

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON BENJAMIN BEACH,

APPELLANT

APPELLATE CASE NO. 2019-000493

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing a police officer to give his personal opinion regarding the veracity of the state's key witness where the credibility of the witness was critical to the jury's determination?

STATEMENT OF THE CASE

A Pickens County grand jury indicted Appellant for sexual exploitation of a minor in the first degree (2017-GS-39-0001) and criminal sexual conduct with a minor in the first degree (2017-GS-39-0002) on January 3, 2017. R. 307; R. 310. The state, represented by Brandi Hinton, called the case to trial before the Honorable Roger L. Couch and a jury on March 18-19, 2019. R. 1. John DeJong and Daniel King represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 291, ll. 8-13. Judge Couch sentenced Appellant to twenty years imprisonment for the exploitation charge and to life imprisonment for the sexual conduct charge. R. 305, ll. 5-9; R. 309; R. 312. He ordered the sentences to be served consecutively. R. 305, ll. 5-9; R. 309; R. 312.

On March 20, 2019, Appellant served his notice of appeal. This brief follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

ARGUMENT

The trial judge erred in allowing a police officer to give his personal opinion regarding the veracity of the state's key witness where the credibility of the witness was critical to the jury's determination.

Relevant facts

The state's star witness, Jacqueline Dowell, lived in Front Royal, Virginia, but she lied and told Appellant she lived in Annapolis, Maryland. R. 91, ll. 16-17; R. 93, ll. 3-4. She also lied to Appellant about her name and age. R. 92, l. 19 – R. 93, l. 2. Dowell claimed that she and Appellant began communicating using an app called Kik in 2016. R. 91, ll. 22-24; R. 92, ll. 3-8. During these communications, Dowell, pretending to be Victoria Hamilton, sent nude photographs to Appellant. R. 94, l. 25 – R. 95, l. 2. She sent "stock nude pictures" – images she claimed were of herself, but were of other people. R. 106, ll. 17-18.

"At some point," according to Dowell, Appellant sent her some images and videos. R. 94, ll. 15-18. These images and videos allegedly showed Appellant sexually abusing his son. R. 95, l. 10 – R. 96, l. 17. Dowell told Appellant "those are so hot" in response to the images. R. 99, ll. 7-14.

Later, Dowell "tried to anonymously report" Appellant to the police. R. 96, l. 25 - R. 97, l. 4. Dowell claimed she called the Easley Police Department "two or three" times. R. 103, ll. 20-22. The police "eventually figure[d] out" who she was. R. 97, ll. 5-7. She then met with local law enforcement to discuss the matter. R. 97, ll. 8-12. She asked for immunity from the police because she was concerned about her own legal jeopardy. R. 104, ll. 2-24.

To assist the Easley Police Department, Chad Morris with the Virginia State Police interviewed Jacqueline Dowell. R. 111, ll. 1-25. Morris testified to hearsay regarding what

Dowell revealed during this interview. According to Morris, Dowell “said that she had knowledge that there was an individual in ... South Carolina that had molested his son and that she had some of that contraband on her phone.” R. 112, ll. 11-14. He further elaborated that what Dowell told him “was in line with the results of the phone examination.” R. 113, ll. 17-19. Later, he explained that Dowell told him she received the messages using an app called Kik, and this information “did jive” with what he found on the phone. R. 119, l. 20 – R. 120, l. 2. Morris told the jurors that he “believed at the time, and still [did], that to be accurate.” R. 120, ll. 2-3.¹

The lead investigator on the case, Brandon Liner, was the state’s last witness. R. 199, ll. 15-17. Liner testified to the beliefs of law enforcement regarding what the evidence revealed: “we believed the initial conversations with Ms. Dowell began roughly mid-June. We believe the pictures that are sent that we’re talking about in video was sent roughly July 4 to the 5th. We also believe that on July 16 is when the initial report was made.” R. 200, ll. 3-9. He further testified to hearsay from “a concerned citizen” in whom Dowell allegedly confided. R. 200, ll. 14-18; R. 203, ll. 8-17.

Discussion

“The assessment of witness credibility is within the exclusive province of the jury.” State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); see also State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977) (explaining that “[i]t is axiomatic that the credibility of the testimony of the[] witnesses is for the jury”). “Therefore, witnesses are generally not allowed to testify whether another witness is telling the truth.” McKerley, 397 S.C. at 464, 725 S.E.2d at 141. “Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is

¹ Appellant concedes trial counsel did not object to the police officer improperly commenting on the veracity of Dowell.

an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror.” State v. Taylor, 404 S.C. 506, 514, 745 S.E.2d 124, 128 (Ct. App. 2013) (internal quotation omitted).

“[W]itnesses may not improperly bolster the testimony of other witnesses.” McKerley, 397 S.C. at 464, 725 S.E.2d at 141. “Even a witness permitted to give an opinion under Rule 608(a) must restrict the opinion to ‘character for truthfulness,’ and may not testify whether the witness believes a specific statement or account given by another witness.” Id. at 465, 725 S.E.2d at 141. “[A] witness may not give an opinion for the purpose of conveying to the jury – directly or indirectly – that she believes the victim.” Briggs v. State, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017). “[E]ven though experts are permitted to give an opinion regarding the credibility of others.” State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013).

The South Carolina Supreme Court held a witness’s testimony that she found another witness’s statement “believable” was improper bolstering. Smith v. State, 386 S.C. 562, 564, 689 S.E.2d 629, 631 (2010). The Court provided a list of “the kinds of statements” a witness should avoid at a trial in State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013). According to the Court, the witness should not (1) say the witness told the other witness to be truthful in prior communications, (2) offer a direct opinion as to the other witness’s veracity or tendency to tell the truth; (3) indirectly vouch for the other witness’s believability; (4) state the witness believes the other witness; or (5) offer an opinion that the other witness’s behavior indicated the other witness was telling the truth. Kromah, 401 S.C. at 360, 737 S.E.2d at 500.

The South Carolina Supreme Court held the admission of a witness’s written report regarding the out-of-court interview of a child-witness in which the witness stated the child-witness presented “a compelling disclosure of abuse” constituted improper vouching. State v.

Jennings, 394 S.C. 473, 479-480, 716 S.E.2d 91, 94 (2011). This Court held that a witness who testified she found out-of-court interviews of another witness as “compelling” was inadmissible opinion evidence. McKerley, 397 S.C. at 465, 725 S.E.2d at 142. Further, the Supreme Court held it was improper for a treating psychiatrist to testify that he found the patient to be genuine. State v. Dawkins, 297 S.C. 386, 393-394, 377 S.E.2d 298, 302 (1989).

The Court held a witness’s recommendation to an alleged victim of sex abuse that the alleged victim not be around the defendant was not proper testimony for a jury because it could only be interpreted as the witness believing the alleged victim’s claim of sexual abuse at the hands of the defendant. State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). This Court agreed with a trial judge that a witness remarking that ninety-five to ninety-nine percent of the time when a child alleges sexual abuse, the child is telling the truth improperly vouched for the credibility of another witness – the child. State v. Dempsey, 340 S.C. 565, 570-571, 532 S.E.2d 306, 309 (Ct. App. 2000).

When Morris informed the jury that he believed Dowell, he improperly commented on Dowell’s credibility. Dowell was the state’s star witness as she was the person to whom Appellant allegedly sent the photographs and videos. Appellant defended that although he sent the images and videos, he only did so because Dowell threatened to harm him and his family. Therefore, it was essential for the state that the jury believe Dowell when she claimed Appellant sent the images and videos to her voluntarily and not at her request. However, Dowell was forced to admit on the stand that she had lied – about her name, her address, her age, and her appearance. In short, the state’s star witness’s credibility was compromised. The state needed the jury to believe Dowell and had the officer substitute his credibility for hers. The state was no longer asking the jury to believe Dowell; instead, the state was asking the jury to believe the

officer and to abdicate its duty as fact finder to the officer. The state wanted the jury to rely on the officer's assessment of Dowell's credibility instead of its own.

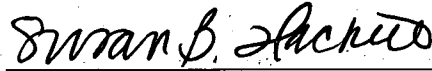
Just as Morris improperly bolstered Dowell's credibility, the solicitor vouched for Dowell. During her closing argument, the solicitor realized her case rested almost entirely upon the credibility of Dowell. Based upon this recognition, the solicitor explained she was "not presenting Ms. Dowell to [the jurors] as a saint." R. 244, ll. 22-23. She admitted Dowell was interested in "sick fantasies." R. 244, l. 24 – R. 245, l. 2. Knowing that she was asking quite a bit of the jurors to rest their verdicts on the testimony of such a person, the solicitor vouched for Dowell: "I do think that Ms. Dowell was truthful to you." R. 245, ll. 3-4. Although a prosecutor may argue the credibility of a witness based on the record and its reasonable inferences, a prosecutor may not vouch for the credibility of a prosecution witness based on personal knowledge or other information outside the record. Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). As explained by the Supreme Court, "[v]ouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution which supports conviction." Id. Further, "[i]t is inappropriate for the State to assure the jury of a witness' credibility, because the jury is charged with assessing the credibility of witnesses based on evidence in the record." Id. Generally, "[a] prosecutor improperly vouches for a witness' credibility and places the government's prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony." Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).

The state improperly bolstered Dowell's credibility and testimony through the testimony of the officer who interviewed her. The officer's testimony relayed to the jury that he believed Dowell, and implicit within the testimony was that the jury should believe Dowell too. The state

capitalized on this testimony during closing by vouching for Dowell as well. This was error and requires reversal of Appellant's convictions.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of November, 2019.

STATE OF SOUTH CAROLINA
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Roger L. Couch, Circuit Court Judge

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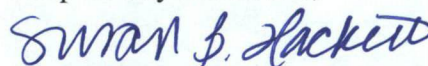
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Aaron Benjamin Beach states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before Judge Roger L. Couch, which was held on March 18 & 19, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Aaron Benjamin Beach.

Respectfully Submitted,



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of November, 2019.

STATE OF SOUTH CAROLINA
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APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript Dated March 18-19, 2019 (Volume 1);
- (2) Trial Transcript Dated March 18-19, 2019 (Volume 2);
- (3) True-billed indictments; and
- (4) Sentence Sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 1, 2019



Susan B. Hackett
Appellate Defender

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ATTORNEY FOR APPELLANT

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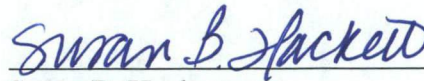
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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

November 1, 2019.



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Appellate Defender

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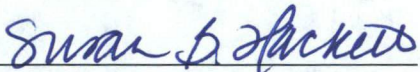
V.

AARON BENJAMIN BEACH,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Aaron Benjamin Beach, 327841, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 1st day of November, 2019.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of November, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: September 30, 2029