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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAELIS S. RAMSEY,

APPELLANT

APPELLATE CASE NO. 2021-000769

ANDERS BRIEF OF APPELLANT

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred when it admitted the DNA evidence in Appellant's case where the chain of custody was not established as far as practicable because two of the forensic technicians who moved the DNA evidence while it was analyzed did not testify at Appellant's trial to their handling of the DNA evidence?

STATEMENT OF THE CASE

During the August 2019 term, the Darlington County grand jury indicted Appellant for criminal sexual conduct with a minor victim 11 to 14 years of age, second degree. R. 229 – 231. On June 21 & 23 – 24, 2021, Appellant proceeded to trial before the Honorable Bentley Price, and a jury. R. 1. Glenn M. Bell and Patti Parker represented the state. Id. Robert L. Newton represented the state. Id.

Appellant was found guilty of criminal sexual conduct with a minor in the second degree. R. 202, ll. 1 – 9. Appellant was sentenced to eighteen years' imprisonment. R. 207, ll. 12 – 18.

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 trial court erred when it admitted the DNA evidence in Appellant's case where the chain of custody was not established as far as practicable because two of the forensic technicians who moved the DNA evidence while it was analyzed did not to testify at Appellant's trial to their handling of the DNA evidence.

Relevant Facts

The complaining minor witness ("Minor") alleged that on May 26, 2019, Appellant sexually assaulted her. R. 44, l. 25 – 45, l. 18; R. 71, l. 10 – 77, l. 4. Minor claimed that Appellant entered her bedroom, where several other children were sleeping, in the middle of the night. R. 71, l. 10 – 77, l. 4. Appellant then climbed the "broken ladder" on the bunk bed to the top bunk where Minor slept. Id. Appellant then allegedly sexually assaulted Minor, without waking up any of the other children sleeping on the bunk bed. Id.; R. 95, ll. 7 – 10; R. 187, l. 25 – 188, l. 11.

After the alleged incident, Minor got out of bed and walked to her mother's room. R. 75, l. 24 – 77, l. 4. She disclosed the incident to her mother. Id. Minor was taken to Carolina Pines Regional Medical Center. R. 45, ll. 14 – 25. She was not examined at Pines Regional because they did not have a sexual assault nurse examiner ("SANE nurse"). R. 30, ll. 4 – 15; R. 45, ll. 14 – 25. Minor was transferred to Prisma Health in Richland County where a sexual assault examination was conducted by Shellie Keisler. R. 30, ll. 4 – 15; R. 93, l. 12 – 17; R 95, ll. 11 – 14.

Foreign DNA was allegedly recovered pursuant to the sexual assault examination of Minor. R. 97, l. 19 – 102, l. 23. Deputy Michael Weatherford testified that he watched Officer Erica Norton take a buccal swab of Appellant to procure his DNA for testing. R. 30, l. 23 – 32, l. 4. His DNA was compared to the DNA sample found on Minor. R. 147, l. 23 – 150, l. 2; R. 150, l. 19 – 153, l. 25.

At Appellant's trial, defense counsel Newton objected to the admission of the DNA evidence due to multiple flaws in the chain of custody. R. 141, l. 22 – 142, l. 8. Defense counsel argued that Jackie M. Davis and Julia Begaman were "involved in all of the chains" and neither one of them were at trial to testify to how they handled the DNA evidence. Id. The trial court asked the state if Davis and Begaman moved the DNA within the SLED facility or outside of the facility. Id. The state responded that they did not move the DNA outside of the SLED facility. Id. The court denied defense counsel's objection and allowed the DNA into evidence. Id.

Due to that erroneous ruling, the state's DNA expert, Donna Money, was allowed to testify regarding the results of the DNA analysis. R. 143, l. 21. Money stated that DNA was found in four different instances on Minor's body and it was between 7.1 septillion to 2.1 octillion times more likely that it was Appellant's DNA rather than that of an unidentified unrelated man. R. 150, l. 19 – 153, l. 25.

The only evidence that Appellant committed criminal sexual conduct with a minor, second degree, was the testimony regarding the allegation of the Minor and the DNA analysis. Based on that evidence Appellant was convicted and sentenced to eighteen years' imprisonment. R. 202, ll. 1 – 9.

Discussion

The trial court erred when it improperly admitted the DNA evidence in Appellant's case because the chain of custody was not sufficiently established. Two of the forensic technicians who moved the DNA, Begaman and Davis, did not testify as to how they handled the evidence such that those links in the chain were broken. R. 141, l. 22 – 142, l. 8. That error prejudiced Appellant because the DNA analyst gave severely prejudicial testimony where she claimed that it was between a 7.7 septillion to 2.1 octillion times more likely the DNA samples found on Minor were

from Appellant rather than an unidentified, unrelated person. Accordingly, the trial court's ruling to admit the DNA evidence affected a substantial right of Appellant's that reasonably could have affected the trial's outcome such that Appellant's conviction should be vacated, and his case remanded for a new trial.

"[T]his Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." 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)). Where multiple people have handled the analyzed substance, "the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." Sweet, 374 S.C. at 6, 647 S.E.2d at 205. "Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." Id., at 7, 647 S.E.2d at 206 (citing State v. Taylor, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct. App. 2004)). "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." Id., at 7, 647 S.E.2d at 206.

In State v. Pulley, 423 S.C. 371, 815 S.E.2d 461 (2018), our Supreme Court held that the trial court improperly admitted the DNA evidence because the state failed to adequately establish the chain of custody. Pulley, at 378 – 79, 815 S.E.2d at 465. Pulley was charged with trafficking cocaine base of ten grams or more, but less than twenty-eight grams. Id., at 373, 815 S.E.2d at 462.

Pulley was driving in his girlfriend's car and was stopped by police officers Brewer and Craven. Id. Craven recognized Pulley from an earlier incident and knew that Pulley was driving under a suspended license. Id. The officers arrested Pulley for driving under a suspended license

and, during the struggle to handcuff him, found a bag of marijuana in his pants. Id. The officers then conducted an inventory search of the vehicle and found a grocery bag with 16.5 grams of cocaine inside. Id.

At Pulley's trial, Craven explained to the jury that after the drugs were found he put them in "evidence inside the Laurens Police Department." Pulley, at 375 – 76, 815 S.E.2d at 463. However, Officer Brewer testified Craven "took possession" of the drugs, but Brewer could not say who took the drugs from the scene to the patrol office. Id.

The evidence custodian, John Stankus, testified he retrieved the drugs from the evidence lockbox and that the chain of custody form indicated Craven was the officer that placed the cocaine in the lockbox. Id. However, the chain of custody form purported that Stankus received the cocaine from Craven in person. Id. Stankus admitted the form was incorrect, but claimed it was standard procedure to write "in person" in the space provided regardless of whether the custodian received the evidence by mail or in person. Id.

Pulley's attorney moved to suppress the drugs because of flaws in the chain of custody. Id., at 376, 815 S.E.2d at 463 – 64. The trial court determined that the state established a chain of custody sufficient for the admissibility of the cocaine. The trial court ruled that despite the fact Officer Brewer did not testify he gave the drugs to Craven, "the logical assumption is that he did" because Brewer was the last officer on the scene it was unlikely that Brewer "would have driven off from McDonald's with the bag of drugs on his hood." Id. Therefore, Brewer must have taken possession of the drugs and turned them over to Craven at some point. Id.

The state recalled Brewer and he testified that, "after reviewing the dash cam video, he remembered leaving the McDonald's with the cocaine and turning the drugs over to Craven." Id., at 377, 815 S.E.2d at 464. However, the dash cam video did not show Brewer taking the drugs and

Brewer admitted "he did not sign any paperwork indicating that he transferred the cocaine to Craven." Id.

Our Supreme Court explained that, prior to Brewer being recalled to testify, the state had not adequately established the chain of custody because there was no testimony or forms indicating how the cocaine was transported from Brewer's car back to Craven. Id., at 378, 815 S.E.2d at 464. The Court then reasoned that the case turned on whether Brewer's recall testimony cured the flaws in the chain of custody. Id.

The Court concluded Brewer's testimony did not sufficiently establish the chain of custody. Id., at 378, 815 S.E.2d at 464 – 65. Brewer's express denial of taking possession of the cocaine, followed by the state stipulating to missing a link in the chain of custody was not cured by Brewer's subsequent reversal that he did take the cocaine from the scene. The state also failed to produce "testimony from Craven indicating how he obtained possession of the cocaine after the drugs were seen on the hood of Brewer's car." Accordingly, the trial court's assumption that Brewer must have taken the drugs equated to conjecture and, "as a result, the chain of custody was not sufficiently established as far as practicable." Pulley, at 378 – 79, 815 S.E.2d at 465 (citing State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205(2007)).

In this case, defense counsel properly argued that there were "critical breaks in the chain of custody" because there was no testimony or evidence on how Jackie M. Davis and Julia Begaman handled the DNA evidence. Id. Furthermore, SLED's forensic serologist Kimberly Spainhour admitted she did not see how other individuals in the chain of custody handled the evidence such that she could not say if those links in the chain were handled properly. R. 137, l. 2 – 138, l. 14. Upon redirect examination, Spainhour could only claim what each person in the chain

of custody "would" have done with the evidence, but she could not attribute any certainty to that claim. R. 138, l. 21 – 141, l. 7.

Here, the state failed to establish the chain of custody as far as practicable for the fungible DNA evidence because two links in the chain were missing. Both Begaman and Davis handled the DNA while it was analyzed at the SLED facility but were not present to testify "to demonstrate the manner of handling" at Appellant's trial. See Sweet, at 7, 647 S.E.2d at 206 (citing State v. Taylor, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct. App. 2004)). In order for the state to establish the chain of custody as far as practicable it was necessary for Begaman and Davis to testify to the manner in which they handled the crucial DNA evidence in this case. Accordingly, trial court erred when it conjectured that the DNA evidence was handled properly and admitted it into evidence over defense counsel's objection. R. 141, l. 22 – 142, l. 8; See Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007).

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that this Court vacate his conviction and remand his case to the Darlington County Court of General Sessions for a new trial.

Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of April, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michaelis S. Ramsey states:

(1) He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

(2) He has reviewed the record of appellant's trial before Judge Bentley Price, which was held on June 21 & 23-24, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

(3) He 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, He asks the Court to relieve him as counsel for Michaelis S. Ramsey.

Respectfully Submitted,

Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of April, 2022.

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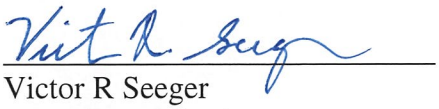
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictments and sentence sheets;
(2) Trial Transcript dated June 21 & 23-24, 2021;
(3) State's Exhibit #6 (Serology Report); and
(4) State's Exhibit #11 (SLED Chain Report)

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



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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."

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April 19, 2022.