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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

APACHE SHAMAN LAWRENCE,

APPELLANT

APPELLATE CASE NO. 2024-001385

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in allowing state's witness Christine Calbert to testify as a mere practitioner rather than an expert on the subject of child sexual abuse dynamics and delayed disclosures because this area of study requires expertise to the extent that any witness addressing the same must first be qualified as an expert to testify on the subject, which was a topic upon which Calberg was not qualified to speak upon, and also because ultimately Calberg was not qualified to testify on either of these matters as a practitioner due to her limited resume and experience in such a field of study.

STATEMENT OF THE CASE

Appellant Apache Shaman Lawrence was convicted of first degree criminal sexual conduct with a minor and unlawful neglect during the August 2024 term of the Greenwood County General Sessions Court before Judge Eugene C. Griffith, who sentenced him to imprisonment for an aggregate period of thirty-five years. Appellant was represented at trial by Attorney Monier Abusoft, and Assistant Solicitors Madison Hoffman and Elizabeth Taylor prosecuted the case.

Appellant appealed his convictions and sentences. This brief follows.

STANDARD OF REVIEW

The decision on whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court judge. State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006). The circuit court judge's decision to admit expert testimony will not be reversed on appeal absent manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). An abuse of discretion occurs when the circuit court judge's conclusions either lack evidentiary support or are controlled by an error of law. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). A circuit court judge's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair. State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003). To show prejudice, the appellant must prove that there is a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof. State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (2015).

ARGUMENT

The lower court erred in allowing state's witness Christine Calbert to testify as a mere practitioner rather than an expert on the subject of child sexual abuse dynamics and delayed disclosures because this area of study requires expertise to the extent that any witness addressing the same must first be qualified as an expert to testify on the subject, which was a topic upon which Calberg was not qualified to speak upon, and also because ultimately Calberg was not qualified to testify on either of these matters as a practitioner due to her limited resume and experience in such a field of study.

At trial, state's witness Sierra Edwards testified that appellant (her stepfather) touched her vagina with his fingers on seven or eight occasions from the time she was age nine up until she reached age fourteen. Tr. 100, 1.20-p. 143, 1.24.

Appellant testified at trial and denied these sexual misconduct allegations raised against him by Edwards. Tr. 261, 1.22-p. 262, 1.7.

The state called Christine Calbert at trial to testify regarding child sex abuse dynamics and delayed disclosures. Calbert stated that children are at risk for sexual abuse if they are young or if domestic violence occurs in the home; and that sexual abuse is possible when a person practices grooming in order to establish trust in a relationship, which silences the abuse victim and boundaries are destroyed. Calbert added that the child who was abused sexually will either purposefully or accidentally disclose the abuse, and that delayed disclosures occur particularly where there is a complex relationship with the abuser and where feelings of helplessness exist. Tr. 219, 1.20-p. 230, 1.8.

Prior to Calbert's testimony being given, defense counsel objected to her testimony on the ground that Calbert was not qualified to testify as an expert regarding "child sex abuse

dynamics.” Tr. 204, l. 22 – p. 208, l. 8. Then, when the trial judge declared Calbert as a practitioner, who could testify as such, rather than an expert, defense counsel continued to object on the ground that Calberg was not qualified to testify as an expert in these matters because she was not qualified as an expert or a practitioner regarding the same, and that as a result her testimony was inadmissible. Tr. 213, l. 2 – p. 218, l. 18. Counsel moved to strike Calberg’s testimony at the close of her testimony. Tr. 241, lines 20–25. When the defense argued that Calbert was not qualified as an expert in the dynamics of sex abuse victims (See Tr. 208, lines 1-8; Tr. 213, l.2-8), the Court ruled that her testimony was admissible since she was not offered as an expert or one who interviewed the prosecutrix in this case, and that her training in her role as a practitioner meant she need not be qualified as an expert on this subject matter. Tr. 213, l.18-p. 214, l.10; Tr. 216, l.1-p. 217, l.19. Tr. 218, l.16-18. Tr. 206, lines 19-21.

As a rule, child abuse dynamics testimony, which would include information on delayed disclosures, would require that a witness be qualified as an expert when addressing this topic. See Briggs v. State 421 S.C. 316, 806 S.E.2d, 713 (2017). In Briggs, where top forensic interviewers must be qualified as experts in the area in question, the Court held as follows:

Expert Qualifications

We disagree, however, with the PCR court’s finding that Singleton was deficient in not objecting to Arroyo-Staggs [*332] being qualified as an expert. Our analysis begins with [State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009)], in which we addressed whether the trial court should have allowed a witness to be qualified as an expert in forensic interviewing. On appeal, from a ruling by the Court of Appeals that qualifying a forensic interviewer as an expert was not error, we affirmed, but said only that it was “unnecessary” on the facts of that case. 380 S.C. at 501, 671 S.E.2d at 608. We did not say it was error, and specifically recognized “there may be a case in which qualification of an expert in this field is proper.” 380 S.C. at 503 n.2, 671 S.E.2d at 608 n.2. In subsequent cases, we have permitted a forensic interviewer to be qualified in related areas such as “child abuse assessment,” the

field in which the State offered Arroyo-Staggs as an expert. In [State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015)], for example, while we held we do not recognize expertise in the narrow field of “forensic interviewing,” 413 S.C. at 219, 776 S.E.2d at 79 (emphasis added), we held that a forensic interviewer may be qualified as an expert in child abuse assessment to “testify to the behavioral characteristics of sex abuse victims,” 413 S.C. at 218, 776 S.E.2d at 79. Writing in partial dissent in Anderson, then Chief Justice Toal—joined by Justice Kittredge—stated “forensic interviewers have a legitimate role to play in these cases...may be qualified as experts in child abuse assessment, [qualified as experts in child abuse assessment[, and] may testify...as experts regarding matters in their expertise, such as delayed disclosure.” 413 S.C. at 222, 776 S.E.2d at 81 (Toal, C.J., dissenting in part). Since Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015)], the Court of Appeals has not at least two occasions affirmed a trial court’s qualification of a forensic [*333 interviewer as an expert to testify as to the behavior of child sex abuse victims. See State v. Barrett, 416 S.C. 124, 130, 785 S.E.2d 387, 390 (Ct. App. 2016), (finding “no error” in qualifying a forensic interviewer as an expert to testify “regarding general behavioral characteristics” of child sex abuse victims); State v. White, 416 S.C. 135, 138, 784 S.E.2d 695, 696 (Ct. App. 2016) (finding “the trial court acted within its discretion” when it qualified “the forensic interviewer as an expert in the dynamics of child abuse”).

Clearly, the prevailing view is that witnesses who testify regarding sex abuse dynamics, which include the topic of delayed disclosures, must be qualified as experts. There may be variations on the type or category of testimony on the issue of children and sex abuse information and studies overall; nonetheless, such a witness would have to be qualified as an expert rather than appear as a mere practitioner, which is what happened in the instant case where Clayberg testified as a practitioner rather than an expert because under either scenario she was not qualified to speak on the subject at hand. See State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), where the Court held that witnesses who testify regarding child abuse assessments must be qualified as experts. See also, State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), where the Court held that witnesses who testify in this area must be qualified and the expert

testimony is reliable. See State v. Acker, 435 S.C. 716, 869 S.E.2d 873 (2022), where the Court held that the testimony given by a witness on child abuse victims constituted expert testimony and that said witness who testified at trial was a qualified expert. Sex abuse witnesses were qualified as experts and testified as experts in Acker, Chavis, State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (2015), and State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018).

It has been duly noted that witnesses who testify regarding characteristics and dynamics of sex abuse and disclosure must be qualified as experts because “it is more appropriate for **an expert** to explain the behavioral traits of child sex abuse victims to the jury,” and that this should come from witnesses who are “experts qualified in the field to explain [the same] to the jury.” State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (2015). In Brown, the Court held as follows regarding expert testimony

Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered **by experts** is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the abused child’s often stranger demeanor. Experience—either directly or indirectly—with sexual abuse. The general behavioral characteristics of child sex abuse victims are, therefore, more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victims’ testimony.

See State v Acker, 435 S.C. 716, 869 S.E.2d 873 (2022), where the Court held as follows:

In Jones, 423 S.C. at 636, 817 S.E.2d at 271, our supreme court stated, “the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized.” See also State v. Anderson, 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015); Brown, 411 S.C. at 342, 768 S.E.2d at 251 (concluding “the [*728 unique and often perplexing behavior exhibited by child sex abuse victims does not fall within the ordinary knowledge of a juror” and, thus, the general behavioral characteristics of child abuse victims “are

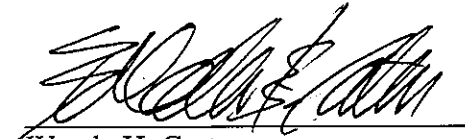
more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victims' testimony"), abrogated on other grounds by Jones 423 S.C. at 637-38, 817 S.E.2d at 271 (abrogating Brown to the extent the court indicated it was appropriate to consider *voir dire* responses when evaluating the need for expert testimony); see generally State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.").

Additionally, the trial judge in effect by implication found that Calberg was unqualified as an expert, but ruled nonetheless that her testimony was admissible as a practitioner. Calbert was not an expert and stated that her credentials were based on her personal contact, as a practitioner, with these children; and further admitted that she had not written any publications on the subject matter. Trial counsel mentioned that not only was Calberg lacking as having not written any publications, but also that she was not a member of a professional association in connection with these matters, and that most of her training emanated from mental health and church affiliated groups. In short, Calbert merely conducted interviews. Tr. 211, l.10-p. 213, l.8.

In summary, witnesses of this ilk must be qualified as an experts. The lower court erred in allowing Calberg to testify as a practitioner on the subject of child sexual abuse dynamics because this is an area where witnesses must first be qualified under expert standards. Calberg was not so qualified, and thus clearly fell below the level of sufficiency required of qualified experts in this area. Note that the prejudice was obvious here where there was a credibility question on the "he says" versus "she says" summary of the case, and where no other evidence forensic or otherwise was presented at trial, and where Calberg's testimony might have been the tiebreaker evidence in the case since the jury acquitted on one sexual misconduct charge at trial.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's convictions and sentences be reversed and his case remanded to the lower court for a new proceeding.


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ATTORNEY FOR APPELLANT

This 20th day of July, 2026.