STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS LAVANCE YOUNG,

APPELLANT

APPELLATE CASE NO 2019-002034

ANDERS BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to admit evidence that the decedent had a tattoo which read "God forgives, I don't," where Appellant raised self-defense and the tattoo was evidence of a pertinent trait of character of the victim and admissible under Rule 404(a)(2), SCRE?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County grand jury for murder and possession of a weapon during the commission of a violent crime. R. 452-455. Appellant's jury trial was held before the Honorable Edgar W. Dickson and a jury from December 2 – 4, 2019. R. 1. Appellant was represented by Nicholas D'Angelo and Benjamin Lewis. R. 1. The state was represented by David Osborne and Shanon Elliott. R. 1.

The jury found Appellant guilty as charged on each count. R. 441, l. 20 – 442, l. 5. The judge sentenced Appellant to thirty-five-years imprisonment for murder and five-years imprisonment for the weapons charge, with both sentences to run concurrently. R. 450, ll. 2 – 14.

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.

STATEMENT OF FACTS

On August 12, 2018 at 8:41 a.m., Jacob Bradshaw, of the Charleston Police Department, responded to a "shots fired" call in East Charleston.[1] R. 59, l. 5 – 61, l. 7. When Bradshaw arrived, he found the decedent lying on the sidewalk and requested EMS to respond. R. 61, l. 15 – 62, l. 1. Bradshaw began searching for a red SUV that was seen leaving the scene of the shooting. R. 65, ll. 7 – 24. Bradshaw identified the driver of the SUV as Kathy Brisbane and recalled that she was "distraught, erratic, and scared." R. 66, l. 3 – 67, l. 19.

Brisbane testified that she had known Appellant for over thirty years and that she used to date his uncle. R. 159, l. 4 – 160, l. 2. On the day of the shooting, Brisbane recalled that she was stopped at a stop sign while driving to work when she saw Appellant standing on a street corner with the decedent. R. 162, ll. 2 – 18. Brisbane stated: "As soon as I stopped, I looked right in front of me. I just saw [Appellant] and a young man. Before he shoot [sic], I tried to blow the horn so he wouldn't shoot. I tried to distract him, but he still shoots." R. 162, ll.21-25.

According to Brisbane, Appellant and the decedent were standing about seven feet away from each other. R. 164, ll. 3 – 14. She stated that the decedent did not have a gun and Appellant was pointing a gun at the decedent. R. 164, l. 25 – 165, l. 9. Brisbane said that Appellant started shooting a few seconds after she started honking her horn. R. 165, ll. 10 – 25. Brisbane maintained that she honked her horn to prevent Appellant from shooting the decedent. R. 172, ll. 2 – 16.

After the shooting stopped, Brisbane said that Appellant pointed the gun at her until he recognized her as his "Auntie." R. 174, ll. 1 – 21. Brisbane recalled that Appellant asked her to

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[1] Four nine-millimeter shell casings were found at the scene, which were later determined to have been fired from the same gun. R. 103, ll. 19 – 22; R. 213, ll. 4 - 8. The gun itself was never recovered. R. 114, l. 20 – 115, l. 1.

take him "around the corner" and then directed her where to drive. R. 174, l. 23 – 175, l. 18. After Appellant got out of the car, Brisbane claimed that Appellant told her that she "didn't see nothing." R. 175, l. 19 – 176, l. 9. Brisbane further claimed that Appellant had a gun in his lap the whole time he was in the car with her. R. 176, l. 20 – 177, l. 4. On cross-examination, Brisbane admitted that she did not know why Appellant was shooting. R. 190, ll. 20 – 21; R. 195, l. 13 – 196, l. 9.

Appellant testified in his defense. Appellant testified that he had met the decedent prior to the day of the shooting because they hung out in the same area and Appellant had sold the decedent cocaine. R. 307, ll. 11 – 25. On the night before the shooting, Appellant recalled that he, the decedent, and a few other guys were "hanging out" together and drinking beer. R. 308, ll. 4 – 15. Appellant described the decedent as "hyped up" and "acting wild" that night. R. 308, ll. 16 – 21. Appellant testified that the decedent was bragging about how he had "done shootings" back in his hometown of Beaufort. R. 308, l. 22 – 309, l. 5. Appellant also recalled seeing the decedent with a gun while he was bragging about his prior shootings. R. 309, ll. 9 – 15.

Appellant testified that the decedent got angry because Appellant was doing cocaine and would not share with the decedent because he did not have enough to share. R. 311, ll. 2 – 8. Appellant recalled that the decedent took his shirt off and wanted to fight Appellant. The decedent then took out a gun, pointed it at Appellant and demanded that Appellant give him his cocaine and money. R. 311, ll. 8 – 25. Appellant testified that he was scared because the decedent was pointing a gun in his face. R. 312, ll. 6 – 9.

While the decedent was pointing his gun at Appellant, a red SUV stopped at the stop sign and the decedent sat back down and covered up the gun. R. 312, l. 10 – 313, l. 7. Appellant then snatched the gun from the decedent and began shooting. R. 313, ll. 17 – 25. Appellant testified

that he fired the gun because he was afraid the decedent would take the gun back from him. R. 314, ll. 9 – 24.

After the shooting Appellant started to run away but the red SUV was honking its horn and Appellant realized that it was Brisbane. R. 315, ll. 13 – 23. Appellant asked Brisbane to drop him off at his girlfriend's house but because she was not home, Appellant walked to an abandoned house nearby to calm down. R. 316, l. 9 – 317, l. 19. Appellant believed that he had no other option than to take the gun from the decedent and shoot him to protect his own life. R. 318, ll. 1 – 18.

The pathologist who performed the autopsy testified that the decedent's blood alcohol content was .15 and that he also had methamphetamine in his system. R. 284, l. 12 – 286, l. 12. The decedent's cause of death was "multiple gunshot wounds to the chest, back, [and] left arm." R. 275, ll. 13 – 18.

ARGUMENT

The trial judge erred in refusing to admit evidence that the decedent had a tattoo which read "God forgives, I don't," because Appellant raised self-defense and the tattoo was evidence of a pertinent trait of character of the victim and admissible under Rule 404(a)(2), SCRE.

Relevant Facts

During defense counsel's cross-examination of the pathologist, counsel asked about a tattoo on the decedent's left bicep. R. 278, ll. 4 – 5. The solicitor objected on relevance grounds and the jury was sent out of the courtroom. R. 278, ll. 6 – 11. Counsel informed the judge that the tattoo read: "God forgives, I don't." R. 278, ll. 20 – 24. Counsel argued that the tattoo was relevant because this was a self-defense case and it was relevant to "how [the decedent] thinks." R. 279, ll. 1 – 7.

The solicitor responded that it was unknown when the decedent got the tattoo or why he got the tattoo and that it was improper to infer his frame of mind based on a tattoo. R. 279, l. 24 – 280, l. 11. The trial judge relied on language from State v. Day, 341 S.C. 410, 422, 535 S.E.2d 431, 437 (2000) which stated: "Evidence concerning a defendant's tattoo or nickname is not prejudicial when used to prove something at issue in a trial, such as the identification of the defendant." R. 282, ll. 8 – 15. The judge ruled evidence of the decedent's tattoo was inadmissible. R. 282, ll. 16 – 20.

Discussion

Rule 404, SCRE provides:

> (a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
>
> . . .

> (2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

Furthermore, Rule 405, SCRE provides the methods that may be used to prove character:

> (a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
>
> (b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 405, SCRE.

In State v. Day, 341 S.C. 410, 419-420, 535 S.E.2d 431, 436 (2000), the Supreme Court held that in a murder case where the defendant raises self-defense, the defendant may introduce specific instances of violence by the victim only if they were directed against the defendant or, "if directed against others, were so closely connected at point of time or occasion with the homicide as to reasonably to indicate the state of mind of the deceased at the time of the homicide." "Whether a specific instance of conduct by the deceased is closely connected in point of time or occasion to the homicide so as to be admissible is in the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the accused." Id. at 420, 535 S.E.2d at 436.

In this case, the trial judge erred in excluding evidence of the decedent's tattoo because it was relevant evidence of a pertinent trait of character. The decedent's tattoo reading "God forgives, I don't" was, at the very least, indicative of his unforgiving character. The tattoo also

corroborated Appellant's testimony that the decedent became enraged after Appellant refused to share his cocaine with the decedent. The decedent's unforgiving nature, evidenced by his tattoo, lends credibility to Appellant's testimony that the decedent got angry when Appellant did not give him what he wanted. The jury should have been permitted to hear that the decedent had this tattoo because it made a fact of consequence more or less probable, i.e. whether the decedent was the initial aggressor.

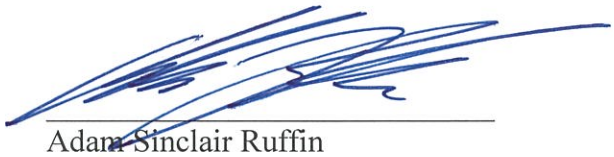
In State v. Day, 341 S.C. 410, 421-422, 535 S.E.2d 431, 437-438 (2000), the Supreme Court ruled that evidence of the defendant's "outlaw" tattoo was inadmissible. The Day Court found that the state had not introduced evidence of the tattoo for any legitimate purpose and instead used the evidence solely to attack the defendant's character. Id. at 422-423, 535 S.E.2d at 437-438. The trial judge's reliance on Day was misplaced because the tattoo evidence in that case was of the *defendant's* tattoo. Rule 404(a)(2), SCRE explicitly makes an exception to evidence related to the *victim*. Simply put, a defendant and a victim are situated quite differently in a criminal trial and are treated differently by the Rules of Evidence. See State v. Williams, 430 S.C. 136, 148-149, 844 S.E.2d 57, 64 (2020) (noting that evidence of the defendant's bad character is not admissible unless the defendant has first offered evidence of his good character); State v. Mekler, 368 S.C. 1, 626 S.E.2d 890 (Ct. App. 2005) (holding that the defendant was allowed to introduce evidence of the victim's prior incident of criminal domestic violence, of which the defendant was aware, because it was an essential element of her self-defense claim, i.e. whether she had a reasonable apprehension of great bodily harm from the victim).

The decedent in this case felt so strongly about his particular character trait that he chose to have it permanently inscribed onto his skin for everyone to see. This was a significant personal statement about who the decedent was. More importantly, this particular character trait

was highly relevant to Appellant's argument of self-defense. Had the jury been informed of the decedent's tattoo they would have been much more likely to view the decedent as having a propensity towards violence which, in the limited circumstances of this case, was admissible under Rule 404(a)(2), SCRE as a pertinent character trait of the decedent in a homicide case. The trial judge erred in excluding this very important evidence that was critical to Appellant's defense at trial. Appellant's convictions should be reversed.

CONCLUSION

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



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of November, 2020.

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Nov 12 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Douglas Lavance Young states:

1. He is 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 J. C. Buddy Nicholson, which was held on December 2-4, 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 Douglas Lavance Young.

Respectfully Submitted,

Adam Sinclair Ruffin
Appellate Defender
ATTORNEY FOR APPELLANT

This 12th day of November, 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(s);
(2) Entire trial transcript.

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

November 12, 2020

Adam Sinclair Ruffin
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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."

November 12, 2020.

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