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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM Horry COUNTY  
Court of General Sessions  
The Honorable Craig D. Brown, Circuit Court Judge

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Appellate Case No. 2022-001034

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THE STATE,

Respondent,

v.

JORDAN MARIE HODGE,

Petitioner.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **STATEMENT OF ISSUE ON APPEAL**

Photographic evidence should be admitted if it is corroborative of other evidence and does not suggest guilt on an improper basis. The State offered a photograph of the victims' skeletal remains as found in a wooded area and black-and-white photographs of the victims' skulls showing entrance and exit fractures caused by a bullet. This was the only documentary evidence tending to prove cause of death. Did the trial court err by admitting the photographs?

## STATEMENT OF THE CASE

An Horry County grand jury indicted Appellant Jordan Hodge for the murder of her grandmother, Linda McAllister, and McAllister's husband, Chet Clemons. She was tried by jury along with her boyfriend and codefendant, Kenneth Carlisle, on September 30–October 3, 2019, before the Honorable Craig D. Brown. She was convicted on both counts and sentenced to life imprisonment. Hodge appealed her conviction to the South Carolina Court of Appeals, alleging the trial court erred in admitting certain photographs of the victims' decomposed bodies. The court of appeals affirmed her convictions in an unpublished opinion. State v. Hodge, Unpublished Opinion No. 2022-UP-189 (S.C. Ct. App. filed May 11, 2022). Hodge filed a petition for certiorari on July 25, 2022. This return follows.

## STATEMENT OF FACTS

Linda McAllister and Chet Clemons, a married couple from Conway, were reported missing on July 13, 2017. (R.p.168). Friends and family became concerned when McAllister did not show up for a Fourth of July party at a friend's house. (R.p.138). A work associate went to McAllister's house on July 8 and found it in disarray. (R.p.161). He called McAllister's friends, Andy and Robin Cole, who came to the house. McAllister's dogs had not been taken care of and were behaving strangely. (R.p.155). In the bedroom, Cole noticed that a wedding picture of Chet and Linda on the bedside table was turned face down. (R.p.144). McAllister's pickup truck was not at the home.

Cole had spoken to McAllister on July 3—the day she was last seen alive. (R.p.145). McAllister told Cole she was going to visit her granddaughter, Jordan Hodge, that afternoon. (R.p.147). Cole testified McAllister had a close relationship with Hodge and saw her several times per week. (R.p.149—50). Cole testified McAllister would occasionally help Hodge financially on the condition that Hodge help out with McAllister's home renovation business. (R.p.155). She also testified McAllister and Clemons did not let anyone borrow their truck. (R.p.155). One of McAllister's clients testified McAllister worked at her house on July 3. McAllister said she would be back the next day, but did not come. (R.p.165).

James Moran, McAllister's son and Hodge's uncle, called Hodge on July 8 looking for McAllister. (R.p.169—72). Hodge claimed she had heard from McAllister two days earlier. (R.p.171). She said McAllister was in Ohio for a family

emergency. (R.p.171). Hodge also claimed to be taking care of McAllister's dogs. (R.p.172).

McAllister's family filed a missing persons report on July 13. (R.p.172). Investigator Heath Watford with the Conway Police Department went to speak to Hodge and her boyfriend, Kenneth Carlisle, because he learned they could have been the last people to speak with McAllister and Clemons. (R.p.259). He discovered McAllister's truck in their yard. (R.p.260). He testified the truck was covered with mud and the interior was extremely messy. (R.p.260–61). Hodge and Carlisle arrived at the residence driving a Jeep Cherokee. (R.p.263).

They told Watford that McAllister and Clemons were in Ohio for a family emergency and McAllister was letting them borrow her truck. (R.p.262). When Watford asked why they weren't driving McAllister's truck, Hodge claimed it was because McAllister was very particular about keeping the truck really clean. (R.p.263). They told officers McAllister would not let anyone smoke in the truck, but officers observed a pack of cigarettes inside the cab. (R.p.267). Watford testified Hodge appeared nervous, "shaking and standoffish, kind of looking away from me as I would ask questions to her, but she was more than cooperative in answering anything." (R.p.264). Watford asked Hodge for the keys to the truck, and Hodge said she would retrieve them from inside the residence. However, she subsequently told investigators she lost the keys at her friend Don's house, but claimed she could not remember Don's last name or where he lived. (R.p.265; 317). Watford asked Carlisle for the keys and Carlisle "became extremely nervous,

shaking. He started sweating. Every time I would mention something with the truck he would turn and look at the truck. I noticed his pulse rate accelerate extensively. . . I could actually see the carotid artery in his neck start to actually start pulsing." (R.p.266). Carlisle claimed the truck keys were lost, and that he had also lost his cell phone. (R.p.301; 315–316; 320).

Hodge and Carlisle agreed to give a recorded statement to police. Hodge admitted she had "mixed feelings" about McAllister and Clemons' relationship, noting that Clemons was "about the same age as [her] dad." (State's Exhibit #5 around 2:30). Hodge continued to insist McAllister agreed to let her borrow her truck.

Officers impounded the truck and prepared search warrants for the truck and for Hodge and Carlisle's residence. (R.p.268). Inside the residence, officers discovered "lots of brand new items." (R.p.275; 350). In Carlisle and Hodge's bedroom, officers discovered McAllister's keys and debit card. (R.p.276). The truck keys were discovered in a money bag from Conway National Bank. In a handbag, police found Hodge's credit card along with one of Clemons' debit cards. (R.p.529). Behind the residence, officers located a burn pit that appeared "fresh." (R.p.346). Inside the pit there was a partially burned holster for a small pistol and a partially-burned smart phone. (R.p.346; State's Exhibits 25 and 26).

Officers searched McAllister's truck at the police station. When they opened the bed cover, officers noticed a strong smell of bleach. (R.p.286). Officers found a blood-stained camouflage hat in the truck bed. (R.p.286—89). Inside the truck,

officers found a paper towel stained with blood. (R.p.290). They swabbed the towel for DNA, along with floor mats which also appeared to be stained with blood. (R.p.293). SLED scientists found Clemons' and McAllister's blood on all of the items taken from the cab of the truck, and Clemons' blood was found on the hat and samples taken from the truck bed. (R.p.631-44).

When McAllister's family went to retrieve her truck from the police impound lot, they discovered the truck was full of trash and blood stains. (R.p.177). When McAllister's son moved the passenger's seat, a "shell casing fell out of the back of the seat . . . ." (R.p.177). He alerted police, who searched the truck again and found another shell casing. (R.p.179). Both casings were determined to be .25 caliber, but they could not be conclusively matched to the same gun. (R.p.568-71). SLED firearms expert testified .25 caliber bullets are "not particularly common." (R.p.569).

On the night of July 15, a witness named Britzi Waddell and two friends were swimming and camping near the landing at the end of Browns Chapel Avenue Road near Conway. (R.p.245-48). They noticed a foul smell they believed to be a dead animal. The next morning, they went to investigate the smell and discovered human skeletal remains in the woods. (R.p.248). Through DNA analysis, police determined they were the bodies of Linda McAllister and Chet Clemons. The local fire department searched the river for a gun, but did not find one. (R.p.382).

The skeletal remains were taken for an autopsy. A forensic pathologist testified that both Clemons' and McAllister's skulls had entrance and exit fractures

consistent with a bullet from a small caliber weapon. She testified "Ms. McAllister's pathway is slightly down, slightly forward and to the right, and Mr. Clemons' pathway is slightly down, slightly back and to the right." (R.p.488, lines 20–23). She testified both fractures were smaller than .35 of an inch. (R.p.488). Pictures were introduced showing the skull fractures. The pathologist found a bullet "embedded in Ms. McAllister's hair in the body bag with her. . ." (R.p.477).

A SLED scientist who examined the bullet testified it was from a .25 caliber cartridge. (R.p.569–70). Ernest Yost testified he sold Carlisle a .25 caliber pistol roughly two months before the murder. (R.p.325). He also sold Carlisle a .40 caliber pistol "three days before they got arrested." (R.p.325). He testified Carlisle and Hodge were both present for the transactions and they were driving a blue truck when he sold them the .40 caliber pistol. (R.p.326). Hodge and Carlisle had a housemate at the time, but he was out of town the week of July 1–8. (R.p.548). He testified Carlisle kept a .25 caliber pistol at the residence. (R.p.549). The gun was never recovered.

Police recovered a GPS device from McAllister's truck and the State presented the data extracted from the device. The data showed the truck's movements around Conway on July 3 and the surrounding dates, which coincided with testimony about McAllister's activities that day. Prior to the evening of July 3, the truck typically travelled along the primary roads around town. (R.p.591). However, beginning that evening, the truck began taking different, less travelled routes. (R.p.592). The GPS data showed the truck travelled around Conway on

July 3 and returned several times to McAllister's house. (R.p.592–94). The truck left McAllister's home at around 9:00 p.m. on July 3 and travelled towards Hodge's residence. (R.p.595). However, once the truck arrived on Pleasant Union Rd., the dirt road leading towards Hodge's home, it stopped in the road for around twelve minutes. (R.p.595). This spot was surrounded by woods and open fields. (R.p.595). After the twelve minute pause, the truck then continued on to Hodge's residence where it remained for about 40 minutes. (R.p.596).

Around 10:18 p.m., the truck left Hodge's residence and took a "circuitous" route around Conway before arriving at Brown's Chapel Rd., where the bodies were later found. (R.p.597). The truck remained there for about 30 minutes before leaving and travelling back to McAllister's home, where it remained for about nine minutes. (R.p.598). The truck then went back into Conway, where it stopped at a car wash for about ten minutes, shortly before 1 a.m. (R.p.598). The truck then went to Walmart. McAllister's truck left Walmart at 1:39 a.m. and arrived back at Hodge's residence around 2:16 a.m. (R.p.599). The following day, the truck travelled around town again, making stops at BB&T Bank, Advance Auto Parts, and other stores, including Walmart. (R.p.600–07).

Police obtained McAllister's bank records and discovered her card had been used for many purchases in the hours and days following her disappearance. Walmart transaction records and camera footage show Hodge and Carlisle spent more than \$500 from McAllister's debit card at Walmart at 1:34 a.m. on July 4, along with a \$100 cash withdrawal. (R.p.445). The bank records and surveillance

footage matched the GPS records showing McAllister's truck at Walmart on the night of the murders. Photographs from ATM machines around town showed Carlisle in McAllister's truck making numerous withdrawals from McAllister's account. (R.p.399–413). Earlier surveillance pictures from Conway National Bank showed Clemons withdrawing cash while wearing the camouflage hat recovered from the back of the truck. (R.p.289). The State also presented additional surveillance photographs from Walmart stores showing Hodge making numerous subsequent purchases (and getting cash back) in the days after the murders, including for home goods and video games. (R.p.445–61; 707; 719). \$11,000 was spent on the card from July 3–13. (R.p.398–99).

Hodge and Carlisle did not testify.

## STANDARD OF REVIEW

The determination of relevancy and materiality of a photograph is left to the sound discretion of the trial judge. State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. The appellate court reviews a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and is obligated to give great deference to the trial court's judgment. State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

## ARGUMENT

**Evidence supports the trial court's ruling admitting photographs of the victims' skeletal remains because the photographs were relevant to show manner of death and did not suggest guilt on an improper basis.**

This case does not warrant this Court's review because the court of appeals decision was unanimous, unpublished, and does not involve any novel or constitutional issues. Moreover, the court of appeals' decision was correct on the merits. Evidence supports the trial court's ruling admitting photographs of the victims' skeletal remains. State's Exhibit #50 shows the position of the remains as they were found in the woods. It was directly relevant to show the circumstances of the crime, including whether both defendants participated in the disposal of the bodies. Likewise, the black-and-white autopsy photographs were the only pieces of documentary evidence tending to directly prove manner of death. The photographs did not contain images of blood or gore, were not calculated to inflame the passions of the jury, and did not suggest guilt on an improper basis. This Court should deny certiorari.

### **A. This case does not warrant this Court's review.**

Rule 242 of the appellate court rules provides: "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The rule then gives a list of non-exclusive factors to guide this Court's decision whether to grant certiorari: (1) Where there are novel questions of law; (2) Where there is a dissent in the decision of the Court of Appeals; (3) Where the decision of the Court of Appeals is in conflict with a prior

decision of the Supreme Court; (4) Where substantial constitutional issues are directly involved; (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

None of those factors are present here. The court of appeals opinion is unanimous and unpublished. It does not contradict any of this Court's precedents and does not involve any novel or constitutional issues. The only issue raised alleges the erroneous admission of evidence, and the court of appeals opinion is correct on the merits, as discussed below. Accordingly, this case does not warrant review.

**B. Evidence supports the trial court's finding that the danger of unfair prejudice did not substantially outweigh the probative value of the photographs.**

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. "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.

If a photograph serves to corroborate oral 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). "Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder." Id. "Even the most

gruesome photographs may be admissible if they tend to shed light on any issue, to corroborate testimony, or if they are essential in proving a necessary element of a case, are useful to enable a witness to testify more effectively, or enable the jury to better understand [the] testimony. Other acceptable purposes are to show the condition of the victims' bodies, the probable type or location of the injuries, and the position in which the bodies were discovered." Id. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). "[A]ll evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." Id.

**i. Crime scene photograph.**

State's Exhibit # 50 shows the victims' skeletal remains as discovered in the woods near the landing on Brown's Chapel Road. It carried immense probative value. The prosecutor explained that the exhibit was "the only photo that shows them in the position they were found. It shows their proximity to each other, shows their position when they were found that, that can be argued as to how they were carried there, your honor." The trial court found the photo was "clearly relevant," noting the picture "simply mirrors the unfortunate reality of this case." (R.p.372). The Court cited State v. Collins, 409 S.C. 524, 763, S.E.2d 22 (2014), for the proposition that it is an "acceptable purpose" to "show the condition of the victims' bodies . . . and the position in which the bodies were recovered." (R.p.373).

The court could have cited several other cases which strongly support its ruling. In State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997), the Supreme Court upheld the introduction of photographs in a murder prosecution that showed "the crime scene and the position of [the victim's] body." Brazell, 325 S.C. 65, 78–79, 480 S.E.2d 64, 72 (1997). The court explained the "photographs supported the testimony of several witnesses and were relevant to the nature of the crime. The State used the photographs to establish that the murder was a deliberate and calculated act. These photographs corroborated [testimony] concerning the location of the body on the side of the road . . . ." State v. Brazell, 325 S.C. 65, 78–79, 480 S.E.2d 64, 72 (1997).

Likewise, the court in State v. Robinson, 201 S.C. 230, 22 S.E.2d 587 (1942), found no error in the admission of photographs in a murder prosecution of "the body at the location at which it was found." The court explained the photographs were "corroborative of the spoken word" and "showed material conditions which existed." State v. Robinson, 201 S.C. 230, 22 S.E.2d 587, 588–89 (1942). See also State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940) (finding no error in the admission of pictures of a dead body "found on the side of a public road"); State v. Thompson, 420 S.C. 192, 802 S.E.2d 623 (Ct. App. 2017) (finding no error in the admission of pictures of a dead body "as found at the crime scene").

The position of the bodies was particularly important in this case because the State relied on an accomplice liability theory to prosecute Hodge and Carlisle. The photographs were relevant to the jury's determination whether both defendants

participated in the disposal of the bodies, which in turn could have affected its finding whether both defendants participated in the murders themselves. In his closing argument, the prosecutor implored the jury to "[s]ee how those bodies were. See if you can't figure out how they were taken there. Look at their condition, plenty of time for two people to take them there . . . ." (R.p.716). Likewise, Carlisle's lawyer noted that it would have taken two people to bury the bodies. He argued, "Jordan didn't bury those bodies herself. . . . I submit to you they very well may have shown you that he helped bury the bodies, but that doesn't make him guilty of murder . . . ." (R.p.739). The picture was directly relevant to the State's theory of the case—that Hodge and Carlisle acted in concert.

Furthermore, the picture corroborated other circumstantial evidence. GPS records showed McAllister's truck was present at the landing for 27 minutes on the night of the murders. (R.p.716). This is a fairly short amount of time to dispose of two bodies, but it is more manageable for two people than one. The bodies were found haphazardly placed in woods, and it was obvious that little time was taken to hide them. With the GPS records, this is strong evidence that Hodge and Carlisle hastily disposed of the bodies on the night of July 3.

Conversely, the picture was not gruesome or gory. The victims' bodies were so decomposed that they were essentially skeletons. This is a far cry from the gruesome photographs at issue in other reported cases. Cf. State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940) (finding no error in the admission of pictures of a dead body despite the fact that numerous witnesses "testified as to the gruesome

condition of the body and of the presence of maggots in large numbers in and near the wound"); State v. Collins, 409 S.C. 524, 529, 763 S.E.2d 22, 25 (2014) (affirming conviction in dog bite case where child victim suffered "extensive' loss of skin and soft tissue on his upper body and his face, including his ears and nose, which were 'completely eaten away' by the dogs. Areas of the boy's chest and his arm had also been eaten, exposing the bone"). While pictures of a human skeleton are somewhat disturbing, depictions of skeletons are ubiquitous in our culture and not particularly inflammatory. They simply do not compare to the type of gory photographs at issue in Collins or Edwards. See also Evans v. State, 306 Ga. 403, 411, 831 S.E.2d 818, 826 (2019) (explaining that while "photographs depicted the victim's skeletal remains and were, therefore, somewhat graphic, that does not alter their admissibility because each of the photographs 'was relevant to some point of the [medical examiner's] testimony"). Evidence strongly supports the trial court's decision to admit the photograph.

**ii. Autopsy photographs.**

State's Exhibit's 58, 59, 61, 62, 63, 64, 66, and 128 were taken during the autopsies. They are closer depictions of the victims' skulls that show small fractures caused by a gunshot wound. Another picture showed the bullet recovered from McAllister's hair. The forensic pathologist referenced these pictures to support her opinion testimony that both victims died of a gunshot wound to the head. She used the photographs to illustrate the size of the fractures and their position relative to each other. She also used the pictures to illustrate the difference

between entrance and exit wounds, and the pathway of the bullet. (R.p.488). The pictures were the only documentary evidence tending to prove cause of death.

Accordingly, they had obvious, immense probative value regarding this central fact.

Again, there is added significance due to the fact that this was a "hand of one, hand of all" prosecution. The pictures were highly relevant to the jury's determination whether the same weapon was used to shoot both victims, and by extension whether the same person did both shootings. This was naturally a crucial fact. Carlisle's defense lawyer spoke during his closing argument about the size of the bullet holes in the two skulls. (R.p.737). He argued both victims were killed by the same gun. The use of one gun or two could have played a pivotal role in the jurors' determination of the facts, and whether the case was decided on an accomplice liability theory. While the state did not argue two guns were used, the jury was entitled to view for itself the only documentary evidence capable of shedding light on this critical issue. The pictures corroborated the pathologist's testimony that the fractures were roughly the same size, and therefore likely were caused by the same caliber bullet. (R.p.487–89).

As with the crime scene photograph, the black-and-white autopsy pictures were not particularly gory or gruesome. They essentially showed a human skull. While unpleasant, they are nowhere near as difficult to view as the bloody, gory photographs at issue in other reported cases. Compare State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014); State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (concerning admittance of "color autopsy photographs . . . depict[ing] the

victim's scalp pulled away from her skull. One showed her surgically opened vaginal cavity exposing a large amount of seminal fluid"); State v. Thompson, 420 S.C. 192, 215–16, 802 S.E.2d 623, 634–35 (Ct. App. 2017) (finding no error in the admission of autopsy photographs showing "deep lacerations on the inside of Victim's lower lip and bruising on Victim's shoulder, torso, back, buttocks, and legs" because they "helped the jury to understand the nature and extent of Victim's injuries"); State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 164–65 (Ct. App. 2014) (finding no error in the admission of autopsy pictures showing "exposed skull and brain" and "a side view of Mack's head that shows his inside-out scalp pulled down over his face" because the pictures were corroborative of pathologist's testimony). Their admittance was not "calculated to arouse the sympathy or prejudice of the jury . . . ." State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). Evidence supports the finding that the photographs' probative value was not substantially outweighed by the danger of unfair prejudice. See State v. Oliveira-Coutinho, 291 Neb. 294, 318, 865 N.W.2d 740, 762 (2015) (finding no error in admission of photographs of skeletal remains "including several close-ups of the skull taken from different angles").

Furthermore, the record shows the trial court exercised its discretion by excluding the photographs it felt carried the most substantial risk of unfair prejudice. The State originally offered a group of 11 photographs during the pathologist's testimony. Defense counsel requested a sidebar with the court, during which he objected to certain photographs outside the presence of the jury. (R.p.476).

At the conclusion of the pathologist's testimony, the trial court held a hearing allowing defense counsel to place his objections on the record. (R.p.500). The Court explained that following defense counsel's objection, the State agreed to withdraw all of the color photographs. (R.p.502, lines 5–6). In addition, the court excluded three others; State's Exhibits 57, 60, 65. (R.p.500). These photographs showed "the frontal portion of each victim's skull" and "a photograph of the arm that had the metal rod in it." (R.p.500–01). The photographs that remained were State's Exhibits #58, 59, 61, 62, 63, 64, 66 and 128. (R.p.501).

The court explained that "each of the photographs that were admitted . . . were the least, so to speak, prejudicial photographs that could be admitted into evidence. I understand that these photographs do show skeletal remains. Again, that was . . . the condition that the bodies were found in." (R.p.503). Accordingly, the trial court exercised its discretion by admitting some of the photographs while excluding others. See State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (finding no abuse of discretion where "the record shows the trial court did thoroughly consider the arguments of both the State and the defense, and it examined each photo while also conducting an examination of the forensic pathologist who took the photographs before making its decision"); State v. Torres, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010) (noting "the trial judge did exercise his discretion by excluding three of the State's photographs, ruling that they were duplicative and prejudicial"). The court explained the pictures showed "the nature and extent of each of the victim's injuries and provide evidence as to what happened

on the date these individuals lost their lives, and therefore, pursuant to such I do not believe that the prejudicial effect outweighs any probative value . . . ."

(R.p.505). Clearly, this is not a case where the trial court mechanically admitted the pictures without considering their potential for unfair prejudice, or refused to exercise its discretion.

Hodge argues admission of the pictures was not necessary because the pathologist's findings "were not in dispute." While it is true that all parties agreed the victims died from gunshot wounds, the photographs were highly probative because they corroborated the pathologist's oral testimony. Our system of evidence has always permitted physical and documentary evidence to be admitted at trial to "substantiate" oral testimony. State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010). It would be extraordinary to require the State to prove two murders beyond a reasonable doubt but prevent it from introducing the only documentary evidence proving manner of death. One can easily imagine the suspicion it would provoke among jurors, especially skeptical jurors, who are instructed ad nauseum about the stringent "beyond a reasonable doubt" standard, if the State did not produce any documentary evidence to substantiate oral testimony about such a central issue. Prosecutors must be prepared to encounter a "doubting Thomas" on every jury.<sup>1</sup> The State must be allowed to prove its allegations in its case and chief, for it may not get another chance in cases (such as this one) where the defendant

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<sup>1</sup> John 20:24–29.

does not testify. As long as the evidence is not "calculated to arouse the sympathy or prejudice of the jury," it is not error to admit it. State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010).

Evidence supports the trial court's ruling that the risk of unfair prejudice did not substantially outweigh the probative value of the pictures. Accordingly, Hodge has failed to show an abuse of discretion. Under the "highly deferential" standard of review in claims of error based on Rule 403, the Court is "obligated to give great deference to the trial court's judgment." Collins, 409 S.C. at 534, 763 S.E.2d at 28. This Court should deny certiorari.

### **C. Harmless error.**

Even if the trial court erred, the admission of the photographs did not affect the result of trial. The remaining evidence conclusively proved Hodge's guilt, rendering any error harmless.

The improper admission of evidence is reversible error only when the admission causes prejudice. State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976). Error is harmless when it could not reasonably have affected the result of the trial. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150,151 (1985). Determining if an error is harmless is not subject to a definite rule, but is assessed in light of the circumstances of the case and if, in this light, the error was not unduly prejudicial and material. State v. Byers, 392 S.C. 438, 447–48, 710 S.E.2d 55, 60 (2011).

The evidence in this case was overwhelming. Hodge and Carlisle were caught red-handed in possession of McAllister's blood-soaked vehicle, which

scientists proved contained a mixture of McAllister and Clemons' blood. Police recovered two .25 caliber shell casings from the truck, the same caliber weapon that fired the bullet recovered from McAllister's hair. The State proved Carlisle owned a .25 caliber handgun. Police recovered McAllister's credit card from Hodge's bedroom, and was able to prove Hodge and Carlisle made numerous purchases with the card in the immediate aftermath of the murders. Through GPS records, the State showed McAllister's truck travelled to the road on which Hodge lived, where it stopped for 12 minutes despite there being no buildings in that area. Shortly after, the truck travelled to the location where the bodies were found, and Hodge was shown to be in possession of the truck just over an hour later.

The State also produced substantial "consciousness of guilt" evidence, including Hodge's false statements to her uncle and police that McAllister and Clemons were in Ohio for a family emergency. Hodge claimed to have lost the keys to the truck, despite the fact that they were discovered in her bedroom shortly thereafter. Police discovered a partially-burned smartphone and pistol holster in a burn pit behind Hodge's residence. The State was even able to show that Hodge did not approve of McAllister and Clemons' relationship, which she admitted in her recorded statement, establishing motive. Finally, Hodge essentially admitted guilt during the sentencing hearing, stating she was glad the trial resulted in "justice for [her] grandma" and asking for mercy. (R.p.772, lines 19–21).

Hodge's guilt was conclusively proven. While the photographs were probative and properly admitted, their admission did not reasonably affect the result of trial

because Hodge would have been convicted even without them. This Court should deny certiorari.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 15, 2022

STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Aug 15 2022**

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY

Court of General Sessions  
The Honorable Craig D. Brown, Circuit Court Judge

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Appellate Case No. 2022-001034

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THE STATE,

Respondent,

v.

JORDAN MARIE HODGE,

Petitioner.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Return to Petition for Writ of Certiorari 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."

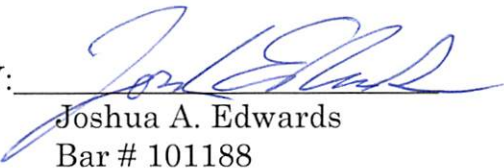
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