

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY RIGGINS,

APPELLANT

APPELLATE CASE NO. 2013-001405

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in qualifying Master Corporal Graham as an expert in “general crime scene investigation and analysis” and permitting the officer to testify about why Appellant’s fingerprints were not found at the scene since Graham lacked the requisite knowledge, skill, experience, training, or education concerning fingerprint lifting and analysis?

STATEMENT OF THE CASE

On July 10, 2008, a Horry County Grand Jury indicted Appellant for armed robbery. R. 148-149. His case was called to trial on June 20, 2013 before the Honorable John C. Hayes, III, and a jury. Kia Wilson represented Appellant and George H. DeBusk, Jr. was the assistant solicitor. R. 1.

At the conclusion of the trial on June 21, 2013, the jury found Appellant guilty. R. 135, ll. 6-12. Judge Hayes sentenced Appellant to thirty years imprisonment. R. 145, l. 17 – 146, l. 3.

This appeal follows.

ARGUMENT

The court erred in qualifying Master Corporal Graham as an expert in “general crime scene investigation and analysis” and permitting the officer to testify about why Appellant’s fingerprints were not found at the scene since Graham lacked the requisite knowledge, skill, experience, training, or education concerning fingerprint lifting and analysis.

Relevant Facts

On May 7, 2008, Chase Mitchell was working alone “typing up reports” in the back office of the Sea Palms Motel, a business owned by his parents in Myrtle Beach, when he heard “the buzzer” ring in the front office. Upon hearing “the buzzer,” Mitchell walked to the front office, which was adjacent to the back office, and saw a man pacing back and forth by the front desk and “sweating profusely.” Mitchell testified that he was “puzzled” and asked the man, “Is everything okay?” He claimed that the man responded, “How about you go ahead and empty out the drawer.” According to Mitchell, the man also indicated that he had a weapon under his shirt. Mitchell testified, “There was an imprint of something, and if I had to guess, it was a gun, and the gestures that were being made, kind of lunging actions was making notion that there was a weapon.” R. 44, l. 9 – 45, l. 3. Mitchell claimed that, at the time of the robbery, he believed the man to be armed. R. 46, l. 24 – 47, l. 20.

After the man demanded that Mitchell “empty the drawer,” Mitchell got the keys, opened the drawer, and gave the man approximately forty dollars. Mitchell testified that the man then proceeded to leave the front office, but after he got about halfway out the door, he turned around and told Mitchell to back up and get on the ground. According to Mitchell,

after he complied, the man then ran down 7th Avenue towards Kings Highway. R. 47, l. 4 – 48, l. 25. Mitchell then called 911 and his parents. R. 49, ll. 21-24.

Mitchell claimed that the entire encounter lasted three minutes and that the lighting was “very bright” because “the sun was still up” and the lights were on in the office. R. 46, ll. 1-7. He also claimed that the robber was standing only “a foot” from him during the robbery. R. 52, l. 22 – 53, l. 7. Mitchell testified that when the man first came in he was holding his shirt above his nose partially obscuring his face, but that after he demanded that Mitchell empty the drawer, he lowered his shirt and Mitchell saw the man’s entire face.

In his written statement given on the night of the robbery, Mitchell described the robber as “very black, five/five, husky, shaved bald head,” with a “pointed, flat, wide nose.” Mitchell testified during a Neil v. Biggers¹ hearing that “the nose is the most distinct part about this person for me.” R. 15, ll. 2-13. Also, according to Mitchell, the man was wearing a white “I Love New York” t-shirt and blue jeans and that, at the time of the robbery, the man’s shirt was right side out. R. 46, ll. 8-23.

Mitchell explained that approximately ten minutes after he called 911, the police arrived on scene. Mitchell told the police what happened and gave them a description of the robber. R. 49, l. 25 – 50, l. 7. Shortly thereafter, the police escorted him by car to a parking lot off of Kings Highway right across from First Baptist Church to identify a suspect they had in custody. Once there, Mitchell identified the man in custody as the robber. Mitchell testified that the man was wearing an “I Love New York” t-shirt, but that the shirt was now inside out with the decal facing inwards. R. 50, l. 21 – 52, l. 10. The man he identified as the robber in the parking lot was Appellant. Mitchell also identified Appellant in the courtroom

¹ 409 U.S. 188 (1972)

as the man who robbed him. R. 52, ll. 11-21. Mitchell claimed that he was “one hundred percent certain” Appellant was the man who robbed him. R. 52, ll. 11-21; R. 59, l. 22 – 60, l. 9.

Officer Randy Miller, a bike patrol officer for the Myrtle Beach Police Department, testified that he responded to the Sea Palms Motel on May 7, 2008 around 8:45 pm in reference to an armed robbery. Upon arriving at the scene, Officer Miller met with Mitchell and received a description of the robber. Miller testified that Mitchell described the robber as “a black male, shorter, five foot range, stocky build, bald head, wearing blue jeans, a white t-shirt with I Love New York written on it.” Miller explained that after he received the description, he left the motel on bike and went “to comb the area for the suspect.” R. 80, l. 21 – 81, l. 24.

Officer Miller testified that he was in the area of 4th Avenue North and Chester Street when he saw a suspect matching the description of the robber running westbound across Chester Street into a wooded parking lot area. Miller stated that he entered the parking lot and cut the suspect off. He met the man in the middle of the parking lot, dismounted his bike, and detained him in handcuffs. R. 82, l. 2 – 84, l. 20. The man was wearing blue jeans and a white t-shirt. Miller testified that the white t-shirt was inside out, but “you could still see through it.” According to Miller, “the writing had an I and then a big heart in red letters, and then I Love New York.” R. 84, l. 21 – 85, l. 2.

After notifying the investigator on duty, Miller testified that other officers drove Mitchell to the parking lot in a patrol vehicle and had Mitchell identify the suspect. Mitchell, from no more than ten feet away, identified the suspect in handcuffs as the man who robbed him. The suspect detained in the parking lot and identified by Mitchell was

Appellant. Miller identified Appellant in the courtroom as the man he detained in the parking lot that night. R. 85, l. 3 – 86, l. 14.

Joseph Graham of the Myrtle Beach Police Department testified that in May 2008 he was assigned to the Investigations Division as a violent crimes detective. He responded to the Sea Palm Motel on May 7, 2008 and was the primary investigator on scene. R. 68, l. 12 – 69, l. 15. Once he arrived on scene, he was updated by other officers and interviewed Mitchell before Mitchell was taken to identify a suspect in custody. R. 69, ll. 16-24.

Master Corporal Graham testified that Crime Scene Specialist Ioanne responded to the scene in order to take photographs and collect physical evidence. R. 69, l. 25 – 70, l. 13. Graham explained that the only physical evidence collected by Specialist Ioanne was “a partial print that was lifted from the door of the Sea Palms” Motel. R. 70, ll. 17-21. Graham testified that Specialist Ioanne ran the partial print through the “AFIS system” and that it came back as a “no-match.” The partial print was also compared to Appellant’s fingerprints and came back as a “no-match.” R. 70, l. 22 – 71, l. 1.

Graham further explained that he completed two “tours” as a “crime scene and forensic supervisor” at the Myrtle Beach Police Department. His second “tour” lasted four years and began shortly after the incident in this case, but ended before the start of this trial. R. 71, ll. 2-10. Without being specific, Graham testified that during his “two tours” as a crime scene supervisor he received specialized training in the analysis of crime scenes. R. 71, ll. 11-14. Graham explained that overall he worked “eight or nine years as a crime scene supervisor, several years as a crime scene specialist,” and “numerous years” as a property crimes and violent crimes detective. R. 71, ll. 15-21. He explained that he had been

qualified as a crime scene expert once in 1996 or 1997. The state then tried to present Graham as an expert in “general crime scene investigation.” R. 72, ll. 9-19.

Defense counsel objected to Graham’s qualification as an expert and asked him further questions during voir dire. Graham explained during voir dire that he was not a certified AFIS operator and that he never completed the specialized training sponsored by SLED to become certified because, as a supervisor, he “never actually needed to use the AFIS system” himself. Graham testified that as a supervisor he did not do the “day-to-day” fingerprint comparisons. However, Graham stated, “I have responded to and worked thousands of crime scenes and probably hundreds of homicides. I’ve actually collected and made numerous matches and had them verify them over the years, and as far as the day-to-day operations with the last few years, my job was basically just to review and check [other officers’] work.” R. 73, l. 7 – 74, l. 24.

At the end of voir dire, the court qualified Graham as an expert in “general crime scene investigation and analysis” over defense counsel’s objection to his qualifications. R. 75, ll. 1-7.

Graham then testified that it is not unusual for an individual to go to a scene and not leave any “useable prints.” Graham explained that a “useable print is one that actually has details in it which will make it identifiable, and details would be specific points that are based on the ridge patterns in the fingertips.” According to Graham, often times a print is smudged and does not have any “identifiable ridges.” Graham also explained that often individuals do not leave behind fingerprints due to the condition of the surface or the condition of the hands. He stated, “Some people have dry hands, some people have oily

hands. Then you also consider the factor of humidity, dust, dirt, salt spray.” R. 75, l. 11 – 77, l. 18.

The state used Graham’s testimony regarding fingerprints to explain why Appellant’s fingerprints were not found at the scene. See R. 79, ll. 11-17. During his closing argument, the solicitor commented on the lack of “usable prints” found at the motel and explained that it was not unusual that Appellant failed to leave any fingerprints at the scene since none of the other visitors to the motel did either. He stated, “So if [Appellant] went through that door and didn’t leave a fingerprint, he’s in good company. Almost everyone else who went through that door didn’t leave a fingerprint either.” R. 107, ll. 2-24.

The “I Love New York” t-shirt was never photographed, never presented at the trial, and never entered into evidence. R. 88, ll. 2-21. When Appellant was apprehended he had no weapons on his person and no cash in his possession. R. 107, l. 25.

Discussion

The court erred in qualifying Graham as an expert in “general crime scene investigation and analysis” and permitting the officer to testify about why Appellant’s fingerprints were not found at the scene since Graham lacked the requisite knowledge, skill, experience, training, or education concerning fingerprint lifting and analysis.

“Expert testimony receives additional scrutiny relative to other evidentiary decisions.” Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). Rule 702 of the South Carolina Rules of Evidence governs when the admission of expert testimony is appropriate and supplies the bases by which an expert may be qualified to give an opinion. Specifically, the Rule 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.

Rule 702, SCRE.

Therefore, several criteria must be met prior to the admission of expert testimony. First, the trial court must determine that such evidence will assist the jury to understand the evidence or determine a fact in issue. Second, the witness must be qualified as an expert due to experience or training. Third, the trial court must determine whether the proposed expert testimony satisfies a reliability threshold for the jury's ultimate consideration. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); see also Watson at 446, 699 S.E.2d at 175.

The second criterion, which is at issue in Appellant's case, requires that the expert's testimony be based upon "knowledge, skill, experience, training, or education." In order for a witness to be competent to testify as an expert, the "witness must have acquired by reason of study or experience or both 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." O'Tuel v. Villani, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995). Qualification as an expert "depends on the particular witness' reference to the subject." Gooding v. St. Francis Xavier Hospital, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997); Lee v. Sues, 318 S.C. 283, 285, 457 S.E.2d 344, 346 (1995). In addition, our courts place no exact requirement regarding how that knowledge or skill must be acquired by the witness. Honea v. Prior, 295 S.C. 526, 531, 369 S.E.2d 846, 849 (Ct. App. 1988). In fact, "[e]ven where the problem presented may be one that usually requires some scientific knowledge or training, a

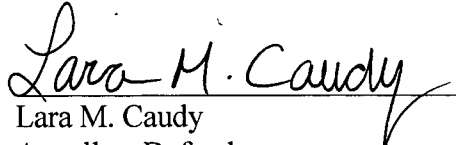
person with long experience may testify as an expert although he or she did not pursue a special study of the matter.” Id.

In this case, Master Corporal Graham should not have been qualified to testify as an expert in “general crime scene investigation and analysis” because he did not have the necessary qualifications. Graham had been qualified as “a crime scene expert” *only* once before in 1996 or 1997. Additionally, a bulk of his experience in law enforcement was as a supervisor in which he basically reviewed and checked other officers’ work. See R. 71, l. 15 – 74, l. 24. Graham was not AFIS certified and did not complete the same specialized training that the “six specialists” in his office completed. See R. 73, ll. 7-17. Therefore, the court erred in qualifying Graham as an expert in crime scene investigation and analysis.

CONCLUSION

By reason of the foregoing argument, Appellant's conviction should be reversed and this case remanded to the Horry County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of November, 2013.

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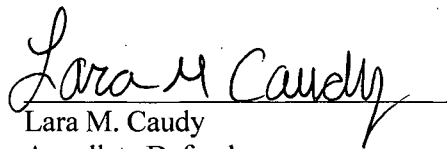
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Riggins 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 John C. Hayes, III, which was held on June 20-21, 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 Anthony Riggins.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

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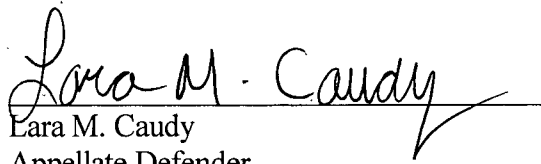
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Entire trial transcript dated June 20-21, 2013.

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

November 22nd, 2013


Lara M. Caudy
Appellate Defender

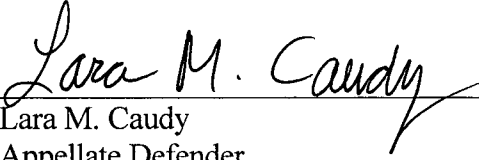
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Attorney for Appellant

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 22, 2013


Lara M. Caudy
Appellate Defender

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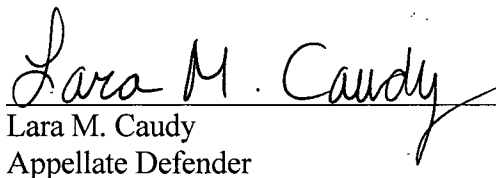
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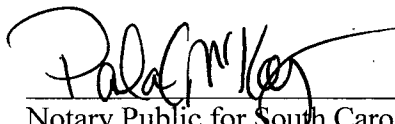
CERTIFICATE OF SERVICE

The undersigned attorney 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 Salley W. Elliott, 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 Anthony Riggins, #305169 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 22nd day of November, 2013.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of November, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: July 24, 2022.