

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From Berkeley County  
The Honorable R. Markley Dennis, Circuit Court Judge  
Appellate Case No. 2012-213388

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THE STATE,

Respondent,

v.

ROGER WILLIAMS,

Appellant.

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**FINAL BRIEF OF RESPONDENT**

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RECEIVED

JUL 21 2014

SC Court of Appeals

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## **STATEMENT OF ISSUE ON APPEAL**

The trial court properly admitted the photograph showing the cement filled trashcan containing Child's body at the dump site because the probative value outweighed any potential prejudicial harm.

## **STATEMENT OF THE CASE**

Respondent concurs with Appellant's procedural Statement of the Case.

## STATEMENT OF THE FACTS

On September 8, 2010, the Berkeley County Grand Jury indicted Appellant Roger Williams on one count of homicide by child abuse and one count of unlawful conduct toward a child. The charges arose from the death of Appellant's two year old son ("Child").

During a pretrial hearing on September 12, 2012, Appellant moved to exclude photographs taken during Child's autopsy. The State indicated it was only offering seven photographs from the autopsy, which were primarily of the trashcan used to dispose of Child's body, and only one included a small part of the body itself. The purpose of the photographs was to "show the manner in which and the extent to which the defendants went to conceal the body," which was "very unique and very extensive," and to help the pathologist explain the "impact of that type of concealment on his examination of the body." (9/12/2012 Hearing Transcript [HT], pp. 13, 56; Record on Appeal [R.], pp. 3, 6). The circuit court indicated it was not inclined to admit the photographs, but would have "to wait to hear and see" the evidence at trial. (HT, pp. 56-57; R., 6-7).<sup>1</sup>

The matter was called for a jury trial on October 8, 2012, before the Honorable R. Markley Dennis, Jr., Circuit Court Judge. There were no additional pre-trial motions prior to selection and seating of the jury.

Grace Trotman (Trotman), who pled guilty to homicide by child abuse in connection with Child's death, testified she and Appellant were romantically involved from 2006 through 2010, and had two children together during that time. (Trial Transcript [TT], pp. 189-195; R., pp. 85-91). In 2009, after the birth of their first child, Trotman and Appellant discovered Appellant had

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<sup>1</sup>Prior to trial, the circuit court excluded the challenged autopsy photographs, and none were offered at trial.

fathered Child by another woman in 2007, and the Child started visiting them shortly thereafter. (TT. pp. 199-200; R., pp. 95-96).

In May 2010, Appellant and Child's mother arranged for Child to spend the summer with Appellant and Trotman. (TT. pp. 332-333; R., pp. 217-218). Trotman described the relationship between Appellant and Child as "really good" initially, but Appellant started getting their two year old daughter to slap, scratch and drag Child "to get him to toughen up." (TT. pp. 208-209; R., pp. 104-105). Trotman testified Appellant believed Child acted effeminately, and he ultimately started hitting Child himself, leaving bruises. She stated she saw Appellant beat Child around ten times, initially just kind of paddling him and popping him on the arm, but eventually hitting Child's back or chest with a closed fist, or slapping "his head to the floor." Trotman was too scared to help Child because Appellant also physically abused her. (TT, pp. 210-229; R., pp. 106-125).

Trotman testified Child had a "seizure" after Appellant "boxed him in his back" during the week prior to Child's death. She described the seizure as Child "grunting," with something weird going on with his eyes, and a loss of consciousness, but he seemed to "snap out of it" when they gave him some water. (TT. pp 214-215; R., pp. 110-111). The next morning, Trotman had to physically shake Child to wake him up, which she thought was a second seizure because he usually woke very easily, but he seemed "okay" and acted normally after he got up. (TT. pp. 216-217; R., pp. 112-113).

On Sunday, June 6 2010, Child had "poop on the back of his pants," and on the floor of his bedroom. Trotman testified Appellant got angry, and took Child into his bedroom, where she "just heard him kind of bumping and hitting him against the wall." When Trotman went into the

bedroom later, Child was “sitting on the wall like he was in a daze.” (TT. pp. 218-223; R., pp. 114-119).

Trotman testified she was feeding her infant son the next morning (June 7), when Child and her two year old daughter started fighting. When the two did not stop at her verbal command, she popped them on their arms, and Child “fell to his bottom, lost his balance and hit his head on the wall.” (TT. pp. 224-225; R., pp. 120-121). Child began “acting different, like the other days where he was having trouble breathing, like gasping for air,” and Trotman tried to perform CPR on him. She then heard Child was breathing, and his heart was beating, so she ran outside to use a neighbor’s phone. (TT. pp. 227-230; R., pp. 123-126).

Rather than call an ambulance, Trotman called Appellant at work. Appellant told her he would come home, but had to wait for a ride. Trotman then called Appellant a second time from another neighbor’s phone to say they needed to call an ambulance, but he told her not to call an ambulance and to wait until he got home. Rather than go inside to check on Child, Trotman waited outside for Appellant. When he got home approximately an hour later, they went inside the home, where Appellant touched Child’s chest and said “that boy dead.” (TT. pp. 231-233; R., pp. 127-129).

Appellant devised a plan to dispose of Child’s body, and told Trotman if the body was ever found, she should say Child fell down the stairs and hit his head “just in case the autopsy came back with blunt force trauma.” (TT, p. 233; R., p. 129). Appellant left the home, and returned with a trashcan and cement. He then removed Child’s clothes, wiped the body clean with peroxide “[s]o he wouldn’t have any of his fingerprints on him,” took the body out to the garage and wrapped it in trash bags and duct tape. (TT, pp. 234-235; R., pp. 130-131).

After wrapping the body, Appellant put cement in the trashcan, and put Child's body in the trashcan headfirst. When he realized he did not have enough cement, he called a friend to bring him more cement, which he then used to fill the rest of the trashcan. (TT. p. 235; R., p. 131).

The next day, Appellant and Trotman rented a truck and loaded the trashcan on it. They rode around looking for a remote area to dump it, but could not find one. They rented another truck the next day, and after Appellant got off work, they rode around again, ultimately putting the trashcan in a very remote, uninhabited area in Orangeburg County. (TT. pp. 235-236; R., pp. 131-132).

During the week of July 4<sup>th</sup>, Child's mother wanted to visit with him. In the on-going effort to hide Child's death, Appellant arranged for a rental car so Trotman could drive with her two children to the Battery in Charleston, where she pretended Child went missing. The police arrived and assisted in the search for Child. (TT. pp. 244-253; R., pp. 140-149).

Eventually, the police took Trotman to the police station, where they questioned her for hours, during which she told many false stories as she and Appellant had previously planned. She ultimately told the police what happened, however, and took them to the place she and Appellant dumped Child's body. (TT. pp. 254-257; R., pp. 150-153).

Lieutenant Dean Kokinda, with the Forensic Services Division of the Berkeley County Sheriff's Office, testified he took photographs at the site where Child's body was dumped. He described the site as extremely remote and heavily wooded, with the trashcan hidden under a discarded lounge chair. When the State offered the photographs as State's Exhibits 24 through 29, Appellant objected to Exhibits 28 and 29 as unduly prejudicial. The circuit court admitted

Exhibit 28 (photograph of trashcan and recliner), but excluded Exhibit 29 (close-up photograph of trashcan). (TT, pp. 360-369, State's Exhibits 24-29 [Photographs]; R., pp. 235-244).<sup>2</sup>

Nicholas Batalis, M.D., qualified as an expert in forensic pathology, performed the autopsy of Child's body, and determined the cause of death was "homicidal violence, including probably blunt head trauma," based on the condition in which the body was found, and two contusions he found on the scalp. Dr. Batalis further found there were no skull fractures followed by bleeding around the brain, and concluded Child suffered a "concussive type phenomenon," or what is called an axonal injury, which can occur if the brain is re-injured when it has not completely healed from a prior injury. (TT. pp. 460-468; R., pp. 273-281).

Carol Jenny, M.D., qualified as an expert in pediatrics, forensic pediatrics and abusive head trauma, testified Child suffered from a diffuse axonal injury, meaning the brain cells were concussed and stopped functioning, over the weeks leading to his death, and ultimately died because of "repeated head injuries which led to his eventual collapse." Based on the reports of Child suffering from seizures and multiple episodes of lost consciousness, she concluded Child had "multiple episodes of head injury/concussion," which made him vulnerable to repeated seizures due to "second impact syndrome." She stated medical intervention may have prevented Child's death, but he may have developed problems later in life. (TT. pp. 504-513; R., pp. 312-321).

Detective Bobby Shuler of the Berkeley County Sheriff's Office testified he participated in an audiotaped interview of Appellant on July 7, 2010. (TT. pp. 548-554; R., pp. 356-362). During that interview, Appellant admitted he concocted the plan to hide Child's body. He went to Lowe's, inquired about which cement dried the fastest, and purchased the trashcan and

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<sup>2</sup>State's Exhibits 24 through 29 will be transported to the Court for consideration.

cement. When he returned to the house, they took the Child's clothes off, wrapped his body in trash bags and encased him inside the trashcan with cement. (State's Exhibit 66).<sup>3</sup>

Appellant stated they rented a truck and took the trashcan out to a remote, secluded area, covered it with a discarded chair they found at the site, and left. They went back some time later to bury the trashcan, but left without burying it because the smell from the decaying body was too strong. (State's Exhibit 66).

Appellant also admitted lying to Child's mother to "buy time" after Child's death. When the mother became insistent about seeing Child over July 4<sup>th</sup>, Appellant told Trotman to go to Charleston and stage the missing child alert. (State's Exhibit 66).

Appellant's expert pathologist, Kimberly Collins, testified while Dr. Batalis found the cause of death was homicidal violence due to blunt force head trauma, due to the decomposed condition of the body, other forms of homicidal violence, such as asphyxia, commotion cordis, or the neck being wrenched to the side, could not be ruled out. (TT. pp. 487-489; R., pp. 295-297). On cross-examination, she testified she agreed with the way Dr. Batalis called the case. (TT. pp. 487-496; R., pp. 295-304).

During closing argument, the State referred to State's Exhibit 27 one time, describing it as the photograph of the trashcan with Child's body inside, filled with cement and a couch over it, and stating it showed how the trashcan was concealed. The solicitor did not refer to Exhibit 28 during closing. (TT. pp. 663-696; R., p. 435-468).

The jury convicted Appellant of homicide by child abuse and unlawful conduct toward a child, and the circuit court sentenced him to life imprisonment without the possibility of parole and ten years concurrent imprisonment, respectively. This appeal followed.

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<sup>3</sup>State's Exhibit 66 [Audiotape] will be transported to the Court for consideration.

## ARGUMENT

**The trial court properly admitted the photograph showing the cement filled trashcan containing the Child's body at the dump site because the probative value outweighed any potential prejudicial harm.**

Appellant contends the trial court erred in admitting State's Exhibit 28 because the prejudice outweighed the photograph's probative value due to its "graphic" nature, and the State used the photograph solely to provoke the passions of the jury. Appellant's argument ignores the photograph's corroborative nature, as well as its importance to the issue of Appellant's state of mind, particularly his "extreme indifference to human life," because it showed the extent of Appellant's efforts to dispose of Child's body.

Rule 403, South Carolina Rules of Evidence, provides relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." The probative value evaluation 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. *See State v. Lyles*, 379 S.C. 328, 665 S.E.2d 201, 206 (Ct.App.2008) ("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.") (*citing State v. Gillian*, 373 S.C. 601, 646 S.E.2d 872, 876 [2007]).

Photographs are unfairly prejudicial when they 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, 703 S.E.2d 226, 228 (2010) (emphasis added). "The relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of abuse of discretion." *State v. Martucci*, 380 S.C. 232, 669 S.E.2d 598, 607 (Ct. App. 2008) (*quoting State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445, 450 [2003]); *see also State v. Rosemond*, 335 S.C. 593, 518 S.E.2d 588, 589-90 (1999). If

photographic evidence serves to corroborate the testimony of witnesses offered at trial, it is not an abuse of discretion to admit it. State v. Dial, 405 S.C. 247, 746 S.E.2d 495, 502 (Ct. App. 2013) (citing Martucci); see also State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362, 371 (Ct. App. 2002) (citing Rosemond).

In this case, State's Exhibit 28 clearly corroborated Lt. Kokinda's testimony describing the dump site. While Lt. Kokinda was able to verbally describe the scene and the condition of the trashcan, the photograph gave the jury an actual visual depiction of what he described, allowing the jury to draw its own conclusions regarding the remoteness of the site, and the condition of the trashcan when it was discovered. (TT, pp. 362-368; R., pp. 237-243). The photograph also corroborated Trotman's testimony and Appellant's statement regarding the steps Appellant took to encase the body in cement and hide it.

Appellant's focus on the fact the State did not use the photograph to identify Child, or by a pathologist to describe the manner of death, is misplaced. South Carolina appellate courts have never interpreted Rule 403 so narrowly. Rather, as discussed above, the probative value of photographs that corroborate testimony, are not unduly gruesome, and help establish elements of the crime, outweighs any potential harm. See State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (graphic photograph of child's face admissible to corroborate testimony regarding the manner of death, and they were not unduly gruesome because there was an insignificant amount of blood visible) Martucci; Jarrell.

Contrary to Appellant's contention State's Exhibit 28 was "graphic," it simply shows a blue plastic trashcan full of cement, with a split on the side from which cement protruded. It does not show any significant blood or body fluid, and no part of Child's body is visible. Significantly, the circuit court did not admit State's Exhibit 29, which was a close-up of the split

on the side of the trashcan, and showed something oozing from the split with more insect activity. Thus, while the State does not concede the prejudicial effect of State's Exhibit 29 outweighed its probative value, the circuit court clearly conducted the required probative/prejudicial balancing test on the offered photographs.

Appellant conflates the nature of the photographs discussed at the pre-trial hearing with the photographs admitted at trial. The photographs at issue in the pre-trial hearing were taken during the autopsy as the body was being removed from the cement, and one of them showed a small part of Child's body. (HT, pp. 54-58; R., pp. 4-8). The circuit court excluded **all** the autopsy related photographs, and they are not at issue in this appeal. None of the photographs admitted at trial were related to the autopsy in any way, or showed **any** part of Child's body.

State's Exhibit 28 is much less "graphic" than many crime scene and autopsy photos routinely admitted in criminal cases in South Carolina. In fact, it simply is not on the same level in regard to potential gruesomeness, or potential emotional response as most of the photographs at issue in other cases. This case involved incredible brutality, and as a result, the facts and evidence of the case were unavoidably brutal. *See Jarrell*, 564 S.E.2d at 371 (some of the photographs in a homicide by child abuse were graphic because the facts of the case were very graphic).

Finally, State's Exhibit 28 went directly to the elements the State had to prove to establish the crime of homicide by child abuse. In order to prove Appellant's guilt on the charge, the State had to show Appellant caused "the death of a child under the age of eleven while committing child abuse or neglect, and the death occur[red] under circumstances manifesting an **"extreme indifference to human life."** S.C. Code Ann. §16-3-85(A) (2003) (emphasis added).

At a minimum, State's Exhibit 28 evidenced the ultimate manifestation of Appellant's extreme indifference to the life of his two year old son.

State's Exhibit 28 was understandably unpleasant, but its probative value as corroborative evidence and proof of a required element of the charged offense far outweighed any potential prejudice from the scene it depicted. *See Martucci*, 669 S.E.2d at 607 (relevant evidence should not be excluded merely because it is unpleasant or offensive). Accordingly, the circuit court did not abuse its discretion in admitting State's Exhibit 28, and its ruling should be affirmed.

**CONCLUSION**

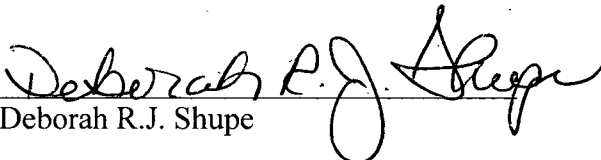
The record supports the circuit court's ruling that the photograph in question was admissible. Accordingly, the State submits Appellant's convictions and sentences should be affirmed.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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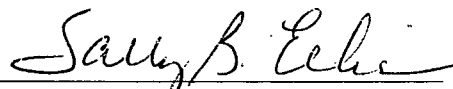
**PROOF OF SERVICE**

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Susan B. Hackett  
Assistant Appellate Defender  
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I further certify all parties required by Rule to be served have been served.

This 21<sup>st</sup> day of July, 2014.



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