

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal From Charleston County  
Hon. J.C. Buddy Nicholson, Circuit Court Judge  
Appellate Case Tracking No. 2020-001665  
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Apr 06 2023

S.C. SUPREME COURT

The State,

Respondent,

v.

Stewart Jerome Middleton,

Petitioner.

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PETITION FOR REHEARING  
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On March 22, 2023, this Court reversed the trial court’s decision allowing testimony by a detective regarding her attempts to meet and interview Petitioner. This Court misapprehended or overlooked the State’s argument regarding harmless error and the evidence contained in the record demonstrating any possible error was entirely harmless. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find even if the testimony by Detective Bailey was not admissible any error was entirely harmless as it could not have affected the outcome of the trial, and affirm Petitioner’s convictions and sentences.

This Court has repeatedly held in order to warrant reversal of a conviction and all of the ramifications of reversal, there must be both error and resulting prejudice sufficient to warrant that reversal. See e.g., State v. Reyes, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (“[T]he harmless error rule embodies a commonsense principle our appellate courts have long recognized—‘whatever doesn’t make any difference, doesn’t matter.’”); State v. Brewer, 411

S.C. 401, 408, 768 S.E.2d 656, 660 (2015) (improper admission of testimony is reversible error only when admission causes prejudice); State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011) (“Improper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.”); State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (“Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result.”); State v. Maxey, 218 S.C. 106, 120, 62 S.E.2d 100, 107 (1950) (“It is likewise a principle of practically universal recognition, that a conviction will not be reversed because of the admission of improper evidence unless the accused was prejudiced or harmed thereby; or unless it appears that there was a miscarriage of justice. The appellate court will consider the record as a whole in determining whether there was prejudice.”); State v. Cooper, 118 S.C. 300, 110 S.E. 152, 154 (1921) (finding exceptions overruled even if error committed when no prejudice has been shown). As the United States Supreme Court has explained:

The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences.

United States v. Mechanik, 475 U.S. 66, 72 (1986) (cleaned up). As a result, when possible, and especially when any error could not conceivably have impacted the verdict, this Court has affirmed convictions and as discussed below should affirm the conviction in this case.

This Court’s Opinion held the “State’s harmless error argument is not that other overwhelming evidence made this error harmless beyond a reasonable doubt.” The Court overlooked the State’s citation to three cases in its Brief of Respondent State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003), State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947), and State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985), all of

which stand for the proposition that an error is harmless when guilt is conclusively proven by other competent evidence—in other words when overwhelming evidence exists. The State admittedly did not use the term overwhelming evidence in its discussion of harmless error but did argue extensively that any possible prejudice resulting from Detective Bailey’s testimony could not have impacted the outcome of the case.

In looking at the three cases cited by the State in its Brief, it is clear that the argument being presented was that overwhelming evidence existed to preclude a finding a prejudice sufficient to warrant reversal. In Adams, evidence was admitted related to a prior burglary. The Court of Appeals cited many cases explaining appellate courts will not set aside convictions due to insubstantial errors and defining an insubstantial error as one not affecting the result of the trial where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. Adams, 354 S.C. at 380-381, 580 S.E.2d at 795 (internal quotations and citations omitted). Ultimately, the Court concluded the erroneous admission would have been harmless in light of Adams’ confession and assistance in the recovery of items from the burglary. This case stands for the proposition that any error is harmless when overwhelming evidence exists.

Next, the State cited to State v. Hariott, 210 S.C. 290, 42 S.E.2d 385 (1947) for the proposition: “It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him.” Id. at 298, 42 S.E.2d at 388. The Court ultimately concluded the error in the case was not harmless, but analyzed it based on a review of “the particular facts and circumstances of [the] case” and with the understanding: “appellate courts are disposed to regard as harmless intervening errors, where it appears from the record that the conviction is clearly

correct on the merits, that the accused had a fair trial, and where no other verdict could reasonably have been returned on the evidence.” State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 389 (1947) (citing State v. Evans, 202 S.C. 463, 25 S.E.2d 492; State v. Gilstrap, 205 S.C. 412, 32 S.E.2d 163).

Finally, the State cited State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985), in which hearsay testimony was entered over objection but this Court found the admission harmless. As noted by this Court and the State, error is harmless when it could not reasonably have changed the outcome of the trial. This Court explained:

Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it “could not reasonably have affected the result of the trial.”

State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)).

The State clearly maintained in its Brief to this Court that any error in admitting the testimony by Detective Bailey was entirely harmless when juxtaposed to the remainder of the evidence admitted against Petitioner. As noted by the State in its Brief of Respondent,<sup>1</sup> all of the witnesses testifying on behalf of the State detailed Victim’s intoxication. Witnesses described her as “stumbling,” “just drunk,” “basically incoherent” (R.95-96). Other witnesses indicated when Victim was found after the rape she was “definitely not sober” and a seven on an intoxication scale of one to ten where ten was unconscious. (R.25-29). Appellant’s own witness acknowledged Victim had a strong odor of alcohol, was slurring her words, and was stumbling

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<sup>1</sup> The facts and circumstances are set forth in even greater detail in the Final Brief of Respondent included in the materials before the Court because one of the issues before the Court of Appeals related to the denial of a motion for directed verdict.

when he talked to her. (R.p.286-294). Victim's blood alcohol level five hours after the assault was still .264 and Victim was treated for alcohol intoxication. (R.155; 171-172).

Significantly, Petitioner's own statement given to Detective Bailey demonstrated his knowledge of her intoxication. First, Petitioner indicated he knew from past experience that Victim gets "hammered" at the annual parties and had drunk a lot the year before. He also acknowledged he knew she drank a lot of December 14, 2013, and that when he arrived at the party people were talking about Victim and how she was "wasted." He knew she continued to drink because he saw an almost empty bottle of vodka in her room and admitted Victim was drunk. (State's Exhibit 6). As a result, the State detailed the extensive evidence in the record demonstrating Petitioner knew or had reason to know Victim was intoxicated such that she was mentally incapacitated or physically helpless at the time he raped her, and the State specifically asked this Court to find any error harmless because it could not have reasonably changed the outcome of the trial—i.e., there was overwhelming evidence of guilt such that the only reasonable conclusion by a jury would be Petitioner was guilty of third-degree criminal sexual conduct.<sup>2</sup>

The State asks this Court to reconsider its finding any error was not harmless, especially in light of the case law cited by the State indicating an issue was raised regarding the lack of prejudice resulting from the error. Any error in this case, particularly any error related to the testimony by Detective Bailey on direct appeal, could not have, beyond a reasonable doubt,

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<sup>2</sup> During his closing argument, the solicitor noted Appellant was not interviewed by the police until two months after the incident, which meant he had plenty of time to come up with his version of what happened that night. (R.p.302-303). Notably, the solicitor did not comment on Appellant's evasiveness in delaying his interview with the police and did not argue it was evidence of a guilty conscience.

impacted the jury's verdict in light of Petitioner's confession he had sex with Victim and his acknowledgement of her intoxication.

**CONCLUSION**

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find any error in the admission of the timeline testimony by Detective Bailey to be entirely harmless as it could not have reasonably impacted the verdict of the jury in light of the evidence in the record.

Respectfully submitted,

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