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Feb 11 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRAIG ANTONIO GEORGE,

APPELLANT

APPELLATE CASE NO. 2021-000581

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in limiting cross-examination of the State's witness pursuant to Rule 610, SCRE, when the proposed questioning did not involve religious beliefs or opinions and was relevant as to the witness's credibility?

STATEMENT OF THE CASE

In December of 2019, the Florence County Grand Jury indicted Appellant, Craig Antonio George, for kidnapping and criminal sexual conduct first degree, indictment # 2019-GS-21-01673. On May 14, 2021, Appellant proceeded to jury trial before the Honorable D. Craig Brown. William Vickery Meetze represented Appellant at trial. David Richardson and John Jepertinger prosecuted the case. The jury found Appellant guilty as charged. Judge Brown sentenced Appellant to life in prison on both charges pursuant to S.C. Code §17-25-45. A timely notice of intent to appeal was served on May 24, 2021. This appeal follows.

STANDARD OF REVIEW

“As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed absent a manifest abuse of discretion.” State v. Quattlebaum, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Douglas, 369 S.C. 424, 429–30, 632 S.E.2d 845, 848 (2006).

ARGUMENT

The trial judge erred in limiting the cross-examination of the State's witness pursuant to Rule 610, SCRE, when the proposed questioning did not involve religious beliefs or opinions and was relevant as to the witness's credibility.

The jury found Appellant guilty of kidnapping and sexual assault of his aunt. Prior to trial the State moved to prohibit defense counsel from questioning the aunt about books she wrote as questioning about religious beliefs and opinions prohibited by Rule 610, SCRE. (Tr. p. 7, lines 14-16). Defense counsel objected telling the judge:

I don't have any intention on questioning her with regards to any kind of religious beliefs or opinions. Obviously, that's a rule. I mean I agree with the rule as it's written. I think to question somebody as to whether or not they're a Christian or not a Christian or whatever and then express upon a jury that somebody is either telling the truth or not telling the truth based on a religious belief or opinion would be inappropriate, but what I would want to question her about would be a book or books that she wrote that are non-fiction books of things that she claimed to be absolute one hundred percent facts, and I think that's different from a belief or an opinion on religion.

So that would be my position, and I think it's a case that credibility is largely at issue in this case, and I think from that standpoint it's certainly very probative for the jury to hear. And again, I don't intend to ask anything with regards to any opinion or belief, just things that she has stated are absolute facts.

(Tr. p. 7, line 20 – p. 8, lines 1-13).

The prosecutor argued that the books were religious in nature and based on angels and the aunt's Christian faith. (Tr. p. 8, line 15 – p. 9, lines 1-18). The prosecutor told the judge, "And I believe based on that it falls within the scope of her belief system and would tend to be overly prejudicial toward her and I think would fall under Rule 610 in its application." (Tr. p. 8, lines 21-25). Defense counsel, reading from the introduction to the book, said, ". . . [T]he information I give you is fact and fiction gathered from original sources. The fictitious parts of this information center on the people who were involved, meaning she changed the names to protect some

identities.” (Tr. p. 9, lines 20-21). Defense counsel continued from the introduction of the book stating, “Even with that, many facts regarding them are included. Every word written from the angels is an absolute fact. Every word written as a quote from them is a word that they said exactly as they said in correct English - - incorrect English and all. I’m only camouflaging people with respect and to protect their privacy.” (Tr. p. 9, line 25 – p. 10, lines 1-5). Defense counsel then argued:

I don’t intend to ask her if she’s a Christian or not a Christian or if she believes in Jesus or doesn’t believe in Jesus or any of that, but, you know, she writes in this book that these things happened in the mid-90s, that angels came down, visited them, and inhabited a host body on this earth, spoke to them through this host body. That host body’s mouth was moving, but it was somebody else’s voice coming out, and she says all of this happened as a fact and that to me is not asking about her religion. It’s asking about an experience that she and other people that she knows had and she wrote about it.

(Tr. p. 10, lines 6-16).

When the judge asked about the purpose of the questioning defense counsel answered that it went to her credibility and then stated, “I think it goes to a very active imagination and I think that I think is – I think it goes to her credibility and I think that’s the primary issue in this case. And I think from that standpoint it should be admissible to ask her questions about that.” (Tr. p. 10, line 17 – p. 11, lines 1-8). Defense counsel then drew a distinction between a religious opinion and the questions he sought to ask telling the judge:

You know, in her book, for example, as an example of an opinion, she’s got a glossary section where she gives definitions. She defines a church as a place of deception, controlled by the illegal lords, Satan, the devil, so man may not know the truth that operates on – that it operates on, a pride of envy and greed.

To me, that’s an opinion. I wouldn’t ask about what her definition of a church is, but the things that she says happened as an absolute fact that she - - you know, I think would be admissible.

(Tr. p. 11, lines 9-18).

The trial judge referred to Rule 610, SCRE and then ruled stating, “I do believe such questioning would be prohibited under the rule. However, at the appropriate time, if you feel necessary, I’ll allow you to proffer whatever testimony you need, but I do not believe that it would be permissible under Rule 610.” (Tr. p. 11, line 25 – p. 12, lines 1-4). The judge heard other pre-trial motions and then the parties picked a jury and the proceedings adjourned for the day.

The next day the judge allowed the proffer and the State called the aunt as a witness. (Tr. p. 61, line 8 – p. 62, lines 1-11). Defense counsel asked her about the book she wrote, *Words from Awaki, the Third and Final Covenant*, volumes one and two. (Tr. p. 62, lines 14 – 25). The aunt confirmed that she wrote about angels visiting the universe in 1995-1996, specifically Baltimore, Maryland where she was living at the time. (Tr. p. 63, lines 5-17). She confirmed that she wrote about the angels communicating with 50-70 people during 40-45 sessions. (Tr. p. 63, line 18 – p. 64, lines 1-2). Defense counsel asked the aunt, “When one of these sessions would take place, the angel would come down and use somebody as a host, so to speak, to be able to communicate; correct?” (Tr. p. 64, lines 3-5). The aunt answered, “That’s correct.” (Tr. p. 64, line 6). The aunt confirmed that *Awaki* from the title of the book was one of the angels referred to. (Tr. p. 64, lines 7-9). The aunt was present for one of the sessions on March 30, 1996. (Tr. p. 64, lines 10-13). The aunt agreed that the sessions with the angels and what they said were one hundred percent fact. (Tr. p. 64, lines 21-24). The aunt agreed that in the book she changed the names of people involved to protect their identities. (Tr. p. 64, line 25 – p. 65, lines 1-4).

The aunt confirmed that she wrote about Thomas, as she referred to him in the book, giving his cousin, Nathaniel, as she referred to him in the book, a pinky ring that chanted. (Tr. p. 66, line 8 – p. 67, lines 1-2). The chanting pinky ring scared Nathaniel so he put the ring in the freezer and called Thomas. (Tr. p. 66, lines 19-21). The aunt testified that when Thomas went to investigate

the chanting ring, Nathaniel fainted and an angel named Shakardak invaded Nathaniel's body to speak to Thomas. (Tr. p. 67, line 9 – p. 68, lines 1-6). The aunt confirmed that she included in the book information that when the angel invaded Nathaniel's body, Nathaniel's mouth would move but it was not Nathaniel's voice they were hearing. (Tr. p. 68, lines 7-22).

When the State asked the aunt if her book was based on personal experience or information provided by others and recordings of the sessions the aunt answered, "I documented. I had one experience personally for about 30 or 45 minutes. (Tr. p. 70, lines 14-19). Counsel renewed the objection to being prohibited from questioning the aunt about the book stating:

Judge, I'll just reiterate that I think the rule - - what the rule encompasses and keeps you from doing is asking anyone about their religious beliefs or opinions. And I don't think anywhere in any of that line of questioning did I ask anybody's belief or opinion. So I don't think that this line of questioning with regards to the books that she wrote applied to that rule or that rule should apply to this - - to this line of questioning. So based on that, I'm just going to renew my motion.

(Tr. p. 71, lines 5-13).

The judge again found that questioning the aunt about the books she wrote was prohibited by Rule 610, SCRE, ruling:

In this particular situation, Dr. George [the aunt] has testified as to beliefs or opinions. She also testified as to fact. She said they were fact, but there's also evidence in the record that this information was conveyed to her by others, albeit she did have one experience. That she did have one experience. So evidence of -- and she believed it. She believed it.

So I think it is evidence of belief. Although defense counsel argues they are facts, they are still beliefs. She believes that those facts did, in fact, occur.

On matters of religion, we're talking about angels here, which the Court believes angels go hand-in-hand, so to speak, with religion. Certainly, in the Bible that everyone comes in here, places their hand on, and swears to tell the truth, the whole truth, and nothing but the truth, there are many references throughout that Bible to angels. I'm not sure about other religions and their reference to angels, but do know that that Bible of which everyone comes in here and places their left hand on, raises their right hand, and swears to tell the truth, that there are a multitude of references throughout of angels in that Bible.

The Court further believes that the sole purpose in defense counsel's desire to bring this out is to show that by reason of their nature, their beliefs, their opinions, that the witness's credibility is impaired in this particular situation, which the rule prohibits.

Therefore, the Court's ruling remains the same, but with all due respect, the Court has allowed Mr. Meetze to proffer whatever testimony he felt like he needed to proffer to ensure that his client's interest was protected as it relates to that particular issue. So your objection is so noted.

(Tr. p. 72, line 7 – p. 73, lines 1-12). The trial judge erred.

The trial judge abused his discretion in refusing to allow Appellant to question the aunt about the books she wrote detailing her own experience as well as the experience of others witnessing angels invading host bodies and speaking through them. This type of questioning is not prohibited by Rule 610, SCRE, which makes evidence of beliefs or opinions of a witness on religious matters inadmissible. The aunt did not testify that the topics covered in her books involve her religion or religious beliefs. The fact that she discusses angels in the books is not sufficient to bring the questioning within the prohibition of Rule 610, as questioning about a religious belief or opinion. If the aunt had written about aliens, rather than angels, invading host bodies and speaking through them, Rule 610 would not have prohibited questioning. The limitation on cross-examination violated the right to confrontation guaranteed by the Sixth Amendment as well as due process guaranteed by the Fourteenth Amendment. The error is not harmless as the credibility of the aunt as the accuser was critical for the jury's determination. The State's evidence was not overwhelming and based predominantly on the testimony of the aunt. The error requires reversal.

Rule 610, SCRE, provides that, "Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced." The federal rule is substantially the same and provides that, "Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the

witness's credibility.” Fed. R. Evid. 610. “The purpose of the rule is to guard against the prejudice which may result from disclosure of a witness's faith. The scope of the prohibition includes unconventional or unusual religions. See Government of Virgin Islands v. Petersen, 553 F.2d 324 (3rd Cir. 1977) (defense counsel could not elicit testimony that alibi witness was a member of the Rastafarian sect).” United States v. Sampol, 636 F.2d 621, 666 (D.C. Cir. 1980).

In the present case Appellant did not seek to ask the aunt about her faith or an unconventional or unusual religion. The aunt was not asked about her faith or religion. The prosecutor argued, “Judge, the basis or [sic] the books in question are religious in nature. They have to do with angels and the like and are premised upon, I guess, Dr. George’s [the aunt’s] Christian faith and her experiences and the experiences of other people primarily with respect to encounters with angels or the divine in some capacity.” (Tr. p. 8, lines 15-20). The aunt, however, never testified that the books were premised on her Christian faith or any other faith or religion. The aunt never testified that angel invasions were a part of her faith or religion, whatever that faith or religion might have been. Appellant was not seeking to elicit testimony that the aunt was a Rastafarian as in Petersen or devoted to the Luceme religion as in Sampol or a devil worshipper as in State v. Kimbrell, 320 N.C. 762, 360 S.E.2d 691 (1987). The proposed questioning about the contents of the books the aunt wrote was not prohibited by Rule 610 because the questioning was not about a religious belief or opinion. The trial judge erred in limiting the cross-examination.

Rule 611(b), SCRE, provides that, “A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.” The credibility of the aunt as the accuser was critical for the jury’s determination as the State’s evidence was not overwhelming and based predominantly on the testimony of the aunt. The trial judge erred in prohibiting cross-examination

of the aunt about the books she wrote documenting purported conversations with angels who had invaded human bodies.

In State v. Jenkins, 322 S.C. 360, 474 S.E.2d 812, 814 (Ct. App. 1996), the South Carolina Court of Appeals wrote:

Generally, the right to cross-examine a prosecuting witness is of constitutional dimensions, being essential to a fair trial as guaranteed by the Sixth Amendment and the due process clause of the Fourteenth Amendment. State v. McCoy, 274 S.C. 70, 261 S.E.2d 159 (1979); see also State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) (specifically included in a defendant's Sixth Amendment right to confront witnesses is the right to meaningful cross-examination of adverse witnesses); accord State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994). A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which the jurors could appropriately draw inferences relating to the reliability of the witness. Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1435–36, 89 L.Ed.2d 674 (1986); State v. Smith; State v. Graham.

In the present case the trial judge abused his discretion by refusing to allow Appellant to question the aunt accuser about books she wrote documenting purported conversations with angels who had invaded human bodies. The questioning was not prohibited by Rule 610, SCRE, as a religious opinion or belief. Appellant was prohibited from engaging in otherwise appropriate cross-examination in violation of Appellant's Sixth Amendment right to confront witnesses as well as the due process clause of the Fourteenth Amendment. The error was not harmless.

In State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012), the South Carolina Supreme Court wrote:

A violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). Whether such an error is harmless in a particular case depends upon a host of factors.... The factors include the *importance of the witness's testimony* in the prosecution's case, whether the testimony was *cumulative*, the presence or absence of evidence *corroborating* or contradicting the testimony of

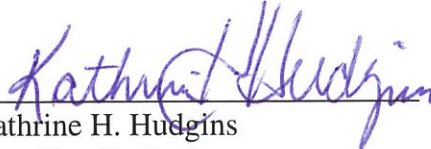
the witness on material points, the *extent of cross examination* otherwise permitted, and, of course, the *overall strength* of the prosecution's case. *Id.* at 684, 106 S.Ct. 1431 (emphasis added).

Applying the Van Arsdall factors in the present case, the error was not harmless. The aunt's testimony, as the accuser in a case with no forensic evidence, was critically important in the prosecution's case. The proffered testimony was not cumulative. There was little evidence corroborating the aunt's testimony. While there was no other limitation on cross-examination, Appellant was precluded from questioning the aunt about her book detailing conversations with angels who invaded human bodies. The questioning did not relate to religious beliefs protected by Rule 610, SCRE. Instead, the proposed line of questioning would show that the witness may have a tendency toward hallucinations or altered perceptions, fair topics for cross-examination. Again, if the books had been about conversations with aliens from another universe invading the bodies of humans or conversations with wildlife, questioning would be allowed pursuant to Rule 611(b), SCRE. The fact that the aunt wrote about angels, rather than aliens or wildlife, does not render the questioning about a religious belief or opinion that would be protected by Rule 610, SCRE.

The error is made more prejudicial by the State's closing argument when the prosecutor told the jury twice that the aunt operates with an "analytical mind." (Tr. p. 261, lines 14-15; p. 263, lines 2-3). Appellant was prohibited from questioning the aunt about her books where she wrote about conversations with angels who invaded human bodies, a fanciful rather than analytical purported event. The improper limitation on cross-examination violated the Sixth Amendment right to confront witnesses as well as the due process clause of the Fourteenth Amendment. The error was not harmless and requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse the convictions and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of February, 2022.

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STATE OF SOUTH CAROLINA
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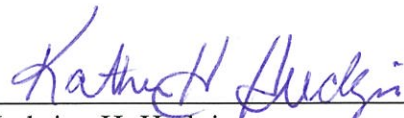
CRAIG ANTONIO GEORGE,

APPELLANT

APPELLATE CASE NO. 2021-000581

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case have been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) and on Craig Antonio George, #234347, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 11th day of February, 2022.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT