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STATE OF SOUTH CAROLINA

APR 01 2015

IN THE COURT OF APPEALS

SC Court of Appeals

Appeal from Laurens County

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP HEATH HOLLINGSWORTH,

APPELLANT

APPELLATE CASE NO. 2014-000903

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion by admitting photographs of Appellant's highly tattooed shirtless body while in custody, as well as a photograph of the decedent's dead body on his living room floor as his dog watched in the background, and additional crime scene photographs of the pet, since none of these photographs were relevant to who shot the decedent, and even if the photographs were relevant, their probative value was substantially outweighed by their unfair prejudicial effect under Rule 403, SCRE?

STATEMENT OF THE CASE

On February 22, 2013, the Laurens County Grand Jury indicted Appellant for murder. R.* On April 7, 2014, Appellant's case proceeded to a jury trial before the Honorable Frank R. Addy, Jr. and a jury. Tr. 1. Appellant was represented by Chelsea McNeill and Claude H. "Chip" Howe, III. David M. Stumbo and O. Warren Mowry, Jr. represented the State. Tr. 1.

After a four-day trial, Appellant was found guilty. Tr. 688. Judge Addy sentenced Appellant to forty years imprisonment. Tr. 709.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial court abused its discretion by admitting photographs of Appellant's highly tattooed shirtless body while in custody, as well as a photograph of the decedent's dead body on his living room floor as his dog watched in the background, and additional crime scene photographs of the pet, since none of these photographs were relevant to who shot the decedent, and even if the photographs were relevant, their probative value was substantially outweighed by their unfair prejudicial effect under Rule 403, SCRE.

Relevant Facts

On November 7, 2012, Shayla Gaines was twenty-four years old and had been living with the decedent, Bill Ardis, at 67 Mercy Drive in Laurens County, South Carolina, for two years. Tr. 145. She was dating Appellant, who also lived with Ardis. Tr. 153.

Earlier that night, Appellant and Shayla's father had an altercation at Shayla's father's house in Greenwood County, and Appellant called the police. Tr. 165. The police responded but did not arrest anyone. Ardis picked up Appellant and Shayla from the CVS near Shayla's father's house. Tr. 166. According to Shayla, Ardis was angry because he had to drive from Laurens to Greenwood County and his tone towards Appellant was "hateful." Tr. 169.

When Ardis, Shayla, and Appellant arrived back at Ardis' residence, Appellant went into the bedroom that he shared with Shayla. Tr. 170, lines 20 – 24. Shayla and Ardis sat in the living room and started talking. Tr. 172, lines 18 – 20. After Appellant asked Shayla to come into the bedroom to talk, Shayla refused and continued talking to Ardis, who was "sitting in his blue recliner." Tr. 171, lines 1 – 11.

TABLE OF AUTHORITIES

Cases

State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (Ct. App. 2005)..... 7

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Rule 403, SCRE..... 3, 5, 7, 8

According to Shayla, Appellant walked in and out of the living room while she sat on the couch and talked to Ardis. Tr. 172. The third time Appellant walked into the living room, “he shot Bill from right behind the recliner” with a shot gun. Tr. 172, line 23 – Tr. 173, line 6.

Motion to Exclude Photographs

Prior to trial, defense counsel McNeil moved to exclude several photographs of the crime scene taken by SLED. Tr. 111. Counsel moved to exclude State’s Exhibit Number 2 (A close-up of Ardis’ dog sitting on the couch), State’s Exhibit Number 3 (Ardis’ dog sitting on the couch), State’s Exhibit Number 4 (Ardis’ dead body on the floor with the dog sitting on the couch watching), State’s Exhibit Number 34 (Appellant’s shirtless tattooed body in jail), and State’s Exhibit Number 35 (Appellant’s tattooed arm and chest in jail). Tr. 112 – 113. The photographs are on file with the Court.

Counsel argued that State’s Exhibit Numbers 2, 3, and 4, which were photographs of the living room and Ardis’ body lying on the floor, included the family pet. Tr. 120, lines 6 – 21. Counsel explained that admitting the photographs of the living room and Ardis’ body with the family dog in the background only had “emotional [and] prejudicial” value. Tr. 120, lines 20 – 21.

Defense counsel also argued that State’s Exhibit Numbers 34 and 35 are also prejudicial. Tr. 115, lines 24 – 25. Counsel explained that the photographs showed Appellant in custody with his shirt off and with multiple tattoos. Tr. 115, line 25 – Tr. 116, line 3. Although the State allegedly sought to enter the photographs to show bruising on Appellant’s shoulder, which the State alleged was from shooting the shotgun, counsel

contended that the photographs are “more prejudicial than probative.” Tr. 115, line 25 – Tr. 117, line 8.

Judge Addy disagreed with defense counsel’s arguments. The judge did not find that either photograph objected was “unduly prejudicial as to warrant its exclusion.” Tr. 117.

Closing Argument

During his closing argument, the Solicitor referenced the family dog in the pictures admitted into evidence. Specifically, the Solicitor stated

“[Y]ou see the little white dog there sitting on the couch . . . the dog didn’t move the entire time they were there, hours spent processing this crime scene, sitting on the back of that couch. If only dogs could talk, but they can’t and we know that. They can’t communicate to us . . .”

Tr. 630, lines 16 – 25.

Discussion

The trial court abused its discretion by admitting photographs of Appellant’s highly tattooed shirtless body while in custody, as well as a photograph of the decedent’s dead body on his living room floor as his dog watched in the background, and additional crime scene photographs of the pet. None of these photographs were relevant to who shot the decedent. Even if the photographs were relevant, their probative value was substantially outweighed by their unfair prejudicial effect under Rule 403, SCRE.

It is elementary that all evidence must be relevant to be admissible. Rule 402, SCRE. Relevant evidence is evidence having the tendency to make some matter in issue more or less probable. Rule 401, SCRE; State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); State v. Crocker, 366 S.C. 394, 408, 621 S.E.2d 890, 898 (Ct. App. 2005).

However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. In analyzing probative value, an appellate court “considers the importance of the evidence and the significance of the issues to which the evidence relates.” State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014); see also State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010).

To determine the prejudicial effect of offered evidence, an appellate court must look at the entire record. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). The result will generally turn on the facts of each case. Id. Before an appellate court reverses a case based on erroneous admission or exclusion of evidence, it must find error in the lower court’s ruling and prejudice resulting from that ruling. State v. White, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007).

Here, neither photograph that the State sought to introduce and the defense objected to was relevant to prove that Appellant committed the murder. Admitting photographs of a dead body lying on the floor with the family dog crouched in the background watching the body was certainly unduly prejudicial to Appellant. R. State’s Ex. 2; State’s Ex. 3; and State’s Ex. 4. The fact that the State referenced the photographs and the dog in closing argument encouraged the jury to make a decision on an improper emotional basis that the sad family puppy witnessed a horrible murder.

The photographs of Appellant in custody, shirtless, and highly tattooed were also unduly prejudicial to Appellant. R. State’s Ex. 34; State’s Ex. 35. The cinder blocked wall in the background made it evident that Appellant was in jail when the picture was taken. The number of tattoos suggests to some people a prior incarceration. Some people also consider a litany of tattoos as illustrating bad character or an association with disreputable

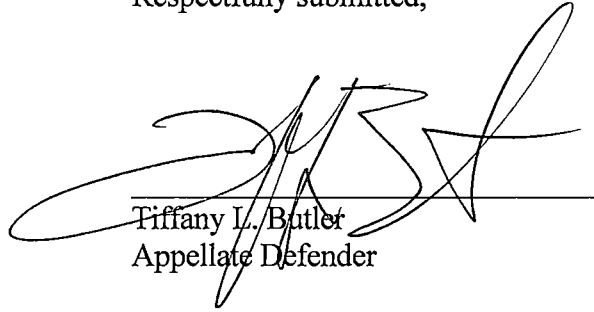
people. Rather than focusing on the alleged bruising on Appellant's shoulder, the jury was invited the judge Appellant based on his shirtless and tattooed appearance in the photograph.

Because the photographs defense counsel objected to invited the jury to decide Appellant's guilt using emotion rather than objectively evaluating the evidence presented at trial, which unduly prejudiced Appellant, the trial judge should have excluded the photographs.

CONCLUSION

For the reasons argued, Appellant Phillip Hollingsworth respectfully requests this Court to reverse his conviction and sentence and remand to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line. The signature is stylized and somewhat abstract.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of April, 2015.

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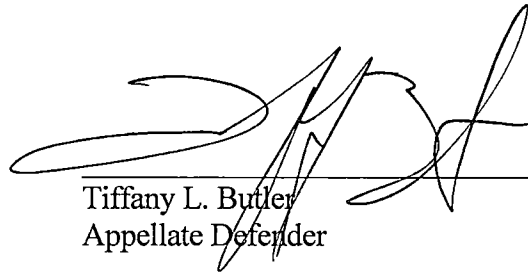
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PHILLIP HEATH HOLLINGSWORTH,

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CERTIFICATE OF SERVICE

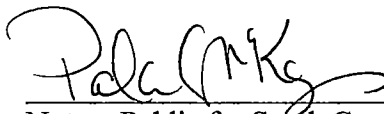
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of April, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of April, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022 .