

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001209-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 03-CR-00458

TYRONE ANTOINE HARTSFIELD

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: ABRAMSON AND GUIDUGLI,¹ JUDGES; BUCKINGHAM,² SENIOR JUDGE.

GUIDUGLI, JUDGE: The Commonwealth of Kentucky appeals from an order of the Fayette Circuit Court dismissing one count of rape and one count of sodomy from an indictment returned against Tyrone Antoine Hartsfield. The circuit court ruled that statements made by the alleged victim, now deceased, were

¹ Judge Daniel T. Guidugli completed this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

inadmissible because Hartsfield had no opportunity to confront her, and because the statements did not fall within any exceptions to the hearsay rule. For the reasons stated below, we reverse the order on appeal and remand the matter for further proceedings.

On April 22, 2003, Hartsfield was indicted by the Fayette County grand jury on three counts of first-degree rape, three counts of first-degree sodomy, and for being a persistent felony offender in the first degree. The indictment alleged that Hartsfield raped three women, one of whom was Minnie Buford. Buford died following the return of the indictment.

After Buford's death, Hartsfield filed a motion to dismiss the counts involving Buford, alleging that her statements to third parties, if admitted, would constitute hearsay. The motion was denied. Thereafter, the Commonwealth filed two motions in limine which sought rulings as to the admissibility of these statements. One motion involved a statement made to a "sexual assault nurse examiner" (a SANE nurse) September 30, 2002, during the course of Buford's examination and treatment for rape at the University of Kentucky Medical Center. The other motion addressed statements made immediately after the alleged rape when Buford ran from her home and, it is alleged, yelled to Malcolm Buchanan, "he raped me, he raped me." The second motion also sought the court's ruling

that Buford's statement to her daughter just after the alleged rape also was an exception to the hearsay rule as an excited utterance under KRE 803(2).

A hearing on the motions was conducted on May 12, 2005, after which the circuit court entered an order finding the statements inadmissible on the basis that Hartsfield's right to cross-examine Buford would be violated by their admission.

Thereafter, the circuit court dismissed the two counts involving the victim Buford, and Hartsfield entered a plea of guilty on two amended counts of sexual misconduct against the other two victims. Buford was sentenced to 12 months in jail on the two sexual abuse counts, with credit for time served. This appeal followed.

The Commonwealth now argues that the circuit court committed reversible error in ruling that Buford's out-of-court statements made within minutes or hours of the alleged rape were inadmissible. The first issue raised by the Commonwealth is its claim that Buford's conversation with the SANE nurse at the hospital shortly after the alleged rape is admissible under the KRE 803(4) "medical treatment or diagnosis" exception to the hearsay rule. It also contends that the Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), prohibition against the admission of out-of-court "testimonial" statements is not applicable herein, as Buford's statement to the SANE

nurse was for the purpose of medical diagnosis and treatment, and was not testimonial. The Commonwealth seeks an order reversing the circuit court on this issue and remanding the matter for additional proceedings.

We have closely examined the record and the law, and must conclude that Buford's conversation with the SANE nurse falls squarely within the KRE 803(4) exception and the case law. As the parties are well-aware, KRE 803(4) holds as admissible, "[s]tatements made for purposes of medical treatment or diagnosis and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to treatment or diagnosis."

The dispositive inquiry on this issue is whether Buford's statement to the SANE nurse "was made for purposes of medical treatment or diagnosis" and/or addressed "the cause or external source thereof insofar as reasonably pertinent to treatment or diagnosis." It is difficult, if not impossible, to fathom that an alleged rape victim could seek treatment for rape without telling the nurses and doctors she encounters that she had been raped. This conclusion is supported by the case law. This Court in Meadows v. Commonwealth, 178 S.W.3d 527, 537 (Ky.App. 2005), held that the trial court did not err in allowing the admission of "everything that T.H. [the victim]

told him [the physician] about the sexual assault and the events leading up to it." This Court held that "[s]tatements by T.H. concerning how she was struck, pinned down, choked, and forcibly penetrated are obviously relevant to describing the inception or cause of her injuries and relevant to treatment or diagnosis. And it was not error to admit Dr. Compton's retelling of these statements." Id. at 538. Meadows is controlling as to statements made for the purpose of medical diagnosis and treatment.

The related inquiry is whether the Crawford prohibition against the admission of out-of-court "testimonial" statements operates to bar the SANE nurse from testifying as to what Buford told her. Since the Crawford court intentionally refrained from defining what constitutes "testimonial," Crawford, 124 S.Ct. at 1374, and because nothing in the record indicates that Buford expected she would be unable to testify at an eventual trial, we conclude that Buford's statement was not made for the purpose of causing the nurse to testify on Buford's behalf. As such, Buford's statement was not "testimonial" and does not run afoul of Crawford.

The Commonwealth also argues that the circuit court erred in failing to rule that Buford's statements to Buchanan and to Buford's daughter were excited utterances under KRE 803(2) and therefore not subject to the prohibition against

hearsay. We agree. KRS 803(2) allows for the admission of relevant statements "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." The Commonwealth properly directs our attention to Ernst v. Commonwealth, 160 S.W.3d 744 (Ky. 2005), for the criteria to determine whether a statement is an excited utterance under KRE 803(2). The factors to be considered include the lapse of time involved, the likelihood of and inducement for fabrication, the actual excitement of the declarant, the place of declaration, and so forth. Id.

The record indicates that Buford ran out the house after the alleged rape and made the exclamatory statement to Buchanan, a passerby. Buford's utterance falls squarely within KRE 803(2) and the factors enumerated in Ernst and thus is admissible. According to the record, there was no appreciable lapse of time, Buford allegedly was "excited" for purposes of KRE 803(2), and the utterance occurred near the site of the alleged crime.

Similarly, Buford's statement to her daughter was made shortly after the utterance to Buchanan, and application of the Ernst criteria leads us to the same conclusion. While the reliability of these statements is subject to further evaluation by the jury, we must conclude that their summary exclusion was not supported by the law.

Accordingly, we reverse the order of the Fayette
Circuit Court and remand the matter for further proceedings.

ALL CONCUR.

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