

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Anderson County

SC Court of Appeals

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM LAUREANO,

APPELLANT

Appellate Case No. 2012-210566

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the jury to hear testimony that appellant's wife divorced appellant on the ground of physical cruelty due to his prior criminal domestic violence conviction while appellant was on trial for the charge of aggravated criminal domestic violence because this constituted prejudicial prior crime evidence that could not have been deemed harmless error.

STATEMENT OF THE CASE

Appellant William Laureano was convicted of criminal domestic violence of a high and aggravated nature per jury trial held during the March 2012 term of the Anderson County General Sessions Court before Judge R. Lawton McIntosh. Appellant was sentenced to imprisonment for a period of eight years, suspended upon the service of four years and five years probation. Charles L. Anderson and Robert P. Lusk represented appellant at trial.

Appellant appealed his conviction and sentence. This appeal follows.

QUESTION I

The trial judge erred in allowing the jury to hear testimony that appellant's wife divorced appellant on the ground of physical cruelty due to his prior criminal domestic violence conviction while appellant was on trial for the charge of aggravated criminal domestic violence because this constituted inadmissible and prejudicial prior crime evidence that could not have been deemed harmless error.

The indictment lodged against appellant charged him with assaulting Miriam Laureano, who was his wife. At trial, Miriam Laureano and Rachael Laureano, who was appellant's and Miriam's daughter, testified as state witnesses. The remainder of the state's case included the testimony of police officers associated with the case. Killian Laureano, who was appellant's and Miriam Laureano's son, testified on behalf of the case for the defense. Appellant did not testify at trial.

Miriam Laureano testified that on February 2, 2010, she was leaving the house temporarily to get milk when appellant began arguing with her. Laureano stated that at one point during the arguing, appellant pointed a gun at her and threatened to kill her, and that he pushed her and slapped her face also. Then, Laureano stated that when appellant made his exit from the house, she and her daughter, and her daughter's two small children, all of whom were living at this residence, departed from the house, and that she reported the incident to police thereafter. R. 19, l. 4 – R. 42, l. 24. Appellant was arrested later on that same day.

Rachael Laureano Moore, who was present during this incident, testified that she could hear appellant pushing Miriam Laureano and "making threats to her." R. 73, l. 4-25; R. 75, l. 16-20.

Killian Laureano testified at trial and stated that he did not witness any fighting and did not see a weapon on the day in question. Killian also testified that he didn't see any marks or bruises on Miriam Laureano. R. 117, l. 20 – R. 132, l. 1.

Also at trial, Miriam Laureano gave the following prior crime testimony:

Defense Counsel: [the fighting] started three days before this incident? Ya'll just started arguing about everything?

Laureano: Well, he started as soon as he got out of jail the first time [this was presumably for the prior criminal domestic prior].

Defense Counsel: Objection, Your honor

Court: All right. Ladies and Gentlemen, anything that happened before this incident, I'm telling you to disregard that. That's not what this case is about. This case is about the current charges, the facts and circumstances surrounding these current charges and so I order that stricken from the record.

Defense Counsel: Thank you, Your Honor. R. 54, l. 14 – R. 55, l.1.

Defense Counsel: The action for divorce was filed in April of 2010. Does that sound about the time?

Miriam Laureano: Yes, it does.

Defense Counsel: So, that's about, basically, the months from when this incident occurred [February 2, 2010]. Is that correct?

Miriam Laureano: Yes.

Defense Counsel: Do you remember what the grounds were for this divorce?

Miriam Laureano: I think it was CDV, battery or ---

Defense Counsel: Does physical cruelty ring a bell?

Miriam Laureano: Yes.

Defense Counsel: Well, it happened so quickly because you alleged physical cruelty. Correct...

Miriam Laureano: I guess. R. 52, l. 18 – R. 53, l. 20.

Note that the actual divorce decree was entered into evidence as defense exhibit #1, which served to punctuate appellant's prior conviction indeed. R. 52, lines 16-17.

Evidence of a defendant's prior crime cannot be admitted to show that the accused is a bad person or has the propensity to commit the crime charged against him. State v. Martucci, 380 S.C. 232; 669 S.E.2d 598 (2008). A prior crime can only be admitted if used to establish motive, intent, absence of mistake, accident, identity, or common scheme or plan. State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (2013). Moreover, there is a heightened prejudice in admitting a prior crime that is strikingly similar to the one for which the accused is on trial because it suggests that appellant indeed had the propensity to commit the similar crime charged. State v. Colf, 337 S.C. 622; 525 S.E. 2d 246 (2000). Prior crime evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. State v. Spears, supra. Unfair prejudice results when there is an undue tendency to make a decision on an improper basis, and also prejudice comes into play when jury's verdict influenced by the challenged evidence. State v. Martucci, supra.

Clearly, appellant's prior criminal domestic violence conviction was made known to the jury. Therefore, based on this prior crime testimony in question, the jury knew that appellant committed at least one prior crime involving physical violence during the marriage and probably surmised that there were other multiple acts of physical violence committed by appellant in this regard. Armed with this information, the jury likely inferred that appellant was probably guilty of the offense of aggravated criminal domestic violence for which he was on trial based on his prior criminal domestic violence conviction. Herein lay the prejudice. Also, appellant was prejudiced by the prior crime evidence because it was not relevant or probative of proof of

whether he was guilty of the offense of aggravated criminal domestic violence for which he was on trial.

Because counsel was very aware of the prejudice of airing appellant's prior conviction for domestic violence, he moved prior to trial to have any such references excluded at trial. Counsel's pre-trial motion was presented as follows:

Defense Counsel: We also have a motion in limine asking the Court to instruct the Prosecution and any witnesses not to mention that Mr. Laureano has a prior record for a CDV from 2010, I believe.

The Court: Is that simple CDV?

Defense Counsel: CDV, first, yes, Your Honor.

The Court: And when is it?

Defense Counsel: 2010. I believe October of 2010. I can get that date for you.

Solicitor: Judge, I have a copy of his certified conviction and I'm, of course, not planning on introducing that. He has a prior CDV charge as well as two assault and battery convictions and, of course, unless he takes the stand or opens the door, I wasn't planning on introducing it.

The Court: Well, as far as that motion then, I'm going to grant the motion with regard to the prior record. Obviously, should the defendant take the stand, there may be some issue then. Also, if they open the door, there may be some issue then. R. 2, l. 22 – R. 3, l. 16.

Likewise, the prior crime evidence in question was not harmless error because the impact of the revelation of appellant's prior conviction on a crime that was nearly identical to the crime for which he was on trial certainly contributed to the jurors' guilty verdict rendered in the case. Error is harmless if it does not contribute to the jury verdict or could not have affected the result of the trial. State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985). The materiality and

prejudicial character of the error must be determined from its relationship to the entire case. State v. Mitchell, *supra*. Courts will not set aside convictions due to insubstantial errors not affecting the result because this is viewed as harmless, particularly when guilt has been conclusively proven by competent evidence such that no other rational conclusion could have been reached. State v. Martucci, *supra*.

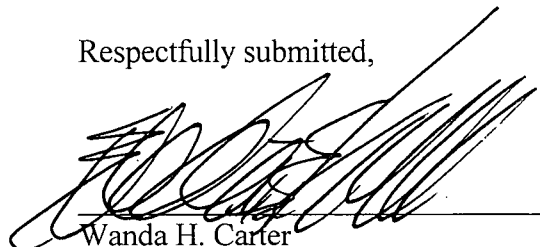
Here, this case boiled down to a swearing contest between the testimony of wife Miriam Laureano and their daughter versus appellant's son's testimony that Miriam's allegation of domestic violence did not in fact occur. Thus, there was no overwhelming evidence conclusively proving appellant's guilt in the case. Thus, the prior crime evidence was an error that was not harmless.

Hence, the prior crime testimony at issue in this case constituted prejudicial evidence that was not harmless error, which in turn denied appellant the right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that the Court reverse his conviction and sentence and remand his case to the trial court for a new proceeding.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of October, 2013.

STATE OF SOUTH CAROLINA
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R. Lawton McIntosh, Circuit Court Judge

THE STATE,

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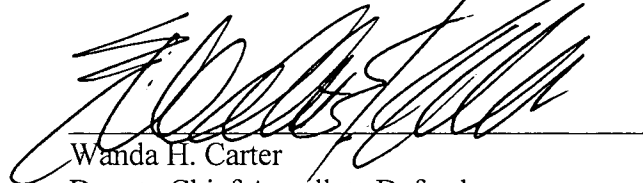
WILLIAM LAUREANO,

APPELLANT

Appellate Case No. 2012-210566

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of October, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of October, 2013.

 (L.S.)

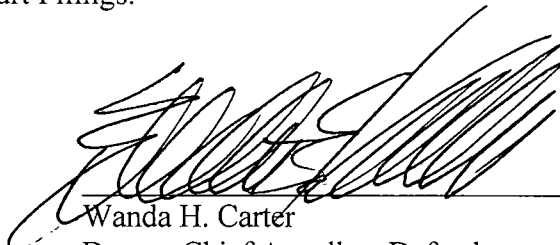
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 17, 2013



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