STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court Of General Sessions
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2024-000172

THE STATE, Respondent,

v.

RICO ANTONIO FUNDERBURK, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. A trial judge may refuse a specific charge if the substance of that request is incorporated in the charge. Did the trial court err by not instructing the jury on involuntary intoxication where it adequately described that the jury should acquit if Funderburk lacked the capacity to distinguish right from wrong?

II. Graphicness alone does not render a piece of evidence inadmissible. Did the trial court abuse its discretion by finding the probative value of photographs was not substantially outweighed by the danger of unfair prejudice, because they corroborate Victim's testimony, show great bodily injury, and tend to show that the abuse was not the result of insanity?

STATEMENT OF THE CASE

In October of 2021, the Horry County Grand Jury indicted Appellant Rico Funderburk for one count of criminal sexual conduct first degree, one count of kidnapping, and one count of domestic violence high and aggravated. Subsequently, in 2023 the Horry County Grand Jury indicted Funderburk for assault and battery of a high and aggravated nature. He proceeded to a jury trial on January 29, 2024, before the Honorable Benjamin H. Culbertson and was convicted as charged. The court sentenced Funderburk consecutively to twenty years' imprisonment for assault and battery of a high and aggravated nature, thirty years' imprisonment for criminal sexual conduct, and thirty years' imprisonment for kidnapping. Funderburk filed a timely notice of appeal.

STATEMENT OF FACTS

Victim testified that she met Funderburk through the dating application Tinder sometime in July of 2021. (R. 404-405). Shortly thereafter, Funderburk moved in with Victim. (R. 405). Victim testified that looking back Funderburk exhibited some strange behaviors. (R. 406). She testified she was not allowed to move in her sleep, was not allowed to touch Funderburk's food or drink, and was not allowed to close the bathroom door. (R. 406-407). Victim testified that she was evicted and the couple lived in Funderburk's car while sometimes staying in hotel rooms. (R. 406-407).

Victim testified that after moving into the vehicle, Funderburk became violent. (R. 409). Victim stated that Funderburk maintained strange rules including that Victim not put her hands near her face. (R. 409). She stated that Funderburk punched her in the face multiple times which made following his rule difficult. (R. 410). Victim noted that when the couple stayed in hotel rooms, she always had to be completely naked and the phone had to be unplugged from the wall. (R. 421).

Victim further detailed Funderburk's ongoing violence. She testified that Funderburk would use a sharp edge, or tire iron, to dig into her ear. (R. 411). She further stated that she was choked to the point of unconsciousness and strangled "a lot." (R. 412-413). Victim testified that Funderburk would take a ratchet or pliers and hammer them against her fingers. (R. 413). Victim stated that due to Funderburk's violence she lost a patch of hair and gained scars on her fingers and shoulders. (R. 418). Victim described how Funderburk would use a screwdriver to attack her joints as to make it difficult for her to escape. (R. 419). Victim testified that once after Funderburk lost money gambling he forcibly burned her vagina before penetrating her. (R. 428). Victim further stated that Funderburk went so far as to take pliers and forcibly spread

Victim's anus. (R. 429). Victim testified that she complied with Funderburk's sexual demands because she feared bodily injury. (R. 427).

Victim testified that the worst stretch of violence occurred from around the 10th of August until the 28th of August of 2021. (R. 415). She stated that Funderburk thought she was drugging him, but that she was not. (R. 416). Victim stated she had no means of obtaining drugs because Funderburk maintained control of her wallet, phone, car keys, and money. (R. 417). Victim stated she did not feel like she was able to leave and that she was worried for her family if she left. (R. 422). Victim testified that Funderburk told her he would kill her and drove her to a secluded area of a Walmart parking lot. (R. 434). Victim successfully opened the car door as Funderburk attempted to move the vehicle. (R. 435). After getting out of the vehicle, she ran into Walmart. (R. 436).

During trial the defense claimed involuntary intoxication. Upon his arrest, Funderburk stated "any action that I did possibly commit, I was under the influence of a substance that I knew nothing about." (R. 355). Text messages were recovered from Funderburk's cellphone wherein Funderburk asserted he was being drugged by Victim. (R. 384; State's Ex. 59; State's Ex. 60). Victim testified that she did not give him drugs and that she did not have access to drugs. (R. 416). Victim stated that in the videos recorded by Funderburk she had admitted to drugging him but only did so because she was fearful of further abuse. (R. 430-431). Funderburk testified that he found drugs on Victim's person and in his car. (R. 473). Funderburk admitted he was wrong but claimed that he could not distinguish right from wrong. (R. 482).

Dr. Emily Gottfried performed a criminal responsibility evaluation on Funderburk. (R. 517-521). Gottfried explained that she reviewed pertinent discovery documents, mental health records, and a virtual interview. (R. 521; 524). Specifically, she examined arrest warrants,

records from Funderburk's detention center, criminal history, photographs of Victim's injuries, interviews conducted by detectives, and screenshots of text messages. (R. 523-524). She stated that, in her opinion, Funderburk had the capacity to distinguish moral or legal right from wrong at the time of the offense. (R. 537). Gottfried specified four reasons for her conclusion. (R. 532). First, she stated it appeared as if the abuse began before Funderburk claimed to have been drugged and more frequently than he claimed he was drugged. (R. 532). Next, she noted that Funderburk's conduct in videos demonstrated he had behavioral control when he claimed to have been drugged. (R. 533). Third, she noted that the violence typically escalated as the abuse was occurring, which would be inconsistent with the inability to determine moral right from wrong. (R. 534). Lastly, she testified that the method of ingestion was unusual compared to the way these drugs are normally consumed. (R. 534). Additionally, Gottfried noted several "data points" which indicated he knew right from wrong. (R. 534-535). She stated he would apologize to the Victim, did not use weapons during the assault, and expressed that it was a reaction he was not proud of. (R. 534-535).

ARGUMENT

I. A trial judge may refuse a specific charge if the substance of that request is incorporated in the charge. The trial court did not commit reversable error by not instructing the jury on involuntary intoxication, because it adequately described that the jury should acquit if Funderburk lacked the capacity to distinguish right from wrong.

The trial court properly instructed the jury concerning involuntary intoxication because the charge instructed the jury that they should acquit if the defendant was unable to distinguish moral or legal right from wrong, the court properly utilized its discretion with particular verbiage, and the instructions sufficiently cover the applicable law.

Relevant Facts

Prior to trial Funderburk requested a jury instruction regarding involuntary intoxication. (R. 8). Mainly, the requested charge stated if Funderburk was found to have been given drugs "without his knowledge, and as a result he lost the ability to exercise independent judgment and volition while committing the crimes alleged against him" then the jury should acquit. (R. 545). The State argued that involuntary intoxication alone does not diminish capacity, but that capacity can be diminished if it leads to temporary insanity. (R. 9). Judge Culberson noted that in Pittman the court used the M'Naughten standard to determine whether a defendant's condition rendered him responsible. (R. 13-14). Ultimately, the court found that a specific involuntary intoxication charge was not necessary. (R. 34). The court instructed the jury that if the defendant was "unable to distinguish moral or legal right from wrong, or to recognize the crime as morally or legally wrong" then the defendant did not possess the requisite criminal intent. (R. 587).

STANDARD OF REVIEW

An appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) ("[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial.").

Analysis

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). In its instruction, the trial judge must instruct the jury on the substance of the law but is not required to use any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). Additionally, the trial judge may also refuse a specific request if the substance of the request is incorporated in the instructions. Burroughs v. Worsham, 352 S.C. 382, 391–92, 574 S.E.2d 215, 220 (Ct. App. 2002) (citing Varnadore v. Nationwide Mut. Ins. Co., 289 S.C. 155, 345 S.E.2d 711 (1986)); Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). Jury instructions are not erroneous if they are substantially correct, sufficiently cover the applicable law, and do not contain comments on the facts. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996). The trial judge has no duty to grant a request to charge that does not correctly state the law or that may confuse or mislead the jury. State v. Simmons, 269 S.C. 649, 239 S.E.2d 656 (1977).

The Court of Appeals for the Eleventh Circuit has noted it does not "engage in word-by-word hairsplitting when reviewing jury instructions given at trial, because a trial judge is given

wide discretion as to the style and wording employed in the instructions." Johnson v. Breeden, 280 F.3d 1308, 1314 (11th Cir. 2002).

South Carolina has adopted the M'Naughten test as the standard for determining whether a defendant's mental condition at the time of the offense rendered him criminally responsible. State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993); Davenport v. State, 301 S.C. 39, 389 S.E.2d 649 (1990); State v. Law, 270 S.C. 664, 244 S.E.2d 302 (1978); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973). Under M'Naughten, a defendant is considered legally insane if, at the time of the offense, he lacked the capacity to distinguish moral or legal right from wrong. Id. Specifically, our Supreme Court has found that M'Naughten is the correct standard concerning involuntary intoxication. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). In Pittman, the court's charge was upheld where the judge instructed as to the M'Naughten standard, but also went so far as to instruct that the jury should find the defendant not guilty if he was involuntary intoxicated. Id. Similarly, voluntary intoxication is not a defense unless the use of alcohol or drugs causes permanent insanity and destroys the defendant's ability to know right from wrong. State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990).

Likewise, several courts have found that involuntary intoxication, as it relates to intent, is considered within the context of insanity. United States v. F.D.L., 836 F.2d 1113, 1116 (8th Cir. 1988); See also People v. Wilkins, 459 N.W.2d 57, 60 (Mich. Ct. App. 1990) ("involuntary intoxication is a defense included within the ambit of the insanity defense"); State v. Stacy, 326 P.3d 136, 145 (Wash. Ct. App. 2014) (involuntary intoxication is a defense only if it "rise[s] to the level of insanity"); State v. Sette, 611 A.2d 1129, 1136 (N.J. Super. Ct. 1992) (involuntary intoxication is a complete defense "where the level of intoxication prevents the defendant from an awareness of the nature and quality of his acts or knowing that those acts are wrong"); Jones

v. State, 648 P.2d 1251, 1258 (Okla. App. 1982) ("involuntary intoxication is a complete defense where the defendant is so intoxicated that he is unable to distinguish between right and wrong, the same standard as applied in an insanity defense").

Here, the court was not required to use the specific verbiage requested by Funderburk. The court declined to use the exact instruction Funderburk requested, but the court adequately instructed the jury that they should find Funderburk not guilty if he was unable to distinguish right from wrong. (R. 587). These instructions enlighten the jury and aided its ability to reach a correct verdict. The trial court did not abuse its discretion as to the style and wording of its instructions because the defense of involuntary intoxication is considered within the context of insanity. See Wilkins, 459 N.W.2d 57, 60 (Mich. Ct. App. 1990) ("involuntary intoxication is a defense included within the ambit of the insanity defense"); cf. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990) (noting voluntary intoxication is not a defense unless the use of alcohol or drugs causes permanent insanity). Consequently, the trial court properly instructed the jury concerning the requisite level of intent by noting an acquittal was appropriate if Funderburk could not distinguish right from wrong. As noted in Worsham, so long as the court covers the substance of the charge, a specific request may be denied. The court has discretion with respect to particular verbiage, and the instructions here sufficiently cover the applicable law concerning the defense raised by Funderburk.[1] This court should affirm.

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[1] Any error in the court's instruction is harmless in light of the overwhelming evidence of Funderburk's guilt. See State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, we must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.") (internal quotation marks omitted). The State produced testimony from Victim detailing the abuse, video evidence shortly after abuse occurred, expert testimony that Funderburk likely had the ability to distinguish right from wrong, and Funderburk's own testimony that he abused Victim.

II. Graphicness alone does not render a piece of evidence inadmissible. The trial court did not abuse its discretion by finding the probative value of photographs was not substantially outweighed by the danger of unfair prejudice, because they corroborate Victim's testimony, show great bodily injury, and tend to show that the abuse was not the result of insanity.

The trial court properly found the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice because they depict the extent of Victim's bodily injuries, corroborate testimony, and aid the jury in determining disputed facts.

Relevant Facts

At trial, Funderburk objected to the admittance of photographs depicting Victim's injuries. (R. 132-135). Funderburk cited Nelson, to which the court noted that in Nelson there was only a dispute as to who committed the act. (R. 138). Counsel then stated "Now, we may have a dispute, and we haven't gotten to our side of the case, but I don't think there's any dispute that this woman was injured." (R. 138). The State argued that the photographs show how the injuries were caused. (R. 139). Additionally, the State argued that great bodily injury was an element it had to prove, which was shown through the photographs. (R. 139). The court found the probative value of the photographs outweighed the prejudicial impact. (R. 141).

STANDARD OF REVIEW

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845 (2006). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). Thus, great deference is given to the trial court's judgment. State v. Hamilton, 344 S.C. 357, 543 S.E.2d 593 (2001).

Analysis

"Probative value is the measure of the importance of that tendency to the outcome of a case." United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). It is the weight that a piece of evidence will carry in helping the jury make a determination. "The more essential the evidence, the greater its probative value." Id.

"All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." State v. Bratschi, 413 S.C. 97, 115, 775 S.E.2d 39, 49 (Ct. App. 2015). Evidence that is unfairly prejudicial is evidence that suggests a decision on an improper basis. State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

This Court has upheld the admission of even graphic autopsy photos on several occasions over defendants' Rule 403, SCRE objection. See State v. Dial, 405 S.C. 247, 259, 746 S.E.2d 495, 501 (Ct. App. 2013) (finding no abuse of discretion where court admitted autopsy photos when the expert "testified the photographs would aid in her testimony"); State v. Jarrell, 350 S.C. 90, 106–07, 564 S.E.2d 362, 371 (Ct. App. 2002) (affirming admission of autopsy photos that "corroborated ... the pathologist's testimony regarding the extent of th[e] injuries"); State v. Thompson, 420 S.C. 192, 215, 802 S.E.2d 623, 635 (Ct. App. 2017) (affirming admission of autopsy photos that helped the jury understand the nature and extent of Victim's injuries as well as his condition near death); State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008) (Autopsy photos of victim's internal organs and other injuries were admissible to corroborate doctor's testimony about various injuries inflicted).

In State v. Collins, the State introduced gruesome photographs that depicted the way in which victim was mauled by dogs. State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014)

(plurality). Collins was charged with, among other things, owning a dangerous animal causing injury to a person. Id. The plurality opinion found the photographs aided the jury in evaluating the testimony offered by both parties. Id. 409 S.C. 524, 536, 763 S.E.2d 29. In a concurring opinion, Justice Kittredge found the admission to be a harmless error. State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014) (Kittredge, J., concurring). The plurality noted the photographs depicted dog bites that jurors likely would be unfamiliar with. Id. 409 S.C. 531, 763 S.E.2d 29. The photographs assisted the jury in establishing the elements of the offense charged and the extent of the injuries sustained. Id. The Collins plurality noted "[c]ourts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury." Id.

The Indiana Supreme Court has upheld the admission of autopsy photographs of victim's body after being beaten and hit by a train. Wheeler v. State, 749 N.E.2d 1111, 1115 (Ind. 2001). The Wheeler Court noted that gory photographs may be admissible if they are relevant to a material issue. Id. The court found that the photographs assisted the jury in understanding expert opinion related to the injuries sustained and determining the cause of death. Id.

Likewise, the Appellate Court of Illinois upheld the admission of photographs that depicted a decedent. People v. Brown, 231 N.E.2d 262, 266 (Ill. App. Ct. 1967). At trial, defendant attempted to show victim's death was caused by an automobile accident. Id. The court found the photographs had probative value because they supported the medical testimony that victim's death was caused by severe blows to the head, not an automobile accident. Id. The court upheld the admission because the photographs aided the jury in their ability to understand the medical testimony and injuries sustained. Id.

Here, the photographs show the nature of the injuries sustained and also aid the jury in determining a material matter of controversy. The photographs introduced were undoubtedly graphic, but that alone does not render them inadmissible. Holder, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (stating "[a]lthough the photographs were graphic, the facts in this case were graphic" and affirming the trial court); Turnipseed v. State, 367 S.E.2d 259, 262 (Ga. App. 1988) (stating "the photographs were not devoid of probative value because they showed the nature of the attack on the victim"). The photographs introduced depict the bodily injuries sustained by the Victim and tend to prove great bodily injury, an element of ABHAN. See SC Code § 16-3-600 ("A person commits the offense of [ABHAN] if the person unlawfully injures another person, and:(a) great bodily injury to another person results"). While the photographs are gruesome, the facts of this case are gruesome. As noted in Collins, courts often deal with disturbing facts; disturbing facts alone should not prevent a jury from considering important evidence which goes to show bodily injury and the unlikelihood of insanity.

Not only do the photographs assist the jury in understanding the injuries sustained, but they also corroborate testimony given during trial. The photographs corroborate Victim's testimony about the extensive abuse she endured. They also corroborate the testimony of Gottfried and support the notion that the acts were not involuntary because they show the extent of abuse before drugs were alleged to have been taken. The court did not abuse its discretion because the photographs carry inherent probative value in their ability to corroborate testimony, show the acts were voluntary, and show bodily injury.

Funderburk contends that any probative value is substantially outweighed by the danger of unfair prejudice. Here, the photographs contain probative value in that they depict the injuries sustained, corroborate testimony, and show bodily injury. While the photographs are graphic,

they fall short of the kinds of photographs depicting deceased victims in autopsy photograph cases. As this Court noted in Bratschi, "[a]ll evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." State v. Bratschi, 413 S.C. 97, 115, 775 S.E.2d 39, 49 (Ct. App. 2015). Here the court acted within its discretion because the danger of unfair prejudice does not substantially outweigh the probative value of photographs.

Even if the photographs were improperly admitted, the error is harmless. "In some cases, the evidence of guilt is so overwhelming, and the prejudicial effect of an improper ruling is so insignificant by comparison, that it is clear beyond a reasonable doubt that the improper ruling was harmless error." State v. McDonald, 412 S.C. 133, 142, 771 S.E.2d 840, 844 (2015). "There is no definitive rule of law governing harmless error; it must be determined from its relationship to the entire case." State v. Simmons, 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018). The State produced evidence including Funderburk's own testimony showing that Victim sustained substantial injuries through Funderburk's actions. Notably, gruesome videos were introduced showing Funderburk in a vehicle with Victim shortly after an assault. Any unfair prejudice with the risk of inflaming the jury's passion was limited by the admittance of gruesome videos that had already been presented.

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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July 28, 2025

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jessica Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 28th day of July, 2025.

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