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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable Jocelyn J. Newman, Circuit Court Judge
Appellant Case No. 2025-001467

THE STATE — RESPONDENT

v.

ERIC DONNELL GREENE — APPELLANT

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENTS OF ISSUES ON APPEAL

1. Whether the court erred in admitting GPS monitoring evidence, where the probative value of the evidence was low as Appellant did not have the monitor when decedent disappeared but the danger of unfair prejudice was high as it invited jury speculation about why Appellant was required to wear the monitor, since the evidence should have been excluded pursuant to Rule 403 SCRE?

2. Whether the court erred in admitting horrific crime scene and autopsy photographs of the decedent's heavily decomposed body, where the photographs had to probative value and the danger of unfair prejudice and considerations of needless presentation of cumulative evidence required exclusion pursuant to Rule 403 SCRE?

3. Whether the court erred in excluding impeachment evidence that the State's star witness Altariq Cuffie, who was gave changing stories to authorities in this case, had been convicted of giving false identification to law enforcement in 2002, since the probative value of the conviction as supported by specific facts and circumstances substantially outweighed its prejudicial effect, and the evidence should have been admitted pursuant to Rule 609(b) SCRE?

RESPONDENT'S COUNTERSTATEMENTS OF ISSUES ON APPEAL

1. Did he trial court err in allowing into evidence information regarding the GPS monitoring of the Appellant, when this information was relevant to reveal the number of times the Appellant was located at the Richland County library, the location where the victim's body was located, did this information reveal Appellant's familiarity with the scene where the victim's body was eventually dumped?

2. Did the trial court err in allowing autopsy photographs of the victim due to the probative evidence overriding any prejudice that might occur when the Solicitor had to corroborate the testimony of the medical examiner regarding the amount of decomposition of the victim's body, thereby, denying the ability to discover a cause of death?

3. Did the trial court err in not allowing evidence or a prior conviction of State's witness Altariq Cuffie who was convicted of the offense of giving false identification to law enforcement due to the fact it was never revealed as a crime of dishonesty and it was beyond the ten-year period allowed in Rule 609, and can any error by the trial judge be considered harmless?

STATEMENT OF THE CASE

On November 28, 2023, Eric Donnell Greene (Appellant) was arrested for the murder of Mr. Morgan Duncan (victim). Ms. Juliviya Waller (co-defendant) was also arrested for the offense of accessory after the fact of murder. On April 16, 2024, the Appellant was indicted for murder by the Richland County Grand Jury. (Indictment #24-GS-40-3321). (R.*). His co-defendant was also indicted for her offenses.

On July 14, 2025, the Appellant appeared before the Honorable Jocelyn Newman for a trial before a jury of his peers. Appearing with the Appellant was his counsel, Fifth Circuit Assistant Public Defenders J. Eric Fox and James Johnson. Appearing on behalf of the State of South Carolina were Senior Assistant Solicitor Kathryn Cavanaugh and Assistant Solicitors Nicolas Fowler, and Joe Kreush of the Fifth Circuit Solicitor's Office. The Appellant was tried simultaneously along with his co-defendant, who was represented by attorneys Carol B. Grant and Joshua Koger.

After the State completed their case, both defendants moved for a directed verdict. The trial judge granted the directed verdict for the Appellant's co-defendant. (T. p. 469 l. 15-16). However, the motion for directed verdict for the Appellant was denied. (T. p. 480 l. 25 – p. 481 l. 1).

After the conclusion of the trial, a jury of his peers found the Appellant guilty of murder. (T. p. 553 l. 2-5). After the reciting of the verdict the Appellant appeared before the trial judge for sentencing. The Appellant was sentenced to serve a fifty-seven-year period on incarceration in the South Carolina Department of Corrections. He was given credit for pre-trial detention. (T. p. 573 l. 17-20). While serving his sentence the Appellant filed a timely notice of appeal. The Respondent now submits this initial brief supporting their arguments.

STATEMENT OF THE FACTS

The victim was part of Mental Illness Recovery Center Incorporated (MIRCI). This was a program providing services for people suffering from mental illness and who had a history of homelessness. The program provided housing, mental health treatment, medication, and case management. (Tr. p. 153 l. 6-10). On November 29, 2023, one of the case managers of MIRCI called the Richland County Sheriff's Department for a welfare check on the victim. Deputy Wesley Thomas responded. Once Deputy Thomas arrived, he met with the case manager. They knocked on the victim's apartment door. When there was no answer, they entered the apartment, but no one was inside. (Tr. 135 l. 19 – p. 136 l. 2). Since no one was in the apartment Deputy Thomas cleared the call and left the premises. (Tr. p. 137 l. 22-24).

The victim was missing for months and was later reported as a missing person. Altariq Cuffie was later arrested for numerous charges and informed law enforcement about the victim's murder. Mr. Cuffie would later testify during trial in which he stated that he was living with the victim in the Springtree Apartments. (Tr. p. 175 l. 6-7). Mr. Cuffie admitted that he had a drug addiction. One day he and the victim went to the Appellant's apartment. At the time the Appellant was living with a Mr. James Kelly. (Tr. p. 177 l. 24-25). Once they got to the apartment the Appellant was there and he was mad with the victim because the victim supposedly owed the Appellant money. (Tr. p. 178 3-4). While the Appellant was demanding his money the victim kept telling him that he was going to give him the money. (Tr. p. 179 l. 5-8). The Appellant then pushed Mr. Cuffie aside, grabbed the victim by the neck, choking him while lifting him up in the air. The victim's body was shaking, and the Appellant then dropped the victim on the floor. (Tr. p. 178 l. 7-10). The victim lay on the floor motionless. (Tr. p. 179 l. 15-16). After this happened the Appellant told Mr. Cuffie to "mind your f'ing business." Appellant gave Mr. Cuffie a one-hundred-dollar bill

and drugs. (Tr. p. 179 l. 20-21). Mr. Cuffie later discovered that the bill was fake, so he returned to the Appellant's apartment. (Tr. p. 183 l. 24 – p. 184 l. 6). Once Mr. Cuffie got to the apartment he saw the victim still lying on the floor. He asked, "What's up with Morgan?" Appellant told him to "mind your own business this ain't got nothing to do with you," then just slammed the door in Mr. Cuffie's face. (Tr. p. 184 l. 21-24; p. 185 l. 3-5). Mr. Cuffie was later asked by the Appellant to clean the co-defendant's truck, which he did. (Tr. p. 186 l. 17-22).

Mr. James Kelly also testified. Mr. Kelly was also a client of the MIRCI program. (Tr. p. 236 l. 14-16). Mr. Kelly was suffering from bipolar disorder and depression. (Tr. p. 236 l. 20-22). Mr. Kelly testified that his wife left him because she had stage 4 pancreatic cancer and he would "not get right." The Appellant got kicked out of his apartment, so he moved in with Mr. Kelly. (Tr. p. 239 l. 9-16). Mr. Kelly called the Appellant "the dopeman" (Tr. p. 238 l. 8-10). The Appellant was only supposed to stay in his apartment for a couple of days. However, the Appellant took over Mr. Kelly's apartment and the Appellant stayed because Mr. Kelly owed him for drugs, and living with him made the drugs more readily available. (Tr. p. 240 l. 20 – p. 241 l. 2).

On the day of the incident Mr. Kelly said that the victim came over. They did a couple lines of coke and drank coffee. (Tr. p. 242 l. 21-22). Mr. Kelly then went to his room, he heard the Appellant and victim arguing. While in his room watching TV, he heard something sounding like a dresser beating up against the wall. (Tr. p. 242 l. 25 – p. 243 l. 3). When Mr. Kelly opened his bedroom door, he saw the Appellant with his arms around the victim's neck. (Tr. p. 243 l. 16). The Appellant told him to go to his room, so Mr. Kelly went back to his room. (Tr. p. 243 l. 6-7). While in his room he heard the Appellant say, "this motherfucker is dead." (Tr. p. 243 l. 11-12).

Sergeant Christopher Mastrianni of the Richland County Sheriff's Department also testified during the Appellant's trial. Sergeant Mastrianni was initially on the case assisting

Sergeant Vicki Rains while it still was a missing person's case. It became a homicide case on January 18, 2024. (Tr. p. 347 l. 2-8). The Appellant was arrested on February 6, 2024. (Tr. p. 353 l. 14-16). Sergeant Mastrianni later got word from Charleston County that someone had information regarding this homicide. So, he went to Charleston to speak with William Cokely. (Tr. p. 355 l. 15-18). Mr. Cokely was housed with the Appellant at the Alvin S. Glenn Detention Center.[1] Mr. Cokely informed Sergeant Mastrianni that he had information, and he wanted to speak to him. (Tr. p. 355 l. 7-10).

Later Mr. JaJuan Lowry found the remains of the victim in a creek behind the Richland County Library Northeast. There was a reward posted by the victim's family, so Mr. Lowry received that reward. (Tr. p. 356 l. 8-12; p. 370 l. 18-19). Three days before Mr. Lowry found those remains he had been an inmate within Alvin S. Glenn. Mr. Lowry was housed in the same dorm as the Appellant. (Tr. p. 370 l. 24 – p. 371 l. 1).

Mr. Cokely also testified, while serving a sentence in Georgia. (Tr. p. 402 l. 10-14). Mr. Cokely stated that he first met the Appellant while in Alvin S. Glenn, because the Appellant was the jail barber. (Tr. p. 403 l. 22-24). They became acquaintances. They would go to chapel and have biblical discussions. (Tr. p. 404 l. 4-6). Mr. Cokely and the Appellant would talk "a lot." (Tr. p. 404 l. 11-12).

Mr. Cokely testified that after bond court, the Appellant found out that someone on the unit made a statement against him. (Tr. p. 404 l. 11-12). Then the Appellant told Mr. Cokely, "They don't have a case against me. There is no – they'll never find a body. There's no body." (Tr. p. 405 l. 18-20). Mr. Cokely stated that right before he was transported to Georgia the Appellant told him, "They will never find **the** body." (Tr. p. 407 l. 20-21). The Appellant later told Mr. Cokely that the

[1] This is the official name of the Richland County Jail.

victim was mentally ill and on drugs, that he took the victim under his wing, that the victim stayed with him. (Tr. p. 408 l. 1-4). Then the Appellant told Mr. Cokely that he and the victim got into a fight because he stole drugs from him. (Tr. p. 408 l. 6-7).

Dr. William Stevens also testified. Dr. Stevens was found qualified as an expert in the field of forensic anthropology. (Tr. p. 424 l. 11-13). Dr. Stevens went to the crime scene and photographed all of the victim's remains. He was at the crime scene for about three and a half hours. (Tr. p. 425 l. 15-21). Dr. Stevens testified that he spent the time looking for remains. After looking for several hours, he stopped because he figured that the other remains must have washed away. (Tr. p. 428 l. 18-22). Dr. Stevens testified that they were given investigative information about the possible identity of the remains. The coroner's office was then quickly provided dental records, including images, and x-rays. Dr. Stevens then used a side-by-side comparison to find those unique features of the victim's dental conditions. All comparisons were present so Dr. Stevens was able to make a positive match. (Tr. p. 430 l. 5-13; p. 431 l. 19-20). There was no question that the remains were that of the victim. (Tr. p. 443 l. 7-9).). Dr. Stevens stated that the knowledge that the victim was missing for eight months and with the distribution of the remains, some being taken apart by animals, was consistent with being exposed to a wooded area in a creek for just under a year. (Tr. p. 443 l. 16-21).

Dr. Stevens testified that there were no eyes because the body was so decomposed. (Tr. p. 436 l. 2-3). This affected the ability to determine any injury to the eyes. (Tr. p. 436 l. 4-7). Since there were no eyeballs you could not see if there was any petechiae, which would have been helpful to determine strangulation. (Tr. p. 442 l. 17-24). That was the purpose of the introduction of States Exhibit #35 revealing the missing eyes. The hyoid bone, as were many other bones, was missing. (Tr. p. 439 l. 10-13). Dr. Stevens testified that the hyoid bone was also potentially significant in

strangulation cases, but it was never collected because it was likely washed away or taken by animals. (Tr. p. 443 l. 2-6)

Dr. Stevens did find a fracture of the styloid which is at the base of the skull. (Tr. p. 436 l. 12-15). It is in the interior of the neck behind the throat, and serves as an anchor for muscles and ligaments, that are responsible for the vocal cords, and speech. (Tr. p. 437 l. 16-19).

The coroner ruled the death "underdetermined" based on the lack of information as to how the victim died. That lack of information was due to the state of decomposition. (Tr. p. 442 l. 3-9).

ARGUMENTS

1. **The trial court did not err in allowing into evidence information regarding the Appellant's GPS monitoring, this information was relevant to reveal the number of times the Appellant was located at the Richland County Library Northeast where the victim's body was eventually found, which revealed his familiarity with that location.**

Relevant Facts

During the trial the State intended to call to testify Erica Ricard, an employee at the GPS monitoring company which monitored the Appellant. The Appellant objected. He argued that this would be prejudicial, in violation of Rule 403 of the South Carolina Rules of Evidence. The State wanted to place this information into evidence to reveal the number of times the GPS monitor revealed Appellant was at the Richland County Library Northeast, where the body was eventually discovered, thereby revealing the Appellant's familiarity with the area. (Tr. p. 313 l. 8-13). The monitor time covered 2019, 2020, 2021 and ended in January 2023. (Tr. p. 312 l. 15-16). The trial judge overruled the Appellant's objection with one caveat that the State must call it a "GPS company," and the Appellant had a "GPS device." The trial judge wished to make these allowances to reduce any suggestion that the Appellant was involved in any criminal behavior. (Tr. p. 314 l. 23 – p. 315 l. 5).

Standard of Review

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 403, SCRE. All relevant evidence is admissible. *State v. Aleksey,* 343 S.C. 20, 538 S.E.2d 248 (2000). Under Rule 401, SCRE, evidence is relevant if it has direct bearing upon and tends to establish or make more or less probable the matter in controversy. *State v. King,* 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002), *quoting, State v. Cheeseboro,* 346 S.C. 526, 548, 552 S.E.2d 300, 311 (2001). The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of discretion. *State v. Dickerson,* 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). A trial court has particularly wide discretion in ruling on Rule 403 objections. *State v. Lee,* 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. *State v. Adams,* 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003).

Discussion

During the trial Ms. Erica Ricard was called to testify. She was employed for the company that provided GPS monitoring of the Appellant. (Tr. p. 321 l. 1-3). The first posting of the Appellant at the Richland County Library Northeast was on June 4, 2020. (Tr. p. 323 l. 21-25). The Appellant was found to be at the Richland County Library Northeast fifty-six times in two years. (Tr. p. 328 l. 19-22). The last posting was at the wooded area behind the library. (Tr. p. 323 l. 21-24). Sergeant Mastrianni of the Richland County Sheriff's Department testified that the victim's body was discovered in a creek behind that library. (Tr. p. 356 l. 8-12).

The State argued that the probative value of this evidence surpasses any prejudice that it might cause. Probative value is the measure of the importance of that tendency to the outcome of the case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. The more essential the evidence, the greater its probative value. *State v. Gray,* 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). The evaluation of probative value cannot be made in the abstract but should be made in the practical context of the issues at stake in the trial of each case. *State v. Lyles,* 379 S.E. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008).

The body of the victim was found behind the Richland County Library Northeast on Parklane Road. The Appellant was found at that library more than 50 times in two years, including once at the rear of the library in the wooded area where the body was found. James Kelly testified that he would meet the Appellant at the library to buy drugs. (Tr. p. 257 l. 19-24). The Appellant would also keep his drugs in the woods behind the library. Mr. Kelly testified that he had seen the Appellant walk back to the wooded area behind the library. (Tr. p. 259 l. 7-15).

The fact he was on GPS by itself would not be relevant, however, when you look at the totality of the circumstances the fact he was constantly at the library selling drugs and behind the library in the wooded area where the body was found, this information was relevant. When balancing the danger of unfair prejudice against the probative value, the determination must be based on the entire record and will turn on the facts of each case. *State v. Gillian,* 373 S.C. 601, 646 S.E.2d 872, 876 (2007). The Appellant argues that this evidence is prejudicial, however, all evidence is meant to be prejudicial; it is only *unfair* prejudice which must be scrutinized under Rule 403. *Gray,* 408 S.C. at 616, 759 S.E.2d at 168, *quoting, United States v. Rodriguez-Estrada,* 877 F.2d 153, 156 (1st Cir. 1989). The fact Appellant was on GPS monitoring while on probation was never mentioned, and there are more than criminal offenses that cause a person to be placed

on GPS monitoring. The probative value definitely overrode any prejudicial effect that might have occurred. Therefore, the trial judge made the correct decision allowing the Appellant's GPS monitoring into evidence only on a limited basis.

2. **The trial court did not err in allowing autopsy photographs of the victim due to the probative evidence overriding any prejudice that might occur, these photos corroborated the testimony of the medical examiner's explanation that due to decomposition of the victim's body a cause of death could not be determined.**

Relevant Facts

During the trial the Appellant objected to certain crime scene and autopsy photos of the remains of the victim. The Appellant objected to State exhibits 22, 24, 25, 26, 28, and 32. (Tr. p. 337 l. 4-6). The Appellant argued that these photos were prejudicial and would raise the emotions of the jury; therefore, they should be considered inadmissible. The trial court ruled to allow 22, 32, 24, and the State could choose either of 27 or 28. The State chose to put 27 into evidence. (Tr. p. 344 l. 1-11).

Standard of Review

The materiality, relevance and admissibility of evidence are within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *State v. Rosemond,* 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson,* 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Collins,* 409 S.C. 524, 763 S.E.2d 22, 28 (2014). The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *State v. Nance,* 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). If the offered photographs serve to corroborate testimony, it is not an abuse of discretion to admit them. *Id.* A

trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Lyles,* 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct.App.2008) (internal quotation marks omitted).

Discussion

"To constitute *unfair* prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting*, *State v. Alexander*, 303 S.C. 377, 377, 401 S.E.2d 146, 149 (1991))(emphasis added).The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case. *Gray*, 408 S.C. at 610, 795 S.E.2d at 165. Here, the photographs were used to specifically demonstrate, explain, and corroborate the evidence that the medical examiner could not determine a cause of death due to the decomposition of the victim's body. In discussing similar evidentiary rulings in their cases, the Pennsylvania courts have often quoted:

> A criminal homicide trial is, by its very nature, unpleasant, and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt. Further, the condition of the victim's body provides evidence of the assailant's intent, and, even where the body's condition can be described through testimony from a medical examiner, such testimony does not obviate the admissibility of photographs.

Com. v. Robinson, 864 A.2d 460, 502 (Pa. 2004) (quoting *Com. v. Rush*, 646 A.2d 557, 560 (Pa. 1994)).

The Georgia courts have concisely rejected an argument on unfair prejudice on the basis of its own paradox: "…a defendant cannot complain about photographs that simply 'portray the havoc wreaked by [his] own hand.'" *McKibbins v. State*, 750 S.E.2d 314, 322 (Ga. 2013) (quoting *Null v. State*, 402 S.E.2d 721 (Ga. 1991)). The decomposition of the body was due to it being dumped into a creek in a desolate wooded area and aptly demonstrated the work of the Appellant's hands.

During his opening argument defense counsel for the Appellant suggested that the victim could have committed suicide or died from an overdose. (Tr. p. 133 l. 1-5). Appellant's trial counsel stated in his opening argument that, "The State is going to have experts sit in that chair during the trial and tell you that they do not know the cause of death." (Tr. p. 133 l. 25 – p. 134 l. 2). Witnesses stated that the victim was strangled to death by the Appellant. The only way that the State could have corroborated the testimony of Dr. Stevens as to the level of decomposition of the victim's body so much so that a cause of death could not be determined, are the autopsy photos.

Dr. Stevens used the photographs of the victim's skull to reveal that the eyes were missing so there was no way to see if there was any petechiae, which is one way to determine strangulation.(Tr. p. 442 l. 17-24). Dr. Stevens also revealed that there was no hyoid bone which if broken could be evidence of strangulation. (Tr. p. 438 l. 2 – p. 439 l. 1). Consequently, there were discrete and necessary reasons to submit the photographs, namely the corroborative value. *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010) "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.," *quoting, Nance*, 320 S.C. at 508, 466 S.E.2d at 353; *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct.App. 2008). (Admitting photographs which serve to corroborate testimony is not an abuse of discretion.). *See also State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and

bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim's body as first discovered by police at the crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim's mouth); *State v. Edwards*, 10 S.E.2d 587, 588 (1940) (In our opinion the trial Judge did not abuse his discretion in admitting the photograph [depicting head, torso, neck wound, decomposition and maggots] as being relevant, nor can we attach any importance, in view of the facts of this case, to the contention that the photograph prejudiced the jury against the defendant. Everything depicted by the photograph was, subsequent to its introduction, testified to in detail by the witnesses). Dr. Stevens also used the photographs to reveal a fracture of the styloid part of the skull which is at the base of the skull. (Tr. p. 436 l. 12-15). Dr. Stevens stated in his opinion that fracture could have occurred around the time of death or during the disposal of the body. (Tr. p. 439 l. 22-24).

At any rate, the proper question for determining relevance was whether the photographs had "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

It has long been established that "[a] trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive." *Martucci*, 380 S.C. at 250, 669 S.E.2d at 607. *See also Farris v. State*, 328 So.2d 640, 641 (Ala.Crim.App. 1976) (The colored photograph in question is clearly ghastly; but, gruesomeness is not grounds for excluding this type of evidence, if relevant. … This photograph was properly admitted into evidence notwithstanding the unpleasant subject matter. We cannot, and should not, gloss over the fact that violent death is itself loathsome). Simply, gruesomeness alone does not render the photograph inadmissible. *Collins,* 409 S.C. at 535–36, 763 S.E.2d at 28.

Appellant within his brief mentioned the South Carolina Supreme Court decision of *State v. Collins.* In *Collins* the majority ruled that the photographs were inadmissible. In the Concurring opinion members of this Court concluded that the photographs were introduced for the sole purpose of inflaming the passions of the jury. However, it was also stated in the concurring opinion,

> "I fully understand there are circumstances where autopsy photographs are relevant, and that the relevance of the photographs is not substantially outweighed by the danger of unfair prejudice."

Collins, 409 S.C. at 539, 763 S.E.2d at 30 (Kittredge J. Concurring).

The one important feature that the present case has that *Collins* did not was the elements of the crime. In *Collins* the Appellant was indicted for involuntary manslaughter and three counts of owning a dangerous animal. *Id.,* 409 S.C. at 529, 763 S.E.2d at 25. Neither of those offenses has malice as an element, therefore, malice was not an element the State was obligated to prove. In murder the State must prove that the Petitioner acted maliciously in order for a jury to convict him of murder. Appellant's trial counsel raised the issue himself that there was no cause of death, the only proof of malice was the testimony of eyewitnesses Altariq Cuffie and James Kelly. Both were drug addicts and Cuffie was convicted of numerous offenses. Appellant's counsel stated in his opening argument, "Two alleged eyewitnesses that are lying, lairs. They're lairs. Untrustworthy witnesses with untrustworthy stories." These eyewitnesses' stories as to the actions of the Appellant in the murder of the victim could not be corroborated by physical evidence due to the decomposition of the victim's body. The only way to reveal the amount of decomposition is by producing autopsy photographs. In *Torres,* a capital murder case this Court decided that "autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant." *Torres,* 390 S.C. at 623, 703 S.E.2d at 229, *citing, State v. Rosemond,* 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999). In order to prove this element of the crime these

photos were relevant evidence. These photos were admissible to reveal how decomposed the victim's body was so a cause of death could not be determined. This basically addresses the accusations of defense counsel. The State just put forth evidence of the victim as the Petitioner left him. The Appellant threw the victim into this creek in order to hide the body, and the Appellant benefited from the amount of time that elapsed between the murder and when the body was discovered, when so much decomposition had taken place, there was no way to determine a cause of death. These photographs were not introduced to inflame the jury's emotions but to prove that the cause of death could not be discovered due to the decomposition.

3. **The trial court did not err in not allowing evidence of a prior conviction of State's witness Altariq Cuffie who was convicted of giving false identification to law enforcement, it was never revealed as a crime of dishonesty and it was beyond the ten-year period allowed pursuant Rule 609, since Mr. Cuffie was impeached on more significant pending charges if any error occurred it must be considered harmless.**

Relevant Facts

Prior to Altariq Cuffie's testimony the court was made aware of his prior record to make a determination of what he could be asked for impeachment pursuant to Rule 609. Appellant's trial counsel raised the fact Mr. Cuffie was convicted in 2002 for the offense of false identification to law enforcement. (Tr. p. 163 l. 6-9). Trial counsel moved before the court to allow them to reveal this conviction, even though it was outside of the ten-year window. Appellant wanted the court to determine that it was a crime of dishonesty, therefore, allowing it to be brought before the jury. The trial court ruled that the Appellant was not allowed to mention this conviction.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The materiality, relevance, and admissibility of evidence are within the sound discretion of the trial court and will not be disturbed on appeal absent an

abuse of discretion. *State v. Rosemond,* 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson,* 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Collins,* 409 S.C. 524, 763 S.E.2d 22, 28 (2014). The scope of cross-examination is within the discretion of the trial court, whose decision will not be reversed on appeal, absent a showing of prejudice. *State v. Colf,* 337 S.C. 622, 624, 525 S.E.2d 246, 248 (2000). Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons,* 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018).

Discussion

The Appellant argues that the trial court erred in deciding that Appellant could not ask Mr. Cuffie about his conviction for the offense of false identification to law enforcement from 2002. The Rule that governs the impeachment by a conviction of a crime is Rule 609 of the South Carolina Rules of Evidence which states:

> For the purpose of attacking the credibility of a witness,
> (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
> (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609(a)(1-2), SCRE.

Prior to making a decision of whether a person should be asked about his prior record the rules require that the trial court make a Rule 403 analysis and make a determination of whether the inclusion of the witnesses' prior conviction's probative value exceeds any prejudicial effect. Rule

609 requires the trial court articulate specific facts and circumstances supporting its determination that the probative value of the evidence substantially outweighs its prejudicial effect. *Colf,* 337 S.C. at 626, 525 S.E.2d at 248. This offense occurred over twenty years prior to this trial making this offense inadmissible for impeachment according to Rule 609 which also states:

> Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs it prejudicial effect.

Rule 609(b), SCRE.

In *State v. Colf,* the South Carolina Supreme Court stated that the court could apply five factors that are used in Federal Court to make this determination. These five factors are: (1) The impeachment value of the prior crime; (2) The point in time of the conviction and the witness's subsequent history; (3) The similarity between the past crime and the charged crime; (4) The importance of the defendant's testimony; and (5) The centrality of the credibility issue. *Id.,* 337 S.C. at 627. However, the Supreme Court did not make these criteria mandatory. In *Colf* the court also determined, "these factors are not exclusive; trial courts should exercise their discretion in light of the facts and circumstances of each particular case. *Id.* In ruling against the Appellant the trial judge stated,

> "I find that the false identification to law enforcement conviction is not admissible, because it is so remote from the time in question in this case. But I don't have specific facts and circumstances. I don't have the statute before me. No one has offered that to me to demonstrate how this is substantially similar. I don't have specific facts and circumstance of that incident. So, it is not admissible." (Tr. p. 167 l. 24 – p. 168 l. 6).

The trial court was correct in applying the balancing test regarding mentioning if a person's conviction from over twenty years ago could be used to impeach when the Appellant was not able

to reveal the statue he was convicted of or the facts of the offense. Mr. Cuffie only was incarcerated for twenty-four days on this sentence. The Court found that the prejudicial effect overrode any probative value that mentioning this conviction might have brought.

The mere fact that a witness has potential criminal exposure does not automatically result in the potential charge being admitted as evidence. *The New Wigmore. A Treatise on Evidence: Impeachment and Rehabilitation.* §6.3.9 (1st ed. 2023). According to the Rules of Evidence the only way a person can ask about pending or prior charges is to reveal untruthfulness. However, pursuant to Rule 403 even if the evidence is admissible if it is prejudicial it should not come into evidence. This crime is too remote to be considered as a means to reveal untruthfulness.

During his direct examination Mr. Cuffie admitted to prior pending charges that were being prosecuted by the Fifth Circuit Solicitor's office, the identical office that is prosecuting the case against the Appellant. These pending offenses were much more egregious than the giving false information to law enforcement that the trial judge excluded. Mr. Cuffie admitted he had pending charges for grand larceny over $2,000 but less than $10,000 and offense that carries a maximum penalty of five years. (Tr. p. 188 l. 18-21) Mr. Cuffie also had a pending charge of breach of trust over $2,000.00 but less than $10,000.00 which also carried a maximum penalty of five years. (Tr. p. 188 l. 24 – p. 189 l. 1). Mr. Cuffie also had pending charges for kidnapping and assault and battery of a high and aggravated nature which carries a total maximum sentence of fifty years' incarceration. (Tr. p. 189 l. 5-13). Mr. Cuffie also had two pending charges of possession with intent to distribute crack. Both carried a maximum sentence of fifteen years. (Tr. p. 189 l. 14-17; l. 20-22; Tr. p. 190 l. 1-3).

The Respondent argues that since the jury was informed about all of these pending charges that were being prosecuted by the same Solicitor's office, there was already plenty of doubt

regarding Mr. Cuffie's credibility. The one offense that occurred twenty years earlier would not make a difference. Therefore, if the trial judge erred in not allowing that information to the jury it must be considered harmless.

In *State v. Young,* 420 S.C. 608, 803 S.E.2d 888 (2017) the South Carolina Supreme Court defined the harmless error doctrine. In *Young* they decided:

> The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.

Young, 420 S.C. at 628, 803 S.E.2d at 899, *quoting, Delaware v. VanArsdall,* 475 U.S. 673, 106 S.Ct. 1431 (1986).

Error is harmless only when it could not reasonably have affected the results of trial. *State v. Charping,* 313 S.C. 147, 437 S.E.2d 88 (1993). All of these pending charges gives Mr. Cuffie the possibility of serving more than fifty years in prison. And these charges are being prosecuted by the identical Solicitor's office that was prosecuting the present case. These pending offenses reveal the possibility of Mr. Cuffie not being credible but seeking a favor from the Solicitor's office. The offense of giving false information to law enforcement occurred more than twenty years ago in which Mr. Cuffie only served a total of twenty-four days. The pending offenses that were revealed before the jury make the other offenses a nullity. This conviction not being mentioned did not change the outcome of this trial. Any error that could have possibly been made by the trial judge must be considered harmless.

CONCLUSION

Based on the foregoing reasons, the State submits the trial court decisions were correct. The Respondent respectfully request the decision of the trial court be affirmed.

Respectfully submitted,

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