



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RHANDY MASSEY :
 :
 : **No.: 131, 2023**
 :
 Defendant-Below, :
 Appellant, : **Court Below:**
 v. : **Superior Court of the**
 : **State of Delaware,**
 STATE OF DELAWARE, : **in and for Sussex County**
 :
 :
 Plaintiff-Below, :
 Appellee. :

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

APPELLANT’S REPLY BRIEF

JOHN R. GAREY, PA

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DATE: March 6, 2025

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ARGUMENT I

The Appellant has no further arguments on this issue.

ARGUMENT II

The Appellant has no further arguments on this issue.

ARGUMENT III

The Appellant has no further arguments on this issue.

ARGUMENT IV

The State submits the trial court correctly ruled eight-year-old complaining witness, M.M. could hold a small stuffed animal comfort toy during her testimony at Massey's trial. This court has held before witnesses are allowed to use any type of comfort item during her testimony at trial, statements show a substantial need for such accommodation.¹ In the present case, the State failed to demonstrate a substantial need, but rather simply stated to the trial court a counselor had recommended each witness keep a comfort item with them to help them feel comfortable at trial. Notwithstanding the Court ruling the stuffed animal toys must be held close to the witness and out of the view of the jury, the jury was still able to observe the witness approaching the witness stand holding a stuffed teddy bear. The Court held, because of the sympathy already engendered due to the young age of each of the complaining witness, any further sympathy engendered by the use of the stuffed animal would be inconsequential. Given the nature of the case and the allegations of intra-family sexual abuse, Massey submits any additional and unnecessary act or prop unduly enhances the sympathies already present in the case. In a close case such as the one at bar, any factor leading to

¹*Czech v. State*, 945 A.2d 1088, 1094 (Del. 2008).

inflaming the passions of the jury is unwarranted and denies the accused a fair trial by an impartial jury.

ARGUMENT V

Please see argument presented under ARGUMENT VI.

ARGUMENT VI

The Superior court erred in ruling the prior allegation of sexual abuse made by M.M. and L.M. against N.M. was inadmissible pursuant to 11 *Del.C.* §3508 for impeachment purposes. The State argues Massey's reliance on *Bryant*² is misplaced, as the Rhode Island case³ this court looked to in issuing its opinion has been limited by subsequent Rhode Island decisions.⁴ The State submits this Court's holding in *Bryant* that prior allegations may be admissible evidence notwithstanding the inability of the movant to show falsity of the allegations is now limited due to the rationale set forth in *Dorsey*. In *Dorsey*, the Rhode Island Supreme Court held the trial court correctly excluded evidence of prior filings of paternity petitions, as well as other statements of the complaining witness. In so holding, the court determined the prior paternity filings were not similar in nature and had no bearing on the credibility of the complaining witness.⁵

Not so in the case at bar. The allegations made by the complaining witnesses against their brother N.M. in 2017, as well as the allegations against the

²*Bryant v. State*, 1999 Del. LEXIS 178, at *9 (June 2, 1999).

³*State v. Oliveira*, 576 A.2d 111 (R.I. 1990).

⁴*State v. Dorsey*, 783 A.2d 947 (R.I. 2001).

⁵*Id.* at 951.

appellant are both allegations of sexual misconduct, albeit not the same exact offenses as delineated in the criminal code. Accordingly, the jury should have been given the opportunity to hear the alleged comments regarding the prior allegations in assessing the credibility of the complaining witnesses as it related to the accusations against Massey.

At Massey's §3508 pre-trial motion hearing, as well as the remand hearing, the defense asserted and the State admitted that both M.M. and L.M. had made allegations of sexual abuse against N.M., when each of the girls reported this to the appellant in August, 2017. When their mother, Inga Massey, was made aware of the allegations made by her daughters, she alerted authorities and transported them to Nanticoke Hospital in Seaford, Delaware for physical examinations. Enroute, Inga inquired of both girls the allegations they had made against N.M. Thereafter, Inga related their statements to Delaware State Police upon their arrival to the hospital. Forensic interviews were scheduled for each of the complaining witnesses. Following these forensic interviews⁶ on August 24, 2017, the State determined not to seek criminal prosecution.

Massey submits the statements made by the complaining witnesses to their father, mother and the forensic interviewer are all admissible for consideration by

⁶State's Exhibits 2 and 3 respectively, State's Appendix B290

the jury in accessing the credibility of each of the witnesses. Given that the statements were made by each of the complaining witnesses to third parties prior to the scheduled forensic interview, there was sufficient evidence for the jury to determine whether the statements could be the product of fabrication.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted this Honorable Court should reverse Appellant's convictions and remand the matter for a new trial.

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