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ADVANCE SHEET HEADNOTE
June 12, 2023

2023 CO 34

No. 21SC340, *Orellana-Leon v. People* – Criminal Law – Child Hearsay Statute – Sexual Assault on a Child.

The supreme court considers whether the trial court properly admitted statements the victim made when she was fifteen years old under the child hearsay statute, which provides that out-of-court statements describing an offense of unlawful sexual behavior are admissible if made by a child “as child is defined under the statutes that are the subject of the action.” § 13-25-129(2), C.R.S. (2022).

The supreme court holds that, pursuant to the plain language of the child hearsay statute, the “subject of the action” for sexual assault on a child by one in a position of trust is the substantive offense, which applies when the child is under eighteen, rather than the sentence enhancer, which applies when the child is under fifteen. Accordingly, the court affirms the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2023 CO 34

Supreme Court Case No. 21SC340
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 18CA595

Petitioner:

Jose Leonel Orellana-Leon,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed

en banc

June 12, 2023

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CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

CHIEF JUSTICE BOATRRIGHT delivered the Opinion of the Court.

¶1 Colorado’s child hearsay statute provides that out-of-court statements describing an offense of unlawful sexual behavior are admissible if made by a child “as child is defined under the statutes that are the subject of the action.” § 13-25-129(2), C.R.S. (2022). The issue before us is what happens when a defendant is charged under a statute that references two different ages.

¶2 In the companion case announced today, *Chirinos-Raudales v. People*, 2023 CO 33, ¶ 21, __ P.3d __, we concluded that the “subject of the action” for sexual assault on a child (“SAOC”) by one in a position of trust is the substantive offense, which applies when the child is under eighteen, rather than the sentence enhancer, which applies when the child is under fifteen. Applying that holding to this case, we conclude that because the victim was under eighteen at the time she made the statements in question, the trial court properly admitted them under the child hearsay statute. We therefore affirm the judgment of the courts of appeals.

I. Facts and Procedural History

¶3 Jose Leonel Orellana-Leon sexually abused his girlfriend’s daughter, L.V., from the time she was seven or eight years old until she was fifteen. When L.V. was fifteen years old, she told her father and stepmother about the abuse; as a result, a forensic interview was conducted.

¶4 The People subsequently charged Orellana-Leon with SAOC by one in a position of trust. Before trial, the People gave notice that they intended to admit statements L.V. made to her father, stepmother, and the forensic interviewer under the child hearsay statute. Over the defense's objection, the trial court granted the People's request.

¶5 At trial, the People introduced a video recording of the forensic interview and solicited testimony from L.V.'s father and stepmother regarding statements L.V. made to them when she was fifteen. Ultimately, the jury found Orellana-Leon guilty; it further found that L.V. was less than fifteen at the time of the assaults and that there was a pattern of abuse. Orellana-Leon was sentenced to sixteen years to life in the Department of Corrections. He appealed.

¶6 A division of the court of appeals affirmed his conviction. *People v. Orellana-Leon*, No. 18CA595, ¶ 1 (Mar. 25, 2021). Relying on another division's analysis in *People v. Chirinos-Raudales*, 2021 COA 37, 491 P.3d 538, the division concluded that for SAOC by one in a position of trust, the relevant age for purposes of the child hearsay statute is under eighteen, not under fifteen like Orellana-Leon argued. *Orellana-Leon*, ¶¶ 27–28.

¶7 Orellana-Leon appealed, and we granted certiorari.¹

II. Analysis

¶8 We first discuss the relevant standard of review and principles of statutory interpretation. We then summarize our holding in *Chirinos-Raudales*, ¶ 21, the companion case announced today, which concluded that the “subject of the action” for SAOC by one in a position of trust is section 18-3-405.3(1), C.R.S. (2022), which applies when a child is under eighteen. Applying that holding to this case, we conclude that because L.V. made the statements in question when she was under eighteen, the court properly admitted them under the child hearsay statute.

A. Standard of Review and Principles of Statutory Interpretation

¶9 “We review questions of statutory interpretation de novo.” *People v. Perez*, 2016 CO 12, ¶ 8, 367 P.3d 695, 697. Our primary task when interpreting a statute is to “give effect to the intent of the General Assembly.” *People v. Dist. Ct.*, 713 P.2d 918, 921 (Colo. 1986). “[W]here the plain language is unambiguous, we apply the

¹ We granted certiorari to review the following issue:

1. Whether the court of appeals reversibly erred by relying on *People v. Chirinos-Raudales*, 2021 COA 37, [491 P.3d 538]’s expansive interpretation of the child hearsay statute rather than strictly construing it as *People v. McClure*, 779 P.2d 864, 866 (Colo. 1989)[,] requires.

statute as written.” *Nieto v. Clark’s Mkt., Inc.*, 2021 CO 48, ¶ 12, 488 P.3d 1140, 1143. To ascertain the intent of the legislature, “we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings.” *Bill Barrett Corp. v. Lembke*, 2020 CO 73, ¶ 14, 474 P.3d 46, 49 (quoting *Blooming Terrace No. 1, LLC v. KH Blake St., LLC*, 2019 CO 58, ¶ 11, 444 P.3d 749, 752).

B. Our Holding in *Chirinos-Raudales*

¶10 In *Chirinos-Raudales*, we held that the child hearsay statute defines “child” for purposes of SAOC by one in a position of trust consistent with how it is defined in section 18-3-405.3(1) (the substantive offense), as opposed to in section 18-3-405.3(2)(a) (the sentence enhancer). ¶ 21. We arrived at this interpretation by looking to the plain language of the child hearsay statute, which requires courts to define “child” consistent with how it is defined in the matter of concern over which the judicial proceeding is created. *Id.* at ¶ 19. We concluded that, for purposes of SAOC by one in a position of trust, the matter of concern over which the judicial proceeding is created is subsection (1) because without that subsection, there would be no judicial proceeding. *Id.* at ¶ 20.

¶11 Orellana-Leon contends that this interpretation is inconsistent with *People v. McClure*, 779 P.2d 864, 866 (Colo. 1989), where we stated that because the child

hearsay statute is in derogation of common law, it must be strictly construed in favor of the accused. But this rule of statutory construction only applies when the statutory language is ambiguous. See *People v. Roybal*, 618 P.2d 1121, 1125 (Colo. 1980) (classifying the principle of strictly construing the statute in favor of the accused as a rule of statutory construction); *Dist. Ct.*, 713 P.2d at 921 (“If the language is clear and the intent appears with reasonable certainty, there is no need to resort to other rules of statutory construction.”). Therefore, because the plain language of the statute supports our holding in *Chirinos-Raudales*, the principle set forth in *McClure* has no bearing.

C. Application

¶12 Orellana-Leon was charged with SAOC by one in a position of trust as part of a pattern of abuse under subsections 18-3-405.3(1), (2)(a), and (2)(b). Subsection (1) states that “[a]ny actor who knowingly subjects another . . . to any sexual contact commits sexual assault on a child by one in a position of trust if the victim is a child *less than eighteen years of age* and the actor . . . is one in a position of trust.” § 18-3-405.3(1) (emphasis added). Subsection (2)(a) escalates the penalty from a class 4 felony to a class 3 felony, stating that “[s]exual assault on a child by one in a position of trust is a class 3 felony if . . . [t]he victim is *less than fifteen years of age*.” § 18-3-405.3(2)(a) (emphasis added). Subsection (2)(b), which does not

specify an age, escalates the penalty to a class 3 felony if the defendant commits the abuse as part of a pattern of abuse. § 18-3-405.3(2)(b).

¶13 Of the two subsections specifying an age, we conclude, as we did in *Chirinos-Raudales*, that subsection (1) is the “subject of the action” because the People could not have brought a judicial proceeding against Orellana-Leon under subsection (2)(a) without also charging him under subsection (1). The jury instructions given here support our conclusion. Jury instruction thirteen lists the elements of the crime of SAOC by one in a position of trust, which notably includes an element that the victim was under eighteen during the time of the sexual contact. Next, jury instruction fourteen states that *only if* the jury finds the defendant guilty of SAOC by one in a position of trust (the crime outlined in subsection (1)) should it then answer whether the victim was less than fifteen years of age (the sentence enhancer outlined in subsection (2)(a)).

¶14 Therefore, we hold that the “subject of the action” for SAOC by one in a position of trust is subsection (1) rather than subsection (2)(a). Accordingly, we conclude that the age of “child” for purposes of the child hearsay statute is under eighteen, meaning the trial court properly admitted L.V.’s statements.

III. Conclusion

¶15 For the foregoing reasons, we affirm the judgment of the courts of appeals.