

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

Respondent,

vs.

MATTHEW RYAN HENDRICKS,

Appellant.

FINAL BRIEF OF RESPONDENT

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DAVID SPENCER
Assistant Deputy Attorney General
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ATTORNEYS FOR RESPONDENT

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AUG 23 2013

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in admitting the 911 call as an excited utterance, the testimony was cumulative to evidence at trial and any error is harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

Appellant Hendricks was indicted by the Pickens County Grand Jury of kidnapping and two counts of criminal sexual conduct in the first degree. Hendricks was tried by jury before the Honorable Letitia H. Verdin and was found guilty as charged. The transcript incorrectly states that Charles Franklin Turner, III represented Appellant. Instead Attorney Allen represented Appellant. Judge Verdin sentenced Hendricks to eight years imprisonment.

STATEMENT OF FACTS

Victim thought she was being burglarized when someone was breaking into her house, but then she saw it was her boyfriend, Appellant Matthew Hendricks, who she thought was in Florida. But Hendricks proceeded to beat her and brutally rape her, accusing her of cheating. Hendricks alleged the sexual conduct was consensual, but admitted to beating her.

Hendricks and his victim had an on/off relationship. At the time of the assault, he was not living with her. Hendricks did not even have a key to the residence. Victim spoke with Hendricks on the telephone just ten minutes before the break-in. She testified she thought he was still in Florida on a construction job. She called 911 when she thought the house was being broken into. Listening to State's Exhibit #2, she sounds

relieved when she realizes it was Hendricks. But Hendricks then grabbed the phone from Victim and started using it to make calls and to text. He accused her of cheating. He called people to ask for a ride, but refused Victim's offers to give him a ride home. ROA. pp. 18-20; pp. 24-29; p. 49.

Hendricks hit Victim in the arm. Victim told Hendricks they were through. So Hendricks picked up Victim by the hair and took her to the back bedroom. Her children were asleep in the house. In the bedroom, he called on the phone again. Hendricks then pulled Victim by the hair and threw her to the floor. He ordered her to take her clothes off. Hendricks proceeded to anally rape Victim. She was bleeding and went into the bathroom. Hendricks made her come out of the bathroom and then vaginally raped Victim. After that, Hendricks wanted to cuddle and Victim refused. Hendricks ripped up a poem Victim had written and displayed. Hendricks stayed another two hours after the assault until he was picked up by Zach Watson and his girlfriend. Victim tried to stay in the bathroom as much of the time as she could. She was bleeding and attempted to stop the bleeding in the bathroom. ROA. pp. 29-42.

Mother was the second witness that testified for the State. Victim called her between 2:00 to 2:30 a.m., distraught and crying. When asked what Victim said happened, Mother answered: "She told me that , uh, Matt had showed up at her house and that he had beaten her up and raped and sodomized her." ROA. p. 61, lines 23-25. Victim came over to Mother's house and they put Victim's children to sleep. Victim looked like she was in a fight and had injuries. She was shaking and crying. Mother described her demeanor as distraught. Mother took her to the hospital and called 911

from the car. Mother described Victim's demeanor at the hospital as "just shut down" and she became withdrawn and distant. Her usual demeanor was boisterous. ROA. pp. 61-68; p. 72. Victim stayed with Mother while she had a friend, Trudy Honeycutt, clean Victim's house. ROA. p. 71.

The recording of the 911 call by Mother is the subject of the appeal. State's Exhibit #3. In the phone call, Mother reports the rape, said it occurred in Victim's home while the children were there, advises the dispatcher that Victim was sodomized and that Victim's boyfriend, Matthew Hendricks, was the assailant. State's Exhibit #3.

Lieutenant Tony Robinson of the Pickens County Crime Scene Unit testified that he found blood on the sheet, comforter, and mattress at Victim's house. There was also blood in the bathroom. Additionally, he found a clump of hair that appeared to be pulled out by the roots. ROA. pp. 74-80. Detective Michael Baker provided similar testimony as well. ROA. pp. 215-220.

Alex Levy from the Rape Crisis Center testified that Victim was tearful and withdrawn as she related the events to Levy. Victim could not get comfortable in her chair, "she couldn't sit". ROA. p. 103. Victim told Levy she was raped in her home in Pickens. ROA. p. 104. Victim was still bleeding during the nurse's examination. ROA. pp. 106-107. Victim needed a sitz bath to help comfort the trauma from the rape. ROA. p. 109.

Jason White, Victim and Hendricks' friend, testified and authenticated some texts he received from Hendricks on Victim's phone. White also testified he received two phone calls from Victim's phone, in the first it sounded like a struggle and he heard a

voice say "call Momma". The second call was when Victim called White and told him she had been raped. ROA. pp. 113-120.

Rachel Simmons was the emergency room nurse that examined Victim. Victim was actively bleeding and had swelling in the vaginal and rectal areas. She needed a tampon for the bleeding. Victim needed to have pain medication proscribed. ROA. pp. 139-167.

Trudy Honeycutt testified that when she went to Victim's house to clean, there was blood on the mattress and the bedroom looked tore up. She testified there was blood on the toilet and the bathroom floor. ROA. pp. 185-187.

Hendricks testified in his own defense. He admitted hitting Victim, slamming her on the floor, and pulling her hair out. He also admitted ripping the poem she wrote him. But he denied the rapes and said the sexual conduct was consensual, although he admitted she bled as a result. He also admitted trying to cuddle with Victim after he beat her up. ROA. p. 229, pp. 237-240; pp. 263-265; p. 280.

ARGUMENT

The trial court did not err in admitting the 911 call as an excited utterance, the testimony was cumulative to evidence at trial and any error is harmless beyond a reasonable doubt.

Hendricks complains it was error to admit the 911 call because too much time passed from the startling event. However, Victim told Mother what occurred upon arriving at Mother's house, when she was still distraught from the beatings and sexual assaults. She was under Hendricks' control until he left Victim's residence. Further, the 911 call is cumulative to Mother's testimony and any error is harmless in light of the overwhelming evidence.¹

In order for a statement to constitute an excited utterance, the statement must 1) relate to a startling event or condition; 2) be made while the declarant is still under the stress or the excitement; and 3) be caused by the startling event. Rule 803(2), SCRE; see State v. Sims, 348 S.C. 16, 21, 558 S.E.2d 518, 521 (2002) (defining excited utterance). Determining if a statement is an excited utterance is within the trial court's discretion after the trial court considers the totality of circumstances. Sims, 348 S.C. at 20-21, 558

¹ Hendricks also complains about the solicitor's closing argument. However, this purported error is not in the statement of issues. State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal."). The issue is not preserved for review. State v. Varvil, 338 S.C. 335, 339, 526 S.E.2d 248, 251 (Ct. App. 2000) (finding the failure to object to comments made during argument precludes appellate review of the issue). Further, the argument was not improper, the Solicitor was merely commenting on the evidence, not placing the prestige of the government with a personal assurance of the witness's veracity. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997) (finding solicitor's comments, put in context, was simply a statement of evidence before the jury and was not improper).

S.E.2d at 521.

In State v. Cox, 274 S.C. 624, 266 S.E.2d 784 (1980), which the prosecution relied on in its argument for admission, the Supreme Court observed the following:

To qualify as part of the res gestae, a statement must be substantially contemporaneous with the litigated transaction and be a spontaneous utterance of the mind while under the active immediate influence of the event. The reason for the exception is that special reliability may be given a statement uttered in a state of spontaneous excitement which suspends the declarant's powers of reflection and fabrication. . . .

In this case there was a lapse in the evening from the time of the sexual battery itself to the time when the statement was made. To qualify as part of the res gestae the utterance need only be substantially contemporaneous with the transaction. . . . Though there was a lapse from the time of the sexual battery, it is clear that the statement was made immediately upon the prosecuting witness's freedom from appellant's dominion. There was no substantial lapse from the time the victim was freed from the clutches of her assailant to the time when she first had an opportunity to speak to a third party. The requirements for res gestae are therefore met.

Id., 274 S.C. at 627, 266 S.E.2d at 785-786 (internal citations omitted).

In the instant case, Mother established that Victim was distraught when she came over to Mother's house and told her that Hendricks beat, raped, and sodomized her. Victim's statements related by Mother related to the startling event, the beating and rape, and further, Victim's stress and excitement was caused by the startling event. As in Cox, Victim was under the dominion of Hendricks for some time after the sexual assaults, but immediately came over to Mother's residence and related the events. Accordingly, the trial court did not err in admitting the evidence.

Further, the testimony was, as alluded to by Hendricks, cumulative to Mother's

testimony at trial about what Victim told her about the event. ROA. pp. 61-64. Accordingly, Hendricks was not prejudiced. Admission of improper evidence is harmless where it is merely cumulative to other evidence. State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003); State v. Johnson, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989).

Additionally, Hendricks admitted to beating Victim, to being at her residence during the events alleged by Victim, and having intercourse with Victim, although he alleges it was consensual. The physical evidence – the uncommonly severe injuries to Victim – are strong proof that the sexual conduct was not consensual. Out of court statements by Victim that she was sexually assaulted are admissible under the outcry exception. Cox. Accordingly, any error is harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

CONCLUSION

For all of the foregoing reasons the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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August 23, 2013

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THE STATE,

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vs.

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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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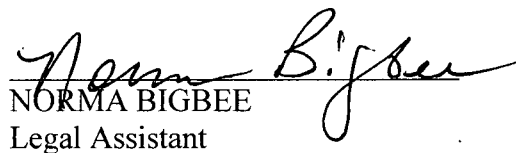
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Carmen V. Ganjehsani, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina, 29211.

I further certify that all parties required by Rule to be served have been served.

This 23rd day of August, 2013


NORMA BIGBEE
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SC Court of Appeals



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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: **The State v. Matthew Ryan Hendricks**
Appellate Case No: 2011-203730

Dear Ms. Kitchings:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent** in the above matter for filing in your office. By copy of this letter we are serving Carmen V. Ganjehsani, Esquire with this brief today.

Sincerely,

David Spencer
Assistant Deputy Attorney General
Bar No: 68571

DS/nb

Enclosures

cc: Carmen V. Ganjehsani, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)

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SC Court of Appeals