STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FREDRICK WILLIAMS,

APPELLANT.

APPELLATE CASE NO. 2021-000628

INITIAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUE ON APPEAL

Whether the court erred in admitting evidence of the DNA "match" of appellant to the alleged victim where the chain of custody was not established because one or more former SLED forensic technicians were missing non-testifying links in the chain?

STATEMENT OF THE CASE

Appellant was indicted at the March 27, 2019 term of the Georgetown County Grand Jury for the offense of criminal sexual conduct in the second degree. R. p. * His case was called to trial on June 1, 2021 before the Honorable Steven H. John. Madison C. Hart represented appellant. Assistant Solicitors Alicia A. Richardson and K. Elizabeth Smith were the prosecutors. Tr. 1.

On June 2, 2021, the jury found appellant guilty. Tr. 249, ll. 18-21. Judge John sentenced appellant to sixteen years imprisonment. Tr. 255, ll. 6-13.

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. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)). "'In criminal cases, the appellate court sits to review errors of law only.'" State v. Pulley, 423 S.C. 371, 815 S.E.2d 461 (2018) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). The appellate court "is bound by the trial court's factual findings unless they are clearly erroneous." Id. (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220)).

ARGUMENT

The court erred in admitting evidence of the DNA "match" of appellant to the alleged victim where the chain of custody was not established because one or more former SLED forensic technicians were missing non-testifying links in the chain.

Relevant facts

S.B. was the alleged fourteen-year-old victim at the time of trial. She was a student at Andrews High School, and the solicitor elicited that she was living with her mother, appellant, and her five siblings in "public housing." Appellant was her mother's boyfriend, her "step-dad," and the father of her siblings. Tr. 58, l. 21 – 59, l. 24; Tr. 66, l. 24 – 68, l. 23.

S.B. testified that she came inside the apartment with her siblings on that October 8, 2018 afternoon because "it was too hot." Her mother had left for work at the Subway, and S.B. recalled that she and her siblings needed to get ready for a birthday party they were attending that afternoon at 4 p.m. S.B. testified that appellant gave them melatonin so they could sleep before the party. Tr. 68, l. 24 – 69, l. 70.

S.B. testified that when she woke up, she was in her mother's bedroom. She alleged appellant had sex with her in that bedroom, and he then told her to take a shower. Tr. 70, l. 8 – 73, l. 22.

Georgetown Detective Allen Morris testified he interviewed appellant after appellant was arrested. Detective Morris admitted that appellant denied the allegation that he had sex with S.B. Tr. 175, l. 13 – 176, l. 21.

Dr. Mayeaux, the emergency room physician at Georgetown Memorial Hospital, testified he did a sexual assault kit on the 14-year-old alleged victim on September 8, 2018. Tr. 93, l. 23 –

94, l. 19. He remembered that S.B. was quiet, she had "a flat affect," and was "somewhat emotionless." Tr. 94, l. 20 – 95, l. 1.

Jessica Hewitt was a nurse at Georgetown Memorial Hospital. Hewitt said she took the sexual assault kit into "a locked room." She then gave that kit to a police officer and signed her name to the form at that time. Tr. 106, l. 20 – 108, l. 20.

Jackie Davis was a forensic technician at SLED in 2018. Tr. 136, l. 18 – 137, l. 13. Davis testified she was a part of the chain of custody of the sexual assault kit in this case. Davis remembered that forensic technician Doris Yarbrough took the kit and put it onto DNA Intake Shelf 55. Davis said Yarbrough had retired from SLED about a year prior to this trial. Tr. 137, l. 12 – 144, l. 5.

Davis said another forensic technician, Charlotte Pitts, took the kit and transferred it to another forensic scientist. Tr. 143, l. 20 – 144, l. 5. Neither Doris Yarbrough nor Charlotte Pitts appeared or testified in this case.

Former SLED analyst Alysha Breland testified that she was currently employed with the police department in Millersville, Maryland. Tr. 194, l. 6 – 196, l. 9. Breland was qualified as an expert in forensic DNA analysis. Tr. 196, ll. 15-16. Breland said that she received all of the relevant items for DNA testing in this case from Charlotte Pitts on November 2, 2018. Tr. 200, ll. 17-23.

Objection to the chain of custody

When the solicitor moved the SLED chain of custody form, State's exhibit #9, and the remainder of the swabs and DNA sexual assault kit into evidence, defense counsel Hart objected to the defective chain of custody. He specifically noted that the forensic technician before Breland [Charlotte Pitts] was missing, and that the chain of custody was not sufficient. The judge overruled

the chain of custody objection, reasoning it was not necessary that all of the individuals in the chain of custody to testify for the evidence to be admissible.[1] Tr. 201, l. 20 – 205, l. 2.

Breland then claimed the DNA "match" from the alleged victim's swabs to appellant was "approximately 1 in 7,500." Tr. 208, l. 1 – 209, l. 5. Breland also said the DNA "match" from the alleged victim's underwear to the DNA profile of appellant was also an "approximately 1 in 7, 500." Tr. 209, l. 19 – 210, l. 5.

Discussion

In State v. Carter, 344 S.C. 419, 544 S.E.2d. 835 (2001), the Supreme Court rejected the defendant's argument that the state had failed to establish a sufficient chain of custody for the admission of evidence to match the defendant's DNA sample in a criminal sexual conduct case. The Court noted it found no missing link in the chain of custody, explaining "[s]ince all custodians of the blood testified, petitioner had the opportunity to cross-examine each of them regarding care of the blood. Each custodian testified he or she did not alter the evidence in any way and that the security tape was unbroken..." State v. Carter, 344 S.C. 424-25, 544 S.E.2d 837.

It is elementary that a chain of evidence must be complete and established as far as practicable, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed. State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992); State v. Kahan, 268 S.C. 240, 233 S.E.2d 293 (1977), (*citing* Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957).

---

[1] There were actually two missing links in the chain of custody -- Pitts and Yarbrough -- not just one. Regardless, the legal reasoning of the trial court was erroneous regardless of whether one or two persons in the chain did not testify without explanation or a stipulation by the defense as to the chain of custody.

In State v. Cribb, 310 S.C. 518, 426 S.E.2d. 306 (1992), the Supreme Court reversed the defendant's felony driving under the influence conviction because of a defective chain of custody. The Court in Cribb wrote "where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had the substance and what was done with it between the taking and the analysis." State v. Cribb, 310 S.C. 522, 422 S.E.2d. 308.

Here, Charlotte Pitts was a prior SLED technician who handled the DNA evidence and did not testify and was not available for cross-examination. Similarly, Doris Yarbrough, another SLED technician, had retired from SLED approximately one year before appellant's trial. She also handled the DNA material that was analyzed, and inexplicably, Yarbrough also did not testify.

In State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997), the Court held that the trial judge erred by admitting the marijuana and crack cocaine evidence because of defects in the chain of custody. In Joseph, the Court concluded the chain of custody was inadequate because a witness, Kilmer, was not available to testify as to the chain of custody, even though Kilmer had retrieved the evidence from the drop box and first analyzed the evidence. The Court noted the fact that Kilmer had moved to Michigan did not render Kilmer unavailable or make it impracticable for the state to produce Kilmer for trial where the defense would not submit to the use of her affidavit or otherwise agree to using Rule 6, SCRCrimP, in lieu of live testimony.

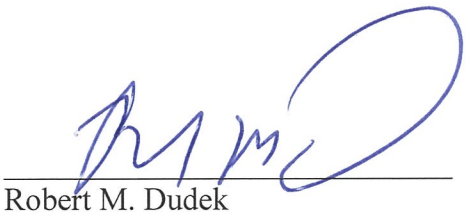
In the present case, Charlotte Pitts and Doris Yarbrough did not testify as to their involvement with the DNA evidence, even though they were plainly within the chain of custody. The DNA evidence was critical evidence, and Pitts and Yarbrough were both important witnesses. The reason for the unavailability is unknown from this record, and the state has made no showing that it would have been impracticable for either or both witnesses to have testified. The trial judge erred by simply reasoning that all of the witnesses in the chain of custody did not have to testify,

and therefore the defense had no legitimate challenge to the evidence. The chain of custody in this case was legally insufficient for admission of the DNA tested evidence given the missing witnesses and the trial court erred in admitting the DNA evidence over appellant's objection. See also, State v. Pulley, 423 S.C. 371, 815 S.E.2d 61 (2018); State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401 (Ct. App. 2003).[2]

[2] Certiorari denied April 8, 2004.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Georgetown County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of February, 2022.

RECEIVED
Feb 17 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

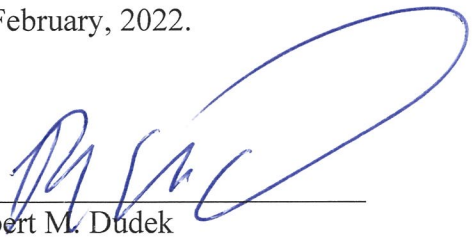
FREDRICK WILLIAMS,

APPELLANT.

APPELLATE CASE NO. 2021-000628

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the initial brief of appellant and designation of matter in the above-referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 17th day of February, 2022.



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1345

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 17, 2022

William M. Blitch, Jr., Esquire
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

Re: The State v. Fredrick Williams

Dear ~~Mr. Blitch, Jr.~~ William:

Enclosed 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,

Robert M. Dudek
Chief Appellate Defender

RMD/lmm

Enclosures