STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL LARONE WILLIAMS,

APPELLANT

APPELLATE CASE NO 2019-001759

INITIAL BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
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

Whether the trial court erred in excluding evidence that the decedent had methamphetamine in his blood, where a bag was discovered by police at the scene of the shooting, which contained numerous items associated with the manufacture of methamphetamine, but police ignored this evidence and did not collect it, which was central to Appellant's defense?

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County grand jury for murder and possession of a weapon during the commission of a violent crime. R. *. Appellant's trial was held before the Honorable William P. Keesley and a jury from October 7 – 10, 2019. Tr. 1. Appellant was represented by Robert Madsen and Kebra Simpson. Tr. 1. The state was represented by Savanna Goude and Joel Kozak. Tr. 1.

The jury found Appellant guilty as charged. Tr. 507. The judge sentenced Appellant to life imprisonment for murder and five-years imprisonment for possession of a weapon. Tr. 513.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

STATEMENT OF THE FACTS

On November 24, 2016, Dayyan Felder contacted Nakerrius Pressley in order to buy marijuana. Tr. 208, l. 23 – 209, l. 1. Felder arrived at Pressley's house with Appellant, who Pressley said he had never met before. Tr. 209, ll. 2 – 14. According to Pressley, Appellant offered to sell Pressley a gun, but Pressley said he was not interested. Pressley sold marijuana to Felder and Appellant and they left. Tr. 210, ll. 1 – 6.

About an hour later, Appellant and Felder allegedly returned to Pressley's house to purchase more marijuana. Tr. 210, ll. 6 – 8. When Appellant and Felder arrived the second time, Pressley got into the backseat of the car that Appellant was driving. Tr. 210, ll. 8 – 12. Pressley claimed that he agreed to make a trade with Appellant in which Pressley would give Appellant marijuana in exchange for a gun. However, Pressley claimed that Appellant did not have any bullets for the gun with him, so they all agreed to go to Appellant's house to get the bullets to complete the trade. Tr. 210, ll. 13 – 22.

As they were getting ready to pull out of Pressley's driveway to go to Appellant's house, Pressley's brother, Kevadric,[1] pulled into the driveway. Tr. 211, ll. 4 – 7. According to Pressley, he got out of Appellant's car and into Kevadric's car. Pressley and Kevadric followed Appellant and Felder down a dirt road. Tr. 211, ll. 7 – 18. While on the dirt road, the two cars pulled next to each other so that the driver's side doors were side by side so that Appellant and Kevadric, the drivers of each car, could make a "hand to hand" transaction. Kevadric handed Appellant the marijuana but then Appellant drove away without giving Kevadric the gun. Tr. 211, ll. 19 – 22.

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[1] Kevadric is the decedent in this case who was killed by a single gunshot wound to the head. Tr. 449, ll. 6 – 8.

After Appellant drove away, Pressley claimed that Felder, who was with Appellant, sent him a Facebook message telling him to follow Felder and Appellant "around the curve." Tr. 211, l. 23 – 212, l. 1. Pressley then recalled:

> So [Kevadric] drove up, he went around the curve, we pulled up to where [Kevadric] and [Appellant] could make a hand to hand transaction and [Kevadric] asked me if I had the money. I handed [Kevadric] the $30. [Kevadric] was handing the $30 out the window. [Appellant] had the gun in his hand and a box of bullets and was handing that out the window and he shot [Kevadric].

Tr. 212, ll. 2 – 8. After the shooting, Appellant and Felder drove away and Pressley called the police. Tr. 215, l. 19 – 216, l. 6. Pressley admitted that, after the shooting, he made several threats to Felder on social media because he believed that Kevadric's death was Felder's fault. Tr. 216, ll. 13 – 25.

Felder also testified. Felder admitted that Pressley was his "plug" – the person Felder purchased marijuana from. Tr. 269, l. 22 – 270, l. 17. Felder recalled that on November 24, 2016, Appellant picked him up so that they could go buy marijuana from Pressley. Tr. 272, l. 8 – 274, l. 25. According to Felder, Kevadric was present when Appellant and Felder arrived at Pressley's house. Tr. 275, ll. 2 – 9. Felder recalled that he was standing outside of the car with Pressley smoking cigars while Appellant and Kevadric were in the car with the windows rolled up. Tr. 276, ll. 1 – 7.

Appellant and Felder left Pressley's house to go sell marijuana to other people but returned approximately one hour later to buy more marijuana from Pressley. Tr. 276, l. 8 – 277, l. 12. When Felder got back in touch with Pressley, Pressley asked if Appellant would trade a gun for more marijuana. Tr. 277, ll. 11 – 16. Pressley and Kevadric then followed Appellant and Felder to where Appellant said the gun was located. Tr. 277, l. 18 – 278, l. 5. Felder then testified:

> [W]e ended up turning on a dirt road and [Appellant] tells me that we're gonna do half the transaction there, about giving them bullets, so I hit [Pressley] up and he was like okay. They pulled beside the car and [Appellant] tells me to put the bullets on the dashboard, and tells me to tell them to toss the weed in the car. They toss the weed in the car and [Appellant] just pulls off.

Tr. 278, ll. 14 – 21.

Felder said that he told Appellant not to continue driving away and that Appellant responded by saying: "I ain't gonna take his weed." Tr. 279, ll. 4 – 9. Felder then claimed that he and Appellant drove back to where Pressley and Kevadric were and Appellant pulled out a gun and shot one time into their car. Tr. 279, ll. 9 – 21.

Daniel Schirra, an officer with the Lexington County Sheriff's Department, arrived on scene to find Kevadric sitting in the driver's seat of his vehicle with a single gunshot wound to his head, and with Pressley pacing back and forth outside the car stating "they smoked my brother." Tr. 238, l. 13 – 242, l. 20. Dalton Shull, an EMS worker for Lexington County, arrived on scene also and confirmed that Kevadric was deceased. Tr. 252, l. 1 – 255, l. 17.

Detective Miles Rawl with the Lexington County Sheriff's Department responded to the scene and learned that Felder was a "witness" to the shooting. Tr. 306, l. 18 – 308, l. 5. Rawl contacted Felder and Felder claimed that Appellant was the shooter. Tr. 308, ll. 6 – 14. Several officers then went to Appellant's girlfriend's house to try to locate Appellant. Tr. 308, l. 15 – 310, l. 9.

Rawl stated that while he was speaking to Appellant's girlfriend outside of her house, he saw headlights coming down her driveway. Tr. 326, ll. 12 – 25. Rawl said as the vehicle approached, he could see that the windows were rolled down and Appellant was driving. Tr. 327, ll. 1 – 18. Rawl claimed that Appellant said "who the fuck are you" at which point Rawl

drew his firearm, stated he was with the Lexington County Sheriff's Department, and ordered Appellant to stop. Tr. 327, ll. 18 – 22.

Rawl maintained that Appellant then turned his vehicle around and drove away. Tr. 327, l. 22 – 328, l. 5. Rawl claimed that Appellant fled for about two-and-a-half miles before crashing into a tree and fleeing on foot. Tr. 328, l. 14 – 329, l. 24. Nicholas Parker with the Lexington County Sheriff's Department K-9 Unit responded to the location of the crash and attempted to track Appellant with his dog. Tr. 337, ll. 10 – 22. The dog located Appellant "on the other side of the yard" from where the crash was. Tr. 337, l. 23 – 338, l. 10.

Appellant was placed under arrest and a magazine from a handgun was found "laying under [Appellant] on the ground." Tr. 338, l. 11 – 339, l. 5. A black handgun was also found "on the path" that Appellant had supposedly taken from his vehicle to where he was arrested by law enforcement. Tr. 360, ll. 10 – 20. When officers searched the vehicle that Appellant was driving, they found a spent shell casing underneath the back seat. Tr. 395, ll. 1 – 15. Michelle Eichenmiller who was a firearms examiner with SLED testified that the spent shell casing was fired from the gun that was recovered from the scene where Appellant was arrested. Tr. 441, ll. 6 – 17. Eichenmiller also opined that a bullet which was recovered from the decedent's car was fired by the same gun. Tr. 441, l. 18 – 442, l. 9.

ARGUMENT

The trial court erred in excluding evidence that the decedent had methamphetamine in his blood, because a bag was discovered by police at the scene of the shooting, which contained numerous items associated with the manufacture of methamphetamine, but police ignored this evidence and did not collect it, which was central to Appellant's defense.

Relevant Facts

Doug Novak, who was the evidence supervisor for the Lexington County Sheriff's Department, responded to the scene in this case to assist the lead investigator with collecting evidence. Tr. 258, l. 7 – 259, l. 25. Novak testified that he searched around the decedent's car for evidence but found "nothing." Tr. 262, l. 24 – 263, l. 10. However, on cross-examination Novak was asked about a bag found at the scene containing "meth-related items," which the police failed to collect. Novak admitted:

> What we did with that is we found probably about a hundred yards back from the scene was a bag in the middle of the road that appeared to have meth – products in it which consists of pill making – Sudafed in it, cans, there were pipes and little other things that they would use to make meth with and it appeared it had been there longer than a day, so we didn't collect it.

Tr. 266, ll. 1 – 9.

Upon further questioning, Novak admitted that he called a narcotics officer to respond to the scene after discovering these items and the narcotics officer confirmed that the items were used in the manufacturing of methamphetamine. Tr. 266, ll. 10 – 20. Furthermore, Novak admitted that the narcotics officer had in fact collected these items, but they were never tested for DNA or fingerprints and were ultimately destroyed by law enforcement. Tr. 266, ll. 21 – 24.

Doctor Janice Ross was the pathologist who performed the autopsy on the decedent in this case. Tr. 444, l. 25 – 447, l. 6. On cross-examination, defense counsel asked Dr. Ross

whether it was standard procedure to run a toxicology screen on a decedent during an autopsy and the solicitor objected. Tr. 449, ll. 14 – 24. Outside the presence of the jury, defense counsel informed the judge that he was going to elicit testimony that the decedent in this case had methamphetamine in his blood. Tr. 450, ll. 2 – 9.

The solicitor responded that this was improper character evidence that had "nothing to do with the actual facts" of the case. Tr. 450, ll. 11 – 16. Defense counsel argued that it was important because law enforcement had discovered items on the scene that were used to manufacture methamphetamine which they had ignored in their investigation. Tr. 450, ll. 17 – 21. Counsel pointed out that the decedent's positive toxicology screen showing methamphetamine in his blood showed that there may have been a connection between the decedent and the meth manufacturing items which were ignored by law enforcement. Tr. 450, l. 22 – 451, l. 12.

The judge ruled:

> I'm struggling to see how it's relevant, but even if it were relevant based on what you just argued, in my mind – it should be excluded under Rule 403 because any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury.

Tr. 453, ll. 14 – 20. The judge then sustained the solicitor's objection. Tr. 453, l. 21.

Defense counsel then made a proffer by asking Dr. Ross about the toxicology screen done on the decedent in this case. Dr. Ross confirmed that the decedent did have methamphetamine in his blood. Tr. 454, ll. 4 – 24.

Discussion

"'Relevant evidence' means evidence having *any* tendency to make the existence of *any* fact that is of consequence to the determination of the action more probable or less probable than

it would be without the evidence." Rule 401, SCRE (emphasis added). Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013).

The judge erred in excluding Dr. Ross' testimony that the decedent had methamphetamine in his system. Throughout the trial, Appellant's defense was that the story told by Pressley and Felder did not make sense and was not true. Defense counsel challenged the state's theory of the case in opening and closing arguments, and also through cross-examination by pointing out inconsistencies in the testimony and calling into question the thoroughness of law enforcement's investigation. Put simply, Appellant's defense was reasonable doubt based on a sloppy investigation and inconsistent eyewitness accounts. Tr. 478, l. 9 – 492, l. 3.

Defense counsel was able to connect the decedent to the bag of items used to manufacture methamphetamine, which was ignored by law enforcement. This bag of meth-related items was found near the decedent's car on the same dirt road where he was shot. Counsel effectively elicited testimony on cross-examination that law enforcement had collected and destroyed this evidence because they believed it to be irrelevant to the shooting. However, the decedent's toxicology report showed that methamphetamine was in his system which could have been used by counsel to show that law enforcement made a mistake in ignoring this important evidence. The decedent's toxicology result was relevant in connecting the decedent to the bag of meth-related items and casting doubt on the eyewitnesses' story about a marijuana deal. The trial court erred in refusing to allow counsel to make this connection before the jury as it was critical to Appellant's reasonable doubt defense.

In State v. Washington, 424 S.C. 374, 404, 818 S.E.2d 459, 474-475 (Ct. App. 2018), this Court found that the trial court did not abuse its discretion in excluding evidence that the decedent had a blood alcohol level of .235. In Washington, the appellant argued that the decedent's blood alcohol level was probative as to whether the decedent had initiated the fight which ultimately resulted in the appellant killing the decedent. Id. Washington maintained that the decedent's high blood alcohol level would have caused the decedent to have "a tendency toward overreaction to a perceived affront, and aggressive or violent behavior." Id.

However, the Washington Court found that there was no evidence in the record that the decedent was the aggressor or that his high blood alcohol level would have caused him to be aggressive or violent. In fact, in her proffered testimony, the forensic pathologist said that she could not say whether the decedent's blood alcohol level would have caused him to be aggressive. Id. at 406-407, 818 S.E.2d at 476.

Unlike in Washington, there was a strong correlation in this case between the results from the decedent's toxicology report and the bag of meth-related items on scene which was ignored by law enforcement. Had the trial judge not erroneously excluded this evidence, defense counsel would have been able to convincingly argue that law enforcement ignored and destroyed critical evidence and cast serious doubt on the accuracy of their investigation. The was essential because Appellant's trial defense was reasonable doubt.

In State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011), the Supreme Court found that the trial court had not abused its discretion in excluding the results from a "preliminary urine analysis" test done on the victim in a murder case which allegedly showed the victim had used cocaine two days prior to being killed. Significantly, the pathologist testified in her proffered testimony that this particular test was unreliable, and no confirmatory testing was

done on the victim. Id. The Dickerson Court agreed with the trial court's conclusion that this evidence was inadmissible due to the unreliable nature of the test. Id. Unlike in Dickerson, in this case there was no dispute regarding the reliability of the toxicology screen done on the decedent.

The trial court erred in excluding the results from the decedent's toxicology report because the results were probative in connecting the decedent to the bag of meth-related items found on the scene. Contrary to what the solicitor argued at trial, the purpose of showing the jury this connection was not to attack the decedent's character but rather to demonstrate that law enforcement's investigation was incomplete and inadequate because they ignored evidence that should have been taken seriously. The probative value of connecting the decedent to the bag found on scene was that it cast substantial doubt on the state's theory of the case that this shooting was the result of marijuana being traded for a gun. The decedent's toxicology report was probative in showing that there was more to the story which was told by Pressley and Felder, and because they were the only eyewitnesses to the shooting, it was essential that Appellant cast as much doubt as possible on their testimony.

Furthermore, the evidence of meth in the decedent's blood was not unfairly prejudicial in showing he used drugs. This entire case was about drugs. More specifically, according to the eyewitnesses, this case was about a drug deal where drugs were to be exchanged for a gun. It was already well established that the decedent was involved in illegal drug transactions, so it is simply untenable to suggest that showing he had drugs in his system was unfairly prejudicial. The trial court erred by excluding the results of the decedent's toxicology report because it was relevant evidence which was not unfairly prejudicial, misleading or confusing. Instead it was

necessary for the jury to get a full picture of the inconsistencies in the state's evidence. Appellant's convictions should be reversed.

CONCLUSION

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

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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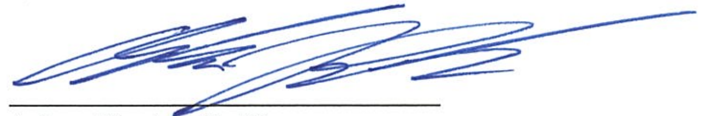
APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case have been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Michael Larone Williams, #313839, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 27th day of July, 2020.



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Wanda H. Carter, Deputy Chief Appellate Defender

July 27, 2020

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SC Court of Appeals

Melody J. Brown, Esquire
Senior Assistant Deputy Attorney General
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1000 Assembly Street, Room 519
Columbia, SC 29201

Re: The State v. Michael Larone Williams

Dear Ms. Brown:

Attached is a copy of the Initial Brief of Appellant and Designation of Matter in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Adam Sinclair Ruffin
Appellate Defender

ASR/sl

Enclosure

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Wanda H. Carter, Deputy Chief Appellate Defender

July 27, 2020

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SC Court of Appeals

Mr. Michael Larone Williams, #313839
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Williams:

Enclosed please find a copy of the Initial Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Adam Sinclair Ruffin
Appellate Defender

ASR/sl

Enclosure