

SUPREME COURT OF SOUTH CAROLINA

State v. Kromah

401 S.C. 340 (2013) · Decided January 23, 2013

SUMMARY

The South Carolina Supreme Court considered whether objections to testimony concerning a child victim's out-of-court statements were preserved for appellate review. The court held that the objections were preserved, that the investigator's testimony was not inadmissible hearsay, and that any error in admitting the forensic interviewer's testimony was harmless beyond a reasonable doubt. The court affirmed the judgment in result.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Beatty; Chief Justice Toal; Justice Kittredge; Justice Hearn; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	January 23, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kromah was convicted by a jury of infliction of great bodily injury upon a child and unlawful neglect of a child. The Court of Appeals affirmed, concluding that her evidentiary challenge was not preserved. The Supreme Court of South Carolina granted certiorari, held the issue preserved, reached the merits in the interest of judicial economy, and affirmed in result.
STANDARD OF REVIEW	Admission or exclusion of evidence is reviewed for abuse of discretion, and the ruling will not be disturbed absent a manifest abuse of discretion accompanied by probable prejudice. An abuse of discretion occurs when the trial court's conclusions lack evidentiary support or are controlled by an error of law. Preserved evidentiary error is subject to harmless-error review beyond a reasonable doubt.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Miama Kromah v. State of South Carolina

TOPICS

hearsay

expert testimony

preservation of error

harmless error

appellate procedure

PRACTICE AREAS

criminal procedure

evidence

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QUESTIONS PRESENTED

1. Whether Kromah preserved her hearsay objection to the testimony of the forensic interviewer and investigator concerning actions taken after their interviews with the child.
2. Whether the investigator's testimony that he interviewed the child and arrested Kromah based on his investigation constituted inadmissible hearsay.
3. Whether the forensic interviewer's testimony that she made a compelling finding of physical child abuse properly vouched for the child's credibility.
4. If admission of the forensic interviewer's testimony was error, whether the error was harmless beyond a reasonable doubt.

HOLDINGS

1. The hearsay objection was preserved because the trial court's ruling immediately before the testimony was a final ruling, and the testimony followed without intervening evidence.
2. The objection to the investigator's testimony was preserved because the trial transcript and context sufficiently apprised the trial court that the objection renewed the previously asserted hearsay argument.
3. The investigator's testimony was not inadmissible hearsay because he did not repeat any statement made by the child; the testimony described his investigative process and actions based on the information he gathered.
4. The forensic interviewer should not have been permitted to testify that she made a compelling finding of physical child abuse because that testimony was the equivalent of stating that the child was telling the truth.
5. The error in admitting the forensic interviewer's testimony was harmless beyond a reasonable doubt and did not require reversal.

KEY QUOTATIONS

"This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection." (at 353)

"The rule does not, however, make hearsay automatically admissible simply because it was relied upon by the expert." (at 358)

"Smith should not have been allowed to testify about a compelling finding of child abuse as that was the equivalent of Smith stating the Child was telling the truth." (at 359)

"A forensic interviewer, however, may properly testify regarding the following: • the time, date, and circumstances of the interview; • any personal observations regarding the child's behavior or demeanor; or •

a statement as to events that occurred within the personal knowledge of the interviewer.” (at 360)

“Based on the entire record, including the physical evidence documented in this case, the challenged testimony could not reasonably have affected the result of the trial, so any error in its admission was harmless beyond a reasonable doubt.” (at 362)

FACTUAL BACKGROUND

Kromah brought her three-year-old stepson to the hospital with a severe, clean, V-shaped laceration across the scrotum that exposed the right testicle, along with facial, lip, and abdominal injuries. Medical experts testified that the genital injury was consistent with a sharp instrument and physical abuse, not an accidental washcloth injury. The child did not testify at trial, but a forensic interviewer and a law-enforcement investigator testified about their investigative actions after interviewing him. Kromah was convicted and later admitted at the new-trial hearing that she had handled the child roughly and may have caused the injuries accidentally.

PROCEDURAL HISTORY

After the jury convictions and concurrent sentences of eighteen years and ten years, Kromah moved for a new trial or reconsideration of sentence. The trial court denied that motion. The Court of Appeals affirmed on preservation grounds. The Supreme Court granted certiorari, found the issue preserved, held that the investigator's testimony was admissible, held that any error concerning the forensic interviewer's testimony was harmless beyond a reasonable doubt, and affirmed the convictions and sentences in result.

DISPOSITION

affirmed

CASES CITED

- State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006)
- State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009)
- State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001)
- State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995)
- State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011)
- South Carolina Department of Social Services v. Doe, 292 S.C. 211, 355 S.E.2d 543 (Ct. App. 1987)
- State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004)
- State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002)
- In re K.K.C., 728 N.W.2d 225 (Iowa Ct. App. 2006)
- State v. Borden, 986 So. 2d 158 (La. Ct. App. 2008)
- State v. Blue, 717 N.W.2d 558 (N.D. 2006)
- State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009)
- Allegro, Inc. v. Scully, 400 S.C. 33, 733 S.E.2d 114 (Ct. App. 2012)
- State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012)

- State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011)
- Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010)
- State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011)
- State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012)
- Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)
- State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (Ct. App. 1996)
- Chapman v. California, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)
- Seward v. State, 76 P.3d 805 (Wyo. 2003)
- State v. Bryant, 382 S.C. 505, 675 S.E.2d 816 (Ct. App. 2009)

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