

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES HAROLD BALDWIN,

APPELLANT.

APPELLATE CASE NO. 2019-001923

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err in allowing a forensic pathologist to testify as an accident and crime scene reconstructionist, which was beyond the scope of her expertise?

2.

Did the trial court err in admitting into evidence an irrelevant and prejudicial photograph from Facebook of appellant in a group with the Sheriff of Chester County in an attempt to paint appellant as close friends with the Sheriff, and then compound the error by eliminating the text from the Facebook post showing it was only a photo-op at a fund raiser?

STATEMENT OF THE CASE

A Chester County grand jury indicted appellant for murder and on October 28, 2019, appellant was tried before the Honorable Daniel D. Hall and a jury. R. 1. Candice Lively and Jay Johnson represented the State. R. 1. Philip Jamieson and Bradley Jordan represented appellant. R. 1. The jury convicted appellant. R. 1119, l. 21 – 1120, l. 5. Judge Hall sentenced appellant to life imprisonment. R. 1124, l. 15 – 24. This appeal follows.

STANDARD OF REVIEW

The evidentiary issues in this case are reviewed under the abuse of discretion standard.

State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003).

ARGUMENT

1.

The trial court erred in allowing a forensic pathologist to testify as an accident and crime scene reconstructionist, which was beyond the scope of her expertise.

Introduction

The central question in this entirely circumstantial case was whether appellant Jamie Baldwin's ("Baldwin") wife, Judy Orr Baldwin ("Judy"), died in a fall from a stepladder. After a highly unusual and irregular investigation, which included extensive involvement by Judy's lifelong, close friend, Coroner Terry Tinker, the State settled on an elaborate theory that Baldwin beat Judy to death, staged the scene at their home to look like an accidental fall, then staged another scene after a car crash suffered by Baldwin while driving his dying wife to the hospital. R. 375, l. 19 – 380, l. 4. R. 1069, l. 9 – 1071, l. 19.

The Night of the Accident

Baldwin called 911 on the night of December 14, 2016. R. 82, l. 4 – 21. (State's Ex. 5). He told the dispatcher that he and his wife had been in "a bad wreck." (State's Ex. 5). They "ran off the bridge." (State's Ex. 5). He did not think his wife was breathing and said he needed help. (State's Ex. 5). He is distraught and crying. (State's Ex. 5). He had already tried CPR (State's Ex. 5).

Fireman Mike Ehrmantraut was dispatched to the scene at 11:06 PM and was the first to arrive. R. 86, l. 4 – 7. R. 87, l. 2 – 6. The wreck happened on a rural "winding" two-lane road called Old Richburg Road. R. 85, l. 6 – 17. He saw Baldwin at the guardrail on the side of the road. R. 87, l. 9 – 16. Baldwin told the fireman, "Go help my wife, she's down there" and that he had pulled her out of the water. R. 87, l. 17 – 21. Ehrmantraut found the Baldwins' jeep

at the bottom of an embankment in a creek and saw Judy's body outside of the Jeep and partially in the water. R. 87, l. 22 – 89, l. 20.

Baldwin told the EMTs and highway patrol that he was on his way to take Judy to Piedmont Medical Center in Rock Hill. R. 117, l. 20 – 118, l. 2. Judy fell putting up their Christmas tree, cut her head and was bleeding badly. R. 117, l. 20 – 118, l. 2. A pickup truck was in their lane and when Baldwin swerved to miss it, he went down the embankment. R. 116, l. 18 – 22.

The fireman said it “was a dark evening.” R. 87, l. 22 – 25. The witnesses who responded to the scene agreed it was foggy. R. 92, l. 11 – 12 (Fireman Ehrmantraut). R. 110, l. 9 – 10 (EMT John Faulkner). R. 121, l. 15 – 17 (EMT Tyanne Perry). R. 234, l. 16 – 25 (Trooper Matthew Nix). Another fireman agreed that had Baldwin not come up to the road, it would have been difficult to locate the Baldwins' Jeep in the creek at the accident scene. R. 105, l. 4 – 13.

The State called its own investigator to criticize Baldwin's choice of hospital and route. R. 208, l. 19 – 217, l. 5. The investigator said it was only 1.97 miles from their house to the Chester Hospital, but much farther to Piedmont in Rock Hill, which required getting on Interstate 77. R. 208, l. 19 – 217, l. 5. The investigator also said Baldwin's choice of Old Richburg Road to get to I-77 was almost two miles longer and that “a person who is of any common sense” would have instead taken the four-lane road, Highway 9 instead of Old Richburg. R. 208, l. 19 – 217, l. 5. Baldwin had worked as a 911 dispatcher for Chester County. R. 102, l. 19 – 25. He was not employed by the sheriff's office at the time of the accident. R. 305, l. 18 – 20. Piedmont in Rock Hill was a higher level trauma center than Chester's hospital. R. 97, l. 4 – 7. R. 120, l. 14 – 18. Chester EMS often takes people to Piedmont instead of

Chester's hospital. R. 120, l. 16 – 18. The EMTs took Baldwin to Piedmont Medical Center in Rock Hill for his injuries. R. 110, l. 22 – 111, l. 3.

Trooper Calvin Rikard with the MAIT Unit responded to the scene, but was sent to the hospital in Rock Hill to talk to Baldwin. R. 193, l. 4 – 23. He recorded his interview with Baldwin, which was conducted at 2:43AM. R. 193, l. 24 – 197, l. 11. In this interview he told the trooper about the accident at the house and that he was taking Judy to the hospital. R. 200, l. 7 – 202, l. 6. (State's Ex. 1).

Baldwin gave another interview to Chester County Sheriff's Deputy Christopher Reynolds six days after the accident on December 20, 2016. R. 266, l. 16 – 267, l. 18. (State's Ex. 2). He begins the interview emotionally, crying, wondering if there is anything else he could have done. (State's Ex. 2). Baldwin said they picked up supper the night of the accident at Chicken King around 7:30PM. (State's Ex. 2). He packed his clothes to go on a charity trip for his motorcycle club to Kentucky to help deliver Christmas presents for deprived children. (State's Ex. 2).

Baldwin told Judy he would help finish the Christmas tree. (State's Ex. 2). Using a ladder, he put the star and a couple of balls on the tree. (State's Ex. 2). He then set the ladder against a wall near the kitchen. (State's Ex. 2). Appellant went into his shop. (State's Ex. 2). When he came back in the house, Judy was on the floor near the fireplace. (State's Ex. 2). She was on her hands and knees trying to get up. (State's Ex. 2). The ladder was now back near the tree. (State's Ex. 2). He helped Judy up, took her into the bathroom to clean her wound, but it was bleeding profusely. (State's Ex. 2). He could not remember what time he came back from the shop and found Judy. (State's Ex. 2).

At one point Judy sat down on the bathroom floor while Baldwin got a cloth. (State's Ex. 2). He helped her up. (State's Ex. 2). Baldwin told Judy she needed stitches and she replied she did not want to go to Chester Hospital. (State's Ex. 2). Baldwin explained that she "hated" Chester Hospital because her father died there. (State's Ex. 2). He said he would take her to Piedmont. (State's Ex. 2). Judy wanted to lie down, but Baldwin would not let her and said they needed to get to the hospital. (State's Ex. 2). He moved the seat back and put Judy in their Jeep. (State's Ex. 2). They left for the hospital. (State's Ex. 2).

Judy was able to talk in the Jeep. (State's Ex. 2). She said her head hurt. (State's Ex. 2). It was foggy. (State's Ex. 2). Baldwin looked up and saw an oncoming truck and eventually realized it was in their lane. (State's Ex. 2). He swerved to the right to avoid a head-on collision. (State's Ex. 2). The back of the Jeep "got squirrely" and "shot across the road." (State's Ex. 2). They hit something and the Jeep came to a stop. (State's Ex. 2).

The next thing Baldwin could remember was waking up and reaching over for Judy. (State's Ex. 2). She was not in the Jeep. (State's Ex. 2). At this point during the interview, Baldwin was overcome with emotion. (State's Ex. 2).

Baldwin saw the passenger door wide open and bent back toward the front of the Jeep. (State's Ex. 2). He climbed out the passenger side. (State's Ex. 2). Baldwin went back toward the road looking for Judy, but did not see her. (State's Ex. 2). When he went back to the Jeep he saw her lying in the creek. (State's Ex. 2). He pulled her as far as he could out of the creek toward the Jeep. (State's Ex. 2). Baldwin got his phone from the car and called 911. (State's Ex. 2). He climbed the embankment to the road so that he could flag down first responders. (State's Ex. 2).

Deputy Reynolds left the room and after he returned, told Baldwin the video recording had been stopped. (State's Ex. 2). He asked Baldwin if he wiped Judy's face because there was no blood on her face. (State's Ex. 2). Baldwin could not remember. (State's Ex. 2). Deputy Reynolds wondered if Judy got out of the Jeep on her own, to which Baldwin replied with surprise and found it deeply troubling. (State's Ex. 2). Deputy Reynolds said the MAIT team "had it one way" and they were shooting holes in each other's theories. (State's Ex. 2). He alludes to "rumors" in the community. (State's Ex. 2). Baldwin denied they argued that night and said he and Judy "had a great relationship." (State's Ex. 2). Baldwin said the police were welcome in his house any time and the ladder was in the carport. (State's Ex. 2).

The Highway Patrol's MAIT Unit conducted an investigation into the car accident and Trooper Brian Trotter was qualified as an expert in accident reconstruction and analysis of event data recorders. R. 397, l. 11 – 15. MAIT removed the event data recorder ("EDR") from the Jeep. R. 398, l. 20 – 399, l. 10. The EDR's purpose is to decide when to deploy a car's airbags. R. 400, l. 3 – 402, l. 14. The Jeep's EDR showed no event for the night of the accident. R. 400, l. 3 – 10. An EDR will record a change in speed of five or more miles per hour within 150 milliseconds. R. 400, l. 3 – 402, l. 14. Using this information from the data recorder and what he observed from an investigation at the scene, Trooper Trotter opined that the Jeep's descent from the road to the creek was "a low speed maneuver." R. 405, l. 6 – 413, l. 13. He believed that the Jeep was controlled by Baldwin during the accident. R. 414, l. 4 – 10. On cross-examination, he agreed that no event would be recorded if Baldwin applied the brakes and slowed the car as it ran off the road. R. 422, l. 4 – 18.

The Coroner and the Investigations

During her unusual opening statement, the solicitor told the jury that Judy's family "dealt with a sheriff's office that would not do their job." R. 72, l. 17 – 19. She said it "took months, months to get the sheriff's office to allow SLED to come in and do a thorough investigation, and only then were they able to put everything back together that the defendant had tried so hard to tear apart." R. 72, l. 19 – 23. She warned the jury they would hear about "conflicting egos and conflicting departments." R. 72, l. 23 – 73, l. 2. She called it "white noise." R. 73, l. 4 – 7.

Coroner Terry Tinker had known Judy his whole life. R. 331, l. 24 – 332, l. 9. Judy's first husband began working for Coroner Tinker when he was assistant chief of the Chester fire department. R. 331, l. 24 – 332, l. 9. He socialized with Judy and her first husband "many times" and considered them "personal friends." R. 376, l. 2 – 19. Coroner Tinker and his wife attended Baldwin's bond hearing, the only bond hearing he ever attended in his life. R. 379, l. 12 – 380, l. 1. Coroner Tinker went to every day of the trial. R. 1080, l. 24 – 1081, l. 3.

Coroner Tinker went to the scene and recognized Judy when he saw her body in the creek. R. 330, l. 3 – 331, l. 23. He said he went "into a mode of was she ejected from the jeep or did something else happen to her, and that's my job." R. 332, l. 10 – 17. When he got back to the top of the creek, an officer told him that Judy did not die from the wreck. R. 334, l. 1 – 7. Coroner Tinker told someone that "there was something very suspicious because it was not adding up with the highway patrol, I had more injuries on this body that to be ejected from the vehicle." R. 335, l. 1 – 13. He took his own photographs at the scene. R. 337, l. 10 – 19. He asked the police "to go put somebody on the residence of Ms. Baldwin." R. 335, l. 12 – 13. At that point, Coroner Tinker had no information about any other place where Judy could have been

injured. R. 335, l. 14 – 17. He scheduled an autopsy at York Pathology for the next day. R. 336, l. 19 – 337, l. 9. He later learned that night about the fall at the Baldwins' house. R. 339, l. 5 – 9. He did not go to the house, saying "The Chester County Sheriff's Office was supposed to take care of the scene at the house. I took care of the scene at the death scene." R. 339, l. 18 – 24. He testified he continued "my part as the death investigator, which I am. I'm a death investigator, that's what my job is supposed to be that night." R. 346, l. 22 – 347, l. 1.

Coroner Tinker claimed Deputy Reynolds told him that night on the bridge, "You know this is not a homicide," and this caused him concern. R. 340, l. 11 – 22. Deputy Reynolds testified that Coroner Tinker told him he believed it was a murder as soon as he arrived. R. 285, l. 9 – 19. Coroner Tinker denied saying this. R. 380, l. 7 – 381, l. 10.

Deputy Reynolds went from the car wreck to the Baldwins' home, then to Piedmont. R. 246, l. 11 – 247, l. 24. Baldwin gave Deputy Reynolds permission to search the house and told him there was a key behind the refrigerator. R. 248, l. 9 – 21. Deputy Reynolds took photographs inside the house. R. 251, l. 5 – 17.

Boxes with Christmas decorations are on the sofa. (State's Ex. 100). A very tall Christmas tree is in the corner. (State's Ex. 109). Four stockings are hung from the mantle, but a space is left and two stockings are on the floor. (State's Ex. 101, 105). A folding stepladder leans into the Christmas tree. (State's Ex. 101). Blood can be seen on the mantle and on the tile surrounding the fireplace. (State's Ex. 101). The damaged tile seen in the photos was not broken during this accident. R. 255, l. 22 – 25. Shards of broken ornaments are on the floor around the leaning base of the ladder. (State's Ex. 104). Blood was also found in the bathroom. (State's Ex. 126).

A close-up photograph shows that ornamental cast iron stocking holders sit on the mantle for the stockings still in place. (State's Ex. 111). A broken cast iron stocking holder is on the floor. (State's Ex. 105). The stocking holder is in the shape of Santa Claus holding an irregular shaped object over his shoulder, likely a small Christmas tree. (State's Ex. 195). A second, intact cast iron stocking holder in the shape of a Christmas tree is at the base of the tree under the ladder. (State's Ex. 102).

The officers measured the mantle's height at fifty-five (55) inches. R. 256, l. 24 – 257, l. 5. They measured the height of the stepladder at its highest point, the handle, and it was fifty-one inches tall. R. 257, l. 12 – 258, l. 4. The Christmas tree was nine feet tall without the star or angel on top. R. 259, l. 4 – 5. The Chester deputies did not secure the scene or take any items into evidence that night. R. 263, l. 10 – 265, l. 3. Another officer went the next day and collected the broken stocking hanger. R. 276, l. 21 – 277, l. 3.

Coroner Tinker attended the first autopsy, which was performed by Dr Roger Stone the day after the accident. R. 341, l. 1 – 342, l. 2. Judy was small, only 60 inches tall and weighing 139 pounds. R. 453, l. 7 – 11. She had a “[c]omplex laceration on the right forehead” measuring two inches. R. 454, l. 12 – 15. It had “a very irregular shape.” R. 464, l. 5 – 7. Dr. Stone noted what he called “raccoon eyes,” which is blood pooling under the eyes after a skull fracture, which he also found. R. 464, l. 8 – 18. Judy had subarachnoid and subdural hemorrhages. R. 465, l. 17 – 466, l. 12. The cause of death was blunt force trauma to the head. R. 465, l. 5 – 11. He noted sites of impact on the back of Judy's head. R. 475, l. 15 – 24. Dr. Stone did not make a determination as to manner of death—either accident or homicide. R. 469, l. 12 – 20. He told law enforcement he could not rule out an accident. R. 474, l. 12 – 19.

Deputy Reynolds attended the autopsy and said Coroner Tinker was unhappy with the results.” R. 289, l. 3 – 13. Dr. Stone said Coroner Tinker “was highly suspicious of homicide.” He admitted he may have told defense counsel in an earlier conversation there was “crossfire” in the room during the autopsy. R. 473, l. 2 – 7. R. 473, l. 11 – 12. Coroner Tinker said, “whenever I saw the massive damage that I observed I immediately thought to myself—and this is strictly up to a coroner to do this, when I saw the massive amount of damage I knew right then I was going to do another autopsy.” R. 347, l. 2 – 13. He claimed he was not dissatisfied, but wanted a forensic pathologist “to look at it.” R. 347, l. 14 – 22. Dr. Janice Ross performed her autopsy the next day. R. 348, l. 3 – 4. Dr. Ross did not make a conclusion as to the manner of death at that time. R. 350, l. 11 – 22.

Coroner Tinker said a “Long, long time,” passed where he could not get together with the sheriff’s office to work towards a conclusion on manner of death. R. 351, l. 1 – 14. He said “the Sheriff of Chester County was not ever willing to help me at all, never, ever.” R. 352, l. 2 – 7. Coroner Tinker called his friend, the Honorable Brian M. Gibbons, and told the judge about his trouble with the sheriff. R. 352, l. 8 - 353, l. 9. Feeling like he “was trying to drag this ball and chain myself,” Coroner Tinker asked Judge Gibbons to “orchestrate a sit down meeting.” R. 352, l. 8 - 353, l. 9.

According to Coroner Tinker, Judge Gibbons called a meeting that included his office, the sheriff and his deputies, the Highway Patrol, the solicitor’s office, and SLED. R. 353, l. 1 – 9. Coroner Tinker knew that Baldwin formerly worked for Chester County dispatch and was concerned about the relationship between the sheriff and Baldwin. R. 354, l. 1 – 355, l. 7. He wondered why SLED was not brought to the scene that night and added, “Why could we not bring somebody else in to help us prove what we’re trying to prove?” R. 354, l. 5 – 17. SLED

took over the investigation. R. 280, l. 5 – 9. Nine months after her second autopsy and two days after a meeting with Coroner Tinker, the solicitor, the sheriff’s office, and SLED, Dr. Ross amended her report to find homicide as the manner of death. R. 390, l. 22 – 391, l. 5. R. 527, l. 8 – 528, l. 14.

Dr. Ross’s Testimony and the Trial Court’s Error

Before Dr. Ross was qualified as an expert in forensic pathology, appellant objected to the scope of her testimony and Judge Hall excused the jury to hear a proffer. R. 483, l. 9 – 4. Dr. Ross admitted she is not a biomechanical expert. R. 484, l. 10 – 487, l. 21. She knew that biomechanical experts give opinions on force and injury. R. 484, l. 10 – 487, l. 21. She admitted she is not a blood spatter expert. R. 484, l. 10 – 487, l. 21. She admitted she is not certified as a crime scene investigator. R. 484, l. 10 – 487, l. 21. She admitted that at the time she amended her report, she did not know the height of the stepladder or the height of the Christmas tree. R. 484, l. 10 – 487, l. 21.

When asked if she performed any calculations to determine how much force it would take to fracture a skull, she said, “You can’t do that in medicine. You can’t line up people and hit them in the head and figure out . . . How much force causes certain injuries depending on the skull.” R. 484, l. 10 – 487, l. 21. She agreed she performed no calculations of force and was not qualified to do so, but claimed she could give examples based on her experience. R. 484, l. 10 – 487, l. 21. When questioned by the solicitor, she claimed, however, that based on her experience she could render an opinion on whether falling from a stepladder could cause a “24 centimeter skull fracture.” R. 488, l. 15 – 489, l. 20. Judge Hall found her qualified “to render an opinion about significant force.” R. 489, l. 22 – 490, l. 8. He noted the objection from the defense. R. 490, l. 25.

Dr. Ross testified that she found two injuries to Judy’s head—the right forehead and the left side of the head. R. 495, l. 8 – 22. Underlying the injuries was a skull fracture that started from the left side of her head and went across the “bony structure of the base of the skull, the bony structure that’s above the eye. . . .” R. 495, l. 8 – 496, l. 3. R. 498, l. 17 – 499, l. 16. She said there were “at least two separate impacts.” R. 497, l. 13 – 16. It measured 24 centimeters. R. 499, l. 17 – 21.

Dr. Ross called the fracture a “hinge fracture.” R. 503, l. 20 – 504, l. 15. She testified that the injuries to Judy’s forehead could have been made by the stocking hanger, but not consistent with hitting the straight edge of the mantle. R. 507, l. 12 – 508, l. 13. When asked if Judy’s injuries were consistent with her falling and hitting the stocking hanger, she replied, “If that’s possible, yes.” R. 508, l. 14 – 23. She testified that the complex laceration could only be explained by hitting the ornament twice. R. 511, l. 6 – 9. She said it would require two separate blows, which Judge Hall allowed her to answer over another objection. R. 511, l. 23 – 512, l. 3.

When asked whether Judy’s injuries made it more probable that she was “hit with significant force or that she fell off a three foot ladder,” appellant objected again, but the court overruled and allowed her to answer. R. 512, l. 14 – 25. Dr. Ross said the separate lacerations made it “more consistent with being hit by an object.” R. 512, l. 14 – 25. Appellant objected again when the solicitor asked, “And would you agree that without any other explanation of mechanisms to explain the severity of her injuries, within a reasonable degree of medical certainty this could likely have been caused by an attack or a beating to her head?” R. 513, l. 15 – 24. Dr. Ross responded, “It’s what I’ve experienced and seen before as being beaten, yes.” R. 513, l. 15 – 24.

On cross-examination, Dr. Ross was forced to admit that she omitted from her report that Judy's skull was thinner than a normal skull. R. 531, l. 8 – 533, l. 16. Defense counsel subpoenaed her notes and discovered Dr. Ross's observation about the thinness of Judy's skull. R. 531, l. 8 – 533, l. 16. She agreed that a thinner skull will fracture more easily and cause more severe injuries. R. 531, l. 8 – 533, l. 16. But this observation about Judy "didn't get typed in." R. 531, l. 8 – 533, l. 16. After being cross-examined about the existence of two stocking holders and their consistency with Judy's injuries, she agreed that "from the medicine alone" she could not rule out an accidental injury." R. 535, l. 21 – 536, l. 3.

The trial court erred in allowing Dr. Ross to testify beyond the scope of her expertise. State v. Commander, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (holding that forensic pathologists may not testify regarding the state of mind or the guilt of the accused); State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001). In Ellis, an officer was qualified as an expert in crime scene processing and fingerprint identification. Id. at 177-78, 547 S.E.2d at 491-92. The officer's testimony concerning the location of the victim and the position of the body at the time of a shooting was improper. Id. This allowed the officer to improperly give his opinion on the ultimate issue in the trial, which was self-defense. Id.

The officer in Ellis was qualified as an expert in crime scene processing. Id. The officer visited the scene and took measurements. Id. Even so, his testimony about the position of the victim's body was impermissible and exceeded the scope of his expertise. Id. The Court noted that the State was free to argue inferences about the position of the victim, but that the expert's testimony was improper. Id. See also Nelson v. Taylor, 347 S.C. 210, 553 S.E.2d 488 (Ct. App. 2001) (citing Ellis and reversing because a physical therapist's testimony about causation of the plaintiff's injuries exceeded qualifications).

In Hamrick v. State, 426 S.C. 638, 649, 828 S.E.2d 596, 602 (2019), the Court reversed because a police officer testified outside of the scope of his qualifications about accident reconstruction. Writing about a car accident, the Court held, “Our review of the record convinces us Officer Harris did not possess the necessary qualifications to give an opinion in accident reconstruction. His training in the field was limited to a few courses he took over a period of several years. He had no other training or education that would otherwise demonstrate he was qualified as an expert to give an opinion on accident reconstruction. Accident reconstruction is a highly technical and specialized field in which experts employ principles of engineering, physics, and other knowledge to formulate opinions as to the movements and interactions of vehicles and people, under circumstances lay people—even trained officers—simply cannot understand.” Hamrick at 649, 828 S.E.2d at 602.

Here, Dr. Ross had little information about the crime scene and admitted she had no expertise in calculating forces or biomechanics. Her opinion improperly strayed from forensic pathology into the realm of accident and crime scene reconstruction. While the State was free to draw inferences and make arguments concerning Dr. Ross’s findings at autopsy, it was improper to place its closing argument in the mouth of a court-qualified expert.

Dr. Ross’s improper testimony was prejudicial because it blunted the testimony of appellant’s two experts, Ross Gardner and Dr. Thomas Beaver. Gardner was qualified as an expert in bloodstain pattern analysis. R. 892, l. 20 – 22. Gardner testified that impact spatter at the hearth indicated that Judy’s forehead was at that level when the impact happened. R. 895, l. 11 – 22. Cast off spatter showed that Judy was not hit from behind. R. 896, l. 23 – 898, l. 4. Long hair swinging can produce cast off spatter. R. 898, l. 1 – 5. The blood pattern around the mantle indicated that she was static, but then upright because of drip stains and accumulation on

the tiles, but no drag marks or drip trail leading away from the mantle. R. 898, l. 8 – 899, l. 18. Gardner acknowledged that an explanation was violence, but also that Judy fell and grabbed at the stocking hangers on the mantle. R. 901, l. 1 – 16. He testified that the large amount of blood soaked into the Jeep passenger seat meant that Judy was still bleeding heavily in the car and the pattern showed likely still conscious. R. 606, l. 18 – 907, l. 24. Gardner did not consider the position of the ladder to indicate a staged scene, but more likely a “post-incident artifact.” R. 910, l. 7 – 25.

Dr. Beaver was qualified as a forensic pathologist. R. 974, l. 14 – 19. He agreed the cause of death was blunt force trauma to the head. R. 979, l. 6 – 11. He testified that the lacerations on Judy’s forehead was “a single impact over an irregular surface.” R. 983, l. 1 – 21. He also disputed Dr. Ross’s finding of two skull fractures versus the single skull fracture found by Dr. Stone. R. 984, l. 8 – 986, l. 22. He believed the second fracture was an artifact from the first autopsy. R. 984, l. 8 – 986, l. 22. Dr. Beaver opined that Judy’s death was an accident and that she was alive in the Jeep because of the amount of blood. R. 986, l. 23 – 988, l. 16. Dr. Ross claimed that Judy would have been unconscious within “half a minute at the most, maybe seconds.” R. 509, l. 2 – 3. She would have died “within minutes, five or six minutes.” R. 510, l. 13 – 17. However, on cross-examination she admitted that Judy would have stopped bleeding when she died. R. 529, l. 12 – 21. But for Dr. Ross’s improperly admitted testimony beyond her qualifications, appellant would have likely been acquitted and this Court should reverse.

The trial court erred in admitting into evidence an irrelevant and prejudicial photograph from Facebook of appellant and in a group with the Sheriff of Chester County in an attempt to paint appellant as close friends with the sheriff, and then compound the error by eliminating the text from the Facebook post showing it was only a photo-op at a fund raiser.

During Coroner Tinker's testimony, he revealed that he had his secretary look into connections between Baldwin and the sheriff. R. 354, l. 18 – 356, l. 5. They found a photograph on Baldwin's Facebook page. R. 354, l. 18 – 356, l. 5. Coroner Tinker knew "two of the six people" in the photo, one was Baldwin and the other was the Sheriff. R. 354, l. 18 – 356, l. 5. The date on the photo was September 30, 2016, a little over two months before Judy's death. R. 354, l. 18 – 356, l. 5. When the State attempted to move the photo into evidence, appellant objected. R. 356, l. 6 – 10.

Appellant objected that the photo was more unfairly prejudicial than probative. R. 356, l. 20 – 357, l. 16. Defense counsel argued that the photo showed public officials in a photo-op and that the Sheriff had probably taken such pictures with hundreds of people. R. 356, l. 20 – 357, l. 16. The State was improperly using a photo-op to try to show Baldwin had a close relationship with the Sheriff, and implying that the Sheriff protected appellant. R. 356, l. 20 – 357, l. 16. The solicitor pointed out that the caption underneath the photo was that the basis for the photo was a charity ride for the sheriff's foundation. R. 358, l. 11 – 359, l. 20.

The court found the photo admissible. R. 360, l. 21 – 361, l. 13. The judge ruled that the photo was probative of the relationship that Baldwin may have had with the Sheriff. R. 360, l. 21 – 361, l. 13. After a recess, the court supplemented his ruling by ordering that the caption showing the photo was connected with a fundraiser be redacted. R. 362, l. 15 – 363, l. 9.

Defense counsel argued that removing the information about the fundraiser made it even more prejudicial because it did not “relate the circumstances under which this photo was taken.” R. 363, l. 16 – 20. The photo was admitted with a yellow tab obscuring the text. (State’s Ex. 197). It shows six people close together and gives the viewer no context about where it was taken or under what circumstances. (State’s Ex. 197).

The photograph was irrelevant under Rule 401 and even if probative, should have been excluded under the balancing test of Rule 403. See Rules 401, 403, SCRE. The relationship between appellant and the Sheriff, if any, was irrelevant to the issue of whether Judy died in an accident. See State v. Owens, 427 S.C. 325, 334, 831 S.E.2d 126, 130–31 (Ct. App. 2019), reh’g denied (Aug. 22, 2019), cert. granted (Mar. 12, 2020). In Owens, the Court found admission of a photograph of the victim hugging his brother bore no relevance to the case and was shown only to elicit sympathy. Id. The photo suggested an improper basis for a verdict. Id.

Here, the photo also suggested an improper basis. It allowed the State to imply that Baldwin received favorable treatment from the Sheriff and improperly bolstered the credibility of their investigation, led by a coroner and SLED. It let them explain away with speculation why Chester County initially (and correctly) treated the investigation as an accident and allowed them to justify Coroner Tinker’s pursuit of appellant. It also provided the State with a scapegoat for their lack of evidence against Baldwin. The redaction of the text compounded the error by taking away the context necessary for appellant to show it was a mere photo-op after a fundraiser. The solicitor referenced its theory and the photo and appellant’s alleged relationship with the Sheriff several times in closing. R. 1030, l. 9 – 10. R. 1052, l. 16 – 1053, l. 18. This Court should reverse.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2021.

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May 12 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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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