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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Orangeburg County
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL DEANGLO CORBITT,

PETITIONER

Opinion No. 2025-UP-235 (S.C. Ct. App. Filed July 16, 2025)

APPELLATE CASE NO. 2022-000361

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued in this case on July 16, 2025, a petition for rehearing was filed on July 31, 2025, which was denied by the South Carolina Court of Appeals on August 20, 2025.

QUESTION PRESENTED

Did The Court of Appeals err in holding that the time and place violation that arose from the attending nurse's testimony at trial was in effect cured and admissible under the medical diagnosis exception as a hearsay exemption because said testimony contained non-medical details of the crimes (including a summary of face punching, head hair and arm pulling and the attempt to escape) that constituted improper testimony prohibited under Rule 801(d)(1), SCRE, and Rule 803(4), SCRE?

STATEMENT OF THE CASE

On July 14, 2021, an Orangeburg County grand jury indicted Petitioner on four different offenses: carjacking, criminal sexual conduct in the first degree, assault and battery in the first degree, and kidnapping. Represented by Jason Turnblad and Breen Stevens, Petitioner proceeded to trial before the Honorable Clifton Newman on March 7, 2022. Catherine M. Hunter and W. Phillip Giese appeared on behalf of the state.

After a three-day trial, the jury found Petitioner guilty as indicted. Judge Newman sentenced Petitioner to sixteen years on the criminal sexual conduct, kidnapping, and carjacking offenses, concurrent, and ten years on the assault and battery charge.

Petitioner appealed, but on July 16, 2025, his convictions and sentences were affirmed by the South Carolina Court of Appeals. See State v. Michael Deangelo Corbitt, Unpublished Opinion No. 2025-UP-235 (S.C. Ct. App. Filed July 16, 2025). A petition for rehearing was filed on July 31, 2025, and on August 20, 2025, the petition was denied by the South Carolina Court of Appeals. Petitioner appeals the decision of the South Carolina Court of Appeals in the case. This petition follows.

ARGUMENT

The Court of Appeals erred in holding that the time and place violation that arose from the attending nurse's testimony at trial was in effect cured and admissible under the medical diagnosis exception as a hearsay exemption because said testimony contained non-medical details of the crimes (including a summary of face punching, head hair and arm pulling and the attempt to escape) that constituted improper testimony prohibited under Rule 801(d)(1), SCRE, and Rule 803(4), SCRE.

Petitioner was convicted of carjacking, kidnapping, first degree criminal sexual conduct, and first degree assault and battery in the case. At trial, the nurse testimony in question exceeded the time and place parameters regarding corroborative statements in sexual assault cases, which this Court found to be an error that was subsequently cured and nonetheless admissible at trial via the medical diagnosis exception to the hearsay rule. However, the record does not support this Court's ruling that the time and place violation was cured by the medical treatment exception because the physical details of the assault and attempted escape that were included in said testimony bore no relevance or connection to the actual sexual encounter and the medical response that followed in the case.

At trial, the state alleged that on September 23, 2018, Petitioner was in the car with Keandra Nickens when he assaulted and kidnapped her. R. 48, l. 24 – R. 49, l. 2. Nickens was dating Petitioner and Johnny Brown at the time. R. 49, l. 3 – R. 50, l. 12. Nickens and Petitioner went to eat that morning at the Sonic in Orangeburg, South Carolina. R. 51, ll. 3 – 24.

Nickens testified that on the way back to Petitioner's house, while Petitioner was driving, he hit her "out of the blue." R. 53, ll. 16 – 22. After striking her, he allegedly grabbed her by the

hair for the remainder of the drive. R. 54, ll. 2 – 10. Instead of driving to his mother’s house, Petitioner drove down a side road. R. 54, ll. 11 – 24.

Nickens claimed Petitioner resumed hitting her and began with verbal threats as well. R. 56, l. 4 – R. 57, l. 4. He then sexually assaulted her, according to her testimony. Id. She managed to get away, and Petitioner leapt onto the hood of the car as Nickens drove off. R. 58, l. 5 – R. 59, l. 23. A struggle ensued until two passersby stopped in a truck; Petitioner then drove off. R. 60, l. 16 – R. 64, l. 20.

Nickens was treated at the hospital and seen by a sexual assault nurse. R. 71, l. 17 – R. 73, l. 22. The nurse, Cadey Keigans, was called by the state during its case-in-chief. The assistant solicitor asked the expert witness who did not witness the alleged altercation to “explain to the jury how the assault occurred.” R. 143, ll. 19 – 20. Defense counsel immediately objected on a hearsay basis. R. 143, ll. 21 – 22. The state suggested that the expert’s testimony could fall under Rule 803(4), SCRE. R. 144, ll. 18 – 19. In response, defense counsel articulated how Rule 801(d)(1) placed a limitation on this type of testimony. R. 145, ll. 11 – 21. Counsel specifically argued:

Your Honor, and I just wanted to point out in my argument just that it’s limited. I’m not saying that it isn’t necessarily hearsay, I’m saying under 801(d)(1), **it’s limited to the time and place of the incident, no more.** Looking at the last part of (d)(1)(d).

R. 146, ll. 19 – 25 (emphasis added).

The trial judge overruled defense counsel’s objection and allowed the testimony. R. 147, l. 6. Keigans was then asked by the state to “tell the jury about how ... [Nickens] described how she was assaulted and how that’s pertinent to your medical exam?” R. 147, ll. 11 – 14. Her response exceeded the limited scope of the South Carolina Rules of Evidence and was unrelated to the state’s relied-upon exception:

Sure. Ms. Nickens described to me that she was in a vehicle when she was initially physically assaulted by being punched in the face and having her hair pulled. Then after she was driven to a wooded area, she was pulled out of the vehicle where she was sexually assaulted when the alleged assailant penetrated her vagina with his fingers and then followed with his penis.

She was pulled back into the vehicle by her hair and her arm. And she was continued to be physically assaulted until they came to a gas station. And [at] that point she was able to get into the driver's seat to attempt to drive away.

R. 147, l. 15 – R. 148, l. 2.

Following the above testimony, the trial judge interjected and pointed out how the information pertained to medical treatment. R. 148, ll. 3 – 5. Nonetheless, the state questioned Keigans about the assault and Nivens' physical appearance and demeanor. R. 148, ll. 19 – R. 150, l. 5.

On appeal, the following issue was presented to the Court:

The trial judge erred in allowing an expert witness to testify beyond the scope of Rule 801(d)(1), SCRE, in a criminal sexual conduct case, where the witness exceeded the lawful bounds of the rule and told the jury in appellant's case about much more than time and place of the incident.

This Court held as follows on the issue on appeal.

We hold the trial court did not abuse its discretion by admitting the witness's testimony. *See State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); *id.* at 429-30, 632 S.E.2d at 848 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."). The witness, a nurse who examined the victim, testified to statements made by the victim that detailed the time and place of the assaults; these statements were not hearsay pursuant to Rule 801(d)(1)(D). *See* Rule 801(d)(1)(D), SCRE ("A statement is not hearsay if . . . [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident."). Although the witness testified to statements made by the victim that went beyond the time and place of the assaults, this information was necessary for the witness to perform a sexual assault exam and diagnose and treat the victim's injuries. Thus, this testimony was admissible as an exception to hearsay

under Rule 803(4) of the South Carolina Rules of Evidence for the purpose of medical diagnosis or treatment. *See State v. Simmons*, 423 S.C. 552, 563, 816 S.E.2d 566, 572 (2018) (“[S]hould the proponent desire more information beyond the permissible ‘time and place’ evidence, a rule or statute must allow for the admission of the additional evidence.”); Rule 803(4), SCRE (including “[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment” as admissible exceptions to hearsay).

Clearly, there was no connection between the nurse’s testimony that presented a detailed non-medical summary on the physical aspects of the events (face punching, head hair and arm pulling, and the daring attempt to escape) and how the same ended up being relevant to any medical diagnoses or treatment with respect to the crimes.

In *State v. Smith*, this Court found error when Kendra Twitty, a forensic interviewer, “identified the perpetrator by testifying the victim reported he was about six or seven years old ‘when his dad started to do these things to him.’ ” 411 S.C. 161, 169-70, 767, S.E.2d 212, 217-17 (Ct. App. 2014). This Court held “[w]e agree with Smith this constituted error because it went beyond time and place.” *Id.* This Court elected not to reverse based on other testimony held to be cumulative. *Id.* “[S]hould the proponent desire more information beyond the permissible ‘time and place’ evidence, a rule or statute must allow for the admission of the additional evidence.” *State v. Simmons*, 423 S.C. 552, 563, 816 S.E.2d 566, 572 (2018). The additional evidence typically constitutes hearsay, both in *Simmons* and the matter *sub judice*. “Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. “Hearsay is inadmissible, except as provided by the South Carolina Rules of Evidence, by other court rule, or by statute.” *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011). After an objection is raised, the proponent of hearsay testimony has the burden of showing it fits appropriately within a hearsay exception.

In Simmons, supra, the state sought to fit the testimony of a doctor within Rule 803(4), the hearsay exceptions for “[s]tatements made for purposes of medical diagnosis or treatment.” 423 S.C. 552, 816 S.E.2d 566 (2018). Our Supreme Court instructed:

Rule 803(4), SCRE, may well apply in a CSC case, but there must be a nexus between the information provided by the patient and the diagnosis or treatment of the patient. For example, after recent trauma, these type of statements can provide the doctor with specific areas to focus on or specific conditions to search for when performing the diagnostic physical exam and are reasonably pertinent to diagnosis or treatment.

Id. at 563, 816 S.E.2d at 572.

In this regard, “a statement that the victim had been raped or that the assailant had hurt the victim in a particular area would be pertinent to the diagnosis and treatment of the victim.” State v. Burroughs, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997). However, “[a] doctor’s testimony as to history should include only those facts related to him by the victim upon which he relied in reaching his medical conclusions. The doctor’s testimony should never be used as a tool to prove facts properly proved by other witnesses.” State v. Brown, 286 S.C. 445, 447, 334 S.E.2d 816, 817 (1985).

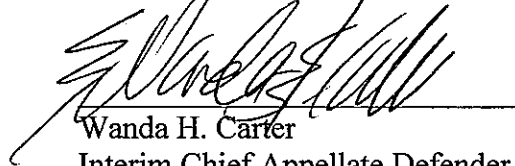
As in Simmons, the statement here by Keigans regarding Nivens’ conveyance to her exceeded the scope of Rule 803(4), SCRE, and the objection was improperly overruled. Keigans’ testimony about being in a vehicle, driven to a wooded area, continued assault, and escape were all beyond the scope of the “time and place” rule, and the same did not fit squarely within the medical treatment exception admissibility ruling in the case.

The Court of Appeals erred in holding that the time and place violation testimony in this case was in effect cured and admissible at trial.

CONCLUSION

Based in the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issue.

Respectfully Submitted,



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This 19th day of September, 2025.

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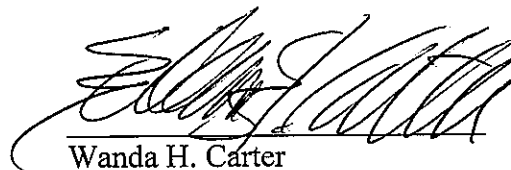
PETITIONER

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APPELLATE CASE NO. 2022-000361

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 Writ of Certiorari to the Court of Appeals in the above-referenced case has been served upon Amie L. Clifford, Esquire, and upon David M. Pascoe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Michael Deangelo Corbitt, #387366, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 19th day of September, 2025.



Wanda H. Carter
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