

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY

Court of General Sessions
Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2018-002014

THE STATE,

Respondent,

v.

JERRELL TROVASE BROCKMAN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Dog-tracking evidence should be admitted if, among other factors, the trail was not “contaminated.” In this case, responding officers testified the trail was not contaminated and Brockman offered no evidence showing anyone passed through the trail. Did the trial court err by admitting the evidence?

STATEMENT OF THE CASE

On November 8th, 2017, Katherine Waldrip was robbed at gunpoint outside Chester First Baptist Church, where her husband is the pastor. It happened after a Wednesday night bible study when Waldrip was walking along the path leading from the church's sanctuary to the social hall. (Tr.p.91). A man holding a handgun attacked her, pushed her to the ground, pressed the gun against her head and demanded money while threatening to kill her. (Tr.p.93). She surrendered her purse and the man ran "across the road . . . toward the park . . ." (Tr.p.95, lines 10-11).

Waldrip ran inside and someone called 911. (Tr.p.95). Police arrived less than a minute later because there were already officers in the area, including an officer four doors down from the church. (Tr.p.54-55). Numerous officers from the city police department and county sheriff's office responded to the call. They set up a "perimeter" on the streets near the church in an attempt to intercept the suspect and to keep others away from the crime scene. (Tr.p.43; 56; 170). Within five minutes, officers requested a bloodhound tracking unit and the hound arrived "within five or ten minutes." (Tr.p.42; 56). The bloodhound was able to track a human scent from the spot on the sidewalk where Waldrip was robbed to a park across the street and down a path ending near a stop sign on nearby Branch Street. (Tr.p.218-19). The bloodhound lost the scent at the stop sign and the handler concluded the suspect's "feet weren't on the ground anymore." (Tr.p.220).

Luckily for police, Lavetta Turner, who lived on Branch Street, spoke with an officer as she returned home from picking up dinner. When told that a robbery had taken place, Turner informed the police that she had just given a man a ride away from the area. Although she was originally uncooperative, she eventually told police that she knew the man as "Speedy." Speedy

was wearing a cap and dark clothing, and matched the general description given by Waldrip. She encountered him as she was leaving her yard, near the stop sign where the path ended. (Tr.p.142). When he asked her for a ride, she agreed and took him to a nearby neighborhood. (Tr.p.144, lines 3–8). At trial, Turner testified she also gave a ride to a second individual that night, but she did not mention the second person to police on the night of the incident. (Tr.p.173, lines 13–15).

Turner agreed to show police where she dropped off “Speedy,” whom she identified at trial as Brockman. (Tr.p.139, lines 12–15). She accompanied officers to the spot where she had let Brockman out. Officers spotted Brockman, who took off running. (Tr.p.173). Officers again used the canine to track Brockman and found him minutes later hiding in the bushes behind a nearby house. (Tr.p.173–74). His appearance matched the description given by Waldrip. (Tr.p.174–75). Police spoke with a neighbor, Michael Roberts, who told them Brockman had approached him in his yard minutes earlier. Brockman was sweating and asked to use his cell phone. Roberts agreed, but before Brockman spoke to anyone police cars pulled onto the street. Brockman dropped the phone and ran away. (Tr.p.180–81). Roberts told officers Brockman came from a house across the street where Brockman’s aunt lived. (Tr.p.181–82; 258, lines 21–25; 198–99). The aunt consented to a search and officers found a handgun, jacket, toboggan, and Waldrip’s purse in a shed in the rear of the house. (Tr.p.200–01). Brockman’s DNA was found on the pistol and purse. (Tr.p.319–22).

A Chester County grand jury indicted Brockman for armed robbery, kidnapping, and first-degree assault and battery. He proceeded to jury trial before the Honorable Brian M. Gibbons on November 5, 2018. Brockman testified in his defense and claimed he found

Waldrip's purse in the back seat of Turner's car. He further claimed he only ran from police because he had cocaine in his pocket. No cocaine was recovered when Brockman was arrested.

The jury convicted Brockman as charged on all counts and the court sentenced him to concurrent terms of 25 and 10 years' incarceration, respectively, for armed robbery and assault and battery. He was given a consecutive 10 year sentence for kidnapping. This direct appeal follows.

STANDARD OF REVIEW

The admission of evidence rests in the sound discretion of the trial court, whose ruling will not be reversed absent a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013). 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.

ARGUMENT

I.

The trial court correctly admitted relevant dog-tracking evidence because responding officers testified the trail was not contaminated and Brockman offered no evidence showing anyone passed through the trail. Even if the evidence was erroneously admitted, Brockman has not shown prejudice because he was caught red-handed with the victim's purse and fled from police.

Brockman claims the dog-tracking evidence was erroneously admitted because the bloodhound tracked a contaminated trail. His claim is without evidentiary support, and the State presented evidence directly to the contrary. Brockman has not shown, and cannot show, an abuse of discretion. Furthermore, even if the evidence was erroneously admitted, Brockman has not shown prejudice because he was caught red-handed with the victim's purse after fleeing from police. This Court should affirm.

Applicable law.

All relevant evidence is admissible unless prohibited by the Constitution, a statute, or the rules of evidence. Rule 402, SCRE. Dog-tracking evidence is reliable and admissible if: (1) the evidence shows the dog handler satisfies the qualifications of an expert under Rule 702; (2) the evidence shows the dog is of a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated. State v. White, 382 S.C. 265, 272, 676 S.E.2d 684, 687 (2009).

Evidence supports the trial court's ruling that the dog-tracking evidence was reliable.

Brockman challenges the final prong of the White test, claiming the trail was contaminated. Brockman's claim is not supported by the record. The State presented evidence that officers arrived at the crime scene within seconds of the 911 call and promptly set up a wide "perimeter" on the streets near the church. (Tr.p.42-43; 53-54; 117-18; 169-70). The purpose of establishing a wide perimeter was to intercept the suspect as he fled and prevent others from coming near the scene of the crime. (Tr.p.43; 170). The perimeter was **not the actual trail** tracked by the dog, but included a much larger area. Officers admitted that people came within the perimeter, but they did not walk through the spot where the robbery occurred. (Tr.p.56-60). Chester Sheriff Alex Underwood, who responded to the robbery, testified that "as soon as I got on scene I took everybody and put them inside of the community room and told nobody to go in the general area [where the robbery occurred] and held them there. . . . [F]rom the time I went there nobody came near the scene where he had supposedly ran." (Tr.p.56). Underwood testified he "established a viewpoint of that area and from what I seen nobody had walked through that area since the time I arrived." (Tr.p.58).

At trial, defense counsel attempted to show that a man with a chainsaw walked through the area where the robbery occurred and corrupted the trail. However, the evidence showed the person with the chainsaw was in the area of a park near the church within the wider "perimeter," but **not in the spot where the robbery occurred**. (Tr.p.120-22; 126-27; 412. State's Exhibits 29-30; 40-45). Defense counsel also referenced a truck that drove past where some officers were standing within the "perimeter," but an officer testified that the truck did not encroach into the actual scene of the crime. (Tr.p.62; 122; 219). Underwood explained that once a bloodhound locks in on a particular scent, it will not stop tracking until it locates the person to whom the scent belongs. (Tr.p.35-45). Therefore, even though others came within the

“perimeter” set up around the church, the trail was not contaminated because no one passed through the sidewalk where the bloodhound picked up the scent. (Tr.p.37–38).

Brockman claims the trial court failed to make a reliability finding, citing State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012). In that case, the Supreme Court held the trial court erred by not conducting a reliability analysis before admitting expert testimony. Instead, the court found the testimony admissible solely because the witness was qualified as an expert. That is not what happened in this case. In addition to finding the dog-handler was qualified to give expert testimony (a finding to which Brockman did not object), the court then went through each of the White factors to assess the reliability of the extensive proffered testimony and admitted the evidence. Brockman did not raise any objection to the court’s analysis. (Tr.p.73–74). Although the court did opine that evidence of the final factor of contamination went to “credibility,” this was merely an acknowledgement that Brockman raised the issue and elicited testimony challenging the officers’ conclusion that the trail was not contaminated.

The question on appeal is simply whether there is **any evidence** in the record that supports the trial court’s ruling that the evidence was sufficiently reliable. There is. The solicitor bluntly asked Underwood, who was qualified as a dog-tracking expert,¹ whether there was “anything in your expert opinion since you were there the whole time that would have contaminated the scene or would have hindered Sadie Mae from being able to stay on that human odor track that she had on the defendant that night?” Underwood responded “No.” (Tr.p.46). This testimony alone supports the trial court’s ruling. Under the abuse of discretion standard, this court needn’t go any farther. State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371

¹ Underwood testified he had participated in “several thousand” tracks and that the bloodhound used in the case, Sadie Mae, had been on at least 10–15 calls and was a reliable tracker. (Tr.p.36–41).

(2015) (explaining the appellate court is limited to reviewing whether the trial court's factual findings are supported by any evidence in the record). Because evidence supports the trial court's ruling, this Court should affirm.

Even if the dog-tracking evidence should have been excluded, Brockman was not prejudiced.

Even if the testimony was erroneously admitted, the error was harmless. The dog-tracking evidence was not necessary to prove Brockman's guilt. The State proved Brockman was in the vicinity of the church through Lavetta Turner's testimony, and Turner showed officers where she dropped off Brockman. That is how police located him, not with the bloodhound. When officers arrived, they made visual contact with Brockman. (Tr.p.48, line 12). Even more importantly, Brockman was caught red-handed: his DNA was found on Waldrip's purse and a handgun recovered from his aunt's house. A neighbor saw a perspiring Brockman approach him from the house and Brockman asked to use his phone. When Brockman saw police cars, he dropped the phone and ran and hid in some bushes.

In a desperate attempt to refute the clear-cut case against him, Brockman concocted a ridiculous story that he found the purse in Turner's car when she picked him up. The jury rightly rejected this tall tale and found him guilty based on the strong physical and circumstantial evidence against him and the guilty mind he demonstrated when he fled from police. Because Brockman would have been convicted without the dog-tracking evidence, he cannot show prejudice. State v. Jenkins, 412 S.C. 643, 651, 773 S.E.2d 906, 910 (2015) (explaining an error is harmless "if it did not reasonably affect the result of the trial"). This Court should affirm.

CONCLUSION

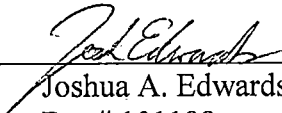
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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November 22, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of General Sessions
Hon. Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2018-002014

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SC Court of Appeals

THE STATE,

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v.


JERRELL TROVASE BROCKMAN,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by delivering two copies of the same addressed to his counsel of record, Joanna K. Delany, Esquire, SCCID, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 2921.

I further certify that all parties required by Rule to be served have been served.
This 22nd day of November, 2019.



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November 22, 2019

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RE: State v. Jerrell Trovase Brockman
Appellate Case No. **2018-002014**

Dear Ms. Delany:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/aam
Enclosures

cc: ~~Honorable Jenny A. Kitchings (original and 1 enclosed)~~
Victim Advocacy Division

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