

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
The Honorable Clifton Newman., Circuit Court Judge

Appellate Case No. 2018-001419

RECEIVED
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SC Court of Appeals

THE STATE,

Respondent,

v.

TYREECE RAHEAM STOKES,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge properly admitted knives found on or near Appellant's person into evidence when the knives' probative value was not substantially outweighed by the danger of unfair prejudice when the knives matched the description given by the victim, Nikia Pitts, of the knives used by Appellant?

II.

Whether the trial judge properly charged the jury on ABHAN as a lesser included offense of attempted murder where evidence was presented to the jury from which they could infer that Appellant lacked the specific intent to kill the victim?

STATEMENT OF THE CASE

In March 2017, the Dorchester County Grand Jury indicted Appellant for one count of attempted murder and one count of armed robbery. On July 23-25, 2018, a jury trial was held in the Dorchester County Court of General Sessions with the Honorable Clifton Newman presiding. Appellant was represented by Assistant Public Defenders Pierce Wehman, Esq. and Michelle Williams, Esq. The State was represented by First Assistant Solicitor Donald Sorenson and Assistant Solicitor Ryan Templeton of the First Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of armed robbery and the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). Following the verdict, the trial judge sentenced Appellant to a term of twenty-five years' imprisonment for armed robbery and twenty years' imprisonment for ABHAN. The sentences ran concurrently with each other resulting in an aggregate sentence of twenty-five years' imprisonment. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On September 1, 2016, Nikia Pitts arrived home from the grocery store with her four children. (R. 72, 203). Pitts and her family had recently moved into her home in the Robynwyn subdivision of Summerville about two months before the date of offense. (R. 202). After preparing herself an alcoholic drink, Pitts stepped outside to speak with her eldest daughter's father about a surprise birthday party for her daughter. (R. 203-04). Pitts sat in the driver's seat of her car while planning the birthday party. While sitting in her car and smoking a cigarette, Pitts observed a young, black male walk directly in front of her townhome. (R. 207). Pitts had seen this young man walking through her neighborhood before and she recognized his face. Pitts described the man as a tall, slim, black man with dreadlocks in his hair and a deep voice. (R. 211). Pitts speculated that she had seen the young man approximately six times before that night. (R. 212). Pitts usually observed the young man walk around the cars in her driveway and go down a path into the woods. However, on this particular night, the young man walked in front of Pitts' home and turned to look at her. (R. 207).

Approximately one minute later, the young man approached the driver's side door with two knives crossed in his hand. One knife was described as "a thick butcher knife that came to a point." (R. 207, lines 24-25). The other knife was described as "a steak knife that you would see like in a restaurant or something like that." (R. 208, lines 1-2). The young man demanded that Pitts hand over her purse. Pitts complied with his command and allowed him to take her purse as well as her phone. (R. 208). Pitts' phone and purse were never recovered. (R. 345). After taking the items from Pitts, the young man then stabbed Pitts in her face and chest. (R. 208-09). The young man left the steak knife lodged in Pitts' chest and then he went into the woods and left the area. (R. 209). Pitts noticed the knife handle had broken off during the attack, but the blade of the

steak knife remained in her chest. Pitts removed the blade and threw it on the ground. (R. 210). The knife blade was later collected by law enforcement. (R. 276). Pitts went inside her home and told her children to call the police. Pitts last remembered going into her bathroom to wash the blood off of her face before she blacked out. (R. 210). Pitts remembered briefly waking up on a stretcher and seeing blue lights but she lost consciousness shortly thereafter. (R. 215). Pitts recalled next waking up in the hospital two to three days later. (R. 215).

Pitts was taken to the Medical University of South Carolina hospital in Charleston. Pitts was admitted to the Intensive Care Unit where it was determined by Dr. Douglas Norcross that the knife wound in her face cut through the bone socket around her left eye and penetrated into her brain. (R. 245-49). Pitts was given a dose of Fentanyl on the way to the hospital and a second dose when she arrived at the hospital. (R. 250-51). Shortly after she arrived at the hospital, Pitts was shown a photo lineup on a cell phone by Officer Leta Boehler of the Summerville Police Department. Boehler testified that Pitts identified her assailant as either the first or second picture in the lineup. (R. 144-45). Appellant's picture was the third picture in the lineup. (R. 145). Pitts could not remember being shown any photo lineup prior to September 6, 2016. (R. 217). On September 6, 2016, Detective Michael Weaver of the Summerville Police Department showed a photo lineup to Pitts at her home. The lineup used by Weaver was the same lineup shown to Pitts in the hospital. Pitts identified Appellant as her attacker. (R. 219-21, 316-17). Pitts admitted that her sister had shown her a picture of Appellant prior to September 6, 2016, but that it was not the same picture in the lineup presented to her by law enforcement. (R. 219-21).

Following Pitts' identification of Appellant, Weaver drafted an arrest warrant for Appellant. (R. 317). On September 7, 2016, Weaver and other officers began to search for Appellant at a residence he was known to frequent. Appellant was found hiding in the woods

behind the residence. (R. 283). When Appellant was found, he was laying on his stomach beside a ditch. (R. 283, 286). Law enforcement arrested Appellant and searched him incident to that arrest. A butcher knife was found in Appellant's right pocket while a steak knife was found within arm's reach of Appellant. (R. 286, 294). According to Weaver, when Appellant was arrested he matched the physical description given by Pitts and he had a deep voice. (R. 319). Both knives were entered into evidence at trial over Appellant's objection. (R. 284). No DNA or fingerprints were obtained from the knives. (R. 298-99).

At the conclusion of trial, the trial judge instructed the jury on the offenses of armed robbery, attempted murder, and the lesser included charge of ABHAN. The jury returned guilty verdicts on armed robbery and ABHAN.

STANDARD OF REVIEW

I.

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

II.

“The evidence presented at trial determines the law to be charged to the jury.” State v. Gilliland, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012). “An appellate court will not reverse the trial judge’s decision regarding a jury charge absent an abuse of discretion.” State v. Commander, 396 S.C. 254, 270, 721 S.E.2d 413, 421-22 (2011). “An abuse of discretion occurs when the [trial] court’s decision is unsupported by the evidence or controlled by an error of law.” State v. Garris, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011). “The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense. State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014).

ARGUMENT

I.

The trial judge properly admitted knives found on or near Appellant's person into evidence when the knives' probative value was not substantially outweighed by the danger of unfair prejudice because the knives matched the description given by the victim, Nikia Pitts, of the knives used by Appellant.

Appellant argues the trial judge erred by admitting the knives found on Appellant because they were irrelevant to any fact at issue. Furthermore, Appellant claims that even if the knives were relevant evidence, the trial judge erred by admitting them because their probative value was outweighed by their prejudicial effect. Appellant's argument is without merit. The knives were relevant because they matched the description of the knives given by Pitts and thereby made it more probable than not that Appellant was the person who robbed and assaulted Pitts. Thus the knives held probative value because of their similarity to the knives used during the robbery. This probative value was significant enough that it was not substantially outweighed by the danger of unfair prejudice.

“‘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. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403 SCRE. “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 decision on an improper basis.” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)). “All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided.” Id. “A trial judge’s decision regarding the comparative probative value and prejudicial effect of

evidence should be reversed only in exceptional circumstances.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

Here, Pitts testified that Appellant threatened her with a butcher knife and a steak knife. (R. 75). Only the steak knife was used to stab Pitts and it was left lodged in Pitts’ chest (R. 75-76). Because Appellant left the steak knife at the scene of the crime, it was undisputed that the steak knife found by law enforcement when Appellant was arrested was not the same knife used during the robbery. (State’s Exhibit #20) While neither knife was forensically linked to Appellant via DNA or fingerprints, both knives matched the description of the knives used during the robbery. (State’s Exhibits #17, #19, #20, R. 75). Furthermore, Pitts inspected the butcher knife that was recovered from Appellant’s pocket and testified it was consistent with the knife Appellant wielded on the night of the robbery. (State’s Exhibit #17, R. 212). Accordingly, the only eye witness to the crime identified one of the knives as being consistent with the weapon used by Appellant. Additionally, a kitchen knife and a butcher knife are unique items for an individual to carry. Indeed, as the solicitor noted in his closing argument, most individuals carry pocket knives, not steak knives or butcher knives. (R. 420). The unique nature of the knives found on Appellant’s person add to the probative weight of the knives. Therefore, the knives were relevant and contained significant probative value.

All evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant. If it were not prejudicial, it is unlikely the State would use it. However, it is the danger of unfair prejudice that must be avoided; not prejudicial evidence in general. Here, the knives were not unfairly prejudicial. That Appellant was arrested with two kitchen knives that are not commonly carried by the general public and just so happened to match the description of the knives given by the lone eye witness to the crime was unfortunate for Appellant. However

introducing that evidence was not unfair to Appellant. The knives were offered into evidence because of their similarity to the knives used during the robbery, not to show that Appellant was a bad person for carrying knives. Carrying knives is not illegal and does not suggest Appellant had a criminal history or a propensity for violence.

The facts of this case are distinguishable from the primary case cited by Appellant. In State v. Elders, this Court ruled that it was an abuse of discretion for the trial judge to admit four knives found in Elders' belongings two days after the crime was committed. State v. Elders, 386 S.C. 474, 486, 688 S.E.2d 857, 864 (Ct. App. 2010). However, unlike the facts in the present case, "none of the witnesses specifically testified that the knives were similar to the knife used to commit the crimes." Elders, 386 S.C. at 486, 688 S.E.2d at 863-64. Here, the victim and only eye witness to the crime specifically identified one of the knives as being similar to the one used in the crime. (R. 75, 207). Indeed, the trial judge appropriately noted this distinction in his ruling on the knives' admissibility. (R. 189-90). That Appellant was found hiding in the woods with a kitchen knife on his person was a relevant fact for the jury's consideration.

Even if this Court determines that the knives were unfairly prejudicial to Appellant, their probative value was not substantially outweighed by the danger of unfair prejudice. The knives matched the description given by Pitts and were of such a unique nature that their probative value was significant. Therefore, what little danger of unfair prejudice the knives posed to Appellant was not significant enough to substantially outweigh their probative value. Thus, the trial judge did not abuse his discretion in admitting the knives into evidence. Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly charged the jury on ABHAN as a lesser included offense of attempted murder because evidence was presented to the jury from which they could infer that Appellant lacked the specific intent to kill the victim.

Appellant argues the trial judge erred by instructing the jury on ABHAN as a lesser included offense of attempted murder. Specifically, Appellant argues the instruction was improper because Appellant's defense was one of misidentification. Appellant's argument lacks merit. The trial judge properly charged the jury on ABHAN because there was evidence in the record from which the jury could conclude that Appellant was guilty of ABHAN and not attempted murder. The jury heard evidence about how Appellant inflicted a serious injury on Pitts by stabbing her in the face and chest. However, the jury was free to conclude Appellant lacked the specific intent to kill Pitts and merely intended to injure her. Appellant's defense of misidentification is irrelevant as to whether the trial judge should charge a lesser included offense. A trial judge is required to charge a jury on a lesser included offense if there is evidence to support the lesser charge. The defense presented by Appellant has no bearing on that consideration. If Appellant's argument were followed to its logical extreme, a defendant could object to a lesser included offense being charged regardless of the evidence presented at trial as long as they presented a defense of misidentification.

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense. Sams, 410 S.C. at 308, 764 S.E.2d at 513. "A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code

Ann. § 16-3-29. “[A] specific intent to kill is an element of attempted murder as codified in section 16-3-29.” State v. King, 422 S.C. 47, 56, 810 S.E.2d 18, 22 (2017): “The highest possible mental state for criminal attempt, specific intent, is necessary because criminal attempt focuses on the dangerousness of the actor, not the act.” King, 422 S.C. at 56, 810 S.E.2d at 22-23 (quoting 22 C.J.S. Criminal Law Substantive Principles § 156, at 221-22 (2016)).

“Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder, as defined in Section 16-3-29.” S.C. Code Ann. § 16-3-600(B)(3). The offense of ABHAN is defined as follows:

(B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) great bodily injury to another person results; or

(b) the act is accomplished by means likely to produce death or great bodily injury.

S.C. Code Ann. § 16-3-600 (B). Further, the statute defines “great bodily injury” as “bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.” S.C. Code Ann. § 16-3-600 (A)(1).

Here, the State presented evidence that Pitts was robbed and assaulted outside her home while she was talking on the phone with her child’s father. (R. 208-09). The jury heard that Pitts’ suffered a knife wound to her chest and to her eye that penetrated into her brain. (R. 245-49). Pitts’ injuries were severe enough for her to be admitted to the intensive care unit in the hospital. (R. 249). This evidence was sufficient for a jury to determine that Appellant attempted to murder Pitts. However, in order to prove attempted murder the State also had to prove Appellant had the specific intent to kill Pitts. Other than the violent nature of Appellant’s attack and his statement

that he didn't "give an F" about Pitts' kids, there was little evidence presented to prove Appellant had any express malice toward Pitts or otherwise specifically intended to kill her. (R. 208). In fact, Pitts testified Appellant turned to look back at her before he fled the scene. (R. 209). Presumably, Appellant could see that Pitts was still alive and yet he chose to depart the scene rather than continuing to stab her. Ultimately, the jury found the State failed to prove a specific intent to kill when they acquitted Appellant of attempted murder. Even though the State failed in to prove the element of specific intent, there was still evidence from which the jury could infer Appellant was guilty of ABHAN.

Pitts was stabbed in the chest and face by Appellant and Pitts suffered great bodily injury as a result. Pitts detailed the problems her eye injury caused her such as blurry vision, dry eyes, and headaches. (R. 222). Accordingly, Pitts' eye injury resulted in a protracted impairment of her eye which thereby met the statutory definition of great bodily injury. However, even if the jury determined Pitts did not suffer great bodily injury, there was still evidence presented that the assault was accomplished by a means likely to produce death or great bodily injury. Certainly stabbing a person in the face and chest is an act that is likely to cause death or great bodily injury. Therefore, in the absence of a specific intent to kill, there was still evidence that Appellant unlawfully injured Pitts and great bodily injury resulted or could have resulted. Because the evidence presented allowed the jury to infer that ABHAN was committed rather than attempted murder, the trial judge was required to give the jury an ABHAN instruction.

Appellant asserts an ABHAN instruction was improper in light of the defense of misidentification presented by Appellant. Appellant's misidentification defense is not relevant to an analysis of whether a lesser included instruction should be given. The trial judge's charging decisions should be based on the evidence presented at trial and not on the defense presented.

“The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense. Sams, 410 S.C. at 308, 764 S.E.2d at 513. If a trial judge were prohibited from instructing the jury on a lesser included offense every time a defendant presented a defense of misidentification, the aforementioned rule from Sams would be meaningless. A defendant would merely have to claim that someone else committed a crime to inoculate himself from the jury being instructed on lesser included crimes that he may be guilty of. This would be an absurd result.

Finally, even if this Court agrees with Appellant on this issue, the appropriate remedy would be to reverse and remand for a new trial on ABHAN only. This issue has no bearing on Appellant’s remaining conviction for armed robbery. Appellant’s convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the sentences and convictions of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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