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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable G. Thomas Cooper, Circuit Court Judge
Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRAIG LEE LEGETTE,

APPELLANT

APPELLATE CASE NO. 2024-000565

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by finding appellant competent after impermissibly ordering him to be evaluated by Dr. Donna Maddox when he had already been found not competent to stand trial and not likely to be restored to competence by the Department of Mental Health and the Department of Disabilities and Special Needs since this procedure of allowing the state to choose another evaluator under these circumstances violated applicable statutes and resulted in appellant being tried while he was unable to adequately assist his attorney in his defense?

STATEMENT OF THE CASE

Appellant was indicted at the June 16, 2021 term of the Horry County Grand Jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. 636-639. A hearing on the state's motion to have appellant reevaluated for competence occurred on June 29, 2023, before the Honorable G. Thomas Cooper. Eric Fox represented appellant, and Nancy Livesay was the assistant solicitor. R. 1.

Appellant's case was then called for trial on April 1, 2024, before the Honorable Donald B. Hocker and a jury. R. 36. A hearing on appellant's competence to stand trial was first held, and appellant was found competent. The trial proceeded and on April 4, 2024 the jury found appellant guilty on both counts. R. 618, ll. 10-17. Judge Hocker sentenced appellant to forty-five years' imprisonment for murder and five years concurrent for possession of a weapon during the commission of a violent crime. R. 634, ll. 7-13.

This appeal follows.

STANDARDS OF REVIEW

Abuse of discretion: An abuse of decision occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).

Competence to stand trial: The trial judge's determinations of competency must have evidentiary support and not be against the preponderance of the evidence. State v. Nance, 320 S.C. 501, 504-505, 466 S.E.2d 349, 351 (1996).

ARGUMENT

The court abused its discretion by finding appellant competent after impermissibly ordering him to be evaluated by Dr. Donna Maddox when he had already been found not competent to stand trial and not likely to be restored to competence by the Department of Mental Health and the Department of Disabilities and Special Needs since this procedure of allowing the state to choose another evaluator under these circumstances violated applicable statutes and resulted in appellant being tried while he was unable to adequately assist his attorney in his defense

Relevant facts – arguments on the state's right to another evaluation

At the June 29, 2023 pre-trial hearing before Judge Cooper, defense counsel Fox pointed out that there was a Blair[1] Hearing scheduled for the week of August 7, 2023 before Judge Murphy. R. 5, l. 16 – 6, l. 7. The Blair hearing would later take place before Judge Hocker. Defense counsel Fox pointed out to Judge Cooper that appellant had already been evaluated, he had been found incompetent to stand trial and not likely to be restored. R. 5, l. 16 – 6, l. 7.

The judge noted that the solicitor was now asking for appellant to be evaluated by Dr. Maddox after the Department of Mental Health (DMH) and the Department of Disabilities and Special Needs (DDSN) had found appellant not competent. Fox said the state had already been consulting with Dr. Maddox. R. 6, ll. 8-18.

Fox objected to another evaluation being conducted under these circumstances. Fox did offer that if Dr. Maddox was allowed to evaluate appellant and she agreed with the results of the prior evaluation done by the DMH and the DDSN that appellant was not competent, then "that

[1] State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

would be the end of it." R. 7, l. 5 – 17, l. 23. However, Fox asserted: "[I] don't think statutorily there is a mechanism for that. . ." R. 17, l. 24 – 18, l. 2.

Livesay claimed that appellant did not cooperate with the DMH evaluator during the first evaluation. Defense counsel Fox answered that he had stressed to appellant the need for him to cooperate, but that appellant was intellectually disabled. Regardless, appellant had been found not competent to stand trial and not likely to be restored by the DMH and DDSN. R 14, l. 14 – 22, l. 10.

Fox added that appellant had been on Social Security Disability Income his entire life, and it became apparent during the evaluation process that DDSN needed to be involved. Further, the statute provided that if appellant was found not competent and not likely to be restored another hearing could not be requested pursuant to S.C. Code Ann. § 44-23-450 until six months had passed from the filing of the previous petition. Therefore, the judge was obligated under the statute to dismiss the state's request for another evaluation. Fox also added that evaluators needed to be neutral and not hand-picked by the prosecution. R. 19, l. 9 – 22, l. 11.

The solicitor responded that the state never got an opinion from the original evaluation done by Dr. Gottfried. Therefore, the state's position was a proper evaluation had never been done due to the "defendant's failure to cooperate." R. 23, l. 2 – 24, l. 15. The solicitor also alleged that all that the evaluators for DMH considered was what was provided to them by the defense. R. 26, l. 17 – 29, l. 19.

Judge Cooper ruled that he would allow appellant to be re-evaluated by Dr. Maddox and "[w]e'll see whether it makes any difference or not. If he reveals something to Dr. Maddox that causes her to change the opinion of DSM [sic], then that will be laid in specific detail for Mr. Fox to examine . . . and have any further expert examine her findings on those narrow points, if

necessary, and this may continue to be an evaluation of a battle of experts for some time to come if we continue with this tennis match of serve and volley with these various reports, it may not be necessary." R. 29, l. 20 – 34, l. 8.

Defense counsel Fox again brought up that no hearing under the statute was allowed to be ordered until six months after the prior evaluation finding appellant not competent to stand trial and not likely to be restored. The judge replied that he was still ordering this extra evaluation by Dr. Maddox. R. 29, l. 20 – 34, l. 8.

Competency hearing

A competency hearing was held before Judge Hocker on April 1, 2024. Defense counsel Fox noted that Dr. Emily Gottfried of MUSC evaluated appellant by Zoom on April 13, 2022, after Judge Culbertson ordered the competency evaluation. Dr. Gottfried's report for DMH stated appellant started answering questions but "eventually shut down." Dr. Gottfried issued a report on June 21, 2022, stating she could not render an opinion on appellant's competency because the evaluation was not completed. R. 46, l. 21 – 49, l. 9.

Fox explained that appellant was evaluated jointly by Dr. Alicia Hall from DDSN and Dr. Abby Mulay from DMH. The result was that appellant was found not competent and he was not likely to be restored to competence. That was in March of 2023. R. 51, l. 21 – 52, l. 9.

The solicitor's office then sought an order to have their own expert, Dr. Donna Maddox, evaluate appellant. That evaluation was ordered in June of 2023, as seen, by Judge Cooper over the defense objection that it violated state law. R. 51, l. 21 – 52, l. 23.

The solicitor argued appellant had already been to prison two prior times, that the prosecution had talked to his probation officers, and they deemed it advisable to get another evaluation of appellant because they thought appellant was competent. The state then retained Dr. Maddox. R. 55, l. 20 – 57, l. 12.

The solicitor told the judge the opinion of Dr. Maddox was that appellant was competent to stand trial. The solicitor offered that the present finding of incompetency by DMH and DDSN could not be a license for appellant to kill by what she alleged was a flawed evaluation process. R. 53, l. 11 – 58, l. 10.

Defense counsel Fox responded that Dr. Hall and Dr. Mulay were provided all the materials necessary for their evaluation. They determined appellant was not competent and not likely to be restored. Fox added that the solicitor's comments about "a license to kill" were irrelevant. The issue was appellant's due process right to be competent to stand trial so that he could assist his attorney. R. 59, l. 21 – 62, l. 17.

The evaluation reports from MUSC, Dr. Hall, and Dr. Maddox were then made Court's Exhibits 1-3. Those reports are before this Court. R. 640-663.

Dr. Alicia Hall then testified that she was a licensed clinical psychologist and had been employed with DDSN since 2010. R. 62, l. 22 – 63, l. 5. Dr. Hall said she considered three psychological evaluations from appellant's past. These were May 1989; February 1994; "and one in December of 1996." R. 71, ll. 20-25. They also considered an Individual Education Plan (IEP) from 1999. Appellant had been found intellectually disabled at a young age. R. 71, l. 20 – 72, l. 24.

Dr. Hall testified appellant had an IQ of 53 when he was eleven years old. When he was thirteen years old, he had a full-scale IQ of 67. R. 73, l. 5 – 74, l. 4. Dr. Hall said there was no

evidence appellant was malingering, he was intellectually disabled, he was not competent, and he was not likely to be restored. Moreover, no medication could assist with appellant's present intellectual and mental problems. R. 74, l. 5 – 86, l. 24.

Dr. Hall confirmed that appellant talked to his brother Roger Legette on the phone from the detention center. Roger was a sovereign citizen, and he used legal terms including "jurisdiction" and "probable cause" when talking to appellant. Dr. Hall opined that appellant repeated these legal terms to make it appear as if he understood the system, but he did not. R. 87, l. 23 – 94, l. 1. Roger Legette also told appellant not to cooperate with anyone.

On cross-examination, Dr. Hall acknowledged appellant had been absent from school on many occasions and that he apparently was also a behavior problem while in school. She attributed appellant's school problems to his intellectual disability, and Dr. Hall admitted appellant fell further behind in school due to his absences. R. 110, l. 1 – 115, l. 6.

Dr. Hall agreed appellant knew he was accused of murdering someone at an apartment complex, he knew that murder was a felony, and he was aware the sentence for that crime could be life imprisonment. R. 115, l. 22 – 118, l. 8. Dr. Hall also testified appellant understood what a flight risk was and that his lawyer was "for him. Appellant also knew that he should not talk to the solicitor because she was "against you." R. 122, l. 4 – 128, l. 15. Dr. Hall reiterated that appellant largely parroted back what others told him, and he did not understand the legal terms he sometimes uttered. R. 139, l. 19 – 145, l. 2.

Dr. Hall acknowledged that appellant referred to Dr. Maddox in a derogatory manner in his jail calls, but she explained appellant was frustrated and using "colorful language" because he was upset. R. 147, l. 4 – 148, l. 19. Dr. Hall added that appellant had never had a job, and he had never been able to live independently. R. 156, l. 22 – 157, l. 2.

Dr. Abby Mulay testified that she was a clinical psychologist at MUSC. She had conducted about five-hundred previous competency exams. R. 162, l. 9 – 163, l. 19. Following the evaluation she did with Dr. Hall, Dr. Mulay opined that appellant was intellectually disabled, that he was not competent, and he was not likely to be restored to competence. R. 169, l. 8 – 170, l. 15.

As for legal terms, Dr. Mulay agreed that appellant was simply parroting things he heard, and the jail calls she listened to of appellant on the phone did not change her opinion that appellant was not competent and that he was not malingering. R. 170, l. 24 – 174, l. 24. Dr. Mulay also said appellant's brother was instructing him not to cooperate with anyone and appellant's prior criminal record did not change her opinion that appellant was not competent to understand the criminal justice system basics or to stand trial. R. 183, l. 15 – 185, l. 16.

Sergeant Sandy Lowe was a long-time employee of J. Reuben Long Detention Center. He testified that appellant had been in that detention center since 2020. Lowe testified that appellant did not need any special accommodations, and Lowe did not know of any reason to move appellant to a special unit because of him being vulnerable. R. 198, l. 6 – 203, l. 18. Lowe also offered that appellant had made 2,083 phone calls from the detention center between September 1, 2020, and August 31, 2021. R. 204, ll. 15-20.

On cross-examination, Lowe repeated that he had no information that appellant suffered from mental or intellectual disabilities. However, he admitted that inmates traded PIN codes when making phone calls which could explain the high number of calls in appellant's name. R. 208, l. 2 – 215, l. 22.

Dr. Emily Gottfried then testified that she was a forensic psychologist at MUSC. R. 229, l. 3 – 231, l. 18. She did an evaluation on appellant in April of 2022 through a "telehealth

platform." R. 231, ll. 8-24. Appellant agreed to be interviewed on the internet. Dr. Gottfried said appellant would not talk about or answer any questions about the incident which gave rise to the murder charge. R. 231, l. 19 – 235, l. 4.

Dr. Gottfried testified that appellant could do simple addition, subtraction, multiplication and that he could spell "(cat) backwards and forward." R. 235, l. 2 – 243, l. 12. Dr. Gottfried repeated that appellant would not answer any questions about the incident in this case, and she admitted she was not qualified to make a diagnosis -- or seemingly rebut one -- of an intellectual disability. R. 243, l. 13- 244, l. 18.

Dr. Donna Maddox then testified over defense counsel Fox's objection that her evaluation and her testimony violated S.C. Code Ann. §44-23-410 through S.C. Code Ann. §43-23-450. Fox noted that appellant had been found not competent to stand trial and not likely to be restored. Fox argued the state did not have the right to "doctor shop," under the statutory complex, and to retain Dr. Maddox to do another evaluation after appellant had been found not competent to stand trial less than six months ago. R. 245, l. 2 – 254, l. 9.

The judge ruled that he would allow Dr. Maddox to testify over the defense objection that it violated state law. R. 254, ll. 10-23. Dr. Maddox acknowledged that appellant had an intellectual disability. However, Dr. Maddox testified that appellant was competent to stand trial. R. 261, l. 1 – 262, l. 19. She reasoned that this was not appellant's first arrest or his first dealings with law enforcement. She found appellant was properly protective given his situation and she noted that he sought legal advice. R. 261, l. 1 – 262, l. 19.

Dr. Maddox testified appellant trusted his brother Roger, and she admitted appellant had likely been coached to not cooperate at times. R. 262, l. 20 – 265, l. 20. Dr. Maddox offered that she had observed appellant talking with his attorney in court, and she believed he was able to

adapt and to function if he so desired. R. 262, l. 20 – 267, l. 24. Dr. Maddox also cited the fact that appellant had a driver's license, and because of his prior law enforcement experiences she believed he was competent to stand trial. R. 267, l. 19 – 272, l. 6; 273, l. 18 – 280, l. 6.

Judge Hocker then stated that the defendant had the burden of proving incompetency by a preponderance of the evidence. The judge ruled that appellant had not carried his burden of proof, and that he was competent to stand trial. R. 281, ll. 3-15.

The trial

Melanie Smith did not live at the Fountain Point apartment complex where the shooting occurred in Myrtle Beach. She was a Probation Department employee for Horry County, and the solicitor called her as a witness because she knew appellant. The shooting was captured on a surveillance tape. Smith identified appellant as the shooter on the surveillance tape. R. 402, l. 4 – 404, l. 19.

Smith confirmed the surveillance tape showed there were three other people in an apartment for several minutes before the man she identified as appellant came out of the apartment shooting at the decedent. No one was called as a witness to testify what happened in the apartment before the shooting occurred immediately outside of the apartment. R. 405, l. 7 – 407, l. 15.

The surveillance tape showed that the decedent was running from the apartment when he was shot. He was able to get in his car and drive a short distance before his car crashed into a ditch. He died in his car in that ditch.

The pathologist, Dr. Edward Proctor, testified the decedent had been shot in the foot and in the upper back from more than five feet away. R. 544, l. 2 – 551, l. 3. The gunshot wound to the back was the fatal wound. R. 551, ll. 1-24.

At the close of the state's case, when defense counsel moved for a directed verdict, he also renewed his objection to appellant being tried when he was incompetent. Defense counsel Fox also renewed his objection to Dr. Maddox being allowed to testify over defense objection that appellant being evaluated again within six months of a finding he was not competent and not likely to be restored violated state law. R. 554, ll. 10-20. The judge again denied these motions. R. 555, ll. 1-11.

Discussion

Appellant was evaluated by Dr. Alicia Hall and Dr. Abby Mulay for DMH and DDSN as ordered by the court. The evaluation took place on May 24, 2023. Appellant was found not competent to stand trial and unlikely to be restored to competence in the near future. See Competency Evaluation Court's Exhibit 2, R. 653-659.

As seen, appellant is intellectually disabled. He had an IQ of 53 at the age of eleven. R. 73. Appellant had apparently never worked, and he could not live independently. The evaluation conclusions indicated appellant did not have the sufficient ability to rationally contribute to his defense, and his ability to adequately assist his attorney was substantially impaired. Report at p. 6. R. 659.

Defense counsel Fox objected to the state's motion to have appellant evaluated again by Dr. Maddox. Defense counsel Fox argued that pursuant to S.C. Code Ann. § 44-23-450, since appellant had been found unfit to stand trial, and not likely to be restored, that the state could not petition for appellant to be reexamined until six months had passed. Therefore, the court was obligated to dismiss the state's petition for another evaluation from Dr. Maddox.

Further, the state was not allowed to "doctor shop" pursuant to S.C. Code Ann. § 44-23-450, because even if a reexamination of appellant's unfitness to stand trial under S.C. Code Ann.

§ 44-23-430 was ripe, the court was obligated to order an examination by two designated examiners and not merely the one examiner chosen by the state. Consequently, the court erred by ordering appellant to be reexamined by Dr. Maddox alone upon the state's motion.

The test for competency to stand trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding of the proceedings against him. State v. Kelly, 331 S.C. 132, 509 S.E.2d 99 (1998); Dusky v. United States, 362 S.C. 402 (1960); State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1996).[2] A defendant must be competent to stand trial because it is necessary that he is capable of understanding the proceedings against him, and he needs to be able to assist counsel in his defense. Godinez v. Moran, 509 U.S. 389 (1993).

In this case, it was undisputed that appellant suffered from an intellectual disability. Dr. Maddox did not contest the fact that appellant was intellectually disabled. Dr. Hall and Dr. Mulay testified at length that appellant was not competent to stand trial and not likely to be restored. Appellant simply did not have the ability to consult with his attorney with a rational degree of understanding to assist counsel at trial and he also did not adequately understand the proceedings against him.

Dr. Hall and Dr. Mulay both testified that appellant's understanding of the legal proceedings was superficial at best, and his brother Roger told him legal terms which appellant parroted when he thought it would make him appear more intelligent. Dr. Hall and Dr. Mulay both opined that appellant was not malingering. Dr. Maddox also did not allege that appellant was malingering.

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2 *cert denied*, 518 U.S. 1026 (1996).

Dr. Maddox simply believed that because appellant had prior dealings with the criminal justice system that he adequately understood the proceedings against him. Yet, this record is devoid of any evidence of appellant having any meaningful interaction with General Sessions courts.

The trial court should not have ordered appellant to be evaluated by Dr. Maddox. Appellant was prejudiced because a fair reading of the evidence in this case showed he was not competent to stand trial. The evaluation and opinion of Dr. Maddox improperly swayed the trial court to reach an erroneous conclusion that appellant was competent to stand trial. See S.C. Code Ann. § 44-23-430-450; State v. Kelly, 331 S.C. 132, 509 S.E.2d 99 (1998); Dusky v. United States, 362 S.C. 402 (1960). This improper finding caused appellant to be tried where he could not adequately understand the proceedings against him, nor could he meaningfully assist his attorney in his defense.

Appellant's conviction should therefore be vacated.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be vacated, and this case remanded to the Horry County Court of General Sessions.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of January, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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THE STATE,

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APPELLATE CASE NO. 2024-000565

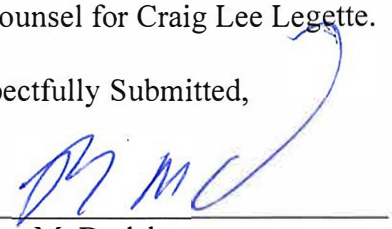
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Craig Lee Legette 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 Donald B. Hocker, which was held on April 1-4, 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 Craig Lee Legette.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of January, 2025.

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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 indictments for murder and possession of a weapon during a violent crime;
(2) Entire pre-trial transcript dated June 29, 2023;
(3) Entire trial transcript dated April 1-4, 2024;
(4) Court's Exhibits 1-3 (competency evaluation reports).

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

Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 5th day of February, 2025.

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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."

Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 5th day of February, 2025.

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STATE OF SOUTH CAROLINA

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APPELLATE CASE NO. 2024-000565

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 Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Craig Lee Legette, #325112, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 5th day of February, 2025.

Robert M. Dudek
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ATTORNEY FOR APPELLANT