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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2025-UP-171 (S.C. Ct. App. Filed May 28, 2025)
Lower Court Case No. 2021-GS-23-006831

THE STATE,

RESPONDENT,

V.

ARIEL ROBINSON,

APPELLANT

APPELLATE CASE NO. 2022-000716

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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INDEX

INDEX i

CERTIFICATE OF COUNSEL1

QUESTION PRESENTED2

STATEMENT OF THE CASE.....3

ARGUMENT

The Court of Appeals erred in affirming the trial court’s admission of six pictures of the external injuries Child sustained and one autopsy photograph of the internal injuries Child sustained where the probative value of the photographs was substantially outweighed by the danger of unfair prejudice, where the injuries to Child were not at issue, and where any probative value was negated by the extensive, descriptive medical testimony elicited during the trial.....4

Relevant facts4

Discussion19

CONCLUSION 33

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on June 27, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the trial court's admission of six pictures of the external injuries Child sustained and one autopsy photograph of the internal injuries Child sustained where the probative value of the photographs was substantially outweighed by the danger of unfair prejudice, where the injuries to Child were not at issue, and where any probative value was negated by the extensive, descriptive medical testimony elicited during the trial?

STATEMENT OF THE CASE

Petitioner was indicted during the October 2021 term of the Greenville County grand jury for one count of homicide by child abuse in the death of her foster daughter V.S (Child). R. 440. A pre-trial hearing to determine the admissibility of body camera footage containing statements made by petitioner and of photographs of the injuries Child sustained was held on April 14, 2022, before the Honorable Letitia H. Verdin. R. 1. The state was represented by Christine Sustakovitch and Alexa Holloway. Petitioner was represented by William Bouton. R. 1. At the conclusion of the hearing, the circuit court determined that most of the photographs would be admissible. R. 56, l. 22 - R. 57, l. 23. The court reserved ruling on the admissibility of the body camera footage until it could review the unedited footage in chambers. R. 48, ll. 3-9.

On May 9, 2022, the state called the case to trial before Judge Verdin and a jury. The state was again represented by Christine Sustakovitch and Alexa Holloway, and petitioner was again represented by William Bouton. R. 61. At the start of the trial, prior to jury selection, the court ruled that the body camera footage containing petitioner's statements was admissible because petitioner was not in custody at the time the statements were made. R. 63, l. 15 – R. 64, l. 21. After a four-day trial, the jury convicted petitioner as indicted. R. 430, ll. 20-25. Petitioner was sentence to life imprisonment. R. 438, ll. 6-16; R. 442.

Petitioner timely appealed her conviction and sentence. Final briefing was completed in February 2024. The Court of Appeals held oral argument in the case on April 8, 2025. The Court of Appeals issued an unpublished opinion affirming petitioner's conviction and sentence. State v. Robinson, Op. No. 2025-UP-171 (S.C. Ct. App. filed May 8, 2025). A petition for rehearing was filed on June 12, 2025, which was denied by written order on June 27, 2025. This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's admission of six pictures of the external injuries Child sustained and one autopsy photograph of the internal injuries Child sustained where the probative value of the photographs was substantially outweighed by the danger of unfair prejudice, where the injuries to Child were not at issue, and where any probative value was negated by the extensive, descriptive medical testimony elicited during the trial.

Relevant Facts

On January 14, 2021, emergency personnel responded to the home of Ariel (Petitioner) and Austin Robinson to treat their three-year-old foster¹ daughter, V.S. (Child). Austin had called 911 to report that Child was choking on water and had become unresponsive. State's Ex. 40 and 41² (911 Call). Members of the Simpsonville Fire Department were the first on scene and discovered that Child was in cardiac arrest. R. 131, l. 9-R. 132, l. 7; R. 137, ll. 1-9. When they removed her shirt to place defibrillator pads onto her chest, they noticed bruising on her lower abdomen. Once EMS arrived on scene, the paramedics took over treatment. R. 139, ll. 14-23.

When paramedics removed Child's pants to start an IO (intraosseous) line for medication and fluid, they noticed extensive bruising to her legs. R. 139, l. 16-R. 140, l. 14. Petitioner, who was standing in the hallway while numerous first responders worked on Child in the bedroom, informed first responders that she had caused the bruising to Child's abdomen when she was attempting life saving measures prior to their arrival. R. 138, ll. 11-17. She also stated that Child's seven-year-old brother, J.E., had anger issues and would harm Child which caused bruising to Child's legs. R. 140, ll. 15-21. Child was transported to Greenville Memorial

¹ The Robinsons were fostering to adopt V.S. and her two older brothers, C.E. and J.E. The adoption was set to be finalized the following week.

² A copy of these exhibits is on file with this Court.

Hospital for treatment. R. 175, ll. 8-15; R. 253, ll. 5-6; R. 256, ll. 1-2. Later that evening, V.S. succumbed to her injuries and passed away. R. 271, ll. 22-25.

The following day, an autopsy was performed by Dr. Michael Ward on Child to determine the cause and manner of death. R. 297, ll. 13-21. The autopsy revealed that V.S. died from multiple blunt force injuries that caused severe internal bleeding, and the death was classified as a homicide. R. 315, l. 21-R. 316, l. 4; R. 313, ll. 22-23. Both petitioner and Austin Robinson were charged with homicide by child abuse. R. 182, l. 23-R. 183, l. 2. A few weeks after their arrest, Austin, with his lawyer, gave a statement to law enforcement implicating petitioner in the death of V.S. R. 288, l. 13-R. 289, l. 24; R. 282, ll. 9-15. Based on the statement, and Austin's agreement to testify against petitioner, the state allowed Austin to plead guilty to aiding and abetting homicide by child abuse with sentencing³ deferred until after petitioner's trial. R. 183, ll. 3-9

On April 14, 2022, the parties convened for a pre-trial motions hearing. One of the matters addressed was the state's motion to admit photographs taken of Child. Nine photographs were submitted to the court for consideration at the hearing. Seven photographs were of Child in the hospital, documenting the bruising on her back, abdomen, and legs. One photograph was from the autopsy and showed the internal injuries to Child's legs. While the state sought to admit an edited photograph, it provided the court with the unedited autopsy photograph for comparison. R. 4, ll. 7-17; R. 56, ll. 5-19.

The state argued that the photographs were not intended to inflame the jury but to prove the "extreme indifference to human life" element of the crime. The state also argued that the photographs were admissible pursuant to Rule 404(b), SCRE, because petitioner had claimed she

³ Austin was ultimately sentenced to twenty years' incarceration.

accidentally caused the bruising on Child's abdomen when she attempted life saving measures, and the state was entitled to put in evidence that was contrary to the claim of accident. Additionally, the state argued because petitioner had "introduced third-party guilt" by stating that J.E. had caused the bruising to Child's legs that the photographs were necessary to show that a seven-year-old could not administer the degree of force necessary to cause the injuries. The state cited State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (2008), to support the admission of the autopsy photograph. R. 48, l. 13- R. 54, l. 11.

Defense counsel argued that the photographs were prejudicial because they created a tendency to suggest a decision on an improper basis, mainly an emotional one. He stated the photographs would "certainly inflame the passions of the jury" and argued that it was not necessary for the state to admit the photographs to prove its case. He argued that the photographs did not go to a substantial material fact and that the condition of Child could be shown in other ways, such as the diagram of the injuries prepared by the medical examiner. He argued the photographs were not necessary to aid the medical examiner in his testimony, particularly the autopsy photograph, and that the probative value of the photographs was outweighed by the prejudicial effect that they would have on petitioner. R. 48, l. 15-R. 56, l. 4.

The circuit court ultimately ruled that six of the photographs were admissible. The court excluded⁴ a close-up photograph of the side of Child's face and ear as prejudicial, along with a photograph that showed the bruising along Child's body as cumulative. The court found that the diagrams by the medical examiner did "not fully depict the injuries and the absence of any

⁴ The excluded photographs and the unedited autopsy photograph were admitted as Court's Exhibits 1-3. The six photographs that the court deemed admissible were admitted as State's Exhibits 1-6. The photographs were placed under seal on the court's motion. The sealed exhibits are on file with this Court.

mistake or certainly the ability of a child to do this type of thing.” The court found the autopsy photograph relevant and necessary for the state to prove its case. R. 56, l. 22-R. 57, l. 23

At trial, the state elicited extensive medical testimony from numerous witnesses. Throughout the testimony of the witnesses, the state used the photographs deemed admissible during the pre-trial hearing and admitted over objection during the testimony of Investigator Jason Weibel. R. 122, l. 18- R. 123, l. 15. Specifically, State’s Exhibits 2-5⁵ were repeatedly presented to the jury throughout the trial.

Firefighter Osmine Givens testified that Child was “really cold” to the touch, wet, and did not have a heartbeat when he began chest compressions. She was in cardiac arrest which essentially meant she was dead. R. 137, l. 1-R. 138, l. 2. He stated that when they cut off Child’s shirt they saw the bruising on her abdomen, and petitioner stated that she had caused that by improperly performing CPR. However, in his experience and training, he had never seen similar abdominal bruising from the administration of CPR. Firefighter Givens testified that EMS established an IO line on Child by drilling into her shin bone down to the marrow and that Child did not react to the procedure. When the bruising on Child’s legs was seen, he testified that petitioner stated Child’s brother J.E. had caused the injuries. He did not think a child could cause that kind of injury. R. 138, l. 8-R.141, l. 6. After meeting J.E., he thought to himself “I don’t care if you gave that kid a ball bat, he’s can’t – he’s not going to be able to do this much damage to that little girl.” R. 142, l. 14-R. 143, l. 17.

Firefighter Jeffery Jennings similarly testified that Child was “very cold, soaking wet, hair was wet, clothes were wet,” and that she was in cardiac arrest with no pulse when he arrived, so she was “essentially dead.” He stated that in his ten years as a firefighter, he had not

⁵ A copy of these exhibits is on file with this Court.

seen similar bruising on the abdomen from the administration of CPR. R. 153, l. 21-R. 155, l. 25. He stated that even when ribs are broken during the administration of CPR, he had not seen bruising like he saw on Child R. 156, ll. 15-18.

Paramedic Ken Koehler testified that the call came into EMS as a pediatric cardiac arrest which meant that the child's heart had stopped, they were not breathing, not responsive, and were technically dead. R. 162, l. 11-R. 164, l. 10. He testified that Child was unresponsive, cool to the touch, and cyanotic, which meant there was bluish coloring around her lips from a lack of circulation. He immediately noticed extensive, "real purplish" bruising on Child's abdomen. R. 165, l. 19-R. 166, l. 11. Child's heart was in asystole, which meant there was no electrical or muscular activity occurring in the heart. Koehler testified that Child was administered epinephrine in an attempt to re-start her heart. R. 167, l. 17-R. 169, l. 23. Koehler noted extensive bruising on Child's legs. Based on petitioner's statements, he believed that Child's older brother would have been in his late teens, as he thought the bruising had to have been caused by an adult. R. 170, l. 3-4; R. 171, l. 15-R. 172, l. 25. Koehler administered six doses of epinephrine, but Child's heartbeat never returned, and she never began breathing unassisted. He was not "overly optimistic" that Child would survive. R. 174, l. 11-R. 175, l. 10.

Dr. Jacqueline Granger testified as an expert in pediatric emergency medicine. R. 255, ll. 3-21. She was the treating physician when Child came into the emergency room on January 14. R. 255, l. 24-R. 256, l. 2. Dr. Granger testified that Child came in unresponsive in cardiac arrest, and "immediately we noticed that there was extensive bruising that wasn't consistent with the report which we had received." R. 256, ll. 3-18. She stated the general consensus of the treatment team was astonishment at the "extent of bruising and trauma that was obvious" when Child arrived at the hospital. R. 256, l. 25-R. 257, l. 4. In her opinion, the injuries to Child were

inflicted, not accidental. R. 258, ll. 10-13. During her testimony, the state entered State's Exhibit 61⁶ into evidence over the objection of defense counsel. R. 257, ll. 5-25.

Dr. Granger testified that Child had a brief period of PEA, which is pulseless electrical activity, but that it was not enough electrical activity to beat her heart. In total, Child received eleven rounds of epinephrine, which she testified was a lot. They were able to get Child's heart to beat again, but it was not "a very adequate heartbeat," and they were having a difficult time keeping Child's blood pressure up. Dr. Granger did not believe Child would survive based on the amount of time she had been unresponsive and without a heartbeat. Because her heart was not beating and she was not breathing, it was presumed that she had no oxygenation to her brain for approximately forty minutes. Dr. Granger stated that the bruising on Child was "significantly greater than what most of us had ever seen before." R. 259, l. 22-R. 262, l. 17.

According to Dr. Granger, Child's body temperature was ninety degrees when she arrived in the emergency room, and her pH level was less than 6.79 which meant she was extremely acidotic. Dr. Granger explained that any pH level below seven is considered critically ill. Child's CO₂ levels were greater than 100 which was not compatible with life. Child's pupils were fixed and dilated, indicating no brain activity, and her abdomen was distended. R. 264, l. 13-R. 266, l. 12.

Dr. Granger immediately noticed that Child had linear patterns, and what appeared to be a loop pattern, in the bruising on her legs which indicated that an object was used to hit Child. She stated that after being hit, Child would have been bleeding into the soft tissues of her body, and the deep, dark coloring and convescing of the bruising indicated that it was deep tissue bleeding. She stated the injuries to Child would have been "excruciatingly painful." In her

⁶ A copy of this exhibit is on file with this Court.

medical opinion, a seven-year-old child could not have injured Child because a child would not be able to produce the amount of force necessary to cause the injuries to Child and would not have been able to control Child long enough to cause such extensive injuries. Dr. Granger further stated that she had never seen abdominal bruising like what Child had caused by the administration of CPR or the Heimlich maneuver. She testified that the extensive bruising on Child's body was "by far more severe than any bruising" that she had treated. R. 266, l. 22-R. 270, l. 25. In her medical opinion, the injuries on Child resulted from multiple blows that appeared to happen around the same time. She stated that after the blows, Child would have been in excruciating pain and would have slowly become altered and then unresponsive. R. 271, ll. 4-16; R. 272, ll. 16-23.

Prior to the testimony of medical examiner Dr. Ward, the circuit court addressed the courtroom gallery, stating:

There is going to be testimony and evidence presented today of an incredibly graphic nature...I say that because if there is anyone in this courtroom who feels that they cannot handle that and sit here, for lack of a better word, stoically while this jury considers this testimony and evidence, then I encourage you to leave now. And I say that because I might have – in all candor, if this were someone – a loved one of mine, I might have a very difficult time keeping my emotions in check with regard to it.

R. 274, l. 15-R. 275, l. 1. Dr. Ward testified that Child was 38 inches in length and weighed 40 pounds at the time of her death. Upon his initial examination of Child, he observed "virtually innumerable bruises present about [V.S.] on her stomach, on her back, and extending down to her lower legs." He noted State's Exhibit 2 accurately reflected the bruising on Child. R. 298, ll. 3-17. Referencing State's Exhibit 4, he explained that there was scratching or abrasions to the skin of the abdomen where the bruising was and that the bruising on her legs was confluent, meaning the bruises overlapped each other and appeared almost solid. R. 300, ll. 12-24. In his

medical opinion, the bruises on Child were caused by blunt force injuries which he described as multiple blows to the skin and the tissue of Child R. 300, l. 25-R. 301, l. 6.

Turning to State's Exhibit 5, Dr. Ward again pointed out the various bruises that were merging, as well as abrasions and scratching to the back of Child He testified that in his opinion, the bruising to Child's stomach and back was not consistent with incorrect hand placement during CPR. He stated the injuries were "distinct areas of blows to the skin of the abdomen and separate blows to the skin of the back." R. 301, l. 7-R. 303, l. 22. He also opined that the Heimlich maneuver would not cause the injuries seen on Child's abdomen. R. 305, ll. 9-23. Consistent with the witness testimony that had come before him, Dr. Ward also stated that he had never seen similar bruising on individuals who had CPR performed on them. R. 305, l. 24-R. 306, 2.

Dr. Ward explained that Child had pattern bruising which meant that she was struck with a non-anatomical object. He stated that at least some of the injuries were inflicted with a foreign object. He agreed that the injuries could have been caused by a belt based on the patterns in the bruising. Using State's Exhibit 2, he pointed out various pattern injuries that he had observed. R. 306, l. 20-R. 308, l. 6. Dr. Ward testified that the force used to injury Child not only caused bruising to the skin but disrupted "virtually all of the superficial blood vessels of the skin." This meant that not only was there bruising but also bleeding into the fat and muscle layer. The blows were made with enough force to cause the upper layer of skin to separate from the lower muscle layer and blood collected between the two areas. He testified "this isn't what we think of as a traditional bruise of the skin. This is a severe deep injury that's tearing tissue from tissue and allowing blood to collect within the tissues underneath the skin." R. 308, l. 18-R. 309, l. 16.

Over objection, the state moved State's Exhibit 42,⁷ a photograph from the autopsy of the internal damage to Child's legs, into evidence. R. 309, l. 20-R. 310, l. 23. Dr. Ward explained that the photograph showed the back of Child's legs from the thighs extending down to mid-calf. He stated there were some areas of relatively normal tissue, but the darker areas were where blood had bled into the fatty tissue of the skin. He pointed out an "avulsion pocket," which is where the tissue has been torn away from the underlying tissue and blood had pooled in the pocket. He stated the injuries were present on both legs. R. 311, l. 6-R. 312, l. 15. When asked about the force necessary to cause such injuries Dr. Ward testified

Well, force is – is hard to describe. But this is – these are very forceful strong blows that can disrupt the tissue underneath. *The classic description of an avulsion pocket is someone who's been hit by a car.* So[,] the back of their legs, it basically, emulsifies or liquifies the fat and tears that tissue plane. So[,] this, certainly, isn't the force of a car, but I'm just saying it is a very strong force that would – multiple blows – very – multiple strong blows that would disrupt that tissue plane allowing blood to entire into those phases.

R. 312, l. 16-R. 313, l. 4 (emphasis added).

Dr. Ward opined, based on the colorization and lack of healing, that the injuries occurred to Child within the same reasonable period of minutes to hours. He testified that Child died because she bled to death into the tissues of her abdomen and legs. R. 313, ll. 5-23. He further testified that a seven-year-old child could not have inflicted that type of injury on Child, and the injuries Child suffered would have been painful. R. 314, l. 15-R. 315, l. 20. The official cause of death was multiple blunt force trauma injuries. R. 315, ll. 21-24. After Dr. Ward concluded his testimony, the court again addressed the gallery, stating it knew that the testimony was difficult for everyone and that the court appreciated the demeanor of everyone throughout the testimony. R. 319, ll. 17-21.

⁷ A copy of this exhibit is on file with this Court.

The sixth and final witness to offer medical testimony was Dr. Christina Goben, the treating physician from the pediatric ICU at Greenville Memorial Hospital. R. 323, l. 23-25. Dr. Goben described Child as “the sickest of the sick,” stating she barely had a pulse, that her blood pressure was about 80 over 40-to-0, her body temperature was 87 degrees, and that she was on a ventilator that was keeping her alive. She explained that a Glasgow Coma Score, or GCS, is an indicator of what a person can do in response to pain, verbal stimuli, and eye opening. When she examined Child, she determined her GCS was a three which meant she was not doing anything. Child could not respond to pain, could not move, could not talk, and never opened her eyes. She testified that a deceased person has a GCS of three. R. 326, ll. 4-22.

In discussing the bruising to Child, the state presented Dr. Goben with State’s Exhibits 2-5 but did not republish the photographs to the jury as the jury had already seen the pictures “lots of times.” R. 327, ll. 5-11. In addition to the bruising on Child’s abdomen and legs, Dr. Goben had documented bruising to her ear. She opined that the bruising was non-accidental and described it as “extensive bruising on a child’s body that was inflicted repetitively by blunt force trauma, which is the worst I’ve seen.” R. 327, l. 16-R. 328, l. 4. She also testified that a seven-year-old child would not be able to inflict the types of injuries seen on Child R. 328, ll. 13-21. According to Dr. Goben, after Child had been injured, she would not have been moving and would not have been able to eat or drink normally. R. 328, l. 22-R. 329, l. 7.

Both petitioner and Austin Robinson testified during trial. Austin testified that he met petitioner when she was fourteen years old, and they began dating when she was sixteen-or-seventeen years old. At that time, he was around twenty-one years old. They were married in 2010, and had two biological sons: K.R., who was fourteen at the time of trial, and A.R., who was eleven. He stated that the idea to adopt was originally petitioner’s, but they both wanted to

go through the process despite the challenges of becoming parents to five children. R. 181, l. 6-R. 182, l. 16; R. 183, ll. 20-23; R. 188, ll. 8-20. He testified that petitioner handled the discipline of Child, and they both would discipline J.E. and C.E. Austin claimed he had a great relationship with Child, stating she never gave him any trouble. He testified that petitioner's main problem with Child was her taking too long to eat. R. 190, l. 3-R. 191, l. 9. He further stated that petitioner had "issues with [V.S.] not listening or – and just not, you know, I guess abiding by the rules, being defiant, or anything like that." R. 197, ll. 7-10.

When Child was taking too long to eat, petitioner would place her on a timer. When the timer went off, Child would get a warning, and another timer would be set. When the second timer went off, Child either got a time out or a spanking from petitioner. Austin testified that petitioner would spank Child with her hand, a belt, or a little wooden paddle. He stated he could hear Child being spanked and sometimes watched it happen, but he did not think it was bad enough that he needed to intervene. R. 192, l. 4-R. 193, l. 23. Austin stated that petitioner typically spanked Child in her room but sometimes would spank her in the kitchen. He could hear the spankings from the other side of the door when they occurred in Child's room. R. 203, ll. 4-13.

Austin testified that the evening before Child's death, the family went to church, and Child ate a snack on the way there. When they arrived at church, Child had thrown up on herself which upset petitioner. He testified petitioner went inside to clean up Child, and because they did not have a change of clothes or their debit card, they borrowed a change of clothes from petitioner's sister for Child R. 198, l. 2-R. 199, l. 20. When they returned home, he gave Child a bath while petitioner went to the grocery store. During the bath, he noticed a light bruise on

Child's lower back. He testified that the bruise he saw was not the same as the bruising on Child's back and legs that was shown while he was testifying. R. 201, l. 4-R. 202, l. 17.

According to Austin, he, petitioner, and Child were at home the morning of January 14. Austin was outside waiting for the family van to get towed and doing "little stuff in the yard." He testified that when he went outside, Child was okay. While outside, he could hear "a little fussing back and forth" about Child needing to eat her food before she got placed on a timer. He next heard a few minutes of crying which stopped before he heard petitioner start "fussing" again. He went inside, observed that everything was fine, and then returned outside. R. 204, l. 9-R. 206, l. 25. When he was back outside, he again heard petitioner fussing and Child crying. He stated he could not hear Child being hit, but he knew she was getting hit from her crying. R. 207, ll. 12-22.

Austin testified that after coming back inside, he could hear petitioner getting louder with Child about eating her food and could hear Child being hit. He went upstairs and saw the bruising on Child and saw petitioner with a belt standing over Child. He stated the bruising he saw was not as dark and defined as it was in the photographs. He testified he told petitioner: "You've gone too far this time," and stated they gave Child an Epsom salt bath. He estimated the incident occurred over the course of about an hour, and he never intervened. R. 208, l. 2-R. 211, l. 4. After the bath, Child was wrapped up in a heating blanket because she was cold. Austin went to CVS to get some Children's Tylenol and stated he still was not inclined to call 911 at that point because Child was still coherent. R. 213, l. 4-21. He testified that Child then requested water and that she drank four or five cups of water before saying she felt like she was going to throw up and then going limp. R. 215, ll. 17-R. 216, l. 15. According to Austin, Child

was naked wrapped up in the blanket, and petitioner dressed her after 911 was called. R. 247, ll. 21-25.

Austin stated that he did not immediately call 911 or tell police what happened because he was scared about getting into trouble and the kids being taken away. R. 186, l. 14-R. 187, l. 23-16; R. 211, ll. 5-12. He also testified that he was trying to protect petitioner, so he did not interject when petitioner was blaming J.E. for the injuries to Child. While looking at the photographs of Child's injuries, he testified that J.E. did not cause the injuries to Child R. 187, l. 12-R. 188, l. 4. During cross-examination, Austin admitted to chronically lying to petitioner throughout the marriage about numerous things as well as pawning family items to get money. R. 222, ll. 1-4; R. 234, l. 13-R. 237, l. 12. He confirmed that he disciplined the other children but stated he never disciplined Child. R. 233, ll. 23-25. He also testified that he never used a belt on any of the children. R. 232, ll. 11-16.

Petitioner testified that she was twelve years old when she first met Austin, and that he was four or five years older than her. She confirmed they started dating when she was sixteen, were married in 2010, and had two biological sons. She also confirmed that it was her idea to adopt because she wanted a little girl, but there were health risks with having more biological children. R. 332, l. 23-R. 333, l. 24. Petitioner testified that Child was a perfect child that did not have a lot of behavioral issues and was really easy to get along with. She spoiled Child as the baby girl and showed her favoritism. R. 335, ll. 6-14. She stated that she and Child had a good relationship, that Child was her "mini-me" and wanted to do everything she did. R. 354, ll. 70-15.

Her testimony mirrored Austin's - that the evening before Child died, the family had gone to church, and Child had thrown up on herself in the van. She stated Child had a ton of

chips in her mouth and was trying to drink her water which caused her to throw up. She admitted to being frustrated but stated she was frustrated with everyone, not just Child. Petitioner testified that she did not see any bruising on Child that evening while cleaning her up in the church bathroom. R. 336, l. 9-R. 340, l. 5. Petitioner testified that after church, she went to the grocery store and was gone for an hour-and-a-half to two hours while Austin was home with the children. When she returned home, the children were all asleep. R. 341, ll. 1-25.

Petitioner testified that on the morning of Child's death, she took the boys to school and was gone from the home for about forty-five minutes. When she returned, Child was still sleeping, so she began to make pancakes for Child to eat when she woke up. When she went to get Child up at around ten that morning, she found Child awake but still in her bed. She told her to come downstairs and eat her breakfast, which she did. She testified it took Child about an hour to eat her breakfast, but she was not paying that much attention to her because she was on her computer with her headphones in. During that time, Austin was doing laundry and working on stuff downstairs. After Child finished eating, she went to her room and played by herself for about thirty minutes. Child came out of her room to tell petitioner that she had peed on herself, and Austin offered to clean her up. She stated Austin put her in leggings, a t-shirt, and a Pull-up. She testified that Child next asked for a popsicle but could not finish it because she got cold. Because Child was cold, she offered to sit with her in a heated blanket and watch her shows. R. 342, l. 10-R. 346, l. 19.

While they were sitting together, Child ate some gummies and asked for water. She drank four or five cups of water before stating that her stomach hurt. Petitioner testified her stomach felt full, and she thought that Child had had too much between the food and water. Because Child's stomach was hurting and she had thrown up the previous night, petitioner asked

Austin to get some Children's Tylenol. About thirty minutes to an hour later, Child started to throw up a little bit. Petitioner could tell that Child still needed to throw up, so she stood up and began the Heimlich maneuver on her. Child then went limp, so she laid her on the stool to the rocking chair and began pressing on her stomach and trying to see if there was anything inside Child's mouth. Petitioner stated that every time she pressed on Child's stomach, fluid and throw up would come out of her mouth. She thought it sounded like Child had fluid in her lungs and was possibly choking. She instructed Austin to call 911. R. 346, l. 25-R. 349, l. 22.

Petitioner testified that she was in shock. As she watched the firefighters perform CPR on V.S., she realized she had been doing CPR wrong. She told police she had caused the bruising on Child's stomach because she had been pushing on Child and had done it wrong, so she just assumed she made the bruise. When she heard EMS state that Child had bruising on her legs, she stated that J.E. had bruised her before, and maybe he had put bruises on her again because he had some anger issues. Petitioner maintained that she did not see the extent of the bruising to Child until after she was arrested. Once she saw the photographs, she did not think J.E. had caused the injuries. She testified that after hearing the medical testimony, she did not think it was possible that J.E. could have caused the bruises on Child or that she could have caused the bruising to Child's abdomen. R. 350, l. 13-R. 353, l. 7.

When she watched Austin's interview with police, she immediately said: "He's lying." She testified that their marriage was very shaky, and she had planned to leave with the children once the adoption was finalized. She confirmed that Austin regularly lied to her throughout the course of the marriage about various things and that he had "one of the scariest type [sic] of anger issues. Because he holds everything in and doesn't let it out. And then when it does come out, it's too much." Petitioner testified that she knew something terrible happened to Child, and

she did not think J.E. harmed Child because he had never left bruising on her like the bruises that were discovered that day. R. 354, l. 16-R. 357, l. 13.

On cross-examination, petitioner testified that corporal punishment was not legally wrong and that she had been spanked by her father growing up. She maintained that if she used a belt when disciplining the children, she would have used it within the bounds of the law, however she did not like to use belts when she spanked the children. R. 366, l. 12-R. 367, l. 24. Petitioner adamantly denied hitting Child with a belt that morning and testified that Austin did not see her with a belt in her hand. R. 377, ll. 10-15. She testified that she did not lie about J.E., that he had a history of lying and abusing Child which she had reported to DSS, his school counselor, his guardian ad litem, and the children's doctor. R. 383, ll. 7-13. Petitioner maintained she did not see Child's legs prior to stating that J.E. had caused the bruises, and she had not thought that the bruising was significant. She testified if she had seen the bruising and how significant it was, she would have never thought J.E. was capable of injuring Child in that manner. R. 383, l. 20-R. 386, l. 5. Appellant agreed that J.E. was not responsible for the injuries to Child, that Child had been beaten to a pulp, and it had to have been by her or Austin. R. 388, ll. 18-25.

Discussion

The Court of Appeals affirmed the trial court's admission of graphic photographs of the horrific injuries to a V.S., holding "that the photographs were necessary to refute Robinson's claims that Victim's injuries were caused by Robinson's CPR attempts and by J.E.'s abuse." That court further found that "the photographs were probative of the cause of death as well as the elements of the offense of homicide by child abuse." State v. Robinson, Op. No. 2025-UP-171 (S.C. Ct. App. file May 28, 2025). Petitioner respectfully requests this Court grant certiorari to review the decision of the Court of Appeals because it conflicts with this Court's decision in

State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023), where the photographs at issue in the matter *sub judice* have little probative value as to any disputed fact in the case.

All relevant evidence is generally admissible. Rule 402, SCRE. To be relevant, the evidence must have a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. However, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE.

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. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). To be classified as unfairly prejudicial, photographs must have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (internal quotation omitted). “When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d. 201, 206 (Ct. App. 2008).

The appellate courts of our state have had numerous opportunities to review a trial court’s admission of gruesome photographs. In State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997), the appellant was charged with armed robbery and murder. He argued that the photographs admitted into evidence by the trial court were highly prejudicial and served no purpose other than to arouse passion and prejudice in the jury. Appellant asserted other graphic testimony of how the victim was killed had already been given by the forensic pathologist and law enforcement

officers. Therefore, the pictures were unnecessary, and their prejudicial effect outweighed their probative value. Id. at 78, 480 S.E.2d at 71-72. This Court held that the photographs of victim's body at the crime scene were properly admitted because the photographs showed the crime scene and position of the victim's body, were not close-ups, supported the testimony of several witnesses, and were relevant to the nature of the crime. Id. This Court continued that even if the descriptive testimony of the prosecution's witnesses adequately conveyed the brutality and malice of the crime and the photographs were unnecessary, they were harmless surplusage because the photographs did not inflame the jury and were not prejudicial. Id. at 79, 480 S.E.2d at 72.

In State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009), Brandi Holder and her boyfriend, Mark Martucci, were charged with homicide by child abuse for the death of Holder's two-and-a-half years old son. One afternoon Martucci and another man brought Holder's unconscious child into the emergency room. The child was not breathing and had no heartbeat. Martucci told hospital staff that the child had fallen off of an All-Terrain Vehicle (ATV) earlier in the week and injured himself. When Holder arrived at the ER, she also informed hospital staff that the child had been in an ATV accident. Id. at 281-82, 676 S.E.2d at 692.

The hospital staff was unable to resuscitate the child. The pathologist that performed the autopsy testified that the child's injuries were not caused by an ATV accident. The child had bruising in the pattern of knuckle marks on his face, the inside of his lip had been split, and there was bruising around his mouth. The child also had numerous bruises all over his body that were in various stages of healing. The pathologist opined that the child died as a result of blunt force trauma to the abdomen. Id. at 282, 676 S.E.2d at 692-93.

Initially, Holder gave a statement denying any knowledge of abuse of her son. Once police informed Holder that they had discovered there was not an ATV accident, she indicated she wanted to change her statement. Holder then gave a second statement wherein she admitted knowledge of repeated instances of Martucci abusing her son. She later recanted her second statement at trial. Id. at 282, 676 S.E.2d at 693. On appeal, Holder argued the trial court erred in admitting autopsy photographs, particularly the on photographs showing the child's internal injuries, Id. at 290, 676 S.E.2d at 697, and in admitting photographs showing prior abuse of the child. Id. at 291, 676 S.E.2d at 697-98. Ultimately this Court held the photographs were properly admitted.

Regarding the autopsy photographs, this Court first recognized that the pathologist had testified in camera that the photographs would help him in “demonstrating the anatomic relationships and the disruption of those anatomic relationships.” The pathologist explained that he could explain the injuries without the photographs but he was not sure if he could explain the injuries to the jury's understanding without the photographs. Id. at 290, 676 S.E.2d at 697. This Court found:

The photographs clearly demonstrate the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone. The photographs corroborated the pathologist's testimony about the extensive bruising on the child, which was in various stages of healing, and showed that even internal organs manifest signs of bruising. This is particularly helpful to jurors who are unversed in medical matters. Although Holder testified she was unaware of any marks on her son prior to his death and thought he was suffering from simple food poisoning, it is abundantly clear from the extensive bruising on the child, which was in various stages of healing, and the torn internal organs, that he had been seriously injured. These photographs demonstrate that the damage to the child would have been difficult to ignore. Id. at 290–91, 676 S.E.2d at 697 (emphasis added).

The other images at issue were two photographs taken of the child approximately a month prior to his death which showed bruising on his back and what appeared to be a burn mark on his arm. Holder asserted the pictures were improper prior bad acts evidence. Id. at 291, 676 S.E.2d 690, 697-98. This Court held the trial court had not abused its discretion in admitting the photographs in this instance because the “photographs tend to establish Holder was aware of ongoing abuse of her child, which is directly relevant to whether her acts *or omissions* resulted in the death of [child]. They are thus relevant to establish elements of the offense, including ‘extreme indifference.’” Id. at 294, 676 S.E.2d at 699 (Emphasis in original). This Court additionally found “the photographs established a pattern of continuous abuse and neglect, which made it more probable that [child] was a victim of child abuse or neglect rather than a mere accident.” Id.

In State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014), a plurality of this court upheld the admission of pre-autopsy photographs of a child who had been mauled to death by the defendant’s dogs. Collins was charged with involuntary manslaughter and three counts of owning a dangerous animal causing injury to a person. The charges arose from the death of a ten year old neighborhood boy who was found in Collins’ front yard “tore to pieces” with a group of Collins’ dogs nearby. At the time of the incident, Collins had six pitbull mixes on his property, all of which were unrestrained. It was determined that one of the female dogs on the property was in heat. Id. at 528, 763 S.E.2d at 24.

An autopsy revealed the boy had died from extensive traumatic injury secondary to being severely mauled by dogs. Id., 763 S.E.2d at 25. At trial, the state elicited testimony from other members of the community that the dogs were known to be aggressive and were never restrained. The state sought to admit seven photographs taken by the pathologist prior to the

autopsy to support its contention about the dangerous propensities of the dogs, the manner and extent of the attack, and Collins' criminal negligence. After a lengthy *in camera* colloquy with the pathologist and the parties, the trial court allowed seven photographs into evidence over objection. Id. at 532-33, 763 S.E.2d at 26-27.

At trial, defense counsel extensively cross-examined the pathologist's findings. While Collins did not testify at trial, witnesses in his defense testified that the dogs were not at all dangerous, that they had never run at people in an aggressive manner, and that they had always been given an abundance of food. Defense counsel argued that the presence of the female dog in heat had perhaps made the dogs more agitated and territorial than normal, but they were not generally dangerous animals. Id. at 533, 763 S.E.2d at 27.

On appeal, Collins challenged the admission of the seven pre-autopsy photographs arguing the danger of unfair prejudice was substantially outweighed by the probative value of the evidence. Two members of this Court found that photographs were properly admitted because the photographs were "highly probative, corroborative, and material in establishing the elements of the offenses charged." Id. at 536, 763 S.E.2d at 28. The lead opinion noted that the nature and extent of the boy's physical injuries as described by the pathologist were in contention by the defense. Id. at 533, 763 S.E.2d at 27. It further noted that the photographs were taken prior to autopsy as a means to document the extent and nature of the injuries and thus showed the unaltered condition of the boy. Id. at 536, 763 S.E.2d at 28. Further, because there were no eye witnesses to the attack, the photographs "aided the jury in evaluating the testimony offered by both the state and defense, especially as to determining the dangerous propensities of the dogs and whether or not Collins's conduct was criminally reckless." Id. at 536, 763 S.E.2d at 29. The

lead opinion also found held that any alleged error would be harmless beyond a reasonable doubt based upon the other evidence adduced at trial. Id. at 537-39, 763 S.E.2d at 29-30.

Two members of the Collins court concluded that the admission of the photographs was error as the primary, if not only, purpose of the photographs was to inflame the passions of the jury. The concurrence noted that the “detailed and graphic testimony of the pathologist was more than sufficient” to allow the state to establish the elements of the offenses. However, the concurrence found the error to be harmless in light of the other evidence adduced at trial. Id. at 30, 763 S.E.2d at 539 (Kittredge, J., concurring). Finally, one member of the Collins court found the admission of the photographs to be error that was not harmless. The dissent opined the majority “approved the admission of evidence that far exceeds...the outer limits of what our law permits a jury to consider.” Id. at 30-31; 763 S.E.2d at 540 (Pleicones, J., dissenting).

In other instances, this Court has found the admission of photographs improper and harmful. In State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986), this Court held the trial court erred in admitting three color autopsy photographs of one of the victims in a capital murder trial. Although the photographs were used to corroborate other evidence, the trial judge erred in permitting their introduction because they were unfairly prejudicial. The Court held that because it was clear the facts were not in dispute and because the testimony of a forensic pathologist “negated any arguable evidentiary value of the photographs” the “prejudice created by the photographs clearly outweighed any evidentiary value.” Id. at 23-24, 339 S.E.2d at 693.

More recently, in State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023), this Court reversed the trial court’s admission of graphic photographs because “the photos had little probative value *as to any disputed fact* in this case.” (emphasis added). This Court found limited probative value in the photographs at issue in Nelson for two reasons: First, in defense counsel’s

opening statement he admitted that the only disputed fact was who committed the murder, thus “the information gained from the autopsy photos was not in question,” and the “facts evidenced by the autopsy photos” were “undisputed.” Id. at 417, 891 S.E.2d at 510. Second, our Court found the “photos provide no insight as to who killed Victim.” Id. 426, 891 S.E.2d at 514.

In analyzing the propriety of admitting the photographs during Nelson’s trial, this Court recognized that the majority of our state’s case law surrounding the admission of graphic photographs arose in the context of the *sentencing* phase of a capital murder trial. The Court then reiterated a long standing principle of law in our state: “In the *guilt* phase of a trial, photographs of the murder victims *should be excluded where the facts they are intended to show have been fully established by competent testimony.*” Id. at 420, 891 S.E.2d at 512 quoting State v. Kornahrens, 290 S.C. 281, 288-89, 350 S.E.2d 180, 185 (1986) (emphasis in original) (emphasis added); see also State v. Waitus, 224 S.C. 12, 27-28, 77 S.E.2d 256 (1953) (There was no dispute as to these facts. All of them were fully established both by uncontradicted medical and lay testimony. These pictures were calculated to inflame and arouse the passions of the jury and their introduction was wholly unnecessary to establish the facts claimed. They should have been excluded.).

Petitioner’s case can be distinguished from cases such as Brazell, Holder, and Collins, *supra*. There was no testimony in the record that the medical examiner or other various medical personnel needed the photographs to aid the jury in understanding the injuries that Child suffered. The photographs did not show Child at the crime scene nor were they necessary to establish the elements of the offense charged. Much like the photographs in Nelson and Middleton, *supra*, the information contained within the photographs presented during petitioner’s trial was not at issue. The case was a question of which adult in the home had beaten Child, not

how or if she had been beaten. The extensive and descriptive medical testimony by not only the forensic pathologist but the treating ER physician, the treating ICU physician, and the various first responders negated any probative value the photographs may have had.

In the matter *sub judice*, the state originally argued that the photographs were necessary to show that the injuries were not caused by an accident, that the injuries were not caused by a seven-year-old child, and that the autopsy photograph particularly showed the force used to injure Child. However, at trial, defense counsel conceded during opening statements that a horrific crime had occurred and that it was the jury's sole job to determine if the state could prove petitioner was the one who committed the crime. R. 89-90. The defense did not challenge the manner and cause of death, only who was responsible for causing the death. The medical testimony at petitioner's trial was extensive, with six separate witnesses testifying at length about the nature, severity, and degree of the injuries to Child. Both the expert and lay medical testimony fully established the injuries to Child and was uncontested by defense counsel. The cross-examination of the six witnesses that gave medical testimony amounted to a mere eleven pages (R. 144-147; 156-157; 176-177; 272; 316-319; 329-331) in the over four-hundred-page record and was limited to clarifying questions about testimony elicited on direct. Regarding force, the medical examiner testified the injuries were similar to when a person is struck by a car—a vivid description that certainly put into perspective the amount of force used to cause Child's injuries.

The opinion of the Court of Appeals noted the photographs were probative to disprove petitioner's statements to first responders that Child's younger brother was likely responsible for the bruising. However, the other testimony at trial established that the injuries occurred the morning of Child's death when no one else was home other than petitioner and her husband/co-

defendant. The medical and lay testimony also established the impossibility that a seven-year-old child could inflict the injuries that caused Child's death. This was testimony the state knew it would elicit when it made its arguments in support of the admission of the photographs. Had petitioner truly asserted the defense that Child's older brother was the cause of the injuries and death, the state would have been able to preclude admission of such evidence under the third-party guilt rules because the evidence would not raise a reasonable inference or presumption as to petitioner's own innocence, and it would only serve to cast a bare suspicion upon J.E. as the guilty party. See State v. Brown, 437 S.C. 550, 566, 878 S.E.2d 364, 373 (Ct. App. 2022) citing State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) (Evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible....). Further, petitioner conceded when she took the stand that it was only possible that she or her husband inflicted the injuries that resulted in the Child's death.

While the Court of Appeals opinion found the photographs at issue were "necessary" and "probative," it did not fully address how the probative value of the photographs was not substantially outweighed by their unfairly prejudicial effect. The photographs admitted were extremely inflammatory and graphic. State's Exhibits 2-5 show the extensive, dark purple, confluent bruising to Child's abdomen, thighs, and back from various angles. In each photograph, Child is overwhelmed by medical equipment as medical staff was still attempting lifesaving measures. In State's Exhibit 61, Child's face is visible. Her eyes are open and fixed while someone is actively pushing oxygen into her lungs with a breathing bag. Her legs are

being held up showing confluent, dark purple-black bruising extending up both legs. State's Exhibit 42 shows the top of Child's thighs down to her feet. The back of her thighs have been excised, showing bone, fat, tissue, muscle, and coagulated blood. The photographs were entered in full color and repeatedly used during trial.

Throughout the testimony, the state showed the various photographs at issue to the jury at least nineteen times. After being introduced through Investigator Weibel, various photographs at issue were repeatedly shown to the jury during the testimonies of Givens, Jennings, Koehler, Dr. Granger, Dr. Ward, and Austin Robinson. By the time the state's final witness (Dr. Goben) testified, the solicitor declined to republish the images as the jury had seen them "lots of times." R. 327, ll. 7-11. The solicitor even declined to republish the photographs during closing arguments, due to the difficulty of viewing them. R. 397. Even more telling, the experienced trial judge felt compelled to admonish the gallery regarding the graphic nature of the autopsy photograph because she herself "if this were someone – a loved one of mine, I might have a very difficult time keeping my emotions in check with regard to it." R. 274, l. 19-R. 275, l. 1. The concessions by defense counsel, along with the extensive lay and medical testimony in the record, greatly reduced the probative value of the photographs while the gratuitous use of the full color, graphic photographs by the state enhanced the unfair prejudice to petitioner.

The Court of Appeals further failed to consider the emotional influence the photographs would have on the jury, particularly where petitioner's co-defendant had pled to a lesser crime at the time of petitioner's trial. As this Court recognized in Nelson, *supra*, the admission of graphic photographs "*unnecessarily* created the potential for the jury to convict Carmie of the murder based on inflamed emotions in a case where the jury was provided with undisputed evidence as to how Victim died, as well as ample evidence that she had been killed with malice, whether by

Carmie or Daniel.” Nelson 440 at 426, 891 S.E.2d at 514 (emphasis added). This Court continued, “[t]he potential for a verdict based on emotion *was amplified* by the fact the jury was informed that Daniel had also been charged in connection with this case but only faced an accessory after the fact of murder charge.” Id. (emphasis added). The same was true for petitioner, except that the emotional influence was much higher for petitioner because the victim was a small child, as compared to the adult victim in Nelson.

The state presented ample, undisputed testimony of how Child died, as well as ample testimony that her death occurred under circumstances manifesting an extreme indifference to human life. The jury was also informed that petitioner’s husband, originally charged as a principle, had been allowed to plead down to aiding and abetting homicide by child abuse. Further, the solicitor in closing argument repeatedly called for justice to be served for Child by finding petitioner guilty. The emotional, graphic pictures when coupled with the jury’s knowledge that petitioner was the only one who could be held to account for Child’s death amplified the likelihood that the jury would determine the case on emotion instead of fact. This is even more true where, as here and in Nelson, the information in the photographs was not at issue. See also, State v. Jones, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) (“It is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial.”)

The witnesses that provided medical testimony stated that the bruising on Child was not like anything they had ever seen before, many describing the injuries as the worst they had seen. The bruises were accurately and vividly described, including size, color, and location. The damage to the internal structure of Child’s legs was also described in painstaking detail. The photographs were corroborative of this testimony but wholly unnecessary for the state to prove

its case. The graphic and disturbing color photographs of Child, shown over and over to the jury, served no other purpose than to inflame the passions of the jurors. The extensive amount of testimony in the case adequately portrayed the injuries suffered by Child. Based on the entire record and the facts of the case, the admission of the photographs in this matter was an abuse of discretion by the trial court, as any probative value was substantially outweighed by the unfair prejudice caused to petitioner.

Criminal prosecutions occurred prior to the advent of photographic technology, and juries returned verdicts without being subjected to graphic and gruesome photographs of victims. The state has continued to push the envelope of what is proper in criminal prosecutions. As this Court stated in State v. Torres, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010),

Although we affirm the admission of the photographs, we take this opportunity to address an area of growing concern to this Court. The photographs at issue in this case, while admissible, are at the outer limits of what our law permits a jury to consider. Moreover, the State also sought to introduce evidence in the form of an autopsy dissection photo at trial, which the trial judge wisely excluded. Today, we strongly encourage all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory which, in all likelihood, was already assured because of other substantial evidence in the case.

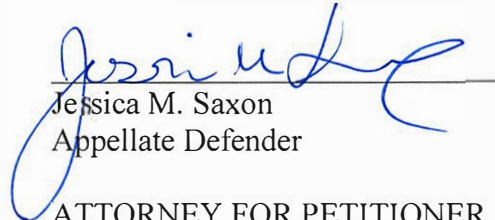
The infinitesimal probative value of the photographs in this case, when compared to the high prejudice suffered by petitioner, weighed in favor of exclusion of the evidence. The emotional toll of a homicide by child abuse case inevitably weighs on even the most seasoned in the legal profession, and it undoubtedly impacts a jury. When the medical testimony describes the uncontested injuries in such comprehensive technical terms and vivid, common ways (such as force being relative to a person being struck with a car), the probative force of the photographs becomes nearly non-existent. The repeated use of the photographs, along with the trial court's and state's recognition of their extremely disturbing nature, highlighted the unfair prejudice

suffered by petitioner. This Court should hold that the photographs admitted in this matter went beyond the outer limits of what the law allows based on the facts and issues in this case. The state pushed too far by admitting and repeatedly publishing the photographs at issue in this case.

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals to allow full briefing on the issue presented.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 28th day of July, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2025-UP-171 (S.C. Ct. App. Filed May 28, 2025)
Lower Court Case No. 2021-GS-23-006831

THE STATE,

RESPONDENT,

V.

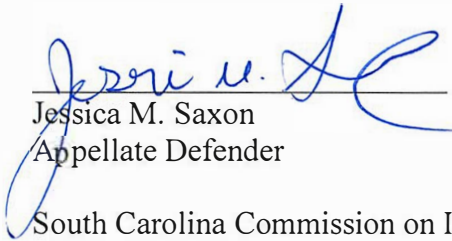
ARIEL ROBINSON,

APPELLANT

APPELLATE CASE NO. 2022-000716

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Ariel Robinson, #387938, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 28thday of July, 2025.



Jessica M. Saxon
Appellate Defender

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ATTORNEY FOR PETITIONER

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Monday, July 28, 2025 3:30 PM
To: Ambree Muller
Cc: Saxon, Jessica; Grace Sommer
Subject: 2022-000716 The State v. Ariel Robinson
Attachments: 2022-000716 The State v. Ariel Robinson Petition for Writ of Certiorari to the Court of Appeals.pdf; 2022-000716 The State v. Ariel Robinson Appendix.pdf

Good Afternoon,

Attached for service in the above-referenced case are the Petition for Writ of Certiorari to the Court of Appeals and accompanying Appendix which will be filed today, July 28, 2025, with the Supreme Court via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

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