

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Court Case No.: 2017-001867

RECEIVED

Jul 14 2020

SC Court of Appeals

The State, Respondent,
v.
Joseph Campbell Williams, II, Appellant.

PETITION FOR REHEARING

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PETITION

Pursuant to Rule 221 the Appellant hereby moves this Court to reconsider its opinion and grant the Appellant a rehearing based on the following:

This Court's decision overlooked evidence showing that the other allegations of abuse were made specifically for the purposes of medical diagnosis or treatment and therefore were admissible under Rule 803(4). Rule 803 (4) provides that the following are not excluded by the hearsay rule: "Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion." Rule 803 (4) SCRE. Mental health provider Angie Farmer testified that the prosecutrix was referred for treatment for a number of behavioral and mental health issues including making false reports of abuse, false reports of physical abuse, telling exaggerated stories, and anger issues. R. 215-217. Those being the basis for the assessment and any resulting diagnosis and treatment, Farmer documented pertinent history in the medical records. This included the prior allegations. Given that they were directly related to the mental health treatment sought, the prior allegations constituted the quintessential example of what is allowed under Rule 803(4), SCRE.

In its analysis this Court further misperceived the prior allegation's probative value. In Boiter the court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility . State v. Boiter, 396 S.E.2d 364, 302 S.C. 381 (S.C.,

1990). Boiter only dealt with one prior allegation that was remote in time. In applying Boiter this Court misperceived the nature of the evidence at issue in the Appellant's case. Unlike cases involving a single remote prior allegation, the present case involves a series of prior allegations made against multiple individuals. By virtue of the increased number of allegations made against different people the probative nature of evidence is far greater than seen in Bointer. Especially when combined with the prosecutrix's documented history of lying.

This Court further misperceived the proximity in time between the prior allegations and the events alleged against the Appellant. This Court found that the offenses for which the Appellant was charged occurred in 2003 and 2004 when the prosecutrix was between six and eight years old. The Court however overlooked evidence showing that this was the exact same time period in which the prior allegations were made and documented by Farmer in the medical records. The record shows that the prosecutrix was originally referred for mental health treatment in 2003. R. 215-219. One of the reasons for the referral in 2003 was specifically for making false allegations. In 2004 allegations against two separate individuals was documented. Clearly the allegations at issue occurred in close proximity to the events for which the Appellant was charged.

Under Boiter the prior accusations were relevant and highly probative. Accusations against multiple people around the same time as the events alleged against the Appellant could reasonably be expected to have an effect on the jury. Where this case turned on the credibility of the prosecutrix it presents precisely the situation where the Confrontation Clause "tips the scales" in favor of permitting cross-examination. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). Because the prior allegations bore directly on the issue of the prosecutrix's credibility they were highly probative to the point of being essential to the defense of the case. Denial of the

Appellant's right to cross-examine and introduce evidence related to the prior allegations was therefore error.

Prejudice

This Court's decision holds that similar evidence was introduced such that it removes the prejudice of excluding evidence relating to the other allegations. This overlooks the fact that it was the pattern of allegations against multiple people that makes the evidence so important. While evidence of a single prior false accusation may raise doubt in the jury's mind as to the credibility of the prosecutrix, a pattern of such allegations around the same time raises that potential exponentially. This is especially important where the case turned entirely on the believability of the prosecutrix. As a result, the defense of the case rested heavily on effective cross-examination. In limiting the defense cross-examination the court violated the Appellant's rights under the Confrontation Clause. "A violation of the defendant's Sixth Amendment right to confront the witness is not *per se* reversible error" if the "error was harmless beyond a reasonable doubt." State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) (*quoting State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)) (*internal quotations omitted*). This Court must determine whether the error was harmless beyond a reasonable doubt. Graham, 314 S.C. at 385, 444 S.E.2d at 527. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318–19 (*quoting* Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

“Harmless beyond a reasonable doubt” means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (internal quotations omitted).

The Mizzell Court concluded the trial court committed reversible error:

Considering the Van Arsdall factors, we note much of Steele's testimony was either cumulative or corroborated by other witnesses....
...Critically, however, Steele was the only witness to testify as an eyewitness to [defendants'] burglary of the home. The lack of physical evidence placing [defendants] at the scene enhanced the importance of Steele's testimony. As in [State v.] Brown, [303 S.C. 169, 399 S.E.2d 593 (1991),] the co-conspirator witness is the only link placing [defendants] at the scene of the crime....
....Because Steele was the only witness to directly link [defendants] to the burglary, we cannot say the trial court's error was harmless beyond a reasonable doubt. Accordingly, we find the trial court committed prejudicial error in limiting [defendants'] cross-examination into Steele's possible sentence.

State v. Mizzell, 349 S.C. 326, 334–35, 563 S.E.2d 315, 319–20 (2002). Here, the State’s case rested squarely on the credibility of the prosecutrix. Attacking credibility was the essence of the defense strategy. Limiting the Appellant’s ability to impeach the prosecutrix can not be harmless.

CONCLUSION

Based on the foregoing the Court should grant a rehearing in the case and reverse the conviction and sentence of the Appellant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 14, 2020, I served the Appellant’s Petition for Rehearing and Certificate on the Respondent by sending a copy of same via AIS email address to counsel of record, and others as indicated below:

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Respectfully submitted,

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