

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Kristi F. Curtis, Circuit Court Judge

RECEIVED

Aug 11 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

COURTNEY ELIZABETH BROCK,

APPELLANT

APPELLATE CASE NO 2019-001848

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did trial judge erred in qualifying a medical student, who was completing her fellowship and acting as the prosector at the autopsy but was not board certified in forensic pathology, as an expert in forensic pathology and allowing her to give an opinion as to cause of death when a board certified forensic pathologist signed the autopsy report and cause of death was an important issue for the jury to decide?

STATEMENT OF THE CASE

In June of 2017, the Beaufort County Grand Jury indicted Appellant, Courtney Elizabeth Brock, for murder, indictment #2017-GS-07-327. (R. p. 583). The indictment was amended in August of 2019. (R. p. 585). On October 21, 2019, Appellant proceeded to jury trial before the Honorable Kristi F. Curtis. Mathew Walker represented Appellant at trial. Hunter Swanson and Samantha Molina prosecuted the case. The jury found Appellant guilty. Judge Curtis sentenced Appellant to thirty (30) years in prison. A timely notice of intent to appeal was served on October 30, 2019. This appeal follows.

STANDARD OF REVIEW

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (quoting Douglas, 369 S.C. at 429–30, 632 S.E.2d at 848) (internal quotation marks omitted). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." State v. Grubbs, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing Means v. Gates, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct.App.2001)). To show prejudice, the appellant must prove "that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citing Means, 348 S.C. at 166, 558 S.E.2d at 924).

ARGUMENT

The trial judge erred in qualifying a medical student, who was completing her fellowship and acting as the prosector at the autopsy but was not board certified in forensic pathology, as an expert in forensic pathology and allowing her to give an opinion as to cause of death when a board certified forensic pathologist signed the autopsy report and cause of death was an important issue for the jury to decide.

On December 7, 2016, first responders were called to a mobile home fire on Falls Road in Beaufort County. Inside the home they found the body of Teresa Seigler wrapped in taped bedding. (R. pp. 107- 109). Ms. Seigler's hands were also bound with duct tape. (R. p. 115, line 19 – p. 116, lines 1-25). She showed no signs of life. (R. p. 123, lines 9-22). A chemist with the Beaufort County Sheriff's Office analyzed samples taken from the mobile home and identified gasoline as an accelerant. (R. pp. 140-142). In opening statement the State asserted that Ms. Seigler's neighbors, Brian Walls, John Priester and Courtney Brock, Appellant, were responsible for her death. (R. pp. 86-88). According to the State's theory, the three stole Ms. Seigler's pain medications and then Priester set the mobile home on fire. (R. p. 91, lines 16-22). Fingerprints and DNA linked all three to the duct tape. Ms. Brock testified, however, that she used a role of duct tape to patch a hole in the floor of the trailer that Walls had provided. (R. pp. 386-387). Ms. Brock had a child by Walls' step-son, Brandon Scarborough. (R. pp. 453-455).

On December 7, 2016, after learning about the fire, Ms. Brock's mother, fearing that Walls may have harmed Brock, filed a missing person report. (R. pp. 471-473). That same day Ms. Brock was found in Chesterfield County in a stolen car driven by Walls. (R. pp. 181-183). Items belonging to Ms. Seigler including medications and a debit card were found inside the car. (R. pp. 202-205). At the time of Appellant's trial, Walls had been convicted of Ms. Seigler's murder in a separate trial. (R. p. 91, lines 23-25). Priester was awaiting trial for murder and arson.

During the trial counsel for Appellant noted that the State's witness list did not include the forensic pathologist who signed the autopsy, Dr. Lee Marie Tormos. (R. pp. 248-253). The prosecutor explained that she planned to call Dr. Joni Skipper to testify as to the result of the autopsy because Dr. Tormos now worked in Miami. (R. pp. 248-249). The State then proffered the testimony of Dr. Skipper outside the presence of the jury. (R. pp. 254-257). Dr. Skipper testified that at the time of the Teresa Seigler autopsy she was completing her one-year fellowship in forensic pathology at the Medical University of South Carolina in Charleston. (R. p. 255, lines 1-23). Dr. Skipper testified that, "A fellow is a licensed physician who performs additional training in a particular medical subspecialty under the direct supervision of a licensed, board certified physician." (R. p. 255, lines 14-17). Dr. Skipper testified that she performed the autopsy and the attending supervising physician, Dr. Lee Marie Tormos, signed the autopsy report. (R. p. 256, lines 7-20).

Dr. Skipper admitted that at the time of Teresa Siegler autopsy she was not board certified in forensic pathology. (R. p. 258, lines 14-23). Dr. Skipper admitted that while she and Dr. Tormos were listed in the autopsy report as the prosectors (R. p. 261, lines 10-13), only Dr. Tormos' signature appears on the certification statement that says, "I certify I personally conducted the diagnostic evaluation on the above specimen and the rendered the above diagnosis." (R. p. 260, lines 17-25). Dr. Skipper admitted that the American Society of Graduate Medical Education, ACGME, policy requires the attending physician to sign the autopsy report. (R.p. 262, lines 7-16).

The State moved to qualify Dr. Skipper as an expert to testify as to the results of the autopsy report and enter the autopsy report in evidence. (R. p. 264, lnes 13-21). Counsel for Appellant objected to Dr. Skipper being qualified as an expert. (R. p. 264, line 25 – p. 265, 266,

line 1). The judge found that Dr. Skipper was qualified to give expert opinion. (R. p. 266, line 2 – p. 267, lines 1-7). The State agreed not to move the actual autopsy report signed by Dr. Tormos into evidence. (R. p. 267, lines 21 – 25). When the jury returned the State offered Dr. Skipper as an expert in forensic pathology. (R. p. 270, lines 21-22). Counsel for Appellant objected. (R. p. 270, line 23). The judge ruled stating, “I do find that she is qualified to give opinion testimony in the field of forensic pathology.” (R. p. 271, lines 2-4). The trial judge erred.

Dr. Skipper testified that the state of the body at autopsy indicated that she had been dead for a period of time. (R.p. 274, lines 18-20). Dr. Skipper testified that she observed multiple areas of bruising and a rib fracture but she did not observe any lethal injuries. (R. p. 275, lines 2-21). The doctor opined that the death could be consistent with smothering (R. p. 275, lines 20 – p. 276, lines 1-12), but admitted that the morphine the deceased received from an internal pump was a respiratory inhibitor at certain levels. (R. p. 283, lines 9-25). The doctor also admitted there was nothing in the autopsy report about smothering or suffocation. (R. p. 284, lines 4-8). When Dr. Skipper was asked if she was able to determine if Teresa Siegler was alive at the time of the fire, the doctor answered that the carboxy hemoglobin concentration which measures the amount of carbon monoxide a person inhales was within the normal range. (R. p. 277, line 17 – p. 278, lines 1-8). The doctor testified, as an expert in forensic pathology, that the cause of death was homicidal violence. (R. p. 279, lines 20-21). When asked to explain homicidal violence she testified, “That’s a term that we will use when, due to the circumstances of the death, foul play is indicated, and – but during the course of the examination, we are not able to determine a fatal injury or, in some cases, a natural disease to account for that death.” (R. p. 279, line 24 – p. 280, lines 1-3).

The trial judge abused her discretion in qualifying Dr. Skipper as an expert in forensic pathology when she was not board certified at the time she served as the prosecutor at the autopsy and could not have signed the certification statement portion of the autopsy report. In Watson v. Ford Motor Co., 389 S.C. 434, 447, 699 S.E.2d 169, 175–76 (2010), the South Carolina Supreme Court wrote:

A person may be qualified as an expert in a particular area based upon knowledge, skill, experience, training or education. Rule 702, SCRE. In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather, should make an inquiry broad in scope. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008). The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. Wilson v. Rivers, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004). The qualification of a witness as an expert is within the trial court's discretion, and this Court will not reverse that decision absent an abuse of discretion. Fields, 376 at 555, 658 S.E.2d at 85.

“Before a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's testimony is reliable. State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). Once a witness is qualified as an expert, continued objections to the amount or quality of the expert's knowledge, skill, experience, training, or education go to weight of the expert's testimony, not its admissibility. Id.”

State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011).


First, while Dr. Skipper's testimony assisted the jury in deciding that Ms. Seigler did not die from the fire or any other injuries observed at autopsy, the homicidal violence cause of death is vague and Dr. Skipper's opinion that the death could be consistent with smothering is wildly speculative and not included in the autopsy report signed by Dr. Tormos. Second, Dr. Skipper did not yet have the experience, training and education that would allow her to certify an autopsy and she was not yet board certified in forensic pathology. This factor does not go to amount or

quality of education. Instead, this is a base level requirement that Dr. Skipper had not yet obtained. Third, Dr. Skipper's lack of qualification and the fact that there was nothing in the autopsy report signed by Dr. Tormos regarding smothering or asphyxiation renders the testimony unreliable.

Dr. Skipper's improper testimony was not harmless. The smothering cause of death was important to the State's theory that Appellant, along with co-defendants Brian Walls and John Priester, wrapped Ms. Seigler in a blanket. The State relied on the smothering testimony in closing argument. (R. p. 515, lines 10-18). The error requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse Ms. Brock's conviction and sentence and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Courtney Elizabeth Brock states:

1. She is 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 before Judge Kristi F. Curtis, which was held on October 21 - 24, 2019, 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 Courtney Elizabeth Brock.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 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) True-billed indictment and amended indictment and sentencing sheet;
- (2) Trial transcript pages 1 – 582.

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

August 11, 2020


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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."

August 11, 2020.



Kathrine H. Hudgins
Appellate Defender

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