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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2024-000092

THE STATE,

Respondent,

v.

BRANDAN LAMONT RICHARDSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly found the State's witness an expert in digital forensics and cell phone extractions.

STATEMENT OF THE CASE

On February 9, 2023, officers entered a hotel room in Lexington County and executed a search warrant. The search revealed a quantity of methamphetamine, cocaine base, and other pills. Brittany Metts, Jeremy Jivers, and Brandan Richardson (Appellant) were in the room where the drugs were found. Appellant was charged based on this search. A Lexington County Grand Jury indicted Appellant for possession with intent to distribute cocaine base, possession with intent to distribute fentanyl, and trafficking heroin. Appellant proceeded to a jury trial January 8, 2024, before the Honorable Walton J. McLeod, IV. The jury found Appellant guilty as indicted. Appellant was sentenced to concurrent terms of twenty-five years' imprisonment on all three charges. This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the Appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). Likewise, a decision as to whether to admit or exclude expert testimony rests within the trial court’s sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

ARGUMENT

The trial judge properly found the State's witness an expert in digital forensics and cell phone extractions.

Prior to trial, the State wanted to proffer testimony about text messages from Appellant's cell phone that were in the immediate days prior to the incident to get a pretrial ruling that what they intended to offer at trial was not prior bad act evidence, but evidence intended to show that he was in possession of the drugs that he was charged with having. (Tr. 129-130). 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 cell phone. (Tr. 130-147). Joslin testified that she had a degree in criminal justice, worked on patrol duty for approximately two years, and then transferred to CSI. (Tr. 131). She testified that in her role as a CSI, she processes crime scenes such as homicides, suicides, overdoses, and burglaries as well as digital forensic examinations of phones, latent print examinations, and touch DNA examinations. (Tr. 132). She explained what digital forensics was and stated that she received on the job training in digital forensics as well as attended roughly 20-30 webinars at work regarding digital forensics. (Tr. 132-133). Joslin testified she has conducted over 120 cell phone extractions and continues to receive training in the field of digital forensics. (Tr. 133).

During Voir Dire examination, Joslin stated that this was her second time testifying in court and she had not been qualified as an expert. (Tr. 134). Appellant then objected to her becoming an expert in digital forensics and cell phone extractions based on the fact that she had not been certified before as an expert and does not have a state or federal certification. (Tr. 135). There was a bench conference held and after the trial judge certified her for the purposes of the proffer. (Tr. 135).

During trial, Joslin testified that she analyzed Appellant's cell phone in this case. (Tr. 297-298). She testified again about her background. (Tr. 299-300). She further testified that she used a Cellebrite Touch UFED machine, which is a universal forensic extraction device used to extract data from phones. (Tr. 298). She explained what extractions did and the three different types of extractions and that she did all three on Appellant's cell phone. (Tr. 300-301). She stated that while she does these cell phone extractions she is helped and supervised by two supervisors Brenda Snelgrove and John Donnelley. (Tr. 301). Joslin stated that once the extraction is complete she generates a report and gives it to the investigator for review unless asked to look for specific information. (Tr. 302).

At this point in her testimony, the State offered her as an expert witness in the field of digital forensics and cell phone analysis. (Tr. 302). Defense counsel again objected to her qualifications. (Tr. 303). Without further argument, the court overruled the objection and qualified Joslin as an expert in digital forensics and cell phone analysis. (Tr. 303-304).

Once qualified, 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). The extraction report (State's Exhibit 21), Facebook messages (State's Exhibit 22), and text messages (State's Exhibit 23) were admitted over defense counsel's objection. The Facebook messages and text messages were associated with accounts of Brandan Richardson. (Tr. 312-313). Joslin testified that State's 22 was a Facebook conversation between Appellant and another individual. (Tr. 315-316). In the conversation, Appellant's messages read "I got down, clear, weed, et cetera" (Tr. 316, State's Exhibit 22). Joslin testified that State's 23 were text messages from Appellant's cell phone to another individual. (Tr. 317-318, State's Exhibit 23). The relevant text messages read "I am about to get six of them things" and included a discussion of price per

ounce followed by a text that stated “I serve you the same dope I do so you know its gon’ be A plus. So with that being said, Ive got the best Ice on this side of town.” (Tr. 319-320, State’s Exhibit 23).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

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 may be used to help the jury to determine a fact in issue based on the expert’s specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony’s probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). “The qualification of an expert witness and the admissibility of an expert’s testimony are matters within the trial judge’s discretion. Lee v. Suess, 318 S.C. 283, 285, 457 S.E.2d 344, 346 (1995). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” Id.

In State v. Peer, officers received numerous noise complaints emanating from a non-alcoholic dance club for teenagers. State v. Peer, 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996). Appellants claimed the trial court erred in qualifying one of the deputies as an “expert” in sound and allowing him in testify concerning the noise ordinance because he lacked sufficient

knowledge to be deemed a sound or noise expert. Id. The deputy testified he worked for the Greenville County Sheriff's Office for about five and a half years, that he was trained by another officer who was certified in the use of sound meter equipment, and he demonstrated for the jury how a sound level meter worked. Id. He also testified that during the one and a half years that he had been conducting those tests he handled probably ten cases. Id. "The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony." Id. at 545-555, 466 S.E.2d at 380. "Defects in the amount and quality of education and experience go to the weight of the expert's testimony and not to its admissibility. Id.

Similarly, Joslin testified that she had a degree in criminal justice, worked on patrol duty for approximately two years and then transferred to CSI. (Tr. 131). She testified that in her role as a CSI, she processed crime scenes such as homicides, suicides, overdoses, and burglaries as well as digital forensic examinations of phones, latent print examinations, and touch DNA examinations. (Tr. 132). She explained what digital forensics was and stated that she received on the job training in digital forensics as well as attended roughly 20-30 webinars at work regarding digital forensics. (Tr. 132-133). She testified she had conducted over 120 cell phone extractions and continues to receive training in the field of digital forensics. (Tr. 133).

She further testified that she used a Cellebrite Touch UFED machine, which is a universal forensic extraction device used to extract data from phones. (Tr. 298). She explained what extractions did and the three different types of extractions and that she did all three on Appellant's cell phone. (Tr. 300-301). She stated that while she does these cell phone extractions she is helped and supervised by two supervisors Brenda Snelgrove and John Donnelley. (Tr.

301). Joslin stated that once the extraction is complete she generates a report and gives it to the investigator for review unless asked to look for specific information. (Tr. 302).

State v. Young found that a SLED agent was qualified as an expert in cell phone location analysis despite him having admitted the program and method of his cell phone analysis had never been peer reviewed and that he had never been qualified as an expert witness before because he possessed the requisite knowledge, skill, experience, and training and his testimony was reliable. State v. Young, 432 S.C. 535, 854 S.E.2d 615 (Ct. App. 2021). The trial judge properly ruled that Joslin should be qualified as an expert because similar to Peer and Young, Joslin testified that she was trained and supervised by officers to work the Cellebrite Touch UFED machine as well as conducted over 100 cell phone extractions and while she may have not been qualified as an expert before in this field she had the knowledge, training, and expertise better qualified than a jury to form an opinion on the how cell phone extractions are performed and what comes from it.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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