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Mar 05 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County

Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN A. WELCH,

APPELLANT

APPELLATE CASE NO. 2023-001048

ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to admit a text message from the alleged victim's mother, Laura Driggers, apologizing for sending photographs to appellant since this corroborated other evidence that she sent nude photographs to appellant which was relevant to her credibility as a state's witness against appellant?

STATEMENT OF THE CASE

Appellant was indicted at the March 16, 2022, term of the Clarendon County grand jury for two counts of criminal sexual conduct with a minor in the second degree. R. *. His case was called to trial on March 20, 2023, before the Honorable R. Kirk Griffin, and a jury. Matthew Williamson represented appellant. Darla Pierce was the assistant solicitor. Tr. 21.

On March 22, 2023, the jury convicted the appellant on both counts. Tr. 226, ll. 11-23. Judge Griffin sentenced appellant to concurrent sixteen-year prison terms. Tr. 237, ll. 6-13.

This appeal follows.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (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.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The court erred by refusing to admit a text message from the alleged victim's mother, Laura Driggers, apologizing for sending photographs to appellant since this corroborated other evidence that she sent nude photographs to appellant which was relevant to her credibility as a state's witness against appellant.

Relevant Facts

K.F., the alleged victim, was eighteen years old at the time of trial. She was born in 2004. Tr. 72, ll. 4-10.

K.F. said her parents were divorced "so I have a stepfather and a stepmother. They - - my stepmother has two kids, and my stepfather, there's also two kids." Her mother's name is Laura Driggers. Ms. Driggers would testify later during the trial. Her father was John Floyd. Tr. 73, ll. 4-21.

K.F. knew appellant as "Woody." Tr. 74, ll. 17-20. "I met him at the Country Store with my mom and my stepfather." Tr. 74, ll. 21-23. The Country Store was off of Highway 378 going towards Turbeville. Tr. 74, l. 24 – Tr. 75, l. 2.

K.F. said that she developed a relationship with Woody, who was in his mid-twenties in February 2019 when she was fifteen. She had "a crush" on Woody at the time. Tr. 79, ll. 1-19. However, Woody had a fiancé, Courtney. Tr. 79, ll. 18-19. K.F. said that she and Woody sent "nude pictures" of each other back and forth on their phones. Tr. 85, l. 4 – Tr. 86, l. 16.

K.F. started having sex with Woody when she was fifteen years-old. She maintained that he told her not to tell anyone or he would kill himself because he did not want to go to jail. Tr. 90, l. 1 – Tr. 91, l. 24.

K.F. became angry with Woody because he started blocking her snapshot and other messages.. K.F. offered that at seventeen years-old she met Gavin who became her new boyfriend. She said that she was no longer was in love with Woody. Tr. 112, ll. 13-24. K.F. also developed relationships with other young men around this time, and she reported her sexual relationship with Woody to her family “shortly after” her brother’s wedding in February 2022. Tr. 120, l. 17 – Tr. 121, l. 15.

Laura Driggers, K.F.’s mother, also met Woody at the Country Store. Driggers confirmed that K.F. had a “crush” on Woody. She thought “it was cute.” Tr. 136, ll. 2-5. She noted that Woody would take K.F. fishing and “she just hung around” while he worked on his truck. Tr. 136, ll. 2-18.

Driggers admitted that she gave K.F. permission to “ride off alone” with Woody many times. She later “learned” that K.F. was often sneaking out of the house and spending the night with Woody. However, she claimed that she did not know that K.F. was having a sexual relationship with Woody in 2019 or 2020 when K.F. was fifteen and sixteen years-old, and Woody was in his late twenties. She claimed that she only found out on February 21, 2022. Tr. 164, ll. 11-21. She denied that she was encouraging K.F. to lie about her relationship with Woody. Tr. 164, ll. 9-10.

On cross-examination, Driggers admitted that she had “developed a relationship” with Woody also. She knew K.F., her daughter, was spending time with Woody at the same time. Tr. 146, l. 13 – Tr. 147, l. 1. She admitted that she was having sex with Woody, and that she exchanged text messages with him. Tr. 147, l. 20 – Tr. 148, l. 18.

Driggers admitted on cross-examination that she texted Woody and apologized for causing more confusion in Woody’s relationship with Courtney. Driggers asked Woody why he

blocked K.F. on his phone since “she does any fucking thing you want her to do. What is your problem - - your damn problem?” Tr. 150, l. 4 – Tr. 151, l. 24.

After Driggers admitted exchanging “nude pictures” with Woody, defense counsel asked Driggers to acknowledge a text message, Defense Exhibit #6 for identification, from February 22, 2021 to Woody. The solicitor objected arguing that it was not clear that Driggers was referencing a nude photograph in the text. Defense counsel Williamson said that this was admissible evidence to corroborate the relationship Driggers was in with Woody. It went directly to her credibility in seemingly explaining her motivation to a state’s witness against Woody. Tr. 154, l. 5 – Tr. 156, l. 21. The judge ultimately sustained the state’s objection. Tr. 156, ll. 17-21.

Discussion

The trial court erred in refusing to allow defense counsel to question Laura Driggers, and offer corroborating evidence, that Driggers was in a sexual relationship with appellant where she claimed she later learned appellant was having illegal sex with her daughter. Rule 608(c), SCRE, provides that “bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.”

As the Court noted in State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002), “Rule 608(c), preserves South Carolina precedent holding that generally, ‘anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity, of a witness may be shown and considered in determining the credit to be accorded [her] testimony.’” *citing* State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). See, also, State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976). In Sims, the Supreme Court found the trial court’s refusal to allow the defense to

question a witness about the charges pending against him and the severity of the possible sentences was error. However, the Court found the error harmless in that case.

In Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), the Supreme Court noted that evidence of the bias of a witness can be compelling impeachment evidence, and for that reason considerable latitude is allowed in the cross-examination of an adverse witness for purposes of testing his or her bias. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Again, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his or her testimony. State v. Brewington, supra, quoting 98 C.J.S. witnesses §§ 460, 560(a).

In State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001), the Supreme Court reversed the defendant's murder conviction and death sentence because the defense was not allowed to cross-examine an alleged accomplice, James Brown, about his past dealing with the prosecutor's office to show his bias and motive to misrepresent while testifying for the state against Jones. Brown claimed Jones was the murderer and that he was merely present when Jones murdered the two victims.

The defense in State v. Jones sought to show Brown knew how to arrange plea bargains with this solicitor, and he knew how the system could be manipulated by cooperating with the state. This was relevant to his bias and his motive to misrepresent the truth for his own benefit. In Jones, the Court held this cross-examination was permissible under Rule 608(b), SCRE, and the refusal to allow it was reversible error.

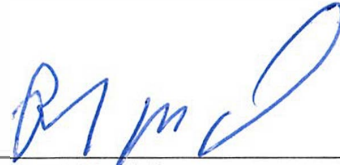
Here, Driggers, the mother of a minor who could not legally consent to sex, admitted that she was in a sexual relationship with appellant. She faced criminal liability or at a minimum the removal of K.F. by D.S.S. from her household if she allowed the minor to have an illegal sexual

relationship with an older man who also happened to be her illicit lover. Driggers could not continue her sexual relationship with appellant if she knew he also was having sex with her underaged daughter. The fact that her relationship soured with appellant after she had had been sending him nude photographs went to her bias and motive to misrepresent the truth by accusing him of having sex with her daughter. Defense counsel correctly argued that it was province of the jury to judge the credibility of Driggers after having all relevant evidence of her bias or motive to misrepresent before them.

In this case appellant was denied his right to meaningful cross-examination of Driggers and to the orderly introduction of impeachment evidence. See State v. Gillian, 360 S.C. 433, 449, 602 S.E.2d 62 (Ct. App. 2004); State v. Mizzell, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). This denied appellant his right to present a complete defense against the charges lodged against him. See Rock v. Arkansas, 483 U.S. 44, 55 (1987); Chambers v. Mississippi, 410 U.S. 284 (1973). Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed and this case remanded to the Clarendon County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2024.

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APPELLATE CASE NO. 2023-001048

PETITION TO BE RELIEVED AS COUNSEL

Counsel for John A. Welch states:

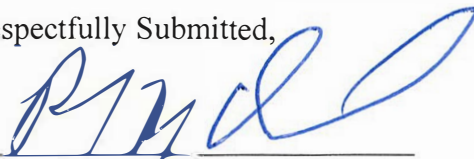
1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before the Honorable R. Kirk Griffin, which was held from March 20-22, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for John A. Welch.

Respectfully Submitted,


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

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

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

- (1) True-billed indictments:
- (2) Entire trial transcript.

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



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This 5th day of March, 2024.

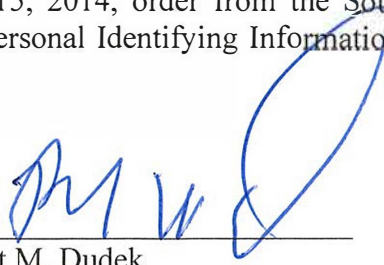
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CERTIFICATE OF COUNSEL

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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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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on John A. Welch, #390582, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 5th day of March, 2024.



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