STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

APPEAL FROM DARLINGTON COUNTY
Court Of General Sessions
The Honorable Michael S. Holt, Circuit Court Judge

---

Appellate Case No. 2023-001100

---

THE STATE, Respondent,

v.

TERRY LEE SANDERS, Appellant.

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM B. ROGERS, JR.,
Solicitor, Fourth Judicial Circuit

105 Green Street
Chesterfield, SC 29709

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**South Carolina Cases:**



**Other Cases:**



**Other**

## STATEMENT OF ISSUE ON APPEAL

Any error made in the admission of the medical report was harmless because it was cumulative to Minor's forensic interview and posed a minimal risk of contaminating the jury's verdict.

## STATEMENT OF THE CASE

A Darlington County Grand Jury indicted Appellant Terry Lee Sanders for criminal sexual conduct with a minor first degree, criminal sexual conduct with a minor third degree, and kidnapping.[1] He proceeded to a jury trial on September 12, 2022, before the Honorable Michael S. Holt. Appellant was convicted as charged. With respect to criminal sexual conduct with a minor first degree, Appellant was sentenced to twenty-five years' incarceration. Appellant also received a concurrent twenty-five years' sentence for kidnapping and a concurrent fifteen years' sentence for criminal sexual conduct with a minor third degree. This direct appeal follows.

[1] Appellant was indicted for criminal sexual conduct with a minor third degree in June of 2022, while he was indicted for the other offenses in February of 2016.

## STATEMENT OF FACTS

When Minor was four years old, she frequently visited her friend's house to play or watch TV where Appellant and Laura (Mother's friend) lived together. (R. p. 56; p. 86). When she would visit her friend's house, Appellant often watched them. (R. p. 86). Minor testified that on one of these visits she was in bed watching cartoons when Appellant touched her inappropriately and had her perform oral sex. (R. pp. 88-89). Minor testified one of her friends witnessed the event and began to cry. (R. pp. 89-90). Minor also testified Appellant assaulted her in the bathroom and covered her mouth to prevent her from making noise. (R. pp. 90-92). Minor disclosed the assault to her mother and police. (R. pp. 92-93; p. 264).

Mother testified that she was out with Laura when Laura received a call and realized they needed to go back to the house. (R. p. 260). While they were enroute to the house, the police were called. (R. p. 57; pp. 262-263). Mother testified Minor was crying when she arrived at the home. (R. p. 263). Mother testified Minor told her something sexual happened to her in the bathroom[2]. (R. p. 264). Mother testified that shortly thereafter she confronted Appellant. (R. p. 264).

Appellant's son was playing video games at the house during the assault. (R. p. 153). While he was playing, Minor's friend got his attention by crying and he went to the bathroom. (R. p. 153; p. 168). When Appellant's son got to the bathroom the door was locked. (R. pp. 153-154). He was able to get on his knees and see through the peephole in the door. (R. pp. 154-155). He stated he could see Appellant but did not see Minor at this time. (R. pp. 154-155). After walking around the house, he returned and saw Minor in the bathroom, pulling her pants up. (R. p. 155).

---

[2] The solicitor informed Mother during questioning that she could not identify the perpetrator or discuss the details of the assault. (R. p. 264).

Officer Spaziani testified that she responded to the scene for what she understood to be a potential sexual assault. (R. pp. 51-52). Spaziani testified that upon her arrival the scene was chaotic. (R. p. 53). She testified that the officers separated the parties and noticed Appellant was grossly intoxicated. (R. p. 53). Ultimately, they arrested Appellant due to his drunk and disorderly conduct. (R. pp. 54-55).

Dr. Morphis, an expert in the field of forensic child sexual assault examinations, stated Minor's vaginal abrasions were consistent with the acts and sexual assault alleged. (R. p. 138). Morphis explained that Minor's abrasions could have been caused by other events as well. (R. p. 142).

Dr. Huxford treated Minor at McLeod Hospital on October 3, 2015. (R. p. 104). The State sought to introduce medical reports compiled by Dr. Huxford, to which Appellant objected. (R. pp. 106-107). Appellant argued Huxford could testify without the records being admitted into evidence. (R. pp. 106-107). The court overruled the objection. (R. p. 107). The State, in an effort to "keep the record clean[,]" noted that the records were admissible under the medical diagnosis and treatment hearsay exception. (R. p. 107). During her testimony, Huxford read the report which identified Appellant as the perpetrator. (R. p. 108). The report notes "Terry touched my tutu[,]" "Terry pulled my hair and covered my mouth[,]" and "Terry hurt me." (R. p. 108).

Additionally, a video of Minor's forensic interview was played for the jury. (State's Exhibit 3; R. pp. 178-179). In the video Minor repeats the statement "Terry touched my tutu." (State's Exhibit 3 at 13:40). She explained "he made me put his penis in my mouth." (State's Exhibit 3 at 15:45; 17:45). She explained she had to throw up. (State's Exhibit 3 at 19:45). Minor stated she told her mother about the incident. (State's Exhibit 3 at 21:00).

## STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id.

## ARGUMENT

**Any error made in the admission of the medical report was harmless because it was cumulative to Minor's forensic interview and posed a minimal risk of contaminating the jury's verdict.**

The trial court did not commit reversible error by admitting hearsay evidence identifying Appellant because the risk was minimal in light of Minor's testimony outlining the events, Mother's testimony, the testimony of Appellant's son placing both Minor and Appellant in the bathroom, and Minor's forensic interview which also identified Appellant.

Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Turner v. Thomas, 431 S.C. 527, 848 S.E.2d 353 (Ct. App. 2020). Under Rule 803, SCRE statements made for the purposes of medical diagnosis or treatment are admissible as a hearsay exception, regardless of the availability of declarant. To be admissible, the statement must be (1) made for the purpose of and be reasonably pertinent to medical diagnosis or treatment; (2) describe the patient's medical history, past or present symptoms, pain or sensations, or the inception or general character of their cause or external source; and (3) reasonably relied upon by the medical professional. Glinyanay v. Tobias, 436 S.C. 137, 145, 871 S.E.2d 193, 198 (Ct. App. 2022). These statements are exempt due to their inherent trustworthiness. Id.

Statements identifying a perpetrator are often inadmissible because they seldom are pertinent to the diagnosis or treatment. State v. Simmons, 423 S.C. 552, 564–65, 816 S.E.2d 566, 573 (2018) (holding physician's testimony inadmissible hearsay to the extent it recounted statements by the minor patient concerning the identity of his abuser that were not made for the purposes of medical treatment or reasonably pertinent to it); State v. Burroughs, 328 S.C. 489,

501, 492 S.E.2d 408, 414 (Ct. App. 1997) (nurse's testimony that a rape victim told her defendant asked if he could hug victim before he assaulted her was not admissible under Rule 803(4), as statement "in no way can be viewed as 'reasonably pertinent' to victim's diagnosis or treatment").

Here, the exhibit admitted identifying Minor's perpetrator as Appellant was improper. The identification was not reasonably pertinent to Dr. Huxford's diagnosis. The admission of portions identifying Appellant did not fall within the medical diagnosis exception because under Simmons, they are not reasonably pertinent to the Minor's diagnosis or treatment. Nonetheless, any error is harmless under the specific circumstances involved.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Admission of evidence in error is harmless when the erroneously admitted evidence is merely cumulative in light of the collective evidence of Appellant's guilt. In State v Mitchell, the South Carolina Supreme Court found that error is harmless when it could not reasonably affect the result of a trial. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d. 150, 151 (1985). "A harmless error analysis is contextual and specific to the circumstances of the case." State v. Byers, 392 S.C. 438, 447, 447–48, 710 S.E.2d 55, 60 (2011). There is no definitive rule of law governing harmless error, rather the prejudicial character of the error is determined from its relationship to the entire case. Id. When examining harmless error courts may consider "the factual guilt or innocence of the defendant in light of the untainted evidence in the record" and "whether the error at trial influenced the jury and thus contaminated its verdict." Harry T. Edwards, To Err Is Human, but Not Always Harmless: When Should Legal Error Be Tolerated?, 70 N.Y.U. L. Rev. 1167 (1995).

"The admission of a hearsay statement that is cumulative to in-court testimony by the declarant can be harmless error, particularly when corroborated by other evidence." 4A Mich. Pl. & Pr. § 36:879 (2d ed.); See also Schindel v. Commonwealth,252 S.E.2d 302 (Va. 1979)(finding any error in admitting police officer's testimony concerning hearsay was harmless where witness' testimony proved essence of content of hearsay and defendant's testimony provided further verification of content of such declaration). Further, "if the declarant himself testified at trial, any likelihood of prejudice was greatly diminished because the primary rationale for the exclusion of hearsay is the inability to test the reliability of out-of-court statements." Id.; People v. Gursky, 786 N.W.2d 579, 595 (Mich. 2010).

In Simmons, our Supreme Court found the admission of hearsay evidence identifying the perpetrator to be reversible error. Simmons, 423 S.C. 552, 816 S.E.2d 566, 573 (2018). The court first noted that since the witnesses provided similar information a harmless error seemed plausible. Id. at 423 S.C. 566 816 S.E.2d 574. Even so, the Simmons Court found it was unable to deem the error harmless due to the importance the state placed on the testimony. Id. The Court noted "[t]he State highlighted the testimony of Dr. Simmons, calling him as the first witness and emphasizing the importance of his testimony in determining credibility for a case that lacked any physical evidence." Id.

In Mitchell, the court ruled hearsay testimony of a law enforcement officer regarding the ownership of a black jacket associated with a crime by Appellant's wife during an interview was inadmissible hearsay. Id. Though the court found the trial court did err in admitting the hearsay, the court ruled because there was abundant evidence in the record from which the jury could have found appellant guilty notwithstanding the hearsay, the error was harmless. Id.

In State v. Chavis, the South Carolina Supreme Court ruled that the testimony of two witnesses used to support other statements was inadmissible as hearsay; yet the overwhelming evidence of substantial guilt rendered the error harmless. State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336 (2015). The Chavis Court found the evidence to be overwhelming where there were multiple witnesses and physical evidence in the form of photographs and medical records. Chavis, 412 S.C. 111 771. S.E.2d 341.

Like Mitchell and Chavis, the other strong evidence presented, which made up of much more than just Huxford's report, supported Appellant's conviction. First, the testimony of Minor provided a complete version of events. Next, Appellant's son corroborated the testimony of Minor and placed her in the bathroom with her pants down shortly after Appellant. Lastly, Dr. Morphis stated Minor's vaginal abrasions were consistent with the acts and sexual assault alleged. (R. p. 138).

Also, unlike the relevant testimony in Simmons, Huxford was not the first to testify nor did the State rely as heavily upon her testimony. Minor's testimony and statements in the forensic interview mirrored her statement to Huxford, which minimized the risk of the report's admission. C.f. McClain, 675 N.E.2d 329 (Ind. 1996) (finding error in admitting family therapist's hearsay testimony as to what child molestation victim told her was harmless where victim's statements merely repeated statements victim made on stand). Here, the testimony of Minor and Appellant's son was essential to the State's case. Appellant was afforded the opportunity to fully cross examine Minor's mirrored testimony at trial, which minimized the risk of admitting such evidence. Cf. McClain, 675 N.E.2d 329, 331 (Ind. 1996) ("the child victim testified at trial, and was subject to cross-examination, regarding the acts of molestation and the surrounding circumstances of the incident"). Lastly, any error in the admission of the report is

minimal. The jury was presented with strong evidence including Minor's forensic interview, the testimony of Appellant's son, the testimony of Mother, and Minor's testimony. Yates v. Evatt, 500 U S. 391, 403 (1991) ("To say that an error did not contribute to the verdict is ... to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record"), disapproved of on other grounds by Estelle v. McGuire, 502 U.S. 62 (1991). Given the circumstances, any error would not have reasonably affected the outcome.

This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

WILLIAM B. ROGERS, JR.,
Solicitor, Fourth Judicial Circuit

BY: 
Andrew D. Powell
Bar # 106415

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 4, 2024

RECEIVED
Sep 04 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

APPEAL FROM DARLINGTON COUNTY
Court Of General Sessions
The Honorable Michael S. Holt, Circuit Court Judge

---

Appellate Case No. 2023-001100

---

THE STATE, Respondent,

v.

TERRY LEE SANDERS, Appellant.

---

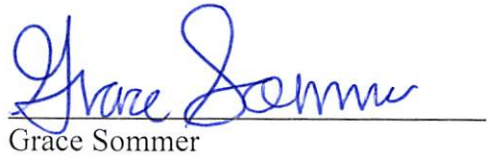
**PROOF OF SERVICE**

---

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Katherine H. Hudgins, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

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

This 4th day of September, 2024.



Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

## Grace Sommer

**From:** Grace Sommer
**Sent:** Wednesday, September 4, 2024 4:29 PM
**To:** Hudgins, Kathrine
**Cc:** Andrew Powell; Stock, Chris
**Subject:** The State v. Terry Lee Sanders (2023-001100)
**Attachments:** SANDERS Terry - FBOR.pdf

Good Afternoon Ms. Hudgins,

Attached please find a Final Brief of Respondent in The State v. Terry Lee Sanders (2023-001100). This Brief will be filed today with the Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

**Grace Sommer**, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov