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**Jul 24 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lancaster County

Honorable Paul M. Burch, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DAVID LOUIS HAYDEN,

APPELLANT.

APPELLATE CASE NO. 2022-001459

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court reversibly erred by preventing Appellant from impeaching his accuser's (Minor) credibility with evidence of another case involving Minor regarding a false accusation of sexual assault, where witness credibility was central to Appellant's case, yet where the trial court deemed the impeachment evidence irrelevant because it occurred subsequent to the facts of the present case?

## STATEMENT OF THE CASE

Appellant David Louis Hayden was indicted on January 20, 2022, by the Lancaster County Grand jury for criminal sexual conduct with a minor in the first degree (CSCM 1st), and on March 31, 2022 for trafficking in persons under 18 years of age, 1st offense, and contributing to the delinquency of a minor. Tr. \* (Indictments). The case proceeded to trial from October 10th through 13th, 2022, before the Honorable Paul M. Burch and a jury.<sup>1</sup> Tr. 1; Tr. II 1. Appellant was represented by William Frick, while Heather Weiss and Jerrod Fussnecker represented the State. Tr. 1.

Appellant was ultimately found guilty on all counts. Tr. II 73, l. 20—Tr. II 74, l. 7; Tr. II 75, l. 18—Tr. II 77, l. 1. Life Without Parole (LWOP) notice had previously been served upon Appellant. Tr. II 77, ll. 2-8; Tr. II 83, l. 10—Tr. II 84, l. 2. Accordingly, the trial court imposed concurrent sentences of LWOP for CSCM 1st; LWOP for trafficking in persons under 18 years of age, 1st offense, and three (3) years for contributing to the delinquency of a minor. Tr. II 86, ll. 8-18.

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<sup>1</sup> The CSCM 1st charge was a bifurcated trial. By agreement of the parties, the jury would determine all elements of CSCM 1st alleged except for whether the incident occurred while Appellant was on the sex offender registry; it was agreed by the parties that this fact would be determined by the trial court. Tr. 337, l. 25—Tr. 339, l. 19; Tr. II l. 18—Tr. II. 77, l. 1.

### **STANDARD OF REVIEW**

“In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous.” State v. Page, 406 S.C. 272, 282, 750 S.E.2d 623, 628 (Ct. App. 2013) (citing State v. Halcomb, 382 S.C. 432, 438–39, 676 S.E.2d 149, 152 (Ct. App. 2009)). “Thus, the role of the appellate court is limited to determining whether the trial court abused its discretion.” Id. “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” Id. (quoting State v. Lyles, 379 S.C. 328, 334, 665 S.E.2d 201, 204 (Ct. App. 2008)).

## STATEMENT OF THE FACTS

Minor was a teenager in DSS custody living at a girls' group home in Lancaster, South Carolina, in March 2020. On the evening of Friday, March 13th, she ran away after having a bad conversation on the telephone with her brother. Dressed in basketball shorts, a t-shirt, and a hoodie sweatshirt, Minor walked across town and ultimately slept on the steps of a church. Tr. 140, l. 16—Tr. 141, l. 4; Tr. 144, l. 1—Tr. 147, l. 25; Tr. 151, l. 8—Tr. 11. She continued walking the next morning until a green SUV approached her, and the driver<sup>2</sup> asked if she needed a ride. According to Minor, she declined, but the vehicle returned, and this time the driver allegedly asked if she wanted to “smoke weed.” Minor claimed she got in, and as they drove they purportedly smoked marijuana, and Minor ingested cocaine. Tr. 153, ll. 4-13; Tr. 155, l. 8—Tr. 159, l. 12. Once the vehicle stopped in a tree-lined alley, the two allegedly had sex. Tr. 159, l. 13—Tr. 164, l. 4. Minor was taken to an empty home,<sup>3</sup> and left there with beer and cigarettes. Tr. 164, l. 21—Tr. 165, l. 25. When she awoke later, the driver brought her a sandwich, and took her to a trailer on Logging Road. Tr. 166, l. 20—Tr. 167, l. 9; Tr. 169, ll. 4-23.

At the trailer, Minor stated the driver again dropped her off, and she consumed beer and cigarettes that were present. Tr. 179, l. 23—Tr. 181, l. 21. Sometime later, the driver returned to the trailer with one of his brothers—Christopher Hayden (Chris). Minor alleged that driver again had sex with her, and later more men arrived with whom she claimed she also had sex in return for money. Two of the men she claimed to have had sex with included Appellant's brothers—

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<sup>2</sup> Minor identified Appellant in a photograph line-up as the person who picked her up only after first picking another photograph of a different person in the same line-up. Tr. 186, l. 19—Tr. 187, l. 4; Tr. 232, l. 23—Tr. 234, l. 25; Tr. 443, ll. 14-16; Tr. 444, l. 20—Tr. 445, l. 7.

<sup>3</sup> Although frequently termed “abandoned” during trial, the lead investigator acknowledged the home was actually occupied by the time police went to the property in July 2020. Tr. 486, l. 23—Tr. 487, l. 25.

Chris and Michael Hayden (Michael). Tr. 184, l. 1—Tr. 197, l. 25. Minor indicated she was awoken early the next day, driven down the road by Appellant and Chris, and dropped off on the roadside within a few minutes' walk to the nearest gas station. Tr. 199, l. 17—Tr. 200, l. 13; Tr. 205, l. 15—Tr. 207, l. 4. After buying items at the gas station, Minor continued to walk until she was offered another ride by Gary Watkins (Watkins) and his wife in the early afternoon of March 16, 2020. Tr. 207, l. 25—Tr. 208, l. 25; Tr. 341, l. 5—Tr. 342, l. 7; Tr. 344, ll. 13-14. Watkins drove her to the Jefferson Food Mart, bought her food, and called the police. Tr. 209, l. 1—Tr. 210, l. 3; Tr. 345, l. 10—Tr. 346, l. 25. Minor was taken by the Chesterfield County sheriff's office to the county line where an officer from the Lancaster police department took custody of her. Tr. 210, ll. 18-21; Tr. 328, ll. 5-25; Tr. 331, ll. 11-19; Tr. 281, l. 6—Tr. 283, l. 16. She was then taken to the girls' home but denied readmission due to her condition. EMS arrived and took Minor to the hospital where she was treated, and then later moved to Palmetto Lowcountry Behavioral Health.<sup>4</sup> Tr. 210, l. 23—Tr. Tr. 212, l. 3; Tr. 283, l. 17—Tr. 12; Tr. 286, ll. 2-12; Tr. 319, l. 21—Tr. 320, l. 25; Tr. 378, l. 12—Tr. 379, l. 1.

Appellant was arrested on June 4, 2020. He eventually spoke with police, and acknowledged *inter alia* that he picked up Minor the morning of March 14th. Tr. 385, l. 13—Tr. 386, l. 7; Tr. 389, ll. 20-24; Tr. 393, l. 17—Tr. 394, l. 6; Tr. 448, l. 447, l. 23—Tr. 448, l. 8Tr. 450, ll. 18-24; Tr. 454, ll. 20-23; Tr. 456, ll. 20-22.

When Appellant's case proceeded to trial, trial counsel (Counsel) sought admission of allegations of sexual assault by Minor against others occurring both before and after the present incident. Tr. 84, ll. 11-13; Tr. 85, l. 22—Tr. 86, l. 17. The first incident occurred in

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<sup>4</sup> No rape kit was utilized to collect potential evidence in the case. Tr. 323, l. 25—Tr. 324, l. 18; Tr. II 13, ll. 19-25.

Summerville, South Carolina in several years before the present case, wherein Minor accused her adoptive father of attempting to sexually abuse her while he was in his underwear, and she was in her bed. The allegations in that instance arose after Minor ran away, was in a hospital, and did not want to come home. Tr. 93, l. 5–Tr. 94, l. 21; Tr. 104, l. 8—Tr. 107, l. 10. After several months, the family was notified by the Department of Social Services that the charges were false. Tr. 95, ll. 1-4; Tr. 107, l. 21—Tr. 108, l. 8.

The second incident about which Counsel sought to impeach Minor’s credibility was based upon an incident report from Dorchester County in 2021. Specifically, as relayed by Counsel to the trial court,<sup>5</sup> Minor ran away from the Lowcountry Behavioral Health home with another girl, and the two met someone at a boat landing. When caught, the two alleged sexual assault by the person in a car on the boat ramp. However, as the matter was later investigated, Minor altered her account later to indicate the sexual encounter was consensual. Tr. 85, l. 22—Tr. 86, l. 17; Tr. 89, l. 24–Tr. 90, l. 23. Thus, Counsel asserted, “So she lied about it being assault versus a consensual act.” Tr. 90, ll. 16-17.

The State opposed allowing Counsel to use the information by first arguing it is excluded under the Rape Shield Statute, and specifically against the 2021 incident report by claiming it did not “believe the defense has brought sufficient facts in front of the judge and in front of the Court... to establish what happened.” Tr. 86, l. 23—Tr. 87, l. 1; Tr. 88, ll. 14-20. As such, the State asserted the defense failed to meet its “burden to show there was an incident. And if so, exactly what the facts were.” Tr. 88, ll. 18-20.

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<sup>5</sup> Counsel likewise offered a copy of the incident report to the trial court for its consideration. Tr. 89, ll. 9-12.

The trial court ruled that the second incident occurring in Summerville was not relevant:

Court: Well, Summerville, I don't see how that's relevant or should come in. We're talking about two incidents.

Counsel: Yes, sir.

Court: I'm going to allow the first one, but I think we'd be out of line with that second one if it happened after all these allegations against—

Counsel: Yes, sir—

Court: —against him.

Counsel: Yes, sir. I understand.

Court: But I don't see how it's relevant to me.

Tr. 91, ll. 4-17.

Chris and Michael were also charged in the case, and both testified as State witnesses at Appellant's trial. Although he acknowledged prior statements to the contrary, Chris testified at trial that he never saw Appellant have sex with Minor. Tr. 270, ll. 4-24. He further indicated Appellant did not tell anyone to have fun with Minor, or to pay her for others to have sex with her, or to pay Appellant for others to have sex with her. Tr. 271, ll. 2-10.

Michael also testified at Appellant's trial, and indicated he was intoxicated<sup>6</sup> after work that night. Although he acknowledged seeing Chris at the trailer that night, he stated he did not see Appellant. Tr. 298, l. 3—Tr. 299, l. 25; Tr. 300, ll. 5-15. When Michael spoke with police regarding the matter, he indicated Minor tried to "grab" him, but he told her no. He further indicated he did not see anyone having sex with Minor, or paying Minor money for sex. Tr. 306, l. 15—Tr. 307, l. 5; Tr. 310, l. 21—Tr. 311, l. 3.

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<sup>6</sup> In Michael's own words, "I stay intoxicated." Tr. 298, l. 5.

After deliberations, the jury found Appellant guilty on all counts. The trial court imposed two sentences of LWOP and one of three years, all to be served concurrently. Tr. II 86, ll. 8-18; Tr. II 73, l. 20—Tr. II 74, l. 7; Tr. II 75, l. 18—Tr. II 77, l. 1.

This appeal follows.

## ARGUMENT

**The trial court reversibly erred by preventing Appellant from impeaching his accuser's (Minor) credibility with evidence of another case involving Minor regarding a false accusation of sexual assault, where witness credibility was central to Appellant's case, yet where the trial court deemed the impeachment evidence irrelevant because it occurred subsequent to the facts of the present case.**

The trial court erred by denying Appellant the right to impeach Minor's credibility with a prior instance where she made a false accusation of sexual assault. Contrary to the court's ruling that such impeachment evidence was not relevant to Appellant's case, it was crucial to the primary issue in the case—Minor's credibility. Tr. 136, ll. 9-17; Tr. II 33, ll. 14-19. As such, the evidence of Minor's prior false allegations occurring before Appellant's trial was both relevant under Rule 401, and admissible under both the Rape Shield statute regardless of whether it occurred before or after the alleged conduct in the present case.

### **Relevance**

First, the evidence sought for use to impeach Minor was relevant to Appellant's case where witness credibility was a critical issue litigated by both the State and defense. "For evidence to be admissible, it must be relevant." State v. Passio, 433 S.C. 666, 678, 861 S.E.2d 785, 791 (Ct. App. 2021) (citing Rule 402, SCRE). "Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986) (citing Assoc. Mgmt. v. E.D. Sauls Constr. Co., 279 S.C. 219, 305 S.E.2d 236 (1983)); see also Rule 401, SCRE (defining relevant evidence). Further, "[e]vidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." Id. (citing Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967)); see also Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided . . . . Evidence which is not relevant is not admissible.").

Additionally, as it pertains to accusations of sexual assault, “[e]vidence of prior false accusations by a complainant may be probative on the issue of credibility.” State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). In the present case, Counsel sought to utilize information from another allegation of sexual abuse made by Minor against a third party wherein she ran away from a facility, and claimed she was sexually assaulted by a stranger in a car. However, once investigations began, her story changed to state that her encounter was consensual. As Counsel argued, it was evidence that “she lied about it being assault versus a consensual act.” Tr. 90, ll. 16-17. Such information would have been probative to impeach Minor’s credibility for making false accusations to authorities when they eventually catch up to her after she runs away.

Here, the State’s primary witness was undoubtedly Minor. Minor again ran away from her group home. When authorities caught up with her, she made allegations of sexual assault. With no rape kit or other DNA evidence establishing that sexual conduct with Minor occurred with anyone either in Appellant’s vehicle or at the trailer, Minor’s testimony was the primary evidence produced by the State of any sexual acts occurring with her from March 14th through March 16th, 2020. Under such circumstances, the information contained in the Dorchester County incident report was relevant and probative to the issue of Minor’s credibility. Accordingly, the trial court erred by denying Appellant the ability to impeach Minor’s credibility with this evidence, and in so doing “precluded the jury from considering evidence that would have assisted the *jury* in arriving at the truth.” State v. Page, 406 S.C. 272, 289, 750 S.E.2d 623, 633 (Ct. App. 2013) (internal quotations and alterations omitted) (emphasis in original); see also Boiter, 302 S.C. at 383, 396 S.E.2d at 365; Rule 401, SCRE (defining relevant evidence); and 402, SCRE.

## Rape Shield Statute

Although not directly addressed by the trial court in its ruling, specific instances of Minor's prior false statement regarding her sexual activities would be proper impeachment evidence under the rape shield statute as well. While generally prohibited under the rape shield statute, "[e]vidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded." S.C. Code Ann. § 16-3-659.1(1). This broad exception has long been recognized in South Carolina. For example, our Supreme acknowledged as much in State v. Finley, 300 S.C. 196, 387 S.E.2d 88, (1989):

Since the proffered evidence is essential to a full and fair determination of appellant's guilt and was offered for purposes other than to attack the complainant's character by revelation of her sexual activity with a third party, we conclude that such evidence does not come within the purview of the Rape Shield Statute.

Id. 300 S.C. at 200, 387 S.E.2d at 89. As long as the purpose of using evidence or information regarding an alleged victim's other sexual activity is not for purposes of attacking her character, then it is admissible. For example, when a defendant uses evidence of the accuser's prior sexual conduct, or even his/her sexuality, for purposes of impeaching credibility, then it is not blocked by the rape shield. See, e.g., State v. Lang, 304 S.C. 300, 301, 403 S.E.2d 677, 678 (1991) ("Here, [Defendant] proposed to offer evidence concerning the victim's sexuality simply for the purpose of impeaching the victim's credibility; thus, the Rape Shield Statute had no application.").

In the case at bar, evidence of Minor's prior story in Dorchester County was not for purposes of smearing Minor's character for chastity. Rather it was to show, as Counsel asserted, that "she lied about it being assault versus a consensual act." Tr. 90, ll. 16-17. Simply stated, it

was offered solely for the purpose of impeaching Minor's credibility. Accordingly, such evidence and impeachment would not have run afoul of the rape shield statute.

### **Prejudice**

Appellant was prejudiced by the trial court's erroneous ruling as well. Witness credibility was the central issue litigated in the case due to a lack of forensic evidence, such as a rape kit, semen, or DNA in locations it should never belong. During closing arguments, the State repeatedly emphasized its importance as it related to Minor's version of events, and pitted them against Appellant's statements to police. Tr. II 13, l. 9—Tr. II 31, l. 2. Moreover, Counsel likewise emphasized the importance of witness credibility in the case, especially as it pertained to Minor, due to the paucity of supporting forensic evidence.<sup>7</sup> Tr. II 33, l. 12—Tr. II 36, l. 6; Tr. 44, ll. 6—Tr. 45, l. 19. In other words, "this evidence was even more significant" because "the case depended primarily on a credibility determination" between Appellant and Minor. State v. Grovenstein, 340 S.C. 210, 220, 530 S.E.2d 406, 412 (Ct. App. 2000) (reversing where evidence of victim's prior sexual conduct was improperly suppressed). Under such circumstances, Appellant was prejudiced by the trial court's erroneous denial of Appellant's ability to impeach Minor's credibility with the Dorchester County incident. Grovenstein, Id. 340 S.C. at 221, 530 S.E.2d at 412; see also State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) ("The assessment of witness credibility is within the exclusive province of the jury.").

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<sup>7</sup> Counsel also addressed other matters as well, including the cell tower location by reminding the jury that the only thing it established was "that [Appellant] was in the very part of the county where he lives and works and has family and that he called his family." Tr. 44, ll. 3-6.

**CONCLUSION**

For the foregoing reasons, Appellant David Louis Hayden respectfully requests reversal of his convictions, and remand for new trial.

A handwritten signature in blue ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen Richard Stevens  
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of July, 2023.