

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Chester County
Honorable Daniel D. Hall, Circuit Court Judge

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S.C. SUPREME COURT

Opinion No. 2022-UP-444 (S.C. Ct. App. Filed Dec. 7, 2022)

Lower Court Case No. 2018-GS-12-00733

THE STATE,

RESPONDENT,

V.

JAMES HAROLD BALDWIN,

PETITIONER.

APPELLATE CASE NO. 2019-001923

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on January 23, 2023.

QUESTION PRESENTED

Where the State's case depended upon discrediting the investigation of the Sheriff of Chester County, did the Court of Appeals err in finding harmless the trial judge's admission of an irrelevant and prejudicial photograph from Facebook of petitioner in a group with the Sheriff and eliminating the text showing it was only a photo-op at a fund raiser?

STATEMENT OF THE CASE

A Chester County grand jury indicted petitioner for murder and on October 28, 2019, petitioner was tried before the Honorable Daniel D. Hall and a jury. R. 1. Candice Lively and Jay Johnson represented the State. R. 1. Philip Jamieson and Bradley Jordan represented petitioner. R. 1. The jury convicted petitioner. R. 1119, l. 21 – 1120, l. 5. Judge Hall sentenced petitioner to life imprisonment. R. 1124, l. 15 – 24.

On December 7, 2022, without the benefit of oral argument, a panel of the Court of Appeals consisting of Judges Geathers, McDonald, and Hill affirmed petitioner's conviction, finding the error in admitting the Facebook photo of petitioner harmless. App. 1. On January 23, 2023, the Court of Appeals denied petitioner's petition for rehearing. App. 13. This petition for certiorari follows.

STANDARD OF REVIEW

The evidentiary issue in this case is reviewed under the abuse of discretion standard. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). “[O]ur jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” State v. Reyes, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020), quoting State v. Tapp, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012).

ARGUMENT

Where the State's case depended upon discrediting the investigation of the Sheriff of Chester County, the Court of Appeals erred in finding harmless the trial judge's admission of an irrelevant and prejudicial photograph from Facebook of petitioner in a group with the Sheriff and eliminating the text showing it was only a photo-op at a fund raiser.

Introduction

The State found itself in a wrong-footed role in this strange case. The solicitors needed to discredit law enforcement's initial investigation that did not conclude whether Judy Orr Baldwin ("Judy") died in an accidental fall or was murdered by her husband, petitioner James Baldwin ("Baldwin"). The Chester County Sheriff treated the death as accidental after two pathologists examined Judy's body and made no determination regarding accident or homicide. Only after efforts by Judy's lifelong friend, Coroner Terry Tinker ("Tinker"), did SLED take over the investigation and the second pathologist changed her conclusion to homicide.

Baldwin formerly worked as a 911 dispatcher for Chester County. R. 102, l. 19 – 25. The State recognized that to convict Baldwin, it needed to bolster the investigation pushed by Coroner Tinker and discredit the sheriff's investigation. Beginning with its opening statement, the State told the jury they would see "a sheriff's office that would not do their job." R. 72, l. 11 – 73, l. 2. 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. The Court of Appeals realized that admission of a Facebook photo of Baldwin with the sheriff was erroneously admitted. Unfortunately, the court did not realize the significance of the photo's implication that a personal relationship resulted in favoritism. This false implication was enough to change the result of the case and prevented Baldwin from getting a fair trial.

The Night of the Accident

Baldwin called 911 on the night of December 14, 2016. R. 82, l. 4 – 21. (State’s Ex. 5). He told the dispatcher that he and his wife had been in “a bad wreck.” (State’s Ex. 5). They “ran off the bridge.” (State’s Ex. 5). He did not think his wife was breathing and said he needed help. (State’s Ex. 5). He was distraught and crying. (State’s Ex. 5). He had already tried CPR (State’s Ex. 5).

Fireman Mike Ehrmanntraut was dispatched to the scene at 11:06 PM and was the first to arrive. R. 86, l. 4 – 7. R. 87, l. 2 – 6. The wreck happened on a rural “winding” two-lane road called Old Richburg Road. R. 85, l. 6 – 17. He saw Baldwin at the guardrail on the side of the road. R. 87, l. 9 – 16. Baldwin told the fireman, “Go help my wife, she’s down there” and that he had pulled her out of the water. R. 87, l. 17 – 21. Ehrmanntraut found the Baldwins’ jeep at the bottom of an embankment in a creek and saw Judy’s body outside of the Jeep and partially in the water. R. 87, l. 22 – 89, l. 20.

Baldwin told the EMTs and highway patrol that he was on his way to take Judy to Piedmont Medical Center in Rock Hill. R. 117, l. 20 – 118, l. 2. Judy fell putting up their Christmas tree, cut her head and was bleeding badly. R. 117, l. 20 – 118, l. 2. A pickup truck was in their lane and when Baldwin swerved to miss it, he went down the embankment. R. 116, l. 18 – 22.

The fireman said it “was a dark evening.” R. 87, l. 22 – 25. The witnesses who responded to the scene agreed it was foggy. R. 92, l. 11 – 12 (Fireman Ehrmanntraut). R. 110, l. 9 – 10 (EMT John Faulkner). R. 121, l. 15 – 17 (EMT Tyanne Perry). R. 234, l. 16 – 25 (Trooper Matthew Nix). Another fireman agreed that had Baldwin not come up to the road, it

would have been difficult to locate the Baldwins' Jeep in the creek at the accident scene. R. 105, l. 4 – 13.

The State called its own investigator to criticize Baldwin's choice of hospital and route. R. 208, l. 19 – 217, l. 5. The investigator said it was only 1.97 miles from their house to the Chester Hospital, but much farther to Piedmont in Rock Hill, which required getting on Interstate 77. R. 208, l. 19 – 217, l. 5. The investigator also said Baldwin's choice of Old Richburg Road to get to I-77 was almost two miles longer and that "a person who is of any common sense" would have instead taken the four-lane road, Highway 9 instead of Old Richburg. R. 208, l. 19 – 217, l. 5.

Baldwin had worked as a 911 dispatcher for Chester County. R. 102, l. 19 – 25. He was not employed by the sheriff's office at the time of the accident. R. 305, l. 18 – 20. Piedmont in Rock Hill was a higher level trauma center than Chester's hospital. R. 97, l. 4 – 7. R. 120, l. 14 – 18. Chester EMS often takes people to Piedmont instead of Chester's hospital. R. 120, l. 16 – 18. The EMTs took Baldwin to Piedmont Medical Center in Rock Hill for his injuries. R. 110, l. 22 – 111, l. 3.

Trooper Calvin Rikard with the MAIT Unit responded to the scene, but was sent to the hospital in Rock Hill to talk to Baldwin. R. 193, l. 4 – 23. He recorded his interview with Baldwin, which was conducted at 2:43AM. R. 193, l. 24 – 197, l. 11. In this interview he told the trooper about the accident at the house and that he was taking Judy to the hospital. R. 200, l. 7 – 202, l. 6. (State's Ex. 1).

Baldwin gave another interview to Chester County Sheriff's Deputy Christopher Reynolds six days after the accident on December 20, 2016. R. 266, l. 16 – 267, l. 18. (State's Ex. 2). He begins the interview emotionally, crying, wondering if there is anything else he could

have done. (State's Ex. 2). Baldwin said they picked up supper the night of the accident at Chicken King around 7:30PM. (State's Ex. 2). He packed his clothes to go on a charity trip for his motorcycle club to Kentucky to help deliver Christmas presents for deprived children. (State's Ex. 2).

Baldwin told Judy he would help finish the Christmas tree. (State's Ex. 2). Using a ladder, he put the star and a couple of balls on the tree. (State's Ex. 2). He then set the ladder against a wall near the kitchen. (State's Ex. 2). Baldwin went into his shop. (State's Ex. 2). When he came back in the house, Judy was on the floor near the fireplace. (State's Ex. 2). She was on her hands and knees trying to get up. (State's Ex. 2). The ladder was now back near the tree. (State's Ex. 2). He helped Judy up, took her into the bathroom to clean her wound, but it was bleeding profusely. (State's Ex. 2). He could not remember what time he came back from the shop and found Judy. (State's Ex. 2).

At one point Judy sat down on the bathroom floor while Baldwin got a cloth. (State's Ex. 2). He helped her up. (State's Ex. 2). Baldwin told Judy she needed stitches and she replied she did not want to go to Chester Hospital. (State's Ex. 2). Baldwin explained that she "hated" Chester Hospital because her father died there. (State's Ex. 2). He said he would take her to Piedmont. (State's Ex. 2). Judy wanted to lie down, but Baldwin would not let her and said they needed to get to the hospital. (State's Ex. 2). He moved the seat back and put Judy in their Jeep. (State's Ex. 2). They left for the hospital. (State's Ex. 2).

Judy was able to talk in the Jeep. (State's Ex. 2). She said her head hurt. (State's Ex. 2). It was foggy. (State's Ex. 2). Baldwin looked up and saw an oncoming truck and eventually realized it was in their lane. (State's Ex. 2). He swerved to the right to avoid a head-on

collision. (State's Ex. 2). The back of the Jeep "got squirrely" and "shot across the road." (State's Ex. 2). They hit something and the Jeep came to a stop. (State's Ex. 2).

The next thing Baldwin could remember was waking up and reaching over for Judy. (State's Ex. 2). She was not in the Jeep. (State's Ex. 2). At this point during the interview, Baldwin was overcome with emotion. (State's Ex. 2).

Baldwin saw the passenger door wide open and bent back toward the front of the Jeep. (State's Ex. 2). He climbed out the passenger side. (State's Ex. 2). Baldwin went back toward the road looking for Judy, but did not see her. (State's Ex. 2). When he went back to the Jeep he saw her lying in the creek. (State's Ex. 2). He pulled her as far as he could out of the creek toward the Jeep. (State's Ex. 2). Baldwin got his phone from the car and called 911. (State's Ex. 2). He climbed the embankment to the road so that he could flag down first responders. (State's Ex. 2).

Deputy Reynolds left the room and after he returned, told Baldwin the video recording had been stopped. (State's Ex. 2). He asked Baldwin if he wiped Judy's face because there was no blood on her face. (State's Ex. 2). Baldwin could not remember. (State's Ex. 2). Deputy Reynolds wondered if Judy got out of the Jeep on her own, to which Baldwin replied with surprise and found it deeply troubling. (State's Ex. 2). Deputy Reynolds said the MAIT team "had it one way" and they were shooting holes in each other's theories. (State's Ex. 2). He alludes to "rumors" in the community. (State's Ex. 2). Baldwin denied they argued that night and said he and Judy "had a great relationship." (State's Ex. 2). Baldwin said the police were welcome in his house any time and the ladder was in the carport. (State's Ex. 2).

The Highway Patrol's MAIT Unit conducted an investigation into the car accident and Trooper Brian Trotter was qualified as an expert in accident reconstruction and analysis of event

data recorders. R. 397, l. 11 – 15. MAIT removed the event data recorder (“EDR”) from the Jeep. R. 398, l. 20 – 399, l. 10. The EDR’s purpose is to decide when to deploy a car’s airbags. R. 400, l. 3 – 402, l. 14. The Jeep’s EDR showed no event for the night of the accident. R. 400, l. 3 – 10. An EDR will record a change in speed of five or more miles per hour within 150 milliseconds. R. 400, l. 3 – 402, l. 14. Using this information from the data recorder and what he observed from an investigation at the scene, Trooper Trotter opined that the Jeep’s descent from the road to the creek was “a low speed maneuver.” R. 405, l. 6 – 413, l. 13. He believed that the Jeep was controlled by Baldwin during the accident. R. 414, l. 4 – 10. On cross-examination, he agreed that no event would be recorded if Baldwin applied the brakes and slowed the car as it ran off the road. R. 422, l. 4 – 18.

The Coroner and the Investigations

During her unusual opening statement, the solicitor told the jury that Judy’s family “dealt with a sheriff’s office that would not do their job.” R. 72, l. 17 – 19. She said 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.” R. 72, l. 19 – 23. She warned the jury they would hear about “conflicting egos and conflicting departments.” R. 72, l. 23 – 73, l. 2. She called it “white noise.” R. 73, l. 4 – 7.

Coroner Terry Tinker had known Judy his whole life. R. 331, l. 24 – 332, l. 9. Judy’s first husband began working for Coroner Tinker when he was assistant chief of the Chester fire department. R. 331, l. 24 – 332, l. 9. He socialized with Judy and her first husband “many times” and considered them “personal friends.” R. 376, l. 2 – 19. Coroner Tinker and his wife attended Baldwin’s bond hearing, the only bond hearing he ever attended in his life. R. 379, l. 12 – 380, l. 1. Coroner Tinker went to every day of the trial. R. 1080, l. 24 – 1081, l. 3.

Coroner Tinker went to the scene and recognized Judy when he saw her body in the creek. R. 330, l. 3 – 331, l. 23. He said he went “into a mode of was she ejected from the jeep or did something else happen to her, and that’s my job.” R. 332, l. 10 – 17. When he got back to the top of the creek, an officer told him that Judy did not die from the wreck. R. 334, l. 1 – 7. Coroner Tinker told someone that “there was something very suspicious because it was not adding up with the highway patrol, I had more injuries on this body that to be ejected from the vehicle.” R. 335, l. 1 – 13. He took his own photographs at the scene. R. 337, l. 10 – 19. He asked the police “to go put somebody on the residence of Ms. Baldwin.” R. 335, l. 12 – 13. At that point, Coroner Tinker had no information about any other place where Judy could have been injured. R. 335, l. 14 – 17. He scheduled an autopsy at York Pathology for the next day. R. 336, l. 19 – 337, l. 9. He later learned that night about the fall at the Baldwins’ house. R. 339, l. 5 – 9. He did not go to the house, saying “The Chester County Sheriff’s Office was supposed to take care of the scene at the house. I took care of the scene at the death scene.” R. 339, l. 18 – 24. He testified he continued “my part as the death investigator, which I am. I’m a death investigator, that’s what my job is supposed to be that night.” R. 346, l. 22 – 347, l. 1.

Coroner Tinker claimed Deputy Reynolds told him that night on the bridge, “You know this is not a homicide,” and this caused him concern. R. 340, l. 11 – 22. Deputy Reynolds testified that Coroner Tinker told him he believed it was a murder as soon as he arrived. R. 285, l. 9 – 19. Coroner Tinker denied saying this. R. 380, l. 7 – 381, l. 10.

Deputy Reynolds went from the car wreck to the Baldwins’ home, then to Piedmont. R. 246, l. 11 – 247, l. 24. Baldwin gave Deputy Reynolds permission to search the house and told him there was a key behind the refrigerator. R. 248, l. 9 – 21. Deputy Reynolds took photographs inside the house. R. 251, l. 5 – 17.

Boxes with Christmas decorations are on the sofa. (State's Ex. 100). A very tall Christmas tree is in the corner. (State's Ex. 109). Four stockings are hung from the mantle, but a space is left and two stockings are on the floor. (State's Ex. 101, 105). A folding stepladder leans into the Christmas tree. (State's Ex. 101). Blood can be seen on the mantle and on the tile surrounding the fireplace. (State's Ex. 101). The damaged tile seen in the photos was not broken during this accident. R. 255, l. 22 – 25. Shards of broken ornaments are on the floor around the leaning base of the ladder. (State's Ex. 104). Blood was also found in the bathroom. (State's Ex. 126).

A close-up photograph shows that ornamental cast iron stocking holders sit on the mantle for the stockings still in place. (State's Ex. 111). A broken cast iron stocking holder is on the floor. (State's Ex. 105). The stocking holder is in the shape of Santa Claus holding an irregular shaped object over his shoulder, likely a small Christmas tree. (State's Ex. 195). A second, intact cast iron stocking holder in the shape of a Christmas tree is at the base of the tree under the ladder. (State's Ex. 102).

The officers measured the mantle's height at fifty-five (55) inches. R. 256, l. 24 – 257, l. 5. They measured the height of the stepladder at its highest point, the handle, and it was fifty-one inches tall. R. 257, l. 12 – 258, l. 4. The Christmas tree was nine feet tall without the star or angel on top. R. 259, l. 4 – 5. The Chester deputies did not secure the scene or take any items into evidence that night. R. 263, l. 10 – 265, l. 3. Another officer went the next day and collected the broken stocking hanger. R. 276, l. 21 – 277, l. 3.

Coroner Tinker attended the first autopsy, which was performed by Dr. Roger Stone the day after the accident. R. 341, l. 1 – 342, l. 2. Judy was small, only 60 inches tall and weighed 139 pounds. R. 453, l. 7 – 11. She had a “[c]omplex laceration on the right forehead” measuring

two inches. R. 454, l. 12 – 15. It had “a very irregular shape.” R. 464, l. 5 – 7. Dr. Stone noted what he called “raccoon eyes,” which is blood pooling under the eyes after a skull fracture, which he also found. R. 464, l. 8 – 18. Judy had subarachnoid and subdural hemorrhages. R. 465, l. 17 – 466, l. 12. The cause of death was blunt force trauma to the head. R. 465, l. 5 – 11. He noted sites of impact on the back of Judy’s head. R. 475, l. 15 – 24. Dr. Stone did not make a determination as to manner of death—either accident or homicide. R. 469, l. 12 – 20. He told law enforcement he could not rule out an accident. R. 474, l. 12 – 19.

Deputy Reynolds attended the autopsy and said Coroner Tinker was unhappy with the results. R. 289, l. 3 – 13. Dr. Stone said Coroner Tinker “was highly suspicious of homicide.” He admitted he may have told defense counsel in an earlier conversation there was “crossfire” in the room during the autopsy. R. 473, l. 2 – 7. R. 473, l. 11 – 12. Coroner Tinker said, “whenever I saw the massive damage that I observed I immediately thought to myself—and this is strictly up to a coroner to do this, when I saw the massive amount of damage I knew right then I was going to do another autopsy.” R. 347, l. 2 – 13. He claimed he was not dissatisfied, but wanted a forensic pathologist “to look at it.” R. 347, l. 14 – 22. Dr. Janice Ross performed her autopsy the next day. R. 348, l. 3 – 4. Dr. Ross did not make a conclusion as to the manner of death at that time. R. 350, l. 11 – 22.

Coroner Tinker said a “Long, long time,” passed where he could not get together with the sheriff’s office to work towards a conclusion on manner of death. R. 351, l. 1 – 14. He said “the Sheriff of Chester County was not ever willing to help me at all, never, ever.” R. 352, l. 2 – 7. Coroner Tinker called his friend, the Honorable Brian M. Gibbons, and told the judge about his trouble with the sheriff. R. 352, l. 8 - 353, l. 9. Feeling like he “was trying to drag this ball and

chain myself,” Coroner Tinker asked Judge Gibbons to “orchestrate a sit down meeting.” R. 352, l. 8 - 353, l. 9.

According to Coroner Tinker, Judge Gibbons called a meeting that included his office, the sheriff and his deputies, the Highway Patrol, the solicitor’s office, and SLED. R. 353, l. 1 – 9. Coroner Tinker knew that Baldwin formerly worked for Chester County dispatch and was concerned about the relationship between the sheriff and Baldwin. R. 354, l. 1 – 355, l. 7. He wondered why SLED was not brought to the scene that night and added, “Why could we not bring somebody else in to help us prove what we’re trying to prove?” R. 354, l. 5 – 17. SLED took over the investigation. R. 280, l. 5 – 9. Nine months after her second autopsy and two days after a meeting with Coroner Tinker, the solicitor, the sheriff’s office, and SLED, Dr. Ross amended her report to find homicide as the manner of death. R. 390, l. 22 – 391, l. 5. R. 527, l. 8 – 528, l. 14.

During the trial, the jury heard competing forensic pathologists. Dr. Ross testified that Judy’s injuries were more consistent with being hit by an object. R. 512, l. 14 – 25. On cross-examination, Dr. Ross was forced to admit that she omitted from her report that Judy’s skull was thinner than a normal skull. R. 531, l. 8 – 533, l. 16. Defense counsel subpoenaed her notes and discovered Dr. Ross’s observation about the thinness of Judy’s skull. R. 531, l. 8 – 533, l. 16. She agreed that a thinner skull will fracture more easily and cause more severe injuries. R. 531, l. 8 – 533, l. 16. But this observation about Judy “didn’t get typed in.” R. 531, l. 8 – 533, l. 16. 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.

Dr. Thomas Beaver testified as the defense's forensic pathologist. R. 974, l. 14 – 19. He agreed the cause of death was blunt force trauma to the head. R. 979, l. 6 – 11. He testified that the lacerations on Judy's forehead were "a single impact over an irregular surface." R. 983, l. 1 – 21. He also disputed Dr. Ross's finding of two skull fractures versus the single skull fracture found by Dr. Stone. R. 984, l. 8 – 986, l. 22. He believed the second fracture was an artifact from the first autopsy. R. 984, l. 8 – 986, l. 22. Dr. Beaver opined that Judy's death was an accident and that she was alive in the Jeep because of the amount of blood. R. 986, l. 23 – 988, l. 16. Dr. Ross claimed that Judy would have been unconscious within "half a minute at the most, maybe seconds." R. 509, l. 2 – 3. She would have died "within minutes, five or six minutes." R. 510, l. 13 – 17. However, on cross-examination she admitted that Judy would have stopped bleeding when she died. R. 529, l. 12 – 21.

The defense also called an expert in blood spatter, Ross Gardner. R. 892, l. 20 – 22. Gardner testified that impact spatter at the hearth indicated that Judy's forehead was at that level when the impact happened. R. 895, l. 11 – 22. Cast off spatter showed that Judy was not hit from behind. R. 896, l. 23 – 898, l. 4. Long hair swinging can produce cast off spatter. R. 898, l. 1 – 5. The blood pattern around the mantle indicated that she was static, but then upright because of drip stains and accumulation on the tiles, but no drag marks or drip trail leading away from the mantle. R. 898, l. 8 – 899, l. 18. Gardner acknowledged that an explanation was violence, but also that Judy fell and grabbed at the stocking hangers on the mantle. R. 901, l. 1 – 16. He testified that the large amount of blood soaked into the Jeep passenger seat meant that Judy was still bleeding heavily in the car and the pattern showed likely still conscious. R. 606, l. 18 – 907, l. 24. Gardner did not consider the position of the ladder to indicate a staged scene, but more likely a "post-incident artifact." R. 910, l. 7 – 25.

The Improperly Admitted Facebook Photo

During Coroner Tinker's testimony, he revealed that he had his secretary look into connections between Baldwin and the sheriff. R. 354, l. 18 – 356, l. 5. They found a photograph on Baldwin's Facebook page. R. 354, l. 18 – 356, l. 5. Coroner Tinker knew "two of the six people" in the photo, one was Baldwin and the other was the Sheriff. R. 354, l. 18 – 356, l. 5. The date on the photo was September 30, 2016, a little over two months before Judy's death. R. 354, l. 18 – 356, l. 5. When the State attempted to move the photo into evidence, Baldwin objected. R. 356, l. 6 – 10.

Baldwin objected that the photo was more unfairly prejudicial than probative. R. 356, l. 20 – 357, l. 16. Defense counsel argued that the photo showed public officials in a photo-op and that the Sheriff had probably taken such pictures with hundreds of people. R. 356, l. 20 – 357, l. 16. The State was improperly using a photo-op to try to show Baldwin had a close relationship with the Sheriff, and implying that the Sheriff protected Petitioner. R. 356, l. 20 – 357, l. 16. The solicitor pointed out that the caption underneath the photo was that the basis for the photo was a charity ride for the sheriff's foundation. R. 358, l. 11 – 359, l. 20.

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 Baldwin. 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 court found the photo admissible. R. 360, l. 21 – 361, l. 13. The judge ruled that the photo was probative of the relationship that Baldwin may have had with the Sheriff. R. 360, l. 21 – 361, l. 13. After a recess, the court supplemented its ruling by ordering that the caption showing the photo was connected with a fundraiser be redacted. R. 362, l. 15 – 363, l. 9. Defense counsel argued that removing the information about the fundraiser made it even more prejudicial because it did not “relate the circumstances under which this photo was taken.” R. 363, l. 16 – 20. The photo was admitted with a yellow tab obscuring the text. (State’s Ex. 197). It shows six people close together and gives the viewer no context about where it was taken or under what circumstances. (State’s Ex. 197).

The photograph was irrelevant under Rule 401 and even if probative, should have been excluded under the balancing test of Rule 403. See Rules 401, 403, SCRE. The relationship between Baldwin and the Sheriff, if any, was irrelevant to the issue of whether Judy died in an accident. See State v. Owens, 427 S.C. 325, 334, 831 S.E.2d 126, 130–31 (Ct. App. 2019), reh’g denied (Aug. 22, 2019), cert. granted (Mar. 12, 2020). In Owens, the Court found admission of a photograph of the victim hugging his brother bore no relevance to the case and was shown only to elicit sympathy. Id. The photo suggested an improper basis for a verdict. Id.

Here, the photo also suggested an improper basis. It allowed the State to imply that Baldwin received favorable treatment from the Sheriff and improperly bolstered the credibility of their investigation, led by a coroner and SLED. It let them explain away with speculation why Chester County initially treated the investigation as an accident and allowed them to justify

Coroner Tinker's pursuit of Baldwin. It also provided the State with a scapegoat for their lack of evidence against Baldwin. The redaction of the text compounded the error by taking away the context necessary for Baldwin to show it was a mere photo-op after a fundraiser.

The Court of Appeals agreed that admission of the photo was error, but found it harmless. 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 Baldwin) for the lack of evidence. Implying a nonexistent personal relationship between the sheriff and Baldwin 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.

The State made this case about the sheriff in its opening and closing statements. During opening, after telling the jurors that Baldwin 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 Baldwin 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).

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 Baldwin 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

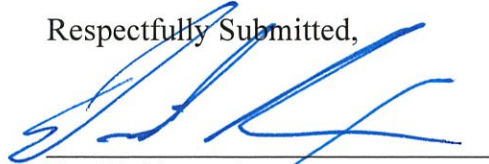
and leave. . . . Terry Tinker had a personal stake in this.” R. 1080, l. 24 – 1081, l. 8. Defense counsel pointed out the personal stake the coroner had and how he orchestrated the continued investigation, including the unusual meeting with Judge Gibbons. R. 1081, l. 8 – 1083, l. 12. The defense had 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 Petitioner 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, Baldwin 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. This Court should grant certiorari and reverse Baldwin’s conviction.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari in this unusual case where the State impeached its own investigation. Petitioner's conviction should be reversed.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of February, 2023.