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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC DONNELL GREENE,

APPELLANT

APPELLATE CASE NO. 2025-001467

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

During the April term of 2024, a Richland County Grand Jury indicted Eric Greene, Appellant, for murder. R. *(indictment both pages). Appellant was tried before the Honorable Jocelyn Newman and a jury, from July 14 – 17, 2025. Appellant was tried jointly with codefendant Juliviya Waller. Appellant was represented by J. Eric Fox and James Johnson. Carol Grant and Joshua Koger represented Waller. Kathryn Cavanaugh, Nicolas Fowler, and Joe Kreush prosecuted the case. Tr. 1. Appellant was convicted as indicted, and he was sentenced to fifty-seven years of imprisonment. Tr. 553, ll. 2-5; Tr. 573, ll. 17-19. This appeal follows.

STANDARD OF REVIEW

The standard of review for all three issues is abuse of discretion. "The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." *State v. Dickerson,* 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011).

"A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012); *see also State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances.") (citation omitted). In exercising its discretion on a Rule 403 objection to the admissibility of autopsy photographs, the trial court "must balance the [unfair prejudice] of graphic photos against their probative value." *Dial*, 405 S.C. at 260, 746 S.E.2d at 502 (citation omitted).

"The admission of evidence concerning past convictions for impeachment purposes remains within the trial court's discretion, provided the trial court conducts the analysis mandated by the evidence rules and case law." *State v. Robinson*, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019) (cleaned up). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Douglas*, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006).

STATEMENT OF FACTS

Morgan Duncan (Decedent) lived at the Springtree Apartments in Columbia. Decedent had assistance from several organizations including "MIRCI," which serves people with mental illness and homelessness, as he had schizophrenia and used drugs. He went missing at the end of November 2023. Tr. 141, l. 7 – 142, l. 8; Tr. 153, l. 1 – 159, l. 13. Law enforcement, assisted by Decedent's caseworker, did a welfare check at Decedent's apartment on November 29, 2023. The apartment was about a half mile from the Richland Northeast Library. No one was present, nothing looked out of order in the apartment, and there were no signs of forced entry. Tr. 135, l. 15 – 138, l. 25. Decedent's disappearance was on the news. Tr. 211, ll. 6-9.

In January of 2024, one Altariq "Jersey" Cuffie (Cuffie) was arrested for assault and battery of a high and aggravated nature and kidnapping. Cuffie asked law enforcement: "What can you do for me?" Tr. 172, ll. 1-7; Tr. 203, l. 8 – 209, l. 1. Cuffie was interviewed by law enforcement four times in 2024, and he was later interviewed by the solicitor. He gave inconsistent details in his statements but was a star witness at Appellant's trial. Tr. 206, ll. 3-5; Tr. 214, l. 10 – 234, l. 14; Tr. 187, l. 12 – 188, l. 3. Cuffie claimed he was living with Decedent and Appellant was their drug dealer. Tr. 174, l. 15 – 177, l. 15. According to Cuffie, the last day he saw Decedent, Cuffie and Decedent went to an older white man's apartment (James Kelly), where Appellant was present with several other people including Juliviya Waller. Tr. 175, ll. 14-18; Tr. 177, l. 19 – 178, l. 2.

Cuffie claimed Appellant was mad because Decedent owed him money. Cuffie alleged Appellant picked Decedent up by his neck and choked him until he stopped moving. Tr. 178, l. 3 – 179, l. 16. Cuffie claimed this occurred in the living room. Tr. 220, ll. 6-20. According to Cuffie, shortly afterwards, Appellant told Cuffie to mind his own business and gave Cuffie drugs

and a fake $100 bill. Tr. 179, ll. 17-21; Tr. 181, ll. 21-24; Tr. 182, l. 24 – 183, l. 6. Cuffie alleged he later went back to the apartment and Decedent was still lying on the floor. Tr. 184, l. 14 – 185, l. 12. Cuffie claimed he was subsequently asked to clean Waller's truck by a friend of Appellant's. Tr. 186, l. 7 – 187, l. 14. Cuffie continued to get high at the alleged crime scene afterwards. Tr. 230, l. 12 – 231, l. 5. Cuffie had many charges pending at Appellant's trial, and he was being prosecuted by Appellant's solicitor. He faced at least one hundred years in prison. Tr. 201, l. 8 – 207, l. 11; Tr. 188, l. 9 – 190, l. 8.

James Kelly (Kelly) was also a witness for the prosecution and he too had credibility problems. Kelly was also staying in a "MIRCI" apartment and had serious mental illnesses and drug addiction. Tr. 236, l. 14 – 237, l. 17. Kelly was interviewed by law enforcement multiple times about Decedent's disappearance but he denied knowing anything about it until several interviews in. Tr. 240, ll. 2-14. Kelly claimed he bought drugs from Appellant and Appellant eventually moved into Kelly's apartment. Tr. 238, l. 8 – 240, l. 2. Kelly alleged the day he last saw Decedent, around Thanksgiving, Decedent had come to his (Kelly's) apartment and several people were there doing drugs, including Waller. Tr. 242, l. 9 – 243, l. 24.

Kelly claimed Appellant and Decedent were arguing and Appellant grabbed Decedent by the throat and strangled him. In contrast to Cuffie, Kelly alleged this did not occur in the living room but occurred in Appellant's bedroom. Tr. 242, l. 24 – 244, l. 24. Kelly claimed he went back into his own bedroom and heard Appellant say: "This [expletive] is dead." Tr. 243, ll. 6-12. According to Kelly, afterwards, Appellant gave him drugs, which Kelly used, and when Kelly later came out of his room, everyone was gone and the living room rug was missing. Tr. 243, ll. 6-8; Tr. 248, l. 8 – 250, l. 4. Kelly stated he later saw Waller cleaning her car. Tr. 253, ll. 6-17.

Kelly claimed he subsequently asked Appellant what happened and Appellant pointed to a teardrop tattoo on his eye and said "he was a gangster or something like that." Tr. 254, ll. 9-17.

Approximately seven months after his disappearance, Decedent's body was found, heavily decomposed, in a creek near the Richland Northeast Library, which was extremely close to where Decedent had lived at Springtree apartments. Tr. 354, l. 7 – 356, l. 4; Tr. 363, ll. 22-25; Tr. 356, ll. 5-20. Dr. Stevens, a deputy coroner and forensic anthropologist, testified he could not determine the manner and cause of death due to decomposition. Tr. 422, ll. 13-14; Tr. 447, ll. 18-20; Tr. 450, ll. 16-21; Tr. 442, ll. 3-16. Dr. Stevens admitted it was possible Decedent overdosed, and fentanyl was found in the decedent's brain. Tr. 449, l. 5 – 450, l. 3.

Dr. Stevens used the report he prepared during his testimony. Tr. 426, ll. 14-20. According to Dr. Stevens, the body was missing the hyoid bone, and there was damage in the area that was probably caused by turtles and fish. If the hyoid bone were present, a broken hyoid bone would be evidence of strangulation. However, a missing hyoid bone was not evidence of anything, as the bone is "free floating" and susceptible to animal predation and normal decomposition processes. Tr. 438, l. 10 – 439, l. 13; Tr. 443, ll. 2-6; Tr. 445, l. 14 – 446, l. 11. The body did show a styloid fracture, under the skull behind the throat, but this could have occurred post-mortem, due to the water and rocks present. Tr. 437, l. 10 – 438, l. 9; Tr. 439, l. 14 – 440, l. 2. Some of the bones were buried in silt. Tr. 438, ll. 1-8. Dr. Stevens's testimony was quite detailed and explicit. In addition to discussing the animal predation evidence, Dr. Stevens discussed fat hydrolysis or adipocere tissue present due to the body being submerged in water, the presence of larvae where the eyeballs would have been, the presence of neck cartilage, and other details about the body. Tr. 432, l. 19 – 433, l. 6; Tr. 435, ll. 14 – 436, l. 3. Dental

records and DNA testing were used to positively identify the body. Tr. 428, l. 23 – 429, l. 5; Tr. 430, l. 5 – 431, l. 24.

Additional evidence introduced at trial included the following. Law enforcement searched Appellant's storage unit and found counterfeit money in it. Tr. 298, l. 16 – 301, l. 13. The State introduced GPS monitoring records which showed Appellant at the library and in the woods near the creek by the library in the years leading up to Decedent's disappearance. Tr. 320, l. 20 – 328, l. 22. Appellant was housed in the same dorm at the detention center as one JaJuan Lowery, around June of 2024. A reward had been offered for finding Decedent. Several days after being released from the detention center, Lowery found the decedent's remains in the creek near the library and he later got the reward money. Tr. 356, ll. 13-15; Tr. 370, l. 9 – 371, l. 10. A jailhouse snitch claimed Appellant told him: "they'll never find a body." Tr. 402, l. 7 – 410, l. 25. Finally, Netflix was filming a "Missing, Dead or Alive" television show at the Richland County Sheriff's Office about Decedent's disappearance when this case was being investigated. The entertainment company filmed Investigator Mastrianni's interviews and filmed Appellant's arrest, but Investigator Mastrianni claimed these circumstances did not dictate his investigation. Tr. 376, l. 12 – 382, l. 16.

ARGUMENT

I.

The court erred in admitting GPS monitoring evidence, where the probative value of the evidence was low as Appellant did not have the monitor when Decedent disappeared but the danger of unfair prejudice was high as it invited jury speculation about why Appellant was required to wear the monitor, since the evidence should have been excluded pursuant to Rule 403, SCRE.

Relevant facts

Immediately prior to the testimony of Erica Ricard, an employee of Offender Management Services, the solicitor stated that the State intended to offer Ricard's testimony to establish Appellant had a GPS ankle monitor prior to the disappearance and death of the decedent. Tr. 311, ll. 9-23. The indictment alleged Decedent was killed on or about November 28, 2023. R. *(indictment, narrative page). The decedent's body was found in the woods behind the library. The solicitor argued the records showed Appellant was familiar with the area, with GPS points placing Appellant in the woods prior to the decedent's disappearance. Tr. 312, l. 21 – 313, l. 13. The solicitor stated he would not get into "why [Appellant] was on the monitor." Tr. 311, ll. 17-21.

Defense counsel argued the GPS monitor evidence was inadmissible under Rule 403, SCRE.[1] Tr. 312, l. 1 – 313, l. 22. Defense counsel argued the evidence was not probative because the GPS monitor was removed before the decedent disappeared; "not anywhere remotely around the time of these alleged incidents occurring." Tr. 312, ll. 1-5; Tr. 312, ll. 15-18. He

[1] Defense counsel initially made a relevance objection, but after the solicitor argued in response, counsel argued the evidence should be excluded pursuant to Rule 403, SCRE: "more prejudicial than probative because of the implication of being on the ankle monitor." Tr. 312, l. 1 – 313, l. 22.

argued it was more unfairly "prejudicial than probative because of the implication of being on an ankle monitor," and the evidence would invite jury speculation about why Appellant was wearing a monitor. "[T]he jury will be speculating, why is this man on a monitor?" Tr. 313, ll. 20-22; Tr. 312, ll. 7-9. Moreover, counsel noted that while "shoplifters" are typically not required to wear ankle monitors, "[p]eople who are alleged to commit scary crimes are." Tr. 312, ll. 11-12.

The court found the evidence admissible, with the caveat the State elicit Appellant "had a GPS monitor" and Ricard "works for a monitoring company." "So as to give less of a suggestion that he . . . had some criminal behavior." "I think that sanitizes it a bit more. That could be—they'll infer whatever they infer, but that is less directly [tied] to criminal activity. There are lots of things that track GPS coordinates." Tr. 313, l. 23 – 315, l. 5.

Witness Ricard then testified in keeping with the court's ruling. According to Ricard, she worked for a GPS monitoring company which provides GPS monitoring to "certain individuals," and the company provided a GPS monitoring device to Appellant. Tr. 320, l. 20 – 321, l. 3. Ricard introduced GPS records generated by Appellant's device during 2020, 2021, 2022, and early 2024. Ricard testified regarding the location on the library on Parklane Road in Columbia, and noted the device was at the library or behind the library, including "within the wood line," on various dates in 2020, 2021, and 2022. The device also placed Appellant at a storage unit in January of 2024. Tr. 321, l. 8 – 329, l. 7. Ricard stated Appellant did not have the GPS monitoring device in November of 2023, i.e., when the State alleged the decedent was killed. Tr. 331, ll. 12-14.

Prior to offering the GPS evidence, the State had already presented witness James Kelly's testimony Kelly bought drugs from Appellant at the library on Parklane Road. Tr. 238, l. 18

239, l. 5. The State used a map and photograph during its direct examination of Kelly to accompany Kelly's testimony that he would meet Appellant in the library parking lot to buy drugs, and Appellant kept his stash of drugs in the woods down there. Kelly claimed he saw Appellant go into the woods during their drug deals. Tr. 257, l. 9 – 259, l. 23. Also prior to offering the GPS evidence, the State had already tied Appellant to the storage unit where counterfeit bills were found, through the testimony of Investigator Ramos, who stated the rental contract was in Appellant's name and Appellant's mother's belongings were in the unit. Tr. 301, ll. 5-13.

Discussion

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest decision on an improper basis, such as an emotional one." *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001). "The determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case." *State v. Holland*, 385 S.C. 159, 171, 682 S.E.2d 898, 904 (Ct. App. 2009) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). The court should place its Rule 403 analysis on the record. *See State v. Benton*, 443 S.C. 1, 9, 901 S.E.2d 701, 705 (2024) (trial court should have placed Rule 403 analysis on the record, since "on-the-record arguments and rulings enable judicial review and allow the parties and the public to better understand the rulings").

The probative value of the GPS evidence was low. Appellant did not have the monitor on when the Decedent disappeared, and he had not worn it for months before the Decedent's disappearance. The State already had the testimony of Kelly he bought drugs from Appellant at the library parking lot and he had seen Appellant go into the woods where he kept his "stash," i.e., where the body was eventually located. Thus, the GPS records were cumulative to Kelly's testimony. Similarly, the testimony Appellant's GPS monitoring device showed him at the storage units where counterfeit money was found had low probative value. Appellant had already been tied to the storage unit by Investigator Ramos.

The low probative value of the evidence was substantially outweighed by the danger of unfair prejudice. A defendant may not be convicted because the State has improperly conveyed to the jury the defendant is a criminal. For example, the prosecution may not force a defendant to trial in prison clothes, or while shackled (absent a finding of necessity), and may not introduce his prior criminal record to show propensity. These actions, like the jury hearing the accused in this case had a GPS monitor on for years, undermine the presumption of innocence. *Cf. State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020) ("Rule 404(b) prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial."); *State v. Nelson*, 331 S.C. 1, 7, 501 S.E.2d 716, 719 (1998) (Propensity evidence is "an improper basis upon which to determine guilt[.]"); *Deck v. Missouri*, 544 U.S. 622, 630 (2005) ("Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process); *Estelle v. Williams*, 425 U.S. 501, 512 (1976) (State may not compel an accused to stand trial before a jury while dressed in identifiable prison clothes since the clothing may affect a juror's judgment and impair the presumption of innocence).

Counsel correctly argued the GPS monitoring evidence invited improper jury speculation. *Cf. State v. Sloan*, 278 S.C. 435, 438, 298 S.E.2d 92, 93 (1982) (solicitor's improper argument invited the jury to speculate about a matter irrelevant to guilt and diverted the jury from its duty to decide guilt or innocence solely on the evidence presented). While many people have cell phones that track location information, a GPS monitoring device placed and monitored by a monitoring company is only used in the criminal justice context. *See,* e.g., S.C. Code Ann. § 17-15-35 (electronic monitoring as condition of bond); S.C. Code Ann. § 24-13-425 (tampering with electronic monitoring device worn as condition of probation, parole, or community supervision); S.C. Code Ann. § 23-3-540 (electronic monitoring of certain sex offenders). Admitting the GPS monitoring evidence was unfairly prejudicial as it went to propensity and undermined the presumption of innocence. The evidence should have been excluded. Rule 403, SCRE.

II.

The court erred in admitting horrific crime scene and autopsy photographs of the decedent's heavily decomposed body, where the photographs had no probative value and the danger of unfair prejudice and considerations of needless presentation of cumulative evidence required exclusion pursuant to Rule 403, SCRE.

Relevant facts

Appellant objected to the admission of several crime scene and autopsy photographs (State's Exhibit #35; State's Exhibit #40; State's Exhibits # 22 – 24; State's Exhibit # 27; State's Exhibits #29 – 32). The decedent's body had been partially submerged in water and silt for seven months and showed animal predation. The body was largely skeletonized but fat, tissue, cartilage, and insect infestations were present in the remains. Defense counsel was reasonable in his requests to exclude, and a number of images of the body were admitted without objection (State's Exhibits # 36 – 37; State's Exhibit #39; State's Exhibits # 46 – 48). However, counsel cited to Rule 403, SCRE in moving to exclude photographs he argued were "gruesome" and "unnecessary," and he argued testimony would be adequate without the photographs. Tr. 336, l. 13 – 344, l. 5; Tr. 392, l. 13 – 400, l. 11; Tr. 434, l. 129 – 435, l. 13; Tr. 364, l. 7 – 365, l. 3.

The State argued the photographs were probative of why there was no cause or manner of death determination, and probative of the area where the body was disposed. The solicitor also argued the photographs helped to explain Dr. Stevens's testimony. Tr. 340, l. 15 – 342, l. 22; Tr. 394, l. 4 – 397, l. 19.

The court ruled the contested photographs were admissible, although it excluded State's Exhibit #25, #26, and #28. It also excluded State's Exhibit #38, without any objection. As to State's Exhibit #35, the court found the evidence's "probative value outweighs the prejudicial

effect. It is not cumulative in any way. This photo actually shows something that no other photo has." Tr. 399, l. 8 – 400, l. 11.

During sentencing, the trial judge acknowledged how disturbing the photographs were, stating: "Those pictures were horrible," and implying the photographs made "everyone in the courtroom want[] to cry." Tr. 573, ll. 5-9.

Discussion

Under Rule 403, SCRE, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "The trial judge must balance the prejudicial effect of graphic photographs against their probative value." *State v. Martucci*, 380 S.C. 232, 249, 669 S.E.2d 598, 607 (Ct. App. 2008). "To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *Id.* (quoting *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995)). The court should place its Rule 403 analysis on the record. *See State v. Benton*, 443 S.C. 1, 9, 901 S.E.2d 701, 705 (2024) (trial court should have placed Rule 403 analysis on the record, since "on-the-record arguments and rulings enable judicial review and allow the parties and the public to better understand the rulings").

Gruesome photographs must be excluded from trial where the facts they show are established by other evidence. "In the *guilt* phase of a trial, photographs of the murder victims should be excluded where the facts they are intended to show have been fully established by competent testimony." *State v. Kornahrens*, 290 S.C. 281, 288-289, 350 S.E.2d 180, 185 (1986) (emphasis in original). *See State v. Nelson*, 440 S.C. 413, 424-25, 891 S.E.2d 508, 513-14

(2023) (autopsy photographs have little, if any, evidentiary value where the information they depict is not in dispute; their scant evidentiary value is negated by the forensic examiner's testimony). "Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions." *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (citing *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)).

The extreme decomposition depicted in the photographs supported exclusion. These photographs are ghoulish and horrifying. In *State v. Kornahrens*, 290 S.C. at 289, 350 S.E.2d at 186, the Supreme Court found the admission of autopsy photographs was not error during the sentencing phase of a trial, and it specifically noted that a lack of decomposition informed admissibility: "The appearance of the bodies as the defendant left them has not been altered by decomposition or by any outside force. While these photographs and slides most likely would have been inadmissible in the guilt phase, under the facts of this case, they were relevant in the sentencing phase to show the circumstances of the crime and the character of the defendant." Unlike *Kornahrens*, this was not a bifurcated trial. The photographs were admitted for guilt, not punishment, and the depictions of the body, in its heavily decomposed state, were incredibly gruesome.

The images of the decedent's decomposing body should have been excluded as the facts they showed were established by other evidence. The State had the testimony of Investigator Mastrianni about the state and location of the remains when they were discovered. It also had the testimony of Dr. Stevens, the deputy coroner and forensic anthropologist, who gave extensive and detailed testimony about the remains. It had x-rays taken by the coroner's office and x-rays taken by the decedent's dentist. It had drone footage of the area where the body was recovered.

It had other photographs. The gruesome photographs were unnecessary to substantiate material facts. *See State v. Jones*, 440 S.C. 214, 263, 891 S.E.2d 347, 373 (2023) (during punishment phase, photographs of children's bodies in advanced stages of decomposition were inadmissible under Rule 403; they had "no probative value").

Moreover, the images did not refute the defense's theory the decedent may have died from an overdose. Dr. Stevens admitted he could not determine the manner of death due to decomposition. The photographs merely showed how decomposed the remains were—a fact thoroughly established by other evidence. *Compare State v. Dial*, 405 S.C. at 261, 746 S.E.2d at 502 (Ct. App. 2013) (autopsy photographs of minor victim's injuries "were highly probative to the issues of whether Victim was abused and whether the abuse was the cause of his death," where defendant claimed Victim's injuries were the result of accident); *State v. Holder*, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) (admission of autopsy photographs of two-year-old child's internal injuries was not error, where defendant claimed child was injured in ATV accident and pathologist used photographs to refute this explanation). *See also State v. Hess*, 279 S.C. 14, 18, 301 S.E.2d 547, 549-50 (1983) (upholding limitation of defense testimony where it was merely cumulative to other testimony).

The likelihood of unfair prejudice was substantial as the images invited a decision on an improper basis. These were eight by ten color photographs and they were horrific. Even the trial judge acknowledged how disturbing the photographs were, stating during sentencing: "Those pictures were horrible." The trial judge indicated the photographs made "everyone in the courtroom want[] to cry." *See State v. Collins*, 409 S.C. 524, 539, 763 S.E.2d 22, 30 (2014) (Kittredge, J., concurring) (admission of autopsy photographs of child eaten by dogs was error since the primary purpose of the horrific photographs was to inflame the passions of the jury);

Torres, 390 S.C. at 624, 703 S.E.2d at 229 (autopsy photographs were "at the outer limits of what our law permits a jury to consider"). The admission of the unfairly prejudicial images was error. Rule 403, SCRE.

III.

The court erred in excluding impeachment evidence that State's star witness Altariq Cuffie, who gave changing stories to authorities in this case, had been convicted of giving false identification to law enforcement in 2002, since the probative value of the conviction as supported by specific facts and circumstances substantially outweighed its prejudicial effect, and the evidence should have been admitted pursuant to Rule 609(b), SCRE.

Relevant facts

As seen, Cuffie was a star witness for the State, and he claimed to have witnessed the murder. Just prior to Cuffie's testimony, the parties moved to settle his record for impeachment. Tr. 161, l. 16 – 162, l. 6. The court heard Cuffie had a substantial criminal history in multiple states dating back to 1994. Tr. 162, l. 7 – 163, l. 9. It also heard he had serious pending charges when interviewed by law enforcement in this case. Tr. 168, l. 7 – 169, l. 18. It heard Cuffie was convicted in 2002 of giving false identification to law enforcement in Pennsylvania, and Appellant sought to impeach him with this conviction. Tr. 163, l. 4 – 166, l. 20; Tr. 167, ll. 4-11. The State argued the conviction was too remote and noted Cuffie's sentence for the charge was twenty-four days. Tr. 167, ll. 4-23; Tr. 163, ll. 20-21.

The court cited to Rule 609(b)'s requirement the probative value of the remote conviction must be supported by specific facts and circumstances. Tr. 165, ll. 15-19. The defense argued the false identification to law enforcement should be admissible even though it fell outside Rule 609(b)'s ten-year time limit, noting Cuffie went "back and forth" with the police about critical facts alleged in the case. Defense counsel noted Cuffie's "credibility as a witness is key," and "[h]is story does change." Tr. 164, l. 1 – 166, l. 20. The court found the conviction was not admissible as it was too remote, the court did not have the "specific facts and circumstances of

that incident," and the conviction had not been shown to be "substantially similar" to this case.

Tr. 167, l. 24 – 168, l. 6.

Discussion

Rule 609(a) and (b), SCRE provide as follows.

> (a) General Rule. For the purpose of attacking the credibility of a witness,
>
> (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
>
> **(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.**
>
> For the purposes of this rule, a conviction includes a conviction resulting from a trial or any type of plea, including a plea of nolo contendere or a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).
>
> **(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.** However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(emphasis added).

Rule 609(b) "contains a time limit that establishes a presumption against the admissibility of remote convictions, i.e., those more than ten years old, for impeachment unless the trial court expressly finds the probative value of the conviction 'substantially outweighs' its prejudicial effect." *State v. Black*, 400 S.C. 10, 18, 732 S.E.2d 880, 885 (2012). "In performing the balancing test required by Rule 609(b), the trial court shall determine whether the probative value of the conviction substantially outweighs the prejudice of its admission after carefully balancing the interests involved and articulating for the record the specific facts and circumstances supporting its decision." *Id.*, *citing State v. Colf*, 337 S.C. 622, 629, 525 S.E.2d 246, 249 (2000).

The Supreme Court has enumerated at least five factors (*Colf* factors) that a trial court should consider in determining, in the interests of justice, whether the probative value of a prior conviction substantially outweighs its prejudicial effect: (1) the impeachment value of the prior crime, (2) the point in time of the conviction and the witness's subsequent history, (3) the similarity between the past crime and the charged crime, (4) the importance of the witness's testimony, and (5) the centrality of the credibility issue. *Id.*, *citing Colf*, 337 S.C. at 627, 525 S.E.2d at 248. The trial court should make an on-the-record evaluation of the *Colf* factors when determining admissibility. *State v. Brewton*, 442 S.C. 169, 182–83, 898 S.E.2d 132, 139 (2024).

"The starting point in the analysis is the degree to which the prior convictions have probative value, meaning the tendency to prove the issue at hand—the witness's propensity for truthfulness, or credibility." *Black*, 400 S.C. at 21, 732 S.E.2d at 886. "A rule of thumb is that convictions that rest on dishonest conduct relate to credibility, whereas crimes of violence, which may result from a myriad of causes, generally do not." *Id.*, 400 S.C. at 22, 732 S.E.2d at 887. "The impeachment value of crimes that involve deception is higher than crimes that involve

violence, and the latter have a higher potential for prejudice." *Id.*, 400 S.C. at 23, 732 S.E.2d at 887 (cleaned up). When the witness has been convicted of "additional crimes since his release from confinement" this weighs in favor of permitting the impeachment. *Id.*, 400 S.C. at 21, 732 S.E.2d at 886.

The trial court should have applied the *Colf* factors, which supported admitting the conviction for impeachment. (1) This crime had extremely high impeachment value. It was a crime of dishonest conduct, which related directly to credibility. (2) The point in time of the conviction in relation to Cuffie's other convictions also supported admission. Cuffie had convictions for serious crimes, such as aggravated assault and escape, in 1994, 2002, 2004, 2007, and 2008, in addition to his pending charges. (3) While the factor regarding the similarity between the past crime and the charged crime is not quite on point since Cuffie was not the defendant in this case, his conviction for giving false identification to law enforcement and his giving of changing information to authorities in this case supported admission. (4) Cuffie's testimony was extremely important. He was an eyewitness to the alleged murder. (5) Cuffie's credibility was central to the trial. *Colf*, 337 S.C. at 627, 525 S.E.2d at 248.

The court was provided with specific facts and circumstances regarding the admissibility of the conviction, in keeping with Rule 609(b). The court heard Cuffie went back and forth with the police about critical facts alleged in this case, that his credibility was key, that he received only twenty-four days the last time he was caught giving misinformation to law enforcement, and the extent of his prior record. Moreover, there was no unfair prejudice to the State as Cuffie was not on trial, and the court did not articulate any. *See State v. Bryant*, 369 S.C. 511, 517–18, 633 S.E.2d 152, 156 (2006) ("when the prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that

prior offense weighs against its admission"). The conviction was highly probative of credibility. *Black*, 400 S.C. at 22, 732 S.E.2d at 887. The court erred in excluding the conviction. Rule 609, SCRE; *Colf*, 337 S.C. at 627, 525 S.E.2d at 248.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

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This 24th day of April, 2026.