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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Jasper County

Honorable J. Derham Cole, Circuit Court Judge

JONATHAN NIEVES,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000057

BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by overruling Appellant's objection under Rule 403, SCRE, to wholly unnecessary and gruesome autopsy photos of the unidentifiable, burnt and extremely charred remains—including a detached head—of the undisputed victims, particularly where the burning occurred after the alleged murders?

STATEMENT OF THE CASE

Appellant Jonathan Nieves was indicted by the Jasper County grand jury in 2016 for two counts of murder and one count of possession of a weapon during the commission of a violent crime. App. 547, 550, 553, 622. He was tried on October 11, 2021, before Judge Carmen Mullen and a jury. App. 1. He was represented by Joshua Koger, and Sean Thornton prosecuted the case. App. 2. Ultimately, the jury found him guilty of all three charges. App. 525:7-19. The trial court issued two life sentences. App. 538:8-13.

Koger filed a notice of appeal, but appellate counsel failed to timely request the transcript, and so Appellant's appeal was dismissed. App. 556-58, 624. Appellant then filed an application for post-conviction relief, asserting several claims and seeking a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). The PCR court found Appellant was entitled to a belated appeal because he did not voluntarily waive his right to appeal. App. 624.

Pursuant to *Davis v. State*, 288 S.C. 290, 290, 342 S.E.2d 60 (1986) (mem.), and Rule 243(i), SCACR, this brief of Appellant is filed with his petition for a writ of certiorari to review the PCR court's order dismissing his application.

STATEMENT OF FACTS

In October of 2015, Richard Brownlee discovered a vehicle burnt in the woods outside Hardeeville in Jasper County, down Purrysburg Road. App. 120:7-121:13. He saw a body in the vehicle, so he called 911. App. 122:4-17. Chief Deputy Jeff Crosby of the Jasper County Sheriff's Department responded, and he found two badly burnt bodies in the car—one in the front seat and one in the back seat. App. 125:9-126:5, 133:8-19. Ultimately, the bodies were identified through DNA testing as Bruce Specks and Shantay Jenkins. App. 277:16-279:5, 279:10-280:24. Specks was in the backseat, and Jenkins was in the front passenger seat. App. 186:17-187:8, 277:16-279:5, 284:2-23, 279:10-280:24, 145:13-19. The car belonged to Jenkins. App. 177:19-178:17, 181:14-24.

Prior to trial, Appellant objected to the admission of several photographs from the crime scene and autopsies. App. 64:10-65:10, App. 74:24-75:4. The trial court ruled the state had to elect among the autopsy photographs and could have only one photo of each victim. App. 78:21-79:5. Appellant renewed his objection when the two selected photos were ultimately introduced, but he was overruled. App. 458:8-17.

SLED Agent Leland Hardee was the arson investigator. App. 138:13-139:23. At trial, using photographs taken at the time, Hardee described how thoroughly burnt the vehicle and bodies were. App. 142:22-146:3; State's Ex. 9-14. He identified photographs showing the burnt bodies both inside and outside the car. App. 144:6-145:19, 146:7-17; State's Ex. 9-10, 13, 15-16.

From her examination of the bodies, Dr. Phillips, the forensic pathologist, concluded the female victim (Jenkins) was killed by the bullet found in her body and her cause of death was a gunshot wound. App. 470:6-11. The male victim (Specks) died due to intracranial hemorrhaging resulting from blunt force trauma to the head. App. 467:3-8, 470:14-21. The

charring on Jenkins's body "limit[ed] the external examination that [she] can do for identifying features." App. 463:22-24. Specks's body "was even more charred and burned than the previous body, so there were more limitations in this case than we had on the previous one." App. 465:23-466:1. In her testimony, Phillips narrated her description of the autopsy photographs to the jury:

> [State's Exhibit 50 of Jenkins is] a photograph of the upper portion of the torso and head, and some of the fragments that are with the body in the bag. What you'll note is that the extremities are missing, and we have an identification band around the stump or left arm. Parts of the skull are also missing, and you can see the exposed brain. The majority of the body is very charred, and that limits the external examination that I can do for identifying features. And we can't really tell injuries on the skin because it's burned or burnt off.
>
> . . .
>
> And what we have in [State's Exhibit 51 of Specks] is, again, the head and upper portion of the torso. You can see that the head is detached from the rest of the body, and , again, fragments of bone debris that were received in the bag. In this case, this body was even more charred and burned than the previous body, so there were more limitations in this case than we had on the previous one.

App. 463:14-461:1, 465:18-466:1; State's Ex. 50-51. For both bodies an external examination revealed no useful information due to the charring. Only by x-ray could Phillips identify their injuries, which helped her determine the fire occurred post-mortem. App. 464:1-465:4, 466:1-467:8. The x-rays were introduced into evidence. App. 457:12-458:17; State's Ex. 53-54.

At trial the state's theory of the case was that James Riley—a.k.a "Jackpot"—conspired with Appellant to rob Riley's drug dealer, Specks. App. 490:1-12. Jackpot and Vanessa Boyles have a child and lived together. App. 301:19-302:19. Boyles testified that on October 2, 2015, Appellant came over to their house and "we was talking about a robbery" in their front yard. App. 303:17-304:2. Boyles was clear both the robbery and the fire were Riley's idea. App.

325:2-14. She knew Appellant as "Santana," and he lived one block over. App. 303:17-304:13. She testified Jackpot and Appellant planned to rob a man named Tyree Jenkins. App. 305:1-10. Boyles insisted she told Riley and Appellant she did not want to be involved with the robbery. App. 306:15-25. The three of them then left in Appellant's car and went to visit Boyles's father, Michael Toomer. App. 305:11-18. Boyles and her father smoked marijuana during the visit. App. 307:17-23, 230:2-3. While there, they all went to the "Handy Dan" convenience store just down the street. App. 305:23-306:6, 307:24-308:7. At the store, Jackpot had the idea to buy gasoline, and Boyles pumped it into a portable tank. App. 309:18-310:6, 325:8-17; State's Ex. 44. They then returned to Toomer's home. App. 310:9-15.

Boyles testified that while with her father inside, Riley and Appellant were outside the house. App. 310:9-311:13. She then heard gunshots. App. 310:18-25. When she went outside, Appellant was in his car, and Jackpot was in an SUV. App. 311:6-24. They all left Toomer's house, and Boyles joined Appellant in his car. App. 312:1-21. Riley then led them to a dirt road off Purrysburg Road. App. 312:20-25. According to Boyles, they then went back to their home on Second Street in Hardeeville. App. 313:1-15. Apparently Boyles then saw flames from her home. App. 313:12-21. Then, apparently, Boyles saw Jackpot and Appellant leave the dirt road carrying the gas can and a bookbag "that had skulls on it." App. 313:22- 314:14. She testified she had previously seen Specks with that bag. App. 314:20-315:7. She testified she watched Jackpot and Appellant "splitting the stuff" from the bag, including marijuana. App. 315:16-25. She knew Specks because she had previously bought marijuana from him for Jackpot so often, "[she] can't count really how many times." App. 327:14-25. Boyles also testified that after the events, Appellant told her "that James started shooting first, and he felt like he had to go along with it." App. 316:23-25

Boyles testified that when she first spoke with law enforcement officers, she twice lied to them about being out of town and did not tell them the version of events described at trial. App. 317:7-318:10. She then pleaded guilty to lying to the police but had not been sentenced at the time of trial. App. 318:15-319:9. It was not until 2020 that she pleaded guilty and gave this version of events, five years after the alleged murders. App. 321:2-323:13. She admitted she lied previously to protect Riley because he is the father of her child. App. 335:15-25. At trial she agreed Jackpot "came up with this entire plan" and "controlled everything" about it. App. 336:4-9. Nonetheless, Jackpot was never charged even though Appellant's trial was not until six years after the murders. App. 413:19-414:16.

Ultimately the jury found Appellant guilty of all charges. App. 525:7-19. The trial court issued two life sentences. App. 538:8-13. Appellant filed a PCR application alleging, among other things, he did not voluntarily waive his right to a direct appeal. App. 561-63, 587:13-24. The state conceded the issue, and the PCR court granted a belated appeal. App. 619:13-17, 624, 632. This brief was filed with the petition for a writ of certiorari to review the PCR court's decision, as required by Rule 243(i), SCACR.

STANDARD OF REVIEW

"[T]he admission of evidence is addressed to the sound discretion of the trial court, and its ruling will not be disturbed in the absence of an abuse of discretion accompanied by prejudice." *State v. Nelson*, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023) (citing *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)).

ARGUMENT

Juries should not be shown photos of severely charred bodies and a detached skull unless necessary to prove an element of the crime in dispute. These autopsy photos were not necessary and had no probative value because there was no dispute the fire occurred after the murders and because the pathologist did not need or even use them to explain anything about the circumstances of the murders or the autopsy. There was, however, substantial danger of unfair prejudice by showing the jury these gruesome photographs, particularly because Appellant's alleged co-conspirator was never even indicted for the murders even though he was, in the state's theory, the primary actor. Because the photos had no probative value and there was a severe danger of unfair prejudice, the trial court erred by allowing their admission.

I. Photographs of the severely charred remains were unnecessary and had no probative value whatsoever because the deaths occurred prior to the fire and the pathologist did not use them.

"[I]t 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." *State v. Jones*, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) (alteration original) (quoting *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986)). The most important question is the extent of the probative value of the photos. *See Jones*, 440 S.C. at 260, 891 S.E.2d at 371 ("[T]he question is whether the photographs are unfairly prejudicial so as to outweigh the probative value." (quoting *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995))). Appellate courts will reverse where photographs are of little or no value. *See State v. Nelson*, 440 S.C. 413, 426, 891 S.E.2d 508, 514 (2023) (reversing because autopsy photos were of "minimal probative value"); *Middleton*, 288 S.C. at 24, 339 S.E.2d at 693 (reversing where "the testimony of the forensic pathologist negated any arguable evidentiary value of the

photographs"); *State v. Waitus*, 224 S.C. 12, 27, 77 S.E.2d 256, 263 (1953) (reversing because the pictures were "wholly unnecessary to establish the facts claimed").

In cases about graphic photographs, there are two related aspects that can reduce the probative value photographs might otherwise have. First, their probative value is minimal where the information to be gained from the photographs is "not really at issue." *Middleton*, 288 S.C. at 24, 339 S.E.2d at 693; *see also Nelson*, 440 S.C. at 426, 891 S.E.2d at 515 ("[T]here was minimal probative value in the photos because the issues of malice and how Victim was killed were not in dispute."). On the other hand, if the photos demonstrate or corroborate a fact in dispute, then there is substantial probative value to their admission. *See Nelson*, 440 S.C. at 423, 891 S.E.2d 508, 513 ("In *Collins*, the 'nature and extent' of the victim's injuries was disputed by the defendant, and the photos, while gruesome, clearly showed the Victim's injuries." (quoting *State v. Collins*, 409 S.C. 524, 532-33, 533 n.3, 763 S.E.2d 22, 27, 27 n.3 (2014) (plurality opinion))); *State v. Gray*, 408 S.C. 601, 613, 759 S.E.2d 160, 167 (Ct. App. 2014) (affirming admission of photos where they corroborated state's medical expert testimony when the co-defendants each had their own competing medical experts).

Second, where testimony or other evidence does or could adequately convey the information to be presented, any probative value of the photos is further limited. *State v. Kornahrens*, 290 S.C. 281, 288-89, 350 S.E.2d 180, 185 (1986) ("[Photographs] *should be* excluded where the facts they are intended to show have been fully established by competent testimony." (emphasis added) (citing *Waitus*, 224 S.C. at 27, 77 S.E.2d at 263)); *see Nelson*, 440 S.C. at 425, 891 S.E.2d at 514 (explaining autopsy photographs were unnecessary because the pathologist's testimony the victim had 113 stab wounds definitively established malice). On the other hand, for example, our Supreme Court has affirmed the admission of autopsy photographs

where they "clearly demonstrate[d] the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone." *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009).

There are three reasons the photographs of these extremely burnt remains had little to no probative value in this case and therefore should have been excluded. *See Nelson*, 440 S.C. at 420, 891 S.E.2d at 511 (holding trial court erred by admitting autopsy photos because they "provided little probative value as to any element of murder."). First, in the state's theory of events, the fire occurred after the deaths, so the photographs did not show anything that tended to prove the deaths were in fact murders or Appellant committed the homicides. Thus, they had no probative value. Second, the sole disputed issue at trial was whether Appellant participated in the crimes with Jackpot, a fact wholly untethered from anything demonstrated by the photographs. Third, to the extent there was any value in showing the jury the bodies, that value was more than adequately covered by testimony and other evidence.

a. First, the autopsy photographs did not and could not prove any fact occurring prior to the fire and thus had no probative value to Appellant's murder charges.

The most important reason these photographs should have been excluded is because they had virtually no ability to connect Appellant to the murders in any way. Probative value is "the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." *Gray*, 408 S.C. at 610, 759 S.E.2d at 165. The photographs in this case were not used in any way except to offer an extreme depiction and description of the condition of the bodies days after the murders and after fire destroyed any possible evidentiary value from their condition. Because "the issues," *id.*, in this case were whether Appellant helped murder these victims *before* fire disfigured the bodies beyond recognition and visual examination, the photographs were of no probative value. They therefore should have been excluded. *Compare State v. Torres*, 390 S.C.

618, 624, 703 S.E.2d 226, 229 (2010) ("The doctor who performed the autopsy used the introduced photographs during his testimony to illustrate the number of injuries, location of the injuries, and manner in which the injuries were committed."), *with Nelson*, 440 S.C. at 426, 891 S.E.2d at 514 ("[W]e note these photos provide no insight as to who killed Victim. Thus, we do not believe the autopsy photos corroborate Daniel's testimony that Carmie killed Victim.").

Appellant was on trial facing two murder charges and a charge for possessing a weapon during the commission of a violent crime. In the state's version of events, Jackpot and Appellant shot and beat the victims before driving their car away, dousing it and the bodies in gasoline, and setting everything on fire. The forensic pathologist, Dr. Phillips, testified Specks's death was caused by blunt force trauma and Jenkins died from a gunshot wound. She testified, as to Jenkins, "we can't really tell injuries on the skin because it's so burned or burnt off." App. 463:22-464:1. She could describe only injuries on the inside of the body after she cut it open, something not depicted in the photograph. App. 464:1-3. As to Specks, Phillips testified, "this body was even more charred and burned than the previous body, so there were more limitations in this case than we had on the previous one." App. 465:23-466:1. She did not use the photographs to explain her testimony in any way at all, and given the limitations based on the burns, she could not have done so. Thus the photographs had no probative value and should have been excluded. *See Gray*, 408 S.C. at 610, 759 S.E.2d at 165 (explaining photographs "calculated to arouse the sympathy or prejudice of the jury should be excluded if they are . . . not *necessary* to substantiate *material* facts or conditions." (quoting *Torres*, 390 S.C. at 623, 703 S.E.2d at 228)).

Evidence about the fire and the damage to the bodies resulting from it did not relate to the murders. These autopsy photographs proved nothing about the shooting or the beating because

the fire and autopsy occurred postmortem and the bodies were so thoroughly burnt. *See State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 362 (1995) (holding photographs admissible where they "depicted pre-mortem wounds" and therefore helped "to more clearly depict the full extent of the pre-mortem physical torture [the victim] suffered and to substantiate the testimony of the pathologist"). There is no probative value the damage that occurred after the alleged crimes, even if in the state's theory Appellant was responsible for that damage.

The photographs at issue here are, in this way, similar to those at issue in *State v. Jones*, 440 S.C. 214, 262, 891 S.E.2d 347, 372 (2023): the bodies in the photographs were in a materially different condition than they were as a result of the murders. In *Jones* the challenged photographs depicted the victims' bodies "in the advanced stages of decomposition" occurring between the murders and law enforcement officers discovering them after the defendant "dumped" them in the forest. 440 S.C. at 262, 891 S.E.2d at 372. "The bodies were so severely decomposed that with the exception of one photograph, neither strangulation nor ligature marks were visible to corroborate [the pathologist's] testimony." *Jones*, 440 S.C. at 262, 891 S.E.2d at 372. Ultimately, the Supreme Court determined those photographs "were of no probative value" because they "d[id] not depict the [victims'] bodies in substantially the same condition in which Jones left them." *Id.* They therefore should not have been admitted. 440 S.C. at 263, 891 S.E.2d at 372. Importantly, *Jones* held the photos should not have been admitted even during the sentencing phase of a capital trial where the scope of relevancy is "'much broader' than in the guilt phase." 440 S.C. at 262, 891 S.E.2d at 372 (quoting *Kornahrens*, 290 S.C. at 289, 350 S.E.2d at 186).

In much the same way, these photos were of no probative value because the fire destroyed any visible injuries. Dr. Phillips was able to determine what happened to these victims

only through x-ray images (which were admitted at trial) and incisions into the bodies (of which there were no photographs). App. 464:1-465:4, 466:1-19; State's Ex. 53-54. Pictures of the burnt remains proved nothing at all about the circumstances of the murders. Although it might be argued the photos do depict the victims' bodies "in substantially the same condition" as Appellant allegedly left them, *Jones*, 440 S.C. at 262, 891 S.E.2d at 372, that condition unequivocally *followed* the murders rather than *resulted from* the murders. There is no important difference between leaving bodies to decompose and leaving them in a car to burn because they both occurred after the alleged crime.

This case is unlike *State v. Benton*, 443 S.C. 1, 901 S.E.2d 701 (2024), where the Court affirmed admission of *crime scene* photographs which included the victim's burnt body inside his home the defendant and his accomplices burnt down. 443 S.C. at 5, 8-9, 901 S.E.2d at 703, 704-05. Benton's accomplices testified against him and described how they tied and handcuffed the victim to a chair before Benton poured gasoline on him and around the house. 443 S.C. at 5, 901 S.E.2d at 703. The photos of the burnt-down house and hand-cuffed body "drew probative force from their unique power to make Benton's accomplices' testimony more believable." *Benton*, 443 S.C. at 9, 901 S.E.2d at 705. "The pictures gave important context to the testimony and other evidence about who did what at the scene." *Id.*

In contrast, these photographs of severely charred and half-destroyed bodies on an autopsy table, including a severed head and exposed brain matter, demonstrated absolutely nothing of any consequence to the jury's decision. They did not make any testimony "more believable," and they did not give "important context" to anything. The photographs did not show the scene of the crime—they did not even show the scene of the fire. Further, the victim in *Benton* "died of carbon monoxide poisoning, meaning he was burned alive." 443 S.C. at 5, 901

S.E.2d at 703. These victims, however, died of blunt force trauma and a bullet wound, events separate from the burning that left their bodies looking like charcoal. Photographs from their autopsies—rather than the crime scene—were therefore of no value and should have been excluded because the obvious danger of inflaming the passions of the jury was comparatively too high.

As explained above, Appellant recognizes that if photographs are used in a way that explains testimony, their probative value can be significant. *See State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (plurality opinion) (quoting *Nichols v. State*, 100 So. 2d 750, 756 (Ala. 1958)). For example, in *State v. Gray*, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014), the pathologist described three autopsy photographs "as 'crucial' and 'necessary' for helping the jury understand his testimony." *Gray*, 408 S.C. at 610, 759 S.E.2d at 165. He testified the photographs "were taken during the autopsy and 'depict the cause of death' in a manner that he could not diagram." 408 S.C. at 611, 759 S.E.2d at 165. He then explained different injuries on the body and opined they were consistent with an attack on the victim in the same manner as witnesses described seeing the defendants attacking the victim. 408 S.C. at 611-12, 759 S.E.2d at 165-66. Thus, his testimony "increased the probative value of the photos because his use of the photos to explain [the victim]'s injuries demonstrated 'the extent and nature of the injuries in a way that would not be as easily understood based on [expert] testimony alone.'" 408 S.C. at 612, 759 S.E.2d at 166 (second alteration original) (quoting *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009)).

The cursory use of the photos by Phillips stands in stark contrast to the use in *Gray*. Phillips did nothing more than narrate her observations of the photographs for the jury. App. 463:11-464:3, 465:17-466:1. In no way did she connect them to the injuries, to the murders, or

to Appellant. She told the jury State's Exhibit 50 "is a photograph of the upper portion of the toros" and that in State's Exhibit 51, "You can see that the head is detached from the rest of the body." App. 463:14-15, 465:19-20. There was nothing of any importance in the photographs, and there could not have been because, as Phillips testified, the burns shown severely limited her external examination of the bodies. They therefore should have been excluded.

b. Second, no fact relating to the fire was in dispute, and the photographs did not prove Appellant acted with Jackpot.

Here, the trial court erred by admitting these photographs because none of the information they contained was in dispute in any way—these autopsy photographs were not used to "throw any real light upon the issues." 22 Corpus Juris, *Evidence* § 1115, at 914-15 (1920) ("Photographs should be excluded . . . where the natural effect of their introduction in evidence would be to arouse the sympathies or prejudices of the jury, rather than to throw any real light upon the issues."). They should have been excluded because "these photos provide no insight as to who killed [the victims]." *Nelson*, 440 S.C. at 426, 891 S.E.2d at 514.

Appellant argued in opening the state was "not bringing [the jury] the whole truth." App. 116:18-19. He argued "some other person"—Jackpot—was truly responsible for these crimes, but the jury would not "see that some other person . . . because that some other person has never been charged, never been brought in for a trial for a crime after six years." App. 117:1-12. Appellant emphasized this point in his closing: "The one person who's been pointed out by several people as the primary person in this whole deal, James R. Riley, Jackpot, that's the third person, and he's not here. . . . [H]e's not here because he was never charged." App. 499:4-11. The state similarly recognized Jackpot's involvement was critical. Thus, the very first words of its closing argument were "the hand of one is the hand of all," and the solicitor framed almost its entire argument in that light: that Jackpot was guilty and Appellant was his accomplice. App.

488:17-490:12. The solicitor ended his closing argument, "It is absolutely clear that [Appellant] participated in this, that he aided, that he abetted, that he assisted, and he performed some of the worst acts in this case himself." App. 496:22-25. That is what this case was truly about: whether Appellant helped Jackpot kill these people. These photographs had no probative value on that point. They did not show "the scene as it occurred" or "where the body was found." *State v. Hawes*, 423 S.C. 118, 131, 813 S.E.2d 513, 520 (Ct. App. 2018). They did not have "unique power" to make any testimony "more believable." *Benton*, 443 S.C. at 9, 901 S.E.2d at 705. Rather, these gruesome autopsy photographs "could corroborate nothing but the prosecutor's overreach." *Id.* (citing *Nelson*, 440 S.C. at 425-26, 891 S.E.2d at 514).

The only question at issue in the entire case was whether the state sufficiently proved Appellant acted with Jackpot to murder these victims. *See Gray*, 408 S.C. at 610, 759 S.E.2d at 165 ("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."). In fact, the fire was so unimportant, trial counsel chose not to cross-examine most of the SLED agents because evidence about the fire and the bodies simply did not matter as it could not connect Appellant to the murders in any way. App. 151:3-7, 167:6-10, 178:18-22, 284:24-285:4. Trial counsel asked even the forensic pathologist a mere three questions—none of which were illuminated by the autopsy photos—because there was no evidence of import from the bodies and especially not from the autopsy photos. App. 471:1-13, 472:6-12. Instead of focusing on the circumstances of the deaths, the real dispute at trial was the alleged conspiracy between Jackpot and Appellant.

The photos could not corroborate anything of significance, *i.e.* about that relationship, and therefore their probative value was severely limited:

> When a photo derives probative value from its tendency to corroborate testimony, the measure of this value varies depending

> on the facts of each individual case. Photos that corroborate important testimony on issues significant to the case may have very high probative value, while photos that corroborate only testimony related to collateral issues will have less probative value.

Gray, 408 S.C. at 613, 759 S.E.2d at 166-67. Whatever value the photos could have had was limited to details about the fire, but the fire was not part of the murder. They could prove neither an unlawful killing nor malice. Moreover, what happened to these bodies was never contested in any way that could be addressed or informed by these photographs. The "nature of the victim's injuries" was not in dispute, and—because the fire occurred after the murders—the photographs were not "evidence of malice or the manner in which the victim[s] died." *Nelson*, 440 S.C. at 426, 891 S.E.2d at 514. They were not "relevant to the issue of malice" because they did *not* show, for example, "how, where, and how many times Victim was attacked." *Hawes*, 423 S.C. at 131, 813 S.E.2d at 520. Again, as Phillips testified, no information could be gleaned from the photographs because of the severe disfigurement resulting from the fire.

In summary, these photographs showed only the horrible post-mortem disfigurement of these bodies, a point no one in the trial courtroom would have disputed. There is no possible way to think otherwise. Because the photos shed no light on the cause of death, and because factual details relating to the fire were collateral to the murder and undisputed, any possible probative value was virtually eliminated. They had no probative value whatsoever in connecting Appellant to these crimes.

c. Third, other evidence and testimony did or could have more than adequately covered any possible probative value of the photographs.

From the onset of this case, it was immediately and indisputably clear the murder victims were found burnt and extremely charred in a car destroyed by fire. Ample testimony—and other pictures—established that fact. The state called several witnesses to describe finding and inspecting the car and bodies. App. 120:10-122:22, 125:18-128:15, 141:10-146:17, 175:15-

178:6. It introduced several other photographs of the obviously burnt and destroyed car. App. 131:2-8, 132:11-4, 142:3-146:3; State's Ex. 6-10, 12-14. It also introduced two photographs showing the bodies removed from the car. App. 146:7-17; State's Ex. 15-16. Phillips more than clearly conveyed to the jury the causes of death were other than the fire. App. 470:6-21. She also thoroughly described the condition of the bodies *based on the photos*. App. 463:14-461:1, 465:18-466:1. Because the photographs were cumulative, admitting them had no additional value and thus was error. 22 Corpus Juris, *supra*, § 1117, at 915-16 ("Photographs may be admitted to prove the physical condition of a person . . . unless the photograph is of an indecent nature, or the injuries are such that the jury may be sufficiently advised of the facts by a verbal description . . . ." (footnotes omitted)). Any of the "the scant evidentiary value" the photographs might have contained "was negated by the forensic examiner's testimony" they were not useful for examination and the other photographs of the bodies at the crime scene. *Nelson*, 440 S.C. at 424, 891 S.E.2d at 513 (citing *Middleton*, 288 S.C. at 24, 339 S.E.2d at 693).

II. The danger of unfair prejudice was significant because the photographs are haunting and the jury knew Jackpot would not be punished.

State's Exhibit 51 shows the burnt corpse of a man whose disjointed remains were gathered from the backseat of a car and collected in a pile, with his skull separated from his body. State's Exhibit 50 shows a body so charred it looks like a burnt mummy, and its brain is exposed through the skull. The bodies more closely resemble charcoal than corpses. They are gruesome and gnarly, even if there is no blood, and their eeriness only grows the longer one looks at them. These photographs were shown and given to the jury in color, and there was a grave danger in allowing these pictures to go to the jury—the risk that the jury found him guilty not because of the evidence presented against him, but because this crime was so heinous the jury felt it had to convict and punish whomever it could.

The danger of unfair prejudice was unacceptably high in this case because the real culprit—the primary actor, even in the state's theory—was Jackpot, and the jury knew he was never even indicted. That left the jury with one avenue to see justice done for the horribly burnt victims it saw before them: convict the man in front of them. In *Nelson* the Court placed weight on the fact "the jury was informed that [the other suspect] had also been charged in connection with this case but only faced an accessory after the fact of murder charge." 440 S.C. at 426, 891 S.E.2d at 514. The inflamed emotions of the jury risked that it wanted *someone* to pay for the gruesome murder in that case, which increased the "potential for a verdict based on emotion." *Id.* That same risk was even greater here because the jury knew that even after six years Jackpot had never been charged and, in all likelihood, never would be charged for his crimes. Similarly, Vanessa Boyles—who in all speculative likelihood was involved in this case to a greater extent than she admitted—pleaded guilty only to *lying to the police*. There was a real danger the jury would want to make someone pay when faced with these bad facts and gruesome photos of a severed head, smashed skulls, and bodies burnt and charred beyond recognition. It would then consciously or unconsciously come to believe Appellant should be punished regardless of the strength of the state's case against him. That risk was too great, so the danger of unfair prejudice substantially outweighed the probative value of these photos as a matter of law.

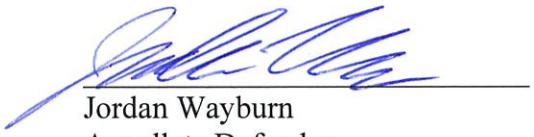
It is important too to remember that Rule 403 is concerned with the *danger* of unfair prejudice. Rule 403, SCRE. Although counsel for Appellant and the state, as well as the members of this Court, have likely seen photographs more gruesome than those here, the same cannot be said for all members of the general public. Jurors do not regularly review the charred remains of human beings so burnt as to look like a body built out of charcoal. But here they were shown the photographs in large scale, blown-up during the trial and then given to them in

color for consideration during deliberations. Jurors may have spent the entire time they deliberated staring at these blackened, hollow corpses. There was a real and substantial danger that jurors looking at the photographs lost or abandoned their ability to focus on the only question truly in dispute: was Appellant a participant in Jackpot's murders? The photographs should have been excluded because they had no probative value on that point and did far more to inflame the jury's passions rather than inform its deliberations.

CONCLUSION

Not one material fact was established or supported by the introduction of these photos. The only purpose they served—and the only effect they had—was to inflame the passions and sympathies of the jury to find *someone* guilty. They had no probative value. With Jackpot not on trial—not even indicted—there was substantial danger the jury would convict the only person in front of it lest these terrible murders go unpunished.

The state "overplay[ed] its hand" by introducing these "shockingly graphic photographs that have scant probative value." *Benton*, 443 S.C. at 8, 901 S.E.2d at 705. Appellant's convictions should be reversed and remanded for a new trial.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of August, 2025.