STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Daniel D. Hall, Circuit Court Judge

Opinion No. 2022-UP-444

THE STATE,

RESPONDENT,

V.

JAMES HAROLD BALDWIN,

APPELLANT.

APPELLATE CASE NO. 2019-001923

PETITION FOR REHEARING

Appellant petitions for rehearing on both issues decided by this Court. Respectfully, this Court erred in its analysis of the first issue because Dr. Ross's testimony about how the accident occurred exceeded her qualifications. On the second issue, the Court correctly recognized the error, but failed to apprehend its significance. The State used the photo to bolster the highly unusual actions by the coroner and to blame the sheriff (and his supposedly close relationship with appellant) for the lack of evidence. The State made this case about the sheriff in its opening and closing statements. This error cannot be harmless in this close, entirely circumstantial case. This Court should grant rehearing, hold oral argument, and reverse appellant's conviction.

Dr. Ross's Testimony Exceeded the Scope of Her Qualifications

A pathologist's ability to testify about the cause and manner of death must be within the limits of their field and what they can observe at autopsy. Dr. Ross strayed into accident and crime scene reconstruction. These fields are complicated and require expertise that Dr. Ross did not have.

Dr. Ross had little information about the crime scene and admitted she had no expertise in calculating forces or biomechanics. She knew that biomechanical experts give opinions on force and injury. R. 484, l. 10 – 487, l. 21. She admitted she is not a blood spatter expert. R. 484, l. 10 – 487, l. 21. She admitted she is not certified as a crime scene investigator. R. 484, l. 10 – 487, l. 21. She admitted that at the time she amended her report, she did not know the height of the stepladder or the height of the Christmas tree. R. 484, l. 10 – 487, l. 21.

When asked if she performed any calculations to determine how much force it would take to fracture a skull, she said, "You can't do that in medicine. You can't line up people and hit them in the head and figure out . . . How much force causes certain injuries depending on the skull." R. 484, l. 10 – 487, l. 21. She agreed she performed no calculations of force and was not qualified to do so, but claimed she could give examples based on her experience. R. 484, l. 10 – 487, l. 21. When questioned by the solicitor, she claimed, however, that based on her experience she could render an opinion on whether falling from a stepladder could cause a "24 centimeter skull fracture." R. 488, l. 15 – 489, l. 20. Judge Hall found her qualified "to render an opinion about significant force." R. 489, l. 22 – 490, l. 8. He noted the objection from the defense. R. 490, l. 25.

Dr. Ross testified that the complex laceration could only be explained by hitting the ornament twice. R. 511, l. 6 – 9. She said it would require two separate blows, which Judge

Hall allowed her to answer over another objection. R. 511, l. 23 – 512, l. 3. This answer about the number of blows when she did not understand the scene was a highly prejudicial error. When asked whether Judy's injuries made it more probable that she was "hit with significant force or that she fell off a three foot ladder," appellant objected again, but the court overruled and allowed her to answer. R. 512, l. 14 – 25. Dr. Ross said the separate lacerations made it "more consistent with being hit by an object." R. 512, l. 14 – 25.

Appellant objected again when the solicitor asked, "And would you agree that without any other explanation of mechanisms to explain the severity of her injuries, within a reasonable degree of medical certainty this could likely have been caused by an attack or a beating to her head?" R. 513, l. 15 – 24. Dr. Ross responded, "It's what I've experienced and seen before as being beaten, yes." R. 513, l. 15 – 24. After being cross-examined about the existence of two stocking holders and their consistency with Judy's injuries, she agreed that "from the medicine alone" she could not rule out an accidental injury." R. 535, l. 21 – 536, l. 3. The solicitor was free to draw these inferences and conclusions in closing, but could not pull them from the witness stand from an unqualified expert.

The Error Admitting the Facebook Photo Was Not Harmless

The State's strategy for convicting appellant included as an integral part discrediting the sheriff's investigation. The State needed to bolster the strange actions by the coroner and to undercut the initial autopsy and determination by the expert originally employed by the sheriff that accident could not be ruled out. Implying a nonexistent personal relationship between the sheriff and appellant gave the prosecution the ability to explain why the jury should accept the actions taken by the coroner—who admitted a lifelong personal relationship with Judy—instead of the sheriff's department. Compounding the prejudice was removing the caption from the photo which would at least have given appellant the opportunity to explain it was just a routine photo-op. The erroneous admission of the photo cannot be harmless in this close case.

The solicitors set the stage for implying that appellant had improperly influenced the system in their opening statement. After telling the jurors that appellant had worked in law enforcement, the solicitor said, "He knows the system, he knows how it works intimately." R. 69, l. 19 – 24. After blaming appellant for taking Judy to a much better hospital that was further away, the solicitor again said, "This was one plan after another by the defendant to manipulate the scene and the narrative of what happened to his wife." R. 71, l. 5 – 24. Near the end of her opening, the solicitor said:

> And remember, the devil is in the details, ladies and gentlemen, when you start to see where he has to fix and manipulate the narrative you will see he's trying to control what happens. Unfortunately when you're in a situation where it's a very complicated case like this sometimes you run into situations you can't control. That family in dealing with the loss of Judy Orr Baldwin **also dealt with a sheriff's office that would not do their job. It took months, months to get the sheriff's office to allow SLED to come in and do a thorough investigation,** and only then were they able to put everything back together that the defendant had tried so hard to tear apart. So it was a process. And you're going to hear how some of these conflicting egos and conflicting departments had to deal with one

another, don't blame that on the family, blame it on the State because we should all be better than that.

R. 72, l. 11 – 73, l. 2 (emphasis added). The solicitor had to set the stage to blame the sheriff and to keep the jury from viewing the case as a grudge by the coroner.

When the State sought the admission of the photo through the coroner, it began by setting up the personal connection with the sheriff as a reason why the investigation did not go as the coroner wished. The solicitor asked the coroner whether he started "doing some background looking into what connections there were between the sheriff and the defendant." R. 354, l. 5 – 22. The coroner then explained his secretary found the photo on appellant's Facebook page. R. 354, l. 18 – 355, l. 22. The solicitor had the coroner emphasize the photo was taken "just four months before Ms. Judy died." R. 356, l. 3 – 5.

During the in camera colloquy, the solicitor explained why they needed the photo and, for purposes of this appeal, why its admission is not harmless. R. 358, l. 11 – 259, l. 11. The solicitor told the judge that the photo proved there was a connection between the sheriff and appellant. R. 358, l. 15 – 18. She then said, "So the problem that we need to be able to show to this jury arose from that relationship, Your Honor." R. 358, l. 18 – 20. She said it was important "to the underlying issue **as to why the sheriff's office did not investigate this case and the fact that Coroner Tinker had to take it upon himself** to try to bring these agencies from outside of Chester County to do the proper investigation, that's already out there for the jury, this is the basis for why that did not happen, so it is extremely relevant to the State's case." R. 359, l. 1 – 7 (emphasis added). Defense counsel responded that the prosecution was trying to make a "scapegoat" out of the sheriff. R. 359, l. 22 – 25. The State needed to blunt the argument that the reason why the sheriff did not pursue appellant was because Judy's death really was an accident and not because of some nefarious personal connection.

During the first part of her closing, the solicitor tried to establish a motive with a timeline of events occurring before Judy's death. R. 1029, l. 4 – 1031, l. 13. She included a life insurance policy in May 2016, Judy talking to her pastor about marital problems in September 2016, and "Then defendant post a photo on his Facebook page with Sheriff Underwood." R. 1030, l. 9 – 10. The solicitor jumped straight from the photo to her theory of a cover-up, immediately telling the jury, "And let me be very clear about this, the fact that the Chester County Sheriff's Office back in 2016 failed to do their duty for that family is on them, but it is something you have to consider as to why things were not done, and you can't ignore that fact." R. 1030, l. 9 – 15. Again, the solicitor herself tells us the importance of the photo and why its admission was not harmless.

When explaining the decision by the coroner to order the second autopsy, the solicitor said, "Coroner Tinker was not happy with that and it's a good thing." R. 1052, l. 16 – 22. She quoted the coroner to the jury as saying, "'Look, I was suspicious about what was going on with the sheriff's office and why they would not just do their job.'" R. 1053, l. 2 – 4. "It's a small community in Chester." R. 1053, l. 4.

The solicitor mentioned the possible conflict of interest because of the coroner's relationship with Judy, and said the coroner considered pulling himself out of the investigation, except, "**And then he finds this.** We have a picture of Sheriff Alex Underwood and the defendant less than months, what was it, September 30, 2016, in a photo together and he posted on his page." R. 1053, l. 15 – 18 (emphasis added). She said appellant was "fed information" from a deputy. R. 1054, l. 12 – 14.

The defense pointed out that the coroner had been in the courtroom every day of the trial and said, "that's not the way a fact witness behaves. Fact witnesses come give their testimony

and leave. . . . Terry Tinker had a personal stake in this." R. 1080, l. 24 – 1081, l. 8. Defense counsel pointed out the personal stake the coroner had and how he orchestrated the continued investigation, including the unusual meeting with Judge Gibbons. R. 1081, l. 8 – 1083, l. 12. The defense had to respond to the Facebook photo in closing, saying it was "supposed to show is that my client is intimate friends with the sheriff and because of that Chester didn't investigate this case." R. 1087, l. 14 – 17. Defense counsel tried to explain it as a mere photo-op, but was hamstrung because of the removal of the caption. R. 1087, l. 17 – 20.

The evidence in this case included statements by appellant describing the accident and competing expert theories as to whether an accident occurred. The admission of the photo allowed the State to imply that Chester's conclusion of accident was not just wrong, but sinister, and but for the heroic efforts of the coroner, appellant would have gotten away with murder. The evidence of guilt was not strong and the erroneous admission of the Facebook photo bore directly on a hotly contested point between the parties. The error recognized by the Court was not harmless and rehearing and reversal are needed.

Conclusion

For the foregoing reasons, this Court should grant rehearing and reverse appellant's conviction.

David Alexander
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ATTORNEY FOR APPELLANT

This 22nd day of December, 2022.

RECEIVED
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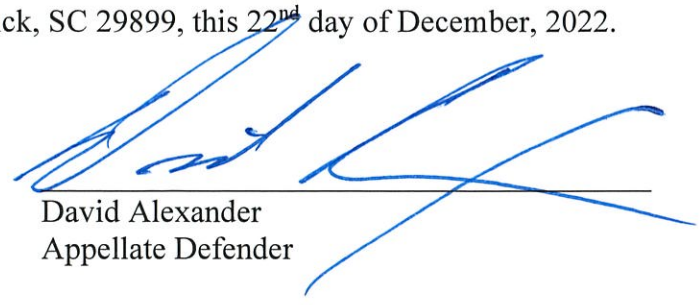
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Jonathan Scott Matthews, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on James Harold Baldwin, #382641, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 22nd day of December, 2022.



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ATTORNEY FOR APPELLANT

From: Stock, Chris
To: SC - MATTHEWS JONATHAN
Cc: Alexander, David
Subject: Baldwin, James - Petition for Rehearing - 2019-1923
Date: Thursday, December 22, 2022 3:47:00 PM
Attachments: Baldwin, James - Petition for Rehearing - 2019-1923.pdf
Baldwin, James - Petition for Rehearing - 2019-1923 - AG Cover Letter.pdf

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Mr. Matthews,

Please find attached for service the Petition for Rehearing for James Baldwin's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
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Commission on Indigent Defense
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