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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-53

No. COA20-275

Filed 2 March 2021

New Hanover County, Nos. 16 CRS 58709-10, 58725

STATE OF NORTH CAROLINA

v.

JONATHAN ALEXANDER HAYES

Appeal by defendant from judgments entered 4 June 2019 by Judge Richard Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 9 February 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kathryne E. Hathcock, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for defendant.*

ARROWOOD, Judge.

¶ 1

Jonathan Alexander Hayes (“defendant”) appeals from judgments entered 4 June 2019 following his conviction for reckless driving, possession of drug paraphernalia, felony death by vehicle, driving without a license, and second-degree murder. Defendant contends that the trial court erred in admitting two autopsy

photographs. For the following reasons, we hold that the trial court did not abuse its discretion and find no error in defendant's trial.

I. Background

¶ 2 On 5 December 2016, a New Hanover County grand jury indicted defendant for second-degree murder, reckless driving, possession of drug paraphernalia, felony death by vehicle, and operating a vehicle without a license.

¶ 3 The matter came on for trial on 24 May 2019 in New Hanover County Superior Court, the Honorable R. Kent Harrell presiding. The State's evidence tended to show as follows.

¶ 4 On 1 November 2016, witnesses in the Monkey Junction area of Wilmington observed a grey full-sized pick-up truck being driven in an erratic manner. Witnesses observed that the driver, later identified as defendant, was having difficulty maintaining his lane, crossed the median, and drove on the wrong side of the road. The truck approached a red stop light where two vehicles were stopped in defendant's lane of travel. Defendant failed to stop and hit the last vehicle in the lane, a Hyundai Sonata driven by Alexandria Williams ("Williams"). Officer Dwayne Ouellette testified that the police department estimated defendant was driving at approximately 43 miles per hour, below the posted speed limit of 45 miles per hour, when he struck Williams' vehicle.

¶ 5 Williams, who was pregnant at the time, was driving with her husband and

two young children: two-year-old M.R.<sup>1</sup> and three-year-old J.R. Although both children were properly secured in car seats, M.R. was killed by blunt force trauma to the head due to the impact from defendant's truck. Defendant's truck came to a stop "a couple hundred yards down the road" close to the median. New Hanover County Sheriff's Deputy Brandon Gueiss ("Deputy Gueiss"), who was off-duty at the time, saw the truck in the road and upon approaching the driver's side door, found defendant unresponsive and slumped over the wheel of the truck. Deputy Gueiss pulled defendant out of the truck to render aid and observed heroin bindles, a Narcan kit, and a bag of needles on the floorboard of the truck. Lieutenant Brent Guy administered two milligrams of Narcan to defendant via intranasal spray with no effect, and another two milligrams of Narcan intravenously which caused defendant to rapidly regain consciousness.

¶ 6

Defendant was transported to New Hanover Regional Medical Center and was evaluated by drug recognition expert Officer Eric Lippert ("Officer Lippert"). After an extensive evaluation, Officer Lippert concluded that defendant was suffering from opioid impairment at the time of the crash. Blood and urine samples were taken from defendant at the hospital. Sample analysis showed that defendant had alprazolam (also known as Xanax), cocaine metabolite, and diphenhydramine (found in Tylenol

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<sup>1</sup> Initials are used throughout the opinion to protect the identity of the juveniles.

PM or Benadryl) in his system. No opioids were detected in defendant's system. Aaron Joncich, the forensic scientist manager in the toxicology section at the North Carolina State Crime Laboratory, testified that some low-dose drugs such as fentanyl are effective in very small concentrations and accordingly "the concentration in the person's blood is much lower and much harder to detect" by the State Bureau of Investigation's ("SBI") instruments.

¶ 7

Multiple autopsy photographs of M.R. were admitted into evidence. Two of the photographs taken during the autopsy, introduced as State's Exhibits 27 and 28, showed M.R.'s skull cap and brain. Defendant's trial counsel objected to the admission of the photographs, arguing that there was no dispute regarding the mechanism of injury and death in the case and the "photographs and the exhibits are of little relevance." The trial court overruled the objection, stating that "stipulations from the defendant don't limit the State's ability to introduce its case when it has elements that it's required to prove[.]" and accordingly allowed the photographs to be introduced, specifically limiting the use of the State's Exhibits 27 and 28 for the witness to "use the actual photograph to explain his testimony," without the photographs being displayed on the large screen display in the courtroom.

¶ 8

Dr. John Almeida ("Dr. Almeida"), who performed the forensic autopsy on M.R., provided testimony regarding the autopsy photographs. Dr. Almeida testified that he performed the autopsy on 2 November 2016, generated a report, and took a

series of photographs documenting the findings of the autopsy. The State moved to introduce the autopsy photographs as illustrative evidence and defendant's trial counsel renewed the objection, which the trial court overruled. With respect to Exhibit 27, Dr. Almeida explained that the photograph depicted the skull cap, which is removed to access the brain. Dr. Almeida noted that the photograph showed a "black blood clot referred to as a hematoma" on the right side of the skull cap, which corresponded to a previous photograph that showed swelling on the right side of M.R.'s head. With respect to Exhibit 28, Dr. Almeida explained that it depicted the bottom half of the skull after the brain was removed, with a large fracture area visible on the right side of the skull as well as three other fractures. Dr. Almeida testified that based on the autopsy of M.R., the cause of death was blunt trauma with skull fractures.

¶ 9 At the close of the State's evidence, defendant's trial counsel made a motion to dismiss for insufficient evidence, which the trial court denied. At the close of all evidence, defendant's trial counsel renewed the general motion to dismiss, with an additional motion that there was insufficient malice to support the second-degree murder charge. The trial court denied both motions.

¶ 10 On 4 June 2019, the jury found defendant guilty of all charges. The trial court arrested judgment on the felony death by vehicle conviction. The trial court consolidated defendant's convictions for second-degree murder, reckless driving, and

driving without a license into one judgment and sentenced defendant to 180 to 228 months incarceration, as well as a sentence of 120 days incarceration for possession of drug paraphernalia. The judgments were ordered to run consecutively.

¶ 11 Defendant filed written notice of appeal on 17 June 2019.

## II. Analysis

¶ 12 Defendant argues that the trial court erred in admitting State's Exhibits 27 and 28, alleging that the photographs were irrelevant and inflammatory and served only to inflame the jury's passions. We disagree.

¶ 13 We review the trial court's decision to admit "evidence pursuant to Rule 403 for an abuse of discretion." *State v. Peterson*, 361 N.C. 587, 602, 652 S.E.2d 216, 227 (2007) (citing *State v. Al-Bayyinah*, 359 N.C. 741, 747-48, 616 S.E.2d 500, 506-507 (2005)). "In our review, we consider not whether we might disagree with the trial court, but whether the trial court's actions are fairly supported by the record." *Id.* at 603, 652 S.E.2d at 227 (quoting *State v. Lasiter*, 361 N.C. 299, 302, 643 S.E.2d 909, 911 (2007)) (quotation marks omitted). "Whether the use of photographic evidence is more probative than prejudicial and what constitutes an excessive number of photographs in the light of the illustrative value of each likewise lies within the discretion of the trial court." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citing *State v. Sledge*, 297 N.C. 227, 254 S.E.2d 579 (1979)). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is

so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citing *State v. Parker*, 315 N.C. 249, 337 S.E.2d 497 (1985)).

¶ 14 We have held that “[p]hotographs are usually competent to be used by a witness to explain or illustrate anything that it is competent for him to describe in words.” *State v. Lloyd*, 354 N.C. 76, 98, 552 S.E.2d 596, 613 (2001) (quoting *State v. Watson*, 310 N.C. 384, 397, 312 S.E.2d 448, 457 (1984)). “Photographs of a homicide victim may be introduced even if they are gory, gruesome, horrible or revolting, so long as they are used for illustrative purposes and so long as their excessive or repetitious use is not aimed solely at arousing the passions of the jury.” *State v. Blakeney*, 352 N.C. 287, 309-10, 531 S.E.2d 799, 816 (2000) (quoting *Hennis*, 323 N.C. at 284, 372 S.E.2d at 526). “This Court has rarely held the use of photographic evidence to be unfairly prejudicial[.]” *State v. Bare*, 194 N.C. App. 359, 364, 669 S.E.2d 882, 886 (2008) (quoting *State v. Robinson*, 327 N.C. 346, 357, 395 S.E.2d 402, 409 (1990)).

¶ 15 In the present case, the challenged photographs were introduced to illustrate testimony by Dr. Almeida about the nature of the injuries to M.R., as well as the cause of death. The trial court admitted the photographs for illustrative purposes only and specifically limited the use and display of State’s Exhibits 27 and 28. The transcript reveals that the photographs were used briefly to illustrate Dr. Almeida’s testimony about internal fractures that supported Dr. Almeida’s conclusion that the

cause of death was blunt force trauma. Because the photographs were used for an illustrative purpose and were not used excessively or repeatedly, we hold that the trial court did not abuse its discretion in admitting the photographs.

III. Conclusion

¶ 16 For the foregoing reasons, we hold that the trial court did not err in admitting State's Exhibits 27 and 28, and find no other error in defendant's trial.

NO ERROR.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).