

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Allendale County

Honorable Carmen T. Mullen, Circuit Court Judge

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**RECEIVED**

**Dec 01 2020**

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

JAMEL DAJOUR WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2020-000101

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court abuse its discretion in qualifying the state's expert in forensic toxicology over defense counsel's objection where the witness had a Master of Science but did not testify to any specialized training or further education in forensic toxicology?

## STATEMENT OF THE CASE

On March 14, 2019, an Allendale County grand jury indicted appellant for murder, attempted murder, and possession of a weapon during the commission of a violent crime. R. 615-617. Appellant's case was called to trial on January 6, 2020, before the Honorable Carmen Mullen and a jury. R. 1. Steve Plexico represented appellant. R. 2. Reed Evans, assistant solicitor, and Melissa Duque, assistant solicitor, represented the state. R. 2.

On January 9, 2020, the jury found appellant guilty of murder, attempted murder, and possession of a weapon during the commission of a violent crime. R. 602. Judge Mullen sentenced appellant to concurrent terms of life imprisonment for murder, thirty years' imprisonment for attempted murder, and five years' imprisonment for possession of a weapon during the commission of a violent crime. R. 609.

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 court abused its discretion in qualifying the state's expert in forensic toxicology over defense counsel's objection where the witness had Master of Science but did not testify to any specialized training or further education in forensic toxicology.

### **Relevant facts**

On the evening of March 21, 2018, Tyrek Mitchell, Raheme Granger, and Devontre Priester showed up to appellant's apartment. Also living in the apartment with appellant were two women, Latoya Patterson and Laquia Patterson, and two young children. Mitchell, Granger, and Priester were searching for a Samsung tablet belonging to Granger that they believed had been stolen by Bernard Elmore, another resident of the apartment complex.<sup>1</sup> Elmore denied that he took the tablet, however, the situation continued to escalate. Appellant asked the three men to leave his apartment numerous times, and they refused to leave without the missing tablet. R. 187-92; 374, l. 3-375, l. 18; 376, l. 10-378, l. 16; 469-74.

Appellant testified at trial that he could see that Mitchell was armed and Mitchell threatened to shoot up the place if he and Granger did not recover the tablet. Appellant pulled out a gun and asked them to leave again. Mitchell and appellant struggled over the gun. One shot was fired during the struggle and after Mitchell fell appellant shot him twice more. When Granger attempted to come inside the apartment from outside on the porch, appellant shot him. R. 473-83. Mitchell died in the hospital the following day, and Granger sustained a minor injury to his mouth. R. 119-22. Appellant left the scene, but two days later appellant went to give a statement to police and was arrested.

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<sup>1</sup> Bernard is referred to by his nickname "Smack" throughout the transcript.

*State's expert*

At trial, the state presented testimony from Tracy McKinnon, forensic toxicologist with the State Law Enforcement Division (SLED). McKinnon testified that his job entailed analyzing biological specimens such as blood or urine for the presence of absence of drugs, alcohol, or poisons and then interpreting those findings in court. R. 389, ll. 6-14. McKinnon's education included a Bachelor of Science with a Chemistry major and a Master of Science in Forensic Science. McKinnon testified that he had worked in this capacity for SLED for fourteen years and that he had previously been qualified as an expert in forensic toxicology. R. 389, l. 15-390, l. 5. McKinnon stated he did not have a Ph.D. nor was he a medical doctor but claimed that based on his education and training he was able to interpret the analysis of biological specimens within a reasonable degree of scientific certainty. R. 390, l. 14-391, l. 14. McKinnon admitted that he would not be able to say how a drug might affect a specific person but could give a general impression of the effect a drug might have on an average person. R. 395, ll. 6-17.

After cross-examining McKinnon regarding his qualifications, defense counsel objected to McKinnon being qualified as an expert, arguing McKinnon was only qualified to read the results of a machine not to interpret them. Without further argument or response from the state, the court summarily overruled the objection and allowed McKinnon to testify as an expert in the area of forensic toxicology. R. 395, ll. 18-25

McKinnon testified that in this case he analyzed a blood sample taken from Mitchell, the decedent, for alcohol and for drugs. R. 396, ll. 8-14. The sample was negative for alcohol but positive for marijuana, morphine, and midazolam. R. 397, l. 9-398, l. 25. McKinnon opined that typically when morphine and midazolam show up in a death case, it indicates to the him that this person was treated in a hospital setting. Defense counsel objected to that portion of his

testimony, arguing that McKinnon was not qualified to testify to what happens in a hospital setting because he was not a medical professional. The court immediately overruled the objection without any further argument. McKinnon went on to testify that the two drugs are commonly used during resuscitative measure in emergency situations. R. 399, ll. 1-16.

Before deliberation the jury was instructed on self-defense, defense of others, and the defense of habitation. R. 588-96. Ultimately, the jury found appellant guilty as indicted, and the court sentenced appellant to life imprisonment for murder, thirty years' imprisonment for attempted murder, and five years' imprisonment for possession of a weapon during the commission of a violent crime. R. 602; 609.

## **Discussion**

In a trial the jury serves as the fact finder and is charged with weighing the evidence admitted at trial and reaching a verdict. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 174–75 (2010). The trial court, on the other hand, is charged with the duty of determining issues of law. *Id.* As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law. *Id.*

The admission of expert testimony is governed by Rule 702, SCRE, which provides:

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 receives added scrutiny relative to other evidentiary decisions. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 174–75 (2010). Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which

are fundamental to Rule 702 before the jury may consider expert testimony. *Id.* First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury. *See State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009) (holding that the witness was improperly qualified as a forensic interviewing expert where the nature of her testimony was based on personal observations and discussions with the child victim). Next, the trial court must find that the expert has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. *See Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252–53, 487 S.E.2d 596, 598 (1997) (observing that to be competent to testify as an expert, a witness must have acquired by reason of study or experience such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony). Lastly, the trial court must evaluate the substance of the testimony and determine whether it is reliable. *See State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999) (evaluating whether expert testimony on DNA analysis met the reliability requirements). Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. *See State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009); *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 174–75 (2010).

Here the trial court abused its discretion in failing to perform its gatekeeping function where it made no findings regarding McKinnon’s credentials and promptly qualified McKinnon as an expert in forensic toxicology over defense counsel’s objection. It is true forensic toxicology is likely “beyond the ordinary knowledge of the jury.” However, it is not clear from the limited *voir dire* in the record that McKinnon had the requisite knowledge and skill to qualify as an expert in forensic toxicology. McKinnon testified that he had a Master of Science degree and had testified in court many times. McKinnon also referenced “training” and “continuing

education.” However, he never specified what training or continuing education he completed. Additionally, defense counsel pointed out that the witness was simply regurgitating results read from a machine and questioned how reading results required any interpretation. The court overruled defense counsel’s objection to McKinnon’s qualification as an expert, on limited information, and summarily qualified McKinnon as an expert in forensic toxicology.

**CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.



Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of December, 2020.

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APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamel Dajour Williams 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 Carmen T. Mullen, which was held on January 6-9, 2020, 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 Jamel Dajour Williams.

Respectfully Submitted,



Sarah E. Shipe

Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of December, 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(s);
- (2) Entire transcript of trial held January 6-9, 2020
- (3) Court's Exhibit #1 (Toxicology report)

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

December 1, 2020

  
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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."

December 1, 2020.

  
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Sarah E. Shipe  
Appellate Defender

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