

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002531
Ct. App. No. 2023-UP-119 (filed March 22, 2023)

State of South Carolina, Respondent

v.

Angelita Nicole Wright, Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, Petitioner’s counsel certifies that a Petition for Rehearing was made on April 3, 2023, and denied on May 19, 2023.

QUESTIONS PRESENTED FOR REVIEW

1. May a police officer with minimal cell phone mapping credentials and who could not map the key phones lacked the requisite qualifications to serve as a cell phone mapping expert?
2. Was Wright prejudiced by the circuit court telling jurors that a witness with one day of mapping software training was qualified as a cell phone mapping “expert”?

STATEMENT OF THE CASE

Petitioner 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. (App. pp. 540-41). 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. On November 30, 2017, the jury returned a guilty verdict for murder and did not enter a verdict on the remaining charge. (App. pp. 529, 539). The Honorable R. Keith Kelly sentenced Wright to 30 years’ imprisonment on that same date. (App. pp. 533-37). Wright filed a notice of appeal that was timely served on December 11, 2017. The Court of Appeals heard oral arguments on June 2, 2020. On March 22, 2023, the Court issued an opinion affirming Wright’s conviction. (App. 1-14)

STATEMENT OF THE FACTS

Brent Lee Tessnear (“Decedent”) was discovered dead on the side of a Cowpens, S.C. roadway just before 3 a.m. on December 27, 2015. (App. pp. 45-47). Medical examiners

concluded Decedent was struck by a vehicle and died from blunt force trauma to his internal organs. (App. pp. 292-93). Brandon Blackwood once confessed to the killing, but it was Petitioner Angelita Wright, Decedent's estranged wife, who was tried and convicted for murder.

The night before Decedent's death, Wright and Blackwood were seen riding in a white pickup truck at various locations in Pacolet and Spartanburg, S.C. Blackwood testified he was driving the truck for some portions of the evening into the overnight hours. (App. 174; see also App. pp. 90, 241-42). During one stop at a relative's house, several witnesses saw Wright behind the wheel. (App. pp. 100, 104, 107, 116).

Witnesses at the relative's house heard Wright tell Decedent by phone that she would kill him. (App. p. 118). At least one person at the house told jurors Wright's words were not meant as a serious threat. (App. 99, lines 15-16). As Wright continued to vent her frustration, Blackwood volunteered to kill Decedent. (App. 118, line 20). As the night continued, Wright and Blackwood made an attempt to confront Decedent, but he was not home. (App. p. 134). They then traveled to a convenience store in Spartanburg, and Wright later met up with friends at her home in Pacolet. (App. p. 134-35). She was picked up from her home by a different friend (who was also Decedent's sister) at approximately 5 a.m. on December 27, 2015. (App. p. 244-47).

Three hours earlier (2 a.m.), Decedent was seen alive for the final time at a Cowpens' convenience store located a short distance from the crime scene. (App. pp. 59-60). When a passerby reported Decedent's body almost an hour later, officers from the Cowpens Police Department and Spartanburg County Sheriff's Office opened an investigation. Police learned several people had previously threatened Decedent with harm including one once drove to Decedent's house armed with a lead pipe. (App. pp. 65, 69, 272). When Wright was questioned

about Decedent's death, she denied being at the crime scene and gave officers the names of the friends who were visiting her in Pacolet when Decedent died. (App. pp. 134-35).

As the investigation continued, Blackwood directed officers' attention toward Wright by alleging she was driving the white pickup truck in Cowpens around the time of Decedent's death when she saw Decedent walking along the roadway and he alleged intentionally hit him despite Blackwood's protestations. (App. pp. 193-95). No other witnesses placed Wright at the crime scene in the hour (approximately 2-3 a.m.) before Decedent's body was discovered. Wright was arrested and charged with murder and leaving the scene of an accident resulting in death. The Seventh Circuit Solicitor, eventually replaced by the South Carolina Attorney General's office¹, prepared to try Wright with Blackwood as their key witness.

However, Blackwood's account of key events began to unravel in meetings with prosecutors and officers as Wright's trial date approached. Blackwood was near tears and confessed to driving the truck and killing Decedent. (App. p. 131). During an additional interview, Blackwood again contradicted his original statement implicating Wright. During a single session with investigators, Blackwood denied all involvement in Decedent's death, confessed to killing Decedent, confessed to the crime but insisted he was acting at Wright's direction, and admitted to killing Decedent but insisted it was an accident. (App. pp. 211-14). There was no consistency to Blackwood's statements. In one moment, he claimed to have been too drunk or sleepy on the night Decedent was killed to remember anything. (App. pp. 224-25). At others, Blackwood said he was not even sure Wright was in the truck when Decedent was

¹ Wright's prosecution was transferred to the Attorney General's office due to two possible conflicts of interests. As a result of Blackwood's changing stories, an assistant solicitor became a witness for purposes of Wright's trial. Additionally, Blackwood's grandfather was a retired member of the Spartanburg County Sheriff's Office. (App. p. 353, lines 4-12).

killed. (App. p. 461). After officers read Blackwood his rights and implored him to tell the truth, Blackwood signed a confession and was charged with murdering Decedent. (App. p. 381).

Even so, the State chose to go forward with its case against Wright alone using Blackwood as its sole eyewitness. During his trial testimony, Blackwood implicated Wright fully and told jurors his multiple confessions were lies coerced by the police.² (App. pp. 193-95; 219). On cross-examination, Blackwood admitted he hoped his testimony against Wright would help him avoid a life sentence for the murder charge he still faced. (App. p. 233). To supplement Blackwood's dubious testimony, the State called Officer Brandon Letterman, who participated briefly in the crime scene investigation but focused mainly on gathering potentially incriminating data from Wright and Blackwood's cell phones. (App. pp. 327-41). Testifying during the State's case-in-chief, Letterman described for jurors how he photographed the contact list from Wright's phone and performed a forensic extraction of the device's data. (App. pp. 331-37).

During her defense, Wright called Tom Slovenski, a cell phone forensics and cell phone mapping expert who explained how cell phone use can be analyzed to approximate the phone owner's location. (App. pp. 394-400). Wright's phone was not equipped with GPS or other active tracking technology. However, when her phone made or received calls or texts, a "transaction" was noted on records obtained from her cell service provider. (App. p. 402). Each transaction identified which of the provider's strategically located towers transmitted the call or text. By mapping each transaction, Slovenski showed jurors Wright's approximate location at several important moments before and after Decedent was killed. Since Wright's phone did not receive or make any calls/texts between 2:18 – 3:08 a.m., there was no transactions to map during that time period. (App. p. 444). However, Slovenski's data did show that from December

² Both the assistant solicitor and police investigator denied coercing or threatening Blackwood. (R. p. 380, lines 8-22; R. p. 392, lines 22-25).

26, 2015 at 11 p.m. to 5 a.m. the next morning, none of the transactions on Wright's phone corresponded with the cell tower that services the crime scene. (App. p. 426).

After Wright rested her case, the State recalled Letterman as a rebuttal witness. (App. p. 465). The State offered Letterman as a cell phone extraction and cell phone mapping expert. (App. p. 470). 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 the crucial 2 a.m. hour. (App. p. 480, line 13-21; App. p. 481, lines 12-14) (did not perform extraction on either phone); App. p. 482, 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. (App. p. 467, lines 10-11; 469, lines 3-7). His only training for operating the mapping software was a one day class. (App. p. 468, lines 22-24). He had not published any articles or obtained any certifications related to cell phone mapping. (App. p. 470, lines 8-13). Wright's counsel asserted a timely objection to Letterman's qualifications that the circuit court overruled. (App. p. 470, lines 9-17; 471, lines 5-7).

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. (App. p. 529; R. p. 539). The circuit court sentenced Wright to 30 years' imprisonment. (R. pp. 536-37).

ARGUMENT

Angelita Wright's murder trial came down to a simple question—was she even present at the crime scene? The State relied on two pieces of evidence to place her there. The State first presented testimony from an alleged eyewitness (Brandon Blackwood) who had previously confessed multiple times to committing the crime on his own and who later said he was either

intoxicated or asleep when the Decedent was killed. But this appeal focuses on the State’s second main piece of evidence. What the State could not establish with Blackwood’s conflicted and contradictory testimony, it then attempted to show with science and technology. The circuit court qualified Spartanburg County sheriff deputy Brandon Letterman as the State’s “cell phone forensics and cell tower mapping” expert. (App. 468, lines 4-6; 471, lines 5-7).

Letterman lacked the Rule 702, SCRE qualifications to testify as a “cell tower mapping” expert. He had only attended a one-day training class on the software (GeoTime) he used for mapping cell phone transactions. The circuit court’s admission of Letterman’s testimony and the Court of Appeals’ affirmance of that ruling stands at odds with precedent. See State v. Andrews, 424 S.C. 304, 818 S.E.2d 227 (Ct. App. 2018) (finding circuit court was correct in ruling potential expert’s one-week training class was “insufficient qualification” to testify as an expert).³ The Court of Appeals overlooked Andrews entirely, instead relying on case law qualifying an expert with far more qualifications than Letterman claimed here. See (App. 11) (citing State v. Warner, 430 S.C. 76, 84, 842 S.E.2d 361 (Ct. App. 2020) (affirming qualification of cell phone expert who had over 800 hours of training, served as a FBI instructor, and had previously testified as an expert 11 times)). The Court of Appeals then ceded Letterman may have lacked the training and experience required to testify on “complex areas of forensic mapping” (App. 11) but found no error in Letterman being presented to jurors as a “cell tower mapping” expert—the precise designation used for Wright’s uncontested cell phone expert (App. 400, lines 3-9).

In short, this case merits review to (1) correct the Court of Appeals’ deviation from Andrews; (2) create a baseline qualification threshold for the burgeoning field of cell tower

³ *Aff’d as modified*, 427 S.C. 178, 830 S.E.2d 12 (2019).

mapping experts; and (3) clarify that the expert designation a circuit court conveys on an expert must be limited to only those fields for which the expert has sufficient qualifications.

1. The Court of Appeals 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. (App. 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. (App. p. 480, line 13-21; 481, lines 12-14) (did not perform extraction on either phone); App. p. 482, 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. (App. p. 468, 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. (App. p. 467, lines 9-11; p. 469, lines 3-7).

In light of these acknowledgements, Andrews was the most important precedent for analyzing Letterman's proposed expert qualifications. 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. The Court of Appeals 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. The Court of Appeals 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. (App. p. 468, line 17 – 469, 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 556-58; Reply Br. at 629-31, 633-34, 639). By overlooking this essential precedent, the Court of Appeals failed to properly apply the minimum level of qualifications a police officer must obtain before offering expert opinions in a criminal trial. The Court of Appeals instead relied on a readily distinguishable expert qualifications opinion. (App. 11) (citing Warner). Warner affirmed the admission of a cell site location information expert but in the context of a very differently situated witness. The proposed expert in Warner was an FBI special agent who (1) received a certification as an instructor by his employer; (2) served as an expert on 11 prior occasions, and (3) completed over 800 hours of CSLI training. 430 S.C. at 84, 842 S.E.2d at 364. Since Warner bears little resemblance to this case and Letterman had only the insufficient qualifications cited in Andrews, this case merits review to correct the Court of Appeals’ deviation from precedent on the important issue of scientific expert qualifications.

2. The Court of Appeals 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. (App. 11) (concluding that mapping testimony “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. (App. p. 479, 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." (App. p. 468, lines 4-6). The State's request was designed to track the designation of expertise Slovenski was given during his testimony. (App. p. 400, 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 as 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 of Appeals' 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 harmless error beyond a reasonable doubt.

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. 373, 379, 741 S.E.2d 27, 30 (2013) (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 Blackwood, Wright's former codefendant. 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 testimony was improperly admitted and was not harmless as a matter of law.

CONCLUSION

For the reasons stated above, Wright respectfully requests this Court grant her petition for writ of certiorari and review the Court of Appeals' ruling.

Respectfully submitted,

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