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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-001459

THE STATE,

Respondent,

v.

DAVID LOUIS HAYDEN,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE

Whether the trial court properly excluded hearsay evidence of Victim's purported false allegation against a third party where the Defendant failed to establish the falsity and relevance of the purported allegation?

STATEMENT OF THE CASE

A Lancaster County grand jury indicted Appellant David Hayden for one count of 1st degree criminal sexual conduct with a minor (CSCM 1st), one count of trafficking in persons under 18 years of age, 1st offense, and one count of contributing to the delinquency of a minor. Appellant proceeded to jury trial before the Honorable Paul M. Burch, Circuit Court Judge, on October 10, 2022. Heather Weiss and Jerrod Fussnecker represented the State, while William Frick represented the Appellant. Appellant was convicted of all three counts and sentenced to life without parole (LWOP) for CSCM 1st, LWOP for trafficking in persons under 18 years of age, 1st offense, and three (3) years' incarceration for contributing to the delinquency of a minor, to be served concurrently.

FACTS

Victim was a 15-year-old girl in DSS custody who lived at a group home in Lancaster County. Tr. 144, ll. 1-13. On March 13, 2020, Victim ran away from the group home after becoming angry about a phone conversation with her brother. Tr. 145, ll. 16-23. Although it was a cold evening in March, she wore only a t-shirt, jacket, basketball shorts, and shoes. Tr. 146, ll. 8, 22. She did not have any money when she left, nor was she familiar with the town. Tr. 147, ll. 4-5, 13-21.

Victim ran across the highway and into the woods. Tr. 147, ll. 24-25. She kept walking for a while in search of a place to sleep for the night. Tr. 150, ll. 3-5, 20-23. She continued walking until she found a church and slept on the steps there. Tr. 152, ll. 2-8. Upon waking up the next morning, she started walking with no idea where she was or where she was going. Tr. 152, l. 12-Tr. 153, l. 10.

As she walked on the side of the road, an unfamiliar green car slowly drove past her, then turned around and pulled up next to her. Tr. 153, l. 24-Tr. 154, l. 23. The driver, later identified as Appellant, asked Victim if she needed a ride, and she said "no." Tr. 155, ll. 24-25. Appellant drove off, but then came back to her, and asked if she smoked marijuana. Tr. 156, ll. 12-22. After she said "yes," she got in the car with him. Tr. 156, l. 24-Tr. 157, l. 1.

While driving, Appellant asked Victim if she had ever done drugs other than marijuana, to which she responded "no." Tr. 157, ll. 9-10. He then snorted cocaine and offered her some as well. Tr. 157, ll. 12-13. She tried to snort it but could not, so he poured cocaine in her mouth. Tr. 157, ll. 13-25. The two then smoked marijuana.

Tr. 158, ll. 10-23. Appellant also had two cans of beer and cigarettes in the car. Tr. 158, ll. 5-8.

Appellant pulled the car over to a secluded alley with trees. Tr. 159, l. 18. He asked Victim if she wanted to make money by having sex. Tr. 159, ll. 24-25. Appellant then performed oral sex on Victim and had sex with her. Tr. 160, l. 14-Tr. 162, l. 17. Upon receiving a phone call, he drove her to an abandoned house completely unfamiliar to her. Tr. 163, ll. 3-22. He told her she was not done making money. Tr. 164, l. 4.

Appellant said the house belonged to one of his brothers. Tr. 165, ll. 1-8. The contents of the house looked very old, and everything seemed to be broken. Tr. 165, ll. 13-17. Appellant said he was going to work and left Victim there alone with beer, cigarettes, and a lighter. Tr. 165, ll. 19-21. She drank a beer before falling asleep on the couch. Tr. 166, ll. 1-5. She woke up when Appellant came back to the house but did not know how long she was asleep because she had no phone or watch. Tr. 166, ll. 17-21. Without saying anything, he gave her a sandwich and drove her to another house. Tr. 167, ll. 6-9. While en route, he gave her his phone to play pornographic videos. Tr. 167, ll. 14-21. She used the opportunity to log into Facebook account to contact someone so she could get away from him. Tr. 167, l. 13-Tr. 168, l. 20. She promptly logged out when they arrived at his brother's trailer, which had no water or electricity. Tr. 169, ll. 4-5.

No one was at the trailer when they arrived, but Appellant told Victim his brother would be back soon. Tr. 169, ll. 7-8. Appellant left her in the trailer with

beer and cigarettes, which she smoked and drank while he was gone. Tr. 180, l. 19-Tr. 181, l. 21. Appellant and his brother soon returned, at which time Appellant led her to a room down the hallway. Tr. 183, ll. 4-7. Soon after, Victim performed oral sex on Appellant, and they had sex. Tr. 183, l. 21-Tr. 184, l. 9.

While they were having sex, a group of men came into the trailer. Tr. 184, ll. 18-19. Appellant got dressed and went out to greet them, so Victim got dressed and followed. Tr. 184, l. 23-Tr. 185, l. 11. When she walked out, Victim only recognized Appellant and his brother in a group of five men in the living room area. Tr. 185, ll. 13-19. The group asked her how old she was, and she told them she was a 15-year-old who ran away from DSS custody. Tr. 186, ll. 1-6. The men then started talking about money and sex, explaining that they would pay Victim each time she had sex with them. Tr. 186, l. 14-Tr. 187, l. 9.

An unfamiliar man took her into the next room, where she performed oral sex and the two had penetrative sex. Tr. 187, l. 13-Tr. 188, l. 9. When they were done, he got dressed, she remained nude, and they went back out to the living room area. Tr. 188, ll. 18-20. She then smoked marijuana with the group, and the man gave her \$60. Tr. 189, ll. 2-24. Next, a second unfamiliar man took her into the next room, and they also had sex. Tr. 190, ll. 1-16. Again, when they were done, he got dressed, she remained nude, and they went back out to the living room area. Tr. 191, ll. 15-18. Subsequently, a third unfamiliar man took her into the next room, she performed oral sex, and they also had sex. Tr. 191, l. 24-Tr. 193, l. 6. Again, when

they were done, he got dressed, she remained nude, and they went back out to the living room area. Tr. 193, ll. 8-9.

Victim became tired, so she fell asleep on the bed in the next room where she was previously. Tr. 194, ll. 6-9. Still nude from before, she was awoken by Appellant's brother touching her. Tr. 194, ll. 14-15. With everyone else in the trailer now gone, he took her into his room after a short time. Tr. 195, l. 6-Tr. 196, l. 4. He undressed himself and had sex with Victim. Tr. 197, ll. 8-11. When he fell asleep, she took his phone, logged into her Facebook account, texted her brother for help, and fell asleep. Tr. 198, l. 20-Tr. 199, l. 15.

The next day, Appellant arrived at the trailer to pick up Victim. Tr. 199, ll. 17-19. Victim got dressed, grabbed the money she made the day before, and left the trailer with Appellant and his brother. Tr. 200, ll. 1-11. Again, she had no idea where they were or where they were going. Tr. 204, ll. 23-24. Appellant became angry upon discovering Victim went through their phones, so he made her log out and delete her messages. Tr. 200, l. 17-Tr. 201-l. 14.

After a short drive, Appellant dropped Victim off on the side road, told her she could walk to the gas station close by, and drove away. Tr. 205, ll. 15-20. Victim was hungry, so she walked to the gas station, bought some snacks with the cash she made, and continued walking for a long time to an unfamiliar small-town area. Tr. 206, l. 19-Tr. 208, l. 9. A man and his wife noticed Victim walking, did not recognize her in this small town, and took her to a convenience store to get her food and bring her to safety. Tr. 208, l. 11-Tr. 209, l. 7. After the man talked to Victim, Victim

waited in the gas station while he called Chesterfield County Sherriff's Department.
Tr. 346, l. 19-25.

An officer soon arrived, bought her warmer clothes for the cold weather, and discussed with her what happened with Appellant and the other men. Tr. 209, l. 8-
Tr. 210, l. 17. Due to the county line divisions, the officer took her to another officer, who took her to the group home from which she ran away. Tr. 210, ll. 19-24. After the group home rejected her for having ingested drugs, she was taken via ambulance to a mental hospital, where she stayed for a week. Tr. 211, l. 1-Tr. 212, l. 1.

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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). The appellate court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion. State v. Fuller, 425 S.C. 468, 476, 822 S.E.2d 910, 914 (Ct. App. 2019). Considerable latitude and discretion should be allowed the trial court in determining the admissibility of impeaching testimony. State v. Williams, 409 S.C. 455, 468, 761 S.E.2d 770, 777 (Ct. App. 2014). The appellate court may affirm any ruling, order, decision, or judgment upon any ground appearing in the record. Rule 220(c), SCACR.

ARGUMENT

The trial court properly excluded hearsay evidence of Victim's purported false allegation against a third party where the Defendant failed to establish the falsity and relevance of the purported allegation.

Appellant claims the trial court erroneously prevented him from proving Victim made a false rape allegation against a third party after she accused Appellant. Appellant failed to meet the requirements of admissibility under State v. Boiter, 302 S.C. 381, 396 S.E.2d 364 (1990). Appellant's scant hearsay-based proffer did not establish a false allegation occurred, and thus the incident is irrelevant and violates the Rape Shield law. Furthermore, Appellant was not prejudiced because he aggressively attacked Victim's credibility based on a separate purported false allegation. This Court should affirm.

At trial, defense counsel sought to introduce two incidents of alleged false accusations of sexual assault, one occurring before this incident in 2017 and the other occurring after this incident in 2021. Tr. 84, ll. 11-13. The trial court allowed the defense to present evidence concerning the 2017 incident, but denied the defense motion concerning the 2021 incident. Tr. 91, ll. 8-21.

The defense proffered testimony of an aunt and uncle concerning the 2017 incident, but did not proffer testimony concerning the 2021 incident. Victim testified in the pretrial motion that in 2017 her uncle got into her bed in his underwear and tried to take her underwear off. Tr. 112, ll. 5-6. An argument ensued in which he slapped her and gave her a black eye. Tr. 112, ll. 114-120. Victim reported this incident to law enforcement the next day. Tr. 113, ll. 5-9. The uncle

and aunt subsequently terminated their parental rights to her. Tr. 113, ll. 9-14.

Once Victim was moved to a group home, she told investigators it did not happen so they would stop questioning her about it. Tr. 113, ll. 5-11. Despite objection by the State, the 2017 incident was ruled admissible by the trial court. Tr. 91, ll. 8-9.

During trial, the defense cross-examined Victim about the alleged false allegation concerning her uncle. Tr. 220-221, ll. The uncle and aunt also testified concerning the false allegation during the defense case. Tr. 506-530, ll.

In its pretrial motion to allow evidence concerning the alleged 2021 false allegation, the defense argued Victim and another person escaped Lowcountry Behavioral Health where they were staying. Tr. 85, ll. 22-25. The defense stated they met someone at a boat landing, had sexual relations with the person, and subsequently alleged they were sexually assaulted after they went back to Lowcountry Behavioral Health. Tr. 86, ll. 1-5. Defense based this summary of facts upon an incident report and did not call any witnesses in support of its motion. Tr. 89, ll. 9-12.

Boiter Analysis

Appellant failed to establish the admissibility of evidence concerning Victim's alleged subsequent false accusation. State v. Boiter established a rule allowing impeachment related to prior false allegations of sexual assault if certain elements are met. Appellant did not establish any of those elements. Thus, Appellant did not demonstrate that the 2021 incident was relevant.

Generally, “[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence.” Rule 608(b), SCRE. However, in Boiter, the Court held that evidence of a victim’s prior false allegation of abuse may be admissible to impeach the victim’s credibility in some circumstances. The Defendant must show three elements for evidence to be relevant: 1) whether such an accusation was false; 2) remoteness in time; and 3) factual similarity between prior and present allegations. State v. Boiter, 302 S.C. 381, 383-84, 396 S.E.2d 364, 365 (1990). See also Vanover v. State, 433 S.C. 31, 41, 856 S.E.2d 160, 165 (Ct. App. 2021) (noting that in other jurisdictions, generally speaking, “prior false allegations are allowed if the allegations ‘suggest a pattern’ that casts ‘substantial doubt’ on the charges at issue”). The Boiter court explained “such evidence is admissible *only* if the court makes a threshold determination that the prior accusation was false.” Boiter, 302 S.C. at 383, 396 S.E.2d at 365 (emphasis added).

Appellant failed to establish Victim made a false allegation of rape.

The first step required to admit evidence of prior allegations under Boiter is for the defendant to establish that Victim made a false accusation of rape. See State v. Boiter, 302 S.C. at 383, 396 S.E.2d at 365 (affirming exclusion of evidence of victim’s prior accusation where “[t]he defense presented no evidence to establish its

falsity”).¹ However, the defense failed to meet its burden to establish Victim made a false accusation of rape because it simply relied on an incident report containing hearsay statements and did not present any admissible evidence the allegation was false. The defense did not call any witnesses, not even Victim. Although Appellant proffered testimony of Victim, her aunt, and her uncle regarding the 2017 incident, Appellant did not proffer any testimony supporting his claims about the 2021 incident. Tr. 91, ll. 18-21. Relying exclusively on the hearsay statements in the incident report, Defense did not have admissible evidence or a witness to establish the purported 2021 false allegation.

Appellant failed to show the relevance of Victim’s purported prior allegations due to remoteness in time.

Appellant also failed to demonstrate 2021 allegation was relevant in this case. Relevant evidence includes “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Regarding the relevancy of evidence, the trial judge has broad discretion and should only be reversed if there is clear abuse of discretion. State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991) (citing State v. Jeffcoat, 279 S.C. 167, 303

¹ Boiter does not explicitly state the evidentiary standard governing a trial court's admission of prior false allegations. If this Court deems it necessary to enunciate a standard, it should employ the same standard necessary to admit evidence of prior bad acts under Rule 404, SCRE: clear and convincing evidence. See State v. Holder, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009) (explaining “evidence of prior bad acts that are not the subject of a conviction must be established by clear and convincing evidence”).

S.E.2d 855 (1983)). Appellant had the burden to show the facts and falsity of Victim's purported false allegation.

Boiter requires that after the trial court is satisfied that a witness made a false accusation of rape, the court must consider the "remoteness in time." Boiter, 302 S.C. at 383, 396 S.E.2d at 365. The purported 2021 allegation does not satisfy this element. Victim's allegation was remote in time from the allegation against Appellant. Victim's allegation against Appellant occurred in March 2020. However, Victim's supposed false accusation against another man occurred at an undetermined time in 2021. The alleged false accusation against another man was made after Victim's accusation against Appellant.

Hayden failed to establish factual similarity.

Additionally, Boiter requires the court to consider the "factual similarity between prior and present allegations to determine relevancy." Boiter, 302 S.C. at 384, 396 S.E.2d at 365. Again, Appellant presented no evidence to satisfy this element. Thus, the allegation is irrelevant.

Defense counsel did not prove the facts surrounding Victim's alleged subsequent accusation of sexual assault against another individual. However, even the few circumstances the defense suggested do not establish factual similarity. Hayden was a complete stranger to Victim, while Victim's relationship with the subsequent individual was not established by the defense. While Hayden brought Victim to his friends and family for her to have sex with them for money, the defense did not establish Victim received anything of value in exchange for sex with

the later individual. The record contains practically no information about the specific allegation Victim made against the man in Dorchester County. Without anything to support Appellant's claims, it is impossible to address the factual similarity between these purported allegations and the allegations against Appellant. As such, Hayden has failed to establish this element of Boiter.

Rape Shield Statute

Because Appellant failed to establish the facts and falsity of the purported 2021 allegation, its admission would also violate the Rape Shield law, which provides that “[e]vidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible in prosecutions” for criminal sexual conduct under S.C. Code 16-3-652. S.C. Code §16-3-659.1(1). It “d[oes] not bar evidence of a victim’s sexual conduct if the evidence [i]s offered for a purpose other than to attack the victim’s morality.” State v. Grovenstein, 340 S.C. 210, 216, 530 S.E.2d 406, 409 (Ct. App. 2000) (quoting State v. Lang, 304 S.C. 300, 301, 403 S.E.2d 677, 678 (Ct. App. 1991)). The “state’s interest in protecting criminal sexual conduct victims is stronger than the right of a defendant to attack such a victim’s character in a manner that has limited or no relevance to the question of guilt.” State v. Finley, 300 S.C. 196, 201, 387 S.E.2d 88, 90 (1989).

Appellant did not evidentiarily establish there was a 2021 incident, much less what the specific facts were. His presentation of a single incident report containing only hearsay did not prove anything. Thus, introduction of the 2021

accusation would have only served to attack Victim's morality and character by introducing evidence of another sexual encounter. Appellant has not established the facts of the incident, and he cannot "attack such a victim's character in a manner that has limited or no relevance to the question of guilt." Finley, 300 S.C. at 201, 387 S.E.2d at 90.

Appellant was not prejudiced.

Appellant did not suffer any prejudice from the trial court's exclusion of the 2021 incident. Defense was allowed to present evidence concerning the alleged false allegation concerning the Victim's uncle to challenge Victim's credibility. The 2017 allegation was introduced by Appellant for impeachment of her credibility, and addressed in his cross-examination of Victim, direct examination of Victim's uncle, direct examination of Victim's aunt, and closing argument. Accordingly, even if the trial court somehow erred in excluding Victim's subsequent accusation, Appellant suffered no prejudice because he was able to call Victim's credibility into question using the admitted 2017 accusation. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial.").

Additionally, the State presented independent evidence to corroborate much of Victim's testimony. Specifically, the State called Appellant's brothers who were also charged in this case, Christopher and Michael Hayden.

Christopher Hayden corroborated Victim's testimony on various points: the trailer Appellant took her to was Christopher's trailer, the trailer had no water or

electricity, Appellant and Victim were at the trailer together, Christopher was in his room alone with Victim, Victim used his phone, and he gave her money. Tr. 246, ll. 20-22; Tr. 256, ll. 20-23; 258, ll. 19-20; Tr. 264, ll. 12-23; Tr. 267, ll. 4-5.

Furthermore, in an interview video shown to the jury, Christopher admitted to investigators in June 2020 that he had sex with Victim as well, a fact that he denied at trial. Tr. 265, l. 15-Tr. 266, l. 14.

Michael Hayden also corroborated parts of Victim's testimony. He testified that he saw Victim in the trailer, Victim told him she was a runaway, there was beer, liquor, and marijuana at the trailer, and Appellant picked her up the next morning. Tr. 293, l. 23; Tr. 301, l. 4; Tr. 305, ll. 6-8; Tr. 304, ll. 15-16. In an interview video shown to the jury, Michael told investigators in June 2020 that Appellant had sex with Victim in the trailer. Tr. 299, ll. 5-17. Accordingly the State's case was strong and Appellant was not prejudiced by the exclusion of the 2021 allegation.

CONCLUSION

For all the foregoing reasons, the State respectfully asks that this Court affirm the conviction and sentence of the lower court.

Respectfully submitted,

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