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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

APPEAL FROM CHARLESTON COUNTY
The Honorable J.C. Buddy Nicholson, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

CARMIE JOSETTE NELSON,.....PETITIONER

BRIEF OF RESPONDENT
Appellate Case No. 2021-001356
Unpublished Opinion No. 2021-UP-330

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PETITIONER'S ISSUE PRESENTED

Whether the Court of Appeals erred finding it was not an abuse of discretion for the trial court to admit gruesome autopsy photographs where the evidence was not needed to aid in the jury's understanding of the decedent's injuries and the probative value of the evidence was substantially outweighed by its potential for being unfairly prejudicial under Rule 403 SCRE?

RESPONDENT'S COUNTER ISSUE PRESENTED

Did the Court of Appeals err in finding that the trial court's admission of autopsy photographs was not done in error because these photos assisted the medical examiner in his testimony regarding the victim's injuries, corroborated prior testimony, and allowed the jury to better understand the facts, thereby, being more probative than prejudicial and not constituting unfair prejudice nor in violation of Rule 403 SCRE?

STATEMENT OF THE CASE

The Petitioner, Carmie Josette Nelson met Jordan Brooke Lum (victim) while they both were patients at Palmetto Behavioral Health. During their stay they created a friendship, and the victim decided to allow the Petitioner to move into her house. Not long after moving in Petitioner constantly text and call her estranged husband Mr. Daniel Nelson and tell him about how much she despised the victim. (R. p. 55 l. 15 – p. 56 l. 6). During this time, Mr. Nelson was homeless living in a tent behind Walmart. Petitioner gave Mr. Nelson the victim's landline phone number, social security number, address, and code to the outside gate of the community where they lived. (R. p. 56 l. 23 – p. 57 l. 1) Petitioner gave Mr. Nelson all of this information because she had devised a plan. She wanted Mr. Nelson to call in order to harass and intimidate the victim. (R. p. 56 l. 16-17). Petitioner also wanted Mr. Nelson to go by their house to assault her. (R. p. 56 lines 19-20). That later became a plan for him to assist the Petitioner in the killing of the victim. (R. p. 56 l. 8-9)

On April 2, 2017, Petitioner contacted Mr. Nelson in order for him to give her a disability check from the Veterans Administration. At that time Mr. Nelson had the Petitioner's truck which was parked in a hotel parking lot. When Mr. Nelson left to meet her, he was driving while high on methamphetamines, and very intoxicated. (R. p. 64 l. 11-13). Due to these impairments Mr. Nelson collided into a tree. (R. p. 64 lines 8-9). After wrecking her truck Mr. Nelson got a ride back to Walmart where he informed the Petitioner about this accident. Petitioner then called a cab to pick up Mr. Nelson in order to take him to the victim's residence. While in route, the Petitioner phoned Mr. Nelson from the victim's landline. Petitioner wanted Mr. Nelson to get to the victim's house immediately, because she had just murdered the victim, and needed his help with disposing of the body, and cleaning of the crime scene. (R. p. 66 lines 14-19). For his assistance Petitioner promised

Mr. Nelson that she would drop his pending criminal domestic violence charges, she also promised him pills, alcohol and sex for his assistance. (R. p. 67 line 12-13)

When Mr. Nelson arrived he found the victim's body on the kitchen floor. (R. p. 69 l. 9-10). Mr. Nelson assisted with the cleaning, placed the victim's body into a crate, and placed the crate into the garage. (R. p. 69 l. 12-20) Petitioner confessed to him that she hit the victim with a hammer and stabbed her multiple times. (R. p. 71 l. 22 – p. 72 l. 4). She told him she murdered the victim because she was being held hostage and the victim constantly beat her dog. (R. p. 72 lines 9-11)

While at the house, Mr. Nelson and the Petitioner discussed numerous scenarios on how to dispose of the body. Burying her in the back behind a cemetery, abandoning her inside her vehicle, or burning her house down, were some of these scenarios. (R. p. 74 l. 3-6). They finally decided to bury her in the cemetery, and to remain in the house informing everyone that she checked herself into a rehabilitation center. (R. p. 74 l. 8-15).

Later, when the cleaning of the crime scene was complete, Mr. Nelson worried that he would be blamed for this murder. So he devised a plan to get the Petitioner to confess while secretly recording her confession onto his phone. (R. p. 76 l. 20 – p. 77 l. 6). He attempted to put his plan into action but it initially failed because the Petitioner would not discuss the crime, instead she only wanted to talk about her wrecked truck and how Mr. Nelson had gotten her previously kicked out of an hotel. (R. p. 78 l. 3-16). Mr. Nelson later coaxed the Petitioner into telling him how she committed this murder. (R. p. 78 l. 17-24). After getting her confession, Mr. Nelson left the house and called 911 informing the authorities his wife had just committed murder. (R. p. 79 l. 3 -10)

Mr. Nelson decided to meet the police at the front gate of the subdivision. (R. p. 23 l. 1-8). He then led them to the victim's house. (R. p. 23 l. 15-24). Once they arrived they found the

Petitioner locked inside. (R. p. 25 l. 18-21). Once she opened the door the police discovered she was highly intoxicated, and had a knife to her throat threatening to kill herself. (R. p. 26 l. 5-15). Officers had no success in convincing the Petitioner to put the knife down, so they rushed into the house, forced the knife out of her hand, and placed her into custody. (R. p. 27 l. 5-18). Once taken into custody she was questioned about the location of the victim. She initially informed the police that the victim was in a drug rehabilitation center. (R. p. 425 l. 19- p. 426 l. 14). After the body was found, she quickly blamed Mr. Nelson for the murder. (R. p. 426 l. 14 – 20). Subsequently, she was arrested and charged with the offense of murder. Mr. Nelson was arrested and charged with accessory after the fact of murder.

Petitioner was indicted by the Charleston County Grand Jury for the offense of murder on October 10, 2017. On May 6, 2019, the Petitioner was brought to trial for this offense. This trial was presided over by the Honorable J.C. Nicholson, Jr., Circuit Court Judge. Present was the Petitioner with her attorney's, William Ted Smith, Jr., and Taylor Semen, of the Ninth Circuit Public Defender's office. Assigned to prosecute this case were Assistant Solicitors, Douglas Bruce DuRant, and Daniel Cooper of the ninth circuit solicitor's office.

Petitioner testified during trial. During her testimony she stated that she was abused by Mr. Nelson for years and she was afraid of him. On the day in question, Petitioner contacted Mr. Nelson and told him to bring her the check because she needed money for bills, and she and the victim were also going to take a trip to Columbia to look for a house. (R. p. 370 l. 2-5). Petitioner and Mr. Nelson were going to go out on a date; however, once he wrecked her truck she was angry at him, and decided to make plans to go out with the victim instead. (R. p. 370 l. 7-12; R. p. 371 l. 18-21). Petitioner testified that when Mr. Nelson arrived she decided to take a shower, while in the shower she heard yelling but she did not think it was anything odd because the victim was always yelling

at the cats or the neighbors. (R. p. 372 l. 21 – p. 373 l. 3). Petitioner stated that when she got out of the shower she found the victim lying by the dining room table, Mr. Nelson then took her cell phone and disabled all of the phones in the house. (R. p. 371 l. 24 – p. 372 l. 1; R. p. 374 l. 16-21). The Petitioner also testified that Mr. Nelson threatened her and that he was the only person who cleaned the crime scene and placed the body in the garage. (R. p. 376 l. 25 – p. 377 l. 12).

The Petitioner testified that Mr. Nelson threatened to kill her dog if she did not make an audio recording confessing to this murder. (R. p. 377 l. 21-25). She stated that she was later forced to leave the house to buy cleaning supplies and alcohol. Petitioner admitted to having her phone the entire time, however, she never contacted the police. (R. p. 378 l. 13-14). She testified that Mr. Nelson told her he would kill her dog if she told anyone she was being held hostage. (R. p. 379 l. 1-3). Although she claimed to be afraid and stressed the entire time, video evidence revealed she had no look of fear or stress when purchasing these items. (R. p. 460 l. 13-15).

On May 9, 2019, a jury of her peers found the Petitioner guilty of murder. After being found guilty the Petitioner appeared before the trial court for sentencing. She was ultimately sentenced to a period of incarceration for the remainder of her natural life.¹ (R. p. 495 l. 2-6)

While serving her sentence Petitioner filed a notice of appeal before the South Carolina Court of Appeals. Within this appeal Petitioner argued that the trial court abused discretion in allowing Respondent to introduce transcripts and a second clearer recording of her confession. It was her opinion that by allowing these items to be introduced it placed an undue emphasis on those pieces of evidence. The Petitioner also argued that the trial court erred in allowing the Respondent

¹ Daniel Joseph Nelson was sentenced to a five year period of incarceration for the offense of accessory after the fact to murder.

to introduce autopsy photographs. She believes that the prejudicial effect of these photographs outweighed any probative value.

The Court of Appeals issued an unpublished opinion affirming the decision of the trial court. *State v. Nelson*, 2021 WL 4197727 (2021). In a unanimous decision, the Court of Appeals determined that the trial court allowing the jury to have a transcript of the Petitioner's recorded confession during deliberations should be considered harmless since the jury received the transcript during trial while they listened to the recordings. *Id.* The Court of Appeals also decided that the photographs assisted the medical examiner in his testimony regarding the victim's injuries, which better allowed the jury to understand his testimony. So the introduction of these photographs did not constitute unfair prejudice. *Id.*

The Petitioner filed a petition for rehearing on September 30, 2021, which the Court of Appeals denied on October 22, 2021. The Petitioner then filed a petition for writ of certiorari before this Court. Within this petition the Petitioner argued that the Court of Appeals incorrectly found harmless error where the trial court abused its discretion by allowing the jury copies of the transcripts of the Petitioner's confession during deliberation; Petitioner also argued, that the Court of Appeals erred in finding that the autopsy photographs being allowed into evidence was not error. This court decided to grant certiorari only on the issue regarding the autopsy photographs being admitted into evidence.

The Respondent will argue that these photographs were necessary to reveal the cause of death and that the Petitioner acted with malice. Ultimately, the probative value clearly outweighed any prejudice that might have occurred. The Brief of the Respondent supporting these arguments follows.

ARGUMENT

2. **The Court of Appeals did not err in finding that the trial courts admission of the autopsy photographs into evidence was not done in error since the photographs assisted the medical examiner in his testimony regarding the victim's injuries and allowed the jury to better understand the facts. This ruling did not constitute any unfair prejudice, or any violation of Rule 403 SCRE.**

a. Relevant Facts

During the testimony of medical examiner Dr. Nicholas Batalis who performed the autopsy, the State introduced autopsy photographs as exhibits 75, 76, 77 into evidence. Petitioner's trial counsel objected to these photographs being admitted arguing that these photos were so gruesome that the prejudicial effect outweighed any probative value they may have.

During his testimony Dr. Batalis stated that it was necessary to use the photographs and not the diagram. He explained that this was needed so the jury can fully see how the injuries matched the murder weapon. (R. p. 323 l. 17-22). These photos also corroborated previous testimony made by Mr. Nelson. The trial court decided to allow these photographs into evidence ruling that it was not in violation of Rule 403 SCRE.

b. Standard of Review

In criminal cases the appellate court sit 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.2 180 (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 the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson*, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22, 28 (2014).

c. Discussion

Petitioner argues that the trial courts inclusion of these photographs were a violation of Rule 403 of the South Carolina Rules of Evidence. Rule 403 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. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995)(emphasis added), *quoting*, *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146, 149 (1991). In discussing similar evidentiary rulings in their cases the state of Pennsylvania have often quoted:

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 through

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).

During trial the State revealed that that this evidence was relevant in proving how the murder occurred and revealing malice. These are elements necessary for the State to prove the crime of murder. A trial judge is given broad discretion in ruling on questions concerning the relevance of evidence, and his decisions will be reversed only if there is clear abuse of discretion; evidence is relevant if it tends to establish or make more or less probable some matter which is in issue upon which is directly or indirectly bears. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991).

During trial, Dr. Batalis explained that the victim suffered multiple injuries to the head and neck. He explained that some of the injuries revealed wound patterns matching that of the claw end of a hammer, which was found to be one of the murder weapons. (R. p. 323 l. 17-22). Other wounds found that were blunt force injuries that matched the front end of a hammer. (R. p. 326 l. 19 – p. 327 l. 10). Dr. Batalis testified that the measurements from these injuries matched that of the murder weapon. This made the photos pertinent in order to reveal the measurements of these wounds matched the murder weapon. (R. p. 323 l. 12-16). This made these photos more probative than prejudicial, so the introduction of these photos were lawful.

Dr. Batalis also testified that the victim's carotid artery was severed which led to her bleeding to death within minutes. (R. p. 329 l. 8-14). He testified as to other wounds found on the victim's torso. The photographs that were introduced revealed the patterns of these wounds that made him believe that these were probably inflicted by a kitchen knife. (R. p. 331 l. 7-9). Photographs that were introduced also revealed the decomposition of the body when it was found. Dr. Batalis testified that the decomposition revealed that the victim was probably killed two days

earlier. (R. p. 324 l. 20-22). The incident occurred on April 2, 2017. (R. p. 65 l. 20). The victim's body was found in a crate by law enforcement on April 4, 2017. (R. p. 198 l. 24 – p. 199 l. 8).

Petitioner offered as a defense that the murder was committed by Mr. Nelson. So the jury had to determine which party was telling the truth. In order to corroborate the testimony of Mr. Nelson and the audiotaped confession of the Petitioner, the photographs had to be revealed. Mr. Nelson testified that when he got to the house he found the victim lying in the kitchen.(R. p. 69 l. 9-10). Mr. Nelson also testified that the victim was in that box from the time he helped the Petitioner place her in there, until the body was found by law enforcement. Dr. Batalis testified that the wound patterns matched that of a kitchen knife, and the decomposition of the body revealed she was dead for two days, the amount of time she was in that crate.

Although Dr. Batalis had a diagram, photographs reveal features, and wound patterns, diagrams only show estimation. (R. p. 308 l. 2-5). The photos reveal the exact measurements and that the wounds were probably caused by the murder weapon. These photos also better illustrate the method of how the murder occurred and it matched Mr. Nelson's testimony and what the Petitioner herself stated on the audio recording. It is well settled in this state that if the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996).

The photos were also necessary to reveal malice, which is an essential element of the offense of murder.² These photos reveal that this was not a case of self-defense or an accident. The victim was struck numerous times with both sides of a hammer, her throat was slashed, and she had other stab wounds about her torso. (R. p. 329 l. 23 – p. 330 l. 1). Since it is the duty of the

² “Murder” is the killing of any person with **malice** aforethought, either expressed or implied. S.C. Code Ann. §16-3-10(2020)(emphasis added).

State to prove beyond a reasonable doubt that malice existed, these photographs were essential in proving Petitioner is guilty beyond a reasonable doubt of murder.

Within her brief Petitioner states that the jury had likely never seen anything like these photographs; however, the record revealed there were probative reasons that these photographs were allowed into evidence. In *State v. Collins* this Court decided that the trial court did not err in allowing autopsy photos into evidence.

Collins was a case where several dogs mauled a little boy to death. The Appellant was convicted of involuntary manslaughter and owning a dangerous animal causing injury to a person. During trial medical examiner Edward Proctor testified that,

The boy suffered a tremendous number of bite marks on his legs and had “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 has also been eaten, exposing the bone. The boy’s jugular vein on the left side was torn in half, causing significant blood loss leading to his death.

Collins, 409 S.C. at 529, 763 S.E.2d at 25.

In *Collins* the State introduced photographs taken by the medical examiner of the child’s body prior to autopsy. The trial court ultimately allowed seven photographs into evidence. Although these photos were graphic this Court decided that they were probative so no error exists in allowing them into evidence. In *Collins*, this Court stated,

Courts and juries cannot be too squeamish about looking at unpleasant things, objects, or circumstances in proceedings to enforce the law and especially if truth is on trial. The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.

Collins, 409 S.C. at 535, 763 S.E.2d at 28, quoting, *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958).

Though gruesome, photographs are admissible if it tends to be more probative than prejudicial. If there are elements that must be proven, or the photographs corroborate previous testimony, no error exists by the trial court allowing them into evidence. 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 crime, are useful to enable a witness to testify more effectively, or enable the jury to better understand the testimony. *Camargo v. State*, 327 Ark. 631, 940 S.W.2d 464, 467 (1997). In *Collins* this Court reversed the decision of the Court of Appeals deciding:

The evidence was highly probative, corroborative, and material in establishing the elements of the offenses charged; its probative value outweighed its potential prejudice; and the appellate court should not have invaded the trial court's discretion in admitting this crucial evidence based on its emotional reaction to the subject matter presented.

Collins, 409 S.C. at 535, 763 S.E.2d at 28.

The Appellant in *Collins* was not charged with murder, therefore, malice was not a necessary element that had to be proven by the State. In the present case the Petitioner is currently charged with murder. An essential element the State must prove beyond a reasonable doubt is that this act was done with malice. In order for this to be proven it was important that the medical examiner had the means available to reveal to the jury the wound patterns, and measurements that matched of the murder weapon. And that these photographs corroborate previous testimony.

In *State v. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010), although this court affirmed the decision of the trial court. This Court did reveal some concerns regarding the admission of autopsy or crime scene photographs. In *Torres* this Court stated:

Although we affirm the admission of the photographs, we take this opportunity to address an area of growing concern to this Court. The photographs at issue in this case while admissible, are at the outer limits of what our law permits a jury to consider... Today we strongly encourage all solicitors to refrain from pushing the

envelope on admissibility in order to gain victory which, in all likelihood, was already assured because of other substantial evidence in the case.

Torres, 390 S.C. at 624, 703 S.E.2d at 229.

These concerns were again raised in *Collins*, when this Court stated, that the challenged photographs “far exceeded the outer limits of what our law permits a jury to consider.” *Collins*, 409 S.C. at 539, 763 S.E.2d at 30 (Kittredge J. concurring), *quoting*, *Torres*, 390 S.C. at 624, 703 S.E.2d at 229. The State is aware of these concerns and that is why during trial the State made a concerted effort to reveal through testimony the importance of these photographs coming into evidence. They were introduced by the state for the sole purpose of revealing the patterns of injury caused by the murder weapon and to corroborate prior testimony. This Court also stated in *Collins*, “there are circumstances where autopsy photographs are relevant and that the relevance of the photographs is not substantially outweighed by the danger of unfair prejudice.” *Id.*

The State has revealed that the probative value of the introduction of these photographs far outweighed any prejudice that they might have caused. Considering the defense raised by the Petitioner these photographs were essential in revealing who actually committed this crime and to reveal the malice that existed in the commission of his murder. The Court of Appeals committed no error in affirming the decision of the trial court. The Respondent would respectfully request this Court to affirm the decision of the Court of Appeals and allow the conviction of the Petitioner to remain.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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