

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002265

THE STATE,

Respondent,

v.

MARREESE JAMAUL FRIPP,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not err or abuse his broad discretion in admitting evidence that Appellant physically abused children other than the victim because it falls within the common scheme or plan exception for which 404(b) evidence can be used.

STATEMENT OF THE CASE

Appellant was indicted in July of 2016 for unlawful neglect of a child by Beaufort Grand Jury. A pretrial hearing was held on December 17, 2017 in front of the Honorable Carmen T. Mullen. The State was represented by Assistant Solicitor Dustin Whetsel. The Appellant was represented by Assistant Public Defender Jessica Saxon. Appellant proceeded to a jury trial before the Honorable Thomas A. Russo from December 10-13, 2018, in Beaufort, South Carolina. At the jury trial the State was represented by Assistant Solicitors of the Fourteenth Circuit Solicitors' Office, Rebekah Luttrell and Jacob McFadden. Jessica Saxon and James Bell represented the Appellant. At the conclusion of the trial, the jury found Appellant guilty of unlawful neglect of a child. Judge Russo sentenced him to six years' imprisonment.

STATEMENT OF FACTS

On December 23, 2015, ten year old minor child (Victim) was spending time with his Godmother Bessie Hugee. (R. 131). While Victim was at her house, Hugee noticed some bruises on Victim's stomach. (R. 259). When Hugee prompted Victim about where the marks on his stomach came from, he informed her that he had been beaten. (R. 259). On December 25, 2015, Mack Williams, Victim's biological dad, came to pick up Victim. Hugee informed Williams that he needed to check Victim before he left. (R. 153). Victim lifted his shirt and there was a U-shaped mark on his stomach. (R. 153). Victim's brother (Brother 1) is a minor child who is also the biological child of Mack Williams. (R. 152). Brother 1 informed Williams that Victim had gotten the mark from a beating from their stepdad, Marreese Fripp. (R. 153). Williams then took the children to the Beaufort County Sheriff's Office. (R. 154). Amanda Dimitrov was the reserve deputy sheriff with whom Williams and Victim spoke. (R. 144). Victim showed Dimitrov the marks on his stomach and when asked what caused the injuries he indicated that his "daddy" did. (R. 149). Dimitrov clarified that "daddy" was Appellant, Marreese Fripp, with whom the Victim lived. (R. 149). Dimitrov took pictures of Victim's bruises and scarring on his stomach. (R. 149).

On December 29, 2015, Investigator Jason Malphrus, accompanied by Sergeant Andrew Rice, went to interview Hugee. (R. 274). Hugee informed Malphrus that she saw the bruises, asked Victim where they came from, and notified Williams when he arrived. (R. 275). Hugee further explained to Malphrus that Victim stated "daddy hit me with a belt." (R. 275). Hugee knew "daddy" to be Appellant.

On December 31, 2015, Corporal James Tunis, a patrol deputy for Beaufort County Sheriff's Office, responded to a complaint at the residence of Latoya Fripp. (R. 241). Fripp stated that her son (Victim) had recently returned home from Williams's house, where he had told

Williams that he was being abused. (R. 241). She stated this was not the case and that Victim had received the marks on his stomach from spilling hot soup on himself about a week before Christmas. (R. 241). Fripp told Tunis that she had taken Victim to the doctor for the burn injury, however there was no record found for the visit. (R. 277). Fripp also informed Investigator Malphrus of the hot soup incident, however she varied from her previous statement placing the incident around November rather than a week before Christmas. (R. 276). While on scene Tunis interviewed Appellant, who told Tunis he was active in disciplining the children, but did not hit them. (R. 242).

Malphrus scheduled a forensic interview of Victim for January 12, 2016. (R. 279). The forensic interview could not be completed that day because it is against protocol to interview a child that is accompanied by the alleged abuser. (R. 279). A forensic medical exam was conducted that day by Kristin Dalton. (R. 203). During the exam Dalton discovered a rectangular shaped mark on Victim's stomach. (R. 213). Victim explained to Dalton that he spilled hot soup; however in Dalton's expert opinion this mark was not consistent with a burn mark. (R. 217). She concluded that it was a classic looped mark consistent with an extension cord, ropes or belts with the ends folded together. (R. 217). Dalton also found injuries to the buttocks and back of the thighs. (R. 220). When she asked how those injuries were obtained, Victim told her he was whipped with a belt by Appellant before Christmas. (R. 222). Dalton stated marks similar to the Victim's lasting three weeks or longer is an indicator of how severe the injuries originally were. (R. 222). Forensic interviews and medical exams were scheduled for the other children living in the house because it is protocol to interview others living in an allegedly abusive household. (R. 67). Dalton conducted medical exams on the other three children living in the house, minor sister (Sister), Brother 1, and minor brother (Brother 2). (R. 224). Brother 1 and Brother 2 both had

scars similar to those found on Victim. (R. 229). Brother 1 disclosed in his interview that his marks came from being beaten with a belt and extension cords by his father, Appellant. (R. 229). All of the children recanted their original statements on the stand. They either did not remember what they said or gave the story of the accidental soup spill. (R. 160-173, 329-336, 340-353.)

The State offered the injuries and testimony from the Victim's siblings as 404(b) evidence to show that all the children were abused in the same place and manner to show a common scheme or plan. Defense objected stating that it was being offered to show Appellant's bad character and was inadmissible under Rule 404(b) SCRE. Defense also argued that the evidence was unfairly prejudicial to Appellant pursuant to Rule 403. The trial judge ruled the testimony fell under the 404(b) exception of the existence of a common scheme or plan, or absence of mistake or accident. (R. 124). At the end of trial, Appellant was convicted of unlawful neglect of a child.

STANDARD OF REVIEW

“In criminal cases, the Appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48 625 S.E. 2d 216, 220 (2006). “A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law.” *Id.* “If there is any evidence to support the admission of bad act evidence, the trial judge’s ruling cannot be disturbed on appeal.” State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008).

ARGUMENT

The trial judge did not err or abuse his broad discretion in admitting evidence that Appellant physically abused children other than the victim because it falls within the common scheme or plan exception for which 404(b) evidence can be used.

Appellant contends that the trial judge erred in admitting evidence of injuries and the testimony of Victim's siblings, where Appellant was being tried for a similar charge involving Victim. Specifically, Appellant believes that the injuries and testimony of the Victim's siblings were inadmissible under Rule 404(b) as it merely showed bad character and that Appellant had the propensity to commit the crime for which he was being tried. Appellant further contends that even if allowed, this evidence was substantially prejudicial to Appellant pursuant to Rule 403. Appellant's argument lacks merit because the other children's injuries and testimony are admissible as common scheme or plan, an exception to the Rule 404(b), and further the evidence's probative value significantly outweighed any risk of unfair prejudice.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may however be admissible to show motive, identity, the existence of a common scheme or plan, absence of mistake or accident, or intent." Rule 404(b), SCRE. "To be admissible, a bad act must logically relate to the crime with which the defendant has been charged." State v. Fletcher, 379 S.C. 17, 23, 664 S.E. 2d 480, 483 (2008). "If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." *Id.* Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE.

"When there is a close degree of similarity between a charged crime and a prior bad act, evidence of the prior bad act is admissible to demonstrate a common scheme or plan." State v.

Cope, 405 S.C. 317, 337, 748 S.E. 2d 194, 204 (2013). “When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity.” State v. Clasby, 385 S.C. at 155, 682 S.E. 2d at 896 (2009). “A close degree of similarity exists between prior bad acts and the charged offense when the similarities outweigh the dissimilarities.” State v. Scott, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (2013). “A common scheme or plan involves more than the commission of two similar crimes; some connection between the two is necessary.” State v. Tutton, 354 S.C. 319, 326, 580 S.E.2d 186, 189. (Ct. App 2003). “A close degree of similarity establishes the required connection between the two acts and no further ‘connection’ must be shown for admissibility.” State v. Wallace, 384 S.C. 428, 434, 683 S.E.2d 275, 279. (2009). “In making similarity determination between prior acts evidence and the charged offense, focus is placed upon whether each particular bad act evidence is sufficiently similar to the crime charged, not whether the different bad acts are sufficiently similar to each other.” State v. Scott, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (2013)

In Appellant’s case, the trial judge did not abuse his discretion by admitting evidence of abuse towards Victim’s siblings because the evidence was not introduced to show the propensity of Appellant to commit the crime, but to show a common scheme or plan by Appellant. The State did not introduce evidence of the abuse towards Victim’s siblings to show the bad character of Appellant, but was introduced to show that the abuse was done by the same person, in the same household, in the same manner and in the same place. In this case, Appellant was charged with unlawful neglect of a child. To convict the Appellant, the State had to prove that Appellant did unlawfully or maliciously cause any bodily harm to the child so that the life or health of the

child was endangered, or likely to be endangered. SC CODE § 63-5-70 (2012). The Victim had a u-shaped mark on his stomach which he initially stated to be caused by a “beaten from Daddy.” Victim later changed his statement to say the mark was caused by spilling hot noodle soup. Victim also had marks on the back of his legs consistent with being beaten with a belt. The State introduced testimony from Victim’s siblings that Appellant would frequently beat them with a belt. The State also introduced evidence of marks, similar in appearance, located in the same areas on the Victim’s siblings as those of the Victim.

In State v. Adams, the trial court admitted Appellant’s stepdaughter’s testimony of sexual assault because it mirrored the victim’s testimony and was held to have fallen into the common scheme or plan exception. State v. Adams, 332 S.C. 139, 504 S.E. 2d 124 (Ct. App. 1998). The court further held that the proof of one tended to prove the other and the close similarity of the other bad act evidence to the charged offense, enhanced the probative value so that it outweighed the prejudicial effect. *Id.* In this case, the evidence of the Victim’s siblings’ injuries and testimony easily follows the “connection standard” set out in Wallace, but it is also sufficient under the standards before Wallace. In State v. Tutton, the incident involved defendant rubbing and touching a minor’s private parts. State v. Tutton, 354 S.C. 319, 326, 580 S.E.2d 186, 189 (Ct. App 2003). The State attempted to introduce evidence of another incident where defendant forced minor to receive and perform oral sexual acts. *Id.* The court held that these two incidents were not sufficiently similar to form a connection. *Id.* at 333, 580 S.E.2d at 195. Appellant’s case is unlike Tutton, because there is a sufficient connection between the injuries and testimony from Victim’s siblings. All of the injuries and testimonies showed a common scheme that all of the children were beaten by the same person, with the same item and in the same area. Unlike in Tutton, where although both incidents were sexual in nature, the acts were

very different. *Id.* Here, the markings on the legs and consistent testimony of what caused the marks are identical. In addition to the similar markings on each child, they all originally stated that they were beaten by a belt by the Appellant and later all children recanted those statements.

Further, even if the court were to believe that the injuries and testimony from the Victim's siblings did not fall in to the common scheme or plan exception, the evidence refutes the claim that the mark on the Victim's stomach was accidental. The evidence and testimony by the Victim's siblings was introduced to disprove the story of an accidental soup spill conveniently given later by all parties, which is consistent with the absence of mistake exception. In State v. Smith, defendant was convicted of murder and assault and battery with intent to kill in connection with a fatal shooting of his daughter. The court held that the defendant's prior criminal domestic violence conviction was admissible in trial to show an ongoing abusive relationship to rebut the defendant's claim that the shooting was an accident. State v. Smith, 337 S.C. 27, 33, 522 S.E.2d 598, 601 (1999). Here, the initial reason for the investigation was a mark on Victim's stomach. This initial investigation led to the discovery of other marks, on Victim and Victim's siblings, consistent with being whipped with a belt. Originally, the marks on Victim's stomach were stated to be caused by a belt. Later when asked, Victim and Victim's siblings recanted all statements involving a belt and produce a story of an accidental soup spill. Similar markings located on the same parts of each child's body, same original statements, and same change of story clearly shows a systemic pattern of abuse. This systematic pattern of abuse completely refutes the idea that the initial mark on Victim's stomach was an accident. The trial court properly admitted the evidence of Appellant's prior abusive behavior in this child abuse case because the evidence was directed at whether the Victim's injuries could happen by accident, as claimed by Appellant and in Victim's recanted story, or whether Appellant

unlawfully caused the harm. See e.g. State v. Ohnstad, 359 N.W.2d 827 (N.D. 1984). (“The admissibility of evidence of other acts to establish intent and absence of mistake or accident is well established in child abuse cases.”)

The similarities of the marks and original testimony by Victim’s siblings that they were beaten by a belt or extension cord substantially outweigh any dissimilarities that there may be. The evidence of abuse towards Victim’s siblings is clear and convincing, considering that all the children’s accounts of being beaten by a belt are identical. Although the Victim and siblings recanted their statements and give the story of the accidental noodle soup spill, the State produced forensic medical reports that supported the original statements of Victim and Victim’s siblings. The evidence of abuse to Victim’s siblings is probative in determining whether the children in the Appellant’s home were safe and that probative value was not substantially outweighed by the risk of unfair prejudice to Appellant.

Additionally, even if the court believes that Victim’s siblings’ testimony and injuries should not have been admitted under either exception of Rule 404(b), there existed overwhelming evidence demonstrating the abuse by Appellant to Victim. The State only needed to prove that Victim’s life or health had been endangered, or was likely to be endangered, by any bodily harm caused by Appellant, and there was an overwhelming amount of evidence to show that. The State introduced pictures of all of the marks that were found on Victim’s body coupled with the testimony of Dalton, who performed the medical exam, stating that the appearance of these markings three weeks after they were originally made showed the severity of the markings. (See R. 505-568). She also testified the marks were not burns, but consistent with a belt or an extension cord. (See R. 217).

The evidence was properly used by the State to prove Appellant committed the crime for which he was being tried and was not unfairly prejudicial to Appellant. Therefore, the trial judge did not abuse his discretion in admitting evidence of abuse toward the Victim's siblings.

CONCLUSION

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


Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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.”

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