STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP HEATH HOLLINGSWORTH,

APPELLANT,

Appellate Case No. 2014-000903.

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion by admitting photographs of Appellant's highly tattooed shirtless body while in custody, as well as a photograph of the decedent's dead body on his living room floor as his dog watched in the background, and additional crime scene photographs of the pet, since none of these photographs were relevant to who shot the decedent, and even if the photographs were relevant, their probative value was substantially outweighed by their unfair prejudicial effect under Rule 403, SCRE?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion in denying Appellant's motion to exclude photographs, including both crime scene photographs that showed Victim's dog in the background and photographs of Appellant's shirtless torso and shoulder.

RESPONDENT'S STATEMENT OF THE CASE

A Laurens County Grand Jury indicted Appellant, Phillip Heath Hollingsworth, in February 2013 for the murder of Bill Ardis (Victim). (Indictment Number 13-GS-30-0288).

On April 7, 2014, Appellant's case was called to trial before the Honorable Frank R. Addy, Jr. (Tr. p. 1). Appellant was represented by Chief Public Defender Claude H. "Chip" Howe, III, and Assistant Public Defender Chelsea McNeill during the trial. (Tr. p. 1). Solicitor David M. Stumbo and Deputy Solicitor O. Warren Mowry represented the State. (Tr. p. 1). On April 10, 2014, the jury found Appellant guilty of murder. (Tr. p. 688, line 11–p. 689, line 11). Judge Addy sentenced Appellant to forty years of incarceration. (Tr. p. 708, line 23–p. 709, line 6).

Thereafter, Appellant served a timely notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF THE FACTS

Appellant and his girlfriend, Shayla Gaines, lived in the spare bedroom of Victim's home. (Tr. p. 145, line 6–p. 153, line 25). Victim owned a roofing company, and Appellant worked for that company. (Tr. p. 150, line 23–p. 151, line 3). Each morning Appellant and Victim got up early to go to work, and Gaines got up with them. (Tr. p. 156, line 14–p. 157, line 4). Gaines testified that when she got up in the mornings with the men, she would talk with Appellant until he went to work, or she would make Appellant and Victim breakfast. (Tr. p. 156, line 14–p. 157, line 1). On the morning of November 7, 2012, Gaines got up with Appellant and Victim like normal, and after they went to work, she watched television and then went back to bed. (Tr. p. 156, line 8–p. 157, line 10).

Gaines woke up around 1:30 that afternoon to find that Appellant and Victim had come home early because it was raining. (Tr. p. 157, line 11–p. 158, line 1). Later that afternoon Appellant and Gaines got a ride to her father's home in Greenwood. (Tr. p. 158, line 14–p. 159, line 22). While at Gaines's father's home, Appellant started drinking "clear liquor" and became increasingly intoxicated. (Tr. p. 159, line 23–p. 160, line 22). According to Gaines, the alcohol had a "bad effect" on Appellant:

> He was slurring and then one minute he promised he wouldn't drink no more and the next minute my dad was giving him more, he was asking for more. He was real—he was—you know, started like being hateful toward me and accusing me of stuff I didn't do, and I begged my daddy to stop.

(Tr. p. 160, lines 9–22). Eventually Appellant, Gaines, her father, and her father's girlfriend, Nikki, left the house to go to the store and get Sudafed so that Gaines's father could cook methamphetamine. (Tr. p. 160, line 23–p. 161, line 25). On the way home from the store, Appellant was very drunk. (Tr. p. 162, lines 18–25).

When everyone got back to Gaines's father's home, Appellant and Victim were sitting in the living room, and Appellant began to get "real kind of possessive" and "mouthy" toward Gaines, which Nikki overheard and reported to Gaines's father. (Tr. p. 163, lines 10–25). According to Gaines, her father and another man began to pick a fight with Appellant. (Tr. p. 164, line 1–p. 165, line 8). Gaines picked up Appellant's phone, which had called Victim, and ushered Appellant outside. (Tr. p. 165, lines 2–19). She then told Victim that he was going to have to come get them. (Tr. p. 165, lines 18–21). While Victim was on the way, Gaines called the police. (Tr. p. 165, line 22–p. 166, line 4). Gaines and Appellant then met the police and Victim at a store up the road. (Tr. p. 166, line 3–p. 167, line 25). The police told Victim he could take Gaines and Appellant home instead of them being locked up. (Tr. p. 166, line 5–p. 167, line 25).

On the way home, Gaines told Victim that earlier in the evening Appellant had accused her "[o]f giving [Victim] oral sex when [she] really went to the bathroom." (Tr. p. 168, lines 4–15). Victim responded, "[']Heath, how could you do that, we've been friends over thirty years, you know better than that,[']" and Appellant denied that he had made such an accusation. (Tr. p. 168, lines 16–20). Victim was angry and warned Appellant that "he wasn't gonna have any BS when he got back to the house." (Tr. p. 168, lines 23–24).

When they got home, Gaines told Appellant that she was going to sleep on the couch. (Tr. p. 170, lines 2–16). Gaines sat down on the couch in the living room and talked with Victim, who was sitting in his blue recliner. (Tr. p. 171, line 5–p. 172, line 20). Appellant came into the living room twice asking Gaines to talk to him in their bedroom, but she refused. (Tr. p. 170, line 19–p. 172, line 17). The third time Appellant

came into the room he came "straight through the door and he already had his hand and the gun out." (Tr. p. 172, line 21–p. 173, line 3). Appellant then shot Victim through the back of the recliner. (Tr. p. 173, lines 4–6). During her testimony, Gaines demonstrated that after being shot Victim "raised and went like this a little bit (demonstrating) and then fell to his left right in front of the table." (Tr. p. 174, lines 3–6). According to Gaines, after Appellant shot Victim, Appellant "immediately dropped the gun and said ['']I just couldn't take it anymore.['']" (Tr. p. 173, lines 12–17). Gaines could see "blood and brains and blood splatter and—everywhere." (Tr. p. 174, lines 19–21). She had to run to the bathroom but told Appellant he could follow her. (Tr. p. 174, line 22–p. 177, line 11). Gaines testified that Appellant followed her to the bathroom and told her, "['']no leaks, Shayla, no leaks.['']" (Tr. p. 187, line 21–p. 188, line 5). It was a phrase he repeated later that evening to indicate to Gaines that "he didn't want [her] to go anywhere or tell anybody." (Tr. p. 188, lines 6–9).

Gaines and Appellant then started to leave Victim's house, but on the way out Appellant held a green shotgun shell up to Gaines's face "[a]nd said, ['']here, smell this, this is the bullet that killed him.['']" (Tr. p. 179, lines 2–12; Tr. p. 189, line 25–p. 190, line 15). Appellant then tossed it. (Tr. p. 179, lines 16–25). Appellant and Gaines then left the house in Victim's truck with Gaines driving. (Tr. p. 177, line 15–p. 180, line 9).

Once they left Victim's home, both Gaines and Appellant wanted to get drugs. (Tr. p. 192, lines 3–12). Appellant wanted to go back to Gaines's father's home, but they could not do that because they had called the police on him earlier, so they went to the home of Tina Renee Dobbins, Gaines's friend and drug connection. (Tr. p. 180, line 8–p. 181, line 11; Tr. p. 192, lines 3–17). Appellant had grabbed a .357 owned by Victim on

the way out of Victim's house, and he had the gun tucked into the waistband of his pants during the drive to Dobbins's house. (Tr. p. 178, line 13–p. 181, line 19). Gaines and Appellant arrived at Dobbins's house a little after 11 p.m. (Tr. p. 191, lines 2–22). Dobbins did not have any pills at the time, but she made some calls, and then Gaines and Appellant accompanied Dobbins to a trailer where she got some pills. (Tr. p. 192, line 20–p. 195, line 3). Appellant gave Dobbins a hundred dollar bill to pay for the drugs. (Tr. p. 193, lines 10–17).

Gaines, Dobbins, and Appellant then went back to Dobbins's home, and they sat at the kitchen table and got high. (Tr. p. 195, line 1–p. 197, line 2). Dobbins could tell that Gaines was upset, and when Appellant got up from the table to go to the bathroom, Dobbins asked what was wrong. (Tr. p. 197, lines 15–23). Gaines, crying, mouthed, "[']Bill's dead[']" and explained that Appellant had killed him.[1] (Tr. p. 197, line 15–p. 198, line 3). When Appellant returned from the bathroom, he told Gaines that he was ready to leave, and they got up to go. (Tr. p. 198, lines 3–11). Before Gaines and Appellant left, Dobbins slipped Gaines a cell phone and told her that they needed to call the police. (Tr. p. 198, line 11–p. 199, line 20). Gaines, afraid that Appellant would kill Dobbins, told Dobbins that she would get rid of him but if she was not back in fifteen minutes, she would call Dobbins. (Tr. p. 199, lines 16–24).

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[1] Dobbins described this incident slightly differently than Gaines did. (Tr. p. 250, line 3–p. 253, line 2). According to Dobbins, Gaines said, "[']I'm in trouble[']" when Appellant went to the bathroom. (Tr. p. 250, line 22–p. 251, line 4). When Appellant returned from the bathroom, he began to nod in and out, and Gaines moved closer to Dobbins as if Dobbins was going to inject her with the drugs they were doing. (Tr. p. 251, lines 2–12). Gaines then whispered to Dobbins that Appellant had shot Victim. (Tr. p. 251, lines 9–12). Dobbins then wrote a note to Gaines on a nearby pad asking if Victim was dead. (Tr. p. 251, lines 15–19). Gaines started to cry and shook her head yes. (Tr. p. 251, line 20–p. 252, line 5).

Gaines drove to a convenience store, and Appellant went in to buy cigarettes. (Tr. p. 199, line 25–p. 201, line 5). Gaines told Appellant that she was too upset to go in. (Tr. p. 200, line 22–p. 201, line 5). According to Gaines, Appellant bought the cigarettes so quickly that she did not have time to do anything, but when he returned to the truck, she asked him to get her a drink. (Tr. p. 200, line 20–p. 202, line 2). Appellant reluctantly went back in. (Tr. p. 201, line 20–p. 202, line 2). Once she was sure he was inside the store, she drove off. (Tr. p. 201, line 20–p. 202, line 20). Gaines went straight back to Dobbins's home and called 9-1-1. (Tr. p. 202, line 21–p. 203, line 5).

ARGUMENT

The trial court did not err in denying Appellant's motion to exclude photos of the crime scene and of Appellant's shirtless torso where the photos were relevant and not unduly prejudicial.

Introduction

The trial court did not abuse its discretion in admitting photographs of the crime scene or the photographs of Appellant's shirtless torso. Both sets of photographs corroborated the testimony of the State's witness, Shayla Gaines, who testified that she saw Appellant shoot Victim with a shotgun. Such corroborative evidence was particularly relevant in light of Appellant's defense that Gaines was the one who pulled the trigger. Any prejudicial effect of the photographs was outweighed by the probative value of the exhibits, and the trial court properly admitted them over Appellant's Rule 403 objection.

Standard of Review

Generally, "[t]he admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's discretion will not be reversed absent an abuse of discretion. *State v. Morris*, 376 S.C. 189, 205–06, 656 S.E.2d 359, 368 (2008) (citing *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2008) (citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

How the Issue Was Raised at Trial

Prior to the start of trial, the trial court asked defense counsel to review the photographs that the State was planning on introducing at trial. (Tr. p. 111, line 22–p. 113, line 3). Defense counsel objected to State's Exhibits 1, 2, 3, 4, 31, 34, and 35.[2] (Tr. p. 112, line 20–p. 113, line 3).

State's Exhibits 2, 3, and 4

State's Exhibit 2 shows a close-up of the couch in Victim's living room—an object on the couch is marked with evidence marker 12. (State's Ex. 2; Tr. p. 117, line 22–p. 118, line 20). State's Exhibit 3 is another view of the couch, but the photograph was taken from a different angle such that the coffee table is partially visible and the corner of the room can be seen. (State's Ex. 3; Tr. p. 119, lines 19–25). State's Exhibit 4 shows Victim's body lying on the floor of the living room. (State's Ex. 4; Tr. p. 118, line 21–p. 119, line 3). The layout of the room is visible in the background. (State's Ex. 4; Tr. p. 118, line 21–p. 119, line 3). A dog is laying on the back of the couch and can be seen in all three photographs. (State's Exs. 2, 3, 4).

Defense counsel objected to the admission of the photographs that had Victim's dog in them due to the "emotional prejudicial value." (Tr. p. 120, lines 6–21). The Solicitor noted, "[I]t's one of the more horrific crime scenes I've ever seen." (Tr. p. 119, lines 9–10). And further indicated that the State was not seeking to admit many of the photographs that had been taken of the crime scene but had, instead, chosen photographs taken from an angle where Victim's gunshot wound would not be visible. (Tr. p. 119, lines 4–18).

[2] The trial court's decision on the admissibility of State's Exhibits 1 and 31 has not been challenged in the instant appeal.

The trial court found that any prejudicial effect did not outweigh the probative value of the photographs:

> One could argue that it would be beneficial to your client that the dog was permitted to be around a scene such as this. In all candor though, I don't see where the prejudicial effect is so bad as to outweigh the probative value, and at this point in time I'm assuming that there would be some relevance to where the shotgun wadding wound up, and certainly if this is the only photograph that's showing Mr. Ardis. And I have no reason to doubt the Solicitor's representation that the other photographs were more graphic. Obviously this would depict the crime scene, so these will be okay. I'll let these in.

(Tr. p. 120, line 22–p. 121, line 8).

State's Exhibits 34 and 35

State's Exhibit 34 is a picture of Appellant with his shirt off, and State's Exhibit 35 shows Appellant's bare, right shoulder. (State's Exs. 34 & 35; Tr. p. 115, lines 15–23). Defense counsel argued that the photographs were prejudicial because they were taken at the jail and showed he was "clearly in custody. . . ." (Tr. p. 115, line 24–p. 116, line 3). Additionally, defense counsel remarked that multiple tattoos were visible in the photographs. (Tr. p. 117, lines 2–8).

The State noted that the photographs depicted a bruise on Appellant's right shoulder, which looked to have been caused by the butt of a shotgun. (Tr. p. 116, lines 6–24). The State argued that the photographs were "extraordinarily probative here because of the fact that the victim was shot with a double barrel shotgun. . . ." (Tr. p. 116, lines 12–17).

The trial court ruled that both exhibits were admissible:

> I would rule that 35 is not so unduly prejudicial as to warrant its exclusion. The photo that's taken shows the Defendant's back to apparently a corner—cement blocks pained in the corner. His shirt is off, but it does not indicate that he's cuffed or otherwise in custody. Additionally, it's a

> little naïve to believe that perhaps once he became a suspect he was not, in fact, arrested and charged with this, so to the extent that there might be prejudice, it's minimal, especially in light of the probative value of State's 35, so—35 and 34, so I'll allow those into evidence as well as the enlarged photograph.[3]

(Tr. p. 117, lines 9–21).

The trial court indicated that defense counsel would need to contemporaneously object to the photographs when the State sought to introduce them. (Tr. p. 121, line 22–p. 122, line 1).

Use of Exhibits During Trial

Deputy Devin Hodges, who worked for the Laurens County Sheriff's Office at the time of Victim's murder, testified that he was dispatched to Victim's home on November 7, 2012 to do a welfare check. (Tr. p. 293, line 19–p. 298, line 19). Deputy Hodges found Victim lying on the floor, deceased. (Tr. p. 295, line 21–p. 296, line 25). Deputy Hodges looked through State's Exhibits 2 through 24 and affirmed that those photographs appeared to be a fair and accurate representation of the crime scene.[4] (Tr. p. 298, lines 3–13).

Deputy John Carter with the Lauren's County Sheriff's Office testified that he responded with Deputy Hodges to Victim's home to perform a welfare check. (Tr. p. 309, line 17–p. 312, line 15). Deputy Carter described what he saw when he looked through the window—"We could see clearly into the residence. There were lights on and whatnot and you could clearly see an individual laying on the floor of the living room and a there was blood everywhere." (Tr. p. 312, lines 22–25). The State then sought to have

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[3] State's Ex. 38.

[4] It does not appear that those photographs were shown to the jury at that time. (Tr. p. 298, lines 3–23).

State's Exhibit 4 entered into evidence, which Deputy Carter confirmed showed the position of the body when they arrived that night. (Tr. p. 313, lines 1–17). Defense counsel objected, but the trial court concluded that the "probative value outweigh[ed] the prejudicial effect" of the photograph. (Tr. p. 313, lines 1–25).

The photographs of Appellant's shirtless torso[5] were later shown to the jury during the testimony of Lieutenant Scott Franklin, who testified that after Appellant was arrested, they received information that he had "a significant bruise on his shoulder," prompting the visit to the detention center to take photographs of Appellant's body. (Tr. p. 347, lines 15–p. 352, line 18).

Almon Brown, an agent in the crime scene unit with the South Carolina Law Enforcement Division (SLED), testified about processing the crime scene in Victim's home. (Tr. p. 396, line 23–p. 477, line 15). He affirmed that State's Exhibit 4 appeared to be a duplicate of a photograph he took showing the condition of Victim in the living room when he arrived. (Tr. p. 407, line 11–p. 408, line 7). Agent Brown also testified that State's Exhibits 2 and 3 were also duplicate photographs of the ones he had taken. (Tr. p. 420, line 18–p. 421, line 11). He explained that evidence marker 12 (shown in State's Ex. 2) was placed beside what he believed to be a piece of shotgun wadding. (Tr. p. 420, line 18–p. 421, line 4). Despite the very bloody crime scene, (Tr. p. 404, lines 13–21), Agent Brown noted "that there appeared to be somewhat of an absence of blood on this end of the couch," (Tr. p. 421, lines 5–9). Agent Brown testified that "from the

[5] It appears from Respondent's reading of the record that State's Exhibit 38, a blown up version of State's Exhibit 35, was shown to the jury. It is not clear whether State's Exhibits 34 and 35 were also shown to the jury at that time, but it appears that they may have been. (Tr. p. 350, line 23–p. 352, line 18). Appellant has not expressly challenged the admission of State's Ex. 38 (though it is clear he is challenging the admission of the smaller version of the same photograph).

time we got there till the time we went to leave, a canine was in this particular area." (Tr. p. 421, lines 9–11). The dog appeared to have red blood stains on him though Agent Brown did not know where the dog had been at the time of the shooting. (Tr. p. 421, lines 12–16). The State later requested permission to publish the photographs to the jury. (Tr. p. 454, lines 1–16). Defense counsel requested that the record reflect that the photographs were being admitted subject to the previous objection. (Tr. p. 454, lines 1–16). Agent Brown then went through a number of photographs and described what they depicted to the jury. (Tr. p. 454, line 18–p. 460, line 19). He mentioned the dog during his description of State's Exhibits 2, 3, and 4. (Tr. p. 456, lines 9–22; Tr. p. 457, line 23–p. 458, line 18).

Analysis

Generally, "[i]f the photographs serve to corroborate testimony, it is not an abuse of discretion to admit them." *State v. Tucker*, 324 S.C. 155, 167, 478 S.E.2d 260, 266 (1996) (citing *State v. Nance*, 320 S.C. 501, 466 S.E.2d 349 (1996), *cert. denied,* 518 U.S. 1026). In the capital case *State v. Torres*, the Supreme Court of South Carolina addressed the impact of Rule 403, SCRE, on the admissibility of photographs:

> Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). Under Rule 403, SCRE, "evidence may be excluded if its probative value is substantially outweighed by the danger or unfair prejudice." 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. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (internal quotation omitted).

390 S.C. 618, 623, 703 S.E.2d 226, 228–29 (2010).

Crime Scene Photographs

State's Exhibits 2, 3, and 4, the photographs of the crime scene, were certainly relevant to the State's case as they showed the room where Victim was killed from various angles. Not only did the photographs corroborate the testimony of multiple law enforcement officers, who described what they found when they arrived at Victim's home, but the photographs also corroborated the testimony of Gaines, the only person present during the murder who testified at trial. *See State v. Campbell*, 259 S.C. 339, 344, 191 S.E.2d 770, 773 (1972) ("Even as one who saw the scene is permitted from memory to describe it verbally, he is usually permitted to describe it using a photograph which he can identify."). The trial court properly concluded that the photographs had probative value in the State's presentation of its case against Petitioner.[6] *See State v. Johnson*, 338 S.C. 114, 122–23, 525 S.E.2d 519, 523 (2000) ("[I]t is generally recognized that the prosecution and the defense should be afforded wide discretion in the selection and presentation of evidence." (citing *State v. Richardson*, 253 S.C. 468, 474, 171 S.E.2d 717, 719 (1969) ("The prosecution is required to prove the guilt of the defendant beyond

[6] Respondent notes that the Solicitor told the trial court that the item beside evidence marker 12 in State's Exhibit 2 was shotgun wadding. (Tr. p. 117, line 22–p. 118, line 20). And when the trial court preliminarily found the photographs to be admissible based on a conclusion that any prejudicial effect did not outweigh the probative value, the court noted, "I'm assuming that there would be some relevance to where the shotgun wadding wound up . . . ." (Tr. p. 120, line 22–p. 121, line 8). Later testimony revealed that the item shown in State's Ex. 2 was only initially believed to be the wadding from the shotgun, but the actual wadding was found under Victim. (Tr. p. 452, line 24–p. 453, line 25; Tr. p. 458, lines 6–22). The item shown in State's Exhibit 2 was found to be some sort of button or fastener. (Tr. p. 602, lines 6–14). This discrepancy was not noted at trial, nor has it been raised in Appellant's brief.

Despite this minor factual error, State's Exhibit 2 was still probative of the state of the crime scene. In fact, Agent Brown testified that there was an absence of blood on the end of the couch where the item marked by marker 12 was located. (Tr. p. 421, lines 1–11).

a reasonable doubt and may, in its discretion, determine what witnesses will be called in presenting such proof."), *cert. denied*, 396 U.S. 955 (1969); *Imbler v. Pachtman*, 424 U.S. 409, 426 (1976) ("Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence.")).

The crime scene pictures were particularly important to the State's case because Appellant's defense was that Gaines, not Appellant, pulled the trigger. (Tr. p. 647, line 23–p. 661, line 23). And the key piece of evidence that Appellant used to support his theory was that Gaines was the primary contributor to the mixture of DNA found on the trigger of the shotgun that killed Victim. (Tr. p. 577, line 17–p. 579, line 16). Appellant was a minor contributor to that mixture. (Tr. p. 578, lines 5–9). Thus, the State had reason to introduce evidence that showed the state of the crime scene to support Gaines's account of the murder. As the Solicitor stated during the discussion of these exhibits, the crime scene was very bloody, and the State did its best to choose photographs that minimized the amount of "gore" shown to the jury, (Tr. p. 119, lines 4–18). Contrary to Appellant's assertion, the crime scene photographs were relevant to the State's theory that Appellant committed the murder.

Additionally, the photographs were not unduly prejudicial. The dog does not feature particularly prominently in either State's Exhibits 3 or 4, and, even in State's Exhibit 2, which shows a closer view of the dog, it just appears to be looking at the evidence marker. (State's Exs. 2, 3, 4). Appellant argues that, by mentioning the dog in closing arguments, the Solicitor "encouraged the jury to make a decision on an improper emotional basis that the sad family puppy witnessed a horrible murder." (Initial Br. of

Appellant, p. 8). However, the Solicitor's comments about the dog during closing arguments did not encourage the jury to make its decision on an emotional basis. Rather, the Solicitor lamented the fact that only two people witnessed Victim's murder—Appellant and Gaines—and those two people were essentially pointing the finger at each other as to who was responsible for pulling the trigger. (Tr. p. 630, line 10–p. 631, line 3). During closing arguments, the Solicitor merely wished that the dog could testify to settle the issue:

> [T]his is the most important thing to remember here, is we have one witness in this case that can give us direct evidence. She was the first witness we saw. That's Shayla Gaines. She was the only human eyewitness to the events of November 7, 2012. Mr. Ardis isn't here anymore to tell us what happened. If only dogs could talk. You can see in State's Exhibit 2, and you heard the crime scene analyst, you see the little white dog there sitting on the couch with what he said was red, which appeared to be blood on the dog, the dog didn't move the entire time they were there, hours spent processing this crime scene, sitting on the back of that couch. If only dogs could talk, but they can't and we know that. They can't communicate with us what they saw, so we're left with Shayla Gaines. The only person in the room that night other than the Defendant and Mr. Ardis, who's not here anymore to tell us what happened.

(Tr. p. 630, line 11–p. 631, line 3). The Solicitor did not ask the jury to come to its decision on an improper basis—his closing argument merely acknowledged that the State's primary witness may not have been an ideal witness, but she was all that the State had as far as direct evidence. The crime scene photographs themselves were not unduly prejudicial in light of their probative value, and the State did not encourage the jury to decide this case on an improper basis. As such, the trial court did not abuse its discretion in admitting the photographs over Appellant's Rule 403 objection.

Photographs of Appellant's Torso and Shoulder

As to the photographs of Appellant's shirtless torso and shoulder, the State introduced those to corroborate Gaines's testimony that Petitioner was the one who had fired the shotgun, killing Victim. (Tr. p. 350, line 23–p. 352, line 18; Tr. p. 599, line 7–p. 601, line 2). The photographs show a discoloration on Appellant's right shoulder, which the State asserted was a bruise, and which served as circumstantial evidence that Appellant shot the shotgun. *See State v. Brockmeyer*, 406 S.C. 324, 354–55, 751 S.E.2d 645, 661–62 (2013) (finding no abuse of discretion in admitting a photograph of defendant without a shirt where "[t]he photograph depicted [defendant] close to the time of the shooting and was relevant to his demeanor at the time"). Again, the photographs of Petitioner's shirtless torso and shoulder were relevant, particularly in light of the defense that Gaines was the one who pulled the trigger. *Id.* at 355, 751 S.E.2d at 662 (noting that the defense introduced evidence that the defendant was distraught after the shooting but that "[s]urely the State [was] entitled to counter that evidence" with a photograph of defendant taken shortly after the shooting).

Respondent disagrees with Appellant's contention that State's Exhibits 34 and 35 were unduly prejudicial. These photographs show that Petitioner had multiple tattoos on his chest and arms, but the State did not emphasize the presence of the tattoos at trial, and the tattoos themselves are not prejudicial. *Cf. State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000) (recognizing that evidence of a defendant's tattoo is not prejudicial when used to prove something at issue in a trial but finding a defendant's due process was violated where a prosecutor repeatedly referred to the defendant as an outlaw or to the word "outlaw" (which was tattooed on defendant's body) during her closing arguments). As to

Appellant's claim that multiple tattoos suggest that Appellant was previously incarcerated or are indicative of bad character, those arguments were not made to the trial court, nor is there any basis, other than speculation, for such claims.

Appellant further asserts that the cinder block wall in the background of the photograph was prejudicial because it suggests that Appellant was incarcerated at the time the photograph was taken. However, as the trial court pointed out, "[I]t's a little naïve to believe that perhaps once he became a suspect he was not, in fact, arrested and charged with this . . . ." (Tr. p. 117, lines 15–17). And, indeed, when these exhibits were introduced at trial, Lieutenant Franklin testified that he went to the detention center to take the photographs,[7] but that was not surprising since, at that point, Appellant had been arrested for murder. (Tr. p. 350, line 2–p. 351, line 6). Of course, the photographs did not suggest a prior incarceration because any pictures of the bruise on Appellant's shoulder that were meant to show that he shot the shotgun that killed Victim could only have been taken after-the-fact. Accordingly, the trial court correctly concluded that the photographs of Appellant's shirtless torso and shoulder were not unduly prejudicial in light of their probative value.

Harmless Error

If this Court were to find that the trial court erred in admitting the photographs of the crime scene that showed Victim's dog in the background or the photographs that showed Appellant's tattoos, the error was harmless because the impact of this brief evidence was minimal in light of the record as a whole. *See State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587 (1942) (finding photographs were unnecessary but harmless because

[7] Trial counsel did not object to the testimony that the photographs were taken while Appellant was at the detention center.

they were not prejudicial or inflammatory); *see also State v. Brazell*, 325 S.C. 65, 79, 480 S.E.2d 64, 72 (1997) (same).

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

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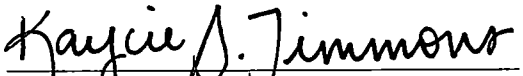

Kaycie S. Timmons
ATTORNEY FOR RESPONDENT

June 17, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP HEATH HOLLINGSWORTH,

APPELLANT,

Appellate Case No. 2014-000903.

PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record at:

Tiffany L. Butler
Appellate Defender
SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This seventeenth day of June, 2015.

Kaycie S. Timmons

Kaycie S. Timmons
Assistant Attorney General
SC Bar No. 100237

ALAN WILSON
ATTORNEY GENERAL

June 17, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Philip Heath Hollingsworth
Appeal from Laurens County
Appellate Case No. 2014-000903

Dear Ms. Kitchings:

Enclosed please find the original plus one (1) copy of ***Initial Brief of Respondent*** and ***Designation of Matter***, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Kaycie S. Timmons

Kaycie S. Timmons
Assistant Attorney General

KST/mv

Enclosures

cc: Tiffany L. Butler, Esquire, Appellate Defender
The Honorable David M. Stumbo, Eighth Circuit Solicitor
Trisha Allen, Victim Services