

STATE OF SOUTH CAROLINA RECEIVED

IN THE COURT OF APPEALS JUN 09 2016

SC Court of Appeals

Appeal from Pickens County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER LEE MEADOWS,

APPELLANT

APPELLATE CASE NO. 2014-000394

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

Whether the testimony of the State's "expert" in the "dynamics of childhood sexual abuse" should have been admitted when it contained nothing that would assist the trier of fact and improperly bolstered the complainant's credibility?

STATEMENT OF THE CASE

On August 15, 2011, a Pickens County grand jury indicted appellant for second degree criminal sexual conduct with a minor. R. 278. On February 24, 2014, appellant was tried before the Honorable James R. Barber, III, and a jury. R. 1. Sam Tooker represented the State. R. 1. John DeJong represented appellant. R. 1. The jury convicted appellant. R. 271, ll. 15 – 17. Judge Barber sentenced appellant to sixteen years' imprisonment. R. 277, ll. 7 – 9. This appeal follows.

ARGUMENT

The testimony of the State's "expert" in the "dynamics of childhood sexual abuse" should not have been admitted because it contained nothing that would assist the trier of fact and improperly bolstered the complainant's credibility.

The Abuse Allegations

The complainant ("Minor") was thirteen years old at the time of the alleged sexual abuse. R. 77, l. 24 – 78, l. 2. Minor's mother dated appellant. R. 79, ll. 9 – 18. Appellant moved in with them. R. 79, ll. 19 – 23. Appellant had children of his own. R. 80, ll. 11 – 14.

Minor claimed that on the Friday after Thanksgiving in 2010, appellant sent her a text message inviting her to ride with him. R. 81, ll. 3 – 9. She had recently broken up with her boyfriend. R. 81, ll. 10 – 12. She discussed the break-up with appellant. R. 81, ll. 10 – 14. Minor claimed that appellant then led the conversation in the direction of sex. R. 81, l. 17 – 23. They sent explicit pictures of themselves to each other. R. 82, ll. 11 – 23. Minor claimed that she eventually rode with appellant to a parking lot and were "getting started," but did not have sex that night. R. 83, l. 2 – 84, l. 13. She claimed they subsequently had sex "seven, eight times" in the car and in their house. R. 84, ll. 11 – 22.

Minor claimed they exchanged numerous text messages of a sexual nature. R. 85, l. 22 – 86, l. 22. Minor's mother also claimed she saw suspicious text messages. R. 114, l. 8 – 115, l. 13. Minor's younger sister ("Sister 2") claimed she saw text messages, as well. R. 57, l. 14 – 59, l. 15. The police obtained call records that purportedly showed the transmission of text messages between appellant and Minor, but did not contain the content of the text messages. R. 165, ll. 1 – 17. Minor admitted that before she went to

the police, she erased all of the text messages and photographs that she supposedly exchanged with appellant. R. 94, l. 14 – 95, l. 4.

Sister 2 claimed she was the first person that Minor told about the alleged abuse. R. 57, ll. 1 – 8. Sister 2 did not immediately inform her mother or police. R. 57, ll. 9 – 13. Sister 2 told Sister 1. R. 67, ll. 3 – 7. Sister 1 then spoke with Minor about the alleged abuse. R. 67, ll. 5 – 7. The sisters then told her mother without Minor's knowledge. R. 61, ll. 5 – 10. The mother waited until the next day to report the allegations to the police. R. 119, l. 24 – 120, l. 10. Appellant's ex-wife took Minor home from the police station. R. 74, ll. 4 – 15.

The girls were taken from the mother and the mother allowed appellant to move back in with her. R. 123, ll. 3 – 9. They lived together for approximately another two or three years. R. 123, ll. 3 – 17.

Minor's trial testimony contradicted what she originally told the police. R. 102, l. 24 – 103, l. 22. She admitted that in her first statement to the police, she told them she had sex with appellant on the Friday after Thanksgiving. R. 102, l. 24 – 103, l. 22. She admitted that her statement was not accurate and explained that she "wasn't comfortable," and was "not the one that wanted to go to the police department." R. 103, ll. 16 – 22. Minor also admitted that she did not make any of these allegations to her mother until after her mother told her that going to marry appellant. R. 104, ll. 6 – 105, l. 6.

The State's Expert Witness

During a break in the trial, defense counsel alerted the court that he would make a motion to exclude the State's expert witness. R. 147, ll. 5 – 10. The trial court asked if it would be necessary to proffer testimony and defense counsel stated that it would. R. 147, ll. 11 – 15.

As its last witness, the State called Shauna Galloway-Williams ("Williams"). R. 165, l. 19 – 166, l. 1. The trial judge dismissed the jury and heard argument from the attorneys. R. 166, l. 2 – 170, l. 7. Defense counsel anticipated that Williams would testify about delayed disclosure and grooming and argued that it would be nothing "more than bolstering or an attempt to bolster the alleged victim's testimony." R. 166, ll. 11 – 20. Defense counsel also argued that under Rule 702, Williams' testimony would not aid the trier of fact. R. 166, l. 21 – 167, l. 21.

The State responded that it would offer Williams "as a blind expert" and that she would testify regarding "delayed disclosure and grooming and then compliant victims." R. 168, ll. 16 – 169, l. 1. The trial judge asked for a proffer and Williams took the stand. R. 170, ll. 4 – 170, l. 23.

During her proffer, Williams offered her opinions on why children delay reporting abuse, "grooming," and that "compliant victims" often believe they are responsible are responsible for the abuse and this prevents disclosure. R. 172, l. 22 – 178, l. 13. After the proffer, appellant again argued that he had "heard nothing in this particular testimony that would aid the trier of fact." R. 179, ll. 5 – 19. Appellant also argued that Williams' testimony would be "pure bolstering." R. 179, ll. 15 – 19.

The trial judge denied appellant's motion. R. 183, ll. 9 – 21. The court stated:

I'm going to find that she's basically providing information to the jury that may help the jury – assist the jury in – the jury's province is determining credibility of all witnesses **and if she's providing information that may factor into a situation like this to assist them in ultimately making a decision, its decision, as to credibility.**

R. 183, ll. 9 – 16 (emphasis added). When Williams took the stand in front of the jury, defense counsel placed an ongoing objection to the entirety of her testimony on the record and the trial judge noted the objection. R. 185, ll. 16 – 20.

The trial judge qualified Williams as an expert in “dynamics of childhood sexual abuse.” R. 188, l. 23 – 189, l. 13. Williams testified she had not been in contact with Minor. R. 189, l. 25 – 190, l. 2. She had not reviewed Minor's written statement nor seen any evidence in the case. R. 190, l. 17 – 22. She told the jury that delayed disclosure was “very common.” R. 191, ll. 1 – 6. She stated that children often do not report abuse because they are afraid. R. 191, l. 11 – 192, l. 9. She told the jury that the more authority a person has, the harder it is for children to report abuse. R. 193, ll. 3 – 14. She discussed “grooming” as normalizing sexual behavior and paying more attention to a child. R. 194, l. 8 – 195, l. 12. She defined the term “compliant victim” as someone who did not perceive themselves as a victim and that they contributed to the sexual abuse that occurred. R. 195, ll. 13 – 22. She stated that “compliant victims” have a much more difficult time reporting abuse. R. 197, ll. 10 – 23. During cross-examination, she claimed that “between 2 to 4% of allegations are false allegations. It's much more likely that you would have a false denial where there may actually be proof or evidence that a child has been abused and that child actually denies it happening, then the chances of allegation being a purely false allegation. According to the research.” R. 199, ll. 8 – 16.

Discussion

Admission of Williams' testimony was error. The trial judge recognized that the only reason for Williams' testimony was to bolster Minor's credibility. The State sought to circumvent State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), with Williams' testimony. In State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012), the Supreme Court held that a forensic interviewer's testimony was properly limited to the foundation necessary to introduce a video recording of a child's interview. See also State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009) (holding there is no need to qualify a forensic interviewer as an expert and Pleicones, J., calling forensic interviewers "human 'truth detectors'" in dissent). The Court stated that it had "confronted instances where the State has abused the statute and sought to have the forensic interviewer, improperly imbued with the imprimatur of an expert witness, invade the province of the jury by vouching for the credibility of the alleged victim." Id. Discussing the qualification of the forensic interviewer in Kromah, the Supreme Court said, "[W]e state today that we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate." Id. at 357 737 S.E.2d at 499 n.5. The Court further noted that the "label of expert should be jealously guarded by the court and never loosely bandied about." Id. at 357, 737 S.E.2d at 499.

Furthermore, as defense counsel argued, Rule 702 prohibits testimony that does not aid the trier of fact and the trial court failed in its gatekeeping role to exclude such evidence. Rule 702, SCRE. State v. White, 382 S.C. 265, 272-273, 676 S.E.2d 684, 687-688 (2009). In Mitchell v. Commonwealth, 777 S.W2d 930 (Ky. 1989) the Supreme Court of Kentucky excluded evidence regarding "Child Sexual Abuse Accommodation Syndrome." This

syndrome involved delay of disclosure in abuse, secrecy, helplessness, entrapment and accommodation, and retraction. The alleged victim in Mitchell told Richard Welch, who held a Masters degree in clinical social work, that she did not report the sexual abuse immediately because she was afraid.

The Kentucky Supreme Court held that the state had failed to prove that the “so called Sexual Abuse Accommodation Syndrome” had attained a scientific acceptance. Mitchell, 777 S.W.2d at 932. The Court noted there was no testimony that sexual abuse by persons other than the accused could have produced the same symptoms in the victims.

The Kentucky court noted there was no testimony that all children who are sexually abused exhibited these symptoms, nor was there testimony that children who have not been sexually abused do not exhibit similar elements of the syndrome. The court found reversible error because: (1) there was no medical testimony that the syndrome is a generally accepted medical concept and, (2) the testimony had no substantial relevance to the issue of the defendant’s guilt or innocence. Id. at 933.

Williams’ testimony was identical to the evidence excluded in Mitchell. She gave only vague descriptions of commonsense concepts that are well within the realm of lay jurors. The thrust of her testimony was that children delay reporting abuse because they are afraid or feel they have done something wrong. These ideas are not beyond the ken of a juror. Nor did Williams cite any specific studies or research to support her vague notions regarding the “dynamics” of child sexual abuse. Her testimony was a thinly veiled attempt to bolster Minor’s testimony and was tailored to generally discuss the specifics of this case.

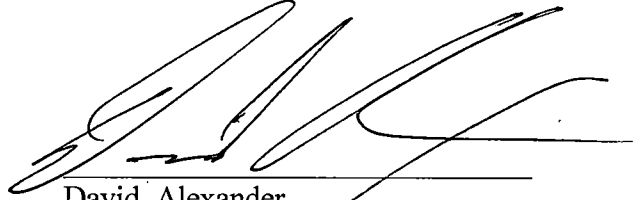
Appellant is constrained to point this Court to its recent decision in State v. Brown, ___ S.C. ___, 2015 WL 80630 (Ct. App. Jan. 7, 2015). Appellant acknowledges that the

Brown court held that such testimony is admissible (indeed, Williams was the expert in Brown). However, a petition for certiorari is currently pending before our Supreme Court on a very similar issue in State v. Mark Stanley Peters, 2014-UP-187 (Ct. App. May 7, 2014). On information and belief, appellate counsel in Brown will seek rehearing in this Court. Respectfully, appellant urges this Court to reconsider its decision in Brown as it applies to this case. Brown reads Kromah too narrowly. The intent of Kromah and the line of cases that preceded it was to limit opinions vouching for the credibility of witnesses. The State has simply renamed forensic interviewers as experts in spurious fields like “dynamics of child sexual abuse.” This testimony does not aid the trier of fact. It invades the province of the jury. The trial judge even stated during his ruling that Williams’ testimony was only relevant to Minor’s credibility. This Court should reverse and remand this case for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

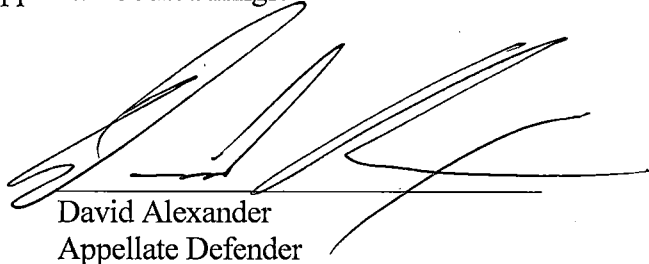
ATTORNEY FOR APPELLANT

This 9th day of June, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 9th, 2015



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
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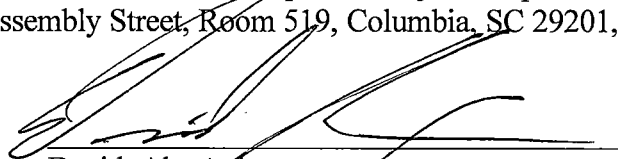
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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of June, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of June, 2015.

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