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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

The Honorable Grace Gilchrist Knie, Circuit Court Judge

THE STATE,

Respondent,

v.

DENARDIS JAMONT KILGO,

Appellant.

Appellate Case No. 2024-000567

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6307

CINDY S. CRICK
Thirteenth Circuit Solicitor's Office
305 E. North St. Ste. 325
Greenville, South Carolina 29601

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHRORITIES

Cases **Page(s)**

State Statutes

Rules

APPELLANT'S STATEMENT OF THE ISSUES

I.

Did the trial court err in admitting photographs taken of the decedent's mutilated and severed lower legs when the evidence was not probative of any disputed fact, was a direct appeal to the jury's emotions, and unreasonably prejudicial under Rule 403, SCRE?

II.

Did the trial court commit reversible error in limiting cross-examination of a prison informant on his pending charges thereby infringing on appellant's right to effectively cross-examine the witnesses against regarding potential bias and motivation to mislead the jury?

III.

Did the trial court commit reversible error in sentencing appellant under the kidnapping conviction in light of appellant's life sentence for murder since the victim was the same for both offenses?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

I.

Did the trial judge abuse his discretion by allowing the State to introduce State's Exhibits 10, 11 & 12 - photographs of the victim's remains taken at the location where they were found, where the photographs depicted the victim as she was left by Appellant, where the photographs corroborated testimony from the State's key witness, and where the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice to Appellant?

II.

Whether Appellant's assertion that that the trial court erred in limiting Dillard's cross-examination in regard to the substance of his pending charges is preserved for this Court's review, and in the alternative, whether the trial court erred in limiting cross-examination of the pending charge(s) when Dillard invoked his 5th Amendment right to remain silent under the United States Constitution and did not infringe on Appellant's 6th Amendment right to cross examination considering the substance of Dillard's pending charge(s) are a collateral matter and did not relate to his direct testimony?

III.

The vacation of Appellant's kidnapping sentence should be left to this Court's discretion.

STATEMENT OF THE CASE

Appellant, Denardis Kilgo, was indicted at the March 2020 term by the Greenville County Grand Jury for the murder (2020-GS-23-6561) and kidnapping (2020-GS-23-6563) of Carolyn Felicia Jackson. (Indictments)

On March 25-28, 2024, Appellant proceeded to a jury trial with the Honorable Grace G. Knie presiding. (R. p. 1). At the conclusion of trial, the jury found Appellant guilty as indicted. (R. pp. 485-486). Judge Knie sentenced Appellant to life imprisonment for murder and thirty (30) years for kidnapping, to be served concurrently. (R. p. 495; Sentence Sheets) Appellant, through counsel, timely filed a notice of appeal.

STANDARD OF REVIEW

Appellate courts sit to review errors of law only in criminal cases, *State v. Wilson*, 345 S.C. 1, 5,545 S.E.2d 827, 829 (2001), and an appellate court is bound by a trial judge's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. *State v. Bridges*, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). As to evidentiary issues, the Court is "limited to determining whether the trial judge abused his discretion." *Id*. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880,884 (2012) (quoting *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011)). "To warrant reversal, an error must result in prejudice to the appealing party." *Id*. at 16-17, 732 S.E.2d at 884.

STATEMENT OF FACTS

On March 24, 2020, the body of 60-year-old Carolyn Felicia Jackson, hereinafter "victim," was discovered in a shallow grave in the woods off of Dunklin Bridge Road and Marler Road in Fountain Inn in Greenville County. Her body was wrapped in plastic bags and clothing items and her legs were discovered in an additional grave a few feet away.

Donna Alexander, the victim's sister, testified that she had a close relationship with the victim and that they spoke regularly. In February of 2020, the victim was in poor health and in frail condition and had recently been hospitalized in December of the previous year. Alexander had discovered that Amanda Scott and her boyfriend, Appellant, had moved in with the victim, and was concerned about the living arrangement because they had "run-ins" in the past and the victim had stated that she would never let them live with her again. Alexander added that it was her understanding that Scott and Appellant showed up at the victim's house late at night, maybe in the rain, and had urged her to let them come into her home. Alexander testified that when she hadn't heard from the victim in about a week, she texted the victim. She received a response from the victim's phone on March 18, 2020, which indicated that she had COVID. After Alexander consulted with the rest of the family, they concluded that recent texts they had received from the victim did not sound like normal correspondence from her. Accordingly, Alexander's son reported the victim as a missing person to the Greenville County Sheriff's Office. (R. R. pp. 199-200).

Officer Blake Richards with the Greenville County Sheriff's Office received the report on March 21, 2020, and based on information from the victim's family, responded to the victim's residence where he was greeted by Amanda Scott. He added that Appellant was not at the house at that time. He noticed that the residence was ransacked, and he was unable to make contact with the victim and subsequently left the residence. (R. pp. 214-215). On March 22, 2020, Officer

Richards received a call from the victim's brother who informed him that Appellant was supposedly at that residence and that there was previously a previously reported armed robbery at the residence. That information, as well as the recently received information that the victim's phone pinged from a wooded location, prompted Officer Richards to return to the victim's residence. (R. pp. 215-216). When he returned to the residence to look for Appellant, Scott was present and informed him that Appellant was hidden in the master bedroom closet. There he discovered the Appellant along with the victim's social security card, birth certificate, and driver's license in a pair of Appellant's pants. (R. pp. 216-218).

Investigator Tracy King conducted a video interview (State's Exhibit 44) with Appellant at the law enforcement center on March 24, 2020. In that interview, Appellant claimed that he knew the location of the victim's body, but he denied being directly involved with her murder. At that time, Appellant provided detailed information on the victim's location by using Google maps. He identified two other individuals as being the perpetrators - LA and Jason. Investigator King learned that LA and Jason were purported drug dealers and quickly ruled them out as suspects considering there was no DNA evidence tying them to the crime, no evidence that they knew the victim, and no evidence that they knew the location of the victim's residence. Further, Appellant was the only person who identified them as being involved. (R. pp. 371-373). Appellant also admitted that he had asked a friend, identified as Wayne Brown, to borrow a shovel, which Scott corroborated later in her interview. Appellant was inconsistent in his reasoning for needing the shovel, which was suspicious to Investigator King. (R. p. 373-374).

While Investigator King was interviewing Appellant in regard to the location of the burial site, Investigator King was relaying that information in real time to a search and rescue team who found the location based on Appellant's directions in a matter of minutes. (R. p. 380-381).

Additionally, Appellant told Investigator King that he had seen the victim the day before on March 21, 2020, and that she left the residence between 12PM – 1PM in a rental car. During the course of the investigation, Investigator King discovered that the victim had been issued a rental car from her insurance company but that it had been returned a week prior to the day Appellant claimed he saw her. (R. p. 388).

Dr. Grace Dukes was qualified as an expert in forensic pathology and testified as to her autopsy examination report of the victim. Dr. Dukes performed the autopsy on March 25, 2020, and initially observed that the victim was wrapped in black plastic, and beneath the black plastic, the victim was wrapped in a blue fitted bed sheet. There was clear plastic tape surrounding her head. Beneath the clear tape there was a brown and white fleece jacket that had also been wrapped around her head. Under that layer, there was tape wrapped multiple times around her head and mouth, and Christmas lights wrapped around her neck. Her arms were tied behind her back with the Christmas string lights. Under all of the layers, Dr. Dukes testified that there was diffused discoloration of the body, which was a result of decomposition. Notably, the legs were separated from the body, and they were covered in denim pants and bound together. As for the injuries, Dr. Dukes testified that the victim had sustained blunt force injuries to the head that resulted in multiple fractures of facial bones, including both orbits, the nasal bone and maxilla and the upper jawbone. The base of the skull was fractured across the front of the skull and over onto the right of the skull. There was dark blue/purple discoloration around her eyes which indicated bleeding from inside the head due to the skull fracture. Almost all of her ribs were completely fractured, and there was a fracture in her vertebra. Dr. Dukes confirmed that the cause of the victim's death was blunt force trauma. (R. pp. 327-339).

After the autopsy, Scott was interviewed as an additional suspect in the victim's murder. Investigator King noted that Scott initially lied about the last time she saw the victim in the interview. Scott stated that the last time she saw the victim was the day before between 12PM - 1PM in the afternoon, which indicated that she was lying considering Appellant had told the same story. Investigator King told Scott that they had located the victim and that she had attended the autopsy without giving Scott any of the details. Eventually Scott admitted her and Appellant's involvement in the crime and was able to provide detailed information as far as the victim, the victim's body, what happened to the victim, and what happened to the victim's body afterwards - information that only someone who was present would know. (R. p. 389-391). As a result, Scott was arrested for murder and kidnapping and warrants for the same were issued for Appellant. (R. pp. 392-393). After the interview, Investigator King returned to the crime scene and was able to locate an axe nearby. (R. p. 384).

Scott testified that at the time of the crime, she had been dating Appellant for approximately three years. Scott and Appellant were living with the victim, as they had on prior occasions, and the victim indicated that she wanted them to move out. The morning of the victim's murder, Scott testified that she and Appellant woke up, and the three of them went to CVS to get syringes and to Walmart to buy drugs from someone. On the way back, the victim went into a gas station to buy cigarettes, and while she was inside, Appellant put a Xanax in the victim's drink. When they returned home, all three proceeded to get high. The victim fell asleep on the couch, Appellant grabbed the victim's phone and discovered that Scott had messaged the victim about calling the police on him. Scott stated that Appellant said that the victim had to pay for putting his life in danger. At that point, Appellant began to gather gloves, tape and Christmas lights. He told Scott to go stand by the door. He turned up the music and told Scott not to turn around. Scott stated that

she heard the victim ask Appellant why he was doing this, then smelled pepper spray in the air, and the sound of tape being peeled. Subsequently, while the victim was still alive, Appellant beat her and then proceeded to look for money in her room. (R. pp. 99-114).

Appellant and Scott then retrieved a shovel from a friend's house and went to the store to buy gloves and trash bags. Scott testified that Appellant instructed her to lay a tarp in the trunk of the car – the victim's car – and Appellant placed her in the trunk. The two drove around looking for a place to bury the victim and decided to bury her at the aforementioned burial site where she was discovered. Subsequently, they drove to a hotel room to see what items they could sell of the victim's that they had taken from her home. The next day they drove by the burial site to see if they could see the body. Scott testified that Appellant brought a shovel and an axe, dismembered the victim and buried her again. Scott testified that she did not call law enforcement because she was scared of Appellant and feared that he would kill her too. (R. pp. 115-142).

In addition to Scott's testimony, Ashley Frasca, Branch Manager at Woodforest National Bank, testified that there was transaction for South Motor Lodge in Anderson on March 14, 2020, on the victim's bank statement. The victim's account was over drafted on March 19, 2020, and the last transaction occurred on March 21, 2020. (R. pp. 204-207). Fingerprint Examination Expert Chris Gary testified that there were three individuals who were identified from the latent fingerprint lifts that were taken from the crime scene: Douglas Wayne Brown, Amanda Marie Scott, and Denardis Jamont Kilgo. (R. p. 287). He testified that Brown's fingerprints were found on the hood of the victim's car. Scott's fingerprints were identified on the inside front passenger side door and outside of the rear driver's side door. (R. pp. 287-288). Appellant's fingerprints were identified on the hood, inside front driver's door and front passenger fender. (R. p. 288). DNA Analysis Expert Tim Nafziger testified that he tested four swabs from the gloves and concluded

that Appellant's DNA was found on the interior and exterior of both gloves. (R. p. 317). After the State rested, Appellant elected not to testify and presented no witnesses in his defense. (R. pp. 418-419, 425.).

ARGUMENT

I.

The trial judge did not abuse his discretion by allowing the State to introduce State's Exhibits 10, 11 & 12 - photographs of the victim's remains taken at the location where they were found, where the photographs depicted the victim as she was left by Appellant, where the photographs corroborated testimony from the State's key witness, and where the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice to Appellant.

Appellant argues that the trial court erred in admitting two photographs that depicted a distant view of the victim's severed legs in the woods surrounded and partially covered by leaves (State's Exhibits 10 & 11) and a third picture that was determined to be the rest of the victim's body wrapped in a trash bag half buried in a shallow grave. (State's Exhibit 12). Appellant asserts that the photographs were unduly prejudicial considering the State presented witnesses who testified to the condition of the victim's remains and the manner of her death, rendering any photographs showing the victim's body unnecessary. Notwithstanding Appellant's argument, Respondent submits that the trial court did not abuse its discretion by allowing the State to introduce the referenced exhibits. The photographs depicted the victim as she was left by Appellant and the callous manner in which he dismantled and abandoned her body in the woods. It also corroborated testimony from other witnesses, and it was probative of the element of malice. Further, the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice to Appellant.

Relevant Facts

State's Exhibits 10 & 11 show a distant view of what appears to be severed legs protruding from the ground in the middle of the woods. State's Exhibit 12 shows a close-up photograph of what was confirmed to be parts of the victim's body wrapped in a trash bag; no parts of the body itself are visible in the photograph, and the viewer would be unable to identify the contents of the bag without context. The State introduced these photographs through the testimony of their key witness, Amanda Scott, who was Appellant's girlfriend at the time of the murder. Scott testified to how Appellant planned and carried out the murder, as well as to the disposal of the body.

An in-camera hearing was held concerning State's Exhibits 10, 11 & 12. The record reflects that initial arguments on the matter were held in chambers and subsequently placed on the record.

> Your Honor, as we discussed in chambers, we have several gruesome pictures in this case. And The State does not want to push the envelope as far as that is concerned. We do not want to enter in lots of difficult to view photos. However, in order to illustrate how the victim died and the circumstances surrounding her burial, also, to point out malice and what happened in the aftermath and her -- and the victim's legs being chopped off, The State feels that it's important for our case in chief to show some photos**. *We picked three photos out of about 200 that we felt like would be least offensive*.**[1]

(R. pp. 51-52) (emphasis added).

For clarification, the State described the photographs that were being referenced.

> Two of the pictures, just for the record, are the victim's foot slash leg sticking out of the ground. The rest of her body buried in a shallow grave. Then the body covered in a trash bag and other things when the body was found.

(R. p. 52).

[1] Appellant omitted the referenced sentence which exemplified the State's conscientious selection of which photographs to present to the jury. (*See* Initial Brief of Appellant, p. 4).

Appellant's counsel raised an objection, arguing that the photographs did not go toward the cause of death of the victim.

> Your Honor, The Defendant would request The Court to keep those pictures out. They don't go toward the cause of death for the victim at all. We believe that it is to inflame the emotions of the jury. She was already deceased when her legs were cut off. It wasn't part of how she died. So it doesn't go towards her cause of death at all. So we would object to the pictures coming in.

(R. pp. 52-53).

The trial court inquired about the probative value of the photographs to which the State replied that the photographs showed malice and the Appellant's disregard for human life.

> Yes, Your Honor, I think in order to prove malice that this went beyond just her murder, he went back and severed her legs off. It's important for the jury to understand the picture. And also, the fact that he dug up a very shallow grave, put her body in it shows just the disregard of human life.

(R. p. 53).

Subsequently, the trial court allowed the photographs.

> All right. Thank you. I am going to allow these three photographs. I have reviewed a very recent decision by our Supreme Court, *State v. Nelson*, and I am aware of the dangers of using photographs to gain emotion from the jury, but of the photographs that I have reviewed, I believe that these are the least likely to do that. And I do believe the State has a good reason for offering them.

(R. p. 53).

At trial, Scott testified that after Appellant killed the victim, Appellant placed her body in the trunk of the victim's car, and they drove around looking for a place to bury her body. (R. pp. 118-119). Scott further testified to the specific location of where the body was buried. (R. pp. 119-123). The State then introduced State's Exhibits 10 & 11, and Scott confirmed that the pictures accurately depicted "how the body was disposed of in a shallow grave, wrapped in bags, with her

foot sticking out of the ground." (R. pp. 123-124). Scott was then shown State's Exhibit 12 and testified that she knew the victim's body was wrapped inside the bags because she "remember[ed] [Appellant] putting the bags over her and that's what he wrapped her with." (R. p. 126). She further confirmed that the photograph accurately depicted how the body looked the last time that she saw it when it was buried. (R. p. 127).

Discussion

Appellant cannot show an abuse of discretion. It is necessary to make a distinction between crime scene photographs that show the body as the Appellant had left it, and the autopsy photographs which were at issue in *State v. Nelson*, 440 S.C. 413, 891 S.E.2d 508 (2023) – the case that Appellant has relied upon in support of his argument. *State v. Benton*[2] makes this distinction noting that the *Nelson* photographs were autopsy pictures of the victim's decomposing and disfigured body. In contrast, the photographs in question in *Benton "*were relevant as they depicted the crime scene" and "[t]hey drew probative force from their unique power to make Benton's accomplices' testimony more believable." *Id*. Such is a comparable circumstance as to the crime scene photographs admitted in Appellant's case.

This Court set forth the applicable standard for the admissibility of photographs in *Benton*:

> Generally, "[a]ll relevant evidence is admissible." Rule 402, SCRE. " 'Relevant evidence' means evidence having any 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. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) (quoting *State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998)).

[2] 443 S.C. 1, 9, 901 S.E.2d 701, 705, *reh'g denied* (June 20, 2024), *cert. denied*, 145 S. Ct. 443 (2024)

> "The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (quoting *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *Id*. at 534, 763 S.E.2d at 28 (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Id. at 534, 763 S.E.2d at 27 (quoting *Nance*, 320 S.C. at 508, 466 S.E.2d at 353).
>
> "[T]he standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of unfair prejudice that substantially outweighs the probative value of the evidence." Id. at 536, 763 S.E.2d at 28. "All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." *State v. Bratschi*, 413 S.C. 97, 115, 775 S.E.2d 39, 49 (Ct. App. 2015) (quoting *Gilchrist*, 329 S.C. at 630, 496 S.E.2d at 429). "[A] court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates." *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014).

Here, the trial court was well within its discretion in admitting the photographs. Notably, State's Exhibits 10, 11 & 12, were the only photographs admitted of the victim. Each photograph depicted the victim's remains as they were left by Appellant and Scott, two of which showed a distinct view of severed legs protruding from the ground and one showing the victim wrapped in a bag in the shallow hole the body was found in.

Also, these photographs corroborated Scott's testimony as to where and how she and Appellant left the remains. Scott was an essential witness because she was present throughout the entirety of the crime, though she was not very descriptive when she was asked to identify the photographs and details of the crime, making photographic corroboration material to the State's case. When asked to describe State's Exhibit 10 & 11, Scott answered, "It looks like her foot." (R. p. 124). When asked to describe State's Exhibit 12, Scott answered, "her body," and supplemented

the next question of how she knew it was the victim's body with the answer "because I remember him putting the bags over her and that's what he wrapped her with." (R. 126). It is well settled in this state that "[i]f the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." *State v. Rosemond*, 335 S.C. 593, 596, 518 S.E.2d 588, 589–90 (1999).

The photographs also corroborate Investigator David Picone's testimony that when he went out to the suspected burial site, he observed bone sticking out of the ground (R. pp. 227-228), and Sergeant Crystal Minwegen's testimony, who photographed the scene, describing how the body parts were positioned and buried. (R. pp. 234-242). Pointedly - as Appellant has also noted - the testimony into the crime scene by investigators was rather descriptive, more so than that of the State's key witness, and the State did not attempt to emphasize the photographs considering the sufficiency of the descriptions. *See State v. Hawes*, 423 S.C. 118, 130-31, 813 S.E.2d 513, 519-20 (Ct. App. 2018) (finding the trial judge did not abuse its discretion when it admitted crime scene photographs that established the circumstances of the crime scene, corroborated the testimony of a witness and a responding officer, and were relevant to the issue of malice); *see also State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370 (1995) ("affirming the admission of photographs corroborating witnesses' testimonies regarding the discovery of the crime scene").

Moreover, the State indicted Appellant for kidnapping and murdering the victim. This required the State to prove that Appellant killed the victim "with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003). The photographs showed the circumstances of the victim's death and disposal and certainly reiterated the presence of the malice factor – though the existence of malice can be viewed as a windfall considering the photographs served other material purposes.

Nor was the probative value of the photographs substantially outweighed by its prejudicial effect under Rule 403, SCRE. It was highly probative of the matters enumerated above. Appellant contends the photographs were intended "to inflame the emotions of the jury." Yet, the photographs did not confuse the issues or mislead the jury and were the only photographs of the body introduced into evidence. They were carefully selected out of an abundance of other photographs to refrain from exposing the jury to unnecessary discomfort. (*See* R. 52, the solicitor stated that the photographs were "3 photos out of about 200 that we felt like would be least offensive."). Instead, the photographs merely depict the scene where the victim was found and the condition of the victim's body resulting from the actions of Appellant. *See Williams v. State*, 301 S.W.3d 675, 693 (Tex. Crim. App. 2009) (close-up photos of injuries were gruesome but they portrayed no more than the gruesomeness of the injuries inflicted by the defendant); *Narvaiz v. State*, 840 S.W.2d 415, 430 (Tex. Crim. App. 1992) (although photographs were gruesome, they merely depicted the gruesomeness of the crime scene as found by the police).

As to the gruesomeness of these particular photographs, forensic matters are graphically shown in various and sundry popular prime time television programs and documentaries; the jurors simply would not be so shocked by these photographs that they would have rendered a verdict based on an emotional basis.

Harmless Error

Finally, and to the extent the Court finds that the trial judge erroneously allowed the prosecution to introduce these photographs, any error in its admission could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been

conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). "Whether an error is harmless depends on the circumstances of the particular case." *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012).

Here, any error must be viewed as harmless and non-prejudicial because, at worst, the photographs were cumulative to the testimony which it corroborated. The admission of improper evidence is harmless when the evidence is merely cumulative to other evidence. *See State v. Haselden*, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003); *See also State v. Brazell*, 325 S.C. 65, 79, 480 S.E.2d 64, 72 (1997) ("Even if the descriptive testimony of the prosecution's witnesses adequately conveyed the brutality and malice of the crime and these photographs were unnecessary, they were harmless surplusage") (citing *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587 (1942) (finding the photographs unnecessary but harmless because they were not prejudicial or inflammatory).

Further, Appellant's guilt was conclusively established beyond any reasonable doubt. The State presented that Appellant incriminated himself after he was arrested by identifying the location of the victim's body and leading investigators to the exact location of the burial site. Scott's depiction of the crime discussed evidence that would have only been known to someone who was there and was corroborated by additional evidence. Appellant's fingerprints were found on the gloves collected at the crime scene, and his DNA identified on the victim's car. As such, any error must be considered harmless.

II.

Appellant's assertion that that the trial court erred in limiting Dillard's cross-examination in regard to the substance of his pending charges is not preserved for this Court's review, and in the alternative, the trial court did not err in limiting cross-examination of the pending charge(s) when Dillard invoked his 5th Amendment right to remain silent under the United States Constitution and did not infringe on Appellant's 6th Amendment right to cross examination considering the substance of Dillard's pending charge(s) are a collateral matter and did not relate to his direct testimony.

Appellant asserts that the trial court erred in limiting Appellant's cross-examination of Dillard in regard to the substance of his pending charges. Appellant relies on our state supreme court's holdings in *State v. Sims*, 348 S.C. 16, 558 S.E.2d 518 (2002) and *State v. Gracely*, 399 S.C. 363, 731 S.E.2d 880 (2012), both of which consisted of the cooperating witness receiving a reduced sentence for their testimony against the defendant. The issue before this Court is not preserved for review, nevertheless, the current facts are discernable from those of *Sims* and *Gracely.*

Relevant Facts

The State called Tony Dillard to testify to Appellant's confessions of committing the murder. (R. 353-368, Entirety of Dillard's Testimony). At the outset of direct examination, Dillard confirmed that he was a convicted felon and was currently residing in the Greenville County Detention Center for pending charges. (R. p. 353-354). The State commented that "we're not here today to discuss [Dillard's] pending charges but we are here to talk about the Defendant, Denardis Kilgo." (R. p. 354). Dillard explained that he met Appellant in the detention center where they participated in the same mental health program and other activities together. (R. p. 354). He testified that they talked every day and became "good buddies." (R. p. 354). Dillard noted that they spoke about their cases but more so discussed Appellant's because his charges were more serious.

(R. p. 355). He testified that Appellant told him that he "had an incident with an older female and that she ended up being duct taped and wrapped and all kinds of bad things." (R. p. 358). He added that Appellant stated that he told his female friend who was with him to go to the department store to get utensils to try to get rid of her body. (R. p. 359). Dillard further added that Appellant stated that "he didn't know what to do with [the body] so he rode around with it for an amount of hours and decided that he was going to take the body back to Charlotte where he's from to bury the body in a cemetery," but Appellant stated that he never got a chance to do it. (R. p. 359). Dillard confirmed that he was providing this information of his own free will and that the solicitor's office did not offer or promise him anything in exchange for his testimony. (R. p. 360).

On cross-examination, Dillard confirmed that he was well versed in the criminal justice system, that he had convictions for indecent exposure and strong-arm robbery, and that he was a registered sex offender. (R. pp. 361-362, 365). When asked if he was facing a new charge, Dillard stated "I plead the Fifth on that." (R. p. 365). Dillard's counsel made an objection on the record to questioning regarding Dillard's pending charges and the Court instructed Appellant's counsel to "move along" with his examination (R. p. 366). When asked if he was hoping that his testimony would benefit him, Dillard responded in the negative. (R. p. 368).

Preservation of the Issue

As an initial matter, defense counsel did not place his argument on the record[3] that the purpose of cross examination of the pending charge was based on the existence of the charge. The record reflects the following exchange:

> Mr. DeBruin: Okay. Now you have a new charge; is that right?

[3] The trial court informed counsel that there would be no speaking objections throughout the trial, and that arguments would be placed on the record as close as possible in time to the objection, at a break, at the end of the day, or the next morning. (R. p. 133).

Dillard: I plead the Fifth on that.

Ms. Landsverk: Your Honor.

The Court: Okay, that would be sustained.

Mr. DeBruin: Your Honor - -

The Court: Can you come up please?

(Whereupon, an off the record bench conference was held in the presence of the jury but out of the hearing of the jury).

Mr. Martinez: Michael Martinez on behalf of Mr. Dillard. I'm objecting on behalf of Mr. Dillard regarding the questioning relating to the fact that he has pending charges.

The Court: Okay. And for the record, counsel present in the courtroom for Mr. Dillard is Michael Martinez, who just made an objection on the record, okay. All right. Counsel, please move along.

(R. pp. 365-366).

The following day, the trial court placed the following on the record:

> On the cross examination of Tony Dillard at 11:54, there was an objection by the solicitor, Ms. Landsverk, concerning going into allegations of a prior record, okay that was sustained.
>
> At 11:55, objection by the solicitor concerning the specifics - - the same witness, Mr. Dillard, regarding the specifics of a plea or pleas, and that was sustained.
>
> At 11:59, there was an objection by Michael Martinez, counsel for Dillard, regarding Mr. Dillard's pending charges. That was sustained.

(R. pp. 426-427).

In fact, there are no apparent stated grounds for the State's objection and no indication from the record that defense counsel ever raised Rule 608(b), SCRE or referenced the elicitation of bias in support of questioning Dillard for the basis of admission of his testimony regarding the

substance of his pending charges. *See State v. Stahlnecker*, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) ("[a] party need not use the exact name of a legal doctrine ..., but it must be clear the argument has been presented on that ground."); *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) ("holding [that a] party may not argue one ground at trial and another on appeal; where appellant did not object to testimony at trial on the grounds raised on appeal, that it was improper character evidence, but objected only on the basis of relevancy, issue was not preserved for review"). The trial court instructed that there would be no speaking objections throughout the trial, however there is no indication that the trial court prohibited defense counsel from stating his arguments on the record. *See Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) ("When a conference takes place off the record, it is trial counsel's duty to put the substance of the discussion and the trial court's ruling on the record."). Accordingly, the argument now made on appeal is not preserved for this Court's review.

Discussion in the Alternative

Even if this Court concludes that the issue was preserved, the facts do not align with *Gracely. Gracely* concluded "[t]he fact a cooperating witness' avoidance of the mandatory minimum sentence is critical information that a defendant must be allowed to present to the jury," and thereby "prevented Appellant from demonstrating the possible bias rising from these plea deals through an examination reaching the requisite degree of granularity." 399 S.C. at 374, 731 S.E.2d at 886. Here, there was no question about the amount of time Dillard was facing which are the circumstances on which *Gracely's* holding is based. It cannot be applicable here.

In *Sims*, defendant's counsel wanted to question a cooperating witness about his pending charges because he had possibly been promised a deal in exchange for his testimony. *Sims*, 348 S.C. at 23, 558 S.E.2d at 522. The State responded there was no promised deal, but that the witness

had been told when he went to trial on the charges, the State would tell the trial judge he had cooperated by testifying in the instant case. *Sims*, 348 S.C. at 24, 558 S.E.2d at 522. Our Supreme Court reasoned that because the witness had ***numerous pending charges*** carrying severe penalties, there is a "***substantial possibility*** that [the witness] would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case." *Sims*, 348 S.C. at 25, 558 S.E.2d at 523 (emphasis added).

Sims makes its holding based on the circumstances at hand and does not call for a uniform application of a brightline rule. Dissimilar to the circumstances in *Sims*, the record here is rather unclear on whether Dillard is facing one or multiple charges. (*See* R. p. 354, the solicitor states, "And we're not here today to talk about your pending **charges**, p. 365, defense counsel asks "Now you have a new **charge**; is that right? p. 366, Martinez states "I'm objecting on behalf of Mr. Dillard regarding the questioning relating to the fact that he has pending **charges**."). It must follow that there is nothing to support that there is a "substantial possibility" that Dillard would give biased testimony to avoid a severe sentence resulting from a multitude of charges. Also, Dillard specifically testified that he was not offered or promised anything for his testimony and the State made no indication that the solicitor's office intended to do so. (R. p. 360).

In *State v. Hill*, 382 S.C. 360, 367 675 S.E.2d 764, 768 (Ct. App. 2009), this Court addresses a witness' refusal to answer questions regarding the details of his plea deal, which the witness acknowledged that he violated, and refused to discuss further. The circumstances and legal analysis this Court presents in *Hill* are comparable to the case at hand.

Though Respondent submits that any presented constitutional issues are not preserved for this Court's review, Appellant argues that Dillard's 5th Amendment right to remain silent was favored over Appellant's 6th Amendment right to cross-examine the witnesses against him

enumerated in the Confrontation Clause. *See State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008) ("confrontation clause and due process arguments not preserved for review"). It is well within the trial court's discretion to "impose reasonable limits on [the scope] of cross-examination designed to show the prototypical form of bias on the part of a witness." *Hill*, 382 S.C. at 366-367, 675 S.E.2d at 767 (citing *State v. Graham*, 314 S.C. 383, 385–86, 444 S.E.2d 525, 527 (1994)). *Hill* reconciled that there is little danger of prejudice to the defendant when the questions on cross examination are collateral, meaning that they "relate solely to the witness's credibility and bear no relation to the subject matter of the direct examination." 382 S.C. at 367, 675 S.E.2d at 768.

> Where the privilege has been invoked as to purely collateral matters, there is little danger of prejudice to the defendant and, therefore, the witness's testimony may be used against him. On the other hand, if the witness by invoking the privilege precludes inquiry into the details of his direct testimony, there may be a substantial danger of prejudice because the defense is deprived of the right to test the truth of his direct testimony and, therefore, that witness's testimony should be stricken in whole or in part.

Hill, 382 S.C. at 367, 675 S.E.2d at 767-768 (citing *Cardillo*, 316 F.2d at 611).

Here, based on defense counsel's question inquiring into the pending charge(s), it appears he sought to elicit what the pending charge was, though the record is void of clarification for purpose. However, as *Hill* has found, that type of information is sought to speak on credibility and there is no indication from the record that identifying what Dillard's pending charge(s) was would have related to his direct testimony *i.e.*, Appellant's confessions of committing the crime to him. Credibility concerns were before the jury on direct and cross examination. Defense counsel suggested that Dillard had perhaps seen the details of Appellant's case on the news or that Dillard went through Appellant's discovery file with him in jail which would have appraised Dillard of the details he was testifying to. (R. pp. 364-367). Without objection from the State, Dillard testified as to his prior convictions, and that he was a registered sex offender, and the State acknowledged

that he had pending charges. (R. pp. 354, 361-362, 365). Accordingly, Dillard's refusal to address the substance of his pending charge(s) could not have reasonably prejudiced Appellant as to warrant reversal of his convictions.

III.

The vacation of Appellant's kidnapping sentence should be left to this Court's discretion.

Appellant asks that this Court review and vacate his sentence for kidnapping. Appellant was sentenced to life imprisonment for murder and a concurrent thirty (30) years for kidnapping at the conclusion of his trial on March 28, 2024. S.C. Code Ann. § 16-3-910 (1991) has previously prohibited the inclusion of the thirty (30) year sentence for kidnapping when the defendant was also sentenced for murder. The statute was amended to allow sentencing for the kidnapping offense when also sentenced for murder, effective on July 2, 2024. *See* 2024 Act No. 213 (S.142), § 4.A, eff July 2, 2024.

Appellant acknowledges that the issue was not raised to the trial court, however, relies on *State v. Plumer*, 439 S.C. 346, 887 S.E.2d 134 (2023) in asking this Court to exercise its discretion, if at all, by correcting the sentence on direct appeal or remanding the issue to the trial court. Respondent leaves the matter within this Court's discretion.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the judgment, conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General
S.C. Bar No: 107073

By: *s/Kaylee C. Kemp*
Kaylee C. Kemp

ATTORNEYS FOR THE RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6307

October 13, 2025
Columbia, South Carolina

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Oct 13 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
The Honorable Grace Gilchrist Knie, Circuit Court Judge

THE STATE,

Respondent,

v.

DENARDIS JAMONT KILGO,

Appellant.

Appellate Case No. 2024-000567

PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order April 24, 2024, the Final Brief and Proof of Service have been forwarded to Appellant's counsel, Gary Johnson, Esquire, via email today, October 13, 2025, at ghjohnson@sccid.sc.gov and to his assistant, Daniel Bast at dbast@sccid.sc.gov.

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

This is the 13th day of October 2025.

s/Kaylee C. Kemp
Kaylee C. Kemp
Assistant Attorney General

Brandy Rankin

From:	Brandy Rankin
Sent:	Monday, October 13, 2025 10:47 AM
To:	gjohnson@sccid.sc.gov
Cc:	dbast@sccid.sc.gov; Kaylee Kemp
Subject:	Final Brief of Respondent - The State v. Denardis Jamont Kilgo - Appellate Case No. 2024-000567
Attachments:	FINAL Brief with proof of Service.pdf

Dear Mr. Johnson,

Please find attached the Respondent's Final Brief and Proof of Service. The Brief will be filed today, October 13, 2025 with the South Carolina Court of Appeals, along with a copy of this email. Thank you.

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant to Kaylee C. Kemp
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305

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