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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

William P. Keesley, Circuit Court Judge

THE STATE, RESPONDENT,

V.

ALICIA ADDERLY, APPELLANT

APPELLATE CASE NO. 2015-000658

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in limiting appellant's cross-examination of the complainant regarding his difficulty paying child support when it demonstrated that he was biased and had a motive to fabricate his allegation that appellant attacked him?

STATEMENT OF THE CASE

On August 22, 2013, a Beaufort County grand jury indicted appellant for Criminal Domestic Violence of a High and Aggravated Nature. R. 344. On March 16, appellant was tried before the Honorable William P. Keesley and a jury. R. 1. Mary Concannon and Hunter Swanson represented the State. R. 1. Trasi Campbell represented appellant. R. 1. The jury convicted appellant of the lesser included offense of criminal domestic violence. R. 295, ll. 13 – 19. Judge Keesley sentenced appellant to thirty days' imprisonment to be served on weekends or around her work schedule. R. 301, l. 25 – 302, l. 14. This appeal follows.

ARGUMENT

The trial court erred in limiting appellant's cross-examination of the complainant regarding his difficulty paying child support when it demonstrated that he was biased and had a motive to fabricate his allegation that appellant attacked him.

Appellant and her husband Terrence Adderly ("Terrence") were separated. R. 72, ll. 13 – 24. On April 27, 2013, appellant took their children to a park to play. R. 29, ll. 10 – 22. They stopped at Golden Corral to get something to eat and on their way home, appellant's daughter saw Terrence at a car wash. R. 210, ll. 1 – 15. Appellant's son said he wanted to see his father, so appellant turned her car around and went to the car wash. R. 210, ll. 10 – 15.

Terrence came over to the car and spoke to his children. R. 210, ll. 19 – 25. Terrence was washing an unfamiliar car so appellant asked him who owned the car. R. 210, ll. 19 – 25. Terrence admitted it was his girlfriend's car. R. 211, ll. 1 – 8. Appellant got out of her car to get the tag number. R. 211, ll. 9 – 20. Appellant wanted proof that Terrence was cheating on her. R. 211, ll. 14 – 20.

When appellant walked to the car, Terrence pushed her. R. 212, ll. 10 – 19. Appellant told him to "keep his hands off me." R. 212, ll. 14 – 19. Terrence was wearing a chain with wedding bands that were important to appellant and she grabbed them from his neck. R. 212, ll. 14 – 23.

Terrence followed appellant back to her car. R. 212, l. 24 – 213, l. 5. Terrence broke her phone and when she tried to get in her car, Terrence pushed her down. R. 212, l. 24 – 213, l. 13. From the ground she crawled into her car and Terrence began choking

her. R. 213, ll. 7 – 13. She grabbed her children's T-ball bat and used it to defend herself. R. 213, ll. 7 – 13.

Appellant's daughter, Jonalisha Sanders ("Sanders") corroborated her mother's version of events. R. 188, l. 20 – 189, l. 9. She described Terrence kicking, pushing, and choking her mother when she reached for the bat to defend herself. R. 189, ll. 2 – 9. Terrence told appellant, "Bitch, I'm going to kill you," and, referring to the presence of their young son, "You lucky T. J. just saved your life." R. 189, ll. 5 – 9. A friend of Sanders, Idaisha Smith, also witnessed Terrence pushing appellant and threatening to kill her. R. 180, ll. 16 – 181, l. 4.

Terrence claimed that appellant was the aggressor. R. 77, l. 13 – 79, l. 23. According to Terrence, after snatching the chain from his neck, appellant walked back to her car saying, "Somebody give me a bat." R. 78, ll. 2 – 8. She came back towards Terrence at his car with the bat. R. 78, ll. 12 – 18. She started swinging, hitting him in his arms and face. R. 79, ll. 1 – 10. Terrence claimed he only grabbed her shoulders and walked her back to her car. R. 79, ll. 18 – 23.

A bystander, Rodney Shell ("Shell"), attempted to corroborate Terrence's version of events, but on re-cross-examination it was clear he was only repeating what he had heard during Terrence's testimony. R. 125, ll. 13 – 20. Trial counsel asked him, "What do you mean **he said** that was the last hit?" R. 125, l. 13 (emphasis added). Shell answered her question with his own question, "Wasn't that the last hit he got hit in the side of the face after he let his arms down." R. 125, ll. 13 – 15. When trial counsel asked him what he was talking about, Shell replied, "I mean, **that's what he's testifying**

that –" R. 125, ll. 16 – 17 (emphasis added). The witnesses were not sequestered. R. 28, ll. 11 – 22.

Terrence had several injuries. R. 132, l. 13 – 136, l. 10. He had contusions on his forearms. R. 133, ll. 20 – 21. He had a fractured pinky finger and a hairline sinus fracture. R. 134, ll. 14 – 19. He also had a cut lip that required stitches. R. 135, ll. 17 – 136, l. 7.

Terrence had physically and verbally abused appellant during their marriage. R. 215, ll. 12 – 22. Appellant's daughter testified regarding one incident. R. 193, ll. 2 – 7. Appellant found naked pictures of women on Terrence's laptop and when she confronted him, Terrence slammed her to the floor. R. 193, ll. 2 – 7. Terrence would often call her a "fat bitch" or "stupid." R. 193, ll. 18 – 20. R. 215, ll. 17 – 22.

During Terrence's cross-examination, appellant asked, "You were not providing any support whatsoever for [your children], correct?" R. 104, ll. 18 – 19. Terrence responded, "That's not correct," and the solicitor objected on the basis of relevance. R. 104, ll. 20 – 21. The trial judge asked appellant, "How is it relevant?" R. 104, l. 22. Appellant responded, "Well, it's relevant to the fact that there are other types of litigation going on between the two of them at this time and have been since 2013 over his support or nonsupport of the family." R. 104, l. 23 – 105, l. 4. The trial judge told appellant that she had not established a foundation for relevance and told the jury to disregard the witness's last statement. R. 105, ll. 2 – 7. Appellant pursued this line of questioning, but the trial judge again ruled it was not relevant. R. 105, l. 9 – 106, l. 11.

The trial court erred in limiting appellant's cross-examination of Terrence. The evidence was relevant as it showed Terrence's bias and motive to fabricate his allegation

that appellant was the aggressor. "'Relevant evidence' means 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." Rule 401, SCRE. The rules of evidence specifically allow evidence of other acts to show motive or intent. Rule 404(b), SCRE.

Impeachment for bias is allowed. Rule 608(c), SCRE. "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Id. In State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 818 (2001), the Court noted that Rule 608 preserves South Carolina precedent holding that generally "anything having a legitimate tendency to throw light on the accuracy, truthfulness, or sincerity of a witness may be shown and considered in determining the credit to be afforded his testimony." Terrence's credibility was critical in this case. See also State v. Brewington, 267, S.C. 97, 226 S.E.2d 249 (1976).

Prohibiting a criminal defendant from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness is error. State v. Pradubsri, 403 S.C. 270, 276-77, 543 S.E.2d 98, 102 (Ct. App. 2013) *quoting* State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). See also State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1984). The fact of Terrence's motive to have appellant charged with a crime to bolster his case in their marital and child support litigation is classic evidence of bias. The court erred in prohibiting appellant's cross-examination and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.

Respectfully submitted,

Susan B. Hackett for
David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

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THE STATE, RESPONDENT,

V.

ALICIA ADDERLY, APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alicia Adderly states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on March 18, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for Alicia Adderly.

Respectfully submitted,

Susan B. Hackett for
David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2016.

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."

January 13, 2016

Susan B. Hackett for

David Alexander
Appellate Defender

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