



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RHANDY MASSEY,	:	
	:	C.A. No. 131, 2023
Defendant-Below,	:	
Appellant,	:	ON APPEAL FROM THE
v.	:	SUPERIOR COURT OF THE
	:	STATE OF DELAWARE
STATE OF DELAWARE,	:	ID No. 2108001587A
	:	
Plaintiff-Below,	:	
Appellee.	:	

**ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR SUSSEX COUNTY**

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

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DATED: October 22, 2024

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EXHIBIT A: Sentence Order for Rhandy Massey, ID NO. 2108001587A

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NATURE AND STAGE OF THE PROCEEDINGS

On November 9, 2023 this matter was remanded to the Superior Court by order of this court following the state's motion for remand to allow the trial court to conduct an evidentiary hearing to expand the record on appeal. This court retained jurisdiction. A hearing was held on February 21, 2024. The court granted the parties' request for written argument. Thereafter, the court scheduled oral argument on July 2, 2024. The Honorable Craig Karsnitz issued a written opinion on July 17, 2024.

This is Massey's supplemental Opening Brief after the appeal's return to this court.

SUMMARY OF ARGUMENT

- I. THE COURT ERRED IN RULING THE PRIOR UNLAWFUL SEXUAL ALLEGATIONS OF L.M. AND M.M. AGAINST N.M. WERE INADMISSIBLE AS EVIDENCE.

STATEMENT OF FACTS

In addition to the facts adduced at the evidentiary hearing, appellant Massey adopts and incorporates by reference the statement of facts submitted in his initial opening brief.

On direct examination, L.M. remembered going to the hospital in August 2017. She recalled she thought it was Bayhealth. She recalled “they were checking [her] to see if N.M. ...did anything wrong.” (EHT¹ 33, A1) L.M. could not testify nor remember anything further. (EHT 34, A2)

Under cross-examination, L.M. recalled N.M. in the house with her and her sister, M.K. (EHT 38, A3) L.M. testified N.M. had his own room. *Id.* She also recalled going to the hospital in Seaford and it stuck out like a big event. (EHT 39, A4). She recalled her mother [Inga], herself and her little sister KK [M.M.] all at the hospital. (T 40, A5). She recalled the purpose of the visit to the hospital was for examinations to see if N.M. had touched or hurt them. (*Id.*) She testified that her recollections were what she recalled specifically, and not from what someone told her. (*Id.*). She recalled the purpose of visit to the hospital was specifically to determine whether there had been any type of abuse by Nathan. (*Id.*) L.M. testified she recalled a physical examination at the hospital for her and MM. (EHT 41, A6). However, L.M. could not recall any statements

¹ Evidentiary Hearing Transcript, hereafter EHT

she made to her mother, Inga. (*Id.*), L.M. testified she could not recall speaking with Nathan or her father Randy. (EHT 42, A7)

L.M. admitted watching the CAC videotape refreshed her recollection regarding the hospital visit in 2017. (EHT 43, A8) Although she could not specifically remember her statement details, L.M. admitted under cross-examination that some of her statements to the CAC interviewer Miss Hunt, as recorded on the CAC video, were highly unlikely and implausible. (EHT 43-44, A8-9) M.M. was called to testify at the evidentiary hearing, but was unable to recall any details of significance regarding the allegations against N.M. or the Child Advocacy Center (CAC) recorded statement admitted as State's Exhibit 3. (EHT 53-55, A10-12)

Inga Lambert (formerly Massey) testified in 2017 she was alerted to allegations of sexual abuse by N.M. against L.M. and M.M. (T 67-68, A13-14) She testified she returned home from work. She saw Nathan was in his room and Randy Massey sleeping in his chair. She further testified she took both girls to the hospital. (EHT 70, A-15)

Under cross-examination, Inga recalled taking the girls to Nanticoke Hospital in Seaford, but she could not recall speaking with any results. After reviewing

Cpl. Brent's report from 2017, Inga testified the police report was wrong and the events as recorded in the report were not accurate. Inga Lambert

specifically recalled LM, telling her all the way to the hospital, that N.M. had asked M.M. to suck his penis. (EHT 83, A-16), Inga was sure that L.M had made the statement accusing the N.M. of making M.M. suck his penis. (EHT 85-86, A-17-18) Inga acknowledged there is a real question as to whether any sexual abuse from N.M. to the girls had ever taken place. (EHT 87, A-19).

LEGAL ARGUMENT

- I. THE SUPERIOR COURT ERRED IN RULING THE PRIOR UNLAWFUL SEXUAL ABUSE ALLEGATIONS OF LM AND MM AGAINST NM WERE INADMISSIBLE AS EVIDENCE, PURSUANT TO *STATE v. BAILEY*. THE LEGAL ISSUE PRESENTED IN THE CASE AT BAR WAS PREVIOUSLY RAISED IN *BRYANT v. STATE*, WHEREIN THIS COURT HELD EVEN INCONCLUSIVE ALLEGATIONS OF SEXUAL ABUSE WERE ADMISSIBLE TO CHALLENGE THE CREDIBILITY OF A COMPLAINING WITNESS.**

A. QUESTION PRESENTED

Whether the Court abused its discretion in ruling allegations of sexual abuse by L.M. and M.M. against N.M. should be excluded from evidence.

B. STANDARD AND SCOPE OF REVIEW

This Court “review[s] the Superior Court's evidentiary rulings for abuse of discretion. If we determine that the Superior Court abused its discretion, we then determine whether the error rises to the level of significant prejudice to deny the defendant a fair trial.”²

² *Jenkins v. State*, 53 A.3d 302 (Del. 2012) (internal citations omitted).

C. MERIT OF ARGUMENT

In its written opinion following the evidentiary hearing, the Trial Court ruled *Bryant v. State*'s,³ holding that even inconclusive allegations were admissible evidence should not control here, but rather relied on *State v. Bailey*⁴, holding a defendant attempting to admit into evidence prior allegations of sexual abuse against a third party by the complaining witness must show some indicia of falsity before the court can consider its probative value for the fact finder.⁵

The appellant submits the Trial Court misconstrues this Court's decision in *Bryant*. Although this Court ruled the trial court abused its discretion in failing to hold a §3508⁶ hearing to explore Bryant's claim of fabrication, the *Bryant* court did not hold falsity, or an indicia thereof, was required before prior sexual assault claims were admissible to challenge a witness' credibility. When the court held even inconclusive allegations are admissible to challenge credibility, the court accounted for the fact that the issue of falsity potentially could not be established.⁷

³ *Bryant v. State*, 1999 Del. LEXIS 178 (June 2, 1999)

⁴ *State v. Bailey*, 1996 Del. Super LEXIS 401 (Del. Super. Sept. 12 1996).

⁵ *State v. Massey*, Del. Super. Def. I.d. 2108001587A, *17 Karsnitz, R.J. (July '17, 2024)

⁶ 11 Del.C. §3508.

⁷ *Bryant* at *9.

The *Bryant* court relied on the Rhode Island case of *State v. Oliveira*.⁸ The *Oliveira* court held the credibility of the complaining witness is always an issue and therefore, the defense was entitled to explore previous allegations of sexual abuse, notwithstanding the defense's inability to demonstrate falsity.⁹

The trial court in its opinion to this Court following the evidentiary hearing determined *Bryant*'s precedential value was limited after reviewing *State v. Manning*.¹⁰ In *Manning*, the Rhode Island Supreme Court held falsity or an indicia thereof, must be shown before a prior allegation of sexual abuse against a third person is admissible evidence.

Manning is inapposite as the Rhode Island Rules of Evidence specifically address the issue of falsity. Rhode Island's version of 608(b)¹¹ of the Uniform Rules of Evidence provides the trial court in its discretion, may admit prior similar false allegations.

Inga Lambert acknowledges she took both her daughters to Nanticoke Hospital in Seaford for physical examinations following an allegation of sexual abuse by them. There was no evidence to corroborate the allegations made

⁸ *State v. Oliveira*, 576 A.2d 111(R.I 1990).

⁹ *Id.* at 113.

¹⁰ *State v. Manning*, 973 A.2d 524 (R.I. 2009).

¹¹ R.I. R. Evid. 608(b)

against N.M. L.M. and M.M. each recall a visit to the hospital for physical examinations.

Both of the complaining witnesses made statements to their mother, which was recorded in the police reports prepared contemporaneously. Due to the age of the complaining witnesses and the length of time that has transpired, the contemporaneous recorded oral statements are the best evidence of the allegations. Because no other evidence corroborates these statements and t no arrest was made, clearly the allegations at best are inconclusive. The trial court's opinion takes note of the CAC interview of M.M, that there was one small allegation accusing N.M. of inappropriate touching. This disclosure in and of itself does not make it credible; mistake and fabrication are as plausible as truthfulness. Appellant submits the jury is entitled to hear these allegations in weighing the credibility of the complaining witness, pursuant to *Bryant*.

CONCLUSION

For the foregoing reasons, Appellant Rhandy Massey respectfully requests that this Court vacate the appellant's convictions and remand the matter to the Delaware Superior Court in and for Sussex County for a new trial.

Respectfully submitted,

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