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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for writ of Certiorari to the Court of Appeals
APPEAL FROM EDGEFIELD COUNTY
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

MICHAEL TIRRELL MEANS,.....PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI
Appellate Case No. 2021-000752

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244

TOMMY EVANS, JR.
Assistant Attorney General
S.C. Bar No. 65282

P.O. Box 11549
Columbia, South Carolina 29211-1529
(803) 734-6305

S.R. HUBBARD, III
Solicitor Eleventh Judicial Circuit

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1. Court of Appeals did not err in affirming the decision of the trial court allowing into evidence photographs of the victim’s body as it was found at the crime scene nor did the trial court err in allowing into evidence autopsy photos. These photos were allowed pursuant to Rule 403 SCRE because their probative value outweighed any prejudice they might have caused, since they corroborated testimony from the victim’s daughter, law enforcement, and the forensic pathologist.....9

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PETITIONER'S QUESTION PRESENTED

Whether the Court of Appeals erred holding the trial court did not abuse 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?

RESPONDENT'S COUNTER-STATEMENT OF QUESTIONS PRESENTED

Did the Court of Appeals err in affirming the trial court decision in allowing into evidence crime scene and autopsy photos as the probative value outweighed any prejudicial effect, since the photographs corroborated testimony made by the victims daughter who was at the scene when the murder occurred? Did law enforcement, and the forensic pathologist, use of autopsy photographs unlawful when these photos were used not to enflame the jury's emotions but to prove malice; therefore, making this a murder and not one of voluntary manslaughter as the Petitioner claimed?

STATEMENT OF THE CASE

In October of 2019, Petitioner was indicted by the Edgefield County Grand Jury for the offenses of murder and possession of a weapon during the commission of a violent crime. On June 28, 2021, Petitioner was called to appear before the Honorable Debra R. McCaslin for trial. Present representing the State of South Carolina was Assistant Solicitors Laura Susanne Mayes, and Douglas Wayne Fender of the Eleventh Circuit Solicitor's Office. Representing Petitioner was attorneys Robert M. Madsen and Erin Rebecca Conroy.

After three days of testimony, a jury of his peers found Petitioner guilty of murder and possession of a weapon during the commission of a crime. (R. p. 480 l. 17-25). After the announcement of the verdict Petitioner appeared before the trial judge for sentencing. Petitioner received a sentence of a term of incarceration for the remainder of his natural life for the offense of murder, and five (5) years for possession of a weapon during the commission of a violent crime. The trial court ordered that these sentences were to be served concurrently. (R. p. 483 l. 14-17).

While serving his life sentence, Petitioner filed a timely notice of appeal. Within this appeal Petitioner argued that the trial court erred in allowing into evidence photographs of the crime scene and autopsy photos due to these photos being overly prejudicial beyond any probative value in violation of Rule 403. Petitioner also argued that these photographs were a needless presentation of cumulative evidence. The Respondent argued that these photographs were relevant due to them corroborating the testimony of the victim's twelve-year-old daughter who was at the scene when it occurred; and, law enforcement and the forensic pathologist, who used the autopsy photos to prove malice. This refuted the Petitioner's argument that this killing was done in the sudden heat of passion. Respondent argues for this reason that the probative value outweighed any prejudice, the decision to allow these photographs into evidence was not in violation of Rule 403.

On November 1, 2023, Court of Appeals Judges Paula Thomas, Aphrodite Konduros, and John Geathers issued an unpublished opinion affirming the decision of the trial court. Within this opinion the Court of Appeals decided that the trial court did not abuse discretion in admitting these photographs since they corroborated witness testimony, illustrated the circumstances of the crime, and were relevant to rebut the Petitioner’s defense that he acted without malice. The probative value was not substantially outweighed by the risk of unfair prejudice. *State v. Means*, UP No. 2023-UP-352 (S.C. Ct. of App. Filed November 11, 2023).

After the Court of Appeals’ decision, the Petitioner filed a motion to reconsider. This motion was denied on December 14, 2023. Petitioner then filed a Petition for Writ of Certiorari on January 12, 2024. In response to this petition the Respondent argues that the decision of the lower court does not fall within any of the parameters found in South Carolina Appellate Rule 242; therefore, this petition should be subject to dismissal. The return of the Respondent follows.

WHY CERTIORARI SHOULD BE DENIED

The Supreme Court reviews the Court of Appeals by writ of certiorari only where special reasons justify exercise of that power. *Douglas v. State*, 369 S.C. 213, 631 S.E.2d 542, 544, (2000). Pursuant to rule 242 of the South Carolina Rules of the Appellant Court, “a writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. The following while neither controlling nor fully measuring the Supreme Court’s discretion of power to grant review in general indicates the character of reasons which will be considered:

1. Where there are novel questions of law;
2. Where there is a dissent in the decision of the Court of Appeals;
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;

4. Where substantial constitutional issues are directly involved;
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.”

Rule 242, SCACR.

In reviewing each of these criteria the present case does not apply. The Court of Appeals unanimously affirmed the decision of the trial court. There are numerous South Carolina Supreme Court decisions relating to crime-scene and autopsy photographs that were placed into evidence, so there exists no novel question of law. The decision by the Court of Appeals was not in conflict with any prior decision made by this court; there are no substantial constitutional issues; and there is no federal question that the Court of Appeals decision that conflicts with a decision made by the United States Supreme Court. The decision of the Court of Appeals should not be subject to review; therefore, this petition should be subject to dismissal.

STATEMENT OF FACTS

Petitioner was once married to the victim Ms. Yumonica Means (victim). At around the time of the incident the Petitioner and victim were having marital problems. During their marriage the Petitioner was living in the victim’s residence. Right before the incident occurred the victim informed that Petitioner that he had to move out of the residence. (R. p. 304 l. 16-17).

On July 3, 2019, the victim went to her sister’s house. (R. p. 80 l. 15-18). The victim allowed her ten (10) year old daughter to stay at home by herself, and the victim gave her daughter her cell phone. (R. p. 80 l. 22-23). While the victim was at her sister’s house, the ten-year-old girl received a text on the victim’s phone from the Petitioner. The text stated that the Petitioner got into a bad automobile accident and the Petitioner and victim’s three (3) year old daughter was badly injured. (R. p. 81 l. 3-4). The victim’s ten-year-old child became scared and called the victim. (R.

p. 81 l. 10-11). Petitioner later called the victim's phone and her ten-year-old daughter answered. Petitioner informed her that he had gotten into a bad car accident and that her sister was badly hurt. (R. p. 82 l. 7). Not long after this call the victim returned home and called Petitioner. They got into an argument, then Petitioner informed the victim where they were. (R. p. 83 l. 1-3). The victim took her ten-year-old daughter with her and rushed over to the supposed location of the car accident. (R. p. 83 l. 17-18).

The location where Petitioner informed the victim of the accident was a remote area of Edgefield County. There were mostly woods and farms at that location with no businesses or lights. (R. p. 64 l. 1-4; p. 114 l. 19-22). Once the victim arrived she got out of her car and was immediately shot in the temple by the Petitioner. After shooting the victim the Petitioner immediately got back into the vehicle he was driving and left the crime scene. Victim's daughter was in the vehicle; she found her mother on the ground dead. She grabbed the victim's phone and called 911. (R. p. 86 l. 16-21; p. 86 l. 22-23.; p. 86 l. 24 – p. 87 l. 1).

A witness Jacob Derrick was coming home from work when he observed a vehicle on the side of the road with the door open. (R. p. 24 l. 1-5). Mr. Derrick pulled over and observed the victim lying on the ground. Mr. Derrick was a member of the volunteer fire department so he knew first aid. He checked the victim for a pulse, he did not feel one so he assessed that the victim was dead. (R. p. 25 l. 23 – p. 26 l. 3).

Once deputies arrived at the scene they spoke to the victim's ten-year-old daughter. She informed them that the Petitioner was the shooter. (R. p. 49 l. 14-19). Officers also were told that Petitioner was driving the victim's 2016 Kia Soul. (R. p. 128 l. 17-23). A Be On the Look Out (BOLO) was issued for that vehicle. (R. p. 129 l. 22-24). There was also an Amber alert released for the victim's three-year-old child. (R. p. 131 l. 2-5).

After Petitioner left the scene, the first place he went was to his mother's house, where he left the three-year old child with his mother. (R. p. 388 l. 4). Petitioner then drove to Laurens and left the car abandoned in a church parking lot. (R. p. 388 l. 20-23). Petitioner later called Lamaz Robinson, Johnston Police Department Chief of Police. Petitioner knew Chief Robinson from high school when they played in the band together. (R. p. 149 l. 16-17). During this call Chief Robinson read the Petitioner his *Miranda* rights and Petitioner agreed that their conversation could be recorded. (R. p. 151 l. 1-4). During this conversation Petitioner confessed to killing the victim. Petitioner's story was that the victim looked at his car and saw no damage and then asked Petitioner, "what kind of joke is this?" Petitioner admitted that he pulled out a gun and told her, "I'm gonna kill you." (R. p. 429 l. 9-11). When the victim turned to run he shot her in the head. (R. p. 431 l. 21-25). Chief Robinson then convinced Petitioner to turn himself into the authorities.

On July 5, 2019, Petitioner met Chief Robinson at Shaker's Gym in Saluda, South Carolina. Pastor Hoops arrived with the Petitioner. (R. p. 153 l. 11-13). The Petitioner gave Chief Robinson the murder weapon. Chief Robinson contacted the Edgefield Sheriff's Department and arranged to meet at the Edgefield Detention Center. (R. p. 153 l. 13-16). Petitioner arrived with Chief Robinson, he was then arrested and charged with the offense of murder, and possession of a weapon during the commission of a violent crime.

During trial, photographs of the crime scene, including photographs of the victim, were allowed into evidence. Photographs of the victim taken during the autopsy were also allowed into evidence. (R. p. 53 lines 3-6; R. p. 54 l. 3-6; R. p. 343 l. 2-8).

Dr. Darren Monroe, the forensic pathologist who performed the autopsy, also testified. Dr. Monroe stated that the victim was shot in the right temple right above where the ear begins. (R. p. 342 l. 9-10).

Petitioner decided to testify. During his testimony he stated that he did lie to the victim regarding the car accident. While in route to the location, however, he informed the victim that there was no accident, that he only wanted to talk. (R. p. 381 l. 22-24). Petitioner testified that the victim got to the scene and she got out of her car screaming and yelling. (R. p. 383 l. 6-10). Petitioner stated that the victim then “mushed” him in the face knocking off his glasses, and then spat on him. (R. p. 385 l. 5-7). Petitioner testified that he told the victim that he heard her having sex with another man, and that he should have killed them both. Petitioner stated that he shouldn’t have waited and that he should have killed them like he was going to kill her now. Petitioner stated that this is when he shot her. (R. p. 386 l. 3-7). Petitioner then testified that after he shot the victim he pointed the gun to his own head, however, he was talked out of committing suicide by his friend Kareem. (R. p. 386 l. 10-13).

ARGUMENT

- 1. Court of Appeals did not err in affirming the decision of the trial court allowing into evidence photographs of the victim’s body as it was found at the crime scene nor did the trial court err in allowing into evidence autopsy photos. These photos were allowed pursuant to Rule 403 SCRE because their probative value outweighed any prejudice they might have caused, since they corroborated testimony from the victim’s daughter, law enforcement, and the forensic pathologist.**

The Petitioner argues that the introduction of crime scene and the autopsy photos were intended to enflame the jury’s emotions. It is Petitioner’s position that the photographs were cumulative and not necessary due to the fact the cause of death was never at issue, and the Petitioner admitted to shooting the victim. Respondent argues that it is not the fact that the cause of death was not at issue or that the Petitioner admitted to shooting the victim. The manner in which he stated it occurred is what causes these photographs to be relevant. They are more probative than prejudicial. The Petitioner claimed that he committed this shooting in the sudden heat of passion and that he did was not commit murder but manslaughter. In order for the State to

prove that malice existed, they had to prove victim was shot as soon as she got out the car which was testified by her then ten-year-old daughter. The photographs that were introduced were necessary to corroborate this testimony, proving this was not done in the sudden heat of passion, but it was a planned and calculated premediated murder.

In order to convict someone of murder you must show malice. Malice is the wrongful intent to injure another and indicates a wicked and depraved spirit intent on doing wrong. *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 70 (1998). The Petitioner's sole intent in this trial was to be found guilty of voluntary manslaughter, since he confessed to this killing and testified that he shot her, during a "sudden heat of passion."¹The only people that were present were the victim, the Petitioner, their three-year-old daughter, and the victim's ten-year-old daughter. The only way to prove that this was not a killing a provoked by a sudden heat of passion, malice must be proven beyond a reasonable doubt. If malice is not proven a jury cannot convict for murder. The only person able to testify that there was malice was the victim's ten-year-old daughter, however, her testimony had to be somehow corroborated. The crime scene photos not only revealed that the victim was shot as soon as she got out of the vehicle, but they also revealed the remoteness of the area where the crime was committed. This proved Petitioner lured the victim to that location with the intent of killing her.

This court has ruled in the past that if photographs are used to corroborate testimony, the evidence should be allowed to be admitted. *State v. Nance*, 320 S.C. 501, 466 S.E.2d 349 (1996)(If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.) *State v. Benton*, 2024 WL 174332 (2024)(The pictures gave important context to the testimony and

¹ Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. *State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000).

other evidence about who did what at the scene. Under the specific circumstances of this case, the pictures assisted the jury in their task to understand other key evidence.) There was a ten-year-old girl who was at the scene and saw the murder of her mother. She was only twelve when she testified. The only piece of evidence revealing to the jury that she was telling the truth was the crime scene photos. These photos revealed the victim lying beside her car with the door open. This was exactly what her daughter testified as to how it happened. This also totally refuted what the Petitioner testified.

As for the autopsy photo, it was relevant because it revealed malice, which is the essential element needed to prove the crime of murder. During the trial the Petitioner's defense was that he committed this killing in the sudden heat of passion. He testified that the victim was facing him and he shot her due to his anger. The autopsy photos revealed she was shot in the right temple. Exactly the side of her head that would be facing Petitioner if she was shot as she exited her vehicle. As the Assistant Solicitor stated in her closing, when Petitioner shot her in the right temple this was an "execution shot." She argued that the only place you shoot someone when you fully intend to kill them is in the head. (R. p. 432 l. 6-7). The autopsy photo was not presented to inflame the jury, it was introduced to reveal the exact location of the shot, and to show that no sudden heat of passion existed. This was a cold-blooded murder. There have been decisions made by this court that allowed the admissibility of autopsy photos regardless of how gruesome they were. *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014)(The evidence was highly probative, corroborative, and material in establishing the elements of the offenses charged; its probative value outweighed its potential prejudice.) *State v. Heyward*, 441 S.C. 484, 895 S.E.2d 658 (2023)(The only evidence revealing Tollison suffered "multiple blunt force injuries" to her head was Dr. Durso's testimony from her observations after reflecting Tollison's scalp and the autopsy photographs corroborating

Dr. Durso's testimony.) No other person could have revealed where the victim was shot. The victim's daughter was sitting in the car, and although she could testify when and the location, she could not testify where on the victim's body that the fatal bullet landed. That had to be done by Dr. Monroe and corroborated by autopsy photos.

The Petitioner wishes to point to the gruesomeness of these photos trying to prove their prejudicial effect overrides their probative value. Gruesomeness doesn't make a photo more prejudicial, a gruesome photo could still carry more probative value, than prejudicial weight. How gruesome photos are is not a reason for exclusion. It has long been established that "[a] trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive." *State v. Martucci*, 380 S.C. 232, 669 S.E.2d 596, 607 (Ct. App. 2008). Simple gruesomeness alone does not render the photograph inadmissible. *Collins*, 409 S.C. at 536-37, 763 S.E.2d at 28. The autopsy photograph was introduced to reveal malice when Petitioner attempts to argue that this was a sudden heat of passion. The Assistant Solicitor correctly argued that this head shot was made in order to kill the victim, nothing was unplanned about this killing. This and other photos revealed that premeditation and malice existed; therefore, this could only be considered murder.

CONCLUSION

Based on the foregoing reasons, Respondent submits Petitioner has failed to reveal that the questions presented warrant certiorari review. This Court should deny this petition and let the decision of the Court of Appeals stand.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

By: *s/ Tommy Evans, Jr.*
TOMMY EVANS, JR.
S.C. Bar No. 65282
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

February 12, 2024

ATTORNEYS FOR RESPONDENT