

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of General Sessions  
The Honorable James R. Barber, III

Appellate Case No.: 2013-002799

**RECEIVED**

JUN 10 2015

SC Court of Appeals

State of South Carolina,

Respondent,

vs.

Dwayne Lee Rudd,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

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## REPLY ARGUMENT

The Respondent argues in its Initial Brief that the Trial Court did not err in allowing two pictures of writing by the Appellant on the wall of the marital home, State's exhibits 3 and 4, to be introduced at trial. The Respondent argues that the two photographs submitted into evidence were relevant and that their probative value outweighed any prejudicial effect. The Respondent argues that the Trial Judge correctly found these statements were relevant because the Jury could infer that Rudd was apologizing for his behavior and exhibited remorse for his actions. The writings on the wall were only after the victim's had moved out of house and the Respondent argues this created an inference that the writings were about "the recent events". The Respondent further argues that the Appellant had the opportunity to explain the photographs when he testified.

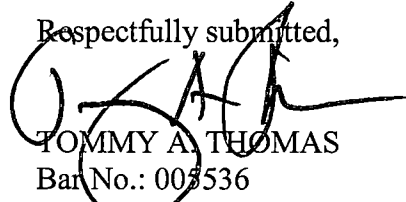
The Respondent's argument that the writings were on the wall only after the victims had left the residence and that the writings were about the recent events indicates the prejudicial nature of these photographs. Clearly these photographs pose a danger of unfair prejudice and they have a tendency to suggest a decision on an improper basis.

The probative value of photos must be balanced against the danger of unfair prejudice. Prejudice that is unfair is distinguished from the legitimate impact all evidence has on the outcome of a case. Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis. State v. Gilchrist 329 S.C. 621, 630 496 S.E.2d 424, 429 (Ct.App. 1998).

Photographs pose a danger of unfair prejudice when they have an undue tendency to suggest a decision on an improper basis. State v. Lee 399 S.C. 521 732 S E. 2d 255 (2012).

In this case, the pictures of the writings on the wall, force an unfair suggestion that the Defendant is admitting to the crimes and allegations of the State.

Respectfully submitted,



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