

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT

V.

ANTHONY BRIGGS,

APPELLANT

APPELLATE CASE NO 2019-000632

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing the minor's grandmother, Parker, to testify that her daughter, Wendy, the child's mother, told her not to talk to the minor about the minor's claims that appellant had sexually abused her since this testimony was prejudicial hearsay meant to convey that the minor had not been coached, and that her mother and grandmother believed her, especially where the minor did not have any independent memory of her dated allegations against appellant at the time of trial?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offenses of committing a lewd act upon a minor, and criminal sexual conduct with a minor in the first degree. R. 408. His case was called to trial on March 25, 2019 before the Honorable R. Keith Kelly, and a jury. Jeremy Thompson represented appellant. Wendy Hallford and Hope Coleman were the assistant solicitors. R. 1.

On March 27, 2019, the jury found appellant guilty on both counts. R. 399, l. 23 – 400, l. 15. Judge Kelly sentenced appellant to life imprisonment for criminal sexual conduct with a minor in the first degree, and fifteen years imprisonment for committing a lewd act upon a minor. R. 406, ll. 10-16.

This appeal follows.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 429–30, 632 S.E.2d at 848.

ARGUMENT

The court erred by allowing the minor's grandmother, Parker, to testify that her daughter, Wendy, the child's mother, told her not to talk to the minor about the minor's claims that appellant had sexually abused her since this testimony was prejudicial hearsay meant to convey that the minor had not been coached, and that her mother and grandmother believed her, especially where the minor did not have any independent memory of her dated allegations against appellant at the time of trial

Relevant Facts

The alleged victim was fifteen-years-old at the time of appellant's trial. She was living with her grandmother, Donna Parker, in North Carolina. R. 56, l. 4 – 57, l. 24. She identified appellant as her mother's boyfriend, who had lived with her, her mother, Wendy, and the minor's siblings, Dakota and Madison, in Spartanburg county in 2008-2009 when the incidents allegedly occurred. She was four to five years old at this time. Her mother, Wendy, would not testify at the trial. R. 57, l. 1 – 58, l. 21.

While living in Spartanburg county, the minor related that she shared a bedroom with her sister, Madison, and her brother, Dakota, had his own room. Appellant and her mother slept on a "pull-out coach in the living room." This was the year the minor started K-4 at Chesnee Elementary School. R. 58, l. 19 – 59, l. 14.

The minor testified that her mother left for work early in the morning, and Dakota and Madison caught an earlier bus to school. This left her alone in the house with appellant before she got on a school bus about midmorning. The minor claimed that appellant touched her sexually and had oral sex with her at times before she left for school in the morning. R. 60, l. 1 – 62, l. 23. The minor said appellant would then "walk me to the bus." R. 62, l. 21 – 63, l. 3. She

said did not tell anyone about the molestation "because I was scared." R. 63, ll. 23 – 24. The minor at some later point told her grandmother, Donna Parker, that appellant had been touching her. R. 66, l. 1 – 67, l. 4.

On direct-examination with the solicitor, the minor, now fifteen, said she had no memory of her forensic interview. She watched the forensic interview before the trial, and now "had the same memory." R. 67, ll. 5-15. However, the minor admitted she had no independent memory of anything she said during the forensic interview she watched. In essence, her memory was not refreshed but she reasoned if she made those claims at the time that they must be true because she was not a liar. R. 69, l. 7 – 71, l. 3.

The following occurred on cross-examination of the minor:

Q. Now, do you recall how long you lived with Anthony?

A. No.

Q. You don't know?

A. No.

Q. Do you recall taking any trips with him?

A. No.

Q. You don't recall going to, say, Tennessee with him?

A. No.

Q. Do you recall, let's say, do you know what kind of car he had?

A. No.

Q. Do you recall taking trips with him in his car? Do you remember driving in the car with him?

A. No.

Q. You testified earlier that you went to work – he took you to work on some mobile homes; is that correct?

A. Yes.

Q. What would he do at those mobile homes?

A. I'm not sure.

Q. You don't remember?

A. No.

Q. These two folks sitting right here, do you recognize them?

A. No.

Q. Do you remember -- do you remember his parents at all?

A. No.

Q. Do you remember going to his parents' house at all?

A. Yes.

Q. You remember going to the house, but you don't remember them?

A. Yes.

Q. Okay. And you testified earlier you don't remember when you started school.

A. Yes.

Q. Do you remember how long you'd be in school for?

A. No.

Q. Do you know -- how did you get home?

A. The bus.

Q. Did you ride with anybody on the bus?

A. No.

Q. You didn't ride with -- you didn't ride -- let me rephrase that. Do you know what school your brother and sister went to?

A. No.

Q. Do you recall riding home on the bus with your sister?

A. Not that I remember.

Q. But you do remember you took the bus home?

A. Yes.

Q. Do you remember Anthony going to work?

A. Can you repeat that?

Q. Do you remember Anthony going to work?

A. Whenever he would take me.

Q. Do you remember when he had a regular job?

A. No.

Q. You don't remember him ever having a regular job?

A. No.

Q. Do you remember who your 4-K teacher was?

A. No.

Q. Do you remember if you had any friends in 4-K?

A. Not that I remember.

Q. You don't remember. Is there anybody other than Wendy, your mother, that you remember telling that nothing happened between you and Anthony?

A. Yes.

Q. There are other people?

A. No. There's nobody else that I remember telling.

R. 71, l. 14 – 74, l. 10.

The forensic interviewer, Michelle Maldonado, was employed at the Boston Children's Hospital at the time of appellant's trial. She had been employed in February 2009 at the Spartanburg Child Advocacy Center. R. 77, ll. 9-22. She said she remembered the two forensic interviews with the alleged victim in this case on February 5, 2009 and February 9, 2009. The minor was then five-years-old. R. 78, ll. 2-7. One of the forensic interviews was admitted without objection, and it is now on file with this Court for viewing. R. 82, l. 22 – 83, l. 23.

Donna Parker, the alleged victim's grandmother, then testified. R. 89, l. 23 – 90, l. 11. Parker testified that the alleged victim was living with her and her stepfather in North Carolina at the time of trial. Parker remembered that in 2008 the minor was living in Chesnee, South Carolina. She recalled that the minor and her sister shared one bedroom, and her brother, Dakota, "had his own room." Appellant and the minor's mother, Wendy, slept in the living room on a "pull-out sofa." R. 90, l. 21 – 91, l. 18.

Parker testified that she found out about the minor's allegations against appellant when "Wendy [the mother, and Parker's daughter] had called me and told me." R. 94, ll. 7-17. The solicitor asked Parker, "Did Wendy tell you not to talk to [minor] about the allegations?" Defense counsel objected on the grounds of hearsay. A bench conference was then held, and the judge overruled the hearsay objection. R. 95, l. 17 – 98, l. 6.

Parker then testified that Wendy had asked her not to talk to the minor about the allegations, and she complied with this request "because I didn't want to hurt the case any." R. 96, l. 7-16. The minor had told her that appellant had molested her on the pull-out couch in the living room. Parker said that the minor had been acting "real timid and clingy and scared. And

that's why at this point in time as a grandmother I had to sit down and ask her what's bothering you, are you okay." R. 96, l. 23 – 98, l. 19.

Detective Danny Morgan testified that, while appellant denied improperly touching the minor, appellant became emotional and told Morgan that he wanted to talk to Wendy. "He was afraid of how things were going to turn out, that everyone was going to be against him." Detective Morgan said appellant was insistent on talking to Wendy, but he continued to deny improper touching of the minor. Morgan admitted he told appellant that while Wendy may be mad at him if he admitted the abuse, that Wendy and others would likely still support him. Morgan said, within the entirety of the interview, he concluded that appellant had given him "non-verbal admissions" of having abused the minor. R. 124, l. 4 – 130, l. 22.

Appellant testified in his own defense that when he moved in with the minor's mother, Wendy, in 2007 when Wendy was going through a divorce with the minor's father. R. 279, l. 1 – 280, l. 22. Appellant said, due to a court order, he was not permitted to be in the house with the children originally since he was "the paramour." So. "I would go out and I would sleep in the woods beside the house and get up the next morning to go to work." R. 281, l. 13 – 282, l. 11.

Appellant said he had a good relationship with Wendy and her children. R. 282, ll. 9-11. He never sexually abused, molested, or improperly touched the minor. R. 288, l. 19 – 290, l. 3.

Appellant remembered talking with Detective Morgan. "He was nice at first." Appellant said Morgan later threatened him, saying he was going to jail if he did not confess. Appellant testified that he never confessed to Morgan or anyone else. R. 290, l. 11 – 293, l. 11. Appellant further learned from Wendy that the minor was actually being abused, or acting out sexually with her older brother, Dakota. Dakota was seven years older than the minor. R. 317, l. 12 – 321, l. 13. Thus, Dakota would have been eleven-years-old when the minor was four.

The state called the minor again as a reply witness following appellant's testimony. She denied that Dakota had ever touched her sexually or molested her. She did not remember telling her mother or anyone else that Dakota had been molesting her. R. 337 l. 8 – 338, l. 20.

Discussion

“Hearsay testimony is inadmissible because the adverse party is denied the opportunity to cross-examine the declarant.” State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) citing State v. James, 255 S.C. 365, 179 S.E.2d 41 (1971). In State v. Mitchell, the victim of the first-degree CSC case told police her assailant was wearing a dark colored jacket or shirt. She later identified Mitchell as the perpetrator from a photographic line-up. Mitchell's wife then consented to a search of their home. A black jacket was not located. However, a police officer testified, over objection, that Mitchell's wife told him that Mitchell owned a dark jacket, but she could not locate it. Mitchell's wife did not testify. The Supreme Court found this testimony to be inadmissible hearsay, but harmless error. Not only did the victim identify Mitchell without hesitation, he was also seen wearing a blue coat on the night of the incident. There was other incriminating evidence against Mitchell in addition to this damning evidence.

Here, the minor's grandmother, Donna Parker, testified over objection that Wendy, her daughter, had told her not to talk to the minor about her allegations against appellant. Parker said she complied with Wendy's request because she did not want to hurt the state's case against appellant. The state sought to convey to the jury through this hearsay testimony that the minor was not coached into making these allegations, and that Wendy, her mother, and Parker, her grandmother, both believed the minor was telling the truth when she asserted appellant had been molesting her.

The hearsay testimony of Donna Parker in this case that Wendy told her not to talk to the alleged victim about her allegations against appellant was, again, meant to convey to the jury that the alleged victim was not coached, and that she remained consistent in her allegations. This made the hearsay error in this case similar in result to what occurred in State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). Saltz involved the hearsay admission of a prior consistent statement of a prosecution witness that the defendant had told her he had killed the missing child where that statement was not admissible to rehabilitate the witness after defense counsel cross-examined her about a more recent statement. Similarly, the implicit assertion that the alleged victim in this case had not been coached, and that she had been consistent in her allegations against appellant, was prejudicial hearsay. Wendy, the declarant, did not testify in this case. The prejudice was apparent, particularly where the alleged victim did not have any independent memory of her dated allegations against appellant at the time of his trial. The forensic interview did not refresh her memory. She only maintained that if she had accused appellant of molesting her years ago that must have been the truth because she apparently never told a lie.

The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies. Watson v. State, 370 S.C. 68, 71, 634 S.E.2d 642, 644 (2006). There was no hearsay exception applicable in this case.


In Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001), the Supreme Court held that defense counsel was ineffective for failing to object to the testimony of four witnesses who testified Dawkins was the person whom the alleged victim stated had abused her. Such improper corroboration has a devastating impact given its cumulative effect. See, Jolly v. State, 314 S.C.

17, 443 S.E.2d 566 (1984).¹ Parker's hearsay testimony in this case was prejudicial as explained above, and appellant should be granted a new trial.

¹ The portion of the Jolly v. State holding that such improper corroborating testimony error is per se prejudicial, and cannot be harmless has been overruled. Thompson v. State, 423 S.C. 235, 814 S.E.2d 487 (2018). The Jolly v. State hearsay analysis is otherwise the same.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2020.

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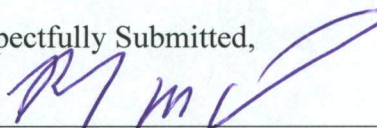
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Briggs states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Keith Kelly, which was held on March 25 - 27, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Anthony Briggs.

Respectfully Submitted,


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 26th day of February, 2020.

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Honorable R. Keith Kelly, Circuit Court Judge

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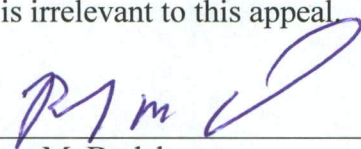
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Entire transcript of trial held March 25-27, 2019;
- (3) State's Exhibit #2 (Forensic interview).

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

February 26, 2020

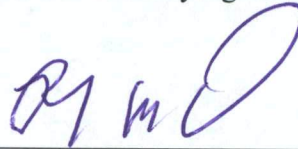

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CERTIFICATE OF COUNSEL

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."

February 26, 2020.



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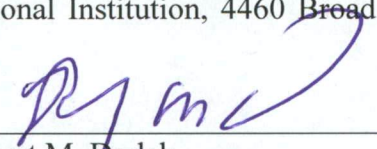
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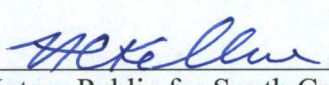
APPELLANT

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, Jr., 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 Anthony Briggs, 342410, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 26th day of February, 2020.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of February, 2020.

 (L.S)
Notary Public for South Carolina
My Commission Expires: December 31, 2029.