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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE HORRY COUNTY
COURT OF COMMON PLEAS

THE HONORABLE WILLIAM SEALS, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-002044

In the Matter of the Care and Treatment of Paul Shuler II,

Appellant

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES

- I. The trial court committed abuse of discretion by allowing extensive testimony and references to Appellant's prior sexual offenses that did not result in a conviction because prejudicial impact of the evidence substantially outweighed any probative value under Rule 403, SCRE.

STATEMENT OF THE CASE

This matter concerns a civil commitment proceeding initiated by the State of South Carolina against Mr. Paul Shuler, II pursuant to S.C. Code § 44-48-10, et seq. of the South Carolina Sexually Violent Predator Act. In 2016, Mr. Shuler pleaded guilty to two sexually violent offenses pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), which were served concurrently: Criminal Sexual Conduct of the First Degree and Criminal Sexual Conduct with a Minor of the Second Degree.

On or about August 7, 2023, the State filed a petition seeking to commit Mr. Shuler as a sexually violent predator. The circuit court found probable cause and ordered Mr. Shuler to undergo a full psychological evaluation. He complied and the matter was set for trial.

Beginning on November 18, 2024, a jury trial took place in the Horry Court of Common Pleas. The Honorable William Seals presided. Mr. Shuler was represented by Kindle Kay Johnson of K. Johnson Law Firm and the State was represented by James Fisher of the South Carolina Attorney General's Office ("State"). (TT p. 1.)

On November 19, 2024, after both sides presented testimony and rested their respective cases, the jury unanimously found beyond a reasonable doubt that Respondent is a sexually violent predator. Based upon the jury's verdict, the court issued an order committing Respondent to a secure treatment facility. (TT p. 275, l. 6— p. 299, l. 19.)

This appeal follows.

STANDARD OF REVIEW

The admission of evidence is within the sound discretion of the trial court, and its ruling will not be reversed absent an abuse of discretion. 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, otherwise, the court's rulings will be affirmed.

ARGUMENT

- The trial court committed abuse of discretion by allowing extensive testimony and references to Appellant's prior sexual offenses that did not result in a conviction because prejudicial impact of the evidence substantially outweighed any probative value under Rule 403, SCRE.**

In this appeal, Appellant Paul Shuler II contends that the trial court erred in allowing the State to introduce and rely on evidence of his prior 2014 sexual offense charges that never resulted in conviction.

Relevant Facts

Before the trial in this case began, the defense moved to limit hearsay testimony related to Mr. Shuler's prior criminal charges that had not led to conviction. The court deferred ruling and chose to address the issue when the testimony arose during trial. (TT p. 32, l. 19—p. 33, l. 25.)

During the trial, the State repeatedly elicited testimony and made statements regarding Mr. Shuler's criminal charges from a 2014 incident, even though the charges had been dismissed. The State first questioned its expert witness Dr. Christopher Gillen, psychologist for the South Carolina Department of Mental Health Forensic Evaluation Service. Dr. Gillen conducted an evaluation of Mr. Shuler and reviewed his records as part of the evaluation. Dr. Gillen had no first-hand knowledge of the incident, but identified the 2014 incident as a significant data point in his risk assessment. He testified in detail about the allegations. (TT p. 57, l. 10— p. 64, l. 12; p. 84, l. 13—p. 85, l. 5; p. 91, ll. 15—17; p. 131, ll. 6—15; p. 93, l. 21—p. 94, l. 1; p. 139, ll. 22—25; p. 64, l. 17—p. 65; p. l. 19.)

According to Dr. Gillen, records showed that on May, 23, 2014, a 13-year-old female friend of Mr. Shuler's son alleged he gave her alcohol and a pill believed to be codeine. She also claimed

Mr. Shuler offered her money to expose herself and touched her breast over her clothing. As a result, Mr. Shuler was charged with Criminal Sexual Conduct with a Minor in the Third Degree and Contributing to the Delinquency of a Minor. Dr. Gillen confirmed that Mr. Shuler was not convicted of either charge. (TT p. 90, l. 25 — p. 94, l. 17; p. 128, l. 18— p. 129, l. 10, p. 209, ll. 5—7; p. 128, ll. 19—24.)

According to Dr. Gillen, Mr. Shuler denied any sexual conduct with the victim; however, Mr. Shuler admitted to providing the girl with alcohol as compensation for cleaning work she had done at his house. Dr. Gillen emphasized that Mr. Shuler’s conduct was clinically concerning due to the victim’s young age and Mr. Shuler’s decision to engage in risky behavior while out on bond for a prior sexual offense. Dr. Gillen believed that such actions indicated Mr. Shuler was, “not able to manage himself and get out of high-risk environments that are related to prior sex offenses.” (TT p. 93, l. 21—p. 94, l. 1; p. 90, l. 25 — p. 94, l. 17.)

The trial court admitted Dr. Gillen’s detailed testimony over repeated objections from Mr. Shuler’s counsel, reasoning that Dr. Gillen relied on the information in forming his opinion of whether Mr. Shuler has a mental abnormality or personality disorder that makes him likely to commit acts of violence if not confined for long-term care and treatment. (TT p. 91, l. 18—p. 95, l. 17; p. 90, l. 25—p. 92, l. 21; p. 93, ll. 12-14; p. 128, ll. 19—24.)

Dr. Gillen then testified that Mr. Shuler met the criteria to be considered a sexually violent predator. He diagnosed Mr. Shuler with other specified personality disorder with antisocial and narcissistic features and opined that, based on his assessment, Mr. Shuler was likely to commit acts of sexual violence. (TT p. 105, ll. 13-19; p. 124, ll. 10-13.)

After Dr. Gillen’s testimony, the State continued to make statements and elicit testimony about Mr. Shuler’s 2014 charges. During cross-examination of Mr. Shuler’s mother Mary Ann

Kim Wu, the State’s attorney asked Ms. Wu if Mr. Shuler, “was on pretrial release for raping K.A. and for raping the 13-year-old.” He also asked Ms. Wu if “in May of 2014, [Mr. Shuler] raped a 13-year-old.” (TT p. 171, l. 21.) This prompted Ms. Wu to provide more damaging testimony about the incident, “I had told [Mr. Shuler] I didn't like him -- the closeness that he had to the mother and the kids because he was trying to help the kids” and that Mr. Shuler, “always turned himself in when they [the police] said that it was a case against him.” Again, Mr. Shuler’s counsel objected, arguing the evidence did not show Mr. Shuler had been convicted of the 2014 charges. The court overruled the objection. (TT p. 171, l. 21— p. 172, l. 25; p. 172, ll. 21—25.)

Notably, during the trial, Mr. Shuler testified on his own behalf and voluntarily admitted, with knowledge and despite advice of counsel, that he made sexual advances towards the victim. However, his admission came only after the State had discussed the 2014 allegations extensively through multiple witnesses. As Mr. Shuler testified, “I did offer the girl \$20 to touch her breasts. She declined.” He explained that he felt obligated to be honest with the court, the victim, and his family. He also expressed remorse for the impact that his actions might have had on the victim’s development. (TT p. 209, l. 5— p. 210, l. 11; p. 210, l. 11— p. 213, l. 19.)

Ultimately, after hearing the evidence, including repeated references to the 2014 incident, the jury found beyond a reasonable doubt that Mr. Shuler is a sexually violent predator. (ROA p. 275, ll. 1—17.)

Analysis

Mr. Shuler argues that the trial court abused its discretion by permitting the State to present detailed testimony about his 2014 sexual offense charges that had not culminated in convictions. The repeated introduction of the dismissed charges through expert testimony, cross-examination, and argument created a substantial risk of unfair prejudice that outweighed its probative value.

This violated Rule 403, SCRE, which dictates that evidence be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

South Carolina courts have recognized that in sexually violent predator proceedings, prior conduct, including both convictions and dismissed charges, may be relevant and thus admissible when used to support an expert's evaluation and diagnosis. In *In the Matter of Ettel*, 377 S.C. 558, 561, 660 S.E.2d 285, 287 (Ct. App. 2008), this Court upheld the admission of an expert's testimony that referenced unconvicted sexual offenses and a prior murder conviction, finding that such conduct was properly considered in forming a clinical opinion about the individual's mental abnormality and likelihood of reoffending. The Court in *Ettel* emphasized that an expert may consider prior acts that have not resulted in convictions, so long as the prior acts were used to inform a professional assessment of risk and diagnosis. The Court further concluded that the testimony was admissible because it was one of multiple sources informing the expert's diagnosis and did not substantially outweigh its probative value under Rule 403, SCRE. *Ettel at ,In the Matter of Ettel*, 377 S.C. 558, 561, 660 S.E.2d 285, 287 (Ct. App. 2008).

The evidence in this case went beyond the narrow purpose permitted in *Ettel* and created a significant risk of unfair prejudice under Rule 403. Here, Mr. Shuler was prejudiced because Dr. Gillen went past testifying that he considered the 2014 incident in forming Mr. Shuler's diagnosis, and discussed the allegations in detail as if they were factual. (TT p. 90, l. 25 — p. 94, l. 17). That prejudice was compounded by the fact that the incident was also presented through lay testimony and during inflammatory closing arguments. For example, the State emphasized the 2014 incident as factual during its cross-examination of Mr. Shuler's mother, directly asking whether Mr. Shuler had "raped a 13-year-old" and whether he was "on pretrial release for raping K.A. and for raping the 13-year-old." (TT p. 171, l. 21 — p. 172, l. 25; p. 240, l. 6—p. 241, l. 1.) These questions,

presented as factually loaded assertions, went far beyond clarifying the basis of the expert's opinion. As such, the trial court should have excluded the evidence under Rule 403 or, at minimum, limited it to the evaluator's clinical use, rather than allowing it to become a central part of the State's case.

Admittedly, during his testimony Mr. Shuler acknowledged making sexual advances towards the victim in the 2014 incident. (TT p. 209, l. 5— p. 210, l. 11; p. 210, l. 11— p. 213, l. 19.) However, Mr. Shuler's admission does not cure the trial court's error because admissibility must be assessed at the moment evidence is offered, not after the fact. Mr. Shuler's acknowledgment came only after the State had introduced the incident multiple times through expert testimony and cross-examination, treating the details of the dismissed charges as though they were factual. By the time Mr. Shuler testified, the fairness of the trial had already been compromised and the jury had already been tainted. The prejudice from that exposure could not be undone.

Ultimately, the trial court's decision to admit extensive evidence of Mr. Shuler's 2014 charges violated Rule 403 of the South Carolina Rules of Evidence, as well as the guidelines in *Ettel*. This error was not harmless. It tainted the fairness of the proceeding. As such, Mr. Shuler's commitment warrants reversal and remanding for a new trial.

CONCLUSION

The trial court committed abuse of discretion by allowing the State to introduce evidence of Mr. Shuler's 2014 sexual charges which had not resulted in conviction, in violation of Rule 403, SCRE, and the limits recognized in *Ettel*. The State's emphasis on the dismissed charges created a prejudicial trial atmosphere that compelled Mr. Shuler to respond on the stand, ultimately

leading to an admission made under tainted circumstances. The court should have excluded the details entirely or limited their use to the expert's evaluation to preserve fairness and comply with evidentiary standards. For the foregoing reasons, Appellant respectfully requests that this Court reverse his commitment order and remand the case for a new trial.

Respectfully Submitted,

s/Kindle K. Johnson

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