

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE CHAVIS,

APPELLANT

Appellate Case No. 2011-188568

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief 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

RECEIVED

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by qualifying Robin Griggs as an expert in child abuse assessment where there was not a sufficient showing of reliability or review of her work product, and this allowed Griggs to give her opinion recommendation that the alleged victim “should not be around Mr. Chavis for any reason” since Griggs should not have been qualified as an expert and her testimony in this manner was irrelevant to the jury’s truth finding function she was invading?

2.

Whether the court erred by allowing Debbie Elliott to testify as an expert in the field of child abuse assessment where there was not a sufficient showing of reliability or review of her work product, and this allowed her to testify that after reviewing the records of another forensic interviewer she learned the alleged victim’s stepsister disclosed sexual abuse by appellant since Elliott should not have been qualified as an expert and able to rely on the second hand findings of another “forensic interviewer?”

STATEMENT OF THE CASE

Appellant was indicted by the Marlboro County Grand Jury for one count of criminal sexual conduct with a minor in the first degree, two counts of criminal sexual conduct with a minor in the second degree, lewd act upon a child, and contributing to the delinquency of a minor. R. 593. His case was called to trial on March 14, 2011 before the Honorable Howard P. King and a jury. Matthew Swilley, Tiffany Gibson, William Grove and Rick Jones represented appellant. John Holt and Bethany Miles were the assistant solicitors. R. 1.

On March 17, 2011, the jury found appellant guilty on all counts. R. 588, l. 3 – 589, l. 6. On March 18, 2011, Judge King sentenced appellant to concurrent sentences equaling twenty-five years on the convictions. R. 591, l. 9 – p. 592, l. 11.

This appeal follows.

ARGUMENT

1.

The court erred by qualifying Robin Griggs as an expert in child abuse assessment where there was not a sufficient showing of reliability or review of her work product, and this allowed Griggs to give her opinion recommendation that the alleged victim “should not be around Mr. Chavis for any reason” since Griggs should not have been qualified as an expert and her testimony in this manner was irrelevant to the jury’s truth finding function she was invading.

Relevant Facts

Appellant’s step-daughter, and the alleged victim, was seventeen-years-old at the time of the trial. She was working on a “self paced” program to graduate from high school. R. 14, l. 20 – p. 17, l. 3. The minor alleged that the sexual abuse started when she was seven or eight years old with oral sex and that she was exposed to pornography. R. 20, l. 21 – 21, l. 12.

The minor also claimed her step-sister, appellant’s daughter, came to visit them every other weekend and that appellant would sexually abuse both of them by performing oral sex. R. 24, l. 15 – p. 27, l. 15. The minor alleged she was scared to tell anybody about the abuse, and she claimed her mother would not have believed her anyway. She was taken to the Durant Center in Florence when she was ten or twelve years old, but this is when she apparently asserted she was not being sexually abused. R. 28, l. 7 – p. 29, l. 19.

The minor also alleged that in addition to pornography appellant also took sexually explicit pictures of her. R. 40, l. 6 – p. 43, l. 21.

The “experts”

Defense counsel Swilley told the judge he was challenging the state’s alleged experts in child abuse assessment and requested in camera hearing on their proposed testimony. R. 78, l. 14 – 79, l. 8. The two witnesses were Robin Griggs and Debbie Elliott. As stated, the solicitor sought to qualify them as experts in child abuse assessment. R. 85, l. 3 – 86, l. 2.

Griggs had a Bachelor’s degree in Psychology from Francis Marion University with a minor in Sociology. She testified she had a Master’s degree in counseling from Webster University. R. 86, ll. 11-19.

She started her career at the Darlington County Department of Social Services office in 1986. She became employed with the Durant Children’s Center in 2004, where she said she now does forensic interviews. She estimated she had done about eighty-five forensic interviews. R. 86, l. 11 – 90, l. 25.

On cross-examination, defense counsel questioned Griggs about quality control procedures and other techniques that would ensure the reliability of her testimony. Griggs answered: “All I know is that they give us the training and the advanced training so that we can ensure we do quality work, *and how that translates into what you’re asking I’m not sure.*” R. 96, ll. 7-13. (emphasis added). Defense counsel also asked Griggs about the consistency of her techniques and methods with scientific laws and procedures. Griggs answered: “If you want to accept RTAC International Children’s Advocacy Center protocols, yes, sir, they are.” R. 97, ll. 2-23.

Defense counsel argued under Watson v. Ford Motor Company, 389 S.C. 434, 699 S.E.2d 169 (2010), the court had to consider the experts’ qualifications, the reliability of the

proposed testimony and whether the testimony was necessary to assist the jury. Defense counsel argued under State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), that Griggs was unable to meet the evidentiary predicate necessary to be an expert witness. "I don't think she was really able to expound on the purview of her technique."

Defense counsel argued Griggs should not be qualified as an expert. R. 102, l. 4 – 103, l. 13. The judge overruled defense counsel's objection and said that he would qualify Griggs as an expert after giving his view of the holding in State v. Council, supra. R. 104, l. 6 – 106, l. 8.

The state then proffered the testimony of Debbie Elliott. Elliott had a Bachelor of Arts degree from Clemson in 1978. She worked most recently at the Florence County Department of Social Services office as a case worker. She also worked at the Child Advocacy Center in Florence for two-and-a-half years and at the Care House in the Pee Dee for the last five years. R. 106, l. 16 – 107, l. 22.

Elliott testified that about ninety-eight percent of forensic interviews involved delayed reporting. R. 112, ll. 10-12. Elliott also opined that those ninety-eight percent involved delayed reporting of a perpetrator who was a family member or person with authority over the child. R. 112, ll. 13-16.

On cross-examination Elliott acknowledged she only had a Bachelor's degree in Sociology, and no graduate degree. R. 114, ll. 11-16. Elliott said she did not consider forensic interviewing and child abuse assessment the same thing. She said that forensic interviewing involved gathering facts and turning them over to law enforcement and the Department of Social Services. Child abuse assessment, Elliott said, "has to do with assessing the entire thing, folks that come in with a child, and assessing what kind of

problems or issues. . . that may not, may or may not have anything to do with any kind of maltreatment of the child.” R. 116, l. 18 – 117, l. 6.

Defense counsel Swilley argued Elliott was also not qualified to testify as an expert. He noted Elliott’s testimony was poor as to quality control of her work, and that her testimony did not reveal her findings were reliable. R. 122, l. 10 – 125, l. 7. The judge said he would not allow Elliott to testify about what the alleged victim told her, but he would allow her to testify as to her findings and conclusion. Defense counsel Swilley acknowledged if the judge qualified Elliott as an expert, the door to her findings and conclusions had definitely been opened by his qualification of her as an expert. The judge then ruled under State v. Council, supra, Rule 702 and 703, SCRE, and Rule 403 that the “expert” testimony on child abuse assessment would be allowed in this case. R. 125, l. 8 – 128, l. 3.

Jury in

The defense would renew its objections to Griggs and Elliott being qualified as experts. R. 148, ll. 6-9; R. 169, ll. 14-21. Griggs testified that the minor stated the sexual abuse started “when she was seven or eight years old till (sic) about two weeks prior to my interview.” R. 155, ll. 5-10. Over defense counsel’s objection that Griggs recommendation was “irrelevant to the issue,” Griggs testified that the minor “[s]hould not be around Mr. Chavis for any reason.” R. 156, ll. 4-22.

When the solicitor asked Elliott if she had the opportunity to review a forensic interview on the minor’s step-sister, appellant’s natural daughter, defense counsel objected that this was not within the scope of her knowledge. The judge ruled as an expert Elliott could testify as to this under Rule 703, SCRE. R. 176, l. 24 – 177, l. 16.

Elliott then testified the step-sister's interview was conducted by Ginger Gist who is out of "New Mexico." R. 177, ll. 11-23. Elliott said Gist conducted her interview around the same time that she interviewed the minor. The step-sister was interviewed on March 17, 2004. R. 177, l. 17 – 178, l. 2. Elliott said in her "expert opinion" that the minor's step-sister disclosed sexual abuse to Gist during the forensic interview. R. 178, ll. 7-10.

On cross-examination Elliott acknowledged that the minor did not allege sexual abuse, and the minor also denied being a witness to any sexual abuse of another person. R. 179, ll. 17-25. Elliott said she was concerned that the mother of the minor allowed the child to be around another man, and that the minor's step-sister was sexually involved with boys. R. 180, l. 21 – 181, l. 8.

Elliott maintained that while RTAC was a very common method of forensic interviewing, she did not know how many states used it, and she could not name any other states that allowed this technique. R. 182, ll. 8-13. On re-cross examination, over objection, Elliott opined it was common for the minor not to make disclosures of abuse at a forensic interview. R. 184, l. 17 – 185, l. 16.

Defense case

During the defense case, Elaine Jones testified that appellant was a distant cousin, and that appellant was a genealogical researcher and a tribal leader for the Tuscarora tribe. R. 411, ll. 9-17. Jones said appellant had a very large role in the tribe, and that she had worked with him in that role. Appellant had always been a gentleman, and never did anything improper in her presence. Jones asserted that at her age, and with her experience, she considered herself a good judge of character. R. 413, ll. 4-21.

Appellant testified in his own defense. He testified he enlisted in the Marine Corp in 1969 or 1970 and that he trained at Parris Island. R. 427, l. 22 – 428, l. 24. Appellant testified he worked as a logger and that he had a good relationship with his daughter “up until the time she started not wanting to go school.” R. 431, l. 18 – 437, l. 21. Appellant denied there was ever pornography or sex toys in his home. R. 441, ll. 7-12.

On cross-examination appellant said the alleged victims falsely accused him of sexual abuse for monetary gain involving his land, equipment, tools and artifacts. R. 455, l. 7 – 457, l. 16.

Discussion

All expert testimony must meet the requirements of Rule 702, SCRE regardless of whether it is scientific, technical, or otherwise. The trial judge has a duty to serve the gatekeeper function in assuring the reliability of expert testimony. This also applies to non-scientific evidence. See State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009).

It is an abuse of discretion for a judge to qualify a witness who is not qualified or where his ruling lacks evidentiary support or is controlled by an error of law. See Watson v. Ford Motor Company, *supra*; State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Defense counsel correctly argued that the judge should not have qualified Griggs and Elliott as experts, which allowed them to give their opinions. As seen, Griggs testified that she concluded and opined that the minors should not be allowed near appellant and that clearly conveyed to the jury that she believed appellant had sexually abused the minor. There was simply no need to qualify Griggs as an experts, and Griggs clearly testified she believed the minor. Although Elliott is discussed in the next issue, Elliott was allowed to

testify that the minor's step-sister disclosed to another forensic interviewer in or from New Mexico that she had been sexually abused. Elliott could only testify to this fact because she was qualified as an expert, and could rely on what experts would normally rely on in the normal course of their duties.

As in State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), there was no need to qualify Griggs as an expert. The fact the expertise allegedly allowing her to give her damning opinion that the minor should never be near appellant again was child abuse assessment rather than forensic interviewing is of no moment. Regardless of what this Court or the Supreme Court holds, the cottage industry surrounding these cases will undoubtedly continue to try and improperly vouch for the credibility and bolster the credibility of the alleged victim.

In State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012) the majority of the Supreme Court wrote that it had confronted instances on appeal where the state has abused forensic interviews and invaded the province of the jury by vouching for the credibility of the alleged victim. If ever there was a case where the forensic interviewer, Griggs, testified she believed the alleged victim was telling the truth, it was this case never let that child near appellant again.

Defense counsel correctly argued the state had failed in its obligation to show reliability and sufficient peer review of the forensic interviews, and the opinions that sprang from them. It is clear that Griggs had no conception of what a meaningful review of her child abuse assessment and forensic interviews would entail.

The judge abused his discretion by qualifying Griggs as an expert and by allowing her to give her highly prejudicial testimony that she clearly indicated she believed the

minor's assertion that appellant sexually abused her. It was irrelevant in this case. This was the function of the jury, and not an issue for Griggs. See State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012); State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); State v. Council, *supra*; State v. White, *supra*. Appellant should be granted a new trial.

The court erred by allowing Debbie Elliott to testify as an expert in the field of child abuse assessment where there was not a sufficient showing of reliability or review of her work product, and this allowed her to testify that after reviewing the records of another forensic interviewer she learned the alleged victim's stepsister disclosed sexual abuse by appellant since Elliott should not have been qualified as an expert and able to rely on the second hand findings of another "forensic interviewer"

The trial judge also erred by qualifying Elliott as an expert witness in child abuse assessment. This allowed Elliott to rely on the second hand findings or notes of another forensic interviewer, and she was able to get before the jury that the minor's step-sister had allegedly disclosed that appellant sexually abused her also.

The judge abused his discretion in his gatekeeping function under State v. White, supra. Further, Elliott should not have been qualified as an expert because her testimony was not reliable, and the state failed to introduce evidence showing a sufficient review of her work to ensure reliability. Defense counsel correctly argued Elliott should not have been qualified as a witness. See State v. Douglas, supra; State v. Council, supra; Watson v. Ford Motor Company, supra.

The import of Elliott's testimony was obvious. It was that another forensic interviewer had been told by appellant's daughter, and the minor step-sister, that appellant had sexually abused her also. It is difficult for a defendant to obtain a fair trial with accusations such as the one in this case under the best of circumstances. It became impossible for appellant to obtain a fair trial when Elliott was incorrectly qualified as an

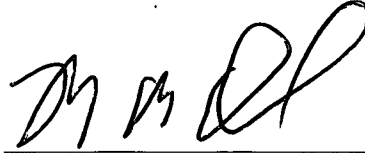
expert, and therefore could rely on the findings on another forensic interviewer that an expert would rely on in the normal course of doing her job.

While the testimony of Griggs and Elliott were not identical, it was severally and cumulatively devastating to appellant. Appellant should be granted a new trial. See State v. McKerley, State v. Jennings, State v. Douglas, State v. White, and Watson v. Ford Motor Company, supra.

CONCLUSION

By reasons of the foregoing arguments, appellant's convictions should be reversed and in this case remanded to the Marlboro County for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of April, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

April 15th, 2013



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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Appeal from Marlboro County
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THE STATE,

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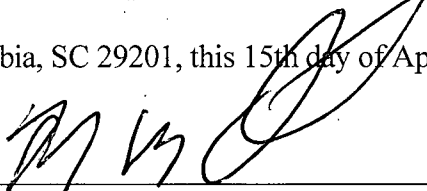
V.

GEORGE CHAVIS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of April, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of April, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .