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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Certiorari from Jasper County
Honorable Carmen T. Mullen, Circuit Court Judge

JONATHAN NIEVES,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000057

REPLY BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT IN REPLY1

CONCLUSION.....5

TABLE OF AUTHORITIES

South Carolina Cases

Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012)4

State v. Gray, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014) 2, 3

State v. Middleton, 288 S.C. 21, 339 S.E.2d 692 (1986) 2

State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023) 2, 3

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010)..... 2

State v. Williams, 417 S.C. 209, 789 S.E.2d 582 (Ct. App. 2016)..... 4

Other Authorities

22 Corpus Juris, *Evidence* § 1117 (1920) 2

ARGUMENT IN REPLY

Prior to trial Appellant objected to three groups of photographs: the crime-scene photos (State's Exhibits 10, 15, and 16), the autopsy photos (State's Exhibits 50 and 51), and the x-rays (State's Exhibits 53 and 54). Appellant now challenges the admission of only the two autopsy photographs.¹ Those were the gruesome color photographs of the partially-destroyed and horribly charred clearly human bodies. Along with the extreme charring and destruction, they show a detached head removed from one body and the broken skull and exposed brain of the other. The crime-scene photographs were not nearly so gruesome because they were barely even recognizable as human remains.² Similarly, Appellant does not assert now that the trial court exceeded its discretion by admitting the x-rays. Those too provoke far less of an emotional response than actual photographs of burnt and charred human bodies, and importantly the forensic pathologist actually used them to explain her testimony.

The state attempts to support admission of the photographs with specious claims that the pictures were highly probative of what are fundamentally trivial points. For example, it is utterly unimportant that the photographs, in the state's view, corroborated Dr. Phillips's testimony "about the limitations she encountered in these autopsies." Resp. Br. at 17. Her limitations with the autopsies were not at issue. Similarly, the jury easily understood—without these graphic photographs—her testimony that "we can't really tell injuries to the skin because it's burned or

¹ The state correctly notes in its brief that trial counsel challenged only the quantity of the crime-scene photographs but essentially consented to the admission of at least one of them. Counsel also did not renew that objection when those photographs were admitted. App. 142:22-143:1

² This is the strongest reason the autopsy photos were not harmless when compared to the crime scene photographs admitted without complete objection. The scene photographs are not as likely to provoke an extreme emotional response because the remains depicted do not look people. Bodies partially reassembled on an autopsy table are far more emotionally evocative.

burnt off." Tr. 463:22-464:3; see *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) ("[T]he testimony of the forensic pathologist negated any arguable evidentiary value of the photographs."). It is also a distraction for the state to argue that "seeing the condition in which she received the body was probative to helping the jury understand that her failure to find projectiles did not mean the male victim was not shot." Resp. Br. at 17. The jury did not need assistance understanding her testimony that, "Because of the burning artifacts on the body, we weren't able to examine the majority of the skin to find an entry wound." App. 468:14-16. That is perfectly understood without photographs. See 22 Corpus Juris, *Evidence* § 1117, at 915-16 (1920) ("Photographs may be admitted to prove the physical condition of a person at a particular time, . . . unless the photograph is of an indecent nature, or the injuries are such that the jury may be sufficient advised of the facts by a verbal description . . .").

Dr. Phillips' testimony and expert opinion were not seriously in dispute; on cross-examination, Appellant asked Phillips a mere two questions. App. 471:1-11. There was no challenge to her testimony that could have been illuminated by the photographs. See *State v. Nelson*, 440 S.C. 413, 426, 891 S.E.2d 508, 514 (2023) ("If this were a case . . . where the nature of the victim's injuries was in dispute . . ., then the photos may have had sufficient probative value to warrant their admission"). In no way were these photographs necessary to her testimony or the state's case. See *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) (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 *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010))). The state's insistence that the photos support these other, unimportant details is a failed attempt to fabricate legitimate probative value where there was none.

Nonetheless, the state insists these photographs were highly probative because Appellant did not concede anything in opening statements or otherwise. It is true that, unlike in *Nelson*, Appellant did not expressly admit these homicides were murders. Instead, however, he focused his whole argument about "some other person," App. 117:1-12, that was involved and truly responsible: Jackpot. App. 499:4-11. This was never a self-defense or manslaughter case, where photographs might demonstrate defensive wounds or indicate the positioning of an attacker. Nor was there any suggestion that some other injury might have been the cause of death. *See Gray*, 408 S.C. at 615, 759 S.E.2d at 168 (affirming admission of photographs where defendant disputed the cause of death and asserted other actors were the true cause). This case was about whether Jackpot killed these people and if Appellant helped him. That should be the heart of the analysis, and it is clear the exhibits had essentially no probative value. *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.").

Finally, the state's assertion that this argument or issue is unpreserved is an overzealous interpretation of the preservation rules, one that is belied by the record. The state recognizes that Appellant objected to the photographs on Rule 403 grounds because they were graphic, inflammatory, and unnecessary. Nothing more is required. It is certainly not important that trial counsel never said the words "these photographs have no probative value," as the state argues. *See Resp. Br.* at 15.

For clarity, however, Appellant was not referring to the autopsy photos when he stated, "I'm not objecting to any pictures being placed in. I am objecting the to the number of pictures being put in showing charred bodies." App. 74:6:9. Just seconds before Appellant distinguished between the two groups of photos. App. 74:2-3. Then immediately afterwards the solicitor

moved on to "the last set we have, [State's Exhibits] 50, 51, 52." App. 74:24-25. Admittedly, Appellant's argument at this point was not extensive, but that is because it followed the discussion about the crime-scene photos where the applicable legal standard was clearly stated and discussed. Importantly, when State's Exhibits 50 and 51 were ultimately offered into evidence, he objected to both based on his pretrial argument. App. 458:8-17. Even if the record could have been more clear, this is at least a case where "the question of issue preservation is subject to multiple interpretations," and so "any doubt should be resolved in favor of preservation." *State v. Williams*, 417 S.C. 209, 229, 789 S.E.2d 582, 593 (Ct. App. 2016) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in part and dissenting in part)).

CONCLUSION

For the reasons given above—and those addressed in the initial brief—the trial court erred. The photographs themselves did not actually help the state prove any element of the crimes charged, and they carried a very serious and obvious risk of shifting the jury’s focus from whether the state met its burden of proof to punishing the only man the jury could for this horrific outcome.



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This 16th day of January, 2026.