STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRYL QUAN DAMOND WILSON,

APPELLANT

APPELLATE CASE NO. 2019-001551

INITIAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by admitting a irrelevant recordings of telephone calls purportedly made by Appellant while he was a pre-trial detainee where the state argued the relevance of the recordings was that they showed a lack of remorse?

STATEMENT OF THE CASE

On June 5, 2018, a Chester County grand jury indicted Appellant for homicide by child abuse (2018-GS-12-314). R. *(indictment). The state, represented by Candice Lively and Kaitlyn Easler, called the case to trial before the Honorable Brian M. Gibbons and a jury on September 3-6, 2019. Tr. 1. Jim Boyd represented Appellant. Tr. 1. Ultimately, the jury found Appellant guilty as charged. Tr. 569, ll. 19-23. Judge Gibbons sentenced Appellant to forty years imprisonment. Tr. 575, ll. 11-17; R. *(sentence sheet).

On September 9, 2019, Appellant served his notice of appeal. This brief follows.

STANDARD OF REVIEW

"In general, the admission or exclusion of evidence is a matter left to the sound discretion of the trial court, whose ruling will not be reversed on appeal absent an abuse of that discretion." In the Matter of Campbell, 427 S.C. 183, 190, 830 S.E.2d 14, 18 (2019). "'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.'" Id. at 191 830 S.E.2d at 18 (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). "'To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.'" Id. (quoting State v. Commander, 396 S.C. 254, 263, 721 S.E.2d 413, 418 (2011)).

STATEMENT OF FACTS

Tornita Adams was the mother of Minor. Tr. 217, ll. 23-25. Appellant was Minor's father. Tr. 218, ll. 8-9. Adams had three older boys by Charles Mobley. Tr. 218, ll. 1-20. After Minor's birth, Adams and Appellant were no longer romantically involved. Tr. 219, l. 19 – Tr. 220, l. 2. Nevertheless, Minor frequently visited with Appellant even after he moved in with his new girlfriend, Ekeria Foote. Tr. 220, ll. 3-10; Tr. 224, ll. 3-9. Adams never worried about Minor when she was in Appellant's care. Tr. 221, ll. 6-11; Tr. 227, ll. 17-20. Minor "was happy to see her daddy." Tr. 224, ll. 21-24.

Although Adams claimed that the only physical discipline she, her grandmother, and aunt, who lived in the house with her, used with her children was a "pop on the hand," the Department of Social Services (DSS) determined all three women physically abused the children. Tr. 227, ll. 3-12; Tr. 236, ll. 17-20. In fact, DSS removed the three boys from Adams' custody for seven months. Tr. 236, l. 25 – Tr. 237, l. 1.

On October 28, 2017, between 10:30 p.m. and 11:00 p.m., Adams took Minor to Appellant's home so that she could spend Halloween with him. Tr. 230, ll. 13-19; Tr. 231, ll. 14-15. When Minor arrived, she had a burn mark on her leg. Tr. 237, ll. 16-18; see also Tr. 381, ll. 16-24. According to Adams, as Minor ran by the hot iron, which was sitting on the floor in the living room, "it hit her leg." Tr. 237, ll. 19-24. Additionally, Adams explained that marks on Minor's legs were from mosquito bites, marks on her arm and face were from playing outside, a scar on the left side of her face from playing with her brothers, and a scar on her shoulder from an unknown source. Tr. 248, ll. 1-22; see also Tr. 375, ll. 5-22; Tr. 381, ll. 20-21. Foote noticed some bruises on Minor's legs as well. Tr. 269, ll. 2-5.

On Monday evening, Appellant's mother, Anissa Gordon, arrived. Tr. 276, ll. 20-25; Tr. 364, ll. 1-10. Gordon had a Halloween costume for Minor. Tr. 277, ll. 2-6; Tr. 369, ll. 3-4. Foote noticed that although Minor ate normally and played with her daughter normally, she "could tell like she wasn't herself." Tr. 278, ll. 4-8; see also Tr. 365, ll. 21-24 (Minor ate half of a hot dog). She was not "happy, just jumping around, … running through the house." Tr. 278, ll. 9-11.

The following day, Foote got up at 2:30 a.m. in order to go to work. Tr. 279, ll. 6-17. When there was no work to do, Foote left at 8:49 a.m. Tr. 280, ll. 1-14; Tr. 285, ll. 22-25. Foote arrived home around 9:15 a.m. Tr. 280, ll. 17-22; Tr. 286, ll. 1-12. Appellant and Minor were still in bed. Tr. 286, ll. 13-16. Shortly after arriving home, Foote fell asleep too. Tr. 288, ll. 3-9. She awoke around 2 p.m. Tr. 288, ll. 10-12. Foote began doing Minor's hand and noticed Minor was not acting normally. Tr. 289, ll. 1-6. Thereafter, Foote took her daughter, her nephew, and Minor to Wal-Mart to buy a costume for her daughter. Tr. 292, l. 19 – Tr. 293, l. 3. Minor was sleepy while they were in Wal-Mart. Tr. 297, l. 13 – Tr. 298, l. 25.

At home, Appellant dressed Minor in her costume for trick-or-treating. Tr. 299, ll. 5-9. After trick-or-treating, Foote initially took Minor and her daughter to Pizza Hut. Tr. 300, l. 21 – Tr. 301, l. 2. However, Minor was sleepy, so Foote took her home to Appellant. Tr. 300, l. 21 – Tr. 301, l. 2. Foote and her daughter returned to Pizza Hut while Minor stayed home with Appellant. Tr. 300, l. 21 – Tr. 301, l. 5. Later in the evening, Foote arrived home with leftover pizza, but Minor refused to eat. Tr. 301, ll. 13-17. Instead, Minor threw up two more times. Tr. 301, ll. 18-24.

Later, Foote took her daughter, her nephew, and Minor to Wendy's, and then took the children and food to her sister's house. Tr. 290, ll. 17-23. Foote thought Minor may have eaten

a French fry, but she did not eat much more than that. Tr. 290, l. 22 – Tr. 291, l. 5. Minor then threw up. Tr. 291, ll. 2-5. Foote described the vomit as green liquid without any food in it. Tr. 291, ll. 6-20.

Foote got up at 2:30 a.m. the next day to go to work. Tr. 306, ll. 14-17. Around Foote looked into the bedroom where Minor was, she saw Minor sitting up in bed. Tr. 307, ll. 1-7. Foote told Minor to lie back down, which Minor did with a smile. Tr. 307, ll. 11-16. Foote then left for work.

On November 1, 2017, at 8:24 a.m., Appellant called 911 because Minor was not responding to him as he tried to wake her. Tr. 87, ll. 11-15. When emergency medical personnel arrived four minutes later, Minor was not breathing and had no pulse. Tr. 91, ll. 17-18; Tr. 92, ll. 12-14. She was "kind of warm on the core and cool on the extremities." Tr. 92, ll. 15-18. The paramedic believed "she had passed away for a while." Tr. 93, ll. 6-7. Appellant explained that Minor had vomited, which was confirmed by vomit present on her chest, and that Appellant had tried to resuscitate Minor. Tr. 93, ll. 16-22. After trying unsuccessfully to revive Minor, the responders took Minor to the hospital. Tr. 95, ll. 1-5. Despite the efforts of the medical staff, Minor was pronounced dead at 8:54 a.m. Tr. 114, ll. 17-22.

According to the hospital staff, Appellant indicated he checked on Minor at 2:30 a.m. and she was sleeping. Tr. 106, ll. 16-17. The ER nurse who helped the coroner place Minor's body in a body bag claimed she could "put [her] hand on her abdomen and [her] hand would fit above, like handprints were on her lower abdomen bruising." Tr. 107, ll. 10-12. Although the nurse saw no marks on Minor's face, the ER doctor's notes indicated Minor had bruising on the right upper quadrant of her abdomen as well as an abrasion on her mid-forehead and nose. Tr. 113, ll. 10-24.

The state's pathologist determined that Minor died as a result of blunt trauma to her abdomen, which the pathologist opined was inflicted. Tr. 174, ll. 6-17. He determined "[t]he amount of force necessary to create these injuries [was] coming with an extreme disregard for the safety and wellbeing of the person." Tr. 186, ll. 10-14. He indicated there was "no way to be certain" regarding the number of blows inflicted: "it could be one impact, it could be multiple." Tr. 186, ll. 20-21. Based upon his observations of the healing processes of her internal organs, the pathologist opined the trauma occurred within two to three days of her death. Tr. 187, ll. 2-14; Tr. 197, ll. 9-23. Thus, it was his opinion that the injury occurred between Sunday, October 29, 2017, and the early morning hours of November 1, 2017. Tr. 201, ll. 8-13. According to the pathologist, "normal reactions" to these injuries would be "pain and probably vomiting." Tr. 204, ll. 1-4.

The state's expert in pediatrics concurred that Minor died from blunt force trauma to her abdomen. Tr. 329, ll. 2-9. According to the pediatrics expert, a child may survive injuries from blunt force trauma if intervention is sought early enough. Tr. 329, ll. 13-23. She opined that a person would develop symptoms quickly after suffering blunt force trauma to the abdomen. Tr. 330, ll. 16-20. She indicated that the onset of symptoms would occurr within "maybe a minute, a couple of minutes, maybe hour or so." Tr. 330, ll. 20-22. These symptoms include pain in the abdomen, not eating, not drinking, vomiting, lethargy, and even unconsciousness. Tr. 330, l. 25 – Tr. 331, l. 15. The pediatrics expert claimed she saw round bruises on Minor that were caused by adult fingertips or knuckles. Tr. 334, ll. 14-21. Further, she opined that Minor was injured prior to her trip to Wal-Mart. Tr. 344, l. 25 – Tr. 345, l. 9. She claimed that Minor "wouldn't be her normal self immediately after that injury." Tr. 345, ll. 19-24. Recognizing the pediatrics expert's testimony conflicted with the pathologist's opinion, the state had the pediatrician relate

why she could "give a more clear timeline": "So generally when you're looking at microscopes or organs or as such it's a wider window than what [the pediatrician] can get to based on history." Tr. 346, ll. 4-12.

In light of Minor vomiting on Halloween, the pediatrician said it was clear Minor was injured at that point. Tr. 348, ll. 11-13. The pediatrics expert claimed Minor was not injured as of Monday evening because she was able to eat dinner. Tr. 349, ll. 5-11. Finally, the pediatrician opined that Minor's injuries had to cause Minor's injuries because the "pattern bruises on her chest and abdomen" were caused by "adult sized fingertips and knuckles." Tr. 350, ll. 14-22. However, she was unable to determine how many blows caused the fatal injury or that the pattern bruises were related to the fatal injury. Tr. 353, l. 23 – Tr. 354, l. 3.

Dr. John David Wren, an expert in pathology, conducted a review of the records and determined Minor suffered two assaults. Tr. 475, ll. 15-17. He explained how Minor had old and new scar tissue coupled with the growth of new capillaries. Tr. 475, ll. 17-19; Tr. 476, ll. 2-6. Dr. Wren opined the initial assault occurred three to eight days prior to her death. Tr. 476, ll. 19-23. He explained that when Minor stopped eating and began vomiting bile was after she suffered the second injury. Tr. 477, ll. 8-15. He opined this second injury occurred "up to three days" before her death. Tr. 479, ll. 23-24. In other words, Dr. Wren's examination showed Minor suffered the second blow "very close to the time [Appellant] received her." Tr. 479, ll. 24-25.

ARGUMENT

The trial judge erred by admitting two irrelevant recordings of telephone calls purportedly made by Appellant while he was a pre-trial detainee where the state argued the relevance of the recordings was that they showed a lack of remorse.

Relevant facts

Prior to trial, defense counsel moved to exclude a recording of a telephone call made purportedly made by Appellant while he was a pretrial detainee. Tr. 42, l. 7 – Tr. 43, l. 5; State's Exhibit #50. In total, there were four calls. According to the solicitor, Appellant was talking about one of his sisters who was pregnant. Tr. 42, l. 24 – Tr. 43, l. 1. The sister "had to find out who the father was." Tr. 43, ll. 1-2. During the call, Appellant referred to the fact that the mother of Minor was also unsure of the paternity of Minor. Tr. 43, ll. 2-5. As a result, Appellant took a paternity test that established he was the father of Minor. Tr. 43, ll. 2-5. In reference to the establishment of paternity, Appellant remarked, "Look where it got me." Tr. 43, ll. 2-5.

Defense counsel objected, arguing the recording was not relevant. Tr. 43, ll. 7-9. The solicitor argued the recording was "extremely relevant" because it showed Appellant "lack[ed] remorse." Tr. 43, l. 12 – Tr. 44, l. 1. The solicitor noted Appellant's child had been dead for four months and Appellant was not expressing love for the child or sadness over her death. Tr. 43, l. 12 – Tr. 44, l. 1. When the judge asked the solicitor to explain the probative value of the recording, the solicitor began explaining it was "probative to show … the lack of actual," but the judge interrupted to supply the answer he wanted. Tr. 44, ll. 3-5. Specifically, the judge wanted the solicitor to argue it was relevant to show "[e]xtreme indifference" to human life. Tr. 44, l. 5. Readily agreeing with the judge, the solicitor continued to argue the recording showed Appellant "did not have a level of connection with this child to where he could control his anger whenever

this happened to this child, whenever the child didn't do something that he expected her to do." Tr. 44, ll. 6-9. According to the solicitor, the call showed the "level of disconnection he had with this child and how he could harm her the way he did and wake up the next morning and just keep going." Tr. 44, ll. 11-14. The judge overruled the objection and permitted the state to use the call. Tr. 44, ll. 15-16.

The state sought to use a second recording as well. During this recording, Appellant stated, "Lord, forgive me, I hate I was the daddy." Tr. 44, ll. 21-22. The state put forward the "[s]ame argument" to support admission. Tr. 44, l. 22. Defense counsel argued the recording was not relevant to any matter in the case. Tr. 44, l. 25 – Tr. 45, l. 2. The judge overruled defense counsel's objection. Tr. 45, ll. 304. The judge further indicated the he had "balanced the probative value versus the prejudicial effect under a 403 analysis and [found] it's more probative than prejudicial." Tr. 45, ll. 3-8.

Later, when the state introduced the recording of the phone call into evidence, defense counsel renewed his objection, which was overruled by the judge. Tr. 410, ll. 5-8. Will Thrasher with the special victim's unit in the child fatalities department of SLED informed the jurors that Appellant "was discussing the paternity test that he took to prove that [Minor] was his child." Tr. 384, ll. 4-10; Tr. 411, ll. 20-21. The solicitor prompted: And he's basically saying he wishes he wouldn't have taken it." Tr. 411, ll. 22-23. Thrasher agreed with the solicitor's prompt and added, "He said he wished he wouldn't have taken it because 'look what it got me.'" Tr. 411, ll. 24-25.

In her closing argument, the solicitor rhetorically asked if there were any holes in the state's case. Tr. 536, ll. 21-22. She then apologized for not having "a video of him committing the crime" or having "a confession," but she claimed the jury knew "he wish[ed] he wasn't the

daddy, wished he wouldn't have taken the paternity test." Tr. 536, ll. 23-25. Previously, the state told the jury that it was difficult to present all of the evidence to the jurors because "it took the state a minimum of four months to make an arrest in the case and make a determination that, yes, he killed his daughter." Tr. 519, ll. 13-18.

Discussion

Pursuant to the South Carolina Rules of Evidence, all relevant evidence is generally admissible. Rule 402, SCRE. "Evidence which is not relevant is not admissible." Id. Even relevant evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. A determination on the admissibility of relevant evidence requires consideration of the evidence's probative value, the danger of unfair prejudice posed by the evidence, and the balancing of those two.

"'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." Rule 401, SCRE. "Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." State v. Preslar, 364 S.C. 466, 476, 613 S.E.2d 381, 386 (Ct. App. 2005). "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, and it is not required that the inference sought should necessarily follow from the fact proved." State v. Sweat, 362 S.C. 117, 126-127, 606 S.E.2d 508, 513 (Ct. App. 2004). When looking at Rule 403, SCRE, the starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. "'Probative' means '[t]ending to prove or disprove.'" State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). "'Probative value' is the measure of the importance of that tendency to the outcome of a case." Id. at 610, 759 S.E.2d at 165.

While relevant evidence and probative evidence are not synonymous, the two share many similarities as demonstrated through their definitions. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). "'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) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)). According to the United States Supreme Court, "[t]he 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." Old Chief v. United States, 519 U.S. 172, 180 (1997). "Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion." United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003).

Once a court has determined the probative value and the danger of unfair prejudice of the evidence, the court must balance the two. State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013). When juxtaposing the prejudicial effect against the probative value, the determination

must be based on the entire record and will turn on the facts of each case. State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27-28 (2014) (citing State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). Only after balancing the probative value and the danger of unfair prejudice may the court determine if the danger of unfair prejudice outweighs the probative value of the proffered evidence as required by Rule 403, SCRE.

In the indictment, the state alleged Appellant "did in Chester County on or about or between October 31, 2017, cause the death of [Minor] age two years, a child under the age of eleven, while committing child abuse or neglect upon the child, and the child's death occurred under circumstances manifesting the defendant's extreme indifference to human life." R. *(indictment). According to statutory law, "[a] person is guilty of homicide by child abuse if the person (1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1).

"Extreme indifference is in the nature of a culpable mental state … and therefore is akin to intent." State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002). "[I]ndifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care." Id. This Court held extreme indifference was "a mental state akin to intent characterized by a deliberate act culminating in death." Id. Under the statute, the state is not required to prove a defendant acted with the intent to harm; instead the state must prove the defendant performed a deliberate act that he or she knew would create a risk of death to the child. State v. Phillips, 411 S.C. 124, 135, 767 S.E.2d 444, 449 (Ct. App. 2014) aff'd as modified 416 S.C. 184, 785 S.E.2d 448 (2016).

Appellant's alleged statements during two telephone calls related to his fathering Minor were not relevant to any issue in the case as they had no tendency to make any fact of consequence more or less probable. There was no question that Minor was under the age of eleven and died as a result of blunt force trauma. Even Appellant's expert agreed Minor died from blunt force trauma. Appellant's expert disputed whether the injuries were inflicted, but there was still no dispute as to the cause of death. Thus, the jury was tasked with deciding whether Minor's injuries were inflicted, and if so, by whom. Appellant's post-arrest statements that indicated he blamed the results of the paternity test on his arrest had no tendency to establish whether the injuries were inflicted. Further, his statements regarding paternity had no tendency to establish whether he inflicted the injuries.

The trial judge provided the solicitor with the suggestion of "extreme indifference" as an argument to support admission of the recordings. However, nothing in the recordings provided any evidence regarding "extreme indifference" as that term has been defined. The statements did not show Appellant's intent. The statements did not show he acted in a way that consciously disregarded a risk to Minor's life. The statements did not show that he failed to exercise due care. Quite simply, the statements simply voiced a man's frustrations with his current predicament.

"References to a defendant's lack of remorse are … improper as violative of a defendant's Fifth, Eighth, and Fourteenth Amendment rights." State v. Reid, 324 S.C. 74, 78, 476 S.E.2d 695, 696 (1996), overruled on other grounds State v. Watson, 349 S.C. 372, 563 S.E.2d 336 (2002); see also State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275-276 (2000); State v. Diddlemeyer, 296 S.C. 235, 239-240, 371 S.E.2d 793, 795 (1988); State v. Cockerham, 294 S.C. 380, 382, 365 S.E.2d 22, 23 (1988); State v. Johnson, 293 S.C. 321, 324, 360 S.E.2d 317, 319 (1987); State v. Sloan, 278 S.C. 435, 440, 298 S.E.2d 92, 94-95 (1982). "[N]o right is more fundamental than the right of an accused to plead not guilty and put the state to its proof." Sloan, 278 S.C. at 440, 298

S.E.2d at 95. "A defendant's exercise of his right to plead not guilty is never a permissible basis upon which to impose the death penalty." Id. If references to a defendant's lack of remorse are improper under the constitution, then evidence allegedly establishing a defendant lacks remorse is not relevant.

The probative value offered by the recordings of Appellant's to the facts in dispute was miniscule. There was no question Appellant was Minor's father. There was no question Minor suffered blunt force trauma that caused her death. The recordings provided no assistance to the jury in resolving whether the injuries were inflicted, and if so, by whom. Thus, the probative value was very low.

However, the danger of unfair prejudice from the recordings was extremely high as shown by the solicitor's argument for admission – they showed a lack of remorse – and her closing argument informing the jurors that they knew how he felt about the death of his child because he had said in the recordings that he wished he were not her father. In the solicitor's view, the recordings showed Appellant lacked remorse because after his child's death, he was making statements that suggested he wished he had not been Minor's father. The solicitor made her view of the evidence clear when arguing for admissibility. She wanted the evidence to appeal to the passions and prejudices of the jurors. She wanted the evidence to suggest the jurors convict Appellant, not based on the relevant and probative evidence presented, but on the highly emotional evidence that he wished he were not Minor's father. One can hardly imagine something more gut wrenching to hear than a father's disavowal of a child after the child's death. Additionally, the constitutional prohibition on a prosecutor's comments on a defendant's failure to show remorse show the extremely high danger of unfair prejudice presented by the recordings. While the challenge presented in the case sub judice is not to the constitutionality of the admission of the

evidence or the solicitor's argument, the fact that the Constitution forbids a comment on a lack of remorse demonstrates the danger of this type of evidence being misused by a jury.

The extremely high danger of unfair prejudice from the recordings substantially outweighed the minimal, if any, probative value of the recordings. The recordings established no facts that were relevant or probative of the issues before the jury. The recordings only served to inflame the passions of the jurors by implying Appellant lacked remorse, which is prohibited by the Constitution. The trial judge erred in admitting the recordings.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction and remand for a new trial.

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of September, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRYL QUAN DAMOND WILSON,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire at the primary e-mail address listed in the Attorney Information System (AIS), which is wblitch@scag.gov; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Darryl Quan Damond Wilson, #381317, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of September, 2020.

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT