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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Heath P. Taylor, Circuit Court Judge

Unpublished Opinion No. 2026-UP-131
(S.C. Ct. App. Heard February 12, 2026-Filed March 18, 2026)

Lower Court Case No. 2021-GS-18-00121

THE STATE,

RESPONDENT,

V.

JASON BARRY BELL,

PETITIONER

APPELLATE CASE NO. 2023-001326

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on April 6, 2026.

QUESTIONS PRESENTED

1.

Petitioner told the police he killed his elderly father as an act of mercy. Did the Court of Appeals err in affirming the trial court's refusal to charge voluntary manslaughter because, under the plain language of the statute, evidence existed that this was "the unlawful killing of another without malice?"

2.

Did the Court of Appeals err in affirming the trial court's admission of a jail call in which petitioner was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403?

3.

Did the Court of Appeals err in finding the erroneous admission of a third-party toxicology report harmless?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted petitioner Jason Barry Bell for the murder of his father, Jim Bell. R. 508. On August 7, petitioner was tried before the Honorable Heath P. Taylor and a jury. R. 1. David Osborne and Jillian Frederick represented the State. R. 2. Ash Chisholm and Pierce Wehman represented petitioner. R. 2. The jury convicted petitioner. R. 493. Judge Taylor sentenced him to life imprisonment. R. 506.

Petitioner appealed and on February 12, 2026, the Court of Appeals heard oral argument. App. 53. The panel consisted of Judges Thomas, McDonald, and Turner. App. 58. On March 18, 2026, the court affirmed in an unpublished per curiam Opinion. App. 53. The court denied rehearing and petitioner now seeks certiorari at this Court. App. 64.

ARGUMENT

1.

Petitioner told the police he killed his elderly father as an act of mercy. The Court of Appeals erred in affirming the trial court's refusal to charge voluntary manslaughter because, under the plain language of the statute, evidence existed that this was "the unlawful killing of another without malice."

Reasons for Granting Certiorari

This Court should grant certiorari to decide the novel issue of whether a mercy killing warrants a voluntary manslaughter charge as a lesser-included offense for murder. See Rule 242(b)(1) (stating that a novel question of law is a reason for granting certiorari). Petitioner contends that under the plain language of the voluntary manslaughter statute, evidence existed showing petitioner killed his father as an act of mercy, lacked malice, and the charge should have been given. The State contended, and the Court of Appeals agreed, that South Carolina requires sudden heat of passion and sufficient legal provocation for voluntary manslaughter. Petitioner concedes that sudden heat of passion and sufficient legal provocation did not exist, so the question of the manslaughter statute's applicability to a killing without malice is cleanly presented as an issue of law for this Court's consideration.

Factual Background

Police and paramedics arrived at Jim and Rose Bell's house early on the morning of New Year's Day. R. 168-70. R. 179-80. Rose called 911 after finding her elderly husband dead in his recliner from a gunshot wound to the head. R. 170. Visible in the police body cams is an oxygen machine beside Bell's recliner. State's Ex. 4.

Petitioner Jason Bell, Jim and Rose's son, told the first officer on the scene that he and his father planned to watch the college football championships on New Year's Day. R. 173. Jason told the paramedic that Bell had complained of increased pain and Rose did not contradict him. R. 181-83. Jason did not immediately admit to shooting his father. R. 176. The police did not find any suicide notes. R. 176. The blood on Bell's temple was dry and the paramedic noted rigor in his jaw. R. 179-80.

Coroner Paul Brothers arrived at the scene at 9:20 a.m. R. 185. The police chief told the coroner that it was a possible suicide. R. 187. The coroner found Bell seated in a chair facing the television. R. 188. He had a knitted throw over his legs up to his midriff. R. 188. A suit jacket was on top of that. R. 188. The coroner pulled back the blanket. R. 188. He heard a thud and saw a revolver had fallen to the floor. R. 188.

At first, the coroner believed he saw only one bullet wound in Bell's head. R. 188. The coroner asked a deputy to pick up the gun and open the cylinder. R. 191. They saw two spent casings in the cylinder and the remaining holes were empty. R. 191. The coroner immediately concluded that Bell's death was not a suicide because you "can't shoot yourself in the head with a revolver more than one time." R. 191.

The police talked to Jason at the scene and then took him to the police station. State's Ex. 4. He did not immediately admit to shooting his father. R. 176. Some of his early interactions with the police at the station were captured on a body cam. State's Ex. 19. Jason told an officer that when he was small, his father told him that if he ever asked for a gun to blow his brains out, that Jason should give it to him. State's Ex. 19, Clip 2. Jason said he was not even ten years old when Bell made this request. State's Ex. 19, Clip 2. Jason said he was thinking about telling this to the St. George Chief of Police. State's Ex. 19, Clip 2. He later said

that when he returned home from North Carolina, his brother had just killed himself and he did not get along with his parents. State's Ex. 19, Clip 3. Afterwards, though, their relationship improved and they "were getting along great." State's Ex. 19, Clip 3.

During a smoke break outside, Jason admitted to the chief that he had killed his father. R. 204-05. Before the smoke break, the recording equipment did not capture his discussions with the police inside the interrogation room. R. 260-62. Jason's interview with the police in the interrogation room after the smoke break was recorded. State's Ex. 9.

Jason said he began drinking early on the day of New Years' Eve trying to work up the courage to put his father out of his misery. State's Ex. 9. He thought, prayed, and cried the rest of the day. State's Ex. 9. When his parents went out, Jason got the pistol that his father always kept beside his chair. State's Ex. 9. The pistol was there for when Bell could no longer take the pain. State's Ex. 9.

Jason waited until the fireworks began and went downstairs. State's Ex. 9. He was not angry with his father; he loved him. State's Ex. 9. Jason just wanted it to be quick and painless and for his father to stop suffering. State's Ex. 9. He made sure his father was asleep and then shot him twice in the head. State's Ex. 9. He ran upstairs and cried himself to sleep. State's Ex. 9.

Bell had been in pain and had been screaming. State's Ex. 9. Jason could hear his father screaming even when Jason was in his own bedroom. State's Ex. 9. Bell had a high tolerance for pain. State's Ex. 9. Jason told a story about fishing with his father and after Bell hooked himself in the arm, Bell pushed the hook through the skin, cut the barb off with a multi-tool, and then went right back to fishing. State's Ex. 9. At the end of the interview, the police told Jason they were charging him with murder.

The State introduced evidence from Bell's friends that Jason and Bell had an antagonistic relationship. They also testified that Bell would not have killed himself. An improperly admitted toxicology report showed Bell had no pain medication in his system. R. 407. During an improperly admitted telephone call from jail with his mother, Jason acknowledged that his he already knew that he would receive no inheritance from his father's will. State's Ex. 92.

Bell was diagnosed with pulmonary fibrosis in early 2015. R. 354. This disease causes someone to become short of breath. R. 354. No cure exists for pulmonary fibrosis and it eventually would have caused Bell's death. R. 355. Bell also had a problem with his aortic valve and nerve compression in his neck. R. 356. He had problems with both shoulders and had surgery on one of them. R. 356. Bell had begun falling in the last years of his life. R. 360-61. The coroner testified about the medical findings in the autopsy. R. 194. Bell had an enlarged heart twice the size of a normal heart, hardened arteries, and aortic valve stenosis. R. 194-95. Bell was 76 years old. R. 347.

The Charge Conference and the Court of Appeals' Decision

The trial court asked for the parties' positions on a voluntary manslaughter charge. R. 430-31. The solicitor said the charge "doesn't fit by any standard." R. 430. Defense counsel cited the text of the statute and argued that the facts fit the statute. R. 430-31. Counsel acknowledged the cases defining voluntary manslaughter, but said, "our position would be that's exactly what we've got here today." R. 430. "Because otherwise it leaves kind of a—a hole in the [law] where if you have an unlawful felony without malice, that it an—if voluntary manslaughter doesn't fit, it means it's just not a crime at all, which I don't think makes any

sense." The court denied the request, citing judge-made law on heat of passion and legal provocation. R. 432-34.

The Court of Appeals agreed with the trial court. App. 54-56. The court reasoned that heat of passion and sufficient legal provocation were required even though Jason presented "some evidence of a lack of malice." App. 55. The court found no evidence of either of these judge-made elements existed and affirmed. App. 55-56.

A Mercy Killing Fits the Statute

Petitioner's argument rests on the language of the voluntary manslaughter statute and how it differs from murder. "'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10. The manslaughter statute reads, "A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years." S.C. Code Ann. § 16-3-50. In the light most favorable to petitioner, Jason killed his father as an act of mercy, not as an act of malice. These facts fit the plain language of the manslaughter statute. It was an unlawful killing without malice.

Voluntary manslaughter is defined by the courts as the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation. State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004). The cases cited by the Court of Appeals all reiterate these common law elements of voluntary manslaughter. None of these elements appear in the text of the statute. A mercy killing does fit the text of the statute.

Florida recognizes in its statutes that assisted suicide is manslaughter. "Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter..." Fla. Stat. Ann. § 782.08. So does Alaska. Alaska Stat. Ann. § 11.41.120.

South Carolina's Legislature criminalized assisted suicide in 1998. S.C. Code Ann. § 16-3-1090. But, as the Court of Appeals noted, the prosecutor has discretion in which charges to bring. App. 55 at n.2. The assisted suicide statute would not likely fit the test to be a lesser-included offense of murder. See State v. McFadden, 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000) ("The test for determining if a crime is a lesser included offense is whether the greater of the two offenses includes all the elements of the lesser offense."). Without the ability to argue a lesser included offense, petitioner was left with arguing that he should simply be acquitted because the State failed to prove malice.

By the plain text of our statute, petitioner could have been found guilty of killing his father without malice. Ample evidence existed that Bell was ill. Jason's interview stating that he killed his father to end his suffering was admitted into evidence. This Court should grant certiorari to consider the interesting legal question posed by this case and ultimately reverse and remand for a new trial.

2.

The Court of Appeals erred in affirming the trial court's admission of a jail call in which petitioner was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403.

Petitioner moved pre-trial to suppress the admission of a jail call between him and his mother, *inter alia*, because it was evidence of bad character. R. 54-60. The State claimed the call had some relevance to motive—that Jason thought he was getting money in Bell's will. The call does not support this allegation by the State.

What does support the State's motive in introducing the call is that it knew the weakness of its case was proving malice. The solicitor acknowledged that the existence of malice would be "the material issue at fact here for the jury to determine." R. 55. The solicitor then complained that the State no longer gets the charge that malice is inferred from use of a deadly weapon. R. 55. The solicitor argued against Rule 403, acknowledging that the unfair prejudice would be that "maybe he's rude to his mama on the phone. . . ." R. 56.

The jail call is approximately six minutes long. State's Ex. 92. Jason tells his mother he got a letter that she had been appointed the personal representative of his father's estate. He asks if that meant he had been left something in the will. His mother replied that everything was left to her. Jason responds, "That's what I thought. Did not know if it was part of the legalese that he had to send something to me. I thought me and him had talked about it. Nothing coming to me." State's Ex. 92.

The rest of the call concerns getting money from his mother for the canteen at the jail. This discussion starts off polite. Jason's mother says she does not know how to put money on the canteen. Jason continues to press her and offers the name of someone who can help. He

becomes exasperated and calls her by her first name. He accuses her that she told him she was going to put money on his account three weeks ago. State's Ex. 92.

His mother curtly replies, "I haven't told you anything because I'm not promising you anything." Jason responds, "Well then I promise you right now that this will be the last time I call." Rose says, "Okay. Fine." The call ends. State's Ex. 92.

Defense counsel argued that nothing in the call about the will showed any temporal connection to the killing. R. 56-57. The call only showed Jason manipulating his mother to get canteen money, which was bad character evidence. R. 57-58. Petitioner argued this was irrelevant and violated Rule 403. R. 57-58. The judge ruled it was admissible and did not violate Rule 403. R. 60.

The Court of Appeals found the part of the conversation did not indicate that Jason was left out of the will "because of something he did" and questioned whether this was even a bad act and not just a disagreement. App. 56. The court then found the call was evidence of the relationship between petitioner and his parents, which was a contested issue and therefore relevant to motive. App. 56-57.

If the Court of Appeals is right about the first part of the call, then it was irrelevant, had no probative value, and should have been excluded under Rule 403. As defense counsel correctly argued, there was no temporal connection to the killing. In order to be admissible, bad character evidence must have some logical connection to the crime. State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). The solicitor argued the call showed that Jason "thought he was getting money and he wanted to confirm it." R. 55. Nothing in the call supports this argument. No logical connection existed and this evidence only served to parade Jason's meanness to his mother before the jury.

Rule 404 prohibits bad character evidence. Rule 404(a), SCRE. The State sought admission of this jail call to show that Jason manipulated his mother and was mean to her. The State's shaky reasoning then would find that if Jason was mean to his mother, then he was mean to his father and must have killed him. Lumping the parents together to analyze the probative value and relevance was incorrect. Whether petitioner was mean to his mother on the phone call was not relevant to motive, but was unfairly prejudicial in showing rudeness to a highly sympathetic State's witness.

Rule 403 prohibits the admission of evidence when its unfair prejudice outweighs its probative value. Rule 403, SCRE. The evidence here had zero probative value. As the solicitor candidly stated, the unfair prejudice was that Jason was mean to his elderly mother who had lost her husband of over fifty years. No jurors—especially South Carolina jurors—take kindly to sons disrespecting their grieving elderly mother. In this close case with shaky evidence of malice, the improper admission of this bad character evidence required reversal and this Court should grant certiorari.

3.

The Court of Appeals erred in finding the erroneous admission of a third-party toxicology report harmless.

The legal error, which the Court of Appeals correctly found, is indistinguishable from State v. Brewer, 438 S.C. 37, 882 S.E.2d 156 (2022) cert. denied 143 S.Ct. 2649 (June 20, 2023). In Brewer, the issue was the overdose of a child on pain medications in a grandmother's sippy cup. The pathologist read the results of the toxicology report from another lab. The Brewer Court found the toxicology report was testimonial and violated the confrontation clause. See also Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009). The Court reversed because of the

centrality of the toxicology report. Just like in Brewer, the State entered Bell's toxicology report into evidence through the pathologist. R. 405-07. R. 425-26.

The Court of Appeals held admission of the report was error under Brewer, but found its admission harmless. App. 57-58. The court held the pathologist's testimony was cumulative to other testimony. App. 57-58. The court singled out the testimony of Bell's doctor as important because the doctor testified he did not prescribe Bell any pain medication. As this Court is well aware, lack of a prescription does not mean someone cannot obtain opioids in South Carolina. See, e.g., State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017) (affirming conviction of defendant for trafficking oxycodone in case where he had drugs delivered to his apartment by Federal Express).

The error here cannot be harmless. Whether Bell was in pain was central to the State's case. The State's witnesses, Rose Bell and Janette Mizell said that Bell had not been in any pain. R. 367. R. 309. Jason told the police that his father was in excruciating pain and he wanted to end his suffering. State's Ex. 9. Appellant could not cross-examine the lab that performed the toxicology testing and was stuck with the pathologist's answer. Without the admission of the toxicology report, the jury would need to assess the credibility of the State's witnesses versus Jason's statement that his father was in pain. That point would become a credibility contest and fall within the jury's purview. The toxicology report was evidence of a different kind and character than the testimony by the doctor or Jim's friends that he was not in pain. The admission of the report cannot be harmless beyond a reasonable doubt and this Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari on all three issues and ultimately reverse petitioner's conviction and remand for a new trial.

Respectfully Submitted,

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ATTORNEY FOR PETITIONER

This 6th day of May, 2026.