

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

\_\_\_\_\_  
Appeal from Florence County

Honorable William H. Seals, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

LATSON RAY MATTHEWS,

APPELLANT

APPELLATE CASE NO. 2017-001163  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

RECEIVED  
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SC Court of Appeals

LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge commit reversible error by allowing the state to introduce into evidence a photograph of the decedent lying in the middle of the road, which graphically depicted her injuries after she had been struck by a vehicle, as this evidence was emotionally inflammatory and unfairly prejudicial under Rule 403, SCRE?

## STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant on January 7, 2016 for murder, first degree burglary, and possession of a weapon during the commission of a violent crime. R. 359-360. His case was called to trial on April 24, 2017 before the Honorable William H. Seals, Jr., and a jury. R. 1. Assistant Solicitor Todd Tucker represented the state, and Scott Floyd represented Appellant. R. 1.

Judge Seals directed a verdict for first degree burglary. R. 311, ll. 4-8. Consequently, only the lesser included offense of second degree burglary was charged to the jury, along with murder and the weapons offense. R. 341, l. 15 – 344, l. 16.

On April 27, 2017, the jury found Appellant guilty. R. 349, ll. 7-22. He was sentenced to life without parole for murder, eight years for second degree burglary, and time served for the weapons offense. R. 356, ll. 3-9.

This appeal follows.

## STATEMENT OF THE FACTS

The state alleged at trial that Appellant entered both the carport and a separate detached garage at Martha Granger's house without consent during the late afternoon hours of July 28, 2015. R. 315, ll. 3-25. Granger returned home and found Appellant's minivan parked in her driveway. She parked her pickup truck immediately behind Appellant's van, blocking it from leaving. Granger then called 911 and confronted Appellant with a pistol. The confrontation was recorded on the 911 call. See State's Exhibit No. 3 (Recorded 911 Calls).

During the confrontation, Appellant repeatedly begged Granger not to "call the law" and demanded she move her truck. See State's Exhibit No. 3 (Recorded 911 Calls). At some point, he also returned a propane gas tank that he had taken from Granger's yard and placed in his van. R. 93, l. 21 – 94, l. 3. However, Granger refused to move her vehicle. After a struggle over the pistol, Appellant rammed his minivan into the back of Granger's pickup truck causing the truck to shift out of gear and travel backward across the street and into a neighbor's front yard. He then fled the home. As he was leaving, he struck Granger with his minivan. R. 115, l. 6 – 119, l. 24; R. 125, l. 1 – 129, l. 1; R. 162, ll. 4-13. The medical evidence established Granger was likely dragged under the vehicle for a short distance and then ran over at least once, but likely twice given her injuries. She died hours later. R. 154, ll. 4-11; R. 200, l. 20 – 201, l. 17; R. 289, ll. 5-11.

Appellant was developed as a suspect after his left palm print was found on a seldom used sports utility vehicle that was parked inside Granger's detached garage. R. 279, l. 15 – 283, l. 12; R. 292, ll. 9-19. He ultimately gave a statement to law enforcement in which he admitted to entering Granger's garage and later striking her with his van as he was fleeing her home. R. 158, l. 22 – 160, l. 4; R. 301, ll. 5-15; See State's Exhibit No. 2 (Recorded Audio Statement).

## ARGUMENT

The trial judge committed reversible error by allowing the state to introduce into evidence a photograph of the decedent lying in the middle of the road, which graphically depicted her injuries after she had been struck by a vehicle, as this evidence was emotionally inflammatory and unfairly prejudicial under Rule 403, SCRE.

### **How the Issue was Presented Below**

The state sought to admit three photographs of the decedent lying in the roadway after she had been struck by Appellant's van. R. 98, l. 20 – 99, l. 17. Defense counsel objected to the admission of State's Exhibit No. 4, State's Exhibit No. 5, and State's Exhibit No. 6. He argued the photographs were "very graphic" in that they depicted a great deal of blood as well as the decedent's injuries and likely would inflame the passions of the jury. Defense counsel asserted that the photographs should be excluded under Rule 403, SCRE, because any probative value was substantially outweighed by the danger of unfair prejudice to Appellant. R. 100, ll. 3-15.

The assistant solicitor argued the photographs were relevant to show the decedent's position in the roadway and the nature of her injuries, both of which were important to support the state's theory of the case. R. 100, l. 19 – 101, l. 11.

The trial judge ultimately excluded the photographs marked as State's Exhibit No. 4 and State's Exhibit No. 5, but admitted State's Exhibit No. 6 over objection. The judge asserted, "I'm going to allow State's Exhibit Number 6 since it does show the body where it was in the road, driveways, houses, and so forth, but not 4 and 5 since they are simply pictures of the body and there's no parameters to it." R. 101, ll. 12-16.

Defense counsel renewed his objection when State's Exhibit No. 6 was ultimately entered into evidence and published to the jury. R. 105, ll. 20-25.

## Discussion

The trial judge erred by admitting State's Exhibit No. 6, a photograph of the decedent lying in the roadway graphically depicting her injuries after she had been struck by a vehicle, as this evidence was emotionally inflammatory and unfairly prejudicial under Rule 403, SCRE. The state repeatedly relied on this graphic photograph throughout its presentation of testimony and during its closing argument thereby enhancing its prejudicial impact on the jury. See R. 108, ll. 11-15; R. 120, ll. 5-19; R. 128, ll. 8-15; R. 144, l. 17 – 145, l. 8; R. 319, ll. 17-24.

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.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)) (internal quotation marks omitted). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Id. (quoting Nance, 320 S.C. at 508, 466 S.E.2d at 353) (internal quotation marks omitted). "When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case." Id. at 534, 763 S.E.2d at 27-28 (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)) (alternation in original) (internal quotation marks omitted).

"Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary to substantiate material facts or conditions." State v. Torres,

390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (citing State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)). Photographs are unfairly prejudicial when they have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” Id. (citing State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995)); See State v. Kelley, 319 S.C. 173, 178, 460 S.E.2d 368, 370-371 (1995) and State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991).

In State v. Martucci, 380 S.C. 232, 240, 669 S.E.2d 598, 602 (Ct. App. 2008), Martucci was tried for homicide by child abuse. He claimed that the child had been accidentally injured in an All-Terrain Vehicle (ATV) accident. Id. at 241, 669 S.E.2d at 603. This Court held autopsy photographs of the child’s internal organs and other injuries were admissible to prove the elements of homicide by child abuse and that “the photographs were necessary to depict the severity of the bruises and the resulting trauma, which was inconsistent with [the defense of] accidental injury or play.” Id. at 250, 669 S.E.2d at 608

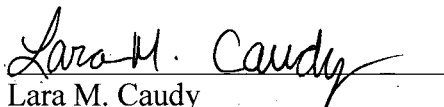
In State v. Collins, 409 S.C. 524, 528, 763 S.E.2d 22, 24 (2014), Collins was charged with involuntary manslaughter and three counts of owning a dangerous animal causing injury to a person after a ten year old boy was killed and partially eaten by his dogs. Our Supreme Court held photographs of the child taken immediately before autopsy were admissible to aid the jury in evaluating the testimony offered by both the state and defendant, “especially as to determining the dangerous propensities of the dogs and whether or not Collins’s conduct was criminally reckless,” which were elements of the offenses charged. Id. at 536, 763 S.E.2d at 29. In so holding, the Court emphasized that the nature and extent of the boy’s physical injuries as described by the pathologist were in dispute by the defense. Id. at 534, 763 S.E.2d at 27.

Here, by contrast, the graphic photograph of the decedent lying in the roadway after having been struck by Appellant's vehicle was not necessary to prove any element of the offenses charged nor did the photograph negate Appellant's defense that the killing was unintentional and without malice. It's only conceivable purpose at trial, given its gruesome nature, was to inflame the emotions of the jury and unfairly prejudice them against Appellant in violation of Rule 403, SCRE. Therefore, the trial judge abused his discretion by admitting this photograph over Appellant's objection. For this reason, respectfully, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2018.

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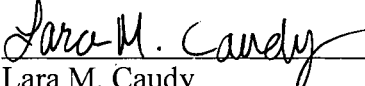
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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Latson Ray Matthews states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before the Honorable William H. Seals, which was held on April 24-27, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Latson Ray Matthews.

Respectfully Submitted,

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

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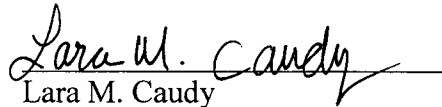
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-Billed Indictment;
- (2) Complete Trial Transcript Dated April 24-27, 2017;
- (3) State's Exhibit No. 1 (Miranda Rights Form);
- (4) State's Exhibit No. 2 (Recorded Audio Statement);
- (5) State's Exhibit No. 3 (Recorded 911 Calls);
- (6) State's Exhibit No. 6 (Photograph).

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

January 2, 2018

  
Lara M. Caudy  
Appellate Defender

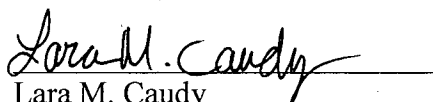
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

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."

January 2, 2018



Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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