

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

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Certiorari to Horry County

Debra R. McCaslin, Circuit Court Judge  
—————

EDWARD LEE WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000730  
—————

PETITION FOR WRIT OF CERTIORARI  
—————

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**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT OF THE CASE.....2

ARGUMENT

The post-conviction relief court erred by finding trial counsel were not ineffective when counsel failed to object to gruesome photographs of the decedent’s body, which depicted the decedent’s injuries after he had been struck by Petitioner’s vehicle pursuant to Rule 403, SCRE, since there is a reasonable probability the trial court would have excluded the horrific photographs and the outcome of Petitioner’s trial would have been different if counsel had properly objected. ....8

CONCLUSION.....13

## **ISSUE PRESENTED**

Did the post-conviction relief court err by finding trial counsel were not ineffective when counsel failed to object to gruesome photographs of the decedent's body, which depicted the decedent's injuries after he had been struck by Petitioner's vehicle pursuant to Rule 403, SCRE, since there is a reasonable probability the trial court would have excluded the horrific photographs and the outcome of Petitioner's trial would have been different if counsel had properly objected?

## STATEMENT OF THE CASE

Shortly after midnight on October 29, 2016, Ryan Bielawa was struck and killed by Petitioner's vehicle while Bielawa was walking across a highway. Bielawa, who was nineteen years old, was a student at Coastal Carolina University in Conway. He and several friends had traveled from campus to The Coop, a nearby bar on Highway 544, that night. App. 176, l. 9 – 177, l. 4. When they “couldn't get in” because The Coop “was too busy,” the group decided to walk to Hicks Dining Hall on campus because it serves “late night food.” App. 177, ll. 4-8; App. 180, ll. 9-11. They began walking down the sidewalk adjacent to Highway 544. They intended to cross Highway 544 at a designated crosswalk, which was about a four to five minute walk from The Coop. However, before they reached the crosswalk, Bielawa left the sidewalk and began to walk across the highway (not within a crosswalk). App. 177, ll. 9-18; App. 180, ll. 14-25.

Olivia Mallee, Bielawa's friend, heard Bielawa get hit by a vehicle, although she did not see the initial impact. She saw a shoe fly and a shadow, which she thought was Bielawa's body. App. 177, l. 9 – 178, l. 9. Mallee sprinted across the highway to where Bielawa's body had landed. Bielawa was laying in the grass between the highway and the Circle K, a gas station and convenience store on Highway 544. App. 177, l. 24 – 178, l. 3.

Kelcee Cramer, a student at Horry Georgetown Technical College, witnessed the collision. She lived at the Coastal Club Apartments located next to The Coop and directly across the street from the Circle K. Cramer had driven to the Circle K early that morning to buy a drink and was stopped at the exit when the collision occurred. App. 183, ll. 11-23. She was waiting for traffic to clear so she could drive across the highway to the Coastal Club. She saw Petitioner's car pass by her and strike Bielawa. Bielawa's body went “straight up” about twenty-

five to thirty feet and then hit the ground. Cramer claimed Petitioner's vehicle was the only car in the roadway at the time of the collision. App. 186, ll. 1-15; App. 187, ll. 13-21. To her, "it seemed like" Petitioner's car "was going fast, really fast." App. 188, ll. 6-13. Cramer claimed the vehicle that struck Bielawa did not stop or brake. Instead, the car continued traveling down Highway 544.

Several minutes later, the vehicle returned to the Circle K. The driver, Petitioner, "started raising ruckus." App. 189, l. 8 – 190, l. 23. Petitioner thought someone had thrown a bottle at his car, which had shattered his windshield. He kept asking, "Who threw a bottle at my car?" Petitioner ultimately punched someone. App. 197, l. 17 – 198, l. 20; App. 211, l. 16 – 212, l. 5.

Daniel Baker, an officer with the South Carolina Department of Natural Resources (DNR), was driving down Highway 544 when he "saw a large gathering of people in the Circle K parking lot and it looked like a fight was taking place." Baker pulled into the parking lot "to break up the fight." App. 163, l. 18 – 166, l. 17. He detained Petitioner because Petitioner was "actively swinging and punching people" and placed Petitioner in his truck. App. 167, ll. 1-19. Baker then tried to control the crowd. At the time, he did not know about the collision. App. 167, l. 16 – 168, l. 14.

Shortly thereafter, officers with the Horry County Police Department, Conway Police Department, and Coastal Carolina University Police arrived at the Circle K in reference to 911 calls concerning the collision. App. 169, ll. 3-7. Corporal Jared Soucy with Horry County was the first of these officers to arrive. Soucy approached Bielawa where he was laying in the grass. Bielawa was surrounded "by several of what appeared to be his friends" who were rendering aid. However, he appeared to be deceased or "was just about to be deceased." Soucy described the most significant injuries he recalled seeing. Bielawa's "chest was split open." There was a

“diagonal cut across his chest where you could see the fat coming out of his stomach.” Someone was holding Bielawa’s foot and “it was only connected by a piece of skin.” App. 151, l. 16 – 152, l. 17.

The state admitted multiple gruesome photographs of the decedent’s body as it was found. The photographs were in color and showed the decedent’s gruesome injuries. Trial counsel did not object to any of the photographs, which were marked as State’s Exhibit Nos. 8-17, and are on file with this Court. App. 153, ll. 1-15. The assistant solicitor asked Corporal Soucy to describe what the photographs depicted. Soucy explained that the photographs showed the injuries to the decedent’s chest and stomach; a wound to the right side of his face, which appeared to be caused by “road rash;” the decedent’s hand and wrist, which appeared to be “broken severely;” and the decedent’s legs, including the portion of the decedent’s right leg that was “only attached by a small piece of skin.” App. 153, l. 19 – 155, l. 24.

Officer Glen Guyett with Conway Police took custody of Petitioner and placed him under arrest for leaving the scene of an accident. Guyett “presumed” Petitioner was intoxicated. He allegedly smelled alcohol on Petitioner’s person and Petitioner’s “eyes were red and glossy.” According to Guyett, Petitioner was limping and complaining of an ankle injury. Consequently, Guyett transported Petitioner to the hospital to be evaluated without conducting any field sobriety tests. App. 240, l. 6 – 242, l. 8. However, once at the hospital, Petitioner refused to be evaluated by medical personnel. App. 246, l. 7 – 247, l. 16.

Detective Josh Scott obtained a search warrant for Petitioner’s blood since law enforcement suspected Petitioner was driving under the influence. Scott took the warrant to the hospital where Petitioner was located and witnessed a nurse collect a blood sample from Petitioner pursuant to the warrant. App. 223, l. 13 – 224, l. 18; App. 248, l. 22 – 251, l. 9.

Petitioner's blood was later analyzed and found to have an average blood alcohol content (BAC) of .239 grams per deciliter. App. 398, l. 8 – 400, l. 15.

Bielawa was pronounced dead at the scene. The pathologist determined he died from an “impact injury.” App. 316, ll. 1-7. His most “significant injury” was a “diffuse brain injury” characterized by swelling and blood within the tissue and cranial cavity of the brain. The decedent also suffered multiple rib fractures, lacerations to his lungs, a compound fracture of the right leg, and numerous contusions and lacerations to his upper body. His blood alcohol content (BAC) at the time of his death was .18 grams per deciliter. App. 316, ll. 11-14.

A Horry County grand jury indicted Petitioner on February 23, 2017 for leaving the scene of an accident resulting in death and felony driving under the influence, death results. App. 684-687. His case was called to trial on June 3, 2019 before the Honorable Steven H. John, and a jury. App. 1. Assistant Solicitors Joshua Holford and Cara Walker represented the state. App. 1. James Stanko and Clay Pinkerton represented Petitioner. App. 1. On June 5, 2019, the jury acquitted Petitioner of leaving the scene of an accident, but found him guilty of felony driving under the influence. App. 470, ll. 3-13. Petitioner was sentenced to twenty years imprisonment. App. 483, ll. 4-7.

The Court of Appeals dismissed Petitioner's appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). On January 10, 2022, Petitioner filed an application for post-conviction relief (PCR) raising the claim argued in this petition. App. 527-537. The state filed a return to this application dated August 19, 2022. App. 538-550. An evidentiary hearing was convened on January 3, 2023 before the Honorable Debra McCaslin. App. 551. Assistant Attorney General Chelsey Marto represented the state. App. 551. Steven Fowler represented Petitioner. App. 551.

Petitioner testified at the evidentiary hearing that his trial counsel were ineffective for failing to object to the “graphic” photographs of the decedent’s body that were admitted into evidence during his jury trial. App. 567, l. 20 – 568, l. 8; App. 593, ll. 4-10. Petitioner said the state admitted the photographs to “arouse the sympathy of the jury” and that they were highly “inflammatory.” App. 562, l. 22 – 563, l. 16. He further asserted that the photographs were not “material to the jury’s proper determination of whether the elements of felony DUI were met.” App. 566, l. 24 – 567, l. 19. Petitioner emphasized that “there was little to no evidence” Petitioner was speeding at the time of the collision other than the opinion of lay witnesses. Consequently, Petitioner believed the state used the photographs to obtain sympathy from the jury and the resulting guilty verdict. App. 587, l. 18 – 588, l. 7.

James Stanko, Petitioner’s lead counsel, testified that his co-counsel, Clay Pinkerton, cross-examined the law enforcement witnesses, including the witness through whom the photographs were admitted. Either way, Stanko admitted that he did not object to the admission of the graphic photographs of the decedent’s body. App. 602, l. 24 – 603, 19. He maintained he did not “have anything to do with the photographs being entered or being objected to.” App. 603, ll. 17-19.

Clay Pinkerton, who was second chair, testified that he became involved in Petitioner’s case about two to three months before trial. Without elaborating, Pinkerton maintained that the photographs of the decedent’s body were not objectionable. App. 614, ll. 14-22.

Joshua Holford, the assistant solicitor who prosecuted the case, testified that the photographs of the decedent’s body were admitted in color. App. 630, ll. 16-18. He emphasized that the photographs were not from the autopsy, but rather depicted the decedent as he was found after the collision. Holford maintained the photographs corroborated testimony that Petitioner

was speeding and demonstrated where the vehicle struck the decedent's body. App. 631, l. 8 – 633, l. 4. He asserted, "It is one thing to tell a jury he [the decedent] was hit on the side, it is another thing for them to see . . . with their own eyes the impact of the vehicle, and the impact it had on the body, the distance that it [the body] was thrown." App. 632, ll. 12-17. Holford thought the photographs "were a crucial part of establishing the State's case." App. 634, ll. 20-21.

By order filed April 21, 2023, the PCR court denied Petitioner relief. App. 667. The court found Petitioner failed to prove trial counsel were ineffective for failing to object to the admission of the photographs of the decedent's body. The court determined the probative value of the photographs outweighed any danger of unfair prejudice, which "undermines any chance of success the defense would have had with an objection." App. 677. The court agreed with the prosecutor who testified that the photographs "were a crucial piece of evidence used to substantiate claims of speeding, the elements of the crime, and the witnesses' narratives of what happened." App. 677-678. Further, the court concluded counsel "were not deficient because there was not a legitimate basis to object and any objection would have been overruled." App. 678. Lastly, the PCR court found Petitioner was not prejudiced by any alleged deficiency "because the admission of the pictures could not have undermined the overwhelming evidence of guilt." App. 678.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the admission of the gruesome photographs of the decedent's body and since Petitioner was prejudiced by counsel's deficient performance given there is a reasonable likelihood the outcome of Petitioner's trial would have been different had counsel properly objected, this petition for writ of certiorari follows.

## ARGUMENT

The post-conviction relief court erred by finding trial counsel were not ineffective when counsel failed to object to gruesome photographs of the decedent's body, which depicted the decedent's injuries after he had been struck by Petitioner's vehicle pursuant to Rule 403, SCRE, since there is a reasonable probability the trial court would have excluded the horrific photographs and the outcome of Petitioner's trial would have been different if counsel had properly objected.

The post-conviction relief court (PCR) erred by finding trial counsel were not ineffective when they failed to object to the gruesome photographs of the decedent's body pursuant to Rule 403, SCRE. The photographs depicted the decedent's injuries after he had been struck by Petitioner's vehicle and were extremely graphic and horrific. Petitioner was prejudiced by counsels' deficient performance because there is a reasonable probability the trial court would have excluded the photographs and the outcome of Petitioner's trial would have been different if counsel had properly objected.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. Petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and the deficient performance prejudiced Petitioner. Strickland, 466 U.S. at 687. Under the second prong, Petitioner must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different.” Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

As a general rule, all relevant evidence is admissible. Rule 402, 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.” Rule 401, SCRE. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence.” Rule 403, SCRE.

“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)) (internal quotation marks omitted). “Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (citing State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” Collins, 409 S.C. at 534, 763

S.E.2d at 27 (quoting Nance, 320 S.C. at 508, 466 S.E.2d at 353) (internal quotation marks omitted).

“When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” Id. at 534, 763 S.E.2d at 27-28 (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). “To be classified as unfairly prejudicial, photographs must have a ‘tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” Torres, 390 S.C. at 623, 703 S.E.2d at 228-229 (quoting State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995)).

In State v. Torres, 390 S.C. at 624, 703 S.E.2d at 229, this Court expressed to the bench and bar its concern over the admission of gruesome photographs, like the photographs admitted in this case. See Collins, 409 S.C. at 540, 763 S.E.2d at 30-31 (Pleicones, J., dissenting). The Court stated:

Although we affirm the admission of the photographs, we take this opportunity to address an area of growing concern to this Court. The photographs at issue in this case, while admissible, are at the outer limits of what our law permits a jury to consider. Moreover, the State also sought to introduce evidence in the form of an autopsy dissection photo at trial, which the trial judge wisely excluded. Today, we strongly encourage all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory which, in all likelihood, was already assured because of other substantial evidence in the case.

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

Recently, in State v. Nelson, 440 S.C. 413, 426, 891 S.E.2d 508, 514 (2023), this Court held the trial court abused its discretion in admitting “excessively gruesome” autopsy photographs of the decedent’s body since the limited probative value of the photographs was substantially outweighed by the danger of unfair prejudice. In so holding, the Court emphasized that the issues of malice and how the decedent was killed were not in dispute. Id. Rather, the

sole issue was the identity of the killer. Id. The Court concluded that the admission of photographs “unnecessarily created the potential for the jury to convict [Nelson] of the murder based on inflamed emotions.” Id. Accordingly, the Court reversed Nelson’s conviction and remanded for a new trial.

In this case, Petitioner was tried for the offense of felony driving under the influence, resulting in death, which is codified in S.C. Code Ann. § 56-5-2945(A). This section states in relevant part, “A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to another person, is guilty of the offense of felony driving under the influence.” State v. Brown, 436 S.C. 505, 519-20, 873 S.E.2d 445, 452 (Ct. App. 2022) (citing S.C. Code Ann. § 56-5-2945(A)).

It was undisputed at trial that Petitioner was driving a motor vehicle while under the influence of alcohol at the time of the collision. The main contention was whether Petitioner did “any act forbidden by law or neglect[ed] any duty imposed by law in the driving of the motor vehicle.” The state alleged that Petitioner was speeding. Significantly, the photographs of the decedent’s body, which depicted his horrific injuries, were not probative of whether Petitioner was speeding at the time of the collision. Instead, the photographs unnecessarily created the potential for the jury to convict Petitioner based on inflamed emotions and, thus, were unfairly prejudicial. Consequently, trial counsel were deficient for failing to object to their admission pursuant to Rule 403, SCRE.

Moreover, the photographs of the scene of the collision, the resting place of the decedent’s body after the body had been removed, and the damage to Petitioner’s vehicle after

the collision, which were admitted as State's Exhibit Nos. 18-76 and are on file with this Court, could have been and were used by the state to support the contention Petitioner was speeding. Thus, the graphic photographs of the decedent's body were unnecessary.

Petitioner was prejudiced by counsels' deficient performance because there is a reasonable probability the trial court would have excluded the photographs if counsel had properly objected since any probative value of the photographs was outweighed by the danger of unfair prejudiced as argued above. If the photographs had been excluded, the outcome of Petitioner's trial likely would have been different. There was little to no evidence Petitioner was speeding at the time of the collision. Moreover, even if the jury found Petitioner did "any act forbidden by law or neglect[ed] any duty imposed by law in the driving of the motor vehicle," it is likely the jury would have found the act or neglect was not the proximate cause of the decedent's death since the decedent was crossing the highway not within a crosswalk at the time of the collision and had a BAC of .18 at the time of his death.

Respectfully, this Court should grant certiorari and hold the PCR court erred by denying Petitioner post-conviction relief due to trial counsels' ineffective assistance.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented. Petitioner ultimately requests this Court reverse his conviction and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy \_\_\_\_\_

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of November, 2023.