

State of South Carolina
In The Court of Appeals

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SC Court of Appeals

Appeal from Greenville County
Honorable G.V. Morgan, Jr., Circuit Court Judge

The State,

Respondent

v.

Tommy Lee Long

Appellant

Appellate Case No. 2023-001183

Anders Brief (Memorandum) of Appellant

Tommy Lee Long
391479
Lee Correctional Institution
990 Wisacky Hwy
Bishopville SC 29010

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Statement of Issue on Appeal

Did the trial court err in allowing Surveillance Footage Time Stamp to be authenticated by testimony of Natasha Booker?

Statement of the Case

Appellant was indicted in Greenville County for Murder, First-degree burglary, Kidnapping, First-degree assault and battery, Attempted armed robbery, Conspiracy, and a weapons charge and on July 10, 2023, he was tried before the Honorable C.T. Morgan and a jury. R.1. Seth Johnson and Courtney Landsverk represented the State. R.1. Craig Pringle represented appellant. R.1. The jury acquitted appellant of Murder, but convicted him on the remaining charges. R.553-56. Judge Morgan sentenced appellant to a total of thirty-five years imprisonment. R.561-62. This appeal follows.

Standard of Review

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a abuse of discretion accompanied by probable prejudice." State v. Brown 424 S.C. 479 818 S.E. 2d 735

"An abuse of discretion occurs when the conclusions of the court either lack evidentiary support or are controlled by an error of law." State v. Brown 424 S.C. 479 818 S.E. 2d 735

Argument

The trial court erred in allowing Tasha Booker to authenticate time stamp of surveillance footage.

An issue presented before this court is whether Tasha Booker testimony was sufficient to authenticate time stamp of surveillance footage. Appellate argues that the time stamp of surveillance footage were not properly authenticated. Appellate has no doubt that Tasha Booker was a proper witness and likely able to lay the necessary foundation. But in terms of establishing the accuracy of time, Tasha Booker simply observed the time stamp is accurate because "the paper says." R. 187. She later claims she left motel 6 with appellate "After midnight." R. 187. Such a response provides no assistance in assessing the accuracy of time stamp. Without this component of authentication satisfied, it was error to admit this evidence.

The State improperly authenticated time stamp of surveillance footage R. 177, R. 187. with Booker testimony. But Booker neither owned or operated the security system that recorded the video as vacquec did in *State v Gray* 438 S.C. 130 882 S.E.2d 469.

Judge Morgan overruled appellate objection R. 188. The court ruled it was authenticated under SCRE Rule 901 R. 188. Appellate acknowledges authentication is not a high burden and the reliability of time stamp in general is not genuinely disputed. The general acceptance of security technology does not, however, translate to the state getting a pass from making minimum showing that the time stamp (Pertinent to the element of time) it seeks to introduce

info evidence are accurate. Here, the testimony of Tasha Booker failed to authenticate because it shed no light on the accuracy of the time stamp.

As recognized by the Fourth Circuit Court of Appeals, Any concerns about the reliability of such machine-generated information is addressed through the process of authentication. When information provided by machines is mainly a product of mechanical measurement or manipulation of data by well-accepted scientific or mathematical techniques, "Then a foundation must be established for the information through authentication.

It is black letter law that evidence must be authenticated or identified as a condition precedent to the admissibility, is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. S.C.R.E. Rule 901. The method at issue here is:

(a) Process or System. Evidence describing a process or system used to produce a result and showing that the process procedures are accurate result.

"No elaborate showing of the accuracy of the recorded data is required however the State must make some showing to authenticate the record." *State v Brown* 424 S.C. 479 818 S.E.2d 735. Under the minimally burdensome test set forth, Tasha Booker failed to properly authenticate the accuracy of the time stamp. Thus, it was error for the trial court to admit this evidence because the time stamp were not properly authenticated.

Conclusion

For the foregoing reasons, this court should reverse
appellant's convictions and remand for a new trial

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Tommy Lee Leng 391479
Appellate

Pro Se

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Statement of Issue On Appeal

Did the trial court abandon its gatekeeping duty by failing to vet Detective Thomas' expert opinion testimony identifying appellant?

Statement of the Case

Appellant was indicted in Greenville County for Murder, First-degree Burglary, Kidnapping, First-degree assault and battery, Attempted armed robbery, Conspiracy, and a weapons charge and on July 10, 2023, he was tried before the Honorable G.V. Morgan and a jury. Pl. Seth Johnson and Courtney Landsverk represented the State. Pl. Craig Pringle represented appellant. P.1. The jury acquitted appellant of Murder, but convicted him on the remaining charges. P.555-56. Judge Morgan sentenced appellant to a total of thirty-five years imprisonment. P.561-62. This appeal follows

Standard of Review

"A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."
State v White 382 S.C. 265 676 S.E.2d 684

Argument

The trial court abandoned its gatekeeping duty by failing to vet the reliability of Detective Thomas Expert Opinion Testimony identifying appellant

"Before admitting expert testimony, a trial court must qualify the expert and determine whether the subject matter of the expert's proposed testimony is reliable, as required by Rule 702, S.C.R.E.": State v. Tapp 398 S.L. 376, 389, 728 S.E.2d 468, 475

Detective Thomas expert opinion identifying appellant R. 370-371 in State's exhibit 31 L. See Attachment I were in response to a hypothetical question based on second-hand account. Such expert opinion does not satisfy Rule 702, S.C.R.E. reliability requirement. Expert opinion based upon hypothetical facts probative value stands or falls on the existence or non-existence of the facts upon which it is predicated.

At trial Detective Thomas testified her identification was not based on her personal knowledge but based upon the image and information provided to her. R. 384. She also testified her informative source was Feronda Willard whom has been untruthful during her interviews. R. 381 R. 366-367. Contrary to the testimony of Detective Thomas, Feronda Willard denied seeing appellant prior to the crimes alleged R. 244 R. 262-263 at trial.

Detective Thomas expert opinion is of dubious value. The jury, after all, was able to view the fuzzy image R. 369 R. 383-384 R. 371 [See Attachment I] and hear the testimony of Feronda Willard and make an independent determination whether it believed that the individual

pictured in the photograph was in fact the appellant.

This Supreme Court outlined the three prong test for the admission of expert testimony. (1) The subject matter of the expert testimony must be beyond the ordinary knowledge of the jury making plain to the court the benefit to the jury of an explanation from an expert. (2) Proposed expert must have acquired the knowledge and skill necessary to qualify as an expert in a particular field. (3) The court must determine that the substance of the proposed expert's testimony is reliable. *Watson v. Ford Motor Co.* 389 S.C. 434 2009 S.E.2d 1169 (S.C. 2010)

"All expert testimony must satisfy the rule 702 criteria and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *State v. White* 382 S.C. 215 1676 S.E.2d 684 Here false evidence can not be used to meet the required threshold.

"Rule 703 S.C.E. does not, however make hearsay automatically admissible simply because it was relied upon by Expert." *State v. Kromah* 401 S.C. 340 737 S.E.2d 490 And Rule 704 S.C.E. does not lower the bar "So as to admit all opinions." Testimony on ultimate issues still "must be otherwise admissible under the rules of evidence, furthermore testimony must be helpful to the trier of fact in accordance with rules 701 and 702 and must not waste time, in accordance with rule 403. These provisions afford ample assurances against the admission of opinions which would merely tell the jury what result to reach.

In sum Detective Thomas expert opinion testimony identifying appellant was within the ordinary knowledge of the jury and based upon a false statement and false statements are inherently unreliable.

The trial court's disregard of its gatekeeping duty denied appellant a fair trial by failing to vet Relative Thomas expert opinion testimony allowing it to invade the province of the jury causing unfair prejudice to appellant.

Conclusion

For the foregoing reasons, this court should reverse appellant's convictions and remand for a new trial.

LS/TZL

Tommy Lee Long 391479
Appellant

Pro Se



Tommy Lee Long #391479
Lee Correctional Institution
FI-3-1255
990 Wisacky Hwy
Bishopville SC 29010

South Carolina Court of Appeals
Tanny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

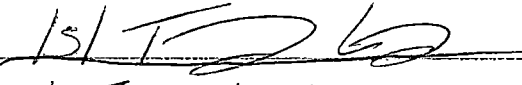
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Re: The State v Tommy L Long
Appellate Case No. 2023-001183

To whom it may concern

Enclosed is a copy of Appellant pro se brief addressing issues believed should be considered in this appeal. I am truly sorry for any delay I did not receive a copy of Anders Brief of Appellant and Record on Appeal until June 13th 2024 slightly delaying my written memorandum. Your help concerning this matter will be very grateful. Thank you in advance for your time and patience.

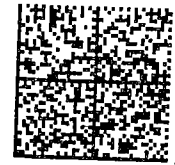
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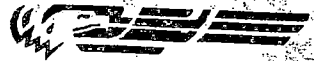

Tommy Lee Long 391479

Enclosure
cc: Filed

Tommy Lee Long 391479
FIB 1255
Lee Correctional Institution
990 Wisacky Hwy
Bishopville SC 29010

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Tenny Abbott Kitchings, Clerk
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