

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2013-000531

RECEIVED
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SC Court of Appeals

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM J. WILDE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly exercised its discretion in allowing the court appointed expert to testify regarding limited details of Appellant's sexual offenses because they were relevant to the expert's opinion regarding Appellant's mental status for purposes of commitment as a sexually violent predator.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In August 2002, the Spartanburg County Grand Jury indicted Appellant William J. Wilde on one count of first degree criminal sexual conduct, arising from the sexual battery of a four year old female. Pursuant to a plea agreement, Appellant pled guilty to the lesser charge of lewd act on a minor, and was sentenced to fifteen years incarceration. (State's Exhibit 2; Record on Appeal [R.], pp. ____).

In accordance with the Sexually Violent Predator Act ("SVP Act"), prior to Appellant's release from incarceration, Respondent State of South Carolina (the "State") commenced a civil commitment proceeding in the Greenville County Court of Common Pleas on October 12, 2011. On September 18, 2012, the circuit court found probable cause to believe Appellant met the criteria for commitment as a sexually violent predator, and appointed Dr. Marie Gehle to conduct a mental health evaluation of Appellant. Dr. Gehle diagnosed Appellant with the mental abnormality of pedophilia, sexually attracted to both sexes, and found he met the criteria for commitment under the SVP Act. (Trial Transcript [TT], pp. 122-125; R., p. ____).

The case was called for a jury trial on October 15, 2012, before the Honorable J. Mark Hayes, II, Circuit Court Judge. Appellant moved to prohibit Dr. Gehle from testifying about charges against Appellant in North Carolina that were subsequently dismissed. The circuit court granted the motion, and instructed the State and Dr. Gehle not to mention those charges during the State's case. (TT, pp. 24-26, 69-71; R., pp. ____).

After she was qualified as an expert in psychology and forensic psychology, Dr. Gehle testified that when performing Appellant's evaluation, she reviewed and relied on records regarding his criminal history, including police reports and witness statements,

and his record while incarcerated. She stated that was the type of information typically relied on by experts in her field, and it formed a part of the basis for her ultimate opinion. (TT, pp. 99-106; R. pp. _____).

Dr. Gehle then testified about Appellant's sexually violent convictions, which included two counts of lewd act on a minor. Appellant objected to introduction of the underlying arrest warrants on those charges, as well as a solicitor's hand-written note on the back of the indictments. The court sustained the objection, and the State removed the arrest warrants and solicitor's statement from the documents before introducing them as evidence. (TT, pp. 106-112, State's Exhibits 1 and 2; R., pp. _____).

Dr. Gehle stated Appellant pled no contest to a lewd act on a child charge on March 23, 1998, and was sentenced to ten years incarceration, suspended on two years probation. Appellant was also required to register as a sex offender, and to attend mental health counseling for sex offenders. She testified the victim was Appellant's eight year old son, who was visiting Appellant overnight. (TT, pp. 113-114; R., pp. _____).

Over Appellant's hearsay objection, Dr. Gehle testified the victim woke up to find Appellant fondling his penis. Dr. Gehle stated the victim reported Appellant stopped when he woke up, and told the victim he better not tell anyone. (TT, p. 114; R., pp. _____).

Dr. Gehle testified Appellant also pled no contest to another lewd act on a child charge on November 1, 2004, for offenses occurring between April 15, 2001, and February 7, 2002, and was sentenced to fifteen years incarceration. The victim was Appellant's four year old stepdaughter, who reported Appellant fondled and licked her genitals. (TT, pp. 115-116; R., pp. _____).

Dr. Gehle indicated the underlying behavior was significant for purposes of her opinion because of the age and gender of the victims, and both offenses involved physical contact with the victims. When Dr. Gehle asked Appellant about the convictions, he denied committed both offenses. He also told her he attended sex offender treatment “somewhere around” 1989 to 1991, and again in 1999 after the first conviction, but Dr. Gehle was unable to recover any records from that treatment. (R., pp. 116-117; R., pp. ____).

Based on her review of records and her interview with Appellant, Dr. Gehle determined to a reasonable degree of psychological certainty Appellant had the mental abnormality of pedophilia, sexually attracted to both sexes. She further opined to a reasonable degree of psychological certainty Appellant’s pedophilia predisposes him to commit acts of sexual violence (TT, pp. 117-123; R., pp. ____).

Dr. Gehle testified she premised her opinion on Appellant’s history of sexually offending, particularly the facts that he offended after being detected by the law, and after attending treatment, indicating he was compelled to commit the offenses even though he knew he could get in trouble. She also found significant the fact he offended against children who knew him which meant the offenses could be easily detected and the victims could readily identify him. She opined to a reasonable degree of psychological certainty Appellant was dangerous and likely to commit acts of sexual violence, he posed a menace to the health and safety of others, he had serious difficulty controlling his deviant behavior toward children, and needed to be confined in a secure facility for long term control, care and treatment. (TT, pp. 123-124; R., pp. ____).

The jury found beyond a reasonable doubt Appellant was a sexually violent predator as defined by the SVP Act. The circuit court denied Appellant’s post-trial

motions, and committed Appellant to the custody of the S.C. Department of Mental Health for long term control, care and treatment. (TT, pp. 251-254; R., pp. ____). This appeal followed.

ARGUMENT

The circuit court properly exercised its discretion in determining the details of Appellant's sexual offenses were relevant to the court appointed expert's analysis and opinion regarding Appellant's mental status for purposes of commitment as a sexually violent predator.

Appellant contends the trial court erred in allowing Dr. Gehle to testify regarding the underlying facts of his criminal offenses because their prejudicial effect outweighed their probative value. He argues the testimony was improper under Rule 802, SCRE, because her testimony was based on hearsay, and under Rule 801(d)(1)(D), SCRE, because the testimony went beyond time and place of the incidents.

“Generally, all relevant evidence is admissible,” and “evidence is relevant if it tends to establish or make more or less probable the matter in controversy.” In the Matter of the Care and Treatment of Ettel, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008); *see also* State v. Brooks, 341 S.C. 57, 533 S.E.2d 325, 328 (2000) (same); State v. King, 349 S.C. 142, 561 S.E.2d 640, 645 (Ct. App. 2002) (same); Rule 401, SCRE. The decision to admit contested evidence rests within the sound discretion of the trial judge. Ettel, 660 S.E.2d at 287; State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). Appellate courts will not disturb the trial court's rulings regarding admissibility of evidence absent prejudicial abuse of discretion. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); Ettel, 660 S.E.2d at 287.

Evidence is unfairly prejudicial if it creates an undue tendency to suggest a verdict on an improper basis. State v. Dickerson, 341 S.C. 391, 535 S.E.2d 119, 123 (2000). Unfair prejudice does not mean damage to the defendant's case resulting from the legitimate probative force of the contested evidence. State v. Ford, 334 S.C. 444, 513, S.E.2d 385, 389 (Ct. App. 1999). A determination regarding the prejudicial effect of

evidence must be based on the entire record, with the result generally turning on the facts of each case. Brooks, 533 S.E.2d at 328; Dickerson, 535 S.E.2d at 123.

“[A]n expert witness may state an opinion based on facts not within his or her firsthand knowledge.” In re Manigo, 389 S.C. 96, 697 S.E.2d 629, 634 (Ct. App. 2010) (citing Hundley ex rel. Hundley v. Rite Aid of S.C., Inc., 339 S.C. 285, 29 S.E.2d 45 [Ct.App. 2000]); *see also* Rule 703, SCRE. Further, the expert may base his or her opinion on information, whether or not admissible, made available before the hearing if the information is of the type reasonably relied upon in the field to make opinions, and **“may testify as to matters of hearsay for the purpose of showing what information he or she relied on in giving an opinion of value.”** *Id.* (emphasis added).

In this case, Appellant did not object to admission of the indictments from his two lewd act convictions, which were admissible under In the Matter of the Care and Treatment of Corley, 353 S.C. 202, 577 S.E.2d 451 (2003). While the indictments established the qualifying convictions, as in most cases, they contained very minimal information regarding the specifics of the offenses. In particular, the indictments only referred to the victims as “a child under the age of sixteen,” and did not indicate the relationships, if any, between Appellant and the victims. (State’s Exhibits 1 and 2; R., pp. _____).

Dr. Gehle testified she reviewed police records and incident reports as part of Appellant’s evaluation, which are the type of records typically relied on by forensic psychologists. She further testified she considered and relied on the information she reviewed as part of the basis for her opinion regarding Appellant’s mental status. (TT, pp. 105-106; R., pp. _____).

As to Appellant's convictions, Dr. Gehle stated it was important to the evaluation for her to review the underlying facts of those convictions. The victim in Appellant's 1998 lewd act conviction was Appellant's eight year old son, who woke up to find Appellant fondling his penis. Appellant's 2004 lewd act conviction involved a four year old female, who reported he fondled and licked her genitals. Dr. Gehle testified the age and gender of the victims was significant, as well as the fact the offenses included physical contact with the victims.¹ (TT, pp. 113-116; R., pp. ____).

Dr. Gehle stated the fact both victims were prepubescent at the time of the offenses supported her diagnosis of pedophilia, and the fact they were different genders indicated Appellant was sexually attracted to both genders. She then testified about the risk factors for re-offending indicated by the facts and circumstances of the offenses, and concluded Appellant was likely to commit future acts of sexual violence. (TT, pp. 116-125; R., pp. ____).

As a threshold matter, Dr. Gehle's testimony regarding information she reviewed in the police reports was not offered for the truth of the matter asserted, but as part of the basis for her opinion. *See State v. Slocumb*, 336 S.C. 619, 521 S.E.2d 507, 518-519 (Ct. App. 1999) (expert testimony regarding the contents of a MRI report was not offered for the truth of the matter asserted therein, but as a basis for the experts' opinion at trial under Rule 703, SCRE). Therefore, her testimony was not hearsay evidence under Rule 801(c), SCRE. Even if her testimony did include hearsay evidence, however, the circuit court did not err in allowing it.

¹The 1997 indictment leading to Appellant's 1998 conviction contained more offense details than the indictment related to his 2004 conviction. The only information Dr. Gehle related that was not included in the indictment itself was the specific age of the victim and his familial relationship with Appellant.

“Facts, data or opinions reasonably relied upon under Rule 703 may be disclosed to the jury on either direct or cross-examination to assist the jury in evaluating the expert's opinion by considering its bases.” Slocumb, 521 S.E.2d at 518 (quoting 2 Michael H. Graham, *Handbook of Federal Evidence* § 703.1, at 110 [4th ed. 1996]). “This is true even if the facts, data or opinions have not themselves been admitted and thus may not be considered for their truth.” *Id.*

The information at issue in this case was necessary for Dr. Gehle to provide the jury with the basis for her expert opinion, without which her opinion testimony would be of little use to the jury in determining whether Appellant met the criteria for commitment as a sexually violent predator. Her recitation of the underlying facts was not graphic, and only contained the details she considered relevant to the evaluation, and she explained the significance of the information for diagnostic purposes, as well as her assessment of Appellant's risk to re-offend.

Dr. Gehle's testimony clearly indicated information from police reports and other records associated with a criminal offense is the type of “facts or data” contemplated by Rule 703, SCRE. See Corley, 577 S.E.2d at 454 (expert's testimony illustrated why the details of an offense was directly relevant to the ultimate issue of an SVP case); Ettel, 660 S.E.2d at 288 (expert's testimony regarding prior sexual offenses admissible because it established a pattern of behavior significant to determination of risk to re-offend); see also State v. Hutto, 325 S.C. 221, 224, 481 S.E.2d 432, 433 (1997) (expert may base his opinion on hearsay evidence if it is of a type reasonably relied upon by other experts in the field). Further, as in Manigo, Corley and Ettel, Dr. Gehle testified the underlying facts of Appellant's offenses were relevant and significant considerations in her evaluation of Appellant's mental status and likelihood to re-offend. (TT, pp. 113-116; R.,

pp. ____). Her testimony was the type of expert testimony allowed under the Rules of Evidence and case precedent.

Appellant's cites Rule 801(d)(1)(D), SCRE, and Vail v. State, 402 S.C. 77, 738 S.E.2d 503 (Ct. App. 2013), are authority for his contention Dr. Gehle's testimony regarding the underlying facts of his criminal offenses was inadmissible because it was not limited to the time and place of the alleged offenses. Rule 801(d) provides a victim's prior consistent statements in a "criminal sexual conduct case" are not hearsay when the statements are limited to time and place of the incident. The instant case is not a "criminal sexual conduct case," and therefore, the "time and place" limitation of Rule 801(d) does not apply.

In Vail, the South Carolina Court of Appeals granted post-conviction relief from the defendant's criminal sexual conduct conviction, holding the criminal defense lawyer was ineffective in failing to object to witness testimony regarding the victim's prior statements because the statements were not limited to time and place as required under Rule 801(d). 738 S.E.2d at 509. As discussed above, Rule 801(d) does not apply to this case, and likewise, the holding and analysis of Vail do not apply.

The circuit court did not abuse its discretion in admitting Dr. Gehle's testimony regarding the information she considered in reaching her expert opinion. Therefore, the jury verdict should be affirmed.

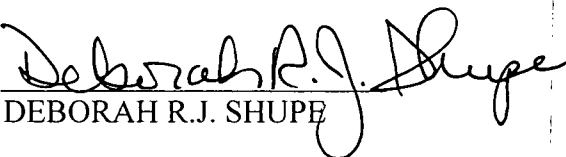
CONCLUSION

Based on the foregoing, Respondent respectfully submits Appellant's commitment as a sexually violent predator should be affirmed.

Respectfully submitted,

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BY: 
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February 25, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal From Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2013-000531

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM J. WILDE,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

1. Trial Transcript, pp. 1, 6-8, 24-81, 99-195, 197-204,
251-254
2. State's Exhibits 1 and 2
3. Order of Commitment dated October 17, 2012

To facilitate preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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By: Deborah R. J. Shupe
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February 25, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2013-000531

IN THE MATTER OF THE CARE AND TREATMENT OF
WILLIAM J. WILDE,

Appellant.

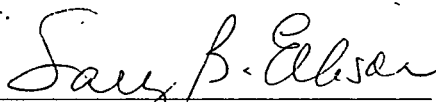
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant
Assistant Appellate Defender
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I further certify all parties required by Rule to be served have been served.

This 25th day of February, 2014.



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SC Court of Appeals



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February 25, 2014

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Re: In the Matter of the Care and Treatment of William J. Wilde
Appellate Case No. 2013-000531

Dear Ms. DuRant:

Enclosed are two (2) copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: ~~The~~ Honorable Jenny A. Kitchings (original and 1 copy enclosed)
Victim Services (with enclosure)

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