

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Chester County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

HILTON RHODEREQUES HAYES,

APPELLANT

APPELLATE CASE NO. 2018-000264

ANDERS BRIEF OF APPELLANT

RECEIVED
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SC Court of Appeals

LANELLE CANTEY DURANT
Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Hayes' motion to suppress the evidence regarding the drug transaction on July 5, 2015 when the state failed to prove the chain of custody by not providing the testimony of all the parties listed in the chain of custody?

STATEMENT OF THE CASE

On June 21, 2016, the Chester County Grand Jury indicted Hayes on the charge of distribution of cocaine base. On February 13-14, 2018, Appellant Hayes proceeded to trial before the Honorable J. Mark Hayes and a jury. Hayes was represented by Vicki Koutsogiannis, and the state was represented by Candace Lively. R. 1. The jury found Hayes guilty as indicted. R. 149, ll. 5 – 24. The judge sentenced Hayes to seven years incarceration. R. 156, ll. 11 – 15. Trial counsel filed a notice of appeal. This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred in denying Appellant Hayes' motion to suppress the evidence regarding the drug transaction on July 5, 2015 when the state failed to prove the chain of custody by not providing the testimony of all the parties listed in the chain of custody.

Relevant Facts

On July 4, 2015, Charles Vess went to the Super 8 Motel in Chester and purchased crack cocaine from a person in a second floor room. When Vess left the motel, he was followed by officers with the Chester County Sheriff's office who were conducting surveillance on the motel due to complaints of drug sales there. R. 36, ll. 20 – R. 37, ll. 22; R. 40, ll. 19 – 25; R. 44, ll. 1 – 17.

The officers followed Vess and conducted a traffic stop when he made a left turn without using his turn signal. Lieutenant Al Crawford and two other officers talked with Vess who admitted that he had bought crack at the motel. Then the officers talked to Vess about working as a confidential informant (CI) after Vess told them the name of the person who sold him the crack. R. 44, ll. 20 – R. 45, ll. 22.

Vess told the officers that Hilton Hayes was the man who sold him the crack. R. 45, ll. 23 – R. 46, ll. 3. The officers did not arrest Vess but instead arranged for him to act as a CI with Hayes on another drug buy. The officers told Vess that if he did not act as the CI, then he would be charged with the drug offense. R. 46, ll. 4 – 25. The officers fitted Vess with the audio/video equipment, gave him \$40 and sent him into the Super 8 motel to meet Hayes. According to the tape, Vess and Hayes were the only people in the motel room. Vess bought the crack. Then he left and went to the meeting location with the officers. R. 49, ll. 3 – R. 51, ll. 25.

According to Lieutenant Crawford, Vess handed the drug to him. R. 51, ll. 15 – 25.

Lieutenant Crawford put the drug into a bag, and placed it into evidence. He signed the evidence log. He also signed the SLED Best Kit, sealed it. Then Chuck Starnes, the evidence custodian took control of the drug. R. 51, ll. 23 – R. 52, ll. 25.

Hayes was indicted for distribution of cocaine base (crack) by the Chester County Grand Jury on June 21, 2016. Hayes' trial was held February 13-14, 2018. R. 1. In a pretrial motion, defense counsel, after viewing the state's witness list, moved to suppress the evidence because all of the custodians and person involved in the chain of custody were not present to testify. R. 17, ll. 13 – R. 18, ll. 13.

The state responded by citing State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011) that said that the really stringent rules regarding the chain of custody did not apply where tampering was not suspected. The judge denied defense counsel's motion. R. 18, ll. 15 – R. 20, ll. 13.

Charles Starnes testified at trial that he was the evidence technician for the Chester County Sheriff's Department. He logged the evidence into the department's system and put the drugs into a Best Kit to protect the drugs. Then he delivered the SLED Best Kit to SLED in July 2015. R. 97, ll. 7 – R. 100, ll. 20.

Lynn Black was the drug chemist with the forensic services laboratory at SLED. R. 104, ll. 8 – 25. When Ms. Black was asked if she received evidence in Hayes' case, defense counsel objected to lack of foundation because there was no testimony as to who Ms. Black received the drugs from. The court ruled that the question was "appropriate." R. 106, ll. 9 – 25.

Ms. Black testified that the drug was cocaine base with a net weight of 0.25 grams. When the drug were admitted into evidence, defense counsel objected again to a lack of foundation as

all of the witnesses were not present to testify “as to the proper chain of custody prior to Ms. Black testing it.” The judge allowed the drugs into evidence. R. 108, ll. 1 – 23.

Ms. Black then testified that she received the evidence from Doris Yarborough who was a forensic technician in the evidence control section at SLED. Ms. Black received the evidence on August 25, 2015 but did not open it to test until October 2, 2015. When she finished testing the evidence, she put the evidence in another bag which she sealed and placed the crime lab number on a sticker on the bag. She returned it to evidence control November 12, 2015. R. 109, ll.

On cross-examination, Ms. Black stated that Doris Yarborough was the one who logged evidence in when law enforcement brought it from Chester County and Ms. Yarborough entered it into the computer system. Then she put the evidence into the vault until Ms. Black got it. Ms. Black admitted that Doris Yarborough was not at the trial. R. 110, ll. 14 – R. 111, ll. 11.

Defense counsel then asked about Jennifer Aycock who was in the chain. Ms. Black said that Ms. Aycock was the one Ms. Black returned the evidence to after testing. Ms. Aycock returned the evidence to the vault. Jackie Davis was the person who removed the evidence from the vault and gave it to the person from the Chester County Sheriff’s Department when they came to get it. Ms. Black admitted that she did not see any of these steps happen. R. 111, ll. 15 – R. 112, ll. 9. Charles Vess testified that he provided the name of Hayes to law enforcement for the drug transaction. Vess had known Hayes twenty years. R. 80, ll. 1 – 25. He admitted that he bought crack from Hayes on July 5, 2015 at the Super 8 Motel. He had his son with him as they had been to the movies. He felt really bad about that. He did not want anyone to know that he had bought crack to use as he did not want to be “publicly humiliated.” That was why he agreed to be a CI as he did not want the charge. He was never arrested for the charge. R. 82, ll. 1 – R. 85, ll. 25; R. 93, ll. 13 – 24. The jury returned a verdict of guilty. R. 149, ll. 14 – 19.

Discussion

In State v. Pulley, 423 S.C. 371, 815 S.E.2d 461 (2018), the Supreme Court 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. Citing State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). The Court reversed Pulley's case because the state failed to establish a complete chain of custody.

In State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007), the Supreme Court held that the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture.

In State v. Taylor, 360 S.C. 18, 598 S.E.2d 735, 739 (Ct. App. 2004), the Court of Appeals held that if the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in admission of such evidence, absent proof of tampering, bad faith, or ill-motive.

Hayes' case should be reversed because all of the persons involved with the drug did not testify at trial. Therefore, the chain of custody for the drugs was not complete. The CI was alone for a brief time after the drug transaction which left a time period for tampering. Lieutenant Crawford testified that he thought the CI Vess handed the drugs to him. However, Vess testified that he left the drugs in the car for the officers to retrieve.

CONCLUSION

Based on the above, Appellant's convictions should be reversed, and the case remanded for a new trial.

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of November, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

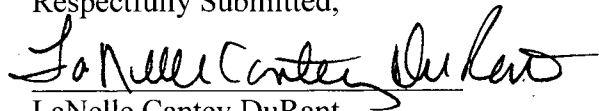
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Counsel for Hilton Rhodereques Hayes states:

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 J. Mark Hayes, which was held on February 13 & 14, 2018, 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 Hilton Rhodereques Hayes.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HILTON RHODEREQUES HAYES,

APPELLANT

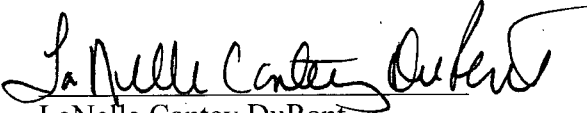
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Sentencing sheet
- (3) Complete Trial Transcript February 13-14, 2018

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

November 5, 2018


LaNelle Cantey DuRant
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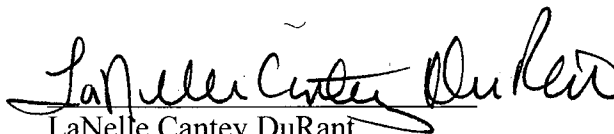
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CERTIFICATE OF COUNSEL

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."

November 5, 2018.



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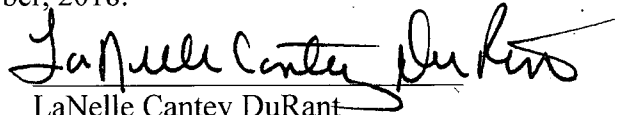
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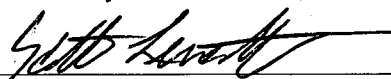
CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Hilton Rhodereques Hayes, 367668, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 22nd day of October, 2018.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of November, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028