ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAQUINCY M. WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2014-002769

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in permitting a pathologist to testify regarding the results of his autopsy and in permitting other experts to testify regarding DNA testing of blood recovered from the body of the deceased where the state failed to present evidence of a complete chain of custody concerning the body?

STATEMENT OF THE CASE

On July 25, 2013, Appellant and his co-defendant, Toshonda Mickens, were jointly indicted by the Williamsburg County grand jury for murder, burglary in the first degree, armed robbery, and criminal conspiracy. R. 1199-1200. In the same indictment, Appellant's co-defendant, Appellant, alone was indicted for possession of a firearm during the commission of a violent crime. R. 1199-1200. The state, represented by Kimberly V. Barr and Tyler B. Brown, called Appellant and Mickens to trial before the Honorable W. Jeffrey Young and a jury on September 9-13, 2013. R. 1. Cesar E. McKnight represented Appellant, and Timothy L. Griffith represented Mickens. R. 1. The jury found Appellant and Mickens guilty as charged. R. 1159, l. 12 – R. 1160, l. 14. Judge Young sentenced Appellant to life imprisonment for murder and first degree burglary, thirty years' imprisonment for armed robbery, five years' imprisonment for criminal conspiracy, and five years' imprisonment for possession of a firearm during the commission of a violent crime. R. 1186, l. 24 – R. 1187, l. 5; R. 1188, ll. 1-9. Judge Young sentenced Mickens to thirty years' imprisonment for murder, burglary, and armed robbery. He sentenced her to five years' imprisonment for criminal conspiracy. R. 1187, ll. 6-18; R. 1202 - 1206. He ordered the sentences to be served concurrently. R. 1185, l. 21 – R. 1186, l. 3; R. 1202 - 1206.

Appellant filed a notice of appeal. This brief follows.

STATEMENT OF FACTS

Shortly before 10 a.m. on November 2, 2007, a Florence city police officer responded to McLeod Regional Medical Center because James Gquan Henry had been admitted due to several gunshot wounds. R. 157, l. 16 – R. 159, l. 9. Henry told the officer he was shot when someone tried to rob him. He was unable to give an exact location of the shooting, however. R. 160, ll. 8-10; R. 169, ll. 13-23; R. 170, ll. 22-24; R. 826, ll. 17-25; R. 827, ll. 1-3.

That afternoon, Tonisha Mickens arrived at the hospital. R. 162, l. 16 – R. 164, l. 9. Mickens told the police she found Henry lying down in the grass on June Lane in Florence. She then took him to the emergency room. R. 164, ll. 18-23; R. 172, l. 12 – R. 173, l. 15; R. 174, ll. 6-7. The police searched the area where Mickens said she found Henry, but they found no evidence of a shooting. R. 165, l. 11 – R. 167, l. 1; R. 172, ll. 1-11; R. 174, ll. 9-11; R. 183, ll. 16-19; R. 212, l. 12 – R. 214, l. 8; R. 225, ll. 1-6. However, the police collected Henry's clothing, including a pair of jeans, and conducted GSR testing on his hands. R. 225, l. 21 – R. 226, l. 11.[1] The police also took photographs of the car Mickens was driving when she took Henry to the hospital and took swabs from areas in the car as well. R. 214, l. 16 – R. 217, l. 5.[2] The Florence Police Department closed the case when they developed no suspects. R. 197, ll. 2-13.

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[1] DNA analysis showed the DNA profile developed from cuttings from Henry's jeans were consistent with the DNA profile developed from the vials of blood collected from the deceased during the autopsy. R. 411, ll. 6-23. The GSR test results showed Henry had round lead particles, a component of GSR, on the palm of his right hand and the back of his right hand. R. 481, l. 4 – R. 482, l. 4.

[2] Eventually, DNA analysis would show that the DNA profile developed from the swab in the car was consistent with Henry's DNA profile. R. 450, ll. 4-19.

Meanwhile, the Williamsburg County Sheriff's Department (WCSD) responded to a shooting scene in Hemingway on November 2, 2007 at 8:44 a.m. R. 342, l. 23 – R. 346, l. 12; R. 489, ll. 4-8. The police found the body of James McNeal, the deceased, in the bedroom of his mobile home. R. 499, ll. 15-18; R. 500, l. 20 – R. 501, l. 19. McNeal had been shot multiple times. R. 348, ll. 2-11. The case went cold when no suspects were developed. R. 881, ll. 2-5.

In September 12, 2008, WCSD received information from the United States Marshal Service that someone had information about the homicide. R. 886, ll. 10-21. However, it was not until 2010 that the connection between the two incidents emerged to police. R. 887, ll. 4-11. Phillip "P.J." Williams was charged with criminal activity by the federal government. In an effort to negotiate a better deal, P.J. told police he had information relative to the shooting death of the deceased. R. 887, l. 13 – R. 889, l. 19; R. 931, ll. 1-8; R. 932, ll. 1-5.

Based on information supplied by P.J., the WCSD arrested James Gquan Henry. R. 889, ll. 20-25. On September 2, 2010, the WCSD collected the clothing evidence of Henry from his November 2, 2007 shooting from the Florence City Police Department. R. 230, ll. 19-25; R. 235, ll. 5-20; R. 252, l. 20 – R. 253, l. 6; R. 357, l. 22 – R. 358, l. 4. Henry cooperated with police and implicated Appellant and Mickens. R. 835, ll. 12-23; R. 896, ll. 15-25; R. 897, l. 12 – R. 898, l. 8; R. 899, l. 17 – R. 900, l. 25. Henry claimed P.J. concocted a plan to rob the deceased because he claimed he would have money and drugs in his possession. R. 789, ll. 15-20; R. 792, ll. 4-19. The plan, according to Henry, was to enter the deceased's home and then walk the deceased and Bell across the street to a barn where the deceased kept drugs and money. R. 793, ll. 1-17; R. 795, l. 2 – R. 796, l. 12.

However, P.J. would be unable to participate in the actual robbery because the deceased knew him – P.J.'s wife was the twin sister of the deceased's girlfriend, Latisha Bell. R. 789, l. 21 – R. 790, l. 17.

During the early morning of November 2, 2007, Henry, Appellant, Mickens, and P.J. went to McNeal's home in a car rented by Mickens. R. 806, l. 17 – r. 807, l. 16. Henry claimed that he and Appellant got out of the car with guns. R. 807, l. 22 – Tr. 801, l. 3. They entered the home and went to the back bedroom, as instructed by P.J. R. 808, ll. 4-19. The deceased got out of bed when Henry turned on the light. R. 808, ll. 19-20; R. 809, ll. 17-21. Appellant then hit the deceased in the head with the gun and the deceased fell to the floor. R. 808, ll. 21-22; R. 809, ll. 23-25. The deceased's girlfriend remained in the bed. R. 809, ll. 8-12. Somehow the deceased got a gun and shot Henry twice in the chest.[3] R. 810, ll. 4-10. Appellant returned fire. R. 810, ll. 14-20. Eventually, Appellant got the deceased's gun, but he accidentally shot Henry with it. R. 811, ll. 1-12. Henry claimed he ran from the home while Appellant continued to shoot. R. 811, ll. 14-20. Henry and Appellant returned to the car Mickens was driving. R. 811, ll. 20-24; R. 816, ll. 7-11; R. 819, ll. 16-25. During the car ride, Appellant revealed he had taken money from the deceased. R. 821, ll. 13-25. Thereafter, Mickens, Appellant, and P.J. took Henry to the hospital. R. 822, ll. 11-22; R. 825, ll. 10-17.

[3] GSR testing on the deceased showed he had GSR on the palm of his left hand and the back of his left hand. R. 477, l. 19 – R. 478, l. 5.

ARGUMENT

The trial judge erred in permitting a pathologist to testify regarding the results of his autopsy and in permitting other experts to testify regarding DNA testing of blood recovered from the body of the deceased where the state failed to present evidence of a complete chain of custody concerning the body.

Relevant facts

When the state called Dr. Bradley Marcus, a pathologist, to testify, Appellant objected. Appellant moved to exclude Dr. Marcus's testimony regarding the autopsy because the state had failed to establish a chain of custody for the deceased's body. R. 260, l. 15 – R. 261, l. 3. Appellant conceded that "no specific case in the State of South Carolina [] deals with a body per se." R. 261, ll. 15-17. However, Appellant explained that the law clearly established there where "products of the body" are tested that a complete chain of custody must be proven. Thus, Appellant reasoned "that where you have a standard for products of the body that are tested, if the whole body is tested, then that standard must be applied to the whole body." R. 261, ll. 17-21. The state presented no evidence regarding how Dr. Marcus got the body on which he performed the autopsy. R. 261, ll. 22-25. Appellant demanded the state "show us how he got the materials to be tested." R. 265, ll. 8-9. The trial judge simply overruled the motion with no analysis. R. 266, ll. 8-9.

Thereafter, Dr. Marcus testified that on November 3, 2007, he received the body of James McNeal, the deceased. R. 272, l. 25 – R. 273, l. 2. He explained that he had been notified by the coroner, Harrison McKnight, to perform the autopsy. R. 273, ll. 3-15. Dr. Marcus testified regarding his examination of the deceased, including his opinion the deceased died as a result of multiple gunshot wounds to the chest and that the manner of

death was homicide. R. 274, l. 15 – R. 311, l. 12. Additionally, Dr. Marcus testified that he provided law enforcement with various items recovered during the autopsy, including a jacket fragment from a gunshot wound, a bullet, and two tubes of chest cavity blood. R. 311, l. 18 – R. 313, l. 11.

On cross-examination, Dr. Marcus admitted that he had no idea who transported the body to the Medical University of South Carolina (MUSC) where he performed the autopsy. R. 314, ll. 7-15. He testified that generally bodies arrive in body bags, but he was not certain how the body of the deceased arrived. R. 314, ll. 16-20. His recollection was that MUSC kept a log book in which the person who delivered the body would be required to sign. R. 316, ll. 1-10. When asked if a body were fungible evidence, Dr. Marcus replied, "Absolutely. No question about it." R. 316, l. 25 – R. 317, l. 1. Dr. Marcus received the name of the deceased from the coroner, but he could not recall if the body arrived in a body bag with the name on it or if he got the name in some other way. R. 335, l. 16 – R. 336, l. 20. Further, Dr. Marcus did not "sign for the body" as some unknown "morgue attendant" handled that aspect. R. 336, ll. 11-21.

When the law enforcement officer who was present during the autopsy testified, he revealed that he did not know who transported the body to MUSC. When asked, he said, "It was transported by whichever funeral home came to pick it up and transported it there." R. 392, ll. 3-6. He was unable to give any more specific information concerning who transported the body despite his testimony that he helped "[o]ne of the employees from the funeral home" "put the body on the gurney." R. 392, ll. 7-24; R. 544, l. 22 – R. 545, l. 7. Further, he candidly admitted that he did not know if the body went directly from the crime

scene to MUSC as no one from law enforcement accompanied the body. R. 546, l. 4 – R. 547, l. 12.[4]

When the state sought to admit the bullets recovered from the deceased's body, Appellant objected based on the incomplete chain of custody. R. 389, ll. 4-12. However, the judge overruled the objection. R. 391, ll. 11-17. When the state sought to introduce testimony concerning DNA testing involving the deceased's blood, which was obtained during the autopsy, Appellant objected based on the incomplete chain of custody. R. 410, ll. 22-25. The judge overruled the objection. R. 411, l. 5.[5] Thus, the DNA analyst testified that the DNA profile developed from two cuttings from James Henry's pants was consistent with the DNA profile of the deceased developed from the blood standard obtained at the autopsy. R. 411, ll. 6-23.

When Appellant moved for a directed verdict, he renewed his motion regarding the suppression of Dr. Marcus' testimony and any evidence derived from the autopsy based on the state's failure to establish a complete chain of evidence on the deceased's body. R. 949, l. 13 – R. 950, l. 13; R. 951, ll. 1-7; R. 954, ll. 11-23. Appellant explained that the state had failed to establish "what happened to the body between or who had it from the time it left Hemingway until the time it got to Charleston." R. 955, ll. 5-11. However, Appellant was clear that he was not suggesting that the body on whom Dr. Marcus performed the autopsy was not the deceased. R. 955, ll. 12-15. Rather, Appellant argued the body was fungible

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[4] No one in law enforcement knew how the body was transported from the crime scene to MUSC for an autopsy. R. 633, ll. 1-16 (crime scene investigator testifying that the coroner and "somebody" from the local funeral home moved the body); R. 908, l. 21 – Tr. 902, l. 5 (investigator testifying that she was not sure which funeral home handled the body but believed it was Bartelle's); R. 1000, ll. 14-19 (same).

evidence for which a complete chain of custody was required. R. 955, l. 19 – R. 957, l. 1. Appellant explained the state could not show that "someone didn't shoot the body again between MUSC and Hemingway" or that "someone didn't remove 5 bullets from the body between MUSC and Hemingway." R. 959, ll. 2-10. Still, the judge denied the motion. R. 959, ll. 16-19.

In his case-in-chief, Appellant called Harrison McKnight, the Williamsburg County Coroner, to testify. R. 1033, ll. 14-15. Coroner McKnight called Bartelle's Funeral Home to handle the body. R. 1039, ll. 10-17. Initially, Coroner McKnight claimed that Isaac Bartelle, the funeral home director, handled the body. R. 1039, l. 18 – R. 1040, l. 3. However, he quickly changed his testimony to say he meant the Bartelle Funeral Home handled the body and he did not know the specific person from the funeral home. He had no idea who drove the body to MUSC. R. 1040, ll. 8-15. He thought the body was placed in a body bag. R. 1045, ll. 4-7. However, the body bag could not be sealed – it operated by zipper alone. R. 1045, ll. 17-24.

At the conclusion of his case-in-chief, Appellant renewed his motion concerning the suppression of Dr. Marcus's testimony and the evidence derived from the autopsy based upon the lack of a chain of custody concerning the body. R. 1071, ll. 7-14. The judge denied the motion. R. 1071, ll. 18-19.

Discussion

The South Carolina Supreme Court "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

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[5] The state argued that the blood sample from the deceased was already in evidence. R. 411, ll. 2-4. According to the record, the blood sample was marked as State's Exhibit #150 and was admitted without objection. R. 391, ll. 12-17.

far as practicable." State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). "[I]t is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed." Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957). When evidence has "passed through several hands," the testimony "must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis." Id. at 33-34, 100 S.E.2d at 537. "[I]f 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." Sweet, 374 S.C. at 6, 647 S.E.2d at 205-206.

Nevertheless, it is not required that each custodian of fungible evidence testify as long as "other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence." Id. at 7, 647 S.E.2d at 206. In such circumstances, "our courts have been willing to fill gaps in the chain of custody due to an absent witness." Id.

Recently, courts have abandoned rigid rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. See State v. Hatcher, 392 S.C. 86, 94-95, 708 S.E.2d 750, 754-55 (2011) (citing United States v. De Larosa, 450 F.2d 1057, 1068 (3rd Cir. 1971)). "The trial judge's exercise of discretion must be reviewed in the light of the following factors: . . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it." Id. (internal quotation marks and citation

omitted). "If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence." Id. at 94-95, 708 S.E.2d at 754-55 (quoting Gallego v. United States, 276 F.2d 914, 917 (9th Cir. 1960)). Accordingly, our Supreme Court held, "The 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. This determination will necessarily depend on the unique factual circumstances of each case." Id. at 95, 708 S.E.2d at 755.

In Sweet, 374 S.C. at 7, 647 S.E.2d at 206, the Court found the state failed to establish a complete chain of custody where the confidential informant in the drug case did not testify that the drugs presented at trial were the drugs he allegedly received from the defendant. As explained by the Court, "[n]one of the chain of custody witnesses testified to seeing inside the motel room [where the alleged drug deal occurred] in order to establish who was in the room making the alleged transaction." Id. Quite simply, "the circumstantial evidence [did] not show how the informant came into possession of the drug evidence and in what condition he received it." Id. Here, the state's proof of chain of custody was incomplete because the evidence failed to establish the identity of each custodian and the manner of the handling of the evidence. Id.

The state simply failed to establish a chain of custody concerning the body of the deceased. Although at least one officer and the coroner recalled the name of a funeral home that handled the body, no one could name the specific person or persons who transported the body from Hemingway to MUSC for the autopsy. This is not a mere failure of the state to

call a witness to testify as a chain witness. This is a substantial failure in that the state cannot even identify the person or persons who transported the most significant evidence in the case – the deceased's body.

Very little evidence connected Appellant to the shooting death of the deceased. In fact, the only evidence against him was the testimony of an alleged co-conspirator, James Henry. The only physical evidence in the case – the DNA and GSR – pointed to Henry as the shooter, not Appellant. Henry's self-interested testimony shifted blame for the shooting to Appellant. The trial judge erred in failing to suppress the testimony of the pathologist and all evidence derived from the autopsy where the state failed to present a complete chain of custody concerning the body.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of October, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAQUINCY M. WILLIAMS,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for LaQuincy M. Williams states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial before Judge William Jeffrey Young, which was held on September 9-13, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She 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, she asks the Court to relieve her as counsel for LaQuincy M. Williams.

Respectfully submitted,

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of October, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

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LAQUINCY M. WILLIAMS,

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Trail transcript dated September 9-13, 2013;
(2) Transcript dated December 15, 2011;
(3) Defendant's #2 (coroner's report);
(4) True–billed indictment; and
(5) Sentence sheets

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

October 13th, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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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 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."

October 13, 2015

Susan B. Hackett

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STATE OF SOUTH CAROLINA

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Appeal from Williamsburg County

William Jeffrey Young, Circuit Court Judge

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LAQUINCY M. WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, 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 LaQuincy M. Williams, #357076, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 13th day of October, 2015.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of October, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.