

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAY 08 2014

SC Court of Appeals

Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5225 (S.C. Court of Appeals filed April 23, 2014)

THE STATE,

Respondent,

vs.

MATTHEW RYAN HENDRICKS,

Appellant.

RETURN TO RESPONDENT'S PETITION FOR REHEARING

Appellant Matthew Ryan Hendricks responds to the State's Petition for Rehearing as follows:

The State is concerned that this Court's Opinion adds a step of analysis in determining whether an out-of-court statement is hearsay, more specifically that this Court added a balancing test like that contained under Rule 403, SCRE in which the probative value of the hearsay is weighed against any danger of unfair prejudice.

A reading of this Court's Opinion reveals that this Opinion in no manner adds any sort of balancing test under Rule 403 to the determination of whether an out-of-court constitutes hearsay. This Court does not once mention Rule 403 in its Opinion. This Court does not mention any balancing test of probative value against unfair prejudice. The only

paragraph of the Opinion which even mentions the word “probative” is the following paragraph:

During oral argument, the State argued Gilstrap’s statement is not hearsay because it did not offer the statement to prove the truth of the matter asserted in the statement, but rather to explain why the police came to the hospital. We acknowledge that there may have been some minimal probative value in admitting the statement for the purpose. However, the reason the police arrived at the hospital was not a significant issue at trial. The probative value in Gilstrap’s statement was in the truth of what is asserted in the statement – that Hendricks raped and sodomized her daughter. Consequently, we find Gilstrap’s statement is hearsay. *See* Rule 801(c), SCRE.

Opinion No. 5225.

It is clear from the context of this paragraph that this Court meant the word “probative” to mean “purpose” – in other words, what was the primary purpose for admission of the out-of-court statement? This Court concluded the primary purpose of Gilstrap’s statement was for the truth of the matter asserted and was consequently hearsay. This Court’s holding that Gilstrap’s statement was hearsay and offered for the truth of the matter asserted was correct because the statement was being used to try to prove that Hendricks committed the crimes of which he was accused.

This Court did not conduct any balancing test like the balancing test under Rule 403 and in no way added a balancing test to the determination of whether an out-of-court statement is hearsay or not.

CONCLUSION

Appellant Matthew Ryan Hendricks therefore requests the portion of this Court's Opinion finding error in the admission of Gilstrap's out-of-court statement be affirmed without any modification and that the State's Petition for Rehearing be denied.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 8th day of May, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Matthew Hendricks, #348747, Tyger River Correctional Institution, 200 Prison Road, Enoree, SC 29335-9308, this 8th day of May, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of May, 2014.

Mark Heuler (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.