

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MATTHEW JONATHAN MOBERG

APPELLANT

VS.

NO. 2018-KA-01726-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: ABBIE EASON KOONCE
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 103632**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680
FACSIMILE: (601) 359-3796
EMAIL: akoon@ago.ms.us**

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	1
SUMMARY OF THE ARGUMENT.....	6
ARGUMENT.....	6
I. There was sufficient evidence of kidnaping to sustain Moberg’s conviction for capital murder..	6
II. The trial court did not err in its admission of State’s Exhibit 25, a photograph of the victim’s body taken during the autopsy..	9
CONCLUSION.....	13
CERTIFICATE OF SERVICE.....	14

TABLE OF AUTHORITIES

CASES

<i>Ambrose v. State</i> , 254 So.3d 77 (Miss. 2018).....	10, 11
<i>Bennett v. State</i> , 933 So. 2d 930 (Miss. 2006).....	10
<i>Bonds v. State</i> , 138 So.3d 914 (Miss. 2014).....	12
<i>Brawner v. State</i> , 872 So.2d 1 (Miss. 2004).....	11
<i>Bush v. State</i> , 895 So.2d 836 (Miss. 2005)).....	7
<i>Conley v. State</i> , 790 So. 2d 773 (Miss. 2001).....	12
<i>Conner v. State</i> , 138 So.3d 158 (Miss. Ct. App. 2013).	7
<i>Edwards v. State</i> , 797 So. 2d 1049 (Miss. Ct. App. 2001).	7
<i>Goldsmith v. State</i> , 195 So.3d 207 (Miss. Ct. App. 2016).....	6
<i>Jackson v. State</i> , 684 So.2d 1213 (Miss. 1996).	11
<i>Manix v. State</i> , 895 So.2d 167 (Miss. 2005).....	10
<i>McLain v. State</i> , 625 So. 2d 774, 7(Miss. 1993)).	7
<i>McNeal v. State</i> , 551 So.2d 151 (Miss. 1989).	12
<i>Milano v. State</i> , 790 So. 2d 179 (Miss. 2001).....	8
<i>Myers v. State</i> , 770 So. 2d 542 (Miss. Ct. App. 2000).	7, 8
<i>Nicolaou v. State</i> , 215 So. 3d 498 (Miss. Ct. App. 2016).....	7
<i>Noe v. State</i> , 616 So.2d 298 (Miss. 1993).....	11
<i>Parker v. State</i> , 514 So.2d 767 (Miss. 1986).....	10
<i>Sharp v. State</i> , 446 So.2d 1008 (Miss. 1984).....	11
<i>Spann v. State</i> , 771 So.2d 883 (Miss. 2000).	10
<i>Underwood v. State</i> , 708 So. 2d 18 (Miss. 1998).	7

<i>Walker v. State</i> , 913 So.2d 198 (Miss. 2005).....	10
<i>Young v. State</i> , 271 So. 3d 650 (Miss. Ct. App. 2018).	7

STATUTES

Mississippi Code Annotated Section 97-3-19.....	1
Mississippi Code Annotated Section 97-3-53.....	1, 7

RULES

Mississippi Rule of Evidence 403.....	10
---------------------------------------	----

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MATTHEW JONATHAN MOBERG

APPELLANT

VS.

NO. 2018-KA-01726-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES

- I. There was sufficient evidence of kidnaping to sustain Moberg's conviction for capital murder.
- II. The trial court did not err in its admission of State's Exhibit 25, a photograph of the victim's body taken during the autopsy.

STATEMENT OF THE CASE

On August 24, 2017, in the Circuit Court of Greene County, Matthew Jonathan Moberg ("Moberg") was indicted for capital murder in violation of Mississippi Code Annotated Section 97-3-19(2)(e) "while engaged in the commission of the felony crime of Kidnaping, as defined by Mississippi Code Section 97-3-53." (CP 18) A jury found Moberg guilty after a trial before the Honorable Circuit Judge Dale Harkey. (CP 507) He was sentenced to life in prison without the possibility of parole. (CP 507) Moberg's Motion for New Trial and/or JNOV was denied and he timely appealed. (CP 511, 545, 547)

STATEMENT OF THE FACTS

On May 22, 2017, pawn broker Nicholas Hillman helped Moberg purchase a stun gun from Holley's Pawn Store. (TR 591-594) Moberg asked Hillman what the shop carried in terms of self-

defense and if a stun gun would “get somebody off you.” (TR 592) Hillman gave Moberg a variety of options as an answer to this question, and Moberg ultimately bought the stun gun. (TR 592-593) Early the next morning, May 23, Savannah Harvison sat in Moberg’s truck and confessed that she had cheated on him with his brother and with sixteen-year-old Brian (“Jessie”) Parker the previous weekend. (TR 906-07) Savannah had actually broken up with Moberg on May 19 but was still trying to make him lose interest as he would not leave her alone. (TR 881-82) Moberg’s response to her was, “I got something for Jessie.” (TR 906-907) At least two witnesses described Jessie and Moberg as best friends. (TR 459, 717)

Greene County Detective Matthew Peak testified that soon after this conversation, Moberg texted Jessie: “I know what you did.” (TR 1008-1009) This text was followed by another one five minutes later in which Moberg wrote: “You got drunk, LOL.” (TR 1009). Tina Parker, Jessie’s mom, explained to the jury that Moberg had come to her house between 5 and 6 a.m. on May 23 looking for Jessie. (TR 565) She told him to leave and come back later because Jessie was sleeping. (TR 565) Moberg returned around 11:00 a.m. and woke Jessie up. (TR 467, 988) Jessie told his mom that he was leaving to help Moberg move into his new trailer. (TR 467-468) Jessie gave her a kiss goodbye and the two left. (TR 468) Tina never saw or heard from Jessie again. (TR 474)

At 11:09 a.m., according to Det. Peak, Moberg texted his brother saying, “Dillon, remember this: No matter how drunk I am, I would never F someone that you love -- that you're in love with. Just remember that because I'm sparing you.” (TR 1010-1011) Later that afternoon, Moberg came back to Jessie’s house alone. (TR 472-473) Tina told the jury that during this encounter she noticed that Moberg’s clothes were wet. (TR 475) Moberg told Tina that he had brought Jessie back to the house thirty minutes earlier and that Jessie had gotten into a black Toyota Camry with people he did not recognize. (TR 472-473) But Tina had not seen or heard Moberg’s truck. (TR 473) Moberg had

come back to the house to give her Jessie's phone which he said Jessie left in his truck. (TR 472) Tina thought this was odd because Jessie never left home without his phone and he would have told her if he was going out with anyone else. (TR 454, 473-474)

Det. Peak testified that between the time Moberg left Tina's house with Jessie around 11 a.m. and then returned to give her Jessie's phone that afternoon, the two had driven to Mississippi. (TR 989-990) Video from a surveillance camera at a BP gas station in Wilmer, Alabama, showed Moberg's truck headed west towards Mississippi at 12:22 p.m. (TR 601, 603-604) Minutes later, video footage from a Dollar General in Lucedale, Mississippi, showed the pair entering the Dollar General at 12:32 p.m. and leaving four minutes later. (TR 753-754, 757) A receipt from that same Dollar General was later found in the front passenger seat of Moberg's truck. (TR 978)

Det. Peak testified that between 11:59 a.m. and 1:23 p.m., Moberg did not send or receive any texts. (TR 1011-1012) At 1:23 p.m., he texted Savannah and said, "I need you now, it's urgent." (TR 1012) He also called her three times, though she never answered. (TR 1012) After these calls, he texted Jessie and said, "Hey bro, where are you? You left your phone in my car." (TR 1012)

Moberg then returned to Alabama. (TR 996-997) The same BP gas station surveillance camera that caught Moberg's truck going towards Mississippi earlier in the day captured his truck going the opposite direction into Alabama at 1:47 p.m. (TR 996-997, 1001) Mirsad Alidemovic, Moberg's supervisor at Hard Rock Stone & Tile, testified that Moberg did not show up for work at 7 a.m. on May 23 like he was supposed to. Instead, he came in around 2 p.m. but Mirsad turned him away and told him to come back in the morning. Moberg told Mirsad that he was late because his car had broken down. (TR 703-705)

While Moberg was there, he and his co-worker Christopher Tullos had a brief conversation. (1078) Moberg told Tullos that his truck had broken down in Silas. (TR 1078) Tullos testified that

he noticed that Moberg was wet from his shirt down to his shoes, and there was sandy dirt on his right leg. (TR 1079) His shoes were so wet that Tullos could hear them “squish” when Moberg walked. (TR 1079) Moberg told him that he “fell in some water.” (TR 1079) It was after being turned away from work that Moberg went to Tina’s house and gave her Jessie’s phone. (TR 1003)

After leaving Tina’s house, Moberg then went to Walter and Logan Frazier’s apartment. (TR 785-786) Walter Frazier testified that Moberg’s hair was wet when he arrived and that he emptied his wallet of its contents so that they could dry because the whole wallet was soaked. (TR 786-787) According to Logan, while he and Moberg were alone in the living room, Moberg explained that Jessie was missing and that the two had gotten into a fight and he had strangled Jessie while they were in Mississippi. (TR 808-809) Moberg told Logan that he got Jessie to go to Mississippi by telling him “that they were going to go and get drugs.” (TR 809) Logan explained that he did not call the police upon hearing this information because he was scared, and told the jury, “I feared for mine and my father’s life.” (TR 809-810)

After Moberg left Tina’s house that afternoon, Tina waited to hear from Jessie and she contacted anyone who might have known his location. (TR 474-475) When it was clear no one had seen him, “we called the cops.” (TR 475) The authorities responded to her house around 11:30 p.m., according to Det. Peak. (TR 957) She told the authorities that Jessie was last seen with Moberg and showed them a text message she had received from him that read, “I hope they can identify him and locate where he’s at.” (TR 483, 955-56, 964-965)

When authorities finally got in contact with Moberg, he agreed to meet them at an Exxon gas station. (TR 962-963) Buddy Frazier heard Moberg leave his apartment at 3:15 a.m. (TR 789) And according to Det. Peak, he and Sgt. Phillips arrived at the Exxon station at 4 a.m. (TR 962) During this meeting, Moberg told the officers that he had picked Jessie up earlier that day so Jessie could

help him move into his trailer. (TR 963) He also told them he did not know where Jessie was and that he had dropped him off earlier at his house. (TR 964) Det. Peak asked Moberg about the text he had sent Tina earlier saying, "I hope they can identify him and find where he's at." (TR 964-965) Moberg told them about Jessie getting into a black vehicle that was in the driveway of his house when he dropped him off earlier. (TR 965-966) Det. Peak said Moberg also told them that when he dropped Jessie off "they said their goodbyes and they said I love you." (TR 966) This struck the detective as odd. (TR 966) Moberg agreed to follow the officers to the police station for an interview. (TR 966-967) During the interview, Moberg denied stopping anywhere with Jessie or going to Mississippi. (TR 970-71)

Officers went to verify the time line of events Moberg had given them by first checking with Hard Rock Stone & Tile. (TR 972-973) They arrived sometime during the lunch hour and as they got out of their vehicles they saw Moberg flee on foot. (TR 973-975) He was ultimately apprehended. (TR 975) Moberg's vehicle, which was left in the parking lot of Hard Rock Stone & Tile, was towed to the FBI office and a search warrant was executed. (TR 977-978) Before the car was towed, officers observed a Dollar General receipt laying on the front passenger seat, which showed that Moberg had lied to police during his interview.

Kenneth Johnson, an inmate in custody with Moberg, testified that he overheard Moberg tell two other inmates that he had hit Jessie in the head with a pipe, stunned him four times, then held his head underwater in the mud, drowning him. (TR 763-764) Johnson explained that Moberg said he did this over a girl. (TR 764) Jessie's body was found in Mississippi on May 31. (TR 519-520) Agent Trey Collins found the body while searching the side roads of Highway 98 and 63 North. (TR 520) He testified the body was 24.1 miles from the Alabama line and partially submerged in water near a culvert. (TR 525, 530) Dr. Mark LeVaughn testified that due to decomposition changes, he

was not able to form an opinion as to the cause of death. (TR 692) However, Dr. LeVaughn did opine as to the manner of death, which he said was homicide. (TR 693)

SUMMARY OF THE ARGUMENT

The jury heard an abundance of evidence that showed how Moberg, angry over his ex-girlfriend's infidelity, lured Jessie to his death. It was reasonable for the jury to believe that Moberg kidnaped Jessie by lying to get him into his car and then murdered him shortly thereafter. As this Court has previously held, "one does not forcibly inveigle." There was sufficient evidence of kidnaping presented to the jury to sustain its verdict.

The trial judge did not abuse his discretion in admitting State's Exhibit 25. He very carefully and deliberately heard both the State and defense's position on the autopsy photograph as well as other proposed testimony of the medical examiner. He ultimately allowed the photograph as it was not so gruesome and prejudicial that its probative value was outweighed. The photograph served the legitimate purpose of showing a notable defect on Jessie's body.

ARGUMENT

I. There was sufficient evidence of kidnaping to sustain Moberg's conviction for capital murder.

Moberg was convicted of capital murder during the commission of a kidnaping. Moberg argues that there was insufficient evidence presented at trial that he kidnaped Jessie. "A directed verdict and a motion for JNOV both challenge the sufficiency of the evidence presented to the jury. Therefore, our standard of review is the same for both." *Goldsmith v. State*, 195 So.3d 207, 212 (Miss. Ct. App. 2016). The reviewing court will consider the evidence "in the light most favorable to the State" and ask "whether the evidence shows beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the

offense existed.” *Conner v. State*, 138 So.3d 158 (Miss. Ct. App. 2013) (citing *Bush v. State*, 895 So.2d 836, 843 (Miss. 2005)). On appeal, “credible evidence consistent with guilt must be accepted as true.” *Edwards v. State*, 797 So. 2d 1049, 1055 (Miss. Ct. App. 2001) (citing *McLain v. State*, 625 So. 2d 774, 778 (Miss. 1993)).

“The prosecution is required to prove each element of the underlying kidnaping offense beyond a reasonable doubt in order for the capital murder conviction to stand.” *Underwood v. State*, 708 So. 2d 18, 35 (Miss. 1998) (superceded on other grounds by *Nicolaou v. State*, 215 So. 3d 498 (Miss. Ct. App. 2016)). Kidnaping is defined in Mississippi Code Annotated Section 97-3-53, which reads, in part: “Any person who, without lawful authority and with or without intent to secretly confine, shall forcibly seize and confine any other person, or shall inveigle and kidnap any other person with intent to cause such person to be confined or imprisoned against his or her will[.]” “‘Inveigle’ means to lure or entice through deceit or insincerity. Black’s Law Dictionary 852 (10th ed. 2014)[.]” *Young v. State*, 271 So. 3d 650, 658 (Miss. Ct. App. 2018). “Circumstantial evidence is sufficient to prove the elements of kidnapping.” *Underwood*, 708 So. 2d at 35.

Moberg contends that there was no evidence that he intended to cause Jessie to be confined or held against his will. To support his argument, he points to the video footage from the Dollar General and Frazier’s testimony that Moberg told him he killed Jessie after a fight over a girl. “Inveigling has no component of force, but only of coaxing. One does not forcibly inveigle. Guilt exists if Myers coaxed the girl into his vehicle with the intent secretly to confine her against her will.” *Myers v. State*, 770 So. 2d 542, 544 (Miss. Ct. App. 2000). In the *Myers* case, Myers was convicted of kidnaping a young girl after he promised to take her home. Instead, he drove her from Pascagoula to Mobile and tried to obtain ransom money from her family. *Id.* at 543. Similarly, the evidence at Moberg’s trial showed that Moberg picked Jessie up using the ruse that he needed help

moving into his apartment or with the promise that they would go purchase drugs. As this Court discussed in the *Myers* case, “[t]he statutory intent is to confine secretly or to imprison against the will.” *Id.* at 547. “What is unquestioned is that Myers admitted that the girl got into his car for the purpose of being driven home, but then he did not take her there.” *Id.* The same can be said in Moberg’s case.

After Savannah told Moberg that she had slept with Jessie, Moberg said he “got something for Jessie.” He then sent a text message to his brother right around the time he picked Jessie up saying he was sparing his brother even though he had slept with Savannah, too. Moberg killed Jessie shortly thereafter. These statements by Moberg show that he intended to kill Jessie when he picked him up from his house. That Jessie got into Moberg’s truck willingly with the understanding that they would be moving into Moberg’s apartment or buying drugs, “constituted a deceitful act, an ‘inveigling,’” since Moberg instead drove him to a remote area in Mississippi and killed him. *Id.* at 548.

While it appears obvious that Moberg intended to harm or kill Jessie when he picked him up that morning, “[k]idnaping is not a specific intent crime. Therefore, it is sufficient that the surrounding circumstances resulted in a way to effectively become a kidnaping as opposed to the actual intent to kidnap.” *Milano v. State*, 790 So. 2d 179, 187 (Miss. 2001). While Jessie could have theoretically run out of the Dollar General while the two were inside the store, at that point he likely did not know what Moberg had planned and that he was being lured to his death. A reasonable juror could have found that the evidence supported that Moberg kidnaped Jessie that morning before killing him.

II. The trial court did not err in its admission of State's Exhibit 25, a photograph of the victim's body taken during the autopsy.

The exhibit at issue, State's Exhibit 25, is an autopsy photo displaying the immediate areas of Jessie's body that were most relevant to the establishment of Dr. LeVaughn's conclusion following his examination of the body. The photo shows defects of the skin and Jessie's lower abdomen. It also shows the decompensation, scavenger activity, and post-mortem changes of part of his left arm, as well as a skin defect on the left side of his chest where, as Dr. LeVaughn described, "a portion of the rib protrudes." (TR 656) The State described it as the "least gruesome" photograph available, to which the defense agreed.

During trial, after Dr. LeVaughn was called to the stand, but prior to him giving his testimony, the defense objected to the photo as a clarifying aid to his testimony. (TR 654-655) In addition to gruesomeness, the defense objected to the photo based on relevance and because Dr. LeVaughn's opinion as to the cause of death could not be given to a reasonable degree of medical certainty. The trial court overruled the objection to the autopsy photo, while sustaining the objection to Dr. LeVaughn's opinion as to the cause of death. The trial judge explained:

The issue of the photograph itself, in the event that that photograph would aid the jury in understanding his testimony, I believe would be probative and such probative value is not substantially outweighed by its prejudicial effect. There are internal identifiable organs that are identifiable that are depicted in the photograph. There is no blood or gore or anything of that nature. The jury already has before it the fact that the body was left in the woods in a creek, exposed to that nature and predatory animals. I do not feel that the probative value is substantially outweighed by the prejudicial effect by the introduction of the photograph. The photograph does depict objective findings made during the course of the autopsy itself, so your objection to the introduction of the photograph will be denied or overruled. But your objection to his opinion as to a penetrating wound will be sustained.

(TR. 664-665)

Moberg now argues that the photo the trial court deemed admissible was gruesome, served no evidentiary purpose, and was more prejudicial than probative. Specifically, he contends the photo did not aid in describing the circumstances of the killing and corpus delicti, that the photo did not describe the location and cause of death, and that the photo did not supplement or clarify Dr. LeVaughn's testimony.

The exclusion of relevant evidence is governed by Rule 403 of the Mississippi Rules of Evidence. Rule 403 states: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." The admissibility of photographs lies within the sound discretion of the trial court. *Manix v. State*, 895 So.2d 167, 177–78 (Miss. 2005). The decision of the trial judge to admit these photos will be upheld unless there has been an abuse of discretion. *Id.* at 178. "Some 'probative value' is the only requirement needed to buttress a trial judge's decision to allow photographs into evidence." *Walker v. State*, 913 So.2d 198, 231 (Miss. 2005) (quoting *Parker v. State*, 514 So.2d 767, 771 (Miss. 1986)).

A photograph has probative value if it supplements or clarifies a witness's testimony or describes a cause of death. *Spann v. State*, 771 So.2d 883, 895 (Miss. 2000). Similarly, "photographs that aid in describing the circumstances of the killing, the location of the body and cause of death, or that supplement or clarify a witness's testimony have evidentiary value and are admissible before a jury." *Ambrose v. State*, 254 So.3d 77, 135 (Miss. 2018) (quoting *Bennett v. State*, 933 So. 2d 930, 946 (Miss. 2006)). The burden of the appellant in proving the trial court abused its discretion is high, since the "discretion of the trial judge runs toward almost unlimited admissibility regardless of the gruesomeness, repetitiveness, and the extenuation of probative value." *Manix*, 895 So.2d at 178

(quoting *Brawner v. State*, 872 So.2d 1, 14 (Miss. 2004)). Despite the wide discretion trial courts have regarding the admissibility of photographs, there are “meaningful limits.” *Ambrose*, 254 So.3d at 135. Those limits are defined by weighing the probative value of the photograph against its prejudicial effect. *Id.*

The State maintained that the photo was not overly gruesome and that it helped the jury in deciding whether the defect depicted in the photo, and discussed by Dr. LeVaughn, was a penetrating wound or scavenger activity. Specifically, Dr. LeVaughn noted the “corresponding defect” on Jessie’s shirt. (TR 682) The trial court ultimately ruled the photograph in question was properly submitted, and that its probative value was found in the clarification it provided for the jury during Dr. LeVaughn’s testimony.

The decision in *Jackson v. State*, a case where autopsy photographs showed children stabbed in the chest, face, and neck, held that autopsy photographs are admissible “only if they possess probative value.” *Jackson v. State*, 684 So.2d 1213, 1230 (Miss. 1996) (quoting *Noe v. State*, 616 So.2d 298, 303 (Miss. 1993)). “[T]he mere fact that a photograph may arouse the emotions of jurors does not render it incompetent so long as the photograph serves a legitimate evidentiary purpose.” *Sharp v. State*, 446 So.2d 1008, 1009 (Miss. 1984). Though Dr. LeVaughn was unable to testify at trial as to the cause of death due to decomposition, he was able to determine that the manner of Jessie’s death was homicide. He reached this conclusion by eliminating the other manners of death—natural, accidental, suicide, and undetermined. He eliminated natural disease as a possible cause by analyzing the organs visible in the photo. Dr. LeVaughn also eliminated death by natural causes due to his findings of suspicious injury, also depicted in the photo. During trial, the jury was able to see those injuries as Dr. LeVaughn explained how they helped him reach his conclusion as to the manner of death.

This photo is not gruesome enough to outweigh its probative value. This Court has reversed cases on the basis of the admission of photographs in very few cases. In *Bonds v. State*, several photos of the burned victim's head were introduced. The Court ultimately found that the other photos introduced could provide the same probative value that the photo in question provided, without simultaneously showing the rotting, maggot-infested, disfigured skull and face. *Bonds v. State*, 138 So.3d 914, 920 (Miss. 2014). In Moberg's case, there were not other photographs available that could show the jury the suspicious skin defect on the left side of Jessie's chest: "That defect of the skin, in my opinion, could certainly represent a penetrating injury and it matches a similar defect in the shirt." (TR 656)

Another case where this Court held that certain photographs were inadmissible is *McNeal v. State*. Again, as in *Bonds*, multiple photos of victim Darlene McNeal's nude and partially decomposed body were accepted into evidence by the trial court. *McNeal v. State*, 551 So.2d 151, 159 (Miss. 1989). This Court found that these photos were "some of the most gruesome photographs ever presented to this Court" and that "the State could have shown the angle and entry of the bullet wound without the full-color, close-up view of the decomposed, maggot-infested skull." *Id.* The *McNeal* Court found the probative value of the photographs to be outweighed by their tendency to inflame and prejudice the jury. *Id.* The photograph at issue in Moberg's case is not comparable.

The trial court did not abuse its discretion in admitting State's Exhibit 25. But should this Court find otherwise, the error should be considered harmless. An error is harmless when it is "clear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Conley v. State*, 790 So. 2d 773, 789 (Miss. 2001). The photograph at issue did not contribute to the jury's verdict given the overwhelming evidence of Moberg's guilt.

CONCLUSION

As discussed herein, the issues raised by Moberg are without merit. Accordingly, the State of Mississippi respectfully requests that this Honorable Court affirm his conviction and sentence.

Respectfully submitted,
JIM HOOD, ATTORNEY GENERAL

BY: /s/ Abbie Eason Koonce
ABBIE EASON KOONCE
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 103632

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680
FACSIMILE: (601) 359-3796
EMAIL: akoon@ago.ms.us

CERTIFICATE OF SERVICE

I, ABBIE EASON KOONCE, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Mollie M. McMillin, Esq.
Indigent Appeals Division
Office of State Public Defender
Post Office Box 3510
Jackson, MS 39207-3510
mmcmi@ospd.ms.gov

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Dale Harkey
Circuit Court Judge
Post Office Box 998
Pascagoula, MS 39568

Honorable Angel Myers McIlrath
District Attorney
Post Office Box 1756
Pascagoula, MS 39598

This, the 29th day of October, 2019.

/s/ Abbie Eason Koonce
ABBIE EASON KOONCE
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680
FACSIMILE: (601) 359-3796
EMAIL: akoon@ago.ms.us