



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISAAC JOHNSON,)
)
 Defendant-Below,)
 Appellant)
)
 v.) No. 319, 2024
)
 STATE OF DELAWARE)
)
 Plaintiff-Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

NICOLE M. WALKER [#4012]
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5121

Attorney for Appellant

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U.S. Const., Amend. VI	<i>passim</i>

I. THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED ISAAC JOHNSON HIS RIGHT TO TESTIFY AND RIGHT TO PRESENT A DEFENSE WHEN IT PREVENTED HIM FROM EXPLAINING THE MOTIVE FOR THE COMPLAINANT OR HER PARENTS TO LODGE A FALSE ALLEGATION AGAINST HIM.

The State erroneously claims that Johnson failed to preserve the issue below because “the issue was raised in the context of Smith’s sexual activity with others having motivated Smith to coach L.F. to have fabricated evidence.”¹ This claim fails to accurately reflect the nature of Johnson’s testimony and the actual ruling by the trial court. In reality, Johnson attempted to rebut Smith’s version of events regarding their “argument” on the night at issue. He testified that he had not made a spontaneous admission to engaging in sexual contact with L.F. as Smith claimed. Rather, the trigger for the ensuing tumult was his expression of legitimate concerns he had about Smith possibly engaging in an affair with L.F.’s father:

So, I let her know that I heard [L.F.] on the phone talking with her dad. I'm letting her know that has [L.F.] told me that her dad had came down here, and her mom, pretty much Marie, they were all together, and I said, [w]as this when I went back to Atlanta.

Johnson told the jury that he “wanted to get clarity” as to the nature of Smith’s relationship with L.F.’s father because there had been a situation that

¹ State’s Ans. Br. at p. 25.

happened six months prior regarding the same type of thing, but that was with a client she had. So I wanted to just get clarity. And so that was what the conversation was about. And then it kind of just spiraled after that. So that's what that was about.²

He also told Smith,

Hey, let's slow down, let's talk about this, because I literally came down here for you, and even though I just found out this, let's talk.³

Johnson then testified that “[t]he reason why [Smith] wants me to get out is because I said some type of crazy things to her that kind of got her ticked off.” Defense counsel asked Johnson what he had said to her. Johnson responded that he needed to offer context. In doing so, he referred to Smith’s prior sexual relationship with a client.⁴

It was at this point that the prosecutor objected. On appeal, the State concedes that “[t]o be sure, the State’s objection to Johnson’s testimony about Smith’s alleged sexual conduct with a client arguably expanded the State’s initial motion *in limine* regarding anticipated testimony about the sexual practices between Smith and Johnson to include Smith’s sexual activity in general.”⁵

² A104.

³ A105.

⁴ A103-106.

⁵ State’s Ans. Br. at pp.25-26.

In response to this expansive objection, the trial judge found that this testimony violated her ruling on the motion *in limine*. Defense counsel said that the point of his question was to elicit what Johnson said to Smith. He did not seek “the supposition that accompanied it.” Upon inquiry by the judge, defense counsel explained that Johnson had called Smith a whore. The judge responded that Johnson could “have just answered that.”⁶

When the trial court admonished Johnson for violating her prior ruling, he responded, “I remember what [the prosecutor] was talking about in terms of in the bedroom, I didn't know that had any relevancy to do with any arrest.”

The following exchange took place:

THE COURT: She also mentioned sexual activity of the mom, alleged sexual activity of the mom.
MR. JOHNSON: Okay. So any sexual activity?
THE COURT: I can't, I can't make it any clearer, all right? Answer the question you're asked. Because the mom is not on trial. I understand her credibility is at issue, I understand that, as is everybody's in a trial, but that is inflammatory and it's unfairly prejudicial. And it's attacking -- it's bad.⁷

The judge then instructed the jury “to disregard the defendant's statement about the alleged prior sexual behavior of Marie Smith. You are not to consider that statement in your deliberations.”⁸ The judge's ruling and

⁶ A108-109.

⁷ A110-111.

⁸ A111.

instruction did not distinguish between the testimony regarding Smith's relationship with L.F.'s father and her relationship with a prior client. It applied to testimony related to any sexual activity by Smith.

Once Johnson's testimony resumed, he was limited to what specifically he said to Smith that got her angry,⁹ "I can see why your phone stopped ringing when I got to Delaware. And ..., Maybe I should go back to Atlanta if you're going to be with your ex-husband."¹⁰ Because the prior testimony had been struck, and because the court limited him to just testifying as to what he said to Smith, Johnson was significantly limited in his ability to provide a defense.

The jury was entitled to know more than the specific statement Johnson made to Smith that made her angry. It was not just the statement that Johnson alleged got her angry or that would have given her or L.F.'s father a motive to coach L.F. into making false claims. It was the existence of the relationship itself that would allow Johnson to fully present his defense that either Smith, L.F.'s father or both had a motive to coach L.F. to lie due to the nature of their relationship. It would allow the jury to assess whether Smith or Johnson was correctly recounting the events. At a minimum, he should have been

⁹ A113.

¹⁰ A113.

permitted to explain why the concern was reasonable as Smith had characterized him as acting irrational that evening.

The State's reliance on cases finding a victim's sexual history inadmissible is misplaced. Those decisions follow the various state Rape Shield laws. Here, the evidence did not involve the victim's conduct. And, even in the State's cases that involve a victim's sexual history, courts have concluded that where "the evidence of prior sexual conduct was not offered merely to show any general moral turpitude or defect of the prosecutrix, but rather to reveal a specific bias against and hostility toward appellant and a motive to seek retribution by, perhaps, false accusation[,] the evidence may be admissible."¹¹

The State's claim that even if there was error, it was harmless, is unavailing. The motive for Smith to lie was not evident from the face of the State's case.¹² And, by the time Johnson testified, the jury heard quite a bit of

¹¹ *Commonwealth v. Jerdon*, 229 A.3d 278, 285 (PA 2019) (internal quotation marks and citation omitted); *State v. Zebadua*, 2009 WL 491577, at *2 (Ariz. Ct. App. Feb. 26, 2009); *State v. Bravo*, 343 P.3d 306, 310 (Utah 2015) (addressing issue involving victim's sexual history). Other cases the State relies upon involve scenarios not at issue in this case. *State v. Martin*, 423 P.3d 1254, 1266 (Utah 2017) (finding that introduction of witness' series of alleged prior false accusations which would have led to multiple mini trials); *Banks v. State*, 93 A.3d 643 (Del. 2014) (finding, under facts of the case, that the evidence not relevant to bias).

¹² *Nappi v. Yelich*, 793 F.3d 246, 252 (2d Cir. 2015) (citing *Corby v. Artus*, 699 F.3d 159, 167 (2d Cir.2012) (concluding "state trial court did not abuse

evidence regarding violence, threats of suicide and other tumult that Smith claimed was a result of his disclosure. Yet, Johnson was not permitted to explain that such events were, in reality, the result from his confrontation of Smith on his legitimate concern about her possible affair with L.F.'s father.

When she called police, Smith made no claims regarding L.F. Instead, she called L.F.'s father. He came down from New York. According to L.F., he spent time alone with her discussing the events of the preceding night. Significantly, Mama Marie testified inconsistent with L.F.'s testimony and said that L.F. and her father were not together outside of her presence. Given this context and the fact that the trial was a credibility contest, exclusion of Johnson's testimony requires his convictions to be reversed.

Accordingly, Johnson's right to present a defense was violated and his convictions must be reversed for a new trial.

its discretion in limiting [defendant's] cross-examination" because the defendant was otherwise "able to show that [the witness] had a motive to lie to deflect the investigators' attention from herself").

CONCLUSION

For the reasons and upon the authorities cited herein, Johnson's convictions must be reversed.

Respectfully submitted,

/s/ Nicole M. Walker
Nicole M. Walker [#4012]
Carvel State Building
820 North French Street
Wilmington, DE 19801

DATED: March 21, 2025