

State v. Jennings, No. 27043, 2011 WL 4356520 (S.C. Sep. 19, 2011)

Appellant was convicted of two counts of committing a lewd act upon a minor. Appellant was a neighbor of three minor alleged victims aged eleven, nine and six. The nine year old child reported to her parents that appellant had inappropriately touched her. Subsequently, the eleven and six year old children disclosed that appellant had touched them inappropriately. Each child was interviewed by the same forensic interviewer. The State called the forensic interviewer as its first witness and asked her to briefly summarize what the children had told her during the interviews. Appellant objected and the trial court sustained the objection. The State then moved to admit the forensic interviewer's written reports into evidence. Over appellant's objection, the court admitted the written reports into evidence. Later in the forensic interviewer's testimony, the court allowed the State to play the videos of each child's forensic interview. After the videos were played, each child testified that appellant abused them in the manner described in the forensic interviews.

The written forensic interview reports included background information, the mother's account of her conversation with her nine year old, and the mother's statement to the forensic interviewer that the eleven and six year old children told the mother that appellant also touched them inappropriately. The report contains a section in which the forensic interviewer outlines the children's accounts of the alleged abuse by appellant provided in the interviews. Finally, the report contained a conclusion section wherein the forensic interviewer stated the children "provided a compelling disclosure of abuse by [appellant]."

On appeal, appellant challenged admission of the written reports on the grounds that they contained inadmissible hearsay and that they impermissibly allowed the forensic interviewer to vouch for the credibility of the children. Appellant further argued that the error in admission of the written reports was not harmless beyond a reasonable doubt. Appellant also challenged the trial court's admission of the videos before the children testified on the grounds that the admission of the videos prior to the children's testimony violated his right to due process and confrontation.

As to admission of the videos before the children testified, the supreme court found that appellant did not specifically object, on constitutional grounds, to admission of the videos before the children testified and that issue was not preserved for review.

The supreme court agreed with appellant that admission of the forensic interviewer's written reports was error and that the error was not harmless beyond a reasonable doubt. With respect to appellant's challenge on hearsay grounds, the court stated, "Appellant specifically challenges the portions of the report where the mother related to [the forensic interviewer] that the middle child told her appellant molested her and specific things the victims told the forensic interviewer during the interviews. We find these portions of the written reports constitute inadmissible hearsay as they were out-of-court statements offered to prove that appellant did in fact inappropriately touch the girls in the way they claimed." In finding that admission of the reports was not harmless error, the court noted, "where credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to the victim's testimony is not harmless."

With respect to appellant's challenge that introduction of the reports improperly vouched for the victims' credibility, the court agreed.

We find the trial court abused its discretion in allowing the State to introduce the reports because they allowed the forensic interviewer to improperly vouch for the children's credibility. In each report, the forensic interviewer stated that during the interviews, each child had "provide[d] a compelling disclosure of abuse by [appellant]." The forensic interviewer further concluded that each of the children provided details consistent with the background information received from their mother, the police report, and the other children. There is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful.

The court also agreed that the error of improperly vouching for the victims' credibility was not harmless beyond reasonable doubt. In that regard, the court noted, "There was no physical evidence presented in this case. The only evidence presented by the State was the children's accounts."

South Carolina Department of Social Services v. Mary C. et al, No. 4891, 2011 WL 444401 (S.C. Ct App. filed Sep. 21, 2011)

The case is an appeal from a family court decision in which the mother argued that the trial court improperly weighed the evidence in a South Carolina Department of Social Services intervention action regarding the identity of the person who sexually abused her daughter. The case began as a private custody action filed by the mother. Approximately three months into the private custody action, the child's counselor notified DSS that she believed the child's father was sexually abusing the daughter. DSS investigated and filed an intervention action alleging that the child's placement with father put the child at substantial risk of sexual abuse. The family court subsequently consolidated the private custody action and the intervention action. Following seven days of hearing, the trial court found the child was sexually abused by an unknown perpetrator. The court also ordered the DSS case closed and dismissed DSS from the private custody action. Mother asked for reconsideration and, following denial, appealed the trial court's decision.

Mother asserted in her appeal that the trial court erred in finding that an unknown perpetrator, as opposed to father, had sexually abused the child because DSS established by a preponderance of the evidence that father had abused the child. The court of appeals in an extensive analysis of the evidence found that the evidence, while conflicting, was ample to support the trial court's decision.

With respect to the identity of the sexual abuser, the court considered the testimony of the child's therapist, a forensic interviewer, and two expert witnesses who testified for father.

In May 2007, shortly before [the child's] overnight visitation was to begin with Father, Mother scheduled therapy sessions with ... a specialist in sexual abuse and post-traumatic stress disorders. [The specialist] testified that [the child], who was almost three years old, began to display sexualized behaviors in August 2007 ... and stat[ed] after prompting from [the specialist] that she, her sister and Father touched and licked her "bottom" while they were in Father's bed.

[An expert in forensic interviewing of child abuse] testified before the court. [The forensic interviewer] stated that, in the forensic interview, [the child] made disclosures about being sexually abused by her sisters and Father.

[Father's expert], an expert in the assessment and treatment of sexual behavior issues in children, testified before the court. [She] reviewed the DSS files; the written reports and videos from [the child's] sessions with the [specialist and forensic interviewer]; treatment records from [the child's] pediatricians; Father's polygraph results; interview reports and affidavits from Mother, Father and Father's two daughters; and the GALs' reports. [Father's expert] was highly critical of [the specialist's] interview techniques, specifically her continuing to have therapy session with [the child] about the sexual abuse allegations until a full assessment was conducted. [Father's expert] stated a child of [the child's] age is easily influenced, and repetitive sessions and questions about allegations could inadvertently and inappropriately reinforce those allegations with the child. [Father's expert] also opined that [the forensic interviewer] inappropriately led [the child] and continued to repeat the same questions to the child until she was satisfied with [the child's] responses.

Following the seven days of hearing, the trial court issued a thirteen page order that found [the child] displayed sexualized behavior but did not find by a preponderance of the evidence that father was the perpetrator. As noted by the court of appeals, "In so finding, the family court held [the child's] disclosures were not trustworthy based on the methodology employed by her therapists in eliciting her sexual abuse disclosures. The family court relied on [Father's experts'] conclusions that [the child's] therapists engaged in inappropriate leading and suggestive tactics, which were below the appropriate standard and protocol for such interviews."