

24 SEP 12 PM 3:55
Brice Barrett DDC BUL SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

The State,

Indictment No. 2022GS2302194,
2024GS2305412-13; 2024GS2305425A

vs.

**MOTION IN LIMINE TO EXCLUDE
REFERENCE TO AND EVIDENCE OF
CHILD PORNOGRAPHY**

Zachary David Hughes)
Defendant.)

Now comes the State with notice to the Defendant, Zachary Hughes (hereinafter the “Defendant”) by and through defense counsel, Andy Moorman and Mark Moyer, that the State moves to exclude any reference to the jury or evidence presented by the Defendant related to child pornography in reference to the victim, Christina Parcell (hereinafter “Parcell”), her juvenile daughter (hereinafter AMP), or Bradley Post (hereinafter “Post”).

Background

On October 13, 2021, Parcell was killed in her home at 122 Canebrake Dr. in Greenville County. In the months preceding the murder, Parcell was involved in a custody battle with the child’s father, John Mello (hereinafter “Mello”). Mello is alleged to be an associate and close friend of the Defendant.¹

Based on evidence that the State intends to introduce at trial, on April 17, 2021, Mello texted the Defendant through the app “WhatsApp” to “harass the shit” out of

¹ This relationship was detailed by several witnesses to law enforcement as well as email, WhatsApp, and phone communications recovered by GCSO.

Parcell. On May 16, 2021, Mello, through his email, received two sexually explicit photos of Parcell and subsequently distributed those images to the Defendant. In July of 2021, packages containing said photographs were mailed to Parcell, her employer at the time (Norris Financial of Greenville), Post, two of Parcell's neighbors, and Outman Cigars and Martini Bar, a bar that both Post and Parcell frequented. Post and Parcell were involved in a romantic relationship leading up to Parcell's murder. Post, upon returning to the home at Canebrake Dr on the morning of October 13th, discovered Parcell's body and notified police. Parcell was the only individual in the home at the time of her murder, as AMP was at school. Pursuant to what he informed investigators, Post had come to the Canebrake home that morning after Parcell had not returned texts and calls.

Law enforcement interviewed and met with Post on several occasions in investigating the murder. In the course of that investigation, specifically in determining his whereabouts during the murder and potential involvement, Post relinquished his phone and electronic devices, leading to the discovery of a high volume of child pornography on those devices.² Post was arrested on October 19th and faces six (6) charges of sexual exploitation of a minor related to that electronic material. Those charges remain pending with the Attorney General's Office. Based on the phone extraction, Post's texts and call history confirm his communication with Parcell that morning. Further, Post's Life360 app places Parcell's arrival at the home at 9:07am.

The murder investigation led law enforcement to a Ring camera located across the street from her home (121 Canebrake Dr), which recorded and confirmed Parcell entering

² Included among the images discovered on Post's devices are images of both Parcell and AMP. Several images of Parcell and AMP are sexually explicit. In AMP's interview with the Julie Valentine Center, she denied any involvement or subjection to sexually explicit activity.

the home at 9:07am, followed by an individual entering her home at 9:15am with a gray hoodie and a black backpack. Ring cameras record in motion-activated clips, as opposed to continually-recording devices. Parcell's body was discovered about an hour later by Post as he placed a 911 call at 11:00am. Parcell was stabbed approximately 31 times and those stab wounds were the proximate cause of her death. Another Ring camera later videoed the suspect leaving Parcell's neighborhood while on a bicycle at 9:27am, dressed in the same clothing described above, with a face covering (N-95 mask) and hoodie over his head.

A Ring camera at 116 Canebrake Dr records Post's vehicle driving towards 122 Canebrake at 10:57am, with the 121 Canebrake Ring footage showing Post's vehicle at the house at 11:05am, the same time law enforcement had arrived. Prior to that time, the 121 Canebrake Ring camera does not show Post's vehicle at the residence. Upon first responders' arrival to the home and on contacting Post, he was in a sport coat and khakis. Subsequent searches of his home revealed no matching clothing to the suspect, or any evidence that would suggest he was involved in the murder in any capacity. On running a complete diagnostic of Post's phone and electronic devices, no internet search, communication, or mention of "Zach Hughes" or "Zachary Hughes" was found.

In learning that Defendant had a relationship with Mello, law enforcement began reviewing FLOCK cameras in Greenville County. FLOCK cameras are license plate reading cameras that store every passing license plate in a searchable database with a time, date and photo of the car. FLOCK cameras are located throughout Greenville County. On the day before the murder and the day of the murder, FLOCK cameras displayed Defendant's truck with a bicycle located in the bed of the truck. This bicycle

matched the description of the bicycle that was leaving Parcell's neighborhood at the time of her murder.

Law enforcement executed a search warrant on 122 Tindal Rd in Greenville, the home in which Defendant was living, and located a bicycle matching the same description as the bicycle located in the back of the Defendant's truck and photographed on the FLOCK cameras. A witness in the Defendant's home stated that Defendant owned the recovered bicycle and that he had recently used it. Subsequent DNA analysis on multiple locations of the bicycle confirmed the presence of Defendant's DNA. DNA analysis was also conducted on Parcell, where a positive match was identified under her right fingernail to match the Defendant at a rate 825 million times more likely than a coincidental match to a random unrelated individual. The Defendant was arrested on November 3rd, and was subsequently charged with Murder, Possession of a Weapon During the Commission of a Violent Crime, Harassment, Conspiracy, and Burglary 1st Degree.

Argument

I. Child Pornography Evidence is Not Relevant to Defendant's Charges

Any evidence relating to Parcell, Post, or AMP regarding allegations of creating, participating in, possessing, or distributing child pornography is not relevant to the determination of whether the Defendant committed the murder of Parcell on October 13th, 2021. More specifically, the evidence has no tendency to make the existence of a fact that is of consequence to this murder more or less likely, nor is there any evidence to show that this potential involvement in child pornography would assist the trier of fact in determining the question of who committed this murder.

“Relevant evidence” is that which has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. Another way of determining relevance is if the evidence would assist “a jury at arriving at the truth of an issue.” State v. Schmidt, 288 S.C. 301 (1986). As a general rule, all relevant evidence is admissible. Rule 402, SCRE.

The Defendant is charged with Murder, Possession of a Weapon During the Commission of a Violent Crime, Conspiracy, Harassment, and Burglary First Degree. For all charges, Parcell is the sole victim. The State anticipates that, at trial, the Defendant will attempt to introduce testimony from Post and law enforcement regarding Post’s pending child pornography charges, and the discovery of the child pornography during the course of this investigation. In essence, the Defendant will attempt to assert that, because Post was in possession of and associated with the child pornography material, he is more likely to have committed the murder. By this logic, the Defendant would be using the “shock value” and heinousness associated with the subject of child pornography to project what is ultimately a completely untenable connection between Post and the murder of Parcel. More specifically, this evidence lacks any tendency to make less probable the Defendant’s alleged involvement in the murder.

The time frame and physical description established by the Ring cameras, in conjunction with the DNA evidence provides only a question as to the identity of the killer. Post’s devices which contained the child pornography, to include his phone, contain no communications or material pertinent to the murder investigation, nor any material that the State would present at trial. Where the Defendant may attempt to offer

the child pornography evidence as being construed towards some sort of motive or lack thereof, it would require the Defendant to present facts which create some nexus between the murder and the child pornography. To that end, the Defendant would either have to testify, or call a witness to establish the relevance of such testimony; as no evidence collected (including all electronic evidence gathered) by the State provides that any witness had knowledge of the child pornography material outside of Post.

II. The Evidence is not Applicable Toward Third-Party Guilt

Evidence of potential third-party guilt of the murder of Parcell by Post is inadmissible pursuant to State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). Such evidence lacks any foundation or cohesion with the facts and circumstances of this case, and only serves to cast an emotional and inflammatory suspicion at a State witness to the jury.

Evidence offered by the Defendant as to the commission of the crime by another must be limited to facts inconsistent with his guilt and facts that raise a reasonable inference or presumption as to his innocence. Id. “Evidence which can have (no) other effect than to case a bare suspicion upon another, or to raise a conjectural inference that the crime was committed by another, is not admissible.” Id. at 534. The Supreme Court goes on to detail that “before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.” Id. at 535; State V. Cooper, 334 S.C. 540 (1999).

As summarized, the State alleges this murder to have taken place between 9:07 and 9:30am on October 13th, 2021, which is substantiated by the video footage the State

intends to introduce at trial. The same video evidence records Post's vehicle at the home at 11:05am, an hour and a half after the murder takes place. The State anticipates that, at the outset of trial in opening statements, or in the course of Post's testimony, that the Defendant will attempt to introduce statements, testimonial evidence, or physical evidence as related to the child pornography and Post. At the point the mere mention of child pornography is introduced, there will be no way to "unring the bell", regardless of any instruction by the trial judge. More specifically, there will be no way at this early stage in the trial, for the Defendant to establish "such proof of connection" of the child pornography with the murder itself, or the underlying harassment and conspiracy, for that matter, to "clearly point out [Post] as the guilty party". Gregory at 53.

The introduction of this testimony by the Defendant runs in plain contravention of the Gregory standard and its progeny. Specific to murder, our courts have upheld and applied Gregory in a number of instances.

In State v. Burgess, the Court of Appeals reiterates the axiomatic principle that the United States Constitution guarantees a criminal defendant the right "to present a complete defense"; with the caveat that the fundamental right is subject to reasonable restrictions. 391 S.C. 15, 21-22, 73 S.E.2d 512, 515-516 (Ct. App. 2010) *See U.S. v. Scheffer*, 523 U.S. 303, 308, 118 S.Ct. 1261 (1998). These restrictions include the exclusion of witness testimony. Id. The defendant in Burgess was convicted of drug-related murders where the defendant shot and killed two individuals at their "crack house." Id. at 17. After hearing the offered testimony of five defense witnesses who would have testified that the victims had been threatened over their drug debts in the months leading up to the murders, the trial judge excluded that testimony in accordance

with Gregory. Id. The Court of Appeals upheld this decision, citing the fact that some of the evidence related to events occurring more than eight months before the murders, and that even the most recent events occurred more than two weeks before. Id. at 22.

Moreover, the trial court found that none of the evidence was inconsistent with the defendant's guilt and concluded in amounted to "mere conjecture or surmise." Id.

In State v. Brooks, the defendant was charged with murder stemming from an altercation at a bar in Columbia. After following the victim to the parking lot, the defendant shot and killed him before fleeing the scene. 428 S.C. 618, 623-624, 837 S.E.2d 236, 240 (Ct. App. 2019). The trial court excluded two photographs of a gun of the same caliber as shell casings found at the scene offered by the defendant that were found on the cell phone of a bar patron who was present at the shooting and was in communication with a suspect of the shooting. Id. 633-634. However, the firearm pictured held nine (9) rounds, while there were ten (10) shell casings found at the scene. Id. at 635. The photographs were discovered the day after the shooting on the phone of a witness, Paxton, who was in the bar during the murder and were sent by her ex-boyfriend, "Bling". Id. Critically, no witness was able to place Bling at the scene before or during the shooting. Id.

The Court of Appeals held that the incongruent evidence between the number of rounds held by the gun pictured and the rounds found at the scene, along with the lack of placement of Bling at the scene, warranted exclusion of the evidence. Id. at 636.

Moreover, the Court found that the defendant had not presented the requisite "train of facts or circumstances" tending "clearly to point out [the] other person as the guilty party." Id. at 637; Gregory, 198 S.C. at 105.

Finally, in State v. Brown, the Court of Appeals found that evidence that a third-party “generally fit [the description]” of a perpetrator who killed and robbed the victim, lived within walking distance of the crime scene, and was in the area within hours of the victim’s death, was not admissible to show that the third-party, rather than the defendant, committed the crimes. 437 S.C. 550, 568-69, 878 S.E.2d 364, 373 (Ct. App. 2022). Specifically, the Court of Appeals reasoned that the defendant presented no witnesses suggesting that third-party claimed responsibility for the crimes nor otherwise offered evidence of third-party’s guilt to exclusion of himself. Id. at 569.

The evidence at issue involves allegations and content wholly outside the subject matter of the charges before the court. The Defendant will be unable to establish how it amounts to evidence that is inconsistent with the defendant’s guilt. *See* Burgess at 22. As a threshold matter for introduction of such evidence, the Defendant is required to present the requisite “train of facts or circumstances” tending “clearly to point out [Post] as the guilty party. Brooks at 637; Gregory at 105. Far removed from Brooks, Burgess, and Brown, the Defendant will be incapable of reaching even the level of evidentiary connection to the charges at issue that our Courts have routinely excluded. By virtue of the plain intention of the Defendant to introduce this evidence in order to raise a wholly conjectural inference of this murder having been committed by Post through unrelated, pending, albeit heinous charges, this Court must take preventative action to exclude such evidence.

III. The Evidence is Improper Impeachment Evidence of Post

Witnesses may be impeached about specific prior acts, but only if they relate to character of truthfulness or untruthfulness. State v. Kelsey, 331 S.C. 50 (1998); Rule

608(b), SCRE. Rule 608(c) provides that bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced. This is further understood as “anything having a *legitimate* tendency to throw light on the accuracy, truthfulness, and sincerity of a witness.” (emphasis added) State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) (quoting State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976)).

Post faces charges of that are being prosecuted by the Attorney General. Accordingly, he has been offered no deal in exchange for his testimony. Where Post’s testimony is limited to the context of discovering Parcell’s body, the legitimate tendency to throw light on his truthfulness in questioning him as to his pending child pornography charges is de minimis, and opens the door to myriad issues and considerations that are collateral and not in any way relevant to the jury’s considerations and evaluation of the factual issues of this case. Based on this, and the related 403 consideration, Post’s pending charges should not be subject to impeachment by the Defendant.

IV. Should the Court Find the Evidence Relevant, it Should be Excluded on 403 Grounds

Should this Court find that the child pornography evidence is relevant to the charges facing the Defendant, this Court should exclude such evidence as its probative value is substantially outweighed by its prejudicial effect in confusing the issues of the case and misleading the jury.

Related to the Gregory rule is the requirement of a trial judge to consider the probative value or potential adverse effects of admitting proffered third-party guilt evidence. State v. Swafford, 375 S.C. 637, 641, 654 S.E.2d 297, 299 (Ct. App. 2007). Although relevant, evidence may be excluded if its probative value is substantially

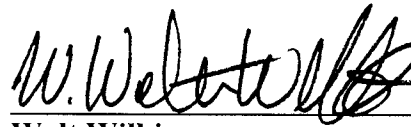
outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury. Rule 403, SCRE. The critical inquiry in determining whether evidence is unfairly prejudicial is whether the evidence improperly appeals to the preferences of the trier of fact for reasons that are unrelated to the power of the evidence to establish a material fact. 29 Am. Jur. 2d Evidence §326. Unfair prejudice may arise from evidence that arouses the jury's hostility or sympathy for one side, confuses or misleads the trier of fact, or unduly distracts the jury from the main issues. Id.

The subject of child pornography is inherently and categorically inflammatory. Where the court finds that there is some relevant aspect to the introduction of this evidence at trial, there is no question that the issues facing the jury – those charges and elements which the Defendant is being tried on – will be distorted by the introduction of what is, at best, a tangential derision of a State witness. On this point, our Court of Appeals has, in a case of CSC with a minor under the age of 11 years, found reversible error in admitting sexually explicit photographs of the Defendant on account of their prejudicial value substantially outweighing their probative value where they were taken after the alleged conduct. State v. Lee, 399 S.C. 521, 529, 732 S.E.2d 225, 229-230 (Ct. App. 2012). Here, in a case of murder, where such evidence is wholly collateral in time frame and subject matter, there is no legitimate purpose for its introduction but for the very tenets which 403 prohibits in order to maintain the integrity of a trial.

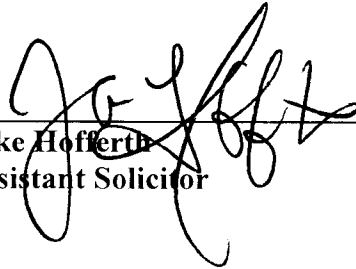
The present case lacks any nexus of the child pornographic material/testimony to the charges against the Defendant. As the case against Post is pending, the facts related to those charges and that material remain in dispute. To allow introduction of child pornography evidence, through any method, by the Defendant would incontrovertibly

prejudice the State through the injection of patently inflammatory subject matter to the jury which distorts the issues which they will be charged to determine. Accordingly, should this Court find it relevant, it should be excluded on 403 grounds.

Respectfully submitted,



Walt Wilkins
Solicitor, 13th Circuit



Jake Hofferth
Assistant Solicitor

September 12, 2024