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Dec 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ROME GREEN,

APPELLANT

APPELLATE CASE NO. 2021-000391

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in allowing photographs of the alleged victim's burn injuries, where the photographs were extremely graphic and were not necessary to prove an element of either offense and the photographs only served the purpose of inflaming the passions of the jury and were unfairly prejudicial?

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County Grand Jury for attempted murder and arson in the first degree. R. 740-742. Appellant's trial was held before the Honorable Debra R. McCaslin and a jury from April 5 – 9, 2021. Appellant was represented by Sarah Mauldin and Rob Madsen. The state was represented by Suzanne Mayes and LeAnna McMEnamin. R. 1.

The jury found Appellant guilty on each count. R. 716, ll. 1 – 12. The judge sentenced Appellant to thirty-years imprisonment for attempted murder and a consecutive forty-years imprisonment for arson. R. 736, l. 14 – 737, l. 8.

This appeal follows.

STANDARD OF REVIEW

“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” Id. (citing State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986)). “When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008).

“A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). This Court is obligated to give great deference to the trial judge’s decision regarding Rule 403, SCRE and should not reverse a trial judge absent a prejudicial abuse of discretion. Id.

STATEMENT OF FACTS

Ardelia McDaniel arrived at her house on August 19, 2019 to find Appellant on her porch with one of her neighbors. McDaniel told Appellant that he could not stay at her house which, according to McDaniel, caused Appellant to become angry. R. 268, l. 7 – 269, l. 8. Appellant and McDaniel were in an “on and off” relationship, and at times resided together. R. 264, l. 5 – 268, l. 3.

That night, McDaniel went to sleep in her house and nobody else was inside of her home with her. According to McDaniel, Appellant did not have her permission to be inside of her home. R. 269, ll. 9 – 24. McDaniel recalled that she woke up to Appellant straddling her in the bed and pouring gasoline on her. R. 270, ll. 2 – 19. According to McDaniel, Appellant said “bitch, you don’t love me,” and then set her on fire with a lighter. R. 271, l. 1 – 273, l. 2. McDaniel fled out of the house while still on fire and ran next door for help. R. 274, ll. 4 – 8.

One of McDaniel’s neighbors, Maria Combs, recalled being woken up by her husband screaming that “the lady across the street [is] on fire.” R. 366, ll. 5 – 11. Combs’ husband called 911 while Combs ran onto her front porch and saw McDaniel screaming and running across her yard engulfed in flames. R. 366, ll. 12 – 17. McDaniel ran into the house of another neighbor, Peter Messina¹, and Combs went to that house to render aid to McDaniel. Messina sprayed McDaniel with a hose in his kitchen to put the rest of the flames out. R. 366, l. 18 – 367, l. 1. Messina and Combs locked their doors and stayed with McDaniel until law enforcement and paramedics arrived. R. 368, l. 19 – 369, l. 10.

Appellant testified in his own defense. Appellant recalled that he and McDaniel were together for a large portion of the day and were drinking beer and liquor together at McDaniel’s

¹ Messina was Combs’ adult son.

house. R. 620, l. 4 – 624, l. 6. Appellant testified that Messina and Messina’s cousin Ricco also came over to drink with them. Appellant maintained that it was a good atmosphere and McDaniel never asked him to leave and never threatened to call the police on him. R. 624, l. 7 – 626, l. 8.

After Messina and Ricco left at around 10:30 or 11:30 that night, Appellant went to sleep in McDaniel’s room. The next thing he remembered was McDaniel waking him up and “fussing” with him. R. 626, l. 9 – 627, l. 8. Appellant admitted that he was very intoxicated and began reflecting on how he was at a “rock bottom” point in his life. R. 627, ll. 9 – 16. It was at this point that Appellant decided he wanted to kill himself so he grabbed the can of gasoline that was in McDaniel’s kitchen and poured gasoline on the bed. R. 627, l. 22 – 628, l. 25.

As Appellant was pouring gasoline on the bed, McDaniel was trying to grab the gas can out of his hand. Appellant pushed McDaniel back and she fell on the floor and he lit the bed with his lighter and “everything caught on fire.” R. 629, ll. 1 – 15. McDaniel then took off running out of the house which caused the fire to get worse. R. 629, ll. 15 – 21. Appellant maintained that he never poured gasoline on McDaniel and that he never wanted to hurt her or kill her. Appellant only wanted to hurt himself. R. 630, ll. 3 – 19. Once Appellant was out of the house and realized how large the fire had gotten, he became scared and fled the scene. R. 631, l. 19 – 632, l. 24. Appellant ultimately got in contact with his mother and sister who took him to the hospital to be treated for his burns. R. 634, ll. 4 – 24.

ARGUMENT

The trial judge erred in allowing photographs of the alleged victim's burn injuries because the photographs were extremely graphic and were not necessary to prove an element of either offense and the photographs only served the purpose of inflaming the passions of the jury and were unfairly prejudicial.

Relevant Facts

During McDaniel's testimony, she showed the jury some of the injuries on her body that were not covered by her clothing. R. 283, l. 17 – 284, l. 21. McDaniel also demonstrated to the jury how the mobility in her right arm had been diminished by the fire. R. 284, l. 22 – 285, l. 9. The state then sought to introduce nine photographs of McDaniel's injuries "which [were] not visible due to [her] clothing." R. 285, l. 19 – 286, l. 13.

Defense counsel objected under Rule 403, SCRE. The judge overruled counsel's objection and allowed the jury to see the photographs. R. 286, ll. 14 – 22; (State's Exhibits 52, 53, 55 – 61, Transported). The state then asked McDaniel about each photograph and she explained to the jury what each photograph showed. R. 289, l. 5 – 291, l. 19.

Discussion

Under Rule 403 of the South Carolina Rules of Evidence, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "[T]he standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of *unfair* prejudice that *substantially* outweighs the probative value of the evidence." State v. Collins, 409 S.C. 524, 536, 763 S.E.2d 22, 28 (2014). "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013). All evidence offered by the

state against a criminal defendant is meant to be prejudicial but evidence that is unfairly prejudicial should be excluded. State v. Benton, Op. No. 5868 (S.C. Ct. App. filed October 13, 2021) (Howard Adv. Sh. No. 36 at 33).

In State v. Collins, 409 S.C. 524, 539, 763 S.E.2d 22, 30 (2014), our Supreme Court held that photographs of a child who had been partially eaten by dogs and died as a result were admissible despite their extremely gruesome nature. The Court noted that there were no eyewitnesses to the dog attack and the photographs “provided concrete evidence as to what transpired.” Id. at 536, 763 S.E.2d at 28. The Court further noted that the photographs were taken of the boy’s body before the autopsy was performed and thus showed “the unaltered condition of the victim.” Id. Finally, the Court held that the photographs were probative to the jury’s determination “as to the dangerous propensities of the dogs and whether or not Collins’s conduct was criminally reckless.” Id. at 536, 763 S.E.2d at 29.

More recently in State v. Benton, Op. No. 5868 (S.C. Ct. App. filed October 13, 2021) (Howard Adv. Sh. No. 36), this Court found that photographs of the victim’s charred remains were admissible in a murder and arson trial. In Benton, the defendants were alleged to have broken into the victim’s home, beaten, handcuffed, and robbed him, and then set the victim’s house on fire where he burned to death. This Court found that the photographs were “highly probative of malice, which is an essential element of murder” and corroborated a testifying codefendant’s testimony. Id.

Here, the trial judge abused her discretion by admitting the horrific photographs of McDaniel’s burn injuries. The photographs here are extremely gruesome and show serious burn injuries that cover McDaniel’s entire upper body. Unlike in Collins, there were several testifying eyewitnesses at Appellant’s trial who observed McDaniel engulfed in flames. There was also

body camera footage from one of the responding officers that was introduced at trial which showed McDaniel with severe burns to her upper body before she was transported from the scene to the hospital. The photographs of McDaniel's burn injuries were not particularly probative because they were of little importance to the jury's determination as to Appellant's state of mind or the extent of McDaniel's injuries – many of McDaniel's injuries were visible to the jury in person and it was undisputed that she suffered great bodily injury. See State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) (noting that 'probative value' is "the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues.")

Furthermore, the photographs were not used by medical experts in explaining the extent of McDaniel's injuries and there was no finding that the photographs were necessary to the explanation of her injuries. In State v. Gray, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014), this Court addressed the admissibility of pre- and post-autopsy photographs of a decedent who had been beaten to death. The pathologist who performed the autopsy of the decedent described the photographs as "crucial" and "necessary" for him to explain the injuries to the jury. The pathologist further testified that the photographs depicted the injuries which were necessary in his determination as to cause of death and that he had taken the photographs specifically to document the cause of death "in a manner that he could not diagram." Id. at 610-611, 759 S.E.2d at 165.

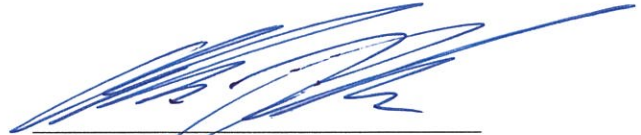
In Gray, this Court examined in great detail the testimony of the pathologist in determining the great probative value that the photographs had in the case. This Court placed significant emphasis on the fact that the pathologist testified that the photographs would help him in explaining the "medical significance" of the decedent's injuries. Id. at 612, 759 S.E.2d at 166. In Appellant's case, there was no such testimony by the medical experts and the photographs

were not used to explain the medical significance of her injuries. Instead, the photographs were used merely to inflame the passions of the jury by highlighting the gruesome nature of the burns. See also State v. Heyward, 432 S.C. 296, 322, 852 S.E.2d 452, 465 (Ct. App. 2020) (finding that autopsy dissection photographs of the victim were admissible where pathologist used the photographs to explain the victim's injuries "in a way that would not be as easily understood based on expert testimony alone").

Unlike Heyward and Gray, the photographs here were introduced through McDaniel herself and served only to inflame the passions of the jury by showing them graphic photographs of her body. The photographs were not necessary to prove an element of any offense against Appellant as it was undisputed, and well established by other competent evidence, that McDaniel suffered great bodily injury because of the fire. Appellant's convictions should be reversed.

CONCLUSION

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



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2021.

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APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Rome Green 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 Debra R. McCaslin, which was held on April 5 - 9, 2021, 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 Robert Rome Green.

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2021.

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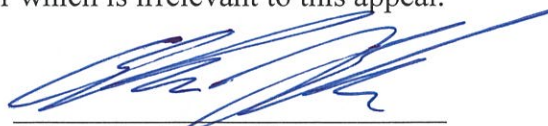
APPELLANT

**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;
- (3) State's Exhibit 52 (Photo Victim top of head);
- (4) State's Exhibit 53 (Photo Victim chest close-up);
- (5) State's Exhibit 55 (Photo Victim right side head/ear);
- (6) State's Exhibit 56 (Photo Victim left side head/ear);
- (7) State's Exhibit 57 (Photo Victim left side upper body/arm);
- (8) State's Exhibit 58 (Photo Victim right arm/part of body);
- (9) State's Exhibit 59 (Photo Victim back/bra close-up);
- (10) State's Exhibit 60 (Photo Victim whole back/bra);
- (11) State's Exhibit 61 (Photo Victim left side/bra).

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



Adam Sinclair Ruffin
Appellate Defender

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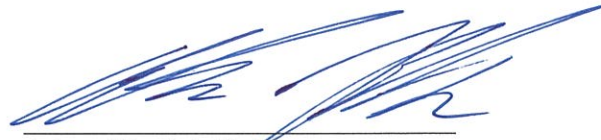
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CERTIFICATE OF COUNSEL

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."



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December 13, 2021.