nothing to block the transmission of DNA." R. 223, l. 4 – 224, l. 18.

Defense counsel also argued that the evidence showed that DNA could be transferred, as was the case with an unknown contributor having DNA on Jada, and appellant's DNA was likely all over the house since he had been there before. R. 225, l. 16 – 226, l. 25. Defense counsel argued that another person's DNA being found on Jada showed how easy it was for DNA to be transferred. R. 226, ll. 16-25. Defense counsel argued that the evidence in this case provided "a definition of reasonable doubt." R. 230, ll. 10-22.

Discussion

In State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), our Supreme Court reversed the defendant's conviction because the state introduced a photograph of the live victim. The victim was killed during a drug deal in Charleston, and our Supreme Court found the photograph was not relevant to proving the guilt of the defendant, Langley.

The Court also noted that the state cannot offer evidence of the victim's good character unless the defendant first attacks the victim's character under Rule 404(a), SCRE. The Supreme Court rejected the state's claim that the photograph was relevant to the identity of the victim since victim's identity was not at issue. State v. Langley, 334 S.C. 643, 648 n 3, 515 S.E2d 98, 100 n 3. The Court held that because evidence of the defendant's guilt was not overwhelming, it could not find the irrelevant photograph did not affect the outcome of the trial. The error in admitting the photograph was not harmless.

In State v. Livingston, 327 S.C. 17, 488 S.E.2d 313 (1987), the Supreme Court similarly reversed the defendant's felony driving under the influence conviction where the state admitted an irrelevant photograph of the live "car crash victim" from a prior occasion. The Court wrote that the definition of relevant evidence under Rule 401, SCRE, was "evidence having any tendency to make the existence of any fact that of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Defense counsel here correctly argued that the photograph of the alleged victim was not probable. It added nothing of value in the jury's determination of whether appellant molested the alleged victim while her cousin was inside the house. and her caregiver and another woman were outside the house. It was irrelevant. Like the photographs in Langley and Livingston, it portrayed a happy victim from a happier occasion, and it was meant to impermissibly garner

sympathy for the victim. It could have no other purpose because as in Langley and Livingston identity was not an issue.

This was a strange case where the alleged victim's cousin admitted appellant and the alleged victim came out of the bedroom fully clothed. Appellant knew that Tabron was outside the house in her car.

As stated, the Supreme Court rejected the state's argument in Livingston that the photograph was relevant to establish the victim's identity. "These facts are of no consequence to the determination of this action (whether appellant is guilty of felony DUI), since the victim's identity and the time and place of the accident were undisputed, and these matters were not at issue." State v. Livingston, 327 S.C. 17, 20, 488 S.E.2d 313, 314 (1997). The same was true in Langley. Further, a photograph should be excluded where it is merely calculated to arouse the sympathy or prejudice of the jury, or if it irrelevant or unnecessary to substantiate facts. State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986).

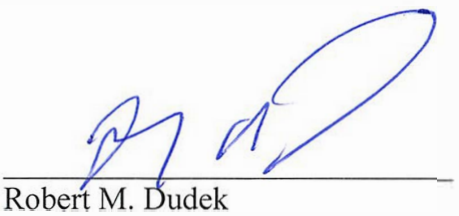
Here, the identity of the victim, Jada, was not at issue. She was found not competent to testify. However, victims are often deceased at the time of a criminal trial and never seen by the jurors, so caution must be used not to introduce irrelevant evidence such as the photographs in State v. Langley and State v. Livingston of the victims when they were alive which are likely to garner sympathy, and the irrelevant photograph of the telegenic alleged victim, State's Exhibit 2, in this case was no different.

The DNA evidence here was strongly challenged as to the possible transfer of DNA. In addition, the circumstances of the alleged molestation which occurred with other people being on the premises at the time was unusual. Appellant should be granted a new trial since it cannot be

said beyond a reasonable doubt that the trial error here did not contribute to the guilty verdict. See State v. Livingston, 327 S.C. 17, 20, 488 S.E.2d 313, 314 (1997).

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the York County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of June, 2025.

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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 16th day of June, 2025.

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APPELLATE CASE NO. 2024-000473

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 16th day of June, 2025.

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Warren, Kaylynn

From: Warren, Kaylynn
Sent: Monday, June 16, 2025 8:42 AM
To: Mark Farthing
Cc: Dudek, Robert; Caroline Collins
Subject: 2024-000473 The State v. Xavier Lamar Holbrooks
Attachments: 2024-000473 The State v. Xavier Lamar Holbrooks 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, June 16, 2025, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
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