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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002531

State of South Carolina, …………….. Respondent

v.

Angelita Nicole Wright, ……………… Appellant.

PETITION FOR REHEARING

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Pursuant to Rule 221(a), SCACR, Appellant Angelita Nicole Wright petitions the Court for rehearing and reconsideration of Opinion No. 2023-UP-119 filed March 22, 2023. Wright respectfully submits that the Court overlooked the primary legal authority cited in support of her argument that the State's cell phone "examination and mapping" witness lacked the qualifications required by Rule 702, SCRE to offer expert opinions at trial.

BACKGROUND

Appellant Angelita Wright was indicted on charges of murder and leaving the scene of an accident resulting in death in violation of S.C. Code Ann. § 56-5-1210(A)(3) in connection with the death of Wright's estranged husband Brent Lee Tessnear ("Decedent"). (R. pp. 573-74). Wright pled not guilty to both charges and was tried by a Spartanburg County jury before the Honorable R. Keith Kelly on November 27-30, 2017.

Decedent was discovered dead on the side of a Cowpens, S.C. roadway just before 3 a.m. on December 27, 2015. (R. pp. 67-69). Medical examiners concluded Decedent was struck by a vehicle and died from blunt force trauma to his internal organs. (R. pp. 309-10). Brandon Blackwood confessed to the killing (R. pp. 153, 398), but the State chose to try Wright for the crime. At trial, Wright contested the State's assertion that she was even present at the crime scene by offering the expert testimony of Tom Slovenski, a certified digital forensic examiner. (R. pp. 412-13). Slovenski analyzed Wright's cell phone and showed jurors that none of the transactions on Wright's phone in the hours immediately after the estimated time of Decedent's death corresponded with the cell tower that services the crime scene. (R. p. 443).

Over Wright's objection (R. p. 487, lines 9-17; 488, lines 5-7), the circuit court qualified Sergeant Brandon Letterman as a cell phone "examination and mapping" expert to rebut Slovenski's testimony. However, Letterman had not actually conducted an extraction of Wright's

phone and admitted he could not map key texts from Wright's phone during crucial time periods. (R. p. 497, line 13-21; R. p. 498, lines 12-14) (did not perform extraction on either phone); R. p. 499, lines 6-10 (never seen extraction data for Blackwood's phone). Letterman also admitted he had never before been qualified as an expert in cell phone mapping and had used the mapping software for only three months. (R. p. 484, lines 10-11; 486, lines 3-7). His only training for operating the mapping software was a one day class. (R. p. 485, lines 22-24). He had not published any articles or obtained any certifications related to cell phone mapping. (R. p. 486, lines 8-13).

On November 30, 2017, the jury returned a guilty verdict against Wright on the murder charge and did not reach the charge for leaving the scene of the accident resulting in death. (R. p. 562; R. p. 572). The circuit court sentenced Wright to 30 years' imprisonment. (R. pp. 569-70).

ARGUMENT

1. The Court overlooked pertinent precedent on the qualification of a proposed expert witness.

The Court cited Letterman's "training and experience" as a sufficient basis to qualify him as a cell phone examination and mapping expert. (State v. Wright, Opinion No. 2023-UP-119, filed March 22, 2023 (hereafter "Opinion") at 10-11). However, Letterman admitted in his testimony he had not performed extractions on Wright or Blackwood's phones and admitted he was unable to map key text messages sent during the crucial hours before Decedent's body was discovered. (R. p. 497, line 13-21; R. p. 498, lines 12-14 (did not perform extraction on either phone); R. p. 499, lines 6-10 (never seen extraction data for Blackwood's phone). Letterman's formal training consisted of just a one-week class, only one day of which addressed cell phone mapping. (R. p. 485, lines 22-24). He had only used the pertinent cell phone software program for three months and had never before been qualified as an expert on either cell phone extraction or mapping. (R. p. 484, lines 9-11; p. 486, lines 3-7).

In light of these acknowledgements, the most important precedent for analyzing Letterman's proposed expert qualifications was this Court's ruling in State v. Andrews, 424 S.C. 304, 818 S.E.2d 227 (Ct. App. 2018), *aff'd as modified* 427 S.C. 178, 830 S.E.2d 12 (2019). The officer in Andrews cited as expertise his extended service as a law enforcement officer and a one-week training class. 424 S.C. at 317, 818 S.E.2d at 234. This Court affirmed a circuit court order excluding the expert and ruled that, even with his experience, the short training class was "insufficient qualification." Id. at 310, 818 S.E.2d at 231. On appeal, this Court focused on two things in affirming the proposed expert's exclusion. First, his proposed qualifications were not specific to his testimony as most of the class covered general law enforcement issues or was even unrelated to the conclusions he offered at trial. Id. at 317, 818 S.E.2d at 234 Second, when the unrelated portions of the class were stripped away, the remaining instruction time (one day) was insufficient to make the officer an expert. Id. The same holds true here. Letterman's testimony was intended to boost Respondent's contention that Ms. Wright was at the crime scene and not at her alibi location. Even adding in Letterman's instruction on Cellebrite, he had a total of six days' training on the cell phone forensic processes for which he was permitted to offer opinion testimony in a murder trial. (R. p. 485, line 17 – 486, line 2). Consistent with Andrews, the Court should have ruled these proposed qualifications were insufficient to allow Letterman to offer "expert" opinions.

Andrews was the centerpiece of Wright's briefing on the qualification issue. (App. Br. at 10-12; Reply Br. at 7-9, 11-12, 17). Yet, the Court failed to address Andrews. By overlooking this essential precedent, the Court failed to properly apply the minimum level of qualifications a police officer must obtain before offering expert opinions in a criminal trial. Accordingly, Wright respectfully requests the Court grant her petition and either reverse the circuit court's ruling or hear additional arguments in the appeal.

2. **The Court improperly discounted the fact that Letterman was qualified by the circuit court as a cell phone "mapping" expert.**

The Court also affirmed the circuit court's analysis of Letterman's qualifications because Letterman's testimony did not include "complex areas of forensic mapping" for which the Court admitted Letterman may have lacked sufficient credentials. (Opinion at 11) ("may indeed have required greater training and expertise than Letterman possessed"). However, Letterman's testimony was certainly presented to offer jurors commentary on Wright's location at key moments. Slovenski's testimony tended to suggest Wright's activities centered around Pacolet, and the State's summary question during Letterman's direct exam was designed to suggest Slovenski's location-based testimony was wrong. (R. p. 496, lines 3-7) (concluding Wright's location during 2 a.m. hour was unknown).

More broadly, it was improper for the Court to deemphasize the fact that, regardless of the depth of mapping testimony Letterman provided, he was specifically offered to be, and presented to the jury as, a cell phone mapping expert. The State asked the circuit court to qualify Letterman not just in "cell phone forensics" but also in "cell tower mapping." (R. p. 485, lines 4-6). The State's request was designed to track the designation of expertise Slovenski was given during his testimony. (R. p. 417, lines 3-9). Given Letterman's lack of qualification on cell tower mapping, it was improper for the jury to ever be told he held the same or similar expertise to Slovenski. See State v. Kromah, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013) ("The label of expert should be jealously guarded by the court and never loosely bandied about"); Watson v. Ford Motor Co., 389 S.C. 434, 449, 699 S.E.2d 169, 176 (2010) (holding that courts "should be cautious in conferring an expert label" on witnesses due to "excessive or undue weight" jurors may afford their testimony).

In other words, the circuit court abused its discretion by attaching the label "cell tower mapping" expert to a witness whose education, experience, and training did not support that designation. The amount of mapping-related testimony Letterman offered after gaining the court-granted label of mapping expert does not affect whether it was proper under Rule 702, SCRE to grant him that designation in the first place. The Court's concerns over the materiality of the circuit court's erroneous ruling on Letterman's expertise should have been analyzed under South Carolina's "harmless error" jurisprudence. For the reasons discussed below, the Court would not be able to find harmlessness beyond a reasonable doubt.

3. Presenting Letterman to the jury as a "cell tower mapping" expert was not harmless error.

A trial court's error must lead to a new trial unless it is shown to be harmless beyond a reasonable doubt. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480, 484 (2008). This onerous standard is only met where the error "did not contribute to the verdict obtained." Id. (citing Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). Improperly admitted testimony cannot be harmless error when it goes to the heart of the case. In re Care & Treatment of Thomas S., 402 S.C. at 379, 741 S.E.2d at 30 (citing State v. Ellis, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001)). Whether Wright was present at the crime scene goes to the heart of the case, especially in light of the prior confession and dubious accusation of Wright's former codefendant Brandon Blackwood. Letterman was presented to provide, and offered testimony on, Wright's location around the time of the murder. (R. p. 496, lines 3-7). Finding improperly admitted cell tower mapping expert to be harmless error would also place South Carolina at odds with other jurisdictions. See e.g., Collins v. State, 172 So.3d 724, 744 (Miss. 2015) (holding that an officer's improper testimony on cell phone location data was "obviously" not harmless since its purpose was to place a criminal defendant "in the same geographic area at the time of the murder"); Wilder v. State, 991 A.2d 172,

200 (Md. 2010) (finding cell phone location evidence can have a "compelling" effect on the jury's perception of the defendant's whereabouts). Accordingly, the Court should grant Wright's petition and find Letterman's improperly admitted testimony was not harmless.

CONCLUSION

For the reasons stated above, Wright respectfully requests the Court grant this petition for rehearing.

Respectfully submitted,

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April 3, 2023
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 3, 2023, he served Respondents' counsel with the Petition for Rehearing at the email addresses listed below pursuant to Rule 262(c)(3), SCACR, and Section (d)(1) of the South Carolina's Supreme Court's August 25, 2021 order (Order No. 2021-08-25-02):

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State v. Angelita Wright (Appellate Case No. 2017-002531)

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1 attachments (104 KB)

A. Wright--Petition for Rehearing FINAL PDF.pdf;

Counsel:

I am attaching a Petition for Rehearing that is being electronically filed today with the South Carolina Court of Appeals. Pursuant to Rule 262(c)(3), SCACR and Section (d)(1) of the South Carolina Supreme Court's August 25, 2021, order (Order No. 2021-08-25-02), please consider this email as service for the Petition.

Thanks,

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