

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank R. Addy, Circuit Court Judge

Case No. 12-GS-30-1154
Appellate Case No.: 2013-000579

 ORIGINAL

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JUN 10 2014

SC Court of Appeals

State of South CarolinaRespondent,

v.

Richard Sylvester EvansAppellant.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	iii
Argument	1
I. Detective Rigott's Testimony Implicated Rule 404, SCRE, and Was Unduly Prejudicial	1
II. Photographs of Williams's Injuries Were Improperly Admitted.....	4
III. Admission of the Testimony regarding Evans's Nickname and the Photographs of Williams's Injuries did not Constitute Harmless Error	4
Conclusion	5

TABLE OF AUTHORITIES

State Cases

<i>State v. Brazell</i> , 325 S.C. 65, 480 S.E.2d 64 (1997)	4
<i>State v. Brooks</i> , 341 S.C. 57, 533 S.E.2d 325 (2000)	5
<i>State v. Day</i> , 341 S.C. 410, 535 S.E.2d 431 (2000)	3
<i>State v. Elders</i> , 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010).....	4
<i>State v. Gonzalez</i> , 360 S.C. 263, 600 S.E.2d 122 (Ct. App. 2004), <i>overruled on other grounds by State v. Gentry</i> , 363 S.C. 93, 610 S.E.2d 494 (2005).....	2
<i>State v. Mizzell</i> , 349 S.C. 326, 563 S.E.2d 315 (2002)	4

ARGUMENT

Respondent argues that the trial court did not err by allowing testimony from Detective Rigott regarding the nickname of Appellant Richard Evans ("Evans") for three reasons: (1) the testimony did not implicate Rule 404, SCRE; (2) if the testimony did implicate Rule 404, SCRE, it was admissible for the purpose of identifying Evans; and (3) Detective Rigott's testimony did not prejudice Evans. Furthermore, Respondent asserts that the admission of bloody photographs was relevant and not unduly prejudicial. Finally, Respondent argues that Evans's convictions should be upheld because the errors complained of on appeal constitute harmless error. For the reasons set forth in Evans's Initial Brief and the additional arguments below, Evans's convictions should be reversed and this case should be remanded for a new trial.

I. Detective Rigott's Testimony Implicates Rule 404, SCRE, and was Unduly Prejudicial.

Respondent argues that Detective Rigott's testimony as to how she knew Evans's nickname of "Chilly Pop" does not necessarily constitute evidence of Evans's prior bad acts. (Resp'ts Br. 6-7.) Specifically, Respondent argues that Detective Rigott's testimony that she knew Evans "in the community" does not inherently imply past wrongdoing and that "Chilly Pop" does not automatically connote prior bad acts.

With respect to the phrase "in the community," the only inference to be drawn from Detective Rigott's testimony is that she knew Evans from prior criminal investigations. When asked about her duties as an investigator with the City of Laurens Police Department, Detective Rigott told the jury that she investigated any and all crimes that are reported by the public or witnessed by law enforcement. (R. p. 119, lines 12-15.) Although Respondent provides the example of a detective who did charity work with

Evans would similarly testify regarding knowledge of Evans “in the community,” Detective Rigott only described her law enforcement duties as associated with investigating crimes. Thus, the only basis for her being able to identify Evans as “Chilly Pop” comes from knowledge of his prior bad acts, which directly implicates Rule 404, SCRE. *See State v. Gonzalez*, 360 S.C. 263, 269, 600 S.E.2d 122, 125 (Ct. App. 2004), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (stating that purpose of Rule 404 is to exclude evidence which implies “because this person is a bad guy or acted in a manner similar to this before, he is guilty”).

As such, the actual nickname is largely irrelevant to the analysis in this case as to whether Rule 404 applies. At the moment that Detective Rigott testified that she had prior knowledge of Evans from her dealings with him in the community, the Rule 404 concerns became apparent.¹

When analyzing Detective Rigott’s testimony under Rule 404, Evans concedes that Respondent was allowed to present testimony to identify him as “Chilly Pop.” However, as set forth in Evans’s Initial Brief, and contrary to the Respondent’s assertions, the victim, Dometry Williams, had already provided this testimony that was unchallenged on cross-examination. Williams first testified that “Richard Evans” was the individual in the store, and she then identified him from the witness stand. (R. p. 26, lines 24-25; R. p. 27, lines 11-25.) Subsequently, the State prompted Williams to provide Evans’s nickname. (R. p. 28, lines 3-6.) Again, the linkage of “Richard Evans” and “Chilly Pop” was not challenged on cross-examination. (R. p. 57, line 14-p. 61, line 25.)

¹ Even the trial court noted in his discussions with counsel outside the presence of the jury that the Solicitor should “tread very very lightly.” (R. p. 125, line 2.)

Accordingly, Detective Rigott's testimony as to how she knew someone by the nickname "Chilly Pop" was not necessary to identify Evans.

Perhaps more telling is that after the *in camera* hearing in which Evans's counsel moved for a mistrial, Respondent did not ask Detective Rigott the question to which the objection was originally made. Detective Rigott simply testified that she knew Richard Evans by the nickname of "Chilly Pop" and provided no further testimony as to *how* she knew Evans by that name. (R. p. 126, lines 10-20.) Detective Rigott's testimony as to the basis of her knowledge of Evans's nickname was certainly unnecessary to identify him, because the question was not repeated following the *in camera* hearing. Therefore, the testimony regarding Evans's prior bad acts was inadmissible under Rule 404 and *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000) (citing *Stevenson v. Texas*, 963 S.W.2d. 801 (Tex. App. 1998)). Although the nicknames "Outlaw" and "Chilly Pop" may have different connotations, the court's analysis in *Day* applies in this case, as the reference to the nickname was not used for any other purpose other than to attack his character and had no bearing on any facts in controversy. *See Day*, 341 S.C. at 422-423, 535 S.E.2d at 437-438.

Finally, with respect to the Rule 403 analysis, should the Court consider Detective Rigott's testimony as permissible identity evidence, Evans would again note that there was virtually no probative value to the prior bad acts testimony by Detective Rigott. The link between "Chilly Pop" and Evans had already been accomplished by Ms. Williams, and Respondent did not repeat the question to Detective Rigott as to how she knew Evans had the nickname "Chilly Pop."

II. Photographs of Williams' Injuries Were Improperly Admitted.

Evans would refer to the arguments set forth in his Initial Brief, which supports his position that these photographs were irrelevant and unnecessary to substantiate material facts or conditions. “[P]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” *Elders*, 386 S.C. at 483, 688 S.E.2d at 862 (quoting *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)).

In the present case, the fact that Evans used a knife during the attack, the manner in which Evans used the knife, and the severity of Williams's injuries were evident from the testimony of several witnesses and were not challenged on cross-examination. Accordingly, the photographs were not necessary to establish these facts. Assuming that the pictures contain something of probative value for the State's case, their minimal value fails to outweigh the prejudicial impact the photographs may have had on the jury. This Court should therefore reverse the decision of the trial court.

III. Admission of the Testimony regarding Evans's Nickname and the Photographs of Williams's Injuries did not Constitute Harmless Error.

“Harmless beyond a reasonable doubt means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt.” *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). This is a substantial burden for the Respondent. “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” *Id.* (Internal quotation marks omitted). The harmless error analysis requires the Court to look at the other evidence admitted at trial to determine whether the defendant's guilt is conclusively proven by competent evidence, such that no other rational conclusion could

be reached. *See State v. Brooks*, 341 S.C. 57, 62–63, 533 S.E.2d 325, 328 (2000) (internal quotation marks omitted).

In this case, while certainly acknowledging that Respondent offered other evidence of guilt against Evans, Appellant respectfully submits that the Respondent cannot establish that the jury's verdict in this case was not reasonably affected by the knowledge that Evans had prior criminal involvement with the Lauren's Police Department and by the improperly admitted photographs of Williams's injuries.

Conclusion

For the reasons stated in his Initial Brief and the arguments set forth herein, Appellant respectfully requests that his convictions be reversed and that this case be remanded for a new trial.

Respectfully submitted,

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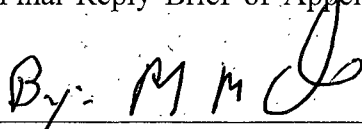
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

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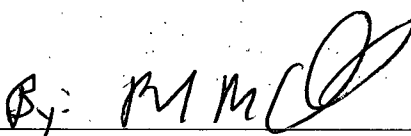
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PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Respondent State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 10, 2014 addressed to its attorney of record, Jared Q. Libet, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.

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