

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Fairfield County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LATROY D. SAMPSON,

APPELLANT

APPELLATE CASE NO 2016-001676

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in refusing to exclude the State's Y-STR DNA evidence when the State failed to prove that Y-STR DNA analysis is reliable and the probative value of the unreliable evidence is substantially outweighed by the risk of unfair prejudice?

STATEMENT OF THE CASE

In September of 2015, the Fairfield County Grand Jury indicted Appellant Sampson for murder, indictment #2015-GS-20-291. On August 8, 2016, Appellant proceeded to jury trial before the Honorable Deandra G. Benjamin. William P. Frick represented Appellant at trial. Riley J. Maxwell and John Croom Colvin Hunter prosecuted the case. The jury returned with a verdict of guilty. Judge Benjamin sentenced Appellant to a sentence of life without parole pursuant to S.C. Code §17-25-45. A timely notice of intent to appeal was served on August 11, 2016. This appeal follows.

ARGUMENT

The trial court erred in refusing to exclude the State's Y-STR DNA evidence when the State failed to prove that Y-STR DNA analysis is reliable and the probative value of the unreliable evidence is substantially outweighed by the risk of unfair prejudice.

Prior to trial Appellant moved to exclude the State's DNA evidence. (R. p. 102, line 17 – p. 103, 104, lines 1-23). An in camera hearing was held on the motion and Donna Money with the South Carolina Law Enforcement Division [SLED] testified as an expert in DNA analysis. (R. pp. 259 – 292). During the in camera hearing Ms. Money explained, “YSTR analysis is typically used in situations where there may be an overabundance of female DNA and you would like to hone down on the male DNA that may be present. In this instance, since this was a swab from the neck of the female victim, we would go ahead and do Y testing to see if this minor contributor seen on the STR profile was indeed from a male individual.” (R. p. 265, lines 15-23). She went on to testify that, “The partial YSTR DNA profile developed from item 9 is a mixture of at least two male individuals. The partial profile of the major contributor to this mixture matched the YSTR DNA profile of Latroy Dante Sampson.” (R. p. 266, line 22 – p. 267, line 1). Item 9 consisted of swabs from the neck of the deceased who was strangled to death. Ms. Money went on to testify that, “The probability of randomly selecting an unrelated male individual having a YSTR DNA profile matching the major contributor to this mixture is approximately one in 8,600.” (R. p. 267, lines 3-6).

Ms. Money admitted that she had never testified in court about Y-STR DNA analysis. (R. p. 268, lines 7-9). She testified that, “SLED came on line with Y testing back in 2011.” (R. p. 268, line 12). Ms. Money admitted that all blood related males will have the same Y-STR DNA profile. (R. p. 271, lines 16-23). She agreed that the analysis does not provide a match to

an individual but provides that an individual cannot be excluded as being the contributor. (R. p. 272, lines 14-20).

In regard to the database for the probability statistic using Y-STR DNA analysis, Ms. Money admitted that the database only contained 25,000 samples. (R. p. 273, lines 16-25). She also admitted that the database was not broken down by ethnic group. (R. p. 276, lines 2-19). She testified that she has read articles about Y-STR DNA analysis. (R. p. 280, lines 7-16).

Appellant objected arguing that the testing was not reliable, the witness should not be able to testify that the DNA abstracted from the neck of the deceased “matched” Appellant and that the probative value of the unreliable “match” testimony was substantially outweighed by the risk of unfair prejudice. (R. pp. 283-289). The trial judge overruled the objections finding the underlying science of Y-STR DNA analysis was reliable. (R. p. 290, line 1 – p. 291, lines 1-5). Additionally the judge found that the probative value of the testimony outweighed any prejudicial effect. (R. p. 291, lines 6-25). The judge noted that the “match” language went to weight rather than admissibility and Appellant could question the witness about the “match” language. (R. p. 292, lines 1-6).

Ms. Money later testified before the jury over the objection of Appellant. (R. p. 318, lines 16 – 23). She again testified that the partial profile developed from Item 9 matched the Y-STR DNA profile of the Appellant. (R. p. 336, lines 7-9). She then clarified and testified, “To keep in mind since, as I have explained, that paternal male relatives will have the same profile, even though the result is saying matches, it is essentially a “cannot be excluded.” So this male profile is linked to the paternal lineage of Latroy Dante Sampson. So if he has other male relatives still alive, then they cannot be excluded as potential contributors to this profile.” (R. p.

336, lines 15-22). Appellant renewed the objection to the DNA evidence at the conclusion of the trial. (R. p. 638, lines 12-19). The judge erred in allowing the testimony.

In Watson v. Ford Motor Co., 389 S.C. 434, 445-447, 699 S.E.2d 169, 175 (2010), the South Carolina Supreme Court wrote:

The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge. Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions. See Rule 703, SCRE. On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training. See Rules 602 and 701, SCRE.

For these reasons, expert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. See State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009) (holding that the witness was improperly qualified as a forensic interviewing expert where the nature of her testimony was based on personal observations and discussions with the child victim). Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. See Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997) (observing that to be competent to testify as an expert, a witness must have acquired by reason of study or experience such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on

the particular subject of his testimony). Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable. See State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (evaluating whether expert testimony on DNA analysis met the reliability requirements).

Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate. See State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) (observing that the “familiar evidentiary mantra that a challenge to evidence goes to ‘weight, not admissibility’ may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence”). It is against this backdrop that we analyze whether the trial court erred in admitting the challenged expert evidence.

In the present case Appellant did not challenge the subject matter as being beyond the ordinary knowledge of the jury or the expert’s qualification. (R. p. 284, lines 11-25). Appellant only challenged the reliability of the Y-STR DNA analysis. In State v. Jones, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001), the South Carolina Supreme Court wrote:

The Jones¹ reliability factors take into consideration:

- (1) the publications and peer reviews of the technique;
- (2) prior application of the method to the type of evidence involved in the case;
- (3) the quality control procedures used to ensure reliability; and
- (4) the consistency of the method with recognized scientific laws and procedures.

State v. Council, *supra*.

Based on the factors above, the State failed to prove that Y-STR DNA analysis is reliable. Although Ms. Money testified that she has read articles about Y-STR DNA analysis, the prosecutor admitted that the procedure was not “wide spread” (R. p. 285, lines 19-20) and SLED has only been using the analysis since 2011. There was no testimony about quality control procedures or consistency. Ms. Money admitted that the database only contained 25,000 samples. (R. p. 273, lines 16-25). She also admitted that the database was not broken down by

¹ State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979).

ethnic group. (R. p. 276, lines 2-19). The trial judge abused her discretion in admitting the unreliable evidence.

Additionally, under the specific facts of this case, the probative value of the unreliable evidence was substantially outweighed by the risk of unfair prejudice pursuant to Rule 403, SCRE. The deceased was found by an individual named Joseph "Map" Sampson. Map Sampson testified at trial. Map and Appellant share the same last name. Both men had a relationship with the deceased. (R. p. 371, line 23 – p. 372, lines 1-13; p. 388, lines 7-17). When asked if he was related by blood to the Appellant, Map Sampson answered, "I don't think we is." (R. p. 454, lines 8-10). Map's blood standard was not collected and not submitted to SLED for analysis. (R. p. 647, State's Exhibit #39). Given the fact that blood related males share the same Y-STR DNA profile, this evidence in the present case is more prejudicial than probative. The trial judge erred in admitting the Y-STR DNA evidence. The error was not harmless.

CONCLUSION

Based on the above argument this Court should reverse Appellant's conviction and sentence and remand the case for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of August, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Latroy D. Sampson 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 DeAndrea G. Benjamin, which was held on August 8 - 10, 2016, 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 Latroy D. Sampson.

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Respectfully Submitted,

Kathrine H. Hudgins

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Appellate Defender

ATTORNEY FOR APPELLANT

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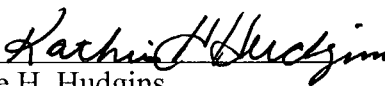
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript dated August 8-10, 2016;
- (3) State's exhibit #39 – DNA Report;
- (4) Defense exhibit #1 – Statement of Joseph Sampson;
- (5) Court's Exhibit #2 – case.

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

August 30, 2017


Kathrine H. Hudgins
Appellate Defender

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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."

August 30, 2017.


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