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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Colleton County
The Honorable Clifton Newman, Circuit Court Judge
Appellant Case No. 2023-001446

THE STATE, RESPONDENT

v.

RITA M. PANGALANGAN, APPELLANT

INITIAL BRIEF OF RESPONDENT

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5. Would any error that might have occurred change the outcome of the trial? And since none of the possible errors raised by the Appellant would have changed the outcome of the trial, can any error be considered harmless?

STATEMENT OF THE CASE

Rita M. Pangalangan (Appellant) along with her co-defendant Larry King (co-defendant) were arrested on August 5, 2019, charged with the offenses of murder, great bodily injury to a child and criminal conspiracy. On August 6, 2020, a Colleton County Grand Jury indicted the Appellant for murder, and great bodily injury to a child. (*R). The Appellant was later indicted on October 6, 2022, for the offense of criminal conspiracy. The co-defendant was indicted for these identical offenses.

On August 28, 2023, Appellant appeared before the Honorable Clifton Newman to stand trial for the above referenced offenses. Appellant was tried simultaneously along with her co-defendant. Appearing on behalf of the Appellant was her trial counsel Dayne Phillips, representing the co-defendant was his counsel Jon Loy and Gil Gatch. Representing the State of South Carolina was Solicitor, I. McDuffie Stone, and Assistant Solicitor, Sean Thornton, of the Fourteenth Circuit Solicitor's Office.

After five days of testimony a jury of their peers found both defendants guilty of murder and great bodily injury to a child, but not guilty of criminal conspiracy. (T. p. 762 l. 21 – p. 763 l. 7). After the reciting of the verdict the Appellant appeared before the trial judge for sentencing. The trial court sentenced the Appellant to a thirty-seven-year period of incarceration for the offense of murder; and twenty years for great bodily injury to a child. The trial court ordered that these sentences were to be served concurrently. (T. p. 809 l. 7-12).

While serving her sentence the Appellant filed a timely notice of appeal before the South Carolina Court of Appeals. The initial brief of the Respondent follows.

STATEMENT OF THE FACTS

On August 5, 2019, at 11:16 am, Appellant, along with her co-defendant, placed the Appellant's thirteen-year-old daughter Christina (victim) into the Appellant's vehicle during a hot August South Carolina summer. The victim suffered from cerebral palsy, so she could not walk nor talk. (T. p. 329 l. 10-15). Victim also wore a diaper and could only "gaggle like a baby." (T. p. 317 l. 7-12; p. 316 l. 7-14). The victim also did not have the use of her hands so she was unable to open doors. (T. p. 332 l. 1-3). At the time of the incident Appellant and her co-defendant were in a relationship. (T. p. 559 l. 20-25). The Appellant and her daughter spent the night at the co-defendant's home. (T. p. 563 l. 23-25). After they placed the victim inside the Appellant's vehicle they closed the door with the windows up in the hot August South Carolina heat. While the victim was in the car Appellant and her co-defendant were having a conversation regarding the fact she was with another man. (T. p. 564 l. 18-19).

During the trial. the co-defendant testified and admitted that they used methamphetamine and that they were up all night due to this drug use. (T. p. 564 l. 2-7). During the trial the co-defendant testified that the car was running with the air conditioning on when they placed the child in the car. (T. p. 567 l. 7-10). The surveillance video from the co-defendant's home was placed into evidence. (State Exhibit #40). This video revealed that when the victim was placed inside the vehicle at 11:16am. (R*).

After placing the victim inside the vehicle Appellant and her co-defendant went inside the house. They stayed inside from 11:43am until they came out at 1:45pm. (R*). At that time the Appellant and the co-defendant were still talking as the victim sat in an extremely hot car. At 2:03pm Appellant and co-defendant went back into the house. (R*). They came back out at 3:00pm and that is when the Appellant realized she locked her keys inside the vehicle. (R*). At 3:52pm

they left the co-defendant's house to go to the Appellant's house to get the spare key. (R*). They did not return until 4:42pm (R*). At that time, they still could not get the car door open. The co-defendant called locksmith Robert Arabis for him to come get the car door open or give any directions in getting the door open. (T. p. 575 l. 14-20). Mr. Arabis explained to the co-defendant that there was a key in the fob that he could use to get the door open. (T. p. 576 l. 20 – p. 577 l. 1). The co-defendant finally got the door open at 4:58pm. (R*). At that time, they realized that the victim had been in the hot car for over five hours, so the co-defendant dialed 911. (T. p. 577 l. 7-13).

During trial, South Carolina Law Enforcement Division (SLED) agent Halley Godley testified. As one of the first people to respond, she saw the victim lying on the ground. The co-defendant was walking around while the Appellant was inside the residence. (T. p. 273 l. 6-9; p. 288 l. 11-13). Paramedic Charles Jones also arrived at the scene. Mr. Jones testified that when he arrived he found the victim lying on the ground beside the vehicle and appeared not to be breathing. (T. p. 293 l. 7-10). Mr. Jones attached a cardiac monitor to the victim. The monitor revealed no registered heartbeat, so he declared the victim deceased. (T. p. 293 l. 19-21; p. 294 l. 12-15).

After the Appellant's arrest, her blood was drawn to test for drugs. (T. p. 336 l. 24 – p. 337 l. 4). The blood was delivered to SLED for testing. The results were that no ethanol was found, (T. p. 360 l. 9-11), however, the blood did test positive for methamphetamine and amphetamine. (T. p. 364 l. 5-6).

During the trial, Dr. Andrew Grundstein also testified. Dr. Grundstein was found qualified as an expert in the field of climatology, specifically on the effect that heat has on people. (T. p. 391 l. 13-16). Dr. Grundstein testified that he did a re-creation of the car temperature. With the re-creation the temperature was hotter than the incident date however it was less humid. (T. p. 403 l.

13-14). His re-creation had the car temperature being at 118º but with the heat index, his determination was that the car inside temperature was actually 135º. (T. p. 407 l. 4-7).

During trial, Forensic Pathologist Dr. Nicolas Batalis testified. Dr. Batalis was found qualified as an expert in the field of forensic pathology. (T. p. 497 l. 15-23). Dr. Batalis performed an autopsy on the victim on August 7, 2019. (T. p. 498 l. 3). Dr. Batalis found the victim to be a thirteen-year-old female who was found unresponsive after being placed in a vehicle for several hours during very high temperatures. (T. p. 498 l. 10-14). The victim's body temperature was measured at 109.9º which is the maximum amount the thermometer could read. (T. p. 498 l. 18-22). Dr. Batalis testified that the body shuts down at temperatures around 105º to 106º. The victim's body was at 109º to 110º which would indicate that there is evidence of hyperthermia. (T. p. 499 l. 7-12). Dr. Batalis testified that if the brain gets out of its normal temperature, it is not able to function, and it is going to drive the other organs in the body to fail. (T. p. 500 l. 10-17). Dr. Batalis determined that the cause of death was hyperthermia due to neglect, the manner of death was homicide. (T. p. 502 l. 18-20).

During the trial the co-defendant testified that the car was on along with the air conditioning; however, as a rebuttal, witness Capitan Jason Chapman of the Colleton County Sheriff's Office testified. Capitan Chapman testified that when he responded to the crime scene he looked inside the vehicle. He stated that the car was running, and the air conditioning was turned on blowing cold air, but inside the car was still hot. (T. p. 658 l. 24 – 659 l. 5).

ARGUMENTS

1. **The trial court did not err in allowing a previous statement made by the Appellant to two witnesses into evidence due to the fact it was *Res Gestae,* lawful pursuant to Rule 404(b) of the South Carolina Rules of Evidence.**

Relevant Facts

During the trial two individuals, Brittany Honeycutt and Lindsey Lewis, testified over the Appellant's objection. Ms. Honeycutt testified that she and her two kids moved in with the Appellant and stayed with her from May of 2019, until August of, 2019. (T. p. 328 l. 20-21). During this time Ms. Honeycutt would watch the victim. One time she was asked by the Appellant to watch the victim; Ms. Honeycutt told the Appellant no because she had to work. Appellant kept asking and as Ms. Honeycutt kept responding "no," Appellant stated, "just leave her in the car with the windows down because I do it all the time." (T. p. 332 l. 25 – p. 333 l. 7).

Ms. Lewis testified that she was once the Appellant's child development teacher. (T. p. 313 l. 10-11). She was supposed to watch the victim, so she went to Appellant's house on August 2, 2019, three days before the incident date. Ms. Lewis went to the Appellant's house to get the child's routine. (T. p. 313 l. 14-22). Ms. Lewis testified that after they went over the routine the Appellant asked her if she could watch the victim for a while so she could go on a date with the co-defendant. (T. p. 318 l. 2-5). Ms. Lewis testified that Appellant left the victim with her on Friday and she did not see the Appellant again until Sunday afternoon. (T. p. 319 l. 2-16). Ms. Lewis testified that the only time she ever heard from the Appellant was a text around 9:30pm-10:00pm to check on the victim. Appellant told her that she would come back Saturday morning, but Appellant never came. (T. p. 319 l. 20-25). Ms. Lewis also testified that there was no food in the house, only Ensure drinks and Kool-Aid. (T. p. 320 l. 1-5).

Prior to trial Appellant's trial counsel made a motion in limine to not allow the testimony of both Ms. Honeycutt and Ms. Lewis to be presented before the jury. Appellant argued that this testimony is prior bad act evidence which is inadmissible propensity evidence. (T. p. 187 l. 1-8). The State argued that his evidence should be allowed pursuant to *res gestae.* (T. p. 188 l. 1-6). The court allowed the testimony into evidence pursuant to *res gestae.*

Standard of Review

In criminal cases the Appellant court sits to review errors of law only. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An Appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* The admission or exclusion of evidence is a matter within the trial court's sound discretion. *State v. Dennis,* 401 S.C. 627, 635, 742 S.E.2d 21,25 (Ct. App. 2013). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. *State v. Preslar,* 364 S.C. 466, 472-73, 613 S.E.2d 381, 384 (Ct. App. 2005). 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. Pegan,* 369 S.C. 210, 208, 631 S.E.2d 262, 265 (2006). Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy. *State v. Wiles,* 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. *State v. McGee,* 408 S.C. 278, 287, 758 S.E.2d 730, 735 (Ct. App. 2014).

Discussion

The State argued that under *res gestae* theory, the evidence was admissible. Rule 404(b) of the South Carolina Rules of Evidence adopted the criteria the South Carolina Supreme Court

determined for the admission of a prior bad act in the decision of *State v. Lyle,* 125 S.C. 406, 118 S.E. 803 (1923). Rule 404(b) of the South Carolina Rules of Evidence State:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake of accident or intent.

Rule 404(b), SCRE.

Appellant argues that the court erred in allowing this prior bad act evidence before the jury because this information was prejudicial. This evidence was relevant due to the fact it occurred right before the actual incident. The incident with Ms. Honeycutt occurred in July (T. p. 330 l. 25 – p. 331 l. 1), the one with Ms. Lewis occurred four days before the incident. (T. p. 313 l. 14-22). These bad acts reveal two things that allow a bad act into evidence pursuant to Rule 404(b). It shows a common scheme and also an absence of a mistake of accident. It is obvious that there was neglect of the victim on the part of the Appellant. She left a handicapped child with a person who was not used to taking care of her for three days with no food and only contacted her once in the three-day period. Appellant also admitted to placing the child alone in the car with the windows rolled down and stated the fact she does it "all the time." This definitely reveals a patten of neglect. This constant neglect resulted in a total disregard of the life of the victim when she was left in a car during a South Carolina summer with the windows up for over a five-hour period. The temporal proximity of the prior bad act should be closely related to the charged crime. *State v. Owens,* 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by, State v. Gentry,* 363 S.C. 93, 610 S.E.2d 494 (2005).

In *State v. Adams,* the South Carolina Supreme Court quoted the Fourth Circuit United States Court of Appeals decision of *United States v. Masters* in which the Fourth Circuit wrote:

> 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 the explanatory or 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 it thus] 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."

State v. Adams, 322 S.C. 114, 112, 470 S.E.2d 366, 370-71 (1996), *quoting, United States v. Masters,* 622 F.2d 83, 86 (4th Cir. 1980).

It is clear that according to South Carolina law, these prior bad acts cannot be submitted if they are prejudicial. Even though the evidence is clear and convincing and falls within the *Lyle* exception, the trial judge must exclude it if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.,* 322 S.C. at 118, 470 S.E.2d at 368. The way to reveal that this evidence's probative value outweighs any unfair prejudice is how it relates to the present case. If the State was only submitting bad acts that the Appellant had committed that were not related to the actions she portrayed during the commission of this crime, then the prejudice would have been too overwhelming. However, these actions closely relate to the actions of the Appellant's committed criminal actions.

The prior bad acts objected to relate to a statement given by the Appellant that in the past she left the victim in the car. This proves that the action during the commission of this crime was common for her and also was not an accident because it was something she did often. Leaving a child that is handicapped for an entire weekend with a caregiver that is not used to taking care of that child also reveals neglect and that she is quite incapable regarding the caregiving of this child. Both of these actions were reckless, revealing a total disregard for the child, which led to her being left in that car for hours causing the victim's ultimate demise.

Appellant also argues that since she was not convicted of any offense, there was insufficient clear and convincing evidence to allow this information into evidence pursuant to the doctrine of *Res Gestae.* There was sufficient evidence presented by two witnesses regarding prior bad acts and admissions made by the Appellant revealing this incident was not a mistake or accident, and there was also a common scheme or plan in leaving the victim in the car for long periods of time. When the Appellant objected to this information coming into evidence, it was allowed by the trial court under the *Res Gestae* doctrine. Therefore, the trial court found that the evidence was clear and convincing. That decision should be held up by this Court. As decided by the South Carolina Supreme Court in the *State v. Wilson*,

> Similarly, we do not review a trial judge's ruling on the admissibility of other bad acts by determining *de novo* whether the evidence rises to the level of clear and convincing. If there is any evidence to support the admission of the bad act evidence the trial judge's ruling will not be disturbed on appeal.

State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The evidence of the prior bad acts was testimony from two lay witnesses, however, any questions about their credibility is a question of fact that has to be determined by the jury. *See, State v. Wilson,* 345 S.C. 1, 545 S.E.2d 827 (2001)(Issue of credibility of defendant's girlfriend was for jury, and thus, did not preclude admission of the testimony).

Appellant was also charged and convicted of the offense of Infliction or allowing infliction of great bodily injury upon a child. S.C. Code Ann. §16-3-95. Pursuant to the South Carolina Code of Laws, it is unlawful to inflict great bodily injury upon a child. "Great bodily injury" is defined as a bodily injury which creates a substantial risk of death, or which causes serious or permanent disfigurement or protracted loss of impairment of the function of any bodily member or organ. S.C. Code Ann. §16-3-95(C). In order to prove this infliction, the State needed to reveal a common scheme or plan and show it was not an accident when the victim was placed inside that hot car.

The Appellant argues that the prior bad act evidence was "strikingly similar" to the one in which the Appellant is being tried. In order for the bad act evidence to be admissible the temporal proximity of the prior bad act should be closely related to the charged crime. *McGee,* 408 S.C. at 288, 758 S.E.2d at 736. In order to reveal any common scheme or plan or any lack of a mistake or accident, the prior bad act must be related to the crime charged. In case of the common scheme or plan exception, a close degree of similarity between the prior bad act and the crime for which the defendant is on trial is necessary. *State v. Hough,* 325 S.C. 88, 95, 480 S.E.2d 77, 80 (1997). Prior bad act evidence is admissible where the evidence is of such a close similarity to the charged offense that the previous act enhances the probative value of the evidence as to outweigh the prejudicial effect. *State v. Raffaldt,* 318 S.C. 110, 114, 456 S.E.390, 392 (1995). State's evidence revealed that the Appellant herself first left her handicapped child alone for 3 days with a caregiver that had never watched her before, and without any warning. There was also no food in their home for the child, who during autopsy was determined to be smaller than a normal child her age. (T. p. 507 l. 6-9). There was also testimony that the Appellant stated herself that she leaves the victim in the car "all the time." (T. p. 333 l. 4-7). When a criminal defendant's prior bad acts are directed toward the same victim and are very similar in nature, those acts are admissible as a common scheme or plan. *State v. Martucci,* 380 S.C. 232, 255, 669 S.E.2d 598, 610 (2008).

These prior bad acts were definitely relevant and although prejudicial the prejudice does not outweigh the probative value this evidence has, revealing a common scheme or a lack of mistake or accident. Where the evidence is of such a close similarity to the charged offense that the pervious act enhances the probative value of the evidence so as to overrule the prejudicial effect, it is admissible. *Id.* During the opening argument counsel for the Appellant argues that this was not murder because he claimed that this act was accidental. This evidence proves that leaving

the victim in the car was commonplace for the Appellant. So, that this was no accident, but a total disregard of a human life and this evidence was relevant to prove implied malice.

2. **The trial court did not err in allowing relevant photographs of the victim as she appeared at the scene into evidence because these photographs corroborated the testimony of the medical examiner and also refuted the defense that the car was running while the air conditioner was turned on.**

Relevant Facts

During the trial the Appellant contested the introduction of four photographs of the victim at the crime scene right after she was taken out of the vehicle. The photos depicted the victim as she was at the scene when this crime occurred. She was wearing a diaper; her hair matted due to sweating as a result of being placed in a hot car for over five hours. There also were burn marks and welts on her legs due to the exposure of the heat from the interior of the vehicle and advanced decomposition after death due to the excessive heat. (T. p. 511 l. 21-25).

During the trial, Appellant argued that these photographs violated rule 403 of the South Carolina Rules of Evidence. Appellant believed that these photos prejudicial effect outweighs any probative value they may bring.

The trial court ruled that the photos were relevant because they revealed bruising on the victim and they further revealed her condition at the time the crime occurred. (T. p. 284 l. 17-20).

Standard of Review

The materiality, relevance and admissibility of evidence are within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion. *State v. Rosemond,* 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson,* 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in

exceptional circumstances. *State v. Collins,* 409 S.C. 524, 763 S.E.2d 22, 28 (2014). The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *State v. Nance,* 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. *Id.* A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Lyles,* 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008)

Discussion

Appellant contends that four photographs each showing either the victim's entire body as it was when it was removed from the vehicle, or a close up of the burn injuries she sustained while being in a vehicle reaching temperatures as high as 135º were prejudicial. (State Exhibits 1-4 R*). Appellant argues that the introduction of these photographs is prejudicial and outweighs the probative value. The Appellant argues that these photographs were introduced only to arise the sympathies and prejudices of the jury, and they had no evidentiary value. The Respondent will argue that these photographs definitely have evidentiary value, and the probative value outweighs any prejudice that might have been caused by their introduction. These photographs reveal the condition of the child when she was found. It revealed the matted hair and burns from being placed in a hot car for hours. These photos also revealed the decomposition that occurred, which was testified to by Medical Examiner Dr. Nicolas Batalis.

"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.'" *State v. Kelley,* 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting, State v. Alexander,* 303 S.C. 377, 401 S.E.146, 149 (1991)(emphasis added). The evaluation of probative value cannot be made

in the abstract but should be made in the practical context of the issues at stake in the trial of each case. *State v. Gray,* 408 S.C. 610, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). The photographs presented were used to specifically demonstrate, explain, and corroborate evidence on how the victim died due to the disregard of human life portrayed by the Appellant as well as her co-defendant. In discussing similar evidentiary rulings in their cases, the Pennsylvania courts have often quoted:

> A criminal homicide trial is, by its very nature, unpleasant, and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt. Further, the condition of the victim's body provides evidence of the assailant's intent, and even where the body's condition can be described through testimony from a medical examiner, such testimony does not obviate the admissibility of photographs.

Com. v. Robinson, 864 A.2d 460, 502 (Pa. 2004), *quoting, Com. v. Rush,* 646 A.2d 557, 560 (Pa. 1994).

The Georgia courts have concisely rejected an argument on unfair prejudice on the basis of its own paradox, "a defendant cannot complain about photographs that simply 'portray the havoc wreaked by [his] own hand.'" *McKibbins v. State,* 750 S.E.2d 314, 322 (Ga. 2023), *quoting, Null v. State,* 402 S.E.2d 7221 (Ga. 1991). Even in South Carolina the Supreme Court established that photographs revealing the scene as the defendant left it are admissible. Photographs are relevant if they "depict the bodies of the murder victims in substantially the same condition in which the defendant left them." *State v. Kornahrens,* 290 S.C. 281, 289, 350 S.E.2d 180, 185 (1986).

These photographs also corroborated testimony made during trial. During his testimony Dr. Batalis stated that once the victim was found, there was skin slippage which is the breakdown process of the body or what is otherwise called decomposition. (T. p. 508 l. 11-13). Dr. Batalis also testified that when temperatures are high, decomposition is going to occur much quicker than if the temperature is much lower. (T. p. 508 l. 17-19). Dr. Batalis also stated how there were "leathery type of lesions" this tell us that there was some sort of injury to the body, some sort of actual burn. (T. p. 508 l. 20-23). When reviewing the admitted photographs Dr. Batalis explained how these photographs reveal the condition of the body when it was found. Dr. Batalis used these photographs to corroborate his testimony when he explained:

> "So, this photograph here illustrates the kind of two different lesions that we're talking about. So up on the upper aspect of the left thigh here, you can see that there's a very thin appearance, kind of a wispy appearance to the skin. That would be more what I'm speaking of the as skin slippage, so part of the breakdown process of the body." (T. p. 511 l. 7-14)
>
> "But in addition to just that, you can see here on the lower part of the left leg we have this lesion, where the skin was more ulcerated away. You can see some areas on the knee on the leg that appear different than up here, where we don't have an appearance of it." (T. p. 511 l. 15-20).
>
> So again, to me that would say these areas were likely in contact with something in the area that caused a direct burn or injury to the skin, and we also have areas that show that decomposition is there now." (T. p. 511 l. 21-25).

The photographs of the condition of the body were also imperative due to the fact Appellant's co-defendant testified that the air conditioner was turned on when the victim was placed in the vehicle. The burn marks on the body, as Dr. Batalis testified were due to her leg being in contact with something that caused a direct burn or injury to the skin. (T. p. 511 l. 21-24). The photographs also revealed her hair was wet and matted, which was due to the sweat she generated from the heat inside that vehicle. These photographs prove that the air conditioning was not turned on during the time the victim was in that vehicle.

Appellant within her brief cites the two recent South Carolina Supreme Court cases, *State v. Nelson,* and *State v. Jones,* In *Nelson,* the South Carolina Supreme Court reversed the decision of the Court of Appeals ruling:

> The probative value of gruesome autopsy photographs was substantially outweighed by danger of unfair prejudice in guilt phase of murder trial, where information gained from photographs was not in question, only issue for jury to decide was whether defendant or her husband killed victim, photographs did not corroborate husband's testimony that defendant killed victim, and jury was informed that husband had also been charged in connection with victim's death but only faced a charge of accessory after the fact of murder.

State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023).

The present case is not identical to *Nelson.* The photographs were relevant to reveal the cause of death and establishing that the air conditioning was not turned on when victim sat in that vehicle. In order to refute the allegation that, the air conditioning was turned on, those photographs had to be allowed into evidence, revealing the injuries from burns from the interior of the vehicle and the early decomposition of the body after death due to the heat.

In *Jones* the South Carolina Supreme Court ruled that the autopsy photographs had no probative value, due to the fact they revealed the victim's bodies after the murder occurred in an advance state of decomposition after being left in the woods for days and being eaten by animals. Since this was not the condition in which the Appellant left these bodies, revealing those photos to the jury was prejudicial.[1] In the present case, the photographs were taken the same day as death. These photos revealed the condition of the body caused by the disregard of human life by the Appellant and her co-defendant. The *Jones* decision does not apply.

[1] The Supreme Court determined that this was harmless error. *State v. Jones,* 440 S.C. 214, 264, 891 S.E.2d 347, 373 (2023).

Although the photographs were not pleasant to look at, they corroborated the testimony of Dr. Batalis as to the injuries sustained due to the heat. As the South Carolina Supreme Court stated in the *Collins* decision, "Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder." *Collins,* 409 S.C. at 534, 763 S.E.2 at 28. So, if a photograph is not pleasing but still goes to prove the commission of the crime that occurred, it cannot be considered prejudicial and is not in violation of Rule 403. These photographs were offered to prove that the Appellant committed these crimes. Their probative value did outweigh any prejudice they might have caused; therefore, admissible. The trial court committed no error in allowing these photographs into evidence. The decision of the trial court should be upheld.

3. The Appellant did not raise sufficient evidence for the trial court to grant a mistrial due to the lawful admission of the prior non-custodial statement of the Appellant; lawfully allowing into evidence photos of the victim as she appeared at the crime scene; and, the closing argument of the Solicitor was related to evidence presented during trial.

Relevant Facts

During the trial Appellant's counsel moved for a mistrial due to the testimony by Ms. Honeycutt and Ms. Lewis which the Appellant had previously objected to pursuant to Rule 404(b) and 403 of the South Carolina Rules of Evidence. They argued that allowing this testimony prejudiced the Appellant to the point that she is being denied a fair trial, so manifest necessity exists, the trial court should declare a mistrial. (T. p. 352 l. 12-20).

During closing arguments, Solicitor Stone stated, "if they had walked up to her and shot her, she wouldn't have suffered the pain that she suffered in this case." (T. p. 691 l. 2-7). After Solicitor Stone made this statement, Appellant objected which was overruled by the trial court. Appellant argued that the statement by the Solicitor during closing arguments was prejudicial due

to the fact a gun was found in the back seat of the car situated by the victim. A photo of said gun was allowed to be placed into evidence. The Appellant once again argued that this statement during closing deprived her of a fair trial. They argued that the closing of the Solicitor arose the passions and prejudices the jury, so the trial court should declare a mistrial. (T. p. 738 l. 3-24).

In both motions, the trial court found no grounds to declare a mistrial. Both motions were denied by the trial court.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The test to determine whether sound grounds exist for declaring a mistrial after the jury is sworn is "whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." *Id.,* 355 S.C. at 214, 584 S.E.2d at 422, *quoting, State v. Prince,* 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). The appropriateness of a solicitor's closing argument is a matter left to trial court's discretion. *State v. King,* 349 S.C. 142, 160, 561 S.E.2d 640, 649 (Ct. App. 2002). An appellate court will not disturb the trial court's ruling regarding closing argument unless there is an abuse of discretion. *Id.* An appellant must prove an abuse of discretion and resulting prejudice to warrant reversal. *State v. Navy,* 370 S.C. 398, 412, 635 S.E.2d 549, 556 (Ct. App. 2006).

Discussion

The Appellant argues that she should have been granted a mistrial after the *Res Gestae* evidence was allowed by the trial court. The Appellant seems to think that they were entitled to a mistrial due to the fact they did not agree with the trial court's rulings. A mistrial should be granted only when absolutely necessary. *State v. Council,* 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). A

trial court judge is not going to grant a mistrial due to evidence that he just allowed to be presented to the jury. The fact that they did not agree is not grounds for the court to grant a mistrial. Before a defendant may receive a mistrial, he or she must show both error and resulting prejudice. *Id.* Nothing prejudicial existed when the *Res Gestae* evidence was presented before the jury. This evidence revealed a common scheme and a lack of accident, both elements exist in Rule 404(b). Since the trial court was correct in their assessment of the evidence the Appellant was not entitled to a mistrial.

Appellant also argues that the trial court erred in not granting a mistrial after statements made by Solicitor Stone during his closing arguments. On appeal, an appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record. *State v. Rudd,* 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003). During his closing argument Solicitor Stone stated the following:

> "This case is about implied malice. What is implied malice? Implied malice is that you take your facts and circumstances of the case, what you have seen, what you have heard, what you know about this case" (T. p. 690 l. 6-10).
>
> "That someone is so extremely reckless that they had a wanton disregard for human life. They may not even have had direct, ill feelings toward that one individual, but their attitude, their actions. All of the things that they chose to do. All the way they chose to act all lead back to the conscious disregard for the lives of others. In this case the other person was Christina, a child totally dependent on them for safety." (T. p. 690 l. 11-20).
>
> "The wickedness, the depravity, malicious. We know what malicious is. So, I ask you as you go back and look at all of this, at one point in time in any of this did either one of these two people show an ounce of compassion or care or concern for Christina's life." (T. p. 690 l. 21 – p. 691 l. 1)
>
> "If they had walked up to her and shot her she wouldn't have suffered the pain that she suffered in this case." (T. p. 691 l. 2-4).

The record revealed that the victim was in a car that possibly reached temperatures as high as 135º for five hours and forty-three minutes. (T. p. 407 l. 4-7; p. 441 l. 8-11). According to Dr. Batalis,

the victim's body temperature was 109º which was the maximum amount the thermometer could read. (T. p. 498 l. 18-22). Dr. Batalis also testified that once the car interior reached temperatures as high as 135º, the victim could not have survived longer than an hour. (T. p. 517 l. 17-20). So, the victim's death was slow and agonizing, if she was shot her death would have been more immediate. Solicitor Stone made a reference to things in the record to make that determination. In the South Carolina Supreme Court decision of *State v. Durden,* the Court determined.

> So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, … and may employ any legitimate means of impressing on them their true responsibility in this respect, … [he] may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of the law.

State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975).

There was nothing stated in Solicitor's closing argument that was not part of the record or could be inferred from testimony during the trial. Just because the Appellant did not agree with what was being said by the Solicitor, it does not make it unlawful. There exists no prejudice in the statement being made by the Solicitor and the Solicitor did not make these statements in order to arouse the emotions or passions of the jury. He made these statements in order to reveal a comparison. The fact that the victim would have suffered less if she was just shot is truthful. And the victim's slow death also reveals a total disregard for human life, something the state must prove in order to reveal implied malice, the element needed to achieve a murder conviction.

Declaring a mistrial is a last resort. A mistrial should only be declared if there was an obvious violation of a right of the defendant that causes him not to have a fair trial. A defendant should not be able to get a mistrial due to the fact a ruling was not in their favor, or that the opposing counsel said something that they did not agree with. There exist absolutely no grounds for the trail court to declare a mistrial. The denial of the Appellant's motion for a mistrial was lawful. The trial

court made no error, so this court should affirm the decision of the trial court as it pertains to this matter.

4. **There exists no South Carolina law allowing individual voir dire in non-death penalty cases so it is up to the trial court to allow individual voir dire and the court did not err in not allowing individual voir dire since the jury panel was asked sufficient questions to determine any possible bias or relationship existing with any witness.**

Relevant Facts

Prior to jury selection, trial counsel for the Appellant requested individual voir dire to be conducted by trial counsel. The trial court realizes that there is absolutely no precedence within South Carolina law nor have there been any appellant court decisions guaranteeing individual voir dire. During this motion, the Solicitor argued that individual voir dire is best left up to the General Assembly or the South Carolina Supreme Court. (T. p. 45 l. 12-16). The trial court agreed, and determined that this might be something that the Legislature might need to explore. (T. p. 50 l. 22-23). The trial court decided that individual voir dire that was not needed in this case and decided to deny the Appellant's motion. (T. p. 50 l. 24-25).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An appellate court is bound by the trial judge's factual findings unless they are clearly erroneous. *Preslar,* 364 S.C. at 472, 613 S.E.2d at 384. Whether or not counsel is permitted to conduct the *voir dire* examination of the juror where such examination is conducted by the court is within the discretion of the trial judge. *State v. Smart,* 274 S.C. 303, 262 S.E.2d 911 (1980)(emphasis added). Our state and federal constitutions guarantee a party the right to an impartial jury, and *voir dire* can be an essential means of protecting this right. *Warger v. Shauers,* 574 U.S. 40, 50, 135 S.Ct. 521 (2014)(emphasis in original).

Discussion

The Appellant argues that she has been denied her Constitutional rights by being denied individual *voir dire* that would be conducted by trial attorneys as well as the trial court. It is the responsibility of the trial judge to make sure that the defendant receives a fair and impartial jury, which is done through *voir dire. Voir Dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges. *Mu'Min v. Virgina,* 500 U.S. 415, 431, 111 S.Ct. 1899, 1908 (1991). *Voir Dire* in South Carolina law allows a party to call to the trial court's attention any juror that may be impartial to either party. The South Carolina Code of Laws specifically states:

> The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that case and another must be called.

S.C. Code Ann. §14-7-20.

The authority and responsibility of the trial court is to focus the scope of the *voir dire* examination as set forth in S.C. Code Ann. §14-7-1020. *State v. Hill,* 331 S.C. 94, 103, 501 S.E.2d 122, 127 (1998).

The trial court has the solemn duty to ensure that every juror is unbiased, fair and impartial. *State v. Gulledge,* 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982). This is done by the *voir dire* questions asked by the trial judge to the jury panel. Some of the questions asked by the trial court during *voir dire* includes,

1. If the defendant being charged with the death of a child would that affect your ability to be an impartial juror? (T. p. 84 l. 16-18).

2. Is anyone a family member or a close personal friend of any of the witnesses that was recited from the witness list earlier? (T. p. 86 l. 25 – p. 87 l. 3).

3. Is anyone a family member or close personal friend of any attorney involved or Solicitor Duffy Stone? (T. p. 90 l. 12-20).

4. Has any potential juror donated money to Solicitor Stone's campaign? (T. p. 91 l. 5-9).

5. If any potential juror has been or a friend or close family member been a caregiver of a person with a disability? (T. p. 91 l. 14-18).

6. Has anyone been a home healthcare nurse or aid? (T. p. 93 l. 3-5).

7. Has anyone been a mechanic or in the business dealing with vehicles? (T. p. 93 l. 6-8).

8. Has any potential juror or close family member been a victim of a violent crime such as rape, robbery, burglary, murder or serious assault? (T. p. 95 l. 6-10).

9. Is anyone so morally or religiously opposed to violent crime or criminal defense they cannot render a fair and impartial decision in this case? (T. p. 96 l. 4-9).

10. Has anyone or a close family member or friend had discussions with any member of the FBI, SLED, Sheriff's department, DEA, Attorney General or Solicitor's office? (T. p. 98 l. 9-15).

11. Has anyone ever served on a neighborhood watch group? (T. p. 98 l. 14-15).

12. Has any potential juror have a "Back the Blue" sticker on their car? (T. p. 98 l. 15-16).

13. Does anyone think a person is guilty just because they were arrested? (T. p. 98 l. 18-20).

14. Does anyone think that the criminal laws are too lenient and there should be stricter punishment? (T. p. 98 l. 21-23).

15. Is there anyone that believes if a police officer testimony should be believed over anyone else? (T. p. 98 l. 23-25).

16. Has anyone commented in a news article or on social media about a person being arrested for a crime or a criminal trial? (T. p. 99 l. 2-5).

17. Has anyone commented on a social media page or follows the social media page of the Sheriff's Department or the Solicitor's office? (T. p. 99 l. 6-17).

18. Has any of them or a family member even been employed by a prosecution agency? (T. p. 101 l. 19 – p. 102 l. 6).

19. Has any of them or a close family member provided support to any law enforcement booster originations or any that opposes the consumption of alcohol or illegal drugs? (T. p. 105 l. 14-22).

20. Does anyone have a bumper sticker showing a position against any specific crime? (T. p. 105 l. 25 – p. 106 l. 2).

21. Has anyone of them or close friend or family member ever served on a jury in a criminal case or testified in a criminal trial? (T. p. 106 l. 7-10).

22. Has any of them or a personal friend or family member ever had a bad experience with the defendant's attorney or the solicitor's office? (T. p. 107 l. 15-18).

23. Do you know any reason you should not be selected to sit on this jury or have you already formed an opinion regarding guilt or innocence? (T. p. 107 l. 21-25).

As this court can see through the above referenced questions, questions asked by the trial court during *voir dire* covered numerous concerns on both sides. Most of the questions were centered around issues of concern for the defense. There was absolutely no prejudice in the selection of this jury. No law created by the General Assembly makes individual *voir dire* mandatory. How the jury is selected is up to the trial judge. All that is required is that the selection of the jury is fair and allows for only impartial individuals to sit on the jury so the defendant can have a fair trial. This is what was given to the Appellant. There exists no prejudice in order for this court to overturn the decision of the trial court. To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof. *Fields v. Regional Medical Center Orangeburg,* 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005), *overruled on other grounds by, State v. Wallace,* 440 S.C. 537, 892 S.E.2d 310 (2023).

5. **There was plenty of evidence that was presented revealing Appellant had a total disregard of human life for the victim, so the Appellant was guilty of murder. Any error that might have occurred by the trial court should be considered harmless.**

Relevant Facts

The Appellant raised issues regarding *Res Gestae* evidence presented by the State; the photographs of the victim that were allowed into evidence; the denial of the motion for a mistrial; and the fact the trial court denied Appellant's motion for individual *voir dire.* Although the Respondent does not accept that any error was made by the trial court, if the court finds the trial court made any errors they should be considered harmless. This is due to the fact the video evidence by itself revealed a total disregard of human life, which is considered implied malice. Other evidence exists not related to the issues revealed by the Appellant revealing the Appellant's guilt beyond a reasonable doubt. Any acknowledgement by this court that any of these issues were in error would not have changed the final result, therefore, any error should be considered harmless.

Standard of Review

Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons,* 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018).

Discussion

The Respondent is not conceding any of the above-mentioned arguments. The Respondent remains positive that the decisions made by the trial court was correct and lawful. However, if this court found any errors in the trial court's decisions, the Respondent argues it should be considered harmless.

During the trial the State argued that the Appellant was guilty of murder due to the doctrine of implied malice.[2] In *State v. Mouzon,* the South Carolina Supreme Court defined malice as an essential element of murder. In *Mouzon* the Supreme Court decided,

> Malice is an essential ingredient of murder, and it does not necessarily import ill-will toward the individual injured, "but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief."

State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675-676 (1957), *quoting, State v. Heyward,* 197 S.C. 371, 15 S.E.2d 669, 671 (1941).

In the present case, home surveillance of the co-defendant was introduced and allowed into evidence without objection from the Appellant. (T. p. 429 l. 2-5). This home surveillance video revealed when the victim was placed in the vehicle by the co-defendant and the agonizing five hour stretch as the Appellant and co-defendant stood right near this vehicle and did nothing as this poor child suffered in 130º heat. There is no doubt that there was a total disregard of human life upon the viewing of this video. The timeline of the video is as follows:

11:16am – Victim is placed in the vehicle.

11:43am – After a discussion on the porch near the vehicle Appellant and co-defendant go into the house.

1:45pm – Appellant and co-defendant come back outside, have another discussion on the porch right near the vehicle.

2:03pm – Appellant and co-defendant go back into the house.

3:00pm – Appellant and co-defendant come back outside.

3:03pm – Appellant notices that she locked her keys inside the vehicle.

3:05pm – Appellant and co-defendant go back into the house.

3:11pm – Appellant and co-defendant come back out of the house to the yard.

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[2] "Murder" is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10.

3:14pm – They attempt to get the door of the vehicle open without any sense of urgency.

3:18pm – Appellant and co-defendant spend time sitting on the porch swing chatting.

3:32pm – Appellant and co-defendant go back into the house.

3:52pm – Appellant and co-defendant leave in the co-defendant's vehicle going to the Appellant's house to get the spare key.

4:42pm – Appellant and co-defendant arrive back at the co-defendant's house with the spare key.

4:56pm – Co-defendant gets on the phone calling Robert Arabis a local locksmith for instructions on how to get the car open. (T. p. 611 l. 12-15).

4:58pm – Co-defendant finally gets the car door open.

4:59pm – Co-defendant calls 911.

(State Exhibit #40 T. p. 428 l. 14 – p. 429 l. 5)

The total amount of time the victim was inside that vehicle with no air conditioning in South Carolina 90 plus degree heat was a total of five hours and forty-three minutes. The video revealed no since of urgency in getting her out of the car and a total disregard of her being in that car all of those hours as they talked and spent time inside the house as the victim eventually died from heat exhaustion. That evidence alone reveals a total disregard for human life sufficient for a conviction of murder. As the Supreme Court stated in *Mouzon,*

> Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

Id.

From watching that video there is absolutely no doubt that the Appellant and her co-defendant had a total disregard for the life of the victim. The jury could definitely apply implied malice to this case and convict the Appellant as well as her co-defendant for murder.

There was also evidence corroborating the video. Deputy Jason Chapman testified that when he arrived at the scene, he got into the car to turn it off, and the air conditioner was blowing but the car was still hot. (T. p. 658 l. 24 – p. 659 l. 5). SLED agent Brooklynn Molina testified. Agent Molina was found qualified as an expert in the field of forensic toxicology. She tested the blood of the Appellant that was drawn the same day of the incident. Agent Molina testified that the Appellant's blood tested positive for methamphetamine and amphetamine. This reveals that the Appellant was intoxicated to the point where she failed to comprehend the fact that her child was in a vehicle that reached temperatures as high as 130º. There was no urgency to get the victim out of that car due to her intoxication. This further proves the total disregard of human life existing in the minds of the Appellant and well as her co-defendant.

It was obvious that implied malice existed in this case; therefore, even without the evidence being in question by the Appellant, a jury would have sufficient evidence to convict for the offense of murder. The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather on the virtually inevitable presence of immaterial error. *Delaware v. Van Arsdall,* 475 U.S. 673, 681, 106 S.Ct. 1431 (1986).

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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