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Feb 20 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ARKEVUS JIMON CAUTHEN,

APPELLANT.

APPELLATE CASE NO. 2024-000646

ANDERS BRIEF OF APPELLANT

GARY H JOHNSON
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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in admitting several photographs showing the deceased victim's body in a bathroom when the nature of the scene and cause of death was not disputed allowing the jury to be motivated by an emotional response to the death scenes rather than the evidence presented at trial regarding the actual perpetrator of the crime?

STATEMENT OF THE CASE

On September 15, 2016, a Lancaster County Grand Jury indicted appellant, Arkevus Jimon Cauthen, for murder and possession of a weapon during the commission of a violent crime. R. 718-719. Appellant was tried before the Honorable Frank Addy and a jury from April 15 – 19, 2024. William Frick represented appellant at trial. Lisa Collins and Nicole Wine prosecuted the case. The jury found appellant guilty of the crimes charged. R. 707, ll. 1 – 23. Judge Addy sentenced appellant to a life sentence for the murder conviction, resulting in no sentence being imposed on the possession conviction. R. 720 – 723. This appeal follows.

STANDARD OF REVIEW

“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. To be classified as unfairly prejudicial, photographs must have a tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228–29 (2010) (internal citations omitted). “Moreover, “[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial.” State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023) (*quoting* State v. Jones, 440 S.C. 214, 891 S.E.2d 347 (2023)). “It remains true, however, that when the trial court actually exercises its discretion in balancing the inherent danger of unfair prejudice posed by these photographs against ‘high’ probative value, and puts its reasoning on the record for the appellate court to review, the trial court's ruling that the danger of unfair prejudice does not substantially outweigh the probative value is a decision that we will almost always find within the trial court's discretion.” State v. Heyward, 441 S.C. 484, 504, 895 S.E.2d 658, 668–69 (2023).

ARGUMENT

The trial court abused its discretion in admitting several photographs showing the deceased victim's body in a bathroom when the nature of the scene and cause of death was not disputed allowing the jury to be motivated by an emotional response to the death scenes rather than the evidence presented at trial regarding the actual perpetrator of the crime.

A. Relevant Facts.

Appellant and Sandra Johnson had an intimate relationship over several months before her death. R. 132, l. 18 – 133, l. 3; 264, l. 1 – 265, l. 25. Johnson's daughter, Kasandra Asgill, had contact with Johnson on Friday, May 20, 2016. R. 135, ll. 5 – 24. The following Monday morning, Asgill knocked on Johnson's door but heard water running and assumed Johnson was in the shower. R. 137, ll. 5 – 17. The following day, Asgill returned and still heard the water running and became concerned. R. 139, ll. 17 – 24. Asgill found the rear door to the Johnson home opened and discovered Johnson's body on the bathroom floor. R. 140, ll. 7 – 17.

The evidence connecting appellant to Johnson's death was almost entirely circumstantial, absent the presence of his DNA. The presence of appellant's DNA at the crime scene was not unexpected considering his long-standing relationship with Johnson. R. 132, l. 18 – 133, l. 3. The state therefore focused on the presence of appellant's DNA found under the fingertips of Johnson's right hand, with her nail clippings being collected during her autopsy.¹ R. 186, ll. 4 –

¹ This DNA evidence was sourced from the Y chromosome and was present only on the clippings from Johnson's right hand. R. 608, l. 9 – 609, l. 15. Appellant was excluded as a source of DNA from the left-hand nails, though unknown male source DNA was present. R. 620, l. 17 – 621, l. 5. Since it was Y-STR testing, the actual profile matching was 1 in 920 for all male relatives in appellant's familial line. R. 603, ll. 7 – 23.

13. The state noted several areas on appellant that showed scratches and bruises following his arrest.² R. 190, ll. 20 – 23. While this same evidence had been used in appellant’s prior conviction, the state argued the photographs were relevant since appellant’s DNA was also found on the fingernails of both victims. R. 88, l. 7 – 90, l. 24. The state also produced evidence of at least a short phone call between appellant and Johnson on May 20 around 6:30 p.m. R. 313, ll. 2 – 25. A witness claimed to have seen appellant walking towards the Johnson home on that same day later in the evening, before midnight. R. 434, l. 10 – 435, l. 23.

Johnson was known to have numerous male visitors. R. 265, ll. 1 – 25. One such visitor was identified as Charles “Tony” Truesdale. R. 318, ll. 10 – 21. Truesdale communicated regularly with Johnson and had made plans to visit her on the evening she was last seen alive and to spend the night. R. 297, l. 5 – 24; 322, l. 4 – 324, l. 5. Over objection, the state introduced several photographs of the deceased Johnson’s body from the initial investigation of the crime scene.³ R. 164, l. 19, - 165, l. 21. The disputed photographs, particularly State’s Exhibit 51, are unduly prejudicial. State’s exhibits 51 – 58; R. 104, ll. 10 – 19.

B. Discussion.

Under Rule 403, SCRE, the introduction of graphic photographs, like those involved here, turns in part on whether the evidentiary value is truly present and touches on a disputed fact. When the essential fact in question is not in dispute, there is no need to corroborate with

² These same photographs and “scratches” on appellant were used by the state in prosecution for a different murder that occurred over this same period in the area. R. 88, ll. 7 – 19. That matter resulted in a conviction and is currently on appeal. See State v. Cauthen, 2022-001268.

³ While the water in the tub was running, the drain plug was not “engaged” so the water level did not flow over the tub itself. R. 178, l. 14 – 178, l. 9.

graphic photos that tend to encourage the jury to base a verdict on emotional responses. *Compare State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (“[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial. Appellant's counsel offered to stipulate to any relevant information contained in the photographs, and it is clear the information was not really at issue. Furthermore, the testimony of the forensic pathologist negated any arguable evidentiary value of the photographs. The prejudice created by the photographs clearly outweighed any evidentiary value.”) *with State v. Collins*, 409 S.C. 524, 536, 763 S.E.2d 22, 29 (2014) (“Since there was no one else present at the time of the event, the photos aided the jury in evaluating the testimony offered by both the State and the defendant, especially as to determining the dangerous propensities of the dogs and whether or not Collins's conduct was criminally reckless.”). This factor’s importance has been stressed in the recent decisions from our Supreme Court when reviewing cases in which prosecutors, despite the continued warnings from the appellate courts, push the envelope on the admission of graphic photographs. *See State v. Benton*, 443 S.C. 1, 9, 901 S.E.2d 701, 705 (2024) (noting the challenged photographs “drew probative force from their unique power to make Benton's accomplices’ testimony more believable. The pictures gave important context to the testimony and other evidence about who did what at the scene.”).

Here, there was no probative value to the photographs as the nature and cause of Sandra Johnson’s death was not disputed. From opening statements, appellant’s counsel did not contest any aspect of Johnson’s death *other than who committed the crime*. “The State is trying to give you the illusion that Arkevus Cauthen committed this terrible crime. It's a terrible crime. There's

no other way to describe it. It's a horrific scene, you're going to see that. We're not trying to hide that." R. 126, ll. 19 – 23.

In arguing for the admission of the photographs, the state claimed relevance based upon a theory that the perpetrator was trying to "destroy evidence" by leaving the water in the tub running and the photos showed the position of the body along with a discarded cigarette.

THE COURT: And just so that I'm clear, as it relates to the picture of the arm with the drip of blood just below the arm, that's relevant on what point?

MS. COLLINS: Just to show the position of the body. It's our belief that he moved the body towards the tub to try to destroy some of the evidence and left the water running, engaged the water at that time. But however, I don't know if he couldn't lift her or he chose not to in terms of how he positioned the body.

THE COURT: And the one with the toilet?

MS. COLLINS: That's important as to the cigarette that's seen in the toilet. We believe it also shows, again, some intent. In the other case particularly, he had thrown some of the evidence, the victim's wallet in the toilet with some cleaner. In this case, there's cleaner seen, the bottle Fabuloso that's seen there at the base of the toilet and that's in there along with the cigarette.

The eyewitness that saw him walking towards the home of the victim about an hour before this is believed to have happened said he was smoking a cigarette as he walked past her. SLED did attempt to get DNA off of that cigarette and could not.

R. 97 l. 20 – 98, l. 17.

When asked about the need for the cumulative nature of the photographs, the state again emphasized the need to show the scene and the tub's still running water.

THE COURT: One of the photographs that's taken and these aren't marked yet, but the one I'm referencing is where the shower curtain is shown to the left of the photograph. Both of her knees are clearly shown about an inch above the bottom border of the photo. And you can clearly see where the photograph depicts the water running from the faucet and emptying into the drain.

Therefore, another one which has been partially cropped just to show just below the waistline over the decedent.

Again, that one is similar to another photograph. There's some garment that appears to be in the tub. It does show the water is running. And then the bottle of Fabuloso, F-A-B-U-L-O-S-O, is in the bottom right-hand corner of that cropped photograph. Is there a reason in particular that you need all five of these?

MS. COLLINS: We believe that it was important to show the stopper was not in the tub. That there were different items of clothing in there. Again, I don't know if he attempted to clean up and then put those items in there. There are some sanitary pads in the home on the floor of the bathroom, too, that may have been used in an effort to clean. Of course, we're coming in after the fact and we don't know. So I was just trying to show a complete presentation in that regard.

As to the blood your Honor, the jury is going to hear that she was stabbed 27 times. I know that they're going to be aware that you bleed when that happens. And I would think that that particular photograph -- again, we tried to pick the one that is not the most egregious by cropping out any wounds.

R. 99, l. 3 – 100, l. 10.

Ultimately, the trial court admitted the contested photographs, noting:

THE COURT: Compared to other photographs I've seen, I don't see where these photographs are so shocking as to violate the defendant's due process rights or right to a fair trial. The actual torso of the decedent has been cropped out in all of them. You can't see her face. You can't see anything really other than her lower pelvic girdle down to her legs. And the Solicitor's point about the blood, this being a stabbing, the blood is a natural result of the stabbing is well taken. I don't think they're cumulative. I think each photo conveys as different vantage points in greater detail than perhaps other photos do and would give the jury a good picture, if you will, of the crime scene.

So your motion is noted but -- or your objection is noted but I will allow them to proceed with these photographs.

R. 100, l. 11 – 101, l. 2.

The state's argument, and the trial court's finding that the photographs were needed to convey the "crime scene" was demonstrably not required in light of the numerous witnesses who testified in great detail regarding the condition of Johnson's body, the crime scene, and the numerous other photographs entered that accomplished this task. Kasandra Asgill testified about finding Johnson's body. R. 140, l. 1 – 143, l. 25. Officer Barry McManus described his protective sweep and his observations of Johnson and the scene. R. 151, l. 1 – 153, l. 25. Ken Taylor testified about photographing the scene and the condition of Johnson's body. R. 158, l. 1 – 163, l. 25. Jeff Steele testified about the blood evidence found on scene. R. 220, l. 1 – 221, l. 25; 224, l. 1 – 225, l. 25. Tammy Motley, responding as EMS, testified regarding her observations of Johnson's body. R. 229, l. 1 – 230, l. 25. Glen Crawford, deputy coroner, visited the scene and described Johnson's body in detail. R. 237, l. 1 – 238 l. 25; 244, l. 1 – 249, l. 25. There was no probative value to the photographs not covered extensively by the volume of witnesses called by the state to set the scene of what the defense had already admitted was a senseless and brutal murder.

Prejudicial impact.

As noted, absent the DNA evidence on Johnson's left hand, the case against appellant was circumstantial. This DNA evidence was itself not overwhelming, as it was sourced from the Y chromosome and was present only on the clippings from Johnson's right hand. R. 608, l. 9 – 609, l. 15. Appellant was excluded as a source of DNA from the left-hand nails, though unknown male source DNA was present. R. 620, l. 17 – 621, l. 5. Since it was Y-STR testing, the actual profile matching was 1 in 920 for all male relatives in appellant's familial line. R. 603, ll. 7 – 23. Regardless, his ongoing relationship with Johnson made the mere presence of his DNA on the

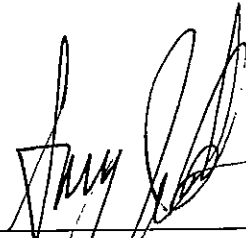
nails of one of her hands, particularly when combined with the unknown male contributors also present on the same samples, hardly overwhelming evidence of guilt. The jury's deliberation took portions of two days. R. 698, l. 16 – 796, l. 13. They asked questions regarding process if they were deadlocked and unable to reach a verdict. R. 702, l. 22 – 703, l. 6; 704, l. 23 – 705, l. 19. Rule 403, SCRE, provides that, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." As the nature of the murder was, as appellant's counsel noted at the beginning of trial, both "terrible" and "horrific", the jury's deliberation should have been free from the unduly prejudicial impact of the graphic photographs depicting Johnson's body in the bathroom. R. 126, ll. 19 – 23.

This case falls within the scope of the Supreme Court's warnings to solicitors not to needlessly rely upon the emotions generated by using graphic photographs to depict matters that were not in dispute. In State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023), the state introduced autopsy photographs when the only matter in dispute was the identity of the killer, not the manner of death. As in Nelson, this case only concerned the identity of the perpetrator, not the manner of death or nature of the crime itself. The Nelson court noted the importance of this distinction in reversing the conviction, noting that if "this were a case such as Collins where the nature of the victim's injuries was in dispute or a case where there was no other convincing evidence of malice or the manner in which the victim died, then the photos may have had sufficient probative value to warrant their admission." Nelson, 440 S.C. at 426, 891 S.E.2d at 514. As in Nelson, the trial court here erred in admitting the photographs that provided no "high"

probative value and raised the prospect that the jury would decide guilt based upon emotion and not the evidence presented.

CONCLUSION

Based upon the foregoing argument, appellant requests that this Court reverse his conviction and remand this matter to the lower court for a new trial with specific instruction to exclude unnecessary and graphic photographs from the trial of this matter.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of February, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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RESPONDENT,

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APPELLATE CASE NO. 2024-000646

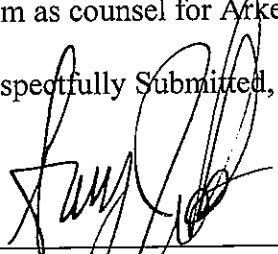
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Arkevus Jimon Cauthen states:

- (1) He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
- (2) He has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on April 15-19, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
- (3) He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Arkevus Jimon Cauthen.

Respectfully Submitted,



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of February, 2025.

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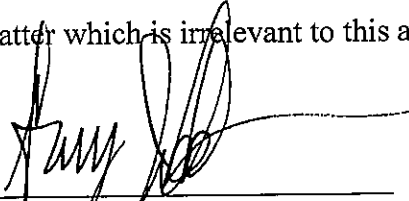
APPELLATE CASE NO. 2024-000646

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript dated April 15-19, 2024
- (2) Indictments
- (3) Sentence sheets
- (4) State's Exhibits Nos. 51-58 (Photographs)

I certify that this designation contains no matter which is irrelevant to this appeal.



Gary H Johnson
Appellate Defender

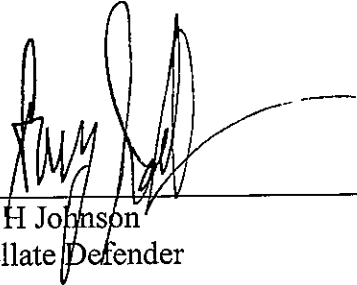
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(803) 734-1330

This 20th day of February, 2025.

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, appearing to read "Gary H. Johnson", is written over a horizontal line. The signature is stylized and cursive.

Gary H Johnson
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

This 20th day of February, 2025.

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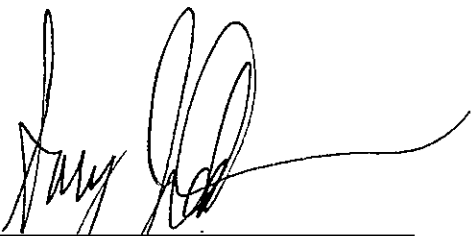
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APPELLATE CASE NO. 2024-000646

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Arkevus Jimon Cauthen, #375966, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of February, 2025.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT