THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case No. 12-GS-30-1154
Appellate Case No.: 2013-000579

State of South Carolina, Respondent,

v.

Richard Sylvester Evans, Appellant.

FINAL BRIEF OF RESPONDENT

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II. The trial court did not err in admitting police photographs of the victim's injuries, as they were both relevant and not unduly prejudicial.

III. Because of the overwhelming evidence of the Appellant's guilt, admission of the testimony regarding Appellant's nickname and the police photographs, even if improper, constituted harmless error.

STATEMENT OF THE CASE

The Respondent agrees that the Appellant's statement of the case is substantially correct.

STATEMENT OF THE FACTS

During the early morning hours of May 3, 2012, the Appellant entered a Li'l Cricket convenience store on Church Street in the city of Laurens, South Carolina. (R. p.21:6-p.22:3.) The sales associate and soon-to-be victim, Dometry Williams, was stocking a cooler. (R. p.24:7-11.) The Appellant came over to the cooler and grabbed a beer, while the victim headed back to the counter. (R. p.29:17-p.30:6.) Suddenly, while her back was turned, the Appellant came up behind her, wrapped his hands around her neck, and told her to give him the money from the cash register. (R. p.31:14-23.) The Appellant also demanded and took the victim's car keys. (R. p.32:5-10.) However, instead of leaving at that point, the Appellant put a knife to her neck and took her to the back part of the convenience store, where he struck her in the stomach and stabbed her with the knife. (R. p.34-3:p.35-15; p.39:6-16.) In an attempt to defend herself, the victim grabbed the knife blade with her hands, but was pushed to the floor by the Appellant. (R. p.43:14-p.44:6.) The Appellant came at her again, and the victim began to kick and scream. (R. p.44:7-12.) At that point, the Appellant left, telling the victim to stay on the floor. (R. p.44:12-18.)

The victim stayed in the back, watching the surveillance monitors, until another car pulled up to the convenience store. (R. p.49:4-24.) At that point, she emerged, calling for help. (R. p.50:3-8.) The Appellant, and the victim's car, were gone. (R. p.56:17-19.) The police and EMS were called and arrived shortly thereafter. (R. p.50:17-p.51:9). Officers with the City of Laurens Police Department secured the crime scene and took photographs of the victim's injuries. (R. p.80:5-22; p.85:21-p.86:19.) The victim was then transported by ambulance to Greenville Memorial Hospital, where

she received 29 stitches in her left hand and 19 in her right. (R. p.47:10-24.) In addition to her hands, she also suffered injuries to her neck and chest. (R. p.47:25-p.48:4.)

Following her release from the hospital, the victim spoke with Detective Leann Riggott of the Laurens Police Department. (R. p.51:14-22.) Detective Riggott took additional photographs of the victim's injuries. (R. p.51:24-25; p.52:8-13.) The victim's car was located at a housing complex nearby, and found in the car were a knife and a pack of cigarettes. (R. p.93:25-p.95:21.) DNA testing of the blood on the knife blade confirmed that it was the victim's blood. (R. p.212:14-p.213:11.) Fingerprints were lifted from the cigarette pack, and testing revealed an impression made by the Appellant's right little finger. (R. p.190:3-p.192:13.) Police, after recognizing the Appellant from the surveillance footage, began a search and eventually located and arrested the Appellant in a wooded area off Sunset Park, where he was in a car with a family member. (R. p.229:15-p.230:23; p.235:6-17.)

The Appellant was charged with armed robbery, possession of a weapon during the commission of a violent crime, kidnapping, grand larceny, and attempted murder. (R. p.18:8-p.19:7.) Following a trial, the Appellant was found guilty on all charges. (R. p.296:23-p.298:1.) The Appellant was sentenced to life imprisonment without parole on the kidnapping, armed robbery, and attempted murder charges. (R. p.301:11-16.) The Appellant also received a sentence of six months with credit for time served on the grand larceny charge. (R. p.301:17-19.) Finally, the trial judge saw no need to sentence Appellant on the charge of possession of a weapon during the commission of a violent crime due to the life sentences imposed on the other charges. (R. p.301:20-24.) This Appeal followed.

ARGUMENT

I. The trial court did not err in allowing testimony by law enforcement as to the Appellant's nickname as that testimony did not violate Rule 403 or Rule 404(b), SCRE.

The Appellant argues that the mention of the Appellant's nickname, "Chilly Pop," by a law enforcement officer violated Rules 403 and 404 of the South Carolina Rules of Evidence. This argument fails for several reasons. First, Detective Riggott's testimony regarding the Appellant's nickname did not implicate Rule 404, SCRE, as this testimony provided neither evidence of his character or a trait of character, nor evidence of other crimes, wrongs, or acts. Second, if this Court finds that Detective Riggott's testimony was evidence of the sort contemplated by Rule 404(b), SCRE, the testimony was relevant and admissible for the purpose of identifying the Appellant. Third, Detective Riggott's testimony that she knew the Appellant "in the community" did not prejudice the Appellant unfairly.

A. The testimony regarding the Appellant's nickname did not implicate Rule 404, SCRE.

The Appellant's nickname was first presented to the jury by the victim, Ms. Williams. The victim testified that she knew the Appellant, not by his real name, but by his nickname of "Chilly Pop." (R. p.26:21-p.27:8.) Lieutenant Hunnicutt of the Laurens Police Department supported this testimony by relating that the victim, while crying and hysterical, told him that "she had been robbed by an individual named 'Chilly Pop.'" (R. p.71:7-15.)

Next, Detective Riggott testified as to her arrival on the scene and her interaction with the other law enforcement officers who were present on the scene. In speaking with another detective, she learned the identity of the Appellant:

Q: As a result of that conversation, was there a nickname that you had heard?

A: Chilly Pop.

(R. p.121:11-13.) Detective Riggott was then asked if she knew anyone by that name and how she knew that person:

Q: Did you know anyone by that nickname?

A: Yes, sir, I did.

Q: Who did you know – well, first of all, let me ask you this. How did you know a person by that nickname?

A: In the community –

(R. p.121:18-23.) At that point, defense counsel interrupted with an objection and the jury left the courtroom. After that objection was addressed and overruled, the jury returned and Detective Riggott was once again asked about the Appellant's nickname. She testified that she knew "Chilly Pop" as the Appellant. (R. p.125:17-p.127:12.) Later, Detective Walter Bentley of the Laurens Police Department offered similar testimony:

Q: Did you take much time with her at that point?

A: No, I just briefly asked her what happened.

Q: What was her response?

A: She told me that she was in the store, that she had been robbed, that the guy who robbed, that she knew him by the name of Chilly Pop.

Q: What did you do after you got that information from Ms. Williams?

A: Let Detective Riggott know, she was on the way to the scene. Also, I knew Chilly Pop by the name of Richard Evans already.

(R. p.227:17-p.228:5.) Lastly, the Solicitor offered one reference to the Appellant's nickname in closing: "Ladies and Gentlemen, this case is clear. You've seen the surveillance tape, you've seen the stills from that. You know who this guy is, Richard Evans, Chilly Pop. It's no question, it is beyond all doubt who committed this crime. It's him. It's on video. That's about as good as it gets in a criminal case. Caught on tape." (R. p.255:7-15.)

The above-described references to the Appellant's nickname are the ***only*** mentions of it heard by the jury in the entire case. In no instance did the testimony regarding the Appellant's nickname serve for any purpose other than to identify the Appellant in order to link the victim's prior knowledge of the Appellant by his nickname to the Appellant's given name. Indeed, the only objected-to instance was Detective Riggott's statement that she knew the Appellant's nickname from the "community." The Appellant's argument incorrectly assumes that Detective Riggott's statement is character evidence or evidence of other crimes, wrongs or acts under Rule 404, SCRE. The basis of this argument is the assertion, without support, that "Riggot's [sic] testimony as to *how* she knew 'Chilly Pop' only gave the jury the impression that Evans had been in trouble before and provided an improper basis for their decision." (Brief of Appellant at 7 (emphasis in original).) In essence, the Appellant would have this Court assume not only that the only conceivable means by which a law enforcement officer could know an individual's nickname was his prior bad acts, but additionally that every member of the jury would arrive at the same conclusion.

However, despite the Appellant's argument, not all criminals have nicknames, and not all people with nicknames are criminals. Furthermore, there are a multitude of

circumstances beyond past criminal dealings that would make a law enforcement officer aware of an individual's nickname. The words "in the community" do not inherently imply past wrongdoing, as a detective who, for instance, built houses for Habitat for Humanity with the Appellant might similarly testify that she knew the Appellant "in the community." Likewise, the nickname "Chilly Pop" does not connote automatically prior bad acts in the minds of the jury, as opposed to a nickname like "Outlaw." *See State v. Day*, 341 S.C. 410, 422-23, 535 S.E.2d 431, 438 (2000) (noting use of the "Outlaw" nickname "to paint a picture of Day as someone who was proud of his status as an outlaw, who felt he was above the law[.]"); *U.S. v. Dean*, 59 F.3d 1479, 1492 (5th Cir. 1995) (considering that "the nickname 'Crazy-K' is not necessarily suggestive of a criminal disposition."). Thus, as Detective Riggott's testimony did not pertain to the Appellant's character or other bad acts, Rule 404, SCRE, is not implicated and the trial judge did not abuse his discretion by allowing the jury to hear the testimony.

B. Even if the testimony at issue did implicate Rule 404, SCRE, it was admissible to show the identity of the Appellant.

If, however, the Court believes that Detective Riggott's testimony as to her knowledge of the Appellant's nickname from the community does amount to evidence of prior bad acts, that testimony was still admissible. Rule 404(b), SCRE, provides that "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Here, Detective Riggott's testimony, as with the other evidentiary references to the Appellant's nickname, were well within the discretion of the trial court to admit as evidence of the Appellant's identity. "Evidence concerning a

defendant's tattoo or nickname is not prejudicial when used to prove something at issue in a trial, such as the identification of the defendant." *Day*, 341 S.C. at 422, 535 S.E.2d at 437.

The victim's testimony was clear that she knew her assailant only by his nickname of "Chilly Pop." (R. p.26:21-p.27:8.) Therefore, the victim was unable to identify definitively the man who attacked her by name. When Detective Riggott testified, not one witness had yet provided the jury with the necessary linkage between the Appellant's nickname and his given name. As the trial judge correctly noted, "[t]he State has a right in some way, shape or form to link up the fact that the defendant on trial goes by the nickname 'Chilly Pop.' If the State is going to do that, they obviously have to present evidence." (R. p.123:21-25.) The judge further commented that, "[a]bsent a stipulation that your client is Chilly Pop, I don't know how the State could possibly seek to introduce this evidence some other way." (R. p.124:3-6.) As defense counsel at trial was not willing to provide such a stipulation, the State needed to and did present evidence through Detective Riggott's testimony, to link "Chilly Pop" to Richard Sylvester Evans. In *State v. Tubbs*, 333 S.C. 316, 509 S.E.2d 815 (1999), the solicitor asked a witness to identify "Cobra," and the witness responded that "Cobra" was the defendant in that case. 333 S.C. at 321, 509 S.E.2d at 818. The South Carolina Supreme Court noted that this was "justified to properly establish Defendant's identity." *Id.* Similarly, in *State v. Gillian*, 373 S.C. 601, 646 S.E.2d 872 (2007), the Court upheld the admission of evidence regarding two prior burglaries in order to establish the identity of the murderer under Rule 404(b), SCRE, by linking him to the location of the murder and the weapon used. 373 S.C. at 609-10, 646 S.E.2d at 876-77.

The Appellant's reliance on *State v. Day* is misplaced. In that case, the Court considered whether the solicitor's repeated references to Day's nickname of "Outlaw" "so infected the trial with unfairness as to make the resulting conviction a denial of due process." 341 S.C. at 423, 535 S.E.2d at 438 (quoting *Tubbs*, 333 S.C. at 320, 509 S.E.2d at 817). In that case, the Court found that the solicitor's 23 references to the "Outlaw" nickname in closing were made only for the purpose of attacking Day's character. In contrast, the solicitor mentioned the Appellant's "Chilly Pop" nickname only once during closing, and there is no argument advanced here that the solicitor attacked the Appellant's character or that the entire trial was infected with unfairness. The present case is better compared to *State v. Tubbs*, where the Court noted that the defendant's nickname only came up seven times during the entire trial, that two references were not objected to, and that at least one of the seven instances was justified to establish the defendant's identity. 333 S.C. at 321, 509 S.E.2d at 818; *see also Randall v. State*, 356 S.C. 639, 642-43, 591 S.E.2d 608, 610-11 (2004) (rejecting argument that solicitor's comparison of defendants to "dirty cockroaches" did not so infect the trial with unfairness as to deprive them of due process). Similarly, the "Chilly Pop" nickname was mentioned to the jury no more than ten times, only one reference was objected to, and all of the instances were used to establish the Appellant's identity.

The detective's testimony was therefore relevant to establishing the identity of the perpetrator by linking him to his nickname. Her statement that she knew the Appellant from the community simply answered the obvious question as to how she knew Chilly Pop was indeed the Appellant. Thus, even if this statement is considered prior bad act

evidence, the trial court did not abuse its discretion in admitting it as identity evidence under Rule 404(b), SCRE.

C. The testimony that Detective Riggott knew the Appellant in the community was not unfairly prejudicial.

The Appellant's final argument with regard to Detective Riggott's testimony is that her mention of knowing the Appellant in the community, even if considered identity testimony under Rule 404(b), SCRE, unfairly prejudiced the Appellant.[1] Rule 403, SCRE, provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (citation omitted).

There is simply no basis to conclude in this case that Detective Riggott's testimony caused prejudice of any kind to the Appellant, let alone prejudice rising to the level required for this Court to reverse the decision of the trial court. No mention of other crimes, wrongs, or acts, either specifically or generally, was made by any witness. Detective Riggott's statement that she knew the Appellant from the community did not show or imply a propensity to commit crimes, nor did it impugn the Appellant's character. The Supreme Court of South Carolina dealt with a similar issue in *State v.*

[1] The Appellant also argues that Detective Riggott's testimony was unnecessarily cumulative. (Brief of Appellant at 7.) However, no objection was made at trial to this testimony on that basis. Further, Detective Bentley's later testimony regarding the identification of the Appellant by his nickname was heard without objection. "Failure to object when the evidence is offered constitutes a waiver of the right to object." *State v. Burton*, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997). "Where an objection and the ground therefor is not stated in the record, there is no basis for appellate review." *State v. Morris*, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991).

Stokes, 381 S.C. 390, 673 S.E.2d 434 (2009). In that case, Stokes, convicted of murder, first degree burglary, and assault with intent to kill, challenged the admission of evidence regarding a previous shooting under, *inter alia*, Rule 403, SCRE. "Appellant further contends the prejudicial value of the evidence outweighed its probative value because it showed appellant 'might be a violent person who may possess a gun.'" 381 S.C. at 406, 673 S.E.2d at 442. Unsurprisingly, the Court rejected this argument, finding that the evidence was not offered to show his bad character and that, while prejudicial, was not "unduly" prejudicial. *Id.* As a result, even if the Appellant can show some level of prejudice from this testimony, it did not have an "undue tendency to suggest a decision on an improper basis." *Lyles*, 379 S.C. at 338, 665 S.E.2d at 206.

II. The trial court did not err in admitting police photographs of the victim's injuries, as they were both relevant and not unduly prejudicial.

The Appellant's next objection is to the introduction of the photographs which depicted the victim's injuries which were taken at the crime scene before the victim was transported to the hospital. Because these photographs: (1) were relevant to understand the injuries suffered by the victim and corroborate testimony in the case, (2) relate to an element of the charges brought against the Appellant, and (3) are not unduly prejudicial, the trial court's decision to admit these photographs should not be overturned.

"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) (citing *State v. Matthews*, 296 S.C. 379, 373 S.E.2d 587 (1988), *cert. denied*, 489 U.S. 1091 (1989)). "A test to determine whether the trial court abused its discretion is whether the photographic evidence serves to corroborate the testimony of witnesses offered at trial." *State v. Jarrell*, 350 S.C. 90, 106, 564 S.E.2d

362, 371 (2002). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit." *Nance*, 320 S.C. at 508, 466 S.E.2d at 353 (citing *State v. Todd*, 290 S.C. 212, 349 S.E.2d 339 (1986)).

During the case, the victim testified at several points regarding her injuries and how they were inflicted by the Appellant. This testimony, while accurate, does not paint the clearest picture of the extent of her injuries. The victim testified that the Appellant "struck me in my stomach four times, he stabbed me right here and he stabbed me right here." (R. p.35:2-11.) She also testified that, when the Appellant held a knife to her throat, she received a "laceration on my neck." (R. p.42:5-10.) Following the attack, she received medical treatment for injuries to her hands; one hand required 29 stitches and the other required 19. (R. p.47:10-24.) The victim also testified she received other injuries to "my neck, my chest here and right here." (R. p.47:25-p.48:4.) Lastly, she demonstrated the location of her scars—from injuries now more than ten months old—to the jury. (R. p.48:5-p.49:1.)

The victim did not testify accurately as to the photographs which were taken of her injuries, remembering only the photographs taken by Detective Riggott following the victim's discharge from the hospital. (R. p.51:14-25; p.52:8-13.) The victim did not recall any other photographs taken of her injuries in the hours following the attack by the Appellant. (R. p.52:1-7). As a result, a proper foundation for some of the photographs could not be laid at that point, and solicitor introduced only the later photographs taken by Detective Riggott. Those photographs were admitted without objection. (R. p.52:8-p.53:4.)

Other witnesses did offer testimony regarding the victim's injuries. Shasha Simpson, who pulled into the gas station where the assault took place just as the Appellant was fleeing in the victim's car, testified that the victim came outside slouched over and covered in blood. (R. p.66:24-p.67:25.) Lieutenant Hunnicutt of the Laurens Police Department noted blood on the victim's hands and neck immediately upon arrival. (R. p.71:7-15). He testified:

Q: And you mentioned that she was bleeding. Where was she bleeding from?

A: She had large lacerations on both hands. I think the larger one was on her left hand. It looked to be almost to the bone. Like I say, she had what appeared to be a little small cut here (indicating neck) and some abrasions – various abrasions on her face and neck.

Q: And based on her physical condition and the lacerations, were you able to call in an ambulance at that time?

A: We did. As soon as I was able to, I called an ambulance for her due to the blood loss and the severe lacerations.

(R. p.72:1-15.) Lieutenant Hunnicutt also explained that additional photographs of the victim's injuries were taken on-scene, prior to her transport via ambulance to the hospital. (R. p.74:8-12). At that time, the solicitor moved the photographs into evidence. Appellant's attorney objected, arguing that the photographs were cumulative and prejudicial. The trial judge reviewed the photographs and overruled the objection contingent on sufficient foundation for the photographs being laid.

The only other testimony with regard to the victim's injuries came from Detective Bentley, who recalled:

Q: Did you see some reason why she might be in pain?

A: I saw some pretty severe lacerations on her hands and a lot of blood.

Q: Did you see any other wounds anywhere else?

A: I could see some places on her neck but I didn't examine them closely because they were trying to get her to the hospital.

(R. p.227:8-16.)

The photographs introduced by the State which were taken prior to the victim being taken to the hospital, which are now challenged by the Appellant, serve to corroborate the testimony of these witnesses with regard to the injuries suffered by the victim. Thus, there is no question as to their relevance or admissibility. As to the question of prejudice, the photographs were not offered simply to arouse the sympathy of the jury, but instead to substantiate the facts of the Appellant's attack. In the other photographs, which were admitted without objection, the victim's hands are bandaged and the actual wounds are not visible. The objected-to photographs provide the only picture of these injuries and are thus highly relevant for this purpose. In addition, the State did not seek to introduce several photographs which all depicted the same injury. Of the five photographs which the Appellant contends should have been excluded, two are of the victim's neck, two are of her left hand, and one is of her right hand.

The Appellant's argument that the photographs were not "necessary," as the injuries had been discussed by several witnesses, fails to apprehend the legal standard by which photographic evidence is considered. The question is not whether the photographs were necessary, but whether they serve to corroborate testimony and are not so prejudicial as to outweigh their probative value. Although the photographs do show the

serious nature of the victim's injuries, especially to her hands, the trial judge did not abuse his discretion in ruling that the photographs were not so prejudicial such that they should be excluded.

This ruling is consistent with the decisions of the appellate courts of this state. In *State v. Elders*, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010), Elders challenged the State's admission of a photograph of the victim's injuries, arguing that the photograph was prejudicial and inflammatory. The Court of Appeals rejected this argument, finding that the photograph "corroborated Mr. Riggs' testimony regarding his struggle with Elders and the injuries he sustained as a result." *Elders*, 386 S.C. at 483, 688 S.E.2d at 862. And "while the photograph may have aroused some sympathy among the jury," it was not unduly prejudicial and similar to other photographs that were admitted without objection. *Elders*, 386 S.C. at 484, 688 S.E.2d at 863. Similarly, in *State v. Bennett*, 369 S.C. 219, 632 S.E.2d 281 (2006), the Supreme Court of South Carolina stated that "there can be no question that the hospital photographs were introduced to describe the extent of the injuries the ABHAN victims suffered." 369 S.C. at 228-29, 632 S.E.2d at 286. Although "the photographs in the case were certain to elicit an emotional response from the jury, these photographs were highly probative of the nature of Appellant's prior crime in that they provided the ***clearest picture of the aggravated nature*** of the assault and battery." *Bennett*, 369 S.C. at 229, 632 S.E.2d at 287 (emphasis added) *see also Jarrell*, 350 S.C. at 106-07, 564 S.E.2d at 371 ("We agree with the trial judge, that while some of 'the photograph[s] are graphic, the facts of the case are very graphic' and the photos helped the jury understand the pathologist's testimony.").

Serving further to establish the admissibility of these photographs is the State's requirement to prove malice in connection with the charge of attempted murder. As the trial court instructed, malice "is hatred, ill will or hostility towards another person. The intentional doing of a wrongful act without just cause or excuse and with an intent to inflict any injury or under circumstances that the law will infer an evil intent." (R. p.282:11-16.) The trial judge further explained that "malice may be inferred from conduct showing a total disregard for human life." (R. p.283:16-17.) In further explaining the legal concept of malice, the trial court stated:

> A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit ***serious bodily injury***. Intent means intending the result which actually occurs, not accidently or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstance from which may naturally and reasonably infer intent: evidence of the character of the action, the character of the instrument used, the manner in which it was used, the purpose to be accomplished and ***the resulting wounds of injuries*** may be considered in determining the intent with which the act was committed.

(R. p.283:25-p.284:14 (emphasis added).); *see also State v. Dennis*, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (quoting *State v. Foust*, 325 S.C. 12, 16 n.4, 479 S.E.2d 50, 52 n.4 (1996)) (a jury may infer a general intent to kill from "the use of a dangerous or deadly weapon in a manner reasonably calculated to cause death or great bodily harm."). "[T]he manner in which the instrument was used, the purpose to be accomplished, and the resulting injuries may also prove intent." *Dennis*, 402 S.C. at 638, 742 S.E.2d at 27 (quoting *State v. Coleman*, 342 S.C. 172, 176, 536 S.E.2d 387, 389 (Ct. App. 2000)).

The trial court additionally charged the lesser included offense of assault and battery of a high and aggravated nature, which has as an element "great bodily injury,"

defined by the judge as "bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." (R. p.285:7-12.) The Appellant did not object to any of these jury instructions.

The photographs introduced into evidence over the Appellant's objection bore directly on the element of malice and the trial court's charge that the jury analyze the injuries to determine if the Appellant possessed the requisite intent for the crimes charged. The Supreme Court of South Carolina addressed a similar issue in *Nance*, where Nance challenged three photographs of the injuries to the victim's hands, abdomen, shoulder, and face. In addition to corroborating the testimony of the doctor who testified regarding the victim's medical condition, as well as the victim himself, the court found that "[t]he photographs were also relevant to the issue of malice, an element of assault and battery with intent to kill." *Nance*, 320 S.C. at 508, 466 S.E.2d at 353.

Thus, because the photographs served to corroborate the testimony of the witnesses, possessed significant probative value without furnishing undue prejudice, and were properly analyzed by the jury in determining whether the Appellant acted with the requisite intent, the trial judge did not commit an abuse of discretion in admitting the photographs over the Appellant's objection.

III. Because of the overwhelming evidence of the Appellant's guilt, admission of the testimony regarding Appellant's nickname and the police photographs, even if improper, constituted harmless error.

Even if the Appellant is correct that the trial judge abused his discretion by admitting either the testimony regarding the Appellant's nickname or the photographs of the victim's injuries, the ultimate outcome of the Appellant's conviction would have

remained the same and such error is harmless. "An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant." *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013) (quotation omitted). "When guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside a conviction for insubstantial errors not affecting the result." *State v. Baccus*, 367 S.C. 41, 55, 625 S.E.2d 216, 233 (2006).

The evidence of the Appellant's guilt was overwhelming. The victim provided eyewitness testimony—uncontroverted by the Appellant—as to the circumstances of the robbery and attack she suffered through. In addition, surveillance video captured the Appellant entering the convenience store, robbing it, and taking the victim and knifepoint to the rear of the store. (R. p.45:5-p.47:7.) Finally, the victim's stolen car was found with a blood-stained knife and a pack of cigarettes inside. (R. p.93:25-p.95:21.) The blood on the knife was shown to belong to the victim, and a fingerprint from the cigarette pack belonged to the Appellant. (R. p.190:3-p.192:13; p.212:14-p.213:11.)

As to the Appellant's arguments that both the testimony of Detective Riggott identifying him and the photographs of the victim's injuries are cumulative and unnecessary, the courts of this state have repeatedly held that no harm results when improper evidence is admitted when that evidence is merely cumulative to other, properly admitted evidence. *See, e.g.*, *Baccus*, 367 S.C. at 55, 625 S.E.2d at 233 (admission of cumulative blood evidence was harmless); *State v. Haselden*, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003) (admission of improper evidence was harmless where the evidence was merely cumulative to other evidence). In analyzing whether Detective Riggott's testimony that she knew the Appellant in the community is grounds for

reversal, the Supreme Court of South Carolina has held that "[t]he erroneous admission of character evidence is harmless beyond a reasonable doubt if its impact is minimal in the context of the entire record." *State v. Brown*, 344 S.C. 70, 75, 543 S.E.2d 552, 555 (2001). The Supreme Court of South Carolina has ruled similarly that the admission of photographs is harmless even where the testimony conveys the malice of the attack as long as the photographs are not inflammatory. "Even if the descriptive testimony of the prosecution's witnesses adequately conveyed the brutality and malice of the crime and these photographs were unnecessary, they were harmless surplusage." *State v. Brazell*, 325 S.C. 65, 79, 480 S.E.2d 64, 72 (1997).

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

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Frank R. Addy, Jr., Circuit Court Judge

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, certify that I have served the Final Brief of Respondent on Richard Sylvester Evans by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2014, addressed to his attorneys of record as follows:

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