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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the SUPREME COURT**

**CERTIOTARI-PCR
Appeal from Laurens County
Court of Common Pleas
Honorable R. Scott Sprouse, Circuit Court Judge**

**Appellate Case No. 2024-000807
Lower Case No. 2021-CP-30-00479**

Arthur L. Williams, #344402, Petitioner,

vs.

State of South Carolina Respondent

PETITION FOR WRIT OF CERTIORARI

**C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
SC Bar № 06188
rauchwise@gmail.com
(864) 229-5010**

Attorney for Petitioner

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Statement of Issue Presented

Question I: Did the Post Conviction Relief judge err in failing to grant the application of Arthur Williams when trial counsel failed to object to the investigating officer testified that the informant in the case was paid more because the informant was more reliable?

Question II: Did the Post Conviction Relief judge err when he held appellate counsel was not ineffective when he failed to brief the issue as to Officer Matt Veal giving an opinion that a drug transaction was shown on the video when Officer Veal had not been qualified as an expert and jury was as qualified as Officer Veal to say what was shown on the video?

Question III: Did the post conviction relief judge err in failing to find that appellate counsel was not ineffective when appellate counsel failed to brief the issues of Officer Shane Prather testifying, in response to a question from the assistant solicitor that Arthur Lee Williams' name had come up on their radar?

Standard of Review

As to the factual findings of the trial judge the standard of review is abuse of discretion.

As to legal conclusions from those findings of fact, the review is de novo. *Smalls v. State*, 422

S.C. 174, 810 S.E.2d 836 (2018)

Statement of the Case

Procedural History

On July 21, 2015, Arthur Lee Williams was arrested and charged with distribution of crack cocaine. On the same day, he posted a \$25,000 surety bond and was released from Laurens County Detention Center. On October 2, 2015, the Laurens County Grand Jury indicted him for the distribution charge. He was tried before the Honorable Donald C. Hocker and a jury on May 24-25, 2018. The jury convicted him of the charges, and Judge Hocker sentenced him to 25 years imprisonment. A Notice of Intent to Appeal was filed on May 25, 2018.

The South Carolina Court of Appeals affirmed the conviction on May 27, 2020. No Petition for Rehearing nor Petition for Writ of Certiorari to the South Carolina Supreme Court was filed.

On May 21, 2021, Mr. Williams filed his Post Conviction Relief Petition. A hearing on the Post Conviction Relief application was held on December 1, 2022 before the Honorable R. Scott Sprouse. By order dated March 28, 2024 the Post Conviction Relief application was denied.¹ A timely Rule 59e motion was filed on April 5, 2024. The Motion was denied by Order dated April 9, 2024. A Notice of Appeal was filed on May 17, 2024.

Factual History

On July 20, 2015 Laurens County Sheriff's Officer Shane Prather and Matt Veal arranged with an informant to attempt to purchase crack cocaine from Arthur Lee Williams on Pondersa Lane in Laurens County. App. at 103, ll 10-14. The informant was searched with a pat down

¹ The length of time between the hearing and the final order was due in part to the attorney who handled the PCR for the state left the Office of the Attorney General shortly after the hearing.

search and not a strip search. App. at 71, ll 14-18. The informant was wired with a camera and a microphone. App. at 72, 8-12. Neither officer was able to visually watch the informant. The alleged drug sale took place inside the house the informant went to. State's exhibit 12. The informant was given \$100 in marked money to make the alleged purchase. App. at 83, l 8.

After the alleged purchase, the informant met again with the officer where he was searched a second time. App. at 84, l 22 to 85, l 2. He gave the officer the crack cocaine which was introduced as state's exhibit 14. They reviewed the video before dismissing the informant. App. at 85, ll 14-18.

The informant testified he had worked with the law enforcement officer before. He stated he typically received money for helping the law enforcement. He testified that earlier on July 10, 2015 he had called Arthur Williams about making a purchase. App. at 110, ll 3-7. The state did not introduce a recoding of this phone call. When initially asked if he recognized the disk the video was on, he responded, "Not really." App. at 113, l 21. The informant subsequently testified that he had reviewed the video, and it accurately depicted what happened that day. App. at 113, ll 24 to 64, l 22.

On cross-examination the informant admitted he had been assaulted and spent some time in the hospital. He was unable to say how long he spent in the hospital. App. at 121, l 13 to 124, l 2. At one point the informant became very defensive and the trial judge had to excuse the jury and admonish him to answer the questions being asked. App. at 126, ll 19-24. The informant, while looking at the video, admitted at one time the crack cocaine shown in the video was on the informant's side of the table. App. at 133, ll 3-10. He subsequently denied the crack cocaine was on his side of the table. App. at 134, ll 12-20.

The video introduced at trial is not very clear as to what was happening. As a result, the informant was not clear as to whose hands were seen in the video. Both the defendant's trial counsel and the state attempted to clarify this issue. App. at 135, ll 1-11; 154, ll 11 to 155, ll 13.

At the Post conviction relief hearing, the trial counsel did not agree that the investigating officer testifying that they paid the informant more because he was more reliable was vouching for the credibility of the informant. App. at 12, ll 8 to 13, ll 21. The appellate counsel did not brief the issue as to Officer Shane Prather testifying that Arthur Williams got on the radar of the narcotics officers. His reason for not briefing the issue was that it was not offered for the truth of the matter asserted. App. at 34, ll 4 to 35, ll 12. Nor did he brief the issue as to Officer Veal testifying as to what the video tape showed when he was not present in the room during the alleged drug sale. App. at 32, ll 4-24. As he testified, he believed Officer Veal is "allowed to testify as to his perception, yeah." App. at 32, ll 24.

Argument

Question I

Did the Post Conviction Relief judge err in failing to grant the application of Arthur Williams when trial counsel failed to object to the investigating officer testified that the informant in the case was paid more because the informant was more reliable?

In re-direct examination of Officer Matt Veal, Officer Veal was permitted to say, with no objection the following:

And in this instance with Mr. Anderson, [the informant] I believe he was paid \$50. To me, we're paying him more than what we would a normal informant. So that tells you that the reliability of Mr. Anderson, in mine and Sgt. Prather's mind and Capt. Goggins', that he was an established informant. We were able to pay him more because of his reliability. App. at 197, ll 14-20.

At the Post Conviction Relief hearing, trial counsel testified he did not believe this was vouching and, therefore, he did not object. App at 13, l 4 to 14, l 10. As he tried to explain, "[I]t's not essentially vouching for him, its commenting on facts regarding his pay that happen to make him more reliable and certainly, these are facts that are admissible, I would assume, I mean I just believe that." App. at 13, l 25 to 14, l 3. Trial counsel at the PCR hearing still believed the testimony of Officer Veal that the informant was paid more because he was more reliable, was still proper. This assumption is simply not correct.

Well before this trial, the courts in South Carolina had long held that vouching as to the credibility of a witness was not proper. *See, State v. Dawkins*, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989)(holding the question "'Based on your examination and your observations of Pamela, are you of the impression that her symptoms are genuine?'," to which the doctor answered, 'yes.' The judge sustained an objection." was improper vouching); *Briggs v. State*, 421 S.C. 316, 325,

806 S.E.2d 713, 718 (2017) (“After *Dawkins* in 1989, certainly after *Douglas* in 2009 and *Smith* in 2010, reasonably competent trial counsel should know to object—absent a valid trial strategy—when a forensic interviewer gives testimony that indicates the witness believes the victim, but does not serve some other valid purpose.”). Trial counsel did not offer any trial strategy. As noted above, he mistakenly believed the testimony was proper. His mistaken belief is ineffective assistance of counsel.

The Kentucky Supreme Court has held testimony in a jury trial as to an informant’s reliability is improper. The Court said, “Testimony about a C.I.’s reliability is appropriate in an affidavit taken to establish probable cause when the police are seeking to obtain a search warrant. However, admission of such evidence at a criminal trial is a different matter. Lantrip’s testimony that Royal was a reliable informant whose work had always resulted in convictions was inadmissible character evidence under KRE 404(a).” *Farrow v. Commonwealth*, 175 S.W.3d 601, 605 (Ky. 2005)(internal citations omitted) *see, also Page v. State*, 733 So. 2d 1079, 1081 (Fla. Dist. Ct. App. 1999)(holding the statement “Everything he did for us he was very trustworthy and reliable.” to be improper)

The PCR judge determined that trial counsel was not ineffective because he expressed a valid trial strategy. The PCR court found the strategy was “he wanted evidence to come in that Anderson was being paid by law enforcement because it could support his argument to the jury that Applicant had a motive to lie.” App. at 337. This is simply not logical. Being paid is hardly a basis for concluding that the informant lied. Secondly, trial counsel, during cross examination of the informant, had obtained the information that the informant was being paid. App. at 135, ll 12-25. No need existed for trial counsel to fail to object to the vouching testimony of Officer Veal.

With decision going back to 1989, any reasonably competent trial lawyer should have been aware that such vouching is not proper. The solicitor in this case would not have been permitted to argue before the jury that he believed the informant to be reliable. As this Court has noted, “A solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record.” *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). Such vouching is equally wrong if a witness for the state does it. No facts in this record support the factual finding by the Post Conviction Relief judge that the decision by the trial counsel was a trial strategy.

Prejudice

The evidence in this case consisted of the informant who at one point testified his hand was not on the video that was introduced. App. at 134, ll 10-11; 135, ll 5-11. The video itself is not clear, contrary to the testimony of trial counsel. See Video of buy. At one point the witness had to be admonished outside of the presence of the jury to simply answer defense counsel's questions. App. at 126, l 19 to 127, l 20. When asked if he recognized the CD of the alleged buy, his response was “Not really.” App. at 113, l 21. Without the vouching by Officer Veal, the evidence is weak. In addition, when Officer Veal testified as to the reliability of the informant, he improperly expressed the opinion that two other officers agreed with him. App. at 197, ll 16-20.

To determine the Applicant was not prejudiced requires this court to determine that the error was harmless. As to harmless error this court has stated, “Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475

(2012).

The PCR judge found that there was substantial evidence to sustain the conviction, including the video. The video in this case is marginal at best. It does not clearly show the alleged transaction. The confusion of the informant is apparent from the trial transcript. An officer vouching for himself and to other officers as to the reliability of the informant could not be deemed harmless beyond a reasonable doubt.

Question II

Did the Post Conviction Relief judge err when he held appellate counsel was not ineffective when he failed to brief the issue as to Officer Matt Veal giving an opinion that a drug transaction was shown on the video when Officer Veal had not been qualified as an expert and jury was as qualified as Officer Veal to say what was shown on the video?

First, a discussion must be held as to what this issue is not about. This issue does not involve the question of whether Officer Veal could have identified Arthur Williams as being on the video. This issue has been resolved in South Carolina. In a case where two witnesses identified the defendant as the robber from a store surveillance camera, this Court said, “Brown’s and Young’s testimonies were based on their perceptions of Fripp, not only on the videotape, but during the time they had known and observed him in the Store.” *State v. Fripp*, 396 S.C. 434, 439, 721 S.E.2d 465, 467 (Ct. App. 2012). This case does not involve the officer identifying Mr. Williams from the video of the alleged drug sale.

In the re-direct examination of Officer Matt Veal, the state asked the following:

Q. (By Ms. Boykin) Okay. So in your opinion, it was Arthur Lee Williams that put the drugs on the table?

A. (By Officer Veal) I - - in my opinion, Arthur Lee Williams placed the original

rock on the table for Sammy - - -

Q. Okay

A. - - - for the business that he was bringing - - -

MR. TONEY: Objection: Speculation. Not testifying about evidence at this point. He's just giving opinions.

THE COURT: Well, based upon his experience, I - - I - -I think he can - - he can You can answer, Sgt. Veal.

Sargent Veal was not qualified as an expert. The opinion he was giving would have to be given by a qualified expert, if there is such an expert as interpreting videos of alleged drug sales. Rule 702 permits experts to give an opinion. As Sargent Veal was not qualified as an expert, he was not permitted to give his opinion as to the issue. The testimony of Sargent Veal is also not admissible as an opinion of a lay witness under Rule 701. Sargent Veal was not testifying as to his perception as to the event as he was not present when the alleged drug sale took place. Nor is this testimony "helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Rule 701. The objection should have been sustained and the jury instructed to disregard the testimony.

North Carolina has held that a narration interpreting what was seen on the video was improper. The Court held:

Detective Welborn was not offering his interpretation of the similarities between evidence he had the opportunity to examine firsthand and a videotape, but rather offering his opinion that the actions depicted in the surveillance video were similar to the female's recollection of the alleged kidnapping and robbery. Accordingly, we find that the admission of Detective Welborn's testimony was in error.

State v. Buie, 194 N.C. App. 725, 733, 671 S.E.2d 351, 356 (2009)

The Illinois appellate court also has held a narrative describing what is on a video is not proper. The court said:

Testimony about the contents of a video recording by a witness with no firsthand

knowledge of the events depicted is treated as the opinion testimony of a lay witness. Thus, the witness's opinion as to the contents of a video recording is inadmissible if the jury is as capable as the witness of drawing inferences or conclusions from the recording.

People v. Hampton, 2021 IL App (5th) 170341, 195 N.E.3d 1260, 1281 (2021)

In a thorough analysis of cases from many states, the New Jersey Supreme Court concluded, “[A]lthough lay witnesses generally may offer opinion testimony under Rule 701 based on inferences, investigators should not comment on what is depicted in a video based on inferences or deductions, including any drawn from other evidence.” *State v. Watson*, 254 N.J. 558, 604, 298 A.3d 1049, 1075 (2023). *See also Morgan v. Commonwealth*, 421 S.W.3d 388, 392 (Ky. 2014)(recognizing the rule in saying “The present case does not implicate impermissible ‘narrative-style testimony’ or any other improper description of video or photo images from a witness' perspective.”)

Officer Veal was permitted to say, over an objection, that Mr. Williams placed drugs on the table to sell to the informant. This was in essence permitting the officer to say based on the video, Mr. Williams sold the drugs. Such a conclusion is improper. The appellate counsel erred in failing to brief the issue.

Furthermore, appellate counsel did not brief this issue because he had other important issues to brief. Appellate counsel incorrectly believed Officer Veal was permitted to testify as to his perception. As appellate counsel testified, “I also don’t think there was an error — as I said, I think you’re allowed to testify to your perceptions.” App. at 33 1 18-22. The error in this case was the perception of Officer Veal was that Mr. Williams was guilty. No court has ever admitted such a perception.

Prejudice

Arthur Lee Williams was prejudiced by the failure to brief this issue. Clearly the testimony was not admissible. The video in this case is marginal at best. The jury easily could have believed that Officer Veal knew more or saw more in the video than they did. Accepting his testimony by the jury would have been wrong. He was in no better position than the jury to determine what was on the video. They were never told not to accept what he said. Thus, Mr. Williams was prejudiced by the failure to brief this issue on appeal.

Question III

Did the post conviction relief judge err in failing to find that appellate counsel was not ineffective when appellate counsel failed to brief the issues of Officer Shane Prather testifying, in response to a question from the assistant solicitor that Arthur Lee Williams name had come up on their radar?

The first witness for the state was Officer Shane Prather. Very early in his direct examination the assistant solicitor asked the following questions:

Q. (By Mr. Scott) Who was the intended target whenever you guys went to [a certain street address]?

A. (By Officer Prather) Arthur Lee Williams

Q. Okay. His name had somehow gotten on y'all's radar?

A. It .

Q. Okay. And - - -

MR. TONEY: objection. hearsay.

MR. SCOTT: Judge, I - - -

THE COURT: I don't think it is offered for the truth of the matter asserted. I think it's - - more goes towards this officer's state of mind in - - in setting up this controlled buy. So, I'll overrule the objection, You may - - you may proceed.

Q, So Arthur Lee Williams' name had come on - - on your radar?

A. Yes, Sir.

App. at 74, ll 7-22

Obviously the testimony was being offered for the truth of the matter asserted or at least

the belief of the officers that it was true. If the officers had known the information to be false, they would not have been setting up an alleged controlled buy on Arthur Williams. The trial court also admitted the improper testimony as going to the officers' state of mind. The state of mind exception to hearsay is only admissible if the state of mind is relevant. As the supreme court has said, "As Atkins' state of mind was relevant, admission of the testimony was proper." *State v. Atkins*, 303 S.C. 214, 221, 399 S.E.2d 760, 764 (1990). The state of mind of either officer as to why they were setting up a controlled buy as to Mr. Williams was simply not relevant to the issue of whether Mr. Williams made a drug sale. The objection should have been sustained and the issue should have been briefed on appeal.

The only logical inference the jury could draw from this testimony is that Mr. Williams had a reputation of dealing drugs. A person does not get on the radar of the police by attending church every Sunday. This unnecessary question placed the reputation of Mr Williams as being a drug dealer before the jury.

In a Georgia case, the officer testified, "First of all, I was given a list and Robert Anderson was on that list as being one of the suspected drug dealers...." *Anderson v. State*, 252 Ga. 103, 103, 312 S.E.2d 113, 114 (1984). The Georgia Supreme Court reversed the conviction stating:

The Court of Appeals affirmed the action of the trial court on the basis of OCGA § 24-3-2 (Code Ann. § 38-302)1 which permits certain evidence which would otherwise be hearsay so long as it is admitted for the limited purpose of explaining conduct or ascertaining motives. This fails, however, to meet the objection that the testimony placed in evidence defendant's character. *Id.* (Internal citations omitted)

In an Arizona case, an objection was raised to this question, "I received numerous

comments from concerned citizens that they suspected drug activity in a residence in San Manuel.” *State v. Ramirez Enriquez*, 153 Ariz. 431, 432, 737 P.2d 407, 408 (Ct. App. 1987). In reversing the conviction, the court said:

The context of the questioning made it clear that the residence referred to was the defendant's residence. Defense counsel's objection should have been sustained. The supervisor was testifying that a number of people had told him that defendant was a drug dealer. Not only is this inadmissible hearsay but it also is an attempt to prove defendant's character as a drug dealer from which the jury was invited to infer his guilt of the present charges. *Id.*

In a Montana case, the court in reciting the facts stated, “On direct examination Officer Bernall testified that the informant was provided with a list of ‘known’ drug dealers in the Libby community to infiltrate and that the Defendant was on that list.” *State v. Gommenginger*, 242 Mont. 265, 270, 790 P.2d 455, 458–59 (1990). In reversing the conviction the court held:

The testimony of Officer Bernall amounted to evidence of the Defendant's bad character as a drug dealer that would invite the jury to infer the Defendant's guilt based on his alleged reputation as a drug dealer in the Libby community. The Defendant did not put his character into issue, and admission of such evidence constitutes reversible error. *Id.* at 271, 790 P.2d at 459.

These cases establish that the testimony as to Mr. Williams being on the ‘radar’ was not proper. The appellate counsel testified that he did not believe the evidence was hearsay. App. at 34, ll 23-24. He agreed it was possible for the statement to be a reflection on his character. In the event this court rejects the hearsay argument, then this court should find trial counsel was ineffective in failing to raise the character issue.

Prejudice

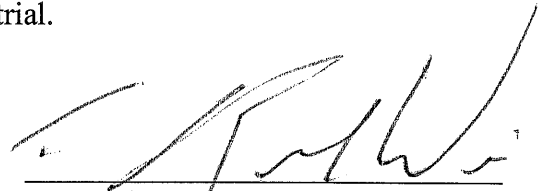
Telling the jury that the narcotics officer suspected Arthur Williams of being a drug dealer before they sent in an undercover informant is prejudicial. The statement gave credibility

to the informant and hurt the reputation of Mr. Williams. Whether Mr. Williams was or was not on the radar of the narcotics officer was simply not legally relevant to any issue in the case. As previously mentioned as the video was marginal at best, this permitted the jury to decide the case on an improper basis.

CONCLUSION

For the foregoing reasons, the decision of the Post Conviction Relief Judge should be reversed and Arthur Lee Williams should be given a new trial.

September 12, 2024



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 6188

Attorney for Arthur Lee Williams