STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

MICHAEL TIRRELL MEANS,.....APPELLANT

INITIAL BRIEF OF RESPONDENT

Appellate Case No. 2021-000752

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULE

APPELLANT'S STATEMENT ON APPEAL

Did the trial court err admitting graphic photographs of decedent's body found at the scene and an autopsy photograph of the gunshot wound under Rule 403, SCRE, because the photographs were a needless presentation of cumulative evidence and the probative value of the photographs was substantially outweighed by their potential for being unfairly prejudicial where there was no dispute as to the manner of death and the only issue at trial was appellant's state of mind at the time of the incident?

RESPONDENT'S COUNTER ARGUMENT ON APPEAL

Did the trial court err in allowing crime scene and autopsy photographs into evidence when the Appellant's defense was that this was manslaughter and not murder? Were the photographs used to reveal malice thereby making the probative value outweigh any prejudicial effect which would not be in violation of Rule 403? And if the trial court committed any error; can it be considered harmless error?

STATEMENT OF THE CASE

Appellant was once married to the victim Yumonica Means (victim). Right before the incident victim and Appellant were going through marital problems. During the marriage the Appellant was living in the victim's residence. Right before the incident the victim informed Appellant he had to move out of the residence. (T. p. 392 lines 6-21)

On July 3, 2019, victim went to her sister's house. (T. p. 159 lines 11-18). She allowed her ten year old daughter to stay home and she gave her daughter her cell phone. (T. p. 159 lines 22-23). While the victim was at her sister's house, the victim's ten year old daughter received a text from the Appellant on the victim's phone. The text stated that the Appellant had gotten into a bad car accident and that the victim's three year old daughter was badly injured. (T. p. 160 lines 3-4). The child became scared so she called the victim. (T. p. 160 lines 10-11). After this, the Appellant called the victim's phone and the victim's ten year old whom she left her phone with answered. The Appellant told her that he had gotten into a bad car accident and that her sister was badly hurt. (T. p. 161 line 7). The victim then got back to the house and called the Appellant. After getting into an argument, Appellant told her were they were. (T. p. 163 lines 1-3). The victim and her ten year old daughter got into victim's sister's car and drove to the incident location. (T. p. 162 lines 17-18).

The location the Appellant told the victim where the wreck occurred was a remote area of Edgefield County. There were only farms at that location, no businesses, and not lighted. (T. p. 143 lines 20-23; p. 197 19-22). Once the victim arrived at the location, she got out her car and was shot in the temple by the Appellant. After shooting the victim the Appellant got back into the victim's car and drove off. (T. p. 165 lines 2-8). The victim's ten year old daughter witnessed the Appellant get back into the car and drive off. Once the Appellant drove off she saw her mother on the ground dead, she called her aunt, and then 911. (T. p. 165 lines 16-21; p. 165 lines 22-23).

A witness Jacob Derrick, coming home from work, observed a vehicle on the side of the road with the door open. (T. p. 102 lines 1-5). He pulled over to see what was going on. Mr. Derrick, a member of the volunteer fire department knew first aid. He checked the victim to see if she was still alive, and assessed that she was dead. (T. p. 103 line 23 – p. 104 line 3).

Once deputies arrived at the scene they spoke to the victim's ten year old daughter and she informed them that the Appellant was the shooter. (T. p. 127 lines 14-19). Law Enforcement also found out the Appellant was driving the victim's 2016 Kia Soul. (T. p. 211 lines 17-23). Law enforcement then issued A Be on the Look Out (BOLO) for the Appellant and the vehicle. (T. p. 212 lines 22-24). They also issued an Amber alert for the victim's three year old child. (T. p. 214 lines 2-5).

After he left the scene the Appellant drove to his mother's house and left his three year old daughter with her. (T. p. 478 line 4). He then drove to Laurens and left the car abandoned in a church parking lot. (T. p. 478 lines 20-23). The Appellant later called Lamaz Robinson, chief of police of the Johnston Police Department. (T. p. 235 lines 14-18). The Appellant and Chief Robinson knew each other because they once played in the high school band together. (T. p. 234 lines 16-17). During the call Chief Robinson read the Appellant his *Miranda* warnings and the Appellant wished to record the conversation. (T. p. 235 lines 14-18). During this conversation the Appellant confessed to killing the victim. He informed Chief Robinson that once the victim looked at the car and saw no damage she asked him "what kind of joke is this?" He then pulled out the gun and told her, "I'm gonna kill you." (T. p. 519 lines 9-11). When the victim turned to run he shot her in the head. (T. p. 521 lines 21-25). Chief Robinson convinced the Appellant to turn himself into the authorities.

On July 5, 2019, the Appellant and Chief Robinson met at Shaker's Gym in Saluda, South Carolina. Along with the Appellant was Pastor Hoops. (T. p. 238 lines 11-13). Once there, the Appellant gave Chief Robinson the murder weapon. (T. p. 238 lines 19-21). Chief Robinson contacted the Edgefield Sheriff's Department and arranged to meet at the Edgefield Detention Center. (T. p. 238 lines 13-16). The Appellant was then arrested and charged with offense of murder, and possession of a weapon during the commission of a violent crime. (T. p. 220 lines 5-7).

In October of 2019, the Appellant was indicted by an Edgefield County Grand Jury for the offense of murder and possession of a weapon during the commission of a violent crime. On June 28, 2021, the Appellant appeared before the Honorable Debra R. McCaslin for a trial. Present representing the State of South Carolina was Assistant Solicitors Laura Susanne Mayes and Douglas Wayne Fender of the Eleventh Circuit Solicitor's Office. Present before the trial court representing the Appellant were attorneys Robert M. Madsen and Erin Rebecca Conroy.

During trial, photographs of the crime scene, including photographs of the victim were allowed into evidence. Photographs of the victim taken during the autopsy were also allowed into evidence. (T. p. 131 lines 3-6; T. p. 132 lines 3-6; T. p. 431 lines 2-5).

Dr. Darren Monroe a forensic pathologist who performed the autopsy also testified. Dr. Monroe testified that the victim was shot on the right temple right were the ear begins. (T. p. 430 9-10). This gunshot wound was immediately fatal. (T. p. 431 lines 15-16).

The Appellant also decided to testify. During his testimony he testified that he did lie to the victim regarding the car accident; however, while she was in route he informed her that there was no accident and that he only wished to talk. (T. p. 471 lines 22-24). The Appellant testified that that when the victim got to the scene she got out of the car screaming and yelling. (T. p. 473

lines 6-10). That she "mushed" him in the face knocking off his glasses and then spat on him. (T. p. 475 lines 5-7). Appellant testified that he told the victim that he had heard her having sex with another man and that he should have killed them both. He also told her that he shouldn't have waited and that he should have killed them like he was going to kill her now. Appellant testified that is when he then shot her. (T. p. 476 lines 3-7). After he shot the victim he testified that he pointed the gun to his own head, however, he was talked out of committing suicide by his friend Kareem. (T. p. 476 lines 10-13).

After three days of testimony, a jury of his peers found the Appellant guilty of murder and possession of a weapon during the commission of a violent offense. (T. p. 570 lines 17-25). The Appellant appeared before the trial judge who sentenced him to a term of incarceration for the remainder of his natural life, and five years for possession of a weapon during the commission of a violent crime. The trial court ordered that both of these sentences are to be served concurrently. (T. p. 583 lines 14-17).

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829, (2001). The trial court has considerable discretion on the admissibility of evidence. *State v. Sheldon,* 344 S.C. 340, 342, 543 S.E.2d 585 (2001). On appeal, the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 234 S.E.2d 230 (1977). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kornahrens,* 290 S.C. 281, 350 S.E.2d 180 (1996). The relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of

discretion. *State v. Shuler,* 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Bryant,* 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). Error is harmless where it could not reasonably have affected the trial's outcome. *State v. Mitchell,* 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

ARGUMENT

Trial court did not err in allowing into evidence photographs of the victim's body as it was found at the scene of the crime nor did the court err in allowing into evidence autopsy photos. These photos where allowed under Rule 403 because its probative value outweighed any prejudice they might have caused. If this court does think the trial court committed an error it should be considered harmless.

The State introduced as exhibits crime scene photos of the victim and autopsy photos of the head area where the victim was shot. The Appellant objected to the introduction of each of these photos arguing it violates rule 403 of the South Carolina rules of evidence. The Appellant argues that the introduction of this evidence was a needless presentation of cumulative evidence that was unfairly prejudicial. The Appellant alleges that since there was no dispute, that he admits to shooting the victim, this evidence was only introduced to enflame the emotions of the jury.

Rule 403 of the South Carolina rules of evidence specifically state:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 403 SCRE

"To constitute unfair prejudice, the photographs must create 'a tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." *State v. Kelly,* 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting, State v. Alexander,* 303 S.C. 377, 401 S.E.2d

146, 149 (1991). In discussing a similar evidentiary ruling, Pennsylvania courts have often determined:

> A criminal homicide trial is, by its very nature, unpleasant and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim, and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt. Further, the condition of the victim's body provides evidence of the assailant's intent, and even where the body condition can be described though testimony from a medical examiner, such testimony does not obviate the admissibility of photographs.

Com. v. Robinson, 864 A.2d 460, 502 (Pa. 2004), *quoting, Com. v. Rush,* 646 A.2d 557, 560 (Pa. 1994).

The Appellant argues that these photographs are cumulative and are only offered to prejudice him. The Appellant's position is that since he has admitted to shooting the victim, the introduction of this evidence should be considered prejudicial. The State offered to enter this evidence not only to corroborate the testimony of the only eyewitness at the scene, the ten year old daughter of the victim[1], but also to reveal the victim's haste as she left the house when she thought her three year old daughter was injured due to the Appellant's lie to lure her to that remote location to murder her.

The Appellant claims that this was a killing in the sudden heat of passion. In order to refute this, photographs need to be revealed to the jury. The Assistant Solicitor argued that the victim must have left her home in haste because when she was shot she did not even have on any shoes. (T. p. 519 lines 22-25). This proves that she was lured to this remote location with a lie that her

[1] "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." *State v. Collins,* 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014), *quoting, State v. Nance,* 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996).

child was in trouble. This lie by the Appellant was for the sole purpose of getting the victim to this remote location in order to kill her. Her now twelve year old daughter testified they both were told by the Appellant that her younger sister was hurt bad after the accident and the victim left the house in a hurry. The little girl also testified that when her mother got out the car she heard a pop and then found her mother laying on the road after the Appellant sped away. (T. p. 165 lines 2-8; p. 165 lines 16-21). The photographs at the scene prove that she was shot in the head not long after she exited the car.

As for the autopsy photo, it was relevant because it revealed malice, an essential element needed in order to prove murder. The Assistant Solicitor stated in her closing, that when the Appellant shot the victim in the right temple, it was an "execution shot." (T. p. 522 lines 2-7). She argued that the only place you would shoot someone when you fully intended them to die is in the head. (T. p. 522 lines 6-7). The autopsy photo were not presented with the intent to inflame the emotions of the jury, it was introduced to reveal the exact location of the bullet and to reveal there was no sudden heat of passion. This photograph revealed the Appellant's intentions to kill the victim. This was done to prove malice and nothing more. In the South Carolina Supreme Court decision of *State v. Collins* this was stated in the concurring opinion,

> I fully understand there are circumstances where autopsy photographs are relevant and that the relevance of the photographs are not substantially outweighed by the danger of unfair prejudice.

Collins, 409 S.C. at 539, 763 S.E.2d at 30 (Kittredge J. Concurring).

In *State v. Torres,* 390 S.C. 618, 703 S.E.2d 226 (2010) the South Carolina Supreme Court determined that, "autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant." *Torres,* 390 S.C. at 623, 703 S.E.2d at 229, *citing, State v. Rosemond,* 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999).

Within his brief the Appellant called the photographs "graphic," however, there exists no evidence as to how graphic these photographs were. Even if they were gruesome, this is not a reason they should be excluded when there some probative value exists. It has long been established that "[a] trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive." *State v. Martucci,* 380 S.C. 232, 250, 669, S.E.2d 598, 607 (Ct. App. 2008). *See also, Farris v. State,* 328 So.2d 640, 641 (Ala.Crim.App. 1976)(The colored photograph in question is clearly ghastly; but, gruesomeness is not grounds for excluding this type of evidence, if relevant...This photograph was properly admitted into evidence notwithstanding the unpleasant subject matter. We cannot and should not, gloss over the fact that violent death is itself loathsome"). Simple gruesomeness alone does not render the photograph inadmissible. *Collins,* 409 S.C. at 536-36, 763 S.E.2d at 28. The mere fact that an item of evidence is considered gruesome or revolting, sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, the court should not exclude it. *Nichols v. State,* 267 Ala. 217, 100 So.2d 750, 756 (1958). The autopsy photograph was introduced to show the malice that existed when this murder occurred. The Appellant was arguing that this was sudden heat of passion, the Solicitor correctly and successfully argued that this head shot was made in order to kill the victim, nothing was sudden about this killing. The premeditation and malice that occurred can only be considered murder.

Although the State is not conceding that the photographs entered into evidence were entered in error, if this court decides that there was error, the State submits that the error should be considered harmless. This is due to the ample amount of evidence presented revealing that this killing was done with premeditation and malice.

There was testimony that the Petitioner emptied the bank account of the victim days before this murder, and the victim was going to press charges. (T. p. 315 line 25 – p. 316 line 2). He admitted that he bought a gun just two days before the murder. (T. p. 489 lines 2-4). There was testimony that he called the victim to tell her he was in a car accident and that her three year old daughter was hurt and needed help. (T. p. 172 lines 10-14; p. 161 line 7). This was done for the sole purpose of luring her to the incident location, a desolate area in Edgefield County where only farmland could be found. (T. p. 197 lines 19-22), the area had very little street activity and no lighting. (T. p. 143 lines 3-4; p. 143 lines 20-23). The Appellant argues that he just wanted to talk to her, however, there are many other places with activity and adequate lighting that he could have asked to speak to her. (T. p. 206 line 13 – p. 208 line 10). But, he asked her to that remote location in order to kill her.

Special Agent Pat Pruitt of the United States Secret Service testified as an expert of cell phone analysis and examination. Agent Pruitt was given the cell phone of the Appellant in order to extract text messages made near the time when the murder occurred. Agent Pruitt pulled a text conversation between the Appellant and someone named Cody. In these texts the Appellant wrote, "I'm probably going to come get you in a few, about to do something. What if I cut her throat?" (T. p. 399 lines 4-6). These texts were sent while the victim was speaking on the phone late at night with her new lover. These texts were made at 12:15 am on July 2nd. (T. p. 397 lines 10-11). Twenty-four hours before the murder occurred. (T. p. 397 lines 12-14).

Without the photographs the Solicitor presented ample evidence to prove that the Appellant committed this murder beyond a reasonable doubt. If these photos were submitted in error, it should be considered harmless. Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons,* 423 S.C. 552, 566, 816 S.E.2d 566, 574 (2018).

CONCLUSION

The trial court made the proper decisions regarding this matter, the Respondent respectfully request this court to affirm the decision of the trial court.

Respectfully submitted,

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July 6, 2022
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

MICHAEL TIRRELL MEANS,.....APPELLANT

PROOF OF SERVICE

Appellate Case No. 2021-000752

I, **Donna D'Alessio**, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Initial Brief of Respondent, Designation of Matter, and Proof of Service has been forwarded to Appellant's counsel, Sarah Shipe, Esq., via email today, July 6, 2022 to sshipe@sccid.sc.gov, and to her assistant at cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 6th day of July, 2022.

Donna D'Alessio,
Legal Assistant to Tommy Evans, Jr.
Assistant Attorney General

Donna D'Alessio

From: Donna D'Alessio
Sent: Wednesday, July 6, 2022 3:46 PM
To: 'sshipe@sccid.sc.gov'
Cc: Stock, Chris (cstock@sccid.sc.gov)
Subject: Means, Michael T. - Appellate Case No. 2021-000752 - Initial Brief of Respondent, Designation of Matter and Proof of Service
Attachments: Means, Michael Tirrell - Appellate Case No. 2021-000752 - Initial Brief of Respondent, DOM, and Proof of Service 7-6-22 (03036423xD2C78).pdf

Dear Ms. Shipe:

Attached is a scanned copy of the Respondent's Initial Brief, Designation of Matter and Proof of Service regarding the above matter. The Initial Brief and supporting documents are being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well.

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