

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals  
Appeal from Chester County  
The Honorable Daniel D. Hall, Circuit Court Judge

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Appellate Case No. 2023-000257

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THE STATE,

Respondent,

v.

JAMES H. BALDWIN,

Petitioner.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**TABLE OF CONTENTS**

STATEMENT OF ISSUE ON CERTIORARI.....1

STATEMENT OF THE CASE.....2

ARGUMENT .....10

The Court of Appeals correctly held that an error in the admission of a Facebook photo of Petitioner and Sheriff Alex Underwood was entirely harmless because the photo did not affect the Jury’s verdict and was cumulative to other evidence regarding Petitioner’s close relationship with the Sheriff’s Office that Petitioner did not object to.

CONCLUSION.....17

## **STATEMENT OF ISSUE ON CERTIORARI**

Did the Court of Appeals correctly hold that an error in the admission of a Facebook photo of Petitioner and Sheriff Alex Underwood was entirely harmless when the photo did not affect the jury's verdict and when it was cumulative to other evidence regarding Petitioner's close relationship with the Sheriff's Office that Petitioner did not object to?

## STATEMENT OF THE CASE

### Procedural History

In August 2018, the Chester County Grand Jury indicted Petitioner for one count of murder. From October 28 to November 5, 2019, a jury trial was held in the Chester County Court of General Sessions with the Honorable Daniel D. Hall presiding. The venue for Petitioner's trial was moved from Chester County to Lancaster County. (R. 7, 15). Petitioner was represented by Phillip Jamieson, Esq., and Bradley Jordan, Esq. The State was represented by Deputy Solicitor Candice Lively and Assistant Solicitor Jay Johnson of the Sixth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Petitioner as indicted. The trial judge sentenced Petitioner to a term of life imprisonment.

Petitioner appealed his conviction. On December 7, 2022, the Court of Appeals issued an unpublished opinion affirming Petitioner's conviction and sentence. (App. 1-3). On December 22, 2022, Petitioner filed a petition for rehearing. The Court of Appeals denied the petition for rehearing on January 23, 2023. Petitioner filed a petition for certiorari with this Court on February 23, 2023. On certiorari, Petitioner no longer challenges the Court of Appeals finding regarding whether the State's pathologist, Dr. Ross, exceeded the scope of her authority when testifying about the cause and manner of Victim's death. Rather, Petitioner only challenges with the trial judge's admission of a Facebook photo depicting Petitioner and Sheriff Alex Underwood together was harmless error.

### Factual History

At approximately 11:06 PM on December 14, 2016, Chester County 911 received a phone call from Petitioner. (R. 86). In the 911 call, Petitioner reported he and Victim "ran off the road" while driving their Jeep Wrangler near a bridge on Old Richburg Road in Chester County.

(State's Exhibit #5). Victim was Petitioner's wife. Petitioner reported Victim was ejected from the car, and he wasn't sure if she was breathing. (State's Exhibit #5). Victim's body was located by first responders in the creek near the driver's side rear tire of the jeep. (R. 88-89, State's Exhibit #10). Victim was not breathing and did not have a pulse. (R. 109). First responders did not attempt to resuscitate Victim. (R. 109). The passenger side door of the jeep was open and hyperextended; however, the windshield was still intact and undamaged. (R. 103, 171, State's Exhibit #30).

Petitioner was initially interviewed at Piedmont Medical Center by Trooper Calvin Rikard at approximately 2:43 AM on December 15, 2016. (R. 41, 194). Petitioner acknowledged to Rikard that he previously worked in law enforcement, including ten years of working for the Chester County Sheriff's Office as a 911 dispatcher. (State's Exhibit #1). Petitioner claimed he and Victim returned home from running various errands and ate supper at approximately 5:30-6:00 PM. (State's Exhibit #1). After dinner, Petitioner said Victim wanted to finish decorating their Christmas tree. While Victim decorated the tree, Petitioner went outside to take some tools to his shed. When Petitioner returned from the shed, he claimed Victim had fallen off of a step ladder and hit her head. (State's Exhibit #1). Petitioner said Victim's head was bleeding profusely and he told Victim she needed to get stitches. (State's Exhibit #1). According to Petitioner, Victim asked to be taken to Piedmont Medical Center in Rock Hill. When asked why he didn't take Victim to the nearby Chester Regional Medical Center<sup>1</sup>, Petitioner responded "[Victim] don't like Chester." (State's Exhibit #1). Petitioner decided to take Old Richburg Road to get from his residence at 1186 Oakwood Drive to Piedmont Medical Center. (R. 129, State's Exhibit #1). On the way to the hospital, Petitioner claimed he saw a truck traveling over the

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<sup>1</sup> Petitioner noted in his initial interview that he lived behind the hospital. (State's Exhibit #1). Presumably, Petitioner was referring to Chester Regional Medical Center.

center line into his lane. (State's Exhibit #1). Petitioner moved to the right shoulder and then over-corrected and drove off the left side of the road. (State's Exhibit #1). Petitioner estimated he was traveling between 55 and 60 miles per hour at the time he swerved off the road. (State's Exhibit #1). Petitioner claimed he lost consciousness during the wreck but claimed to remember the impact of the wreck. (State's Exhibit #1). When he regained consciousness, Petitioner initially couldn't find Victim and had to search for her. (State's Exhibit #1). Petitioner found Victim lying in the creek in front of the jeep on the passenger side. (State's Exhibit #1). Petitioner claimed he dragged Victim to the driver's side of the vehicle and attempted to perform CPR. (State's Exhibit #1).

Trooper Kirk Winburn was the first member of the South Carolina Highway Patrol to arrive at the scene of the collision. Winburn observed that the jeep suffered very little damage from the collision. (R. 169-70, 179, State's Exhibit #21, #30, #73, #74). However, Winburn observed a large amount of blood in the passenger seat. (R. 170, State's Exhibit #15). Because of the discrepancy between the lack of damage to the vehicle and the severity of Victim's injuries, Winburn opined Victim did not die in the collision. (R. 171). Winburn called the Highway Patrol's MAIT team to assist in his investigation. (R. 171). As part of the MAIT team's investigation of the collision, Trooper Brian Trotter performed an analysis of the data recorder from Petitioner's vehicle. (R. 398). Trotter's analysis revealed no "event" or collision was recorded by the vehicle's data recorder. (R. 400-01). Trotter explained an event would be recorded anytime the vehicle experienced a five mile per hour change in speed over the course of a 150 millisecond interval. (R. 400-03). Trotter also photographed the tire impressions made by Petitioner's vehicle and noted they were well defined and not distorted as would be expected in a high speed collision. (R. 407-10, State's Exhibit #41). After analyzing the tire impressions and

data from the data recorder, Trotter concluded Petitioner's jeep engaged in a low speed, controlled maneuver that was inconsistent with Victim being ejected from the vehicle. (R. 411, 413-14).

Petitioner arrived at Piedmont Hospital shortly after midnight on December 15, 2016. (R. 141). When Petitioner was initially treated at the hospital, he told Dr. Michael Miller he did not suffer a head injury nor did he lose consciousness. (R. 142-43). Petitioner also told first responders at the scene of the wreck that he did not lose consciousness. (R. 114). Petitioner received a CT scan that revealed no abnormalities. (R. 143). However, at approximately 4:22 AM, Petitioner told nurse, Alexandria Hickman, he suffered a loss of consciousness and did not remember what occurred during the wreck. (R. 159). Petitioner was released from the hospital at 6:59 AM the following morning (R. 144). Subsequently, during his third interview with law enforcement, Petitioner claimed to suffer further memory loss from a motorcycle accident that occurred in early 2017. (State's Exhibit #3).

An initial autopsy was performed on Victim on December 15, 2016 by Dr. Roger Stone. (R. 451). Stone was tendered as an expert in the field of pathology<sup>2</sup>. (R. 451). In performing his external examination of Victim, Stone noted the presence of an approximately two inch complex laceration<sup>3</sup> on Victim's right forehead. (R. 454, State's Exhibit #86). Stone opined that Victim's cause of death was blunt force trauma to the head. (R. 465). However, Stone did not determine a manner of death in order to give investigators more time to gather additional information regarding the circumstances of Victim's death. (R. 469). While Stone could not exclude the

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<sup>2</sup> Coroner Terry Tinker explained that he requested a second autopsy of Victim because he wanted the additional perspective that a forensic pathologist could provide. Stone was not a forensic pathologist. (R. 347).

<sup>3</sup> Dr. Stone deemed the laceration "complex" because it had "a very irregular shape." (R. 464, lines 5-7).

possibility of an accidental death, he was skeptical that Victim's injuries could have been caused by a fall from a step ladder. (R. 475, 478). Stone explained his skepticism by noting the unusual shape of the wound and by describing the presence of two to three sites of impact on Victim's head. (R. 475-76, 479).

At the insistence of Coroner Terry Tinker, a second autopsy was performed by Dr. Janice Ross on December 16, 2016. (R. 347-48). Ross concurred with Stone's conclusion that blunt force trauma to the head was Victim's cause of death. (R. 495). Ross also agreed with Stone's observation that Victim suffered at least two separate impacts to her head. (R. 497). Ross measured a 24 centimeter fracture to Victim's skull. (R. 499). Ross described Victim's skull fracture as a "hinge fracture" because it stretched almost all the way around the skull and allowed the skull to be manipulated in a similar manner to a door hinge. (R. 503-04). According to Ross, the injuries Victim sustained would have rendered her unconscious within one minute and caused her death within five to six minutes. (R. 509-10). Ross completed her autopsy report on December 17, 2016. (R. 1126-34). However, Ross declined to provide a manner of death until additional investigation was completed. (R. 1126-34). After learning more about the ladder that Victim allegedly fell from and viewing pictures of a broken stocking holder found at the scene, Ross amended her autopsy report on August 1, 2017 to conclude the manner of Victim's death was homicide. (R. 505-07, 1126-34, State's Exhibits #195). Ross opined the lacerations to Victim's forehead could have been caused by the broken stocking holder. (R. 507).

Petitioner was interviewed a second time by Investigator Chris Reynolds of the Chester County Sheriff's Office on December 20, 2016. Petitioner's version of events was similar to the version he gave to Rikard in his first interview. However, Petitioner revised the timeline of events regarding when he and Victim returned home and ate dinner. Petitioner stated he and

Victim ate dinner at 7:30 PM<sup>4</sup>. (State's Exhibit #2). Petitioner also specified that Victim was conscious and able to speak to him during their trip to the hospital. (State's Exhibit #2).

Petitioner described his relationship with Victim as "about as perfect as you can get." (State's Exhibit #2). Petitioner ended his second interview by telling Reynolds he would be speaking to Sheriff Alex Underwood about rumors circulating that Petitioner was under criminal investigation. (State's Exhibit #2).

On August 11, 2017, a meeting was held at the Chester County Sheriff's Office between Coroner Terry Tinker and members of the Chester County Sheriff's Office, SLED, the Sixth Circuit Solicitor's Office, and the South Carolina Highway Patrol. (R. 796-97). The meeting was presided over by the Honorable Brian M. Gibbons. (R. 796). The purpose of the meeting was to discuss the status of the investigation into Victim's death. (R. 797-98). At the conclusion of the meeting, it was agreed that SLED would assist the Chester County Sheriff's Office with the investigation. (R. 798).

On September 25, 2017, agents from SLED searched Petitioner and Victim's home for blood stains. (R. 802). Approximately twenty-two blood stains were found. (R. 310, State's Exhibits #153, #187, #188). Petitioner was indicted for murder in August 2018. (R. 813, 1136-37). After Petitioner was placed under arrest, he was interviewed a third time by Agent Kristen Grant of SLED and Investigator Reynolds on August 15, 2018. In his third interview, Petitioner again revised the timeline of events on the evening of December 14<sup>th</sup>. Petitioner estimated that less than one hour passed from the time Victim allegedly fell off the ladder to the time he and Victim left to go to the hospital. (State's Exhibit #3). Petitioner claimed he and Victim left for the hospital at 11:00 PM (State's Exhibit #3). Therefore, according to Petitioner's third

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<sup>4</sup> Petitioner previously told Trooper Rikard he and Victim ate dinner from 5:30-6:00 PM (State's Exhibit #1).

statement, the injury to Victim had to occur sometime after 10:00 PM. Petitioner also claimed he and Victim never argued. (State's Exhibit #3). During the course of her investigation, Grant discovered that Victim purchased a \$25,000 accidental death insurance policy six months prior to her death in which Petitioner was the designated beneficiary. (R. 804).

Approximately forty-five days after Victim's death, Petitioner moved in with Teri King. (R. 279, 702-03). On November 5, 2016, Petitioner told his friend, Randall Black, that he was sleeping with King. (R. 608-09). According to Victim's friend, Karen Black, she observed difficulties in the couple's marriage in December 2016. Black testified she attended a Christmas party with Victim and Petitioner on December 10, 2016. (R. 560-61). When Victim and Petitioner arrived, Black said she could tell Victim was upset and had recently been crying. (R. 561). After the party ended, Black testified that Victim called her five times<sup>5</sup> in the early morning hours of December 11<sup>th</sup>. (R. 584-85, 612-13, 1135). Black said Victim was hysterical and was planning to drive to King's house. (R. 584-85). Black advised Victim she needed to talk to her pastor. (R. 587). Victim's pastor, Keith Hinson, confirmed he spoke with Victim approximately two to three months before her death about the state of Victim and Petitioner's marriage. (R. 664-65). Black also testified she occasionally worked for Victim and Petitioner's cleaning business. (R. 555). According to Black, when Victim cleaned houses, she would never climb a ladder because of a childhood problem with her legs<sup>6</sup>. (R. 556).

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<sup>5</sup> In a proffer outside the presence of the jury, Black revealed the substance of her conversations with Victim. Victim told Black that she and Petitioner argued about Teri King on the way home. Victim said Petitioner was enraged and left their home until the following morning. (R. 578-80).

<sup>6</sup> Victim's son, Joshua Orr, testified he never saw his mom climb a ladder. (R. 783). Orr also revealed he noticed a difference in his mother's marriage in November 2016. Orr described the marriage as "awkward" and "it was like walking on eggshells, especially for [Victim]." (R. 764, R. 765, lines 8-9).

King testified on behalf of the State at Petitioner's trial. King denied having an affair with Petitioner. (R. 706). However, King admitted she loved Petitioner and acknowledged she would tell Petitioner she loved him and Petitioner would say he loved King. (R. 703, 706). King also provided a timeline of the events of December 14<sup>th</sup> that differed from Petitioner's. King testified Petitioner sent her a text message at 6:30 PM saying Victim cut herself. (R. 682). Approximately thirty minutes later at 7:00 PM, King said Petitioner called her and said Victim is going to need stitches. (R. 684). Victim's sister, Mary Ann Wilkes, testified she last talked to Victim on the phone at 7:13 PM. (R. 637-38). By contrast, Petitioner told Victim's son, Joshua Orr, that Victim fell between 8:00 PM and 8:45 PM. (R. 775). Finally, Petitioner claimed in his last interview that he and Victim left to go to the hospital less than an hour after Victim fell. (State's Exhibit #3). Petitioner estimated he and Victim left the house at 11:00 PM. (State's Exhibit #3). Petitioner called 911 at approximately 11:06 PM. (R. 86). At the conclusion of trial, Petitioner was convicted of murder.

## ARGUMENT

**The Court of Appeals correctly held that an error in the admission of a Facebook photo of Petitioner and Sheriff Alex Underwood was entirely harmless because the photo did not affect the jury’s verdict and because the photo was cumulative to other evidence regarding Petitioner’s close relationship with the Sheriff’s Office that Petitioner did not object to.**

Petitioner asks this Court to review the decision of the Court of Appeals on certiorari because he argues the Court of Appeals erred in holding the trial judge’s error<sup>7</sup> in the admission of a Facebook photo depicting Petitioner and Sheriff Alex Underwood together was harmless. Specifically, Petitioner argues the State’s case hinged on bolstering “the investigation pushed by Coroner Tinker and discredit[ing] the sheriff’s investigation.” (Petition for Cert. 5). While evidence of Petitioner’s relationship with Sheriff Underwood served the probative purpose of explaining why the Sheriff’s Office’s investigation of Victim’s death was deficient, the State’s case did not depend on such evidence and Petitioner’s guilt was proven beyond a reasonable doubt separate and apart from that evidence. Furthermore, the Facebook photo was merely cumulative to myriad other forms of evidence demonstrating the close relationship between Sheriff Underwood and Petitioner that Petitioner never objected to. Because the Facebook photo did not have any effect on the verdict and it was merely cumulative to other evidence that

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<sup>7</sup> Although the State did not file a petition for rehearing contesting whether the Court of Appeals correctly determined the trial judge erred in admitting the Facebook photo, the State nonetheless contends the trial judge did not abuse his discretion in admitting the photo because it was relevant evidence that served to explain various deficiencies in the Sheriff’s office’s investigation of Victim’s death such as the failure to obtain Petitioner’s phone records. The photo served a limited, but probative purpose, and its probative value was not outweighed by the danger of unfair prejudice. The State submits this Court should consider whether the trial judge abused his discretion in admitting the Facebook photo as an additional sustaining ground to affirm Petitioner’s conviction. See I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) (“It is within the appellate court’s discretion whether to address any additional sustaining grounds.”). See also Rule 220(c) SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”).

Petitioner did not object to, the Court of Appeals correctly concluded that the trial judge's error was harmless.

In support of his argument, Petitioner asserts "the admission of the photo allowed the State to imply that Chester's conclusion of accident was not just wrong, but sinister, and but for the heroic efforts of the coroner, Baldwin would have gotten away with murder. The evidence of guilt was not strong and the erroneous admission of the Facebook photo bore directly on a hotly contested point between the parties." (Petition for Cert. 20). Petitioner's argument is meritless for two reasons. First and foremost, the evidence of Petitioner's guilt was strong despite the deficient investigation by the Sheriff's Office. While the State indeed sought to discredit the Sheriff's Office's threadbare investigation, the State's trial strategy was not dependent on the admission of the Facebook photo, nor was the evidence of Petitioner's guilt affected by the shortcomings of the Sheriff's investigation. Second, far from being "a hotly contested issue", Petitioner's close relationship with the Sheriff's Office was well established separate and apart from the Facebook photo. The testimony of multiple witnesses—offered without objection—and Petitioner's own recorded statements established that Petitioner had a close relationship with Sheriff Underwood.

### **Strong Evidence Against Petitioner**

The State proved that Petitioner murdered his wife in three primary ways. First, the State highlighted the inconsistencies in Petitioner's timeline of Victim's alleged accidents. Second, the State presented physical and forensic evidence that proved Victim was beaten with an object and not injured in a fall or a car accident. Finally, the State established Petitioner's motive to kill Victim through evidence of Petitioner's extramarital relationship with Teri King and evidence of a recent life insurance policy that was purchased in the event of his wife's death. None of the

aforementioned evidence relied on proving Petitioner had a close relationship with Sheriff Underwood or the admission of the Facebook photo.

Petitioner gave three separate statements to law enforcement. With each statement Petitioner provided, Petitioner altered his timeline of events on December 14, 2016. Petitioner initially told law enforcement that he and Victim ate supper at approximately 5:30-6:00 PM and Victim began to decorate the Christmas tree after dinner while Petitioner went to his shed. (State's Exhibit #1). When Petitioner returned, he claimed Victim had fallen off a step ladder and hit her head. When Petitioner spoke to law enforcement a second time, he revised his dinner estimate to 7:30 PM. (State's Exhibit #2). Petitioner provided a third revised time frame when he told law enforcement that he and Victim left their home approximately one hour after Victim fell to go to the hospital at 11:00 PM, thereby placing the time of Victim's alleged fall at 10:00 PM. (State's Exhibit #3). Petitioner's final time frame was contradicted by the testimony of Teri King, Joshua Orr, and Mary Ann Wilkes. King testified that Petitioner sent her a text at 6:30 PM saying that Victim cut herself. (R. 682). Wilkes testified she spoke to Victim on the phone at 7:13 PM and Victim had yet to sustain any injuries. Orr testified Petitioner told him Victim fell between 8:00 PM and 8:45 PM. The State highlighted the inconsistencies in Petitioner's timeline in closing argument and encouraged the jury to consider it as evidence of his guilt. (R. 1032-33). The inconsistencies in Petitioner's timeline were not dependent on the Facebook photo or evidence proving Petitioner had a close relationship with Sheriff Underwood.

The State also utilized physical and forensic evidence to prove Petitioner murdered his wife. In spite of the Sheriff's Office's failure to preserve Petitioner's home as a crime scene, SLED was nonetheless able to find twenty-two blood stains in Petitioner's home nine months after the murder. (R. 310, State's Exhibit #153, #187, #188). The State utilized the testimony of

two pathologists, Dr. Stone and Dr. Ross, who each testified it was unlikely Victim fell from a step ladder. (R. 475, 478, 507). Rather, Dr. Ross opined that Victim suffered at least two separate impacts to her head that were consistent with being beaten with an object similar to a stocking holder. (R. 497, 507, 513). The State also disproved Petitioner's claims regarding being run off the road by another vehicle while he was on the way to the hospital. In addition to there being very little damage to Petitioner's vehicle, the State tendered expert testimony from Trooper Brian Trotter that the data recorder from Petitioner's vehicle showed no "event" or collision occurred. (R. 400-01, State's Exhibit #30, #73, #74). Trotter concluded, based on his analysis of the tire impressions and data recorder, that Petitioner's vehicle engaged in a low speed, controlled maneuver that was inconsistent with Victim being ejected from the vehicle as Petitioner claimed. (R. 411, 413-14). The physical and forensic evidence presented, like the evidence in the inconsistencies of Petitioner's timeline, did not rely on the Facebook photo or proving Petitioner had a close relationship with Sheriff Underwood.

Finally, the State produced evidence of Petitioner's motive to kill his wife to prove he acted with malice aforethought. Agent Kristen Grant testified that Petitioner was the beneficiary of a \$25,000 insurance policy that would be paid in the event Victim died an accidental death. The policy was purchased six months prior to Victim's death. (R. 804). Furthermore, Petitioner admitted to a friend one month prior to Victim's death that he was having an affair with Teri King. (R. 608-09). Victim's friend, Karen Black, testified Victim suspected an affair and was planning to confront King three days before her death. (R. 584-85). Victim's pastor confirmed he spoke with Victim about problems in her marriage with Petitioner approximately two to three months before her death (R. 664-65). King denied having an affair with Petitioner, but admitted she would tell Petitioner she loved him and Petitioner would say the same thing to her. King also

admitted Petitioner moved in with her approximately forty-five days after Victim's death. (R. 702-06). The evidence of Petitioner's motive to kill Victim, like the physical evidence and inconsistencies in Petitioner's timeline, was not dependent on the Facebook photo or discrediting the Sheriff's investigation by implying Sheriff Underwood and Petitioner had a close relationship. Therefore, the evidence against Petitioner was strong and was in no way dependent on or enhanced by the admission of the Facebook photo. Accordingly, the Court of Appeals correctly concluded the trial judge's error in admitting the photo was harmless because it did not affect the verdict.

### **Cumulative Evidence**

In addition to the Facebook photo having no affect on the jury's verdict, the admission of the photo was also harmless because it was cumulative to other evidence establishing Petitioner and Sheriff Underwood's close relationship that Petitioner did not object to. Multiple witnesses testified regarding Petitioner's relationship with the Chester County Sheriff's Office, and about the Sheriff's Office's unwillingness to assist with various aspects of the investigation. In fact, references to Petitioner's relationship with the Sheriff's Office were so ubiquitous that the trial judge made the following remark when Petitioner moved for a continuance after the Facebook photo was admitted: "the Court's view is there has been nothing that should have been or is not fully disclosed to the defense and that the trial strategy of relationship between [Petitioner] and the Sheriff was certainly not something that is a surprise to anyone" (R. 361; R. 448, lines 2-6).

The evidence establishing Petitioner and Sheriff Underwood's close relationship came initially from Petitioner himself. Six days after his wife's death, Petitioner told Investigator Reynolds that he heard the Sheriff's Office was conducting a criminal investigation into the wreck. In response to that rumor, Petitioner told Reynolds "you can tell your Sheriff I will be

back to see him about that.” (State’s Exhibit #2). Petitioner acknowledged in his initial interview with Highway Patrol that he worked for the Sheriff’s office for ten years. (State’s Exhibit #1). When Petitioner attempted to get some personal items out of his jeep after it had been impounded by law enforcement, Petitioner handed the body shop owner a police officer’s card and said “if you call this man he will let me get my stuff out.” (R. 656, lines 10-11).

Aside from Petitioner’s own statements about his relationship with Sheriff Underwood, the jury also heard from employees of the Sheriff’s Office regarding the difficulties they faced when attempting to investigate Petitioner. Investigator Reynolds, who was one of the first law enforcement officers to visit Petitioner’s home, testified he “[ran] everything up the chain of command” when deciding how to process the scene. (R. 263, lines 20-21). After taking photos at the house, Reynolds and Deputy Jonathan Thomasson left the home without blocking or taping off the scene to restrict access to it. (R. 134, 263-65). The Sheriff’s Office’s failure to secure the scene prevented the step ladder that Victim allegedly fell from ever being collected and placed in evidence. According to Petitioner, the step ladder was later burned in a fire. (State’s Exhibit #3). The failure to secure the scene also allowed King to go to the house the following morning and clean up Victim’s blood, thereby destroying evidence. (R. 694-98). When Investigator Reynolds attempted to obtain Petitioner’s phone records, he was denied permission by his superiors. (R. 272-73). Reynolds also testified Petitioner personally knew two senior members of the Sheriff’s Office, Phillip Perry and Burley McDaniel. (R. 882). Perry, who testified on behalf of Petitioner, admitted he was also denied permission on one occasion to subpoena Petitioner’s phone records. (R. 965-66).

It was undisputed that the Sheriff’s Office never charged Petitioner with a crime. Rather, SLED charged Petitioner with murder over a year and a half after Victim’s death. (R. 813, 1136-

37). Reynolds testified that Sheriff Underwood was opposed to SLED becoming involved in the investigation. (R. 303). In fact, multiple witnesses testified that SLED did not become involved in the investigation until a meeting was held between the Sheriff's Office, SLED, Coroner Tinker, and Judge Gibbons. (R. 218-19, 370, 796-98). The meeting was described as "very tense. It was a very volatile meeting" and "very heated" by two people who attended it. (R. 219, line 11; R. 798, line 12). Even Dr. Stone, who performed the first autopsy on Victim, testified that tensions were high between the Coroner and Sheriff's Office during the autopsy. (R. 472-73).

None of the aforementioned evidence was objected to by Petitioner. Therefore, the Facebook photo was cumulative to other evidence establishing Petitioner's close relationship with Sheriff Underwood that Petitioner never objected to. See State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008) ("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence."). Accordingly, any error in the admission of the Facebook photo was harmless.

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Mar 17 2023

S.C. SUPREME COURT

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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March 17, 2023