

The South Carolina Court of Appeals

The State, Respondent,

v.

Matthew Ryan Hendricks, Appellant.

Appellate Case No. 2011-203730

ORDER

Both the State and Matthew Ryan Hendricks submitted petitions for rehearing. The State asserts in its petition that we improperly conducted a balancing test similar to that required under Rule 403, SCRE, by weighing the probative value of the truth of Lisa Gilstrap's statement made on the 911 recording against its alleged non-hearsay purpose. We disagree.

In its brief and at oral argument, the State argued Gilstrap's statement is not hearsay because it was offered to explain how police became involved in the case. Explaining our basis for rejecting the State's argument, we analyzed the purpose for which the State offered Gilstrap's statement. We determined her statement had little or no probative value for the purpose of explaining why police went to the hospital because it was not at issue during trial. On the other hand, we determined the statement had high probative value for the purpose of proving the truth of the statement—that Hendricks beat and raped Gilstrap's daughter. Thus, our evaluation of probative value related to the purpose for which the State offered the statement—an evaluation necessary to analyze the State's argument—and had nothing to with balancing probative value against the danger of unfair prejudice.

Having carefully considered both the State's and Hendricks's petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, both petitions for rehearing are denied. However, we substitute the attached opinion. The only change is the addition of footnote one.

John Cannon Jr C.J.
Paul G. Sperry Jr J.
Joe Deather J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
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FILED
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