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**Jul 17 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

PAULETTE J. SIMS,

APPELLANT

APPELLATE CASE NO. 2021-001202

Appeal from Allendale County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

Opinion No. 2024-UP-240

PETITION FOR REHEARING

On July 3, 2024, this Court affirmed Appellant's convictions and sentence in an unpublished opinion. State v. Sims, 2024-UP-240 (S.C. Ct. App. filed July 3, 2024). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter based upon the significant points overlooked and/or misapprehended by this Court in reaching its decision.

On appeal, Appellant argued the trial court abused its discretion by admitting footage from the dash camera inside the first responding officer's patrol vehicle and that officer's body worn camera in violation of Rule 401, SCRE, and Rule 403, SCRE, since the evidence was not relevant and any probative value of the evidence was substantially outweighed by the danger of

unfair prejudice given that the footage shows Appellant kneeling over the body of the decedent, who is covered in blood, Appellant being repeatedly tased by multiple law enforcement officers, and Appellant's bizarre behavior immediately following, particularly where the court did not view the videos before ruling they were admissible and permitting the state to publish the videos to the jury.

In its unpublished opinion, this Court held “the trial court did not abuse its discretion by admitting the in-car and body-worn camera footage into evidence because the videos were relevant and their probative value was not substantially outweighed by the danger of **confusing or misleading the jury.**” (emphasis added). The Court then cited to a series of cases in support of its holding. Importantly, the Court did not address Appellant's main argument on appeal. The thrust of Appellant's argument was that any probative value of the footage from the dash camera and the body worn camera was substantially outweighed **by the danger of unfair prejudice.** Appellant never argued the evidence was confusing or misled the jury.

For the reasons that follow, Petitioner respectfully requests this Court grant rehearing, hold the trial court abused its discretion, reverse Appellant's convictions, and remand for a new trial.

As a general rule, all relevant evidence is admissible. Rule 402, SCRE. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .” Rule 403, SCRE. Unfair prejudice pursuant to Rule 403 “is the tendency of the evidence to suggest a decision based on something other than the legitimate probative force of the evidence.” State v.

Phillips, 430 S.C. 319, 328, 844 S.E.2d 651, 656 (2020) (citing State v. Gray, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014)); See State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228-229 (2010).

First and foremost, the trial court completely failed to exercise its discretion as it did not view the exhibits before ruling they were admissible, a fact that this Court ignored. The court merely had the assistant solicitor vaguely describe what the videos showed. However, the arguments of counsel are not evidence. Notably, defense counsel disagreed at times with the solicitor's description of the footage. See Harper v. Bolton, 239 S.C. 541, 562, 124 S.E.2d 54, 64 (1962) ("the statements of counsel in an argument are not evidence but are merely the expression of his individual view"). The court could not possibly have determined whether the videos were relevant nor could it have properly balanced the probative value of the footage against its prejudicial effect without viewing the exhibits. Surprisingly, the court initially admitted all three videos the state sought to admit without even hearing a description of the third video. See R. 4, ll. 22-23.

If the court had watched the videos, later admitted as State's Exhibit No. 8 and State's Exhibit No. 9, it would have discovered they were not relevant to any matter in controversy. The state claimed the videos were relevant to prove Appellant's identity. However, Appellant admitted at trial that she stabbed the decedents, but maintained she acted in self-defense. Therefore, the videos were not needed to prove identity as Appellant's identity was not disputed.


Not only were the exhibits not relevant, but any probative value was clearly outweighed by the danger of unfair prejudice. State's Exhibit No. 9, footage from Linder's body worn camera, showed Appellant kneeling over the decedent's body, which was covered in blood. The woman was obviously already deceased. The video then showed Appellant being violently tased

and eventually apprehended. Throughout the entire video, Appellant is acting extremely bizarre and crazed, screaming incomprehensibly. State's Exhibit No. 8, the dash camera footage from Linder's patrol vehicle, showed the same events with the addition of Linder's initial arrival into the parking lot. This footage captured Appellant allegedly making a stabbing motion over the decedent's body, which again is covered in blood. Both videos are extremely difficult to watch.

The detailed testimony of the eyewitnesses, including Gerald Penn, April Bostick, Chandre Grant, and Jacob Linder, was sufficient to enable the state to establish the elements of the offenses without the disturbing and unfairly prejudicial videos. The exhibits were unfairly prejudicial because they had the tendency "to suggest a decision based on something other than the legitimate probative force of the evidence." See Phillips, 430 S.C. at 328, 844 S.E.2d at 656. They were clearly intended to arouse the sympathy and prejudice of the jury. The jury was likely prejudiced against Appellant based on her crazed behavior and the extremely alarming sight of the bloodied body and violent arrest of Appellant. The jury likely convicted Appellant on an improper basis, namely an emotional one. Accordingly, the trial court abused its discretion by admitting the videos over Appellant's objection.

Based on the foregoing, Appellant respectfully requests this Court rehear her case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court in affirming Appellant's convictions and sentence.

Respectfully Submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of July, 2024.

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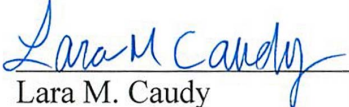
APPELLATE CASE NO. 2021-001202

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CERTIFICATE OF SERVICE

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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 Tommy Evans, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 17th day of July, 2024.



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

**From:** [Mcinnis, Sara](#)  
**To:** [Tommy Evans, Jr.](#)  
**Cc:** [Brandy Rankin](#); [Caudy, Lara](#)  
**Subject:** 2021-001202 The State v. Paulette J. Sims Petition for Rehearing  
**Date:** Wednesday, July 17, 2024 12:24:00 PM  
**Attachments:** [2021-001202 - State v. Paulette Sims - Petition for Rehearing.pdf](#)

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Good Afternoon Mr. Evans,

Please find attached for service in the above-referenced case the petition for rehearing, which will be filed with the Court of Appeals today, July 17, 2024, via email filing.

Thank you!

**Sara McInnis**

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(803) 734-1330