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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-001337

THE STATE,

Respondent,

v.

ANTONIO LONG,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

I. Whether the trial court erred by admitting gruesome crime scene photographs of the decedents' horrifically damaged faces, where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCRE?

II. Whether the trial court erred by denying the motion to sever the murders from the criminal sexual conduct and kidnapping, where the offenses failed to meet the requirements for consolidation?

Respondent's Counterstatements

I. Whether the trial court abused its discretion by admitting black-and-white crime scene photographs of the victims' faces 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.

II. Whether the trial court abused its discretion by denying Appellant's motion to sever the murder charges from the criminal sexual conduct and kidnapping charges.

STATEMENT OF THE CASE

On April 6, 2022, an Horry County grand jury indicted Appellant for two counts of murder, one count of first-degree criminal sexual conduct ("CSC"), and one count of kidnapping. (Indictments 2022-GS-26-01367, -01369, -01370, -01373). Appellant proceeded to a jury trial before the Honorable Maite Murphy on August 7-9, 2023. (Tr. 1).

Before jury selection, Appellant moved to have separate trials for the murder charges and the kidnapping and CSC charges. (Tr. 16; Motion for Separate Trials). He argued that the charges constituted separate and distinct offenses which mandated separate trials to ensure a fair trial and protect his constitutional rights. (Tr. 16). Citing *State v. Tucker*,[1] Appellant argued that while the events occurred on the same evening, the CSC and kidnapping charges would require different proof than the murder charges. (Tr. 17). He asserted that the CSC and kidnapping charges would also be "extremely prejudicial" against him regarding the murder charges. (Tr. 17-18).

The State argued that all four charges resulted from conduct that occurred in a "very short span of time in the exact same home." (Tr. 20). Citing to *State v. Rice*,[2] the State asserted that without the evidence of all four charges, the jury would not receive an accurate portrayal of the case and that when evidence of various crimes presents a full picture of criminal activity, then the charges should be tried together. (Tr. 20). The State contended that inappropriate touching lead to the murders and, therefore, "it would simply be impractical and nonsensical for the jury to only hear about the murders and not what actually led up to that." (Tr. 20).

Walking through the four factors from *Tucker*, the trial court first determined that the events resulting in the four charges appeared to have occurred in a continuous course of conduct. (Tr.

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[1] 324 S.C. 155, 478 S.E.2d 260 (1996).
[2] 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006).

22). Second, the trial court found that the charges could be proven by the same eyewitness, who was the alleged victim of the CSC and kidnapping immediately following the two deaths. (Tr. 22). Third, the trial court found that the charges were all of the same general nature because the events all occurred during the same short period of time and that the circumstances that lead to one set of the charges also led to the other. (Tr. 22). Fourth, the trial court determined that no real right of Appellant would be prejudiced by allowing all four charges to be tried together because the four charges arose from a single course of contemporaneous conduct. (Tr. 22-23). The court noted that even though trying all four charges together would be prejudicial to Appellant, no substantial rights of Appellant would be violated by trying them all together and that due to Appellant's single course of conduct, trying all four charges together would be more probative than prejudicial. (Tr. 23).

At trial, Minor testified that in December 2020, she was seventeen years old and lived with Appellant, her mother, Marlene Haywood ("Haywood"),[3] and her brother, Kevonta Hills ("Kevonta"), at Appellant's house (the "residence"). (Tr. 81-82, 123). At that time, Minor had been living with Appellant and Haywood for at least a year while Kevonta had lived with them for "just a couple of months." (Tr. 83). Minor denied that anything happened between her and Appellant that led to the incident. (Tr. 83). However, according to Minor at some point on December 23, 2020, Appellant touched her butt while she was walking through the kitchen at the residence. (Tr. 84). She told Appellant not to touch her again, went to the room Haywood shared with Appellant, and told Haywood that "she better get her boyfriend." (Tr. 85). Haywood, who was lying on the bed, asked Minor what happened, Minor joined her mother in lying on the bed, and Appellant walked into the room. (Tr. 85). Appellant laid down next to Minor and showed

[3] Minor confirmed that Marlene Haywood also went by Marlene McLeod. (Tr. 82). For consistency in this brief, Minor mother is referred to as "Haywood."

her a 9 mm gun. (Tr. 86-87). Minor left the room and went to her bedroom. (Tr. 87). She believed that Appellant showing her the gun was his way of telling her not to tell Haywood that he touched her or he would shoot her. (Tr. 87).

Once in her room, she typed out a text message to her brother, and due to technical difficulties, went to his room and showed him the message. (Tr. 87). Kevonta left his room to find Appellant and Haywood. (Tr. 87). She heard two gunshots. (Tr. 88). According to Minor, Kevonta had nothing in his hands when he left his room and Appellant was the only person in the house with a gun. (Tr. 88). After the two gunshots, she did not leave her room. (Tr. 88).

Shortly after the two gunshots, Appellant came into Minor room, unbuttoned his pajamas, and told her to take off her clothes while pointing a gun at the center of her forehead. (Tr. 89). Minor took off her clothes because Appellant had a gun to her head. (Tr. 89). Appellant instructed her to lay on her bed and then "forced his penis into [her] vagina," using baby oil for lubrication. (Tr. 89). During the encounter, Appellant instructed Minor to put his penis in her mouth and her "other hole." (Tr. 90). Minor testified that during the encounter,

> There was a couple of times [Appellant] went back to see if [Kevonta] was dead, because I heard gurgling coming from Kevonta. I don't think he was dead. So, there was one time where [Appellant] came in the living room. I don't know what he did, but he came back and the end of the gun had blood on it. And he had a gash in his right hand.

(Tr. 91). Minor was unable to hear anything that happened when Appellant was out of the room. (Tr. 91). Appellant continued sexually assaulting her when he returned. (Tr. 91).

After he finished sexually assaulting her, Minor believed Appellant's gun "had failed or stopped working" because Appellant mentioned wanting to kill himself but did not do so. (Tr. 92). Appellant put a towel over her head and walked her to Haywood's bedroom, where he dressed. (Tr. 92-93). While still in possession of his gun, Appellant led Minor outside with the towel still

over her head, and he left her there for "a couple of minutes" before instructing her to get in a white car. (Tr. 94-95). Appellant stopped for gas and then drove to North Carolina. (Tr. 95). On the drive to North Carolina, Appellant told Minor that "he would look through the blinds while [she] was getting out the shower and changing clothes." (Tr. 96). He let Minor out at another gas station outside of Raleigh, North Carolina, instructing her to say that "this car that I was in was stolen and that the people who stole it dropped me off at the gas station." (Tr. 95).

At the gas station where he left her, Minor called law enforcement. (Tr. 96). She initially told them what Appellant instructed her to say before telling them what she experienced. (Tr. 96). Law enforcement took her to the police department and then to the hospital, where "[t]hey had run some tests and had me to tell the story again of what happened and made me take some pills." (Tr. 96-97).

Minor did not see what happened to her mother or her brother. (Tr. 98). Appellant only told her that he shot both Haywood and Kevonta in their legs. (Tr. 98). She maintained her belief that both Haywood and Kevonta were alive through the drive to Raleigh. (Tr. 98). Minor found out that her mother and her brother were no longer alive only after arriving at the hospital on Christmas Eve, the day after the incident. (Tr. 98).

After Minor testimony, the parties and the trial court discussed two black-and-white photographs that the State expected to use in upcoming testimony. (Tr. 126). The photographs are two crime scene photographs—one of Haywood's head and one of Kevonta's head. (Tr. 126, State's Ex. 18, 22). Appellant objected to the admission of the photographs unless the State had a sufficient reason to utilize them. (Tr. 126). The State handed the trial court the black-and-white copies of the photographs as well as color copies of crime scene photographs. (Tr. 126).

The State argued that it had been "very conservative" and "very reasonable" in asking the trial court to admit the black-and-white versions of the photographs and use of the black-and-white versions of the photographs made the pictures as non-prejudicial as possible. (Tr. 126-27). Noting the extensive damage to Kevonta's face in his picture, the State informed the trial court that a crime scene investigator would testify that a coffee table leg found at the residence had what appeared to be teeth impressions, which showed a probative connection to Kevonta's photograph. (Tr. 127). The State argued that both photographs, along with a forensic pathologist's testimony, would go to refute Appellant's self-defense claim. (Tr. 127). The State asserted that a firearms expert would testify that one possible explanation for the wound on Haywood's forehead, as well as for Appellant's gun becoming inoperable, was Appellant's use of the gun, which also explained Minor testimony that Appellant came back into her room with blood dripping from the gun. (Tr. 127-28).

Appellant argued that he had not seen any forensic examination of the table leg to determine whether the marks on the leg were teeth impressions and that the crime scene investigator could not testify as to whether the marks were teeth impressions. (Tr. 128). Appellant asserted that the most the crime scene investigator could say would be that the marks might be a tooth impression but contended that the crime scene investigator did not need the photographs of Kevonta and Haywood's heads to testify about that. (Tr. 129).

After reviewing the color and black-and-white photographs, the trial court determined that the black-and-white photos were:

> necessary to substantiate material facts or conditions at issue in this case. The pictures will assist the trier of fact to determine the nature and location of the injuries in order to understand the witnesses' testimony as to the case and manner of death. And they are also corroborative of Minor's testimony that the gun malfunctioned, and the defendant returned to the room with blood on the gun, which

> is consistent with the photographs depicting injuries caused by strikes to the head. Further, the nature of the injuries tends to establish the element of malice and are relevant and or corroborative to the nature and extent of the injuries. The black-and-white photographs proposed by the state are much less graphic than the color photographs, and I find that the probative value of these photographs outweighs the prejudicial effect. And upon proper authentication, they are admissible.

(Tr. 134-35).

The following day before the crime scene investigator testified, Appellant argued that if the State's line of questioning gets into a witness's opinion on what caused the marks on the coffee table leg, then that would be objectionable. (Tr. 164-65). The State once again argued that the coffee table leg had what appeared to be teeth impressions and Kevonta had significant injuries to his face and teeth that seemed to be consistent with the marks on the coffee table leg. (Tr. 165). The State noted that it instructed its witnesses that the court was not looking for any witness to say whether the teeth marks were from Kevonta. (Tr. 165).

The State informed the trial court that Appellant was not objecting to any of the photographs that it wanted to admit through the crime scene investigator, which Appellant confirmed. (Tr. 165). Appellant agreed to the admission of numerous exhibits, including State's Exhibits 18 and 22, which are the black-and-white photographs of Kevonta and Haywood's faces, respectively, after their deaths. (Tr. 167-68).

Dennis Lewis, a crime scene investigator at the Horry County Sheriff's Office, testified that he responded to the residence the day after the incident. (Tr. 169). He found a towel on the floor just inside the front door and saw broken items, including an upside-down coffee table with broken legs and a body under a white sheet, when he entered the living room. (Tr. 173-74). Lewis testified that one of the broken-off coffee table legs had what appeared to be teeth impressions on it. (Tr. 177). He stated that the teeth impressions were consistent with the blunt force trauma that

Kevonta had to his face. (Tr. 177). Lewis identified and described State's Exhibit 18, which is the black-and-white photograph of Kevonta's face that he took after uncovering Kevonta's body. (Tr. 177-78). Lewis observed that Kevonta's eyes, nose, and teeth were broken and that the left side of his face sustained "severe" blunt force trauma. (Tr. 177-78). According to Lewis, Kevonta's body did not have a weapon within reach. (Tr. 181). Lewis observed five wounds consistent with gunshot wounds on Kevonta's body. (Tr. 182). Lewis identified State's Exhibit 22, which is the black-and-white photograph of Haywood's face, and Appellant renewed his objection to State's Exhibit 22, which the trial court overruled. (Tr. 182). He described the photograph as showing Haywood with a blunt force injury to her forehead that broke through the skull and left part of her brain revealed. (Tr. 182). Lewis also testified Haywood's body had three injuries consistent with gunshot wounds. (Tr. 182). On December 26, 2020, Lewis collected a 9 mm handgun from Appellant's sister's home. (Tr. 197-98).

In Minor 's room, Lewis collected a towel, bathrobe, and bedding, and saw a bottle of baby oil. (Tr. 190). He also collected a pair of plaid pants from the master bedroom. (Tr. 215). Lewis conducted a presumptive test for acid phosphatase, which is a component found in semen. (Tr. 203). He stated that a presumptive test is suggestive but not conclusive. (Tr. 203). The presumptive tests on the robe, towel, plaid pants, and blanket from Minor 's bed all returned positive presumptive tests. (Tr. 203-06).

Christopher Drew Edwards, a detective with the Horry County Sheriff's Office, testified that he observed no visible injuries on Appellant when Appellant turned himself in on December 26, 2020. (Tr. 223, 228-29).

Catherine Leisy, a DNA casework analyst with the South Carolina Law Enforcement Division ("SLED") and an expert in forensic DNA analysis, testified regarding DNA testing on

various objects and Minor 's rape kit. (Tr. 260-66). Regarding swabs taken from the top halves of two broken coffee table legs, Leisy testified that Appellant and Kevonta were very likely to have contributed to the DNA found on the table legs. (Tr. 271, 274, 280-81). Regarding swabs taken from the trigger of a gun, Leisy testified that Appellant, Kevonta, and Minor were very likely to have contributed to DNA found on the trigger. (Tr. 285). Regarding testing on underwear collected from Minor , swabs of Minor 's vagina, and swabs taken from Minor 's mouth, all of which were collected at the hospital, Leisy testified that Appellant's DNA was likely to be that of the DNA found on these three samples. (Tr. 289-92).

Chad Smith, a SLED agent and expert in firearms identification, testified that the seven fired cartridge casings and the three bullets that were recovered were all fired from the same gun, which was the firearm collected from Appellant's sister. (Tr. 314-15, 319). The firearm had a spring malfunction, which appeared to be caused by a missing trigger bar. (Tr. 315-16). Smith testified that a force applied to the gun, such as the gun being used to hit something, could cause the trigger bar to dislodge. (Tr. 316).

Dr. Ellen Riemer, a forensic pathologist at the Medical University of South Carolina and an expert in forensic pathology, testified about Haywood and Kevonta's injuries. (Tr. 326, 330). Regarding Haywood's injuries, Dr. Riemer testified that Haywood had gunshot wounds to the right side of her head, her left upper chest, and her left hand. (Tr. 332). The gunshot wound to the head was fatal. (Tr. 334). Haywood also had postmortem blunt force trauma to her forehead. (Tr. 337). Regarding Kevonta, Dr. Riemer testified that Kevonta had four gunshot wounds—a flesh wound to his left shoulder, a flesh wound to his left forearm, a wound to his upper mid-abdomen that hit his abdominal aorta, and a wound to his right lower abdomen. (Tr. 341-47). Kevonta also suffered blunt force trauma wounds that resulted in a fractured upper jaw, broken upper and lower teeth,

and injury to the left orbital bone near the eye. (Tr. 347-48). Dr. Riemer confirmed, without objection, that State's Exhibit 18, the black-and-white photograph of Kevonta's face, was an accurate representation of the damage his face sustained. (Tr. 348). Dr. Riemer opined that Kevonta's cause of death was the two gunshots to abdomen. (Tr. 350).

Testifying in his own defense, Appellant stated that he was renting to own the residence and had been living there for about two and a half years. (Tr. 386-87). Haywood moved in around the same time that he did. (Tr. 388). Minor moved into the residence approximately a year and a half before the incident, and Kevonta moved in about two months before the incident. (Tr. 388-89).

On the day of the incident, Appellant came inside and put his gun on the kitchen counter. (Tr. 392). He was planning to watch Polar Express with Haywood when Minor came into the kitchen and said she wanted to watch it with them. (Tr. 392). Appellant agreed and tapped her with the back of his fingernails. (Tr. 392). Minor went into Appellant and Haywood's room, where Haywood was playing on her phone. (Tr. 392). After a few minutes, he went into the room, and Minor was flipping through television channels. (Tr. 392). Appellant and Minor argued about what they were going to watch, and she eventually left. (Tr. 393). He put on Polar Express. (Tr. 393). Minor came back a few minutes later, jumped in between him and Haywood, took the remote, and tried to change the channel. (Tr. 393). Appellant told Minor to "get the H out the room." (Tr. 394). She left and threw the remote as she left. (Tr. 394). Haywood asked Appellant what was going on, he said he did not know, and Haywood decided to find out. (Tr. 394). Appellant testified that he was wearing his plaid pants at this point. (Tr. 395).

When Appellant and Haywood walked out of the room, Kevonta was standing in the hallway and said, "Aint nobody gonna be beating on my sister." (Tr. 396). Haywood told Kevonta

that no one hit Minor . (Tr. 396). Kevonta said "aint nobody gonna be feeling on her either." (Tr. 396). Haywood asked who had been feeling on Minor , and Kevonta indicated Appellant had. (Tr. 396). Haywood told Kevonta that she had been there the whole time and Appellant had not touched Minor . (Tr. 396). Kevonta "kept bowing up." (Tr. 396). Appellant told Haywood that Kevonta had to go for a while but stated Kevonta would not leave. (Tr. 396-97). According to Appellant, Kevonta threatened to kill him for touching Minor (Tr. 398). Haywood called for Minor , who never came. (Tr. 398).

Appellant chambered a round in his gun because he did not want to be disrespected in his own home. (Tr. 399). Appellant claimed Kevonta charged at him while Haywood was between them. (Tr. 399). While Appellant and Kevonta were fighting, Haywood started hitting Kevonta with the television remote. (Tr. 400). Appellant's gun went off several times while he fought with Kevonta, but he claimed to not know how Haywood was shot. (Tr. 401). He stated that Haywood's death was senseless and accidental. (Tr. 401).

As the fighting progressed, Appellant pushed Kevonta backward into the coffee table. (Tr. 403). Kevonta picked up one of the coffee table legs that had broken during his fall. (Tr. 403). Appellant told Kevonta to drop the table leg before managing to take the table leg and hit Kevonta with it. (Tr. 403-04). Kevonta picked up another table leg, and Appellant claimed that shooting Kevonta at this point was a last resort. (Tr. 404-05). According to Appellant, Kevonta did not immediately fall over, so he hit Kevonta with a table leg. (Tr. 406-07). Appellant stated he did not hit Haywood with anything. (Tr. 409).

After the confrontation ended, Appellant picked up his gun, which he had previously dropped, and a piece fell out of the gun. (Tr. 410). He went to Minor s room. (Tr. 410). According to Appellant, Minor came on to him and started touching him. (Tr. 411-12). He

claimed that he did not threaten her with a gun and that Minor knew the gun was broken because "[s]he looked right at it." (Tr. 412). He confirmed he and Minor had sex. (Tr. 412). Appellant stated that Minor got in the car with him willingly after they had sex. (Tr. 413). He let her out of the car the first time she asked and did not tell her to lie about how she got there. (Tr. 416). On cross-examination, he stated that he and Minor did not have penetrative sex; rather, he ejaculated on her thigh, which she then put in her vagina and anus using a towel. (Tr. 420-21).

The jury found Appellant guilty of first-degree CSC and kidnapping. (Tr. 504). The jury found Appellant not guilty of Kevonta's murder but did find him guilty of the lesser included offense of voluntary manslaughter. (Tr. 504). The jury found Appellant not guilty of Haywood's murder. (Tr. 505). The trial court sentenced Appellant to 30 years' imprisonment for each of his three convictions, with all three sentences to run consecutively. (Tr. 513-14).

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).

"A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown." *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996).

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 black-and-white crime scene photos of Haywood and Kevonta because the probative value of the photographs in assisting the jury to determine the nature and location of the victim's injuries as well as understand witness testimony of the victim's injuries does not substantially outweigh the danger of unfair prejudice.

First, Appellant did not preserve his argument that the trial court abused its discretion by admitting State's Exhibit 18 (the black-and-white photograph of Kevonta's face). Despite his pretrial objection to State's Exhibits 18 and 22, Appellant confirmed he did not have an objection to "any of the photographs that [the State] is admitting" through the crime scene investigator, Dennis Lewis, directly before Lewis testified. (Tr. 165). Before Lewis testified, State's Exhibits 18 and 22 were admitted to evidence without objection. (Tr. 168). This amounted to a waiver of Appellant's pretrial objection. *See State v. Dicapua*, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (holding that when a party affirmatively states that it does not have an objection to evidence being admitted at trial, the party has waived any previous objections made in a pretrial motion).

Accompanied by a lack of contemporaneous objection when the State questioned Lewis about State's Exhibit 18, Appellant's argument on the admissibility of State's Exhibit 18 is unpreserved for appellate review. (Tr. 177). *See State v. Wood*, 362 S.C. 520, 526, 608 S.E.2d 435, 438 (Ct. App. 2004) ("[M]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. Thus, the moving party must make a contemporaneous objection when the evidence is introduced." (citations omitted)). However, due to his contemporaneous objection to State's Exhibit 22 (the black-and-white photograph of Haywood's face), which was overruled by the trial court, the State does not contest the preservation of Appellant's argument on the admissibility of State's Exhibit 22. (Tr. 182).

Second, on the merits, 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 Haywood and Kevonta's injuries and tended to establish malice given the nature of the injuries and Appellant's general lack of serious injury. *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 black-and-white photographs outweighed the prejudicial effect. (Tr. 135). *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*, where this Court determined 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 in this case are probative of whether Appellant acted in self-defense given Haywood and Kevonta's injuries and Appellant's general lack of serious injuries. 405 S.C. 247, 261, 746 S.E. 2d 495, 502 (Ct. App. 2013).

The photographs also corroborated the testimony of at least two witnesses. *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))). Minor testified that Appellant's gun malfunctioned and that Appellant returned to her room during the sexual assault with blood dripping from his gun, which is consistent with blunt force injuries shown in Haywood's photograph. (Tr. 91, 134-35). The photographs also assisted the jury in determining the nature and location of Haywood and Kevonta's injuries and to understand Dr. Riemer's testimony regarding the injuries and causes of death. (Tr. 134-35, 332-50).

The black-and-white copies admitted into evidence are less graphic than the color versions, as the trial court determined, while still serving corroborative and substantiative functions. *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.

II. The trial court properly denied Appellant's motion to sever the murder charges from the criminal sexual conduct and kidnapping charges because the factors for consolidation were met and trying all of the charges together was necessary to allow the jury an accurate portrayal of the case.

Appellate courts consider four factors when deciding whether a trial court properly decided to consolidate the trial of charges. *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996) ("Charges can be . . . tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced."); *see also State v. Simmons*, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) ("Where the offenses charged in separate indictments are of the same general

nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced.").

First, the murder charges and the CSC and kidnapping charges all arise out of a single chain of circumstances. The alleged inappropriate touching of Minor by Appellant directly led to the confrontation between Appellant and Kevonta, which resulted in Kevonta and Haywood's deaths and immediately proceeded Appellant sexually assaulting, and subsequently kidnapping, Minor (Tr. 84-95, 392-416). The events that led to these four charges all occurred in a short period of time and all occurred at the residence. (Tr. 84-95, 392-416). Therefore, the trial court properly determined that the four charges arose out of a single chain of circumstances.

Second, all four charges can be proven by the same evidence. Here, Minor provided testimony that could provide evidence for all four charges. Additionally, Appellant's gun was used as evidence in all four charges—as the murder weapon in the murder charges, mentioned as dripping with blood when Appellant returned to Minor s room during the sexual assault, and as a weapon to coerce Minor to accompany Appellant for the kidnapping charge. (Tr. 91, 94-95, 314-15, 319, 334, 350). The same DNA evidence was also used in all four charges. Catherine Leisy, the SLED DNA casework analyst, testified that DNA found on various items had a high probability of being Appellant's DNA. (Tr. 274-92). Some of these items included the towel in Minor 's bedroom, the trigger of Appellant's gun, broken coffee table legs, samples of Minor 's clothing, and swabs from Minor s vagina. (Tr. 271-92). Therefore, the trial court properly determined that the four charges can be proven by the same evidence.

Third, all four charges are of the same general nature. *See State v. Rice*, 368 S.C. 610, 614, 629 S.E.2d 393, 395 (Ct. App. 2006) ("Offenses are considered to be of the same general nature

where they are interconnected."); *State v. Grace*, 350 S.C. 19, 24, 564 S.E.2d 331, 333 (Ct. App. 2002) (holding that the defendant's charges were of the same general nature, and also interconnected, because the incidents involving the same parties, taking place in the same location, and occurring within a relatively short time period). Here, these four crimes are interrelated because they all concern events that happened at the same location (the residence) and occurred within a short period of time, with one event leading directly into the next. Further, each crime involved both Appellant, as the perpetrator, and Minor as either the victim (CSC and kidnapping) or the underlying cause for others' actions (Kevonta attempting to stand up for his sister, resulting in his and Haywood's deaths). Therefore, the trial court properly determined that these four charges are all of the same general nature.

Fourth, Appellant suffered no prejudice from the joinder of the four charges. The jury acquitted him of Haywood's murder. The jury also found him guilty not of Kevonta's murder but rather the lesser included offense of voluntary manslaughter. (Tr. 504-05). Further, without evidence of all four charges, the jury would not have received an accurate portrayal of the case. The evidence presented for the murder charges was necessary for a full presentation of the CSC and kidnapping charges, and vice versa, due to the interrelated nature of the facts in this case. *See United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980) ("One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context or the res gestae or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown

without proving the other . . . (and is thus) part of the res gestae of the crime charged. And where evidence is admissible to provide this full presentation of the offense, [t]here is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." (internal citations and quotations omitted)); *see also State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996) (quoting the same from *Masters*), *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). Therefore, the trial court properly determined that Appellant would suffer no prejudice by the joint trial of these four charges.

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CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for voluntary manslaughter, first-degree criminal sexual conduct, and kidnapping, as well as his associated sentences.

Respectfully submitted,

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