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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

RESPONDENT,

v.

JASON B. BELL,

APPELLANT.

Appellate Case No. 2026-001090

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTIONS PRESENTED

1.

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

2.

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

3.

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

RESPONDENT'S QUESTIONS PRESENTED

1.

Did the Court of Appeals err in affirming the trial court's refusal to charge the jury on voluntary manslaughter when the conduct that Petitioner himself describes is not voluntary manslaughter under South Carolina law, and characterizing it as manslaughter would go against the history of murder law?

2.

Did the Court of Appeals err in affirming the trial court's decision to admit a phone call between the Petitioner and his mother when the phone call was arguably not evidence of a prior bad act and was in any event relevant to Petitioner's motive for killing his father?

3.

Did the Court of Appeals err in holding that expert testimony about the victim's toxicology report was without a doubt harmless when, even under Petitioner's explanation of his actions, he was guilty of murder regardless of whether his father was on pain medicine at the time of his death, and the evidence was in any case cumulative?

STATEMENT OF THE CASE

Respondent accepts Petitioner's statement of the case for the purposes of this petition.

ARGUMENT

I. The Court of Appeals affirmed the trial court's refusal to charge the jury on voluntary manslaughter because the conduct that Petitioner himself describes is not voluntary manslaughter under South Carolina law, and characterizing it as manslaughter would go against the history of murder law.

Factual Background

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. 8–15). 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: Petitioner, who was Jim Bell's son. (R. p. 200, ll. 3–6). Shortly before 11 a.m., Chief Camp told Petitioner that the police believed they were investigating a homicide. (R. p. 200, ll. 8–9; p. 201, ll. 17–19). Petitioner asked law enforcement if he needed to be placed in handcuffs. (R. p. 201, l. 23–25).

After Petitioner had been detained and was at the police station, Chief Camp and Petitioner took a smoke break. (R. p. 204, ll. 8–16). While the two men were outside, Petitioner confessed 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 Petitioner gave a fuller account of what happened. (R. p. 205, ll. 15–21; State’s Exh. 9). According to Petitioner, 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, Petitioner would do it for him. (Exh. 9). By New Year’s Eve, with his father suffering from pulmonary fibrosis, Petitioner decided the time had come. (Exh. 9; R. p. 354, ll. 1–3). Petitioner said Jim Bell had spent much of the previous day screaming in pain. (Exh. 9). Petitioner 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.” (Exh. 9).

That night, Petitioner went downstairs and found his father asleep. (Exh. 9). With New Year’s Eve fireworks going off, Petitioner fired two bullets into his father’s head. (Exh. 9). He then dropped the gun and returned to his bedroom upstairs, after which he continued to cry and pray. (Exh. 9). His mother discovered the body the next day. (Exh. 9).

Friends and associates of Mr. Bell testified at trial.

Larry Bowers would frequently visit the Bells. (R. p. 294, l. 19–22). His visits because less frequent after Petitioner moved back into the house; Bowers “didn’t appreciate the way [Petitioner] 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 he was "fearful of what would happen with it being there."[1] (R. p. 296, l. 9–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. 7–18). 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, Petitioner, 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). Likewise, Rose Bell said her husband never screamed in pain. (R. p. 367, ll. 4–15).

In discussions about jury charges, Petitioner argued that the court should instruct the jury on voluntary manslaughter. (R. p. 430, l. 13–p. 431, l. 16). Petitioner argued that the killing was done without malice, and that Petitioner acted under the heat of passion because he heard his father screaming in pain the day before. (R. p. 430, l. 13–p. 431, l. 16).

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[1] In briefing before the Court of Appeals, Respondent stated that Bowers wanted the gun "because of Bower's concerns about [Petitioner]." (App. 31). In reviewing the transcript again, counsel realized Bowers was not that specific.

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, Petitioner 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 Petitioner guilty of murder. (R. p. 493, ll. 20–24). The trial court sentenced Petitioner to life imprisonment. (R. p. 506, ll. 9–11). Petitioner appealed. The Court of Appeals affirmed the conviction in an unpublished opinion. (App. 53–58). The Court of Appeals denied the petition for rehearing. (App. 64–65).

Standard of Review

When considering whether the trial court should have instructed the jury on a lesser-included offense, an appellate 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).

Discussion

Petitioner contends that the Court of Appeals erred in affirming the trial court's decision not to charge the jury with voluntary manslaughter. That is because the Court of Appeals would have needed to redefine voluntary manslaughter to reverse. As the Court of Appeals found, Petitioner did not introduce evidence that Jim Bell legally provoked Petitioner or that Petitioner was acting under a heat of passion. (App. 55).

As Petitioner 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, Petitioner asks for

a more inclusive view of a killing without malice. But 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.

This Court has already dismissed Petitioner'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").

"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 warrants a charge of 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 598, 698 S.E.2d at 609. This is what Petitioner cannot show in this case.

First, Petitioner cannot show 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."). And 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, 168, 682 S.E.2d 898, 902 (Ct. App. 2009) ("[M]ere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon." (quoting *State v. Rogers,* 320 S.C. 520, 525, 466 S.E.2d 360, 362 (1996))). The only act of Jim Bell's that Petitioner could argue legally provoked him was the act of screaming in pain. But screams—even disturbing ones—are not the stuff of legal provocation.

Petitioner 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. A head of passion 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))).

Respondent has not found any South Carolina law dealing specifically with whether a "mercy killing" qualifies as voluntary manslaughter—and Petitioner has offered none. 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)).

Here, Petitioner was capable of reflection. Petitioner described in detail his cool reflection—the crying, praying, and thought he undertook as he decided whether to kill his father. Petitioner 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.

As a result, Petitioner 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 Petitioner's invitation.

"'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 Petitioner'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 this 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 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.'"). And that idea was in keeping with an understanding of manslaughter that went back to the

legal system of England. *See* Tom Stacy, *Changing Paradigms in the Law of Homicide*, 62 OHIO ST. L.J. 1007, 1021–22 (2001) ("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."). 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.[2]

The trial court did not instruct the jury on manslaughter—and the Court of Appeals affirmed—because there was no evidence at trial that Petitioner committed manslaughter rather than murder. The petition for writ of certiorari should be denied.

II. The Court of Appeals affirmed the trial court's decision to admit a phone call between the Petitioner and his mother when the call was arguably not evidence of a prior bad act and was in any event relevant to Petitioner's motive for killing his father.

Factual Background

At trial, the State admitted evidence of a phone call between Petitioner and his mother, Rose, from March 24, 2021—when Petitioner was in jail.[3] (State's Exh. 92). During the call, Petitioner explained to his mother that a lawyer had contacted Petitioner regarding Jim Bell's will.

[2] Petitioner's discussion of Florida and Alaska's assisted suicide statutes is irrelevant. 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). That is not what happened with Jim Bell.

[3] A detailed description of the call was provided in Respondent's brief before the Court of Appeals. (App. 28–30). For the sake of brevity, Respondent has not provided as much detail here.

> PETITIONER: 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.
>
> PETITIONER: —(a) am I in it at all?
>
> ROSE BELL: No, it's all left to me.
>
> PETITIONER: 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]
>
> PETITIONER: I thought me and him had talked about it not, nothing coming to me.

Petitioner then turned to another matter he wanted to discuss on the call, asking his mother if she had provided any money for him to use in the canteen. (State's Exh. 92). Rose Bell responded that she had not and she didn't know how to do so. (State's Exh. 92). Petitioner persisted, saying that he was "not hustling you for money," but that he needed money for expenses at prison, including contacting the lawyer about the will. (State's Exh. 92). Eventually, Petitioner became impatient.

> PETITIONER: 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.
>
> PETITIONER: 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.
>
> PETITIONER: Well, then I'll tell you right now, I promise you this will be the last time I call.[[4]]

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[4] Rose Bell testified that 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).

(State's Exh. 92).

At trial, Petitioner made a motion in limine to exclude a recording of the jail call. Petitioner argued that the recording was obtained in violation of his Fourth Amendment rights. (R. p. 50, ll. 21–25). Petitioner also argued that the call was irrelevant. (R. p. 56, l. 24–p. 57, l. 17). Finally, Petitioner 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 Petitioner 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 moved to enter the phone call into evidence, Petitioner objected again. (R. p. 275, ll. 8–12). After hearing from the attorneys, the trial court maintained its prior ruling allowing the recording to be admitted. (R. p. 276, ll. 23–25).

Standard of Review

Evidentiary rulings 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).

Discussion

Petitioner argues that the Court of Appeals erred in affirming the trial court's decision to admit the phone call between Petitioner and his mother when Petitioner was in jail. Petitioner argues that the evidence is "bad character evidence" and that it 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.

As the Court of Appeals found, it is debatable whether the evidence "represents a prior bad act." (App. 56). *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."). Even so, as the Court of Appeals recognized, Rule 404(b) has an exception allowing another bad act to be introduced "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *Id.*

In any event, the evidence was probative of motive. 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 Petitioner 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 Petitioner's unspecified "meanness" toward his mother, but because it reflected the tensions between Petitioner and his parents. It did not show that Petitioner had the propensity to murder one of his parents, but it indicated that relations were perhaps not as sanguine as Petitioner 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 Petitioner's relationship with his parents.[5] But 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)).

For example, in *White*, the Court of Appeals 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

[5] As the State argued below, Petitioner might have abandoned this argument on appeal. Other than a brief citation to Rule 403 itself, Petitioner 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*, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009), 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").

considering the potential for unfair prejudice, the *White* 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. *See White*, 437 S.C. at 497, 879 S.E.2d at 25.

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 Petitioner's prior imprisonment.

While the jury likely did not like the disrespect that Petitioner 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 Petitioner 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. Even if the Petitioner's own stated motive is to be believed, it does not make his crime manslaughter.

The petition for the writ of certiorari should be denied.

III. The Court of Appeals did not err in holding that expert testimony about the victim's toxicology report was without a doubt harmless because, even under Petitioner's explanation of his actions, he was guilty of murder regardless of whether his father was on pain medicine at the time of his death, and because the evidence was in any case cumulative.

Factual Background

At trial, Dr. Watson, testified that Jim Bell had once experienced some pain in his shoulder and had taken pain medications in August 2019. (R. p. 356, l. 21–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. 1–3).

The state also presented the testimony of Virginia Richards, who was qualified as an expert in forensic pathology. (R. p. 399, l. 23–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. 14). After the jury had left the courtroom, the court allowed Petitioner to place on the record his objection—previously made in a sidebar—that Richards' testimony about the toxicology report violated Petitioner'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).

Discussion

Petitioner argues the Court of Appeals erred in finding that any error in the admission of the toxicology results was harmless.

"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) (alterations in original) (quoting *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013)). In assessing harmless error, an appellate 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)).

As the Court of Appeals found, any error here was harmless. First, there was already 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 have warranted an instruction 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 Petitioner to kill his father—the defendant did not commit manslaughter, but murder.

The petition for writ of certiorari should be denied.

CONCLUSION

Petitioner has failed to demonstrate any way in which the Court of Appeals erred in affirming his conviction. The petition for writ of certiorari should be denied.

Respectfully Submitted,

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