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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-510

Filed 15 October 2024

Wake County, Nos. 20CRS214120, 20CRS214141-42, 20CRS214286

STATE OF NORTH CAROLINA

v.

JUSTIN FERNANDO MERRITT, Defendant.

Appeal by defendant from judgments entered on or about 2 December 2022 by Judge A. Graham Shirley in Superior Court, Wake County. Heard in the Court of Appeals 6 March 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Teresa M. Postell, for the State.*

*Mark L. Hayes for defendant-appellant.*

STROUD, Judge.

Defendant appeals from judgments convicting him of first-degree murder, felony larceny of a motor vehicle, robbery with a dangerous weapon, and possession of a firearm by felon. Defendant contends photos of the victim's body submitted by the State during trial should not have been admitted as evidence since they were not probative and were unduly prejudicial to Defendant. As the trial court did not abuse

its discretion in admitting the photos, we conclude there was no error.

### **I. Background**

The State's evidence tended to show that the victim, Andy Banks, would "flip" cars by buying and re-selling them, most commonly through internet websites such as Craigslist, Facebook Marketplace, or other sites "where he could get an online presence." Mr. Banks would often use Google Voice during his interactions with potential customers as a way to avoid giving out his personal phone number. One of the vehicles Mr. Banks was trying to sell was a silver Range Rover; Mr. Banks connected with a potential buyer for the Range Rover who wanted to "bring his mechanic back to take another look before he decided whether or not he wanted to purchase the car."

The potential buyer was from Virginia and Mr. Banks told his friends on Saturday, 12 September 2020, that he was going to meet the buyer at a K&W Cafeteria in the Cameron Village shopping center in Raleigh, North Carolina. Mr. Banks left his friends' house around 1:30 or 1:45 pm and told them he would be back "in no more than 30 minutes." After about two hours, Mr. Banks had not returned to his friends' house and they started to become concerned about Mr. Banks's safety. Mr. Banks's friends tried messaging him and calling him but he did not answer the messages or phone calls. The friends eventually went to the K&W Cafeteria parking lot "looking for license plates that said Virginia" since they were aware the buyer Mr. Banks was supposed to meet was coming from Virginia. Eventually, the friends

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contacted Mr. Banks's brother, Mark, because they "thought something was seriously wrong at th[at] point." After trying to get in contact with Mr. Banks without success, Mark filed a missing person report. Mr. Banks's friends were "consistently searching for" him from about 4:00 pm on 12 September through 1:00 am the next morning but were still unable to locate him.

Mr. Banks had been communicating with the potential buyer of the Range Rover, who identified himself as "Jae." At 3:14 pm on 12 September, "Jae" sent a message to Mr. Banks stating "[t]hanks for letting me check out the Range again, man. Sorry we couldn't agree on a price. I'll send the guy I was telling you about info when I get back." Police were eventually able to access Mr. Banks's current location from his cell phone, which showed him near the SAS campus in Cary, North Carolina. However, the phone was eventually located "on the side of the highway" and police still had no indication as to Mr. Banks's whereabouts.

On 14 September 2020, police told Mr. Banks's family they were treating this report as a homicide case. The police were also able to identify the potential buyer who was using the name "Jae" as Defendant. Raleigh Police confirmed the phone number texting Mr. Banks about the Range Rover belonged to Defendant, and they asked the Danville Police Department in Virginia to go by the address they identified for Defendant to search for the vehicle and Mr. Banks. Police in Virginia ultimately located the Range Rover at an abandoned church near Defendant's address. The Range Rover had a cover over it that "still had the creases in it" indicating the cover

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was “brand new out of the box.” Police then found a receipt from Advance Auto Parts dated 13 September 2020 at 6:49 pm for an SUV car cover.

Later, police searched the Range Rover and found “red specks of a red-like - - red-type substance on the inside of the vehicle” and upon opening the door there was a “strong smell of bleach” and what looked like projectiles in the interior of the passenger’s side door. Further, even though the surface of the passenger seat had been wiped clean, blood had seeped through to the foam underneath the seat. Police located personal items belonging to Mr. Banks in the back seat of the Range Rover. There was also a receipt from Dollar General and a receipt from Ollie’s store which showed purchases of “[c]ar cleaning supplies, Armor All, [and] upholstery cleaner.”

Police eventually contacted Defendant, brought him back to the police station in Danville, and charged him with larceny of a motor vehicle. Police stated their priority at that point was to locate Mr. Banks. In a search of Defendant’s home, police located “a napkin of some sort that had a red stain on it, and then there were also shell casings inside that were spent. Spent by meaning they had been fired already.” The red stain was field tested and showed a presumptive positive as being blood. Police also found a “black-in-color semiautomatic firearm in a cloth holster” under a couch cushion. Shell casings located in the Range Rover and from Defendant’s shorts matched the firearm found underneath the couch cushion.

Raleigh Police also accessed Mr. Banks’s and Defendant’s phone data which showed Defendant’s phone in Danville, Virginia around 12:18 pm on the day Mr.

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Banks went missing. Around 1:53 pm, both Defendant and Mr. Banks were in the area of the K&W Cafeteria in Cameron Village, where the sale of the Range Rover was to take place. According to the phone location data, Defendant and Mr. Banks then traveled together on Capital Boulevard and eventually ended up back at Cameron Village around 2:23 pm. Defendant then started to travel back in the direction of Virginia and Mr. Banks's "data [was] no longer on the map because his phone was recovered off the side of the highway."

Detectives eventually located "three areas of interest" they wanted to search in the Danville area. On 17 September 2020, police did a grid search in an area near Hopewell, Virginia and officers smelled "a strong odor of possibly a decaying corpse[.]" Officers eventually found Mr. Banks's body in a field of tall grass out of view of the main roadway. Mr. Banks's body was "in an advancing stage of decomposition" and his skin was "pale white" and was covered in insects. Specifically, "the insect activity [was] high and [was] nearly everywhere on the upper torso and head of [Mr. Banks], and that would just indicate, again, the victim being exposed to the elements for sometime." The "skin tissue" of Mr. Banks neck area "ha[d] been removed and it [was] almost to the bone[.]" There were multiple gunshot wounds to Mr. Banks's back and forearms. Photos were taken of the body and the area the body was found.

Mr. Banks's body was so decomposed that he was identified only after an autopsy was done and he was identified by his fingerprints. The autopsy revealed Mr. Banks's cause of death to be multiple gunshot wounds, "at a minimum five

gunshot paths: two to the base of the skull, upper neck area, and three to the left shoulder,” although the medical examiner testified there may have been up to nine total gunshot wounds.

On 28 September 2020, Defendant was indicted for larceny of a motor vehicle, robbery with a dangerous weapon, possession of a firearm by a convicted felon, and murder in Wake County. On 28 October 2022, Defendant moved to exclude photos of Mr. Banks’s body under North Carolina Rules of Evidence 401, 402, and 403. The matter came on for trial on 28 November 2022. The trial court heard arguments on the motion on or about 29 November 2022 and noted Defendant “whittled down the number of [challenged] photographs to . . . 11.” The trial court entered an order that same day allowing in part Defendant’s motion by requiring the State to choose between two photographs identified as 0653 and 0509, excluding photographs 0680, 0539, and 0524, and denying the remaining part of Defendant’s motion by allowing the other challenged photographs to be introduced as evidence.

On 2 December 2022, the jury found Defendant guilty on all counts, including first-degree murder under both the felony murder rule and based on malice, premeditation, and deliberation. Judgments were entered and Defendant was sentenced to life imprisonment without the possibility of parole. Defendant entered oral notice of appeal in open court.

## **II. Analysis**

Defendant’s sole argument on appeal is “whether grossly repulsive photos of

[Mr. Banks's] decomposed body, ravaged by animals until the head became detached, inflamed the jury and likely impacted its selection of first degree murder over second degree murder." (Capitalization altered.)

### **A. Preservation**

Before addressing the merits of Defendant's arguments, we must consider whether Defendant objected to the photographs at trial to preserve his argument.

Defendant argues

[t]he defense objected to the admission and publication of State's Exhibits #194 through #220, which were presented to the jury in full color on a television screen as Det. Terry Jackson narrated about what was being shown. These photos showed the condition of Mr. Bank's [sic] body when it was found in a rural area. The issue is therefore preserved for appeal.

The State argues State's Exhibits 194-200 and 216-220 "do not even include the victim" and Defendant "only objected to State's Exhibits # 204-06, and 211-15." The State then contends "[a]fter [D]efendant filed a pre-trial motion to exclude generally 'duplicative, graphic or inflammatory photos of the deceased body,' he presented a list to the trial court of the eleven specific photographs he objected to from the location where [Mr. Banks] was found." Finally, the State argues Defendant makes a different argument to this Court than he did to the trial court, as at trial he argued there were too many photos but on appeal he argues that the photos "had no probative value" under North Carolina Rule of Evidence 403 and the photos were "unduly prejudicial."

"In order to preserve a question for appellate review, a party must have

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presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State v. Howard*, 228 N.C. App. 103, 106, 742 S.E.2d 858, 860 (2013) (citations and quotation marks omitted). In *State v. Baldwin*, this Court distinguished the facts from the *Howard* case, where “the defendant objected under Rule 403 at trial but argued under Rule 404(b) on appeal.” 240 N.C. App. 413, 417, 770 S.E.2d 167, 171 (2015). Instead, in *Baldwin*, the State contended “the defendant failed to preserve th[e] issue, because he makes new arguments on appeal for why the interview is inadmissible under Rule 403” but in contrast to *Howard*, the “defendant has not changed the specific ground for his objection.” *Id.* Thus, this Court concluded the argument was preserved. *See id.*

The State cites to *State v. Hunter*, 305 N.C. 106, 286 S.E.2d 535 (1982), to assert the only arguments Defendant preserved are to the number of photos admitted and the relevance of the photo of Mr. Banks’s hands. Our Supreme Court was addressing the voluntariness of a confession in *Hunter*, concluding

we specifically hold that when there is an objection to the admission of a confession or a motion to suppress a confession, counsel must specifically state to the court before voir dire evidence is received the basis for his motion to suppress or for his objection to the admission of the evidence.

*Id.* at 112, 286 S.E.2d at 539.

Here, Defendant filed a pre-trial motion to limit the number of photos admitted

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under North Carolina Rule of Evidence 403. Defendant did not identify specific photos in this motion but requested “a pretrial hearing to review any photographs of the deceased body of [Mr.] Banks that the State intends to offer for evidentiary or illustrative purposes.” Defendant also moved “to exclude all photographs which are irrelevant or whose probative value is outweighed by their inflammatory nature.” Then, at the beginning of trial, Defendant renewed his objections to the photos and the trial court noted that Defendant had “whittled down the number of photographs to, looks like, 11” subject to his objection. The photographs were each identified by a number, and the State and Defendant presented their arguments about which pictures the State should or should not be allowed to present, addressing the details of many of the photographs and their arguments to the relevance of each. Based upon the fact that some photos had already been eliminated, the State contended that the “number of the photographs have already been greatly diminished and [the remaining photos] are not unnecessarily duplicative of the autopsy photos for sure because they are at different times and show very different things.” Defendant contended some photos were duplicative and that the autopsy report diagrams would adequately show the locations of gunshot wounds and other features of the body. Defendant argued that admitting too many duplicative photos would be prejudicial to Defendant. Finally, Defendant again renewed his objections when the State moved to introduce them. Defendant makes the same arguments to this Court, as he states the number of photos prejudiced him and there was no probative value “when other

evidence has already established the issue in question.”

While Defendant did not use the word “probative” in this argument to the trial court, he specifically stated “I just don’t know the evidentiary value” of using the photos. North Carolina Rule of Evidence 403 states “[a]lthough 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.” N.C. Gen. Stat. § 8C-1, Rule 403 (2023). Although Defendant did not use the same exact words in his argument to the trial court as on appeal, Defendant did argue to the trial court that the probative value of the photographs was outweighed by the cumulative nature of the evidence and Defendant was thereby prejudiced. Defendant makes those same arguments here, so his argument was preserved at the trial court and we will address the merits of his argument. However, the trial court noted the objections to the photos were “whittled down” to eleven photos and Defendant was successful in excluding several photos, so we will address his arguments as to the eight remaining exhibits of pictures of the body admitted as evidence.

## **B. Standard of Review**

Our Supreme Court has recently addressed the standard of review for this issue in the context of a murder case where the defendant argued, as in this case, that the trial court erred by admitting “eighty-eight color photographs” of the victim’s body and her injuries:

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All relevant evidence is admissible at trial unless the Constitution, the legislature or the Rules of Evidence provide otherwise. N.C.G.S. § 8C-1, Rule 402 (2021). Relevant evidence includes all evidence that has any tendency to make the existence of any fact that is of consequence to the determination of the action either more or less probable. N.C.G.S. § 8C-1, Rule 401 (2021). A trial court may, however, exclude evidence when that evidence is substantially outweighed by the danger of unfair prejudice, confuses the issues, misleads the jury, or causes undue delay, waste of time, or needless presentation of cumulative evidence. N.C.G.S. § 8C-1, Rule 403 (2021). A trial court's decision whether to admit or exclude evidence under Rule 403 is reviewed for abuse of discretion. An abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. A defendant advancing such an argument must also demonstrate that any abuse of discretion prejudiced the defendant.

Photographs are allowed to prove the character of the attack made by defendant upon the deceased, and to illustrate testimony regarding the manner of a killing in order to prove circumstantially the elements of murder in the first degree. Photographs of a homicide victim may be introduced even if they are gory, gruesome, horrible or revolting, so long as they are used for illustrative purposes and so long as their excessive or repetitious use is not aimed solely at arousing the passions of the jury. But when the use of photographs that have inflammatory potential is excessive or repetitious, the probative value of such evidence is eclipsed by its tendency to prejudice the jury. The number of photographs alone is an insufficient measure of their capacity to prejudice and inflame the jury; instead, the court looks to their probative value and the circumstances of their introduction into evidence.

*State v. Richardson*, 385 N.C. 101, 132-33, 891 S.E.2d 132, 163 (2023), *cert. denied*, 144 S. Ct. 2692 (2024) (citations, quotation marks, ellipses, and brackets omitted).

**C. Rule 403**

Defendant's sole argument on appeal is "whether grossly repulsive photos of [Mr. Banks's] decomposed body, ravaged by animals until the head became detached, inflamed the jury and likely impacted its selection of first degree murder over second degree murder." (Capitalization altered.) Defendant argues both that the photos were not probative and that they were unfairly prejudicial to Defendant. We will first discuss the probative value of the photos and then the prejudicial effect on Defendant.

***1. Probative Value***

North Carolina Rule of Evidence 403 states "[a]lthough 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." N.C. Gen. Stat. § 8C-1, Rule 403. Our Supreme Court has noted the factors the trial court should consider when determining whether photos should be excluded in this situation:

The test for excess is not formulaic: there is no bright line indicating at what point the number of crime scene or autopsy photographs becomes too great. Ultimately, whether the use of photographic evidence is more probative than prejudicial and what constitutes an excessive number of photographs in the light of the illustrative value of each likewise lies within the discretion of the trial court.

Factors that may be considered in determining whether photographs should be excluded under Rule 403 include: (1) the number of photographs; (2) whether the

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photographs are unnecessarily duplicative of other testimony; (3) whether the purpose of the photographs is aimed solely at arousing the passions of the jury; and (4) the circumstances surrounding their presentation. In addition,

what a photograph depicts, its level of detail and scale, whether it is color or black and white, a slide or a print, where and how it is projected or presented, the scope and clarity of the testimony it accompanies—these are all factors the trial court must examine in determining the illustrative value of photographic evidence and in weighing its use by the State against its tendency to prejudice the jury.

When a photograph adds nothing to the State's case, then its probative value is nil, and nothing remains but its tendency to prejudice.

*Richardson*, 385 N.C. at 133-34, 891 S.E.2d at 163-64 (citations, quotation marks, and brackets omitted).

Defendant relies heavily upon *State v. Hennis*, 323 N.C. 279, 372 S.E.2d 523 (1988), as he did at trial, to support his argument that the photographs were duplicative and prejudicial. But both the duplicative nature of the photographs and the manner of presentation in this case was quite different than in *Hennis*. *See id.* at 282-83, 372 S.E.2d at 535-36. In both cases, the photographs were no doubt gruesome, but our Supreme noted that in *Hennis*,

Th[e Supreme] Court held that the trial court abused its discretion in admitting thirty-five color photographs because they were repetitious, lacked probative value and served only to inflame the jurors. In making this determination, the [Supreme] Court perceived that multiple photographs of the same wounds were

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gratuitously displayed; the State's witnesses acknowledged that some of the photographs showing the same wound did not add anything to the illustration of their respective accounts; the majority of the twenty-six photographs taken at the victims' autopsies added nothing to the State's case as already delineated in the crime scene slides and their accompanying testimony; and *all* of the thirty-five pictures, which had already been displayed to illustrate testimony during the presentation of the State's case, were published to the jury for a second time—one at a time—in a process that consumed a full hour and was *unaccompanied by further testimony*.

*Richardson*, 385 N.C. at 138, 891 S.E.2d at 166 (emphasis in original) (citations, quotation marks, ellipses, and brackets omitted).

Here, the challenged photos are also not identical; some photos include the entire top half of the body from the front outlining the condition of the body upon discovery while others include close-up photos of the bullet wounds in the body, the arms, and the back. Thus, while the photos are gruesome, they are not repetitive and they illustrate the victim's injuries and condition. The State's witnesses used the photographs to illustrate their testimony and did not indicate that any of the photographs "did not add anything" to their evidence. *Id.*

Defendant contends the photos were not probative especially since "other evidence has already established the issue in question" such as the "material fact" that "the victim has been shot and killed[.]" But our Supreme Court has also been clear that even a defendant's "stipulation as to the victim's cause of death would not relieve the State of the burden to prove its entire case beyond a reasonable doubt so

long as [the] defendant maintained his plea of not guilty.” *State v. Elkerson*, 304 N.C. 658, 666, 285 S.E.2d 784, 789-90 (1982). Defendant’s contention that “[t]he defense also affirmatively stated that it had no challenge to the cause and manner of death as described by the State’s medical expert” is unconvincing as the State must still prove those elements beyond a reasonable doubt. *See id.* The trial court engaged in an extended discussion with defense counsel and the State when considering Defendant’s motion, addressing the features of each photograph challenged, and the trial court ultimately excluded some photos while allowing others. Out of the eleven photos Defendant tried to exclude, the trial court excluded three; the trial court also excluded another picture Defendant did not object to.

In its argument to the trial court, the State presented the trial court with this Court’s opinion in *State v. Bare*, 194 N.C. App. 359, 364, 669 S.E.2d 882, 886 (2008), where

[t]he challenged exhibits include[d] the following: (1) three photographs of [the victim’s] trunk and lower body, depicting the remains of a fire, the mummification and decay of his flesh, the branches placed over the body, and the blue jeans and shoes [the victim] was wearing; (2) two photos of a skull and jawbone, and four pictures of other bones, all largely devoid of flesh; (3) one photograph of a hand that is partially decayed, and; (4) two photographs showing the underbrush where [the victim] was found, without a clear view of the body itself.

*Id.* This Court concluded “[t]he exhibits at issue are necessarily unappealing and unfortunate. However, we conclude that the trial court’s decision to admit them was

not an abuse of discretion.” *Id.* This case is similar to *Bare* in that the photos were presented to show “the condition of [the victim’s] body when it was discovered[.]” *id.*, and the photos were gruesome photos of a body in advanced stages of decomposition. While the trial court noted the presence of “maggots” on the body made it particularly gruesome, this case is not significantly different from *Bare*. *See id.* For the same reasons this Court concluded the photos in *Bare* were not admitted in error, we conclude the photos here are probative to show the “condition of [the victim’s] body when it was discovered[.]” *Id.*

## ***2. Prejudicial Effect***

Defendant contends the photos were unduly prejudicial since they were likely to elicit an emotional response from the jury. Essentially, Defendant also contends in this argument the other evidence presented by the State was sufficient to convict Defendant without the use of the photos. “Evidence will be considered unfairly prejudicial when it has an undue tendency to suggest a decision on an improper basis, usually an emotional one” and “[t]he probative value of photographs or images may be eclipsed by its tendency to prejudice if they are inflammatory, excessive, or repetitious.” *State v. Riffe*, 191 N.C. App. 86, 95, 661 S.E.2d 899, 906 (2008) (citation and quotation marks omitted). Thus, even if the photos of Mr. Banks’s body were probative, and we have concluded they were, the photos must still be excluded if they will influence the jury to find a defendant guilty based on emotion. *See id.*

Murder in the first degree is the unlawful killing of a

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human being with malice and with premeditation and deliberation. Premeditation means that the act was thought out beforehand for some length of time, however short, but no particular amount of time is necessary for the mental process of premeditation. Deliberation means an intent to kill, carried out in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation. A defendant's conduct before and after the killing is a circumstance to be considered in determining whether he acted with premeditation and deliberation.

*State v. Jones*, 342 N.C. 628, 630-31, 467 S.E.2d 233, 234 (1996) (citations and quotation marks omitted). The Court in *Jones* specifically discussed the defendant's actions after the murder, stating "the evidence tends to show that after the murder, [the] defendant concealed the victim's body in sheets, carried it and the rifle to the victim's car, drove to Lillington, discarded the car and body in a ditch, and threw the rifle into the river." *Id.* at 631, 467 S.E.2d at 235. Defendant's actions after the murder here also show a level of premeditation since he drove all the way back to Virginia with Mr. Banks's body, bought cleaning supplies from Dollar General and Ollie's, dumped Mr. Banks's body in a rural area, deep-cleaned the Range Rover with the cleaning supplies, bought a new cover for the Range Rover, and drove the Range Rover to a church parking lot to hide it. These actions "permit[ ] a reasonable inference that [D]efendant premeditated and deliberated the killing[.]" *Id.*

In addition to Defendant's actions after the murder, his actions before the murder also permit an inference the murder was premeditated and deliberated. *See*

*id.* Defendant negotiated with Mr. Banks to buy the Range Rover days before he drove down to North Carolina from Virginia to buy it from Mr. Banks. Defendant presumably brought the gun he used to murder Mr. Banks with him from Virginia, despite being a convicted felon and being legally barred from possessing a gun in this State. *See* N.C. Gen. Stat. § 14-415.1 (2023) (“Possession of firearms, etc., by felon prohibited.”). Defendant contends that his actions show he did not act with premeditation and deliberation since he

had no plans to rob or kill anyone when he drove down from Virginia, including that 1) he used his real phone number to communicate with Mr. Banks, 2) he drove down to Raleigh in the middle of the day, 3) he met Mr. Banks in a public place, 4) he drove down with his brother-in-law and young niece, and 5) he drove back up to Virginia with the body in his car.

Defendant argues, “[h]e had no plan. There is one word for what occurred here, panic, pure panic.” This argument is a proper argument to the jury, and Defendant made this argument to the jury. But the evidence would also permit the jury to infer Defendant planned to kill Mr. Banks. Defendant brought a gun with him to North Carolina, shot Mr. Banks in the car, and took extensive measures to attempt to cover up this crime, including dumping his body in a secluded area in Virginia. The jury was left with a reasonable inference Defendant’s actions were premeditated and deliberated. *See Jones*, 342 N.C. at 631, 467 S.E.2d at 235.

We also note the number of photos at issue here, where only eight photos were admitted. The trial court carefully considered Defendant’s objections as to each photo

and the number presented to the jury was reduced based upon Defendant's objections. This case stands in stark contrast in this regard to *Hennis*, where thirty-five photos of the crime scene and autopsy were admitted and some were repetitive to the point that one witness stated "[t]his looks like the [picture] we saw before." *Hennis*, 323 N.C. at 286, 372 S.E.2d at 527. In contrast, here, the State presented only eight nonidentical photos of the body as it was found in Virginia.

As there was extensive evidence presented to support the theory of first-degree murder under malice, premeditation, and deliberation, Defendant was not unduly prejudiced by the photos despite their gruesome nature.

### **III. Conclusion**

We conclude the eight admitted photos of Mr. Banks's body used to show the condition of the body and prove the elements of first-degree murder beyond a reasonable doubt were probative and were not unduly prejudicial. The trial court did not abuse its discretion in the admission of the photos.

NO ERROR.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).