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Jun 16 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK ANTHONY BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001548

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy 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

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing into evidence hearsay testimony outside the restrictive time and place limits applicable in criminal sexual conduct cases.

STATEMENT OF THE CASE

Appellant Marc Anthony Brown was convicted of third degree criminal sexual conduct with a minor per a jury trial held during the October 2022 term of the Dorchester County General Sessions Court before Judge Thomas Cooper. Appellant was sentenced to imprisonment for a term of twelve years.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of 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). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id at 429-30, 632 S.E.2d at 848.

ARGUMENT

The trial judge erred in allowing into evidence hearsay testimony outside the restrictive time and place limits applicable in criminal sexual conduct cases.

In this case, five witnesses testified at trial: 1.) Z.T.G (prosecutrix), 2.) Angela Smalls (prosecutrix's aunt) 3.) Kreig Griffin (police officer) 4.) Yxsumi Simmons (police officer) and 5.) Cova Tanton (custodian of 911 records).

Z.T.G., who was seventeen years old at the time of the trial held on October 25, 2022, testified that she was babysitting her aunt's three-year-old grandbaby on May 26, 2019, at her aunt's apartment in Summerville when appellant, who lived at the apartment at that time, entered the room where she was sleeping, and brushed his penis against her back. She called the police immediately thereafter. R. 150, l.14 - p. 163, l.6.

Officer Kreig Griffin testified that he was dispatched to the scene on the date in question, and that he saw appellant exit the apartment after his arrival there. Officer Griffin stated that he obtained a statement from Z.T.G. and took pictures also. R. 166, l.1 - p. 170, l.22. Griffin added that Z.T.G. "seemed afraid" on that date, and that her "body demeanor was not...not normal." R. 170, lines 21-24.

Angela Smalls, who is Z.T.G.'s aunt, testified that she appeared at the scene after the police arrived, and that Z.T.G. told her that "[appellant] touched her." R. 175, l.14 - p. 180, l.19.

Police Officer Yxsumi Simmons testified that she investigated the case and was responsible for the arrest warrant drawn and issued against appellant. R. 183, l.2 - p. 191, l.22.

Cora Tanton was the 911 records custodian who authenticated the 911 call placed by Z.T.G., R. 142, l.9 - p. 146, l.12.

The jury in this case heard the prosecutrix's aunt testify that she (prosecutrix) identified appellant as the perpetrator who touched her. In Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001), the Court held as follows:

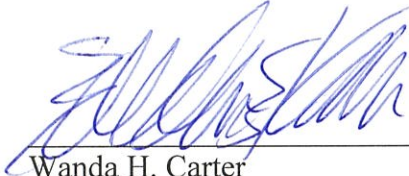
The rule against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies. Tully v. State, 314 S.C.17, 443 S.E.2d 566 (1994). A well-settled exception in criminal sexual conduct cases allows limited corroborative testimony. *Id.* When the victim testifies, evidence from other witnesses that the victim complained of the sexual assault is admissible in corroboration; however, such evidence is limited to time and place of the assault and cannot include details or particulars. Testimony from other witnesses regarding the victim's identification of the perpetrator does not fall within the hearsay exception. Rule 801, SCRE.

Here, the prosecutrix's aunt's testimony that relayed to the jury the identity of the perpetrator, i.e., appellant, was inadmissible hearsay and improper corroborative evidence that deprived appellant of a fair trial. Furthermore, this prejudicial evidence was not harmless error in the case. See Dawkins, supra, where the Court held that improper corroboration testimony that is cumulative to the victim's testimony is not harmless error. Note that neither appellant nor the forensic examiner who interviewed the prosecutrix testified at trial. Therefore, the state's case hinged solely on the testimony of the prosecutrix, which was improperly corroborated by the aunt of the prosecutrix whose testimony exceeded the parameters of time and place rule applicable in criminal sexual conduct cases. In addition, the police officer's testimony regarding the prosecutrix's demeanor (afraid and not normal) did not qualify under any hearsay rule exception per Rule 803(3), SCRE, because there was no frame of reference to adjudicate what is normal for someone whom he never met and did not know. His improper testimony added to the prejudice that previously permeated the case via the erroneous testimony admitted into evidence

from the aunt of the prosecutrix at trial. The trial judge erred in allowing hearsay testimony into evidence at appellant's trial.

CONCLUSION

Based on the foregoing argument, the undersigned counsel would request that this Court reverse appellant's conviction and sentence in this case and remand for a new proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of June, 2023.

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CASE NO. 2022-001548


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mark Anthony Brown states:

1. She is Deputy Chief 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 Thomas W. Cooper, which was held on October 24 & 25, 2022, 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 Mark Anthony Brown.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of June, 2023.

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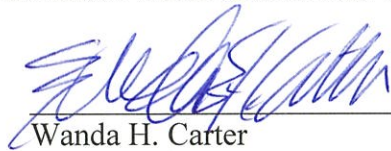
APPELLATE CASE NO. 2022-001548

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript dated October 24, 2022
- (2) Entire Trial Transcript dated October 25, 2022
- (3) Indictment

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



Wanda H. Carter
Deputy Chief Appellate Defender

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This 16th day of June, 2023.


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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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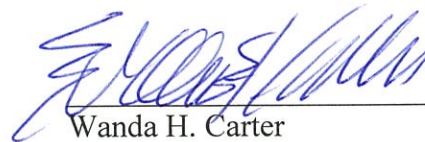
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Mark Anthony Brown, #137021, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 16th day of June, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT