STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Sumter County
Honorable Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM LEE ROSEBORO, JR.

PETITIONER

APPELLATE CASE NO. 2026-000108

APPENDIX

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General
PO Box 11549
Columbia, SC 2911-1549
(803) 734-3737

ERNEST ADOLPHUS FINNEY, III
Solicitor, Third Judicial Circuit
PO Box 836
Sumter, SC 29151
(803) 436-2188

ATTORNEYS FOR RESPONDENT

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Honorable Alison Renee Lee, Circuit Court Judge

THE STATE,

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WILLIAM LEE ROSEBORO, JR.

APPELLANT

APPELLATE CASE NO. 2022-001551

FINAL BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting the marijuana where the State failed to prove a sufficient chain of custody from the time the marijuana was originally seized by the United States Postal Service (USPS)?

STATEMENT OF THE CASE

Appellant was indicted during the April 2018 term of the Sumter County grand jury for one count of trafficking marijuana, 100 or more pounds but less than 2000 pounds. R. 311. The State, represented by Christa Bell and Ernest Finney, III, called the case to trial on October 25, 2022, before the Honorable Alison R. Lee and a jury. Appellant was represented by Michael D. Routzong. R. 1. Prior to the call of the case, the State moved to amend the indictment to the lesser included offense of possession with intent to distribute marijuana (PWID).[1] R. 2, l. 9-R. 3, l. 8. After a three-day trial, Appellant was found guilty of possession with intent to distribute marijuana. R. 286, ll. 2-13. Judge Lee sentenced Appellant to eight years imprisonment with credit for time served. R. 309, ll. 1-7.

Appellant timely filed a notice of appeal on November 2, 2022. This brief follows.

[1] Based upon Appellant's prior criminal record the State proceeded forward on the PWID charge as a second offense. R. 3, ll. 1-8.

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (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.

ARGUMENT

The trial judge erred in admitting the marijuana where the State failed to prove a sufficient chain of custody from the time the marijuana was originally seized by the United States Postal Service (USPS).

Relevant Facts

On January 12, 2018, Michael Rogers, an inspector with the United States Postal Inspection Service branch of the USPS, intercepted a suspicious package. The package, which was addressed to Appellant at his apartment in Sumter, South Carolina, had drawn Rogers's attention because the name and address on the return label when run through the law enforcement database CLEAR came back as false. R. 17, ll. 3-12; R. 19, ll. 19-25; R. 21, ll. 7-17; R. 27, ll. 7-22; R. 38, ll. 3-7. Upon visually inspecting the parcel, Rogers noted it was tightly taped, had originated in California which is considered a "source area of marijuana" coming to the east coast, and it was shipped priority. Those facts, combined with the bad return address, heighted his suspicion of the parcel. R. 38, l. 13-R. 39, l. 14. Rogers requested a drug canine to inspect the box. R. 38, ll. 7-9.

Rogers placed four or five boxes, along with the suspicious parcel, on the floor in a room at the Sumter police department. R. 40, ll. 1-18. Sergeant Cameron Bryant and K-9 Murphy conducted the box inspection. R. 169, l. 17-R. 170, l. 8. Neither Bryant nor K-9 Murphy were present in the room when Rogers set up the boxes for inspection. K-9 Murphy was deployed into the room and Bryant observed changes in his behavior that indicated an alert to narcotics. Specifically, K-9 Murphy displayed a head snap, which is a quick turn of the head whenever he first identifies the odor he smells, he tracked the scent back to the suspicious parcel, placed his nose on the box, and then gave a final alert by sitting. R. 178, l. 25-R. 179, l. 8.

Rogers obtained a federal search warrant to open the suspicious parcel. R. 22, ll. 4-17. He opened the box from the bottom to avoid damaging the shipping label and found four silver mylar bags inside. Within the mylar bags, he found four vacuum sealed bags of a green leafy substance that was later identified as marijuana. The parcel also contained packing popcorn. R. 23, ll. 6-19. The contents of the parcel were photographed and weighed. The parcel was repackaged with just enough marijuana to "make the charge," along with papers and/or books to add back the weight of the removed narcotics. Once the parcel was repackaged and resealed, Rogers conducted a "controlled delivery" where he posed as regular mail carrier and delivered the parcel to an employee at Appellant's apartment complex office. R. 20, l. 16-R. 21, l. 6; R. 22, ll. 16-24; R. 50, ll. 8-15.

While the controlled delivery was occurring, members of the Sumter Police Department's drug unit were in the parking lot of Appellant's apartment complex to conduct surveillance. R. 51, l. 1-5. Investigator Joseph Lane, the lieutenant of the Sumter Police Department drug unit, was part of the surveillance team. R. 58, ll. 11-23. According to Lane, surveillance began at 10:40 a.m. on January 12, 2018. At 10:54 a.m., Rogers was in route to the apartment complex with the repacked parcel which he delivered at approximately 11:02 a.m. At approximately 11:08 a.m., Appellant was observed entering the apartment complex office. At approximately 11:10 a.m., Appellant was observed leaving the office of the apartment complex carrying the parcel that Rogers had previously delivered. R. 60, ll. 19-22; R. 63, l. 3-R. 64, l. 6.

Appellant was arrested, the parcel was re-seized, and he was searched incident to arrest. Inside of his wallet, police located a receipt from a post office in California with the parcel

tracking number on it and airline receipts[2] in Appellant's name for a flight from Columbia, SC to Los Angeles, CA dated for January 9 to January 11, 2018. R. 32, ll. 1-18; R. 33, l. 22-R. 34, l. 17; R. 67, l. 13-R. 68, l. 14. Joseph Powell, a now retired drug analyst, tested the contents of the parcel. He determined that each of the four vacuum sealed bags contained marijuana weighing a total of 1,796.2 grams or 3.9 pounds. R. 132, l. 23-R. 133, l. 4; R. 148, ll. 2-6.

At trial, Lane testified about the chain of custody for evidentiary items. He stated that all the items that were seized from Appellant on January 12, 2018, including the parcel, its contents, and the items found in his wallet, were placed by him into an evidence locker at the Sumter Police Department. Once the evidence was placed into a locker it could only be removed by the evidence custodians who would take the evidence, label it, and transport it to the proper storage area to await testing or trial. He testified that every time the evidentiary items are handled by a person, that person signed off on a log notating when they handled the evidence and what they did with the evidence. He stated that a "chain of custody is very important when it comes to evidence, very, very important." R. 68, l. 7-R. 72, l. 24.

The State called Officer Alexis Carter, one of two evidence technicians for the Sumter Police Department, to testify to the chain of custody. Carter was not employed with the police department at the time of Appellant's arrest. However, she had been trained by Jim Alsbrook who was the evidence custodian who initially took custody of the evidence in Appellant's case. R. 97, l. 13-R. 98, 21. When the solicitor attempted to question FOfficer Carter about the chain of custody log, Counsel Routzong objected and asked to take up a matter of law. R. 100, ll.1-22.

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2 Appellant's name was subsequently run through the Airline Reporting Corporation which confirmed that he flew from Columbia, SC to Los Angeles, CA between January 9, and January 11, 2018. R. 42, ll. 8-23.

Counsel Routzong initially argued that Carter was not in the chain of custody from the time the evidence was seized until it was tested and therefore her testimony was not relevant. He believed Carter was going to testify to things done by her predecessor Alsbrook and he believed that was problematic. R. 101, ll. 10-24

Solicitor Bell clarified that Alsbrook was not a witness because he was retired and stated that his testimony would not further the case because he would not have been able to bring the marijuana into court. She asserted that the chain in Appellant's case consisted of Lane, Powell, the prior evidence custodian Alsbrook, and Carter who brought the marijuana into court. Solicitor Bell argued that Carter, as the current evidence technician, could establish the chain of custody as best as practicable by showing the procedures followed and that it was not necessary or possible to bring Alsbrook in to testify as he no longer worked for the police department. R. 101, l. 10-R. 103, l. 19.

Counsel Routzong maintained that Carter's testimony was not relevant because she was not in the chain of custody up until the time the marijuana was tested. He stated the fact that she brought the drugs to court was not relevant to any issue at trial. He asserted the chain of custody was from postal inspector Rogers to the drug analyst Powell, that Carter was not a part of the chain, and that any testimony she could offer was not relevant pursuant to Rule 401, SCRE. R. 103, l. 21-R. 106, l. 19. He conceded that the State could have Carter testify that as the current evidence technician she had brought the marijuana to court but that anything else she could testify to would not be relevant. R. 107, ll. 1-4.

Counsel Routzong further argued that pursuant to Rule 6, SCRCrimP, that the defense had demanded the presence of all individuals in the chain of custody and the State was required to bring them all to court. He admitted that gaps in the chain could be filled "a little bit" but that

under Rule 6 the State was required to produce the chain witnesses if they were available. R. 107, l. 17-R. 109, l. 1. Solicitor Bell stated that Carter was able to testify based on the evidence logs as to how the items were handled as part of the police departments routine practices. R. 112, ll. 2-11. The trial judge ruled that under case law the current custodian of evidence could testify to the records and files showing how the evidence was handled to further establish the chain of custody and that would satisfy the requirements of Rule 6, SCRCrimP. R. 114, l.18-R. 116, l. 18.

After the court initially ruled, Counsel Routzong argued additional issues with the evidence log and chain of custody. As to the log, he argued that it did not comport with a proper chain of custody document because it did not contain a sufficient description of the substance or its container to distinguish it and that it did not contain assurances that the substance was delivered in substantially the same condition as when it was received. He relied upon templates provided in the South Carolina criminal procedure rules book to support his argument. He further argued that the gaps could be filled in but only with sufficient documentation such as the forms in the rule book. He also argued that he could not confront the missing members of the chain. R. 117, l. 17-R. 121, l. 22.

Solicitor Bell argued the forms defense counsel relied on were suggestions and not required forms. Further, she stated that the chain as established so far began with Rogers seizing the package, then went to Lane who deposited the items into evidence and that defense counsel had ample opportunity to cross-examine the witnesses. The chain would be further established once Powell testified, and the State was prepared to offer into evidence the logs documenting the movement of the marijuana into evidence. Thus, the State had established a sufficient chain of custody. R. 121, l. 24-R. 123, l. 21.

In reply, Counsel Routzong asserted that there were "clearly" some people in the chain who were not testifying. Further, Counsel Routzong argued that there was an unknown person in the chain, specifically the individual in the apartment complex office that Rogers initially delivered the parcel to. He argued that if the State could not produce that person, then the drugs should be suppressed, and the case dismissed. R. 123, l. 22-R. 124, l. 15. Solicitor Bell asserted that Appellant had been under surveillance the entire time and when they arrested Appellant the parcel appeared to be in the same condition as when it was delivered. Thus, because there was no indication that the parcel had been altered during the amount of time it was in the apartment complex office that the unknown person argument was without merit. R. 124, l. 17-R. 125, l. 6.

Quoting State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004), Counsel Routzong argued that "[w]here the identity of persons handling the evidence is unknown, our courts have consistently held the evidence is inadmissible." Taylor at 23, 598 S.E.2d at 737. He adamantly maintained that because the State could not produce the individual from the apartment complex that the parcel was delivered to that the case should be dismissed. R. 125, l. 7-R. 126, l. 1. In response, Solicitor Bell reversed course and argued that the chain of custody only began when law enforcement took custody of the evidence from the Appellant. Prior to that, the State was not required to prove who handled the package. Solicitor Bell also argued that there was testimony that Appellant had been under surveillance, that there was a very short time period between delivery and pickup of the parcel, and that the parcel was "unscathed in any way." R. 126, ll. 2-19.

The trial judge ruled that Taylor did not apply under the circumstances of Appellant's case because the chain of custody was designed to make sure evidence was not tampered with after it was seized from the defendant in a case, not whether it was tainted before it was given to

a defendant. The judge ruled the State had to establish the chain of custody from the time the marijuana was seized from the defendant's person through testing and that the case law applied once the evidence came into law enforcement's hands. Relying on case law that the State was not required to produce every person in a chain of custody, the trial judge overruled defense counsel's objection and motion to suppress the drugs and dismiss the case. R. 127, l. 2-R. 129, l. 19.

Counsel Routzong renewed his objection to the sufficiency of the chain when the State moved the evidence logs and chain of custody documents into evidence , when the State recalled Officer Carter to the stand, and when the State moved the marijuana into evidence. R. 153, ll. 14-24; R. 159, l. 4-R. 160, l. 20; R. 167, l. 22-R. 168, l. 8. During the motion for a directed verdict, Counsel Routzong again referenced the insufficient chain of custody and argued that the case law stated the chain begins when the evidence is initially seized by law enforcement or had initial control over the evidence and that the initial control and seizure in Appellant's case occurred when postal inspector Rogers opened the parcel pursuant to the search warrant. He argued that the State had a gap in the chain, namely the unknown office personnel who took initial delivery of the package, and that gap was fatal to their case. R. 184, l. 6-R. 187, l. 21; R. 192, ll. 7-R. 193, l. 20. The State asserted it had established a sufficient chain of custody and that defense counsel's argument went to the weight, not the admissibility, of the evidence. R. 187, l. 23-R. 192, l. 6

The trial judge ultimately ruled that the case law did not address the circumstances where a parcel was delivered to a non-law enforcement person who was not cooperating with law enforcement in some capacity. In ruling, the trial judge stated that the case law did not support the requirement "that the intervening person to whom the package was delivered in this

particular case to the office of the apartment complex, does not required that they have to come in and testify as to what happened to the package." Additionally, the judge found there was testimony to support that the package and the contents did not appear to have been changed from the time that Rogers delivered it and that there was only a short period of time when the package was in the apartment complex office. The trial judge denied defense counsel's motion for the direct verdict and to dismiss the case. R. 197, l. 22-R. 201, l. 24.

Discussion

The trial judge's ruling regarding the chain of custody was based on an error of law. The case law is clear that the chain of custody for evidence begins with law enforcement's initial seizure and interaction with the evidence. In Appellant's case, the initial seizure of the evidence occurred when Rogers opened the parcel, removed three of the four packages of marijuana, and then resealed the parcel for the controlled delivery. The State was required to identify every person in that chain of custody from that point forward and it failed to do so when it could not identify the civilian that the parcel was initially delivered to at the apartment complex. That gap in the chain was fatal and the charge against Appellant should have been dismissed.

"A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable." State v. Taylor, 360 S.C. 18, 22–23, 598 S.E.2d 735, 737 (Ct. App. 2004) (internal citations omitted). "Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable." Id. (internal citations omitted).

The identity of the persons who handled the evidence must be established. State v. Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992), citing Raino v. Goodyear Tire and Rubber Co., 309 S.C. 255, 422 S.E.2d 98 (1992). A complete chain of evidence, tracing possession from the evidence's initial control to its final analysis, must be established as far as practicable. State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). A missing link in a chain of custody creates an issue of admissibility. Id.

"In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (internal citations omitted). "On the other hand, where the identity of persons handling the specimen is established, we have found evidence regarding its care goes only to the weight of the specimen as credible evidence." Id. (internal citations omitted). "In other words, where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility." Id. (internal citations omitted).

"Where the identity of persons handling the evidence is unknown, our courts have consistently held the evidence is inadmissible." Taylor, at 23, 598 S.E.2d at 737. In cases where the identity of a person handling the evidence was unknown "the party offering the [evidence] failed to trace the handling of the evidence from the time it was gathered until it was tested. As a result, the identity of the people who had control of the evidence and what was done with it during their possession was left to speculation." Taylor, at 24, 598 S.E.2d 735, 737

Admittedly, "each person who handled the evidence is not required to testify." State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007). When "other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of

the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." Id. However, evidence is inadmissible under this rule when the offering party omitted a link in the chain of possession by failing to establish the identity of each custodian at least as far as practicable. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct.App.2005).

The State failed to prove a sufficient chain of custody during Appellant's trial. The chain of custody began when Inspector Rogers intercepted the parcel and opened it subject to the federal search warrant that he had obtained. Rogers then removed three of the four packages of marijuana and left only one package in the parcel. From that point forward, the State was required to prove the chain of custody as far as practicable, which required proving the identity of all persons in the chain. However, the uncontradicted testimony was that Rogers delivered the parcel to Appellant's apartment complex office and left it with an unknown person for approximately ten minutes. The person who accepted the initial delivery of the parcel was never established. The fact that this person was a civilian uninvolved in the case, or that the package was only in their possession of a limited period, does not negate the fact that the State failed to even identify who they were. Further, the State did not even make a base effort to identify the person who accepted initial delivery of the parcel must less attempt to identify them "as far as practical." This left a gap, a missing link, in the chain of custody that under the established jurisprudence of this state was fatal to the prosecution of Appellant.

Notably, there was no testimony as to what occurred to the three packages of marijuana that were not included in the controlled delivery. After Rogers removed those packages, it was not clarified what he did with them or how he secured them. However, it was uncontradicted that law enforcement officers had three of the four packages of marijuana from the parcel in their possession prior to the controlled delivery. This further establishes that the chain of custody

began when Rogers opened the parcel and not when, as the judge ruled, the parcel was seized from Appellant. Further, even the solicitor initially admitted that the chain of custody started with Rogers and only began to backtrack when Counsel Routzong argued that the chain of custody failed because they State did not and could not identify who Rogers delivered the parcel to.

Not only did the State not establish a sufficiently complete chain of custody but it failed to establish a chain of custody as far as practicable. While every person who handled the evidence does not have to be hauled into court to testify, it was paramount that the State identify every person in the chain and identify how the evidence was handled and stored, from the time Rogers took possession of the parcel through testing. In the case *sub judice,* the State failed to trace the evidence from the time it was gathered until the time it was tested and the jury was left to speculate as to who had control over the marijuana and what may have happened to it for ten minutes. The trial judge's ruling that the chain did not begin until Appellant was arrested was in error and allowed the State to circumvent the requirements of providing a complete chain of custody. Appellant's conviction and sentence should be reversed.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests that this Court hold the State failed to establish a sufficient chain of custody, reverse his conviction, and remand the matter back to the Court of General Sessions for Sumter County for a new trial.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2024.

RECEIVED
Mar 18 2024
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final 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."

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 18th day of March, 2024.

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ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

215 N. Harvin St.
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his discretion in admitting the marijuana because the chain of custody was established.

STATEMENT OF THE CASE

Appellant was indicted by a Sumter County Grand Jury for one count of trafficking marijuana, 100 or more pounds but less than 2000 pounds. Appellant proceeded to a jury trial on October 25-27, 2022, before the Honorable Alison R. Lee. Michael D. Routzong, Esq. represented Appellant. Prior to the call of the case, the State moved to amend the indictment to the lesser included offense of possession with intent to distribute (PWID).[1] The jury found Appellant guilty of possession with intent to distribute marijuana. Appellant was sentenced to eight years' imprisonment with credit for time served. This appeal follows.

[1] Based upon Appellant's prior record, the State proceeded forward on the PWID charge as a second offense.

STATEMENT OF FACTS

On January 12, 2018, Michael Rogers, an inspector with the United States Postal Inspection Service branch of the USPS, intercepted a suspicious package. The package, which was addressed to Appellant at his apartment in Sumter, South Carolina, had drawn Rogers's attention because it was tightly packaged and the name and address on the return label came back as false when ran through the CLEAR database. (R. 17-27). The package was sent from Los Angeles, California on January 10, 2018.

A canine search was conducted where the box was placed in a room with several other packages and the canine alerted to the suspicious package. (R. 179). A federal search warrant was obtained, and the box was then opened by Inspector Rogers. (R. 22-23). The box was opened from the bottom to prevent damage to the shipping label. (R. 23). Once opened, four silver mylar bags were observed and photographed. (R. 23). Inside the sealed mylar bags were heat and vacuum sealed bags of a green leafy substance, later identified as 3.9 pounds of marijuana. (R. 23, 65, 132).

A controlled buy was then conducted. Some of the marijuana was removed from the box and replaced with items to keep the same weight and then resealed.[2] Surveillance began and the package was then delivered by Inspector Rogers to the leasing office at 11:02 a.m. (R. 63). Appellant was observed entering the office at 11:08 a.m. (R. 63). At 11:10 a.m. Appellant exited the office carrying the package and was arrested shortly after. (R. 64). The package had not been opened nor had it been tampered with in anyway. (R. 64). Appellant was searched incident to arrest and inside of his wallet a receipt from a post office in California with the parcel's tracking number

[2] This is standard practice in the off chance the target could run off with the box and all of the evidence lost. Once Appellant was arrested, Rogers gave all 3.9 pounds originally photographed to Investigator Joseph Lane with the Sumter Police Department. (R. 22).

on it and airline receipts in Appellant's name for a flight from Columbia, South Carolina to Los Angeles, California from January 9-11, 2018, were found. (R. 32-34, 67-68).

At trial, Investigator Joseph Lane with the Sumter Police Department testified about the chain of custody. He stated that all the items that were seized from Appellant on January 12, 2018, including the parcel, its contents, and the items found in Appellant's wallet, were placed into a locker at the Sumter Police Department. (R. 72). Once the evidence was placed into a locker, it could only be removed by the evidence custodians who would take the evidence, label it, and transport it to the proper storage area to await testing or trial. He testified that every time the evidentiary items are handled by a person, that person signed off on a log notating when they handled the evidence and what they did with the evidence. (R. 68-72).

Alexis Carter, an evidence technician for Sumter Police Department, then testified as to the chain of custody. Counsel for Appellant initially objected to her testimony stating that Carter was not in the chain of custody from the time the evidence was seized until it was tested and therefore was not relevant. (R. 101). The State argued since the previous evidence technician at the time was retired, Carter, as the current evidence technician, could establish the chain of custody as best as practicable by showing the procedures followed and that it was not necessary or possible to bring the former evidence tech in to testify. (R. 101-103). The trial judge ruled that under case law the current custodian of evidence could testify to the records and files showing how the evidence was handled to further establish the chain of custody and that would satisfy the requirements of Rule 6, SCRCrimP. (R. 114-116).

After the court initially ruled, Counsel for Appellant argued additional issues with the chain of custody. He argued that he couldn't confront everyone in the chain of custody because they were not here. (R. 121). The State argued that the chain started at Inspector Rogers who then gave

it to Investigator Lane then to the retired evidence technician, then to Joseph Powell, the drug analyst, then back to the evidence technician where it remained in storage until brought to court by Carter, the current technician. (R. 121-123). Counsel for Appellant then argued that "there is one person in the chain of custody that's missing and you had testimony about this today. You had testimony that postal inspector Rogers delivered a package into the office of that apartment complex and he left it there. Who is that person, your Honor? [3] Can the state produce that person? If they cannot, this case should be dismissed, these drugs should be suppressed." (R. 124).

The State argued that Appellant was under surveillance the entire time, the box was intact when delivered, and that there was testimony that officers observed Appellant the entire time and therefore the argument was without merit because there is no indication whatsoever that there was anything to upset the integrity of that package. (R. 124-125). Quoting State v. Taylor,[4] counsel for Appellant argued that "[w]here the identity of persons handling the evidence is unknown, our courts have consistently held the evidence is inadmissible." (R. 125). The trial judge overruled the objection and motion to suppress the drugs stating that "the whole idea behind the chain of custody is making sure as well that the State or someone else doesn't tamper with the evidence that was obtained from the defendant. It's not whether it was tainted before it was given to the defendant." (R. 127).

After the State rested their case, Counsel for Appellant referenced again the insufficient chain of custody relying on State v. Chisolm,[5] and argued that the chain of custody begins when initial control is taken over the evidence and that the initial control occurred when Rogers

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[3] There is nothing in the record to indicate whether there was in fact someone in the office that the package was delivered to or was simply placed in a mail area within the leasing office for Appellant to pick up.

[4] State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004).

[5] State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401 (Ct. App. 2003).

originally opened the package pursuant to the search warrant and that the unknown office personal was a gap in the chain of custody and was fatal to their case. (R. 184-187). In clarifying Appellant's argument, the trial court asked, "that gap in the chain is the time period that it was in the office...the time period from when the postal inspector took the package and left it in the office for the defendant to pick it up." (R. 192-193). The trial judge ruled that while there didn't seem to be any caselaw that addressed circumstances when there is a third party who is not cooperating with law enforcement, he did not believe that the case law required the third party to come in and testify as to what happened to the package. (R. 198-199). He further stated that it was important that the postal inspector who delivered the package indicated that there was a seal on it, the tape hadn't been removed, and it hadn't been tampered with. (R. 200). Finally, he stated:

> For the purposes of, well, the chain and whether there's evidence to submit to the jury, I believe that the fact that it was picked up by the postal inspector, it was opened, it was photographed, the contents of it, it was repackaged, it was resealed, and it was delivered to an office that didn't have anything to do with law enforcement or with the defendant directly and that the defendant picked it up within a short period of time...And as soon as he came out of the office with the package before he had the chance to open it, he was stopped and it was seized from him and at that particular point I think is when all the chain of custody is to be established.

(R. 200-201).

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). "The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." State v. Howard, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct. App. 2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "To warrant the reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

ARGUMENT

The trial judge did not abuse his discretion in admitting the marijuana because a chain of custody was established.

Appellant contends that the trial judge erred in admitting marijuana where the chain of custody was not established because the State could not identify the civilian that the parcel was initially delivered to at the apartment complex. Appellant's argument lacks merit because the State established a sufficient chain of custody.

"'To warrant reversal based on the admission or exclusion of evidence, the [A]ppellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof.'" State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 336 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)). A party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007). "Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." Id. at 6, 647 S.E.2d 202, 205 (2007). Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill motive. State v. Taylor, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004).

"Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." State v. Pulley, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (Citing State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)).

"Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). "We have never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." South Carolina Dep't of Soc. Servs. v. Cochran, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005). Cochran further held that the chain of custody was sufficient even though the courier who transported the samples from the collection site to the testing facility was never identified, where the samples arrived at the facility sealed and intact. Id.

Appellant relies on State v. Taylor, that held "where the identity of persons handling the evidence is unknown, our courts have consistently held the evidence is inadmissible." State v. Taylor, 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct. App. 2004). Taylor further held that in cases where the identity of a person handling the evidence is unknown "the party offering the [evidence] failed to trace the evidence from the time is was gathered until it was tested. As a result, the identity of the people who had control of the evidence and what was done with it during their possession was left to speculation." Taylor, at 24, 598 S.E.2d at 737. Our Supreme Court has determined "where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007).

Appellant is making the argument that the State did not establish a sufficient chain of custody because the individual that Rogers delivered the package to in the leasing office was not identified and did not testify. There was no testimony that there was an "individual" that Rogers delivered to. While counsel for Appellant asked Rogers "Okay and at the apartment complex you

delivered it to the apartment, somebody in the office?" (R. 50). Rogers' response was "yes, sir, it was at the office. That's where the parcel delivered to so people can come pick them up." (R. 50). He did not testify that he handed it to any individual, simply that it was delivered to the office.[6] Even if there had been someone in the office that the package was delivered to, the chain of custody was established due to the condition of the evidence.

"Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, and faith, or ill motive." Sweet, at 6, 647 S.E.2d at 205-206. "It is unnecessary.... [t]hat the police account for 'every hand-to-hand- transfer' of the item; it is sufficient if the evidence demonstrates a reasonable assurance of the condition of the item remains the same from the time it was obtained until its introduction at trial." State v. Hatcher, 392 S.C.86, 95, 708 S.E.2d 750, 754 (2011). "To expect the [prosecuting authority] to produce every possible individual who may have had fleeting contact with the evidence would cause unnecessary logistical problems concerning chain of custody." Id. (citing to Commonwealth v. Herman, 431 A.2d 1016, 1019 (Pa Super. Ct. 1981) (holding the absence of testimony from a crime lab custodian who merely logged in the seized marijuana was not fatal to the chain of custody where the officers who seized the drugs and the chemist who tested them did testify at trial)).

Rogers testified that he delivered the package to the leasing office. (R. 50). Lane testified that surveillance began at 10:40 a.m. and Rogers was seen delivering the package at 11:02 a.m. (R. 63). The package remained in the office for six minutes before Appellant was seen entering the office at 11:08 a.m. (R. 63). Lane testified that they never lost sight of Appellant and he exited

[6] It is worth noting that there are many apartment complexes that have their mail and mail boxes in the leasing office and it is self-service.

the building at 11:10 a.m. carrying the package Rogers delivered. (R. 63). There is no evidence of tampering to the package. If there was a person that the package was delivered to in the office, he would have had only six minutes to open the package and remove or replace the drugs inside. Further, Lane testified that after arresting Appellant and seizing the package, there was no evidence of tampering to the box. (R. 64). The State sufficiently produced a chain of custody as far as practicable and therefore the trial judge did not err in admitting the marijuana.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

215 N. Harvin St.
Sumter, SC 29150

BY: _____
AMBREE M. MULLER
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 29, 2024

RECEIVED
Feb 29 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
The Honorable Alison R. Lee, Circuit Court Judge

Appellate Case No. 2022-001551

THE STATE, Respondent,

v.

WILLIAM LEE ROSEBORO, JR., Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: _____
AMBREE M. MULLER
Bar # 104213

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY
The Honorable Alison R. Lee, Circuit Court Judge

Appellate Case No. 2022-001551

THE STATE — Respondent,

v.

WILLIAM LEE ROSEBORO, JR., — Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jessica M. Saxon, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 29th day of February, 2024.

Grace Sommer

Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

William Lee Roseboro, Jr., Appellant.

Appellate Case No. 2022-001551

Appeal From Sumter County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2025-UP-331
Submitted September 1, 2025 – Filed October 1, 2025

AFFIRMED

Appellate Defender Jessica M. Saxon, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Ambree Michele Muller, both of Columbia; and Solicitor Ernest Adolphus Finney, III, of Sumter, all for Respondent.

PER CURIAM: William Lee Roseboro, Jr., appeals his conviction for possession with the intent to distribute marijuana and sentence of eight years' imprisonment. On appeal, Roseboro argues the trial court erred by admitting drug evidence

because the State failed to establish a sufficient chain of custody; specifically, Roseboro contends the chain of custody was insufficient without testimony from an employee at Roseboro's apartment complex. We affirm pursuant to Rule 220(b), SCACR.

We hold the trial court did not abuse its discretion by admitting the drug evidence because the State established a sufficient chain of custody. Although Roseboro contends the chain of custody was insufficient without the testimony of an apartment complex employee, there was no testimony or evidence providing an employee received the drug evidence during the controlled delivery to Roseboro. *See State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002))); *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011) ("Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts."); *id.* at 95, 708 S.E.2d at 755 ("Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be."); *id.* (explaining, however, that "[t]he State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable"); *State v. Taylor*, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004) ("[I]f the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission [of the evidence], absent proof of tampering, bad faith, or ill-motive."); *S.C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629 n.1, 614 S.E.2d 642, 646 n.1 (2005) ("Whether the chain of custody has been established as far as practicable . . . depends on the unique factual circumstances of each case.").

AFFIRMED.[1]

KONDUROS, GEATHERS, and VINSON, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Alison Renee Lee, Circuit Court Judge

Opinion No. 25-UP-331 (Filed October 1, 2025)

THE STATE,

RESPONDENT,

V.

WILLIAM LEE ROSEBORO, JR.

APPELLANT

APPELLATE CASE NO. 2022-001551

PETITION FOR REHEARING

On October 1, 2025, this Court affirmed the trial court's admission of the drug evidence, finding the state established a sufficient chain of custody. This Court found that while "Roseboro contends the chain of custody was insufficient without the testimony of an apartment complex employee, there was no testimony or evidence providing an employee received the drug evidence during the controlled delivery to Roseboro." State v. Roseboro, Op. No. 2025-UP-331 (S.C. Ct. App. filed October 1, 2025). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter and consider the significant points overlooked and/or misapprehended by this Court as discussed below.

The Record reflects that Postal Inspector Rogers delivered the package to an unknown person at the apartment complex. During the cross-examination of Rogers, defense counsel asked:

> Q: Okay. And at the apartment complex you delivered it to the apartment, *somebody in that office?*
>
> A: *Yes, sir,* it was at the office. That's where the parcel delivered to so people can come pick them up.

R. 50, ll. 10-15. The question put to Rogers was whether the package was delivered to *somebody* in the office, and Rogers answered that question in the affirmative. Therefore, there is testimony in the Record that the parcel was delivered to an unidentified employee at the apartment complex during the controlled delivery.

Further, the trial court acknowledged that the parcel was delivered to an intervening party at the apartment complex office. It noted there was no case law that addressed the circumstance where "there's a package that's delivered to a non-law enforcement person, a person who is not cooperating with law enforcement in any way, someone who's not in a [sic] undercover capacity" and ruled "the case law does not require that there be – that the intervening person to whom the package was delivered in this particular case to the office of the apartment complex, does not require that they have to come in and testify as to what happened to the package." R. 198, l. 23 – 199, l. 3; R. 199, ll. 20-25.

Even the solicitor, in arguing that the chain was complete, did not argue that there was not an unknown individual in the chain. The state argued that defense counsel's argument was without merit because the box was intact when it was delivered, Appellant was under surveillance the entire time, and upon arrest "there's no indication whatsoever that there was anything to upset the integrity of that package." R. 124, l. 7 – 125, l. 6. Defense counsel

presented State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004), which requires suppression of evidence when the identity of persons handling the evidence is unknown, and the state then changed its argument. In changing its argument, the state did not to say that there was not a person at the apartment complex but claimed the chain of custody did not start until Appellant was arrested. R. 126, ll. 2-19. The trial court accepted this argument and ruled as a matter of law that the chain did not start until after Appellant was arrested, and thus, the chain was complete. However, the law is clear that the chain begins when law enforcement takes *initial* control of the evidence – in this case, when Rogers opened the suspicious parcel.

The Record reflects that an unidentified person accepted the package from Rogers and held it for approximately ten minutes until Appellant retrieved the package. "A party offering into evidence fungible items such as drugs or blood samples *must* establish a chain of custody as far as practicable." Taylor, 360 S.C. at 22–23, 598 S.E.2d at 737 (internal citations omitted) (emphasis added). "Where the analyzed substance has passed through several hands, *the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis*. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable." Id. (internal citations omitted) (emphasis added).

The law is clear. While the state is not required to bring every person in the chain of custody into court to testify, it is required to *identify every person in the chain* and how that person handled the evidence. See State v. Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992), citing Raino v. Goodyear Tire and Rubber Co., 309 S.C. 255, 422 S.E.2d 98 (1992) (The identity of the persons who handled the evidence must be established.); State v. Trapp, 420 S.C. 217, 231, 801 S.E.2d 742, 749 (Ct. App. 2017) (When an analyzed substance has passed through

several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture.). The failure to establish the identity of a person who initially received the parcel, and what that person did with the fungible narcotic evidence for ten minutes, created an issue of admissibility that was fatal to the state's case. Had the state but gotten the name of the individual in the office who accepted the initial delivery of the package and how the package was stored until it is picked up by the recipient, then the chain would have been complete. See State v. Trapp, 420 S.C. 217, 231, 801 S.E.2d 742, 749 (Ct. App. 2017) (If the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, the circuit court does not abuse its discretion in admitting the evidence absent proof of tampering, bad faith, or ill-motive.) However, the state failed to procure that information or produce it at trial. This created a gap in the chain, not merely a weak link, and such a gap in the chain of custody demands suppression. See State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable).

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of October, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM LEE ROSEBORO, JR.

APPELLANT

APPELLATE CASE NO. 2022-001551

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on William Lee Roseboro, #389383, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 20th day of October, 2025.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

William Lee Roseboro, Jr., Appellant.

Appellate Case No. 2022-001551

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Jessica M. Saxon, Esquire
Ambree Michele Muller, Esquire
Ernest Adolphus Finney, III, Esquire
The Honorable Alison Renee Lee

FILED
Dec 18 2025