



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 15 2015

SC Court of Appeals

Appeal from Richland County
Deandra G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

-v-

ISAAC ANTONIO ANDERSON,

APPELLANT

PETITION TO ARGUE AGAINST PRECEDENT

In his appeal, Isaac Antonio Anderson asks this Court to find that testimony concerning the behavioral testimony propounded by a forensic interviewer who was improperly qualified as an expert in forensic interviewing and child abuse assessment improperly vouched for the credibility of the child witness. The Court scheduled this case for oral argument on February 5, 2015. Pursuant to Rule 217, SCACR, the Appellant petitions for leave to argue against this Court's precedent in State v. Smith, Op. No. 5283 (Ct. App. Dec. 17, 2014).¹ The grounds for this petition are as follows:

1. In Smith, this Court found that the expert testimony of Tod Lynch-Stanley, a licensed clinical social worker, concerning delayed disclosure in a sexual abuse setting did not constitute improper vouching for the child witness's testimony.

¹ The instant appeal was filed and briefed before this Court handed down its decision in Smith.

2. The Court so ruled despite finding that the solicitor’s question to Lynch-Stanley—“Does the length of the delay in the disclosure have any—in your opinion, does it erode the credibility of the disclosure?”—because the Court found that “Lynch-Stanly qualified his initial response² and never gave an opinion regarding whether the victim was telling the truth.”

3. South Carolina law expressly prohibits any witness—either lay or expert—from commenting directly or *indirectly* on the credibility of another witness. State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012).

4. As cited in the Appellant’s Reply Brief, numerous jurisdictions have found that such behavioral testimony as presented in this case and in Smith constitutes either a direct or indirect statement on the credibility of both children and adults alleging sexual abuse.

5. The decision in Smith stands for the proposition that expert testimony concerning child sexual abuse disclosure does not improperly bolster child witness testimony so long as the expert does not express an opinion as to the veracity of the child witness. This is despite the fact that such testimony is not relevant in proving any of the elements of the offense alleged and can only logically serve to improperly vouch for the credibility of the testimony by attempting to explain and justify the conduct of the child witness after the alleged offense occurred.

6. When considering the testimony presented in this case and, in light of the Supreme Court’s decision in State v. Kromah³, this Court’s decision in State v. Portillo,⁴

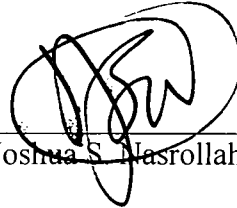
² In response to the inappropriate question, Lynch-Stanley responded: “I never see it as a credibility or non-credibility thing. I think when you’re looking at credibility, you’re looking for other types of things, but not necessarily the length of disclosure.”

³ 401 S.C. 340, 737 S.E.2d 490 (2013).

and those cases cited in the Appellant's Reply Brief, the decision in Smith should be modified.

The Appellant, therefore, respectfully submits that he be allowed to argue that this Court overrule or modify Smith.

IT IS SO MOVED.



Joshua S. Nasrollahi

Robert M. Dudek
Chief Appellate Defender

Attorneys for
Isaac Antonio Anderson

⁴ 408 S.C. 66 (Ct. App. 2014).

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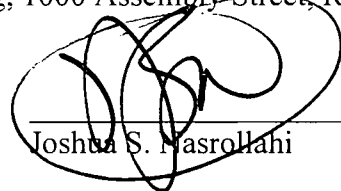
-v-

ISAAC ANTONIO ANDERSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that three (3) true copies of the Petition to Argue Against Precedent in the above-referenced case has been served upon Alan Wilson, Attorney General for the State of South Carolina, William M. Blicht, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, and Daniel E. Johson, c/o the Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 12th day of January 2015.

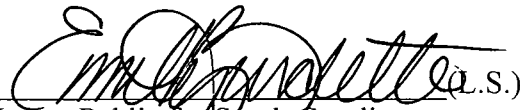


Joshua S. Masrollahi

Robert M. Dudek
Chief Appellate Defender

Attorneys for
Isaac Antonio Anderson

SUBSCRIBED AND SWORN TO before me
This 12th day of January 2015.


Notary Public for South Carolina
My Commission Expires: 5/22/2023