

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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JUN - 3 2014

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Appeal from Lexington County  
William P. Keesley, Circuit Court Judge

**S.C. Supreme Court**

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APPELLATE CASE NO.: 2013-000455

STATE OF SOUTH CAROLINA,

RESPONDENT

JEFFERY T. LUCAS,

APPELLANT.

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BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting gruesome photographs of injuries to a child?

### STATEMENT OF THE CASE

Appellant was originally indicted for assault and battery with intent to kill, but in March 2009, he was indicted in Lexington County for the same factual circumstances for infliction of great bodily injury upon a child. (App. 505, App. 435, lines 15-22) On March 16-18, 2009, Appellant was tried before the Honorable William P. Keesley and a jury. (App. 1) Lawrence G. Wedekind, Sara McMahon, and Michael D. Ross represented the State. (App. 1) H. Wayne Floyd represented Appellant. (App. 1) The jury convicted Appellant. (App. 334 lines 19-24). Appellant did not appeal.

On February 19, 2010, Appellant filed a PCR application. (App. 375) On April 25, 2012, a hearing was held before the Honorable Clifton Newman. (App. 432) Tommy A. Thomas represented Appellant. (App. 432) Kaelon E. May represented the State. (App. 432) On February 15, 2013, Judge Newman granted Appellant a belated appeal. (App. 492) Judge Newman denied Appellant's remaining PCR allegations. (App. 492) This belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974) follows:

## ARGUMENT

The trial court erred in admitting gruesome photographs of injuries to a child.

### **Relevant Facts**

Appellant was child's mother's boyfriend. On the day of the incident, Appellant was taking care of child by himself. The child had cerebral palsy. (App. 111, lines 8-19) They were on the front porch. (App. 110, lines 18-24) The child could not walk on its own and could only move around the front porch by supporting itself with chairs or the railing. Appellant left child on the front porch and went to get the mail. (App. 117, lines 14-22). He then walked to his father's house. (App. 140, lines 16-23) He was gone approximately fifteen minutes. (App. 140, lines 16-23)

When Appellant returned, he saw the child on the porch. (App. 140, lines 24-25) The child's head was stuck between the railings of the porch. (App. 117, lines 14-22) He ran to the child. (App. 140, line 25) The child was limp and not breathing. (App. 117, lines 14-22) Appellant picked the child up and took him inside and began administering CPR. (App. 140, lines 24-25 and App. 141, lines 1-14) Appellant told police that he administered CPR "with my fist hitting him in the chest and stomach for a long period of time." (App. 140, lines 16-25 and App. 141, lines 1-14) He was able to restore the child's breathing by blowing into his mouth. (App. 141) Appellant then left the child to go across the street to call the child's mother. (App. 141, lines 9-14). Child's mother called 911.

The State's expert witnesses testified that the child's injuries could not have been received in the manner described by Appellant. Even though the child had had surgery ten days before the incident for an undescended testicle, the State's doctors opined that the child's injuries were caused by "a tremendous amount of force... applied suddenly to

the abdomen." (App. 172, lines 7-25 through App. 173, lines 1-8) The child had a severed small intestine, a ruptured scrotum, and other bruises. (App. 170, lines 1-25 through App. 171, lines 1-22) The doctors testified they would not expect to see these injuries from a failed attempt to administer CPR. (App. 187, lines 11-15) However, one of the doctors admitted that the area of the bruising to the chest and abdomen were all "kind of in one line." (App. 201, lines 1-5)

Appellant moved in limine to exclude photographs of the child that were taken at the hospital. (App. 43, lines 19-23) The photographs were gruesome and depicted the child in the hospital and also showed close-up photographs of the child's genitalia. The trial court admitted the photographs over Appellant's objection. (App. 175 lines 1-25 through App. 179, lines 1-5)

### **Discussion**

Because the serious injuries to the child were internal and no photographs existed for these injuries, the photographs of the child's external injuries were unnecessary. The State's doctors explained the child's internal injuries without using the photographs. Therefore these gruesome photographs were only admitted to inflame the jury and arouse sympathy for the child. In fact the Assistant Solicitor commented in his closing argument to the gruesomeness of the photos. He stated:

"all you have to do, ladies and gentlemen, is look at those pictures. Brutality, savage and even in the words of Mr. Floyd, heinous." (App. 286, lines 15-17)

"[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial." State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986); see also State v. Tones, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010). The Supreme Court's analysis of prejudicial photographs in Middleton is instructive. In Middleton, the State sought the introduction of autopsy photographs, including a

photograph of a surgically opened vagina. See Middleton at 24, 339 S.E.2d at 693. The Supreme Court found' the information contained in the photographs was "not really at issue." See *id.* The Supreme Court held that "the prejudice created by the photographs clearly outweighed *any* evidentiary value." *Id.* (emphasis in original). Just as in Middleton, these photographs included close up photographs of the child's genitalia which enhances their unfair prejudice.

The court of appeals conducted a thorough Rule 403 analysis of inflammatory photographs in State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (2012). In Collins, the Court of Appeals reversed because of the improper admission of photographs of a boy's half-eaten corpse. The boy had been attacked by dogs. The Collins court's analysis followed several steps. First, it examined the reasons why the State sought the photographs' admission. Next, it determined whether the State's reasons matched any of the elements of the crime charged. Third, it evaluated the prejudicial impact of the photographs. Finally, the court determined whether the photographs corroborated other testimony. The Collins court concluded the photographs were unnecessary. This analysis compels the same result in this case.

Normally, if photographs serve to corroborate the testimony of a witness, it is not an abuse of discretion to admit them. See State v. Jarrell, 350 S.C. 90, 106, 564 S.E.2d 362, 371 (Ct. App. 2002). But the mere existence of a photograph's tendency to corroborate a witness's testimony is not enough to overcome exclusion on Rule 403 grounds. As in Collins, "the photos relate to the expert's opinion only to the extent they show the same fact testified to by the [expert]. . . ." *Id.*

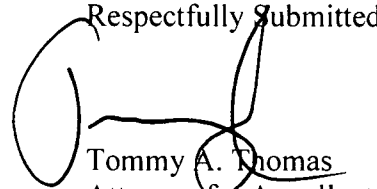
In this case, the serious injuries to the child were internal. The State's experts explained multiple times the mechanism by which they believed the severance of the child's intestine was achieved. They explained this without resort to the photographs. (App. 193, lines 4-25 though App. 195, lines 1-17) Since the experts could explain the serious internal injuries without the

photographs, the highly inflammatory photographs of the child's external injuries were superfluous and it was error to admit them under Rule 403.

CONCLUSION

For the foregoing reasons, Appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully Submitted,



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June 3, 2014

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions

**S.C. Supreme Court**

William P. Keesley, Circuit Court Judge

Appellate Case No.: 2013-000455

State of South Carolina.....Respondent.

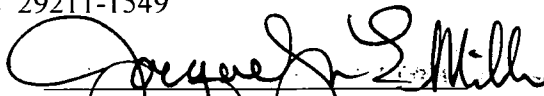
vs.

Jeffery T. Lucas #333799..... Appellant,

CERTIFICATE OF SERVICE  
BY MAIL

I, Jacquelyn E. Miller, Secretary to the Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Brief of Appellant Pursuant to White v. State with postage prepaid and the return address clearly shown on said envelope, to the Office of the Attorney General, at:

J. Walt Whitmire, Esq.  
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