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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RUFUS RAIDEN, III,

APPELLANT

APPELLATE CASE NO. 2014-000215

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

In this trial for leaving the scene of an accident resulting in death, did the trial judge err in refusing to exclude irrelevant and highly prejudicial testimony in regard to causation when fault is not an element of the crime?

STATEMENT OF THE CASE

In January of 2012, the Pickens County Grand Jury indicted Appellant Raiden for leaving the scene of an accident resulting in death. On January 27, 2014, Appellant proceeded to jury trial before the Honorable G. Edward Welmaker. Steven Alexander represented Appellant at trial. Doug Richardson prosecuted the case. The jury returned a verdict of guilty and Judge Welmaker sentenced Appellant to twenty five years. A timely notice of intent to appeal was served on February 4, 2014. This appeal follows.

ARGUMENT

In this trial for leaving the scene of an accident resulting in death, the trial judge erred in refusing to exclude irrelevant and highly prejudicial testimony in regard to causation when fault is not an element of the crime.

On December 10, 2011, at 1:22 AM Corporal Brian Mayfield with the South Carolina Highway Patrol received a dispatch call about an car accident Highway 8 in Pickens County. (Tr. p. 119, lines 10-24; p. 120, lines 7-12). At 1:44 AM Corporal Mayfield arrived at the accident involving a pickup truck and a Chevrolet Cavalier. (Tr. p. 120, lines 2-23). Corporal Mayfield saw emergency personnel trying to remove Ryan Crain from the Cavalier. (Tr. p. 122, lines 8-17; p. 125, lines 12-17). Crain later died as a result of injuries sustained in the accident. Corporal Mayfield did not see anyone in the truck. (Tr. p. 123, lines 5-7). The truck was registered to Tara Henderson. (Tr. p. 127, lines 20-24). Inside the truck Corporal Mayfield found paperwork belonging to Appellant Raiden. (Tr. p. 127, lines 10-19).

Raiden testified that the truck involved in the accident was his truck but was registered to Tara Henderson for purposes of a title loan. (Tr. p. 364, lines 14-24). He testified that on December 9, 2011, between 7:00 and 8:00 PM he drove the truck to a bar and grill called Joe Schmo's. (Tr. p. 366, lines 3-24). Raiden testified that he met a guy named Josh at Joe Schmo's Bar and Grill. (Tr. p. 367, lines 12-23). The two men talked and had a few drinks and then about 10:30 PM decided to go to Steady's Bar and Grill in Easley to look for Josh's girlfriend. (Tr. p. 369, lines 8 - 24). Raiden testified that he had too much to drink to drive so he allowed Josh to drive the truck. (App. p. 368, lines 8-17). After they were unable to find Josh's girlfriend, Josh drove the truck back to Raiden's house where the two played pool and drank beer. (App. p. 372, lines 4-17).

Later Josh made plans for his girlfriend to come to Raiden's house. (Tr. p. 372, line 23 – p. 373, line 1). The girlfriend, however, could not find the house so Josh, accompanied by Raiden, drove Raiden's truck to the old WalMart to meet the girlfriend. (Tr. p. 373, line 7 – p. 374, lines 1-8). Raiden testified that he laid down in the backseat of the truck as Josh drove to WalMart. (Tr. p. 374, lines 4-17). Josh and Raiden met the girlfriend and one of her friends in the Walmart parking lot and the girls followed Josh as he drove back to Raiden's house. (Tr. p. 375, line 5 – p. 376, lines 1-13) Raiden testified that on the way back to the house he dozed off but when he awoke he was in the floorboard of the truck and Josh was telling him to run. (Tr. p. 376, line 18 – p. 377, lines 1-5). Raiden testified that he was not sure what happened. (Tr. p. 378, lines 22-25). He saw Josh run ahead and get in a car leaving the scene. (Tr. p. 379, lines 5-11). Raiden testified that he ran into the woods because he did not want to be blamed as being the driver, especially since he had been drinking. (Tr. p. 379, lines 13-25).

Prior to trial counsel for Appellant Raiden moved to exclude all testimony about causation of the accident or fault. (Tr. pp. 47-52). After hearing arguments from both sides the judge scheduled a hearing on the issue for the next morning. (Tr. p. 63, line 20 – pp. 64 – 73, lines 1-16). During the pre-trial hearing the next morning the State called Corporal Tommy Brooks with the Multi-disciplinary Team [MAIT] of the South Carolina Highway Patrol. (Tr. pp. 84-85). Corporal Brooks was qualified as an expert in accident reconstruction. (Tr. pp. 88-89). Corporal Brooks testified that the truck crossed the center lane and struck the car. (Tr. p. 102, line 24 – p. 103, lines 1-17).

Counsel for Appellant Raiden objected and moved to exclude the testimony in regard to causation arguing that the testimony was irrelevant to the charge of leaving the

scene of an accident resulting in death and highly prejudicial. (Tr. p. 104, line 22 – p. 105, lines 1-15). The judge overruled the objection finding the testimony relevant and finding that the probative value of the testimony outweighed any prejudicial effect. (Tr. p. 106, line 23 – p. 107, lines 1-17). Raiden renewed the objection when Corporal Brooks testified before the jury. (Tr. p. 239, lines 3-9). The trial judge erred in finding the causation testimony was relevant and in finding that the probative value outweighed any prejudicial effect.

“Relevant evidence” is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2003); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct.App.2001); Rule 401, SCRE. Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct.App.2002).

S.C. Code §56-5-1210, the law against leaving the scene of an accident, provides:

The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than is necessary.

Fault is not an element of the crime of leaving the scene of an accident. The testimony from Corporal Brooks about causation and fault indicating that the truck

crossed the center lane and struck the car is irrelevant in the this trial for leaving the scene of the accident. The testimony did not have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The testimony did not have a direct bearing upon or tend to establish or make more or less probable the matter in controversy.

The judge properly instructed the jury on the elements of the crime of leaving the scene of an accident stating:

The state must prove beyond a reasonable doubt several matters. First of all, they must prove that the defendant was driving a motor vehicle. That the vehicle was involved in an accident. That the accident resulted in death of another person. The defendant did not stop or failed to render – remain at the scene. The defendant failed to give his name, address and vehicle registration number, and if asked, failed to show his driver's license. And that the defendant failed to give reasonable assistance to the injured person.

Now, reasonable assistance includes taking the person to the doctor or hospital or making arrangements to have the person taken if it is apparent that treatment is need or if the injured person asks for treatment.

The State must also prove beyond a reasonable doubt that the defendant knew or should have known that the accident happened. This may be shown by evidence of circumstances and conditions which would cause an ordinary, reasonable person to believe the vehicle had been involved in an accident resulting in injury or death of another person.

(Tr. p. 476, line 13 – p. 477, lines 1-10).

Testimony in regard to causation or fault is not necessary to prove any of the elements of the leaving the scene of the accident. The testimony from Corporal Brooks is irrelevant and the judge erred in finding that the testimony was relevant and in refusing to suppress that testimony. Rule 402 SCRE provides, "Evidence which is not relevant is not admissible."

In addition to arguing that the testimony in regard to causation and fault should be excluded because it was irrelevant, Appellant also argued that the testimony should be excluded because any probative value was outweighed by the prejudicial effect of the testimony. (Tr. p. 105, lines 6-15). Appellant argued that the testimony simply garnered sympathy for the victim by showing he was not at fault. (Tr. p. 105, lines 10-15).

The State argued that the testimony was probative of motive and was the res gestae of the case. (Tr. p. 105, line 17 – p. 106, lines 1-6). The judge found that the prejudicial effect of allowing the testimony would not be outweighed by the probative value. (Tr. p. 107, lines 7-17). The judge, however, did not state how the testimony was probative. The judge erred in not excluding the testimony as more prejudicial than probative.

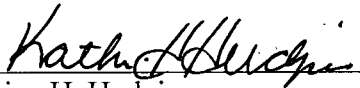
Rule 403, SCRE provides, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” It is difficult to determine what, if any probative value the causation and fault testimony had in the present case. Res gestae is an exception against the hearsay rule and does not make the testimony probative or relevant. It is unclear how the testimony goes to motive. “Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence ... of the intent to commit the crime when intent or state of mind is in issue.” Danny R. Collins, South Carolina Evidence 319 (2d ed.2000). “State of mind is an issue any time malice or willfulness is an element of the crime.” Id. State of mind is not an issue for the crime of leaving the scene of an accident.

The judge erred in admitting the testimony. The testimony was irrelevant and highly prejudicial. The error requires reversal.

CONCLUSION

Based on the above argument, Appellant's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of October, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rufus Raiden III states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge G. Edward Welmaker, which was held on January 30, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Rufus Raiden III.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of October, 2014.

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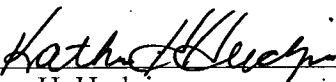
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 20th, 2014


Kathrine H. Hudgins
Appellate Defender

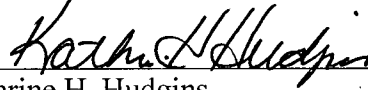
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

October 20, 2014



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CERTIFICATE OF SERVICE

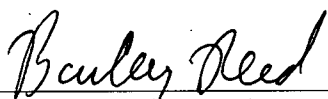
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Rufus Raiden, III, #358656 at Lee Correctional Institution, this 20th day of October, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of October, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021