

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of General Sessions
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2019-001002

THE STATE,

Respondent,

v.

JEROME KEITH WEST,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Expert testimony should be admitted only if it is reliable. In this domestic violence prosecution involving victim recantation, the trial court considered proffered expert testimony about domestic violence dynamics. The expert testified her opinion was based on her extensive education, clinical experience, and knowledge of peer-reviewed studies conducted in line with professional norms. Did the court err by finding the testimony reliable?

STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant Jerome West for Domestic Violence in the Second Degree. He proceeded to jury trial before the Honorable Deadra L. Jefferson on June 11–12, 2019. He was convicted and sentenced to three years' incarceration. (R.p.248). This direct appeal follows.

STATEMENT OF FACTS

A Charleston County sheriff's deputy responded to a call of a disturbance at the home of Shanika West, the sister of Appellant Jerome West. (R.p.64; 27). West and his girlfriend, Crystal Ragin, were living there at the time. (R.p.27). Shanika West told the officer Jerome was drunk and causing a scene. (R.p.64). After a brief investigation, Appellant West agreed to leave the residence. He gathered some belongings and the deputy agreed to give him a ride to a friend's house. West was yelling belligerently and insulting Ragin. (R.p.68; State's Exhibit#1). As the officer attempted to coax West towards his cruiser, West walked over to Ragin, claiming he wanted to tell her goodbye. (R.p.68; State's Exhibit #1). Instead, West punched Ragin in the face. (State's Exhibit #1, R.p.32; 68–69).

The deputy's body camera recorded the interaction and the video was admitted at trial. (State's Exhibit #1). West's fist cannot clearly be seen making contact with Ragin's face in the video. However, both Ragin and the deputy testified West punched Ragin in the face. (R.p.32; 68). The deputy testified he was six to eight feet away when it happened and saw it clearly. (R.p.68–69). He took pictures of a red mark on Ragin's face. (R.p.70). After punching Ragin, West walked off stating he was "ready to go to jail." (R.p.69; State's Exhibit #1). Children witnessed the attack and West had previously been convicted of Domestic Violence. (R.p.8; 14–15; 88). Due to these aggravating factors, the State charged West with Domestic Violence in the Second Degree.

Expert testimony about domestic violence victim recantation.

The victim admitted during her testimony that she submitted a “drop charge” request after West’s arrest in which she claimed West never actually hit her, but that she slipped and fell. She admitted at trial that she “didn’t say . . . what really happened” in her drop charge request. (R.p.35). She explained, “[s]ometimes when you care for someone, you think you’re in love, you just do those types of things; so I did reach out to him.” (R.p.35). She admitted she requested the charges be dropped because she loved him and “did not want him in trouble.” (R.p.45).

Subsequently, West raised an objection to the testimony of the State’s planned expert witness, Dr. Alice Rheingold. Dr. Rheingold is a clinical psychologist specializing in treatment of victims recovering from trauma, including domestic violence-related trauma. (R.p.116-120). West raised concerns about the extent of Dr. Rheingold’s testimony and requested “that she be limited to . . . why people cover for their perpetrators, and why they still have contact with them afterward and why they move to drop charges.” (R.p.106). West further requested a hearing on the reliability of Dr. Rheingold’s testimony.

The State proffered Dr. Rheingold’s testimony. She testified generally about trauma-induced behavior in domestic violence victims, including the tendency for victims to recant inculcating statements and reconcile with abusers. (R.p.116-42). When asked how she formed her opinion regarding behavior of domestic violence victims, Dr. Rheingold explained her opinion was based on “a combination of synthesizing research studies, as well as my experience in working with roughly

200 domestic violence victims within our clinic.” (R.p.135). Dr. Rheingold referred specifically to studies that anonymously surveyed 16,000, 12,000, 10,000, and 4,000 domestic violence victims, respectively. (R.p.136-38). She explained they were all peer-reviewed. (R.p.141). She further testified the methodology was “industrywide” and accepted within the field. (R.p.142). The trial court found that “clearly, they meet the reliability test,” and ruled the testimony was admissible. (R.p.143).

STANDARD OF REVIEW

The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion. A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions. State v. Prather, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020).

ARGUMENT

The trial court correctly performed its gatekeeping role by probing the reliability of expert testimony about domestic violence dynamics, and evidence supports the trial court's ruling allowing the testimony.

The trial court correctly performed its gatekeeping role by holding a hearing to determine the utility and reliability of expert testimony about behavioral patterns in victims of domestic abuse. The expert explained that her testimony was based on her extensive education, clinical experience, and knowledge of relevant academic literature. The expert relied in part on academic studies, and she explained the studies were peer-reviewed and used methodology that is accepted within the field. Accordingly, the trial court did not abuse its discretion in finding the testimony reliable. This Court should affirm.

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE. “In determining whether to admit expert testimony, the trial court must make three inquiries: (1) whether the evidence will assist the trier of fact; (2) whether the expert has acquired the requisite knowledge and skill to qualify as an expert in that particular subject matter, and (3) whether the substance of the testimony is reliable.” State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018). “The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type

reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”

Rule 703, SCRE.

West alleges Dr. Rheingold’s testimony was unreliable. Specifically, he complains that her opinion was based on “unreliable studies.” Brief of Appellant at 6. He claims the studies used “unverifiable methodology” because the data collected from domestic violence victims was not “corroborated.” Brief of Appellant at 9.

West’s bare assertions of unreliability are unsupported by any testimony, secondary sources, or evidence of any kind. He does not address the fact that it would be impossible to “corroborate” the statements of domestic violence victims in the vast majority of cases. Nor does he address the fact that the studies in question are purposefully performed anonymously. (R.p.137-38). The only testimony presented at trial regarding the reliability of the studies was that of Dr. Rheingold, who testified the methodology used in the studies is accepted “industrywide.” (R.p.142). This evidence alone supports the trial court’s ruling and thus meets the applicable abuse of discretion standard of review. See also State v. Commander, 396 S.C. 254, 266, 721 S.E.2d 413, 419–20 (2011) (explaining “anecdotal history is routinely relied on by medical professionals in fulfilling their duties under [South Carolina’s cause of death statute]”); Myers, Bays, Becker, Berliner, Corwin & Saywitz, Expert Testimony in Child Sexual Abuse Litigation, 68 Neb. L. Rev. 1, 8–9 (1989) (explaining “physicians and other helping professionals constantly and necessarily rely on hearsay to make the most momentous medical decisions”).

Moreover, West ignores the fact that Dr. Rheingold's opinion was not based exclusively on the academic studies in question. On the contrary, her opinion was based at least in part on her education and experience as a practitioner. Dr. Rhiengold holds a master's degree in psychology and a doctorate in clinical psychology. (R.p.117). She has published "almost 50 peer reviewed articles, primarily in the area of trauma victimization, and about 20 more book chapters and additional writings." (R.p.118). She is an experienced practitioner of clinical psychology and treats domestic violence victims as a part of her work. (R.p.120, lines 4–6). She teaches students how to treat domestic violence victims and "oversee[s] our outpatient clinics" providing "trauma focused treatment." (R.p.116-17). In response to inquiry from the trial court, Dr. Rheingold specifically testified that her opinion was based on "a combination of synthesizing research studies, as well as my experience in working with roughly 200 domestic violence victims within our clinic." (R.p.135). See Rule 702, SCRE (allowing expert testimony based on education, knowledge, or experience). Surely, Dr. Rheingold's personal observations and experiences as a practitioner are a reliable source of expertise.

The South Carolina Supreme Court addressed a claim of error strikingly similar to West's in State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018). In that case, Jones challenged the admission of expert testimony about delayed disclosure in sexual abuse cases, alleging the trial court had failed to adequately vet the basis of the expert's opinion. In rejecting his claim, the Supreme Court noted that expert "explained her opinions were supported by peer-reviewed professional journals and

trade publications, all of which were uniformly accepted and recognized by child sexual abuse experts and professionals.” Jones, 423 S.C. at 639, 817 S.E.2d at 272.

The Court elaborated:

We find Jones's argument conflates reliability with perfection. There is always a possibility that an expert witness's opinions are incorrect. However, whether to accept the expert's opinions or not is a matter for the jury to decide. Trial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may offered into evidence. Here, Galloway-Williams met the threshold reliability requirement when she **testified her methods were published in professional articles and trade publications, subject to peer review, and uniformly accepted and relied upon by other professionals in the field.** Accordingly, we affirm the trial judge's finding.

Jones, 423 S.C. at 639–40, 817 S.E.2d at 272 (emphasis added).

Finally, this case is distinguishable from those in which experts improperly bolstered the testimony of CSC victims by conveying a belief that the victims were telling the truth or suggesting that a particular interviewing technique could induce or guarantee a truthful response. See, e.g. State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015). Dr. Rheingold’s testimony is a textbook example of proper behavioral evidence from a qualified expert. She did not claim to have personal knowledge of the facts of this case, and had never met the victim. As a “blind expert,” she gave a general opinion about behavioral patterns of domestic violence victims based on her education, knowledge, and experience. This Court should affirm the admission of her testimony.

Prejudice

Even if the trial court erred by allowing the expert testimony, the error was harmless. The crime was captured on video. While the video is dark and the assault cannot be fully seen, it is obvious that West strikes the victim. (R.p.53). West lunges forward, the victim screams, a slap can be heard, and the officer exclaims, “come on Jerome!” (State’s Exhibit #1 at 17:15). West can be heard declaring he was “ready to go to jail,” and the officer can be heard telling dispatch West “punched a female in the face.” The victim then showed the officer where West hit her. When ruling on the video’s admissibility, the trial court noted “it’s clear that he hit her. . . .” (R.p.53). The video strongly corroborates both the officer’s and victim’s trial testimony. It also illustrates West’s violent demeanor and the victim’s subservient attitude towards him. West was obviously guilty, and he would have been convicted without the expert testimony. State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) (“Error is harmless when it could not reasonably have affected the result of the trial.”). Accordingly, any error in the admission of the expert testimony was harmless. This Court should affirm.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL


The undersigned certifies that this Final Brief of Respondent 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."

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