

**SYNOPSIS OF CRIMINAL OPINIONS IN THE MISSISSIPPI SUPREME COURT
HANDED DOWN JUNE 2, 2016**

Dequane Lomax v. State, No. 2014-KA-00835-SCT (Miss. June 2, 2016)

CASE: Forcible Rape

SENTENCE: 25 years, with 7 suspended and 5 years PRS

COURT: Hinds County Circuit Court

TRIAL JUDGE: Hon. Jeff Weill, Sr.

TRIAL ATTORNEYS: Jamie K. McBride, Matt Eichelberger

APPELLANT ATTORNEY: Hunter Nolan Aikens

APPELLEE ATTORNEY: Abbie Eason Koonce

DISTRICT ATTORNEY: Robert Shuler Smith

DISPOSITION: Reversed and Remanded. Beam, Justice, for the Court. Waller, C.J., Dickinson and Randolph, P.J.J., Concur. Kitchens, J., Concur in Part and in Result with Separate Written Opinion Joined by King and Coleman, J.J.; Dickinson, P.J., and Maxwell, J., Join in Part. Lamar and Maxwell, J.J., Concur in Part and in Result Without Separate Written Opinion.

ISSUES: (1) Whether the trial court erred in refusing to sever the simple-assault charges from the rape charge, and (2) whether the trial court abused his discretion in prohibiting the defense from cross-examining S.C. and the CAC interviewer on what S.C. said after her interviews when left alone in the room.

FACTS: Dequane Lomax was indicted on two counts of rape and two counts of simple assault of a law enforcement officer. One rape count was severed and he went to trial on the remaining counts. (The trial judge refused to sever the simple assault charges involving the arresting officers). The State alleged that 18-year old Lomax forcibly raped 15-year-old S.C. at her residence in Jackson. S.C. and Lomax first became acquainted through Facebook. On January 20, 2013, Lomax texted her and asked if he could visit her. S.C. agreed but told him she would text him when her mother, Barbara Carter, left for work. Once her mother left, S.C. texted Lomax, and he arrived approximately five to ten minutes later. S.C. claimed that he eventually raped her while she tried to fight him off. (She claimed he retrieved a knife from the kitchen and held it to her neck). She also claimed he erased his number from her phone.

S.C. called her cousin and told her that she had been raped. S.C.'s mother was called and she took S.C. to UMMC, where S.C. was examined by a sexual-assault nurse-practioner. Her examination she no physical injuries. On February 4, 2013, S.C. was interviewed by the Children's Justice Center (CJC). The next day, S.C. was interviewed by Erin Gowen, a licensed social worker and forensic interviewer with the Children's Advocacy Center (CAC). Gowen recommended a mental-health assessment for S.C. due to unusual behaviors during the interview. The CJC interview was audio recorded, and the CAC interview was video recorded. The trial judge refused to allow the defense to cross-examine S.C. about what occurred at the end of her interview at the CAC. A proffer of the video apparently shows S.C. having a conversation with herself using her hands as puppets,

each with a different voice. Gowen admitted hearing S.C. say "you should just tell her the truth." Gowen denied hearing S.C. say that the truth would "ruin the relationship" or that "you should just get out of here so you can text her and tell her the truth."

On February 7, 2013, two weeks after the alleged rape incident, JPD Officers Shivon Hodges and Ella Thomas questioned Lomax at the police station. Near the end of the interview, Hodges began yelling at Lomax, calling him "Ronald Rapist." While escorting Lomax out of the interrogation room and to the holding facility, the officers claimed that Lomax attacked them when they entered the elevator. Both testified that they had suffered minor injuries from the attack.

Lomax testified on his own behalf, and admitted to having sex with S.C., but he claimed it was consensual. He said it occurred at his father's home. Lomax said that S.C. became angry with him afterwards when he would not respond to any of her text messages to him. He denied attacking the officers, and claimed they attacked and punched him, throwing him out of the elevator and dragging him to a jail cell.

The jury found Lomax guilty of rape in violation of §97-3-65(4)(a), and not guilty on both counts of simple assault of a law-enforcement officer. Lomax appealed.

HELD: (1) Although the trial judge held a *Corley* hearing (*Corley v. State*, 584 So. 2d 769 (Miss. 1991)), he did not discuss each *Corley* factor when he denied Lomax's motion to sever the counts. The SCT found all three *Corley* factors weighed in favor of severance, so the trial court erred when it refused to sever the rape charge from the assault charges. The fact that Lomax was acquitted of the assault charges does not remove the prejudice to Lomax. The evidence submitted in support of the assault charges unfairly bolstered the State's theory of the rape case, built on the premise that Lomax is violent against women.

(2) There was no error in the trial court's decision to prohibit Lomax from showing the video recording, or any portions of it, to the jury. The video recording at issue constitutes extrinsic evidence. S.C. admitted during proffer outside the presence of the jury, to making the statements recorded by the video camera. She denied, however, that the statements were in reference to Lomax and/or the alleged rape. Accordingly, it cannot be said that any of the statements made by S.C. while sitting alone in the interview room are inconsistent for purposes of MRE 613(b). There was no abuse of discretion in the trial court's decision not to allow the video recording itself—as extrinsic evidence—to be used as impeachment evidence.

However, the trial judge did err in failing to allow the defense to cross-examination S.C. about what happened after her interviews. This includes those statements made by S.C. when she was sitting alone in the interview room. While the video recording was inadmissible for purposes of Rule 613(b), Lomax should have been allowed to question S.C. about the alleged statements by ordinary cross-examination.

Additionally, the defense should have been allowed to cross-examine Gowen on S.C.'s post-interview actions. Gowen was allowed to offer her opinion that the statements S.C. made to her during the interview were consistent with someone who has been abused. Gowen observed S.C.'s conduct while S.C. was left alone in the room. Whatever assessment she got from it certainly would go to Gowen's credibility.

Kitchens, Justice, Concurring in Part and in Result:

Justice Kitchens concurred with the plurality's finding that it was error not prohibit the defense from cross-examining S.C. and Gowen about S.C.'s behavior when she was left alone after the interview, but he would also find that the trial court erred by excluding the videotape of S.C.'s prior inconsistent statements. (He also believed the trial court's ruling regarding the video also violated the Rule of Completeness in MRE 106).

The trial court barred Lomax from cross examining S.C. about her prior inconsistent statements on the ground of relevance. However, S.C.'s statements on the video were relevant to her credibility. It was error for the trial court to make a finding of fact that the statements did not concern the rape at issue. The trial court invaded the province of the jury by weighing S.C.'s credibility. Further, a witness's mental state is relevant for impeachment purposes, and a defendant may challenge a witness's credibility with relevant evidence concerning mental defects.

While S.C. acknowledged in her proffer that she had made the statements, she did not admit that they were inconsistent with her trial testimony. The video reveals that, after giving a forensic interview stating that Lomax had raped her, S.C. began arguing with herself about whether she should tell the truth. The trial court abused its discretion by finding that S.C.'s statements were consistent with her trial testimony.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112854.pdf>

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