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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON EDWARD BARNES,

APPELLANT

APPELLATE CASE NO. 2025-001361

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

A Sumter County grand jury indicted Appellant on August 10, 2023, for murder and possession of a weapon during the commission of a violent crime. R. * (Indictments). His case was called to trial on June 23, 2025, before the Honorable R. Ferrell Cothran, and a jury. Tr. 1. Assistant Attorneys General Angel Tanner and Chris Scalzo represented the state. Elaine Cooke and Warren Anderson represented Appellant. Tr. 1.

On June 26, 2025, the jury found Appellant guilty as indicted. Tr. 449, ll. 14-21. He was sentenced to thirty-eight years for murder and five years concurrent for the weapons offense. Tr. 459, ll. 14-17.

This appeal follows.

STANDARD OF REVIEW

"'The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.'" State v. Brewer, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015) (quoting State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012)); See State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001).

"In criminal cases, this Court only reviews errors of law." State v. Perry, 440 S.C. 396, 403, 892 S.E.2d 273, 276 (2023) (quoting State v. Gamble, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013)) (internal quotation marks omitted). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." Id. (quoting State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)) (internal quotation marks omitted). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." Id. at 403, 892 S.E.2d at 276-77 (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)) (emphasis removed); See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011).

ARGUMENT

1.

The trial court abused its discretion by failing to suppress statements made by law enforcement during the recorded interrogation of Appellant where the statements were hearsay and shifted the burden of proof to Appellant.

Relevant Facts

Appellant moved pretrial to exclude "inadmissible burden shifting language" made by law enforcement during Appellant's recorded interrogation pursuant to State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), and State v. Washington, 431 S.C. 619, 848 S.E.2d 764 (Ct. App. 2020). R. * (Court's Exhibit No. 6). Attached to Appellant's written motion, which was marked as Court's Exhibit No. 6, was a list of requested redactions "should the video be played" before the jury. However, Appellant suggested the investigator who interviewed Appellant could merely testify as to what Appellant stated thereby excluding the improper and inadmissible burden shifting statements made by law enforcement during the interrogation. R. * (Court's Exhibit No. 6).

On the record, defense counsel argued that if the court admits Appellant's recorded statement, the statement should be redacted to remove any burden shifting language, hearsay, and improper opinion evidence by the officers. Counsel again cited to State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), and State v. Washington, 431 S.C. 619, 848 S.E.2d 764 (Ct. App. 2020). She stated that the specific language counsel sought to be redacted was listed on Appellant's written motion. Tr. 92, l. 3 – 94, l. 3.

At the conclusion of the argument, the trial court stated it would watch Appellant's recorded statement on its own that evening. Tr. 101, l. 18 – 103, l. 15.

The following morning, the trial court stated that it had "stayed here last night and reviewed the video of the Defendant." The court found that the recorded interview did not contain any burden shifting language under Brewer or Washington. It reasoned, "It was a standard police interview." Accordingly, the court found the recording was admissible. However, it ruled the video must be stopped at 9:28:35 when the police discuss Appellant's criminal record, a polygraph, and "the amount of jail time" Appellant was facing. Tr. 130, l. 24 – 131, l. 11.

Immediately before the state sought to admit Appellant's recorded interview during the testimony of Investigator Russell Elmore, the trial court commented that it had previously reviewed the video "to rule on evidentiary issues." Based on this prior review, the court concluded the statement was "freely and voluntarily given" since Appellant was advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and freely and voluntarily waived those rights. Tr. 279, l. 16 – 280, l. 2. When the state moved to admit the recorded interview, which was marked as State's Exhibit No. 25, and is on file with this Court, defense counsel stated she had no objection.[1] Tr. 280, l. 15 – 281, l. 6. The state published the statement from 8:13 to 9:10 "by the counter on the video."[2] Tr. 283, l. 8-18.

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[1] Even though defense counsel did not object when the statement was admitted into evidence, this issue is preserved for appellate review. The trial court's pretrial finding that Appellant's recorded statement did not contain any burden shifting language pursuant to Brewer and Washington was clearly a final ruling and no evidence presented during the trial could have reasonably caused the trial court to alter this pretrial ruling. See State v. Jones, 435 S.C. 138, 866 S.E.2d 558 (2021). Additionally, this is a constitutional issue which does not require a contemporaneous objection pursuant to Jones. See Brewer, 411 S.C. at 408, 768 S.E.2d at 659-660 ("Beyond the hearsay error, we wish to briefly comment on the grave **constitutional** error in the admission of the challenged evidence in this case. Law enforcement's *ad nauseam* insistence that Brewer prove his innocence has *no* place before the jury. It is chilling that we have to remind the State that an accused is presumed innocent and that the State has the burden to prove

Discussion

The trial court abused its discretion by failing to suppress statements made by law enforcement during the recorded interrogation of Appellant where the statements were hearsay and shifted the burden of proof to Appellant.

In State v. Brewer, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015), our Supreme Court acknowledged "the propriety of law enforcement interrogation techniques, including misrepresenting the existing and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily." The Court explained that "such matters are typically examined *in camera* when the trial court is making a preliminary determination as to the admission of a confession." Id. However, the Court stated that "such evidence will rarely be proper for a jury's consideration." Id. at 406, 768 S.E.2d at 659.

During Brewer's interrogation, the "investigators frequently referenced *and quoted* many purported eyewitnesses to Brewer shooting both victims. This evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer's guilt to all charges." Id. at 406-07, 768 S.E.2d at 659 (emphasis in original). The Supreme Court implored trial courts and lawyers to exercise caution "in the admission of such evidence to ensure that all out-of-court statements are either 'admissible for a valid nonhearsay purpose or as an exception to the hearsay rule in order to safeguard against an end-run around the evidentiary and

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guilt beyond a reasonable doubt. See U.S. Const. amend. V ('No person ... shall be compelled in any criminal case to be a witness against himself....'); Sandstrom v. Montana, 442 U.S. 510, 512, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979) (noting that the Fourteenth Amendment requires that 'the State prove every element of a criminal offense beyond a reasonable doubt')."

[2] The assistant attorney general informed the trial court on the record before Investigator Elmore testified that she intended to stop the video at 9:10 instead of 9:28 as the court had previously ruled because "there is a long break where the defendant is sitting in the room by himself, that would be unnecessary to play for the jury." Tr. 248, l. 4 – 249, l. 12.

constitutional proscriptions against the admission of hearsay.'" Id. at 407-08, 768 S.E.2d at 659 (quoting State v. Miller, 676 S.E.2d 546, 556 (N.C. 2009)). The Court reminded trial courts that "'the questions police pose during suspect interviews may contain false accusations, inherently unreliable, unconfirmed or false statements, and inflammatory remarks that constitute legitimate points of inquiry during a police investigation, but that would otherwise be inadmissible in open court.'" Id. at 408, 768 S.E.2d at 659 (quoting Miller, 676 S.E.2d at 556).

Finally, the Supreme Court held the officer's insistence that Brewer prove his innocence during the interrogation video had "*no* place before the jury." Id. (emphasis in original). The Court found it "chilling" to have "to *remind* the state that an accused is presumed innocent and that the state has the burden to prove guilt beyond a reasonable doubt." Id. (emphasis added).

Subsequently, in State v. Washington, 431 S.C. 619, 848 S.E.2d 794 (Ct. App. 2020), this Court held the trial court erred by admitting an audio recording of certain hearsay statements a police detective made while interrogating Washington. Relying on our Supreme Court's opinion in Brewer, this Court concluded that "every word [the detective] uttered during the out of court interview was inadmissible hearsay." Id. at 622-23, 848 S.E.2d at 796. The Court remarked that the state could have admitted Washington's statements by asking the detective about them, thereby "avoiding the hearsay taint of [the detective's] statements in the recording." Id. at 623, 848 S.E.2d at 796. This Court further held that the detective's repeated requests that Washington explain why he was not guilty amounted to a "grave constitutional error" because it was burden shifting. Id. (quoting Brewer, 411 S.C. at 408, 768 S.E.2d at 659). Holding the error was not harmless, this Court reversed Washington's convictions. Id. at 624-25, 848 S.E.2d at 797.

As in Washington, every word the investigators uttered during Appellant's out of court interview was inadmissible hearsay. See Washington, 431 S.C. at 622-23, 848 S.E.2d at 796. In

Brewer, our Supreme Court rejected the state's argument that law enforcement questions and comments designed to elicit responses from a defendant during an interrogation were not hearsay.

Not only did the recording of Appellant's interrogation contain inadmissible hearsay statements made by the investigators, but it also contained constant and persistent impermissible burden shifting language. See State's Exhibit No. 25. The investigators repeatedly challenged Appellant's denial of guilt by insisting Appellant shot the decedent and stating "nothing" Appellant said made sense. The specific burden shifting language challenged is listed in Appellant's written motion, which was marked as Court's Exhibit No. 6 during Appellant's trial. See R. * (Court's Exhibit No. 6). In response to law enforcement's constant burden shifting statements, Appellant repeatedly denied shooting the decedent or having any knowledge of his death. See State's Exhibit No. 25.

Respectfully, this Court should hold the trial court abused its discretion by admitting the statements made by investigators during Appellant's recorded interrogation since the statements were clearly hearsay and unconstitutionally shifted the burden of proof to Appellant. This error requires reversal.

2.

The trial court abused its discretion by admitting gruesome photographs of the decedent's body where any probative value of the photographs was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE.

Relevant Facts

In a written motion, Appellant moved pretrial to exclude any photographs showing the decedent's body, whether at the crime scene or taken during autopsy pursuant to Rule 403, SCRE. R. * (Court's Exhibit No. 3). Appellant emphasized that the defense did not dispute that "the crime occurred, where it occurred, nor the cause of death due to a gunshot wound." R. * (Court's Exhibit No. 3). Appellant maintained that, unlike in State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014), the nature and extent of the decedent's injuries in this case were not in dispute. R. * (Court's Exhibit No. 3). Accordingly, Appellant argued that any probative value of the photographs of the decedent's body was substantially outweighed by the danger of unfair prejudice. Appellant contended such photographs had no probative value because the only "issue in dispute is the identity of the person who shot the deceased." R. * (Court's Exhibit No. 3). Appellant further argued that graphic photographs of the body would be unfairly prejudicial because such evidence tends to suggest a decision on an improper basis. R. * (Court's Exhibit No. 3). Lastly, Appellant requested that if the court "deems it necessary to allow the state to" admit any photographs of the body, the number of photographs should be limited "to one, or the least amount needed to accomplish the objective." R. * (Court's Exhibit No. 3). If any photographs of the decedent's body are admitted, Appellant argued they should "be in black and white, rather than color, to subdue and cut down on any graphic nature of the photo and lessen the possibility of arousing the passions and prejudice of the jury." R. * (Court's Exhibit No. 3).

On the record pretrial, defense counsel reasonably acknowledged that the state should be permitted to admit a photograph or two that shows the location of the decedent's body where it was found. Specifically, she stated, "They can show far away pictures of his body lying there in the trailer." However, counsel argued that there was "no reason to put a closeup of his face with his eyes open and blood all over him. Like, something out of a horror movie." She contended that the state should be required to lessen the improper prejudicial and emotional impact of such photographs as much as possible. Tr. 59, l. 22 – 61, l. 13.

The assistant attorney general argued that photographs of the decedent's body were "probative and relevant." She maintained that Appellant stated during his interrogation with the police that he thought the decedent was sleeping and the photographs of the decedent with his eyes open and blood on his chin show that Appellant could not have thought that. The assistant attorney general further argued that the jury would "see worse things on the news tonight than any photographs we're going to show in this trial." She contended the photographs were not gruesome and only showed "blood on the chin, blood running on both sides of the face." Tr. 62, l. 8 – 63, l. 12.

Appellant ultimately objected to two photographs, which were marked together as State's Exhibit No. 7. These photographs are closeups of the decedent's body. Defense counsel argued that they were "excessive" and "redundant" since the state intended to admit numerous other photographs of the decedent's body and the blood. Tr. 122, ll. 4-12.

The trial court told counsel to renew her objection when the state sought to admit the photographs before the jury and the court would rule then. Tr. 123, ll. 21-23.

The state moved to admit the two photographs marked as State's Exhibit No. 7 during the testimony of Matthew Martin, who was employed with the Sumter County Coroner's Office.

Martin testified that emergency medical services (EMS) notifies the coroner's office any time there is a death. The coroner's office then investigates the circumstances surrounding the death and produces a death certificate certifying the death. The coroner's office also collects the body. Tr. 183, l. 18 – 184, l. 3.

Martin testified that on August 19, 2022, he collected the decedent's body from a single wide trailer on Antelope Drive in Sumter. When he arrived at the tailer, he was directed to a back bedroom on the left. Tr. 184, ll. 4-16. He observed the decedent in the closet. "It looked like he had been pushed in with blood coming from his mouth." Tr. 184, l. 25 – 185, l. 1. Martin then prepared to place the body in a body bag. He testified that "county forensics would be there photographing" as they move the body. Martin was then shown the two photographs marked together as State's Exhibit No. 7 and stated that he recognized them as photographs of the decedent's body as they were in the process of moving it. When the state sought to admit the exhibit, defense counsel renewed her "objection for the record." The trial court stated, "I understand you objected at the bench." The court then admitted the exhibit over Appellant's objection. Tr. 185, l. 2 – 186, l. 7.

Martin testified that the first photograph showed the decedent's "backside" after they had rolled the decedent over. He identified blood at the top of the photograph and explained that this blood came "mostly" from the decedent's mouth when they had "rolled him to the side." He clarified that the blood was not there until they moved the body. Tr. 186, l. 11 – 187, l. 10. Martin then identified the second photograph that was admitted as part of State's Exhibit No. 7. This was a closeup of the front of the decedent with "the blood coming from the mouth." He again clarified that the blood under the decedent's head was not there before they moved the body. That blood came from the decedent's mouth as they moved him. Tr. 187, ll. 11-17.

Appellant did not object to the admission of other photographs of the decedent's body, including three photographs that showed the decedent's body at a farther distance than the two admitted as State's Exhibit No. 7. These three photographs were admitted together as State's Exhibit No. 4. See Tr. 155, l. 21 – 157, l. 8. Appellant also did not object to State's Exhibit No. 5, which was two photographs of a closeup view of the decedent's gunshot wound. Tr. 168, l. 22 – 170, l. 13. Finally, Appellant did not object to the admission of State's Exhibit No. 36, which included three photographs of the decedent's gunshot wound taken during autopsy, a photograph of the x-ray of the decedent's upper body, and a photograph of the projectile removed from the decedent's body. See Tr. 372, l. 18 – 377, l. 6. State's Exhibit Nos. 4, 5, 7, and 36 are on file with this Court.

Discussion

The trial court abused its discretion by admitting gruesome photographs of the decedent's body after the body had been moved by the coroner, which caused a large amount of blood to spew from the decedent's mouth, since any probative value of the photographs was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Gleaton, 444 S.C. 394, 411, 906 S.E.2d 630, 639 (Ct. App. 2024) (quoting State v. Johnson, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000)) (internal quotation marks omitted). "However, photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary to the issues at trial." Id. (quoting Johnson, 338 S.C. at 122, 525 S.E.2d at 523) (internal quotation marks omitted). "The criteria is not . . . that photographs become inadmissible because they graphically depict a gruesome scene. Rather, the question is whether the photographs are unfairly prejudicial

so as to outweigh the probative value." Id. (quoting State v. Jones, 440 S.C. 214, 891 S.E.2d 347 (2023)) (internal quotation marks omitted); See State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995). "To be classified as unfairly prejudicial, photographs must have a tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." Id. (quoting State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228-29 (2010)) (internal quotation marks omitted); See Franklin, 318 S.C. at 55, 456 S.E.2d at 361.

In State v. Collins, S.C. 409 S.C. 524, 763 S.E.2d 22 (2014), the appellant was convicted of involuntary manslaughter and of being the owner of a "dangerous animal" that attacked and injured a human being. Our Supreme Court wrote, "In order to support its assertions about the dangerous propensities of the dogs, the manner and extent of the attack, and Collins's criminal negligence, the State also offered a group of photos taken of the victim by Proctor, the forensic pathologist, before he began the autopsy." 409 S.C. at 532, 763 S.E.2d at 27. In finding no error in the admission of the pre-autopsy photographs the Court wrote:

> These are not ordinary dog bites with which most jurors would ever be familiar. Even the pathologist stated he felt compelled to document the injuries prior to the start of the autopsy because he had never come across a situation this extreme. Since there was no one else present at the time of the event, the photos aided the jury in evaluating the testimony offered by both the State and the defendant, especially as to determining the dangerous propensities of the dogs and whether or not Collins's conduct was criminally reckless.
>
> Id. at 536, 763 S.E.2d at 29.

In contrast, in this case, the photographs of the decedent's body after it had been moved by the coroner did not aid the jury in evaluating testimony. The decedent's cause of death was not in dispute. Rather, the identity of who caused the death was in question. These two gruesome photographs did not aid the jury in determining who caused the death.

Moreover, the challenged photographs were taken during the process of moving the body and thus were not probative to demonstrate the crime scene as it occurred. See State v. Gleaton, 444 S.C. 394, 411, 906 S.E.2d 630, 639 (Ct. App. 2024) (holding photographs of the decedent's burned body after it was placed on a stretcher were not probative to demonstrate the crime scene as it occurred since the body had been moved); See also State v. Hawes, 423 S.C. 118, 129, 813 S.E.2d 513, 519 (Ct. App. 2018) (holding photographs were probative to establish the crime scene as it occurred and where the body was found in the house). Other photographs of the decedent's body from a farther distance and before the body had been moved were already admitted into evidence without objection. These photographs, admitted as State's Exhibit No. 4, showed the crime scene as it occurred and where the body was found in the closet. The photographs admitted over objection as State's Exhibit No. 7 served no purpose other than to inflame the passions and prejudices of the jury. The two close up photographs gruesomely and unnecessarily depicted a large quantity of blood, which spew from the decedent's mouth as the coroner moved his body.

"Our supreme court has 'long warned the State not to overplay its hand in criminal trials by seeking to admit shockingly graphic photographs that have scant probative value in violation of Rule 403, SCRE, just to inflame the passions of the jury.'" Gleaton, 444 S.C. at 415, 906 S.E.2d at 640-41 (quoting State v. Benton, 443 S.C. 1, 8-9, 901 S.E.2d 701, 704-05 (2024)); See State v. Nelson 440 S.C. 413, 891 S.E.2d 508 (2023). That is exactly what the state did in this case. Respectfully, this Court should hold the trial court abused its discretion by admitting these gruesome photographs of the decedent's body and reverse Appellant's convictions.

3.

The trial court erred by instructing the jury after the conclusion of the full instruction on the law that the state is not required to prove "why it happened" and that "the motive of why it happened is not part of the elements they have to prove" since the instruction was an improper comment on the facts and the timing of the instruction placed undue emphasis on the charge.

Relevant Facts

During her closing argument, defense counsel argued that Appellant had no motive to kill the decedent and the lack of a motive created reasonable doubt. Specifically, she argued:

> What is his motive? They [Appellant and the decedent] are friends. They've been friends for years. He's raising his [Appellant's] child. He said his child idolized Ricky. He's living in Ricky's house. . . . Why would he kill the person his son idolizes? The person whose house he's living in. The person who is one of his best friends. There's no evidence of a fight. There's no evidence of any ill will between them. There's no evidence of an argument between them. There's no motive. There's no motive in the evidence. There's no motive why would he kill him? Do you know why he'd kill him? Do you know what - - if you - - that - - if you don't, that's a doubt? Has it been proven who killed him? That's a doubt. That's a question mark.

Tr. 419, l. 15 – 420, l. 11.

Defense counsel concluded her closing argument by asserting, "There's absolutely no reason in the world Jason [Appellant] would want his best friend, his son's idol [the decedent] dead. There's no evidence of a fight, there's no evidence of arguing. So I guess you just have to trust them. I'm asking you to find my client not guilty." Tr. 430, ll. 15-19.

Immediately after defense counsel concluded her closing argument, the trial court instructed the jury on the law. See Tr. 430, l. 22 – 442, l. 5. After the jury was excused from the courtroom, the court asked the state whether it had "any exception or deletions?" The assistant attorney general requested the trial court instruct the jury that "motive is not an element of the

crime" because defense counsel argued lack of motive during her closing argument. Tr. 442, ll. 7-23.

Defense counsel objected to the request. She emphasized that the trial court already instructed the jury on the elements of murder. Counsel further stated that she never argued to the jury that motive was an element of the crime or had to be proved. Instead, she merely told the jury that Appellant had no reason to kill the decedent. Tr. 442, l. 25 – 443, l. 3.

The assistant attorney general responded there was more to defense counsel's argument "than that" and again requested that the trial court instruct the jury that there is a "difference between motive and criminal intent and that motive is not an element of either crime that the state would have to prove. The defense has made it an issue in closing." Tr. 443, ll. 5-12.

The trial court stated, "So I can charge them that under law, the state has the burden of proving that a murder occurred and who did that murder, but the state is not required to prove a reason why or any motive as to commit that murder?" The assistant attorney general said she agreed with the court's statement. However, defense counsel repeated, "I still say it's perfectly logical to ask: Why would he kill him?" Tr. 443, ll. 13-22.

The trial court told defense counsel that she could argue lack of motive, but that the state was not required to prove motive. Rather, the state only had to prove that a murder occurred and who committed the murder beyond a reasonable doubt. Tr. 443, l. 23 – 444, l. 9.

The court then had the jury reenter the courtroom. The court instructed the jury as follows:

> Ladies and gentlemen, I need to clear up one short matter with you all. In this case, the defendant is charged with the crime of murder. The state has the burden to prove to you that a crime occurred. That a murder occurred. That it - - that it was not suicide. It was not accidental. It was in fact a murder. That is part of the burden they must prove to you.

They also must prove to you, beyond a reasonable doubt, who did that murder. They are not required to prove to you why it happened. That - - that - - the motive of why it happened is not part of the elements they have to prove. They have to prove the fact the murder occurred beyond a reasonable doubt, and they have to prove to you beyond a reasonable doubt who did it.

They're not required to prove why it was done under our law, okay?

Tr. 444, l. 16 – 445, l. 6.

After the jury was excused from the courtroom, defense counsel objected to the court's supplemental instruction. She argued that the charge did not need to be given and that the instruction put emphasis on the fact that the state did not need to prove motive. She also asserted that the timing of the instruction itself put undue emphasis on the charge. Tr. 445, ll. 14-20.

The trial court noted Appellant's objection for the record and asked whether counsel thought the court misstated the law. While defense counsel agreed it was a correct statement of the law in that the state is not required to prove motive, she asserted that the charge was an improper jury instruction and that the timing of the instruction placed undue emphasis on the charge. Tr. 445, l. 21 – 446, l. 13.

Discussion

The trial court erred by instructing the jury after the conclusion of the full instruction on the law that the state is not required to prove "why it happened" and that "the motive of why it happened is not part of the elements they have to prove" since the instruction was an improper comment on the facts and the timing of the supplemental instruction placed undue emphasis on the charge.

Trial courts may not comment on the facts. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). "The trial court may not instruct the jury what weight should be given to the evidence, or even that any particular evidence is or is not entitled to receive weight or consideration from them." State v. Hartley, 307

S.C. 239, 241, 414 S.E.2d 182, 184 (Ct. App. 1992) (quoting 75A Am.Jur.2d *Trial* § 1203, at 693 (1991)) (cleaned up). "A trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy." Sosebee v. Leeke, 293 S.C. 531, 535, 362 S.E.2d 22, 24 (1987) (quoting State v. Smith, 288 S.C. 329, 342 S.E.2d 600 (1986)).

While the supplemental instruction given in this case was a correct statement of the law in that the state is not required to prove motive, the instruction was an unconstitutional comment on the facts because it suggested to the jury that it should not consider evidence of motive. See State v. Perry, 440 S.C. 396, 405-06, 892 S.E.2d 273, 278 (2023) ("The state never has to prove motive to a jury as the element of a crime. The only instance when the state must demonstrate motive is when trying to admit character evidence under Rule 404(b), SCRE."). The instruction implied to the jury that it should give the evidence of lack of motive no weight. See Pantovich v. State, 427 S.C. 555, 562, 832 S.E.2d 596, 600 (2019) (finding improper a charge that "good character" evidence may create reasonable doubt as to the commission of the crime charged); State v. Cartwright, 425 S.C. 81, 93, 819 S.E.2d 756, 762 (2018) (precluding the trial court from providing a limiting instruction or otherwise commenting to the jury on suicide attempt evidence); State v. Stukes, 416 S.C. 493, 499-500, 787 S.E.2d 480, 483 (2016) (invalidating a charge that the victim's testimony in a criminal sexual conduct case need not be corroborated); State v. Grant, 275 S.C. 404, 407-08, 272 S.E.2d 169, 171 (1980) (concluding it was improper for the trial judge to charge the jury that the defendant's flight may be considered as evidence of guilt).

Moreover, the timing of the improper supplemental instruction is also relevant. By specifically addressing motive in its supplemental instruction, the trial court unduly emphasized

the weight of that evidence in the eyes of the jury. See State v. Stukes, 416 S.C. 493, 499, 787 S.E.2d 480, 483 (2016). The instruction on motive was the last thing the jurors heard before beginning deliberations and its brevity was likely received by the jurors with "heightened alertness rather than the normal attentiveness" given during the court's initial lengthy charge. See Lowery v. State, 376 S.C. 499, 507, 657 S.E.2d 760, 764 (2008) (quoting Arroyo v. Jones, 685 F.2d 35 (2d Cir. 1982)). Accordingly, the trial court erred by instructing the jury on motive during its supplemental instruction.

CONCLUSION

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

Respectfully submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of May, 2026.