

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

v.

RODNEY OBRYANT SAMUELS,

RECEIVED
OCT 10 2017
SC Court of Appeals
RESPONDENT

APPELLANT

APPELLATE CASE NO 2017-000495

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court abused its discretion in admitting into evidence photographs of Minor's autopsied liver where the danger of unfair prejudice substantially outweighed any probative value the photographs may have had because the cause of Minor's death was not in dispute at trial and the photographs were extremely graphic.

STATEMENT OF THE CASE

On April 30, 2015, the Saluda County Grand Jury indicted Appellant Rodney Samuels for homicide by child abuse under S.C. Code Ann. § 16-3-85(A)(1)(B)(1). R. 335 – 336.

On February 13-15, 2017, Appellant proceeded to trial before the Honorable J. Derham Cole and a jury. R. 1 -332. Steve Wayne Sumner and Erica Marie Soderdahl represented Appellant, and Solicitor Barry Joe Barnette represented the State. The jury found Appellant guilty as charged. R. 324, ll. 2-13. The trial court sentenced Appellant to life imprisonment. R. 330, l. 25 – 331, l. 10.

ARGUMENT

The trial court abused its discretion in admitting into evidence photographs of Minor's autopsied liver where the danger of unfair prejudice substantially outweighed any probative value the photographs may have had because the cause of Minor's death was not in dispute at trial and the photographs were extremely graphic.

Minor tragically died as a result of serious blunt force injuries to his liver sometime on the morning of January 3, 2015. R. 243, l. 3 – 252, l. 10. At the time of his death, Minor lived with his mother, Brittany Gentry, and his older half-brother. *Id.* Appellant is the father of Minor's half-brother. Minor's father was a man named "Andrew". R. 104, ll. 10-24. Appellant and Gentry were the only two adults with Minor during the "window of injury." The issue at trial was whether Appellant or Minor's mother inflicted Minor's fatal injuries. Minor's mother was never charged with a crime.

Relevant Facts

Appellant spent the night before Minor's death at Gentry's Saluda County apartment. R. 106, l. 17 – 123, l. 20. On the morning of Minor's death, Gentry went to a nearby store after Appellant asked her to buy him a cigar. She was gone approximately ten to fifteen minutes. *Id.*

At trial, Gentry claimed that Appellant asked her to go to the store to get him the cigar and that she had not initially intended to go shopping. *Id.* On cross-examination, she was forced to admit that she met with Minor's father Andrew on her way back from the store. *Id.* Reluctantly, Gentry further admitted that she begged Andrew to take custody of Minor as she could not afford to keep Minor. R. 123, l. 1 – 128, l. 21. Gentry also conceded that she did not initially mention meeting with Andrew to police. *Id.*

Andrew evidently refused to take custody of Minor, but did give Gentry an unknown amount of money. At the time of Minor's death, Gentry was under severe financial strain. She was losing her apartment and preparing to go live with her mother. There was no food in the

apartment. *Id.* After Gentry arrived back at her apartment, she spent an unknown amount of time alone in the car. While she was alone in her car, Appellant texted that Minor was “hollering” for her. R. 106, l. 24 – 109, l. 21.

When Appellant finally walked back into her apartment, she went to check on Minor. She recalled at trial that Minor appeared to be having a nightmare. *Id.* She shock Minor to wake him up. Gentry first told police that Minor appeared normal and responded to her in a way that “I took as mommy, well, mama.” R. 131, ll. 6-23. At trial, she changed her version of events and claimed that – while Minor was conscious and appeared alright – Minor did not fully wake-up. R. 106, l. 24 – 109, l. 21.

After this point, Gentry’s account becomes further confused as she inconsistently testified as to whether she checked on Minor once or twice more before preparing to shower for church. *Id.*; *see also* R. 128, l. 3 – 137, l. 21. She also first told police that when she checked on Minor either the first or the second time, she pulled Minor’s sheets down. *Id.* However, at trial she denied pulling Minor’s sheets down and stated that Minor remained covered in the bed. *Id.* If they had already been inflicted, Minor’s fatal abdomen injuries would have been readily apparent if Gentry had pulled down Minor’s covers.

Regardless, when Gentry left Minor to get ready, he appeared normal. *Id.* Throughout this time, Appellant stayed in the master bedroom and kitchen area. As Gentry was laying out her clothes for church and preparing to get in the shower, she heard a thud. Appellant and Gentry rushed into Minor’s room to find that he had fallen out of bed and was lying unresponsive on the floor. Gentry called 911 to request an ambulance, but Appellant believed that they could get Minor to the hospital faster if they took him directly rather than waiting for an ambulance to reach the rural apartment. *Id.*

Minor died at the hospital from the effects of severe blunt force trauma to his liver. R. 203, l. 1 – 207, l. 6. . Based on rigor mortis and Minor’s internal temperature, the pathologist concluded that Minor died between thirty minutes and twelve hours prior to arriving at the hospital. R. 189, l. 7 – 198, l. 12.

While being interrogated by the police, Appellant stated that, on the morning of Minor’s death, Minor came into Appellant’s bedroom and jumped on the bed. R. 243, l. 3 – 252, l. 10. As Appellant went to embrace Minor, he realized that Minor was wet – likely from having wet the bed – and reflexively pushed Minor away. *Id.*

Minor fell on to the floor, but appeared fine. After falling Minor stood up and walked back into his bedroom. *Id.* Appellant adamantly denied inflicting the fatal injuries on Appellant. Appellant repeated his version of events in a recorded telephone call while in pre-trial incarceration. It was not disputed at trial that Gentry was the last person alone with Minor and the last person to see Minor in apparent good health. *Id.*

At trial, the State sought to enter into evidence multiple pictures of Minor’s damaged liver following its being removal during the autopsy. R. 74, l. 24 – 76, l.8; R. 333 - 334. Defense counsel objected to photographs of Minor’s autopsied liver as “extremely graphic” and moved to suppress. *Id.* Defense counsel stated that the photographs would be cumulative to the testimony of the pathologist and would needlessly inflame jurors against Appellant. *Id.*

Defense counsel further argued that the cause of death was not in dispute and that jurors looking at the photographs would not better understand any disputed fact by viewing Minor’s liver. *Id.* The State conceded that the cause of death was not in dispute, but maintained that the photographs were necessary to help the pathologist explain Minor’s fatal injuries. *Id.* The trial

court denied the defense's motion to suppress the photographs of Minor's liver without further argument or elaborating on its reasoning. R. 76, ll. 9-13.

Discussion

The trial court abused its discretion in admitting the prejudicial photograph because the primary purpose of the photograph was to inflame the emotions of the jury and to establish that Appellant had a general sexually deviant disposition in violation of Rule 403, SCRE. *See State v. Lee*, 399 S.C. 521, 732 S.E.2d 22 (Ct. App. 2012).

A. Probative Value

Rule 403, SCRE, states that “[a]lthough 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.” A trial court has particularly wide discretion in ruling on Rule 403 objections. *See State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (“A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We ... are obligated to give great deference to the trial court's judgment [regarding Rule 403].” (internal citation omitted)). However, “[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are ... not necessary to substantiate material facts or conditions.” *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010). “[A] court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.” *State v. Collins*, 398 S.C. 197, 203, 727 S.E.2d 751, 754 (Ct. App. 2012).

In this case, the cause of Minor's tragic death was not in dispute. The severity of the injuries to Minor's liver were not in dispute. The contested issue at trial was whether Appellant

or Gentry inflicted the fatal injuries. Both were alone with Minor at various times when the the injuries could have been inflicted.

Photographs showing the damage to Minor's liver were simply not relevant to the State's case against Appellant. Furthermore, the pathologist testified as to the fatal injuries and how they were inflicted. R. 189, l. 7 – 207, l. 6. Thus, the probative value of the photographs were minimal at best because they added virtually nothing to the jury's ability to determine whether Appellant inflicted the injuries, and thus guilty of the crime charged. *See Torres*, 390 S.C. at 623, 703 S.E.2d at 228 (finding “[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are ... not necessary to substantiate material facts or conditions.”)

B. Danger of Unfair Prejudice

“The probative value of the photos must be balanced against ‘the danger of unfair prejudice.’ ” *Collins*, 398 S.C. at 207, 727 S.E.2d at 757. “Prejudice that is ‘unfair’ is distinguished from the legitimate impact all evidence has on the outcome of a case.” *Id.* “‘Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis.’ ” *Id.* (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)). “‘All evidence is meant to be prejudicial; it is only unfair prejudice which must be [scrutinized under Rule 403].’ ” *Id.* (quoting *Gilchrist*, 329 S.C. at 630, 496 S.E.2d at 429).

“Photographs pose a danger of unfair prejudice when they have ‘an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’ ” *Id.* (quoting *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009)). “Like probative value, unfair prejudice should be evaluated in the practical context of the issues at stake in the

trial of the case.” *Id.*; *See State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001) (“The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.”).

The photographs the State sought to enter into evidence were undoubtedly gruesome. R. 74, l. 24 – 76, l.8; R. 333 – 334. The State’s insistence on admitting them is particularly questionable given that the parties were able to agree to a number of evidentiary stipulations regarding matters collateral to the main issue at trial, such as limitations on introducing evidence of prior bad acts by Appellant and Gentry. R. 50, l. 2 – 61, l. 18.

As to the danger of unfair prejudice, the photographs of Minor’s severely damaged liver would cause a reasonable juror to draw an emotional response such as “an undue tendency to suggest a decision on an improper basis.” *See Holder*, 382 S.C. at 290, 676 S.E.2d at 697. Accordingly, the photographs were unduly prejudicial because the primary purpose of the photograph was to inflame the emotions of the jury. *See Lee*, 399 S.C. at 527, 732 S.E.2d at 25

Moreover, the added visual element provided by the photographs does far more to create a danger of unfair prejudice than it does to add probative value to the State’s case. Thus, the trial court abused its discretion in admitting the photographs of Minor’s liver. *See Collins*, 398 S.C. at 203, 727 S.E.2d at 754.

C. Harmless Error

The trial court’s error cannot be harmless for two reasons. First, the prejudicial photographs “lures the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief v. United States*, 519 U.S. 172, 180 (1997)). Second, the State’s case relied heavily upon the jury’s determination of Appellant’s credibility. *See Lee*, 399 S.C. at 525, 732 S.E.2d at 24.

Accordingly, the trial court abused its discretion in admitting the photographs of Minor's autopsied liver because the danger of unfair prejudice substantially outweighed the probative value of this evidence. Rule 403, SCRE.

CONCLUSION

For the foregoing reasons, Appellant Rodney Samuels respectfully requests that this Court reverse his forgery conviction and remand this case to the Saluda County Court of General Sessions for a new trial.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2017.

STATE OF SOUTH CAROLINA

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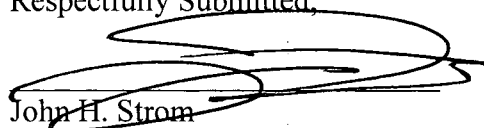
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rodney Obryant Samuels 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 J. Derham Cole, which was held on February 13 - 15, 2017, 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 Rodney Obryant Samuels.

Respectfully Submitted,


John H. Strom

Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2017.

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


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

- (1) True-billed indictment;
- (2) Transcript of February 13-15, 2017 Trial; and
- (3) State's Exhibits 27 - 28.

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

October 10, 2017


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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 10, 2017.



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CERTIFICATE OF SERVICE

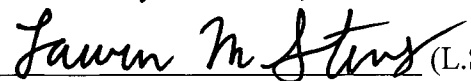
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Rodney Obryant Samuels, 348785, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 10th day of October, 2017.


John H. Strom

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2017.


Notary Public for South Carolina
My Commission Expires: July 5, 2027.