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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2024-001528

The State,Respondent,

v.

David Demias White,Appellant.

FINAL BRIEF OF RESPONDENT

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Additional Authorities:

- The American Heritage Dictionary of the English Language, <https://www.ahdictionary.com/word/search.html?q=gruesome> (last visited April 17, 2026)..... 37
- Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/gruesome> (last visited April 17, 2026) 37

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Appellant's motion to sever his homicide by child abuse charge from his unlawful neglect charges where the charges had a logical relationship to each other and where joinder did not unfairly prejudice Appellant's substantive rights.
2. Whether the trial court properly admitted six redacted autopsy photographs into evidence where their probative value was not substantially outweighed by the danger of unfair prejudice. Furthermore, whether any possible error in admitting the photos was harmless under the circumstances of the case where the photos did not reasonably affect the result of the trial given the overwhelming evidence of guilt.
3. Whether the trial court properly permitted Dr. Lamb to offer her independent expert opinion as to Victim 1's cause of death where she testified as a forensic pediatrician, with a different background and different area of expertise than Dr. Presnell, who offered her own expert opinion as to Victim 1's cause of death as a forensic pathologist. Furthermore, whether any possible error in admitting Dr. Lamb's opinion was harmless under the circumstances of the case where her testimony did not reasonably affect the result of the trial given the overwhelming evidence of guilt.

STATEMENT OF THE CASE

David Demias White (Appellant) was indicted at the August 8, 2024 term of the grand jury for Lancaster County for one count of homicide by child abuse (HBCA) (2021-GS-29-02062) and six counts of unlawful neglect of a child (2021-GS-29-02056, -02057, -02058, -02059, 02060, & -02061). He was represented by Public Defender William Frick of the Sixth Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitors Luck Campbell and Melissa McGinnis of the Sixth Circuit Solicitor's Office. On August 26-September 5, 2024, the case proceeded to trial before the Honorable Donald B. Hocker and a jury. At the conclusion of trial, the jury found Appellant guilty as indicted, and he was sentenced to concurrent terms of twenty-five (25) years' imprisonment for HBCA and ten (10) years' imprisonment for each count of unlawful neglect of a child with credit for 590 days of time served. (R.p.33; 142; 656; 1022-1038; 1-14).

Appellant timely filed a notice of intent to appeal his convictions and a brief in support of his appeal was filed by Appellate Defender Molly M. Keegan of the South Carolina Commission on Indigent Defense. This Brief of Respondent now follows.

STATEMENT OF FACTS

In its opening statement, the State explained that this case stemmed from an investigation of Appellant and Shaquanda Page (Page) following the February 22, 2021 death, by starvation and extreme dehydration, of their 14-month-old daughter (Victim 1). The solicitor said Victim 1 died because she did not receive enough food and water to survive and that Appellant and Page were the people responsible for her death, as well as being responsible for the unlawful neglect of her six siblings (Victims 2 through 7). The solicitor noted that Page had already had her day in court and had been convicted. She then briefly explained the roles of the attorneys, judge, and

jurors in the trial before reviewing the charges set forth in the seven indictments and, as described below, summarizing the facts the State intended to prove through the introduction of evidence. (R.p.158-p.162).

Prior to Victim 1's death, Appellant and Page lived together in an apartment in Lancaster with their seven children—Victim 1 and her six siblings, who ranged in age from four-month-old boy-and-girl twins (Victim 2 and Victim 3), to a seven-year-old girl (Victim 7). Around 9:45 p.m. a neighbor called 911 and when first responders arrived they found Victim 1 lying on the kitchen floor where Appellant was attempting to do CPR. Emergency workers found no pulse and attempted unsuccessfully to resuscitate Victim 1 before transporting her to the emergency room, where further life-saving efforts were made before she was declared dead. Due to the unexplained death of a child, various agencies became involved, including the Department of Social Services (DSS), the State Law Enforcement Division (SLED), and local law enforcement, who took photos depicting Victim 1's condition. Investigators interviewed Appellant and Page at the hospital, and the solicitor described some details from Appellant's interview. (R.p.162-p.166).

Based on the circumstances of Victim 1's death, law enforcement continued to investigate and scheduled an autopsy for Victim 1 and medical appointments for the six other children, all of whom were taken from the home the night of the incident and placed in kinship care with Appellant's relatives. Police searched the entire apartment, taking photos of the conditions inside, which the solicitor said created risks for all the children. There were no safe sleeping conditions for the twins, not enough food in the refrigerator for a family of nine, feces on the floor and in the childrens' bedding, bedding that had been removed from beds, exposed electrical wires, bugs, and other signs of neglect. Police also sought medical records for each

child and found that most appeared to have had little to no pediatric care after their births. Doctors who examined the children discovered most had significant developmental delays, with a three-year-old girl (Victim 5) suffering from profound developmental delays and a four-year-old boy (Victim 6) with poor weight gain and a speech delay. The oldest child, a seven-year-old girl (Victim 7), experienced physical neglect due to conditions in the home but otherwise had received routine medical care, which the solicitor said showed Appellant and Page knew the importance of taking their children to the doctor. (R.p.166-p.171).

The solicitor explained that Dr. Presnell from the Medical University of South Carolina (MUSC) performed the autopsy and concluded Victim 1's cause of death was dehydration and malnourishment with ketosis due to neglect. The external physical examination included findings of prominent ribs, sunken orbital areas (eyes) and cheeks, and skin tenting, indicating dehydration. The internal examination included findings of organs which were tacky to the touch, also indicating dehydration, pulmonary edema (too much fluid in the lungs), and fat emoli (fat particles in the pulmonary system). Toxicology results showed acetone in the urine which indicated ketosis and starvation and elevated BHB in the blood which was a byproduct of ketosis. All of these findings showed Victim 1 suffered from hypernatremic dehydration and ketosis due to starvation. The solicitor concluded by asking the jurors to determine the facts, apply the law, and hold Appellant responsible for his actions and inactions that led to Victim 1's death and contributed to the abuse and developmental delays for the other children. (R.p.171-p.174).

In his opening statement, Appellant's counsel acknowledged the evidence would be difficult to hear and that Victim 1's death was an absolute tragedy, but asked the jurors to separate emotion from fact, to decide the true facts of the case by considering the credibility of

the witnesses, and to keep in mind that Page was the primary caretaker and that Appellant suffered this tragedy too. (R.p.174-p.178).

Pretrial Proceedings

Prior to trial, Appellant filed a written motion asking the trial court for an order severing the trial of the HBCA charge from the trial of the charges for unlawful neglect of a child. (R.p.31). On August 21, 2024, the trial court convened a virtual Webex hearing to address Appellant's motion to sever. (R.p.15). The trial judge advised he would review the submitted cases and make a ruling later. (R.p.23, lines 18-20).

On August 26, 2024, the trial court and the parties went forward with jury qualification and selection for a joint trial on all the charges. (R.p.33-p.91). After hearing and denying Appellant's *Batson* motion, Appellant handed the trial judge copies of his written pretrial motions including "severance that you already ruled upon." (R.p.91-p.92). The trial court allowed the parties to put their severance arguments on the record. The judge then explained he had sent the parties an email after the virtual hearing denying the severance motion before he articulated his reason for denying the motion on the record. The trial court found "there was no unfair prejudice outweighing probative value and that was the reason for denying the motion." (R.p.106-p.107).

The trial court addressed several other pretrial motions before breaking for the day, including Appellant's motion to exclude photographs from the autopsy. (R.p.107-p.140). The autopsy photo arguments made by the parties are set forth in more detail in Argument II below. The trial court deferred ruling, noting it would require a consideration of *in camera* testimony from the pathologist to determine if the photos would benefit her in describing her work-up in this case. (R.p.131-p.133).

Trial

The following morning, the jury was sworn, the trial court gave brief preliminary instructions, and the case proceeded to trial. (R.p.142-p.158). As detailed in the summary above, the State and Appellant each gave an opening statement before the State began calling witnesses. (R.p.159-p.178). First, the State called Janessa Campbell to the stand. Campbell was a neighbor who lived in the same apartment complex as Appellant, Page, and their seven children at the time of the incident. Around 9:30 or 9:45 p.m., Appellant knocked on Campbell's door, came in, grabbed her husband by the collar and told him his baby wasn't breathing. Campbell immediately went outside where she encountered Page, holding Victim 1, who was not moving. Campbell called 911 and went with Page into Page's apartment with Victim 1, where she was placed on the kitchen floor. Appellant and Campbell's husband briefly went down the steps to a friend's car in the parking lot, then came back up the steps to the apartment, where Appellant attempted to perform CPR on Victim 1 until EMS arrived. Campbell stayed with the other six children after Appellant and Page went to the emergency room with Victim 1. (R.p.178-p.188).

The State then proceeded to call various emergency workers and law enforcement officers who either responded to the incident scene or conducted some aspect of the investigation, expert witnesses, chain of custody witnesses, and record custodians. Lancaster Police Department (LPD) Deputy Paul Blas was working as a patrol officer the night of the incident. He responded to a call from dispatch regarding a person who was unconscious and not breathing at the Pardue Street Apartments. Upon arrival, Blas was flagged down by bystanders, so he parked behind a firetruck that had also just arrived. He entered the apartment to find Victim 1 lying unconscious, on her back, without any clothing. Shortly thereafter, the firefighter

started CPR. Blas said Victim 1's "ribs were kind of sunken in . . . sucking down into her chest," and "her eyes as well, kind of sunken into her head," and that she was not responsive at all. He and the firefighter transferred care of the patient to EMS when they arrived, and EMS subsequently transported Victim 1 to the hospital. Blas later went to the hospital where he learned Victim 1 was dead. He secured the hospital as a possible secondary crime scene until SLED could respond. (R.p.192-p.199).

Andrew Porte of the Lancaster Fire Department (LFD) arrived on the scene with Deputy Blas. He explained that when they found the unresponsive victim he picked her up and took her out of the house to begin performing CPR because it was chaotic inside with low lighting. After EMS workers arrived, he continued assisting with CPR, riding with the paramedics to the emergency room where Victim 1 was turned over to hospital staff. Victim 1 did not respond at all at the apartment, her pupils were not reactive to light, and she did not display any signs of life the whole time Porte was with her. (R.p.207-p.213).

Lancaster County EMS shift supervisor and paramedic David Demby also responded to the call. He joined other first responders who were already working on Victim 1 in the back of the ambulance. Despite the ongoing efforts at CPR, Demby determined Victim 1 was not breathing, had no pulse, and her eyes were fixed and dilated. She was placed on a monitor which showed she was in asystole, which means there was no electrical activity. Demby described further resuscitation efforts in detail, including placing an intraosseous IV and administering epinephrine, and using a McGill laryngoscope to ventilate the lungs, neither of which worked. He said they never got any rhythm on the monitor, never saw any breathing, and never saw any other signs of life on the way to the ER. (R.p.214-p.224). On redirect examination, Demby testified that Victim 1 looked "really emaciated" and that her mouth was very dry. (R.p.233).

Records Custodian Cheryl Lewis from MUSC-Lancaster (MUSCL) authenticated Victim 1's birth records, which were admitted without objection. (R.p.237-p.240). LPD Detective Sergeant Joseph Whitaker was dispatched to MUSCL to investigate Victim 1's death in conjunction with the coroner's office, SLED, and DSS. He participated in interviews with Appellant and Page at the hospital and in taking pictures of Victim 1's body [ER photos]. Appellant's first video-taped interview was authenticated, admitted over Appellant's prior objection, and was later published to the jury once technical issues were resolved. Whitaker eventually left the hospital and went to the apartment to participate in a search of the apartment with SLED, the coroner, and the Department of Social Services (DSS). Based on everything he learned during his initial investigation, Whitaker ordered an autopsy. (R.p.241-p.254). Approximately three months after the incident, Whitaker interviewed Appellant again and his second video-taped interview was authenticated and admitted without objection. A security camera video from the apartment complex was also authenticated and admitted without objection. Whitaker narrated what was shown in the security camera video as it was published to the jury. He explained that when he conducted Appellant's second interview, he also collected two Cricket cell phones from Appellant which were admitted into evidence without objection. (R.p.254-p.263).

Next, as previously mentioned by the trial court and as explained in more detail in Argument III below, the trial court excused the jury and allowed the State to proffer forensic pediatrician Dr. Susan Lamb's testimony as it would relate to the HBCA charge. The trial court concluded the proffer accomplished what it needed to accomplish and the trial resumed. (R.p.277-p.289). The jury then returned and Dr. Lamb was admitted without objection as an expert in forensic pediatrics. She explained that at the time of the incident she was employed by

Prisma Health as the division director of child abuse pediatrics. Dr. Lamb gave background information about her participation in the investigation of Victim 1's death. She explained that any time a child dies unexpectedly in South Carolina, state law mandates a "death review" which must be attended by law enforcement, first responders, the coroner's office, a pathologist, DSS, and a board-certified child abuse pediatrician, and that she was that pediatrician for the Midlands. She further explained that another legal mandate in South Carolina is the Child Fatality Advisory Committee (CFAC), which is a much larger, statewide group that reviews all such child deaths to develop and recommend ways to prevent more deaths in the future, and that she served on the CFAC along with representatives from SLED, the Department of Mental Health (DMH), the Department of Juvenile Justice (DJJ), the Department of Education, and the Department of Alcohol and Other Drug Abuse Services (DAODAS). Finally, Dr. Lamb explained she was a consultant for SLED's Child Fatality Unit which meant they had access to her 24/7. (R.p.291-p.296).

In these roles, Dr. Lamb was trained in how to perform autopsies, how to interpret the results, toxicology, and other aspects of death investigations, and she would often attend autopsies of children. Thus, while her typical expertise as a pediatrician involved live children and their injuries, including those from abuse and neglect, she also frequently had to help investigate dead children. Dr. Lamb explained that investigating a death sometimes takes months and involves review of birth records, early pediatric records, and toxicology reports in addition to autopsy reports, all of which she did in Victim 1's case. She testified she also reviewed incident reports from law enforcement, reports from DSS, scene photographs, photographs of Victim 1 from the ER, and photographs of Victim 1 from the autopsy. (R.p.296-p.305).

Dr. Lamb then pivoted to providing detailed testimony and an expert opinion about the condition of each of the six surviving children and whether they suffered from abuse or neglect. Her specific assessment of each child involved: (1) a review of birth records and early pediatric records, (2) a physical examination, (3) observing them in the waiting room, and (4) interviewing Appellant's mother. (R.p.300-p.304). As with Victim 1, Dr. Lamb also reviewed incident reports from law enforcement, reports from DSS on involvement with the family, and photographs from the scene. She described the varying levels of growth and development for each child, pointing out developmental delays, some profound, as well as the overall living conditions in the apartment which included: (1) the four-month old twins sharing a single crib with adult bedding, which is unsafe for infants and which was soaked in urine and feces; (2) adult human feces and urine in the bathroom and closets; (3) exposed electrical wires; (4) a bedroom with a bunkbed with no mattress on the top bunk; (5) another bedroom with a mattress on the floor; (6) a foot massager with standing water and insects; (7) cockroaches; (8) mounds of unclean dishes; (9) no baby bottles or formula; and (10) not enough food in the refrigerator for a family of nine, most of which had little to no nutritional value; all of which created a scene of physical neglect as to each of the seven children. (R.p.304-p.318). Based on these conditions and her individual assessments, Dr. Lamb ultimately opined that: (1) Victim 2 and Victim 3, the four-month-old twins, had suffered from physical abuse and neglect; (2) Victim 4, the two-year-old, had suffered profound medical neglect, profound nutritional neglect, and possible physical abuse; (3) Victim 5, the almost four-year-old, had suffered profound medical neglect and nutritional neglect; (4) Victim 6, the almost five-year-old, had suffered profound nutritional neglect and medical neglect; and (5) Victim 7, the seven year old, had suffered from physical neglect due to the unsafe conditions in the home. (R.p.318-p.343).

After a break in Dr. Lamb's testimony, the State offered virtual testimony from the MUSCL emergency room doctor, Dr. Alexander Vinuya. He recounted the night Victim 1 arrived via ambulance to the ER in asystole, and the unsuccessful efforts his team took to resuscitate and revive her until she was pronounced dead. Dr. Vinuya testified Victim 1 had no signs of life when she arrived, with no spontaneous breathing, no heart activity, and no pulse, and her condition never changed. (R.p.343-p.359).

The State then resumed questioning Dr. Lamb, but when the solicitor asked her specifically about Victim 1, Appellant objected to the testimony as "bolstering." The bolstering arguments made by the parties are addressed in more detail in Argument III below. The trial court overruled the objection. (R.p.359-p.360). Dr. Lamb proceeded to describe her review of Victim 1's birth records which showed she was born normal, at a normal birth weight, without any obvious medical issues or defects. She testified she had reviewed the autopsy report, the toxicology report, and photographs from the ER and the autopsy, and then went over the significant findings from the autopsy report, which concluded Victim 1 died of long-standing malnutrition that she had suffered during her life. She noted Victim 1's delayed weight and bone development and testified that no matter what, in the months leading up to her death, Victim 1 was not receiving proper nutrition of any sort. (R.p.360-p.370). Dr. Lamb particularly referenced the ER photos which showed Victim 1's "eyes were sunken, she was emaciated," and "you could see all her ribs." (R.p.365, lines 5-13; p.373, lines 2-6). She said "the sunken eyes" were a classic sign of dehydration. (R.p.370, lines 11-19). Dr. Lamb testified she came up with an independent opinion as to what caused Victim 1's death and opined: "she died of severe child neglect, medical neglect, nutritional neglect, and that ultimately is what killed her." (R.p.374, lines 1-7).

At the conclusion of Dr. Lamb's testimony, the jury was excused and, as explained in greater detail in Argument II below, the State proffered testimony from Dr. Presnell in support of admitting the six photographs of Victim 1 that were taken during the autopsy and that were discussed during pretrial motions. (R.p.388-p.394). The trial court conducted a Rule 403 analysis and found that the probative value of the pictures outweighed any unfair prejudice to the defendant so long as the photos were cropped to take away the bottom half of the naked body. (R.p.394, lines 8-18).

Dr. Presnell then testified before the jury, where she was admitted without objection as an expert in pathology and forensic pathology. She explained what typically happens during an autopsy and proceeded to describe the autopsy she performed on Victim 1, including the external exam, the internal exam, taking tissue samples, and drawing blood samples for toxicology. Regarding the external exam, Dr. Presnell noted Victim 1 was "very, very underweight," had "sunken eyes," "her cheeks are kind of sunken in," "her abdomen is kind of curved in, "her ribs stick out in the front," and "on the back you can see her ribs as well as her backbone." (R.p.407-p.409). She then authenticated the six redacted autopsy photos and they were admitted subject to Appellant's prior objection, and published to the jury. (R.p.409-p.415).

Dr. Presnell went through each of the six photographs, describing what they showed in the context of her external examination of Victim 1. This included a description of: (1) eyes that were "sunken in;" (2) the absence of fat pads in the cheeks; (3) protruding ribs; (4) an abdomen and chest cavity that "sinks in;" and (5) visible vertebral bodies along the spine. (R.p.415-p.417). Dr. Presnell then described her internal examination of Victim 1 and the toxicology results, all of which supported her ultimate expert opinion describing Victim 1's cause of death as follows:

Her appearance, her loss of the fat, the sunken eyes, protruding ribs, the no abnormalities, the less than one percentile weight, the normal histology, and no birth defects, no congenital abnormalities, no drugs, high elevated ketones, and markedly elevated sodium and chloride levels. . . . So I put dehydration and malnourishment with ketosis.

(R.p.418-p.427; p.439-p.440).

At the start of the third day of trial, the trial court granted Appellant's motion to exclude photos taken by the coroner's office of Victim 1. (R.p.441-p.446). The State then proceeded with its case in chief. Angie Woody, the human resources (HR) director for Popeye's, authenticated screen prints from the Popeye's HR information system and explained they showed Appellant had no work activity from February 21, 2021, through February 28, 2021. (R.p.449-p.452). Shontessa Wylie, the foster parent for the two oldest children, Victim 6 and Victim 7, described how their condition and development had improved since being removed from the home. (R.p.454-p.460). Ashika Weeks, the foster parent for the two middle children, Victim 4 and Victim 5, did the same. (R.p.461-p.466).

Chief Deputy Coroner Jennifer Collins explained the role her office plays in suspicious death investigations and then described her education and training. She was on duty the night of February 22, 2021, and responded to a call to MUSCL to participate in an external examination. Upon arrival, she observed a female child's body lying in a hospital bed. Collins testified Victim 1 appeared fragile and sickly, showing obvious signs of dehydration and maybe malnourishment. She said Victim 1's ribs were visible and she had feces on her anal and vaginal areas, lower limbs, and feet, and described her as looking "like a holocaust victim." Collins noted Victim 1's fingernails were blue and that she appeared not to have had any signs of life for a long period of time. (R.p.467-p.470).

At the conclusion of the external examination, Collins participated with local law enforcement, DSS, and SLED, in interviewing Appellant and Page—actually leading the interview with Appellant, which was recorded. Collins then explained how Victim 1's body was moved from the hospital to the morgue, where she collected ocular fluid, urine, and femoral blood, and how those fluids were labeled, secured, and shipped to NMS labs in Pennsylvania for testing. (R.p.470-p.481). Based on the circumstances, Collins requested an autopsy from a forensic pathologist and Victim 1 was transported to Charleston to have an autopsy performed by Dr. Presnell the following day. Collins said she was familiar with the fact that Dr. Presnell collected additional fluid samples which were sent to NMS to be tested along with the one Collins herself took, and that a forensic toxicologist, Dr. Demi Garvin, reviewed those results. Appellant's recorded interview was then played for the jury and Collins noted that Appellant and Page both declined to see Victim 1 one last time at the morgue before she was sent for the autopsy. (R.p.481-p.491).

Quanita Clyburn, the practice manager and records custodian for The Children's Clinic in Lancaster authenticated the clinic's appointment records for each of the seven children and those records were admitted without objection. (R.p.498-p.509). Allison Dinwoodie, an analyst with NMS Labs in Pennsylvania, described her education and training, as well as how the specimen processing department at NMS operates. She processed the vitreous fluid from Victim 1 and sent the results to the toxicologist for interpretation. (R.p.511-p.517). Stacy Davis, another analyst with NMS, worked in the esoteric department. She processed the blood from Victim 1 and sent the results to the toxicologist for interpretation. (R.p.517-p.525).

LPD Lieutenant Brian Small was dispatched to the hospital on the night of the incident. After confirming that Victim 1 was deceased, he obtained a search warrant for the apartment on

Pardue Street. Small then accompanied Investigator Burns and SLED Agent May to execute that warrant where he took photographs from the scene. He authenticated aerial views and diagrams of the complex to provide an overall description and layout of the scene. The photographs of the apartment were admitted over Appellant's prior objection and Small used them to supplement his detailed description of each room in the apartment, the items discovered in those rooms, and the deplorable conditions encountered throughout the search. These included feces and urine stained mattresses, bedding, and closet floors; stacks of dirty dishes on the kitchen counter and in the kitchen sink; insect activity, and exposed electrical wires. (R.p.528-p.580). Small's body-worn camera footage from the search was also admitted over Appellant's objection. Finally, cell phones taken from Page and Appellant were admitted into evidence through Small, without objection. (R.p.580-p.584).

Dr. Demi Garvin, a board-certified toxicologist with Forensic Science Network, which partnered with NMS for toxicology testing in Victim 1's case, was admitted without objection as an expert in forensic toxicology. She explained she does not actually perform the toxicology tests and instead interprets the results, which she was asked to do by Deputy Coroner Collins. Using the five separate written reports she prepared as a reference, Dr. Garvin provided detailed testimony about the relevant chemical compounds found during testing of Victim 1's vitreous fluid and cardiac blood samples, all of which she opined were findings consistent with malnutrition and dehydration. (R.p.593-p.613; p.619).

Lieutenant Alex Clark, who ran the digital forensics department at the York County Sheriff's Department, described the examination process for cell phones, including how user data is extracted. He was contacted by the LPD and asked to examine the cell phones obtained from Appellant and Page, which he did. The written reports generated from those cell phone

extractions were admitted without objection. (R.p.620-p.630). Lancaster County DSS caseworker Jessica Knight described her general duties in investigating child abuse and neglect and her specific role in participating in the hospital interviews of Page and Appellant, requesting birth and pediatric records for the children, and placing the children in foster care. (R.p.632-p.638). Lancaster County DSS administrative specialist Deloris Crocket authenticated food stamp records for Page which detailed the amount she received in benefits during the relevant time-period. The records were admitted without objection. (R.p.639-p.647). Before breaking for the day, the State published the previously admitted recording of Appellant's hospital interview. (R.p.653).

On day four of the trial, Lancaster County Sheriff's Office Investigator Matthew Snoddy described his training in cellular telephone records and then described his review of the cell phone extraction reports from the confiscated phones, as well as his review of the photos and call logs from those phones. (R.p.667-p.674). After hearing arguments from the parties regarding Appellant's request to admit a video recording of Appellant's "reenactment" of his attempted life-saving efforts, the trial court admitted one part of that six-part video—the part where Appellant demonstrated how he tried to perform CPR prior to the arrival of first responders. (R.p.679-p.686). The trial court also addressed Appellant's request to admit certain ER photos of Victim 1 despite his earlier objection. It allowed Appellant's change-in-position but ruled it would open the door to the State's use of all ER photos. (R.p.686-p.689). During the State's subsequent direct examination of Agent May, the ER photos were admitted as State's Exhibits 231 through 233 and 236 through 246, subject to the arguments Appellant had already placed on the record. Agent May proceeded to describe the photos, including those that showed Victim 1's blue fingernails, the dried feces on her feet and groin, and her sunken eyes. (R.p.694-p.698;

State's Exhibits 231-233; 236-246). Agent May also described other aspects of her investigation including: (1) the hospital interviews with Appellant and Page, (2) the search of the apartment, (3) asking Appellant to reenact the events before first responders arrived at the scene, and (4) her body-worn camera recording which showed the condition of the apartment and the surviving children. (R.p.699-p.713). The segment from the reenactment video previously ruled admissible was then played for the jury. Agent May then used the security camera video previously admitted to narrate what was occurring outside the apartment during the incident. (R.p.713-p.720). Next, Agent May described the second interviews of Appellant and Page which occurred several months after the incident. She testified the account Appellant provided was a completely different story from the one he gave at the hospital. Agent May noted that both Page and Appellant were ultimately charged with the crimes and that Page had already been convicted. She finally identified Appellant in the courtroom. (R.p.720-p.733; p.750).

At the conclusion of Agent May's testimony, the State rested. Appellant moved for a directed verdict as to all charges and that motion was denied. The trial court then questioned Appellant regarding his right to testify. (R.p.750-p.755). Appellant proceeded to call four defense witnesses: (1) his mother, Cynthia Lowery; (2) his father, David L. White; (3) his general manager from Popeye's, Tori Kennedy; and (4) his former on-again-off-again girlfriend, Sakeena Howze (R.p.758-p.829), before testifying on his own behalf. Appellant insisted he loved his children and was devastated by what happened to Victim 1; however, he attempted to place the blame squarely on Page, testifying he was hardly ever in the apartment because of problems with Page, his relationships with Howze and other girlfriends where he often spent the night, and his work at Popeye's. (R.p.829-p.909). At the conclusion of his testimony, Appellant rested. (R.p.909). The State briefly called Agent May in reply. (R.p.910-p.914). Appellant

renewed his directed verdict motion, the motion was denied, and the parties proceeded to closing arguments. (R.p.916-p.917).

During the State's close, the solicitor first described the relevant law that would be charged by the trial judge, focusing on the concepts of reasonable doubt, the State's burden of proof, the elements of the offenses, and the credibility of witnesses. She then made a detailed recitation of the evidence elicited during trial concerning Victim 1, including recounting the expert testimony from pathologist Presnell and toxicologist Garvin and Dr. Presnell's opinion that dehydration was the final cause of death. The solicitor then focused on the expert testimony from pediatrician Lamb, first concerning her assessments and opinions regarding the abuse and neglect of Victims 2, 3, 4, 5, 6, and 7, and then concerning Victim 1 and her independent conclusion that she died from dehydration and malnutrition. Finally, the solicitor highlighted the inconsistencies in and implausibility of Appellant's statements and testimony before asking the jury to find him guilty of HBCA for his role in Victim 1's death, and unlawful conduct for his actions regarding the surviving children. (R.p.917-p.964).

In his closing argument, Appellant asked the jury to separate emotion from facts when evaluating the State's case. He acknowledged some living conditions in the apartment were not ideal, but focused on the positive things Appellant did for the children while repeatedly reminding them Page was the caretaker who was with the children most of the time. Appellant then pointed out alleged deficiencies in the police investigation and in the depth of the expert's evaluations before asking the jury to find him not guilty of the charges. (R.p.964-p.996).

The State made a brief argument in reply before the trial court charged the jury on the law. (R.p.996-p.998). At the outset of the jury charge, the trial court instructed:

Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law that

applies to it uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged.

(R.p.999, line 22-p.1000, line 2). The trial court also charged on the burden of proof, the presumption of innocence, reasonable doubt, the respective duties of the judge and jury, direct and circumstantial evidence, credibility of witnesses, criminal intent, expert witnesses, and the elements of the offenses. (R.p.999-p.1012). After deliberation, the jury found Appellant guilty as indicted and he was sentenced to concurrent terms of twenty-five (25) years' imprisonment for HBCA and ten (10) years' imprisonment for each count of unlawful neglect of a child. (R.p.1022-p.1038).

STANDARD OF REVIEW - GENERAL

In criminal cases, the appellate court sits to review errors of law only. *State v. Dent*, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023); *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by *any evidence*. *State v. Quinn*, 430 S.C. 115, 123, 843 S.E.2d 355, 359 (2020) (emphasis added); *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829.

ARGUMENT

I.

The trial court properly denied Appellant's motion to sever his homicide by child abuse charge from his unlawful neglect charges because the charges had a logical relationship to each other and because joinder did not unfairly prejudice Appellant's substantive rights.

Appellant argues the trial court abused its discretion by refusing to grant his motion to sever his single HBCA charge from the six unlawful neglect charges because the multiplication of distinct charges prejudiced his right to a fair trial. He contends the extensive evidence elicited from Dr. Lamb concerning her evaluation of the six other children and her findings of medical neglect, unfit sleeping spaces, nutritional concerns, concerns of physical abuse, and unmet physical needs, would not have been admitted in a separate trial for HBCA, particularly the concerns for physical abuse for two of those children, all of which made that evidence highly prejudicial. Appellant further contends the sheer number of unlawful neglect charges and the evidence presented to support those charges had a significant potential to influence the jury's verdict. He argues the trial court failed to properly consider the significant prejudice he would suffer to his rights from the joinder of his charges and argues that, given the nature and particular allegations in the charges, his case presented a circumstance where the uniting of several counts was unjust. (Brief of Appellant, p.3-p.10). The State disagrees and submits this argument is without merit.

Under the deferential standard of review, the trial court did not abuse its discretion in denying Appellant's motion to sever because the charges had a logical relationship to each other and because joinder did not unfairly prejudice any of Appellant's substantive rights. The trial court's decision is supported by ample evidence in the record and was not controlled by an error

of law; therefore, its decision to join the unlawful neglect and HBCA charges in a single trial, and Appellant's resulting convictions, should be affirmed.

Standard of Review – Severance & Joinder

Decisions on severance and joinder are reviewed under a deferential standard. *State v. Tallent*, 430 S.C. 438, 445, 845 S.E.2d 508, 512 (Ct. App. 2020); *McCrary v. State*, 249 S.C. 14, 152 S.E.2d 235 (1967); *State v. Carter*, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996); *State v. Anderson*, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). Indeed, these rulings “should not be disturbed unless an abuse of discretion is shown.” *State v. Beekman*, 415 S.C. 632, 636, 785 S.E.2d 202, 204 (2016); *Tallent* at 445, 845 S.E.2d at 512 (quoting *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996)); *State v. Deal*, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Tallent* at 445, 845 S.E.2d at 512 (quoting *State v. Rice*, 368 S.C. 610, 613, 629 S.E.2d 393, 395 (2006)); *State v. Walker*, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005).

Relevant Procedural History and Facts

Prior to trial, Appellant filed a written motion asking the trial court for an order severing the trial of the HBCA charge from the trial of the six charges for unlawful neglect of a child. Relying on *Beekman*, 415 S.C. 632, 785 S.E.2d 202 (2016) and *Tucker*, 324 S.C. 155, 748 S.E.2d 260 (1996), he argued a trial on all charges would be unfairly prejudicial pursuant to Rule 403, SCRE, because the jury would be likely to render a verdict on an improper basis. (August 16, 2024, Notice of Motion and Motion for Severance of Charges).

On August 21, 2024, the trial court convened a virtual hearing on the motion. The trial judge advised he had read the two cases cited in Appellant's written motion and had also

reviewed *Tallent*, 430 S.C. 438, 845 S.E.2d 508 (Ct. App. 2020), before asking to hear from Appellant. Appellant admitted he did not have any argument on the first three prongs of the severance analysis set forth in the cited cases and was simply arguing “prejudicial versus probative” under the fourth prong. He also admitted the State would introduce the same evidence on all charges except for one key witness who did forensic examinations of the children after the incident [Dr. Lamb]; however, he argued it would be extremely prejudicial to try several neglect cases along with the HBCA case where the sheer number of the cases could lead the jury to punish Appellant because the jurors: “don’t like the way the case looks.” Appellant maintained it would be more unfairly prejudicial than probative. (R.p.15-p.18).

The solicitor argued severance was not warranted simply because one of the seven neglected children died from the unlawful neglect, noting that all of the children were neglected in the same manner that led to Victim 1’s death which made it important to help show Victim 1’s death was not a mistake. The State relied in part on *State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002), *State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006), and *State v. Cutrow*, 365 S.C. 366, 618 S.E.2d 890 (2005), in support of trying the cases together. The solicitor explained that they were all examples of cases where the decisions to deny severance of less connected charges with less overlapping evidence were nevertheless affirmed on appeal. (R.p.19-p.21). The trial judge advised he would review the submitted cases and make a ruling later. (R.p.23, lines 18-20).

On August 26, 2024, the trial court held a pretrial hearing on several motions, including Appellant’s motion to sever. Appellant handed the trial judge copies of all of his written pretrial motions including “severance that you already ruled upon.” (R.p.91-p.92). At that hearing, the trial court allowed the parties to further put their arguments on the record regarding the motion to

sever. Appellant reiterated his prejudice argument under the fourth prong of the severance analysis. He argued the particular allegations and the sheer number of charges were overwhelming and would allow the jury to reach a conclusion on an improper basis. The State similarly advanced the arguments it previously made, but added a contention that judicial economy supported trying the cases together. (R.p.104-p.106).

The trial court explained it had sent the parties an email after the virtual hearing denying the severance motion. The judge noted he had reviewed a total of nine cases, all of which upheld the trial judge denying a motion for severance even though many provided a weaker basis to deny when compared to Appellant's case. The trial court then specifically referenced *State v. McGaha*, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013) in support of its ruling, explaining that where charges would likely be admitted in a separate trial under a Rule 404/*Lyle* analysis anyway, it supported a finding that they were more probative than unduly prejudicial for purposes of severance. The judge also said it was important to his determination that the same witnesses would testify as to all charges. Ultimately, the trial court found "there was no unfair prejudice outweighing probative value and that was the reason for denying the motion." (R.p.106-p.107).¹

Law / Analysis

Multiple criminal charges can be tried together when they have a logical relationship to each other and when there is no prejudice. *Tallent*, 430 S.C. at 445, 845 S.E.2d at 512. The test is that the charges must: (1) arise out of a single chain of circumstances, (2) be proved by the

¹ Appellant's counsel expressed concern that he did not object to the trial court's denial of his motion to sever at the time Dr. Lamb testified about the six neglect cases at trial (R.p.291-p.343; p.359-p.374). He referenced his pretrial request to sever, his failure to object, and his belief that the trial court would have denied any renewed objection had he raised one, and the trial court advised counsel that Appellant was protected on the record based on the pretrial ruling. (R.p.447, lines 4-22).

same evidence, and (3) be of the same general nature. *Id.*; *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265. Further, no real right of the defendant can be prejudiced. *Id.*; *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265. Thus, where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant's substantive rights would not be prejudiced. *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (2005); *Tallent*, 430 S.C. at 445, 845 S.E.2d at 512; *Rice*, 368 S.C. at 614, 629 S.E.2d at 395.

In the present case, Appellant conceded at trial that: (1) the charges arise out of a single chain of circumstances and are closely related in kind, place and character; (2) the charges are proved by the same evidence; and (3) the charges are of the same general nature. His only complaint stemmed from his claim that despite these connections, trying the cases together would prejudice his substantive right to a trial where the jury would only reach a conclusion about his guilt or innocence on a proper basis. A comparison to cases where our courts found no right to the defendant was prejudiced demonstrates the fallacy of that claim.

In *State v. Tucker*, our Supreme Court found the charges of murder and burglary were interconnected because the reason Tucker burglarized a church was to avoid capture for the murder charge. *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). The Court found there was no abuse of discretion in the trial judge denying the severance motion because the crimes arose out of a single chain of circumstances, evidence of the break-ins were admissible as evidence of flight and identity for the murder, and the crimes were of the same general nature. *Id.* at 164-65, 478 S.E.2d at 265. The supreme court held that because the crimes were of the same general nature, no right of the defendant was prejudiced. *Id.* The same is certainly true here, where the unlawful neglect of the surviving children was occurring contemporaneously, in the

same home with the same conditions and caretakers, with the abuse and neglect that caused the death of Victim 1 under circumstances showing an extreme indifference to human life. As in *Tucker*, these crimes were of the same general nature, so no right of Appellant was prejudiced.

Even more on point, and as recognized by the trial court, Appellant's case is quite similar to *State v. McGaha*, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013). There, the defendant was charged with two counts of first-degree criminal sexual conduct with a minor and two counts of lewd act upon a child. *Id.* at 293, 744 S.E.2d at 604. The charges stemmed from the sexual abuse of two sisters on multiple occasions over the course of approximately one year. *Id.* at 292-93, 744 S.E.2d at 603-04. The State made a motion to try the four charges together, and McGaha asked for separate trials as to each victim. *Id.* at 293, 744 S.E.2d at 604. The trial court granted the State's motion. *Id.*

McGaha argued that his substantive rights were prejudiced in a joint trial because evidence of the multiple charges improperly showed his *propensity* to commit similar crimes. *McGaha*, 404 S.C. at 298, 744 S.E.2d at 606. The trial court and this court disagreed. *Id.* This Court noted that where a defendant argues prejudice from the admission of evidence of the other charges tried in the same case, our courts have analyzed whether evidence of one or more charges would be admissible in a trial involving only the other charge. *Id.* It went on to find that in McGaha's case, the evidence of his molestation of the other child would be admissible under Rule 404(b), SCRE, as proof of a common scheme or plan, particularly where the State would be able to establish a logical connection due to the close degree of similarity. The court followed our Supreme Court's reasoning in *State v. Cutro*, 265 S.C. 366, 376, 618 S.E.2d 890, 895 (2005), which found a defendant tried for two counts of homicide by child abuse and one count of assault and battery was not prejudiced because the evidence met the motive and common scheme

or plan exceptions in Rule 404(b), SCRE. It found McGaha's abuse of each child would likely be admitted into evidence in a separate trial of the other case and therefore, the trial court did not abuse its discretion in granting the State's motion for a joint trial on all four charges. *Id.* at 299, 744 S.E.2d at 607.

While Appellant did not use the term "propensity" in arguing prejudice at trial, he made essentially the same argument as McGaha, claiming he would suffer undue prejudice:

. . . because the sheer number of cases and the jury saying, "Well, all these children are neglected. You know, we're just going to punish him because - - because we don't like the way the case looks." That's my concern. That's really what my motion is about.

(R.p.18, lines 16-23). If there was no winning case for joinder causing unfair prejudice in *McGaha*, there is not a winning case for unfair prejudice here. Appellant's basic argument seems to be that evidence of neglect of the six surviving children would show his propensity to abuse and neglect Victim 1. Although that may be true in some individual cases, the State respectfully disagrees with such a blanket proposition and notes that if it were true, the result in *McGaha* would be different. Furthermore, and as noted by the solicitor at trial, the evidence of unlawful neglect would also have been admissible under Rule 404(b), SCRE, as proof of the absence of mistake or accident. (R.p.19, lines 21-22).

Finally, the unlawful neglect evidence would have been admissible in a separate HBCA trial as *res gestae*. Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. *State v. Adams*, 322 S.C. 114, 119-22, 470 S.E.2d 366, 369-71 (1996), *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). Under the *res gestae* theory, evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. *State v. Owens*, 346 S.C. 637,

552 S.E.2d 745 (2001) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Wood*, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

[W]hen such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...’ [and is thus] part of the res gestae of the crime charged.” And where evidence is admissible to provide this “full presentation” of the offense, “[t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “res gestae.”

Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980) (citations omitted)).

Here, the conditions in the apartment and the unlawful neglect of all seven children living there were an integral part of the HBCA. They furnished highly relevant context and allowed the State to provide a full presentation of the offense. The evidence would be admissible to show the complete story regarding Victim 1’s death from dehydration and starvation. Without evidence of the unlawful neglect, the jury would not have received an accurate portrayal of the events and circumstances that occurred surrounding the HBCA. The evidence was necessary for a full presentation of the case without fragmentation, just as drug evidence was necessary for a full presentation in *State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006). Therefore, no real right of Appellant was prejudiced by the trial court’s denial of his motion to sever. That decision, and Appellant’s convictions should be affirmed.

II.

The trial court properly admitted six redacted autopsy photographs into evidence because their probative value was not substantially outweighed by the danger of unfair prejudice. In any event, any possible error in admitting the photos was harmless under the circumstances of the case because the photos did not reasonably affect the result of the trial given the overwhelming evidence of guilt.

Appellant argues the trial court abused its discretion by admitting autopsy photographs of Victim 1 during trial because the probative value of the photos was substantially outweighed by the danger of unfair prejudice. He contends “the graphic autopsy photographs were unnecessary and designed to inflame the passion of the jury,” and argues the trial court should have excluded them pursuant to Rule 403, SCRE. Appellant contends the trial court erred in determining the photos had any probative value where the State was able to present extensive testimony and evidence to establish neglect and Victim 1’s visible condition without them, rendering the “gruesome photos” unnecessary. He further contends the prejudice he suffered was unfair due to the inherent tendency of the photos to cause an emotional reaction and arouse the sympathies of the jury, which led to his conviction on an improper basis. Finally, Appellant contends the prejudice from the photos was amplified where the State emphasized them in its closing argument. He concludes by acknowledging the trial court specifically referenced Rule 403 in finding the probative value of the autopsy photos was *not* outweighed by the danger of unfair prejudice, but argues the ruling nevertheless constitutes an abuse of discretion because the trial court did not appear to contemplate how significant the danger of unfair prejudice was where it failed to sufficiently articulate its finding or provide its reasoning. (Brief of Appellant, p.11-p.26). The State disagrees and submits Appellant’s argument is without merit.

Under the deferential standard of review, the trial court did not abuse its discretion in admitting the six redacted autopsy photos into evidence because their probative value was not

outweighed by the danger of unfair prejudice. The trial court’s decision is supported by ample evidence in the record and was not controlled by an error of law; therefore, its decision to admit the autopsy photos should be affirmed. In any event, even if this court disagrees and finds the autopsy photos were admitted in error, any error was harmless in view of the overwhelming evidence presented of guilt, such that it could not reasonably have affected the result of the trial. Appellant’s convictions should be affirmed.

Standard of Review – Admission of Autopsy Photographs

Our appellate courts give great deference when reviewing the evidentiary rulings of the trial court. *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019); *State v. Davis*, 437 S.C. 93, 96, 876 S.E.2d 321, 322 (Ct. App. 2022). Indeed, the admission or exclusion of evidence is left to the sound discretion of the trial judge. *State v. Wallace*, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023); *State v. Phillips*, 430 S.C. 319, 340, 844 S.E.2d 651, 662 (2020); *State v. Swaringen*, 446 S.C. 16, 26, 916 S.E.2d 343, 349 (Ct. App. 2025); *State v. Edwards*, 373 S.C. 230, 234, 644 S.E.2d 66, 68 (Ct. App. 2007). The trial court’s ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. *State v. Nelson*, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023); *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); *State v. Adams*, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003). An abuse of discretion occurs when the ruling lacks evidentiary support or is controlled by an error of law. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *McDonald*, 343 S.C. at 325, 540 S.E.2d at 467.

“[T]he trial court—when ruling on the admission or exclusion of evidence—must think through the objection that has been made, the arguments of the attorneys, and the law—

particularly the applicable evidentiary rules—and must thoughtfully apply the correct law to the information and evidence before it. *State v. Wallace*, 440 S.C. 537, 540, 892 S.E.2d 310, 313 (2023); *Morris v. BB&T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023). If the record reflects the trial court “exercise[ed] its discretion according to law,” the appellate court will almost always affirm the ruling. *Wallace*, 440 S.C. at 543, 892 S.E.2d at 313; *Morris*, 438 S.C. at 585-86, 885 S.E.2d at 396; *see also State v. Gibbs*, 438 S.C. 542, 551-53, 885 S.E.2d 378, 383-84 (2023) (discussing in detail a trial court's exercise of discretion in ruling on the admissibility of evidence).

Relevant Procedural History and Facts

Prior to trial, Appellant submitted a written motion to exclude “photographs of the decedent and/or autopsy photographs” as being unfairly prejudicial under Rule 403, SCRE. Near the end of the pretrial motions hearing, the trial court asked the parties to address the admissibility of Victim 1’s autopsy photos. Relying on *State v. Heyward*, 441 S.C. 484, 895 S.E.2d 658 (2023), *State v. Benton*, 443 S.C. 1, 901 S.E.2d 701 (2024), and *State v. Jones*, 440 S.C. 214, 891 S.E.2d 347 (2023), the State argued that in a case about starvation and dehydration, the appearance of Victim 1 after her death was crucial. The solicitor explained that where the State’s theory of the case was that Victim 1 was starved over a period of time, while in the care of Appellant and Page, it would have been apparent to anyone that she required medical assistance, and the photos showed this. The State noted it had 55 other autopsy photos it did *not* plan to offer and instead wanted to introduce only a few photos to show Victim 1’s face and the front and back of her body. The solicitor acknowledged the State could not put in cumulative photos and simply wanted to show the condition of Victim 1 in order to comply with the controlling case law. Ultimately, the State selected six photographs, three of Victim 1’s head

from various angles, and three of her body from the front, back, and side to show how emaciated she was at the time of her death. (R.p.125-p.129).

Appellant said the limitations did not change his position and argued the State could make a full presentation of the case through the pathologist *without* introducing any photos. He argued he had enough difficulty mounting a defense based on the charges alone and that he was afraid the jury would simply convict based only on looking at the pictures. Appellant asked that none of the photos be admitted, but further asked that if they were, the photos be cropped so as not to show Victim 1's pubic area. Finally, he argued that any photos admitted should not be published on the big courtroom screens and instead should be handed up to the jury. (R.p.129-p.131). The trial court deferred ruling, noting it would require a consideration of *in camera* testimony from the pathologist to determine if the photos would benefit the doctor in describing her work-up in this case. (R.p.131-p.133).

At the start of trial, during the State's open, the solicitor mentioned the jurors would unfortunately have to see a few photos depicting Victim 1's condition after she died. (R.p.163, lines 18-25). Later during trial, LPD Deputy Blas described Victim 1's condition when he found her lying on the kitchen floor. He said her ribs were "sunken in," or "sucking down into her chest," and her eyes were "sunken out into her head." (R.p.196, line 6-p.197, line 5). EMS shift supervisor Demby testified that when saw Victim 1 in the ambulance, she looked "really emaciated." (R.p.232-p.233).

When Dr. Lamb testified before the jury, she acknowledged reviewing the autopsy report, the toxicology report, and the autopsy photos; however, her testimony was limited to describing the ER photos which showed Victim 1's "eyes were sunken, she was emaciated." (R.p.365, lines 5-13). She later noted "the sunken eyes" were a classic sign of dehydration. (R.p.370, lines 11-

19). Dr. Lamb repeated her testimony that you could see from the ER photos that Victim 1's "eyes were sunken" and testified "you could see all her ribs." (R.p.373, lines 2-6).

At the conclusion of Dr. Lamb's testimony, the jury was excused and the State proffered testimony from Dr. Presnell in support of admitting the six autopsy photos. She testified she had classified the cause of death as dehydration and malnourishment with ketosis due to neglect and explained Victim 1's external appearance supported that conclusion. Dr. Presnell said the photographs at issue showed "sunken eyes," "sunken cheeks," "prominent ribs," "the backbone protruding," and "a flattened [belly] . . . a little bit concave to the ribcage." She testified the photographs would help her in explaining the external signs of dehydration and malnourishment to the jury. Under further examination by the court, Dr. Presnell explained she could better describe the injuries to the jury and the cause of death with the photos than without, but agreed the lower half of Victim 1's naked body was not needed for this purpose. (R.p.388-p.394).

The trial court ruled as follows:

In doing a 403 analysis as to the autopsy pictures, I find that the probative value of the pictures outweighs any unfair prejudice to the defendant so long as the photos are cropped to take away the bottom half of the naked body. And I think that is consistent, my ruling is consistent with *State v. Hayward* [sic], which is one of the cases that the State provided to the Court. I think that's the best case to analyze with respect to this issue. And I think it's already been mentioned that there was a case that came out today related to photographs. But I think the *Hayward* [sic] case is really the best case on this issue.

(R.p.394, lines 8-18). The parties subsequently worked together to crop/redact the photos in compliance with the court's ruling. Appellant again asked that the photos be kept off the big screen in the courtroom and instead be handed to the jury as prints. The trial court agreed to keep the photos from appearing on the main screen in the courtroom, but would allow the jury to

see a digital image of each admitted photo on a small computer screen during Dr. Presnell's testimony. (R.p.394-p.397).

Dr. Presnell then testified before the jury, where she was admitted without objection as an expert in pathology and forensic pathology. She explained what typically happens during an autopsy and proceeded to describe the autopsy she performed on Victim 1, including the external exam, the internal exam, taking tissue samples, and drawing blood samples for toxicology. Regarding the external exam, Dr. Presnell noted Victim 1 was "very, very underweight," had "sunken eyes," "her cheeks are kind of sunken in," "her abdomen is kind of curved in," "her ribs stick out in the front," and "on the back you can see her ribs as well as her backbone." (R.p.407-p.409). She then authenticated the six redacted autopsy photos and they were admitted subject to Appellant's prior objection, and published to the jury. (R.p.409-p.415).

Dr. Presnell went through each of the six photographs, describing what they showed in the context of her external examination of Victim 1. This included a description of: (1) eyes that were "sunken in;" (2) the absence of fat pads in the cheeks; (3) protruding ribs; (4) an abdomen and chest cavity that "sinks in;" and (5) visible vertebral bodies along the spine. (R.p.415-p.417).

Chief Deputy Coroner Collins also described Victim 1's condition. She testified that when she first saw Victim 1 lying in the hospital bed in the ER it was obvious that she had signs of dehydration and maybe malnourishment because "her ribs were very visible" and "she looked sickly." Collins described Victim 1 as looking like "a holocaust victim." (R.p.469, line 17-p.470, line 4).

As the State neared the end of its case in chief, Appellant's counsel raised an issue with the trial court regarding other photos of Victim 1. He acknowledged he had originally objected

to *all* of the autopsy photos and *all* of the ER photos; however, he now thought there might be a couple of ER photos he was interested in introducing in support of his defense. The solicitor said once counsel let her know which photos the defense wanted to introduce, the State may not object. (R.p.663-p.664). During a subsequent discussion, the solicitor clarified that the trial court had previously ruled to admit only six autopsy photos, but had ruled to exclude *all* of the ER photos, and that Appellant had now changed his mind and was seeking to introduce four of the previously excluded ER photos. Counsel explained Appellant still did not want any of the photos to come in and that he was not waiving his objection to the autopsy photos the court previously admitted; however, because the court had allowed those six photos in, he believed he needed the use the ER photos as part of his efforts to “deal with” the autopsy photos. Counsel acknowledged Appellant was opening the door to the State’s use of all ER photos, but counsel, the solicitor, and trial court agreed this would not open the door to admission of any additional autopsy photos. The solicitor advised she intended to introduce the ER photos through the next witness. (R.p.686-p.689).

During the State’s direct examination of Agent May, the ER photos were admitted as State’s Exhibits 231 through 233 and 236 through 246, “subject to what has already been placed [by Appellant] on the record.” Agent May proceeded to describe the photos, including those that showed Victim 1’s blue fingernails, the dried feces on her feet and groin area, and her sunken eyes. (R.p.694-p.698; State’s Exhibits 231-233; 236-246).

During the State’s closing argument, the solicitor referenced the testimony elicited from Dr. Presnell, first focusing on the external examination and the autopsy photos, and then talking about the internal examination. The solicitor acknowledged the photos were hard to look at, but argued they were incredibly important and asked the jurors to pay close attention to them

because they demonstrated what Victim 1 looked like. She argued it supported Dr. Presnell's observation that as soon as she looked at Victim 1, she could tell it was a child who was malnourished and dehydrated. The solicitor referenced the testimony about Victim 1's sunken eyes and cheeks, her concave belly, the lack of fat on her body, and her ribs. (R.p.931, line 20-p.933, line 2). Later, when describing the testimony from Dr. Lamb, the solicitor mentioned both the autopsy photos *and* the ER photos which showed Victim 1 was emaciated with no visible fat. (R.p.946, lines 4-7). During Appellant's closing argument, counsel asked the jurors to focus on the ER photos of Victim 1, arguing they looked different from the autopsy photos and showing she was not as emaciated that night as she appeared two days later at the autopsy. (R.p.994, lines 4-23).

During the sentencing proceeding, Appellant's counsel commented that he knew the autopsy photos were something that would be difficult to overcome. He said he understood the trial court's ruling, which was why he made the objections, but explained how the photos compounded the difficulty he had in defending Appellant. (R.p.1030, line 20-p.1031, line 2).

Law / Analysis

Generally, all relevant evidence is admissible. Rule 402, SCORE; *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001). Relevant evidence is evidence having 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, SCORE; *State v. King*, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCORE; *Nelson*, 440 S.C. at 420, 891 S.E.2d at 511; *Saltz* 346 S.C. at 127, 551 S.E.2d at 247; *State v. Cooley*, 342 S.C. 63, 536 S.E.2d 666 (2000). "To show prejudice, there must be a reasonable

probability that the jury's verdict was influenced by the challenged evidence." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." *Id.* at 529, 732 S.E.2d at 229. "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." *State v. Hamilton*, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Our supreme court has explained that when balancing the danger of unfair prejudice against the probative value of evidence, the determination must be based on the entire record and will turn on the facts of each case. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27-28 (2014).

"[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial." *Nelson*, 440 S.C. at 420, 891 S.E.2d at 511; *State v. Jones*, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023); *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986)). Under this well-established precedent, our supreme court has consistently recognized since at least 1986 that "gruesome" autopsy photographs carry the inherent tendency to cause an emotional reaction on the part of the jury. *State v. Heyward*, 441 S.C. 484, 501, 895 S.E.2d 658, 667 (2023). In *Nelson*, it discussed a long line of cases which criticized the casual admission of gruesome autopsy photographs because of the emotional reaction they tend to cause. *Nelson*, 440 S.C. at 420-26, 891 S.E.2d at 511-13. In every case in which the State seeks to introduce gruesome autopsy photographs, therefore, the trial court must acknowledge the significant danger that the photos will cause unfair prejudice. *Heyward*, 441 S.C. at 502, 895 S.E.2d at 667.

In Appellant's case, it is abundantly clear the trial court did not abuse its discretion in admitting the six redacted autopsy photos of Victim 1. First, while the photos are clearly disturbing, they simply cannot be considered "gruesome" by common definition or under the well-established caselaw of South Carolina. The American Heritage Dictionary of the English Language defines "gruesome" as: "causing horror and repugnance; frightful and shocking."² Merriam-Webster similarly defines "gruesome" as: "inspiring horror or repulsion."³ In *Heyward*, the State offered two autopsy photos that showed what the victim's head looked like after the pathologist "reflected" her scalp, which involved pulling the scalp forward over the face to expose the inside of the scalp and the tissue normally covered by the scalp. *Heyward*, 441 S.C. at 500, 895 S.E.2d at 666-67. In *Nelson*, the State offered three autopsy photos, two of which were close-up photos of the victim's head and neck wounds which showed partial decomposition of her body, and a third which depicted the victim lying on her stomach, showing stab wounds on her back and her swollen head. *Nelson*, 440 S.C. at 418, 891 S.E.2d at 510. Unlike those unquestionably gruesome photos, the photos of Victim 1 admitted here simply show the condition of her body before the pathologist began her internal examination. They do not show decomposition or any wounds, save a small bruise on her forehead. It is inescapable that the autopsy photos of Victim 1 were unpleasant, but they were simply not "gruesome.;" therefore, the significant danger described in *Heyward* did not exist. Second, the trial court *did* recognize the potential that photos of Victim 1 might hold for causing prejudice. As a result, it repeatedly ruled in favor of ameliorating that potential prejudice by: excluding the ER photos, limiting the

² The American Heritage Dictionary of the English Language, <https://www.ahdictionary.com/word/search.html?q=gruesome> (last visited April 17, 2026).

³ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/gruesome> (last visited April 17, 2026).

State to using pre-internal examination autopsy photos, redacting the six photos admitted, and prohibiting them from being enlarged on the big screen in the courtroom.

Surely our courts have 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. Here, the State did no such thing. As noted above, the photographs at issue in *Nelson* were autopsy pictures of the victim's decomposing and disfigured body. They could corroborate nothing but the prosecutor's overreach. By contrast, the pictures here were relevant as they depicted Victim 1's condition at the time of her death, in a way a mere description of her condition was unable to convey. Their value was recognized by Dr. Presnell when she told the trial court the photos would assist with her expert testimony. They drew probative force from their power to prove the elements of HBCA. The pictures gave important context to the testimony and other evidence about the circumstances showing Appellant's mental state of extreme indifference. Under the specific circumstances of this case, the pictures assisted the jury in their task to understand key evidence. Therefore, they were properly admitted.

Finally, despite Appellant's claims to the contrary, a review of the trial court's ruling to admit the autopsy photos shows it conducted an entirely adequate Rule 403 analysis and sufficiently placed that analysis on the record. The trial court found the probative value outweighed any unfair prejudice once the autopsy photos were redacted so as not to show the lower half of Victim 1's naked body. The trial court further explained it specifically relied upon our supreme court's analysis in *Heyward* in reaching its conclusion. These findings were made in compliance with our supreme court's reminder that: "we stress the importance of placing on the record arguments and rulings that took place off the record, whether during a bench

conference, in emails, or in chambers.” *State v. Benton*, 443 S.C. 1, 8-10, 901 S.E.2d 701, 704-05 (quoting *State v. Washington*, 431 S.C. 394, 405 n.4, 848 S.E.2d 779, 785 n.4 (2020)). For all of these reasons, the trial court did not abuse its discretion in admitting the six redacted, non-gruesome autopsy photographs. If this Court disagrees and finds the photos were admitted in error, any such error was harmless in view of the overwhelming evidence presented of guilt, such that it could not reasonably have affected the result of the trial. The trial court should be affirmed.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012); *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Only errors so substantial that they result in a verdict which would not otherwise have been rendered require reversal. *State v. Jolly*, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991). “A harmless error analysis is contextual and specific to the circumstances of the case.” *State v. Byers*, 392 S.C. 438, 447-48, 710 S.E.2d 55, 60 (2011). “No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.” *Id.* at 447-48, 710 S.E.2d at 60 (quoting *State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990)). A defendant seeking reversal based on error in admission of evidence has the burden of showing that evidence was prejudicial. *State v. McElveen*, 280 S.C. 325, 327, 313 S.E.2d 298, 299 (1984).

Here, any error in the admission of the six redacted autopsy photos was harmless because their introduction did not affect the result of the trial. *See Byers*, 392 S.C. at 447, 710 S.E.2d at 60 (“Where ‘guilt has been conclusively proven by competent evidence such that no other

rational conclusion can be reached,' an insubstantial error that does not affect the result of the trial is considered harmless." (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006)). The record is loaded with compelling evidence incriminating Appellant of each of the crimes for which he was charged. From the evidence establishing the deplorable conditions of the apartment, to the descriptive testimony from multiple witnesses as to Victim 1's emaciated appearance, to the expert testimony offered about the cause of death, it is clear the autopsy photographs themselves did not contribute to the verdict in any significant way. This is particularly true in light of Appellant's request to admit four ER photos which Appellant readily acknowledged opened the door to admission of all ER photos, and which showed Victim 1's condition and physical appearance. (State's Exhibits 231-233; 236-246).

For all of these reasons, the State submits this argument should be denied and dismissed, and Appellant's convictions should be affirmed.

III.

The trial court properly permitted Dr. Lamb to offer her independent expert opinion as to Victim 1's cause of death because she testified as a forensic pediatrician, with a different background and different area of expertise than Dr. Presnell, who offered her own expert opinion as to Victim 1's cause of death as a forensic pathologist. In any event, any possible error in admitting Dr. Lamb's opinion was harmless under the circumstances of the case because her testimony did not reasonably affect the result of the trial given the overwhelming evidence of guilt.

Appellant argues the trial court abused its discretion by refusing to limit Dr. Lamb's testimony because it impermissibly bolstered Dr. Presnell's testimony and expert opinion as to the cause of Victim 1's death, and because it allowed the State to vouch for her credibility during its closing argument. He contends Dr. Lamb's testimony only served to bolster the conclusions later drawn by Dr. Presnell concerning Victim 1's cause of death, particularly where Dr. Lamb

never met with Victim 1 and merely reviewed Dr. Presnell's autopsy report and other records. Appellant further contends Dr. Lamb's testimony as to Victim 1's cause of death was merely cumulative and therefore should have been excluded under the Rule 403, SCRE, language that says relevant evidence should be excluded if it constitutes a "needless presentation of cumulative evidence." Finally, Appellant argues the error in admitting Dr. Lamb's testimony is illustrated by the State's closing argument, claiming that by noting Dr. Lamb agreed with Dr. Presnell, the state vouched for the credibility of Dr. Presnell. (Brief of Appellant, p.27-p.36). The State disagrees and submits Appellant's argument is without merit.

Under the deferential standard of review, the trial court did not abuse its discretion in permitting Dr. Lamb to offer her independent expert opinion as to Victim 1's cause of death because she testified as a forensic pediatrician, with a different background and different area of expertise than Dr. Presnell, who offered her own expert opinion as to Victim 1's cause of death as a forensic pathologist. The decision was supported by ample evidence in the record showing Dr. Lamb and Dr. Presnell were testifying from different backgrounds and different areas of expertise. Furthermore, the decision was not controlled by an error of law; therefore, it should be affirmed. In any event, even if this court disagrees and finds Dr. Lamb's testimony as to Victim 1's cause of death was admitted in error, any error was harmless in view of the overwhelming evidence presented of guilt, such that it could not reasonably have affected the result of the trial. Appellant's convictions should be affirmed.

Standard of Review – Admission of Expert Testimony

The decision to admit or exclude testimony from an expert witness rests within the trial court's sound discretion. *State v. Jones*, 440 S.C. 214, 241, 891 S.E.2d 347, 361 (2023); *State v. Makins*, 433 S.C. 494, 500, 860 S.E.2d 666, 670 (2021); *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion. *Jones*, 440 S.C. at 241, 891 S.E.2d at 361; *Makins*, 433 S.C. at 500, 860 S.E.2d at 670. An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *Makins*, 433 S.C. at 500-01, 860 S.E.2d at 670; *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

Relevant Procedural History and Facts

At the virtual pretrial hearing on Appellant's motion to sever, he argued in part that the charges should be severed because the State's evidence would not entirely overlap. Counsel asserted that one State's witness, Dr. Lamb, would *only* be testifying about the alleged unlawful neglect of the six surviving children. The solicitor responded to that assertion by clarifying that the State certainly intended to call Dr. Lamb on the unlawful neglect cases, but also planned to offer her expert opinion as a forensic pediatrician in the HBCA case as well. (R.p.21, line 6-p.22, line 7).

Later, during trial, the trial court excused the jury and allowed the State to proffer Dr. Lamb's testimony as it would relate to the HBCA charge, to "provide some advance benefit to the defense" regarding the substance of her testimony. She first explained how, as division director for child abuse pediatrics at Palmetto Health USC [now Prisma Health], she served in the South Carolina Child Abuse Medical Response System as a child abuse pediatrician and participated in rapid fatality reviews. Dr. Lamb was on contract with SLED's Child Fatality Unit

and met with Agents for a monthly review of cases. She would often get phone calls from crime scenes or autopsies. In this role, and specifically in regard to the investigation of Victim 1's death, Dr. Lamb explained she was privy to information from the autopsy including photos, toxicology reports, and lab studies, and she had information from the scene relating both to Victim 1 and the six other children's living conditions. Dr. Lamb also had access to Victim 1's birth records, her ER records, photos from the scene, and the initial incident reports from law enforcement. She testified that based on reviewing all of this information, she came up with an opinion as to Victim 1's cause of death—that Victim 1 died of dehydration on top of severe chronic malnutrition—which agreed with Dr. Presnell's opinion. (R.p.277-p.289). The trial judge concluded the proffer accomplished what it needed to accomplish and the trial resumed.

Dr. Lamb was then called to testify in front of the jury, where she was admitted without objection as an expert in forensic pediatrics and provided detailed testimony and opinions about the condition of each of the six surviving children. (R.p.291-p.343). After a break in Dr. Lamb's testimony while the trial court took virtual testimony from Dr. Vinuya (R.p.343-p.359), Dr. Lamb retook the stand and was asked about Victim 1. Appellant objected to the testimony as "bolstering." He acknowledged the particular testimony Dr. Lamb would allegedly bolster had not yet been elicited from the pathologist, Dr. Presnell, but nonetheless contended it was inappropriate to allow Dr. Lamb to offer an opinion about Victim 1's cause of death. The solicitor responded that Dr. Lamb came to an independent decision as to her diagnosis of child abuse and neglect of Victim 1. The trial court overruled Appellant's objection finding: ". . . as long as she's made an independent assessment related to [Victim 1], I don't think it would necessarily be bolstering. Your objection is so noted, but I'll overrule it." Appellant complained that Dr. Lamb was a pediatric child abuse doctor and not a pathologist. (R.p.359-p.360).

Dr. Lamb proceeded to describe her review of Victim 1's birth records, which showed Victim 1 was born normal, at a normal birth weight, without any obvious medical issues or defects. She testified she had reviewed the autopsy report, the toxicology report, and photographs from the autopsy, and then went over the significant findings from the autopsy report, which concluded Victim 1 died of long-standing malnutrition that she had suffered during her life. She noted Victim 1's delayed weight and bone development, and testified that no matter what, in the months leading up to her death, Victim 1 was not receiving proper nutrition of any sort. (R.p.360-p.370). Dr. Lamb specifically referenced the ER photos which showed Victim 1's "eyes were sunken, she was emaciated," and "you could see all her ribs." (R.p.365, lines 5-13; p.373, lines 2-6). She said "the sunken eyes" were a classic sign of dehydration. (R.p.370, lines 11-19). Dr. Lamb testified she came up with an independent opinion as to what caused Victim 1's death and opined: "she died of severe child neglect, medical neglect, nutritional neglect, and that ultimately is what killed her." (R.p.374, lines 1-7). On cross-examination, Dr. Lamb admitted she was not present for the autopsy and had not consulted with either the pathologist or the toxicologist, and had instead only reviewed the reports. (R.p.376, lines 2-17).

During the State's closing argument, the solicitor described the testimony elicited from Dr. Lamb, first focusing on her findings and opinions on the six surviving children before moving on to her testimony about Victim 1. (R.p.936-p.944). In regard to Victim 1, the solicitor highlighted Dr. Lamb's review of birth records showing Victim 1 was born healthy, and her review of the medical records for all the children to point out the neglect was not due to a lack of transportation or due to poverty. The solicitor mentioned Dr. Lamb had reviewed the autopsy photos and the ER photos which showed Victim 1 was emaciated with no visible fat. She noted that Dr. Lamb's opinion agreed with Dr. Presnell's findings of dehydration and malnutrition

which led up to her death. (R.p.946-p.947). During Appellant’s closing argument, Counsel discounted Dr. Lamb’s testimony about Victim 1, arguing “it was all on paper” with “no real investigation.” He said she did not consult with anybody and just read the reports before concluding “that looks right to me.” (R.p.986, line 25-p.987, line 8).

Law / Analysis

The assessment of witness credibility is within the exclusive province of the jury. *Makins*, 433 S.C. at 501, 860 S.E.2d at 670; *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499 (Ct. App. 2019); *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). While experts can testify to their opinion, they are precluded from offering an opinion about the credibility of other witnesses. *Makins*, 433 S.C. at 501, 860 S.E.2d at 670; *State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013); *Chappel*, 429 S.C. at 75, 837 S.E.2d at 499. Thus, a witness “may not ... give testimony that improperly bolsters the credibility of [another witness].” *Chappel*, 429 S.C. at 75, 837 S.E.2d at 499 (quoting *Briggs v. State*, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017)).

First, Dr. Lamb’s testimony did not constitute improper bolstering. Improper bolstering is “testimony that indicates the witness believes the [other witness], but does not serve some other valid purpose.” *Briggs*, 421 S.C. at 323, 806 S.E.2d at 717; *Chappell*, 429 S.C. at 75, 837 S.E.2d at 499–500. Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes the [other witness], or when there is no other way to interpret the testimony other than to mean the witness believes the [other witness] is telling the truth. *Briggs*, 421 S.C. at 324, 806 S.E.2d at 717; *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); *McKerley*, 397 S.C. at 465, 725 S.E.2d at 142. However, an expert’s

testimony is not improper bolstering “when the expert witness gives no indication about the [other witness’s] veracity” *Chappell*, 429 at 75, 837 S.E.2d at 500.

The standard of review is critical to any analysis of the trial court’s evidentiary rulings. *Makins*, 433 S.C. at 501, 860 S.E.2d at 670 (2021). If the standard of review were de novo, an appellate court could simply rule on evidentiary issues in accordance with its own view of the dynamic faced by the trial court. *Id.* However, under the deferential standard applicable here, an appellate court cannot disturb the trial court’s rulings unless they lacked evidentiary support or were controlled by an error of law. *Id.*

Simply because the opinions of two different experts agree with each other does not mean either expert has improperly bolstered the other. Indeed, this court recently reviewed a civil case where it acknowledged that multiple expert witnesses offered testimony about the nature of an injury. *Pratt v. Amisub of SC, Inc.*, 445 S.C. 199, 216, 912 S.E.2d 268, 278 (Ct. App. 2025). As articulated by the United States District Court in Utah: “While it is true that a party may not elicit the same testimony on the same subject from multiple witnesses, multiple experts may testify on the same subject matter, so long as they testify from different backgrounds and different areas of expertise.” *Stratton v. Thompson/Ctr. Arms, Inc.*, 608 F.Supp. 3d 1079, 1090–91 (D. Utah 2022).

Here, Dr. Lamb provided an opinion about Victim 1’s cause of death based upon her own area of expertise and a review of information that went beyond what Dr. Presnell reviewed in performing the autopsy. Her opinion served the important purpose of helping the jury understand why, from the standpoint of a pediatrician who regularly assesses and treats children, Victim 1’s condition and physical appearance would make it abundantly clear to a caretaker that she needed nutrition, hydration, and medical help. Dr. Lamb acknowledged her opinion agreed with the one given by Dr. Presnell, but she never gave an opinion, either directly or indirectly,

that she believed Dr. Presnell was telling the truth. Dr. Lamb did not state an opinion about Dr. Presnell's credibility and the purpose of her testimony was not to convey her opinion about Dr. Presnell's credibility. Indeed, the most obvious way to interpret her testimony was as her own opinion, not to mean that Dr. Lamb believed Dr. Presnell was telling the truth. As such, Dr. Lamb's testimony did not constitute improper bolstering.

Second, and for the same reasons, where Dr. Lamb's testimony was offered from a different area of expertise than Dr. Prenell's, it could not have been cumulative. Third, even if arguably cumulative, the trial court did not abuse its discretion in declining to exclude Dr. Lamb's testimony on that basis. It is widely recognized that trial courts have broad authority over the management of trials. *See, e.g., United States v. Beckton*, 740 F.3d 303, 306 (4th Cir. 2014); *see also* Rule 611(a), SCRE ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."). Part of this authority is the discretionary power to exclude cumulative testimony. Rule 403, SCRE ("Although relevant, evidence *may* be excluded . . . by consideration of . . . needless presentation of cumulative evidence."). As explained by the Eleventh Circuit Court of Appeals when reviewing a trial court's decision to exclude expert testimony as cumulative: "[U]nder the abuse of discretion standard of review there will be occasions in which we affirm the district court even though we would have gone the other way had it been our call." *Tran v. Toyota Motor Corp.*, 420 F.3d 1310, 1315–16 (11th Cir. 2005) (quoting *Rasbury v. Internal Revenue Serv. (In re Rasbury)*, 24 F.3d 159, 168 (11th Cir.1994)). That court held: "Given our deferential standard of review, however, we cannot say that the district court's decision fell outside its permissible

“range of choice.” *Tran*, 420 F.3d at 1315–16 (11th Cir. 2005) (quoting *United States v. Kelly*, 888 F.2d 732, 745 (11th Cir.1989)). In a similar vein, the trial court’s decision to allow Dr. Lamb’s testimony, even if cumulative, fell within its permissible “range of choice.”

Fourth, Appellant’s claim that the State vouched for Dr. Presnell’s credibility during its closing argument by pointing out the agreement between Dr. Lamb’s opinion and Dr. Presnell’s opinion as to Victim 1’s and cause of death is equally unavailing. Appellant broadly contends “the state cannot be permitted to improperly bolster one witnesses’ credibility and findings through the testimony of another witness.” (Brief of Appellant, p.35). But this proposition would seem to prohibit multiple eyewitnesses from describing a crime if their accounts were in agreement. This is simply permissible corroboration, not improper bolstering. Furthermore, the solicitor’s reference to the corroborative nature of the expert testimony from Dr. Lamb and Dr. Presnell was a proper argument based on the evidence admitted during trial and in no way constituted vouching. Indeed, the legal concept of “vouching” prohibits a prosecutor from giving the jury any indication she knows something about the credibility of a witness that the jury does not know, or that is based on an event or proceeding outside the presence of the jury. *State v. Busse*, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023). Here, the solicitor neither made a personal assurance of Dr. Presnell’s veracity nor indicated information not presented to the jury supported her testimony. Thus, her closing argument did not amount to vouching.

Finally, any suggestion that Dr. Lamb’s testimony improperly bled over into a suggestion that she believed Dr. Presnell was credible, was cured by the clear jury instructions in this case. The trial court charged the jury on the burden of proof, the presumption of innocence, and reasonable doubt. In regard to the duties of the judge and jury, the trial court emphasized several critical points. First, it charged that it was the jurors’ duty to accept and apply the law as stated

by the judge. (R.p.1002, lines 17-21). Second, it charged that the jury is the sole and exclusive judge of the facts. (R.p.1003, lines 2-17). Third, it charged that the jurors must determine the credibility of witnesses. (R.p.1004, line 17-p.1005, line 11). Finally, it charged: (1) that they should consider any expert opinion like any other evidence and give it the weight they thought it deserved; (2) that an expert witnesses' testimony should be given no greater weight than any other witness; and (3) that they were not required to accept an expert's opinion even though it may not be contradicted. (R.p.1006, line 16-p.1007, line 15). Where the jury was unequivocally instructed that they alone were to determine Dr. Presnell's credibility, Appellant could not have suffered any real prejudice. If this court disagrees and finds Dr. Lamb's testimony constituted improper bolstering, any error in admitting her testimony was nevertheless harmless.

Harmless Error

The harmless error standard set forth in Argument II above is hereby incorporated by reference. The determination whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim or witness that was bolstered. *Compare Jennings*, 394 S.C. at 480, 716 S.E.2d at 94 (finding improper bolstering by a forensic interviewer not harmless, where there was no physical evidence and the case turned on the victims' credibility), *with Kromah*, 401 S.C. at 501, 737 S.E.2d at 360-61 (finding error harmless in light of abundant evidence and distinguishing *Jennings* because the case did not turn on the credibility of the victim). This case, even though not about bolstering a victim, is more akin to *Kromah*, as there is physical evidence, photographs, and multiple witnesses who corroborated Dr. Presnell's description of Victim 1's condition and appearance at the time of her death. Also, as explained above, the jury charge effectively eliminated any prejudice. Consequently, any bolstering error was insubstantial and did not affect the result at trial.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that Appellant's convictions and sentences be affirmed.

Respectfully submitted,

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