STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Unpublished Opinion No. 2026-UP-131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

THE STATE,

RESPONDENT,

V.

JASON BARRY BELL,

PETITIONER

APPELLATE CASE NO. 2023-001326

APPENDIX

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803)734-3727

DAVID MICHAEL PASCOE, JR.
Solicitor, First Judicial Circuit
PO Box 1525
Orangeburg, SC 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

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FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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1.

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

2.

Did the trial court err in admitting a jail call in which appellant was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403?

3.

Did the trial court err under the Confrontation Clause in admitting the results of a third-party toxicology report through the pathologist?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted appellant Jason Barry Bell for the murder of his father, Jim Bell. R. 508. On August 7, appellant 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 appellant. R. 2. The jury convicted appellant. R. 493. Judge Taylor sentenced him to life imprisonment. R. 506. This appeal follows.

STANDARD OF REVIEW

The issues on appeal are reviewed for abuses of discretion.

ARGUMENT

1.

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

Introduction

Rightly so, a defendant cannot control a solicitor's selection of charges. When a prosecutor overcharges a defendant, the best a defendant can do is request a lesser-included offense. When a prosecutor charges the wrong crime, and the right crime is not a lesser-included offense, the best a defendant can do is hope for an acquittal.

Appellant Jason Bell ("Jason") told the police he killed his suffering father, Jim Bell ("Bell") as an act of mercy. State's Ex. 9. The solicitor did not charge Jason with assisted suicide under S.C. Code Ann. § 16-3-1090. He only charged Jason with murder. Appellant asked for the lesser-included offense of voluntary manslaughter, which, by the statutory language, would fit, but the trial court refused. Jason was convicted of the only charge before the jury—murder—and sentenced to life imprisonment.

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.

Jason 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 asked him that. State's Ex. 19, Clip 2. He 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.

Legal Discussion

The 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." Defense counsel argued alternatively that the facts fit the judge-made law on heat of passion and that if the judge viewed the facts in the light most favorably to appellant, the charge should be given and left to the jury to decide. The court denied the request, citing judge-made law on heat of passion and legal provocation. R. 432-34.

"'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. As trial counsel argued, the facts of this case fit the statute. In the light most favorable to appellant, 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.

Defense counsel was correct that a hole in the law existed—but only in this case because the solicitor did not bring the proper indictment. South Carolina has an assisted suicide statute. Section 16-3-1090 would have fit the facts of this case. It states. "It is unlawful for an person to assist another person in commiting suicide." S.C. Code Ann. § 16-3-1090(B). The act criminalizes participating in a physical act by which a person commits suicide. Id. The hole in the law does not exist because of the legislature, but because of the way the solicitor charges the case. The solicitor then capitalized on his charging discretion by opposing a manslaughter charge.

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). 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.

By the plain text of our statute, appellant 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. The lower court erred in not charging manslaughter.

2.

The trial court erred in admitting a jail call in which appellant was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403.

Appellant moved pre-trial to suppress the admission of a jail call between appellant 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. Nothing in the call supports 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. R. 57-58. Appellant 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.

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. 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 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 requires reversal.

3.

The trial court erred under the Confrontation Clause in admitting the results of a third-party toxicology report through the pathologist.

The solicitor asked the pathologist if he had reviewed Bell's toxicology report. R. 405. When the solicitor began to ask what the report showed, appellant objected. R. 405-06. The court held a bench conference. R. 406. After the bench conference, the solicitor asked a series of questions on whether pathologists rely on toxicology reports. R. 406-07. When the solicitor asked if the report showed any pain medications in Bell's system, appellant objected again and his objection was overruled. R. 407. The pathologist said Bell had "No medications of any sort." R. 407.

The court later allowed appellant to place his objection on the record. R. 425. Appellant stated that the pathologist could not "read in the results of the toxicology in this case." R. 425. Appellant stated that he objected under hearsay and the confrontation clause. R. 425. Defense counsel stated that he could not "cross-examine on methodology or conclusions or anything like that." R. 425. The trial court ruled that experts can rely on reports from other experts and that the report was admissible. R. 426.

Our Supreme Court reversed on this exact issue in 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

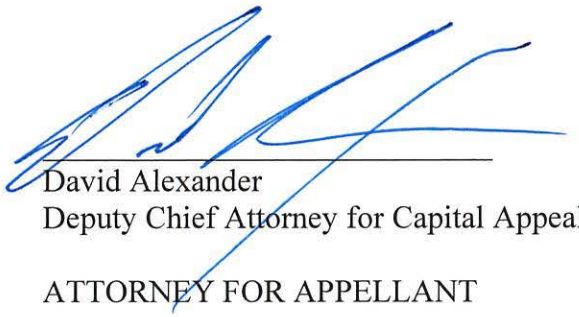
a child on pain medications in a grandmother's sippy cup. The pathologist read the results of the toxicology report from another lab.

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.

This case is just like Brewer. The toxicology report was read into the record by the pathologist. 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. Just like in Brewer, this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 21st day of March, 2025.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 21st day of March, 2025.

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THE STATE,

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JASON BARRY BELL,

APPELLANT

APPELLATE CASE NO. 2023-001326

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 21st day of March, 2025.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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Appellate Case No. 2023-001326

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
101 Ridge Street, 2nd Floor
St. George, South Carolina 29477
(843) 871-2640

ATTORNEYS FOR RESPONDENT

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RESPONDENTS COUNTER-STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err in declining to charge the jury on involuntary manslaughter when the act was not manslaughter under South Carolina law, when nothing in the history of murder law would support such a charge, and when other states have found such a charge is not warranted?

2.

Did the trial court err in admitting a jail call that gave the jury important information about the dynamics between Appellant and his parents when such a call did not unfairly prejudice Appellant?

3.

Was any error the trial court made in the admission of expert testimony about the victim's toxicology report harmless without a doubt when, under Appellant's theory of the case, he was still guilty of murder rather than manslaughter?

STATEMENT OF THE CASE

Appellant proceeded to trial in front of the Honorable Heath P. Taylor. (R. p. 1). The trial was conducted August 7–10, 2023. *Id.* Appellant was represented by Ash Chisholm, Esq., and Pierce Wehman, Esq., of the First Circuit Public Defender. (R. p. 2). The State was represented by David Osborne, Esq., and Jillian Frederick, Esq., of the First Circuit Solicitor's Office. *Id.*

At trial, the court declined Appellant's request to charge the jury on manslaughter in addition to murder. (R. p. 432, ll. 16–18). Over Appellant's objection, the trial court admitted a recording of a phone conversation between Appellant and his mother. (R. p. 60, ll. 2–24; R. p. 276, ll. 23–25). The court also allowed a forensic pathologist to testify about the results of the victim's toxicology test. (R. p. 405, l. 22–p. 407, ll. 11). Appellant was found guilty of murder. (R. p. 493, ll. 20–24). He was sentenced to life imprisonment. (R. p. 506, ll. 9–11). This appeal follows.

STATEMENT OF FACTS

In the earliest hours of 2021—the morning of New Year's Day—a death was reported to the St. George Police Department. At 8:02 a.m., Donald Weatherford—at the time a patrol officer with the department—was dispatched to an apparent suicide on Kelly Drive. (R. p. 168, ll. 17–21; p. 170, ll. 11–17). He arrived at the home four minutes later. (R. p. 170, l. 17).

When Investigator Adam Dunway arrived shortly thereafter, he found Jim Bell—a retired local attorney—seated in his recliner, with his feet propped up on an Ottoman and a gunshot wound to the left side of his head. (R. p. 253, l. 25–p. 254, l. 5). No suicide note would be found at the scene. (R. p. 176, ll. 7–9; p. 193, ll. 9–15). Jim Bell had not committed suicide.

That soon became clear to investigators. Coroner Paul Brothers arrived at the scene and, as part of his inspection, decided to pull off a blanket that was covering Jim Bell's body. (R. p. 188, ll. 9–11). A gun tumbled to the floor. (R. p. 188, ll. 11–13). When the revolver was opened, there were two spent shell casings inside. (R. p. 191, ll. 2–4). Brothers realized that with two shots fired, it was unlikely that Jim Bell had killed himself. (R. p. 191, ll. 4–7).

According to St. George Police Chief Brett Camp, his department quickly focused on a person of interest: Jason Bell (Appellant), Jim Bell's son. (R. p. 200, ll. 3–6). Shortly before 11 a.m., Chief Camp told Appellant that the police believed they were investigating a homicide. (R. p. 200, ll. 8–9). Appellant asked law enforcement if he needed to be placed in handcuffs. (R. p. 201, l. 23–25).

After Appellant had been detained and was at the police station, Chief Camp and Appellant took a smoke break. (R. p. 204, ll. 8–16). While the two men were outside, Appellant decided to confess to killing Mr. Bell. He told Chief Champ: "I am the one and I killed my father. I was the one that did it." (R. p. 205, ll. 15–18). The two men then returned to the interview room, and

Appellant gave a fuller account of what happened. (R. p. 205, ll. 15–21; State's Exh. 9). According to Appellant, he was acting on Jim Bell's request, expressed years earlier, that if the older man was suffering in his final days and could not end his own life, Appellant would do it for him. (Exh. 9). By New Year's Eve, with his father suffering from pulmonary fibrosis, Appellant decided the time had come. (Exh. 9; R. p. 354, ll. 1–3). Appellant said Jim Bell had spent much of the previous day screaming in pain. (Exh. 9). Appellant cried and prayed as he considered his next steps. (Exh. 9). "Doing it was bad enough," he told investigators. "Working up the courage to do it was the worst." *Id.*

That night, Appellant went downstairs and found his father asleep. *Id.* With New Year's Eve fireworks going off, Appellant fired two bullets into his father's head. *Id.* He then dropped the gun and returned to his bedroom upstairs, after which he continued to cry and pray. *Id.* His mother discovered the body the next day. *Id.*

On March 24, 2021, as Appellant was in jail, he placed a phone call to his mother, Rose. The phone call included the following exchanges:

> APPELLANT: Okay. Um, I got a, um—I got a, uh, letter, from, uh, from [a lawyer], uh, about you, um, you getting appointed to be the, um, personal representative of the, of the estate
>
> ROSE BELL: Yeah.
>
> APPELLANT: And, um, I honestly, as you, I, I don't, I've never seen the will before, I don't know if I'm actually, I was left anything in it or if I'm not in it all. So I did want to know—
>
> ROSE BELL: No.
>
> APPELLANT: —(a) am I in it at all?
>
> ROSE BELL: No, it's all left to me.

APPELLANT: That's what I thought, that's what. I just didn't know if that was part of the legalese that he had to send me something that, I mean.

ROSE BELL: [inaudible]

APPELLANT: I thought me and him had talked about it not, nothing coming to me.

Appellant then turned to another matter he wanted to discuss on the call.

APPELLANT: Okay, and I don't know if you ever tried to send me any, um, money for the canteen, but it has not shown up yet

ROSE BELL: No.

APPELLANT: You have not.

ROSE BELL: I don't know how to do that.

. . . .

APPELLANT: Uh, okay. Um, I mean it's, you can call [inaudible], I'd appreciate it, you know – the canteen, you only get, you get to order until Wednesday morning,

ROSE BELL: Um-hmm.

APPELLANT: Wednesday morning at 8 o'clock and they deliver it on Thursday.

ROSE BELL: Right.

APPELLANT: So, since I didn't have any money this morning, I'm not going to get anything tomorrow. Other than what I had in my pocket, I didn't have anything since I got here, so.

ROSE BELL: [Inaudible] I understand.

APPELLANT: I know you do, I know you do, and you know I'm not hustling you for money, I just, um, you know, I try, when I tried to call just to even see if I needed to respond to [the lawyer] or any of that—I can write him a free letter, but again, I don't have any money to call anybody and if you gotta buy stamps they give you two free a month—

> ROSE BELL: Yeah.
>
> APPELLANT: —or something, you know, so I'm. To help me help you, you know how that goes, so I can get in touch and let your lawyer know, yeah, I got the notification, let y'all take care of it kind of thing—I sure could, I mean, could you put a hundred instead of fifty?

Appellant told his mother that she could transfer some money into his account through an online system. She was still hesitant, saying she did not know how to do so. Eventually, Appellant became impatient.

> APPELLANT: Three weeks, Rose. Three weeks you been telling me every, you know I hate to try to bust your chops—
>
> ROSE BELL: I didn't tell you anything.
>
> APPELLANT: You told me you were going to put money on it three weeks ago. I mean, you told me again last week, and I'm just telling you that.
>
> ROSE BELL: No, I haven't told you anything, because I'm not promising you anything.
>
> APPELLANT: Well, then I'll tell you right now, I promise you this will be the last time I call.
>
> ROSE BELL: Okay, that's fine.
>
> AUTOMATED VOICE: Goodbye.

(State's Exh. 92).

At trial, Appellant made a motion in limine to exclude a recording of the jail call. Appellant argued that the recording was obtained in violation of his Fourth Amendment rights. (R. p. 50, ll. 21–25). Appellant also argued that the call was irrelevant. (R. p. 56, l. 24 – p. 57, l. 17). Finally, Appellant argued that the call was character evidence—meant to show that he had been "mean to his mom"—and that even if it was relevant, the call was more prejudicial than probative under Rule 403 of the South Carolina Rules of Evidence. (R. p. 57, l. 23–p. 58, l. 13).

The State countered that the call was relevant because part of the state's theory was that Appellant was spoiled, and that the call could be probative as to motive because of the discussion of the will. (R. p. 58, l. 14–p. 59, l. 16). The trial court ruled the recording conditionally admissible. (R. p. 60, ll. 2–24). When the State tried to enter the phone call into evidence, Appellant objected again. (R. p. 275, ll. 11–12). After hearing from the attorneys, the trial court maintained its prior ruling allowing the recording to be admitted. (R. p. 276, ll. 23–25).

Several friends and associates of Mr. Bell also testified at trial.

Larry Bowers would frequently visit the Bells. (R. p. 294, l. 19–22). His visits because less frequent after Appellant moved back into the house; Bowers "didn't appreciate the way [Appellant] treated them." (R. p. 294, l. 23–p. 295, l. 8). Bowers acknowledged that he did not see mistreatment, "just the results of it." (R. p. 295, ll. 11–14). Bowers also asked Jim Bell to give him the revolver because of Bowers' concerns about Appellant. (R. p. 296, l. 11–p. 297, l. 5). Like other witnesses, Bowers said he never heard Jim Bell screaming in pain. (R. p. 298, ll. 17–25).

Janette Mizzel, who cleaned Mr. Bell's home, recalled an incident two or three weeks before the shooting. (R. p. 301, ll. 8–16, p. 303, l. 22–p. 304, l. 1). She said she found Jim Bell lying on the concrete outside the house and asked what happened. (R. p. 305, ll. 4–6). Jason was standing nearby. (R. p. 305, ll. 7–17). Jim Bell said, "that bastard knocked me down." (R. p. 306, l. 10). Mizzel said the only people present at that time were Jim Bell, Appellant, and her. (R. p. 306, ll. 11–14). She said that she once asked Jim Bell to remove the bullets from his revolver, "[b]ecause I was getting scared for him and Rose's life." (R. p. 308, ll. 6–18). Mizzel never heard Jim Bell scream in pain. (R. p. 308, l. 24–p. 309, l. 7).

The jury also heard from Dr. Eric Watson, who was Jim Bell's primary care physician. (R. p. 353, ll. 7–19). While Jim Bell did have pulmonary fibrosis—and the condition would have ultimately killed him—Dr. Watson said it would not have caused him significant pain at the time of his death. (R. p. 354, ll. 1–3; p. 354, ll. 22–24; p. 355, ll. 16–19). Dr. Watson said Jim Bell had experienced some pain in his shoulder and had taken pain medications in August 2019. (R. p. 356, l. 23–p. 357, l. 6). But to Dr. Watson's knowledge, Jim Bell was not on pain medication at the time of his death. (R. p. 358, ll. 2–3). Dr. Watson saw nothing that indicated to him that Jim Bell was considering suicide. (R. p. 359, l. 19–p. 360, l. 1).

Likewise, Rose Bell—who met Jim Bell at camp in high school and had been married to him for more than 50 years—said her husband would not have considered suicide. (R. p. 366, ll. 12–14; p. 366, ll. 16–17; p. 368, ll. 16–19). She also said he never screamed in pain. (R. p. 367, ll. 4–15). As to the phone call from the jail, Rose Bell said she believed Appellant tried to call her again sometime after that call, but she would not accept the charges. (R. p. 369, ll. 6–13).

The state also presented the testimony of Virginia Richards, who was qualified as an expert in forensic pathology. (R. p. 399, l. 24–p. 400, l. 5). Over objection, she testified that the toxicology report on Mr. Bell indicated that no medications were present in his body when he died. (R. p. 405, l. 22–p. 407, ll. 11). After the jury had left the courtroom, the court allowed Appellant to place on the record his objection—previously made in a sidebar—that Richards' testimony about the toxicology report violated Appellant's rights under the Confrontation Clause. (R. p. 425, l. 6–p. 426, l. 5). The court repeated that it had overruled the objection. (R. p. 426, ll. 6–12).

In discussions about jury charges, Appellant argued that the court should instruct the jury on voluntary manslaughter. (R. p. 430, l. 13–p. 431, l. 16). Appellant argued that the killing was

done without malice, and that Appellant acted under the heat of passion because he heard his father screaming in pain the day before. *Id.*

The trial court declined to include a charge for manslaughter. (R. p. 432, ll. 16–18). The court held that even if Jim Bell's screams could have been provocation, Appellant had sufficient time to cool off before killing his father. (R. p. 433, l. 2–p. 434, l. 10).

During deliberations, the jury asked about the definition of malice. (R. p. 490, ll. 22–24). The judge recharged the jury with his murder instruction. (R. p. 490, l. 24–p. 491, l. 6; R. p. 491, l. 24–p. 493, l. 4).

The jury ultimately found Appellant guilty of murder. (R. p. 493, ll. 20–24). The court sentenced Appellant to life imprisonment. (R. p. 506, ll. 9–11). This appeal follows.

STANDARD OF REVIEW

This Court's "standard of review in criminal cases is limited to correcting errors of law." *State v. Green*, 436 S.C. 492, 494, 872 S.E.2d 869 (Ct. App. 2022). When considering whether the trial court should have instructed the jury on a lesser-included offense, this Court considers whether "the evidence in the record is such that the jury could have found the defendant guilty of the lesser offense instead of the crime charged." *State v. Gilmore*, 396 S.C. 72, 77, 719 S.E.2d 688, 690–91 (Ct. App. 2011). As to evidentiary rulings, they are "within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

ARGUMENT

I. The trial court properly declined to give an instruction for manslaughter because the evidence at the trial did not support a conviction on voluntary manslaughter rather than murder.

Appellant argues on appeal that the trial court should have instructed the jury on manslaughter because the killing of his father was without malice. Appellant also argues on appeal that the crime he was actually guilty of was assisting his father's suicide. These arguments are incorrect; Appellant's killing of his father did not constitute manslaughter, but murder.

A. Under South Carolina law, Appellant cannot show the necessary elements for a charge of voluntary manslaughter.

First, as Appellant all but concedes in his brief, his actions in this case do not fit under our state's well-established law regarding the elements of voluntary manslaughter. Instead, Appellant asks this Court to ignore those traditional elements in favor of a more inclusive view of a killing without malice. Contrary to Appellant's argument, a killing in the heat of passion brought on by legal provocation is not a species of the lack of malice; it is the test for determining the lack of malice.

Our courts have already dismissed Appellant's implicit contention that some sort of ill will is required for malice to exist.

> In its popular sense, the term "malice" conveys the meaning of hatred, ill-will, or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.

State v. Judge, 208 S.C. 497, 505–06, 38 S.E.2d 715, 719–20 (1946) (quoting a source identified as "29 C.J. 1084"). *See also* In re *Tracy B.*, 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010) ("In the context of murder, malice does not require ill-will toward the individual injured, but rather it signifies 'a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.'" (quoting *State v. Mouzon,* 231 S.C. 655, 662, 99 S.E.2d 672, 675–76 (1957))).

"Voluntary manslaughter is the intentional and unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Payne*, 434 S.C. 121, 135, 862 S.E.2d 81, 88 (Ct. App. 2021) (quoting *State v. Smith*, 391 S.C. 408, 412–13, 706 S.E.2d 12, 14 (2011)). It is the connection between the two—legal provocation and heat of passion—that mitigates a murder and reduces it to manslaughter. *See id.* at 137, 862 S.E.2d at 89 ("Moreover, there must be evidence that the heat of passion was caused by sufficient legal provocation." (quoting *State v. Starnes*, 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010))); *Starnes*, 388 S.C. at 596, 698 S.E.2d at 608 ("We have consistently held that both heat of passion and sufficient legal provocation must be present at the time of the killing. A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." (citation omitted)).

In sum, South Carolina courts look for a sufficiently provocative act producing "an uncontrollable impulse to do violence." *Id.* at 590, 698 S.E.2d at 609. This is what Appellant cannot show in this case.

First, Appellant would be required to show not just a provocation, but that his father provoked him. *See State v. Locklair*, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000) ("Provocation necessary to support a voluntary manslaughter charge must come from some act of or related to the victim in order to constitute sufficient legal provocation."). Furthermore, the act must be

sufficiently egregious to qualify as legal provocation—most human interactions will not do. *See State v. Hernandez*, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) ("Neither the exercise of a legal right nor a victim's attempts to resist or defend himself from crime constitute sufficient legal provocation."); *State v. Holland*, 385 S.C. 159, 166, 682 S.E.2d 898, 902 (Ct. App. 2009) ("Mere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon." (cleaned up) (quoting *State v. Rogers,* 320 S.C. 520, 525, 466 S.E.2d 360, 362 (1996))).

The only act of Jim Bell's that Appellant could argue legally provoked him was the act of screaming in pain. But screams—even disturbing ones—are not the stuff of legal provocation and certainly should not give a patient's family the ability to kill him or her, then have the charges reduced to manslaughter.

Appellant has also failed to show that, under any interpretation of the evidence produced at trial, he acted in the heat of passion; to the contrary, his own statement to investigators disproves the idea.

Like provocation, the heat of passion is not a trivial matter. It requires a state of mind that "need not dethrone reason entirely, or shut out knowledge and volition," but still "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *State v. Pittman*, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007) (quoting *State v. Cole,* 338 S.C. 97, 99, 525 S.E.2d 511, 513 (2000)).

Even once the heat of passion has been triggered, voluntary manslaughter does not create an unlimited invitation to kill the provocateur at a time of one's choosing. If a defendant has time to "cool off," then the defendant is no longer acting in the heat of passion. *See Hernandez*, 386

S.C. at 661, 690 S.E.2d at 585 ("However, even when a person's passion is 'sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter.'" (quoting *State v. Knoten,* 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001))).

While Respondent has not found any South Carolina law dealing specifically with whether a "mercy killing" qualifies as voluntary manslaughter—and Appellant has offered none—other states' courts have wrestled with similar theories and largely dismissed them. Even an advocate for reducing the charges faced by defendants for "non-voluntary" euthanasia has observed that no such doctrine currently exists. *See* Michael Buchhandler-Raphael, *Compassionate Homicide*, 98 WASH. U. L. REV. 189, 195 (2020) ("[N]o existing criminal defense recognizes compassion as grounds for mitigating murder charges to manslaughter. Moreover, the law generally rejects the idea that actors' purportedly beneficial motive for committing compassionate homicide diminishes the scope of their criminal responsibility." (footnote omitted)).

For example, in *State v. Forrest*, the Supreme Court of North Carolina faced a situation that strongly resembles the current case. There, the court held that a son who killed his terminally-ill father in the hospital did not act under the heat of passion in response to a legal provocation. *See Forrest*, 362 S.E.2d 252, 253–54, 256 (N.C. 1987).[1] The court rejected the argument that "where a defendant kills a loved one in order to end the deceased's suffering, adequate provocation to negate malice is necessarily present." *Id.* at 256. Furthermore, the Forrest court noted that the son in that case had indicated that he had thought out his course of action before killing his father. *Id.*

[1] The jury in Forrest had been charged with voluntary manslaughter, but the jury convicted him of first-degree murder. *See id.* at 254.

Here, like the defendant in *Forrest*, Appellant was capable of reflection. Appellant described in detail his cool reflection—the crying, praying, and thought he undertook as he decided whether to kill his father. Appellant talked about needing to work up the courage to shoot Mr. Bell. But someone who has to work up the courage to do violence is not under an uncontrollable urge to do violence; that is why they have to work themselves up.

As a result, Appellant cannot satisfy the test for voluntary manslaughter long followed in South Carolina. He instead asks this Court to rewrite the law of voluntary manslaughter through statutory interpretation. The history of South Carolina's law of murder, though, shows that the long history of voluntary manslaughter undermines any effort to accept Appellant's invitation.

B. There is no basis in the history of South Carolina's law of murder for Appellant's theory that voluntary manslaughter is a product of mere jurisprudence.

Appellant advances the novel legal theory that because the state's statutes do not explicitly include the requirements of legal provocation or heat of passion for manslaughter, those limitations are "judge-made law" that do not restrain the statute. Appellant's argument is undermined by the history of murder law.

"'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (West). On the other hand, the law defines manslaughter as "the unlawful killing of another without malice, express or implied[.]" S.C. Code Ann. § 16-3-50 (West).

Contrary to Appellant's attempt to distinguish between malice and the elements of manslaughter in South Carolina, the two have long been understood as equivalents. The state's elements of manslaughter are how to determine whether malice exists, not the other way around—and history bears that out.

For example, as our supreme court held nearly 130 years ago, "[t]he very essence of manslaughter is that tenderness of the law in judging our fellow men when influenced by sudden heat and passion while smarting under reasonable provocation, *thus negativing the existence of malice*." *State v. Richardson*, 47 S.C. 18, 24 S.E. 1028, 1029 (1896) (emphasis added). Even when the court decided *Richardson*, the idea that a reduction of a killing from murder to manslaughter required a heat of passion triggered by a legal provocation was nothing new; it had been stated at least 60 years earlier. *See State v. Ferguson*, 20 S.C.L. (2 Hill) 619, 621–22 (S.C. App. L. & Eq. 1835) ("The distinction between murder and manslaughter, as put in the books, and as generally understood by the profession, is not merely an arbitrary rule, but is founded on a thorough knowledge of the human heart, and framed in compassion to the passions and frailties which belong to and are inseparable from our natures. . . . Passion arising out of even imaginary wrongs, frequently gets the ascendancy of distempered minds, and even those that are better regulated are sometimes carried away by the ordinary 'ills which flesh is heir to.'").

This idea did not come from a legal innovation; instead, it was in keeping with an understanding of manslaughter that went back to the legal system of England.

> In seventeenth-century England, courts began to accept the notion that certain heat-of-passion killings lacked the "malice aforethought" necessary for murder and thus were not subject to the death penalty, then obligatory for murder. . . . At common law, only a few kinds of provocations were adjudged sufficient to excuse the killer's state of passion and reduce the killing to manslaughter.

Tom Stacy, *Changing Paradigms in the Law of Homicide*, 62 OHIO ST. L.J. 1007, 1021–22 (2001). *See also* William H. Coldiron, *Historical Development of Manslaughter*, 38 KY. L.J. 527, 544 (1950) ("Whether there is mitigation other than provocation does not concern us here since it seems to be a new idea in the law[.] There is nothing in the early writings and cases on the subject of

manslaughter which indicate to the writer that such a problem was even considered before the early part of the twentieth century[.]").[2]

As a result, there is no reason to believe that the framers of any of South Carolina's malice murder statutes were working under the belief that there were multiple other ways to negate malice other than the heat of passion under sufficient legal provocation.

C. Appellant's crimes do not fit the definition of assisted suicide.

Appellant argues that rather than be prosecuted for murder, he should have been prosecuted under the state's ban on assisted suicide. Appellant's argument contradicts the text of the statute.

South Carolina's law on assisted suicide defines a crime that occurs under two circumstances: one, that a person "by force or duress intentionally causes the other person to commit or attempt to commit suicide," § 16-3-1090(B)(1) (West); or two, that the individual know that someone is planning to commit suicide and either "provides the physical means by which the other person commits or attempts to commit suicide; or . . . participates in a physical act by which the other person commits or attempts to commit suicide," § 16-3-1090(B)(2) (West). The law also defines suicide as "the act or instance of taking one's life voluntarily and intentionally." § 16-3-1090(A)(2) (West).

Of course, Appellant did not aid Jim Bell in committing suicide because Jim Bell did not commit suicide and could not have attempted to commit suicide; he was asleep. While there is a scarcity of South Carolina authority on this law—beyond an unpublished federal case and a case from the Southern District of West Virginia dealing with extradition—the text of the statute is clear

[2] This article, which counsel could not find in a database, is instead available at https://uknowledge.uky.edu/klj/vol38/iss4/2/.

and unambiguous. Assisting suicide requires there to be a suicide in which the defendant is assisting.[3]

Again, courts in other states have turned aside arguments that Appellant's actions would constitute a violation of restrictions on assisted suicide. One influential rule was crafted by the Oregon Supreme Court in *State v. Bouse*. The *Bouse* court was considering a statute that made it manslaughter to "procure another to commit self-murder, or assist another in the commission thereof." *State v. Bouse*, 264 P.2d 800, 807 (Or. 1953). There, in the course of interpreting the statute, the court held:

> [W]here a person actually performs, or actively assists in performing, the overt act resulting in death, such as shooting or stabbing the victim, administering the poison, or holding one under water until death takes place by drowning, his act constitutes murder, and it is wholly immaterial whether this act is committed pursuant to an agreement with the victim, such as a mutual suicide pact.

Bouse, 264 P.2d at 812 (Or. 1953), *overruled on other grounds by State v. Fischer*, 376 P.2d 418 (Or. 1962), and *State v. Brewton*, 395 P.2d 874 (Or. 1964). *See also People v. Matlock*, 336 P.2d 505, 511 (Cal. 1959) (applying *Bouse* to a case before it); *Edinburgh v. State*, 896 P.2d 1176, 1180 (Okla. Ct. Crim. App. 1995) ("[W]here the defendant only furnishes the means by which the victim kills herself, he has merely assisted suicide. But, where the defendant proximately causes the defendant's death he can be held liable for homicide."); *State v. Sexson*, 869 P.2d 301, 304, (N.M. Ct. App. 1994) (finding, in the case of an uncompleted suicide pact, that second-degree murder and assisted suicide statute did not govern the same behavior because "[t]he wrongful act

[3] Appellant also cites to statutes in Florida and Alaska defining assisted suicide as manslaughter. Even if Appellant were guilty of committing assisted suicide—he is not—Appellant was tried in South Carolina, not Florida or Alaska, and South Carolina's assisted suicide statute is the one at issue.

triggering criminal liability for the offense of assisting suicide is 'aiding another' in the taking of his or her life," which is "intended to mean providing the means to commit suicide, not actively performing the act which results in death"); *Goodin v. State*, 726 S.W.2d 956, 958 (Tex. App. 1987) ("We believe the aiding suicide statute encompasses action which indirectly contributes to another's voluntary suicide, such as providing access to poison or a gun. We do not believe that this offense includes action on the part of an accused which directly causes the death of another, even if done at the deceased's request."), *aff'd,* 750 S.W.2d 789 (Tex. Crim. App. 1988).

There is nothing in South Carolina law that Respondent is aware of—and nothing that Appellant has shown—that should lead the courts of this state to make a different determination. Instead, Appellant asks this Court to invent from whole cloth a new species of manslaughter that is contrary to our law, contrary to history, and contrary to the path taken by other states. This Court should decline that invitation and affirm Appellant's conviction.

II. The trial court correctly admitted a phone call that did not violate the state's prohibition on character evidence, that provided probative evidence about Appellant's relationship with his parents, and that did not have improper prejudicial impact.

Appellant argues that the phone call between Appellant and his mother when Appellant was in jail should not have been allowed because it was evidence of bad character. He also cursorily argues that the evidence violates Rule 403's prohibition that evidence must be excluded if it is substantially more prejudicial than probative. The latter argument may very well be abandoned; both are meritless.

Appellant seems to be specifically objecting to the evidence under Rule 404(b). That rule deals with evidence of other bad acts of a defendant with the primary goal of proving character. *See* Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."). However, Rule 404(b) has a familiar exception; the other bad acts of a defendant may be admitted into evidence "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *Id.* That is why the State argued for admission of the call in this case.

First, Appellant continues to argue that the phone call did not show anything about Appellant's understanding of the will, other than that he knew he was excluded. This is an extremely generous reading of the record.

> JASON BELL: And, um, I honestly, as you, I, I don't, I've never seen the will before, I don't know if I'm actually, I was left anything in it or if I'm not in it all So I did want to know—
>
> MS. BELL: No.
>
> JASON BELL: —(a) am I in it at all?

The first substantive question Jason Bell asked in the phone call, after having received a letter from his mother's attorney regarding the will, was whether he was in it. Appellant only then

acknowledged that he did not believe he was getting anything from the will. Additionally, the identity of the "he" spoken of in the phone call is not clear, and it certainly does not definitively prove that the Appellant did not have a motive for committing murder based on his understanding that he was not in the will.

The evidence is also probative of motive in other ways. The State at trial argued that it was trying to show that the opponent was spoiled. In other words, the State was trying to show the dynamics in the household between Appellant and his parents, and how they might have played into his motivation to take his father's life. In that sense, the evidence was relevant not because of Appellant's unspecified "meanness" toward his mother, but of the tensions inside the household that led up to the fatal shots. It did not show that Appellant had the propensity to murder one of his parents, but it indicated that relations were perhaps not as sanguine as Appellant implied. *See State v. Nelson*, 331 S.C. 1, 7, 501 S.E.2d 716, 719 (1998) ("The term 'character' refers to a generalized description of a person's disposition or a general trait such as honesty, temperance or peacefulness. Generally speaking, character refers to an aspect of an individual's personality which is usually described in evidentiary law as a 'propensity.'" (quoting *State v. Smith,* 617 N.E.2d 1160, 1169 (Ohio Ct. App. 2d Dist. 1992))); *cf. State v. Plyler*, 275 S.C. 291, 296, 270 S.E.2d 126, 128 (1980) ("Evidence of previous difficulties or ill feelings between the accused and the victim and of facts showing the cause of such difficulties or ill will is admissible on the question of motives where there is some connection of cause and effect between the evidence and the crime." (quoting 40 C.J.S., Homicide, Section 228)).

Secondly, the danger of unfair prejudice—which is what our courts look for in weighing potential violations of Rule 403, SCRE—did not substantially outweigh the probative value of giving the jury an understanding of Appellant's relationship with his parents.

Appellant appears to have abandoned this argument on appeal. Other than a brief citation to Rule 403 itself, Appellant offers no authority on this point—simply a paragraph with a rule statement, followed by a series of assertions about the evidence's probative value and its prejudicial effect. *See State v. Lindsey*, 394 S.C. 354, 364, 714 S.E.2d 554, 559 (Ct. App. 2011) (stating, in parenthetical, that *State v. Howard*[4] stands for the proposition that an "argument [was] abandoned when defendant failed to cite any authority in specific support of his assertion that the trial court erred in denying his motion for a mistrial").

In any event, any unfair prejudice—and Respondent contends there is none—could not *substantially outweigh* its probative value. *See* Rule 403, SCRE.

When our courts are searching for unfair prejudice, they do not go hunting for anything that might make a defendant look bad. Rather, they are looking for something that—unconnected to the probative value it might have—is intended to rouse the jury against the defendant. Rule 403 is a safeguard against ad hominem justice. *See Johnson v. State*, 433 S.C. 550, 558–59, 860 S.E.2d 696, 701 (Ct. App. 2021) ("In criminal cases, the term 'unfair prejudice' 'speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt *on a ground different from proof specific to the offense charged.*" (emphasis added) (quoting *Old Chief v. United States*, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997)). As this Court held in *Johnson*:

> Probative evidence always prejudices the opposing party by building a case against them; however, Rule 403 only forbids "unfair prejudice," and its balancing test enables the trial court to temper the risk that evidence will exert such a pull on the jurors' emotions that it overwhelms their ability to rationally and impartially weigh the evidence and apply the law to the facts.

Id. at 559, 860 S.E.2d at 701.

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[4] 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009).

For example, in *White*, this Court allowed admission of a phone call from jail when the contents indicated the defendant's guilt. *See State v. White*, 437 S.C. 490, 493–94, 879 S.E.2d 21, 22–23 (Ct. App. 2022). There, the defendant's girlfriend misinformed him that an autopsy of the victim had concluded that the victim died because of a car crash, rather than a gunshot wound that the defendant had inflicted, prompting the defendant to celebrate. *See id.* In considering the potential for unfair prejudice, this Court distinguished the case before it from *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). Among the distinctions that the court found was that the call in *White* did not raise the same danger of unfair prejudice as the evidence in *King* because the profanity captured on the recording was casual and there were no racial slurs or references to bad acts prior to the phone call.

The same is true here. Like the call in *White*, the phone call at issue in this case does not contain a surplus of profanity. It does not appear to contain any profanity at all. There are no racial slurs, and the exhibit played for the jury excised a reference to Appellant's prior imprisonment.

While the jury likely did not like the disrespect that Appellant showed to his mother, the idea that it manipulated jurors to the extent that it "overwhelm[ed] their ability to rationally and impartially weigh the evidence and apply the law to the facts" is baseless. It seems highly unlikely that the jury would convict the defendant of murder because he was not polite to his mother. However, to the extent that the jury used the conversation on the audio to inform their view of the relationship between Appellant and his parents—and what that might have indicated about his motive for killing his father—the evidence was properly admitted.

Finally, any error here is without a doubt harmless. As explained above, even if the Appellant's own stated motive is to be believed, it does not excuse his commission of murder or

reduce it to manslaughter. A phone conversation covering less than six minutes that contradicts a self-serving defense that does not even properly serve Appellant, as part of a four-day trial, is not an error that could reasonably have affected the jury's decision.

For these reasons, this Court should affirm Appellant's conviction.

III. Even if the trial court erred in admitting the toxicology report, that error was without a doubt harmless when Appellant's own account of killing his father does not show the necessary legal provocation or heat of passion for manslaughter.

In his final issue, Appellant argues that the trial court erred in admitting the forensic pathologist's testimony about Jim Bell's toxicology results. Even if that is the case, any error was without a doubt harmless.

Appellant argues that the pathologist's reference to the toxicology report—showing the lack of medication, in Jim Bell's system—is contrary to our supreme court's decision in *State v. Brewer*, 438 S.C. 37, 42, 52–54, 882 S.E.2d 156, 158, 164–65 (2022) (holding that the testimony of a pathologist who relied on tests by a private laboratory to help conclude that a child had died from "acute oxycodone toxicity" was improperly admitted).

"A violation of [a] defendant's Sixth Amendment right to confront [a] witness is not *per se* reversible error if the error was harmless beyond a reasonable doubt." *State v. McCray*, 413 S.C. 76, 91, 773 S.E.2d 914, 922 (Ct. App. 2015) (alteration in original) (quoting *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013)). In assessing harmless error, the court should consider "whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case." *Id.* (quoting *State v. Gracely,* 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012)).

For reasons both evidentiary and legally, the error here was harmless. First, there was already ample evidence in the record to indicate that Jim Bell had not been prescribed pain medication in the days leading up to his death; his primary care physician testified as much. Likewise, other witnesses testified to their understanding that Mr. Bell was not in excruciating pain in his final weeks. The pathologist's testimony was cumulative.

Second, even if there had been pain medication in Jim Bell's system, it would not have provided sufficient evidence of manslaughter. As discussed above, the pain that Jim Bell purportedly suffered would not reduce the charge to manslaughter in any event, because even if Jim Bell *was* in immense pain, and he *did* require painkillers because of that, and that pain is what *did* prompt Appellant to kill his father—the defendant did not commit manslaughter, but murder.

For that reason, this Court should affirm Appellant's conviction.

CONCLUSION

Appellant was convicted of murder, rather than manslaughter, because that was the crime he committed. Nothing in the law of murder, nothing in the admission of Appellant's phone call to his mother, and nothing in the testimony of the pathologist concerning the toxicology results alters that. This Court should affirm Appellant's conviction.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: s/*R. Brandon Larrabee*
R. BRANDON LARRABEE
ATTORNEYS FOR RESPONDENT

March 25, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Heath P. Tayor, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JASON BARRY BELL,

APPELLANT.

Appellate Case No. 2023-001326

PROOF OF SERVICE

I, **R. Brandon Larrabee**, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, David A. Alexander, Esq., via email today, March 25, 2025 to dalexander@sccid.sc.gov, and to his assistant at cstock@sccid.sc.gov.

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

This 25th day of March, 2025.

s/ R. Brandon Larrabee

R. Brandon Larrabee
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jason Barry Bell, Appellant.

Appellate Case No. 2023-001326

Appeal From Dorchester County
Heath P. Taylor, Circuit Court Judge

Unpublished Opinion No. 2026-UP-131
Heard February 12, 2026 – Filed March 18, 2026

AFFIRMED

Deputy Chief Attorney for Capital Appeals David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Assistant Attorney General R. Brandon Larrabee, of Columbia; and Solicitor David Michael Pascoe, Jr., of Orangeburg, all for Respondent.

PER CURIAM: Jason Bell appeals his conviction and sentence for the murder of his father, Jim Bell.[1] On appeal, he argues the trial court erred by (1) refusing to charge voluntary manslaughter, (2) admitting a jail call recording because it was impermissible bad-character evidence, and (3) admitting the results of a third-party toxicology test through the pathologist. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. Jason argues the trial court erred by refusing to charge voluntary manslaughter because the facts fit the plain language in the statutory definition of voluntary manslaughter as "the unlawful killing of another without malice, express or implied." Jason admitted to shooting his father; however, he claimed the shooting was essentially an assisted suicide, not a malice-motivated killing. We hold the trial court correctly determined Jason was not entitled to a voluntary manslaughter instruction. *See State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009) (explaining that in criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous); *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001) ("The trial [court] determines the law to be charged on the presentation of evidence at trial."); *State v. Childers*, 373 S.C. 367, 373, 645 S.E.2d 233, 236 (2007) ("In determining whether the evidence requires a charge on voluntary manslaughter, this [c]ourt must view the facts in the light most favorable to the defendant.").

Pursuant to the South Carolina Code, "manslaughter" is "the unlawful killing of another without malice, express or implied." S.C. Code Ann. § 16-3-50 (2015). This "general statutory definition . . . includes both voluntary and involuntary manslaughter." *State v. Barnett*, 218 S.C. 415, 423, 63 S.E.2d 57, 59 (1951). The legislature has never defined voluntary or involuntary manslaughter; thus, we look to the common law for the more specific definitions and elements of those offenses. *See Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993) ("The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment."); *see also Hoogenboom v. City of Beaufort*, 315 S.C. 306, 318 n.5, 433 S.E.2d 875, 884 n.5 (Ct. App. 1992) ("The Legislature is presumed to enact legislation with reference to existing law, and there is a strong presumption that it does not intend by statute to change common law rules."). South Carolina case law defines voluntary manslaughter as "the unlawful killing of a human being in [a] sudden heat of passion upon sufficient legal provocation." *See, e.g.*, *Shuler*, 344 S.C. at 632, 545 S.E.2d at 819.

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[1] Because the main individuals involved in this case are related and share the same last name, we will refer to them by their first names.

Voluntary manslaughter is "distinguished from murder because the vital element of malice is missing." *State v. Gandy*, 283 S.C. 571, 573, 324 S.E.2d 65, 66-67 (1984), *overruled on other grounds by State v. Lowry*, 315 S.C. 396, 399-400, 434 S.E.2d 272, 274 (1993).

Still, Jason was not entitled to a voluntary-manslaughter instruction simply because he introduced some evidence of a lack of malice. As our appellate courts have repeatedly instructed, "[b]oth heat of passion and sufficient legal provocation must be present at the time of killing to constitute voluntary manslaughter." *Shuler*, 344 S.C. at 632, 545 S.E.2d at 819. Jason failed to present evidence of either element. The sudden heat of passion "must be such as would naturally disturb the sway of reason and . . . produce what may be called an uncontrollable impulse to do violence." *State v. Sams*, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). Jason's own statement to police indicated that he deliberated about killing his father for hours, retreating to his room to consume alcohol and "pray" about his decision; waited for fireworks to start in order to cover up the sound of the shots; and vehemently denied that he wished to harm his father; rather, he asserted that he acted out of mercy. *See Childers*, 373 S.C. at 375, 645 S.E.2d at 237 (Toal, C.J., concurring in result) ("Voluntary manslaughter, by definition, requires a criminal intent to do harm to another. "). "Moreover, there must be evidence that the heat of passion was caused by sufficient legal provocation." *State v. Payne*, 434 S.C. 121, 137, 862 S.E.2d 81, 89 (Ct. App. 2021) (quoting *State v. Starnes*, 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010)). Jason asserted he killed his father to carry out Jim's wishes that Jason end his life if he were suffering. However, "sufficient legal provocation" contemplates some kind of physical aggression or assault, and words alone are not sufficient to constitution legal provocation. *See State v. Gilliam*, 66 S.C. 419, 421, 45 S.E. 6, 7 (1903) (explaining that "[a] sufficient legal provocation involves the idea of an assault and battery" and "words only, however opprobrious, would not be sufficient to reduce a killing from murder to manslaughter"); *State v. Hernandez*, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) ("Sufficient legal provocation must include more than 'mere words' or a display of a willingness to fight without an overt, threatening act."). Jason offered no evidence of any physical aggression or assault from Jim; rather, he asserted the "provocation" was his father's verbal directive, given more thirty years earlier. Thus, we hold that even when viewing the evidence in a light most favorable to Jason, he was not entitled to the voluntary manslaughter instruction.[2] *See*

[2] Jason also argues that the State created the issue in this case by charging him with the incorrect crime—murder instead of assisted suicide—and then opposing a manslaughter instruction. We disagree. *See State v. Burdette*, 335 S.C. 34, 40, 515

Childers, 373 S.C. at 373, 645 S.E.2d at 236 ("In determining whether the evidence requires a charge on voluntary manslaughter, this [c]ourt must view the facts in the light most favorable to the defendant.").

2. Jason argues the trial court erred by admitting the recording of a jail call between himself and his mother because it was bad-character evidence prohibited by Rules 404 and 403, SCRE. We hold the trial court did not err in admitting this evidence. *See State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) ("The trial [court] has considerable latitude in ruling on the admissibility of evidence and [its] decision should not be disturbed absent prejudicial abuse of discretion."); Rule 404(b), SCRE (explaining that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith" except when the evidence is relevant to prove "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent"); *State v. Cutro*, 365 S.C. 366, 374-75, 618 S.E.2d 890, 894 (2005) ("[B]ad act evidence that falls within a[n] exception and meets the clear and convincing standard may still be excluded if the danger of unfair prejudice substantially outweighs the probative value of the evidence."); *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001) ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.").

First, we question whether the portion of the phone call regarding the will represents a prior bad act. Jason asks if he was included in the will, and Rose says no and that everything was left to her. Nothing in their conversation indicates Jason was not included because of something he did—much less something bad. Thus, even if the phone call "suggests there was a prior disagreement between [Jason] and [Jim], there is no indication the prior disagreement was the result of a bad act committed by [Jason.]" *State v. Braxton*, 343 S.C. 629, 636, 541 S.E.2d 833, 836 (2001) (affirming the admission of testimony regarding an argument between Braxton and the victim over the victim's apparent refusal to sell him cigarettes because it was not testimony regarding a prior bad act and was relevant to the issue of motive). The portion of the phone call in which Jason presses Rose for money arguably depicts him "manipulating" her and being rude to her, and thus, constitutes a prior bad act. However, the nature of Jason's relationship with his parents was a contested issue at trial, and we find this evidence was relevant to motive under that theory. *See* Rule 404(b) (stating the evidence of a defendant's

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S.E.2d 525, 528-29 (1999) ("Choosing which crime to charge a defendant with is the essence of prosecutorial discretion . . . .").

prior bad acts is admissible to prove "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent"). Further, this evidence was cumulative to other evidence of Jason's bad behavior toward his parents. *See State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("[T]he admission of improper evidence is harmless where it is merely cumulative to other evidence."). Consequently, we affirm.

3. Jason asserts the trial court erred under the Confrontation Clause by admitting the results of a third-party toxicology report through the pathologist, citing *State v. Brewer*.[3] Although we agree that the admission of the report was error, we hold it was harmless. *See id.* at 54, 882 S.E.2d at 165 (holding that "the State violated Brewer's Sixth Amendment right to confront the witnesses against her because it was permitted to use a surrogate witness to explain the results of a test involving a key fact at issue and to essentially vouch for the accuracy of that lab without undergoing" cross-examination); *Wright v. State*, 446 S.C. 475, 492, 920 S.E.2d 17, 25 (Ct. App. 2025) ("Generally, 'constitutional error does not automatically require reversal of a conviction.'" (quoting *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991))), *reh'g denied* (Aug. 20, 2025); *Franklin v. Catoe*, 346 S.C. 563, 573, 552 S.E.2d 718, 724 (2001) (acknowledging "the appropriateness of a harmless error analysis even when a defendant's constitutional rights have been violated"); *State v. McCray*, 413 S.C. 76, 91, 773 S.E.2d 914, 922 (Ct. App. 2015) ("A violation of [a] defendant's Sixth Amendment right to confront [a] witness is not *per se* reversible error if the error was harmless beyond a reasonable doubt." (quoting *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013)); *see also McCray*, 413 S.C. at 91, 773 S.E.2d at 922 (finding the admission of a DNA expert's testimony violated McCray's rights under the Confrontation Clause because the expert "merely served as a conduit to introduce the results of [a third party's] DNA tests" but that the error was harmless).

In this case, the pathologist's testimony was cumulative to other trial testimony—most importantly, that of Jim's doctor who testified that Jim had not been prescribed any pain medication at the time of his death—and multiple other witnesses who contradicted Jason's assertion that Jim was in significant pain at the time of his death. Additionally, the State presented significant evidence that Jason attempted to mislead investigators into believing Jim had committed suicide in order to cover up his own involvement in the shooting. Therefore, we find the admission of the pathology report was harmless error. *See McCray*, 413 S.C. at 91, 773 S.E.2d at 922 ("A violation of [a] defendant's Sixth Amendment right to

[3] 438 S.C. 37, 44, 882 S.E.2d 156, 160 (2022).

confront [a] witness is not *per se* reversible error if the error was harmless beyond a reasonable doubt." (quoting *Pradubsri*, 403 S.C. at 280, 743 S.E.2d at 104)); *id.* (explaining that when determining whether a particular error was harmless, this court evaluates multiple factors including "the importance of the witness'[s] testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross[-]examination otherwise permitted, and . . . the overall strength of the prosecution's case." (quoting *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012))).

AFFIRMED.

THOMAS, MCDONALD, and TURNER, JJ., concur.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Heath P. Taylor, Circuit Court Judge

Unpublished Opinion No. 2026-UP-131
Heard February 12, 2026-Filed March 18, 2026

THE STATE,

RESPONDENT,

V.

JASON BARRY BELL,

APPELLANT

APPELLATE CASE NO. 2023-001326

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, appellant Jason Barry Bell requests that this Court grant rehearing on all three issues on appeal. As to Issue One, this Court erred in requiring appellant to show heat of passion and legal provocation. The statute simply defines voluntary manslaughter as an unlawful killing without malice. S.C. Code Ann. § 16-3-50. Appellant asserted he killed his father as an act of mercy. Viewing the facts in the light most favorable to appellant, his actions lacked malice and fit the wording of the statute. A reasonable jury could

have convicted appellant of the lesser offense, therefore this Court should grant rehearing and reverse.

As to Issue Two, nothing in the call supports that it was relevant to motive and therefore it was inadmissible as a prior bad act and unfairly prejudicial. This Court held that his rudeness to his mother was probative of motive by stating that appellant's relationship with his parents was at issue. However, this showed his relationship with his mother, not his father—and that was the relationship that was at issue. Lumping the parents together to analyze the probative value and relevance was incorrect. Whether appellant 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.

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. R. 57-58. Appellant 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.

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. 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 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 cannot be harmless and rehearing should be granted and the case reversed.

As to Issue Three, the erroneously admitted toxicology report cannot be harmless. 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. Furthermore, the fact that Jim's doctor testified he did not prescribe pain medication does not mean Jim could not have obtained pain medication in some other way. Illegally obtained opioids have long been a problem 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 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 rehearing and reverse.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of April, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON BARRY BELL,

APPELLANT

APPELLATE CASE NO. 2023-001326

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jason Barry Bell, #391707, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 1st day of April, 2026.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

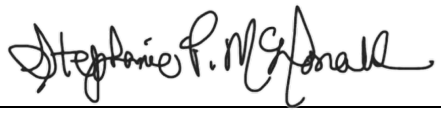
Jason Barry Bell, Appellant.

Appellate Case No. 2023-001326

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J.



J.

J.

Columbia, South Carolina

FILED
Apr 06 2026

cc:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
David Alexander, Esquire
Richard Brandon Larrabee, Esquire
Donald J. Zelenka, Esquire

David Michael Pascoe, Jr., Esquire
The Honorable Heath P. Taylor