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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LATISHA RASHIONE TODD,

APPELLANT

APPELLATE CASE NO 2018-000348

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in qualifying the state's veterinarian expert as an expert in the new field of veterinary forensics because the expert had never been qualified as an expert in court in any field; her experience in veterinary forensics was minimal; the judge did not determine how this new field would assist the jury when the expert never saw the bodies of the dogs in this case; and the judge made no reliability finding of this underlying field of veterinary forensics when it was a new field?

STATEMENT OF THE CASE

On February 15, 2017, the Richland County Grand Jury indicted Appellant Latisha Todd on four counts of the ill treatment of animals pursuant to South Carolina Code Section 47-1-40 (B). On July 17 – 21, 2017 Appellant proceeded to trial before the Honorable Deandrea G. Benjamin and a jury. Appellant Todd was represented by Mark E. Schnee, and the state was represented by Joseph B. Berry and Sandra V. Moser. The jury found Appellant guilty of all four counts as indicted. The judge postponed sentencing and ordered a PSI be done by the Department of Probation, Pardon and Parole. The judge placed Appellant on bond and electronic monitoring. R. 461, ll. 1 – R. 482, ll. 9.

On February 20, 2018, Appellant appeared before the Honorable Deandrea G. Benjamin for sentencing. Appellant was again represented by Mark Schnee, and the state was represented by Joseph Berry and Sandra Moser. The judge sentenced Appellant Todd to five years on each of the four counts suspended to the service of thirty months. The sentences were to run concurrent to each other. R. 493, ll. 18 – 25. 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 qualifying the state's veterinarian expert as an expert in the new field of veterinary forensics because the expert had never been qualified as an expert in court in any field; her experience in veterinary forensics was minimal; the judge did not determine how this new field would assist the jury when the expert never saw the bodies of the dogs in this case; and the judge made no reliability finding of this underlying field of veterinary forensics when it was a new field.

Relevant Facts

On July 1, 2016, Roger Williamson who was the maintenance manager for In House Realty, went to a rental house on Scarsdale Drive to cut the grass. The realty company had received complaints because the grass and bushes were grown up and the electricity had been cut off. When Williamson went to the back to cut the grass, he smelled a "real strong odor of decomposition" as a window in the house was broken. Williamson knew the smell of decomposition because he had served in the military thirty years and said he had "seen a lot of dead people." R. 64, ll. 1 - R. 66, ll. 4.

Williamson could tell that no one had been at the house for a "few weeks." When he went in the house, Williamson saw "a mass of maggots" coming from under the bathroom door. When he opened the door, he found a dog behind the toilet which was extremely decomposed so badly that there was nothing left but skin and bones. R. 66, ll. 9 - R. 67, ll. 23. He went further down the hall and found the "outline" of another deceased dog. He called the realty company and told them of the dead dogs. The realty company said that they were going to call Animal Control and Code Enforcement. R. 67, ll. 25 - R. 68, ll. 8.

Karisa Williamson, who worked for In House Realty, reported that the house was rented by Latisha Todd who lived there with her children. R. 82, ll. 1 – R. 84, ll. 18.

Jesse Cody, who was an animal care officer with Richland county Animal Care, received a call on July 1, 2016 that the maintenance man had found a deceased dog in the house on Scarsdale Drive. Ms. Cody could not go so she sent Talmadge Clemons to the home to check. R. 98, ll. 18 – R. 100, ll. 7.

Talmadge Clemons, who worked for Richland County Animal Care, went to the house on Scarsdale to check the report. She smelled an odor as of something dead inside the home. R. 87, ll. 1 – 25; R. 89, ll. 1 – 25. She called her department and told them what she found. She then left a violation notice of animal care generally. R. 93, ll. 1 – 14.

Officer Jesse Cody received a call on July 6, 2016 from Appellant Todd in response to the notice of violation left at the house. According to officer Cody, Todd told her she knew about the puppy found dead in the bathroom. Todd explained to Cody that she had left a man named John in charge of her two dogs while she was on vacation for two weeks. She allegedly told Cody that she left the other dog who was elderly with another friend. R. 100, ll. 1 – R. 101, ll. 23.

Amanda Jordan worked for the Richland County Sheriff's Department in the Code Enforcement Unit which was part of the Community Service Division. R. 107, ll. 1 – 24. Jordan had gone to the house on Scarsdale in July in response to community complaints received concerning the yard being overgrown and about an odor of stench from the property. R. 109, ll. 1 – R. 110, ll. 7.

When Jordan got out of her car, she said she smelled the smell of death, of decomposition. R. 111, ll. 16 -25. She called Investigator Joe Clarke, and told him she believed

there had been some kind of "incident" at the house. He said he would be there in about thirty minutes. R. 115, ll. 4 – R. 117, ll. 25. A car pulled in at that moment, and Appellant Todd appeared. Jordan asked Todd where the children were, and Todd responded that she had taken them to Pennsylvania to stay. When Jordan asked about the dogs, Jordan said that Todd got "teary-eyed" and pointed back at the house. R. 118, ll. 16 – R. 120, ll. 21. Investigator Clarke arrived about that time. R. 121, ll. 4 – 25.

Investigator Clarke could smell decomposition as soon as he got out of his car as he had been a homicide investigator for years. R. 153, ll. 3 – 20. He talked to Appellant Todd who gave consent for the investigator to look at the house. R. 155, ll. 4 – 18. Investigator Clarke, Appellant Todd, and Deputy Fish entered the house. R. 159, ll. 12 – 19.

Upon entering, Investigator Clarke saw the floor covered in bugs. The dogs had been removed but the investigator saw the stain and spot and remnants of the puppy's remains in the bathroom. The bathroom was covered in dead maggots, fleas, bugs, and "other vermin." R. 160, ll. 8 – R. 162, ll. 25. In the back bedroom, Investigator Clarke found three spots on the floor and outlines and remnants that appeared to be dogs. R. 163, ll. 1 – R. 164, ll. 23.

The three people in the house were covered in fleas and had to douse themselves with Raid when they exited the house. R. 174, ll. 3 – R. 175, ll. 6. Then Investigator Clarke decided he needed to talk with Appellant Todd as he wanted to try and get a statement from her. According to Investigator Clarke, he advised Todd of her Miranda warnings and rights which Todd did waive. R. 175, ll. 1 – 25.

According to Investigator Clarke, Todd told him that she had five dogs. She left them on June 3, 2016 and went to Pennsylvania. She left food and water. She returned July 3, 2016 and went to the house just to get her mail. She allegedly said that she did not go in the house because

the dogs "got so excited." R. 179, ll. 17 - R. 180, ll. 23. She learned that the dogs were dead from her uncle. The maintenance man told her uncle who told Todd. She said that she owned the dogs. R. 180, ll. 24 - R. 181, ll. 3.

Investigator Clarke said that he had heard from other people that Todd may have had someone who was taking care of the dogs for her. However, Todd did not mention that in her statement to the investigator. R. 181, ll. 5 - 25. Investigator Clarke did not arrest Appellant Todd at that point. R. 183, ll. 2 - R. 184, ll. 23. He did arrest Todd on July 19, 2016. R. 186, ll. 2 - 25.

The Richland County Grand Jury indicted Todd on four counts of the ill treatment of animals. Todd proceeded to trial on July 17-21, 2017. R. 1. In a pretrial hearing, the state asked the court to qualify their expert under Rule 702, SCRE, as an expert in veterinary forensics, veterinary services, and veterinary care. R. 7, ll. 1 - 10. Dr. Rebecca K. Laster then testified in camera concerning her qualifications. She was the animal services veterinarian for the City of Columbia Animal Shelter. R. 9, ll. 1 - 23.

Dr. Laster testified that one of her duties was to perform necropsies which were autopsies for animals. She assisted law enforcement by performing necropsies. R. 10, ll. 25 - R. 11, ll. 24. The expert explained that she received a graduate certificate in veterinarian forensics from the University of Florida in addition to her Doctorate of Veterinary Medicine. R. 12, ll. 1 - R. 13, ll. 15.

When asked about the field of veterinary forensics, she explained that it was a very new and developing field in veterinary medicine. It involved performing necropsies and legal cases and the law. Some of the classes explained what she would see in certain typed of animal cruelty cases. She was continuing to study shelter medicine as part of a masters degree. As part of her

practice and studies, she knew what happened to a dog's body when it was dehydrated and starved. R. 15, ll. 20 – R. 16, ll. 14.

When the judge asked if the doctor had done anything with the dogs in this case as the dogs were already dead and decomposed, the state replied that Dr. Laster was “essentially a blind expert.” She would be asked about hypotheticals about what happened to a dog if it did not have water or food for a number of days in very extreme heat. R. 18, ll. 2 – 24. The judge said she assumed the doctor was not giving an opinion regarding the animals in this case because she had not treated them. The state responded with “correct.” R. 19, ll. 8 – 25.

Defense counsel objected to expert being qualified in veterinary forensics. He argued that she had only a certificate that she had just recently received. He argued that she had done no work in that field, as her studies were veterinary care and providing medicine. The judge decided that she was going to allow the expert to testify to veterinary forensics. Defense counsel continued to argue that there was no forensic aspect in this case. He explained that the expert had done no examinations in this case so any testimony regarding forensics would be irrelevant. R. 52, ll. 15 – R. 53, ll. 23.

The judge responded that the expert's testimony concerning “dehydration and dogs dying from dehydration would come from her forensic knowledge versus just veterinary.” The judge ruled that she was going to qualify the doctor as an expert in veterinary forensics, medicine and veterinary care. R. 54, ll. 1 – R. 55, ll. 9.

During the trial, Dr. Laster told the jury that forensics meant “taking the science of medicine and applying it to legal cases.” She told them she had a certificate in veterinarian forensics. R. 209, ll. 1 – R. 212, ll. 6.

During defense counsel's voir dire of Dr. Laster, she admitted that she had never been qualified as an expert in any field in court. She had never testified in court as a forensic veterinarian. She had not performed any forensic examination in this case. Since she had received her certificate in veterinary forensics, she had performed only two forensic autopsies but had performed seven or eight forensic exams which were done on living animals. R. 212, ll. 10 – R. 214, ll. 16.

Defense counsel then objected to the qualification of Dr. Laster as an expert in the field of forensic veterinarian sciences. Counsel argued that her level of training in this field was minimal, and she had never been qualified as an expert in any field. Counsel also argued that the doctor had performed no forensic work in this case. R. 214, ll. 17 – R. 215, ll. 11.

The judge overruled the objection and qualified Dr. Laster as an expert in the areas of veterinary forensics, veterinary medicine, and veterinary care. R. 215, ll. 10 – 24.

Dr. Laster then testified as to the effects on a dog's body of a very few days without water. She said a dog would die within a few days without water but could last weeks without food. R. 216, ll. 5 – R. 224, ll. 5.

When the state rested its case, defense counsel renewed all prior motions and objections and moved for a directed verdict which was denied. R. 227, ll. 1 – 22; R. 235, ll. 3 – R. 239, ll. 4.

Appellant Todd testified at trial that she had four children and she had taken them to Pennsylvania to visit her parents during the summer. She tried to find one place for all of her dogs. However, Luther, the person she asked, would keep only one which was Prince, the oldest dog. R. 290, ll. 12 – R. 292, ll. 25. The other four were the puppies of Prince. R. 293, ll. 1 – 23.

She asked a man named John to keep the puppies. John was from the neighborhood and had kept dogs for her in the past, but which were different dogs. John was in a bind with his

relationship. Therefore, Todd asked him if he would stay at her house and look after the dogs.

This way he was helping her and she was helping him. John agreed to do it. She gave John money to buy things for the dogs. R. 294, ll. 9 -R. 296, ll. 25.

Todd first learned there was a problem with the dogs when her uncle called her and told her of the police officers in her yard. When she learned about the dogs, Todd came home. She had stopped in Sumter at her grandmother's house. R. 297, ll. 1 - R. 298, ll. 5. When she arrived at her house, Investigator Clarke and Amanda Jordan were there. Her uncle had removed the dogs the day before as she could not do it. She gave a written statement to Investigator Clarke. R. 298, ll. 6 - R. 300, ll. 24.

At the close of the testimony, defense counsel renewed all motion and objections. R. 321, ll. 14 - 22.

The jury returned a verdict of guilty on the four charges as indicted. R. 453, ll. 19 - R. 455, ll. 7. The judge ordered a Presentence Investigation (PSI) at the request of defense counsel. R. 461, ll. 1 - R. 463, ll. 22. On February 20, 2018, Appellant Todd and counsel appeared before Judge Benjamin for sentencing following the PSI. The judge sentenced Todd to five years on each of the four counts with the sentences to run concurrent. The judge ordered the five years suspended to the service of thirty months with probation for two years. R. 483 - R. 494, ll. 25.

Appellant Todd filed a notice of appeal.

Discussion

Under Rule 702, SCRE, 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. All expert testimony must satisfy Rule 702, SCRE, criteria. State v. White, 382, S.C. 265, 270, 676 S.E.2d 684, 686 (2009).

Under the Rule, the trial court exercises a gatekeeping function to insure the proposed expert testimony meets a reliability threshold for the jury's consideration. Id. This inquiry requires that the proposed expert testimony meets a sufficient level of reliability, regardless of whether it is scientific or nonscientific. Id. Reliability is the central concern governing the admission of expert testimony. State v. Jones, 343 S.C. at 572, 541 S.E.2d at 818.

Under State v. White, *supra*, two threshold determinations must be made: the qualifications of the expert must be sufficient, and there must be a determination that the expert's testimony will be reliable. State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015) citing State v. White, *supra*.

Trial courts should be cautious in conferring an expert label upon a witness because juries may accord excessive or undue weight to "expert" testimony. Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010). In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the Supreme Court wrote:

Although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts.

Trial courts are required to establish whether: (1) the expert has the requisite qualifications, experience, and/or credentials; (2) the methodology by which the evidence is obtained is reliable; and (3) the evidence will assist the trier of fact. State v. Council, 335 S.C.1, 515 S.E.2d 508 (1999).

When evaluating scientific evidence under Rule 702, SCRE, the trial court must determine if the underlying science is reliable. State v. Council. In making its determination, the trial court must

examine the following factors: (1) publications and peer reviews of the technique used by the expert; (2) prior application of the method to the type of evidence involved in the case; (3) quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Jones, supra.

The admissibility of an expert's testimony is a matter within the trial court's sound discretion and the determination will not be reversed on appeal absent an abuse of discretion. A trial court's ruling on the admissibility of expert testimony constitutes an abuse of discretion where the ruling is unsupported by the evidence or controlled by an error of law. State v. Jones, supra.

While both scientific and nonscientific expert testimony require the trial court make a finding of reliability, there is no formulaic approach for determining the reliability of nonscientific testimony. State v. Jones, supra.

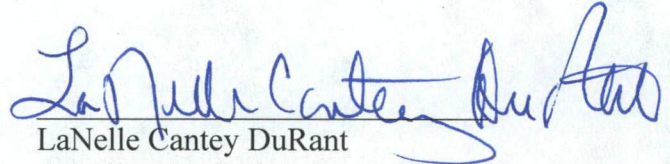
The trial court erred in qualifying Dr. Laster as an expert in the new field of veterinary forensics. The judge made no finding of the reliability of the field of veterinary forensics which was necessary in order to find the doctor's testimony would be reliable. The state offered her as a "blind" witness because she had not seen the bodies of the dogs. The state pointed out that the doctor would testify only in hypotheticals which made the finding of reliability even more important.

No evidence of peer review or publications was presented by the state, and no mention of quality control procedures. The doctor's testimony regarding the effect of dehydration and starvation on a dog's body was not beyond the common knowledge of a reasonable juror. An expert was not needed to convey this information which a veterinarian could have been expected to know.

Dr. Laster's qualifications in veterinary forensics were insufficient to qualify her as an expert because she had performed only two necropsies. She had only a certificate in veterinary forensics which required only five courses with each being twelve weeks long. Dr. Laster did the work for this certificate online. R. 211, ll. 1 – 23.

CONCLUSION

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



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Appellate Defender

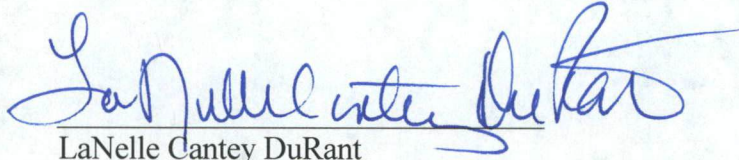
ATTORNEY FOR APPELLANT

This 6th day of June, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

June 6, 2019



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