

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County

Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED

MAR 21 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KAYLA GAYLE WRIGHT,

APPELLANT

APPELLATE CASE NO. 2017-000091

INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by refusing to allow the jury to rehear the testimony of Appellant Kayla Wright, the testimony of her “victim” grandmother, and the testimony of her alleged accomplice Suggs who had a long criminal property crime record, where the jury specifically asked to rehear this important testimony from these three witnesses, and the judge refused to allow any of this testimony to be replayed which was arbitrary where even the solicitor urged the judge to replay the testimony?

**STATEMENT OF THE CASE**

Appellant Kayla Wright was indicted by the Horry County Grand Jury for the offenses of burglary in the first degree and grand larceny. R. \*. Her case came on for trial on January 9, 2017, before the Honorable Brian M. Gibbons, and a jury. Linda Burroughs, Kia Wilson, and James Galmore represented Appellant Kayla Wright. The solicitors were Martin Spratlin and O'Bryan Martin. Tr. 1.

On January 11, 2017, the jury found Appellant Wright guilty on both counts. Tr. 247, ll. 1-9. Judge Gibbons sentenced Appellant Wright to twenty-two years' imprisonment for burglary in the first degree, and a concurrent term of five years' imprisonment for grand larceny. Tr. 251, ll. 20-25.

This appeal follows.

## ARGUMENT

The trial judge erred by refusing to allow the jury to rehear the testimony of Appellant Kayla Wright, the testimony of her “victim” grandmother, and the testimony of her alleged accomplice Suggs who had a long criminal property crime record, where the jury specifically asked to rehear this important testimony from these three witnesses, and the judge refused to allow any of this testimony to be replayed which was arbitrary where even the solicitor urged the judge to replay the testimony.

### **Relevant Facts**

This case involves an alleged burglary of Appellant Kayla Wright’s grandmother’s home, and the theft of her property between two thousand and ten thousand dollars in value. Appellant Kaya Wright would take the stand in her own defense. She was twenty-one years old, and living in Tabor City, North Carolina. Kayla’s four-year-old son, Ethan, was staying with her grandmother, Linda Bryant, who had temporary custody. Tr. 144, l. 23 – 160, l. 4.

Kayla only had the equivalent of a ninth grade education because she broke her back when she was nine-years-old in a car accident, and was homeschooled. Tr. 145, l. 17 – 146, l. 16. Kayla said she only agreed to talk to the Detectives because she was told she would remain in jail for at least sixty days without her pain medication if she did not talk to him. Tr. 146, l. 12 – 148, l. 15.<sup>1</sup>

Kayla testified that an alleged accomplice, Bradley Suggs, implicated her in the crime even though she was innocent. Kayla said Suggs’s statement was played for her while she was in jail without her pain medication. Tr. 148, ll. 5 – 15. As will be seen infra, Suggs was a career

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<sup>1</sup> Defense counsel moved to suppress appellant’s statement as coerced, since the police were aware appellant was in pain and not getting her pain medication when she was threatened. Supp. Tr. 56, l. 14 – 58, l. 6. However, when the statement was introduced before the jury, defense counsel inexplicably failed to object. Tr. 123, ll. 5-22.

property crimes criminal, and the defense wanted the jury to understand such a person would know how to get sentencing consideration or better by implicating others in crimes that needed to be solved. Appellant Kayla Wright conversely turned down an offer of “drug court” three times to go to trial. Tr. 249, l. 20 – 250, l. 12.

On the day of the burglary, which was the wedding day of Kayla’s mother, and her grandmother’s daughter, Kayla telephoned her grandmother’s house to talk to “my little boy, but she said he was asleep at the time and stuff.” Kayla said she originally wanted to go to her mother’s wedding, but she learned her “sister was going to be there, and I didn’t want to go. We ended up having problems and stuff, so I decided not to go.” Appellant did not get along with her sister, and she did not want “to ruin” her mother’s wedding. Tr. 151, l. 10 – 162, l. 1.

Instead of going to the wedding, Kayla went to a bowling alley with her friend, Sherry Caines at about three o’clock in the afternoon, and they did not leave until ten or eleven o’clock at night. This was Kayla’s alibi for the burglary -- which was discovered by her grandmother at 9:20 that evening when she returned home from the wedding. Tr. 152, ll. 11-16.

Sherry Caines had known Kayla all of her life. Caines said that her favorite place to shoot pool and bowl was the 701 Bowling Alley in North Myrtle Beach. Caines testified on April 16, 2016, the day of the burglary, she went to the bowling alley with her husband and Kayla Wright. They arrived at about three o’clock that afternoon. Tr. 172, l. 4 – 173, l. 25. Caines testified that she, Kayla, and her husband stayed at the bowling alley until “a little bit before eleven o’clock when we left.” Tr. 174, l. 1 – 175, l. 1.

Kayla’s grandmother, Linda Bryant, testified she lived in a double wide mobile home in Green Sea, South Carolina. Tr. 50, l. 6 – 51, l. 21. Bryant recalled that Kayla came to her home

on Christmas Day of 2015 and in January of 2016 with her boyfriend Matt Stevens. Kayla stayed at her home for two nights in January of 2016. Tr. 52, l. 17 – 54, l. 4.

Bryant testified she talked to Kayla on the day Kayla's mother, and her daughter was getting married. Bryant said she confirmed to Kayla that she was going to the four o'clock wedding that afternoon. Bryant essentially insinuated that she expected Kayla to come to the wedding but she did not see Kayla at the wedding. Bryant returned home at 9:20 that evening. Tr. 54, l. 10 – 55, l. 24. Her home had been burglarized during the wedding. Tr. 55, l. 4 – 59, l. 20. Bryant was allowed to speculate, without objection, that she suspected Kayla and her boyfriend, Matt Stevens, were involved in the burglary. Tr. 59, ll. 7-25.

Thirty-six year old Bradley Suggs testified for the state, and he claimed Kayla was involved in the burglary committed by him, Matt Stevens, and "Bug." Suggs did not know "Bug's" real name. Tr. 81, l. 9 – 85, l. 13.

Suggs claimed that jewelry, a knife, and a pistol were stolen, but he maintained that he did not know what happened to the stolen property. Suggs claimed they went with the stolen items to "Bug's house" and "just basically sat there and spoke a few minutes and left, went our separate ways." Tr. 85, l. 14 – 86, l. 16. Suggs had a substantial criminal record for property crimes such as the one in this case, he was incarcerated in North Carolina at the time of the trial, but he claimed no promises were made in exchange for him implicating Kayla and Matt Stevens in the burglary. Tr. 86, l. 9 – 87, l. 17.

On cross-examination, Suggs acknowledged he had an extensive criminal record. Suggs had been convicted of larceny, shoplifting, petit larceny, receiving stolen goods, grand larceny, and "enhanced shoplifting." Tr. 94, l. 2 – 95, l. 20.

### **Request to replay testimony of three witnesses**

During jury deliberations, the jury asked to rehear Kayla's testimony and that of her alleged accomplice, Bradley Suggs, and also the testimony of appellant's grandmother, Linda Bryant. Tr. 242, ll. 3-7.

The judge stated he was not inclined to replay the testimony of these three witnesses. "It sounds like the jury wants to rehear the entire trial. I'm not inclined to do that, that's why I told them at the very get-go to pay attention to what happens." Tr. 242, ll. 16-25. The solicitor asked that the jury **"be allowed to hear what they requested, including the cross-examinations, obviously."** Tr. 243, ll. 1-8. (emphasis added).

Defense counsel suggested the judge ask the jury if there was any particular part of the three witnesses' testimony that it wanted to hear "just to save some time." Tr. 243, ll. 10-16. The judge said he thought that would be "intervening into the deliberation process, which I am loath to do. I mean, I think it's either an all or nothing situation."<sup>2</sup>

The judge then told the jury he would not allow them to rehear the testimony of Appellant Kayla Wright or Bradley Suggs or Linda Bryant. Tr. 244, l. 23 – 245, l. 24. One hour and one minute later, the jury found appellant guilty on both counts. Tr. 246, l. 7 – 247, l. 9. As stated, appellant was sentenced to twenty-two years' imprisonment.

### **Discussion**

"The trial judge, in his discretion, may permit the jury at their request to review, in the defendant's presence, testimony after the beginning of jury deliberations." State v. Plyler, 275 S.C. 291, 298, 270 S.E.2d 126, 129 (1990). "The extent of the review is within the trial judge's

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<sup>2</sup> Defense counsel Galmore responded to the judge's assertion by saying the judge could tell the jury to "deliberate with what they have." Tr. 243, ll. 17-24.

discretion **which is to be exercised in the light of the jury's request.**" State v. Carlson, 363 S.C. 586, 601, 611 S.E.2d 283, 291 (Ct. App. 2005). (emphasis added).

In Plyler, the jury requested the testimony of a key witness be read back to them. The tape was replayed for the jury, and upon the conclusion of the direct testimony, the foreman informed the judge that the jury had heard all it desired or needed to hear. The tape was stopped and the jury returned to deliberations.

The Supreme Court found no abuse of discretion in the judge denying the defense motion that the jury be required to hear the cross-examination as well. In Carlson, this Court wrote: "The court is not required to submit evidence to the jury for review **beyond that specifically requested** but may, in its discretion, have the jury review *other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.*" State v. Carlson 363 S.C. 586, 601-602, 611 S.E.2d 283, 291 (Ct. App. 2005).

Here, the jury requested to hear Appellant Kayla Wright's testimony again. Obviously, in a criminal trial, the defendant's testimony is critical if he or she exercises the right to testify. That testimony will often be the only source from which a criminal defendant's defense can be imparted to the jury.

In addition, the jury asked to rehear the testimony of Kayla's grandmother, Linda Bryant. Finally, the jury wished to rehear the testimony of alleged accomplice Bradley Suggs.

Kayla testified that she was at a bowling alley at the time the state alleged her grandmother's home was burglarized. As seen, Kayla had a corroborating witness also testify to that fact, Sherry Caines.

Linda Bryant was not home at the time of the burglary, and she could only speculate that Kayla was involved. How that speculation sounded to the jury is impossible to ascertain from the

could record, but the jury wanted to hear Bryant's testimony again before it reached its verdict. There was apparent tension in the family between Kayla and her sister, and the grandmother who had temporary custody of Kayla's young son.

Finally, Bradley Suggs had a substantial criminal record for property crimes, and on cross-examination it seemed apparent that Suggs would know how to "work the system" given his life of property crimes. He would expect sentencing consideration or better by implicating Kayla, and by testifying against her. See, State v. Jones, 343 S.C. 562, 568-569, 541 S.E.2d 813, 816-817 (2001); State v. Brewington, 267 S.C. 97, 100-101, 226 S.E.2d 249, 250-251 (1976); Rule 608 (c), SCRE.

The jury specifically requested to hear the testimony of these three witnesses. In this case, the judge flatly refused to allow the jury to rehear **any of the requested testimony**. That was an abuse of discretion, particularly where the testimony of these three witnesses was very important for the reasons given above in deciding Appellant Wright's credibility, her guilt or innocence, the bias of Suggs as a state's witness,<sup>3</sup> and the what, if any, credence to give her grandmother's speculation that Kayla was involved in the burglary.

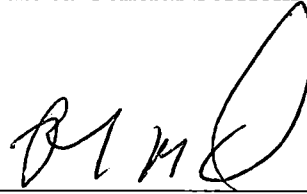
The judge's abuse of discretion was respectfully reversible error here where the jury specifically requested to hear that testimony from these three important witnesses, and the judge ruled the jury would rehear none of it. Again, even the solicitor agreed the jury should rehear the testimony of these three witnesses it requested to rehear. Appellant Kayla Wright should be granted a new trial.

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<sup>3</sup> The solicitor admitted "he [Suggs] may want something out of this . . ." "Bradley Suggs, I don't want him over at my house for dinner. He ain't a good man. He is what he is. He's a thief, he's a burglar. Ms. Burroughs read off his list of convictions." Tr. 211, ll. 3-19.

**CONCLUSION**

By reason of the foregoing arguments, Appellant Kayla Wright's convictions should be reversed, and this case remanded to the Horry County Court of General Sessions for a new trial.



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of March, 2018.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

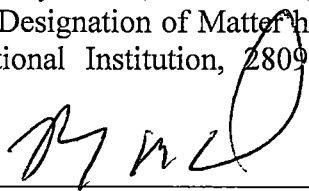
V.

KAYLA GAYLE WRIGHT,

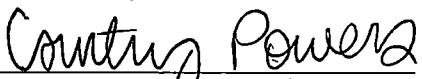
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Kayla Gayle Wright, #371029, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 21st day of March, 2018.

  
Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21st day of March, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027.

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