

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

RECEIVED

NOV 03 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALEXANDER B. WILSON,

APPELLANT

APPELLATE CASE NO. 2014-002659

AMENDED ANDERS BRIEF OF APPELLANT

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

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL.....3

STATEMENT OF THE CASE4

ARGUMENT

The trial court erred in allowing a lay witness testify regarding his opinion concerning Appellant’s ability to know right from wrong and conform his conduct to the requirements of the law – the only issues in the case.5

CONCLUSION.....13

PETITION TO BE RELIEVED AS COUNSEL14

TABLE OF AUTHORITIES

Cases

State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993)..... 9, 10

State v. Curry, 410 S.C. 46, 762 S.E.2d 721 (Ct. App. 2014) 10

State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997)..... 9, 10

State v. Smith, 298 S.C. 205, 379 S.E.2d 287 (1989)..... 9, 10

State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992)..... 9

Statutes

S.C. Code Ann. § 17-24-10(A) 9

S.C. Code Ann. § 17-24-10(B) 9

S.C. Code Ann. § 17-24-20(A) 9

S.C. Code Ann. § 17-24-20(B) 9

S.C. Code Ann. § 17-24-30..... 8

S.C. Code Ann. § 17-24-70 (A) 9

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing a lay witness testify regarding his opinion concerning Appellant's ability to know right from wrong and conform his conduct to the requirements of the law – the only issues in the case?

STATEMENT OF THE CASE

On May 19, 2011, a Sumter County grand jury indicted Appellant for murder (2011-GS-43-0698). R. 512-513. The state, represented by Ernest A. Finney, III, and John P. Meadors, called the case to trial before the Honorable W. Jeffrey Young and a jury on December 1, 2014. R. 1. Charles T. Brooks, III, represented Appellant. R. 1. The jury unanimously found Appellant guilty but mentally ill. R. 453, lines 10-19. Although Appellant was sixty-three years old at the time of his trial and the judge recognized that a thirty-year sentence was “in effect a life sentence,” Judge Young sentenced Appellant to life imprisonment without the possibility of parole because he could not take the chance that Appellant could “ever walk these streets again.” R. 461, line 18 – R. 462, line 3; R. 514.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

The trial court erred in allowing a lay witness testify regarding his opinion concerning Appellant's ability to know right from wrong and conform his conduct to the requirements of the law – the only issues in the case.

Relevant facts

There was no question that on November 29, 2010, Appellant killed his mother, Elizabeth Wilson, by beating her with a baseball bat. R. 68, line 14 – R. 69, line 5. The only question for the jury was concerned Appellant's mental state. Appellant, who was sixty-three years old at the time of his trial, had been diagnosed with schizophrenia when he was twenty-two years old. R. 87, lines 6-14; R. 253, lines 6-12; R. 304, lines 5-6. Appellant had been hospitalized numerous times for his psychiatric condition. R. 253, lines 18-19. In fact, he had been committed several times between the crime in 2013 and his trial in 2014. R. 253, lines 19-22. Appellant presented expert testimony that he was insane at the time of the crime. R. 262, lines 8-21. However, the state presented an expert to testify that in her opinion, there was "no data to indicate that [Appellant] didn't know right from wrong" and that there was "insufficient data to indicate he was unable to conform his conduct to the requirements of the law." R. 364, line 24 – R. 365, line 14; R. 370, line 10 – R. 371, line 7.

The state called Appellant's older brother, Jerome Wilson, as a witness. R. 50, lines 10-15; R. 304, lines 7-10.¹ Jerome and Appellant lived at home with their mother

¹ Appellant testified that he and Jerome did not have the same mother. R. 304, lines 11-12. According to Appellant, his mother was struck by lightning in a cotton field when he was two-years old. R. 304, lines 14-18. At the time of her death, she was pregnant with his younger brother, whom he called his identical twin. R. 305, lines 7-15. Appellant

and father until the father's death in September 2010. R. 49, lines 17-19; R. 51, lines 1-25.² The two continued to live in the home with their mother thereafter. R. 52, line 24 – R. 53, line 25; R. 55, lines 14-16.

Jerome was aware that Appellant was schizophrenic and taking anti-psychotic medication. R. 86, lines 13-18. Jerome was also aware that Appellant obtained his medication from the Veterans' Administration Hospital by using a pharmacy mail service. R. 57, lines 3-19; R. 86, lines 22-25; see also, R. 256, lines 9-16. Appellant received a social security check for his disability – schizophrenia. R. 55, lines 20-24; R. 86, lines 19-21. Appellant's mother oversaw the funds. R. 56, lines 7-14. Jerome recalled that in the days prior to his mother's death, Appellant "was on a mission to have some money" and badgered their mother to give him money. R. 63, lines 2-5. Jerome objected to his mother giving Appellant any money. R. 63, lines 12-18.

On the day he killed his mother, Appellant had prepared a mail order form to get a refill of his prescription because he had been without his medication for eight days; however, he did not have a stamp to place on his envelope to mail the request. R. 79, line 20 – R. 80, line 20; R. 81, line 10 – R. 82, line 9; R. 256, lines 16-20. He repeatedly requested the money for a stamp from his mother, but she refused. R. 81, line 10 – R. 82, line 9; R. 256, lines 20-23; R. 306, lines 16-24; R. 307, lines 11-14.

referred to Jerome's mother as his adoptive mother and explained her name was Elizabeth S. Wilson. R. 307, lines 3-10.

² In September 2010, Appellant was in jail on a shoplifting charge. R. 51, lines 7-9. Approximately, three weeks after father's passing on September 2, 2010, mother bailed Appellant out of jail despite Jerome's objection. R. 53, lines 20-25; R. 54, lines 23-24; R. 55, lines 2-13.

Believing his mother had been replaced by a clone, a delusion he expressed to the police the day after his arrest, Appellant killed her with a baseball bat. R. 218, line 22 – R. 219, line 5. One of the ways that Appellant’s schizophrenia manifested was through Capgras Syndrome, an irrational belief that a familiar person has been replaced by an exact duplicate. R. 254, line 19 – R. 255, line 2. Due to his schizophrenia, Appellant believed his mother “was a replacement, and was a threatening figure to him.” R. 255, lines 5-8. Additionally, Appellant heard his deceased father instruct him to kill his mother and deliver her to him. R. 258, lines 11-13; R. 310, lines 3-22. Appellant testified that the woman he killed was not his biological mother or his adoptive mother. His adoptive mother was Elizabeth S. Wilson, but the person he killed was Elizabeth Wilson, an imposter. R. 309, line 9 – R. 310, line 3; R. 310, line 23 – R. 311, line 14.

Jerome gave his opinion regarding how the death occurred, including his believe that Appellant first struck her while she was in bed and then struck her again as she was trying to get away. R. 84, line 19 – R. 85, line 14. Jerome repeatedly claimed that Appellant acted purposely on the day he killed his mother. Jerome opined that Appellant knew the difference between right and wrong. He based this opinion on his experience “working in mental health and dealing with a lot of different clients.” R. 88, lines 9-12. Jerome claimed he had “watch[ed] him for years, smooth talk.” R. 100, lines 19-20. Jerome opined that Appellant “know [*sic*] what to do. He know [*sic*].” R. 101, lines 2-3.

In the 1970s, Jerome had started working “with young, borderline juvenile boys in New York.” R. 44, lines 1-2. He then “went into mental retardation.” R. 44, lines 15-16. When he returned to South Carolina, he started working with the “mentally disturbed” at the Midlands Center. R. 45, lines 16-21. He also worked with adult prisoners at the

Central Correctional Institution. R. 46, lines 8-16. In the 1980s, he went to Texas to work at a juvenile detention center. R. 47, lines 23-24. He moved to Seattle in the mid-1980s and stopped doing the “kind of work [he] like[d] to do.” R. 47, lines 4-6. Thereafter, he worked in Houston for eight years with a preacher in a car detailing business the two owned together. However, that was not the kind of work he liked to do. R. 47, lines 18-24. When he returned to South Carolina in 2001, he started working in “home health” until he “retired in 2011.” R. 47, lines 5-9; R. 48, lines 9-10.

Jerome went on a bit of a tangent by theorizing that Appellant was trying to take advantage of “the system”: “When you watch somebody, when you watch somebody for so many years, for so many years, and you see, you know this person can do better, you know this person can do better, and see a person that will take advantage of the system ‘cause right now he looking [*sic*] to take advantage of the system.” R. 99, lines 2-7.³

Discussion

The only issue before the jury was Appellant’s mental state. The jury was presented with four options: (1) guilty; (2) not guilty; (3) not guilty by reason of insanity; and (4) guilty but mentally ill. However, Appellant testified that he had killed the deceased; thus, the verdict of not guilty was likely not a real option for the jurors. See R. 309, line 16.

South Carolina law provides for the verdict of guilty but mentally ill (GBMI). S.C. Code Ann. § 17-24-30. A defendant is GBMI if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong, but

³ Appellant admits that trial counsel did not object to Jerome’s testimony. To the extent this Court is willing to excuse the lack of error preservation, Appellant requests review of the issue presented.

because of mental disease or defect, he lacked sufficient capacity to conform his conduct to the requirement of the law. S.C. Code Ann. § 17-24-20(A); State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255 (1993). The burden of proof is on the defendant to prove by a preponderance of the evidence that at the time of the crime he was mentally ill. S.C. Code Ann. § 17-24-20(B). If a defendant is found to be GBMI, the judge must sentence the defendant as provided by law for a defendant found guilty; however, if the sentence includes incarceration, then the defendant must be taken to a facility designated for treatment and retained there until he may be safely moved to the general population. S.C. Code Ann. § 17-24-70 (A).

South Carolina law also provides for the verdict of not guilty by reason of insanity (NGRI). A defendant is insane if, “at the time of the commission of the act constituting the offense, [he], as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.” S.C. Code Ann. § 17-24-10(A). “[T]he key to insanity is ‘the power of the defendant to distinguish right from wrong in the act itself – to recognize the act complained of is either morally or legally wrong.’” State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997) (quoting State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992)). A defendant is presumed to be sane. State v. Smith, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989); State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993). The burden is on the defendant to prove the defense of insanity by a preponderance of the evidence. S.C. Code Ann. § 17-24-10(B). “However, when a defendant offers evidence of insanity, the state no longer enjoys the presumption, but must present evidence to the

jury from which the jury could find the defendant sane.” Smith, 298 S.C. at 208, 379 S.E.2d at 288.

Admittedly, expert testimony is not necessary to prove insanity or sanity; lay testimony may be sufficient. Smith, 298 S.C. at 208, 379 S.E.2d at 288; State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997); State v. Curry, 410 S.C. 46, 54, 762 S.E.2d 721, 725 (Ct. App. 2014). In fact, a jury may disregard expert testimony on the issue of a defendant’s sanity. Lewis, 328 S.C. at 278, 494 S.E.2d at 117. At his trial, Poindexter presented lay testimony that he exhibited behavioral changes in the months prior to the murder for which he was charged. Poindexter presented an expert who testified that Poindexter was unable to absorb vitamin B-12 and was insane as a result. The jury rejected Poindexter’s claim that he was insane, but found him GBMI. Poindexter, 314 S.C. at 491-492, 431 S.E.2d at 254. The Supreme Court affirmed the trial court’s refusal to direct a verdict of NGRI where the prosecution presented lay testimony that Poindexter fled after the murder, appeared normal within hours of the murder, and was cooperative during the arrest. Despite the strong evidence of Poindexter’s insanity, the Court found evidence in the record from which the jury could have deduced that Poindexter was sane. “The jury was free to rely on circumstantial evidence to find Poindexter sane even though expert testimony favored a finding that he was insane.” Id. at 493-494, 431 S.E.2d at 256.

South Carolina permits lay witnesses to testify in the form of opinions, but only in very limited circumstances. In order for a lay witness to give an opinion, the testimony must (1) be rationally based on the perception of the witness, (2) be helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue, and (3)

not require special knowledge, skill, experience, or training. Rule 701, SCRE. While a witness may testify regarding his observations of a person, including observations that appear rational or irrational, the witness may not testify as to an opinion on the person's sanity or ability to conform his conduct to the requirements of the law because such an opinion would require special knowledge, skill, experience, or training.

Jerome's testimony far exceeded the bounds for lay opinion. Not only did Jerome opine on how the crime occurred, but he gave his opinion on the ultimate issue before the jury – Appellant's mental condition. Without any training in crime scene reconstruction, Jerome told the jury how he believed Appellant hit the deceased first while she was in bed and then a second time as she tried to get away. Jerome had no authority for arriving at such a conclusion. He had no experience in crime scenes, but was allowed to testify with no restraints regarding his opinion on how the crime occurred.

Further, Jerome told the jury repeatedly that Appellant acted purposely, knew what he was doing, and knew right from wrong. At one point, Jerome even claimed that he knew Appellant knew right from wrong based on Jerome's experience working "in mental health." The fact of the matter was that Jerome had not worked "in mental health" since the mid-1980s. For the last three decades, he had worked in the "car detailing" business and "home health." Thus, over half of his working life was spent in a field outside of "mental health." At any rate, Jerome's very limited experience in "mental health" was not the kind that would allow him to give expert testimony on Appellant's mental state at the time of the crime. Although Jerome could testify regarding his observations of Appellant's behavior, he exceeded the scope of permissible testimony from a lay witness when he informed the jury that Appellant "knew right from

wrong.” Jerome should not have been to testify in such a manner and his testimony was not harmless. The jury was faced with competing expert opinions on that very issue – Appellant’s sanity. Jerome’s testimony was the evidence used by the state to tip the scales of justice on the side of Appellant’s sanity. Thus, Appellant’s conviction cannot stand judicial scrutiny.

CONCLUSION

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

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER B. WILSON,

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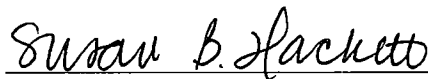
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alexander B. Wilson states:

1. She is 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 December 1-4, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Alexander B. Wilson.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2015.

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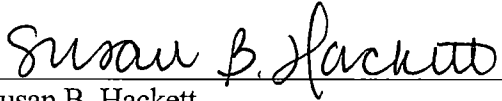
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire trial transcript dated December 1, 2014;
- (2) Entire pre-trial hearing transcript dated September 4, 2014;
- (3) Court's Exhibit #1 (Dr. Domino's report);
- (4) Court's Exhibit #5 (Dr. Martin's report);
- (5) True-billed indictment; and
- (6) Sentence Sheet

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

November 3, 2015


Susan B. Hackett
Appellate Defender

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PO Box 11589
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Attorney for Appellant

CERTIFICATE OF COUNSEL

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

November 3, 2015

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Susan B. Hackett Appeals
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SC Court of Appeals

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William Jeffrey Young, Circuit Court Judge

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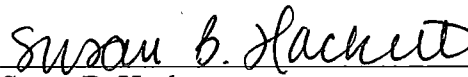
V.

ALEXANDER B. WILSON,

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CERTIFICATE OF SERVICE

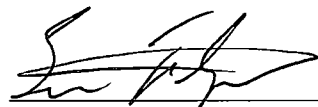
The undersigned attorney hereby certifies that a true copy of the Amended Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Amended Anders Brief of Appellant and Designation of Matter have been served on Alexander B. Wilson, #175318 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 3rd day of November, 2015.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of November, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.