

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

CLYDE L. MCBRIDE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213470

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT;

V.

CLYDE LEROY MCBRIDE,

APPELLANT

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the State failed to establish a complete chain of custody for appellant's DNA without establishing a complete chain of custody for the vehicle in which the DNA was discovered?

STATEMENT OF THE CASE

Appellant was convicted of armed robbery, kidnapping, and first degree burglary after a jury trial held before the Honorable G. Thomas Cooper, Jr. on April 2-4, 2007, in Richland County. Thirty (30) year sentences were imposed on each charge.

A final Anders brief was submitted on January 29, 2008. On August 5, 2009, this Court issued an order directing the parties to brief the issue contained herein.

ARGUMENT

The State failed to establish a complete chain of custody for appellant's DNA because it failed to establish a complete chain of custody for the vehicle in which the DNA was discovered.

On August 29, 2005, the victim was robbed at gun point at her home. She was forced inside and currency and her car keys were taken. The suspect also took her car. On September 25, 2005, the car was recovered off of I-26 in Lexington County. Edward Cole was sent to tow the vehicle to the Richland County Sheriff's Department. When he got to the scene, there was a deputy from Lexington County there who told him not to touch anything inside the vehicle. He did not remember the deputy's name. (Tr. p. 235, line 6 – p. 239, line 25) The vehicle was towed back to the station where it was processed for prints and DNA. (Tr. p. 235, line 6 – p. 239, line 25) The steering wheel of the car was swabbed for DNA which was found to match appellant's DNA profile. When the State put Dr. Amick on the stand to testify about his DNA analysis, defense counsel objected because there was a missing link in the chain of custody of the vehicle. The Lexington County deputy who was at the vehicle when the tow truck driver came to get it did not testify. (Tr. p. 270, line 9 – p. 272, line 15) The trial court overruled the objection. (Tr. p. 276, line 6-24) The ruling was in error.

The vehicle was not recovered for 27 days after the crime. There was no testimony from the Lexington County deputy who was at the scene where the vehicle was first recovered. In State v. Glenn, 328 S.C. 300, 492 S.E.2d 393 (1997) this Court noted:

Because fungible items such as drugs or blood samples are not readily identifiable and may be easily tampered with, the party offering such items into evidence must establish a chain

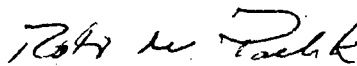
of custody as far as practicable. See, e.g., State v. Cribb, 310 S.C. 518 426 S.E.2d 306 (1992); Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957); State v. Johnson, 318 S.C. 194, 456 S.E.2d 442 (Ct. App. 1995), cert. denied (December 8, 1995). Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and analysis. However, the proof of chain of custody need not negate all possibility of tampering, but instead must only establish a complete chain of evidence as far as practicable. State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989); Johnson, 318 S.C. at 196, 456 S.E.2d at 443.

The State in this case could not say the car had not been tampered with. They offered no explanation for not having the deputy there to testify. As a result the chain of custody was not complete as far as practicable and DNA evidence found inside the car should not have been admitted.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 3rd day of September, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLYDE LEROY MCBRIDE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of September, 2009.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 3rd day of September, 2009.

Selicia K. Berry (L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010.