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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

Daniel McLeod Coble, Circuit Court Judge

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Appellate Case No. 2023-001415

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THE STATE,

Respondent,

v.

ANTONIO LAVAR BETHEL,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

### **Appellant's Issue Statement**

Whether the trial court reversibly erred by admitting photographs taken by an investigator depicting close-up images of a bloody gunshot wound to the head where the emergency room doctor had already testified regarding the details of the injury, and the questions of how and where the victim was shot were not contested matters in the case where Appellant asserted self-defense?

### **Respondent's Counterstatement**

Whether the trial court abused its discretion by admitting photographs of the victim's head injury where the probative value of the photographs to refute Appellant's self-defense claim and corroborate witness testimony was not substantially outweighed by the danger of unfair prejudice.

## STATEMENT OF THE CASE

In December 2019, a Richland County grand jury indicted Appellant for the attempted murder of Duan Lane (“Victim”). (Indictment). On August 7-9, 2023, Appellant proceeded to a jury trial before the Honorable Daniel McLeod Coble. (I Tr. 1; II Tr. 1).

Brittany Hart, a deputy with the Richland County Sheriff’s Department (“RCSD”), testified that she was dispatched to the scene of a shooting at a Motel 6 in the early morning hours of April 19, 2019. (II Tr. 23-24). When she arrived, she observed a black Mercedes parked in front of the lobby, an emotional female trying to explain the situation, and a male sitting against the front bumper of the Mercedes. (II Tr. 24-25). The female, Ketoya Pinckney, witnessed the incident and “seemed really upset.” (II Tr. 25-27). Deputy Hart asked Victim what happened, but he was “not very coherent.” (II Tr. 27). Deputy Hart noticed that Victim had a wound to the left side of his head. (II Tr. 28). Deputy Hart testified that while she was attempting to identify Victim, police dispatch confirmed that the Mercedes was registered to Victim. (II Tr. 29). The Mercedes had a broken window on the back driver’s side door. (II Tr. 29). Deputy Hart wore a body camera, and the recording from her body camera was admitted into evidence.<sup>1</sup> (II Tr. 30-31).

Alexander Laird, a sergeant with RCSD, testified that he responded to the scene of the incident wearing a body camera. (II Tr. 32-35). This body camera recording was also admitted into evidence.<sup>2</sup> (II Tr. 35).

Duan Lane, the victim, testified that on the day of the incident, he was shot in the head. (II Tr. 43). Before the incident, Laqueen Jackson called him and asked him to drive her to Walmart and then to a hotel. (II Tr. 43-44). Victim previously met Jackson on a dating website. (II Tr. 44).

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<sup>1</sup> See State’s Exhibit 4.

<sup>2</sup> See State’s Exhibit 5.

When Victim and Jackson arrived at the Motel 6, he had no intention of staying with her that night, but Jackson asked him to accompany her inside. (II Tr. 44). Victim parked in front of the lobby door and went into the lobby with Jackson. (II Tr. 45). After entering the lobby, Jackson went back outside to speak with someone. (II Tr. 45). Victim testified that Jackson and the person she went outside to meet appeared to be arguing. (II Tr. 45). Victim went out to check on and move his car because the person with whom Jackson was arguing parked close to his car, which was unlocked with an open window. (II Tr. 46-47). After moving his car to a different spot in front of the hotel, he exited his vehicle and waited for Jackson to return for her belongings. (II Tr. 49). When Jackson approached his vehicle, the man she had been arguing with approached him and “had some words and stuff” while pacing right in front of Victim. (II Tr. 49). According to Victim, he felt uncomfortable due to the man’s behavior. (II Tr. 49).

Victim identified the man as Appellant, whom he had seen previously when he would visit Jackson at her hotel. (II Tr. 50-51). Victim testified that Appellant kept coming at him, which was frustrating. (II Tr. 51). While Victim did not remember throwing the first punch, he did recall that Appellant returned to his car before coming back with a gun. (II Tr. 51-52). Victim put his hands up, Appellant continued to approach him, and Appellant shot at Victim, which hit him in the head. (II Tr. 52). Victim did not have a gun during the incident. (II Tr. 53).

Victim recalled being in the hospital for almost two months after he was shot. (II Tr. 53-54). While he was in the hospital, RCSD Investigator Michael Laurita discussed the incident with him and showed him two photo lineups. (II Tr. 54). Victim identified Appellant and Jackson from the lineups. (II Tr. 54-56). During cross-examination, Victim stated that he body slammed Appellant before Appellant went to his car and returned with a gun. (II Tr. 72, l. 9-12).

John Carwell, a captain with RCSD, testified that when Appellant was arrested, Appellant was in possession of a firearm. (II Tr. 121). Additionally, he went to the scene, noticed surveillance cameras, and requested footage from the night of the incident. (II Tr. 121-23). The video surveillance was admitted into evidence without objection.<sup>3</sup> (II Tr. 123).

Amanda Metz, an expert in firearms and tool examination, testified that a casing found at the scene was shot by the gun collected from Appellant when he was arrested. (II Tr. 160, 164). Metz testified that the gun “wouldn’t just go off if you didn’t have your finger all the way on the trigger and did a deliberate pull of the trigger.” (II Tr. 165).

Dr. Christopher Watson, a trauma surgeon at Prisma Health Midlands and an expert in emergency medicine and trauma surgery, testified that he admitted Victim to the hospital after the incident. (II Tr. 193-95). He observed a gunshot wound to Victim’s head near the left ear and stated that the bullet penetrated Victim’s skull. (II Tr. 193, 195). According to Dr. Watson, “the casing of the bullet separated from the lead core. The lead core continued into the brain and the casing looked like it shattered with the bone of the skull.” (II Tr. 196). Dr. Watson stated that the bullet remained in Victim’s head because “[i]t usually causes more injury to try and get the bullet out.” (II Tr. 196). Dr. Watson opined that Victim’s injury was life-threatening and noted that Victim had multiple episodes during which his condition worsened in the hospital, which could have resulted in Victim’s death. (II Tr. 198). Dr. Watson did not recall reviewing any pictures in Victim’s medical record. (II Tr. 199).

Michael Laurita, formerly a criminal investigator with RCSD, testified that he was first assigned to this case the morning after the incident occurred. (II Tr. 226). He went to the hospital to check on Victim’s status and obtain information about the incident. (II Tr. 226). While he was

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<sup>3</sup> See State’s Exhibit 76.

at the hospital, he took two photographs of Victim's injury. (II Tr. 227). Appellant objected to the admission of these photographs, arguing that the trauma surgeon provided competent testimony to establish the injuries, which made the photographs more prejudicial than probative. (II Tr. 227). The trial court allowed the photographs into evidence, finding that they went to the elements of the crime. (II Tr. 227). The trial court stated, "Its probative value is not substantially outweighed by the prejudicial effect. There has been video already submitted, but I think it is necessary for the elements." (II Tr. 227).

Investigator Laurita stated that he had seen the surveillance video of the incident. (II Tr. 228). He testified that the footage showed Victim arriving at the Motel 6 at 12:36 am and entering the hotel with a woman. (II Tr. 229-30). At 12:41 am, a vehicle with Appellant as a passenger pulled in and parked farther away from the door than Victim. (II Tr. 230). Appellant got out of the passenger seat, walked toward the entrance of the hotel, and made a motion to Jackson, who came outside. (II Tr. 230). Appellant got back in the car, and the vehicle circled the parking lot, pulling in front of the door to the hotel. (II Tr. 230). Victim came outside and moved his vehicle "kind of behind" Appellant's vehicle. (II Tr. 230).

Victim and Appellant appeared to exchange words. (II Tr. 230). Appellant approached Victim, who punched Appellant, and a fight ensued. (II Tr. 230). Appellant returned to his vehicle, retrieved something, and walked back toward Victim. (II Tr. 230). Investigator Laurita stated, "At that time[,] I [saw] a flash from the suspect." (II Tr. 230-31). Investigator Laurita believed the flash was a muzzle flash. (II Tr. 231). Both Victim and Appellant fell to the ground, but only Appellant stood back up. (II Tr. 231). Appellant and Jackson got into Appellant's car and left the area. (II Tr. 231). Jackson and Appellant returned approximately a minute and a half later,

broke into Victim's car, and each took a bag. (II Tr. 233-34). Both Jackson and Appellant went to the front of the vehicle where Victim was before they returned to Appellant's vehicle. (II Tr. 234).

After Appellant was arrested, Investigator Laurita interviewed Appellant. (II Tr. 244). He asked Appellant about going back to his car to retrieve his gun, to which Appellant responded that it was not the best decision. (II Tr. 244).

In his closing argument, Appellant made a self-defense argument, in which he argued that he went back to his car to retrieve the gun to protect himself and Jackson. (II Tr. 284-301). Appellant contended that his retreat to retrieve his gun did not end the confrontation. (II Tr. 295-96).

The jury found Appellant guilty of attempted murder. (II Tr. 328-29). The trial court imposed a sentence of 15 years' imprisonment. (II Tr. 343).

This appeal followed.

## STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). “A trial court has particularly wide discretion in ruling on Rule 403 objections.” *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

## ARGUMENT

- I. **The trial court properly allowed the admission of the hospital photographs of Victim's injury because the probative value of the photographs in assisting the jury to understand witness testimony of the victim's injuries as well as determine the nature and location of the victim's injuries does not substantially outweigh the danger of unfair prejudice.**

The State has the right to prove every element of the crime charged. *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000). Here, the photographs were relevant to the nature and extent of Victim's injury and tended to establish both malice and intent to kill given the nature of the injury, Victim's lack of any weapon, and Appellant's withdrawal from the fight to obtain a gun. *See State v. Haselden*, 353 S.C. 190, 199, 577 S.E.2d 445, 450 (2003) (holding that the relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion).

The trial court found the probative value of the photographs outweighed the prejudicial effect. (II Tr. 227). *See State v. Vang*, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003) (holding that a trial court must balance the prejudicial effect of graphic photographs against their probative value); *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) ("A trial [court's] decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances."). Much like in *State v. Dial*, the photographs in this case are probative of whether Appellant acted in self-defense given Victim's injury (a gunshot wound to the head), Victim's lack of a weapon, and Appellant's withdrawal from the fight to retrieve his gun from his vehicle as well as whether Appellant had intent to kill due to the gunshot wound to Victim's head. *State v. Dial*, 405 S.C. 247, 261, 746 S.E. 2d 495, 502 (Ct. App. 2013) (holding that autopsy photographs of a victim's injuries were highly probative to issues of abuse and cause of death where the defendant claimed the victim's injuries were the cause of an accident).

The photographs also corroborated the testimony of Dr. Watson. *See State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999) (admitting photographs which serve to corroborate testimony is not an abuse of discretion); *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (holding that 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. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995) (“To constitute unfair prejudice, the photographs must create a ‘tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991))). Dr. Watson testified that Victim’s gunshot wound was near his left ear, which the pictures corroborate. (II Tr. 195; State’s Exhibit 90; State’s Exhibit 91). Therefore, the pictures assisted the jury in determining the nature and location of Victim’s gunshot wound and in understanding Dr. Watson’s testimony regarding the injury and its life-threatening nature. (II Tr. 195-98).

Merely because the photographs can be described as unpleasant does not reduce their relevance to Appellant’s charge of Victim’s attempted murder. *See Davis v. Traylor*, 340 S.C. 150, 530 S.E.2d 385, 387 (Ct. App. 2000) (holding that a trial court is not required to exclude relevant evidence merely because it is unpleasant or offensive). Therefore, because the photographs substantiate material facts and corroborate witness testimony, the trial court did not abuse its discretion by allowing their admission.

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**CONCLUSION**

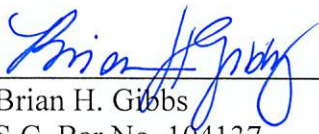
Based on the foregoing, the State requests that this Court affirm Appellant's conviction for attempted murder, as well as his associated sentence.

Respectfully submitted,

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