

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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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.

PETITION FOR REHEARING

The Appellant, Matthew Ryan Hendricks, respectfully petitions the Court for a rehearing of its Opinion No. 5225 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

Appellant does not challenge that portion of this Court's Opinion which finds that it was error for the Trial Court to admit into evidence Gilstrap's statement to the 911 operator and Appellant asks the Court to affirm that portion of its Opinion.

Appellant, however, disputes that the admission of Gilstrap's statement caused no prejudice and was harmless error. Appellant suffered prejudice because the admission of Gilstrap's out-of-court statements to the 911 operator bolstered Gilstrap's own in-court testimony and the bolstering of crucial trial testimony cannot be considered harmless error. See State v. Foster, 354 S.C. 614, 624, 582 S.E.2d 426, 431 (2003) (holding admission of

prior consistent statement which bolstered witness's crucial trial testimony could not be considered harmless error).

In his Appellant's Brief, Appellant directed this Court to the prejudicial nature of the 911 recording where Assistant Solicitor Tooker referenced the improperly admitted hearsay evidence twice when vouching for the mother's trial testimony during his closing argument. Appellant's Brief, p. 11; R. 323, l. 9 – 324, l. 2; R. 341, ll. 13-14. For example, Assistant Solicitor Tooker stated:

You heard the 911 tape . . . Why is it that she [Gilstrap] would lie? I mean, what reason would she have to lie about those events? . . . There's nothing beneficial to her about lying. All she really does is open herself up to perjury charges if she does lie while she's on the stand. So she gets up there and promises to tell the truth because that's what's right. That's what's expected and that's her duty as a witness.

R. 323, l. 15 – 324, l. 2.

The solicitor further emphasized the 911 call during his closing argument: "They call 911. You heard that tape." R. 341, ll. 13-14.

Moreover, a 911 recording has a character of official importance, perhaps giving the jury the impression that the statements contained therein must be true and credible. The prejudice to Appellant was enhanced by the jury's request to rehear this 911 recording. R. 343, l. 3 – 344, l. 24; Court's Exhibit # 5 (Jury Note); see State v. Blassingame, 271 S.C. 44, 244 S.E.2d 528 (1978) (jury had "focused critical attention").

Finally, the admission of this 911 recording was prejudicial to Appellant where the 911 recording contained statements regarding alleged prior bad acts of Appellant: (1) "His name is Matthew Hendricks[;]" (2) "He has beat her up before but he has never raped her[;]" (3) "He has charges pending[;]" and (4) "I have a trespassing notice on him

here.” State’s Exhibit #3 (911 recording); see, e.g., State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (holding evidence that a defendant has committed other unrelated crimes or bad acts is inadmissible to prove the defendant’s propensity to commit the crime with which he is charged).

CONCLUSION

For the reasons set forth herein, Appellant Matthew Ryan Hendricks respectfully requests that the portion of the Opinion of the Court of Appeals finding that Appellant has not demonstrated prejudice from the erroneous admission of Gilstrap’s statement be withdrawn, his convictions reversed, and the case remanded for a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 8th day of May, 2014.

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CERTIFICATE OF SERVICE

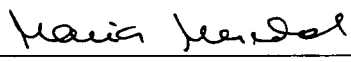
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Matthew Hendricks, #348747, at Tyger River Correctional 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.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.