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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDAN LAMONT RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2024-000092

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion qualifying the state's witness as an expert in digital forensics and cell phone extractions where they had only testified in court once, had never been qualified as an expert, and did not have the requisite knowledge, skill, experience, training, or education pursuant to Rule 702, SCRE?

STATEMENT OF THE CASE

In November 2023, a Lexington County grand jury indicted appellant for possession with intent to distribute cocaine base, possession with intent to distribute fentanyl, and trafficking heroin. R*. On January 8, 2024, appellant's case was called to trial before the Honorable Walton J. McLeod and a jury. Tr. 1. Appellant was represented by Ola Johnson. Tr. 1. Assistant solicitors Jordan Cox and Bruce Norton prosecuted for the state. Tr. 1.

The jury found appellant guilty as indicted. Tr. 430, l. 17—431, l. 4. The trial court sentenced appellant to concurrent terms of twenty-five years' imprisonment on all three charges. Tr. 437, ll. 5-16.

This appeal follows.

STANDARD OF REVIEW

Appellate courts review a trial court's ruling on the admission or exclusion of evidence—when the ruling is based on the South Carolina Rules of Evidence—under an abuse of discretion standard. *See, e.g., State v. Phillips*, 430 S.C. 319, 340, 844 S.E.2d 651, 662 (2020) (citing *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011)); *State v. Council*, 335 S.C. 1, 21, 515 S.E.2d 508, 518 (1999) (citing *State v. Von Dohlen*, 322 S.C. 234, 248, 471 S.E.2d 689, 697 (1996)). The court will not reverse a trial court's ruling on an evidence question unless there is an abuse of discretion, or—recognizing the term “abuse of discretion” can be a bit harsh—unless the court finds the trial court has not acted within the discretion granted to trial courts. *State v. Wallace*, 440 S.C. 537, 541–43, 892 S.E.2d 310, 312–13 (2023) (citing *State v. Williams*, 430 S.C. 136, 149, 844 S.E.2d 57, 64 (2020)). A trial court acts outside of its discretion when the ruling is not supported by the evidence or is controlled by an error of law. *See, e.g., State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018) (“A trial court's ruling on the admissibility of expert testimony constitutes an abuse of discretion where the ruling is unsupported by the evidence or controlled by an error of law.”).

ARGUMENT

The trial court abused its discretion qualifying the state's witness as an expert in digital forensics and cell phone extractions where they had only testified in court once, had never been qualified as an expert, and did not have the requisite knowledge, skill, experience, training, or education pursuant to Rule 702, SCRE.

Introductory facts

On February 9, 2023, officers entered a hotel room in Lexington County and executed a search warrant. Tr. 231, ll. 21—232, l. 13; 233, ll. 11-13. The search revealed a quantity of methamphetamine, cocaine base, and other pills. Tr. 233, ll. 12-16. Brittany Metts, Jeremy Jivers, and appellant were in the room where the drugs were found. Tr. 216, l. 16—217, l. 12; 219, ll. 17-18. Appellant was charged based on this search.

In-camera testimony

During pretrial motions the state called Hannah Joslin, a crime scene investigator, from the Lexington County Sheriff's Department to proffer her testimony regarding a data extraction conducted on appellant's cellular phone. Tr. 130-147. Joslin testified she had a degree in criminal justice from University of South Carolina. She testified that after she graduated, she worked on patrol duty at the Sheriff's Department for two years before starting in crime scene investigation. Tr. 131, ll. 8-25. Joslin stated her job duties included processing scenes where she conducted, "digital forensic examinations of phones, . . . labs such as latent print examinations and touch DNA examinations." Tr. 132, ll. 1-7.

Joslin testified that digital forensics is "any type of digital device we can extract information from." She explained her focus was cellular phones because that was all she had been taught. Tr. 132, ll. 13-15. When asked about her training in this area, Joslin answered she

had on the job training and had participated in webinars. Tr. 132, ll. 16-25. At the time of trial, Joslin had conducted one hundred and twenty cell phone extractions. Tr. 133, ll. 10-12. Joslin had testified in court once before but had never been qualified as an expert. Joslin admitted she had no certifications in digital forensics. Tr. 134, ll. 2-11.

Defense counsel argued Joslin should not be qualified as an expert where she was not certified in this field. Tr. 135, ll. 1-4. The solicitor argued Joslin was qualified under Rule 702, SCRE. After an off the record bench conference the trial court qualified Joslin as an expert for the purpose of the proffer and withheld a decision regarding her testimony at trial. Tr. 135, ll. 18-23.

Joslin's proffered testimony continued. She explained she received the cellular device and a search warrant and entered the password appellant provided for the phone. Joslin conducted a data extraction on the phone. Tr. 136-137. In the extraction Joslin flagged messages and photos that she believed were relevant to the investigation. Court's exhibits 7-10.¹

Trial testimony

During trial Ms. Joslin testified she analyzed appellant's cell phone in this case. Tr. 297, ll. 21-24; 312, l. 19—313, l. 15; State's exhibit 21, Cellebrite report. She stated that she used "a Cellebrite Touch 2 UFED machine" in her analysis, explaining it is a universal forensic extraction device used by law enforcement. Tr. 298, ll. 3-8. Joslin further explained that Cellebrite is a company that makes devices used during law enforcement investigations to pull data from cell phones. Tr. 309, ll. 16-23.

¹ Court's exhibits 7-10 are on file with the Court.

Joslin again testified about her background this time adding that she had “done training in blood pattern analysis, shooting incident reconstruction, . . . photography trainings . . . [and] a whole bunch of different webinars for cell phones.” Tr. 299, ll. 6-15. She testified her supervisors, Brenda Snelgrove and John Donnelley, oversaw her work. Tr. 301, 7-21.

Joslin explained an extraction pulls information from the cell phone. She stated there were three different types of extractions that could be done: an advanced logical extraction, a file system extraction, and full file system extraction. Joslin conducted all three extractions on the cell phone in this case. Tr. 300, l. 14—301, l. 1. Joslin stated once the extraction in a case is complete, she generates a report and gives it to the investigator for review unless asked to look for specific information. Tr. 302, ll. 1-7.

At this point in her testimony the state offered her as an expert in the field of digital forensics and cell phone analysis. Defense counsel again objected to her qualifications. Without further argument the court overruled the objection and qualified Ms. Joslin as an expert in digital forensics and cell phone analysis. Tr. 302, l. 17—303, l. 21.

Joslin testified she generated reports to break down the raw data extracted from the phone and she reviewed the reports in developing an opinion in this case. Tr. 307, ll. 1-10. State’s exhibit 21, extraction report, state’s exhibit 22 Facebook messages, and state’s exhibit 23 text messages were admitted over defense counsel’s objection.² Tr. 308, l. 10—309, l. 3.

Joslin testified that state’s exhibit 22 was conversation between appellant and another individual via Facebook messenger on February 7, 2023. Tr. 314-317. In the conversation the messages from appellant’s phone read, “I got down, clear, weed, ect.” Tr. 316, ll. 6-22; State’s exhibit 22, Facebook messages. Regarding state’s exhibit 23, Joslin testified these were text

² State’s exhibits 21, 22, and 23 are on file with the Court.

messages from appellant's cell phone to another individual on February 3, 2023. Tr. 317-318. The relevant text messages read, "I am about to get six of them things" and included a discussion of price per ounce. Tr. 319, l. 3—320, l. 6. Joslin opined this conversation originated on appellant's cell phone. Tr. 318, ll. 5-7.

Discussion

In a trial the jury serves as the fact finder and is charged with weighing the evidence admitted at trial and reaching a verdict. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 174–75 (2010). The trial court, on the other hand, is charged with the duty of determining issues of law. *Id.* As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law. *Id.*

The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE.

Expert testimony receives added scrutiny relative to other evidentiary decisions. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 174–75 (2010). Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702, SCRE, before the jury may consider expert testimony. *Id.* First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury. *See State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009) (holding that the witness was improperly qualified as a forensic interviewing expert where the nature of her testimony was based on

personal observations and discussions with the child victim). Next, the trial court must find that the expert has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. See *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252–53, 487 S.E.2d 596, 598 (1997) (observing that to be competent to testify as an expert, a witness must have acquired by reason of study or experience such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony). Lastly, the trial court must evaluate the substance of the testimony and determine whether it is reliable. See *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999) (evaluating whether expert testimony on DNA analysis met the reliability requirements). Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. See *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009); *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 174–75 (2010).

Here the trial court abused its discretion in failing to perform its gatekeeping function where it made no findings regarding Joslin’s credentials and promptly qualified her as an expert in digital forensics and cell phone extraction over defense counsel’s objection. Digital forensics is likely “beyond the ordinary knowledge of the jury.” However, it is not clear from the limited *voir dire* in the record that Joslin had the requisite knowledge, skill, or training to qualify as an expert in digital forensics or cell phone extractions.

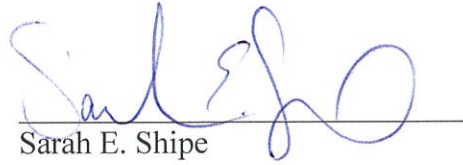
Joslin had a degree in criminal justice and claimed to have completed several webinars but offered no specifics regarding the content of the webinars other than “they explain[] how to do extractions.” Tr. 299, ll. 13-14. She also admitted these webinars offer training to “pretty much anyone if you have an account” with the NW3C website. Tr. 299, ll. 18-20. No evidence was offered regarding the website other than the above. There was no evidence Joslin had any

expert knowledge of digital forensics other than watching videos on the internet. Joslin had only ever testified in court one prior time and had not been qualified as an expert.

The court overruled defense counsel's objection to her qualifications as an expert on limited information and summarily qualified Joslin as an expert in digital forensics and cell phone extraction where she had never been qualified as an expert previously and did not have the requisite skill, knowledge, or training pursuant to Rule 702, SCRE.

CONCLUSION

Based on the forgoing argument, Mr. Richardson's convictions should be reversed, and the case remanded to Lexington County Court of General Sessions for a new trial.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of January, 2025.