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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
The Honorable Alison R. Lee, Circuit Court Judge

Appellate Case No. 2022-001551

THE STATE, Respondent,

v.

WILLIAM LEE ROSEBORO, JR., Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

215 N. Harvin St.
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

Appellant was indicted by a Sumter County Grand Jury for one count of trafficking marijuana, 100 or more pounds but less than 2000 pounds. Appellant proceeded to a jury trial on October 25-27, 2022, before the Honorable Alison R. Lee. Michael D. Routzong, Esq. represented Appellant. Prior to the call of the case, the State moved to amend the indictment to the lesser included offense of possession with intent to distribute (PWID).[1] The jury found Appellant guilty of possession with intent to distribute marijuana. Appellant was sentenced to eight years' imprisonment with credit for time served. This appeal follows.

[1] Based upon Appellant's prior record, the State proceeded forward on the PWID charge as a second offense.

STATEMENT OF FACTS

On January 12, 2018, Michael Rogers, an inspector with the United States Postal Inspection Service branch of the USPS, intercepted a suspicious package. The package, which was addressed to Appellant at his apartment in Sumter, South Carolina, had drawn Rogers's attention because it was tightly packaged and the name and address on the return label came back as false when ran through the CLEAR database. (R. 17-27). The package was sent from Los Angeles, California on January 10, 2018.

A canine search was conducted where the box was placed in a room with several other packages and the canine alerted to the suspicious package. (R. 179). A federal search warrant was obtained, and the box was then opened by Inspector Rogers. (R. 22-23). The box was opened from the bottom to prevent damage to the shipping label. (R. 23). Once opened, four silver mylar bags were observed and photographed. (R. 23). Inside the sealed mylar bags were heat and vacuum sealed bags of a green leafy substance, later identified as 3.9 pounds of marijuana. (R. 23, 65, 132).

A controlled buy was then conducted. Some of the marijuana was removed from the box and replaced with items to keep the same weight and then resealed.[2] Surveillance began and the package was then delivered by Inspector Rogers to the leasing office at 11:02 a.m. (R. 63). Appellant was observed entering the office at 11:08 a.m. (R. 63). At 11:10 a.m. Appellant exited the office carrying the package and was arrested shortly after. (R. 64). The package had not been opened nor had it been tampered with in anyway. (R. 64). Appellant was searched incident to arrest and inside of his wallet a receipt from a post office in California with the parcel's tracking number

[2] This is standard practice in the off chance the target could run off with the box and all of the evidence lost. Once Appellant was arrested, Rogers gave all 3.9 pounds originally photographed to Investigator Joseph Lane with the Sumter Police Department. (R. 22).

on it and airline receipts in Appellant's name for a flight from Columbia, South Carolina to Los Angeles, California from January 9-11, 2018, were found. (R. 32-34, 67-68).

At trial, Investigator Joseph Lane with the Sumter Police Department testified about the chain of custody. He stated that all the items that were seized from Appellant on January 12, 2018, including the parcel, its contents, and the items found in Appellant's wallet, were placed into a locker at the Sumter Police Department. (R. 72). Once the evidence was placed into a locker, it could only be removed by the evidence custodians who would take the evidence, label it, and transport it to the proper storage area to await testing or trial. He testified that every time the evidentiary items are handled by a person, that person signed off on a log notating when they handled the evidence and what they did with the evidence. (R. 68-72).

Alexis Carter, an evidence technician for Sumter Police Department, then testified as to the chain of custody. Counsel for Appellant initially objected to her testimony stating that Carter was not in the chain of custody from the time the evidence was seized until it was tested and therefore was not relevant. (R. 101). The State argued since the previous evidence technician at the time was retired, Carter, as the current evidence technician, could establish the chain of custody as best as practicable by showing the procedures followed and that it was not necessary or possible to bring the former evidence tech in to testify. (R. 101-103). The trial judge ruled that under case law the current custodian of evidence could testify to the records and files showing how the evidence was handled to further establish the chain of custody and that would satisfy the requirements of Rule 6, SCRCrimP. (R. 114-116).

After the court initially ruled, Counsel for Appellant argued additional issues with the chain of custody. He argued that he couldn't confront everyone in the chain of custody because they were not here. (R. 121). The State argued that the chain started at Inspector Rogers who then gave

it to Investigator Lane then to the retired evidence technician, then to Joseph Powell, the drug analyst, then back to the evidence technician where it remained in storage until brought to court by Carter, the current technician. (R. 121-123). Counsel for Appellant then argued that "there is one person in the chain of custody that's missing and you had testimony about this today. You had testimony that postal inspector Rogers delivered a package into the office of that apartment complex and he left it there. Who is that person, your Honor? [3] Can the state produce that person? If they cannot, this case should be dismissed, these drugs should be suppressed." (R. 124).

The State argued that Appellant was under surveillance the entire time, the box was intact when delivered, and that there was testimony that officers observed Appellant the entire time and therefore the argument was without merit because there is no indication whatsoever that there was anything to upset the integrity of that package. (R. 124-125). Quoting State v. Taylor,[4] counsel for Appellant argued that "[w]here the identity of persons handling the evidence is unknown, our courts have consistently held the evidence is inadmissible." (R. 125). The trial judge overruled the objection and motion to suppress the drugs stating that "the whole idea behind the chain of custody is making sure as well that the State or someone else doesn't tamper with the evidence that was obtained from the defendant. It's not whether it was tainted before it was given to the defendant." (R. 127).

After the State rested their case, Counsel for Appellant referenced again the insufficient chain of custody relying on State v. Chisolm,[5] and argued that the chain of custody begins when initial control is taken over the evidence and that the initial control occurred when Rogers

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[3] There is nothing in the record to indicate whether there was in fact someone in the office that the package was delivered to or was simply placed in a mail area within the leasing office for Appellant to pick up.

[4] State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004).

[5] State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401 (Ct. App. 2003).

originally opened the package pursuant to the search warrant and that the unknown office personal was a gap in the chain of custody and was fatal to their case. (R. 184-187). In clarifying Appellant's argument, the trial court asked, "that gap in the chain is the time period that it was in the office...the time period from when the postal inspector took the package and left it in the office for the defendant to pick it up." (R. 192-193). The trial judge ruled that while there didn't seem to be any caselaw that addressed circumstances when there is a third party who is not cooperating with law enforcement, he did not believe that the case law required the third party to come in and testify as to what happened to the package. (R. 198-199). He further stated that it was important that the postal inspector who delivered the package indicated that there was a seal on it, the tape hadn't been removed, and it hadn't been tampered with. (R. 200). Finally, he stated:

> For the purposes of, well, the chain and whether there's evidence to submit to the jury, I believe that the fact that it was picked up by the postal inspector, it was opened, it was photographed, the contents of it, it was repackaged, it was resealed, and it was delivered to an office that didn't have anything to do with law enforcement or with the defendant directly and that the defendant picked it up within a short period of time...And as soon as he came out of the office with the package before he had the chance to open it, he was stopped and it was seized from him and at that particular point I think is when all the chain of custody is to be established.

(R. 200-201).

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 the marijuana because a chain of custody was established.

Appellant contends that the trial judge erred in admitting marijuana where the chain of custody was not established because the State could not identify the civilian that the parcel was initially delivered to at the apartment complex. 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). "We 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. Taylor, that held "where the identity of persons handling the evidence is unknown, our courts have consistently held the evidence is inadmissible." State v. Taylor, 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct. App. 2004). Taylor further held that in cases where the identity of a person handling the evidence is unknown "the party offering the [evidence] failed to trace the evidence from the time is was gathered until it was tested. As a result, the identity of the people who had control of the evidence and what was done with it during their possession was left to speculation." Taylor, at 24, 598 S.E.2d at 737. Our Supreme Court has determined "where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007).

Appellant is making the argument that the State did not establish a sufficient chain of custody because the individual that Rogers delivered the package to in the leasing office was not identified and did not testify. There was no testimony that there was an "individual" that Rogers delivered to. While counsel for Appellant asked Rogers "Okay and at the apartment complex you

delivered it to the apartment, somebody in the office?" (R. 50). Rogers' response was "yes, sir, it was at the office. That's where the parcel delivered to so people can come pick them up." (R. 50). He did not testify that he handed it to any individual, simply that it was delivered to the office.[6] Even if there had been someone in the office that the package was delivered to, the chain of custody was established due to the condition of the evidence.

"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, and faith, or ill motive." Sweet, at 6, 647 S.E.2d at 205-206. "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, 431 A.2d 1016, 1019 (Pa Super. Ct. 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)).

Rogers testified that he delivered the package to the leasing office. (R. 50). Lane testified that surveillance began at 10:40 a.m. and Rogers was seen delivering the package at 11:02 a.m. (R. 63). The package remained in the office for six minutes before Appellant was seen entering the office at 11:08 a.m. (R. 63). Lane testified that they never lost sight of Appellant and he exited

[6] It is worth noting that there are many apartment complexes that have their mail and mail boxes in the leasing office and it is self-service.

the building at 11:10 a.m. carrying the package Rogers delivered. (R. 63). There is no evidence of tampering to the package. If there was a person that the package was delivered to in the office, he would have had only six minutes to open the package and remove or replace the drugs inside. Further, Lane testified that after arresting Appellant and seizing the package, there was no evidence of tampering to the box. (R. 64). The State sufficiently produced a chain of custody as far as practicable and therefore the trial judge did not err in admitting the marijuana.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

215 N. Harvin St.
Sumter, SC 29150

BY: _____
AMBREE M. MULLER
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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CERTIFICATE OF COUNSEL

The undersigned certifies 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."

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: _____
AMBREE M. MULLER
Bar # 104213

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jessica M. Saxon, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 29th day of February, 2024.

Grace Sommer

Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727