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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CYNETHIA KATHLEEN MORTON,

APPELLANT

APPELLATE CASE NO. 2024-000377

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting the autopsy report of Dr. Richards which contained inadmissible hearsay from the coroner, law enforcement, and McLeod Regional Medical Center, where this also denied appellant her right to confront and cross-examine the witnesses against her, and this hearsay evidence was impermissibly used by the state to prove elements of the crime charged?

STATEMENT OF THE CASE

Appellant was indicted at the August 3, 2023, term of the Marion County grand jury for the offense of reckless vehicular homicide. R. 210. Her case was called to trial on February 26, 2024, before the Honorable Michael Nettles, and a jury. John Clark represented appellant. Kevin Hope was the assistant solicitor. R. 1.

On February 27, 2024, the jury found appellant guilty. R. 202, ll. 12-16. Judge Nettles sentenced appellant to thirty months' imprisonment. R. 207, ll. 17-23.

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 manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. at 429–30, 632 S.E.2d at 848.

The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." This procedural protection applies in both federal and state prosecutions by virtue of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 406, (1965).

ARGUMENT

The court erred by admitting the autopsy report of Dr. Richards which contained inadmissible hearsay from the coroner, law enforcement, and McLeod Regional Medical Center, where this also denied appellant her right to confront and cross-examine the witnesses against her, and this hearsay evidence was impermissibly used by the state to prove elements of the crime charged.

The decedent, Jyheam Robinson, in this case was a passenger in the automobile the teenaged appellant was driving on the morning of December 11, 2021, in Marion County. The car ran off the road and crashed in the woods at approximately 7:15 a.m.

The first witness at trial was the pathologist, Dr. Virginia Richards. Dr. Richards was employed by the Medical University of South Carolina. R. 62, ll. 3-9.

Dr. Richards testified that the decedent had already been embalmed by the time she conducted her autopsy on his body, which hindered the autopsy. R. 64, l. 10 – 65, l. 16. Dr. Richards saw "artifacts of embalming, I could see that there were some rib fractures. I could see that he had undergone a surgery on his left thigh. I could see that he had undergone surgery for some fractures in his neck bones and his vertebral column there. And I also read the medical records from McLeod Regional to correlate what I was seeing with what they said was done, and it did correlate." R. 65, ll. 10-23.

Dr. Richards testified that she determined the decedent had a blood clot in his lungs which caused his death. R. 66, ll. 2-4. When the solicitor attempted to introduce the autopsy report, the judge ruled that it was admitted into evidence over the defense's objection. R. 66, l. 12 – 67, l. 4.

Dr. Richards then opined that the cause of death of the decedent was "pulmonary thromboembolism completing treatment for blunt force injuries." R. 67, ll. 11-14. Dr. Richards explained that this involved the blood clot she referred to earlier. "The clot had formed elsewhere, often in the leg vessels, and had dislodged and so then blocked the vessels in his lungs, which is why he had a sudden death." R. 67, ll. 15-20.

On cross-examination, Dr. Richards testified she learned the decedent had been in the hospital for several days, which increased the risk of forming blood clots. R. 70, ll. 2-8. Dr. Richards acknowledged that she did not speak with the doctors in the hospital where the decedent stayed, but she reviewed the medical records that she was given. R. 71, ll. 12-17. Dr. Richards did talk to law enforcement about what they believed happened in this case. R. 72, l. 22 – 73, l. 20. The date of the accident was December 11, 2021, and the decedent died in the hospital on December 18, 2021. R. 74, ll. 1-12. Dr. Richards acknowledged that she was aware the decedent's mother "said he got poor care in the hospital…" R. 79, ll. 18-25.

On redirect examination, Dr. Richards opined that the decedent died as a proximate result of the injuries he sustained in the car accident where appellant was driving. This meant that she did not think the negligence of the Marion Hospital was the proximate cause of the decedent's death as the defense asserted throughout appellant's trial. R. 82, ll. 8-10.

The autopsy report in this case is at R. 212-218. The autopsy report was admitted over defense objection, read in pertinent part:

> According to the coroner, the decedent was the unrestrained backseat passenger of a car during a collision with a tree stump while in a high speed chase with law enforcement on December 11. He was admitted to McLeod Regional Medical Center. According to medical records from McLeod Regional, the decedent was alert and oriented immediately after the accident but was complaining of not being able to feel anything below his mid-chest level and shoulder pain preventing him from moving his

> arms. He was unable to move his lower extremities. Imaging revealed a fracture of the left femur for which he underwent surgery the same day and was encourage[d] to do weight bearing the day after. Imaging of the cervical spine revealed fractures of the 5th and 6th cervical vertebrae for which he underwent surgery on December 15 for fusion of the 5th through 7th vertebrae. On December 18, he went unresponsive while being rolled for a suppository placement, and his oxygen saturations were in the low 70%s. His oxygen saturation increased significantly with bag-mask ventilation, however he coded several times before being pronounced dead. The decedent's mother brought her concerns of poor medical care to the coroner's attention, and an autopsy was requested after the decedent had been embalmed. Please see the coroner's report for further details.

R. 212-218.

In what can only be described as hostile testimony against the defense or defense counsel, Highway Patrolman Joseph Rowell was the state's next witness. Rowell testified that on December 11, 2021, he was patrolling on US-76 in Marion County. At about 7:15 a.m., he was traveling on US-76 into the city of Mullins. He noticed two automobiles traveling in the other directions going seventy-three miles an hour in a forty-five mile an hour zone. Rowell said appellant's car was one of the speeding cars, and when the highway went from four lanes to two lanes, he claimed appellant effectively "pushed" the other car from the road. R. 84, l. 14 – 85, l. 15.

Rowell turned around and began to follow the vehicles intending to stop them. Rowell said the second vehicle, the one that appellant was not driving, turned off the road and stopped. He maintained he clocked appellant's car at 112 miles an hour. When the car went around the curve, he lost sight of it, "and when I got into the curve, I noticed a trail going through these people's yard to the right-hand side where there was dust everywhere, there was clothes, debris in the trees. And at that time, I knew that vehicle had wrecked. I had pulled over, initiated my

blue lights, and I got out of my vehicle and approached where there was some shrubs against some woods." R. 84, l. 14 – 85, l. 15.

Rowell also remembered hearing people talking in the woods, and he asked if everyone was alright. As he made his way into the woods, he noticed appellant's car was upside-down on its roof. One person, the decedent, was still inside the vehicle, and there were three people, including appellant, standing outside the car. Rowell said he told the decedent inside the car that he would "be alright" and that the fire department and EMS were on the way. R. 85, ll. 21-25. Rowell remembered that the decedent kept telling him that he could not feel his legs. R. 85, l. 25 – 86, l. 10.

Rowell said he later determined the car appellant was driving was her mother's automobile. Rowell went to see appellant in the hospital, and he asked her "why did you do it?" and he maintained appellant said: "I was scared, and I didn't have a license." R. 102, l. 8 – 103, l. 9.

On cross-examination, defense counsel asked Rowell to admit "that this was a terrible investigation." Rowell repeatedly answered that defense counsel needed to ask the Marion County Sheriff's Department if he had any questions about what happened in the car accident or about the adequacy of the investigation. R. 128, l. 2 – 131, l. 14; 132, l. 10 – 139, l. 14.

Defense counsel asked Trooper Rowell to admit that if medical negligence in the hospital caused the victim's death, then the car accident was not the cause of death. Rowell responded that he was not a physician and that defense counsel needed to ask the Marion County Police Department about the medical negligence legal issue. R. 143, ll. 4-12.

Rowell also maintained that he told a Marion County sheriff's deputy after the accident that he clocked appellant's car going 112 miles an hour before the accident. He denied it was

several months after the accident before he first alleged the car was going that fast. R. 134, ll. 7-25.

Marion County sheriff's deputy Bryan Woodberry remembered the car accident on December 11, 2021. Deputy Woodberry talked to appellant and her mother at the MUSC Hospital in Marion later in the morning on the day of the accident. R. 150, l. 4 – 151, l. 11. Woodberry told appellant that the decedent was not doing well at McLeod Hospital in Florence, and he acknowledged both appellant and her mother "showed concern and sorrow . . . and she did tell me that she panicked, but I don't remember the exact conversation word-for-word." R. 152, l. 8 – 153, l. 23.

Discussion

The autopsy report in this case contained inadmissible hearsay from the coroner's office, the hospital and from law enforcement. While an expert may base her opinion on hearsay evidence which is not admissible, so long as that evidence is of the type reasonably relied upon by experts in the field pursuant to Rule 703, SCRE, a report containing hearsay evidence is not admissible merely because it was written by an expert. See State v. Franklin, 318 S.C. 47, 57, 456 S.E.2d 357, 362-63 (1995). Rule 801(c), SCRE, provides that "'hearsay' is a statement other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted."

In this case, the hearsay in the autopsy report stated that according to the coroner, the decedent was an unrestrained backseat passenger in a car which collided with a tree stump while in a high-speed chase with law enforcement on December 11, 2021. This was a highly prejudicial and likely an inaccurate statement by the coroner. That contention about a "high speed chase" was obviously given to the coroner by law enforcement since the coroner was not

present at the time of the car accident. The evidence at trial strongly suggested that appellant knew she was being followed or "chased at a high speed" by Trooper Rowell at the time of the car accident. Rowell admitted he lost sight of appellant's car when he turned around to pursue it and his blue light was not on.

Further, the information given by McLeod Regional Medical Center contained in the autopsy report seemed to state that the decedent died on December 18 when he became unresponsive during seemingly normal treatment for his injuries. The hospital information imparted to the pathologist did not address the issue of the hospital's possible medical malpractice being the proximate cause of the decedent's death.

This case is distinguishable from State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005), wherein the Supreme Court found that the autopsy reports in that case were not inadmissible hearsay because autopsies are required in cases of SIDS. Pursuant to Rule 803(8), SCRE, reports containing matters where there was a duty to report were not considered hearsay. See also Rule 803(9), SCRE.

Here, Dr. Richards, who performed the autopsy, testified in this case, which also made the admission of the report unnecessary pursuant to South Carolina Code Ann. § 17-5-280.

Moreover, even if the autopsy report itself was admissible, it still should have been redacted to remove the subjective hearsay opinions from the coroner and hospital personnel since the people from those entities who provided those opinions did not testify and were unavailable. Therefore, appellant did not have a prior opportunity to cross-examine them. See Crawford v. Washington, 541 U.S. 36 (2004). A defendant has a right under the Confrontation Clause to question live the analyst of even seemingly objective forensic test results relied upon by a

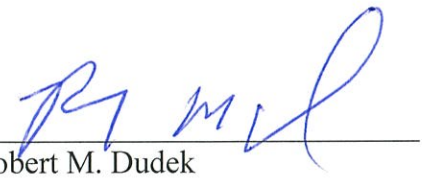
testifying expert at trial. See Melendez-Diaz v. Massachusetts, 557 U.S. 305, 310-11 (2009); State v. Brewer, 438 S.C. 37, 882 S.E.2d 156 (2022).

The hearsay in this case was very prejudicial because the supposed information from the coroner by way of law enforcement that appellant was engaged in a "high-speed chase" with law enforcement automatically provided the illusion of proof of the "recklessness" element of the crime for which she was convicted where appellant was unable to confront and cross-examine the coroner who allegedly provided this information. Further, information provided by McLeod Regional reportedly showing the decedent died of injuries sustained in the collision, and that his death was not proximately caused by the hospital's negligence, also provided hearsay evidence that appellant's negligence or recklessness, and not the hospital's malpractice, was a proximate cause of the decedent's death. R. 196, ll. 6-21.

In short, the inadmissible hearsay evidence contained in the autopsy report was enormously prejudicial and impermissibly contributed to a finding of negligence, or recklessness on appellant's part, and purported to show that the proximate cause of the decedent's death was appellant's recklessness and not the hospital's malpractice. For these reasons, appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Marion County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2024.

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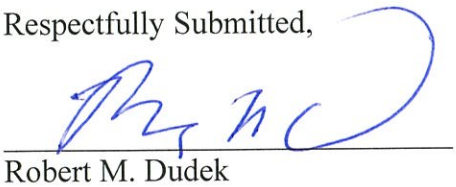
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cynethia Kathleen Morton states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on Feb. 26-27, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Cynethia Kathleen Morton.

Respectfully Submitted,



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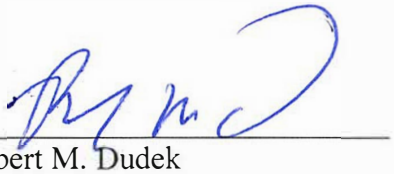
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment:
(2) Entire trial transcript.
(3) State's Exhibit 1 (autopsy report)

I certify that this designation contains no matter which is irrelevant to this appeal.



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ATTORNEY FOR APPELLANT

This 13th day of December, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Cynethia Kathleen Morton, #393442, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 13th day of December, 2024.

Robert M. Dudek
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