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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2022-001268

THE STATE,

Respondent,

v.

ARKEVUS JIMON CAUTHEN,

Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court correctly admitted evidence that police uncovered the victim's gun from Cauthen's back yard where Cauthen had no reasonable expectation of privacy in the dirt in his yard and police obtained a valid search warrant for the premises.

II. Whether the trial court correctly admitted evidence that eyewitnesses observed an apparent bite mark on Cauthen's arm where the testimony did not require expertise.

STATEMENT OF THE CASE

A Lancaster County grand jury indicted Appellant Arkevus Cauthen for murder, armed robbery, and possession of a weapon during the commission of a violent crime. Cauthen's first trial ended in a mistrial, and he was retried on April 6–9, 2022, before the Honorable Brian M. Gibbons and a jury. Cauthen was convicted as charged and sentenced to life imprisonment for murder, 30 years for armed robbery, and 5 years for possession of a weapon during the commission of a violent crime. This direct appeal follows.

STATEMENT OF FACTS

John Hardy Duncan was murdered in his home in Heath Springs on or about May 24, 2016. Duncan was stabbed over 70 times, six times in the heart. (R.264–67). A forensic pathologist removed a broken-off knife blade from his neck during an autopsy. (R.261, 294). Duncan also suffered a blunt force injury to his head. (R.274–75).

Duncan often bought lottery tickets from the gas station near his house and was carrying $800 cash days before he was murdered. (R.97, 400–01). Police did not find any cash in his home. (R.236). They found Duncan's wallet in a toilet. (R.327). A handgun was missing. (R.104).

A witness saw Cauthen walking near Duncan's house on the night of the 24th wearing a red shirt and white shorts. (R.197). She saw him again 45 minutes later wearing only a white tank top and shorts. (R.199–200). She told police she saw scratches and a wound on Cauthen's arm. (R.203). Cauthen asked if she or anyone else wanted to buy a gun. (R.204).

On the same day Duncan's body was found, police executed a search warrant for Cauthen's residence. Cauthen was a suspect in a separate murder, that of 54-year-old Sandra Johnson, who had been found stabbed to death inside her home on the previous day. (R.660).[1] In Cauthen's yard, about 10–15 feet from the house, officers observed a freshly-dug hole. There was a shovel leaning against the house. (R.349). Inside the hole, officers uncovered a pistol in a plastic bag. (R.350). This

[1] Cauthen was subsequently convicted of Johnson's murder. At the time of filing of this brief, that appeal is pending before this Court.

pistol was later identified as the one owned by John Hardy Duncan. (R.358–59). Cauthen's blood was found on the pistol. (R.463–66).

Police observed what appeared to be a bite mark on Cauthen's arm. (R.345, 360). Cauthen also had various bruises and abrasions on his body, including scratches on his arms and hands. (R.311–14; State's Exhibit's #6–18). John Duncan's granddaughter later discovered one of Duncan's teeth on the floor in Duncan's kitchen. (R.100, 471). Another person's DNA was also on the tooth, but test results were inconclusive as to the identity of that person. (R.471). A medical examiner noted during Duncan's autopsy that Duncan was missing a tooth and that his mouth had not yet healed. (R.269). Cauthen's DNA was discovered underneath Duncan's fingernails. (R.450–62).

Cauthen testified and denied killing Duncan. He claimed the scratches on his legs came from walking through a briar patch, and that he cut his hand while fishing. (R.576). He claimed he bought Duncan's pistol for $50 from a man that lived in the neighborhood and admitted to burying it in the back yard. (R.574–76). He claimed his DNA was under Duncan's fingernails because they shook hands days earlier. (R.56–77). He disputed the wound on his arm was a bite mark and testified he had no idea what it was but that he may have injured his arm lifting weights. (R.578).

ARGUMENT

I. The trial court correctly refused to suppress evidence that police uncovered the victim's pistol from Cauthen's back yard during the execution of a search warrant for his home.

The trial court correctly refused to suppress evidence that police uncovered the victim's pistol from Cauthen's back yard during the execution of a search warrant for his home. Cauthen had no reasonable expectation of privacy in the dirt in his unfenced back yard, and thus the area does not come within the scope of the Fourth Amendment. Even if Cauthen's yard was entitled to Fourth Amendment protection, the search was lawful because it was done pursuant to a valid search warrant for the entire premises, including the yard. The same analysis applies to Cauthen's argument that police violated his privacy rights under the South Carolina Constitution. This Court should affirm.

A. Standard of review.

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis where the court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

B. Discussion.

i. Cauthen had no reasonable expectation of privacy in the dirt in his back yard.

The Fourth Amendment protects "persons, houses, papers, and effects" against unreasonable searches and seizures. U.S. Const. amend IV. Additionally,

the Fourth Amendment's protections extend to areas in which a person has a reasonable expectation of privacy. Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) ("[T]here is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited."). A defendant has the burden to establish a reasonable expectation of privacy in an area not named in the text of the Fourth Amendment. Minnesota v. Carter, 525 U.S. 83, 88 (1998) (explaining "in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one that has 'a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society'").

The United States Supreme Court has explained that outdoor areas generally do not fall within the scope of the Fourth Amendment because they are not sufficiently private: "[t]he special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law." Oliver v. United States, 466 U.S. 170, 176 (1984) (quoting Hester v. United

States, 265 U.S. 57, 59 (1924)). The phrase "open fields" is not to be interpreted literally: "the term 'open fields' may include any unoccupied or undeveloped area outside of the curtilage. An open field need be neither 'open' nor a 'field' as those terms are used in common speech." Oliver at 180 n.11.

Outdoor areas may be entitled to constitutional protection if they are within the curtilage of the home. Whether a particular area is within the curtilage is a fact-specific inquiry. The United States Supreme Court has identified four factors which bear on the determination whether a particular area is within the curtilage of the home: 1) the proximity of the area claimed to be curtilage to the home; 2) whether the area is included within an enclosure surrounding the home; 3) the nature of the uses to which the area is put; and 4) the steps taken by the resident to protect the area from observation by people passing by. United States v. Dunn, 480 U.S. 294, 301 (1987).

Cauthen failed to establish a reasonable expectation of privacy in the outdoor area where the gun was found. While the gun was uncovered a relatively short distance from the home (10–15 feet according to officer testimony), the area was not within the curtilage. The yard was unfenced, and thus within view of anyone who happened to pass by. (R.585; State's Exhibit #55). Cauthen's home was located on a residential street in Heath Springs. Any person (or animal) could have easily discovered the gun in the freshly-dug hole, which was in plain view. Cauthen failed to show he had taken any steps to keep the area private or that he used the space for any private activities. In other words, Cauthen failed to show the area was used

for "intimate activity associated with the sanctity of a man's home and the privacies of life," or that he "reasonably [could] expect that the area in question should be treated as the home itself." Dunn, 480 U.S. at 300 (quotation marks altered). The Fourth Amendment is not implicated.

It matters not that police uncovered the gun from the ground. In Conrad v. State, 218 N.W.2d 252 (Wis. 1974), a sheriff suspected Conrad had murdered his wife. After Conrad left the state and listed his farm for sale, the suspicious sheriff brought a backhoe to the property and began digging. He found the woman's body buried under a pile of rocks 450 feet from the house. The Wisconsin Supreme Court held there was no Fourth Amendment violation because Conrad did not have a reasonable expectation of privacy in the open fields of his property. This was true even though the sheriff committed an "outrageous trespass" by digging up dirt on defendant's land with a backhoe. The court explained: "Under the 'open fields' doctrine, the fact that evidence is concealed or hidden is immaterial. The area is simply not within the protection of the Fourth Amendment. If the field where the body was found does not have constitutional protection, the fact that the sheriff, rather than observing the evidence that might have been in plain view, dug into the earth to find the body and committed a trespass in so doing does not confer protection." Id. at 257.

Likewise, Cauthen had no reasonable expectation of privacy in the dirt in his yard. Because the area was not entitled to Fourth Amendment protection, the motion to suppress was properly denied. This Court should affirm.

ii. Cauthen's back yard was part of the premises for which police obtained a valid search warrant.

If Cauthen's yard was within the curtilage of the home, it was within the scope of the search warrant. The warrant authorized the search of the entire "premises," which includes the yard. It was not necessary for the warrant to list every conceivable area within the premises where police were allowed to search. The police did not exceed the scope of the warrant.

The warrant authorized the search of the entire premises located at Cauthen's street address. (Supp.R.2). A "premises" is "[a] house or building, along with its grounds." PREMISES, Black's Law Dictionary (12th ed. 2024). In United States v. Griffin, police obtained a search warrant to search Griffin's home, identified on the warrant by his street address and a description of the house. United States v. Griffin, 827 F.2d 1108 (7th Cir. 1987). Pursuant to the warrant, officers searched the house, outbuildings, and surrounding yard, and found drugs buried in the yard. Griffin argued the search exceeded the scope of the warrant. The Eighth Circuit Court of Appeals rejected the argument, holding the warrant authorized the search of the surrounding grounds and outbuildings. The court explained the warrant authorized a search of the entire "premises," which, by definition, included the "lands and buildings thereon." Id. at 1114. Thus the search "was not limited by the absence of a specific reference in the warrant to each and every building on the 'premises' and the location of each spot the Government agents dug up." Id. at 1115.

Cauthen argues the warrant should have explicitly authorized the search of the dirt in his yard. This was not necessary. As discussed above, the warrant authorized the search of the entire premises, including the yard. Further, the warrant authorized the search of all "outbuildings, storage sheds, trash areas and containers, attached or unattached," which clearly demonstrated the magistrate's intent that the entire premises was subject to search. (Supp.R.2). Thus the warrant authorized the search of Cauthen's yard, even though it was not specifically listed in the warrant. See United States v. Ross, 456 U.S. 798, 820–21 (1982) (explaining a "lawful search of fixed premises generally extends to the entire area in which the object of the search may be found"); Brown v. State, 425 S.E.2d 856, 857 (Ga. 1993) (explaining "a search warrant for a residence authorizes a search of the curtilage of that residence, which includes yards and grounds and buildings"); Wayne LaFave, 2 Search and Seizure: A Treatise on the Fourth Amendment § 4.10(a) (6th ed. November 2024 update) (explaining "if the place to be searched is identified by street number, the search is not limited to the dwelling house, but may also extend to the garage and other structures deemed to be within the curtilage and the yard within the curtilage").

Police did not exceed the scope of the warrant. This Court should affirm.

II. The trial court correctly admitted evidence that witnesses observed an apparent bite mark on Cauthen's arm.

The trial court correctly admitted testimony from several witnesses who observed a wound on Cauthen's arm that appeared to be a bite mark. No witness claimed to know for sure whether the wound was in fact a bite mark, or whose teeth made the impressions; rather the witnesses were merely describing what they saw in the most basic, accurate, and comprehensible terms. No witness gave expert testimony and Cauthen was not prejudiced. This Court should affirm.

A. Standard of review.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Brewer, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015).

B. Discussion.

Cauthen complains that witnesses were allowed to identify a wound on his arm as a bite mark without being qualified as experts. This claim is meritless because this testimony did not require expertise. Rather, it was straightforward fact testimony which was based on the perceptions of the witnesses and comprehensible to the average juror. See Rule 701, SCRE ("If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training."); State v. McClinton, 265 S.C. 171, 176,

217 S.E.2d 584, 586 (1975) (holding lay witness was properly allowed to describe appearance of bite mark on defendant's hand).

No witness claimed to know for sure whether the wound was a bite mark. Rather, each witness essentially testified that the wound appeared to them to be a bite mark, fact testimony based on their own perceptions. This testimony did not require expertise, as would testimony attempting to match the bite mark to Cauthen's teeth. Cf. Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.").

Cauthen was not prejudiced. In closing, defense counsel summarized the officer testimony as conveying that the wound "looks like a bite mark . . . ." (R.612). He criticized the State for not offering an actual expert, such as a "forensic odontologist," to testify with certainty that the wound was a bite mark, and called the lay witness testimony speculative. (R.612–13). Thus counsel implicitly acknowledged the officer testimony was not expert testimony. The jurors viewed a picture of the wound and were free to draw their own conclusions whether the wound was in fact bite mark. Finally, any error was harmless given the overwhelming evidence of Cauthen's guilt. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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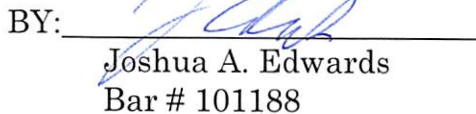
BY: 
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STATE OF SOUTH CAROLINA
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APPEAL FROM LANCASTER COUNTY

Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2022-001268

THE STATE, Respondent,

v.

ARKEVUS JIMON CAUTHEN, Appellant.

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Brief of Respondent on David Alexander, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 27th day of January, 2025.

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From:	Susan Spencer
Sent:	Monday, January 27, 2025 2:13 PM
To:	Alexander, David
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Subject:	The State v. Arkevus Jimon Cauthen (2022-001268)
Attachments:	CAUTHEN Arkevus - Brief of Respondent.pdf; CAUTHEN Arkevus - Motion To File A Second Supplemental Record On Appeal.pdf; CAUTHEN Arkevus - Proposed Transportation Order.pdf

Good Afternoon Mr. Alexander,

Attached please find the Brief of Respondent, Proposed Transportation Order, and a Motion to File a Second Supplemental Record on Appeal in The State v. Arkevus Jimon Cauthen (2022-001268). These documents will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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