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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-718

Filed: 21 April 2020

Craven County, No. 15CRS50867

STATE OF NORTH CAROLINA

v.

ANTHONY LEON HARGETT, Defendant.

Appeal by Defendant from judgment entered 18 December 2017 by Judge Richard Kent Harrell in Craven County Superior Court. Heard in the Court of Appeals 31 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph E. Elder, for the State.

Paul F. Herzog for Defendant.

INMAN, Judge.

In 2015, Defendant Anthony Leon Hargett (“Defendant”) was involved in a shootout at a motel in Havelock, NC. During the shootout, shots were fired from multiple weapons, striking both Defendant and James Godette (“Godette”), who died

of his injuries before emergency responders arrived. During trial, Defendant admitted to shooting Godette. The jury found him guilty of voluntary manslaughter.

On appeal, Defendant argues the trial court abused its discretion in admitting in evidence two sets of photographs, which he contends were either irrelevant or unduly prejudicial: autopsy photographs of Godette and family photographs of Godette with his two young daughters. After careful review, we disagree and find no reversible error.

I. FACTUAL AND PROCEDURAL HISTORY

The testimony provided at trial tends to show the following facts:

On 24 March 2015, Defendant, his brother Tornez Hargett (“Tornez”), and another friend drove to the parking lot of the Havelock Inn and Suites (the “Havelock Inn”). They planned to stay the night in a friend’s room.

James Godette (“Godette”) was visiting friends at the Havelock Inn that night. Defendant testified that, six days before the shootout, Godette and another man had broken into Defendant’s room at another motel and robbed him and his brother at gunpoint. Out of a desire to protect himself, Defendant obtained a firearm, which he kept on the floor of his car.

Defendant testified that he left the car to knock on his friend’s motel room door, and then heard Tornez cry out, “Bro, I think that’s James.” He heard a gunshot, was hit by a bullet in the hand, and then retreated to the car and returned fire.

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Roger Fogle testified that he, Godette, and another acquaintance were heading downstairs from their room to get drinks when Godette spotted Defendant in the parking lot. Godette pushed Fogle and the other acquaintance under the staircase and ran back upstairs, and someone in the parking lot shouted “you messed with the wrong one,” and then began shooting.

Several shots were fired from at least three different firearms. Godette was shot three times: two of the bullets were fired from a pistol recovered from Tornez and a third bullet could not be linked to a specific weapon. Defendant testified that he shot Godette during the incident.

Officers responded quickly to the shooting. They found Godette dead on the second floor balcony. Tornez was arrested at the scene, but Defendant had fled. Officers found Defendant hiding in the attic of his ex-girlfriend’s home. They arrested Defendant and transported him to a hospital for treatment of his wounded hand.

Defendant was charged with first-degree murder and tried before a jury in Craven County Superior Court. The jury returned a verdict finding Defendant guilty of voluntary manslaughter and the trial court entered judgment on 18 December 2017.

On 18 June 2018 Defendant petitioned this Court *pro se* for discretionary review of the judgment. Defendant’s petition was granted and the matter remanded to the trial court for the preparation of the transcript and appointment of appellate

counsel. The Office of the Appellate Defender was appointed to represent Defendant on appeal.

II. ANALYSIS

Defendant argues that photographs of Godette’s autopsy and photographs of Godette with his children were either irrelevant or unduly prejudicial and that the trial court erred by admitting them into evidence. We examine each set of photographs in turn.

A. Family Photographs

The trial court admitted two photographs of Godette and his daughters over the objection of counsel.¹ Defendant contends the photographs should be excluded as irrelevant and unduly prejudicial.

“Evidence is admissible at trial if it is relevant and its probative value is not substantially outweighed by, among other things, the danger of unfair prejudice.” *State v. Wallace*, 104 N.C. App. 498, 502, 410 S.E.2d 226, 228 (1991) (citing N.C. Gen. Stat. § 8C-1, Rules 402-403). Evidence is relevant if it has any tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence. N.C. Gen. Stat. § 8C-1 Rule 401 (2019). A trial court’s rulings on relevance

¹ The photographs were introduced during the testimony of Godette’s mother. Defendant objected generally to her testimony as irrelevant, but did not explicitly object to the introduction of the photographs. When admitting the photographs, however, the trial court commented, “Those will be received. Defense objection be noted.” The State does not argue that Defendant did not object to these photographs. We therefore review this assignment of error assuming Defendant lodged a timely objection with the trial court.

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are technically not discretionary, but, as evidence is relevant if it has *any* logical tendency to prove any fact of consequence, a trial court's Rule 401 rulings are given great deference on appeal. *Wallace*, 104 N.C. App. at 502, 410 S.E.2d at 228.

Although Defendant argues the photographs of Godette with his children were irrelevant, our Supreme Court has "consistently held that, during the guilt-innocence phase of a trial, a photograph of the victim taken before death is admissible." *State v. Barden*, 356 N.C. 316, 351, 572 S.E.2d 108, 131 (2002). Demonstrating the appearance of the victim and establishing a basis for a medical examiner's testimony satisfies the relevance requirement of Rule 402. *Id.*

Defendant also argues that the use of a family photograph was unfairly prejudicial. Rule 403 prohibits evidence which has "an undue tendency to suggest an improper basis, commonly, though not necessarily, as an emotional one." *State v. Cagle*, 346 N.C. 497, 506, 488 S.E.2d 535, 542 (1997). A trial court's ruling on an objection based on Rule 403 is reviewed for an abuse of discretion and will not be upset unless the ruling was "manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *State v. Chapman*, 359 N.C. 328, 347-48, 611 S.E.2d 794, 811 (2005) (citations omitted).

The presence of family members in a photograph of a murder victim does not as a rule render it unduly prejudicial. *State v. McNeill*, 326 N.C. 712, 720, 392 S.E.2d 78, 82 (1990) (holding admission of a photograph of the victim and his brother during

testimony of the victim's daughter did not violate Rule 403); *State v. Goode*, 341 N.C. 513, 539, 461 S.E.2d 631, 646 (1995) (holding any prejudicial effect of family photograph of elderly murder victims was outweighed by its probative value). Here, the potential for prejudice caused by a photograph of the victim with his two young daughters is not lost on this Court. But the trial court determined that the photographs' probative value outweighed any prejudice, and we cannot hold that decision to be so manifestly unsupported by reason as to constitute an abuse of discretion.

B. Autopsy Photos

Defendant also argues that the trial court erred in admitting photographs taken during Godette's autopsy. Thirteen of these photographs were admitted and published to the jury, and Defendant contends that two of them were so graphic that the prejudice caused by their viewing outweighed any probative value they may have had.

Defendant did not object to the admission of the autopsy photographs at trial. Therefore, we review their admission for plain error. *State v. Holloway*, 82 N.C. App. 586, 586, 347 S.E.2d 72, 73 (1986). Plain error is error which "resulted in a miscarriage of justice or in the denial to appellant of a fair trial" or "had a probable impact on the jury's finding that the defendant was guilty." *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citations omitted).

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The photographs at issue in this case, though taken in a clinical setting, depict stages of an autopsy that may be shocking to an unprepared viewer. Exhibit 4J shows Godette's upper body and head. Several incisions to the chest have been made, displaying muscles, bone, and organs. The face has been removed and folded down over the chin, revealing the brain cavity from which the brain has been removed and a metal rod displaying the trajectory of the bullet that struck the neck and head. Significant quantities of blood are visible on the skin, on the table beneath Godette, and on surgical tools including a pair of pliers and a surgical fork. Exhibit 4K displays the opened cranium from a different angle, with the scalp peeled back. Teeth appear to be visible through the opened skull.

Defendant argues that these photographs served no probative purpose. He concedes that they display the path of the bullet through Godette's skull but argues that the State could have used medical diagrams or other, less inflammatory evidence. But the fact that a photograph depicts "a gory, gruesome scene or tend[s] to arouse prejudice in the jury does not render it incompetent if it is otherwise relevant and material." *State v. Temple*, 302 N.C. 1, 13, 273 S.E.2d 273, 281 (1981). Because the cause of Godette's death is at issue in this case, with wounds caused by bullets fired from different guns, the photographs were relevant to the jury's determination of Defendant's guilt. *State v. Robinson*, 283 N.C. 71, 77, 194 S.E.2d 811, 816 (1973). The question, then, is whether this probative value was outweighed

by the prejudicial effects of the photographs so that they should therefore be excluded under Rule 403. We review this determination for plain error. *Chapman*, 359 N.C. at 349, 611 S.E.2d at 812.

Our Supreme Court “has rarely held the use of photographic evidence to be unfairly prejudicial.” *State v. Robinson*, 327 N.C. 346, 357, 395 S.E.2d 402, 409 (1990). There is no definitive test for the admissibility of photographs alleged to be inflammatory, but courts have looked to factors including “(1) the number of photographs; (2) whether the photographs were unnecessarily duplicative of other testimony, (3) whether the purpose of the photographs was aimed solely at arousing the passions of the jury, and (4) the circumstances surrounding the presentation of the photographs.” *State v. Mlo*, 335 N.C. 353, 374-75, 440 S.E.2d 98, 109 (1994). In *Mlo*, the trial court admitted two autopsy photographs: one showing the victim’s head with a probe inserted through the cheek and out of the temple to show the path of a bullet wound, and another of the bullet wounds to the victim’s ankle. *Id.* at 373, 440 S.E.2d at 108. The Court affirmed the admission of the photographs, noting that they were taken in a clinical setting, were not particularly gruesome given the circumstances of the crime, and in context did not appear to be intended to inflame the passions of the jury, as the forensic pathologist merely gave a brief description of the photos as a foundation for their admission. *Id.* at 375, 440 S.E.2d at 109.

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The photographs in this case were likewise taken in a clinical setting and were not unnecessarily duplicative. The forensic pathologist briefly described each photograph in order to introduce them to the jury. This case appears to be distinguishable from *Mlo* only in that the photographs display a more progressed autopsy. “Properly authenticated photographs of a homicide victim may be introduced into evidence even if they are gory, gruesome, horrible or revolting,” as long as they illustrate witness testimony and are not used solely to arouse the passions of the jury. *State v. Murphy*, 321 N.C. 738, 741, 365 S.E.2d 615, 617 (1988). Given the absence of other factors indicating prejudicial effect in excess of probative value, we cannot find plain error in their admission. While Defendant argues that less prejudicial evidence could be used to show the cause of death, the trial court is not tasked with ensuring only the evidence with the least possibility of prejudice is admitted. The question is whether the prejudicial effect outweighs the probative value—while the availability of less prejudicial evidence may be a factor in that determination, it is by no means dispositive.

Although our courts have concluded at times that postmortem photographs are overly prejudicial, the cases cited by Defendant are distinguishable. In *State v. Mercer* our Supreme Court held that photographs of the body of a teenage boy, shown at a funeral home with probes indicating bullet paths, were “poignant and inflammatory” and had “no probative value in respect of any issue for determination

by the jury.” 275 N.C. 108, 121, 165 S.E.2d 328, 337 (1969). This determination was dicta, however, because the Court noted that the evidence was uncontradicted as to the cause of death, rendering the photographs irrelevant. *Id.* In *State v. Johnson*, our Supreme Court held that photographs showing a child’s remains that had been recovered in a state of decomposition and that had been dismembered by wild animals were unduly prejudicial. 298 N.C. 355, 376, 259 S.E.2d 752, 765 (1979). In neither of these cases did the photographs tend to prove any material fact at issue. Here, the autopsy photographs were used to illustrate the pathologist’s testimony regarding the victim’s injuries and cause of death. They were relevant to a material issue, and their prejudicial effect did not outweigh that probative value.

Additionally, even if the trial court erred in admitting the autopsy photographs, we are not convinced that they had a “probable impact on the jury’s finding of guilt.” *Odom*, 307 N.C. at 651, 300 S.E.2d at 379. The State presented substantial evidence of Defendant’s guilt, including video of Defendant approaching Godette and shooting him. Defendant admitted to shooting Godette. There was significant evidence upon which the jury could have found Defendant guilty of voluntary manslaughter, and we find no plain error in Defendant’s trial.

III. CONCLUSION

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We hold that the trial court did not abuse its discretion in admitting the family photographs of the victim, and do not find plain error in the admission of the autopsy photographs.

NO ERROR.

Judges McGee and Berger concur.

Report per Rule 30(e).