

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Edgefield County

Honorable Debra R. McCaslin, Circuit Court Judge

\_\_\_\_\_  
Opinion No. 2023-UP-352  
\_\_\_\_\_

**RECEIVED**

**Nov 09 2023**

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

MICHAEL TIRRELL MEANS,

APPELLANT

APPELLATE CASE NO. 2021-000752

\_\_\_\_\_  
PETITION FOR REHEARING  
\_\_\_\_\_

On November 1, 2023, this Court affirmed appellant's convictions and sentences where appellant argued the lower court erred admitting graphic photographs of decedent's body found at the scene and an autopsy photograph of the gunshot wound under Rule 403, SCRE, because the photographs were a needless presentation of cumulative evidence and the probative value of them was substantially outweighed by their potential for being unfairly prejudicial where there was no dispute as to the manner of death and the only issue at trial was appellant's state of mind at the time of the incident. Pursuant to Rule 221(a), SCACR, Michael Tirrell Means requests that this Court rehear the matter considering the significant points overlooked and/or

misapprehended by this Court discussed below.

In affirming appellant's convictions and sentences, this Court held the lower court "did not abuse its discretion in admitting the photographs because the photographs corroborated witness testimony, illustrated the circumstances of the crime, were relevant to rebut appellant's defense that he acted without malice, and their probative value was not substantially outweighed by the risk of unfair prejudice." *State v. Means*, Op. No. 2023-UP352 (S.C. Ct. App. filed Nov. 1, 2023). This Court cited to recent South Carolina Supreme Court case *State v. Nelson*, for the proposition that gruesome photographs should not be excluded if they were "highly probative, corroborative, and material in establishing the elements of the offense charged." 440 S.C. 413, 423, 891 S.E.2d 508, 513 (2023) (quoting *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014)).

In *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014), autopsy photographs of a child who had been killed by defendant's dog were admitted. In that case, the Court found that the trial court did not abuse its discretion in admitting the photographs because the photographs were highly probative, corroborative, and material in establishing the elements of the offenses charged." *Collins*, 409 at 535, 763 at 28. *Collins* is distinguishable from the case at hand because these photographs were not necessary to substantiate a material fact or condition. The issue at trial was whether this was murder or voluntary manslaughter, not the manner of death.

Evidence at trial showed appellant and decedent's relationship was fraught. Appellant admitted he shot decedent after arguing on the side of the highway. The photographs of decedent's body at the scene, though probative of the condition of the body and where it was found were not probative as to malice. The photographs did not, and could not, show what was in appellant's mind at the time of the shooting. Whatever minimal probative value the

photographs had was substantially outweighed by the danger of unfair prejudice.

This Court also cited to recent South Carolina Supreme Court case *State v. Heyward*, for the proposition that autopsy photographs are properly admitted when the photographs illustrate a contested point at trial. Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11, 24-26).

This case is distinct from *Heyward* where the Court found that the probative value of the gruesome autopsy photographs was not outweighed by the danger for unfair prejudice. Unlike in *Heyward*, appellant admitted decedent died from a gunshot and that he was the shooter. The testimony of Officer Morgan did not need further corroboration where appellant did not refute, rather he confessed, he shot decedent on the side of the road after arguing.

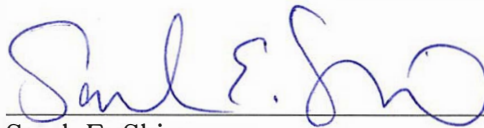
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule, 403 SCRE. Photographs 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. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). Under Rule 403, SCRE, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” 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.” *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (internal quotation omitted).

The photographs of decedent’s body at the scene and the autopsy photograph were not necessary in this case where appellant did not contest the fact that he shot and killed the decedent. *See State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). State’s exhibit 7,

photograph of decedent as found at the scene is particularly graphic the photograph shows decedent with a large pool of blood around her head. State's exhibit 65, autopsy photograph, is a close-up of decedent's head depicting a close up look at the gunshot wound.

These photographs were gratuitous and crossed the line of what the rules of evidence allow. None of the contested photographs were necessary to corroborate the testimonies of Morgan or Monroe because the defense never disputed where or how the body was found or the manner of death. The only purpose these graphic photographs served was to create an emotional response in the jurors, which likely led to a decision on an improper basis. *See State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998).

Accordingly, appellant respectfully requests this Court reverse appellant's convictions and sentences based on the trial court's erroneous admission of these graphic photographs.



Sarah E. Shipe  
Appellate Defender

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ATTORNEY FOR APPELLANT

This 9th day of November, 2023.

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THE STATE,

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APPELLATE CASE NO. 2021-000752  
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CERTIFICATE OF SERVICE  
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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Michael Tirrell Means, #334379, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 9th day of November, 2023.



\_\_\_\_\_  
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