STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE TYRONE HEATLEY, JR.

APPELLANT

APPELLATE CASE NO. 2019-000165

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

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Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse her discretion by admitting evidence that Appellant allegedly told a third party that the decedent told others she was "going to be with" Appellant "after she got off work" because Appellant "had some drama going on" when such evidence was hearsay within hearsay and did not meet any exceptions to the hearsay rule, and where the evidence was unfairly prejudicial since the state's theory was that the decedent was shot and killed within thirty minutes of leaving work?

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Appellant on November 7, 2016 for murder and armed robbery. R. *. An amended indictment was obtained on November 6, 2018. R. *. Appellant's case was called to trial on January 22, 2019 before the Honorable DeAndrea G. Benjamin, and a jury. Tr. 1. Assistant Solicitors Daniel Goldberg and Lamar Fyall represented the state. Tr. 1. Deon O'Neil and Khalil Eaddy represented Appellant. Tr. 1.

On January 30, 2019, the jury found Appellant guilty as indicted. Tr. 1261, l. 16 – 1262, l. 7. He was sentenced to fifty years' imprisonment for murder and ten years consecutive for armed robbery. Tr. 1275, ll. 8-21. The aggregate sentence was sixty years' imprisonment.

This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Hughes, 419 S.C. 149, 155, 796 S.E.2d 174, 177 (Ct. App. 2017) (quoting State v. Washington, 379 S.C. 120, 123, 665 S.E.2d 602, 604 (2008)). "A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." Id. (quoting Washington, 379 S.C. at 123-124, 665 S.E.2d at 604). "The improper admission of hearsay is reversible error only when the admission causes prejudice." Id. (quoting State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006)).

ARGUMENT

The trial judge abused her discretion by admitting evidence that Appellant allegedly told a third party that the decedent told others she was "going to be with" Appellant "after she got off work" because Appellant "had some drama going on" when such evidence was hearsay within hearsay and did not meet any exceptions to the hearsay rule, and where the evidence was unfairly prejudicial since the state's theory was that the decedent was shot and killed within thirty minutes of leaving work.

Relevant Facts

Deanndra Roach, the decedent, worked at the Walmart on Two Notch Road in Columbia. On January 28, 2016, the decedent worked from 5:00 pm to 10:00 pm. She clocked out at 10:09 pm and was captured on surveillance footage leaving the Walmart parking lot at 10:13 pm. Tr. 323, ll. 23-25. Her body was found in a field off Farrow Road in Columbia around 5:00 pm the following day, January 29, 2016. Tr. 324, l. 17 – 325, l. 14; Tr. 358, ll. 5-19; Tr. 364, ll. 7-19. She had been shot with a nine millimeter at least ten times. Tr. 516, ll. 21-24.

The state's theory of the case was that the decedent drove to the location off Farrow Road where her body was later found immediately after work to meet Appellant. Appellant and the decedent had an on again/off again relationship but were not currently dating at the time of the decedent's death. Tr. 565, l. 10 – 567, l. 10. Appellant was captured on surveillance footage using the decedent's debit card at three different ATMs later that night.

Ivory Fleming, who knew Appellant through her employment at Taco Bell, testified that Appellant called her the day the decedent was reported missing, January 29, 2016. During their conversation, Appellant allegedly told Fleming that the decedent had told others she was "going to be with him [Appellant] after work." Tr. 739, ll. 12-22. Defense counsel objected to Fleming's

testimony, which the trial judge initially heard *in camera*, as "hearsay within hearsay." Tr. 740, ll. 11-12. Counsel argued, "The statement is he said Deanndra [the decedent] told people that she was going to be with him [Appellant] after she got off work . . . there is not a non-hearsay foundation as to how Mr. Heatley [Appellant] would have known that. It's not a statement he overheard the victim say. The statement is that he said Deanndra told people. If he didn't overhear her say that, the only basis of him knowing that would be some hearsay source if he didn't hear it himself. So he would have gotten it from another person. If he didn't overhear it himself, he would have gotten the information from another person who told him that Deanndra said this to other people. It's almost like three layers of hearsay, but it's definitely two layers of hearsay that he's saying that Deanndra told other people this." Tr. 740, l. 13 – 741, l. 4.

The solicitor argued the testimony was "not hearsay within hearsay" because Fleming was testifying as to what Appellant said. Citing to Rule 801(d), SCRE, he asserted, "What he [Appellant] said is, by rule, not hearsay. I mean, 801(d), a statement is not hearsay if Section 2, admission by a party opponent, the statement that he [Appellant] made that she's [Fleming is] testifying to, that is . . . by letter of the rule, not hearsay. So it cannot be hearsay within hearsay if it isn't coming from hearsay. It is what he said to her. His words." Tr. 741, ll. 11-22.

Defense counsel made clear that Fleming's testimony was based on what Appellant said the decedent said and Appellant did not have a "non-hearsay way of knowing." Tr. 741, ll. 23-25.

The trial judge ultimately overruled the objection. She found the evidence was admissible pursuant to Rule 801(d), SCRE. Tr. 744, ll. 8-11; Tr. 746, ll. 13-18.

The following exchange then occurred between the solicitor and Fleming before the jury:

> Q: Just briefly, the 29th [January 29, 2016] when you had that call with A.J. [Appellant], did he tell you anything about where Deanndra [the decedent] was going?

A: No. I don't remember.
Q: Do you remember in your statement to law enforcement telling them, **He [Appellant] said Deanndra [the decedent] was going to be with him [Appellant] after she got off work because he had some drama going on**?

A: That's what I said.

Tr. 747, ll. 1-9 (emphasis added).

Defense counsel contemporaneously objected based on hearsay and the confrontation clause. His objection was again overruled by the trial judge. Tr. 747, ll. 10-14.

Discussion

The trial judge abused her discretion by admitting this highly prejudicial evidence since it was hearsay within hearsay and did not meet any exception to the hearsay rule.

All criminal defendants are entitled to a fair trial. U.S. Const. Amend. VI; S.C. Const. Art. 1, § 14. The Rules of Evidence are designed to ensure a fair trial occurs. One of the most important Rules of Evidence concerns the rule against hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Hearsay is not admissible except as provided by the South Carolina Rules of Evidence, by other rules prescribed by our Supreme Court, or by statute. Rule 802, SCRE.

Rule 801(d)(2), SCRE, excludes an admission by a party opponent from the definition of hearsay. Specifically, the rule states that a statement is not hearsay if the statement "is offered against a party and is . . . the party's own statement in either an individual or a representative capacity." Rule 801(d)(2)(A), SCRE. While Fleming testified as to what Appellant allegedly told her, Appellant's statement contained at least two layers of hearsay. First, what the decedent allegedly told others about where she was going after work is hearsay. It is "a statement, other than one made by the declarant while testifying at the trial or hearing, *offered in evidence to prove the*

truth of the matter asserted." See Rule 801(c), SCRE (emphasis added). The state clearly sought to admit this evidence to prove the decedent told her coworkers immediately before she left work that night that she planned to meet Appellant. The decedent's hearsay statement does not fall within any of the exceptions found in Rule 803, SCRE, or Rule 804, SCRE.

The only exception the statement could possibly fall under would be Rule 803(3). This rule excludes a "statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)" from the hearsay rule. The decedent's statement that she was going to be with Appellant after work does not qualify as her then existing state of mind. *Contra* State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000) (holding "a statement by the victim that he or she planned to meet the defendant at the time or place of the murder is admissible under Rule 803(3) as evidence of the declarant's then-existing state of mind"). Rather, this exception to the hearsay rule was designed to exclude statements by the decedent that she was scared or afraid for example.

Moreover, as defense counsel argued at trial, Appellant's only basis for knowing that the decedent allegedly told others she was "going to be with" Appellant after work is hearsay. Appellant had to have been told this information by someone else. The unidentified individual's statement to Appellant is hearsay. While it is unclear from the record who shared this information with Appellant, this fact alone does not make the evidence admissible.

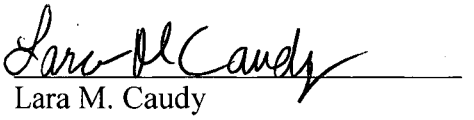
Consequently, the trial judge abused her discretion by admitting this hearsay within hearsay evidence. For obvious reasons, this inadmissible hearsay evidence was extremely prejudicial to Appellant. The state's theory of the case was that the decedent was shot and killed within thirty minutes of leaving work on January 28, 2016. If the decedent told others she planned to "be with" Appellant after work, this evidence suggest Appellant was present at the time of the murder.

Respectfully, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February, 2020.

STATE OF SOUTH CAROLINA

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Honorable DeAndrea G. Benjamin, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andre Tyrone Heatley states:

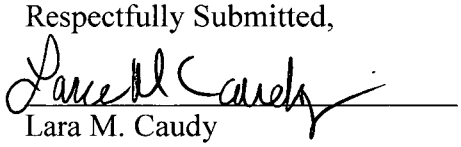
1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial, which was held on January 22-30, 2019 before the Honorable DeAndrea G. Benjamin, 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 Andre Tyrone Heatley.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February, 2020.

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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) Complete Trial Transcript Dated January 22-30, 2019;
(2) State's Exhibit No. 1 (Statement);
(3) Court's Exhibit No. 2 (Written Motion);
(4) Court's Exhibit No. 3 (Search Warrant);
(5) Court's Exhibit No. 8-11 (Jury Notes);
(6) True-Billed Indictments;
(7) Sentence Sheets.

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

February 12, 2020

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

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 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."

February 12, 2020.

Lara M. Caudy
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ATTORNEY FOR APPELLANT

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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 Melody J. Brown, 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 Andre Tyrone Heatley, 378998, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 12th day of February, 2020.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of February, 2020.

Lindsay M. Matthews (L.S)
Notary Public for South Carolina
My Commission Expires: October 22, 2024.