

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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**RECEIVED**

**Jan 12 2024**

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MICHAEL TIRRELL MEANS,

PETITIONER

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

APPELLATE CASE NO. 2021-000752

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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**CERTIFICATE OF COUNSEL**

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on December 14, 2023. App. 9-10.

### **QUESTION PRESENTED**

Whether the Court of Appeals erred holding the trial court did not abuse its discretion in admitting gruesome photographs of decedent's body at the scene and an autopsy photograph under Rule 403, SCRE, because (1) the photographs were a needless presentation of cumulative evidence and (2) the probative value of the photographs 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 petitioner's state of mind at the time of the incident?

## STATEMENT OF THE CASE

In October 2019, petitioner was indicted by an Edgefield County grand jury for murder and possession of a weapon during the commission of a violent crime. R. 484-485; R. 487-488. Petitioner's case was called to trial on June 28, 2021, before the Honorable Debra R. McCaslin and a jury. R. 1. Robert Madsen and Erin Conroy represented petitioner. R. 1. Deputy solicitor, Laura Mayes and assistant solicitor, Douglas Fender represented the state. R. 1.

On July 1, 2021, the jury found petitioner guilty as indicted. R. 480. Judge McCaslin sentenced petitioner to concurrent terms of life imprisonment for murder and five years' imprisonment for possession of a weapon during a violent crime. R. 483.

The Court of Appeals affirmed petitioner's convictions and sentences in *State v. Means*, 2023-UP-352 (S.C. Ct. App. filed Nov. 1, 2023). App. 1-3. Petitioner sought rehearing which was denied on December 14, 2023. App. 4-10.

This petition for a writ of certiorari follows.

## ARGUMENT

The Court of Appeals erred holding the trial court did not abuse its discretion in admitting gruesome photographs of decedent's body at the scene and an autopsy photograph under Rule 403, SCRE, because (1) the photographs were a needless presentation of cumulative evidence and (2) the probative value of the photographs 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 petitioner's state of mind at the time of the incident.

### **Introductory facts**

By all accounts petitioner and his wife, Yumonica Means, were having serious marital problems. R. 255, ll. 17-23; 259, ll. 9-25; 327-329; 361, ll. 14-19. The previous April petitioner and Yumonica signed paperwork to legally separate. However, they never filed the documents and continued their romantic relationship. R. 255, ll. 17-23; 268, ll. 7-25; 365, l. 16-366, l. 3. The two communicated frequently via phone calls and text messages to discuss day-to-day life. R. 159, l. 18-160, l. 1; 265, ll. 9-13; 266, l. 25-267, l. 9; 316-325. At the time of the incident, they were still living as a married couple and sharing vehicles.

In the days leading up to the incident petitioner and Yumonica's relationship worsened exponentially. R. 160, ll. 2-17; 302-304. A few days before the incident petitioner woke up and heard Yumonica having a sexually explicit conversation with another man. R. 160, ll. 2-10; 362, ll. 11-17. The afternoon before the incident, petitioner went looking for Yumonica at her friend's apartment and as he walked to the door, he heard Yumonica and another man having sex. R. 160, ll. 13-17; 375-378.

Petitioner tried knocking on the door of the apartment, but no one answered. He left and drove around, reeling from the stress of the past few days and all that happened between himself

and Yumonica. R. 378, ll. 5-23. Petitioner tried calling and texting Yumonica without success. Eventually he made up a story in order to get her to speak to him. R. 379, ll. 10-12. Petitioner told Yumonica that he and their child had been in a car accident and asked her to come meet them. R. 296, ll. 3-13. Yumonica and her daughter drove to meet petitioner.<sup>1</sup> R. 81-84; 382, ll. 4-5. When Yumonica got to petitioner she realized there had not been a car accident. They argued and ultimately petitioner shot and killed Yumonica. R. 383-386.

Petitioner drove away and took his child to his mother's home. R. 387, ll. 4-21. He called his friend Lamaz Robinson, a law enforcement officer, and told him what happened. R. 150-53; State's exhibit 17.<sup>2</sup> On the call with Robinson petitioner explained how bad things had gotten with Yumonica. Petitioner was agitated and threatened his own life during the conversation. R. 150, ll. 8-20; 390, ll. 6-16. Later, petitioner turned himself and the gun over to law enforcement and cooperated with the investigation. R. 153, l. 7-154, l. 18; 390, ll. 6-16.

At trial, the state's case centered on petitioner's mental state at the time of incident. The state's theory was that petitioner lured Yumonica to a remote area with the intention of killing her. R. 2; ll. 14-18; 3, ll. 11-16; 4, l. 23-5, l. 5; 427, ll. 3-5; 428, ll. 23-23; 435, 24-25; 437, ll. 13-15. Petitioner's testimony, and the recording of his conversation with Officer Robinson, told a different story of petitioner's mental state at the time of the incident. Petitioner was upset, frantic from all he had learned about his marriage in the days leading up to the incident. Petitioner admitted he shot Yumonica but testified that he did so in the heat of passion during a terrible argument after confirming her infidelity. R. 380, ll. 17-20; 383, l. 21-386, l. 7. The trial court instructed the jury on the lesser included offense of voluntary manslaughter. R. 463, l. 10-

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<sup>1</sup> A child from a former relationship with another man. R. 75, l. 4; 78, ll. 2-22.

<sup>2</sup> State's exhibit 17, recording of petitioner's phone call, is on file with the Court.

465, l. 19

### **Objections to graphic photographs**

During responding officer, James Morgan's, testimony the prosecutor sought to admit state's exhibits 7, 8, and 9, photographs of the decedent's body as it was found at the scene.<sup>3</sup> R. 53, l. 15-54, l. 6. Defense counsel objected under Rule 403, SCRE. The court overruled defense counsel's objection and allowed the photographs to be admitted. The court found that the photographs showed the condition of the crime scene, the condition of the body, and the location. The court also found that the photographs corroborated the testimony of Officer Morgan. R. 59, ll. 2-13.

During the pathologist, Doctor Darren Monroe's, testimony the prosecutor introduced state's exhibit 65, autopsy photograph.<sup>4</sup> R. 334, l. 18-335, l. 3. Defense counsel objected, again under Rule 403, SCRE. Counsel argued that the photograph was unnecessary in this case where there was no dispute regarding cause of death or the trajectory of the bullet. Counsel contended the autopsy photograph added nothing, and its only purpose was to "get a picture of [decedent] with a bullet hole in her head in front of the jury." R. 335, ll. 9-18. Without making any findings the court ruled, "I'm gonna allow it." R. 336, ll. 5-6.

### **Discussion**

In affirming petitioner's convictions and sentences, the Court of Appeals held 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 petitioner's defense that he acted without malice, and their probative value was not substantially

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<sup>3</sup> State's exhibits 7-9, photographs, are on file with the Court.

<sup>4</sup> State's exhibit 65, autopsy photograph, is on file with the Court.

outweighed by the risk of unfair prejudice.” *State v. Means*, Op. No. 2023-UP352 (S.C. Ct. App. filed Nov. 1, 2023). The court cited to this Court’s recent opinion in *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, *Nelson*, gruesome autopsy photographs of decedent were admitted over objection at defendant’s trial. In that case this Court held, “[t]he photos admitted here surpassed ‘the outer limits of what our law permits a jury to consider.’” *State v. Nelson*, 440 S.C. 413, 415, 891 S.E.2d 508, 509 (2023), reh'g denied (Sept. 14, 2023) (quoting *State v. Torres*, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010)).

Like *Nelson*, this case does not concern the “admission of evidence during the sentencing phase of a capital murder trial; therefore, the trial court did not have broader discretion to allow evidence that would generally be inadmissible during the guilt phase of a trial.” *Nelson* at 424, 891 S.E.2d at 513; *see also State v. Kornahrens*, 290 S.C. 281, 288-89, 350 S.E.2d 180, 186 (1986) (“In the guilt phase of a trial, photographs of the murder victims should be excluded where the facts they are intended to show have been fully established”). Also, as in *Nelson*, the contested photographs had little probative value as to any disputed fact in this case where petitioner admitted to having shot and killed decedent.

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, this 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 petitioner and decedent’s relationship was fraught. Petitioner admitted he shot decedent after arguing on the side of the road. 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 could not, and did not, show what was in petitioner’s mind at the time of the shooting. Whatever minimal probative value the photographs had was substantially outweighed by the danger of unfair prejudice.

The court also cited to this Court’s recent opinion in *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 this Court found that the probative value of the gruesome autopsy photographs was not outweighed by the danger for unfair prejudice. Unlike in *Heyward*, petitioner admitted decedent died from a gunshot and that he was the shooter. The testimony of Officer Morgan did not require further corroboration where petitioner did not refute, rather he confessed, he shot decedent on the side of the road after arguing.

In this trial, where the only issue for the jury to determine was whether this was murder or voluntary manslaughter, the trial court erred by admitting graphic photographs of decedent’s body at the scene and an autopsy photograph which were not necessary and were substantially more prejudicial than probative.

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 petitioner 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 showing the gunshot wound.

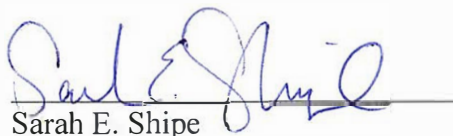
None of the contested photographs were necessary to corroborate the testimonies of Officer Morgan or Doctor Monroe because the defense never disputed where and how the body was found or the manner of death. The only purpose these graphic photographs served was to create an emotional response in the jurors, 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).

Petitioner’s murder conviction should be reversed, and he should be granted a new trial free of the undue prejudice of these gruesome photographs.

**CONCLUSION**

Petitioner respectfully requests this Court issue a writ of certiorari and order full briefing on the issue presented.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Sarah E. Shipe", is written over a horizontal line.

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This 12th day of January, 2024.