

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Newberry County

Eugene C. Griffith, Jr., Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

v.

WILLIAM RUSSELL NEAL,

APPELLANT

APPELLATE CASE NO. 2013-000465  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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SOUTH CAROLINA APPEALS

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in allowing a SLED forensic DNA scientist to testify about DNA results when there was a defect in the chain of custody?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the second degree after a jury trial held before the Honorable Eugene C. Griffith, Jr., on February 4, 2013, in Newberry County. A ten (10) year sentence was imposed. Because of prior burglaries, appellant will have a life sentence. Charles Verner, Esquire, was trial counsel. Dale Scott, Esquire, and Yates Brown, Esquire, were the assistant solicitors.

This appeal follows.

## ARGUMENT

The trial court erred in allowing a SLED forensic DNA scientist to testify over DNA results when there was a defect in the chain of custody.

Appellant was tried for burglary at a August 18, 2011, break-in at the residence of Brandon Gillion and David Gillion. Around 10:50 a.m., Brandon returned home to find that it had been broke-in by an African-American male who had a plastic bag in his hand. He called 911. (Tr. p. 97, lines 2 – 15). Law enforcement arrived and made sure the suspect was gone. Brandon noticed a drill, a Dr. Pepper can, and a baseball cap that did not belong in the house. There was also some scattered coins from an old cookie can. (Tr. p. 180, line 1 – p. 101, line 9).

Sgt. Rowe testified that he responded to the scene. He noticed the change scattered around. He also learned that the drill, the Dr. Pepper can, and the baseball cap did not belong to the homeowner. (Tr. p. 112, line 8 – p. 114, line 13). He learned from other officers that a suspect had been caught in the neighborhood. That person was appellant. (Tr. p. 115, line 23 – p. 116, line 13).

Officer Gunwall found appellant in the neighborhood. He had a plastic bag with change in it. Nearby, where appellant had been, Officer Gunwall found appellant's ID and a large knife on the ground. (Tr. p. 122, lines 11 – 24).

Captain Atkins testified that he responded to the scene and took possession of the Dr. Pepper can, the baseball cap, the change jar, and the drill. (Tr. p. 142, line 19 – p. 143, line 6). He swabbed the mouth of the soda can and put the swab in a heat sealed bag and initialed it. He did this to see if he could get saliva from the can to test for DNA. He put the package in the evidence refrigerator and locked it. (Tr. p. 146, line 1 – p. 148, line 16).

Captain Atkins also swabbed the baseball cap and packaged it up and put it into evidence. He said he assumed the cap and swab went to SLED. He said they try to let the evidence custodian take evidence to SLED to cut down of the number of people in the chain. (Tr. p. 149, line 12 – p. 150, line 7).

Lt. McClurkin testified that he took a DNA sample from appellant by swabbing his cheek and placed the swab in an envelope, sealed it, and put it inside the secure evidence refrigerator. (Tr. p. 153, line 2 – 25). He said the evidence custodian had access to the evidence. That was Lt. Mike O’Connell, who also took it to SLED for analysis. (Tr. p. 154, lines 11 – 17).

Catherine Leisy, a SLED forensic DNA scientist, testified that the DNA profile from appellant and the DNA profile from the Dr. Pepper can were a match with a probability of one in 3.8 quadrillion people. (Tr. p. 164, lines 17 – 21).

The trial court should not have allowed the SLED agent to testify about the results of the DNA testing because the chain of custody was not complete. In State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007), the Court wrote it:

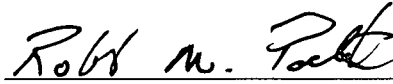
has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. Benjamin v Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957) Where an analyzed substance that has passed through several hands, the identity of individuals who acquired evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. Id. at 33-34, 100 S.E.2d at 537. Accordingly, if the identity of each person handling the evidence is established, 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).

In this case, we do not know when the Dr. Pepper can swab and the oral swab were taken to SLED. Neither do we know for certain who took the evidence to SLED. The evidence custodian himself did not even testify.

CONCLUSION

Because the DNA results should not have been admitted and because they were prejudicial, appellant's conviction should be reversed.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2013.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Newberry County  
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PETITION TO BE RELIEVED AS COUNSEL

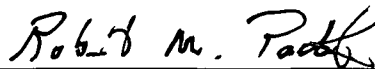
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Counsel for William Russell Neal states:

1. He is 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 Eugene C. Griffith, Jr., which was held on February 6, 2012, 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 William Russell Neal.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2013.

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Appeal from Newberry County

Eugene C. Griffith, Jr., Circuit Court Judge

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THE STATE,

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APPELLATE CASE NO. 2013-000465

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

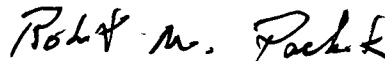
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Schmerber Hearing Transcript dated February 9, 2012
- (3) Entire Trial Transcript dated February 4 – 5, 2013

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

December 18th, 2013



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Robert M. Pachak  
Appellate Defender

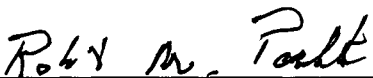
South Carolina Commission on Indigent Defense  
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PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 18, 2013

  
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Robert M. Pachak  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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Post Office Box 11589  
Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on William Russell Neal, #154611 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 18th day of December, 2013.

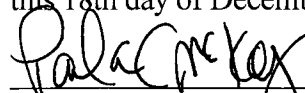


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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 18th day of December, 2013.



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(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.