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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE LEXINGTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE WALTON J. MCLEOD, IV, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-001746

In the Matter of the Care and Treatment of Phillip B. Nix,

Appellant

INITIAL APPELLANT'S BRIEF

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STATEMENT OF ISSUES

- I. Did the court err by allowing the State's forensic expert in a sexually violent predator trial to testify to explicit hearsay details from investigations conducted during previous sexually violent convictions, when the probative value of those details was substantially outweighed by their unfairly prejudicial impact?

STATEMENT OF THE CASE

This matter concerns a civil commitment proceeding initiated by the State of South Carolina under the Sexually Violent Predator (SVP) Act against Mr. Phillip Byron Nix. On March 11, 2013, Mr. Nix was convicted in Lexington County of two sexually violent offenses: Criminal Sexual Conduct with a Minor, Second Degree, and Sexual Exploitation of a Minor, Third Degree. Following his convictions, he was placed under community supervision. That supervision was revoked in March 2022. (TT p. 93, ll. 16-23, State's Exhibits 1-2).

On July 25, 2022, the State filed a petition seeking to determine whether Mr. Nix met the statutory definition of a sexually violent predator under South Carolina law. The circuit court found probable cause and ordered Mr. Nix to undergo a full psychological evaluation. He complied and the matter was set for trial.

Beginning on August 12, 2024, a jury trial took place in the Lexington Court of Common Pleas. The Honorable Walton J. McLeod, IV presided. Mr. Nix was represented by Kindle Kay Johnson of K. Johnson Law Firm and the State was represented by Christopher Runyan of the South Carolina Attorney General's Office. During the trial, the State presented evidence to establish that Mr. Nix met the legal definition of a sexually violent predator. (TT p. 1.)

On August 13, 2024, following deliberation, the jury found beyond a reasonable doubt that Mr. Nix met the legal criteria to be designated a sexually violent predator. Based on the jury's verdict, the court issued an order committing Mr. Nix to a secure treatment facility. (TT p. 332, l. 2-p. 333, l. 13.)

After the trial, counsel for Nix filed a timely Motion to Set Aside Verdict and Grant a New Trial. The court denied the Motion by Order filed October 1, 2024.

This appeal follows.

STANDARD OF REVIEW

Matters of the jury, much like the admission of evidence, are within the sound discretion of the trial court, and its ruling will not be reversed absent an abuse of discretion. State v. Spann, 279 S.C. 399, 402, 308 S.E.2d 518, 520 (1983); State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023); In the Matter of Ettel, 377 S.C. 558, 561, 660 S.E.2d 285, 287 (Ct. App. 2008) (citing In the Matter of Corley, 353 S.C. 202, 205, 577 S.E.2d 451, 453 (2003)). Such discretion is subject to review where it is wholly unsupported by the evidence (Spann at 402, 308 S.E.2d 518, 520 (1983)). Otherwise, the court's rulings will be affirmed.

STATEMENT OF FACTS

This matter concerns a civil commitment proceeding initiated by the State of South Carolina under the Sexually Violent Predator (SVP) Act against Mr. Phillip Byron Nix. On March 11,

Mr. Phillip Nix was the subject of a Petition Pursuant to the Sexually Violent Predator Act (S.C. Code Ann. Sections 44-48-10, et seq.), filed against him on July 25, 2022 in Lexington County, South Carolina. From August 12, 2024 to August 13, 2024, a jury trial was held in the Lexington County Court of Common Pleas. The Honorable Walton J. McLeod, IV presided. The State was represented by Christopher Runyan of the South Carolina Attorney General's Office and Mr. Nix was represented by Kindle Kay Johnson of K. Johnson Law Firm. Four witnesses testified: Dr. Emily Gottfried and Chris Catoe testified for the State and Dr. Christopher Gillen and S.G. testified for the defense.

The record shows that Mr. Nix had two qualifying sexually violent predator convictions that occurred 2013: Criminal Sexual Conduct with a Minor, Second Degree, and Sexual Exploitation of a Minor, Third Degree. Three minor females were named as victims of Mr. Nix's sexually violent offenses, including S.G., his twelve-year-old daughter.

S.G., who is now an adult, was also a subject of Mr. Nix's 2022 community supervision revocation after eight nude images of S.G. showering with her two-year-old daughter were found on Mr. Nix's phone. Mr. Nix's community supervision was revoked shortly thereafter. (TT p. 155, l. 11- p. 156, l. 25.)

The State's first witness was Dr. Emily Gottfried, Ph.D., clinical forensic psychologist and Director of the of the Sexual Behaviors Clinic and Lab in the Community and Public Safety Psychiatry Division of the Medical University of South Carolina. Dr. Gottfried was retained by

the State to perform an independent sexually violent predator evaluation of Mr. Nix. (TT p. 54, ll. 8-14). During the trial, she was qualified as an expert witness. (TT p. 53, ll. 13-25.) Dr. Gottfried diagnosed Mr. Nix with antisocial personality disorder and cocaine use disorder. (TT p. 106, ll. 18-20) (TT p. 110, ll.13-14). She opined that Mr. Nix met “the statutory criteria for being a sexually violent offender.” (TT p. 54, ll. 12-14; p. 123, ll. 6-17.)

The State’s second witness was Chris Catoe, a forensic analyst from the South Carolina Department of Probation, Pardon and Parole. Mr. Catoe was involved in Mr. Nix’s community supervision revocation because he extracted the nude images of S.G. and her daughter from Mr. Nix’s phone. He documented the photos in his Celebrite Extraction Report dated January 27, 2022. (TT p. 153, ll. 10-13.) Mr. Catoe testified as to the contents of the report and described the photos, which he admitted did not depict sex acts (TT p. 146, ll. 12-25; TT p. 156, l. 14 - p. 157, l. 25.) (TT p. 159, l. 1 - p. 160, l. 5.) Mr. Catoe’s redacted Cellebrite Extraction Report was admitted into evidence without objection. (TT p. 151, ll. 11-17.) The State then rested and the Defense moved for directed verdict, which the court denied.

For the defense, two witnesses testified. The first witness was Dr. Christopher Gillen who was court appointed to conduct Mr. Nix’s initial pre-commitment evaluation and was qualified as an expert at the trial. Dr. Gillen initially diagnosed Mr. Nix with antisocial personality disorder and concluded that he met the criteria of a sexually violent predator. However, Dr. Gillen changed his opinion in 2023 when the legal definition of “Likely to engage in acts of sexual violence” changed. S.C. Code § 44-48-30(9) (Supp. 2023). He issued a new report in June 2023, opining that Mr. Nix no longer met that standard to be considered a sexually violent predator. (TT p. 173, l. 3 - p. 182, l. 14; p. 223, ll. 17-21.) Dr. Gillen did not change his antisocial personality disorder diagnosis of Nix. (TT p. 201, ll. 12-20; p. 203, ll. 11-18; p. 232, ll. 3-19.)

The defense's final witness was S.G., Mr. Nix's adult daughter and the named victim in his sexually violent convictions. She denied that the nude images found on Mr. Nix's phone depicting her and her young daughter were sexual. (TT p. 273, l. 7 - p. 276, l. 19; p. 280, ll. 9-24; p. 282, l. 18 - p. 283, l. 11.) She also confirmed that she did not fear for her, or her daughter's safety, if Mr. Nix were to be released. She stated that Mr. Nix had "never ever... sexually assaulted [her]." She attempted to testify about her efforts to pursue Mr. Nix's legal exoneration, but the State's objection was sustained. (TT p. 271, ll. 7-24; p. 281, l. 10-p. 282, l. 1.)

The defense then rested and moved for directed verdict. The court again denied the motion and the case was submitted to the jury. After deliberation, the jury found that the State had met its burden of proof, and Mr. Nix was deemed a sexually violent predator, and he was committed to a secure treatment facility (p. 331).

ARGUMENT

I. DID THE COURT ERR BY ALLOWING THE STATE’S FORENSIC EXPERT IN A SEXUALLY VIOLENT PREDATOR TRIAL TO TESTIFY TO EXPLICIT HEARSAY DETAILS FROM INVESTIGATIONS CONDUCTED DURING PREVIOUS SEXUALLY VIOLENT CONVICTIONS, WHEN THE PROBATIVE VALUE OF THOSE DETAILS WAS SUBSTANTIALLY OUTWEIGHED BY THEIR UNFAIRLY PREJUDICIAL IMPACT?

A. Relevant Facts

This case involves the sexually violent predator civil commitment proceedings against Mr. Phillip Nix, pursuant to S.C. Code § 44-48-10 *et. seq.* During the trial, the State relied on expert testimony from Dr. Emily Gottfried to support its position that Mr. Nix met the criteria for designation as a sexually violent predator under the South Carolina Sexually Violent Predator Act. Dr. Gottfried’s testimony was based on her review of records, forensic interviews, and a clinical evaluation of Mr. Nix. She testified extensively about Mr. Nix’s prior convictions for Criminal Sexual Conduct with a Minor and Sexual Exploitation of a Minor.

During her testimony, Dr. Gottfried went into detail about the hearsay allegations involving Mr. Nix and his daughter, S.G., who was a named victim in his criminal convictions. Dr. Gottfried acknowledged that Mr. Nix denied having sexual contact “with any of his children.” (TT p. 77, l. 24- p. 78, l. 2.) However, she still recounted statements attributed to S.G. that included descriptions of repeated sexual intercourse, physical pain such as bleeding and soreness, and highly inappropriate remarks Mr. Nix allegedly made to S.G. The statements were taken from unidentified “documents” and a prior forensic interview.

Dr. Gottfried testified that, according to the documents, S.G. claimed the abuse began shortly after Mr. Nix was released from incarceration, occurred almost daily, and took place while other people were present in the home.

The documents indicated that the 12-year-old daughter [S.G.] said that [Nix] had been raping her for several months, having full intercourse with her. The documents suggested that the victim told one of her family members that Mr. Phillip Nix told her that she made it really easy for him to become aroused or have an erection because she was so beautiful.

(TT p. 75, ll. 1-3; p. 75, l. 20 - p. 76, l. 19.)

Dr. Gottfried also spoke of S.G.'s previous forensic interview.

[S.G.] noted that [Nix] had gotten out of some incarcerated setting about three weeks before he began touching her. So he got out, he moved in with them, her and her sisters and her mother, and then three weeks later he began touching her. She said that this would happen almost every day. That she would be bleeding and she would be sore. She said that she was eleven years old when her dad moved in. She made a lot of statements that were -- within this forensic interview of things that he reportedly said to her such as you should not be able to make me hard.

(TT p. 76, ll. 8-19.)

Following an objection and bench conference, the court cautioned the State to limit the graphic testimony. Despite this guidance, Dr. Gottfried continued to reference explicit details and asserted that they informed her opinion that Mr. Nix lacked control over his behavior and posed a risk of future sexual violence.

To me it demonstrates that [Mr. Nix] cannot control his behavior. So he offended against the victim shortly after going to live with them, almost immediately, three weeks later. He offended in situations that had a really high likelihood of him getting caught, which also suggests that he had problems controlling his behavior. So he offended against people who could readily identify him because she was related to him. He abused her within the home while other people were reportedly present and he reportedly offended against

her nearly every day despite her reportedly being bleeding, sore, being distressed by it.

(TT p. 76, ll. 5-19.)

After Dr. Gottfried testified about inappropriate photos found on Nix's phone by the victims' mother, defense counsel again objected pursuant to Rule 403. (TT p. 78, l. 1 - p. 79, l. 1.) The court ruled the testimony admissible as part of Dr. Gottfried's case record, but expressed concern about the level of details being elicited. The court cautioned the State to present Dr. Gottfried's testimony in a more general and limited manner.

[W]hen we talk about having sex with your daughter, that in itself is somewhat inflammatory, but it's part of the case; however, just detail after detail after detail, which is why after Ms. Johnson's objection I said let's keep it a little bit more general because I recognize that that was in the record, but, you know, you have a high burden and we need to allow you to meet your burden, but we also -- we don't need to slam the burden either.... I think I've allowed you to meet your burden of proof... Ms. Johnson has made an objection under Rule 403 that all of this type of evidence we're talking about from the expert on the phone, from records [Dr. Gottfried] saw that were probation records, as well as her one on one interview, that the danger of unfair prejudice outweighs its probative value, I'll deny the objection, I find that it's admissible, but I hope I've been somewhat clear that I would like that testimony somewhat streamlined without -- to limit specific details. The fact that it was there and who was there is enough.... I think we're making the best effort we can to try to get the necessary appropriate information there without getting too much.

(TT p. 89, l. 10 - p. 92, l. 5.)

B. Hearsay Testimony by an Expert

Under Rule 703 of the South Carolina Rules of Evidence, an expert may rely on hearsay if it is the type of information reasonably relied upon by experts in the field. However, the rule does not permit the hearsay itself to be admitted into evidence unless it falls within an established

exception. In SVP proceedings in particular, South Carolina courts have cautioned that “due process does not allow an expert to serve as a ‘conduit’ for hearsay without some baseline showing that the hearsay is reliable.” Matter of Bilton, 432 S.C. 157, 166, 851 S.E.2d 442, 446 (Ct. App. 2020).

In this case, Dr. Gottfried went beyond what Rule 703 allows. Instead of briefly explaining the materials that informed her evaluation, she recited detailed out-of-court statements to the jury. These statements were not introduced through witnesses, were not tested through cross-examination, and were presented under the justification that they contributed to her clinical opinion. Although these statements were gathered during an investigation that led to Mr. Nix’s conviction, that alone does not establish that every detail recounted was accurate, credible, or truthful. The jury was invited to accept those statements as fact, without the safeguards required by the rules of evidence. As such, by introducing the statements, Dr. Gottfried became a conduit for hearsay, placing unchecked emotionally charged and detailed graphic allegations of sexual abuse before the jury.

C. Relevance and Prejudicial vs. Probative

Under Rule 402, SCRE, evidence must be relevant to be admissible. Relevance is defined as evidence that has any tendency to make a fact more or less probable. Rule 401, SCRE. Even if evidence is relevant, Rule 403, SCRE permits its exclusion when the danger of unfair prejudice substantially outweighs the probative value.

In this case, Dr. Gottfried’s testimony was superfluous and the danger of unfair prejudice was substantial. Mr. Nix’s qualifying convictions were already established and undisputed. Therefore, the explicit content of Dr. Gottfried’s testimony had limited probative value. For

example, Dr. Gottfried repeated deeply disturbing statements allegedly made by Mr. Nix to his own daughter that included references to sexual arousal and physical trauma like bleeding. These details were not reasonably necessary for clinical assessment, and even if they had some relevance to Dr. Gottfried's evaluation, they were neither appropriate nor necessary to present to the jury for a verdict.

Admittedly, the trial court was watchful and expressed concern about the graphic content; however, in the end, the court allowed the statements to be introduced anyway. As such, the jury received testimony that only served to inflame and unfairly influence its decision, which was solely whether Mr. Nix suffers from a mental abnormality that makes him likely to commit future acts of sexual violence. The probative value simply does not outweigh the unfair prejudice.

South Carolina courts have allowed details about previous criminal offenses to be introduced to a jury. For example, the South Carolina Supreme Court upheld a ruling that permitted the introduction of a detailed indictments from an appellant's convictions, even though the appellant was willing to stipulate to the offenses. See In re Corley, 353 S.C. 202, 206, 577 S.E.2d 451, 453 (2003). However, this case is different because Dr. Gottfried's testimony went into graphic detailed hearsay beyond formal court indictments.

In contrast, in State v. Nelson, the South Carolina Supreme Court reversed a criminal conviction due to the admission of autopsy photographs that were not needed to establish elements of the crime; the photos had minimal probative value and high potential for "inflamed emotions." State v. Nelson, 440 S.C. 413, 426, 891 S.E.2d 508, 514 (2023). Similarly in this case, Dr. Gottfried's descriptions of the victim's physical suffering were not necessary to prove any contested issue, instead unfairly influencing and inflaming the jury.

Ultimately, the admission of Dr. Gottfried's extensive and graphic hearsay testimony was inconsistent with the South Carolina Rules of Evidence and contrary to South Carolina law. Her repetition of disturbing statements created a substantial risk of unfair prejudice that outweighed any limited probative value. The error was not harmless because it undermined the very fairness of the trial. As such, the evidence should have been excluded and exceptional circumstances exist that justify reversal.

CONCLUSION

For the foregoing reasons, Appellant Phillip Nix respectfully requests that this Court reverse his commitment and order his release, or remand the case for a new trial.

Respectfully Submitted,

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