STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Calhoun County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN EDWARD HAYNES,

APPELLANT.

APPELLATE CASE NO. 2013-000468

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in excluding a psychiatrist as an expert witness on the subject of automatism and sexual performance where the complainant told her psychologist and a DSS worker that she had sex with appellant while he was drunk and unaware of what happened?

STATEMENT OF THE CASE

On May 17, 2010, a Calhoun County grand jury indicted appellant for incest and second degree criminal sexual conduct with a minor between the ages of fourteen and sixteen. R. 236. On February 25, 2013, appellant was tried before the Honorable Diane S. Goodstein and a jury. R. 1. Sarah A. Ford and Benjamin Harrison Bell, Jr. represented the State. R. 1. Mark Wise and Robert Douglas Mellard represented appellant. R. 1. The jury convicted appellant. R. 226, ll. 6 – 15. Judge Goodstein sentenced appellant to consecutive terms of twenty years' imprisonment for criminal sexual conduct and ten years' imprisonment suspended upon the service of five years' imprisonment and five years' probation for incest. R. 232, l. 11 – 233, l. 7. After timely filing and service of the notice of appeal, this appeal follows.

ARGUMENT

The trial court erred in excluding a psychiatrist as an expert witness on the subject of automatism and sexual performance where the complainant told her psychologist and a DSS worker that she had sex with appellant while he was drunk and unaware of what happened.

Relevant Facts

Complainant was fifteen when she gave birth to her first child and seventeen when she gave birth to her second. R. 34, ll. 1 – 8. R. 35, ll. 1 – 7. Appellant John Haynes ("Haynes") is complainant's stepfather. R. 30, ll. 11 – 12. The State's DNA expert testified that the chances that Haynes was the father of these two children were 99.9%. R. 93, l. 8 – 95, l. 24.

At trial, complainant claimed that Haynes began sexually abusing her when she was approximately twelve or thirteen, eventually forcing her to have intercourse and impregnating her. R. 31, l. 11 – 35, l. 10. After complainant denied or said she did not remember making multiple statements regarding Haynes to a psychologist and to a DSS worker, Haynes called both of these witnesses in his case. R. 51, l. 1 – 60, l. 2.

Dr. Marc Harari ("Harari") performed a psychological evaluation of complainant. R. 111, ll. 19 – 22. Harari testified that complainant told him that she had sex with Haynes when he was drunk and "entirely unaware that he had sexual relations." R. 113, l. 20 – 114, l. 5. She told Harari that she loved her stepfather and wanted to have his children. R. 114, ll. 15 – 19.

The DSS worker, Eula Clark ("Clark") testified that complainant told her all of her friends were having babies and she wanted a baby, too. R. 124, ll. 21 – 25. She said

she loved Haynes and had sex with him because she wanted a baby. R. 125, ll. 5 – 16. Complainant also told Clark that Haynes did nothing wrong and did not know what happened because Haynes was drunk and unaware of what was happening. R. 126, l. 5 – 127, l. 20. Complainant told Clark that she only claimed Haynes raped her because she thought that was what everybody wanted to hear. R. 127, ll. 21 – 25. Clark told her a judge would not believe her story and complainant then claimed Haynes raped her. R. 132, ll. 1 – 25.

Following the testimony of these two witnesses, the defense called a psychiatrist, Dr. Amanda Salas. R. 143, ll. 2 – 4. The defense intended to offer Dr. Salas to educate the jury on whether it is possible to have sex and remain totally unconscious. R. 147, l. 24 – 152, l. 5. The State objected on relevance and that Dr. Salas had not performed any tests on Haynes to determine whether he had what the solicitor termed "sex somnia." R. 144, l. 17 – 346, l. 8. Judge Goodstein told the defense to proffer Dr. Salas's testimony and then she would rule. R. 151, l. 3 – 152, l. 6.

Dr. Salas was board certified in general psychiatry, child adolescent psychiatry, and forensic psychiatry. R. 154, ll. 20 – 22. She had previously been qualified to testify in court as an expert witness. R. 156, ll. 6 – 10. She explained that "the term automatism relates to involuntary behavior that occurs in a state of unconsciousness." R. 156, ll. 14 – 20. She researched medical literature on automatism. R. 157, ll. 9 – 19. She testified that people can engage in activities while they are unconscious and have no awareness of what they are doing. R. 157, l. 20 – 359, l. 18. When defense counsel asked about automatism and sexual performance, the State objected on the grounds that Dr. Salas had "no background in urology or the medical side of male physiology. R. 158, ll. 19 – 25.

After discussion, the court agreed that Dr. Salas was an expert in psychiatry, but did not "know that she is an expert in the field of automatism." R. 159, l. 23 – 160, l. 1. Defense counsel asked Dr. Salas further questions about her knowledge of automatism. R. 160, l. 10 – 167, l. 5. She researched automatism in PubMed, a scientific database. R. 160, l. 15 – 162, l. 11. She read the abstracts of articles she found concerning automatism and said that any physician, not just a psychiatrist, would have the knowledge to interpret them. R. 161, l. 8 – 162, l. 11. She explained that males can have erections while unconscious. R. 164, l. 21 – 166, l. 19. She explained the "parasympathetic nervous system" and that erections can occur while unconscious and are controlled by this part of the nervous system. R. 164, l. 21 – 166, l. 19. The State again objected that Dr. Salas was not an expert in this area. R. 166, ll. 21 – 25. Defense counsel then moved to have Dr. Salas qualified as an expert in psychiatry and automatism and the court allowed voir dire. R. 167, ll. 1 – 16.

On voir dire, Dr. Salas testified that she learned about automatism in medical school and during both neurology and psychiatry rotations. R. 168, ll. 1 – 12. She admitted she was not an automatism researcher, but when the State asked her if she had only a "generalized knowledge" of automatism, she replied that she had "specialized knowledge in terms of having a medical degree that allows me to know that automatism exists and how to identify it." R. 168, l. 13 – 169, l. 7. She agreed that she did not promote herself as "somebody who studies automatism" and that she had not written any papers on automatism. R. 169, ll. 11 – 17. She had treated patients who exhibited automatism. R. 170, l. 21 – 171, l. 3. At this point, the State concluded its voir dire and argued Dr. Salas did not have "specialized training or knowledge in order to help define a

fact on this particular subject in this case" and also objected that her testimony was irrelevant. R. 171, ll. 7 – 17.

Defense counsel argued her testimony was relevant because of complainant's testimony that she had sex with Haynes while he was drunk and unaware of what was happening. R. 171, l. 18 – 172, l. 18. Defense counsel argued that Dr. Salas's knowledge was "superior to the jurors' knowledge" and that she could educate them about whether what the complainant said happened was possible. R. 172, ll. 19 – 25. He then proffered Dr. Salas's testimony that an unconscious man can have an erection, ejaculate, impregnate a woman, and never awaken. R. 173, l. 11 – 176, l. 3.

The trial judge then questioned defense counsel about whether Dr. Salas would offer an opinion as to whether Haynes suffered from automatism and could have impregnated complainant while unconscious. R. 176, ll. 11 – 22. Defense counsel stated she would not offer such an opinion. R. 176, ll. 11 – 22. Judge Goodstein asked, "So, what she's prepared to testify, there is this thing called automatism and it can happen?" R. 176, ll. 23 – 25. Trial counsel agreed, while relating Dr. Salas's opinions to sexual performance. R. 177, ll. 1 – 5. The trial judge also asked whether Dr. Salas had any information about how much alcohol Haynes consumed, and defense counsel said she did not. R. 177, ll. 4 – 9.

Judge Goodstein then ruled she would not allow Dr. Salas's testimony and would not qualify her as an expert. R. 178, l. 3 – 182, l. 20. The trial judge concluded that the psychiatrist's testimony could only "invite the jury to speculate" because she had not examined Haynes and could not testify whether Haynes had automatism. R. 178, l. 3 – 179, l. 14. Judge Goodstein noted that diminished capacity is not a defense. R 178, l. 24

– 179, l. 6. The court debated whether Dr. Salas was not an expert because she only read "summaries" of forty articles. R. 179, l. 15 – 180, l. 9. Defense counsel argued that Dr. Salas's information was admissible because the information she had was relevant and "lay people without some additional information can't solve it." R. 181, ll. 9 – 20. While the trial judge agreed that the jury needed "appropriate expert testimony regarding . . . automatism," the court ultimately concluded that because Dr. Salas could not "take the next step to relate [automatism] to this defendant," her testimony was inadmissible. R. 181, l. 21 – 182, l. 20.

Discussion

The trial court erred in two respects. First, the court erred in finding that Dr. Salas was not qualified. Second, the court erred in finding that even if qualified, Dr. Salas's testimony was inadmissible because she could not testify that Haynes suffered from automatism. The exclusion of Dr. Salas's testimony left Haynes without scientific testimony that explained that what complainant told her psychologist and the DSS worker was possible and stripped Haynes of his defense.

Finding that Dr. Salas was not qualified because she was not a specialist in automatism was error. "To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony." Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-54, 487 S.E.2d 596, 598 (1997) (internal quotations omitted). A doctor's limited exposure to a particular field only affects the weight of her testimony, not its admissibility. McGee v. Bruce Hosp. Sys., 321 S.C. 340, 344-45, 468 S.E.2d 633, 636

(1996). "A physician is not incompetent to testify merely because he is not a specialist in the particular branch of his profession involved." Daves v. Cleary, 355 S.C. 216, 228, 584 S.E.2d 423, 429 (Ct. App. 2003). In McGee, an emergency room physician was held competent to testify about the standard of care of a surgeon. McGee at 345, 468 S.E.2d at 636. In Daves, a cardiologist was held competent to testify about emergency medicine. Daves at 228, 584 S.E.2d at 429.

Dr. Salas, a psychiatrist, was a medical doctor. She was board certified in three different fields of psychiatry. She testified that the mechanics of automatism were basic medicine "learned in medical school" that she could interpret because of her medical training. R. 162, ll. 5 – 11. The fact that automatism was not her specific field of study related only to the weight of her testimony, not its admissibility. While the trial court and solicitor disparaged Dr. Salas's research into automatism, this, again, was as issue of weight, not admissibility. Dr. Salas had more information than an average juror about automatism and refusing to allow her testimony on this basis was error.

The trial court also erred in refusing to allow Dr. Salas to testify because she had not examined Haynes and would not offer an opinion on whether he was capable of automatism or whether automatism occurred in this case. As long as their testimony is relevant and will assist the jury, experts are allowed to give opinions and information about a factual issue regardless of whether they have an opinion about whether a particular factual circumstance happened in the case being tried. A good example of this principle is provided by Jenkins v. Few, 391 S.C. 209, 220, 705 S.E.2d 457, 463 (Ct. App. 2010). In Jenkins, a business rival placed sugar in the plaintiff's gas tank. Id. An automobile mechanic was qualified as an expert witness about the effect of sugar on an

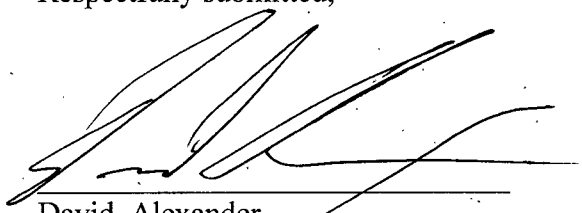
automobile engine. Id. This Court held that his testimony was admissible even though nothing in the opinion indicates he would testify that the damage to the plaintiff's engine was caused by sugar. Id.

These experts provided information to the jury about an issue that was not within their common knowledge and was admissible even though they did not testify that a specific matter had occurred in the case. See Kilby v. Commonwealth, 663 S.E.2d 540, 547 (Va. Ct. App. 2008) (holding testimony regarding the general subject of delayed disclosure was admissible expert testimony). By excluding Dr. Salas's testimony the trial court accomplished the exact opposite of what it intended—it forced the jury to speculate whether someone could have sex while unconscious. Dr. Salas's testimony was crucial to provide the scientific knowledge to the jury that automatism exists and is well-known to doctors. Had she testified, it would have lent support to the defense's theory. Haynes's defense arose from the complainant's own version of what happened and was not speculative. Without Dr. Salas's testimony, Haynes was left without an expert and more than a reasonable doubt exists that this error prejudiced his defense. The solicitor was free to argue in closing that "applying common sense and your general life experience what the defense is proposing is ludicrous." R. 199, ll. 1 – 4. Precisely because automatism is outside most people's common sense and general life experience is why the defense needed Dr. Salas to testify. For these reasons, this case must be reversed and remanded for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse Haynes' convictions and remand the case for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2014.

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."

December 18th, 2014

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330