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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge
Appellate Case No. 2022-000457

THE STATE,

Respondent,

vs.

TAMIKA YOLANDA WILLIAMS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Was any issue regarding the admission of Appellant's incriminating statements properly preserved for appellate review when defense counsel did not renew his in limine objection to those statements when they were offered into evidence during trial and, instead, expressly indicated he had no objection to their admission at that time? Furthermore, regardless of any issue preservation concerns, did the trial judge err by admitting Appellant's incriminating statements to law enforcement when the evidence and testimony presented to the trial judge supported his determination those statements were voluntarily made following a valid waiver of rights based on the totality of the circumstances involved?

II.

Did the trial judge abuse his broad discretion or otherwise err by admitting a limited number of autopsy photographs depicting the extensive nature of the three-day-old victim's fatal injuries when: (1) the photographs were highly probative since they helped establish the victim's injuries were not accidentally inflicted due to their nature, which was a critically-important fact in Appellant's homicide by child abuse case; and (2) the high probative value of the photographs was not substantially outweighed by any potential for undue prejudice under the circumstances involved?

III.

Did the trial judge err by declining to grant the directed verdict motion when the evidence and testimony presented during trial supported a rational and logical conclusion Appellant committed homicide by child abuse by causing the death of her three-day-old infant son, who died from fatal head injuries that resulted from significant blunt force trauma, while committing child abuse or neglect under circumstances manifesting extreme indifference to human life?

STATEMENT OF THE CASE

In June of 2018, Appellant Tamika Yolanda Williams was arrested following an investigation into the tragic death of her three-day-old son. In December of 2018, the Charleston County Grand Jury indicted Appellant for one count of homicide by child abuse. On April 4, 2022, a jury trial was commenced in the Lexington County Court of General Sessions with the Honorable Roger M. Young, Sr., circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a twenty-five-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

A little after 4:00 p.m. on the afternoon of June 26, 2018, Marcus Williams ("Marcus") called 911 in a panic, reported he had just woken up and discovered his three-day-old infant son ("Victim") was neither moving nor breathing, and further reported there appeared to be some blood on the floor of their apartment. (Tr. p. 125; pp. 145-146; pp. 209-210; State's Ex. # 64 (911 Call Recording)). Within seconds, Appellant, who was Marcus's wife and Victim's mother, took the phone from Marcus and—unprompted—immediately claimed she believed her three-year-old son ("Toddler") must have dropped Victim "or something" while she and Marcus had been asleep. (Tr. p. 117; p. 125; p. 435; State's Ex. # 64).

In response to that shocking report, paramedics and police officers rushed to the scene. (Tr. p. 147; pp. 191-193; p. 206; pp. 209-210; State's Ex. # 64). Paramedic Patrick Wells of Charleston County Emergency Medical Services was the first to arrive, and he encountered Appellant seated in a chair holding Victim, who had visible injuries to his head and was completely lifeless. (Tr. p. 206; pp. 209-214). Upon Wells's arrival, Appellant quickly repeated her assertion Toddler, who was sleeping in a chair nearby at the time, must have been the one who caused Victim's injuries. (Tr. p. 148; pp. 211-212). Wells then promptly took Victim, who was still warm, and began resuscitation efforts, and, as he vainly tried to save Victim's life, other medical personnel and officers arrived at the scene to assist. (Tr. pp. 214-216; p. 220; State's Ex. # 62 (Body Camera Recording)). Within minutes, Victim was transported to the hospital. (Tr. pp. 218-219). Sadly though, Victim was never able to be revived, and he died from significant injuries he had sustained to his head. (Tr. p. 220; p. 223; p. 225; p. 358; p. 375).

Meanwhile, at the scene, officers from the North Charleston Police Department began an investigation into what occurred. (Tr. pp. 193-195; pp. 247-248; State's Ex. # 62). During that

investigation, the officers spoke with Appellant, and she calmly and repeatedly claimed Toddler—whom she asserted had a "habit" of playing with Victim despite the fact Victim came home from the hospital just a day earlier—must have accidently dropped Victim and then lifted him back up into the bassinet after she and Marcus left him alone with Victim.[1] [2] (Tr. p. 194; pp. 197-199; p. 435; State's Ex. # 62). The officers also attempted to speak with Marcus and Toddler, but Marcus was too distraught to provide much information at the time while Toddler seemed not to possess sufficient language skills to effectively communicate. (Tr. p. 148; p. 184; p. 194, p. 334; p. 389; p. 392; State's Ex. # 62).

After speaking with officers at the scene, Marcus and Appellant voluntarily agreed to come to the police station for an interview, and Toddler was taken to the hospital for his own medical examination.[3] (Tr. pp. 149-150; p. 332; p. 389; p. 391; p. 423). At the police station, a deputy coroner advised Marcus and Appellant of Victim's death. (Tr. pp. 224-225; p. 391). Marcus responded to the terrible news in a highly-emotional manner. (Tr. p. 225; p. 391). Appellant did not. (Tr. p. 225; p. 391). Following that, Marcus and Appellant were permitted to return home to the apartment for the evening, and Toddler temporarily remained at the hospital overnight for further examination. (Tr. p. 150; p. 392; p. 423; Int. Tr. pp. 8-9).

[1] At that time, Toddler was just over three feet tall and weighed approximately thirty-seven pounds. (Tr. p. 333). Meanwhile, Victim weighed over eight pounds at the time of his birth. (State's Ex. # 62).

[2] When Appellant was accusing Toddler over and over again of inflicting Victim's injuries, Toddler—who had been awakened by one of the responders and was seated nearby—violently rocked himself back and forth in a chair. (Tr. pp. 200-201; p. 204; p. 257; p. 297; State's Ex. # 62). As Appellant's accusations continued, Toddler lowered his head and covered his ears with his hands. (State's Ex. # 62).

[3] At that time, Toddler had some blood on his feet, knees, and forearm after appearing to have walked through the blood on the floor, and he also had a bump of some sort on his head. (Tr. pp. 255-257; p. 274; pp. 333-334; Int. Tr. pp. 8-9; State's Ex. # 62). Unsurprisingly, the blood on Toddler was later determined to be Victim's. (Tr. p. 274).

On the following day, Dr. Susan Presnell, a forensic pathologist at the Medical University of South Carolina, performed Victim's autopsy. (Tr. p. 224; p. 353; p. 356). Through her examination, she found multiple impact sites on Victim's head, including one over the left side of his forehead, one above his right eyebrow, and one over his right temple. (Tr. p. 360). Notably, the impacts to those sites resulted in distinctive square-shaped bruises. (Tr. pp. 359-360; p. 375; State's Ex. # 61 (Photograph)). She further found scratches in various places, bruising to Victim's cheek, and an extensive tear to Victim's superior labial frenulum that extended nearly half an inch and would have resulted in profuse bleeding. (Tr. p. 357; pp. 360-361; p. 365; p. 378). Beyond that, she found multiple complex fractures to Victim's skull and extensive intracranial hemorrhages. (Tr. pp. 356-357; pp. 369-372; pp. 375-376). Significantly, the fractures were present on both sides of Victim's skull, they were angulated as opposed to linear, and the one on the left side extended around the back side of the skull. (Tr. p. 362; p. 366; pp. 371-372). As a result of her findings, Dr. Presnell concluded Victim's death was a homicide "definitely" caused by "significant" blunt force head trauma. (Tr. p. 358; p. 375).

Based on those startling findings, Detective Jerry Jellico of the North Charleston Police Department decided to again attempt to interview Appellant and Marcus about what occurred, and, upon making contact with them, the two once again voluntarily agreed to come to the police station for another interview.[4] (Tr. p. 49; pp. 59-60; p. 63; pp. 392-393; pp. 424-425). The detective then personally drove Appellant to the station in his law enforcement vehicle, and she was permitted to sit in the front seat next to him during the ride. (Tr. p. 49, p. 60; p. 393). Along with way, the two briefly chatted after Appellant initiated a conversation, and, during their chat, Detective Jellico made sure Appellant understood someone could go to jail in connection to

[4] By the time of Appellant's trial, Detective Jellico had retired from law enforcement. (Tr. p. 387).

Victim's death due to the "concerning" things that had been discovered through the autopsy. (Tr. p. 49; pp. 55-56; p. 60; p. 393).

Thereafter, once they arrived at the police station, Detective Jellico immediately took Appellant to an interview room, and, before engaging in any substantive discussion, he fully advised her of her rights with the assistance of an advisement of rights form. (Tr. p. 49; p. 62; State's Ex. # 63). In response, Appellant, who was not handcuffed at the time, confirmed she understood her rights, personally initialed and signed the form, and agreed to make a statement. (Tr. pp. 49-51; Int. Tr. pp. 4-6; State's Ex. # 63; State's Ex. # 69 (Advisement of Rights Form)).

Following that, Appellant proceeded to provide an account of what occurred and claimed she accidentally dropped Victim onto the floor on his side a single time before prompting Marcus to take the actions that led to Victim's terrible injuries being discovered. (Int. Tr. pp. 26-36; pp. 50-51; pp. 55-57; p. 59; pp. 61-62; State's Ex. # 63). She further reported she initially left Victim on the floor for a bit due to pain she was experiencing, eventually returned him to the bassinet, sat down in her chair, meditated about both the family's financial situation and not wanting to go to jail for some time, and did not immediately call 911 to report what occurred "because of the medication," which she identified as Tylenol.[5] (Int. Tr. pp. 26-36; pp. 50-51; pp. 55-57; pp. 59-62; State's Ex. # 63).

After she provided those details, Appellant indicated she wanted to talk to Marcus about what happened, and the detective temporarily left her alone in the interview room to retrieve him. (Int. Tr. p. 64; pp. 67-69; State's Ex. # 63). Once Detective Jellico was gone, Appellant began audibly praying to herself, stated aloud she knew she did not do "this," asserted Toddler

[5] Beyond that, Appellant admitted she initially accused Toddler of inflicting Victim's injuries because she was unsure of what consequences she would suffer if she had said something different. (Int. Tr. p. 37; pp. 41-42; State's Ex. # 63).

must have been the one who dropped Victim, and claimed she did not personally do anything but was nonetheless willing to accept mental health treatment. (Int. Tr. pp. 69-71; State's Ex. # 63). Thereafter, Detective Jellico returned with Marcus, and Appellant proceeded to relay her account of accidentally dropping Victim a single time to him. (Intr. Tr. pp. 71-72; State's Ex. # 63).

Once she was done relaying that account, Appellant was again left alone in the interview room. (Int. Tr. pp. 74-76; State's Ex. # 63). While alone, Appellant again audibly prayed and reasserted her claim of not having personally done anything to Victim. (Int. Tr. p. 76; pp. 78-80; State's Ex. # 63). She further stated she would prefer going to a mental health treatment facility instead of jail, and she asserted she only went along with the "story" because she thought she would get mental health treatment if she did. (Int. Tr. p. 76; pp. 78-80; State's Ex. # 63).

Following those remarks, Detective Jellico returned to the interview, confronted Appellant about the statements she was making in his absence, and questioned her about whether she truly dropped Victim as she had previously claimed.[6] (Int. Tr. pp. 80-81; State's Ex. # 63). In response, Appellant confirmed she had, in fact, dropped Victim and affirmed that was the true account of what happened. (Int. Tr. p. 81; pp. 85-86; State's Ex. # 63). At that point, Detective Jellico alerted Appellant she was going to be charged and would be going to jail. (Int. Tr. pp. 86-87; State's Ex. # 63).

Upon learning that, Appellant asserted it did not make sense since the result of her telling the truth was her going to jail. (Intr. Tr. p. 101; State's Ex. # 63). Appellant then changed her account yet again, asserted she did not actually drop Victim, and alleged Toddler must have been the one who did so. (Int. Tr. pp. 102-103; State's Ex. # 63). Following that, Detective Jellico

[6] Notably, prior to Detective Jellico's return, Appellant appeared to be aware her audible prayers would be heard by others, and, shortly after affirming aloud she was not "worried about where that camera [wa]s," she seemed to glance at the interview room's camera. (Int. Tr. p. 79; State's Ex. # 63).

advised Appellant to stick to that story if it truly was her story, cautioned her lying could be viewed negatively later on, and advised he wanted to know the truth. (Int. Tr. pp. 106-107). In response, Appellant once again asserted she dropped Victim, stated it occurred a single time, and alleged that account was the truth. (Int. Tr. pp. 106-108; State's Ex. # 63).

Based on Appellant's incriminating admissions coupled with the nature of Victim's extensive injuries, Detective Jellico arrested Appellant in connection to Victim's death at the conclusion of the interview. (Tr. p. 400; Arrest Warrant). On the same date, the Williams' apartment was again searched and processed for evidence based on the information uncovered during Victim's autopsy. (Tr. pp. 250-271; p. 393). By that point, Appellant had cleaned up and moved some things around at the scene. (Tr. p. 261; p. 270; p. 292; p. 424). Nevertheless, additional spots of suspected blood were located in the apartment, including on a shelving unit that had square-shaped end caps which—significantly—were consistent with both the size and shape of Victim's bruises. (Tr. pp. 251-252; pp. 261-262; p. 267; p. 286; pp. 373-375; State's Ex. # 25 (Photograph); State's Ex. # 26 (Photograph); State's Ex. # 61 (Photograph)).

Subsequently, Appellant was indicted for homicide by child abuse, and she elected to proceed forward to trial. (Tr. p. 6; Indictment). During the course of trial, testimony and evidence was presented about the events leading up to and following Victim's tragic death, a recording of Appellant's interview with Detective Jellico was admitted into evidence and played for the jury, and Dr. Presnell testified about the results of her autopsy of Victim, including about how Victim's "significant" injuries were inconsistent with having been sustained in a single short fall like the one Appellant—at some points—had claimed occurred.[7] [8] (Tr. pp. 117-164;

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[7] The recording of Detective Jellico's interview with Appellant was redacted by agreement of the parties before being admitted into evidence to remove a number of hearsay statements that were relayed to Appellant during the detective's conversation with her. (Tr. p. 80).

pp. 169-187; pp. 189-220; pp. 222-225; 245-299; pp. 330-339; pp. 353-383; pp. 387-400). In addition to that, Appellant testified on her own behalf, claimed she falsely told Detective Jellico she dropped Victim, and renewed her earlier assertion Toddler must have been the true perpetrator. (Tr. pp. 409-445). Appellant also offered the testimony of her mother, and Appellant's mother initially stated Appellant was not affected by her arrest or separation from Toddler before—upon further prompting—pivoting to a claim those events were, in fact, emotional and distressing to Appellant. (Tr. pp. 446-456). After all that testimony and evidence was presented, the case was submitted to the jury, and the jury convicted Appellant as indicted. (Tr. p. 527; p. 529).

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[8] Amongst the evidence presented, a recording from the body camera of one of the responding officers was admitted into evidence and played for the jury. (Tr. pp. 190-192; p. 195). Notably, the parts of that recording showing the futile attempts to resuscitate Victim were edited out by the solicitor in an effort to ensure undue prejudice would not unnecessarily result from the admission of the recording. (Tr. p. 196; State's Ex. # 62).

ARGUMENT

I.

Any issue regarding the admission of Appellant's incriminating statements was not properly preserved for appellate review because defense counsel did not renew his in limine objection to those statements when they were offered into evidence during trial and, instead, expressly indicated he had no objection to their admission at that time. Furthermore, regardless of any issue preservation concerns, the trial judge properly admitted Appellant's incriminating statements to law enforcement because the evidence and testimony presented to the trial judge supported his determination those statements were voluntarily made following a valid waiver of rights based on the totality of the circumstances involved.

Appellant contends the trial judge erred by allowing her incriminating statements to Detective Jellico to be admitted into evidence. As support for that contention, Appellant maintains a proper examination of the totality of the circumstances demonstrates her will was overborne during the interview and, thus, her incriminating statements should have been excluded from evidence during trial. Initially, any issue regarding the admission of Appellant's incriminating statements was not properly preserved for appellate review because defense counsel expressly abandoned his in limine objection to those statements by confirming he had no objection when the recording of them was actually offered into evidence and admitted during trial. However, even if Appellant's current issue with her statements could somehow still properly be considered on appeal despite those statements being admitted without objection, the totality of the circumstances surrounding Appellant's incriminating statements fully supported the trial judge's determination those statements were voluntarily made after a valid waiver of rights as opposed to being the product of any police coercion. Under such circumstances, the trial judge correctly admitted the recording of Appellant's incriminating statements into evidence during trial, and there are no proper grounds warranting a reversal of that decision on appeal. Appellant's conviction should be affirmed.

Relevant Facts

Towards the outset of Appellant's trial, defense counsel moved to suppress incriminating statements Appellant made to Detective Jellico, and the trial judge conducted an in limine hearing on the matter in response. (Tr. pp. 47-49). During the course of that hearing, Detective Jellico testified about his interview with Appellant on the day after Victim was killed. (Tr. p. 49; p. 58). In doing so, he confirmed Appellant voluntarily accompanied him to the police station after he alerted her there had been "new developments" concerning Victim's death, she demonstrated she was literate by reading the first of her rights aloud from an advisement of rights form, she initialed each of her rights after they went through the form together, she stated she understood her rights, she appeared to understand those rights, she reported she was a high school graduate and actively enrolled at Strayer University at the time, and she signed the form while agreeing to make a statement. (Tr. pp. 50-51; p. 57; pp. 59-60; p. 63). Similarly, regarding her condition, Detective Jellico indicated Appellant—who was thirty-one-years old at the time—did not appear to be under the influence of anything, she seemed to be a mature individual, she stated she was "fine" that day, she reported she was not currently suffering from depression or anything similar, and she identified the medication she had taken in the last two days as Tylenol.[9] [10] (Tr. pp. 51-52; p. 57; State's Ex. # 63). Meanwhile, regarding the circumstances of the interview, Detective Jellico explained Appellant was only at the police station for the interview for a few hours in total, the interview itself was not continuous during that time span because he had to step out at different points, it occurred in an ordinary interview

[9] Significantly, Appellant—by her own admission—had not yet filled any of the unspecified prescriptions she had received at the time of the interview. (Tr. p. 151; p. 434; State's Ex. # 63).

[10] During the interview, Appellant indicated she also took some Motrin at some unspecified point before she took the Tylenol. (Int. Tr. p. 36; State's Ex. # 63).

room, and Appellant was not handcuffed for it. (Tr. pp. 56-57). Likewise, he affirmed no promises or threats were made to Appellant, she never asked to stop the interview or made a request for an attorney, he alerted her multiple times she could potentially go to jail based on what was said, he advised her what ultimately happened to her would not be his decision, and he made sure she knew he simply wanted her to tell the truth. (Tr. pp. 54-56; pp. 65-67).

In addition to Detective Jellico's testimony, a recording of Appellant's interview was presented to the trial judge along with a full interview transcript. (Tr. p. 78; Int. Tr. pp. 1-118). Based on the contents of the recording, the interview began at approximately 2:19 p.m. on June 27, 2018, and ultimately concluded at approximately 4:51 p.m. (State's Ex. # 63). Throughout the interview recording, Detective Jellico, who was the only one in the interview room with Appellant for the vast majority of their conversation, did not appear to use any overly harsh, loud, or aggressive tones when speaking with Appellant, and, at various points, Appellant appeared to chuckle in response to things, which demonstrated the interview was largely relaxed and conversational in nature. (State's Ex. # 63). Similarly, consistent with the detective's testimony, the recording demonstrated the interview was not continuous over the roughly two-and-a-half hour period Appellant was in the interview room, and Detective Jellico never made any threats or promises to Appellant during that time. (State's Ex. # 63). Likewise, Appellant responded appropriately and clearly to the detective's questions, first made an incriminating admission of dropping Victim onto the floor less than thirty minutes into the interview, proceeded to give a detailed explanation of the circumstances surrounding that occurrence, attempted to minimize her own responsibility for it by alleging it was accidental and caused by the medication she was on, and then demonstrated self-protectiveness by attempting to pivot at various points—including during audible prayers she made—to a version of events in which

Toddler was the one who caused Victim's injuries before reverting to what she—at least at that point—claimed was the truth. (State's Ex. # 63).

Following the presentation of that testimony and evidence, the solicitor argued it demonstrated Appellant's statements were not involuntary and her will was not overborne. (Tr. p. 74). As support for that argument, the solicitor noted Appellant appeared comfortable throughout the interview, she seemed to understand her rights, she was not denied any comforts and never asked for any breaks, she was only at the police station for a few hours in total, she self-reported she was fine, and she did not appear to be in any physical stress. (Tr. pp. 71-74). Conversely, defense counsel argued there was "a legitimate question" as to whether Appellant's statements were involuntary.[11] (Tr. p. 76). In so arguing, defense counsel focused primarily on Appellant's physical condition and noted she was on medication, had recently given birth, had not gotten much sleep, was suffering from a hernia, and recently had a child die.[12] (Tr. p. 75). He further asserted there was an implication or threat Toddler would not be returned, he faulted the officer for truthfully ensuring Appellant understood she potentially could go to jail as a result of the investigation, and he maintained the possibility mental health treatment could have been available may have induced Appellant's admissions. (Tr. pp. 75-76).

After considering the matter, the trial judge found the State had established by a preponderance of the evidence Appellant's statements were freely and voluntarily given and, therefore, ruled they could be admitted into evidence during trial. (Tr. pp. 78-79). In reaching

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[11] During the interview, Detective Jellico provided water to Appellant, and he further offered her food and an opportunity to use the restroom. (Int. Tr. pp. 76-77; pp. 113-114; State's Ex. # 63).

[12] Although defense counsel specifically referenced Appellant being on medication as part of his argument, Appellant personally only reported having most recently taken two Tylenol, which she described as being "too strong," while no other evidence of any ingested medications that would or could have impacted her at time of the interview was presented. (State's Ex. # 63).

that conclusion, the trial judge noted it was apparent Appellant clearly was not coerced, she was informed of and understood her rights, she answered the detective's questions in a forthright manner, and she was never subjected to any promises or threats before making her incriminating admissions. (Tr. pp. 78-79).

Thereafter, the trial continued forward, and the solicitor sought to admit a redacted recording of Appellant's interview during the testimony of Detective Jellico, who was the State's last witness. (Tr. p. 80; p. 399; p. 401). Notably, when that recording was offered into evidence, defense counsel expressly stated: "Without objection, Your Honor." (Tr. p. 399). The recording was then admitted into evidence and played for the jury. (Tr. p. 399).

Subsequent to that, Appellant testified on her own behalf and asserted the statements she made during the interview recording were false. (Tr. p. 428). Significantly though, Appellant did *not* claim she made the supposedly-false statements as the result of any coercion from Detective Jellico and, instead, alleged she did so because she was in a state of shock from Victim's death, had not gotten much sleep, wanted to go home to her family, and did not want Marcus or Toddler to go to jail. (Tr. pp. 425-428).

Standard of Review

Historically, in South Carolina, an appellate court reviewing a trial judge's ruling concerning the voluntariness of a statement "does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); see State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) ("Our role when reviewing a trial court's ruling concerning the admissibility of a statement upon proof of its voluntariness is not to reevaluate the facts based on our view of the preponderance of the

evidence."). Pursuant to that historically-applied standard, "[t]he trial judge's determination of the voluntariness [of a statement] will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998).

However, in its recent decision in State v. Brewer, Op. No. 28120 (S.C. Sup. Ct. filed Oct. 12, 2022) (Howard Adv. Sh. No. 37 at 16), our Supreme Court questioned whether a totality-of-the-circumstances voluntariness determination presents a mixed question of law and fact, which could support the application of a standard of review in which the trial judge's factual findings are reviewed for evidentiary support and the ultimate legal conclusion is reviewed de novo. Cf. State v. Frasier, 437 S.C. 625, 633-634, 879 S.E.2d 762, 766 (2022) ("[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to de novo review."). Ultimately though, the Supreme Court elected in Brewer to "leave for another day" any possible revision to the standard of review applied to voluntariness determinations in South Carolina. Brewer, Op. No. 28120 (S.C. Sup. Ct. filed Oct. 12, 2022) (Howard Adv. Sh. No. 37 at 16, 20-21 n. 1).

Argument

In a criminal prosecution, the State "may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Prior to custodial interrogation, a suspect must be warned she has a right to remain silent, any of her statements may be used against her, she has

a right to an attorney, and an attorney will be appointed to her prior to any questioning if she desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is afforded an opportunity to exercise her rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

Significantly, if a defendant is advised of her constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence the defendant knowingly, intelligently, and voluntarily waived her rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990); see Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (instructing the prosecution must establish the accused understood her rights in order for the accused's waiver of those rights to be valid). In determining whether a valid waiver of rights occurred, the particular facts and circumstances surrounding the case must be examined, including the background, experience, and conduct of the accused. North Carolina v. Butler, 441 U.S. 369, 374-375 (1979).

However, even if a defendant validly waives her rights and makes a statement, a confession or statement by a defendant is nonetheless inadmissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). The reason for the prohibition against the use of an involuntary confession is that "coerced confessions" have been recognized to be "inherently untrustworthy." Dickerson v. United States, 530 U.S. 428, 433 (2000); see also Jackson v. Denno, 378 U.S. 368, 385-386 (1964) ("[T]he Fourteenth Amendment forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will, and

because of the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." (citations and internal quotations omitted)).

When considering the voluntariness and admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980); Boulden v. Holman, 394 U.S. 478, 480 (1969) ("The question whether a confession was voluntarily made necessarily turns on the totality of the circumstances[.]" (footnote and internal quotations omitted)). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of her constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Significantly though, "no one factor is determinative," and "each case requires careful scrutiny of all the surrounding circumstances." State v. Pittman, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007).

In the end, the "ultimate test" of voluntariness involves determining whether the confession was "the product of an essentially free and unconstrained choice by its maker" or was the product of an overborne will and critically-impaired capacity for self-determination. Schneckloth, 412 U.S. at 225-226; see State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996) ("The question is whether the defendant's will was overborne when he confessed."); see also Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for

voluntariness is not a but-for test: we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all."). Importantly though, the defendant's statement *must* have been the product of some coercive law enforcement activity or state action for it to be found involuntary. See Colorado v. Connelly, 479 U.S. 157, 167 (1986) ("[C]oercive police activity is a *necessary predicate* to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." (emphasis added)). Meanwhile, "[m]ental deficiency alone is not a basis for rendering a confession involuntary." State v. Tyner, 273 S.C. 646, 656, 258 S.E.2d 559, 564 (1979).

In the case sub judice, Appellant's current issue with the admission of her incriminating statements to Detective Jellico was not properly preserved for appellate review because defense counsel waived any issue with the statements during trial. Demonstrating the lack of proper preservation, defense counsel initially raised an in limine objection to the voluntariness of Appellant's statements, but he subsequently followed that by directly and unreservedly affirming to the trial judge he had *no objection* when the recording of those statements was actually offered into evidence during trial. Under such circumstances, defense counsel's earlier preliminary objection was abandoned instead of simply not renewed, and, resultantly, any issue concerning the admission of the recording of Appellant's statements was not properly preserved for appellate review since that evidence was admitted without objection during trial. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); see also State v. Jones, 435 S.C. 138, 144, 866 S.E.2d 558, 561

(2021) ("[A] different approach is warranted where a court rules after a[n in limine] hearing on a constitutional issue. Under those circumstances, the ruling is final and, unless something changes during trial that may reasonably cause the trial judge to alter the pretrial ruling, no further objection is required to preserve the issue for appellate review."); cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."). Therefore, Appellant's current challenge to the admission of her incriminating statements cannot now appropriately be considered on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors").

However, even if Appellant's appellate challenge to the admission of her statements could somehow now be appropriately addressed despite being abandoned at trial by defense counsel, the trial judge's ruling admitting Appellant's statements was nonetheless a proper one and should be upheld on appeal. That is true because the totality of the circumstances—including the circumstances surrounding Appellant herself, the conditions of the interview, and the conduct of Detective Jellico during that interview—fully supported the trial judge's conclusion Appellant's statements were voluntarily made after a valid waiver of her rights.

Looking to the specific circumstances established by the evidence and testimony presented, Appellant was a full-grown adult with a high school degree who was actively enrolled in college courses, she seemed to be a mature and intelligent individual, she appeared to be alert and engaged throughout the interview, and, just as the trial judge recognized, her contextually-

appropriate answers to the detective's questions were forthright. Cf. United States v. Clayton, 937 F.3d 630, 641 (6th Cir. 2019) ("Clayton has a high-school education and attended some college; he was able to understand the situation he was in and what was being asked of him."); United States v. Robinson, 404 F.3d 850, 860-861 (4th Cir. 2005) (affirming a district court judge's finding a troubled *juvenile* with an I.Q. potentially as low as 70 validly waived his rights because the defendant "indicated he understood his rights as they were recited" and appeared to be "street smart"). Additionally, Appellant voluntarily agreed to come to the police station for the interview, was fully informed of her rights prior to being subjected to any questioning, appeared to understand—and personally affirmed she understood—those rights, initialed and signed an advisement of rights form, and confirmed she wished to waive her rights and make a statement. See Berkemer v. McCarty, 468 U.S. 420, 433 n. 20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare."). Similarly, Appellant was subjected to less than three hours of questioning in total during afternoon hours in an interview room, which meant her interview was not excessive in length and occurred at a bog-standard location for such an activity at an unremarkable time of day. Cf. Berghuis, 560 U.S. at 387 (finding no coercion where "[t]he interrogation was conducted in a standard-sized room in the middle of the afternoon" and rejecting the suggestion three hours of interrogation was "inherently coercive"). And, during that span of time, Appellant was given water by the detective, was not deprived of any bathroom opportunities or other comforts prior to making her incriminating admissions, was not subjected to any threats or promises, was not handcuffed or otherwise subjected to any form of physical restraint, and seemed to be at relative ease since she remained calm throughout the interview and even chuckled at several points. See

Pittman, 373 S.C. at 165, 647 S.E.2d at 568 (recognizing courts do not generally find even a juvenile's confession to be involuntary without evidence of intimidating questioning or some other form of coercion). Moreover, for the vast majority of the interview, Detective Jellico was the only one present in the interview room with Appellant—including when she first stated she dropped Victim—such that she was not subjected to a "police-dominated atmosphere" designed to wring a confession out of her. Cf. State v. Dye, 384 S.C. 42, 49, 681 S.E.2d 23, 27 (Ct. App. 2009) (concluding Dye was not subjected to "a police-dominated atmosphere" since only one officer was present in the room). Furthermore, the detective—who behaved in a polite and unaggressive manner throughout the interview—was dressed in non-uniformed attire, he neither displayed a firearm at any point nor appeared to be visibly armed, and he made sure Appellant had no misconceptions about the situation she was in by repeatedly making sure she knew she could potentially go to jail based on what was revealed during their conversation. Cf. United States v. Kourani, 6 F.4th 345, 352 (2d Cir. 2021) (concluding the conduct of government agents was not coercive based—in part—on the facts they "were dressed in business-casual attire and did not display firearms").

Meanwhile, beyond the circumstances established by the evidence and testimony presented, the trial judge was *not* furnished with anything establishing Appellant was coerced into making the statements, including from Appellant herself. Cf. Breeze, 379 S.C. at 545, 665 S.E.2d at 251 ("Conversely, Breeze did not contradict [the officer]'s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]'s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]'s testimony, we cannot conclude the trial court's ruling is unsupported by any evidence."); State v. White, 311 S.C. 289, 294-295, 428 S.E.2d 740, 743 (Ct.

App. 1993) ("There is no evidence the questioning was either extended or coercive. White appeared to the troopers to understand what he said to them and seemed to be aware of why the troopers were there. The fact that he had been under medication and was strapped to his bed was, at best, only a circumstance the trial court was to consider in determining voluntariness."). To the contrary, what was presented to the trial judge established Appellant—despite her recent experiences—was self-admittedly "fine" at the time of the interview, she had been released from the hospital following her two-day stay in connection to Victim's birth, she did not appear to be under the influence of anything, and the only medications she identified as having recently taken were Tylenol and Motrin, which were not substances that would ordinarily affect one's ability to make reasoned decisions. See United States v. Cristobal, 293 F.3d 134, 141 (4th Cir. 2002) ("[A] deficient mental condition (whether the result of a pre-existing mental illness or, for example, pain killing narcotics administered after emergency treatment) is not, without more, enough to render a waiver involuntary."); cf. State v. Hill, 361 S.C. 297, 306-307, 604 S.E.2d 696, 700-701 (2004) (rejecting the contention Hill's statement should have been suppressed as involuntary even though he made it in response to police interrogation while hospitalized following a suicide attempt in which he sustained a gunshot wound to the roof of his mouth along with an exit wound to the top of his skull). Moreover, nothing that occurred during the interview or that was presented afterwards suggested Appellant—who was both attentive and self-concerned—did not understand what she was being asked, did not comprehend what she was saying, or was not cognizant of the fact she could potentially suffer consequences as the result of what she said when speaking with Detective Jellico. Cf. Clayton, 937 F.3d at 642 ("[W]hile Clayton has some history of mental-health issues, nothing about his interrogation suggests he did not understand the questions posed or that he otherwise acted in a concerning manner.").

Furthermore, when Appellant personally testified on the subject of her interview statements before the jury, she did *not* claim the statements she made to Detective Jellico resulted from any coercive actions that overbore her will and, instead, suggested they resulted from her recent traumatic experiences coupled with her desire to protect her family members from jail. See Connelly, 479 U.S. at 164 ("Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law."); State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2008) ("Coercive police activity is a necessary predicate to finding a statement is not voluntary."); cf. United States v. Holmes, 670 F.3d 586, 593 (4th Cir. 2012) (concluding Holmes's own explanation for his confession supported a finding of voluntariness since he did *not* claim to have confessed as the result of anything coercive the interviewing agents did); United States v. Brave Heart, 397 F.3d 1035, 1041 (8th Cir. 2005) (determining Brave Heart's confession to killing an infant was not involuntary because the record supported a conclusion he confessed "because his conscience prevailed upon him to do so, not because the environment and nature of the questioning was so coercive that it overbore his will and critically impaired his capacity for self-determination"); Hill, 361 S.C. at 307, 604 S.E.2d at 701 (finding the trial judge properly admitted Hill's statement in part because "there [wa]s no testimony in the record that [Hill] felt coerced by this statement").

When viewed in their totality, those circumstances—just as the trial judge recognized—supported a conclusion Appellant's incriminating statements were voluntarily made after a valid waiver of rights as opposed to being the product of any overbearing coercive activity on the part of the police. As a result, the trial judge correctly admitted the recording of Appellant's incriminating statements into evidence during trial. See Miranda, 384 U.S. at 478 ("Confessions

remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence."). Accordingly, notwithstanding the fact the issue was not properly preserved for appellate review since defense counsel's in limine objection was abandoned when the recording of the statements was offered into evidence, the trial judge's factually-supported and proper ruling on the matter should be upheld on appeal. See Reed, 332 S.C. at 43, 503 S.E.2d at 751 ("The trial judge's determination of the voluntariness will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law."); cf. Dye, 384 S.C. at 47, 681 S.E.2d at 26 ("The circuit court considered the totality of circumstances in its voluntariness determination. While the court may not have specifically articulated all relevant factors, the court did find that Dye's statement to the police was knowingly, intelligibly, and voluntarily made. Furthermore, a review of the record demonstrates that the State proved by a preponderance of the evidence that Dye's confession was freely and willingly made." (citation omitted)). Appellant's conviction should be affirmed.

II.

The trial judge did not abuse his broad discretion or otherwise err by admitting a limited number of autopsy photographs depicting the extensive nature of the three-day-old victim's fatal injuries because: (1) the photographs were highly probative since they helped establish the victim's injuries were not accidentally inflicted due to their nature, which was a critically-important fact in Appellant's homicide by child abuse case; and (2) the high probative value of the photographs was not substantially outweighed by any potential for undue prejudice under the circumstances involved.

Appellant contends the trial judge abused his broad discretion by admitting several autopsy photographs depicting the extensive nature of the injuries that resulted in Victim's death. In support of that contention, Appellant maintains the photographs were grisly, purportedly had little probative value, and were highly prejudicial due to their alleged tendency to inflame the jury. To the contrary, the photographs depicting Victim's fatal injuries were critical towards establishing his death resulted from intentional abuse, which was a key fact tending to prove Appellant's guilt for the required elements of homicide by child abuse. Moreover, although undeniably graphic, the autopsy photographs were not so gruesome, gory, or extreme that their potential for undue prejudice substantially outweighed their high probative value under the circumstances of Appellant's case, and that was particularly true given the fact the trial judge took steps to minimize the risk of any undue prejudice arising from their introduction. As a result, the trial judge did not abuse his discretion or otherwise err by admitting the photographic evidence in the restricted manner he did. Appellant's conviction should be affirmed.

Relevant Facts

On the third day of Appellant's trial, the trial judge conducted a hearing outside the presence of the jury to analyze a number of photographs depicting Victim's fatal injuries that the parties had not—as they had been able to do with the majority of the other photographs and exhibits offered into evidence—been able to reach an agreement upon for admissibility purposes.

(Tr. pp. 80-81; p. 113; p. 336). During that hearing, the solicitor presented three separate versions of each of the challenged photographs the State was seeking to admit: a full-color original version, a "filtered" version with the brightness reduced, and a black-and-white version. (Tr. p. 336; pp. 343-344). In seeking the photographs' admission, the solicitor asserted they were necessary to show the severity of Victim's injuries, which was important to demonstrate the existence of circumstances manifesting extreme indifference as required to prove the indicted offense and to rebut Appellant's claim Victim's injuries resulted from a simple accidental drop. (Tr. pp. 338-339). Conversely, defense counsel argued he believed the photographs would be "extremely prejudicial" due to their "incredibly gruesome" nature *if* presented to the jury in color. (Tr. p. 346). He further argued he believed Victim's injuries were "plainly" visible in and could be explained to the jury from the black-and-white versions of the photographs alone.[13] (Tr. p. 346).

To support the State's position, the solicitor proffered the testimony of Dr. Presnell, who—as previously noted—had conducted Victim's autopsy. (Tr. p. 353; p. 341; pp. 355-356). During that proffer, Dr. Presnell went through each of the six challenged photographs initially offered, identified what injuries were shown in them, and explained one—State's Exhibit # 52, which depicted an infant other than Victim—was useful for comparative purposes because it depicted a normal infant without any hemorrhaging underneath the scalp. (Tr. pp. pp. 341-343). Dr. Presnell further explained—in response to questioning from the trial judge—the shade or darkness of the red shown in some of the photos was abnormal and constituted evidence of the trauma Victim sustained. (Tr. p. 345).

[13] In light of his arguments, it appears defense counsel was only objecting to the admission of the color versions of the photographs. (Tr. pp. 343-344; p. 346)

After reviewing the photographs, listening to Dr. Presnell's proffered testimony, and considering the matter, the trial judge acknowledged the "unsettling" nature of the photographs but nevertheless found they were, in fact, relevant to Appellant's case. (Tr. p. 346). He then indicated he was going to take steps to minimize their gruesomeness for the jury, identified the select photographs he was going to permit the State to use, and placed limitations on how the State would be able to use the admitted photographs. (Tr. pp. 347-349). More specifically, the trial judge ruled the solicitor would only be able to initially show the full-color versions of three of the photographs—State's Exhibits # 51, # 54, and # 56—to the jury but would have to use the black-and-white versions when questioning Dr. Presnell about their contents, and he further ruled the State would be required to use the black-and-white versions of any of the other challenged photographs admitted except for the one depicting the skull of a normal infant, which he ruled could be shown to the jury through the full-color version. (Tr. pp. 347-349).

Thereafter, consistent with the trial judge's ruling, only five of the six challenged photographs were admitted into evidence over defense counsel's objection, the jury—at the trial judge's direction—was only briefly shown the full-color version of any of the admitted photographs, and, after that brief showing, the black-and-white versions of the photographs were substituted in and used by Dr. Presnell to offer her technical explanations of Victim's injuries to the jury, which she did while referring to and relying upon the various photographs.[14] [15] (Tr. p. 351; pp. 367-372; State's Ex. # 51 (Photograph); State's Ex. # 52 (Photograph); State's Ex. # 53

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[14] As part of her explanations, Dr. Presnell called the jurors' attention at one point to the distinct difference in *color* between the uninjured tissue of a normal infant and Victim's injured tissue, which—unlike the uninjured tissue—was dark "maroon." (Tr. pp. 368-370).

[15] Demonstrating the importance of the photographs to Dr. Presnell's testimony, the words "here" and "there" accompanied by notations indicating Dr. Presnell was pointing to specific parts of the photographs appear repeatedly throughout the portion of the trial transcript containing her testimony before the jury. (Tr. pp. 368-375).

(Photograph); State's Ex. # 54 (Photograph); State's Ex. # 56 (Photograph)). And, before any of the challenged photographs were shown to the jury, the trial judge—without objection—made the following remarks to the jury:

> Let me just explain to you. Autopsy photographs are not easy to see under any circumstances. What you're about to see is going to be unsettling to you but you have to see it. And she'll explain to you why it is necessary.
>
> We have color photos and we have black and white of the same color photos. I've instructed the Solicitor to show you the color photos very briefly so they can explain to you why it's necessary for you to see the color photo but then we're going to switch over to the black and white of the same thing when it is necessary for her to explain to you some of the more detailed part of the photograph.
>
> But there is just no getting around the fact that it's unsettling and I understand that. But we're trying to do this and minimize the impact to you as much as possible but it's just necessary for you to see what you're about to see, okay.

(Tr. p. 367). Meanwhile, other photographs depicting Victim's externally-visible injuries, photographs of Victim's bloody clothing, and diagrams of Victim's injuries were admitted into evidence without objection from defense counsel. (Tr. pp. 350-351; p. 362; pp. 364-365; State's Ex. # 50 (Photograph); State's Ex. # 57 (Diagram); State's Ex. # 58 (Diagram); State's Ex. # 59 (Photograph); State's Ex. # 60 (Photograph); State's Ex. # 61).

At the conclusion of Dr. Presnell's testimony, the solicitor—in an effort to help further minimize any possibility of undue prejudice arising from the autopsy photographs—proposed sending only the black-and-white versions of the challenged photos back to the jury room during the jury's deliberations even though some of the full-color versions were actually admitted into evidence, and the trial judge agreed with the solicitor's sensible proposal. (Tr. p. 385). Thereafter, consistent with the solicitor's proposal, a disc of exhibits was prepared containing—

in addition to other photographs and exhibits admitted without objection—only the black-and-white versions of the challenged photographs, and that disc was admitted into evidence and sent with the jurors to use during their deliberations in lieu of the photographs themselves. (Tr. pp. 464-465; p. 525).

Ultimately, after deliberating for a little over three-and-a-half hours in total, the jury convicted Appellant as indicted. (Tr. pp. 527-529). Notably, in doing so, the jury never asked to view the full-color versions of any of the challenged autopsy photographs at any point during the deliberations, and, resultantly, the jurors who decided Appellant's case only briefly saw the non-black-and-white versions of those five photographs a single time when they were first introduced prior to reaching their verdict. (Tr. pp. 367-372; pp. 527-529).

Standard of Review

Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and, on appeal, an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("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."). "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when

the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

Argument

All relevant evidence is admissible, and only relevant evidence should be admitted at trial. Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (" '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.' ").

However, even if relevant, evidence must be excluded from trial if its probative value is *substantially* outweighed by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, 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."); see also New Oxford American Dictionary 1736 (3rd ed. 2010) (defining "substantially" as "to a great or significant extent"). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case. State v. Collins, 398 S.C.

197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Meanwhile, unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see Old Chief v. United States, 519 U.S. 172, 181 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). However, unfair prejudice does *not* mean damage to a defendant's case that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). That is true because all evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant, and it is only unfair prejudice that must be avoided. Id.

When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have "particularly wide discretion[.]" Collins, 398 S.C. at 209, 727 S.E.2d at 757. As a result, a trial judge's ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Hamilton, 344 S.C. at 358, 543 S.E.2d at 594.

In the case at bar, Appellant was on trial for homicide by child abuse in connection to the blunt-force-trauma-caused death of Victim, who was only three days old at the time he was killed. Significantly, by its very nature, that charged offense was inherently difficult to prove since it is a secretive one typically occurring behind closed doors, and, thus, evidence of anything direct or circumstantial that could reasonably tend to shed light on what occurred in Appellant's case carried enhanced probative value due to the nature of the crime involved. See State v. Fletcher, 379 S.C. 17, 27, 664 S.E.2d 480, 484-485 (2008) (Toal, C.J. dissenting) (explaining child abuse differs from other types of crimes, "often occurs in secret" to victims too young to defend themselves or obtain help, and is "extremely difficult" to prove); see also Holmes v. Goldsmith, 147 U.S. 150, 164 (1893) ("[G]reat latitude is allowed in the reception of circumstantial evidence, the aid of which is constantly required; and therefore, where direct evidence of the fact is wanting, the more the jury can see of the surrounding facts and circumstances the more correct their judgment is likely to be.").

Meanwhile, in the aftermath of Victim's death, Appellant claimed at various points—when not denying all knowledge of what occurred or attempting to pin the killing on her three-year-old toddler—Victim's fatal injuries were sustained after she accidentally dropped the infant onto the floor one single time, which—if not rebutted—could have potentially supported a conclusion Victim's death was the result of an accident as opposed to a crime. Cf. Lackey v. State, 271 S.E.2d 478, 484 (Ga. 1980) (rejecting the contention the trial judge erred by admitting twelve enlarged color photographs depicting the juvenile victim's body after her death along with three color photographs depicting a fractured rib surgically removed from the victim's body during an autopsy because the photographs refuted the possibility the victim's injuries were accidental or self-inflicted); People v. Dickerson, 837 N.Y.S.2d 101, 108 (N.Y. App. Div. 2007)

(finding autopsy photographs were relevant and probative in light of claims made by the defendant). However, as even Appellant herself now appears to recognize on appeal, the extensive nature of Victim's fatal injuries demonstrates Victim's tragic death was *not* an accidental one as she—at least sometimes—has claimed and, instead, was "purposeful." (App. Br. p. 19).

In light of the nature of the charged offense coupled with Appellant's vacillating claims about what occurred, any evidence of the extent of Victim's injuries was exceedingly probative because such evidence constituted the clearest proof on an issue Appellant herself placed into dispute—the manner in which Victim's fatal injuries were incurred—and could have helped establish the necessary elements of the indicted crime. Cf. State v. Bennett, 369 S.C. 219, 229, 632 S.E.2d 281, 287 (2006) (concluding the trial judge did not err by admitting hospital photographs depicting two victims even though they "were certain to elicit an emotional response from the jury" because they were "highly probative" since they provided the "clearest picture of the aggravated nature of the assault and battery"). Therefore, the five challenged autopsy photographs, which were directly used by Dr. Presnell to help explain Victim's injuries to the jury, possessed high probative value in Appellant's case because they *visually* demonstrated the extensive nature of Victim's injuries in a more easily-understood manner than words alone could accomplish. See State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (recognizing photographs can be important to demonstrate the nature and extent of a victim's injuries "in a way that would not be as easily understood based on the testimony alone"); cf. State v. Gray, 408 S.C. 601, 614, 759 S.E.2d 160, 167 (Ct. App. 2014) ("[T]he photos were important to the State's ability to establish that Gray and Reese acted with malice."); State v. Dial, 405 S.C. 247, 261, 746 S.E.2d 495, 502 (Ct. App. 2013) ("We find the [autopsy]

photographs were highly probative to the issues of whether Victim was abused and whether the abuse was the cause of his death, which are integral elements to the charge of homicide by child abuse." (citation omitted)), cert. dismissed as improvidently granted, 412 S.C. 121, 770 S.E.2d 767 (2015); State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 608 (Ct. App. 2008) ("The photographs were relevant to prove Child was abused, that the abuse was the cause of his death, and that the abuse manifested an extreme indifference to human life, all of which support the charge of homicide by child abuse."). And, the importance of those photographs was increased by the fact the nature of Victim's injuries was a medical matter not "readily understood by most jurors," who ordinarily would not be expected to be knowledgeable about such things. Gray, 408 S.C. at 612, 759 S.E.2d at 166.

Recognizing the importance of the nature of Victim's fatal injuries to the proper resolution of the case, the trial judge allowed the introduction of a limited number of photographs depicting those injuries—including the five challenged photographs—to corroborate Dr. Presnell's testimony, which the photographs unquestionably served to do. See 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."). Furthermore, in doing so, the trial judge did not simply admit the photographs based purely on their probative value but, instead, *also* took considered steps to minimize their potential for causing any undue prejudice by: (1) permitting the solicitor to only briefly display full-color versions to the jury a single time; (2) requiring black-and-white versions to be used during the forensic pathologist's explanatory testimony; and (3) sending only black-and-white versions of the photographs back to the jury during their deliberations. Therefore, through those limiting actions, the trial judge ensured the jurors were only exposed to the full-color versions of the five challenged photographs during the

entirety of the trial for a single brief moment when first admitted, which demonstrated a careful exercise of discretion on the trial judge's part designed to prevent the challenged photographs from being more prejudicial than probative. Cf. State v. Jarrell, 350 S.C. 90, 106, 564 S.E.2d 362, 371 (Ct. App. 2002) (concluding the trial judge's decision to exclude some autopsy photographs depicting the infant victim's injuries demonstrated he exercised his discretion in admitting the photographs admitted).

Beyond that, each of the corroborative photographs was presented to the jury along with a technical and scientific explanation from Dr. Presnell, which helped ensure the photographs were introduced in a manner "detached from the emotions of the case" as opposed to in an unnecessarily or unduly prejudicial manner. Gray, 408 S.C. at 616, 759 S.E.2d at 169. Moreover, although naturally graphic due to the fact they were taken at an infant's autopsy, the photographs accurately reflected what occurred to Victim and were not so extreme, unusually gruesome, or gory that they would have been inflammatory in a sense that went beyond the natural inflammation attendant to any post-mortem photographs of someone who died of an unnatural and violent cause. Id.; see State v. Collins, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (plurality opinion) ("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."); cf. Holder, 382 S.C. at 291, 676 S.E.2d at 697 ("Although the photographs were graphic, the facts in the case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis. We hold the trial court properly exercised its discretion in admitting the autopsy photographs in this case.").

Accordingly, even though the five challenged photographs—only four of which actually depicted Victim—were inherently unpleasant, their potential for undue prejudice did not *substantially* outweigh their probative value under the circumstances involved in Appellant's case, the trial judge did not abuse his broad discretion or otherwise err by admitting the limited photographs he allowed to be introduced in the restricted manner he did, and there are no proper grounds warranting a reversal of that sound discretionary ruling on appeal. See State v. Sweat, 362 S.C. 117, 129, 606 S.E.2d 508, 515 (Ct. App. 2004) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances."); see also State v. Robinson, 426 S.C. 579, 607, 828 S.E.2d 203, 217 (2019) (recognizing it is conceivable the discretionary rulings of two different trial judges who reached opposite conclusions from the same set of circumstances will both be affirmed on appeal due to the deferential nature of the abuse of discretion standard of review). Appellant's conviction should be affirmed.

III.

The trial judge correctly declined to grant the directed verdict motion because the evidence and testimony presented during trial supported a rational and logical conclusion Appellant committed homicide by child abuse by causing the death of her three-day-old infant son, who died from fatal head injuries that resulted from significant blunt force trauma, while committing child abuse or neglect under circumstances manifesting extreme indifference to human life.

Appellant contends the trial judge reversibly erred by denying the motion for a directed verdict. In support of that contention, Appellant maintains the directed verdict motion should have been granted because the State purportedly failed to present any evidence of extreme indifference.[16] To the contrary, the evidence and testimony presented during trial was sufficient for the jury to logically and rationally find Appellant guilty of each and every element of homicide by child abuse because it supported a conclusion she caused the minor victim's death while committing child abuse or neglect under circumstances manifesting extreme indifference to human life. Accordingly, the trial judge correctly denied the directed verdict motion and submitted the case to the jury. Appellant's conviction should be affirmed.

Relevant Facts

During Appellant's trial, expert testimony was presented establishing Victim, who was just three days old at the time of his death, died as the result of fatal injuries that were "definitely" caused by significant blunt force trauma inflicted upon him by someone else. (Tr. p. 225; p. 355; p. 358; p. 375). In addition to that, expert testimony—along with corroborative photographic evidence—was introduced establishing those fatal injuries, which included non-

[16] In challenging the trial judge's ruling on the directed verdict motion, Appellant bolsters her appellate argument by citing to an unpublished memorandum decision issued by our Supreme Court in an unrelated case. (App. Br. p. 21). Significantly though, citation to unpublished memorandum decisions in such a manner is expressly prohibited by our state's appellate court rules due to the fact such decisions have no precedential value. See Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and *should not be cited* except in proceedings in which they are directly involved." (emphasis added)).

linear skull fractures to the right, left, and back sides of Victim's tiny skull, were not caused from a single blow such as one that could have *potentially* been sustained in a lone accidental drop to the floor from a short or medium distance but, instead, resulted from at least three distinct blunt force impacts to different parts of Victim's head that left bruising consistent in size and shape to the size and shape of the end caps on a piece of furniture found at the scene. (Tr. pp. 251-252; pp. 261-262; pp. 355-360; p. 362; p. 366; pp. 373-375; State's Ex. # 25; State's Ex. # 61). Furthermore, expert testimony was presented demonstrating Victim's injuries would have been readily apparent due to—at a minimum—the profuse bleeding that necessarily would have resulted from the significant tear he sustained to his frenulum. (Tr. p. 365; p. 378).

In addition to that, testimony and evidence was presented establishing Appellant repeatedly attempted to place the blame for Victim's death on her three-year-old toddler before eventually making vacillating admissions to having dropped Victim to the floor. (Tr. pp. 197-198; p. 212; State's Ex. # 62; State's Ex. # 63; State's Ex. # 64). Likewise, a recording of Appellant's incriminating statements was introduced into evidence during trial, and, on that recording, Appellant stated she left Victim, whom she described as having been fussy from birth, on the floor for a period of time after dropping him and then chose to meditate about how her family would be able to pay for things along with about how she personally did not want to go to jail for some time after that instead of immediately seeking medical attention or any other form of help for him in the aftermath of him being dropped. (Tr. pp. 397-399; Int. Tr. p. 15; pp. 26-34; pp. 55-57; pp. 59-60; p. 72; p. 81; pp. 85-86; pp. 106-108; State's Ex. # 63). Beyond that, Appellant further stated during the recorded interview Toddler *saw* what happened to Victim and was awake when she dropped Victim onto the floor. (Int. Tr. p. 40; State's Ex. # 63). Meanwhile, on that same recording, Appellant also offered completely contradictory accounts at

various points and inconsistently claimed to have done nothing at all to Victim.[17] (Int. Tr. pp. 69-71; pp. 78-80; pp. 102-104; State's Ex. # 63).

After that testimony and evidence was presented and the State rested its case, defense counsel moved for a directed verdict. (Tr. pp. 401-402). As support for that motion, defense counsel conceded the evidence and testimony presented established Victim's injuries were caused by blunt force trauma. (Tr. p. 402). Nevertheless, defense counsel contended the State failed to produce sufficient evidence for conviction because: (1) there was purportedly no proof "an actual homicide" occurred; (2) no weapon was introduced to explain Victim's injuries; and (3) the only thing Appellant directly admitted to doing was accidentally dropping Victim. (Tr. p. 402). Conversely, the solicitor argued "more than sufficient evidence" had been presented to warrant the submission of Appellant's case to the jury, and she noted it established a significant amount of force would have been necessary to cause Victim's fatal injuries. (Tr. p. 402).

Upon considering the matter, the trial judge denied defense counsel's motion. (Tr. p. 403). In doing so, the trial judge found sufficient evidence had been presented, including circumstantial evidence, suggesting Appellant caused Victim's death through either child abuse or neglect under circumstances manifesting extreme indifference to human life. (Tr. p. 403). Ultimately, following that ruling, the case was submitted to the jury, and the jury convicted Appellant as indicted. (Tr. p. 527; p. 529).

Standard of Review

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial

[17] Later on during trial, Appellant testified on her own behalf and readily acknowledged she made false statements during the investigation into Victim's death. (Tr. p. 428; pp. 437-439).

circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)).

Argument

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is not permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908)

("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, determine what inferences should be drawn from the facts, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

In the present case, Appellant was charged with homicide by child abuse. That offense has been committed when a person "causes the death of a child under the age of eleven while

committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life[.]" S.C. Code Ann. § 16-3-85(A)(1). For purposes of the offense, child abuse or neglect means "an act or omission by any person which causes harm to the child's physical health or welfare." S.C. Code Ann. § 16-3-85(B)(1). Relatedly, harm for purposes of the offense includes: (1) the infliction of physical injury to the child; and (2) the failure to provide adequate food, clothing, shelter, or health care such that the child's death results. S.C. Code Ann. § 16-3-85(B)(2). Meanwhile, extreme indifference constitutes "a mental state akin to intent characterized by a deliberate act culminating in death." State v. Phillips, 416 S.C. 184, 196, 785 S.E.2d 448, 454 (2016) (citations and internal quotations omitted); see Jarrell, 350 S.C. at 98, 564 S.E.2d at 367 (explaining extreme indifference is a culpable mental state akin to intent). Thus, in order to establish all the required elements of homicide by child abuse, the State necessarily must prove beyond a reasonable doubt the defendant: (1) caused the death of a minor child; (2) while committing acts of child abuse or neglect; (3) under circumstances manifesting a mental state of extreme indifference to the victim's well-being. Holder, 382 S.C. at 294, 676 S.E.2d at 699.

Viewing the evidence and testimony presented in a light most favorable to the State as required, the nature, number, and severity Victim's injuries demonstrated those fatal injuries were caused by intentional—as opposed to accidental—acts, which constituted clear proof Victim's death was the result of deliberate acts of child abuse. S.C. Code Ann. § 16-3-85(B); cf. State v. Smith, 359 S.C. 481, 492, 597 S.E.2d 888, 894 (Ct. App. 2004) (concluding the trial judge properly submitted Smith's homicide by child abuse case to the jury because—in part—the evidence showed the minor victim sustained multiple severe injuries consistent with having been inflicted through intentional acts). And, in light of Appellant's own statements, a reasonable

fact-finder could conclude from Appellant's vacillating claims she was, in fact, the one who inflicted those injuries since she acknowledged—albeit in a minimizing manner that was not fully consistent with the true extent of Victim's injuries—she dropped Victim to the floor, returned him to his bassinet, and then proceeded to wait nearby for a period of time before prompting Marcus into appearing to be the one who first discovered Victim was injured and unresponsive. See Raymer v. State, 195 N.E.2d 350, 351 (Ind. 1964) (explaining a partial admission can be sufficient to connect a defendant to a crime when coupled with other evidence); see also Arizona v. Fulminante, 499 U.S. 279, 296 (1991) (recognizing a "defendant's own confession is probably the most probative and damaging evidence that can be admitted against him"). Beyond that, the fact Appellant necessarily had to have been lying during an investigation into Victim's death due to the fundamentally inconsistent nature of the various accounts she presented at different times constituted guilty conduct evidence demonstrating her consciousness of her own guilt. See State v. Pittman, 137 S.C. 75, __, 134 S.E. 514, 526-527 (1926) (recognizing guilt can properly be inferred from an act of uttering false exculpatory statements); see also State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt."). Finally, the significant and non-accidental nature of Victim's injuries coupled with Appellant's own acknowledgement she did not seek immediate medical attention for Victim after he was injured and, instead, meditated for some time about her family's financial situation *and her own self-serving desire not to go to jail* supported a conclusion Appellant—at a minimum—was indifferent to Victim's well-being such that circumstances manifesting extreme indifference to human life on her part were present. See State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) (recognizing intent can be

inferred from the circumstances involved); see also State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527-528 (2000) (recognizing a defendant's subsequent actions can constitute evidence of the defendant's intent at an earlier point). As a result, sufficient evidence and testimony was presented tending to prove Appellant's guilt for each and every element of homicide by child abuse.

Because the evidence presented supported a fair and reasonable conclusion Appellant was guilty of the indicted offense, the trial judge was required to submit Appellant's case to the jury so it could carry out its fact-finding role. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Accordingly, the trial judge correctly declined to grant the directed verdict motion, and there is no legitimate basis upon which that ruling can be disturbed on appeal. See Bennett, 415 S.C. at 236-237, 781 S.E.2d at 354 ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and *must* submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (emphasis added and citation and internal quotations omitted)); United States v. Moye, 454 F.3d 390, 396 (4th Cir. 2006) ("[A]s appellate judges, we enjoy no greater vantage point on appeal than did the jury at trial and we have no right to usurp the jury's role to find facts. If we did otherwise, we would be substituting our judgment for that of the jury." (citation omitted)). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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