

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

Jun 18 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRIAN DAVID WALLS,

APPELLANT

APPELLATE CASE NO 2019-000689

ANDERS BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT

The court erred by allowing Amanda Reddish to testify that life in appellant’s home was chaotic, unhealthy, and that appellant and those around him were chronic “unclean” drug users, since this was inadmissible highly prejudicial bad character evidence under Rule 404 (b), SCRE, meant to allegedly prove appellant was a “desperate” man who would do anything, including murder, for money.4

Relevant facts – pre-trial.....4

The trial.....5

Discussion.....9

CONCLUSION..... 12

PETITION TO BE RELIEVED AS COUNSEL..... 13

TABLE OF AUTHORITIES

Cases

Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989).....9, 10

State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007).....3

State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009).....3

State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990).....10

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).....5

State v. Smith, 309 S.C. 48, 419 S.E.2d 816 (1982).....9, 10

State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012).....3

Rules

Rule 403, SCRE.....3, 8

Rule 404 (b), SCRE1, 3, 4, 5

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing Amanda Reddish to testify that life in appellant's home was chaotic, unhealthy, and that appellant and those around him were chronic "unclean" drug users since this was inadmissible highly prejudicial bad character evidence pursuant to Rule 404 (b); SCRE, meant to allegedly prove appellant was a "desperate" man who would do anything, including murder, for money?

STATEMENT OF THE CASE

Appellant was indicted at the January 22, 2017 term of the Beaufort County grand jury for the offense of murder. R. 594. His case was called to trial on April 8, 2019 before the Honorable G. Thomas Cooper, and a jury. Trasi Campbell and James Bell represented appellant. Hunter Swanson was the assistant solicitor. R. 1.

On April 11, 2019, the jury found appellant guilty. R. 566, ll. 4-7. Judge Cooper sentenced appellant to forty years' imprisonment. R. 592, ll. 8-10.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” Clasby, 385 S.C. at 154, 682 S.E.2d at 895; “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)” to show, *inter alia*, the existence of a common scheme or plan. Clasby, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”)

ARGUMENT

The court erred by allowing Amanda Reddish to testify that life in appellant's home was chaotic, unhealthy, and that appellant and those around him were chronic "unclean" drug users, since this was inadmissible highly prejudicial bad character evidence under Rule 404 (b), SCRE, meant to allegedly prove appellant was a "desperate" man who would do anything, including murder, for money.

Relevant facts - pre-trial

The solicitor made it clear from the beginning of the trial that she thought appellant's "lifestyle" was relevant. The solicitor noted that appellant lived very close to the decedent in their trailer park. "That is the motive behind this murder. This is the life that they were living. And Teresa Seigler [the decedent] had an open door policy." R. 144, ll. 21-23. "You know, their water would get cut off and she would have a hot shower. They couldn't afford groceries and she would cook for them." R. 145, ll. 1-4.

The judge asked, "Is this a crack house?" The solicitor responded, "It looks like a trap house to me, but, yes, there were plenty of drugs used there. Did they stay there all the time, no. But, you know, presenting oneself in a suit, you know, beard trimmed, portrays a much different Brian Walls after two years of being clean, and that's not who we're going to talk about in this case." R. 146, ll. 9-16.

Defense counsel Campbell informed the judge the state was attempting to "shore up class-based prejudice about drug use. That drug use equals squalor and filth." R. 146, ll. 19-20. Counsel also noted, "It's not [even] his home. It's his brother's home. You know—and he's not a lease, or any deed, or any real estate. They want to say it's his house, but they can't give you any proof that that's his house, or that he resided there." Counsel said that the filthy condition of

the mobile home was not relevant, and “She’s trying to cast him in this negative light.” R. 147, l. 12 – 148, l. 2. The judge seemingly agreed at that time, stating it would be different if this was “a child endangerment case.” R. 148, ll. 3-4.

The judge admitted several photographs of the mobile home over defense counsel’s relevance objections, and he excluded others. R. 164, ll. 13-16. Defense counsel Campbell noted as to all of this that it was clear the state was introducing inadmissible Rule 404(b), SCRE, or State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), bad character or bad acts evidence over the defense’s objection. R. 164, ll. 13-20.

The solicitor also argued that co-defendant John Priester’s drug use in her opinion was relevant because of “the fact that he would do anything to get high. His personality would change when he was high. I think that drug use is extremely probative in this case to show motive.” R. 165, ll. 7-16. Defense counsel repeated that the evidence the solicitor wanted to introduce was “classic bad character evidence . . . he’s a bad guy, he’s a drug user. . . his personality changes when he uses drugs.” R. 166, l. 10 – 167, l. 10.

The judge, while respectfully inconsistent in his rulings, stated, “That testimony could be excluded. Bad guy.” Defense counsel agreed, “Right. But that’s the essence of the testimony. Because, as she just said she would argue, desperate times call for desperate measures. I mean, it all rolls into this, they’re high, they’re on a drug bender. It’s fanciful. It’s not based in fact.” R. 167 ll. 11-18.

The trial

Burton firefighter Mark Baird recalled responding to a fire on December 7, 2016 at 11:10 a.m. at 126 Falls Road, a trailer park. R. 217, l. 16 –218, l. 21. Firefighters learned the decedent was likely inside, and Baird made entry “into the master bedroom of this residence [through the

window].” R. 220, l. 24 –222, l. 4. The elderly decedent was removed from the mobile home on a stretcher in her nightgown. It was evident her hands had been tied with duct tape. R. 224, ll. 9-24.

Paramedic Jeff Knieling of the Beaufort county EMS remembered seeing smoke billowing from the mobile home when they arrived. He noticed that decedent’s “hands were bound upward like this (indicating), and there was no movement with the body . . . “ R. 237, ll. 9-21. Beaufort county sheriff’s deputy Brandon Cooler said the fire was quickly thought to be “a possible homicide.” “It was a structure fire where the body was located.” SLED arson team responded. R. 257, l. 7 – 258, l. 16.

Pathologist Lee Marie Tormos performed the autopsy on the decedent’s body on December 8, 2016. R. 273, l. 5 – 275, l. 25. Dr. Tormos noted, “She [the decedent] had a fracture of the ninth left rib on the lateral side, on the side of her body. She had a lot of contusions, bruising to her body. Now, some of the bruising was slightly obscured by the post-mortem changes [resuscitation attempts were made]; however, we were able to determine that she had bruising on the deep soft tissues of the posterior aspect of the right shoulder along both flanks, along the lower back. She had a bruise on her abdomen.” R. 276, l. 6 – 277, l. 17.

Dr. Tormos said the decedent likely suffered from a seizure also. Dr. Tormos opined that the decedent was dead before the fire started, and that the fire was not a contributing cause of her death. R. 277, ll. 17-20.

Amanda Reddish was the state’s key witness. She had known Appellant Brian Walls for thirteen or fourteen years prior to this incident. He was her former boyfriend. When asked to describe her relationship with appellant by the solicitor, Reddish answered, “Unhealthy.” R. 293, l. 8 – 294, l. 19.

When the solicitor asked Reddish what life was like “in that trailer?” Reddish answered, “Chaotic,” and she said that people used drugs in the trailer and that appellant also used drugs there. R. 296, ll. 10-25. Reddish said appellant did not have a steady job, and when the solicitor asked if this was a “healthy environment,” defense counsel objected that this called for speculation and for opinion testimony. The judge reasoned, “She’s already put that evidence in,” and overruled the objection. Reddish then said, “It was a lot of drug use in that house.”

The solicitor then asked Reddish if anyone was “clean in December of 2016 or was everyone using?” Defense counsel again objected. The judge said if Reddish knew the answer to the question she could answer. Reddish then responded, “No one was clean.” Reddish testified everyone, including herself, was using drugs. Reddish also said when appellant used drugs he was “[v]ery unpredictable.” R. 298, ll. 10-11.

Reddish testified that the decedent knew about the drug use but offered that “she didn’t condone it.” “As far as shelter, as far as if somebody needed food, as far as if someone needed a shower, if you haven’t—like I said, food, if you haven’t ate, she would help you.” Reddish said the decedent had “an open door policy.” R. 299, ll. 15-25.

Reddish testified the decedent had a morphine pump, and she also had many powerful prescription pain medications. Reddish claimed on December 6, 2016, the day before the decedent was killed, that all of the people around appellant had stayed up for days using drugs. Reddish added this was not unusual “for any of this crowd.” R. 302, l. 7 – 305, l. 20. The solicitor had Reddish repeat that she remembered appellant staying up for “days on end” doing drugs. R. 305, ll. 17-23.

Reddish said when she went to appellant’s mobile home on December 7, 2016, she saw that the road was blocked, there were fire engines at the scene, and firefighters had removed the

decedent's body from her mobile home. She said she thought appellant and co-defendant Courtney Brock were "missing" at this time. R. 306, l. 9 – 308, l. 20.

Investigator Jennifer Snyder of the Beaufort County Sheriff's Department testified that she went to talk to appellant's children, Kyle and Xavier Walls, after the fire because she had received reports that the teenagers were with John Priester, a co-defendant, near the decedent's mobile home around the time of the fire. Snyder said that the Kyle and Xavier ran from her while she was attempting to interview them. R. 330, l. 9 –334, l. 11.

Appellant was located in Chesterfield county, and the state offered evidence that many of decedent's possessions, including her cell phone, her purse, morphine, other prescribed medication, as her debit card were found inside the Toyota Camry appellant had been traveling in. R. 341, l. 10 – 344, l. 13.

Hannah Siegler, the decedent's daughter, testified the decedent had many health problems, she was bound to a wheelchair, and she took many medications. R. 363, l. 12 – 366, l. 13. Siegler said when the police interviewed her after her mother was found dead, they asked her if she had any idea who could harm her mother. She immediately answered: "Brian Walls," and she said in the past she had "asked her [the decedent] to please stay away from him [appellant], to not have any dealings [with him]." Tr. 367, ll. 7-16. There was no relevance or Rule 403, SCRE, objection to this testimony.

Jason Malphrus, a Beaufort County Sheriff's investigator, testified that Hannah Siegler had stated that appellant was the prime suspect. Malphrus noted that John Priester and Courtney Brock also became suspects -- and then co-defendant's in this case. R. 381, ll. 3-21. Priester, Kyle Walls, and Xavier Walls were all charged in the arson. R. 382, ll. 15-20.

SLED DNA expert John Donahue testified that appellant's touch DNA was found on duct tape attached to or stuck to a blanket found inside the decedent's home. R. 463, l. 1 – 464, l. 14. The defense later argued this was insignificant evidence since appellant had lived in that mobile home, and he had been there often. Courtney Brock's DNA was found on several items inside the decedent's mobile home. R. 467, l. 10 – 471, l. 20. John Priester's DNA was also found there. R. 472, l. 8 – 475, l. 11. Finally, appellant's and Courtney Brock's DNA were found on a bottle cap that apparently belonged to the decedent. R. 475, ll. 7-24. Donahue said of his eleven DNA matches -- five of them were on items appellant apparently touched -- and other six were Priester's and Brock's DNA. R. 493, ll. 20-24.

In moving for a directed verdict, defense counsel Campbell noted that appellant's DNA being on items from inside the decedent's mobile home was not surprising since he often visited that home, and the DNA evidence did no more than raise a suspicion of appellant's guilt. R. 495, l. 21 – 498, l. 16.

Discussion

In State v. Smith, 309 S.C. 48, 419 S.E.2d 816 (1982), this Court reversed the defendant's conviction where the trial judge allowed a social worker to testify as to the wretched condition of the home in which the defendant, the children, and their mother, lived. The social worker testified, in great detail, that they all lived in one room of a four-room house. "The house was filthy, with old food over the floor, ground-in dirt, with bugs and flies that were crawling all over the floor." State v. Smith, 309 S.C. 48, 49, 419 S.E.2d 816, 817 (Ct.App. 1992).

This Court noted, as the Supreme Court had held in Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989), that evidence of bad acts is not admissible to show criminal propensity or to demonstrate that the defendant is a bad person. In Mitchell v. State, the Supreme Court found

that defense counsel was ineffective for failing to object to testimony that the defendant was a member of the mafia and engaged in devil worshipping.

The state simply may not attack a defendant's character to achieve a conviction. The testimony of how a defendant lived is wholly irrelevant to the question of whether he is guilty of the crime of which he is charged. Former Chief Judge Sanders noted: "The fact that a person lives in abject squalor or in great splendor has nothing to do whatsoever with whether the person is guilty of having committed a crime. Criminality is not the exclusive province of any lifestyle. Crime happens in the suites, as well as in the streets. Thus, the law wisely recognizes that a defendant has a right to be found guilty or not guilty based on the evidence of what the defendant has done, not how the defendant lives." State v. Smith, 309 S.C. 48, 49, 419 S.E.2d 816, 817 (Ct.App. 1992) *citing* Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989).

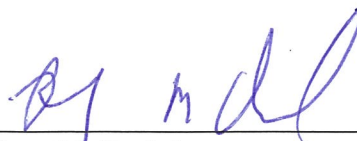
In State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990), the Supreme Court reversed the defendant's conviction where the Court found that the prejudice to the defendant from the admission of evidence that he was a social user of cocaine outweighed any probative value to allegedly show the defendant's state of mind at the time of the murder. In Coleman, the Supreme Court held testimony that Coleman appeared "wired" on the morning of the murder was bad character and prior bad act evidence, which should not have been admitted since the prejudice to the defendant as a result of this evidence far outweighed its probative value, if any. State v. Coleman, 301 S.C. 57, 60, 389 S.E.2d 659, 660-661 (1990).

Here, the solicitor made it abundantly clear from the outset of the trial that she intended to try appellant on his "lifestyle," his drug use, and inescapably -- his bad character. Defense counsel objected to this evidence from the outset, and the judge was well aware of what the defense thought the solicitor was going to place before the jury about appellant's lifestyle and

drug use to urge a murder conviction. The judge, well aware of the defense's objection to this evidence, nonetheless allowed it to be placed before the jury anyway. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed, and this case remanded to the Beaufort County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of June, 2020.

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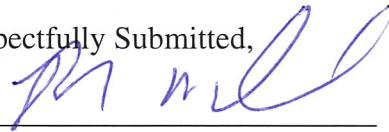
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brian David Walls states:

1. He is Chief 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 G. Thomas Cooper, Jr., which was held on April 8 - 11, 2019, 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 Brian David Walls.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of June, 2020.

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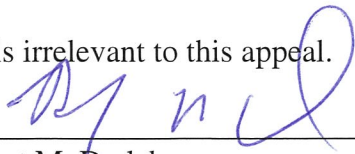
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment
- (2) Transcript of trial held April 8, 2019
- (3) Transcript of trial held April 9, 2019
- (4) Transcript of trial held April 10, 2019
- (5) Transcript of trial held April 11, 2019

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

June 18, 2020


Robert M. Dudek
Chief Appellate Defender

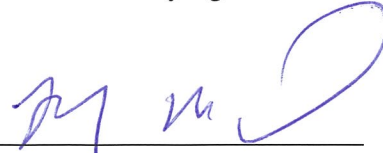
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ATTORNEY FOR APPELLANT

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."

June 18, 2020.



Robert M. Dudek
Chief Appellate Defender

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