

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jun 25 2026
SC Court of Appeals

Appeal from Bamberg County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JIMMIE MCMILLAN,

APPELLANT

APPELLATE CASE NO. 2025-001894

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting security video of the actions surrounding the fire that was not authenticated under Rule 901, SCRE?

STATEMENT OF THE CASE

Appellant was indicted by a Bamberg County grand jury for arson in the second degree in violation of S.C. Code Ann. § 16-11-110(b) (2016) arising out of a fire at the Bamberg County jail on January 2, 2025. R. 152. Appellant was tried from September 2 – 3, 2025, before the Honorable Walton J. McLeod, IV. R. 1. Megan Gresham represented appellant and David Miller appeared on behalf of the State. R. 1.

The jury found appellant guilty as indicted. R. 140, ll. 12 – 18. Judge McLeod sentenced appellant to 78 months imprisonment. R. 154.

This appeal follows.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006) (*citations omitted*). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 429–30, 632 S.E.2d at 848.

ARGUMENT

The trial court erred in admitting security video of the actions surrounding the fire that was not authenticated under Rule 901, SCRE.

A. How the matter was raised at trial.

During the testimony of Christopher Gantt, the state attempted to introduce a security video from the Bamberg County jail as evidence.¹ Appellant's counsel objected due to a lack of authentication:

Q I want to show you what's been marked for identification as State's Exhibit No. 1 and ask if you can identify this item?

A Yes, sir. This is the CD of the Bravo unit that had B unit on it that I had signed this morning.

Q Okay. And does State's Exhibit No. 1 fairly and accurately represent the activities surrounding the fire in B pod on the night of January 2nd, 2025?

A Yes, sir.

MR. MILLER: Your Honor, at this time, the State would move to introduce State's Exhibit No. 1.

THE COURT: Any objection?

MS. GRESHAM: I do have an objection. It's to hearsay -- not hearsay, I'm sorry, lack of foundation. We may need to take this up outside of the presence of the jury.

THE COURT: Y'all approach.

(WHEREUPON, a bench conference was held in the presence of the jury, but outside the hearing of the jury.)

¹ At the time of the fire, Gantt was employed by the Bamberg County jail as shift supervisor. R. 41, ll. 8-20.

MR. MILLER: Your Honor, we're going to leave this exhibit marked for identification and we'll take up the rest of it at the break.

R. 45, l. 14 – 46, l. 9.

During the next break in proceedings, the trial court heard argument over the foundation for the introduction of State's Ex. 1.² Ultimately, the trial court ruled the foundation sufficiently laid and admitted the video.

THE COURT: Or sometime prior to his testimony. I haven't seen the video, so I'm going off what you're telling me, but I think under Rule 901, it is the proponent's claim that this is what it says -- the witness's testimony that this is the video satisfied the authentication requirement.

From a business records standpoint, there's no verbal statements you can hear from the video. I don't think it even get to business record. I think this is just the video from -- this is if it were a body cam with no sound. This is just a video of the scene at that time. I don't know if there's anything in the video of anything aggravating. I haven't heard about it. So I will admit State's Exhibit No. 1 subject to Defendant's objection.

R. 67, ll. 11 – 23.

B. How the trial court erred.

“[E]vidence must be authenticated or identified in order to be admissible.” State v. Brown, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). Rule 901, SCRE, specifically provides, “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901(a), SCRE. Typically, photographs and videos would be

² State's Exhibit has been designated to be included in the Record on Appeal and will be transported to this Court for review as needed.

authenticated under Rule 901(b)(1) by identification by a witness with knowledge "that a matter is what it is claimed to be."

Here, the state made no effort to have officer Gantt fulfill the duty imposed by Rule 901(b)(1), SCRE. In fact, Gantt testified that he had not seen the video in question until just before trial.

Q The video was recovered around January 9th, correct?

A I do not remember.

Q But you returned to work before you saw the video?

A I never saw the video until this morning.

Q You never saw the video until this morning?

A Yes, ma'am.

R. 56, ll. 6-11.

While officer Gantt could have had sufficient personal knowledge to properly authenticate the video, the State failed to present such knowledge, instead relying upon the video in effect "self-authenticating."

MR. MILLER: This is the surveillance video from inside the B pod that night. And this officer was aware of it because this officer was the supervisor. He was working that night. He was in the B pod. He had an interaction with Jeffrey Augustine, all of which you can see on the video.

I mean, at some point, it almost becomes self-authenticating only from the standpoint of the stuff that he's testified about, you can see on the video.

R. 66, ll. 2 – 10

This haphazard approach to the authentication requirement was rejected by our Supreme court in State v. Brown. "This general acceptance of GPS technology does not, however,

translate to the State getting a pass from making a minimum showing that the GPS records it seeks to introduce into evidence are accurate." Id., 424 S.C. at 489, 818 S.E.2d at 740.

The approach here can be further contrasted with this Court's decision in State v. Gray, 438 S.C. 130, 882 S.E.2d 469 (Ct. App. 2022). There, the State did lay the proper foundation for surveillance video through the testimony of the owner of the system's personal knowledge. The owner testified regarding the camera angle and what it recorded and further "explained that the time stamp on the video was incorrect because he did not set the correct date or time when he set up the security system." Id., 438 S.C. at 143, 882 S.E.2d at 475–76. This Court noted that while "contemporaneously watching" the video monitor was not required, the owner's "personal knowledge sufficiently authenticated the video." Id.

Here, the state made no effort to demonstrate Gantt's personal knowledge regarding the security cameras laid the proper foundation to admit the video into evidence under Rule 901, SCRE. In contrast to the owner of the system in Gray, Gantt's testimony more closely aligns with the cursory testimony offered in Brown. Videos of the nature presented here do not "self-authenticate" any more than GPS data. The State was obligated to lay the proper foundation and failed to do so.

C. Prejudice.

State's Exhibit 1 was the piece of evidence that connected appellant to assisting in the fire. The fire itself started outside the cell door of another detainee who had threatened to burn down the jail just before the fire started. R. 42, l. 1 – 43, l. 5. The only thing that connected appellant to the incident was State's Exhibit 1 as no eyewitnesses to the fire testified during trial. R. 78, l. 18 – 79, l. 16. The State relied extensively on the video during closing arguments.

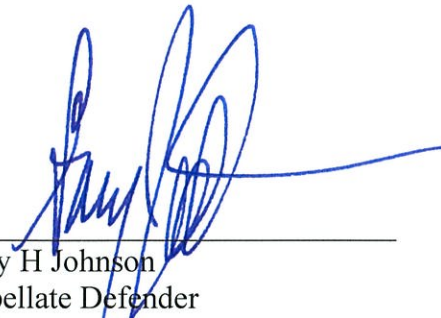
MR. MILLER: [W]hat you need for this case is in State's Exhibit No. 1. It's the video. And I'm going to publish that for you now so that you can see what the video shows. If anybody gets tired, let the Judge know. (WHEREUPON, State's Exhibit No. 1 was played for the jury.)

R. 114, ll. 2 – 7.

Appellant was prejudiced by the error in admitting the video without proper authentication.

CONCLUSION

Based upon the foregoing argument, appellant requests that this Court reverse his conviction and remand this matter for a new trial.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2026.

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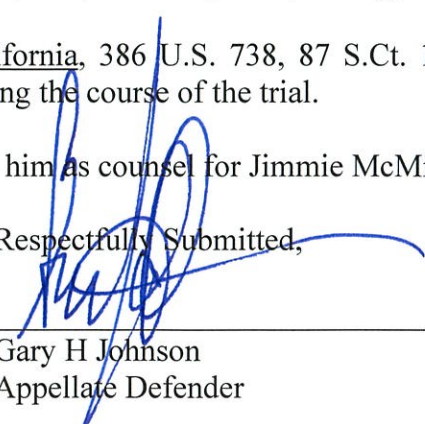
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jimmie McMillan 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 Walton J. McLeod, IV, which was held from September 2-3, 2025, 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 Jimmie McMillan.

Respectfully Submitted,



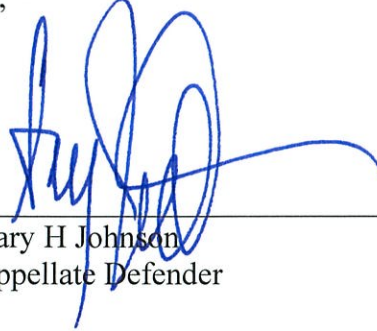
Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2026.

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."



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