

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Pickens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case Tracking No. 2023-000641
Opinion No. 28246

State of South Carolina,

Respondent,

vs.

Brandon Jerome Clark,

Petitioner.

PETITION FOR REHEARING

On December 18, 2024, this Court issued a published opinion through which it reversed and remanded Petitioner Brandon Jerome Clark's conviction for first degree criminal sexual conduct with a minor upon finding the trial court erred by restricting Petitioner's cross examination of the forensic interviewer concerning the techniques she employed in her interview. Pursuant to Rule 221(a), SCACR, the State respectfully petitions for rehearing because even if the trial court did err in preventing Petitioner from questioning the forensic interviewer, the information sought through the questioning was still presented to the jury and therefore could not have prejudiced Petitioner under the specific circumstances involved.

This Court found that the Court of Appeals and trial court misapplied Kromah and Anderson, that Kromah and Anderson do not set forth a blanket prohibition on all parties of all testimony from forensic interviewer regarding the techniques employed, but on the State from eliciting such direct testimony. Based on that determination, this Court concluded the trial judge

erred by limiting the cross examination in Petitioner's case. Importantly, more than error is necessary to warrant reversal on appeal. State v. Byers, 392 S.C. 438, 447-448, 710 S.E.2d 55, 60 (2011). Instead, there must be error and prejudice such that any error is not harmless. It is important to note that the forensic interviewer was a collateral witness to the case and did not have any independent knowledge about what happened or whether the victim was telling the truth. The purpose of her testimony was to lay the foundation for the forensic interview to be admitted. Prohibiting her broad testimony to techniques used in conducting the forensic interview is a much different situation than admitting testimony from a witness who has direct knowledge of the crime. This case likewise differs from Anderson and Kromah because, unlike those cases, this case did not involve the admission of something improper that should not have been in front of the jury but, instead involved a situation where a trial judge was overly cautious in what did go in front of the jury.

In this specific case, preventing the cross examination of the forensic interviewer did not prejudice Petitioner. Accordingly, based on the circumstances involved this Court should grant rehearing, conduct a harmless error analysis, and ultimately affirm due to the harmlessness of the error that occurred here.

Specifically, just because Petitioner was prohibited from cross-examining Cheney in his desired manner does not mean Petitioner was unable to attack the evidence concerning the interview or raise the points he wished to raise in front of the jury. Indeed, despite the Petitioner's limitations placed on cross examination was able to cross examine the forensic interviewer about how she was supposed to conduct a neutral and unbiased interview of the child and elicited that she worked for a child advocacy center. She was also asked "the best way to give an unbiased interview is not to have any prior knowledge from a bunch of outside sources" and pointed out all

of the sources the forensic interviewer spoke to before speaking with the child. While not the forensic interviewer, Petitioner was also able to cross examine the State's expert witness regarding the techniques used in the forensic interviewer. Further, in Petitioner's closing argument, trial counsel was free to (and did) go into great detail about the suggestiveness, paraphrasing, and the techniques used by the forensic interviewer in great detail. Most importantly, the jury was able to review the forensic interview itself and draw their own conclusions from the recording. Therefore, this petition for rehearing should be granted, a harmless error analysis should be conducted, and Petitioner's conviction should ultimately be affirmed.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant this petition for rehearing, conduct a harmless error analysis, and therefore affirm Petitioner's convictions

Respectfully submitted,

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