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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
Roger L. Couch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ASHLEY MARTIN

APPELLANT

APPELLANT CASE NO. 2015-001925

ANDERS BRIEF OF APPELLANT

ROBERT PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by admitting evidence that Appellant was physically abusive to Tiffany Mosier where Mosier testified on behalf of the State, the inadmissible evidence was not relevant, was improper character evidence under Rule 404 (a), SCRE, and even if it was relevant evidence, its probative value was substantially outweighed by unfair prejudice to Appellant?

STATEMENT OF THE CASE

On July 10, 2014, Appellant was indicted by the Cherokee County Grand Jury for tattooing of a person under the age of eighteen. R.* On September 3, 2015, Appellant's case proceeded to a jury trial before the Honorable Roger L. Couch. R. 1. Don A. Thompson represented Appellant. Christopher M. Bain represented the State. R. 1.

Appellant was found guilty as charged. R. 161. Judge Couch sentenced Appellant to one year imprisonment suspended to one year probation. R. 165. Appellant appealed her conviction and sentence. This brief follows.

STATEMENT OF FACTS

Amber Mosier and her boyfriend, Daniel Mosier were living with Tiffany Mosier, Daniel's sister, during April and May of 2014 in Cherokee County. R. 64, ll. 1 – 25. Appellant was in a romantic relationship with Tiffany Mosier and moved into the home during April and May 2014. R. 64, ll. 1 – 25. According to the State, Appellant gave Amber, who was seventeen years old at that time, two different tattoos. R. 42, ll. 3 – 5. Both tattoos were on her arms. R. 52, ll. 23 – 25.

Amber father, Gary Lynn Cook, saw the tattoos and filed a police report with the Gaffney Police Department. R. 51, ll. 1 – 23. Amber and Daniel both gave statements to police claiming Appellant tattooed Amber. However, Tiffany Mosier gave a statement that Daniel Mosier tattooed Amber, not Appellant. R. 67, l. 11 – R. 68, l. 13. Appellant denied giving Amber the tattoos.

At trial, Tiffany Mosier claimed that her original statement to police that Appellant did not give Amber any tattoos was a lie. R. 65, l. 21 – R. 66, l. 6. Tiffany claimed that Appellant forced her to lie to police. Specifically, Tiffany stated:

“She had threatened, basically she had threatened my life.”

R. 68, ll. 17 – 19.

“Basically, that if I didn't write the statement that I would not be, I would not be here right now. She had threatened my family, uh, uh, she just and then she just kept beatin' me until I decided to write it.”

R. 69, ll. 9 – 12.

The solicitor asked Tiffany:

“Were you and the defendant in an abusive relationship?”

R. 81, l. 14.

She responded:

“Yes, sir.”

R. 81, l. 15.

Tiffany further claimed:

“Every time me and her get into an argument and she’d always come and hit me in the back of the head, hit me pretty much everywhere. She punched me in my stomach, my my my back, my leg, everywhere.”

R. 81, ll. 19 – 22.

During Amber Mosier’s testimony, the solicitor asked:

“Alright. Now at any time did you see the defendant was she abusive.”

R. 98, l. 13.

Amber responded:

“Yes, sir.”

R. 98, l. 14.

Appellant’s stepmother, Leylonne Martin, testified on Appellant’s behalf. R. 111. Martin explained that Amber and Daniel Mosier both told her that Daniel gave Amber the tattoos. R. 114, l. 24 – R. 115, l. 24. Michelle Patterson, Appellant’s mother, stated that she witnessed Daniel giving Amber a tattoo while they were both living with Tiffany Mosier and Appellant. R. 123, l. 23 – R. 125, l. 6. Appellant exercised her right not to testify. R. 131, l. 14.

The solicitor used the testimony given by Tiffany Mosier and Amber Mosier of Appellant's alleged physical abuse in closing argument. R. 140. The solicitor argued:

“So let's spend a little bit a time on Tiffany Mosier's statement and I'll admit to you Tiffany admitted that she lied in this statement but you heard testimony that she was in an abusive relationship with the defendant, that she had been hit and she had nowhere else to go. Yeah, she might have been at the police department the day that she handed in the statement but so was the defendant and what does she do once she leaves the police station, police could protect her at that point, but where was she gonna go, said she had nowhere to go. She was scared, she was threatened, she was frightened so guess who she blamed, Daniel Mosier.”

R. 140, ll. 13 – 23.

ARGUMENT

The trial judge erred by admitting evidence that Appellant was physically abusive to Tiffany Mosier where Mosier testified on behalf of the State, the inadmissible evidence was not relevant, was improper character evidence under Rule 404 (a), SCRE, and even if it was relevant evidence, its probative value was substantially outweighed by unfair prejudice to Appellant.

The trial judge erred by admitting evidence that Appellant was physically abusive to Tiffany Mosier. The inadmissible evidence was not relevant and was improper character evidence under Rule 404 (a), SCRE. Even if it was relevant evidence, its probative value was substantially outweighed by unfair prejudice to Appellant.

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).

Unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Stephens, 398 S.C. 314, 320, 728 S.E.2d 68, 72 (Ct.App. 2012) (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (2008)); State v. Cheeseboro, 346

S.C. 526, 547, 552 S.E.2d 300, 311 (2001) (“Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.”).

Evidence of a defendant’s character is likewise not admissible to prove the accused possesses a criminal character. State v. Brown, 344 S.C. 70, 543 S.E.2d 552 (2001); State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). Under Rule 404 (a), SCRE “[e]vidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.”

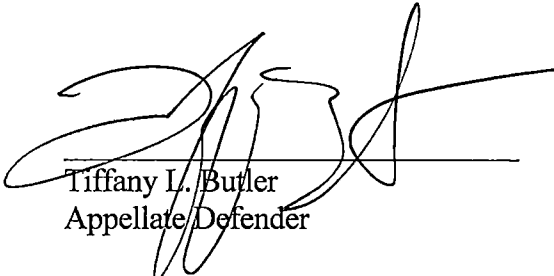
Here, the evidence that Appellant was physically and verbally abusive to Tiffany Mosier was not relevant and, therefore, inadmissible. Even if the evidence was relevant, any probative value that it had was substantially outweighed by its prejudicial effect to Appellant. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

Because the trial judge allowed the jury to hear this inadmissible and prejudicial evidence, the jury was invited to find Tiffany Mosier credible and Appellant guilty on the improper basis that Mosier was a victim of abuse and lied to police to protect her and her family due to Appellant’s violent character. The inadmissible and prejudicial evidence also encouraged the jury to determine Appellant’s guilt of unlawfully tattooing Amber Mosier based on Appellant’s alleged violent tendencies of coercion. Thus, Appellant was unduly prejudiced, and deprived of her right to a fair trial.

CONCLUSION

For the reasons argued above, Appellant Ashley Martin respectfully requests this Court to reverse her conviction and sentence and remand her case to the lower court for a new trial.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of April, 2016.

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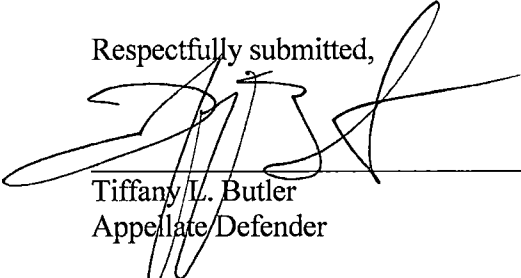
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ashley Martin 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 Roger L. Couch, which was held on September 3, 2015, 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 Ashley Martin.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of April, 2016.

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