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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN KRANENDONK,

PETITIONER

APPELLATE CASE NO. 2014-002044

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Steven Kranendonk, Appellant.

Appellate Case No. 2012-210207

Appeal From Richland County
G. Thomas Cooper Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-210
Heard April 8, 2014 – Filed June 4, 2014

AFFIRMED

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General J. Benjamin Aplin, both of Columbia, for Respondent.

PER CURIAM: Steven Kranendonk appeals his convictions for two counts of reckless homicide by operation of a boat. Kranendonk argues the trial court erred in (1) qualifying Investigator Robin Camlin as an expert in navigational rules and

allowing her to offer opinions that exceeded her qualifications; and (2) admitting evidence of Kranendonk's blood alcohol content that was allegedly obtained without probable cause. We affirm.

1. We hold the trial court did not abuse its discretion when it qualified Camlin as an expert in navigational boating rules. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) ("The decision to admit or exclude testimony from an expert witness rests within the trial court's sound discretion."); *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) (stating the admission or exclusion of expert testimony will not be reversed absent a prejudicial abuse of discretion). She derived her opinions from facts within her knowledge and her professional experience with boating rules. *See State v. Goode*, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991) ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of [her] testimony as would enable [her] to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge."). Accordingly, we find no error in Camlin's qualification and the admission of her expert testimony.

2. We find the facts and circumstances known to the officer requesting the blood sample would warrant a prudent man to believe Kranendonk violated section 50-21-113. *See* S.C. Code Ann. § 50-21-116 (2008) (requiring an individual to submit to a breath, blood, or urine test if an officer has probable cause to believe the individual has violated section 50-21-113—the statute that provides penalties for operating a boat while under the influence of alcohol resulting in death); *Henry v. United States*, 361 U.S. 98, 102 (1959) ("Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."). The officer articulated specific reasons for drawing Kranendonk's blood, including: (1) his knowledge that Kranendonk operated a boat involved in an accident with multiple fatalities; (2) his knowledge that Kranendonk had been drinking prior to the accident; and (3) his observation that Kranendonk smelled of alcohol. Therefore, we find probable cause existed and hold the trial court did not err in admitting evidence of Kranendonk's blood alcohol content.

AFFIRMED.

FEW, C.J., and SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

STEVEN KRANENDONK,

APPELLANT

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 2014-UP-210

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, the Court's opinion overlooks and does not address crucial portions of appellant's arguments. Appellant asks for rehearing on both issues on appeal.

Issue 1

While the Court acknowledged in its opening paragraph that appellant contends that Investigator Camlin offered opinions exceeding the scope of her qualifications, the Court's opinion fails to address this issue. The Court only holds that "the trial court did not abuse its discretion when it qualified Camlin as an expert in navigational boating rules." The thrust of appellant's argument was that Camlin should not be allowed to recreate the accident. Camlin began her

testimony by stating the navigational rules, but then, after vociferous objections from trial counsel, was allowed to recreate the accident and opine whether appellant violated various standards of care.

The solicitor asked what navigational rules and regulations appellant violated. R. 511, ll. 10 – 15. Camlin testified that appellant did not keep a proper lookout. R. 511, ll. 14 – 15. Despite further objections from defense counsel that were overruled, Camlin stated that if you keep a proper lookout, you have to "see it, know what it is and interpret it and take action to avoid a collision." R. 513, ll. 1 – 15. Appellant objected to this answer and the objection was overruled. R. 513, ll. 12 – 15.

Camlin then testified that appellant should have throttled down completely. R. 514, ll. 9 – 17. She testified that appellant violated Rule 6 of the navigational rules because he failed to keep a safe speed. R. 514, l. 18 – 515, l. 14. She testified that appellant violated a rule of navigation because he did not take into consideration "all prevailing circumstances" to avoid the risk of collision. She claimed that appellant had "ample time to prevent a collision." R. 515, l. 15 – 516, l. 1. She opined that appellant violated Rule 8 of the navigational rules because he did not "alter his course in time or slow down in time to avoid a collision." R. 516, ll. 7 – 13. She opined that appellant violated Rule 15 of the navigational rules by failing to change his course or slow down to allow the boat approaching from the right to maintain its course and speed. R. 516, ll. 14 – 21. Finally, she opined that appellant violated Rule 16 of the navigational rules by not taking early and substantial action to avoid a collision because he was the "give-way" vessel. R. 517, ll. 7 – 18.

All of this testimony amounted to recreation of the accident, which Judge Cooper had previously ruled was inadmissible. This exceeded the scope of her qualifications. "[A]n expert's testimony may not exceed the scope of his expertise." State v. Commander, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (holding that forensic pathologists may not testify regarding the state of

mind or the guilt of the accused). Camlin was only qualified as an expert in navigational rules. Therefore, she should only have been allowed to testify as to what rules existed. Furthermore, Judge Cooper ruled that she could only testify concerning hypothetical situations. The solicitor repeatedly asked Camlin for her opinions on what appellant specifically did wrong. Having been "improperly imbued with the imprimatur of an expert witness," this testimony severely prejudiced appellant on the main issues at trial. See State v. Whitner, 399 S.C. 547, 732 S.E.2d 861, 867 (2012).

In State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001), the Supreme Court reversed and ordered a new trial because a police officer testified outside of the scope of his qualifications. In Ellis, an officer was qualified as an expert in crime scene processing and fingerprint identification. Id. at 177-78, 547 S.E.2d at 491-92. The officer testified as to his conclusions concerning the location of the victim and the position of the body at the time of a shooting. Id. The Supreme Court stated that the officer was improperly allowed to give his opinion on the ultimate issue in the trial, which was self-defense. Id. Just as in Ellis, Camlin, who was also a law enforcement officer, was allowed to exceed her knowledge of navigational rules and offer an opinion on the ultimate issue in this trial: whether appellant acted recklessly. The fact that this testimony came from an individual qualified as an expert heightened the prejudice to appellant. Id. "An officer's improper opinion which goes to the heart of the case is not harmless." Id. See also, Fordham v. State, 325 S.E.2d 755, 756 (Ga. 1985) (holding that an officer's opinion as to whether a defendant acted with malice required reversal).

An expert may only offer an opinion on the ultimate issue at trial if the expert is properly qualified. See State v. Wilkins, 305 S.C. 272, 407 S.E.2d 670 (Ct. App. 1991) (holding that a properly qualified psychiatrist could testify about state of mind in a battered woman's syndrome

case); Ellis at 178, 547 S.E.2d at 491; SCRE 704. In the recent case of In re Thomas S. 402 S.C. 373, 741 S.E.2d 27 (2013), the Supreme Court reversed because a social worker, who was not qualified to give an opinion on whether a sexually violent predator would reoffend, improperly gave such an opinion. The State attempted to avoid this problem by not qualifying the social worker as an expert. Id.

Similarly, in this case, the State attempted to hide the ball by first qualifying Camlin as an expert in navigational rules who would be presented with hypotheticals, and then immediately eliciting testimony concerning specific actions or non-actions taken by appellant. Judge Cooper seemed to realize that it had been a mistake to allow Camlin's testimony. As she was leaving the stand, he told her, "Next time somebody asks you to be an expert, you might want to think twice about it." R. 540, ll. 4 – 5.

The Court should reconsider its opinion in light of Camlin exceeding the scope of her expert qualification, grant rehearing, and reverse.

Issue 2

Respectfully, the Court failed to address appellant's argument that probable cause did not exist because appellant previously passed a previous field sobriety test. R. 26, ll. 12 – 14. R. 27, l. 17 – 28, l. 1. Furthermore, the officer who drew appellant's blood admitted he did not have probable cause. R. 49, l. 15 – 51, l. 2. The State needed probable cause to seize appellant's blood. See State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) (dealing with DNA evidence). S.C. Code Ann. § 50-21-116. Under these facts, probable cause did not exist and the warrantless seizure of appellant's blood violated his federal and state constitutional rights. See U.S. Const. amends. IV and XIV; S.C. Code Ann. § 50-21-116. Taking evidence from a citizen's body constitutes a search and seizure under the Fourth Amendment. State v. Simmons, 384 S.C. 145,

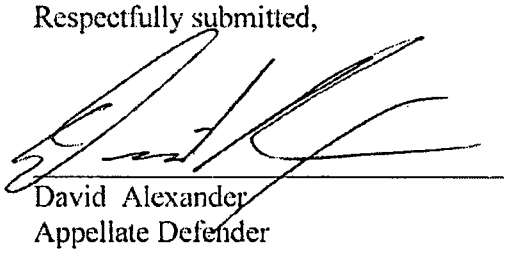
174, 682 S.E.2d 19, 35; Schmerber v. California, 384 U.S. 757 (1966). Searches and seizures without a warrant are *per se* unreasonable under the Fourth Amendment unless some exception applies. Katz v. United States, 389 U.S. 347, 357 (1967).

This Court's opinion appears to focus solely on Officer Bickley and does not address whether Officer Roosen's knowledge that appellant passed a field sobriety test and did not appear impaired at the scene should have been imputed to Officer Bickley. The State is one entity and officers are presumed to have the facts of other officers. See United States v. Morales, 238 F.3d 952 (8th Cir. 2001) (stating that probable cause may be based on officers' collective knowledge); United States v. Rosario, 543 F.2d 6, 8 (2nd Cir. 1976) (stating that the test for probable cause "is whether, based on the collective knowledge of the police, rather than that of the arresting officer alone, the facts available to the police at the time of arrest were sufficient to warrant a prudent man in believing that the petitioner had committed . . . an offense."); cf. State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (Ct. App. 2004) (holding that because officer did not have personal knowledge or hearsay knowledge of facts in his affidavit, that warrant was invalid for lack of probable cause).

This doctrine certainly should apply in cases where one officer has exculpatory facts, but does not relay them to another officer. The police are not allowed to withhold information from each other in order to bolster an officer's probable cause determination. In this case, where Officer Roosen knew the highly exculpatory fact that appellant had passed a field sobriety test with no difficulty, the failure to communicate this information to Officer Bickley cannot inure to appellant's detriment. For these reasons, and considering the totality of the circumstances, law enforcement lacked probable cause and the seizure of appellant's blood violated his constitutional rights and under section 50-21-116 of the South Carolina Code. The evidence of

appellant's blood alcohol level was highly prejudicial and likely made the difference in this close case. Therefore, this Court should grant rehearing, reverse, and order a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

This 19th day of June, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN KRANENDONK,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and upon Mr. Steven Kranendonk, # 350076, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189 on this 19th day of June, 2014.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 19th day
of June, 2014.

Rhonda Denise Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

The South Carolina Court of Appeals

The State, Respondent,

v.

Steven Kranendonk, Appellant.

Appellate Case No. 2012-210207

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.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
David Alexander, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
The Honorable G. Thomas Cooper Jr.

AUG 26 2014

FILED

8/25/14