RECEIVED
Jan 03 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
The Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,……………………………………………………………………RESPONDENT

PAULETTE J. SIMS,…………………………………………………………..APPELLANT

INITIAL BRIEF OF RESPONDENT
Appellate Case No. 2021-001202

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

TOMMY EVANS, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

I. McDuffie Stone, III
Solicitor Fourteenth Judicial Circuit
P.O. Box 1880
Bluffton, South Carolina 29526
(843) 470-3725

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities……………………………………………………………………………..ii

Appellant statement of issues on appeal…………………………………………………………..iv

Respondent counter-statement of issues on appeal………………………………………………..v

Statement of the case……………………………………………………………………………1

Arguments

1. Trial court did not err in allowing footage from the dash and body camera into evidence. There exists no violation of Rule 401 nor 403 of the South Carolina Rules of Evidence due to its probative value outweighing any prejudicial effect. The fact the ruling was made by the trial judge without the videos being viewed was not preserved, due to Appellant never making any request to the trial court; therefore, that portion of Appellant's argument should not be considered……………………………………………………………………….5

2. The trial court did not err in denying the Appellant's motion to suppress DNA evidence. The search warrant followed the parameters listed in Section 17-13-140 of the South Carolina Code of Laws, and law enforcement acted in good faith in obtaining a search warrant for the Appellant's blood samples. However, since the Appellant testified that she in fact did kill both victims this argument is moot, and any error that may have occurred should be considered harmless due to the overwhelming evidence presented by the State proving the Appellant's guilt beyond a reasonable doubt. The DNA evidence would have been discovered evidently, thereby allowing the evidence to be introduced……………..16

Conclusion………………………………………………………………………………….22

TABLE OF AUTHORITIES

Cases

Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185 (1995) 19
Collins Music Co, Inc. v. IGT, 365 S.C. 544, 619 S.E.2d 1 (2005) 17
Com. v. Robinson, 864 A.2d 460 (Pa. 2004) 9
Com. v. Rush, 646 A.2d 557 (Pa. 1994) 9
Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) 14
Davis v. United States, 564 U.S. 229, 131 S.Ct. 2419 (2011) 19
Delaware v. VanArsdall, 475 U.S. 673, 106 S.Ct. 1431 (1986) 21
Ferris v. State, 328 So.2d 640 (Ala.Crim.App. 1976) 12
I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 14
Illinois v. Krull, 480 U.S. 340, 107 S.Ct. 1160 (1987) 19
McKibbins, v. State, 750 S.E.2d 314 (Ga. 2013) 9
Nix. v. Williams, 467 U.S. 431, 104 S.Ct. 2501 (1984). 21
Null v. State, 402 S.E.2d 721 (Ga. 1991) 9
Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006 14
Schmerber v. California, 384 U.S. 757 (1966) 21
Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 630 S.E.2d 474 (2006) 20
State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) 8
State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) 17
State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (2017) 17
State v. Collins, 409 S.C. 524, 763 S.E.2d 22, 28 (2014) 7, 12, 13
State v. DeBerry, 250 S.C. 314, 157 S.E.2d 637 (1967). 15
State v. Edwards, 10 S.E.2d 587 (1940) 11
State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) 17
State v. Gray, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014) 8
State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009), ... 13
State v. Jackson, 384 S.C. 29, 681 S.E.2d 17 (2009) 14
State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) 17
State v. Jones, 86 S.C. 17, 67 S.E. 160 (1910) 10
State v. Kelly, 319 S.C. 173, 460 S.E.2d 368 (1995) 8
State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) 10
State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971) 20
State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008) 10
State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1996) 7
State v. Nance, 320 S.C. at 508, 466 S.E.2d at 353 10
State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) 7
State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999) 7, 13
State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975) 19
State v. Simmons, 423 S.C. 552, 816 S.E.2d 566 (2018) 17
State v. Smicklevich, 268 S.C. 411, 234 S.E.2d 230 (1977) 6

State v. Spears, 393 S.C. 466, 713 S.E.2d 324 (2011) 18
State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010) 10
State v. Trapp, 398 S.C. 376, 728 S.E.2d 468 (2012) 20
State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2017) 17
State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 6
U.S. v. Chavez, 894 F.3d 593 (4th Cir. 2018) 19
U.S. v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984) 17

Statutes

S.C. Code Ann. §17-13-140 (4) (1976) 18

Other Authorities

40 C.J.S. Homicide §46 (April 2016 Update) 10

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge abuse her discretion by admitting footage from the dash camera inside Officer Jacob Linder's patrol vehicle and Linder's body camera in violation of Rule 401, SCRE and 403 SCRE, where the evidence was not relevant and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice as the footage shows Appellant kneeling over the body of the decedent, who is covered in blood, Appellant being repeatedly tased by multiple law enforcement officers, and Appellant's bizarre behavior immediately following, particularly where the judge did not view the videos before ruling they were admissible and permitting the state to publish the videos to the jury?

2. Did the trial judge err by denying Appellant's motion to suppress pursuant to the Fourth Amendment, Article 1 §10 of the South Carolina Constitution, and S.C. Code Ann. §17-13-140 when the affidavit in support of the search warrant to obtain a buccal swab from Appellant, and thereby her known DNA standard, failed to provide the magistrate with a substantial basis for determining the existence of probable cause?

RESPONDENT COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing footage from the dash and body camera of Officer Jacob Linder into evidence where there was no violation of Rules 401 nor 403 of the South Carolina Rules of Evidence due to its probative value outweighing any prejudicial effect, and was the ruling being made by the trial judge without viewing the evidence not requested by the Appellant's trial counsel, so this argument is not preserved?

2. Did the trial court err in denying the Appellant's motion to suppress DNA evidence when the search warrant followed the parameters of Section 17-13-140 of the South Carolina Code of Laws, and law enforcement acted in good faith in obtaining this search warrant for the Appellant's DNA sample, however, since the Appellant testified she did in fact killed the victims is this argument moot, and if any error occurred should it be considered harmless?

STATEMENT OF THE CASE

On March 1, 2020, at the Oakland Apartments in Allendale, South Carolina an individual named Gerald Penn, Jr. also known as "BB" saw the Appellant Ms. Paulette Sims lying in the middle of the road. He walked over and told her that she needs to get out of the road or "a car is going to crush you." (T. p. 154 l. 3-7). Appellant told him that, "I guess I'll get run over," so Mr. Penn decided to leave the Appellant alone. (R. p. 155 l. 14-15). While walking away Appellant placed Mr. Penn in a chokehold and he was able to push Appellant off him. (T. p. 156 l. 7-9). Appellant then went into her apartment coming back out with a knife. (T. p. 156 l. 17-20). She came back outside and tried to stab Mr. Penn with the knife. (T. p. 156 l. 25). During this attempt one of the victims Ms. Carolyn Cook came over to defuse the situation. Appellant then stabbed Mr. Cook in the chest. (T. p. 158 l. 8). At that time Ms. Cook's boyfriend, the other victim Mr. Bobby Heath was also stabbed in the chest by the Appellant. (T. p. 159 l. 2-3).

During this incident 911 was called, the first person to respond was Officer Jacob Linder of the Allendale Police Department. As Officer Linder arrived he viewed the Appellant over the body of Ms. Cook making a stabbing motion onto Ms. Cook's motionless body. (T. p. 123 l. 3-5). At that moment Officer Linder got out of his police vehicle pointing his taser at the Appellant commanding her to put her hands behind her back. The Appellant failed to honor Officer Linder commands; she was then shot with the taser. (T. p. 123 l. 19-20). After being tased numerous times the Appellant continued resisting. Deputy Jim Evans of the Allendale Sheriff's Department also arrived, Deputy Evans tased the Petitioner which worked. Both officers were then able to place handcuffs on the Appellant and place her under arrest. (T. p. 149 l. 2-7).

Upon arrest emergency medical service personnel was able to come onto the scene and examine both victims. At that time Ms. Cook was checked, she was unresponsive, pulseless, and

not breathing. (T. p. 183 l. 9-10). She was declared dead on the scene. (T. p. 183 l. 20-21). EMT Cody Getridge noticed that she had two stab wounds to the chest area. Mr. Heath was observed further away near his apartment. Mr. Heath was on the ground no shirt with a chest filled with blood. He was unresponsive, but breathing, with a one-inch stab wound to the chest. (T. p. 184 l. 16-17; p. 188 l. 10-13). Mr. Heath was immediately taken by helicopter to August Medical Center. (T. p. 185 l. 1-3), where he later died. (T. p. 193 l. 5-7).

The Appellant was later indicted by the Allendale County Grand Jury for two counts of murder and possession of a weapon during the commission of a violent offense. On October 11, 2021, the Appellant's case was called for trial before Circuit Court Judge, the Honorable Courtney Clyburn-Pope. Present before the trial court was the Appellant along with his counsel, Public Defender Steve Plexico. Representing the State of South Carolina was Assistant Solicitor Julie Kate Keeney of the Fourteenth Circuit Solicitor's Office.

During trial South Carolina Law Enforcement Agency forensic scientist Catherine Leisy testified. Ms. Leisy was qualified as an expert in the field of forensic DNA analysis. (T. p. 293 l. 15-20). During her testimony she stated that she tested the knife blade found at the scene. The identical knife Appellant threw to the ground after stabbing Ms. Cook. The DNA found on the blade was found to be positive to Ms. Cook. It was one in 120 septillion chance that the DNA on the blade belonged to another person. (T. p. 302 l. 4-7). There was also blood on the blade that matched Mr. Heath. It was five times more likely to be Mr. Heath than an unidentified individual. (T. p. 302 l. 21 – p. 303 l. 2). She also tested the DNA sample of the Appellant to the knife blade. Appellant was excluded as a contributor to the mixture found on the knife blade. (T. p. 304 l. 10-12). No DNA was found on the knife handle. (T. p. 304 l. 20-22).

Ms. Leisy also tested samples that were removed from the Appellant's fingernails and right hand. The results found that the samples were 580,000 times more likely to be contributed by Ms. Cook than the Appellant or any unidentified individual. (T. p. 307 l. 16-20). Mr. Heath was excluded to as a contributor to the sample removed from the Appellant's right hand. (T. p. 307 l. 24). Ms. Leisy also testified that she received a sample from the right pants leg of the pants worn by the Appellant at the time of the crime. (T. p. 308 l. 22-24). It was determined that it was 107 septillion times more likely that Ms. Cook contributed to the profile than an unidentified or unrelated individual. (T. p. 310 l. 13-17).

Later in the trial Dr. Kelly Rose testified. Dr. Rose is a forensic pathologist with the Newberry Pathology Group. Dr. Rose was qualified as an expert in the field of pathology. (T. p. 323 l. 18 – p. 324 l. 3). Dr. Rose was the person who performed the autopsy on both victims. Dr. Rose testified that she found that Ms. Cook was stabbed three times. Two of the stab wounds went into her chest and into her left lung, and one entered the chest and cut the pulmonary artery. This is the artery that takes blood to your lungs to be oxygenated. (T. p. 325 l. 13-18). Ms. Cook had a large collection of blood in her chest cavity, so she lost a lot of blood inside her body. (T. p. 325 l. 19-21). Dr. Rose testified that Ms. Cook's cause of death was exsanguination which means a bleed out, due to a perforation of the pulmonary artery, this is the large artery that pumps blood out of the heart, there was also a perforation of the left lung due to a stab wound to the chest. (T. p. 330 l. 6-11).

Dr. Rose then testified about Mr. Heath's injuries and cause of death. Mr. Heath had one stab wound, the knife went through his sternum and into his heart. (T. p. 335 l. 18-21). The blade cut his coronary artery which is the big artery that supplies blood to the heart itself. (T. p. 335 l. 21-25). Dr. Rose determined Mr. Heath's cause of death to also be exsanguination. This was due

to the perforation of the left anterior descending coronary artery and penetration of the left cardiac ventricle. (T. p. 336 l. 10-13).

After the State rested the Appellant decided to testify. In her testimony she stated that she was in her apartment cutting onions when Mr. Penn came buy asking for sex. She informed him that she was not interested. (T. p. 358 l. 1-9; p. 358 l. 11-16). She then told him to leave and to stay away from her children. (T. p. 359 l. 9-11). They went outside and then Ms. Cook came behind her and hit her about four or five times. (T. p. 359 l. 17-23). Then Mr. Heath came at her with a knife. (T. p. 360 l. 11-12). She admitted to stabbing both victims, and to killing them. (T. p. 368 l. 20-25). She also admitted to attacking Ms. Cook when she was possibly dead. (T. p. 368 l. 10-14).

At the conclusion of the trial a jury of her peers found the Appellant guilty of both counts of murder and of possession of a weapon during the commission of a violent offense. (T. p. 469 l. 25 – p. 470 l. 12). After the reading of the verdicts Appellant appeared before the trial court for sentencing. The trial court sentenced the Appellant to a thirty-eight (38) year term of imprisonment for each count of murder; and, five (5) years for possession of a weapon during the commission of a violent crime. The trial court ordered that each of these sentences were to be served concurrently. (T. p. 486 l. 21 – p. 487 l. 5).

During her incarceration the Appellant filed a timely notice of appeal before this Court. Within this appeal the Appellant argues that the trial court erred in allowing the dash and body cam videos of Officer Linder into evidence. The Appellant argues that these videos were unduly prejudicial because of their graphic nature which cause the arousing of the jury's emotions. Appellant argues that the trial court made a ruling but did not view the video which was also in error. The Appellant also argues that trial court erred in allowing DNA testimony into evidence

due to the fact a faulty search warrant was submitted in order to retrieve a DNA sample from the Appellant.

The State argues that the dash and body cam videos were probative as they reveal malice, identity, and corroborate the testimony of the eyewitnesses. The State provides that these videos place the Appellant at the scene either actually committing the murder or right after it was committed, which is the best evidence that could have been revealed to the jury proving the Appellant's guilt. The State will also argue that the search warrant was valid, that it revealed that the Appellant was a suspect in this murder, and revealed that she stabbed both victims to death, thereby, revealing the need for a DNA sample to match blood evidence taken from the crime scene. The State argues that this argument is moot due to the fact the Appellant admitted to stabbing both victims. The officer also obtained this evidence in good faith that the warrant was valid. The State will also argue that if this Court finds the trial court made this decision in error, it should be considered harmless, and the discovery of this evidence would have been discovered inevitably due to a motion being filed to appear before the Circuit Court requesting an order for the Appellant to provide a DNA sample.

ARGUMENTS

1. **Trial court did not err in allowing footage from the dash and body camera into evidence. There exists no violation of Rule 401 nor 403 of the South Carolina Rules of Evidence due to its probative value outweighing any prejudicial effect. The fact the ruling was made by the trial judge without the videos being viewed was not preserved, due to Appellant never making any request to the trial court; therefore, that portion of Appellant's argument should not be considered.**

Relevant Facts

Prior to trial Appellant moved to have three videos the State wished to introduce into evidence excluded due to their prejudice. Two were the dash and body cameras from Officer Linder, the other, the dash camera video from the vehicle of Deputy Evans.

On Officer Linder's dash camera video, the Appellant is kneeling over the victim stabbing her twice and hitting her lifeless body. The body camera reveals the Appellant grabbing the victim and failing to abide to the commands of law enforcement, so she was tased. She further resisted and attempted to flee so she was tased again by Deputy Evans. The third video the State wished to introduce was the dash camera of Deputy Evans showing the body of Mr. Heath being placed into the ambulance.

During her argument the Appellant believed the State only wished to place these videos into evidence in order to arouse the emotions of the jury. Appellant argued that since there were eyewitnesses that were going to testify about these events, the videos were unnecessary. The State argued that these videos were necessary to reveal the identity of the Appellant and that they were the best evidence available proving that Appellant committed these offenses.

At the conclusion of these arguments the trial court decided to allow the videos from the dash and body camera of Officer Linder into evidence. The trial court granted the motion not to allow the dash camera of Deputy Evans into evidence. The trial court ruled that Deputy Evans's video was cumulative to the other videos so it should not be allowed into evidence. The trial court made their decision without viewing the video, and it was never requested by either party that the video be viewed. There were also never any objections by the Appellant of the facts presented to the trial court as to the contents of these videos.

<u>*Standard of Review*</u>

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). 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). The materiality, relevance and admissibility of evidence are within the

sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *State v. Rosemond,* 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions that are without evidentiary support. *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007). 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). The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *State v. Nance,* 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. *Id.*

Discussion

Appellant contests two videos that were allowed to be introduced into evidence. These videos were the dash and body camera videos of events that occurred in front of Officer Jacob Linder. Appellant argues that these videos were prejudicial and their being allowed to be introduced violates Rule 401 and 403 of the South Carolina Rules of Evidence. Rule 401 of the South Carolina Rules of Evidence specifically states:

> "Relevant evidence" means evidence having 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

Rule 403 of the South Carolina Rules of Evidence 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

The Appellant argues that these videos are very graphic, and they were introduced to arouse the emotions of the jury. Appellant further argues that since there are eyewitness accounts of these events the videos are not needed. The jury can be aware of what happened through eyewitness testimony. The State remains with the task of the burden of proof. In meeting that burden the State should be allowed to introduce all relevant evidence to meet that burden. These videos are defiantly probative, you cannot become more probative than witnessing the defendant committing the crime. Therefore, these videos probative value was well beyond any prejudicial effect they may have.

The Appellant argues that the video was graphic and extremely difficult to watch. Appellant emphasized that the video revealed while being tased she was acting extremely bizarre and crazed. The video was not as hard to watch nor as graphic as the Appellant makes it out to be. Appellant is seen in the video stabbing the victim, and when she refused to obey the commands of law enforcement she was tased. These are the actions brought on by the Appellant herself, and it reveals events that occurred matching the testimony of several eyewitnesses.

Some parties may have found the video gruesome, but within that gruesomeness is evidence of the very element of malice that the State must prove. There is no greater evidence the State could have presented to the jury than the Appellant herself committing the crime on video. "The more essential the evidence, the greater its probative value." *State v. Gray,* 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014), *quoting, United States, Stout,* 509 F.3d 796, 804 (6th Cir. 2007).

To constitute *unfair* prejudice, the photographs must create a "tendency to suggest a decision on an improper basis, commonly, through 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)(emphasis added). The evaluation of probative value cannot be

made in the abstract but should be made in the practical context of the issues at stake in the trial of each case. *Gray,* 408 S.C. at 610, 795 S.E.2d at 165. Here, the videos was used to specifically reveal what happened during this crime, as it revealed the Appellant actually stabbing Ms. Cook. These videos also revealed malice in the heart of the Appellant when she committed these murders. The videos also corroborated the testimony of the eyewitnesses. In discussing similar evidentiary rulings in their cases, the Pennsylvania courts 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 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's condition can be described through testimony from a medical examiner, such testimony does not obviate to admissibility of photographs.

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

These cases refer to photographs, however, the same could be said when the evidence is a video. The evidence should be considered even more probative when it is a video that was taken at the scene of the crime when the Appellant is continuing to commit said crimes. The Appellant argues that the video is too prejudicial due to its graphic nature and the effect of her being tased. However, these factors were created by the Appellant herself. She should not be allowed to argue prejudice regarding issues created by her actions. The Georgia courts have concisely rejected an argument on unfair prejudice based on its own paradox, "… a defendant cannot complain about photographs that simply 'portray the havoc wreaked by [his] own hand.'" *McKibbins, v. State,* 750 S.E.2d 314, 322 (Ga. 2013), *quoting, Null v. State,* 402 S.E.2d 721 (Ga. 1991).

Another reason for the admissibility of the videos is that they proved malice. Malice is an essential element of the crime of murder.[1] During the jury instructions the trial court instructed that the level of brutality could be considered in the jury's consideration of the element of malice aforethought. During jury instructions the trial court specifically stated, "Malice, that's hatred ill will; or hostility toward another person. . . an intent to inflict an injury or under circumstances that the law will infer as evil intent." (T. p. 457 l. 23 – p. 458 l. 3). *See, State v. Jones,* 86 S.C. 17, 19-20, 67 S.E. 160, 162 (1910)(approving charge that "[m]alice… may be implied from brutal conduct on the part of the person committing the crime."). See also, 40 C.J.S. Homicide §46 (April 2016 Update)("The fact that cruelty or brutality was manifested in the killing will raise the inference of malice…").

Further the videos corroborated witness testimony on how the scene presented, including the stabbing by the Appellant of both victims to the chest. (T. p. 158 l. 8-22; p. 171 l. 3-4; p. 176 l. 6-13). Consequently, there were necessary reasons to submit these videos for their corroborative value. *State v. Torres,* 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010)(If offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.), *quoting, State v. Nance,* 320 S.C. at 508, 466 S.E.2d at 353; *State v. Martucci,* 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008)(Admitting photographs which serve to corroborate testimony is not an abuse of discretion.), *See also, State v. Kelsey,* 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998)(photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim's body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb

---

[1] "Murder" is the killing of any person with *malice aforethought,* either express or implied. S.C. Code Ann. §16-3-10 (1976)(emphasis added).

had been detonated in victim's mouth.); *State v. Edwards,* 10 S.E.2d 587, 588 (1940)("In our opinion the trial judge did not abuse his discretion in admitting the photograph [depicting head, torso, neck wound, decomposition and maggots] as being relevant, nor can we attach any importance, in view of the facts of this case, to the contention that the photograph was, subsequent to its introduction, testified to in detail by the witnesses.")

The proper question that must be raised by the trial court to determine relevance was whether the videos had "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. Appellant argues that the video was not necessary because there exist three eyewitnesses that could testify concerning the facts of the case. The factual videos from the dash and body cam of the law enforcement officer that first arrived at the scene, video of the Appellant stabbing the victim, dragging Ms. Cook's body around, and her not complying to law enforcement commands and attempting to escape were the best possible evidence that was available to the State.

Within her brief the Appellant claims that both videos are difficult to watch. She claims that Ms. Cook was covered in blood and already deceased. The crime scene was not as gruesome as the Appellant depicts and there is no proof that the victim was deceased at the time law enforcement arrived, that is why EMS personnel checked Ms. Cook for any vitals. It is possible that Ms. Cook was still alive until the Appellant plunged her knife into the Ms. Cook's chest two additional times as law enforcement arrived, which the dash cam video revealed. Dr. Rose testified that if the victim had just suffered one stab wound she would live a little longer. In Dr. Rose's opinion all three stab wounds were fatal. (T. p. 328 l. 22 – p. 329 l. 2). The Appellant also argues that her reaction as to being tased and her behavior was disturbing, which caused the jury to decide

based on emotion and not fact. The reaction of the Appellant as to being tased was brought on by her own behavior. Officer Linder told her numerous times to "put your hands behind your back." The fact she did not comply caused her to be tased which caused her reaction. These were actions brought on by her own behavior, so it was relevant, no error existed in allowing these videos into evidence.

Murder cases are often gruesome therefore any evidence that might be disturbing to watch does not cause mean it should be excluded from evidence. If the evidence is relevant it must be allowed to be admitted. It has long been established that, "[a] trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive." *Martucci,* 380 S.C. at 250, 669 S.E.2d at 607, *See also, Ferris v. State,* 328 So.2d 640, 641 (Ala.Crim.App. 1976)(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). Simply gruesomeness alone does not render the photograph inadmissible. *Collins,* 409 S.C. at 535-536, 763 S.E.2d at 28.

In *State v. Collins,* the majority ruled that the photographs should be inadmissible.[2] However, in the concurring opinion members of the Supreme Court concluded that the photographs were introduced for the sole purpose of inflaming the passions of the jury. They also stated this in their concurring opinion,

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

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

[2] Concurring opinion thought that the admission of the photographs was clear error, however, this error was harmless, so the decision of the Court of Appeals was reversed.

The one important feature in the present case that did not exist in *Collins* were the elements of the crime. In *Collins* the Appellant was indicted for the offenses of involuntary manslaughter and three counts of owning a dangerous animal. *Id.,* 409 S.C. at 529, 763 S.E.2d at 25. Neither of those offenses has malice as an element, therefore, malice was not an element the State was obligated to prove. In the present case the Appellant is charged with the offense of murder. Malice is a major element that must be proven by the State beyond a reasonable doubt in order to receive a conviction. In *Torres,* a capital murder case the Supreme Court decided that "autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and the character of the defendant." *Torres,* 390 S.C. at 623, 703 S.E.2d at 229, *citing, State v. Rosemond,* 335 S.E. 593, 597, 518 S.E.2d 588, 590 (1999). In order to prove an element of the crime these videos had to be presented; therefore, making them relevant. These videos were relevant to prove that malice existed, that there exists no self-defense, nor accident. These videos also proved identity. This evidence was presented by the State proving malice and revealing how Appellant left the victim. These videos were not presented to inflame the emotions of the jury, but to prove that malice existed, that this was not a killing done by accident, or self-defense, but it was a malicious act of the Appellant to intentionally kill two victims.

The State was also obligated to place these videos into evidence to corroborate the testimony of eyewitnesses Gerald Penn, April Bostick, and Chandre Grant, as well as the two law enforcement officers first arriving at the scene, Officer Jacob Linder, and Deputy Jim Evans. In *State v. Holder,* 382 S.C. 278, 676 S.E.2d 690 (2009), the South Carolina Supreme Court held, "if the offered photograph serves to corroborate testimony it is not an abuse of discretion to admit it." *Holder,* 382 S.C. at 290, 676 S.E.2d at 697, *quoting, Nance,* 320 S.C. at 508, 466 S.E.2d at 353. The testimony of these eyewitness was corroborated by this video due to the fact, there was a

question of self-defense raised by the Appellant. When that occurs, it is up to the State to prove that self-defense did not exist. State bears the burden of disproving self-defense beyond a reasonable doubt. *State v. Jackson,* 384 S.C. 29, 35, 681 S.E.2d 17, 21 (2009). The videos reveal that self-defense did not exist.

The Appellant argues that the trial court erred in making a ruling without first watching the video. No law exists that obligates the trial court to view video evidence prior to making a ruling if the contents were fully explained and the court found its obviously relevant. If the Appellant wished the trial court to view this evidence that request should have been made before or after the ruling by the trial court. Since this request was not made that issue is waived, and not preserved for appeal. It should not be considered by this Court.

The fact the trial court made a ruling without viewing the evidence is being raised for the first time on appeal. It is axiomatic that an issue cannot be raised for the first time on appeal. *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). This law exists because no appellant court should make a ruling on an error by the trial court if the issue was never raised for the trial court to make a ruling. Imposing such a requirement on the appellant, "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.,* 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Had the Appellant raised to the trial court that she requested the court view the video before it is offered into evidence and presented to the jury, it is possible the trial court would have considered

watching these videos. However, it was never requested so the trial court was never given an opportunity of refusal. This Court cannot rule on any possible error that has not been preserved.

There exists no error for the trial court to make a ruling without first viewing these videos. A trial judge is well within their right to decide on a video's inadmissibility without viewing the video. "A trial judge is vested with a wide discretion in the conduct of a trial. He has the duty to see that the trial proceeds in an orderly fashion and should prevent unnecessary repetition, working to that end that the time of the court be preserved." *State v. DeBerry,* 250 S.C. 314, 322, 157 S.E.2d 637 (1967).

The trial court was correct in allowing those two videos into evidence. The videos were not introduced to raise any emotions by the jury, but provided relevant evidence regarding malice, identity, and that self-defense did not exist. Each of these must be proven by the State beyond a reasonable doubt. The probative value highly outweighs any prejudicial effect these videos may have. The trial court did not violate neither rules 401 nor 403 of the South Carolina rules of evidence. The decision of the trial court was lawful, there exists no error, so this decision should be upheld by this court.

2. **The trial court did not err in denying the Appellant's motion to suppress DNA evidence. The search warrant followed the parameters listed in Section 17-13-140 of the South Carolina Code of Laws, and law enforcement acted in good faith in obtaining a search warrant for the Appellant's blood samples. However, since the Appellant testified that she in fact did kill both victims this argument is moot, and any error that may have occurred should be considered harmless due to the overwhelming evidence presented by the State proving the Appellant's guilt beyond a reasonable doubt. The DNA evidence would have been discovered evidently, thereby allowing the evidence to be introduced.**

Relevant Facts

Upon the Appellant's arrest, while she was an inmate in the detention center, law enforcement obtained a search warrant pursuant to S.C. Code Ann. §17-13-140. The description of the property sought listed:

> "Any and all instrumentalities of the crime of Murder, to include but not limited to, DNA samples, via buccal (salvia) swabs and fingerprints, from the subject Ashley Simms, a black female, illegal contraband, electronic devices, mass media storage devices, recording equipment, personal identification cards, identifying paperwork, miscellaneous paperwork and/or notes determined to be of evidentiary value.

Court Exhibit No. 3 (Search Warrant)

When the search warrant was presented to the magistrate in the portion for the reason this property is being sought it stated:

> On March 1, 2020, at approximately 1159 hours, Allendale Police Department (APD) received a 911 call of an active assault. Upon APD officers' arrival they observed a black female subject actively stabbing a white female victim in the parking lot in front of apartment 826. The subject was detained and identified as Ashley Simms. The victim, identified as Carolyn Cook, was of apartment 826. At this time, no motivate [sic] has been determined. It is the affiant's belief that items of evidence may be recovered in the residence that will aid in this investigation. Any and all evidence recovered as a result of this search will be compared to other evidence obtained in the investigation.

Court Exhibit No. 3 (Search Warrant)

During trial prior to the DNA evidence being introduced the Appellant made a motion to suppress this evidence due to the second page. The Appellant argued that the search warrant never

mentioned a reason for the DNA evidence. The State argued that law enforcement acted in good faith in obtaining this warrant so the information discovered should not be excluded as evidence. The trial court denied the Appellant motion to suppress the DNA evidence.

Standard of Review

In criminal cases, the appellate court only review errors of law. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). On appeals from a motion to suppress on Fourth Amendment grounds, appellate courts review questions of law de novo. *State v. Bash,* 419 S.C. 263, 268, 797 S.E.2d 721, 723-724 (2017). The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster,* 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions without evidentiary support. *State v. Jennings,* 394 S.C. 473, 477-478, 716 S.E.2d 91, 93 (2011). When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling. *State v. Weaver,* 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2017). The exclusionary rule is more generally modified to permit the introduction of evidence obtained in the reasonably good-faith belief that a search or seizure was in accord with the Fourth Amendment. *U.S. v. Leon,* 468 U.S. 897, 909, 104 S.Ct. 3405, 3413 (1984). A matter becomes moot when judgment, if rendered will have no practical legal effect upon the existing controversy. *Collins Music Co, Inc. v. IGT,* 365 S.C. 544, 549, 619 S.E.2d 1, 3 (2005). 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, 573 (2018). The inevitable discovery doctrine, one exception to the exclusionary rule, states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information

is admissible despite the fact that it was illegally obtained. *State v. Spears,* 393 S.C. 466, 484, 713 S.E.2d 324 332 (2011).

Discussion

Law enforcement issued a search warrant for DNA samples to match them to evidence found at the crime scene. This search warrant was issued pursuant to Section 17-13-140 of the South Carolina Code of Laws, in part states,

> Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize…property constituting evidence of crime or tending to show that a particular person committed a criminal offense.

S.C. Code Ann. §17-13-140 (4) (1976).

This was an act of murder where both victims were stabbed, the murder weapon was recovered, as well as clothing worn by the Appellant at the time the murder. There was sufficient blood evidence that was preserved to make matches to both victims as well as the Appellant. To obtain the evidence that was allowed pursuant to this search warrant law enforcement went to the detention center where they obtained a buccal swab and removed blood from under the fingernails of the Appellant's right hand and her ankle and obtained the clothing the Appellant worn at the time she committed the crime.

During trial the Appellant argued that this search warrant was not obtained legally due to the fact it was not mentioned as to why this evidence was needed. However, in the body of the search warrant it was mentioned that DNA evidence was being sought, there was no attempt to deceive the magistrate when the application was made. A warrant does not offend the constitution so long as it issued upon affidavit or Affirmation. There was no intention to deceive the ministerial

recorder and his decision to issue the warrant was based on probable cause. *State v. Sachs,* 264 S.C. 541, 558, 216 S.E.2d 501, 510 (1975).

The Appellant has never argued that probable cause did not exist when the warrant was being obtained. All that is necessary to justify the issuance of a warrant is probable cause. *Id.,* 264 S.C. at 555, 216 S.E.2d at 508. The warrant was obtained in good faith, officers listed what they wished to obtain, named the Appellant as a suspect in the case due to her stabbing the victim in front of law enforcement, and they need buccal swabs and fingerprints from the Appellant. When investigators "act with an objectively, 'reasonably good-faith belief' that their conduct was lawful," the exclusionary rule will not apply. *U.S. v. Chavez,* 894 F.3d 593, 608 (4th Cir. 2018), *quoting, Davis v. United States,* 564 U.S. 229, 236-37, 131 S.Ct. 2419 (2011). Law enforcement presented before the magistrate probable cause that the evidence existed and that there was a stabbing that was committed by the Appellant. The fact that it was not listed as to why DNA was needed, it should have been obvious that DNA is needed from the Appellant when there is a stabbing that resulted in a murder. If exigency is determined by the investigative agency and if the request is reasonable the good faith exception applies. *See, Illinois v. Krull,* 480 U.S. 340, 107 S.Ct. 1160 (1987)(extended the good faith exception to searches conducted in reasonable reliance on subsequently invalidated statutes); *Arizona v. Evans,* 514 U.S. 1, 115 S.Ct. 1185 (1995)(Good faith exception applied when police reasonably relied on erroneous information concerning an arrest warrant in a database maintained by judicial employees).

The State will also argue that the argument of the Appellant became moot as soon as the Appellant testified. During the Appellant's testimony she admitted to stabbing both victims. (T. p. 361 l. 21; p. 362 l. 4). The State would argue that this argument is moot due to the fact the Appellant admitted to stabbing these victims, though she claims self-defense. The blood evidence would

certainly be on the knife, clothing of the Appellant, and on her person. The evidence was still relevant due to the fact the Appellant admitted to stabbing both victims. Any ruling regarding the search warrant would have no effect on the validity due to the statements of the Appellant during her testimony. A moot case exists where a judgment rendered by the court will have no practical legal effect upon the controversy. The statement of the Appellant during her testimony was an intervening event that would make a ruling by the trial court meaningless. A moot case exists where a judgment rendered by the court will have no practical effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. *Sloan v. Friends of Hunley, Inc.,* 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

If this court finds that the trial court erred in allowing the DNA evidence due to a faulty search warrant, this court must find that this error was harmless.[3] This is due to the overwhelming evidence that was presented prior to the DNA evidence being presented to the jury. When determining if an error is harmless, jurisprudence requires not to question whether the State prove their case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict. *State v. Trapp,* 398 S.C. 376, 390, 728 S.E.2d 468, 475 (2012). There exists no definite rule that governs harmless error, rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. "Error is harmless when it 'could not reasonably have affected the result of the trial.'" *Id.,* 398 S.C. at 389, 728 S.E.2d at 475, *quoting, State v. Key,* 256 S.C. 90, 180 S.E.2d 888 (1971).

When reviewing the evidence, it is clear that Appellant committed this crime beyond a reasonable doubt. There were three eyewitness that were at the event when it occurred. Gerald Penn, Jr., who testified that he saw the Appellant stab both victims. (T. p. 158 l. 8; p. 158 l. 20-

---

[3] Most constitutional errors can be harmless. *State v. Odom,* 412 S.C. 253, 268, 772 S.E.2d 149, 156 (2015).

22). April Bostick who testified she did not see Ms. Cook get stabbed she just saw her lying on the ground. (T. p. 167 l. 21 – p. 168 l. 1). However, Ms. Bostick did testify that she saw Mr. Heath get stabbed in the chest by the Appellant. (T. p. 171 l. 3-4). Ms. Chadre Grant who testified that she saw the Appellant stab both victims. (T. p. 176 l. 6-13; p. 176 l. 22-25). Officer Jacob Linder was the first law enforcement officer at the scene. On his dash camera it is clear Appellant is stabbing the victim two more times and was dragging her body around. It is clear even without the DNA evidence that sufficient evidence was presented by the State to prove that Appellant committed this crime beyond a reasonable doubt. The harmless error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence. *Delaware v. VanArsdall,* 475 U.S. 673, 681, 106 S.Ct. 1431, 1436 (1986).

The State also argues that evidence should be allowed into evidence due to doctrine of inevitable discovery. The State prior to trial made a motion pursuant to *Schmerber v. California,* 384 U.S. 757 (1966) for a hearing to be held before the Honorable Carmen T. Mullen for an order to obtain DNA samples from the Appellant. (T. p. 251 l. 8-12). Appellant never argued that probable cause did not exists. Appellant argued, that due to technical matters they perceive the warrant as faulty. Since probable cause exist there is no reason to believe that Judge Mullen would not have granted this motion and the DNA samples would have been obtained. This evidence would have inevitably been in the control of the State, this argument should be decided on behalf of the State due to the rule of inevitable discovery. The purpose of the inevitable discovery rule, i.e., that evidence would ultimately or inevitably have been discovered notwithstanding constitutional violation, is to block setting aside conviction that would have been obtained without police misconduct. *Nix. v. Williams,* 467 U.S. 431, 104 S.Ct. 2501 (1984).

CONCLUSION

The trial court made the proper decisions regarding this matter the State respectfully request this Court affirm the decisions of the trial court.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

I. McDuffie Stone, III
Solicitor, Fourteenth Judicial Circuit

By: *s/ Tommy Evans, Jr.*
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

January 3, 2023

ATTONREY FOR RESPONDENT

RECEIVED
Jan 03 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
The Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE, ...RESPONDENT

v.

PAULETTE J. SIMS, ...APPELLANT.

PROOF OF SERVICE
Appellate Case No. 2021-001202

I, Tommy Evans, Jr., the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Brief of Respondent and Proof of Service has been forwarded to Appellant's counsel, Lara M. Caudy, Esq., via email today, January 3, 2023 to lcaudy@sccid.sc.gov, and Ms. Caudy's legal assistant, Scott Leverett, sleverett@sccid.sc.gov

I further certifiy that all parties required by Rule to be served have been served. This 3rd day of January 2023.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

Brandy Rankin

From:	Brandy Rankin
Sent:	Tuesday, January 3, 2023 3:53 PM
To:	Caudy, Lara
Cc:	Leverett, Scott; Tommy Evans, Jr.
Subject:	Initial Brief & Designation of Matter - The State v. Paulette J. Sims - Appellate Case No. 2021-001202
Attachments:	Cover Letter to Initial Brief and Designation of Matter, 1-3-23 (03186254xD2C78).pdf; Initial Brief of Respondent, DOM, POS (Adobe Version) (03186272xD2C78).pdf

Dear Ms. Caudy,

Happy New Year! Please find attached the Respondent's Cover Letter, Initial Brief, Designation of Matter, and Proof of Service. These documents will be filed with the South Carolina Court of Appeals today, January 3, 2023 along with a copy of this email.

Sincerely,

Brandy Rankin

Legal Assistant to Tommy Evans, Jr.
Office of the South Carolina Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

RECEIVED
Jan 03 2023
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

January 3, 2023

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Paulette J. Sims*
Appeal from Allendale County
Appellate Case No. 2021-001202

Dear Ms. Kitchings:

Please find enclosed the Respondent's Initial Brief and Designation of Matter along with the Proof of Service in the above-referenced case. Please file these documents. Thanks in advance for your assistance. If you should have any questions, please feel free to contact me.

Sincerely,

Brandy Rankin

Brandy Rankin,
Legal Assistant

TE/bbr

cc: Lara M. Caudy, Esquire (via email only)