STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Chester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2018-000103

THE STATE,

Respondent,

vs.

MELVIN FOURNEY, SR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 7

I. The trial judge, who otherwise presented jury instructions that correctly conveyed the relevant and applicable South Carolina law to the jury and ensured the jurors would consider all the evidence presented in deciding Appellant's case, properly declined to present the requested jury instruction on the evidence of Appellant's good character because that instruction would have constituted a confusing, misleading, and unconstitutional comment on the facts in direct violation of the mandates of the South Carolina Constitution. However, even if the trial judge somehow erred by declining to give the requested instruction, any error was entirely harmless in light of the overwhelming nature of the evidence of Appellant's guilt, which included Appellant's own admissions to angrily stabbing his victim with a knife. 7

II. The trial judge did not abuse his broad discretion by admitting a limited number of crime scene and autopsy photographs depicting the injuries sustained by the victim when he was fatally stabbed by Appellant because those photographs were highly probative towards establishing how the victim was killed along with the nature and extent of his fatal injuries and the photographs' high probative value greatly outweighed any potential undue prejudice that could have resulted from their admission. 24

CONCLUSION 38

TABLE OF AUTHORITIES

South Carolina Cases:

Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). 12

Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003). 16

Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999). 34

In re Walter M., 386 S.C. 387, 688 S.E.2d 133 (Ct. App. 2009). 7

Rauch v. Zayas, 284 S.C. 594, 327 S.E.2d 377 (Ct. App. 1985). 12

Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004). 12, 14, 21

State v. Adkins, 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003). 13

State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). 29

State v. Arther, 290 S.C. 291, 350 S.E.2d 187 (1986). 34

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). 21

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989). 36

State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014). 20

State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). 15, 21

State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011). 13

State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). 36

State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). 36

State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002). 13, 14

State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013). 16, 18

State v. Cheeks, 408 S.C. 198, 758 S.E.2d 715 (2014). 20

State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (Ct. App. 2012). 30

State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014). 30, 36, 37

State v. Deas, 202 S.C. 9, 23 S.E.2d 820 (1943). 13

State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013). 37

State v. Dial, 412 S.C. 121, 770 S.E.2d 767 (2015). 37

State v. Dickerson, 341 S.C. 391, 535 S.E.2d 119 (2000). 30

State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). 29

State v. Edwards, 127 S.C. 116, 120 S.E. 490 (1923). 21

State v. Ezell, 321 S.C. 421, 468 S.E.2d 679 (Ct. App. 1996). 12

State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). 22

State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). 13

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). 28

State v. Gathers, 295 S.C. 476, 369 S.E.2d 140 (1988). 23

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). 31

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998). 30

State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007). 30

State v. Gray, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014). 33

State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982). 14, 22, 23

State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980). 28

State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999). 34

State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001). 31

State v. Hartley, 307 S.C. 239, 414 S.E.2d 182 (Ct. App. 1992). 16, 18

State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003). 21, 23

State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009). 33

State v. Holmes, 277 S.C. 232, 285 S.E.2d 353 (1981). 15

State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002). 32, 34

State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). 29

State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010). 14, 15, 19

State v. Leonard, 292 S.C. 133, 355 S.E.2d 270 (1987). 12

State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). 21

State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947). 7

State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008). 30

State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008). 31, 35

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). 29

State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1996). 32, 33

State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007). 21

State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997). 7

State v. Pauling, 264 S.C. 275, 214 S.E.2d 326 (1975). 19

State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980). 15, 16

State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007). 12, 16

State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991). 22

State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009). 12

State v. Smith, 288 S.C. 329, 342 S.E.2d 600 (1986). 13

State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). 17, 18, 19, 20

State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003). 13

State v. Tench, 353 S.C. 531, 579 S.E.2d 314 (2003). 23

State v. Thompson, 420 S.C. 192, 802 S.E.2d 623 (Ct. App. 2017). 31

State v. Thorne, 237 S.C. 248, 116 S.E.2d 854 (1960). 20

State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986). 33

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010). 28, 33

State v. Ward, 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007). 35

State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009). 29

State v. Wiley, 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010). 21

State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013). 34, 37

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). 11

Todd v. State, 355 S.C. 396, 585 S.E.2d 305 (2003). 12

United States Supreme Court Cases:

Michelson v. United States, 335 U.S. 469 (1948). 20

Old Chief v. United States, 519 U.S. 172 (1997). 30, 35

United States v. Hasting, 461 U.S. 499 (1983). 21

Other State and Federal Cases:

Commonwealth v. Pestinikas, 617 A.2d 1339 (Pa. Super. Ct. 1992). 34

Ducett v. State, 65 So. 351 (Ala. 1914). 19

Lackey v. State, 271 S.E.2d 478 (Ga. 1980). 35

McKee v. State, 44 So. 2d 781 (Ala. 1949). 36

State v. Allen, 839 P.2d 291 (Utah 1992). 32

State v. Graham, 636 A.2d 852 (Conn. App. Ct. 1994). 19, 22

United States v. Kilbourne, 559 F.2d 1263 (4th Cir. 1977). 32

United States v. Summers, 666 F.3d 192 (4th Cir. 2011). 29

United States v. Washington, 705 F.2d 489 (D.C. Cir. 1984). 19

United States v. Whitfield, 715 F.2d 145 (4th Cir. 1983). 35

Constitutional Provisions, Statutes, and Rules:

S.C. Const. art. V, § 21. .....13, 17

S.C. Code Ann. § 16-3-657. 17

Rule 401, SCRE. 29

Rule 402, SCRE. 29

Rule 403, SCRE. 29

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge, who otherwise presented jury instructions that correctly conveyed the relevant and applicable South Carolina law to the jury and ensured the jurors would consider all the evidence presented in deciding Appellant's case, properly declined to present the requested jury instruction on the evidence of Appellant's good character because that instruction would have constituted a confusing, misleading, and unconstitutional comment on the facts in direct violation of the mandates of the South Carolina Constitution. However, even if the trial judge somehow erred by declining to give the requested instruction, any error was entirely harmless in light of the overwhelming nature of the evidence of Appellant's guilt, which included Appellant's own admissions to angrily stabbing his victim with a knife.

II.

The trial judge did not abuse his broad discretion by admitting a limited number of crime scene and autopsy photographs depicting the injuries sustained by the victim when he was fatally stabbed by Appellant because those photographs were highly probative towards establishing how the victim was killed along with the nature and extent of his fatal injuries and the photographs' high probative value greatly outweighed any potential undue prejudice that could have resulted from their admission.

STATEMENT OF THE CASE

In September of 2015, Appellant Melvin Fourney, Sr. was arrested after he fatally stabbed a relative who shared a home with him. In January of 2016, the Chester County Grand Jury indicted Appellant for one count of murder and one count of possession of a weapon during the commission of a violent crime. On January 9, 2018, a jury trial was commenced in the Chester County Court of General Sessions with the Honorable Brian M. Gibbons, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant of voluntary manslaughter as a lesser-included offense of murder and possession of a weapon during the commission of a violent crime. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of ten years for voluntary manslaughter and five years for possession of a weapon during the commission of a violent crime. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Shortly before noon on September 1, 2015, James Fourney ("James") received a telephone call from his sixty-eight-year-old father, Appellant Melvin Fourney, Sr., who asked him to come over to his Chester, South Carolina, home "right quick" without revealing anything more. (Tr. p. 64; pp. 85-86; p. 108; pp. 142-144). Believing something was amiss, James headed over to his father's house along with his wife, Theresa Fourney ("Theresa"). (Tr. p. 86; p. 91; pp. 142-143). Upon arriving, the two encountered Edward King Nelson leaving the residence, and Nelson advised them it appeared Appellant had stabbed and killed Leonard "Buster" Hayes ("Victim"), who was Appellant's forty-seven-year-old second cousin and long-term roommate.[1] (Tr. pp. 62-64; pp. 78-79; p. 85; p. 87; p. 92; p. 143; pp. 151-152; State's Ex. # 2 (Recording of Appellant's Second Interview)). James and Theresa then quickly rushed inside the residence. (Tr. pp. 87-88; pp. 142-143).

When they went inside, they observed Victim slumped over on a couch with a food bowl on his lap and Appellant seated in a chair near the front door. (Tr. pp. 88-89; pp. 142-144). At that time, Victim was motionless, did not appear to be breathing, and had flies buzzing around his body. (Tr. p. 95; p. 145; p. 148). Based on Victim's condition, James was startled and immediately left the home to find his older brother. (Tr. pp. 88-89; p. 94). Meanwhile, Theresa stayed behind and asked Appellant what had happened. (Tr. p. 149). In response, Appellant reported he stabbed Victim because "he got tired of him." (Tr. p. 149). Appellant then asked Theresa to call 911, and she complied.[2] (Tr. pp. 142-143; State's Ex. # 5 (911 Call Recording)).

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[1] While speaking with law enforcement on the day after the incident, Appellant claimed Nelson was present prior to the stabbing but left before it occurred. (State's Ex. # 2).

[2] During the 911 call, Theresa advised the 911 dispatcher Appellant stabbed Victim, whom she stated was not breathing. (State's Ex. # 5). Appellant then took control of the phone and

Shortly thereafter, law enforcement officers and medical personnel arrived at the scene. (Tr. p. 118). Upon arriving, the medical personnel attempted to provide treatment to Victim. (Tr. p. 118). However, Victim had suffered a fatal stab wound that perforated his heart, and he was pronounced dead at the scene. (Tr. p. 108; pp. 192-194; p. 201). Meanwhile, officers began processing the scene for evidence. (Tr. p. 100). In processing the scene, officers found a trail of blood droplets on the floor of the home, and the trail led to a bloody knife with a five-inch blade resting on a table. (Tr. pp. 110-113). Officers then collected the knife and a sample of the blood droplets for evidentiary purposes. (Tr. p. 117; pp. 161-163).

In addition to processing the scene, officers placed Appellant under arrest for his self-admitted involvement in the stabbing, and Captain Travis Moore of the Chester Police Department transported him to city hall in order to interview him about what had occurred.[3] (Tr. p. 88). During the interview, Appellant, who appeared to be calm and relaxed, readily admitted he stabbed Victim while providing his account of the incident. (Tr. p. 115; p. 124; p. 134; State's Ex. # 1 (Recording of Appellant's First Interview)). Specifically, Appellant claimed Victim fixed something to eat earlier that day, he asked Victim what "they" were eating, and Victim responded by picking a knife up off the couch and "snagging" his arm with it before stating that was what they were eating. (State's Ex. # 1). Appellant alleged Victim then set the

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confirmed he stabbed Victim, whom he indicated was not moving. (State's Ex. # 5). At that point, the dispatcher asked to speak with Theresa again, and, in response to the dispatcher's questions, Theresa indicated Victim appeared to be bleeding from the chest, was cold to the touch, and had flies buzzing around him. (State's Ex. # 5). The dispatcher then inquired as to when precisely Victim had been stabbed, and Appellant—after asking the dispatcher how she was doing—personally responded he had stabbed Victim approximately twenty minutes earlier. (State's Ex. # 5). Thereafter, officers arrived at the scene, and the dispatcher advised Appellant to end the call and speak with them. (State's Ex. # 5).

[3] Prior to conducting the interview, Captain Moore photographed Appellant to document several reported injuries, which included a small scratch on Appellant's wrist. (Tr. p. 127; pp. 130-132; Defendant's Exs. #1-5 (Photographs)).

knife down, he picked it up, and he "hit [Victim] back" as Victim sat on the couch eating his meal. (State's Ex. # 1). After that, Appellant asserted he called his son and daughter-in-law and was subsequently arrested by the police. (State's Ex. # 1).

Thereafter, on the following day, Special Agent Lee Blackmon from the South Carolina State Law Enforcement Division ("SLED") conducted a follow-up interview of Appellant along with Investigator Tammy Levister of the Chester Police Department.[4] (Tr. p. 98; p. 115; pp. 135-136). During that interview, Appellant reported he had known Victim since Victim was born, had a good relationship with him, considered him to be a good friend, had lived with him for approximately one-and-a-half to two years, had never had any prior violent incidents with him, and had never had any conflicts with him aside from the two "talk[ing] trash back and forth." (State's Ex. # 2). Appellant further reported Victim cooked for him, bought him groceries, and had "done for him," and he affirmed Victim was not a violent person. (State's Ex. # 2). Regarding the specifics of the incident, Appellant asserted Victim was gone when he awakened that morning but returned home at some point after that. (State's Ex. # 2). Once Victim was back home, Appellant indicated Victim prepared a meal, which smelled good, and he asked Victim what "they" were eating. (State's Ex. # 2). Appellant claimed Victim, who was seated on a couch, then picked up a kitchen knife, "snagged" him on the wrist with it, and set the knife back down next to him on the couch. (State's Ex. # 2). At that point, Appellant asserted he became angry, picked the knife up, and stabbed Victim.[5] (State's Ex. # 2). Appellant claimed he then set the knife down and initially did not believe Victim was hurt because he did not think he

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[4] Special Agent Blackmon assisted with the investigation into Victim's death because one of Appellant's family members was employed by the Chester Police Department at that time. (Tr. pp. 99-100; p. 135).

[5] Notably, Appellant specifically stated he was *not* afraid at the time he stabbed Victim. (State's Ex. # 2).

had used much force when he stabbed him.[6] (State's Ex. # 2). However, he reported he eventually realized something was wrong and contacted his son and daughter-in-law, who then called 911 on his behalf. (State's Ex. # 2).

As the investigation into the killing continued, analysts from SLED examined the knife used to kill Victim and determined it had a heavy concentration of blood on its blade. (Tr. p. 208; pp. 210-211). Upon further analysis, an expert in DNA analysis determined the blood on the knife was solely Victim's blood. (Tr. pp. 213-214; pp. 216-217; p. 221). Furthermore, samples collected from Victim's body during an autopsy were analyzed, and the analysis revealed Victim had a blood alcohol concentration of .210 percent along with a small amount of cocaine in his system at the time of his death. (Tr. p. 197).

Subsequently, Appellant was indicted for murder and possession of a weapon during the commission of a violent crime, and he proceeded forward to trial. (Tr. p. 4; Indictments). At the conclusion of trial, the jury acquitted Appellant of murder and convicted him of both the lesser-included offense of voluntary manslaughter and the offense of possession of a weapon during the commission of a violent crime. (Tr. p. 288). The trial judge then sentenced Appellant to an aggregate ten-year term of imprisonment for his offenses. (Tr. p. 295).

[6] Although Appellant claimed to have not used much force in stabbing Victim, the five-inch knife used to kill Victim penetrated Victim's body to a depth of four-and-one-quarter inches, severed one of Victim's ribs, and went all the way through Victim's heart. (Tr. pp. 191-193). Based on the shape of Victim's chest wound, Appellant also twisted or turned the knife after plunging its blade into Victim. (Tr. p. 194).

ARGUMENT

I.

The trial judge, who otherwise presented jury instructions that correctly conveyed the relevant and applicable South Carolina law to the jury and ensured the jurors would consider all the evidence presented in deciding Appellant's case, properly declined to present the requested jury instruction on the evidence of Appellant's good character because that instruction would have constituted a confusing, misleading, and unconstitutional comment on the facts in direct violation of the mandates of the South Carolina Constitution. However, even if the trial judge somehow erred by declining to give the requested instruction, any error was entirely harmless in light of the overwhelming nature of the evidence of Appellant's guilt, which included Appellant's own admissions to angrily stabbing his victim with a knife.

Appellant contends the trial judge committed reversible error by declining to instruct the jury in regard to the evidence of his good character and reputation. In support of that request, Appellant maintains evidence of his good character was elicited during trial and, therefore, he "was entitled to an instruction to the effect that evidence of his good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant."[7] Although evidence and testimony regarding Appellant's good character was, in fact, elicited during trial, the trial judge, who otherwise completely and accurately instructed the jury on all the applicable law, correctly declined to present a jury instruction singling out that good

[7] Notably, defense counsel did *not* actually request a jury instruction indicating evidence of Appellant's good character "in and of itself" could create a doubt as to his guilt. (Tr. pp. 241-242). Therefore, any issue regarding the trial judge's failure to present a jury instruction containing that particular language was not properly preserved for appellate review since it was neither raised to nor ruled upon by the trial judge. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); cf. State v. Lyles, 210 S.C. 87, 92, 41 S.E.2d 625, 627 (1947) ("There was no request to charge to this effect and at the conclusion of the charge the Court's attention was not called to the omission now complained of. Under these circumstances such omission cannot now be assigned as error.").

character evidence because—just as the trial judge found—such an instruction would have constituted an impermissible comment on the facts. However, even assuming the trial judge somehow erred by declining to present a good character evidence jury instruction, any error was entirely harmless because Appellant readily admitted he intentionally stabbed and killed Victim, which overwhelming established his criminal responsibility for Victim's death such that the presentation of a good character evidence jury instruction could not have had any actual impact on the outcome of Appellant's trial. Appellant's convictions should be affirmed.

RELEVANT FACTS

During the course of trial, evidence was presented, including eyewitness testimony, establishing Appellant angrily stabbed Victim with a kitchen knife with sufficient force to sever one of his ribs, fully pierce his heart, and kill him. (Tr. pp. 75-78; p. 134; p. 149; p. 192). Likewise, Appellant's own statements were admitted into evidence, and those statements confirmed Appellant was, in fact, the person who stabbed Victim and did so out of anger after Victim purportedly scratched his wrist with a knife while seated on a couch eating a meal.[8] (Tr. pp. 73-74; pp. 127-128; pp. 137-138; State's Ex. # 1; State's Ex. # 2; State's Ex. # 5).

In addition to that evidence and testimony, testimony was presented from a number of witnesses who knew Appellant indicating Appellant was not violent, did not get into trouble, was good to his family, and was a good person in general.[9] (Tr. p. 70; pp. 80-81; p. 96; p. 154).

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[8] When Appellant was interviewed by Captain Moore shortly after the incident, Appellant did have a scratch on his wrist, but it was unclear whether that scratch was "fresh." (Tr. pp. 130-131; p. 133). Moreover, Appellant was *not* bleeding and did *not* have any injuries requiring medical attention at that time. (Tr. pp. 132-133).

[9] Notably, although multiple witnesses testified to Appellant's general good character, Victim's mother also indicated Appellant informed her he was going to kill Victim approximately a month before he did so. (Tr. pp. 66-67). However, she stated she did not believe Appellant was serious at the time the threat was made because she had not previously known him to be violent and he

Additionally, testimony and evidence was presented establishing *Victim* also was not known to be violent and had not hit or threatened Appellant in the past. (Tr. p. 89; p. 91; p. 93). In fact, through his own statements after the incident, Appellant himself characterized Victim as non-violent, indicated Victim took care of him in a variety of ways, and disavowed having any conflicts or prior violent incidents with Victim before the incident. (State's Ex. # 2). Furthermore, other testimony and evidence was presented establishing Appellant and Victim generally got along well aside from occasionally bickering, arguing, or "picking on" one another. (Tr. p. 65; p. 82; p. 89; p. 91; pp. 151-152; p. 154).

At the conclusion of the evidentiary phase of trial, the trial judge discussed his intended jury instructions with the parties, and, during the discussion, defense counsel requested a jury instruction on "good reputation." (Tr. p. 241). Specifically, defense counsel requested the following charge:

> The defendant has presented evidence of his good reputation and character to show that it would be inconsistent with his committing the crime. The weight you give that testimony like all other testimony in this case is for you to decide in your good judgment. You may consider the testimony of the defendant's good character along with all of the other evidence in deciding whether or not the defendant committed the alleged crime.

(Tr. pp. 241-242).

Following the request, the solicitor objected to the proposed charge while initially contending it would be improper because no "clear" reputation evidence had been presented during trial. (Tr. pp. 241-242). In rebuttal, defense counsel countered testimony was elicited from multiple witnesses related to Appellant's general character, and the trial judge agreed while indicating he intended to present the requested instruction to the jury. (Tr. pp. 242-243). At that

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seemed to get along well with Victim, whom he had lived with "for years." (Tr. pp. 65-66; pp. 69-70).

point, the solicitor objected to the requested instruction on the additional basis it constituted an impermissible comment on the facts.[10] (Tr. p. 243). After considering that particular argument, the trial judge agreed the requested instruction was improper and declined to give it. (Tr. pp. 243-244). However, the trial judge specifically noted defense counsel would be fully permitted to call the jurors' attention to the character evidence through his closing argument. (Tr. p. 243).

Thereafter, the parties presented their closing arguments to the jury, and, during his closing argument, defense counsel readily acknowledged Appellant admitted to stabbing Victim. (Tr. pp. 244-269). However, despite that acknowledgment, defense counsel focused the jurors' attention on the testimony indicating Appellant was a "good guy" and was non-violent while maintaining Appellant's good character was inconsistent with him having "malice in his heart" at the time he stabbed Victim. (Tr. p. 246). Similarly, defense counsel asserted the evidence presented did not establish Appellant was an "ornery old man" and, instead, was good-hearted and non-violent. (Tr. p. 252). As a result, defense counsel alternately contended Appellant must have stabbed Victim in self-defense or Victim must have impaled himself on the knife after Appellant simply picked it up.[11] (Tr. p. 247; pp. 251-252).

Following the closing arguments, the trial judge instructed the jury on the applicable law. (Tr. pp. 269-284). Through his jury instructions, the trial judge explained the State was required to prove Appellant's guilt for the charged offenses beyond a reasonable doubt, thoroughly defined reasonable doubt for the jury, confirmed Appellant was presumed to be innocent and was

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[10] Specifically, the solicitor indicated the requested instruction would constitute a comment on the "particular defendant's reputation[,]" which was something "the Court can't comment upon." (Tr. p. 243).

[11] Later on during the sentencing proceedings, defense counsel acknowledged the self-defense theory he advanced was entirely of his own creation while conceding Appellant had never informed him at any point he acted in self-defense when he stabbed Victim. (Tr. p. 292).

not required to prove anything during the trial, discussed criminal intent while explaining the State was required to prove Appellant acted with criminal intent in order for him to be convicted, defined the elements of the charged offenses along with the lesser-included offense of voluntary manslaughter, specifically instructed the jury on the defense of self-defense, and indicated the jury's verdict must be unanimous. (Tr. pp. 272-281; pp. 283-284). Additionally, the trial judge directly advised the jurors they were the finders of fact, indicated he could not personally express any opinions on the facts, stated nothing he said should be interpreted as a comment on the facts, confirmed they had to "sort through" *all* the evidence presented, and specifically instructed them they had a duty "to determine the effect, value, weight, and truth of the evidence that's been presented during [the] trial." (Tr. pp. 269-270; p. 282). Furthermore, consistent with his earlier ruling, the trial judge did not present any instructions regarding the evidence of Appellant's good character.[12] (Tr. pp. 269-284).

Subsequently, at the conclusion of trial, the jury acquitted Appellant of the indicted offense of murder, which was an action in accord with defense counsel's argument Appellant's character was inconsistent with him stabbing Victim with malice aforethought. (Tr. p. 246; p. 288). However, the jury convicted Appellant, who had admittedly intentionally stabbed Victim with a knife, of the lesser-include offense of voluntary manslaughter along with possession of a weapon during the commission of a violent crime. (Tr. p. 288; State's Ex. # 1; State's Ex. # 2; State's Ex. # 5).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal, an appellate court reviewing a trial judge's

[12] At the end of the jury instructions, defense counsel renewed his previous objection, and the trial judge once again overruled that objection. (Tr. p. 284).

jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). When reviewing a jury charge, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal."); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). Moreover, an appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) ("[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial.").

ANALYSIS

A. Propriety of the Trial Judge's Decision Not to Present the Requested Jury Instruction, Which Would Have Singled Out Only the Evidence of Appellant's Good Character and Would Have Constituted an Impermissible Comment on the Facts

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987).

To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does *not* have to use any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). However, a trial judge in South Carolina is constitutionally prohibited from making any comments that could be construed as offering an opinion on the facts of the case. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); see also State v. Smith, 288 S.C. 329, 331, 342 S.E.2d 600, 601 (1986) ("The trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused or as to controverted facts."). Importantly, so long as the trial judge's jury instructions are substantially correct, adequately cover the applicable law, and do not run afoul of the constitutional prohibition against comments on the facts, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law."); see also State v. Deas, 202 S.C. 9, 14, 23 S.E.2d 820, 822 (1943) ("Of course, under our Constitution and practice the jury are the sole judges of the facts in criminal trials and it is error for the Judge to communicate his views of them to the jury.").

In the case sub judice, the trial judge, through his jury instructions, identified the correct burden of proof for the jury, accurately explained the burden of proof rested solely on the State, thoroughly defined the concept of reasonable doubt, and correctly conveyed Appellant was presumed to be innocent and had no burden whatsoever to prove anything during his trial. Furthermore, the trial judge specifically advised the jurors they had to consider *all* the evidence, which would have necessarily included the evidence of both Appellant's and Victim's characters for non-violence, in determining whether the State had proved Appellant's guilt beyond a reasonable doubt. Viewing those jury instructions together as a whole, the trial judge's jury instructions correctly conveyed the relevant and applicable South Carolina law to the jurors and afforded the jurors the appropriate test for resolving the issues raised by the evidence in Appellant's case. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 ("A jury charge is correct if it contains the correct definition of the law when read as a whole."); see also Burkhart, 350 S.C. at 263, 565 S.E.2d at 304 ("Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues."). As a result, the trial judge's jury instructions were sufficient to not warrant reversal.

In arguing to the contrary, Appellant contends the trial judge's instructions were not sufficient because they did not contain specific verbiage informing the jury evidence of good character in and of itself can establish a reasonable doubt. See, e.g., State v. Lee-Grigg, 387 S.C. 310, 317, 692 S.E.2d 895, 898 (2010) (" '[W]here requested and there is evidence of good character, a defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant.' " (quoting State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982))).

Importantly though, while such verbiage has been found to constitute an appropriate instruction in regard to good character evidence, the trial judge's jury instructions as a whole were adequate under the circumstances to ensure the jurors considered the good character evidence that had been presented along with *all* the other evidence presented in determining whether the State had met its burden of proving Appellant's guilt. See State v. Holmes, 277 S.C. 232, 234, 285 S.E.2d 353, 354 (1981) (recognizing a trial judge does not have to use any particular language when instructing the jury on the law so long as the instructions given adequately cover the relevant and applicable law); see also State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 (2009) ("It is axiomatic that some matters appropriate for jury argument are not proper for charging. 'Do jurors need the court's permission to infer something? The answer is, of course not.' " (citation omitted)); but see Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898 ("Here, the dispositive issue presented by the defense was whether Lee-Grigg believed in good faith that she was authorized to apply for reimbursement. The jurors' request for a recharge on the definition of 'intent' is evidence that they were struggling with this question. Character evidence of Lee-Grigg's reputation for honesty and trustworthiness was admitted, but without an instruction the jury was not aware that it could consider this evidence in determining her credibility and her culpability."). Under such circumstances, defense counsel's requested jury charge on good character evidence was unnecessary to ensure the jurors were capable of properly evaluating the evidence presented during trial, including the good character evidence, and reaching a correct verdict in Appellant's case. See State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) ("While the charge would not have been inappropriate, we are of the opinion that the judge's charge, when considered as a whole, adequately covered the applicable law under the facts of this case. The Constitution of this State requires that the trial judge declare the law, but no

particular verbiage is necessary. It is sufficient if the precepts stated to the jury adequately cover that law which is applicable."); see also State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt. It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

Because the trial judge's jury instructions correctly conveyed the relevant and applicable law to the jurors and provided the jurors with the appropriate test for deciding Appellant's case, the trial judge committed no error in instructing the jury on the law even without expressly instructing the jury on good character evidence. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). Accordingly, even though various instructions on good character evidence have previously been recognized as proper in South Carolina, the jury instructions given in Appellant's case were not erroneous and did not justify or warrant the grant of a new trial. See Rabon, 275 S.C. at 462, 272 S.E.2d at 636 (holding the failure to give a jury instruction on a proper statement of law did not constitute reversible error in light of the fact the jury instructions as given adequately and sufficiently covered the applicable law); see also Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003) ("A circuit court's refusal to give a properly requested charge is reversible error only where the requesting party can demonstrate prejudice from the refusal.").

Moreover though, the trial judge would have erred had he given the jury instruction requested by defense counsel because—just as the trial judge recognized—the requested instruction constituted an impermissible comment on the facts. See State v. Hartley, 307 S.C.

239, 240-241, 414 S.E.2d 182, 183-184 (Ct. App. 1992) (rejecting a contention the trial judge erred by refusing to give a requested charge where that requested charge would have constituted an impermissible comment on the facts). Critically, as our Supreme Court recently recognized in its decision in Stukes, the South Carolina Constitution directly bars judges in our state from commenting to the jury on the facts of a case. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). In Stukes's case, the trial judge instructed the jury on the statutory non-corroboration language from Section 16-3-657 of the South Carolina Code of Laws simply by informing the jurors the testimony of a victim in a sexual assault case need not be corroborated, which was an unquestionably accurate statement of law. State v. Stukes, 416 S.C. 493, 495-496, 787 S.E.2d 480, 481 (2016); see S.C. Code Ann. § 16-3-657 ("The testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658."). On appeal, the Supreme Court found that particular jury instruction to be unconstitutionally erroneous and reversed. Stukes, 416 S.C. at 496, 787 S.E.2d at 481. In reversing, the Supreme Court concluded a jury instruction on the statutory language of Section 16-3-657 was confusing and "violative of the constitutional provision prohibiting courts from commenting to the jury on the facts of a case." Id. at 499, 787 S.E.2d at 483. Specifically, the Supreme Court explained:

> [I]t is not within the province of the court to express an opinion to the jury on its view of the facts. By addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak. Moreover, it is inescapable that this charge confused the jury. Specifying this qualification applies to one witness creates the inference the same is not true for the others.

Id. at 499-500, 787 S.E.2d at 483 (footnote omitted).

Similar to the jury instruction found to be improper in Stukes, the good character evidence jury instruction requested by defense counsel during trial would have singled out just one type of evidence presented during the trial—the good character evidence offered in regard to Appellant—and classified that singled-out evidence as constituting evidence of Appellant's good character despite the fact it was solely for the jury to decide whether the evidence actually was evidence of good character. Moreover, the requested instruction would have directly instructed the jurors to consider that evidence while also instructing to specifically consider other evidence, such as the evidence of Victim's good character. Significantly, by emphasizing Appellant's good character evidence to the jury alone over all the other evidence presented and directly addressing the potential significance of that evidence, such a jury instruction could have been construed as expressing the trial judge's opinion on that specific evidence to the jury and, as a result, would have constituted an impermissible and unconstitutional comment on the facts. Cf. Stukes, 416 S.C. at 499, 787 S.E.2d at 483 ("By addressing the veracity of a victim's testimony in its instruction, the trial court emphasizes the weight of that evidence in the eyes of the jury."); Cheeks, 401 S.C. at 328-329, 737 S.E.2d at 484 ("[C]harging a jury that 'actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use' unduly emphasizes that evidence, and deprives the jury of its prerogative both to draw inferences and to weigh evidence."); Hartley, 307 S.C. at 241, 414 S.E.2d at 184 ("[T]he trial judge was requested, in effect, to charge that particular evidence (*i.e.*, evidence of lack of motive) is entitled to receive weight or consideration. The requested charge is clearly a charge on a fact that the jury was to determine."). Furthermore, such an instruction had a high potential to confuse the jury based on the fact it would have indicated *Appellant's* good character evidence could have been inconsistent with him committing the crime and should be considered while containing no

reference to the evidence of *Victim's* similar non-violent character, which was equally relevant to the jury's deliberations.[13] See State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975)

[13] To the extent Appellant maintains on appeal—for the first time—a jury instruction should have been presented indicating evidence of his good character "in and of itself" could have created a doubt as to his guilt, such an instruction would have been even *more* confusing and problematic than the one actually requested in light of the fact it would not have even been entirely true or accurate. As an example of its inaccurate and misleading nature, take, for instance, a hypothetical situation in which the State's evidence conclusively and irrefutably established the defendant was guilty of the charged crime and the defendant was, in fact, guilty as charged. In such a situation, could evidence of the defendant's good character in and of itself establish a doubt as to the defendant's guilt? The answer necessarily must be no since the defendant's guilt in that hypothetical situation is both known and proven to an absolute certainty. See State v. Graham, 636 A.2d 852, 858 (Conn. App. Ct. 1994) ("Since a person of previous good character may commit a crime, proof of good character is not a defense to a criminal charge. . . . If the facts establish beyond a reasonable doubt that the accused committed the charged crime, then evidence of good character is 'no longer of any weight.' " (citations omitted)). Thus, evidence of the defendant's good character in such a situation could not logically or lawfully create a doubt as to guilt, which means a good character instruction indicating it could create such a doubt could only serve to confuse the jurors and potentially mislead them into believing jury nullification was appropriate regardless of a defendant's guilt so long as the defendant possessed good character. See Ducett v. State, 65 So. 351, 352 (Ala. 1914) (holding the trial judge committed no error by refusing to instruct the jury "proof of defendant's general good character, taken in connection with the other evidence in the case, may be sufficient to generate a reasonable doubt of the defendant's guilt, requiring his acquittal" because such a charge could have potentially been misinterpreted by the jury to mean "good character alone may be a sufficient reason for acquittal, though the evidence upon the whole showed his guilt beyond a reasonable doubt"); see also United States v. Washington, 705 F.2d 489, 494 (D.C. Cir. 1984) ("A jury has no more '*right*' to find a 'guilty' defendant 'not guilty' than it has to find a 'not guilty' defendant 'guilty,' and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power. Any arguably salutary functions served by *inexplicable* jury acquittals would be lost if that prerogative were frequently exercised; indeed, calling attention to that power could encourage the substitution of individual standards for openly developed community rules."). Accordingly, despite the fact such an instruction has previously been recognized as proper in South Carolina *prior to* the decision in Stukes, an instruction indicating good character evidence "in and of itself" can create a doubt as to guilt constitutes an improper comment on the facts and, thus, cannot be constitutionally permissible in our state. See Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898 (" '[E]vidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant.' " (citation omitted)); see also Stukes, 416 S.C. at 499, 787 S.E.2d at 483 ("[I]t is not within the province of the court to express an opinion to the jury on its view of the facts.").

("It is . . . well settled that the weight and sufficiency of the evidence is for the jury. It is the province of that body to weigh the evidence and decide on its sufficiency in reaching a verdict."); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) ("The task of determining the weight of the evidence lies within the exclusive province of the jury."); cf. Stukes, 416 S.C. at 499, 787 S.E.2d at 483 ("Specifying this qualification applies to one witness creates the inference the same is not true for others."); State v. Cheeks, 408 S.C. 198, 200, 758 S.E.2d 715, 716 (2014) (finding a "strong evidence" jury instruction to be improper where it "unduly emphasized the evidence" and "deprived the jury of its prerogative to draw inferences and to weigh evidence").

For all those reasons, the trial judge, who otherwise presented instructions that fully provided the jurors with all the relevant law needed for them to be able to properly decide Appellant's case, correctly declined to present a jury instruction that would have singled out Appellant's good character evidence alone since such an instruction would have constituted a confusing, problematic, impermissible, and unconstitutional comment on the facts. See State v. Thorne, 237 S.C. 248, 251, 116 S.E.2d 854, 855 (1960) ("The Judge must be careful to avoid expressing, or even intimating, any opinion, as to the facts, and if he does so, whether intentionally or unintentionally, a new trial must be granted. Under our Constitution the jury is the exclusive judge of the facts, and the true meaning and real object is that the jury must be left to form its own judgment, unbiased by any expressions, or even intimations, of opinion by the Judge."); see also Michelson v. United States, 335 U.S. 469, 474, n. 5 (1948) ("A judge of long trial and appellate experience has uttered a warning which, in the opinion of the writer, we might well have heeded in determining whether to grant certiorari here: '* * * evidence of good character is to be used like any other, once it gets before the jury, and the less they are told about

the grounds for its admission, or what they shall do with it, the more likely they are to use it sensibly. The subject seems to gather mist which discussion serves only to thicken, and which we can scarcely hope to dissipate by anything further we can add.' " (citation omitted)); Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 (recognizing a jury charge is correct if it correctly defines the relevant and applicable law when read as a whole); cf. State v. Edwards, 127 S.C. 116, __, 120 S.E. 490, 491 (1923) (finding the trial judge correctly refused to instruct the jury the absence of a motive may be sufficient to raise a reasonable doubt because such an instruction would have constituted an impermissible comment on the facts). Appellant's convictions should be affirmed.

B. Harmlessness of Any Error Resulting from the Trial Judge's Decision Not to Present the Requested Instruction to the Jury

Most trial errors, including errors involving jury instructions, are subject to harmless error analysis. Belcher, 385 S.C. at 611, 685 S.E.2d at 809; see State v. Logan, 405 S.C. 83, 98, 747 S.E.2d 444, 452 (2013) ("[E]rroneous jury instructions are subject to harmless error analysis."). When an error is found in a case on appeal, an appellate court must ordinarily still review the record as a whole to ascertain the impact of that error. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."); see also United States v. Hasting, 461 U.S. 499, 509 (1983) ("[I]t is the duty of a reviewing court to consider the trial record *as a whole* and to ignore errors that are harmless, including most constitutional violations[.]" (emphasis added)). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs

this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). Significantly, after reviewing the entire record, the appellate court will typically not set aside a judgment based on insubstantial errors not affecting the result, and errors are generally deemed harmless when they do not contribute to the verdict. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); see State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.").

In the case at bar, even assuming the trial judge somehow erred by declining to instruct the jury on good character evidence, any error was nonetheless harmless and non-prejudicial because the evidence of Appellant's criminal responsibility for unlawfully killing Victim was absolutely overwhelming. Demonstrating that fact, testimony from an eyewitness who observed Appellant angrily stab Victim on the date of the incident was presented, and Appellant himself readily acknowledged he fatally and intentionally stabbed Victim out of anger through multiple statements that were introduced during trial. Cf. Green, 278 S.C. at 240, 294 S.E.2d at 335 (concluding an error resulting from the refusal to instruct the jury on the defendant's good character evidence was harmless beyond a reasonable doubt in light of the fact Green admitted he participated in the charged crime). In light of that overwhelming evidence of Appellant's guilt, Appellant's good character—assuming the good character evidence was, in fact, accurate—could not have excused him of criminal responsibility for Victim's death and, instead, could have at best only been a factor relevant in determining whether he acted with the malice aforethought required for his act to have constituted the indicted offense of murder.[14] See State

[14] Notably, the jurors—perhaps based on the evidence of Appellant's good character—acquitted Appellant of murder, which was a decision in accord with defense counsel's closing argument

v. Graham, 636 A.2d 852, 858 (Conn. App. Ct. 1994) (recognizing a person who previously exhibited good character can be capable of committing a crime). Therefore, any error made in regard to the requested jury instruction could not have had any impact on the outcome of Appellant's trial, which ended with Appellant *not* being convicted of murder, and, thus, was harmless beyond a reasonable doubt. See State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."); State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt); see also Haselden, 353 S.C. at 196, 577 S.E.2d at 448 (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record); cf. Green, 278 S.C. at 240, 294 S.E.2d at 335 ("[T]he refusal in this case to instruct the jury on the issue of good character was not reversible error, because we are not convicted that such refusal prejudiced the appellant."). Appellant's convictions should be affirmed.

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remarks contending Appellant's good character was incompatible with him acting maliciously when he fatally stabbed Victim. (Tr. p. 246; p. 288).

II.

The trial judge did not abuse his broad discretion by admitting a limited number of crime scene and autopsy photographs depicting the injuries sustained by the victim when he was fatally stabbed by Appellant because those photographs were highly probative towards establishing how the victim was killed along with the nature and extent of his fatal injuries and the photographs' high probative value greatly outweighed any potential undue prejudice that could have resulted from their admission.

Appellant contends the trial judge abused his broad discretion over evidentiary matters by admitting six different photographs which were either taken at the crime scene or during Victim's autopsy. In support of that contention, Appellant maintains the "gruesome" and "graphic" photographs were only admitted to inflame the passions of the jury and were far more prejudicial than probative. To the contrary, the photographs, which depicted the positioning of Victim's body on a couch at the crime scene, the nature and depth of the stab wound to Victim's chest, and the scope of Victim's injuries, were highly probative and relevant towards establishing both how Victim died and how much force was employed to cause Victim's injuries, which were important issues that went directly to Appellant's criminal responsibility for the killing. Moreover, although somewhat graphic, the photographs were not so gruesome, gory, or extreme that their potential for undue prejudice substantially outweighed their high probative value under the circumstances of Appellant's case. As a result, the trial judge did not manifestly abuse his broad discretion by admitting the photographic evidence during trial. Appellant's convictions should be affirmed.

RELEVANT FACTS

During the course of Appellant's trial for murder and possession of a weapon during the commission of a violent crime, evidence and testimony, including Appellant's own self-incriminating admissions, was presented to establish Appellant fatally stabbed Victim with a knife with sufficient force to fully pierce Victim's heart and sever one of Victim's ribs from his

sternum while Victim was sitting on a couch eating a meal. (Tr. pp. 73-78; pp. 127-128; p. 134; pp. 137-138; p. 149; p. 192; p. 194; State's Ex. # 1; State's Ex. # 2; State's Ex. # 5). To demonstrate the accuracy of that testimony and evidence and provide corroboration and support for it, the solicitor sought to admit a number of photographs taken at both the crime scene and during Victim's autopsy. (Tr. p. 102; p. 177).

Regarding the photographs taken at the crime scene, the solicitor moved to admit twenty-three different photographs during the testimony of Investigator Levister, who was present at the crime scene, personally took the photographs, and attested to their accuracy. (Tr. p. 98; p. 100; p. 107). The vast majority of those photographs simply depicted the residence itself, the knife used to stab Victim, and various blood droplets found of the floor of the residence while a few of them depicted the positioning of Victim's body on the couch along with the fatal stab wound to Victim's chest. (State's Exs. # 6-28 (Photographs)).

When the photographs were offered into evidence, defense counsel indicated he had no objections to many of them but he did object to seven particular images.[15] (Tr. p. 103). Specifically, defense counsel objected to every single photograph taken at the crime scene that depicted Victim or any portion of his body in any manner, including a photograph that merely showed the lower portion of Victim's uninjured leg. (Tr. p. 103; State's Exs. # 9-13; State's Exs. # 27-28). Inconsistent with his objection, defense counsel then conceded the solicitor could properly introduce some photographs of Victim's injuries but maintained any photograph containing a "frontal view" of Victim would be more prejudicial than probative.[16] (Tr. pp. 103-

[15] On appeal, Appellant has abandoned the objection to all but two of the crime scene photographs. (App. Br. p. 14).

[16] Since Victim was stabbed in the chest, his injuries were obviously on the front side of his body. (Tr. p. 176).

104). Furthermore, defense counsel argued it was possible Victim's body had been moved before the photographs were taken. (Tr. pp. 105-106). In rebuttal, the solicitor argued the objected-to photographs depicted the defenseless nature of Victim at the time of the stabbing, showed Victim was killed while eating food based on the nearby bowl, refuted Appellant's claim of only inflicting a small nick, demonstrated the violent nature of the stabbing, and were not unduly prejudicial. (Tr. pp. 104-105). After considering the arguments of counsel and reviewing the photographs, the trial judge ruled all the photographs could be admitted except for one photograph that depicted a "full frontal view of [Victim's] entire face and all of the blood and the wound and everything," which he concluded would be unnecessarily prejudicial. (Tr. p. 106). The approved photographs were then admitted into evidence over defense counsel's objection, and Investigator Levister used the photographs to explain what she found at the crime scene. (Tr. pp. 107-114).

Similarly, regarding the photographs taken at the time of Victim's autopsy, the solicitor moved to admit eight photographs during the testimony of Dr. Robert Thomas, who was a medical doctor and the expert pathologist who conducted Victim's autopsy following his death. (Tr. pp. 170-172; p. 177). One of those photographs simply depicted the knife used to stab Victim positioned next to a ruler, two of the photographs depicted a portion of Victim's face and upper body along with the stab wound, two of the photographs depicted the pathologist measuring the depth of the stab wound without Victim's face visible, one of the photographs depicted the pathologist measuring the wound itself, and two of the photographs depicted the portion of Victim's rib that was cleanly severed by the knife. (State's Exs. # 29-36 (Photographs)).

When the photographs were offered into evidence, defense counsel objected to all of them as cumulative, more prejudicial than probative, "gory," and unnecessary in light of the testimony that could be presented by the pathologist.[17] (Tr. pp. 177-178; p. 186). In rebuttal, the solicitor maintained the photographs taken during the autopsy were important to illustrate the viciousness of the stabbing, directly show the depth of the stab wound, and reflect both Appellant's intent and the level of violence employed. (Tr. pp. 178-179). The solicitor further noted she was only seeking to admit a few of the available photographs from the autopsy in order to avoid unnecessary prejudice. (Tr. pp. 178-179). After considering the matter and reviewing the photographs, the trial judge indicated he had conducted the necessary balancing test and determined six of the photographs could be admitted while the only two depicting any portion of Victim's face would be excluded. (Tr. p. 186; State's Exs. # 29-30). The approved photographs were then admitted into evidence over defense counsel's objection, and Dr. Thomas, who had indicated the photographs would be "very helpful" for him by providing visual support for his testimony, used the photographs to explain Victim's injuries to the jury, demonstrate how far into Victim's body the knife blade penetrated, and show the jury where Victim's rib had been severed by the knife. (Tr. p. 185; pp. 188-195).

Thereafter, as the trial proceeded forward, the parties presented their closing arguments to the jury. (Tr. pp. 244-269). During defense counsel's closing argument, defense counsel contended Appellant was not physically capable of exerting the force necessary to have stabbed Victim in the manner in which Victim was stabbed, urged the jury to find Appellant had not acted with malice when he killed Victim, and further claimed Victim was either accidentally killed or killed in self-defense. (Tr. p. 246; pp. 250-251). Furthermore, defense counsel, who

[17] On appeal, Appellant has abandoned the objection to all but four of the autopsy photographs. (App. Br. p. 14).

presumably was not a medical doctor or pathologist, maintained Dr. Thomas's testimony indicating Victim's rib was severed by the knife was not plausible and should not be believed while opining it was possible Victim's rib was broken by the medical personnel who purportedly attempted to treat Victim at the scene. (Tr. pp. 250-251). Following those remarks, the solicitor called the jurors' attention to the admitted photographs during her closing argument and contended they illustrated the level of force used in the stabbing, which she asserted was relevant to Appellant's criminal intent. (Tr. p. 266).

Subsequently, at the conclusion of trial, the jurors, who had expressly been instructed their decision could not be based on sympathy, passion, prejudice, emotion, or any other non-evidentiary considerations, acquitted Appellant of murder while convicting him of voluntary manslaughter and possession of a weapon during the commission of a violent crime. (Tr. p. 282; p. 288). Notably, before rendering that verdict, the jurors did nothing during the deliberations that overtly established or suggested they were unduly influenced by the photographic evidence admitted during trial. (Tr. pp. 284-288).

STANDARD OF REVIEW

When reviewing an evidentiary ruling, the appellate court must give great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). Significantly, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93

(2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ANALYSIS

All relevant evidence is admissible, and only relevant evidence should be admitted at trial. State v. Douglas, 369 S.C. 424, 430, 632 S.E.2d 845, 848 (2006); see Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible."). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (" '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.' ").

However, even if relevant, evidence must be excluded from trial if its probative value is *substantially outweighed* by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, 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."). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each particular case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Meanwhile, unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see Old Chief v. United States, 519 U.S. 172, 181 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). However, unfair prejudice does *not* mean damage to a defendant's case that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). That is true because all evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant, and it is only unfair prejudice that must be avoided. Id.

When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have "particularly wide discretion[.]" Collins, 398 S.C. at 209, 727 S.E.2d at 757. As a result, a trial judge's ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328,

339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Hamilton, 344 S.C. at 358, 543 S.E.2d at 594.

In Appellant's case, the trial judge did not abuse his broad discretion by admitting a limited number of photographs depicting Victim's injuries and condition after he was fatally stabbed by Appellant. That is true because, although somewhat graphic, the photographs of Victim's body and injuries taken at both the crime scene and during the autopsy were exceptionally probative as they demonstrated the positioning of Victim's body on a couch next to a food bowl at the time of his death while also demonstrating the extent of Victim's injuries, which served to aid the jurors in understanding what had occurred and in correctly deciding Appellant's case. See State v. Thompson, 420 S.C. 192, 215, 802 S.E.2d 623, 634-635 (Ct. App. 2017) ("These [autopsy] photographs, while graphic, were necessary to help the jury fully understand Dr. Durso's testimony regarding the nature of Victim's injuries resulting in his death. . . . Likewise, the photographs of Victim as he was found at the crime scene helped the jury to understand the nature and extent of Victim's injuries as well as his condition near death."); see also State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 608 (Ct. App. 2008) ("[T]he photographs were introduced to corroborate the testimony of Dr. Ward, who testified regarding the various injuries inflicted on Child, including the discoloration of the bruises and the internal

trauma which caused his death. . . . [T]he photographs were necessary to depict the severity of the bruises and the resulting trauma, which was inconsistent with accidental injury or play. The photographs were relevant and necessary, and they were not introduced with the intent to inflame, elicit the sympathy of, or prejudice the jury. The trial judge did not abuse his discretion in admitting the photographs."); cf. United States v. Kilbourne, 559 F.2d 1263, 1264 (4th Cir. 1977) ("Pictures taken at the scene showed the proximity of the body to certain items linked to Kilbourne, including a package of cigarettes and a gin bottle. Photographs taken at the morgue supported the prosecutor's theory that the nature of the victim's wounds indicated that the killer had acted deliberately and with premeditation."). Additionally, the photographs of Victim's condition and injuries served to corroborate the testimony of the different witnesses who testified during trial, and they visually conveyed the severity of the injuries inflicted upon Victim while allowing the pathologist to identify to the jury with support the depth of the stab wound while also showing where Victim's rib had been severed by the knife blade. See State v. Jarrell, 350 S.C. 90, 106-107, 564 S.E.2d 362, 371 (Ct. App. 2002) (finding the trial judge did not abuse his discretion by admitting autopsy photographs because, even though the photographs were "graphic," they corroborated testimony presented during trial by depicting the victim's injuries and by showing the victim's condition); see also State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) ("The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it."); see generally State v. Allen, 839 P.2d 291, 302 (Utah 1992) ("Photographs of victims are always sobering and graphic, and indeed, they fit within the adage 'a picture speaks a thousand words.' "). Moreover, the photographs—although inherently disturbing since they depicted a person who had been stabbed

and killed—accurately reflected what occurred to Victim and were not so extreme, unusually gruesome, or gory that they would have been inflammatory in a sense that went beyond the natural inflammation attendant to any post-mortem photographs of an individual who died of an unnatural and violent cause. See Torres, 390 S.C. at 624, 703 S.E.2d at 229 ("While the admitted photographs graphically depict the injuries of the victim, this was a particularly horrific crime, and the admission of the photographs did not unduly prejudice the jury."); State v. Holder, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) ("Although the photographs were graphic, the facts in the case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis. We hold the trial court properly exercised its discretion in admitting the autopsy photographs in this case."). Finally, although the jury ultimately acquitted Appellant of murder, the photographs were relevant and significant in regard to whether Appellant acted with malice at the time he stabbed Victim since they visually demonstrated Appellant plunged his knife several inches into Victim's body and twisted the blade after doing so. See Nance, 320 S.C. at 508, 466 S.E.2d at 353 ("The photographs were . . . relevant to the issue of malice, an element of assault and battery with intent to kill."); State v. Gray, 408 S.C. 601, 614, 759 S.E.2d 160, 167 (Ct. App. 2014) ("[T]he photos were important to the State's ability to establish that Gray and Reese acted with malice."). Accordingly, even though the photographs were unpleasant and graphic, their potential for undue prejudice did not *substantially* outweigh their probative value, and the trial judge, who discretionarily excluded a number of photographs he believed could have potentially proved to be unnecessarily prejudicial, committed no error by admitting into evidence a limited number of the photographs taken of the Victim's body after his death.[18] See State v. Todd, 290 S.C. 212, 214, 349 S.E.2d

[18] Moreover, prior to the jurors beginning their deliberations in Appellant's case, the trial judge

339, 340 (1986) (recognizing determinations in regard to the relevancy and materiality of photographic evidence are generally left to the sound discretion of a trial judge); see also Jarrell, 350 S.C. at 106, 564 S.E.2d at 106 ("We find the trial court's exclusion of photographs demonstrates it exercised its discretion.").

In arguing to the contrary, Appellant contends the probative value of the photographs was greatly outweighed by their potential for undue prejudice because the pathologist's testimony alone was purportedly sufficient to establish the elements of the indicted offenses. Importantly though, the photographs of Victim's injuries visually demonstrated the manner in which Victim was killed in a way words simply could not while aiding the pathologist in explaining what caused Victim's death. See State v. Williams, 405 S.C. 263, 281, 747 S.E.2d 194, 204 (Ct. App. 2013) ("A trial court is not required to exclude relevant evidence simply because it is unpleasant or offensive."); see also Commonwealth v. Pestinikas, 617 A.2d 1339, 1346-1347 (Pa. Super. Ct. 1992) ("The photograph in question showed what happened to the decedent and, therefore, served as an aid to the jury in understanding the crime committed. . . . The availability of alternate evidence of a verbal nature does not obviate the admissibility of the photographs."). Moreover, the photographs were critical towards refuting the various claims made by both Appellant and defense counsel, including the claim Victim's rib was not, in fact, severed as

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instructed them they were not permitted to reach a verdict based on sympathy, passion, prejudice, emotion, or any other non-evidentiary considerations, which helped ensure the jurors were not improperly impacted by the photographs of Victim following his untimely death. See Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267 (1999) ("The jury was instructed to determine petitioner's guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice." (citations omitted)); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) ("[J]urors are presumed to follow the law as instructed to them."); cf. State v. Arther, 290 S.C. 291, 295, 350 S.E.2d 187, 189 (1986) ("The trial judge did charge the jury not to consider anything heard outside the courtroom. This charge was adequate under the circumstances to ensure the jury would render a verdict based upon the evidence presented.").

determined—and shown—by the pathologist but, instead, was broken during attempted medical treatment. See Lackey v. State, 271 S.E.2d 478, 484 (Ga. 1980) (rejecting the contention the trial judge erred by admitting twelve enlarged color photographs depicting the juvenile victim's body after her death along with three color photographs depicting a fractured rib surgically removed from the victim's body during an autopsy because the photographs refuted the possibility the victim's injuries were accidental or self-inflicted); cf. State v. Ward, 374 S.C. 606, 613, 649 S.E.2d 145, 149 (Ct. App. 2007) ("The trial court overruled the objection [to the autopsy photographs], finding the jury's knowledge of the graze wound was necessary to rebut the defense's arguments about the angle of the shot, and therefore the photographs' probative value outweighed their prejudicial effect. This determination is left to the discretion of the trial court, and the record evinces no abuse of that discretion."). Accordingly, the photographic evidence possessed enhanced probative value in light of the various claims made by both Appellant and defense counsel, and its high probative value was not substantially outweighed by its potential for undue prejudice due simply to the fact the photographs were somewhat graphic. See Martucci, 380 S.C. at 250, 669 S.E.2d at 607 ("A trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive."); see also Old Chief, 519 U.S. at 183, n. 7 ("On appellate review of a Rule 403 decision, a defendant must establish abuse of discretion, a standard that is not satisfied by a mere showing of some alternative means of proof that the prosecution in its broad discretion chose not to rely upon."); cf. United States v. Whitfield, 715 F.2d 145, 148 (4th Cir. 1983) ("While it is certainly possible that [Whitfield] could have been convicted in the absence of the photographs [depicting the wounds of the victim, who was bludgeoned to death with a blunt instrument]; and, while it may be true that [Whitfield] suffered prejudice by its admission, we do not find abuse of discretion by the trial

court, and we find nothing in the admission of the photographic evidence to constitute reversible error.").

In conclusion, the photographs depicting Victim's body and injuries after he was stabbed by Appellant were highly probative of and relevant towards establishing Appellant's guilt for the unlawful killing, and any potential for undue prejudice that could have resulted from the photographs based on their unpleasant nature did not substantially outweigh their high probative value. See State v. Brazell, 325 S.C. 65, 79, 480 S.E.2d 64, 72 (1997) (finding the trial judge did not abuse his discretion by admitting several crime scene photographs where the photographs "supported the testimony of several witnesses[,]" "were relevant to the nature of the crime[,]" and were used "to establish that the murder was a deliberate and calculated act"); see also McKee v. State, 44 So. 2d 781, 784 (Ala. 1949) ("Courts and juries cannot be too squeamish about looking at unpleasant things, objects or circumstances in proceedings to enforce the law and especially if truth is on trial. The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it."). Under those circumstances, the trial judge did not abuse his broad discretion by admitting a limited number of those photographs during Appellant's trial, and no exceptional circumstances exist that would warrant a reversal of that discretionary decision on appeal.[19] See State v. Collins, 409 S.C. 524, 535, 763 S.E.2d 22, 28

[19] Significantly, even assuming the trial judge somehow erred by admitted the crime scene and autopsy photographs during trial, any error resulting from the admission of those photographs was nonetheless entirely harmless because, even without consideration of the photographic evidence, the other evidence of Appellant's guilt presented during trial, which included Appellant's own admissions to angrily stabbing Victim, conclusively established Appellant's guilt such that no rational juror could have reached any other verdict aside from finding Appellant criminally responsible for Victim's death. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)

(2014) ("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."); see also Williams, 405 S.C. at 281, 747 S.E.2d at 203 (recognizing decisions regarding the comparative probative value and prejudicial effect of graphic photographs should only be reversed on appeal in "exceptional circumstances"); cf. State v. Dial, 405 S.C. 247, 259-260, 746 S.E.2d 495, 501 (Ct. App. 2013) (finding the trial judge did not abuse his discretion by admitting photographs from the five-month-old victim's autopsy that depicted the victim's exposed brain and scalp in a homicide by child abuse case despite the fact the photographs were "shocking and gross"), cert. dimissed as improvidently granted, 412 S.C. 121, 770 S.E.2d 767 (2015). Appellant's convictions should be affirmed.

("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."); see also Collins, 409 S.C. at 538-539, 763 S.E.2d at 29-30 (concluding any error in the admission of the photographic evidence in Collins's case was entirely harmless in light of the fact the other evidence presented during trial was such that no jury could rationally conclude anything other than Collins was criminally negligent in his victim's death).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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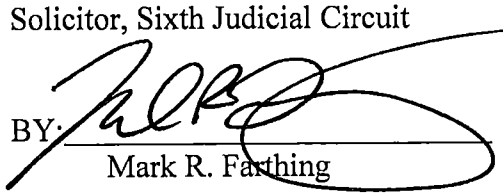
Attorney General

MARK R. FARTHING
Assistant Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY: 
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ATTORNEYS FOR RESPONDENT

November 26, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

Appeal from Chester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2018-000103

THE STATE,

Respondent,

vs.

MELVIN FOURNEY, SR.,

Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 26th day of November, 2018.

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November 26, 2018

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RE: State v. Melvin Fourney, Sr. – Appellate Case No. 2018-000103

Dear Ms. Caudy:

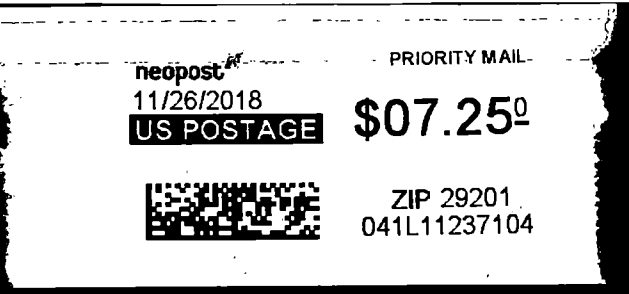
I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings-(original enclosed)
Victim Services



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