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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Colleton County
The Honorable Clifton Newman, Circuit Court Judge
Unpublished Opinion No. 2026-UP-018

THE STATE,

RESPONDENT

v.

RITA M. PANGALANGAN,

PETITIONER.

Appellate Case No. 2026-000656

BRIEF OR RESPONDENT

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TABLE OF CONTENTS

Table of Authorities.....	ii
Petitioner’s questions presented.....	iv
Respondent’s counter questions presented.....	v
Statement of the case.....	1
Statement of the facts.....	2
Arguments	
1. The Court of Appeals was correct in deciding that the trial judge did not err in allowing into evidence relevant photographs of the victim as she appeared at the scene because these photographs corroborated the testimony of the medical examiner and climatologist and refuted the defense raised by the Petitioner, these pictures also revealed a total disregard for human life	5
2. The Court of Appeals was also correct in deciding that the Petitioner did not preserve the objection to the photographs of the contents inside the vehicle for appeal, since it was only stated at the bench, but never put on the record.....	12
Conclusion.....	14

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Austin v. Specialty Transp. Services, Inc.</i> , 358 S.C. 298, 315 S.E.2d 867 (2004)	13
<i>McKibbins v. State</i> , 750 S.E.2d 314 (Ga. 2023).....	8
<i>Null v. State</i> , 402 S.E.2d 7221 (Ga. 1991).....	8
<i>State v. Alexander</i> , 303 S.C. 377, 401 S.E. 146 (1991)	7
<i>State v. Anderson</i> , 386 S.C. 120, 687 S.E.2d 35 (2009)	6
<i>State v. Collins</i> , 409 S.C. 524, 763 S.E.2d 22 (2014)	6,12
<i>State v. Franklin</i> , 318 S.C. 47, 456 S.E.2d 357 (1995)	7
<i>State v. Heyward</i> , 197 S.C. 371, 15 S.E.2d 669 (1941)	9
<i>State v. Jones</i> , 440 S.C. 214, 891 S.E.2d 347 (2023)	11
<i>State v. Kelly</i> , 319 S.C. 173, 460 S.E.2d 368 (1995)	7
<i>State v. Kornahrens</i> , 290 S.C. 281.....	7
<i>State v. Mouzon</i> , 231 S.C. 655, 99 S.E.2d 672 (1957)	9,10
<i>State v. Nance</i> , 320 S.C. 501, 466 S.E.2d 349 (1996)	6
<i>State v. Nelson</i> , 440 S.C. 413, 891 S.E.2d 508 (2023)	11
<i>State v. Nichols</i> , 325 S.C. 111, 481 S.E.2d 118 (1997).....	13
<i>State v. Rosemond</i> , 335 S.C. 593, 518 S.E.2d 588 (1999)	6
<i>State v. Torres</i> , 390 S.C. 618, 703 S.E.2d 226	7
<i>York v. Conway Ford, Inc.</i> , 325 S.C. 170, 480 S.E.2d 726 (1997)	13
 Rules	
Rule 401, SCRE	7

Rule 403 of the South Carolina Rules of Evidence	7
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PETITIONER'S STATEMENT OF ISSUES ON APPEAL

1. Did the Court of Appeals err in finding the trial court did not abuse its discretion in admitting unfairly prejudicial photographs of her daughter's corpse with a white sheet and coroner's tag and in finding Petitioner did not preserve the error admitting an irrelevant photograph of a gun found in the vehicle when the photos served no legitimate purpose and were calculated to arouse the sympathies of the jury?

RESPONDENTS' COUNTER QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the trial judge's decision to allow relevant photographs of the victim as she appeared at the crime scene into evidence because these photographs corroborated the testimony of the medical examiner and also refuted the defense raised?
2. Did the Court of Appeals err in deciding that the Petitioner did not preserve an objection to the photographs of the contents inside of the vehicle since it was only stated at the bench and was never placed on the record?

STATEMENT OF THE CASE

Rita M. Pangalangan (Petitioner), along with her co-defendant Larry King (co-defendant) were arrested on August 5, 2019, and charged with the offenses of murder, great bodily injury to a child and criminal conspiracy. On August 6, 2020, a Colleton County Grand Jury indicted the Petitioner for murder, and great bodily injury to a child. (App. p. 839-840; p. 841-842). The Petitioner was later indicted for the offense of criminal conspiracy. (App. p. 843-844). The co-defendant was also indicted for these identical offenses.

On August 28, 2023, the Petitioner appeared before the Honorable Clifton Newman to stand trial before a jury of her peers for the above referenced offenses. Appearing on behalf of the Petitioner was her trial counsel Dayne Phillips. The Petitioner's trial was held simultaneously with her co-defendant. Petitioner's co-defendant was represented by attorneys Gil Gatch and John Loy. Appearing on behalf of the State of South Carolina was Solicitor, I. McDuffie Stone, and Assistant Solicitor Sean Thornton, of the Fourteenth Circuit Solicitor's Office.

After five days of testimony, a jury of her peers found the Petitioner guilty of murder, and great bodily injury to a child, but not guilty of criminal conspiracy. (App. p. 845-846). After reading the verdict the Petitioner appeared before the trial judge for sentencing. The trial judge sentenced the Petitioner to a thirty-seven years period of incarceration for the offense of murder; and twenty years for great bodily injury to a child. The trial court ordered that these sentences were to be served concurrently. (App. pp. 847- 850).

On September 8, 2023, the Petitioner filed a notice of appeal before the South Carolina Court of Appeals. (App. p. 851). On January 21, 2026, the South Carolina Court of Appeals issued an unpublished opinion affirming the ruling of the trial court. *State v. Pangalangan*, Op. No. 2026-UP-018 (S.C. Ct. App. filed January 21, 2026). Within this opinion the Court of Appeals' Judges

McDonald, Hewitt, and Turner unanimously decided that the trial judge did not err in allowing photographs of the crime scene into evidence. They also decided that the objection to the photographs of the contents inside of the vehicle was not preserved for appeal.

After this opinion the Petitioner filed a Petition for Certiorari before this Court on March 31, 2026. The State filed their response on May 8, 2026. On August 21, 2026. This Court granted Certiorari, but only for the issue of the photographs. The brief of Respondent presenting their arguments follows.

STATEMENT OF THE FACTS

On August 5, 2019, at 11:16 am, Petitioner, along with her co-defendant, placed the Petitioner's thirteen-year-old daughter (victim) into the Petitioner's vehicle during a hot August South Carolina summer day. The victim suffered from cerebral palsy, so she could not walk nor talk. (App. p. 333 l. 10-15). Victim also wore a diaper. (App. p. 321 l. 7-12). The victim did not have the use of her hands, so she was unable to open doors. (App. p. 336 l. 1-3). At the time of the incident, Petitioner and her co-defendant were in a relationship. (App. p. 559 l. 20-25). The Petitioner and her daughter spent the night at the co-defendant's home. (App. p. 562 l. 23-25). After they placed the victim inside the Petitioner's vehicle they closed the door with the windows up in the hot August South Carolina heat. While the victim was in the car, Petitioner and co-defendant were having a conversation regarding the fact she was with another man. (App. p. 563 l. 18-19).

During the trial, the co-defendant testified and admitted he and the Petitioner had taken methamphetamine and were up all night due to this drug use. (App. p. 563 l. 2-7). During the trial the co-defendant also testified that the car was running with the air conditioning on when they placed the child in the car. (App. p. 566 l. 7-10). The surveillance video from the co-defendant's

home was placed into evidence. (State Exhibit #40). This video revealed that the victim was placed inside the vehicle at 11:16 a.m.

After placing the victim inside the vehicle, the Petitioner and her co-defendant went inside the house. They stayed inside from 11:43 a.m. until they came out at 1:45 p.m.. At that time the Petitioner and co-defendant were still talking as the victim sat in an extremely hot car. At 2:03 p.m. Petitioner and co-defendant went back into the house, never once checking on the victim. They came back out at 3:00 p.m. and that is when the Petitioner realized she had locked her keys inside the vehicle. At 3:52 p.m. they left the co-defendant's house to go to the Petitioner's house to get the spare key. They did not return until 4:42 p.m. At that time, they still could not get the car door open. The co-defendant called locksmith Rober Arabis to come get the car door open or give any directions in getting the door open. (App. p. 584 l. 14-20). Mr. Arabis explained to the co-defendant that there was a key in the fob that he could use to get the door open. (App. p. 585 l. 20 – p. 586 l. 1). The co-defendant finally got the door open at 4:58 p.m. At that time, they realized that the victim had been in the hot car for over five hours, so the co-defendant dialed 911. (App. p. 586 l. 7-13).

During trial, South Carolina Law Enforcement Division (SLED) agent Halley Godley testified. As one of the first people to respond, she saw the victim lying on the ground. The co-defendant was walking around while the Petitioner was inside the residence. (App. p. 278 l. 6-9; p. 292 11-13). Paramedic Charles Jones also arrived at the scene. Mr. Jones testified that when he arrived he found the victim lying on the ground beside the vehicle and she appeared not to be breathing. (App. p. 297 l. 7-10). Mr. Jones attached a cardiac monitor to the victim. The monitor revealed no registered heartbeat, so he declared the victim deceased. (App. p. 297 l. 19-21; p. 298 l. 12-15).

After the Petitioner's arrest, her blood was drawn for drug testing. (App. p. 340 l. 24 – p. 341 l. 4). The blood was delivered to SLED for testing. The results were negative for ethanol. (App. p. 364 l. 9-11). However, the blood did test positive for methamphetamine and amphetamine. (App. p. 368 l. 5-6).

During the trial, Dr. Andrew Grundstein also testified. Dr. Grundstein was found qualified as an expert in the field of climatology, specifically on the effect that heat has on people. (App. p. 395 l. 13-16) Dr. Grundstein testified that he did a re-creation of the car temperature. In the re-creation, the temperature was hotter than the incident date, however, it was less humid. (App. p. 407 l. 13-14). His re-creation had the car temperature at 118° but with the heat index, his determination was that the car's inside temperature was actually 135°. (App. p. 411 l. 4-7).

During trial, Forensic Pathologist Dr. Nicolas Batalis testified. Dr. Batalis was found qualified as an expert in the field of forensic pathology. (App. p. 501 l. 15-23). Dr. Batalis performed the autopsy on the victim on August 7, 2019. (App. p. 502 l. 3). Dr. Batalis found the victim to be a thirteen-year-old female who was found unresponsive after being placed in a vehicle for several hours during very high temperatures. (App. p. 502 10-14). The victim's body temperature was measured at 109.9° which was the maximum amount the thermometer could read. (App. p. 502 l. 18-22). Dr. Batalis testified that the body shuts down at temperatures around 105° to 106°. The victim's body was at 109° to 110° which would indicate that there was evidence of hyperthermia. (App. p. 503 l. 7-12). Dr. Batalis testified that if the brain gets extremely outside its normal temperature, it is not able to function, and it will drive the other organs in the body to fail. (App. p. 504 l. 10-17). Dr. Batalis determined that the cause of death was hyperthermia due to neglect, the manner of death was homicide. (App. p. 511 l. 18-20).

During the trial the co-defendant testified that the car was running along with the air conditioning. (App. p. 576 l. 7-10; 577 l. 4-7). In rebuttal, Captain Jason Chapman of the Colleton County Sheriff's Office testified. Captain Chapman testified that when he responded to the crime scene he looked inside the vehicle. He stated that the car was running, and the air conditioning was turned on blowing cold air, but inside the car was still hot. (App. p. 667 l. 24 – p. 668 l. 5).

ARGUMENT

- 1. The Court of Appeals was correct in deciding that the trial judge did not err in allowing into evidence relevant photographs of the victim as she appeared at the scene because these photographs corroborated the testimony of the medical examiner and climatologist and refuted the defense raised by the Petitioner, these pictures also revealed a total disregard for human life.**

Relevant Facts

During the trial, Petitioner contested the introduction of four photographs. These photos were of the victim at the crime scene after she was taken out of the vehicle. The photos depicted the victim as she was at the scene when this crime occurred. She was wearing a diaper; her hair matted with sweat due to being locked in a hot car for over five hours. She had burn marks and welts on her legs due to the heat from the interior of the vehicle. The victim was also in an advanced stage of decomposition due to the excessive heat. (App. p. 520 l. 21-25).

During trial, Petitioner argued that these photographs violated Rule 403 of the South Carolina Rules of Evidence. Petitioner believed these photos were prejudicial and the effect outweighed any probative value they may have had.

The trial court ruled that the photos were relevant because they revealed the bruising and blistering on the victim and her condition at the time the crime occurred. (App. p. 288 l. 17-20). The Court of Appeals ruled that the trial court did not abuse its discretion because the photographs' probative value were not substantially outweighed by the danger of unfair prejudice. The Court of

Appeals also ruled that the photographs aided the State's forensic pathologist in explaining the victim's injuries and assisted the jury in determining whether the Petitioner acted with malice, which was a disputed issue at trial. *State v. Pangalangan*, Op. No. 2026-UP-018, at 2. The Court of Appeals ruled that trial counsel failed to preserve the objection to the photographs of the contents of the vehicle. This was not preserved because the objection was never stated on the record.

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, absence 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)

Discussion

Petitioner argues that the Court of Appeals erred in affirming the decision of the trial court to allow photographs of the victim into evidence. Each of these photos showed the victim's entire body as it was when it was removed from the vehicle. One was a close up of the burn injuries sustained while the victim was in a vehicle reaching temperatures as high as 135°. Petitioner continues to argue that these photos were only introduced to raise the sympathies and prejudices of the jury and that they have no evidentiary value. The State argues that the Court of Appeals was

correct in affirming the decision of the trial judge. These photos did have evidentiary value, because they corroborated the testimony of Dr. Batalis the medical examiner, and Dr. Andrew Grundstein the expert in the field of climatology. The Court of Appeals was also correct that these photos revealed proof of a total disregard for human life which showed implied malice. “Relevant evidence” means 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, SCRE. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 403, SCRE.

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. Kelly*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting*, *State v. Alexander*, 303 S.C. 377, 401 S.E. 146, 149 (1991)(emphasis added). To be classified as unfairly prejudicial, photographs must have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily an emotional one.” *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228-29, *quoting*, *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995).

The photographs presented were used to specifically demonstrate, explain, and corroborate testimony and to prove the total disregard for human life portrayed by the Petitioner as well as her co-defendant to the victim.

Photographs are relevant if they “depict the bodies of the murder victims in substantially the same condition in which the defendant left them.” *State v. Kornahrens*, 290 S.C. 281, 350, S.E.2d 180, 185 (1986). 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. 2023), *quoting*, *Null v. State*, 402 S.E.2d 7221 (Ga. 1991).

These photographs demonstrated and corroborated testimony of Dr. Batalis and Grundstein. During his testimony Dr. Batalis testified that once the victim was found, there was skin slippage, which was a breakdown process of the body or what is otherwise known as decomposition. (App. p. 517 l. 11-13). Dr. Batalis also testified that when temperatures are high, decomposition is going to occur much quicker than if the temperatures are much lower. (App. p. 517 l. 17-19). Dr. Batalis used the photographs to demonstrate and explain the “leathery type of lesions” which tell us that there was some sort of injury to the body, some sort of actual burn. (App. p. 518 l. 20-23). When reviewing the admitted photographs Dr. Batalis explained how these photographs revealed the actual condition of the body when it was found.

“So this photograph here illustrates the kind of two different lesions that we’re talking about. So up on the upper aspect of the left thigh here, you can see that there’s a very thin appearance, kind of a wispy appearance to the skin. That would be more what I’m speaking of the as skin slippage, so part of the breakdown process of the body.” (App. p. 520 l. 7-14)

“But in addition to just that, you can see here on the lower part of the left leg we have this lesion, where the skin was more ulcerated away. You can see some areas on the knee on the leg that appear different than up here, where we don’t have an appearance of it.” (App. p. 520 l. 15-10).

“So again to me that would say these areas were likely in contact with something in the area that caused a direct burn or injury to the skin, and we also have areas that show the decomposition is there now” (App. p. 520 l. 21-25).

The photographs of the condition of the body were also imperative due to the fact Petitioner’s co-defendant testified that the car was running and air conditioner was turned on when the victim was placed inside the vehicle. (App. p. 576 l. 7-10; 577 l. 4-7). This was also argued by the Petitioner’s trial counsel in his closing argument. (App. p. 711 l. 5-6; l. 20-22). These photographs also corroborate the testimony of Captain Jason Chapman of the Colleton County Sheriff’s Office.

Captain Chapman testified that when he got to the scene the car was running and while the air-conditioner was on, the inside of the car was still hot. (App. p. 667 l. 22 – p. 668 l. 4). The burn marks on the body, as Dr. Batalis testified, were due to her leg being in contact with something that caused a direct burn or injury to the skin. (App. p. 520 l. 21-24). The photographs also revealed the victim’s hair was wet and matted, due to the sweat she generated from the heat inside the vehicle. These photographs prove that the air conditioning was not turned on during the time the victim was inside that vehicle.

The Court of Appeals also ruled that the photographs were relevant to prove that there was implied malice. At the conclusion of the trial the trial judge issued a jury instruction for implied malice. Within this jury instruction the trial judge stated:

Malice may be inferred from conduct that is so extremely reckless and wanton, as to indicate a depravity of mind and general disregard for human life. In the context of murder, malice does not require ill-will toward the individual injured, but rather it signifies a general malignant extreme recklessness of the lives and safety of others, or a condition of mind that shows a heart, regardless of social duty a fatal event on mischief. (App. p. 735 l. 18 – p. 736 l. 2).

In *State v. Mouzon*, this Court defined malice as an essential element of murder. In *Mouzon*, this Court decided,

Malice is an essential ingredient of murder, and it does not necessarily import ill-will toward the individual injured, “but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.”

State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675-76 (1957), *quoting*, *State v. Heyward*, 197 S.C. 371, 15 S.E.2d 669 (1941).

In the present case, the Petitioner left the victim in a vehicle in temperatures reaching as high as 130° for a total of five hours and forty-three minutes. Petitioner did not even once check on her disabled child during that entire time. The video that was entered into evidence revealed no sense of urgency by Petitioner in getting the victim out of the vehicle. During this five-hour period,

Petitioner and her co-defendant spent time talking inside and outside the house as the victim eventually died from the heat inside the vehicle. The co-defendant stated during his testimony that the car as well as the air conditioning were running during this period. These photographs were needed to reveal the extent of injury the heat did to the victim including the burns from the leather seats. It also revealed the decomposition that was advanced due to the heat.

The photos were also a prime representation of a total disregard for the victim's life. Implied malice does not require an intent to kill just that there was a total disregard for a human life. In *Mouzon* this Court also decided:

Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

Mouzon, 231 S.C. at 662, 99 S.E.2d at 675.

From the evidence presented, including the photographs, there is absolutely no doubt that the Petitioner and her co-defendant had a total disregard for human life. These photos revealed the state of this child due to the actions of the Petitioner and her co-defendant. These photos definitely revealed implied malice.

The Petitioner tried to equate this case to two other cases where this Court decided that the photographs were prejudicial, *State v. Nelson* and *State v. Jones*. This case is not close to those two cases and distinguishable on critical points. The decision of this court relating to those two opinions is irrelevant.

In *State v. Nelson*, this Court decided that autopsy photos admitted did not prove who committed the crime, the Appellant or her boyfriend; therefore, they were found to be prejudicial. In *Nelson* this Court decided the following:

Here the only issue was who murdered the victim: Carmie or Daniel. Carmie raised no argument that Victim was not murdered, no argument that Victim was not murdered in the way the State claimed – namely, being beaten in the head with a hammer, having her throat slit, and receiving several stab wounds to her chest – and no argument that Victim did not have around 100 wounds on her body. Notably, Carmie did not even cross-examine Dr. Batalis who performed the autopsy.

State v. Nelson, 440 S.C. 413, 424, 891 S.E.2d 508, 513 (2023).

There is no dispute regarding who left the child inside the car. Both defendants are complicit in the death of this child. All of the evidence points to both parties, The co-defendant testified that the car was running with the air conditioner turned on, an argument used by the Petitioner’s trial counsel during his closing argument. The photographs refute this argument, so it is relevant. The probative value is overridden by any prejudice that the photos might have caused.

State v. Nelson does not support an abuse of discretion in this case.

In *State v. Jones*, this Court decided:

The photographs here do not depict the children’s bodies in substantially the same condition in which Jones left them. The photographs depict the children’s bodies in the advanced stages of decomposition occurring in the three days between the time Jones dumped the bodies to the time law enforcement discovered them. The bodies were so severely decomposed that with the exception of one paragraph, neither strangulation nor ligature marks were visible to corroborate Dr. Ross’s testimony. The State does not claim Jones altered his children’s faces or limbs, yet several photographs shows extensive tissue loss appearing as though an animal had eaten their faces and limbs.

State v. Jones, 440 S.C. 214, 262-63, 891 S.E.2d 347, 372 (2023).

The photographs taken of the victim in this case were taken right after her body was found and removed from the car. The physical state and the injuries found on the victim were caused by these two defendants. There was not a span of days between the death and the discovery of the body as in *Jones*. So, the photos in *Jones* are not comparable to the present case, and do not support an abuse of discretion.

Although the photographs were not pleasant to look at, they explain and corroborate the testimony of Dr. Batalis and Dr. Andrew Grundstein regarding the damage done to the victim due to being left in a hot car for five hours. These photographs also refute the testimony of the co-defendant and the defense raised by the Petitioner. As this Court stated in the *Collins* decision, “Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder.” *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014). If a photograph is explicit but still goes to prove the crimes committed by the Petitioner, revealing the total disregard for a human life, it is critically probative of malice. It cannot be considered prejudicial and is not a violation of Rule 403. These photographs were introduced in order to prove Petitioner committed these crimes. The probative value did outweigh any prejudice they might have created. These photographs were admissible, so in affirming the decision of the trial court the Court of Appeals committed no error. The decision of the Court of Appeals should be upheld.

- 2. The Court of Appeals was also correct in deciding that the Petitioner did not preserve the objection to the photographs of the contents inside the vehicle for appeal, since it was only stated at the bench, but never put on the record.**

Relevant Facts

During the trial, Investigator Todd Schenk was called to testify. Investigator Schenk was the crime scene investigator who arrived at the scene to take photographs of the incident location. Investigator Schenk took photographs of the back seat of the vehicle that the victim was left in. Investigator Schenk testified that in the back seat of the Petitioner’s vehicle he found, a blue duffle bag, gym bag, a pink sippy cup, and a bag that contained a 9mm handgun. (App. p. 306 l. 10-21).

Prior to this photograph being allowed into evidence, counsel for Petitioner requested to approach the bench. A bench conference ensued between both counsel and the trial judge. (App.

p. 340 l. 2-4). After this occurred the Solicitor introduced these photographs into evidence in which the trial judge allowed into evidence “over objection.” (App. p. 304 l. 21-25).

Standard of Review

An issue may not be raised for the first time on appeal but must have been raised to the trial judge to be preserved for appellate review. *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997).

Discussion

The objection was made at the bench but never put on the record. Since it was not put on the record it was not preserved for appeal. An objection made during an off-the -record conference which is not made part of the record does not preserve the question for review. *York v. Conway Ford, Inc.* 325 S.C. 170, 172, 480 S.E.2d 726, 728 (1997). The Court of Appeals was correct in their decision that Petitioner failed to preserve this argument for appeal. The Court of Appeals cannot address an issue not raised to the trial court. *Austin v. Specialty Transp. Services, Inc.* 358 S.C. 298, 315 S.E.2d 867 876 (2004). The objection by the Petitioner to the photographs of the contents of the vehicle was never stated on the record. The Appellate court had no way of knowing what the defense argued. This deprives the Court of the record of review. Since this objection was never made to the court on the record it was not preserved for appeal. The Court of Appeals made the correct decision in not considering this issue and that ruling should not be reversed by this Court.

At any rate, the photograph was clearly of the murder scene and arguably could support extreme recklessness toward an incapacitated individual. There is no obvious unfair prejudice or abuse of discretion. However, the procedural bar should be applied, and the Court of Appeals decision should be affirmed on that basis.

CONCLUSION

Based on the foregoing reasons, the State submits the Court of Appeals was correct in affirming the decision of the trial court. The State respectfully request the decision of the Court of Appeals be affirmed by this Court.

Respectfully submitted

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