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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Edgefield County
Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TIRRELL MEANS,

APPELLANT

Opinion No. 2023-UP-352 (S.C. Ct. App. Filed November 1, 2023)

APPELLATE CASE NO. 2021-000752

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Deputy Assistant Attorney General

ATTORNEY FOR PETITIONER

TOMMY EVANS, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29201
(803)734-3727

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street, Third Floor
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Michael Tirrell Means, Appellant.

Appellate Case No. 2021-000752

Appeal From Edgefield County
Debra R. McCaslin, Circuit Court Judge,

Unpublished Opinion No. 2023-UP-352
Submitted October 2, 2023 – Filed November 1, 2023

AFFIRMED

Appellate Defender Sarah Elizabeth Shipe, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General Tommy Evans, Jr., all of
Columbia; and Solicitor Samuel R. Hubbard, III, of
Lexington, all for Respondent.

PER CURIAM: Michael Tirrell Means appeals his convictions for murder and possession of a weapon during a violent crime and his life sentence. On appeal, Means argues the trial court abused its discretion by admitting graphic photographs of the victim at the scene and an autopsy photograph. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

We hold the trial 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 Means's defense that he acted without malice, and their probative value was not substantially outweighed by the risk of unfair prejudice. *See State v. Wallace*, 440 S.C. 537, 541–42, 892 S.E.2d 310, 312 (2023) ("We will not reverse a trial court's ruling on an evidence question unless we find the court abused its discretion, or . . . unless we find the trial court has not acted within the discretion we grant to trial courts. . . . [A] trial court acts outside of its discretion when the ruling is not supported by the evidence or is controlled by an error of law."); *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) ("The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." (quoting *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996))); *id.* at 534, 763 S.E.2d at 28 ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003))); *State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998) ("Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis."); *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) ("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."); *id.* at 623, 703 S.E.2d at 229 ("[A]utopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant."); *State v. Nelson*, 440 S.C. 413, 423, 891 S.E.2d 508, 513 (2023) ("[P]hotos should not be excluded on the ground they were gruesome when the photos were 'highly probative, corroborative, and material in establishing the elements of the offenses charged.'" (quoting *Collins*, 409 S.C. at 535, 763 S.E.2d at 28)); *State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11, 24-26) (affirming the admission of autopsy photographs when the photographs illustrated a contested point at trial).

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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

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.

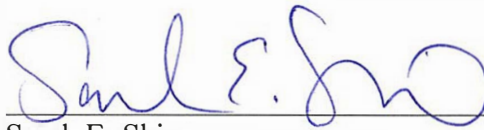
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule, 403 SCRE. Photographs 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

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of November, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

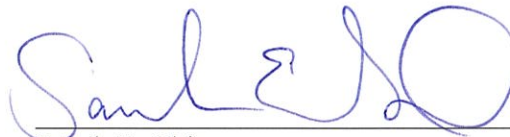
MICHAEL TIRRELL MEANS,

APPELLANT

APPELLATE CASE NO. 2021-000752

CERTIFICATE OF SERVICE

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.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,


v.


Michael Tirrell Means, Appellant.

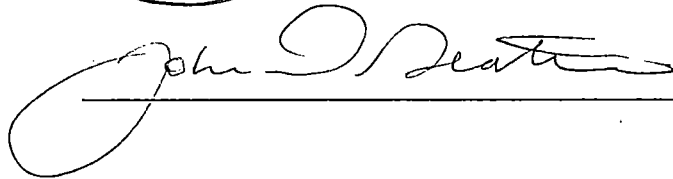
Appellate Case No. 2021-000752

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Sarah Elizabeth Shipe, Esquire
Tommy Evans, Jr., Esquire
Samuel R. Hubbard, III, Esquire

FILED
Dec 14 2023

Donald J. Zelenka, Esquire
The Honorable Debra R. McCaslin