STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
The Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTONE B. ELLIS TREMAYNE BLAKELY,

APPELLANT.

Appellate Case No. 2023-000721

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

HON. DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, South Carolina 29648-0516
(864) 942-8800
ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

Antone B. Ellis Tremayne Blakely (hereinafter "Appellant") was indicted by a Laurens County grand jury for murder, possession of a weapon during the commission of a violent crime, armed robbery, kidnapping, and criminal conspiracy. (2022-GS-30-1416, 1418, 1419, 1420, 1421). Solicitor David Stumbo and Assistant Solicitor Josh Thomas represented the State. Attorney Matt Ozment, Esq. represented Appellant. Appellant proceeded to a jury trial before the Honorable Donald B. Hocker from April 18th to 21st, 2023, after which he was found guilty on all charges, except for armed robbery. Therein, the jury found Appellant guilty of the lesser included offense of assault and battery by mob third degree.[1] (R. p. 609-610).

Appellant was sentenced by Judge Hocker to 40 years' imprisonment for murder, 25 concurrent years for kidnapping, 5-year concurrent sentences for the conspiracy and possession charges, and time served for the assault and battery by mob third degree. (R. p. 616).

STATEMENT OF FACTS

On the evening of January 22, 2021, while lying in bed at his apartment on Spring Street, Victim was assaulted, held at gun point, and then physically beaten for having served as a confidential informant against Marcus Grant. (R. p. 67-69). The initial assault and the actions of multiple accomplices afterward demonstrated a conspiracy to gain revenge against Victim that ultimately led to his murder by gunshot.

Victim was able to get out of the apartment after the beating wherein he called his uncle, Mr. David Little, to tell him of the attack. During the call, Victim told his uncle that he had just been "jumped" and named the individuals responsible. According to Mr. Little, Victim named

[1] Appellant was originally indicted for armed robbery. However, the lesser included offenses went forward following a directed verdict on the charge of armed robbery. (R. p. 452-54).

Appellant (aka "Cheeze") Marcus Grant, Grant's son[2], and an additional unnamed assailant. His uncle immediately drove to Victim's apartment and tried to convince Victim to leave with him. Victim refused, insisting "I ain't no punk," and that he would not run from his assailants who had chosen to remain in Victim's apartment. (T. p. 70). At Victim's request, Mr. Little provided Victim with a .22 caliber revolver as protection. (R. p. 70-71).

Mr. Little left the apartments, and within minutes he saw a SLED vehicle fly through a redlight in the direction of the apartments he had just left. He turned around and drove back to check on Victim, but when he arrived, he found Victim lying in the roadway with gunshot wounds. Victim was being tended to by an officer but was not verbally responsive, and the .22 caliber revolver was gone.[3] (R. p. 73-74). Victim went into cardiac arrest in route to the hospital and ultimately died from his wounds. (R. p. 236).

Mr. Little's testimony was corroborated by Victim's girlfriend, Jaquetrice Putman. She spoke with Shykorie Grant at Victim's apartment a few days after the crime. There, Shykorie informed her that he had grabbed Victim's machete to prevent Victim from using it to fight back against them during the assault. He further informed her that Marcus Grant was one of the assailants. (R. p. 172; 176-178).

Mark Brown's testimony further confirmed the details of the initial assault, set forth the manner in which the subsequent shooting took place, and established Appellant's involvement in the shooting. Mr. Brown testified that he was at home on Spring Street on January 22, 2021. He

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[2] Mr. Little was undoubtedly referring to Shykorie Grant who is considerably younger than Marcus and has the same last name, but according to Marcus Grant, he is not related to him by family.

[3] Mr. Little testified that it did not appear Victim was looking to start a gunfight with his assailants, since he chose not to take Mr. Little's much larger and advantageous firearm, an AK-47 rifle. Mr. Little even commented that Victim laughed at the thought of taking such a gun before opting for the .22 caliber revolver. (R. p. 85).

witnessed who all had gone into Victim's apartment that evening and testified that Shykorie came and spoke with him briefly after the initial assault. Therein, Skykorie told Mr. Brown that he had helped "Cheeze" and Marcus Grant jump Victim. He then identified "Cheeze" as Appellant and identified him in court. (R. p. 179-181).

Mr. Brown watched from his porch in the moments just before the shooting. Out of fear for Victim's safety he yelled at Victim not to go back into the apartment, but Victim did not respond. Mr. Brown could see Appellant through the broken blinds of the home and as Victim began to enter the home gunshots from inside the home were fired. Mr. Brown testified that Victim was shot at in the doorway to his home, causing him to flee.[4] (R. p. 182-183). Mr. Brown then testified that he watched the continued shooting take place from his front door. Mr. Brown testified that the subsequent shooting took place in the street. However, he did not name Appellant as one of the individuals who continued the shooting while in the street. He identified those assailants to be "D Rose" and "Quay". (R. p. 193-196).

Law enforcement's investigation established that the crime scene was essentially two places: Victim's apartment, and the porch and roadway outside the apartment. Investigation of Victim's apartment demonstrated that gunshots were directed toward the doorway, not inward. (R. p. 315-316). The second and primary portion of the crime scene was the apartment's porch and area extending toward the roadway, wherein 29 shell casings were recovered. These consisted primarily of 9mm casings, as well as some .40 caliber Smith and Wesson casings. (R. 108). Projectiles were also recovered from the scene. (R. p. 116). The crime scene indicated that bullet strikes were all directed toward Spring Street.

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[4] Victim's roommate, Shemia Workman, was not far behind Victim at the time that he was attempting to enter the home. She fled when the gunfire began as well. (R. p. 183; 194).

Witness Kelly Porter testified that she heard the gunfire and the sirens. Thereafter, she saw one person standing in the back alley of the apartment complex and then another when she peered out of her front door. (R. p. 153-154). It was at that time that she saw a man discarding some firearms. (R. p. 154). She described one of the suspects as wearing a dark hoodie and having a tattoo on the front of his neck.[5] (R. p. 155-156). After meeting with Ms. Porter, Detective Gallow located the two firearms she described being abandoned near the scene: a Taurus 9mm and a Glock model .40 caliber Smith and Wesson. (R. p. 158-159; 123; 132). DNA analysis was conducted on swabs taken from the Taurus 9mm, and a likelihood ratio was produced as to the contributors to the DNA profile that was discovered. Expert witness Mary Ann Boehm testified that it was 11 septillion times more likely that Appellant and an unrelated unidentified individual contributed to the DNA profile, as opposed to two unidentified contributors. (R. p. 271-279).

Detective Sellers also testified to the various efforts of the investigation and the evidence that resulted. A Facebook video post by Appellant showed him holding a Taurus 9mm firearm (R. p. 370), and a separate Facebook post expressed a displeasure with the city promoting "snitches." (R. p. 375; 369-376). Detective Sellers also testified that recovered surveillance footage showed two individuals walking down and cutting behind the apartments; one of those individuals was wearing dark color pants, white tennis shoes, and a hooded sweatshirt (the color of the hooded sweatshirt was distorted by the nature of the camera). (R. p. 348). Surveillance footage also captured the silhouette of someone standing over Victim as he laid in the roadway and the video showed two muzzle flashes being discharged. Detective Sellers testified on cross examination that the investigation suggested Deandre Hakeem Lee was the shooter at this point in the conspiracy. (R. p. 329-330; 388-389). The investigation learned that some of the suspects of the crime had

[5] The record demonstrates that Appellant does have tattoos on his neck. (R. p. 483).

gone to a club in Mauldin later that night, where Marcus Grant was the announced VIP. Surveillance footage captured the group visiting a gas station on the way to the club. The footage showed a figure wearing a blue hooded sweatshirt, dark jeans, and white tennis shoes. This attire was consistent with the other surveillance footage, Ms. Porter's description of one of the assailants who discarded weapons near the crime scene, and Jenniqua West, who testified that Appellant was wearing a blue hooded sweatshirt (also referred to in the record as a hoodie). (R. p. 283; 202; 332; 349; 352; 487).

As part of presenting prior inconsistent statements, Detective Sellers testified that Ms. West informed law enforcement that she *had* seen Appellant inside the home when the shooting took place, that she *had* heard shots coming from inside the apartment, and that Appellant *had* been standing on Victim's porch smiling in regard to the initial assault on Victim. (R. p. 353-354). He similarly refuted the in-court testimony of Shameia Workman by noting her statement to law enforcement indicated that both Victim and Appellant had guns and that Victim had informed her that "Cheeze" and an "old associate" had committed the earlier assault.[6] (R. p. 531-532).

Victim ultimately sustained multiple gunshot wounds from the attack. The first entered the right lower chest and traveled to the left side of the abdomen. (R. p. 218-219). The second entered at the left buttock and traveled through the pelvis and abdominal cavity. These two wounds were both potentially fatal. Victim also sustained a gunshot wound to his toe and a graze wound to his right leg. (R. p. 220-224). Detective Sellers took photographs of Victim's gunshot wounds during the autopsy; three of which were admitted at trial.

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[6] Detective Sellers testified that several witnesses expressed considerable fear of being named in documents as cooperating in the investigation against Appellant. So much so that it required him to utilize code names for witnesses. (R. p. 353).

Appellant's case-in-chief relied upon the testimony of Marcus Grant and Shameia Workman. Mr. Grant testified that he committed the earlier assault on Victim in his apartment, but that he did so alone. (R. p. 455-467). He claimed to be away from the scene entirely at the time the shooting took place, and that he had no intention or plan to further attack or harm Victim. (R. p. 470-471). Ms. Workman testified that although she could not identify who shot first, Victim was the initial aggressor in pulling out a gun in front of Appellant. (R. p. 503-510). Much of her testimony was refuted by prior inconsistent statements during the State's Rebuttal.

STANDARD OF REVIEW

"The admission of evidence is left to the trial court's sound discretion, and its decision will not be reversed absent an abuse of discretion." *State v. Heath*, 433 S.C. 506, 513, 860 S.E.2d 673, 676 (Ct. App. 2021). "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). "In exercising its discretion on a Rule 403 objection to the admissibility of autopsy photographs, the trial court 'must balance the unfair prejudice of graphic photos against their probative value.'" *Id.* "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice." *Id.* "Prejudice occurs when there is a reasonable probability the wrongly admitted evidence influenced the jury's verdict." *Id.* Additionally, any abuse of discretion related thereto is subject to a harmless error analysis. *State v. Geter*, 434 S.C. 557, 563, 864 S.E.2d 569, 572 (Ct. App. 2021). "Such error is deemed harmless when it could not have reasonably affected the result of trial, and an appellate court will not set aside a conviction for such insubstantial errors." *State v. Brewer*, 411 S.C. 401,

408–09, 768 S.E.2d 656, 660 (2015) (quoting *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011)).

ARGUMENT

I. David Little's hearsay testimony was properly admitted as an excited utterance.

Issue as it was presented at trial

The State offered the testimony of Victim's uncle, Mr. David Little, who spoke with Victim on the phone immediately after Victim had been assaulted in his apartment. Appellant raised objection to Mr. Little's testimony as to what Victim said took place during the assault on the grounds of hearsay. The State argued that such testimony would constitute an excited utterance under Rule 803(2) and should be admissible. (R. p. 49-51)

The trial court excused the jury, heard the arguments of counsel on the issue, and allowed the attorneys to proffer testimony from Mr. Little. (R. p. 51-65). The court, in an effort to determine whether the elements for excited utterance were satisfied, conducted its own questioning of Mr. Little to ensure it properly understood his testimony. In so doing, the record demonstrates that Victim called Mr. Little practically immediately following the assault once he had managed to leave the apartment. Mr. Little's testimony demonstrated that he could hear from the sound of Victim's voice that he was scared, upset, and hurting from the assault that had just taken place. (R. p. 59-62). The record further demonstrates that making his uncle aware of the assault, naming who was responsible, and asking for help were Victim's only purposes of the phone call. After doing so, the trial court was convinced that the statements qualified as an excited utterance exception and permitted Mr. Little to testify as intended.

Discussion

The trial court properly admitted the hearsay testimony of witness David Little as an excited utterance exception, pursuant to Rule 803(2), SCRE. The trial court correctly applied the three elements necessary to evaluate a statement as an excited utterance, considered the totality of the circumstances, ruled the testimony admissible, and the record supports the court's ruling.

"The rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication. In determining whether a statement falls within the excited utterance exception, a court must consider the totality of the circumstances. Additionally, such a determination is left to the sound discretion of the trial court." *State v. Sims*, 348 S.C. 16, 20–21, 558 S.E.2d 518, 521 (2002) (internal citations omitted). In evaluating whether a hearsay qualifies as an excited utterance, three elements must be satisfied. "First, the statement must relate to the startling event or condition. Second, the statement must have been made while the declarant was under the stress of excitement. Third, the stress of excitement must be caused by the startling event or condition." *Id.* (citing Rule 803(2), SCRE). Additionally, a number of factors can be weighed in considering whether the statement was made "under the stress of excitement." *Id.*

At trial, Appellant raised objection at the outset of Mr. Little's hearsay testimony. Questioning for purposes of establishing the elements began, and ultimately the trial court had Mr. Little proffer the testimony he would give as it related to the elements of the excited utterance exception. The first and third elements were met with little to no dispute. Victim had just received a beating from four men. He was upset, scared, and in pain as a result of that event, and he was calling Mr. Little to tell him of the attack. The startling event for Victim was being "jumped" or

otherwise beaten by these men and the stress and excitement experienced by Victim was a result thereof. (R. p. 51-52).

Contrary to Appellant's arguments, the second element was also well satisfied. Mr. Little's testimony demonstrated that the assault on Victim had just occurred prior to Victim's phone call. The record therefore establishes an extremely short timeframe between the exciting event and the statement made under the stress of that event. At the questioning of the trial court, the record further supports the second element by demonstrating that Mr. Little was able to hear Victim and described his demeanor as "very upset", "hurting," and "very frightened" by what had just happened. (R. p. 52, lines 9-17).

As arguments continued, the trial court appropriately excused the jury in order to conduct a more thorough proffer of Mr. Little's testimony. Thereafter, Mr. Little testified that he could hear it in Victim's voice that he was scared and upset. He further noted that there was no hesitancy in Victim revealing what had just occurred. (R. p. 57; 52). The trial court then took a brief recess to review the law. When he returned, he asked further questions of Mr. Little to clarify his testimony. That clarification demonstrated that 1) Victim called Mr. Little; 2) Victim told Mr. Little that he had been jumped and that it had *just happened*; 3) Victim's demeanor was one of being "scared because where he was living he couldn't go back in there because of the guys was still there;" 4) based upon the tone of his voice and speech he appeared to be under the stress of the excitement of that particular event; 5) the sole reason for his phone call was because of the attack he had just experienced; 6) there was nothing to indicate that he was making up what had really happened – "You could hear it is his voice that, you know, something had just really happened to him."; 7) Victim reported Marcus Grant, Cheeze (Appellant), and "Marc Grant's son", and a fourth person he did not name as the culprits; and 8) Victim divulged how the assault took place. (R. p. 59-62).

In light of the totality of circumstances, and in reliance upon *State v. Ladner*, 373 S.C. 103, 644 S.E.2d 684 (2007) and *State v. Whisonant*, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999), the trial court found that the statement by Victim satisfied each of the three elements for admission as an excited utterance exception. Here, the trial court analyzed the matter precisely as the law instructs and its ruling was proper.

Despite the thorough examination of Mr. Little in satisfying the elements of excited utterance, Appellant contests the second element and asserts that Victim could not have been under the excitement of the assault because he "had the mental wherewithal to form a plan of action." Appellant relies upon a misconception of what "reflective thought" means under the rule. Appellant appears to argue that if the victim of an attack, speaks of the attack immediately after and manages to maintain even the most basic levels of competency regarding his safety and need for help, that such is disqualifying "reflective thought" under the rule. (Brief of Appellant, p. 8-9). Appellant does not cite any authority for such a strained interpretation of the exception, and the suggested application of the rule would run contrary to countless cases decided by our courts and would practically eliminate the exception entirely. (See generally *State v. Burdette*, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999) (statement made by victims to the responding police immediately after an attack qualified as excited utterance); *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991) (statement to police was admissible under res gestae exception when officer proceeded directly to the scene of the attack upon its reporting); *State v. LaCoste*, 347 S.C. 153, 162, 553 S.E.2d 464, 469 (Ct. App. 2001) (bystander who witnessed the crime had the wherewithal and competence to approach officer to report it, despite being upset); *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007) (toddler had the wherewithal to tell her caretakers that her "tooch" hurt and that defendant did it). A suspension of the declarant's process of reflective thought is not the equivalent

of mental hysteria. An out-of-court declarant's recognition of a need for safety is not a disqualifying factor for the excited utterance exception. The rule simply guards against out-of-court speakers who have had a chance to gather themselves and reflect upon the events that had previously excited them, so as to negate the trustworthiness of their spontaneity. Moreover, specific to this case, the testimony of Mr. Little demonstrates that not only had Victim just survived the initial beating, but he remained under the threat of further harm because his assailants were still in his home. Arguably, indeed certainly, the circumstances of the attack demonstrate that Victim was not just reacting to an event that had just ended, he was reacting to an assault and a threat that still existed. This soundly satisfies the excited utterance standard and would invoke the exception of present sense impression as an additional sustaining ground under Rule 803(1).

The record here shows that Victim's call was made just after having been beaten up. The record supports the admission of the evidence and the trial court was well within its discretion to admit the statements.

In the alternative to the above argument, if this Court were to find error on the part of the trial court, such error would be harmless in light of the record. Mr. Little was the first to report Appellant's participation in the initial assault, but multiple other witnesses provided the same essential testimony. In most cases, such information came from either directly witnessing the individuals enter Victim's home or being told about the assault by Shykorie after the fact. Mr. Little's hearsay testimony would be rendered largely cumulative. *State v. Brewer*, 411 S.C. 401, 408–09, 768 S.E.2d 656, 660 (2015) (noting that improperly admitted hearsay may be harmless when merely cumulative to other evidence).

II. The trial court was within its discretion to admit the limited number of black and white autopsy photos, as they were admitted for the purpose of contradicting the anticipated self-defense argument, were corroborative and explanatory to the testimony offered by the forensic pathologist, and were inherently lacking in prejudice given their minimal graphic nature.

Issue as it was presented at trial

Detective Billy Sellers took photographs of Victim's wounds while at the hospital after the incident and while present at Victim's autopsy. Detective Sellers confirmed that the photographs taken accurately reflected the injuries testified to by forensic pathologist and the condition of the body following the crime. Initially, the State sought to enter seven different colored photographs. (State's Exhibits 122, and 129-134). (R. p. 292-293; 294). Objection was raised by the defense as to prejudicial effect and to the cumulative nature of the evidence. The trial court then reviewed the photos in question, and shortly thereafter excused the jury so as to hear the extended arguments of counsel. (R. p. 293-294).

Exhibit 122 was admitted and is not the subject of this appeal. The trial court reviewed the six remaining photographs and noted that they "basically just show the entrance wounds of the, I think it is three shots; side, butt and toe. . ." The court then commented that there was a lot of blood on his body, and asked if the pictures show any other injuries other than three entry wounds. (R. p. 294). The trial court distinguished between photos of injuries that relate to the assault and battery by mob charge as having sufficient probative value but initially expressed concern that there was not much probative value to providing photographs of the entrance wounds. (R. p. 295).

The State argued collectively that the photos were relevant for satisfying their burden to prove the elements of the crime, were further explanatory of Dr. Duke's prior testimony[7], and most

[7] Normally the State would offer such photographs during the testimony of the forensic pathologist. However, the State noted that these were being introduced through Detective Sellers because there

importantly that the location of the gunshot wounds would go to contest the defense's anticipated self-defense argument. To wit, wounds received to the side and back are relevant and probative for purposes of countering Appellant's self-defense claim of being threatened by Victim, as the photographs help demonstrate Victim was running away and corroborate the testimony from Mr. Brown who described as much. (R. p. 293; 295; 183). The State also noted at trial that one of the photographs is of an injury to Victim's toe and is entirely without prejudice. (R. p. 296).

Given the objection and the court's concerns, the State was willing to reduce its requested number of photographs to 130 (which the State argued as not being bloody and graphic), 132 (wherein the blood "ha[d] been cleaned up a little bit), 133, (a closer up photo of the wound), and 134. That concession was reduced even further to just exhibits 130, 132, and 134. The State also offered the concession of rendering the photos to black and white copies to further reduce any concern over the alleged gruesome nature of the photos. (R. p. 295-296; 300).

The trial court agreed with the State's offer to render the photos in black and white, so that they could be reevaluated, and agreed that the entrance wound photos would have probative value if there was to later be a self-defense argument from the defendant. Defense counsel confirmed that there would be a self-defense argument raised during the trial, but argued that the photos would not be in contrast to a self-defense theory. (R. p. 297-298). Once the photos were rendered in black and white, defense counsel admitted that there was improvement but maintained the objection of significant prejudicial effect.

In final review, the trial court agreed that the black and white versions were less gruesome, and that there was "enough probative value to outweigh any sort of prejudicial effect." That fact,

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was some hesitancy from Dr. Dukes in testifying to photos she had not taken, and for photos where Victim's face could not be seen. (R. p. 286-297).

coupled with the fact that the State had voluntarily limited its request to three photographs, was sufficient to render the offered evidence admissible. (R. p. 302).

Discussion

The trial court appropriately exercised its discretion in admitting the three autopsy photographs offered by the State. Specifically, the trial court's handling of the objection led to an offer of three total photographs instead of the remaining six, and black and white versions of the photographs were created so as to provide the State with the desired purpose of disproving self-defense while also reducing the already minimal level of gore depicted in the photographs. The trial court was entirely within its discretion to find the photos admissible under Rule 403, SCRE.

Rule 403 sets forth that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. . .". Rule 403, SCRE. "In exercising its discretion on a Rule 403 objection to the admissibility of autopsy photographs, the trial court 'must balance the unfair prejudice of graphic photos against their probative value.'" *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (citing *State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013). "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. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010). "A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances." *Id.*

Our Supreme Court has recently weighed in on the inherent tendency of autopsy photographs to cause an emotional reaction on the part of the jury. See *State v. Heyward*, 441 S.C. 484, 501, 895 S.E.2d 658, 667 (2023); *State v. Nelson*, 440 S.C. 413, 891 S.E.2d 508, 511-13 (2023). However, it is important to remember that this "inherent tendency" is not a certainty, and

the risk of emotional reactions by the jury will vary considerably given the actual photographs in question. Unlike previous cases that, depending on the evidentiary necessity, involved far more graphic matters, the injuries depicted in State's Exhibit 130A, 132A, and 134A are fairly benign gunshot wounds that involve very little injured flesh and very little depiction of blood given their black and white renderings. Respondent would therefore argue, as threshold matter, that these pictures simply do not qualify as photos "calculated to arouse the sympathy or prejudice of the jury." As a second threshold argument, these photos are for the most part not traditional autopsy photographs that depict medical procedures being performed on Victim's body.[8] Importantly, they depict Victim's injuries as they were inflicted, and though fatal, the injuries themselves are visually unimpactful. See *State v. Gray*, 408 S.C. 601, 609, 759 S.E.2d 160, 164 (Ct. App. 2014) (in affirming the admission of autopsy photographs the Court of Appeals noted that a number of the photos were taken prior to the autopsy even beginning and that "it was important for the jury to see the nature and location of these injuries in order to understand the witnesses' testimony about the fights and the pathologists' testimony about the injuries.").

The State's case against Appellant presented a similarly important basis for the evidence in visually depicting the location of Victim's injuries. It was important that the state corroborate the medical testimony of the forensic pathologist and demonstrate to the jury with photographic evidence where precisely the Victim's injuries were sustained. The location of Victim's gunshot wounds was relevant and highly probative evidence that contradicted Appellant's assertion of self-

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[8] State's Exhibit 130A appears to include some sort of medical tool in the bottom of the photograph. Due in large part to the black and white renderings, it is nearly impossible to tell what that portion of the photograph depicts. The injury in question appears to be in its original state and the body is largely unaltered. This inherently reduces the gruesomeness that can be ascribed to the photo. Defense counsel commented on this briefly, and attempted to argue that he still found this photo disturbing, *but absent a prior viewing of the color photograph*, Respondent argues that this portion of the photo cannot distinguish between alleged gore and deep shadows. (R. p. 301).

defense. While some jurors may be able to decipher the medical jargon and visualize how a bullet struck the Victim, providing a simple photograph of the wound – which in this case shows that he was struck directly in the buttocks and in the side – bolsters the State's argument to the jury that Victim was running away from danger, not presenting a danger to others. Unlike *State v. Nelson* where only the identity of the shooter was left in dispute (440 S.C. at 417, 891 S.E.2d at 510), the question of Victim's supposed actions as the aggressor and Appellant's actions in self-defense were strenuously contested issues between the parties. The issue of self-defense was the crux of the Appellant's trial strategy. See *State v. Heyward*, 441 S.C. 484, 502, 895 S.E.2d 658, 668 (2023) (noting that defendant not conceding any critical issues at trial rendered the autopsy photos highly probative for purposes of the corroboration of the forensic pathologist's testimony). The State had every right to present relevant evidence that would contest Appellant's version of events, and the State should not be prevented from presenting its best case out of over-precaution for juror sensitivity.

Also, beyond the nature of the photographs and their intended purpose, the exercise of discretion and the weighing of the competing arguments for probative value and prejudice was clearly taken with care by the trial court. This is evident from the length of discussion that was held outside the presence of the jury and the various concessions that the State made for the court in its consideration of Rule 403. Contrary to Appellant's arguments that discount the importance of such concessions, the State's willingness to limit the number of photographs offered and to substitute black and white versions of the exhibits all factor heavily into the weighing of probative value and prejudice. As argued above, the black and white photographs depict so little gore that Respondent would argue that they fail to even trigger the concerns warned of by our Supreme Court.

The trial court fairly weighed the probative value in contrast to the potential prejudice and found that "there [was] enough probative value to outweigh any sort of prejudicial effect."[9] (R. p. 302). Here, the trial court rightly concluded that the probative value outweighs the risk of unfair prejudice, and properly admitted the photos under Rule 403.

In the alternative to the above argument, if this Court were to find error in the admission of the autopsy photographs, such would constitute only harmless error. In light of the evidence presented at trial, the autopsy photos could not be said to have reasonably affected the result of the trial.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgments, convictions, and sentences of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

HON. DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, South Carolina 29648-0516

[9] A fair reading of the trial court's conclusion would suggest that it was more beneficial to Appellant than the law requires. With relevant evidence, the risk of unfair prejudice must prove to *substantially* outweigh the probative value, not prove that the probative value outweighs the risk of unfair prejudice.

(864) 942-8800

BY: *s/ W. Joseph Maye*
W. Joseph Maye
S.C. Bar No. 100851

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 9, 2024

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
The Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTONE B. ELLIS TREMAYNE BLAKELY,

APPELLANT.

Appellate Case No. 2023-000721

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Wanda H. Carter, Esq., via email today, December 9, 2024 to wcarter@sccid.sc.gov., and to her assistant at sleverett@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 9th day of December, 2024.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
W. Joseph Maye,
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305