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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2025-000315

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JOHN TUFTON BLAUVELT,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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2. Did the trial court err in admitting State's exhibit 31, a graphic photograph of decedent's body, over defense objection where pursuant to Rule 403, SCRE, the photograph was unduly prejudicial and had minimal probative value because the photograph no longer reflected the condition the body was found in as it had been manipulated by emergency workers?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion in finding law enforcement had apparent authority to search the home and bag based on the consent of Green, Appellant's then-girlfriend who owned the home, when Green led law enforcement to the bag and no evidence showed the bag was locked in any manner or Appellant had prohibited Green from using the bag or looking in the bag?

2. Did the trial court abuse its discretion in admitting Exhibit 31 into evidence when the photograph was probative in depicting the crime scene and corroborating other testimony? Further, was any shock value to the photograph cumulative to the un-objected to autopsy photos, making any error harmless beyond a reasonable doubt?

STATEMENT OF THE CASE

Appellant is presently confined in the South Carolina Department of Corrections serving a life sentence. In June 2023, the Greenville County Grand Jury indicted Appellant for murder and possession of a weapon during the commission of a violent crime. On September 16-20, 2024, Appellant proceeded to a jury trial before the Honorable G.D. Morgan. Paul Neely, Anastasia Walker, and Madison Johnston, Esquires, represented Appellant, and Assistant Attorney Generals John Meaders and Kinli Abee prosecuted the case. The jury convicted Appellant as indicted, and Judge Morgan sentenced him to life imprisonment for murder. This appeal follows.

STATEMENT OF FACTS

On October 24, 2016, Appellant's estranged wife Catherine Blauvelt ("Cati") went to work and never returned. (Tr. 232-33). On October 26, her body was found in a concrete box in the basement of an abandoned home.[1] A six-inch knife blade was lodged in her neck. (Tr. 377-78, 381, 383, 442-43). Police informed Appellant of Cati's death later that afternoon. Shortly thereafter, Appellant left the state. Six years later, a fugitive task force found him in Oregon living under the name "Ben." (Tr. 202-03, 207-08, 310-11).

At trial, Appellant's former live-in girlfriend Hannah Thompson recounted how she and Appellant fled South Carolina shortly after Cati's death and traveled together to Oregon.[2] (Tr. 255, 295-96). During the drive, Appellant confessed to details of the murder:

> He told me that he stabbed her in the neck. Then he told me that he had to drag her body back to the abounded house, which is where he said he did it at. He said that he threw her phone into the water that was on the ground in the abandoned house. And he said that he had to cover up her blood with dirt.

(Tr. 302).

Hannah recalled that prior to Cati's death, Appellant had mentioned wanting to kill Cati—even suggesting to others that they could share in her life insurance proceeds if they helped. (Tr. 257-59). Hannah did not take him seriously. (Tr. 259, 271). However, "[a] few weeks before [Cati's death], he . . . mentioned to me that he—he was going to ask me to do things for him and

[1] At trial, Allison Somerville testified Appellant lived in the abandoned house for a two-week period when he and Cati first separated. (Tr. 680). Somerville and Hannah Thompson both recalled partying with Appellant at this abandoned house. (Tr. 252, 685).

[2] Hannah—who was only 17 years old at the time—began living with Appellant after Cati moved out. (Tr. 253-55). Although she fled the State with Appellant, she returned to South Carolina in December 2016. Hannah continued communicating with Appellant until late 2019 or early 2020. In January 2022, she spoke to the U.S. Marshalls about where Appellant may be located. (Tr. 313).

that I needed to do them." (Tr. 259). Appellant also sent Hannah a text before Cati's death saying "he's going to go through with something in . . . a few days"; she believed he was referencing killing Cati. (Tr. 267).

Hannah recalled dropping Appellant off once near Cati's mother's house "so that he could hide out there and wait for [Cati and her boyfriend] to come home." (Tr. 260). When she later picked up Appellant, he had a knife that he said he found "on the side of the road." (Tr. 260-61).

On October 24, Hannah dropped Appellant off near Cati's job at his request. (Tr. 270-71). After she returned home, she was in the kitchen with her roommate Crystal Tucker when Tucker saw Cati's car pull into the driveway. (Tr. 272). Hannah looked out the window and saw it pulling away. (Tr. 272). She began driving to where she had dropped Appellant off, but he called and told her to return home. (Tr. 272-73). Once Hannah returned home, Appellant "came outside with trash bags. And he told me that he needed me to take him somewhere." (Tr. 274). Hannah noticed he was wearing different clothes. (Tr. 274). She testified they drove to a dirt path where Cati's car was parked; Hannah then followed him in his Prius while he drove Cati's car. (Tr. 2776). They drove to a parking lot on White Horse Road, where Appellant left Cati's car.[3] When Appellant got into the Prius with Hannah, he had Cati's car keys and license plate. (Tr. 277-78). They drove to a dumpster, where Appellant disposed of the keys, license plate, and two trash bags. (Tr. 286-87). After Cati's body was discovered, Appellant confessed to Hannah that he had killed Cati and told Hannah not to say anything to the police. (Tr. 252, 289-90, 301). A week later, Appellant told Hannah they needed to flee. (Tr. 291, 295-96).

Crystal Tucker recalled being in the kitchen with Hannah on October 24 and seeing Cati's

[3] Cati's car was later discovered in this parking lot. The State recovered surveillance video from the business across the street showing a car similar to Appellant's Prius follow Cati's car into the lot, and then showing the Prius leave three minutes later. (Tr. 279-80, 531-32, 597-602).

car briefly pull into the driveway and then leave at 4:56 p.m. (Tr. 492, 497-99). The driver—who was not Cati—was wearing a black hooded jacket. (Tr. 499-500). Fifteen minutes later, Appellant came "walking up from the back yard" and entered the house sweating and wearing a black hooded jacket. (Tr. 502). Tucker recalled that prior to seeing Appellant, she noticed Hannah had his phone; Hannah told her Appellant had given it to her that day. (Tr. 498). Tucker thought it was unusual for Appellant to not have his phone. (Tr. 498).

Appellant's phone records corroborated portions of Hannah's and Tucker's testimony. Specifically, on October 24, Appellant's phone records showed activity from 9:26 a.m. until 11:11 a.m.; no activity from 11:11 a.m. until 5:03 p.m.; a phone call to Hannah at 5:03 p.m.; and a text message to Hannah at 5:04 p.m. saying "Check out your Snapchat chat, LOL." (Tr. 652-54). At 5:04, Appellant's phone sent a Snapchat message to Hannah, but the contents of that message were deleted. (Tr. 654-57). The State entered additional text messages from October 19 between Appellant and Hannah's phones generally discussing Cati. During that exchange, Appellant texted, "I'm going through with that thing, though. Soon." (Tr. 660). "Like Friday or Saturday." (Tr. 661).

Allison Somerville testified she met Appellant around 2015 or 2016, when she was 16. Somerville was friends with Cati's niece, Chyanne, and Chyanne and Somerville moved in with Appellant and Cati. (Tr. 676-78). Somerville testified they would sometimes party at the abandoned house and sit on a concrete box in the basement; Appellant frequently said, "[T]hat's where the trash goes." (Tr. 685-87). Appellant also told Somerville "the basement of the abandoned house would be a perfect place to put a body." (Tr. 687).

Somerville stated Appellant and Cati's relationship deteriorated after they got married in December 2015, and Cati eventually moved out. (Tr. 678-79). After that, Appellant frequently called Cati a "piece of trash," told everyone she was a bad person, and said he hated her. (Tr. 684-

85). Somerville recalled Appellant asked her once if she wanted to go to Charleston:

> And he was like, Well, I want you to take my car and my credit card and my phone and go to Charleston, spend as much money as you want, then come back in a couple days. And I said, Why? And he said, Because I'm going to kill Cati.

(Tr. 681). Somerville testified Appellant offered to share the proceeds of a life insurance policy with her and Chyanne. (Tr. 686). She stated Appellant said "he was born to kill, good and bad people, that he loved to kill. That's what he was born to do." (Tr. 682).

Cati's boss testified Cati logged out of work at 2:05 p.m. on October 24. Records from a device on Cati's car recorded four trips that afternoon. Specifically, the car travelled:

- one-half of a mile between 2:08 and 2:13 p.m.;
- 10.44 miles between 3:10 and 3:30 p.m.;
- 3.45 miles between 4:49 and 4:58 p.m.; and
- 23.88 miles between 5:29 and 6:05 p.m.

(Tr. 473-75). Critically, the data from the final two trips was inconsistent with the data from the prior trips—showing the driver was operating the vehicle differently.[4] (Tr. 476-77). Investigator Schofield drove between the different locations and measured the following distances:

- 11 miles between Cati's job and the abandoned house;
- 2.5 miles between the abandoned house and Appellant's house; and
- 14 miles between Appellant's house and the lot where Cati's car was recovered.

(Tr. 770-72).

Police also recovered Google searches from Appellant's phone. On November 1, 2016, Appellant searched six times for "when can police tap a phone or obtain phone records." (Tr. 663).

[4] The device on Cati's car measured hard and extreme accelerations and brakes for purpose of establishing insurance rates. Prior to the final two trips, the device did not record any hard or extreme accelerations or brakes. However, in the final two trips, it logged eleven hard accelerations, twenty-five hard brakes, and four extreme brakes. (Tr. 476-77).

Between October 27 and November 1, he searched Cati's name multiple times. (Tr. 664-666). On October 26, shortly after he was notified of Cati's death, he searched his own name. (Tr. 666). On October 18, he searched for "airline miles won't show up." Finally, on October 18, he searched six times for "How to use Smith's knife sharpener." (Tr. 667).

In addition to the foregoing, the State entered Appellant's journal. In a letter to his daughter Madison, Appellant wrote, "Someday I hope you understand why I did it. That girl was evil to me. She treated me like dirt and took everything from me including you. I'm sorry that I had to do that but there was no other way for me. Sorry bud. I love you." (pg. 39). On January 3, 2017, Appellant made a reference to Investigator Morehead's[5] daughter. Over that entry were six capital letters: "I DID IT."

[5] Investigator Morehead was the lead investigator in this case before he retired.

STANDARD OF REVIEW

"[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis." State v. Frasier, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022). Under this dual inquiry, appellate courts "review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review." Id. at 633-34, 879S.E.2d at 766.

An appellate court's review "extends only to corrections of errors of law." State v. Benton, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024). Appellant courts "view evidentiary rulings for abuse of discretion." Id. "The relevance, materiality[,] and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Rosemond, 335 S.C. 593, 596, 518 S.E.2d 588, 589-90 (1999).

ARGUMENT

1. The trial court did not abuse its discretion in finding law enforcement had apparent authority to search the home and bag based on the consent of Green, Appellant's then-girlfriend who owned the home, when Green led law enforcement to the bag and no evidence showed the bag was locked in any manner or Appellant had prohibited Green from using the bag or looking in the bag.

Appellant first contends the trial court erred in denying his motion to suppress the contents of a backpack found after police obtained consent from his then-girlfriend, Stephanie Green, to search the home and bag. Although he does not contest Green's authority to consent to the search of the home (or the validity of that consent), he avers Green lacked apparent authority to consent to the search of the bag after Appellant had identified it to law enforcement as belonging to him. He thus contends his journal, which was located in the backpack, should have been suppressed.

However, probative evidence supports the trial court's finding that Green had apparent authority to consent to the search of the bag in her home, especially when Green knew immediately where the bag was located and there is no indication the bag was locked or Appellant had ever prohibited Green from using the bag or looking in the bag. Further, because Appellant was being arrested on an active murder warrant by a fugitive task force team six years after the murder and Appellant told the officers about the bag, the bag and its contents would have been inevitably discovered by lawful means. Additionally, here where Appellant lied to both police and Green about his actual identity, police acted in good faith in relying on Green's apparent authority to consent to the search of the bag to see if it contained any identifying information. Finally, in light of other overwhelming evidence of guilt submitted by the State, any error in the admission of the journal was harmless beyond a reasonable doubt.

"[A] warrant is generally required for a search of a home, but the ultimate touchstone of the Fourth Amendment is reasonableness." Fernandez v. California, 571 U.S. 292, 298, (2014)

(internal citations and quotation marks omitted). "[P]olice officers may search jointly occupied premises if one of the occupants consents." Id. at 294. "The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched." State v. Laux, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001). "Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so." Id. at 376, 544 S.E.2d at 277.

In State v. Bailey, 276 S.C. 32, 274 S.E.2d 913 (1981), the South Carolina Supreme Court considered whether the defendant's uncle could consent to a search of the defendant's truck located on the uncle's property. Id. at 35, 274 S.E.2d at 915. Notably, the uncle told police the truck had not been there prior to that night. Id. The Court found the uncle's consent valid, reasoning:

> The truck was left on the premises without instructions or restrictions on its use. The vehicle was unlocked and the keys were in it. The camper top was disassembled and stored near the house. Under the circumstances it was reasonable for the officers to believe and the inference is amply supported that the resident had authority to consent to the search . . . as a common possessor or bailee.

Id. at 37, 274 S.E.2d at 916 (internal citations omitted).

Likewise, in State v. Curley, 253 S.C. 513, 171 S.E.2d 699 (1970), the South Carolina Supreme Court concluded a third-party, who had borrowed the defendant's vehicle, could consent to the search of the vehicle's trunk, reasoning:

> [T]he defendant Curley, by allowing another to use his car and, without prohibitory instructions, entrusting her with the key to the trunk, must be taken to have assumed the risk that she would accede to the request of an officer to look inside. Having to this extent surrendered his right to privacy as to the contents of the trunk, he is in no position to maintain that the shoes were discovered in derogation of it.

Id. at 518, 171 S.E.2d at 70.

Prior to trial, Appellant moved to suppress a journal found in a bag that was "stored in the rafters in a garage," arguing law enforcement did not obtain a warrant but instead obtained consent from his girlfriend, whom he contended had no interest in the bag. (Tr. 106). As part of the pretrial motion, the State called Deputy U.S. Marshall Chris Tamayo of the Fugitive Task Force in the District of Oregon. (Tr. 111). Deputy Tamayo explained the task force received this case from the District of South Carolina and "develop[ed] an address for a Stephanie Green as a possible associate" of Appellant. The task force set up surveillance around the home and noticed someone outside matching Appellant's description—including a "distinct tattoo on his right arm." (Tr. 112-13). Appellant was arrested and transported to jail. (Tr. 115-17). Although he initially told the task force his name was "Ben," Deputy Tamayo ran his fingerprints and confirmed it was, in fact, Appellant. (Tr. 115-17).

After Appellant was transported, the task force waited at the home for Green to return. (Tr. 119-21). Police then obtained her consent to search the home; the interview with Green was audio recorded and entered as Court's Exhibit 3 at the pretrial hearing. (Tr. 119-21). During the interview, Marshall Migara asked, "He mentioned to us he has a bag of his personal belongings . . . out in the garage. Is that something you would allow us to take a look at?" (Court's Ex. 3, at 12:30; Tr. 131, 133-34). Green led law enforcement to a detached garage and gave them permission to retrieve and search a bag. (Tr. 121). Deputy Tamayo explained he wanted to confirm the identity of Appellant—who had told him (and Green) that his name was Ben—so he searched the bag to see if it contained any identifying items. (Tr. 124, 127). Inside the bag was the journal where Appellant—in coded words—confessed to killing Victim. (Tr. 126-27). Deputy Tamayo seized

the bag and its contents; he later transferred it to deputies from Jackson County, who turned it over to Simpsonville Police Department. (Tr. 124).

Here, probative evidence supports the trial court's finding that Green had apparent authority to consent to the search. It is uncontradicted that Green consented to the search, as is plainly depicted in the audio recording. (Ex. 3 at 12:30). Further, as the homeowner and a resident of the home, Green had authority to consent to the search of the home. (Tr. 133).

Appellant's argument centers on his contention that Green did not have authority to consent to the search of the bag. However, the bag was not locked in any way, and there is no indication that Appellant had ever told Green she could not go in the bag. Thus, like the defendant in Curley, Appellant did not have a reasonable expectation of privacy in the bag. See Curley, 253 at 518, 171 S.E.2d at 70 (finding third party could consent to search of vehicle when defendant allowed her to use his car and entrusted her with the keys without any prohibitionary instructions). Likewise, because Green knew immediately where the bag was located and led officers to the bag—which was not locked or secured in any way—it was reasonable for the officers to believe she had authority to consent to the search. See Bailey, 276 S.C. at 37, 274 S.E.2d at 916 ("The truck was left on the premises without instructions or restrictions on its use. The vehicle was unlocked and the keys were in it. The camper top was disassembled and stored near the house. Under the circumstances it was reasonable for the officers to believe and the inference is amply supported that the resident had authority to consent to the search . . . as a common possessor or bailee."). Based on the foregoing, evidence supports the trial court's finding that Green had apparent authority to consent to the search. See Frasier, 437 S.C. at 633-34, 879 S.E.2d at 766 (providing courts reviewing Fourth Amendment issues "review the trial court's factual findings for any evidentiary support").

b. Because Appellant was a fugitive with an active arrest warrant for murder and had already told law enforcement about the bag, the contents of the bag would have been inevitably discovered by lawful means.

Even if Green had not consented to the search, the contents of the bag—including the journal—would have been inevitably discovered by lawful means. Further, law enforcement acted in good faith in relying on Green's apparent authority to consent to search the bag that was located in her home. Thus, the exclusionary rule does not apply.

"The purpose of the exclusionary rule is to deter law enforcement officers from committing Fourth Amendment violations." State v. Moore, 429 S.C. 465, 478, 839 S.E.2d 882, 889 (2020). "[W]hen suppression will fail to yield appreciable deterrence, exclusion is clearly unwarranted." Id. (internal quotation marks omitted). "[C]ourts have recognized several exceptions to the exclusionary rule, including, among others, the independent source doctrine, inevitable discovery, and good-faith reliance." Id. (internal quotation marks omitted). "The inevitable discovery doctrine provides that illegally obtained information may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been discovered by lawful means." State v. Cardwell, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019).

Here, officers arrested Appellant—a fugitive—on an active murder warrant. While talking to police, Appellant identified a bag as belonging to him. (Tr. 131, 133). Appellant also lied about his identity to both the officers and Green—his live-in girlfriend of six years. After Appellant was arrested, police searched the home with Green's consent—specifically looking for the bag Appellant told them about. Under these facts, where Appellant had an active warrant for murder and had previously told officers about this bag, a preponderance of the evidence shows the journal that was inside the bag would have been ultimately discovered by lawful means. Thus, the exclusionary rule does not apply.

c. Law enforcement acted in good faith in relying on Green's apparent authority and in attempting to confirm Appellant's identity after Appellant lied about his name; thus, the exclusionary rule does not apply.

"[W]hen law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system." United States v. Leon, 468 U.S. 897, 907-08 (1984).

The officers here acted in good faith in obtaining Green's consent to search the home and retrieve the bag. Officers waited an hour for Green—the homeowner—to return home so they could obtain her consent. In fact, Deputy Tamayo called her after Appellant was arrested and asked her to return home. (Tr. 131-32). Police then procured her assistance in searching the home and locating the bag, which Green gave to police. Because Green—who had apparent authority—consented to the search, the officers acted in good faith.

Additionally, Deputy Tamayo explained he looked inside the bag to see if it contained anything that would confirm Appellant's identity. (Tr. 124, 127). Here, where Appellant lied to both law enforcement and his live-in girlfriend about his name, Deputy Tamayo acted in good faith in attempting to confirm his identity. The foregoing shows law enforcement acted in objective good faith and any transgression was minor. Thus, the exclusionary rule does not apply.

d. The State presented other overwhelming evidence of guilt, making any error in the admission of the journal harmless beyond a reasonable doubt.

"Most errors that occur during trial, including those that violate a defendant's constitutional rights, are trial errors that are subject to harmless error analysis." State v. Jenkins, 412 S.C. 643, 651, 773 S.E.2d 906, 909 (2015). "Harmless error analyses are fact-intensive inquiries and are not governed by a definite set of rules." Id. Rather, appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case." Id. "An error is harmless if it did not reasonably affect the result of the trial." Id.

Here, the State presented overwhelming evidence of Appellant's guilt even without the journal. Hannah—whom Appellant fled the state with—testified Appellant discussed killing Cati prior to the murder and later confessed to the murder. (Tr. 252, 257-59, 267, 289-90, 301). Hannah's testimony about the details of the murder—as recounted to her by Appellant—were corroborated by the pathologist's testimony about injuries on Cati (specifically, markings consistent with being drug and a six-inch blade in her neck) and crime scene photos showing the crawl space Appellant drug her body through. (Tr. 302, 415, 420-22; Ex. 18, 22, 28, 48). Hannah testified about a text she received from Appellant shortly before Cati's murder that she believed referenced killing Cati. (Tr. 267). Finally, Hannah stated she followed Appellant on October 24 while he drove Cati's car and abandoned it in a parking lot. Appellant then got in the car with Hannah—carrying Cati's license tag and keys. (Tr. 270-78, 2886-87).

Although compelling, the State did not rely on Hannah's testimony alone. Rather, the State presented substantial evidence to corroborate her testimony. First, the State entered text messages from Appellant's phone to Hannah's phone—sent five days before the murder—that stated, "I'm going through with that thing, though. Soon." (Tr. 660). "Like Friday or Saturday." (Tr. 661). Second, phone records showed Appellant called Hannah around 5:03 p.m. on October 24—twenty-six minutes before Cati's car made its fourth (and final) drive. (Tr. 652-54). This evidence corroborated Hannah's testimony that Appellant called her to tell her to return home, and shortly after she returned home, she followed him in his Prius while he drove Cati's car. (Tr. 272-73). Third, the State entered evidence that Cati's car was in fact abandoned in a parking lot without its tag. Additionally, a video showed Cati's car enter the lot where it was later recovered with a second car—similar to a Prius—behind it. Three minutes later the Prius left. (279-80, 531-32, 597-602).

The device on Cati's car also strongly corroborated Hannah's testimony. The device measured 3.45 miles travelled between 4:49 and 4:58 p.m., and 23.8 miles between 5:29 and 6:05 p.m. (Tr. 473-75). Investigator Schofield measured 2.5 miles between the abandoned house and Appellant's house, and 14 miles between Appellant's house and the lot where Cati's car was recovered. (Tr. 770-72). The foregoing strongly corroborated Hannah's testimony that Appellant told her he killed Cati at the abandoned house (where her body was discovered), then drove to his house in Cati's car, then had Hannah follow him while he drove Cati's car to its final destination.

Additional witness testimony corroborated Hannah's testimony. Tucker recalled being in the kitchen with Hannah on October 24 and seeing Cati's car pull into the driveway and then leave at 4:56 p.m. (Tr. 492, 497-99). The driver—who was not Cati—was wearing a black hoodie. Shortly thereafter, Somerville testified Appellant walked in from the back yard—sweating and wearing a black hooded jacket. (Tr. 502). Not only does this testimony corroborate Hannah's testimony about that afternoon, but it is substantial evidence placing Appellant in Cati's car within hours of her clocking out of work and going missing. Likewise, Tucker recalled Hannah had Appellant's phone that day—which she thought was strange. (Tr. 498). This testimony was corroborated by Appellant's phone records, which indicated his phone was inactive from 11:11 a.m. until he called Hannah at 5:03 pm. (Tr. 652-54).

Somerville's testimony also corroborated a portion of Hannah's testimony. Specifically, Somerville testified—similar to Hannah—that Appellant discussed killing Cati and splitting insurance proceeds before Cati was killed. (Tr. 681-82, 684-86). Somerville also recalled Appellant saying the basement of the abandoned home would be a perfect place to hide a body. (Tr. 687). Cati's body was later found in that very basement—in the cement box where Appellant (who had called Cati "trash") had said was "where the trash goes." (Tr. 685-87).

Significant portions of Hannah's testimony were corroborated by independent evidence—including digital forensic evidence and witness testimony. As if that was not enough, the State entered incriminating Google searches recovered from Appellant's phone—notably, six searches related to sharpening a knife (the weapon that killed Cati) just six days before the murder, and six searches about when police can tap a phone or obtain phone records just six days after Cati was found. (Tr. 663-667). Finally—and perhaps one of the more difficult pieces of evidence for Appellant to overcome—the State introduced evidence that Appellant fled the state about a week after Cati's death and remained a fugitive—living under a false identity—until he was apprehended by a fugitive task force six years later. The evidence is overwhelming. Based on the foregoing, any error in admitting the journal is harmless beyond a reasonable doubt.

2. The trial court did not abuse its discretion in admitting Exhibit 31 into evidence when the photograph was probative in depicting the crime scene and corroborating other testimony. Further, any shock value to the photograph was cumulative to the un-objected to autopsy photos, making any error harmless beyond a reasonable doubt.

Appellant next contends the trial court abused its discretion in allowing into evidence Exhibit 31, a crime scene photograph showing Cati's body where police found it in a cement box. Appellant contends the manner of death was not contested and the photo of the body was entered only to inflame an emotional response from the jury. He contends that because the manner of death was not contested, this case is akin to State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023), and the court erred in allowing the picture into evidence.

Contrary to Appellant's argument, however, here where Appellant did not concede the manner of death in opening argument, the State still maintained the burden of proving this was, in fact, a murder. Further, like other cases with scene photos depicting deceased victims, the picture was probative in showing Cati's body at the crime scene. Specifically, Exhibit 31 showed Cati's

body in the condition Appellant left her. This photograph (combined with other photographs of the basement) corroborated testimony about statements Appellant made. Thus, the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice. Finally, any shock value was cumulative to the shock-value of the unobjected-to autopsy photos, making any error in the admission harmless beyond a reasonable doubt.

Generally, "[a]ll relevant evidence is admissible." Rule 402, SCRE. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

"When a photo derives probative value from its tendency to corroborate testimony, the measure of this value varies depending on the facts of each individual case." State v. Gray, 408 S.C. 601, 613, 759 S.E.2d 160, 166 (Ct. App. 2014). "Photos that corroborate important testimony on issues significant to the case may have very high probative value, while photos that corroborate only testimony related to collateral issues will have less probative value." Id. at 613, 759 S.E.2d at 166-67.

Since 2023, the Supreme Court of South Carolina has issued four opinions addressing the admissibility of photographs of deceased victims. In State v. Jones, 440 S.C. 214, 891 S.E.2d 347 (2023), a capital case, the Court concluded the danger of unfair prejudice from autopsy photos entered during the sentencing phase substantially outweighed any probative value. The Court found the pictures contained "no probative value" because they did "not depict the children's

bodies in substantially the same condition in which Jones left them" but rather showed "advanced stages of decomposition." Id. at 262, 891 at 372. The Court concluded that any probative value of the pictures was substantially outweighed by the danger of unfair prejudice. In making this finding, the Court emphasized the gruesome nature of the photos, which "show the children's bodies in a state of complete discoloration; they were engulfed in maggots and contorted beyond recognition. Some of the children's faces were missing, a number of their limbs had been eaten by animals, and one child's head had decomposed to skeletal remains." Id. at 263, 891 S.E.2d at 373.

In State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023), the South Carolina Supreme Court again found the danger of unfair prejudice from autopsy photos substantially outweighed any probative value. Critically, the defense in Nelson conceded in opening statement that the victim was "brutally murdered" and agreed with the prosecution about the cause of death, where the victim was killed, and the murder weapon. Thus, the only disputed fact was who murdered the victim—not whether the victim was murdered or how she was killed. Id. at 417, 891 S.E.2d at 510. Because the issues of malice and how the victim was killed were not disputed, the Court found pictures showing the victim's head and neck wounds, partial decomposition of her body, stab wounds on her back, and her swollen head "had little probative value as to any disputed fact in this case." Id. at 418-19, 426, 891 S.E.2d at 510-11, 515. The Court further found the danger of unfair prejudice substantially outweighed the minimal probative value.

More recently, however, the Supreme Court of South Carolina has affirmed the admission of photos depicting deceased victims in two cases. In State v. Heyward, 441 S.C. 484, 895 S.E.2d 658 (2023), the Court affirmed the admission of "gruesome autopsy photographs" taken after the pathologist "reflected"—or peeled back—the victim's scalp to expose tissue normally covered by the scalp. Id. at 500 & n.3, 895 S.E.2d at 666-67 & n.3. In affirming, the

Court agreed with the trial court's assessment that the photographs were highly probative in corroborating prior testimony as well as the pathologist's testimony that the victim's head was struck in multiple areas. Id. at 500-501, 503, 895 S.E.2d at 667-68. The Court likewise differentiated Nelson on the basis that Heyward "conceded nothing in his trial" and directly challenged the pathologist's findings. Id. at 502-03, 895 S.E.2d at 668.

In State v. Benton, 443 S.C. 1, 901 S.E.2d 701 (2024), the Supreme Court of South Carolina affirmed the trial court's admission of crime scene photos depicting the victim's burned body. In doing so, the Court differentiated the case from Nelson on the basis the pictures in Nelson "were autopsy pictures of the victim's decomposing and disfigured body," whereas the pictures in Benton "were relevant as they depicted the crime scene." Id. at 9, 901 S.E.2d at 705. The Court found the pictures were probative in (1) making "Benton's accomplices' testimony more believable," (2) providing "important context to the testimony and other evidence about who did what at the scene," and (3) "assist[ing] the jury in their task to understand other key evidence." Id.

At trial, the State sought to enter a video of the crime scene. Appellant objected to the final minute of the video that showed Cati's body, arguing it was unduly prejudicial and cumulative to what he expected the pathologist to testify to. (Tr. 359-60). The State countered that it maintained the burden of proving how Cati was killed, and the video would corroborate Hannah's testimony that Appellant said he drug Cati's body into the basement of this abandoned house after she was killed. (Tr. 360-62). The State averred the video would depict blood on bushes outside the home, the crawl space Cati's body was drug through, and the concrete box where she was found—covered in boards and blankets. (Tr. 360-62). Appellant countered,

> [T]his video does not show the body of [Cati] in the condition it was originally found in on that night. At this point, it's already been manipulated and uncovered by EMS as they have put life saving supporting modules on her to see if there was, in fact, proof of life.

> So it doesn't even show the condition that she was found in that night. She's been uncovered. She's been exposed.

(Tr. 364). The State then offered a compromise:

> [W]e are happy to pivot and use pictures if that's going to be most appropriate. Again, we don't want to cause any sort of issue for any potential future appellate courts or anything like that. However, I do think using one picture of where the body is located and how it was found, especially when an eyewitness is somebody who found it, I think is important.
>
> **There is a picture of the body that we have that doesn't have any of the medical leads on or anything like that.** And I do think using one isolated picture that shows that is important, Judge.

(Tr. 364, emphasis added). Appellant maintained his objection. (Tr. 365). The State reiterated that the picture (Ex. 31) was probative in showing where Cati's body was found, which would corroborate other testimony about Appellant's statements to witnesses—specifically, that he drug Cati's body into the basement. (Tr. 365-66). The court overruled the objection to the picture:

> I do think it to some degree corroborates some testimony. And I think it does have some relevance and probative value to malice. It does show, as I just mentioned a little while ago, the allegations are he killed her outside, drug her in the house, put her in a box. I think that is some evidence of malice. I'm not allowing—or won't allow as it goes through more inflammatory photographs that may show some other issues. But as far as this particular photo, I'm going to allow that photo in.

(Tr. 368-69). The court additionally found the probative value outweighed any risk of unfair prejudice. (Tr. 368-69).

a. The trial court did not abuse its discretion in admitting Exhibit 31 into evidence when the photograph was probative in depicting the crime scene and corroborating other testimony, and the probative value was not substantially outweighed by the risk of unfair prejudice.

The trial court did not abuse its discretion in admitting Exhibit 31 into evidence. Initially, the State exercised restraint in offering a compromise, and the trial court exercised its discretion

in ruling on this issue. Here, the crime scene photos (including Ex. 31) were probative in depicting the crime scene, corroborating Hannah's testimony about Appellant's confession, providing context to the testimony, and establishing malice. See Benton, 443 S.C. at 9, 901 S.E.2d at 705 (finding pictures were probative in (1) making "Benton's accomplices' testimony more believable," (2) providing "important context to the testimony and other evidence about who did what at the scene," and (3) "assist[ing] the jury in their task to understand other key evidence."); State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018) ("[T]he circuit court properly evaluated the probative value of the crime scene photographs, with respect to the question of malice, explaining that they established 'the wounds that were inflicted on the victim, which would go to the issue of malice.'"). Further, the probative value of the photograph was not substantially outweighed by the risk of unfair prejudice. Thus, the trial court did not abuse its discretion in admitting the picture.

The crime scene photos tell a story: blood in bushes outside, an overgrown crawl space leading to an abandoned basement, and a concrete box inside. (Tr. 376-95; Exs. 16-19, 21-22, 27-43). Exhibit 31 is critical to the story because it shows Cati's body inside the concrete box in the manner Appellant left her. This in turn corroborated Hannah's testimony about the details Appellant provided when he confessed to the crime—specifically, that he drug Cati's body into the abandoned house and left it there.[6] (Tr. 302).

Contrary to Appellant's argument, Exhibit 31 does not depict Cati with medical leads. Rather, the State offered this picture as a compromise depicting Cati's body without the leads. Exhibit 31 depicts Cati's body in the condition Appellant left it, making it probative. Contra Jones,

[6] Although Somerville had not yet testified, Exhibit 31 also corroborated her testimony that Appellant had said the basement would be a perfect place to hide a body, and trash (which is what he called Cati) goes in the cement box.

440 S.C. at 262, 891 S.E.2d at 372 (finding no probative value to autopsy photos when pictures did "not depict the children's bodies in substantially the same condition in which Jones left them" but rather showed "advanced stages of decomposition").

Appellant's reliance on Nelson is misplaced. In Nelson, the defense conceded in opening statement that the victim was "brutally murdered" and agreed with the prosecution about the cause of death, where the victim was killed, and the murder weapon. Thus, the only disputed fact was who murdered the victim—not whether the victim was murdered or how she was killed. 440 S.C. at 417, 891 S.E.2d at 510. Because the issues of malice and how the victim was killed were not disputed, the Court found the autopsy pictures "had little probative value as to any disputed fact in this case." Id. at 418-19, 426, 891 S.E.2d at 510-11, 515.

Here, however, Appellant did not concede in opening statement that Cati was murdered or agree with the prosecution about the cause of death or where Cati was killed. Thus, the trial court did not abuse its discretion in finding the picture was probative. See Benton, 443 S.C. at 9, 901 S.E.2d at 705 (affirming trial court's admission of crime scene photos depicting the victim's burned body; differentiating Nelson because the pictures in Nelson "were autopsy pictures of the victim's decomposing and disfigured body," whereas the pictures in Benton "were relevant as they depicted the crime scene"); Heyward, 441 S.C. at 502, 895 S.E.2d at 668 (affirming the trial court's finding that autopsy photographs were highly probative and differentiating Nelson in part because "Heyward conceded nothing in his trial"); Hawes, 423 S.C. at 118, 813 S.E.2d at 513 ("[T]he circuit court properly evaluated the probative value of the crime scene photographs, with respect to the question of malice, explaining that they established 'the wounds that were inflicted on the victim, which would go to the issue of malice.'").

Countless cases have affirmed the admission of photographs depicting deceased victims either at crime scenes or during an autopsy. See, e.g., Benton, 443 S.C. at 9, 901 S.E.2d at 705 (affirming trial court's admission of crime scene photos depicting the victim's burned body); Heyward, 441 S.C. at 500-01, 895 S.E.2d at 667-68 (affirming admission of gruesome autopsy photographs depicting victim with deflected scalp); State v. Collins, 409 S.C. 524, 534-35, 763 S.E.2d 22, 28 (2014) ("[W]e conclude, contrary to the Court of Appeals, that the trial court did not abuse its wide scope of discretion in admitting the pre-autopsy photos. The Court of Appeals's obvious revulsion for the evidence, while certainly understandable, permeated its legal analysis. The evidence was highly probative, corroborative, and material in establishing the elements of the offenses charged; its probative value outweighed its potential prejudice; and the appellate court should not have invaded the trial court's discretion in admitting this crucial evidence based on its emotional reaction to the subject matter presented."); State v. Holder, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) ("Although the photographs were graphic, the facts in this case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis. We hold the trial court properly exercised its discretion in admitting the autopsy photographs in this case."); State v. Brazell, 325 S.C. 65, 79, 480 S.E.2d 64, 72 (1997) (affirming admission of crime scene photos depicting the victim's body: "The photographs supported the testimony of several witnesses and were relevant to the nature of the crime. The State used the photographs to establish that the murder was a deliberate and calculated act. These photographs corroborated the testimony of Gregory Whetstone concerning the location of the body on the side of the road and Dr. Sexton concerning the injuries sustained by Jeffers."); Hawes, 423 at 130-31, 813 S.E.2d at 519-20 (affirming admission of crime scene photos depicting deceased

victim); Gray, 408 S.C. at 601, 759 S.E.2d at 160 (affirming admission of eleven autopsy photos over Rule 403 objection).

In each case, the appropriate questions are (1) what probative value the pictures had and (2) whether that probative value was substantially outweighed by the risk of unfair prejudice. Here, the photographs were probative in depicting the crime scene, which in turn corroborated witness testimony about Appellant's statements. The photographs were also probative in proving the essential element of malice—which Appellant did not concede in opening argument.

Further, although a photograph of a deceased victim always has some intrinsic shock value, this photograph is not excessively shocking or unfairly prejudicial. In the picture, Cati's stomach and leg are exposed, but her private parts are covered and her head is not included in the frame of the picture. Although the stab wound in her neck is visible upon close inspection, there aren't any immediately apparent wounds. The picture does not depict large amounts of blood—or really, much blood at all. There aren't visible signs of decomposition apparent in the photograph. Contra Jones, 440 S.C. at 263, 891 S.E.2d at 373 (emphasizing the gruesome nature of the photos, which "show the children's bodies in a state of complete discoloration; they were engulfed in maggots and contorted beyond recognition. Some of the children's faces were missing, a number of their limbs had been eaten by animals, and one child's head had decomposed to skeletal remains."). This isn't an autopsy photograph showing, for example, a reflected scalp. See Heyward, 441 S.C. at 500 & n.3, 895 S.E.2d at 666-67 & n.3 (affirming admission of gruesome autopsy photographs taken after the pathologist "reflected"—or peeled back—the victim's scalp).

On balance, the risk of unfair prejudice here is low. In contrast, the picture is probative in showing Cati's body as it was discovered in the basement of this abandoned house, corroborating Hannah's testimony about Appellant's confession, and proving the essential element of malice.

Thus, the trial court did not abuse its discretion in finding the probative value of the photograph was not outweighed by the risk of unfair prejudice.

b. Any shock value to the photographs was cumulative to the un-objected to autopsy photos, making any error harmless beyond a reasonable doubt.

"Generally, appellate courts will not set aside convictions due to unsubstantial errors not affecting the result." Benton, 443 S.C. at 9, 901 S.E.2d at 705 (quoting State v. Byers, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011)). Appellate courts "will not reverse a criminal conviction for the erroneous admission of evidence unless the defendant shows on appeal the error was prejudicial." Heyward, 441 S.C. at 505, 895 S.E.2d at 669.

During the pathologist's testimony, the State entered into evidence several autopsy photos depicting wounds on Cati's body—specifically, drag marks on her back and the stab wound on her neck. Appellant did not object to these photos. (Tr. 414, 416, 418, 428).

Here, several of the autopsy photos were more shocking than Exhibit 31. Specifically, Exhibits 50 and 51 depict Cati's back before and after the pathologist cleaned off the dirt. (Tr. 414-15). Although probative,[7] the pictures are graphic—depicting several scratches and large bruises. Likewise, Exhibits 49 and 56 are close-up photographs of the stab wound on Cati's neck. Again, although probative, these pictures are more graphic than Exhibit 31. On balance, any prejudicial impact of Exhibit 31 is cumulative to the prejudicial impact of Exhibits 49, 50, 51, and 56. Thus, any error in the admission of Exhibit 31 is harmless beyond a reasonable doubt.

[7] Specifically, Dr. Ward used these pictures to explain why he concluded the injuries were post-mortem. He explained the injuries were consistent with Cati being drug across a rough surface. This testimony and these pictures corroborated Hannah's testimony that Appellant drug Cati to the concrete box after killing her.

CONCLUSION

Based on the foregoing, this Court should affirm.

Respectfully Submitted,

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