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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Stephen H. John, Circuit Court Judge

Appellate Case No. 2021-000628

THE STATE, Respondent,

v.

FREDRICK WILLIAMS, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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The trial judge did not abuse his discretion in admitting DNA evidence because the chain of custody was established.

STATEMENT OF THE CASE

Appellant was indicted by a Georgetown County Grand Jury for criminal sexual conduct with a minor in the second degree. Appellant proceeded to a jury trial on June 1, 2021 before the Honorable Steven H. John. Madison C. Harte represented the Appellant. The jury found Appellant guilty as charged. Appellant was sentenced to sixteen years' imprisonment. This appeal follows.

STATEMENT OF FACTS

In September of 2018, 14 year old Victim lived with her grandmother, but stayed with her mother Versheena Brown (Brown), Fredrick Williams (Appellant) and her four minor siblings on weekends. (R. 15). On September 8, 2018, Brown had to work, leaving Victim and her siblings at the home with Appellant. (R. 16). Victim and her siblings played outside, but came inside to watch a movie because it was too hot. (R. 17).

Victim testified that Appellant gave them melatonin to take a nap before going to a birthday party later that afternoon. (R. 17). When Appellant attempted to give Victim's sister (Minor 2) a melatonin she spit it out. (R. 17). Victim testified that she fell asleep and when she woke up she was in her mom's bedroom with Appellant and "his penis was in [her] vagina."(R. 18-19). Victim attempted to get away, but couldn't because Appellant was holding her down. (R. 19). Victim testified Appellant also was "licking between [her] legs. (R. 19). Victim testified that they heard Minor 2 leaving the house and Appellant told Victim to go shower while he looked for Minor 2. (R. 19).

Minor 2 testified that she woke up because she heard moaning between Victim and Appellant as well as Appellant calling Victim's name. (R. 10). She also heard TV in the background playing "the same thing my dad and sister were doing." (R. 11). Minor 2 attempted to open the bedroom door, but it wouldn't open. (R. 11). Minor 2 went to a neighbor's house to call Brown. (R. 11).

After immediately leaving work to go home, Brown arrived home and could see Minor 2 was at the neighbor's house and Victim and Appellant at the door telling Minor 2 to come back to the house. (R. 28). Brown called the police and took Minor 2 to the police station. (R. 28). Johnell Sparkman, an officer with Georgetown Police Department, transported Victim and the other minor children who were at the house to the station. (R. 58).

Allen Morris, an Investigator with Georgetown Police Department, responded to the police station. (R. 97). Morris told Brown to take Victim to the hospital to get a sexual assault kit done. (R. 97). At the hospital, Dr. Eugene Mayeaux, an expert in emergency medicine, testified that sexual assault kits were developed because a need was perceived for a uniform approach to gathering evidence in sexual assault cases; meaning everything had to be universal and redundant and there should be no variation in the protocol. (R. 35-36). Each kit contains envelopes that are very specific about what goes in them. The envelopes are numbered and it tells you what goes in each envelope. (R. 43-44). Mayeaux performed the examination on Victim using the Sexual Assault kit. (R. 45). In conducting the examination using the sexual assault kit, Victim's underwear and clothes were placed in a sealed bag and placed in the kit. (R. 73) Swabs were taken of Victim's mouth, rectum, suspected saliva places such as Victim's inner thigh, breasts, and vagina and were each placed in individual respective envelopes and sealed. (R. 74-76). Finger nail scrapings and pubic hair combings were taken and sealed in an envelope as well. (R. 76). In the internal exam of Victim's vagina, Mayeaux testified he found a clear white discharge at the deep recesses of her vagina. (R. 42). Melissa Moore Walker, a Sexual Assault trained nurse, testified she sealed each individual swab or evidence in an envelope. (R. 77). She then sealed all of those envelopes or bags and put them into the sexual assault kit and signed it over to Jessica Hewitt, the head nurse of the Emergency Department at Tidelands Georgetown. (R. 77).

Hewitt testified that when she was given the kit she placed it in the sexual assault cart, which is locked and the cart is also placed behind a locked door. (R. 51). It was not until Officer Morris went back to the hospital to retrieve the evidence collected that the kit was removed from the locked room. (R. 99). Morris placed the kit the Georgetown Police Department evidence locker that is on the outside of the evidence room. (R. 55). Sparkman testified that the only way to access

evidence placed into the locker is to enter the property room with a key card and fingerprint. (R. 55). Sparkman further testified that only two people have access to that room. (R. 55).

At trial, Sparkman testified about the procedure for taking the evidence to SLED. (R. 65). This included pre-logging the evidence into the SLED database, putting in the test requested on the evidence, then calling SLED to make an appointment. (R. 65). The evidence is then transported and placed in an isolated locker that prevents access to the evidence once it is placed inside. (R. 66).

Jackie Davis, a forensic tech at SLED, testified that once the evidence is placed in that locker, the only people who have access are the four technicians and two supervisors. (R. 81-82). Davis was the first to take control of the evidence in this case and it was sealed and undamaged when she retrieved the evidence out of the locker. (R. 82). Davis testified that if it had been altered in any way pictures would have been taken and notations made, but that was not the case. (R. 84-85). Davis gave the evidence a unique lab number and transferred it to a secure evidence room. (R. 85).

On October 8, 2018, Bethany Davidson, a forensic technician at SLED, pulled the evidence from the evidence room. (R. 90). She testified that it did not appear to be tampered with and if it had the tampering would have been notated. (R. 90). Davidson then gave it to Veronica Herrera, another forensic technician at SLED. (R. 89). When Herrera received the evidence she checked to make sure it had not been tampered with. (R. 130). She also testified that if the seals were not intact or had not been signed it would be returned to evidence control and not processed until it was determined whether or not there had been tampering, but that was unnecessary in this case. (R. 130). She further testified that a victim's evidence is processed before a suspect's to prevent possible contamination, and no two pieces of evidence are opened at the same time. (R. 131-32).

Herrera resealed and gave the evidence to Doris Yarborough, another forensic technician at SLED. (R. 132).

Alysha Breland, a DNA Analyst at SLED, testified that she received the evidence from Charlotte Pitts. (R. 142). Yarborough and Pitts did not testify, but Breland testified that there was no evidence of tampering and if there had been it would have been noted and returned to evidence control to alert them to possible tampering. (R. 143).

At this time defense counsel objected to State's 9 (Chain of Custody) (R. 186-203) coming into evidence based on two witnesses not testifying from the chain and therefore the chain of custody was incomplete. (R. 143).The trial judge overruled the objection stating

> I'm gonna allow it into evidence over the objection of the defense based on the testimony presented that the items were not tampered with, so it is not necessary to have all of the individuals who signed the document to testify. (sic)

(R. 144). Defense counsel renewed his objection when the State attempted to enter State's 10 (remainder of sexual assault kit, 6 (Victim's underwear), 5 (Victim's Buccal Swabs), and 3 (Victim's Vaginal Swabs) into evidence. (R. 146).

Breland testified that she found foreign DNA profiles not belonging to Victim on the Vaginal Swabs and the crotch of the Victim's Underwear. (R. 148, State's 3 and 6,). The foreign profile matched a male donor. (R. 149). The profile developed from the foreign DNA found matched the profile of Appellant. (R. 151).

STANDARD OF REVIEW

"In criminal cases, the Appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." State v. Howard, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct. App. 2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "To warrant the reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

ARGUMENT

The trial judge did not abuse his discretion in admitting DNA evidence because a chain of custody was established.

Appellant contends that the trial judge erred in admitting evidence of the DNA "match" of Appellant to the victim where the chain of custody was not established because one or more former SLED forensic technicians were missing non-testifying links in the chain. (IBOA). Appellant's argument lacks merit because the State established a sufficient chain of custody.

"'To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof.'" State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 336 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)). A party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007). "Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." Id. at 6, 647 S.E.2d 202, 205 (2007). Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill motive. State v. Taylor, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004).

"Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." State v. Pulley, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (Citing State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007).

"Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). "[W]e have never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." South Carolina Dep't of Soc. Servs. v. Cochran, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005). Cochran further held that the chain of custody was sufficient even though the courier who transported the samples from the collection site to the testing facility was never identified, where the samples arrived at the facility sealed and intact. Id.

Appellant relies on State v. Cribb that held the identity of persons handling blood was required to establish chain of custody. State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992). In Cribb, defendant was taken to the hospital and a blood alcohol test was performed. Id. At trial, two nurses attended to Cribb upon his admission to the hospital. Id. One of the nurses testified that the other nurse drew the IV of Cribb and that it was customary for blood to be drawn by the person administering the IV. Id. The nurse who administered the IV did not recall drawing blood from Cribb, but assumed she did because that was standard procedure. Id. The lab technician did not know who drew Cribb's blood, how it was transferred to the lab, nor do the medical records or labels indicate this information. Id. Therefore, the court held that the evidence does not identify the persons who handled the blood from the time it was drawn until the time it was tested. Id.

This case differs because each individual person in the chain of custody is identified. Herrera testified that she gave the evidence to Doris Yarborough to return to the evidence control department. (R. 132). The next person in the chain to testify was Breland, who testified she

received the evidence from Charlotte Pitts. (R. 142). Although Yarborough and Pitts did not testify at trial, they were still identified for purposes of the chain of custody.

Appellant also relies on State v. Joseph, where the court concluded the chain of custody was inadequate because a witness was not able to testify as to the chain of custody even though he had retrieved the evidence from the drop box and first analyzed the evidence. State v. Joseph 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). Appellant relies on State v. Joseph in arguing that Pitts and Yarborough were similarly "important witnesses." (IBOA pg. 7). In State v. Joseph, the missing witness was the person who actually analyzed the evidence and would have been the one to testify to what the actual evidence was. State v. Joseph, 328, S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). Although not relied on by Appellant, State v. Williams held that a chain of custody was defective because the person who sealed and labeled the defendant's blood test did not testify at trial. State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990). The present case differs because although the two witnesses didn't testify, they were identified by all of the witnesses who did testify. Further they were not the ones who analyzed the evidence or performed any tests at all, but simply replaced or retrieved the evidence from the evidence control room. The evidence was only in Yarborough's possession for approximately eight minutes and in Pitt's possession for less than a minute. (R. 186).

Further, there was plenty of testimony about the condition of the evidence. Each person who testified about the chain stated that there was no evidence of tampering or alterations, and if there had been, they testified about the steps that would be taken to notate the tampering and alterations and the evidence would be returned to evidence control unit and would notify the unit of tampering. (R. 82, 90, 130, 143). "It is unnecessary... [t]hat the police account for 'every hand-to-hand- transfer' of the item; it is sufficient if the evidence demonstrates a reasonable

assurance of the condition of the item remains the same from the time it was obtained until its introduction at trial." State v. Hatcher, 392 S.C.86, 95, 708 S.E.2d 750, 754 (2011). "To expect the [prosecuting authority] to produce every possible individual who may have had fleeting contact with the evidence would cause unnecessary logistical problems concerning chain of custody." Id. (citing to Commonwealth v. Herman, 288 Pa.Super. 219, 431 A.2d 1016, 1019 (1981) (holding the absence of testimony from a crime lab custodian who merely logged in the seized marijuana was not fatal to the chain of custody where the officers who seized the drugs and the chemist who tested them did testify at trial)). Every piece of the chain of custody is identified. Even though two people in the chain did not testify, they were identified and the witnesses before and after them testified that there was no tampering and the evidence remained sealed. Therefore, the trial judge did not abuse his discretion in admitting DNA evidence because a sufficient chain of custody was established.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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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