

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2018-000348

THE STATE,

Respondent,

v.

LATISHA RASHIONE TODD,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

RECEIVED

MAY 16 2019

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STATEMENT OF ISSUE ON APPEAL

Whether the issue of Dr. Rebecca Laster being admitted as an expert in the field of veterinary forensics was properly preserved for appeal where Appellant waived the issue when she expressly conceded that the substance of Dr. Laster's testimony was proper, and if the issue were properly preserved for appeal, whether the trial judge erred in qualifying Dr. Laster as an expert in the field of veterinary forensics when Dr. Laster possessed the requisite skill, education, and training to testify as an expert in that field and even if Dr. Laster was improperly tendered as an expert in the field of veterinary forensics, whether Appellant was not prejudiced by her testimony because Appellant conceded that Dr. Laster's testimony was proper, thereby making any error harmless?

STATEMENT OF THE CASE

In February 2017, the Richland County Grand Jury indicted Appellant for four counts of ill treatment and torture of animals. On July 17-21, 2017, Appellant proceeded to trial before a jury in the Richland County Court of General Sessions with the Honorable DeAndrea G. Benjamin, presiding. Appellant was represented by Mark Schnee, Esq. Respondent (the State) was represented by Assistant Solicitors Joseph Berry and Sandra Moser of the Fifth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of all counts. Following the verdict, sentencing was held in abeyance until the Department of Probation, Pardon, and Parole Services could evaluate Appellant. On February 20, 2018, Judge Benjamin sentenced Appellant on each count to a term of five years' imprisonment suspended upon the service of thirty months in custody. Upon completion of the thirty months in custody, the remainder of Appellant's sentence was suspended and she was placed on probation for two years. All of Appellant's sentences were to run concurrently with each other. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On July 1, 2016, Roger Williamson, the property manager for In The House Realty, went to inspect the property located at 608 Scarsdale Drive in the City of Columbia. (R. 64-65).

Williamson initially went to inspect the property because of complaints about the height of the grass. While cutting the grass, Williamson smelled the odor of decomposition coming from the house. (R. 65). Williamson entered the house to see what was causing the smell. Inside, Williamson located a dead dog behind the toilet in the bathroom. (R. 67). Williamson also saw the outline of what he believed was a second dead dog in a bedroom. Appellant was the lessee and only adult occupant of 608 Scarsdale Drive. (R. 83-84). After Richland County Animal Care left a violation notice on Appellant's door, Appellant called the Animal Care office. Appellant told Animal Care Officer Jesse Cody that she left a man named John to care for one dog while she was out of town and she left another elderly dog with a friend. (R. 100-01). Appellant only acknowledged owning two dogs during this phone call. Appellant said she didn't have John's address or phone number. (R. 101).

On July 7, 2016, Deputy Amanda Jordan of the Richland County Sheriff's Department went to 608 Scarsdale Drive in response to complaints about the height of the grass in the yard and the smell coming from the house. (R. 109-10). While waiting on an investigator to arrive at the scene, Jordan observed Appellant arrive at the residence. (R. 118-19). Jordan knew Appellant from previous interactions regarding the height of her grass and previously met her elder dog, Prince. (R. 113). Jordan asked Appellant where her dogs were and Appellant "got teary-eyed and she pointed back at the house." (R. 120, lines 20-21). Upon arrival, Investigator Joseph Clarke obtained consent from Appellant to search her home. (R. 155). Clarke entered the house and observed "the floor was covered in bugs" and "the house was very hot". (R. 160, line 14,

161, line 22). When Clarke entered the bathroom, the body of the dog behind the toilet was removed, but the bathroom remained “covered in dead maggots and other vermin, fleas, bugs.” (R. 162, lines 24-25). Clarke entered the back bedroom of the house and observed three outlines on the floor where the bodies of three different dogs were located in addition to areas where “fecal matter in some places was several inches deep.” (R. 164, line 15-16, 354). Clarke found the bodies of Appellant’s dogs inside a plastic bag within the doghouse in Appellant’s back yard. (R. 167). Appellant subsequently admitted her uncle removed the dog’s bodies and placed them inside the plastic bag. (R. 318).

Upon exiting the house, Appellant waived her rights to an attorney and agreed to give Clarke a statement. Appellant acknowledged owning five dogs: Prince, Panda, Midnight, Diamond, and Sparkle. (R. 180). Appellant identified Panda as being the deceased dog in the bathroom and Midnight, Diamond, and Sparkle as being the deceased dogs in the back bedroom. (R. 180). Appellant said she left food and water for the dogs and went to stay with her parents in Pennsylvania on June 3, 2016. Appellant acknowledged returning to her residence on July 3, 2016 to check her mail, but she did not go inside to check on the dogs. (R. 180). Appellant learned the dogs were dead after speaking to her uncle. Appellant’s uncle learned of the dog’s deaths from Williamson. (R. 181). Appellant did not tell Clarke that she arranged for John to take care of her dogs.

At trial, the State presented testimony from Dr. Rebecca Laster about the physical effects of dehydration, starvation, and insect bites on a dog’s body. Dr. Laster was admitted by the trial court as an expert in the fields of veterinary forensics, veterinary medicine, and veterinary care. (R. 215). Dr. Laster testified that dogs deprived of water would eventually die due to a condition called salt toxicity (R. 217). Dr. Laster opined that dogs without a source of food would

eventually eat non-food items such as debris to satiate their hunger. If a dog were to eat debris, the dog would experience pain as the non-food items moved through their digestive system. (R. 220-22). Dr. Laster also said if a dog was bitten by enough fleas, it would suffer from anemia and eventually die. (R. 223).

Appellant testified in her own defense. Appellant made arrangements for her oldest dog, Prince, to stay with a Mr. Luther, but she made alternative arrangements for the four puppies. (R. 292-93). The puppies were the offspring of Prince. (R. 293). Appellant testified she asked someone named John to live in her house temporarily and to watch the four dogs. Appellant knew John from “the neighborhood” but did not know his last name or where he lived. (R. 294-95). According to Appellant, she was first informed her dogs were dead when she got a call from her uncle about police being at her house. (R. 297). On July 5, 2016, Appellant and her uncle went inside the house to clean it up and remove the bodies of the dogs. (R. 299, 317-18). At the conclusion of trial, Appellant was convicted of all counts.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial courts have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial court's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). Likewise, a decision as to whether to admit or exclude expert testimony rests within the trial court's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (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." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I.

The issue of whether Dr. Rebecca Laster was properly admitted as an expert in the field of veterinary forensics was not properly preserved for appeal because Appellant waived the issue when she expressly conceded that the substance of Dr. Laster's testimony was proper. However, even if the issue was properly preserved for appeal, the trial judge did not abuse her discretion in qualifying Dr. Laster as an expert in the field of veterinary forensics because Dr. Laster possessed the requisite skill, education, and training to testify as an expert in that field. Even if Dr. Laster was improperly tendered as an expert in the field of veterinary forensics, Appellant was not prejudiced by her testimony because Appellant conceded that Dr. Laster's testimony was proper thereby making any error harmless.

Appellant contends the trial judge erred by qualifying Dr. Laster as an expert in the field of veterinary forensics because the trial judge did not make a finding that the field of veterinary forensics was reliable. Appellant also maintains the subject matter of Dr. Laster's testimony was not beyond the common knowledge of an ordinary lay juror. Appellant's arguments are without merit. As an initial matter, Appellant did not preserve this issue for appellate review because Appellant waived her objection by conceding that Dr. Laster's testimony was proper. However, even if Appellant properly preserved this issue for Appellant review, Dr. Laster was nonetheless appropriately qualified as an expert in the field of veterinary forensics, veterinary medicine, and veterinary care because she had over twenty years' experience as a veterinary doctor and obtained a specific certification in the field of veterinary forensics that required her to complete five twelve-week courses. Even if Dr. Laster did not have the proper qualifications to be tendered as an expert witness in the field of veterinary forensics, Appellant was not prejudiced by her testimony because Appellant explicitly conceded that Dr. Laster's testimony was proper. Appellant only objected to Dr. Laster testifying about the emotional state of Appellant's dogs, but conceded that testimony about the physical effects of dehydration and starvation was proper. The trial judge appropriately excluded the testimony that Appellant objected to. Therefore,

Appellant suffered no prejudice from Dr. Laster's testimony and any error in admitting Laster's testimony is harmless. Appellant's convictions and sentences should be affirmed.

Error Preservation

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). If a party expressly consents to the admission of evidence, that party waives their right to raise that issue on appeal. State v. Johnson, 298 S.C. 496, 498, 381 S.E.2d 732, 733 (1989). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). "The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal." State v. Freiburger, 366 S.C. 125, 135, 620 S.E. 2d 737, 742 (2005). "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011).

Here, Appellant waived her objection to Dr. Laster's testimony by conceding that it was proper for Dr. Laster to testify about the physical effects of dehydration and starvation on a dog. Appellant only objected to testimony about the behavioral or emotional state of Appellant's dogs, but expressly conceded that she had no problem with testimony about the physical condition of the dogs. (R. 51). The trial judge agreed with Appellant and prohibited Dr. Laster from testifying about the emotional state of the dogs. Dr. Laster complied with the trial judge's ruling and limited her testimony to the physical effects of dehydration, starvation, and insect bites. (R. 205-26). Therefore, Appellant received the relief she requested at trial and thus waived her right to raise any issue with Dr. Laster's testimony on appeal.

Appellant further contends the trial judge erred in not making a finding regarding the reliability of the field of veterinary forensics. However, Appellant did not preserve this issue for appeal either. Appellant did indeed object to Dr. Laster being offered as an expert in the specific field of veterinary forensics, but Appellant objected on the basis of Dr. Laster's qualifications, not the reliability of the subject matter. Appellant lamented that Dr. Laster had only recently obtained her veterinary forensics certificate and therefore she did not have enough experience in the field. (R. 52-54). However, Appellant never questioned the reliability of the science of veterinary forensics, and even acknowledged that she did not have a problem with Dr. Laster testifying about the physical effects of dehydration and starvation. (R. 50-51). Therefore, Appellant did not preserve this issue for appellate review.

Expert Testimony

Appellant contends the trial judge erred in qualifying Dr. Laster as an expert in the field of veterinary forensics, but does not contest that Dr. Laster was properly qualified as an expert in the fields of veterinary medicine and care. The trial judge did not abuse her discretion in qualifying Dr. Laster as an expert in veterinary forensics because she had the requisite skill, education, and training to qualify as an expert in that field. However, even if the trial judge improperly tendered Dr. Laster as an expert in the field of veterinary forensics, the substance of Dr. Laster's testimony would still have been admissible under the general fields of veterinary medicine and veterinary care that Dr. Laster was also deemed to be an expert in.

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

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; “Expert testimony may be used to help the jury to determine a fact in issue based on the expert’s specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony’s probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). “The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” State v. Peer, 320 S.C. 546, 554-555, 466 S.E.2d 375, 380 (Ct. App. 1996).

Here, the trial judge listened to proffered testimony from Dr. Laster in an *in camera* hearing. (R. 9). Dr. Laster received an undergraduate degree in Zoology in 1990 and a Doctorate of Veterinary Medicine in 1994. (R. 12). Dr. Laster practiced as a veterinarian for multiple species from 1994 until the date of trial in 2017. As of the date of trial, Dr. Laster obtained a graduate certificate in veterinary forensics from the University of Florida and she was pursuing a master’s degree in Shelter Medicine. (R. 12). To obtain the graduate certificate in veterinary forensics, Dr. Laster completed five 12 week-long classes. (R. 43). In the course of her career, Dr. Laster often performed autopsies on animals to determine a cause of death and she estimated that she performed over ten thousand surgeries. (R. 11, 15).

After hearing testimony from Dr. Laster, the trial judge articulated her analysis of the admissibility of Dr. Laster's testimony under Rule 702 SCRE. (R. 43-45). The trial judge properly determined the subject matter of the testimony fell outside the realm of the ordinary knowledge of the average lay juror. (R. 43). The trial judge then determined the witness was qualified to testify about the physical effects of dehydration and starvation, but she expressed concern regarding the reliability of any testimony regarding the behavioral science of dogs experiencing dehydration and starvation. (R. 44-45). Ultimately, the trial judge determined that any testimony regarding behavioral science was not reliable and thus not admissible. (R. 53). Dr. Laster complied with the trial judge's ruling and only testified about the physical effects of dehydration and starvation. (R. 205-26). Implicit in the trial judge's ruling was her determination that testimony regarding the effects of starvation and dehydration was reliable. The trial judge did not articulate her finding of reliability in her ruling, but she was not required to. The trial judge did not need to make a reliability finding when Appellant explicitly acknowledged that she did not object to Dr. Laster testifying about the physical effects of dehydration and starvation. (R. 51).

To the extent Appellant quibbles with the specific field of expertise Dr. Laster was qualified as an expert in, Dr. Laster's testimony was entirely appropriate within the fields that Appellant did not object to. Appellant specifically objected to Dr. Laster being tendered as an expert in veterinary forensics. (R. 52-53). However, Appellant never objected to Dr. Laster's qualifications in the fields of veterinary medicine and veterinary care. Dr. Laster's testimony regarding the physical effects of dehydration and starvation on a dog--testimony Appellant explicitly conceded was proper--would be admissible if Dr. Laster had only been tendered as an expert in veterinary medicine and veterinary care. Because Dr. Laster was testifying as a blind

witness and did not perform a physical examination of the deceased dogs, her general expertise in veterinary medicine was a sufficient basis for her to testify regarding the physical effects of starvation and dehydration. Thus, even if the State did not offer Dr. Laster as an expert in the field of veterinary forensics, the subject matter of her testimony was still properly offered under her general expertise in veterinary medicine.

Harmless Error

Even if the trial judge improperly qualified Dr. Laster as an expert in the field of veterinary forensics, Appellant suffered no prejudice from the substance of her testimony. Appellant explicitly agreed that Dr. Laster was qualified to testify about the physical effects of dehydration and starvation on a dog. The only substantive aspect of Dr. Laster's testimony Appellant objected to was any discussion of the emotional or psychological effects of starvation or dehydration on a dog. The trial judge sustained Appellant's objection, and Dr. Laster did not testify to any emotional effects of starvation or dehydration. Therefore, Appellant suffered no prejudice from the trial judge's ruling and any error was entirely harmless.

An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." Id. "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

The trial judge determined Dr. Laster was qualified to testify about the physical effects of dehydration, starvation and insect bites on a dog. However, the trial judge expressed reservations about Dr. Laster testifying to any behavioral characteristics of a dog who was experiencing these physical conditions. The trial judge articulated her ruling in the following manner:

The Court: She can testify as to, I know this is what happens when a dog becomes dehydrated, I know this is what happens when a dog has issues of, I guess, infestation of ticks or fleas, because she has treated dogs for that. But as far as anxiety in the dogs and how the dogs may have felt in the last days, I'm not sure if she can testify.

(R. 45, lines 3-17). Appellant agree with the trial judge's ruling and clarified that she was only objecting to any testimony about the psychological effects various physical conditions would have on a dog:

Mr. Schnee: My concern is anything dealing with psychology and behavioral sciences. The dehydration aspect of the salt toxicity and it causing problems with the brain to function and causing pain and then, obviously, you know, the eating random objects, that is certainly clearly established because that is something that's easy to observe. The other aspect about anxiety--anything dealing with anxiety, any emotional attachment to any--any action or inaction of either any other dogs or what's going on, that's kind of what I'm having a problem with. That's the part the science does not have.

(R. 48-49, lines 23-10). Appellant again clarified the basis of his objection when she stated:

Mr. Schnee: Right. When it comes to just the dehydration and lack of food issue technically, it's the behavioral aspect and the anxiety and the emotional—any emotional phrase is what I'm objecting to. All the physical effects, I have no problem with those.

(R. 51, lines 9-14).

Here, Appellant objected to the specific field of expertise that Dr. Laster was tendered as an expert in, veterinary forensics, but she did not object to the substance of Dr. Laster's testimony. (R. 52). Appellant's argument is therefore an exercise in semantics. Appellant cannot

claim to be prejudiced by Dr. Laster's testimony when she specifically agreed the substance of Dr. Laster's testimony was proper. Even if Appellant had contested the substance of Dr. Laster's testimony, her testimony regarding the physical effects of dehydration and starvation was still admissible under the additional fields of veterinary medicine and veterinary care that Dr. Laster was also qualified to be an expert witness in.

To the extent that Appellant maintains she was prejudiced by the label of veterinary forensics, it is unlikely the jury's verdict was improperly influenced by the title of Dr. Laster's field of expertise. It is more likely the jury's verdict was influenced by the overwhelming evidence presented against Appellant. Appellant testified that she lived at 608 Scarsdale Drive and that she was the owner of the four dogs who were found there. (R. 303-04). She admitted that she left the dogs at home alone for a month while she was in Pennsylvania. She maintained a man named John was supposed to be staying at her home to take care of her dogs, but she did not know his last name or where he lived. Appellant also admitted to returning to her residence to check her mail on July 3, 2016, but she did not go inside to check on her dogs despite the odor of decomposition being noticeably present outside the residence prior to that date. (R. 65, 89, 305). Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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