

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Horry County  
Steven H. John, Circuit Court Judge  
Trial Case No.: 2004-GS-26-2031

---

THE STATE,

Respondent,

vs.

GARRY L. VALENTINE,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

---

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE  
Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

JOHN GREGORY HEMBREE  
Solicitor, Fifteenth Judicial Circuit

Post Office Box 1276  
Conway, SC 29526  
(843) 915-5460

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....3

ARGUMENT .....6

    The drug evidence was admissible in this case because each person in the  
    chain of custody, including the informant, was identified at trial, and there  
    was significant circumstantial evidence regarding how the informant came  
    into possession of the drugs and the condition they were in when he  
    received them. ....6

CONCLUSION.....12

**TABLE OF AUTHORITIES**

**Cases:**

Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957) .....6

State v. Carter, 344 S.C. 419, 544 S.E.2d 835 (2001) .....7

State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003) .....6

State v. Governor, 362 S.C. 609, 608 S.E.2d 474 (Ct. App. 2005) .....6

State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007)..... *Passim*

State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004).....6

**Other Authorities:**

Rule 6(b), SCRCrimP .....9

U.S. Const. amend. VI .....9

## **STATEMENT OF ISSUE ON APPEAL**

The drug evidence was admissible in this case because each person in the chain of custody, including the informant, was identified at trial, and there was significant circumstantial evidence regarding how the informant came into possession of the drugs and the condition they were in when he received them.

**STATEMENT OF THE CASE**

Respondent concurs with Appellant's procedural Statement of the Case.

## STATEMENT OF FACTS

On May 27, 2004, the Horry County Grand Jury indicted Appellant Garry L. Valentine (“Valentine”) on one count of trafficking powder cocaine. (Indictment No. 2004-GS-26-2031; Record on Appeal [R.], pp. 108-109). The matter was called for a jury trial on September 11, 2006, before the Honorable Steven H. John, Circuit Court Judge. Valentine failed to appear for trial and was tried *in absentia*. (Trial Transcript [TT], pp. 5-9; R., pp. 2-6).

Prior to trial, Valentine’s counsel moved to suppress the drug evidence on the ground the confidential informant was not going to testify, and the State could not establish the chain of custody for the evidence without that testimony. The court took the motion under advisement pending receipt of the State’s evidence regarding the circumstances surrounding the drug transaction. (TT, pp. 20-23; R., pp. 10-13).

Officer Kent Donald (“Officer Donald”) of the Horry County Police Department testified that on March 17, 2004, a confidential informant, identified as Andre Daniels (“Daniels”),<sup>1</sup> said he could purchase illegal drugs from Valentine. Officer Donald gave Daniels \$1000 in “buy money,” searched him to make sure he did not have any weapons or drugs on his person, and put an electronic recording device on him so the police officers could hear and record any conversation between Daniels and Valentine. After Daniels called Valentine to arrange the drug purchase, law enforcement set up surveillance around Valentine’s apartment,<sup>2</sup> and Officer Donald drove the informant to the apartment. (TT,

---

<sup>1</sup>Valentine knew Daniels’ identity and the circumstances leading to his cooperation with law enforcement, and vigorously cross-examined Officer Donald about Daniels. (TT, pp. 48-55; R., pp. 26-33).

<sup>2</sup>Valentine contends there was a back door to the apartment “that no officers observed.”

pp. 36-40; R., pp. 14-18).

After Daniels got out of Officer Donald's car, the officers watched him walk up to the apartment building, talk to Valentine outside for a few minutes, and then go into the apartment with Valentine. When Daniels came out of Valentine's apartment five to ten minutes later, he walked to a parking lot around the corner from Valentine's apartment and got into Officer Donald's car. Officers maintained visual surveillance of Daniels from the time he left Valentine's apartment until he got into Officer Donald's car approximately thirty seconds later. (TT, pp. 41-43, 75-76; R., pp. 19-21, 53-54). No one else entered or exited Valentine's apartment while the officers had it under surveillance.

After Daniels got into Officer Donald's car, Officer Donald got the drugs (19.65 grams of cocaine) from him, and then radioed to the other police officers to arrest Valentine. (TT, pp. 43-46, 109; R., pp. 21-24, 87). Valentine did not answer the door when the officers knocked, and after approximately five seconds, the officers forced their way into the apartment. Valentine was the only person in the apartment, and the "buy money" from Daniels was on the bathroom floor. (TT, pp. 76-80; R., pp. 54-58).

Valentine was arrested and Officer Donald obtained a search warrant for his apartment. In addition to the "buy money," officers found a pepper grinder containing an off-white substance commonly used to cut cocaine, a small bag of marijuana, sheets of paper listing drug weights and prices, and a set of digital scales commonly used to weigh narcotics. (TT, pp. 44-45, 59-62, 69-70, 79-87; R., pp. 22-23, 37-40, 47-48, 57-65).

---

(Initial Brief of Appellant, p. 5). On the contrary, an officer who was part of the surveillance team testified the officers saw the back door when they initially arrived at the scene, and a team was assigned to watch the back door. (TT, pp. 76-77, 94-95; R., pp. 54-55, 72-73).

After presenting testimony from the officers who had control of the drug evidence between the time Officer Donald took it from Daniels and it was brought to court for trial, the State offered the cocaine into evidence. Valentine moved to suppress the evidence, arguing the State had not presented a complete chain of custody for the evidence without Daniels' testimony. The circuit court denied the motion, finding the chain of custody commenced when the officers got control over the cocaine, and there was no dispute regarding a complete chain of custody from that point.<sup>3</sup> (TT, pp. 110-115; R., pp. 88-93).

At the close of the State's case, Valentine moved for a directed verdict on the ground the State failed to prove the drugs Officer Donald got from Daniels came from Valentine. The circuit court denied the motion, finding there was sufficient circumstantial evidence Valentine possessed the drugs at issue. Specifically, the court noted Daniels was searched prior to meeting Valentine, and except for the brief time he was in Valentine's apartment, officers kept Daniels under close observation until he turned the drugs over to Officer Donald. (TT, pp. 118-120; R., pp. 96-98).

The jury convicted Valentine as charged, and the court entered a sealed sentence pending Valentine's apprehension and appearance for formal sentencing. (TT, pp. 144-148; R., pp. 101-105). Valentine appeared the following day, and was sentenced to three years incarceration. (TT, p. 149; R., pp. 106). This appeal followed.

---

<sup>3</sup>The court stated the absence of Daniels' testimony went to whether the evidence was sufficient to submit the trafficking case to the jury, not whether the chain of custody was sufficiently established. (TT, pp. 114-115, 121; R., pp. 92-93, 99).



## ARGUMENT

**The drug evidence was admissible in this case because each person in the chain of custody, including the informant, was identified at trial, and there was significant circumstantial evidence regarding how the informant came into possession of the drugs and the condition they were in when he received them.**

" \1 2

Relying on State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007), Valentine contends the circuit court erred in admitting the cocaine evidence since Daniels' testimony was necessary to prove the complete chain of custody.<sup>4</sup> This case is distinguishable from Sweet.

Rulings regarding the admission of evidence are submitted to the trial court's discretion. State v. Foster, 354 S.C. 614, 582 S.E.2d 426, 429 (2003). Appellate courts will not reverse a trial court's rulings regarding the admissibility of evidence absent an abuse of discretion. *Id.*; see also State v. Governor, 362 S.C. 609, 608 S.E.2d 474, 476 (Ct. App. 2005).

When an analyzed substance has passed through several hands, the identity of individuals who acquired the evidence and what was done with it between the taking and the analysis "must not be left to conjecture." Sweet, 647 S.E.2d at 205 (*citing Benton v. Pellum*, 232 S.C. 26, 100 S.E.2d 534 (1957)). "[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive." *Id.* at 205-206 (*citing State v. Taylor*, 360 S.C. 18,

---

<sup>4</sup>Valentine conceded in the circuit court that the chain was sufficiently established from the time Officer Donald received the drugs from Daniels and the evidence was offered at trial, and he does not contest that fact on appeal. (TT, pp. 110-111; R., pp. 88-89). Thus, the only issue on appeal is whether there was sufficient evidence regarding how Daniels obtained and handled the drugs.

598 S.E.2d 735 (Ct. App. 2004) (emphasis added).

Testimony from each custodian of fungible evidence is not required to establish a chain of custody sufficient to admit the evidence. *Id.* Courts have been willing to fill gaps in the chain of custody due to an absent witness where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates how it was handled. *Id.*

Evidence is inadmissible “only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable.” State v. Carter, 344 S.C. 419, 544 S.E.2d 835, 837 (2001) (emphasis added). Where the identity of every person handling the evidence is established, but there is a “weak link” in the chain due to issues regarding handling of the evidence, the question is “only one of credibility and not admissibility.” *Id.*

As a threshold matter, Sweet did not hold that a confidential informant’s involvement in the chain of custody can only be shown through the informant’s testimony or sworn statement rather than circumstantial evidence. Rather, the Court examined the evidence in the record regarding the circumstances surrounding the transaction at issue, and determined the evidence presented did not sufficiently establish “how the confidential informant came into possession of the drug evidence and in what condition he received it.” 647 S.E.2d at 206.

In Sweet, a confidential informant arranged to purchase drugs from the defendant at a local motel.<sup>5</sup> Police officers searched the confidential informant’s car and person for

---

<sup>5</sup>The Court’s opinion indicates the police officer knew the informant’s identity, but there is no indication the informant was identified at trial.

drugs and wired him with a listening device before following him to the motel, where they maintained video surveillance of the parking lot. The officers saw the informant meet the defendant outside the motel and accompany him into a motel room. While they did not see what occurred in the room, the officers heard only the informant's and one other voice on the informant's wire, and no one else entered or exited the motel room during that time. *Id.* at 204.

When the informant left the motel, the officers followed him as he drove back to the police station, where he handed over .21 grams of crack cocaine. Officers waiting at the motel arrested the defendant when he attempted to leave the motel on his bicycle, and found a plastic bag containing 4.27 grams of crack cocaine on his person. The defendant was charged with distribution and possession of crack cocaine within proximity of a school. *Id.*

The confidential informant was unavailable and did not testify at trial. None of the police officers could testify who was in the room during the alleged drug transaction,<sup>6</sup> or affirmatively identify the "other voice" heard on the audiotape as the defendant's voice. *Id.* Since the circumstantial evidence did not establish how the confidential informant obtained the drug evidence or its condition at the time he received it, the Court held the State failed to establish the identity of each custodian and the manner of handling the evidence.<sup>7</sup> *Id.*

---

<sup>6</sup>There apparently was no evidence the officers actually went into the motel room at any time prior to or after the defendant's arrest.

<sup>7</sup>The Court noted that even though the confidential informant was unavailable to testify at trial, the State could have taken a sworn statement from the informant before he left the police station and produced that statement at trial under Rule 6(b), SCRCrimP. Since the informant's statement would also constitute substantive evidence of the crime charged, the

Unlike Sweet, the informant in the instant case (Daniels) was identified during trial, and Valentine vigorously cross-examined Officer Donald about the details of Daniels' criminal record and why he was working for law enforcement. (TT, pp. 48-55; R., pp. 26-33). Further, the informant in Sweet was alone in his car for periods of time before and after the alleged transaction. In this case, however, other than the time Daniels was in the apartment, he was in the officers' presence or under close surveillance from the time he was searched prior to the transaction until he turned the drugs over to Officer Donald within minutes after leaving Valentine's apartment.

Also, there was no evidence in Sweet the police actually went into the motel room at any time before or after the defendant was arrested, and therefore, no one could testify the informant and the defendant were the only people in the motel room when the drug transaction occurred. In this case, however, there was affirmative evidence Daniels and Valentine were the only people in the apartment during the drug transaction.

---

State submits admitting it at trial would raise significant Confrontation Clause issues. *See* U.S. Const. amend. VI (accused in a criminal proceeding has the right to be confronted with the witnesses against him).

The police officers established surveillance around Valentine's apartment before Daniels arrived, and maintained surveillance of the apartment after he left. During that time, only Daniels and Valentine entered the apartment, and only Daniels left it. Within minutes of Daniels' departure, Officer Donald confirmed by radio that the drug transaction had been completed, and officers entered the apartment by force. Valentine was the only person in the apartment when the officers entered, and the "buy money" was on his bathroom floor. (TT, pp. 38-44, 74-80, 94-97; R., pp. 16-22, 52-58, 72-75).

Finally, the location of the drug transaction in Sweet was a motel room, and there was no evidence the room, its contents or occupants were controlled by the defendant. Thus, the evidence did not preclude the possibility someone other than the defendant supplied the drugs to the informant.

The location in this case, however, was Valentine's apartment, over which he had complete control. Valentine's control of the premises, combined with the evidence no one other than Valentine and Daniels entered or exited the apartment prior to or during the drug transaction, leads to the unavoidable conclusion Valentine possessed the drugs at issue and sold them to Daniels.

The evidence in this case established Daniels' identity, and that he did not have drugs on his person prior to entering Valentine's apartment. It also established Valentine had control of the premises and was the only person in the apartment with Daniels during the drug transaction, and he had possession of the "buy money" within minutes after Daniels left the apartment. The only reasonable conclusion from the circumstantial evidence is that Daniels received the drugs at issue from Valentine in the same condition

they were in when he handed them over to Officer Donald a mere few minutes later, and the chain of custody was directly established from the time Daniels received the drugs until the evidence was offered at trial.

At most, the absence of Daniels' testimony at trial was not a "missing link" in the chain of custody. Rather, it was a "weak link" that went to the credibility of the evidence, not its admissibility. The circuit court did not err in admitting the drug evidence, and its ruling should be affirmed.

**CONCLUSION**

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE  
Assistant Attorney General

JOHN GREGORY HEMBREE  
Solicitor, Fifteenth Judicial Circuit

BY: \_\_\_\_\_  
DEBORAH R.J. SHUPE

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 13, 2008

STATE OF SOUTH CAROLINA  
IN THE COURT OF

APPEALS

---

Appeal from Horry County  
Steven H. John, Circuit Court Judge  
Trial Case No.: 2004-GS-26-2031

---

THE STATE,

Respondent,

vs.

GARRY L. VALENTINE,

Appellant.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE  
Assistant Attorney General

JOHN GREGORY HEMBREE  
Solicitor, Fifteenth Judicial Circuit

By: \_\_\_\_\_

DEBORAH R.J. SHUPE

Office of Attorney General



Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 13, 2008

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Horry County  
Steven H. John, Circuit Court Judge  
Trial Case No.: 2004-GS-26-2031  
\_\_\_\_\_

THE STATE,

Respondent,

vs.

GARRY L. VALENTINE,

Appellant.  
\_\_\_\_\_

**PROOF OF SERVICE**  
\_\_\_\_\_

I, Ellen R. DuBois, certify that I served the within Initial Brief of Respondent on Appellant by depositing three copies in the United States mail, postage prepaid, addressed to:

Eleanor Duffy Cleary, Esquire  
Assistant Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 13<sup>th</sup> day of June, 2008.

\_\_\_\_\_  
ELLEN R. DUBOIS  
Legal Assistant

General

11549

Office of Attorney

Post Office Box

Columbia, SC 29211

(803) 734-3727 June

13, 2008

Eleanor Duffy Cleary, Esquire  
Assistant Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

Re: State v. Garry L. Valentine

Dear Ms. Cleary:

Enclosed herewith and served upon you are three (3) copies of the Final Brief of Respondent, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J.

Assistant

Shupe

Attorney General

DRJS/erd

Enclosures

cc: The Honorable Kenneth A. Richstad (original and 9 copy enclosed)  
Victim Services (with enclosure)