

COURT OF APPEALS OF MARYLAND

Gross v. State

Gross · No. No. 32, September Term, 2021 · Decided August 26, 2022

SUMMARY

The Maryland Court of Appeals held that the erroneous admission of a video recording containing the victim’s out-of-court allegations was harmless beyond a reasonable doubt. Applying the framework from Dorsey v. State, the Court reaffirmed that harmless-error review considers the full trial record, including whether the improperly admitted evidence was cumulative of properly admitted evidence. The Court affirmed the judgment of the Court of Special Appeals.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Biran, J.; Getty, C.J.; McDonald, J.; Watts, J.; Hotten, J.; Booth, J.; Gould, J.
JURISDICTION	Maryland
DECIDED	August 26, 2022
DOCKET	No. 32, September Term, 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gross sought review of the Court of Special Appeals' determination that the erroneous admission of a video recording was harmless beyond a reasonable doubt. The State filed a conditional cross-petition concerning whether the video was admissible under the prompt-complaint exception to the hearsay rule.
STANDARD OF REVIEW	The proper harmless-error standard is reviewed de novo. The reviewing court independently examines the full trial record and must determine beyond a reasonable doubt that the error in no way influenced the verdict.
PRECEDENTIAL VALUE	Published precedential opinion of the Maryland Court of Appeals.
PARTIES	Daniel Jay Gross v. State of Maryland

TOPICS

- harmless error
- hearsay
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether Maryland's harmless-error standard requires the State to establish the existence of other overwhelming and largely uncontroverted evidence in addition to the erroneously admitted evidence.
2. Whether the cumulative nature of an erroneously admitted prior consistent statement is relevant to harmless-error analysis.
3. Whether, based on the full trial record, the erroneous admission of the June 2015 video was harmless beyond a reasonable doubt.

HOLDINGS

1. Maryland's harmless-error review is governed by *Dorsey v. State*: after independently reviewing the record, the reviewing court must be convinced beyond a reasonable doubt that the error in no way influenced the verdict. The State is not required to prove as an independent prerequisite that other overwhelming and largely uncontroverted evidence supported the verdict.
2. The cumulative nature of erroneously admitted evidence is a relevant factor in determining whether the error was harmless beyond a reasonable doubt, including when the evidence was admitted improperly as a prior consistent statement.
3. The erroneous admission of the June 2015 video was harmless beyond a reasonable doubt.

KEY QUOTATIONS

"[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed harmless and a reversal is mandated." (20)

"In order to establish that an error was harmless, the State must show beyond a reasonable doubt that the evidence admitted in error in no way influenced the verdict." (26)

"Our review of the full trial record of this case convinces us beyond a reasonable doubt that the admission of the June 2015 video was harmless." (39)

FACTUAL BACKGROUND

Gross was convicted of sexually abusing his adopted daughter, including repeatedly making her perform oral sex on him while she was in kindergarten and first grade. The State introduced several accounts of the alleged abuse, including the victim's trial testimony, statements to her grandmother, a video-recorded interview with a social worker, testimony concerning an interview with a child-abuse pediatrician, and DNA evidence linking Gross to semen found on carpet near the victim's bed. The trial court admitted a video of the victim's June 27, 2015 disclosure to her grandmother as a prior consistent statement; the Court of Special Appeals held that admission erroneous but harmless.

PROCEDURAL HISTORY

A Montgomery County jury convicted Gross of two counts of second-degree sexual offense and one count of sexual abuse of a minor. The Court of Special Appeals held that the trial court erred in admitting the June 2015 video as a prior consistent statement but found the error harmless beyond a reasonable doubt; it also vacated Gross's sentences and remanded for resentencing. The Court of Appeals granted both petitions, affirmed the intermediate appellate court's judgment regarding harmlessness, and left the State's alternative prompt-complaint issue unresolved.

DISPOSITION

affirmed

CASES CITED

- Dorsey v. State, 276 Md. 638 (1976)
- Younie v. State, 272 Md. 233 (1974)
- Chapman v. California, 386 U.S. 18 (1967)
- State v. Robertson, 463 Md. 342, 358 (2019)
- State v. Miller, 475 Md. 263, 302 (2021)
- Taylor v. State, 473 Md. 205, 235, 238 (2021)
- Bellamy v. State, 403 Md. 308, 332-33 (2008)
- Dove v. State, 415 Md. 727, 743-51 (2010)
- Simms v. State, 420 Md. 705, 738-40 (2011)
- Morris v. State, 418 Md. 194, 221-24 (2011)
- Yates v. State, 429 Md. 112, 119-24 (2012)
- Hutchinson v. State, 406 Md. 219, 227-29 (2008)
- Thomas v. State, 429 Md. 85, 111 (2012)
- Newman v. State, 65 Md. App. 85, 97-98 (1985)
- Muhammad v. State, 223 Md. App. 255, 272-73 (2015)
- McCray v. State, 122 Md. App. 598, 610-11 (1998)
- Gross v. State, No. 1413, Sept. Term, 2019, 2021 WL 1929292 (Md. Ct. Spec. App. May 13, 2021)
- Gross v. State, 476 Md. 237 (2021)