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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2024-UP-408

THE STATE,

RESPONDENT,

V.

BRADLEY MARK CORLEW,

PETITIONER

APPELLATE CASE NO. 2021-000989

PETITION FOR REHEARING

On December 4, 2024, this Court affirmed appellant's convictions and sentences where appellant argued the trial court erred in allowing the state to introduce bad acts pursuant to Rule 404(b), SCRE, and as part of the res gestae of the crimes alleged; (2) admitting into evidence an adolescent questionnaire wherein one of the victims identified appellant as her abuser; (3) allowing an expert witness to describe sexually explicit photographs found on appellant's phone; and (4) requiring appellant to move his seating position in the courtroom in a manner violative of appellant's constitutional right to confrontation. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. Filed Dec. 4, 2024).

Appellant respectfully requests rehearing pursuant to Rule 221(a), SCACR, as to issue one, regarding the trial court's admission of evidence of bad acts considering the significant points overlooked and/or misapprehended by this Court discussed below.

Preservation

In its opinion this Court found appellant only renewed his pretrial objection to the admission of bad act evidence as to the forensic interview videos and not the victims' testimony. However, as pointed out by the Court in the opinion, during pretrial motions the trial granted the state's request to present the evidence of prior bad acts, and importantly, noted that the defense was "protected in the record." R. 19, ll. 4-6. The trial court specifically instructed counsel should make a contemporaneous objection "without having to stand up every single time something is said." R. 19, ll. 6-9. The court explained that defense counsel could simply note his objection for the record during the trial. R. 19, ll. 9-15.[1]

Counsel for appellant relied on the trial court's verbal assurance that the objection was "protected in the record." Counsel's objection was to both the victims' testimony and to the forensic interview videos. Counsel objected at the first mention of this the prior bad act evidence and his objection is preserved for appellate review.

Evidence

Regarding the evidence that appellant physically harmed Lacy, this Court held the evidence was admissible finding it was introduced for some purpose other than to show the accused is a bad person or acted in conformity with prior bad acts. This Court found specifically; this evidence

[1] During the trial, when the state sought to introduce State's Exhibit #1, which was digital media containing the first and second forensic interviews of Minor 1, defense counsel renewed his objection by stating, "Previous object as ruled upon." R. 162, ll. 6-9. Similarly, defense counsel renewed his objection when the state sought to introduce State's Exhibit #2, which was the forensic interview of Minor 2. R. 162, ll. 20-24. State's Exhibits #1 and #2 are on file with this Court.

was used by the state to explain any delay by the victims in disclosing the alleged abuse. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. Filed Dec. 4, 2024). In support of its holding this Court cited *State v. Galloway*, 443 S.C. 229, 904 S.E.2d 866 (2024) ([i]t was not error for the trial court to admit the testimony about [the defendant's violence towards a third party living in the victim's home] because it is clear the State did not elicit the testimony for the purpose of demonstrating [the defendant's] propensity to be sexually violent. Instead, the [s]tate offered the evidence to explain why the victim did not disclose the abuse when she was a child).

This case is distinct from *Galloway*, where the victim in that case disclosed the abuse she endured as a child in elementary school several years later when she was thirty-seven. There was no delay of disclosure to explain away in appellant's case. The minors alleged the sexual abuse was ongoing until they were separated from appellant. The minors were thirteen at the time of trial. The evidence could not have been used to explain a delay in disclosure where there was none in this case. Furthermore, whether appellant physically assaulted Lacy, his co-defendant, was not connected to the alleged sexual assaults at all. There was simply no relationship between the two.

This Court correctly found evidence related to the other children in the home and was erroneously admitted where the acts did not constitute evidence of a common scheme or plan and was used to show propensity. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. Filed Dec. 4, 2024). Additionally, this Court correctly found evidence related to other bad acts—testimony that Lacy urinated and defecated on the floor—was erroneously admitted where the evidence had "little logical connection" charged offenses. *Id.* at 7-8. This Court correctly held none of the bad act evidence was admissible as part of the res gestae of the charged crimes stating, "[w]e are unpersuaded that the [s]tate needed the bad acts evidence to prosecute the case. *Id.* at p. 8.

Reversible Error

The state presented these prior bad acts to convince the jury that appellant was a sexual deviant, and as such, he had likely committed the charged offenses of sexual battery. According to the state, the children lived in a "house of horrors" created by appellant and Lacy, which involved sexual assaults between the adults and among even the children, physical beatings between the adults and the adults and the children, lack of sanitation, deficiencies in hygiene, and a general mood of hyper-sexualization. This so-called "house of horrors" was not connected at all to the charged offenses as it had no tendency to prove a fact in dispute or that appellant committed the charged offenses. The state used the prior bad acts for the very purpose for which they are prohibited – propensity.

This Court held the errors were harmless stating "the abundant remaining evidence was more than sufficient to establish [appellant's] guilt beyond a reasonable doubt." *Id.* at 8.

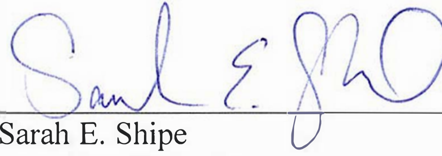
Error is harmless where it could not reasonably have affected the result of the trial. *In re Harvey*, 355 S.C. at 63, 584 S.E.2d at 897; *State v. Burton*, 326 S.C. 605, 610, 486 S.E.2d 762, 764 (Ct.App.1997). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); *State v. Adams*, 354 S.C. 361, 380–381, 580 S.E.2d 785, 795 (2003). Thus, an insubstantial error not affecting the result of the trial is harmless when guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978); *State v. Weaverling*, 337 S.C. 460, 471, 523 S.E.2d 787, 793 (Ct.App.1999); see also *State v. Williams*,

321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) (instructing that error in admission of evidence is harmless where it is cumulative to other evidence which is properly admitted).

As with any improper evidence, the next step is to determine whether the erroneous admission qualifies as a harmless error. *See In re Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) ("No definite rule of law governs this finding [of harmless error]; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." (quoting *Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009))). We do not weigh the evidence when determining this. Instead, we ask "whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012).

The trial court's admission of these shocking acts allegedly committed by appellant were not "insubstantial error[s] not affecting the result" of trial but rather were *critical* errors which certainly affected the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Moreover, because the objection was preserved as to both the testimony and the forensic interviews the evidence was not cumulative to other evidence. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The state's case against appellant was far from compelling where beyond the two minor testimonies it presented, one normal physical exam and one exam with with injury explaining that both could be consistent nor not consistent with sexual trauma, and Lacy's dubious and self-serving testimony. This disturbing and improper evidence contributed to the guilty verdict. *Matter of Bilton*, 432 S.C. 157, 581 S.E.2d 442 (2020).



Sarah E. Shipe
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ATTORNEY FOR PETITIONER

This 19th day of December, 2024.

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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 Petition for Rehearing in the above-referenced case has been served upon J. Ben Aplin, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Bradley Mark Corlew, #385931, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of December, 2024.

Sarah E. Shipe
Appellate Defender

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PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

From:	Warren, Kaylynn
To:	Ben Aplin
Cc:	Shipe, Sarah; Susan Spencer
Subject:	2021-000989 The State v. Bradley Mark Corlew
Date:	Thursday, December 19, 2024 9:15:00 AM
Attachments:	2021-000989 The State v. Bradley Mark Corlew Petition for Rehearing.pdf

Good Morning,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today, December 19, 2024, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330