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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

PETITIONER'S REPLY TO RESPONDENT'S RETURN

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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 testifying that the informant in the case was paid more because the informant was more reliable?

The State argues that trial counsel was not deficient when he failed to object to the vouching testimony of Officer Matt Veal. Br. of Resp. at 4. They argue, "[T]he PCR court found Trial Counsel articulated a valid reason for wanting evidence of Anderson's high payments to come in, as evidence of Anderson's potential bias." *Id.* This argument does not address the position of Arthur Williams that the testimony of Officer Matt Veal vouched for the credibility of the informant when the officer stated he paid the informant more because he was reliable. To claim the weight of this improper testimony is out weighed by the video is to simply ignore the poor quality of the video.

Mr. Williams had no objection to Officer Veal saying the informant was paid. Such testimony is common and not objectionable. At the Post Conviction Relief hearing trial counsel defended his not objecting by saying, "[H]e wasn't directly vouching for his reliability, he was asked the rate he was paid and he did state accurately that he was paid a rate based on greater experience or more reliability." App. at 12, ll 21-24. Trial counsel did not object because he did not understand the testimony did in fact vouch for the credibility of the informant. As noted in the opening brief, vouching for the credibility of witnesses has long been condemned.

In an effort to get around the improper vouching, the State now argues that the testimony by Officer Veal as to why he and the other officers paid the informant more was proper

testimony as the credibility of the informant had been attacked. The State on page 6 of its brief argues, "Only after Anderson's character honesty had been extensively attacked by Trial counsel did Officer Veal, on redirect examination by the solicitor, testify that Anderson was 'a very experienced informant' and that he was paid '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 money because of his reliability." Br. of Resp. at 7. This answer was to a question that did not even ask how much was Mr. Anderson going to be paid. The officer volunteered the prejudicial information.

The State contends this testimony is admissible under Rule 608(a). This is incorrect. Rule 608(b) prohibits extrinsic evidence to prove the good or bad character of a witness. "Extrinsic evidence means evidence other than the witness's own answers on cross-examination." *State v. Miller*, 155 N.H. 246, 250, 921 A.2d 942, 946 (2007). When Officer Veal testified as to the fact that the informant was paid more than other people because of his reliability, he was giving extrinsic evidence as to the reputation of the informant. This is not proper. As the court of appeals has said, "Rule 608(b) provides, for the purpose of attacking credibility, that specific instances of conduct, other than the conviction of a crime, may not be proven by extrinsic evidence." *State v. Grace*, 350 S.C. 19, 26, 564 S.E.2d 331, 334 (Ct. App. 2002). Under the rule, the same principle applies if the testimony is being used to support the credibility of the witness. *Mizell v. Glover*, 351 S.C. 392, 401, 570 S.E.2d 176, 180 (2002)("Rule 608(b) allows specific instances of conduct to be inquired into on cross, but does not allow those instances of conduct to be proved by extrinsic evidence."). The specific testimony of Matt Veal as to specific acts in support of the informant's credibility would not have been admissible.

A case very similar to the facts of this case can be found in *United States v. Taylor*, 900 F.2d 779 (4th Cir. 1990). In the case the government sought to repair the attack on the credibility of the informant with testimony as to specific acts in which the informant had been found to be reliable. In reversing the case, the court held, "[Defendant] argues that it was error for the district court to admit extrinsic evidence that the informer, Phillips, had provided reliable information and testimony that resulted in several convictions, in order to bolster Phillips' credibility. We agree." *Id.* at 781. Reliable information in the past is more general that the specific act of paying more because he is more reliable. Under a proper objection, the extrinsic information would have been suppressed.

The State finally argues that because the video is so clear, Mr. Williams was not prejudiced. The video is not clear. The video does not show who was doing what even if one says they see the drug transaction. Because the video was not clear, the testimony of Officer Veal was in fact prejudicial to Mr. Williams. This Court should grant the petition for a Writ of Certiorari and reverse the conviction of Arthur Lee Williams.

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?

In discussing this issue, the fact should be noted that appellate counsel did not fail to brief this issue because it was one of many and in his professional judgment was not the best issue. Appellate counsel only briefed one issue. He stated at the hearing he did not believe the ruling

was in error. App. at 32, ll 112-14; 33, ll 15-14. He did not make an informed decision after considering the alternatives. The Post Conviction Relief judge erred in finding "Appellate Counsel has articulated a valid strategic reason for not raising the opinion issue as that issue was not 'clearly stronger' that the issue actually presented concerning the admissibility of the video." App. at 339. The appellate counsel has testified he did not believe the opinion testimony was error, he has not articulated valid strategic reason for not briefing the issue.

As noted in the opening brief, claiming Officer Veal is giving lay opinion testimony does not aid the state. Officer Veal's opinion as to what he saw, does not aid the jury as to his testimony. If the video is clear, the jury can equally draw the same inference. If the video is not clear, the statement should not have been admitted. The Eighth Circuit in *United States v. Peoples,* 250 F.3d 630 (8th Cir. 2001) held that for a police officer to give a lay opinion under Rule 701 the officer must have first hand knowledge of the events about which he is testifying. Officer Veal did not have first hand knowledge as he was not in the room when the alleged drug transaction took place. As such, the testimony was not admissible as lay opinion testimony under Rule 701.

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?

If the statement that Mr. Williams name had come up on the officers radar is not being offered for the truth of the matter asserted, why was the state offering a statement that is or might

not be true? The state had no intention of offering a statement they believed to be false. Nothing in the record indicates this. Whether Mr. Williams was on anyone's radar was simply not relevant to any issue involved in this case.

The State has argued, "[I]t is clear that Officer's [sic] Prather vague testimony - that, somehow, Petitioner's name had come to the attention of law enforcement - was not offered to prove that Petitioner had a reputation as a drug dealer." Br. of Resp. at 15. No rational person listening to the testimony would draw any inference other than Mr. Williams had a reputation as a drug dealer and they were going to try and buy drugs from him because of that reputation. The trial judge was clearly in error in ruling the statement was admissible to show the officer's state of mind. App. at 74, ll 10-19. The State at trial asked a very leading question to get the answer. Appellate counsel initially stated he did not believe the statement was hearsay nor was it offered for the truth of the matter asserted. App. at 34, ll 4-24. Officer Prather could not have made such a statement unless it was from what other people had told him about Mr. Williams. Or, the only alternative is that Officer Prather was lying and no person had said anything about Mr. Williams. Under either situation, the testimony should have been excluded.

Appellate counsel did agree that the testimony about Mr. Williams being on the officer's radar was not relevant to any issue in the trial. The Post Conviction relief judge denied relief on this issue. The appellate counsel never gave a tactical reason for not briefing this issue. He simply felt it was not hearsay. The Post Conviction Relief judge erred in not granting relief on this issue. This court should grant the Petition for Writ of Certiorari and reverse the conviction of Arthur Lee Williams.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for Writ of Certiorari, this Court should grant the Writ and reverse the conviction of Arthur Lee Williams.

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