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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Marvin H Dukes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRYL JEROME WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2025-000433

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in precluding appellant from cross-examining the Complainant's mother under Rule 403, SCRE, about her own statements to a therapist regarding Complainant lying about bringing guns to school?

STATEMENT OF THE CASE

On May 11, 2017, a Colleton County grand jury indicted appellant Darryl Washington for first-degree criminal sexual conduct with a minor. R. ___ (Indictment). On February 26, 2025, Washington was tried before the Honorable Marvin Dukes and a jury. Tr. 1. Lynorr Musser represented the State. Tr. 1. Nicholas Kanaly represented Washington. Tr. 1. The jury convicted Washington. Tr. 162. Judge Dukes sentenced Washington to thirty years' imprisonment. Tr. 168. This appeal follows.

STANDARD OF REVIEW

The evidentiary issue in this appeal is governed by the abuse of discretion standard. State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023) (reversing because of improper Rule 403, SCRE analysis).

ARGUMENT

The trial court erred in precluding appellant from cross-examining the Complainant's mother under Rule 403, SCRE, about her own statements to a therapist regarding Complainant lying about bringing guns to school.

Appellant Darryl Washington testified in his own defense and denied sexually abusing Complainant. Tr. 120. The solicitor told the jury in her closing argument that the case "boils down to credibility" and that it had to judge the credibility of Complainant as they saw him in his forensic interview at eight years old and again testifying at sixteen years old "versus the defendant." Tr. 134-35. No physical evidence existed and no witnesses to the alleged abuse testified.

The State's first witness was the investigating officer, Kelly Padgett. Tr. 53. Her direct-examination was brief. Padgett took the sexual abuse call and spoke with Complainant's mother. Tr. 54. Complainant was eight years old at the time of the call. Tr. 54. Officer Padgett set up a forensic interview and arrested Washington afterwards. Tr. 55-56. On cross-examination, Officer Padgett admitted that "an event spurred that call. Tr. 57. Defense counsel then asked, "Okay. Now [Complainant], he was caught in bed with his cousin naked, correct?" Tr. 57. Officer Padgett answered, "That's my understanding." Tr. 57. Defense counsel's next question about the details of what Complainant and his cousin were doing drew an objection which Judge Dukes sustained. Tr. 57.

Complainant's mother testified that Washington was her cousin and she considered his parents her aunt and uncle. Tr. 61. Washington lived with his parents. Tr. 61. Complainant's mother worked and her aunt and uncle would sometimes watch Complainant during the summer.

Tr. 61-62. She testified that in 2016, Complainant disclosed sexual abuse that happened during the summer at Washington's house. Tr. 62.

Complainant was sixteen years old when he testified about the abuse that allegedly occurred when he was eight years old. Tr. 74-75. Complainant confirmed that he sometimes stayed at his aunt and uncle's house where Washington lived. Tr. 76-77. Complainant described two instances of abuse. He said Washington would fondle his genitals and perform oral sex on him in Washington's room. Tr. 78-79. Complainant also recalled another instance when he was in the bathroom and Complainant pulled his pants down and performed oral sex on him. Tr. 79. During the encounter in the bathroom, Washington's mother supposedly saw them in the bathroom together and questioned if they should be in there. Tr. 79-80. Complainant did not tell his aunt about what he testified happened in the bathroom despite her inquiry. Tr. 80.

On cross-examination, Complainant admitted that he had been suspended from school "from time to time." Tr. 81. When he broke rules and got in trouble, he would be beaten with a belt sometimes so severely that he would cry. Tr. 82. Complainant's forensic interview was admitted into evidence and played for the jury. Tr. 95. (State's Ex. 1). During the interview, Complainant said multiple adults administered beatings with a belt or a shoe, sometimes to his face. (State's Ex. 1, 5:45). After identifying the parts of the body on a sketch, Complainant told the interviewer that Washington touched his "private part" and put his mouth on it. (State's Ex. 1, 12:19).

When Complainant described the incident in the bathroom in more detail, he said Washington only touched his genitals with his hand and did not use any other body part. (State's Ex. 1, 16:10). Contradicting his testimony, Complainant said he told about the abuse and Washington got in trouble. (State's Ex. 1, 16:27). Washington only touched him one time.

(State's Ex. 1, 17:48). The interviewer left the room for a minute and Complainant drew on the easel. (State's Ex. 1, 21:15). When the interviewer returned, she asked him what he drew and he said he drew Washington touching his "private part." (State's Ex. 1, 23:23). The interviewer said Complainant had previously told her that Washington used his mouth on his private part and when asked to describe this, Complainant said Washington "licked it." (State's Ex. 1, 24:00).

The Attempted Impeachment Evidence

During his cross-examination of Complainant's mother, defense counsel confirmed that Complainant would stay at his aunt and uncle's house when he got suspended from school and that Complainant had behavioral problems at school. Tr. 64. Complainant's mother then said Complainant did not get suspended from school often. Tr. 64. Defense counsel then asked whether Complainant's mother sent him to therapy because of his behavior problems and the State objected on relevance. Tr. 64. Judge Dukes excused the jury and heard argument from the parties. Tr. 64-71.

Defense counsel proffered that Complainant's mother told the mental health facility that her son claimed "he had guns in his backpack, claiming he was going to shoot everyone." Tr. 65. He argued this question was relevant to Complainant's character and truthfulness and also to the credibility of Complainant's mother. Tr. 65. The State argued that the question was not relevant and was more prejudicial than probative. Tr. 65-66. The State also argued that it was a prior bad act. Tr. 65-66. Defense counsel responded that he was not attempting to introduce the evidence as a prior bad act, but to Complainant's mother's "credibility and the alleged victim's credibility." Tr. 66.

The State then argued that bringing guns to school was "overly prejudicial" because of school shootings and that it was not relevant. Tr. 66-67. The solicitor referenced Rule 405,

SCRE, and argued character evidence was not admissible unless first placed in issue. Tr. 66-67. Defense counsel responded that he was not trying to use the fact of bringing guns in a backpack, but that Complainant said this and it was not true. Tr. 67-68. The State then responded that it was hearsay and defense counsel replied that he was not offering it for the truth of the matter asserted. Tr. 68.

Judge Dukes ruled that "talking about guns and backpacks, the prejudice substantially outweighs the probative value." Tr. 68-71. He allowed defense counsel to ask Complainant's mother whether Complainant had ever lied to her. Tr. 68-71. Defense counsel restated his argument that Complainant's lie about the guns was "a documented incident. It's a document[ed] incident of the victim having no regard for anyone at the school and the consequences of this action, Your Honor," and that it showed Complainant had a "propensity for lying." Tr. 70. Judge Dukes reiterated his ruling, stating, "But again, I think it's highly prejudicial. I think it substantially outweighs the prejudice, substantially outweighs the probative value." Tr. 70-71. The judge gave an example that if it were "kittens in the backpack," it might be admissible, but guns at school was "highly prejudicial." Tr. 70-71.

When the jury returned, trial counsel confirmed that Complainant would be punished with beatings with a belt. Tr. 71. The mother answered that Complainant had lied to her "a few times" and that he had lied at school. Tr. 72. She agreed Complainant went to therapy for these problems, and also for hitting kids at school. Tr. 72-73.

The Trial Court Erred in Using Rule 403 to Bar Important Evidence Regarding Complainant's Credibility

The probative value of the evidence was not just that Complainant would lie, but that he was willing to lie about something with such severe legal consequences such as bringing guns to school. If the Complainant was willing to lie about something that severe, it showed he would also be willing to lie about sexual abuse. The trial court's Rule 403, SCRE analysis on this point was deeply flawed and cannot be harmless when credibility was the major factual issue for the jury.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. The court must first decide the probative value of the evidence. State v. Gray, 408 S.C. 601, 609-19, 759 S.E.2d 160, 165-70 (Ct. App. 2014). "'Probative value' is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." Id.

The probative value of evidence of Complainant's willingness to lie about matters of great import was of immense probative value. The judge's example about the kittens in the backpack demonstrates the error in assessing probative value. Lying about kittens in a backpack would have little probative value as it is of an inconsequential matter. But lying about bringing guns to school in a backpack shows, as defense counsel argued, a lie without "regard for anyone at the school and the consequences of this action. . . ." Tr. 70.

As for prejudice, the key component is whether evidence is *unfairly* prejudicial. State v. Kelley, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995). Unfair prejudice is usually found

when evidence is introduced to suggest a decision on an improper basis, such as emotion. Id. All relevant evidence is prejudicial to some degree, it is the amount of unfair prejudice that must be scrutinized by the trial judge. Gray at 616-17, 759 S.E.2d at 168.

The unfair prejudice is almost zero. The judge correctly stated that bringing guns to school in a backpack is an emotional issue. Few things are so horrifying and emotionally charged as school shootings. But the topic of school shootings was not the point—Complainant's credibility was the point. Credibility was the central issue and the magnitude of the lie bore specifically on its *fair* prejudicial value, not an *unfair* tying of Complainant to school shootings. The precise reason the evidence had such a high probative value is what makes the prejudice not unfair. Little chance existed that the jury would issue a not guilty verdict because they thought Complainant was a potential school shooter. But a substantial probability existed that the jury would exonerate Washington if they believed Complainant was willing to lie about very important matters.

The fact that the jury heard that Complainant would tell lies in a general sense does not make this error harmless. First, this child sexual abuse case had no physical evidence and no eyewitnesses. Complainant testified he was abused. Washington took the stand and denied abusing Complainant. This case was a classic credibility contest and, because this error directly affected Complainant's credibility, it cannot be harmless. See State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) (discussing the difficulty of finding harmless error in sexual abuse cases that are credibility contests).

Second, the specifics of Complainant's lie would have tipped the scales when the jury weighed his credibility. The jury heard from the investigating officer that Complainant made the abuse allegation when he was caught in a sexual situation. Tr. 57. The consequences for getting

in trouble were severe beatings with a belt. Complainant denied making the allegation when he was "accused of doing the same thing." Tr. 100. Complainant said in his forensic interview that he reported the incident in the bathroom, but when he testified he admitted he did not.

Washington testified that Complainant held a grudge against him because Washington caught him watching pornography on a computer and his grandmother beat him with a belt. Tr. 115. During its deliberations, the jury wanted to know the sentence for the charge and to have Complainant's testimony replayed. Tr. 159. Without the trial court's error, the jury would have acquitted Washington and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand for a new trial.

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ATTORNEY FOR APPELLANT

This 9th day of March, 2026.

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