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RECENT DEVELOPMENT

LAWSON v. STATE: IT IS ADMISSIBLE FOR A SOCIAL WORKER ACTING WITHIN THE COURSE OF HER PROFESSION TO TESTIFY TO A CHILD DECLARANT'S OUT-OF-COURT STATEMENTS REGARDING CHILD ABUSE OR SEXUAL ABUSE OF CHILDREN OF TENDER YEARS WHEN THE CONFRONTATION CLAUSE IS SATISFIED

By: Alice Arcieri

A social worker may testify to an out-of-court statement made to her by a victim of child abuse, when she is acting within the course of her profession, the child testifies at trial and is available for cross-examination. *Lawson v. State*, 389 Md. 570, 886 A.2d 876. In addition, the Court of Appeals of Maryland held that prejudicial statements admitted that are not properly cured during closing arguments constitutes plain error. *Id.*

In July 2002, Nigha, a seven-year-old female, told her mother, Ms. Thomas ("Thomas"), that a man had sexually molested her. Thomas reported the sexual abuse to the police and Nigha was examined by a doctor and interviewed by a social worker, Jennifer Cann ("Cann"). All three females testified at trial. Nigha described two distinct incidents. In 2001, Joseph Lawson ("Lawson") had been living with Nigha's family when the first abuse occurred. One night, Lawson exposed his genitalia to Nigha, pulled down her pants and penetrated her slightly. In June 2002, Nigha came home from school and Lawson was there, even though he no longer lived with her family. Lawson took Nigha into a bedroom and offered her soda in return for letting him touch her genitalia. Although Nigha refused, Lawson tried to pull down her pants. She told him to stop and left the room. She said she did not see his genitalia during that incident.

At trial, Thomas and Cann testified to a similar account regarding the first incident, but the second incident was inconsistent. Thomas stated that Nigha told her that she saw Lawson's genitalia the second time and that he was wearing a condom. Cann testified that Nigha

spoke of three incidents of abuse including a statement that Lawson had penetrated her as well during the second incident.

On July 8, 2003, the Circuit Court of Prince George's County convicted Lawson of two counts of second-degree rape, two counts of attempted second-degree rape and two counts of second-degree assault. Lawson appealed to the Court of Special Appeals of Maryland, which affirmed in part and reversed one count of second-degree rape and attempted second-degree rape. The Court held that the social worker's testimony was admissible, the prosecutor's closing remarks were harmless and did not cause reversible error, and without corroborative evidence for the second allegation, that conviction was reversed. However, an out-of-court statement by Nigha who testified at trial was sufficient to convict Lawson on the first count. Lawson filed a writ of *certiorari* to the Court of Appeals and the Court granted *certiorari*.

The Court determined the out-of-court statements of a child to a social worker were admissible under the statutory interpretation of Section 11-304 of Maryland Criminal Procedure. *Id.* at 581, 886 A.2d at 882 (citing MD. CODE ANN., CRIM. PROC. Section 11-304(c)(4)). The Court held that Nigha's statements to Cann were admissible under the statute because she meets the tender years doctrine of being under twelve-years-old, her statements regarding sexual abuse were offered for the truth of the matter asserted, and the statements were given to a social worker acting in her professional capacity. *Id.* at 582, 886 A.2d at 883. Under this statute, the Court held that the social worker's testimony was admissible because the Confrontation Clause was satisfied based on Nigha's testimony at trial, even if her statements were testimonial. *Id.* at 589, 886 A.2d at 887 (citing MD. CODE ANN., CRIM. PROC. Section 11-304(d)-(f)); see *State v. Snowden*, 385 Md. 64, 867 A.2d 314 (2005) (explaining the statute requirements of Section 11-304 under the Confrontation Clause).

The Court of Appeals described the standard of review for reversible error, and stated that an appellate court will not reverse "unless that error is 'both manifestly wrong and substantially injurious'." *Id.* at 580, 886 A.2d at 882 (citing *I.W. Berman Props. v. Porter Bros.*, 276 Md. 1, 11-12, 344 A.2d 65, 72 (1975)). The Court stated that in a criminal case, an error is harmless only if an appellate court decides "beyond a reasonable doubt that the error did not in any way influence the verdict." *Id.* at 581, 886 A.2d at 882 (citing *Dorsey v. State*, 276 Md. 638, 659, 350 A.2d 665, 678 (1976)).

The Court analyzed the prosecutor's closing remarks and determined whether the trial court interfered to cure any improper statements. *Id.* at 589, 886 A.2d at 887. The Court stated that it would only reverse if the improper remarks "actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused" and there was an abuse of discretion. *Id.* at 592, 886 A.2d at 889 (citing *Degren v. State*, 352 Md. 400, 722 A.2d 887 (1999)).

The Court explained each allegation and the holding of the Court of Special Appeals. Although the prosecutor used a "golden rule" argument, the Court of Special Appeals held that the general jury instructions cured any prejudice. *Id.* at 594, 886 A.2d at 890. Although the prosecutor used terms like "monster" and "sexual molester" in her closing remarks, the Court of Special Appeals held that the statements were isolated and did not directly refer to Lawson, so there was no prejudicial effect on the verdict. *Id.* at 597, 886 A.2d at 891-92. Although the Court of Appeals had not addressed the issue of future criminality in closing remarks, the Court of Special Appeals held that the statements were improper because they were not based on evidence at trial. *Id.* at 599, 886 A.2d at 893.

Through this analysis, the Court of Appeals held that the prosecutor's improper statements should be evaluated as a whole. *Id.* at 600, 886 A.2d at 893. The prosecutor shifted the burden on Lawson to prove that Nigha had a motive to lie, although Nigha's credibility was essential because she gave the primary evidence to convict Lawson. *Id.* at 596, 886 A.2d at 891. The prosecutor's indirect statements, "monster" and "sexual molester," were intended to describe Lawson, even without a direct reference to his name. *Id.* at 599, 886 A.2d at 892-93. The prosecutor's allegation regarding Lawson's possible future molestation of an eleven-year-old boy living with him was highly prejudicial. *Id.* at 599, 886 A.2d at 893. Through this assessment, as a whole the improper closing remarks had a prejudicial effect which contaminated the jury's verdict. *Id.* at 604, 886 A.2d at 895-96.

Using the factors in *Spain*, the Court held that there was less evidence with even more severe remarks and the trial court's actions to cure were insufficient. *Id.* at 600, 886 A.2d at 893 (citing *Spain v. State*, 386 Md. 145, 161, 872 A.2d 25, 34 (2005)). There was not overwhelming evidence against Lawson because both Thomas' and Cann's testimony were inconsistent with Nigha's testimony regarding the second allegation. *Id.* at 601, 886 A.2d at 894. Although there was sufficient evidence to convict, the verdict should have been based

on Nigha's credibility convincing the jury. *Id.* at 605, 886 A.2d at 896. The continuous admission of prejudicial statements heavily weighed in favor of the conclusion that the jury's verdict was influenced. *Id.* at 600-01, 886 A.2d at 894.

The trial judge's actions were inadequate to cure the prejudicial influence on the jury. *Id.* at 604, 886 A.2d at 896. The trial court overruled the objection regarding Lawson having the burden to prove Nigha had a motive to lie. *Id.* at 601, 886 A.2d at 894. In addition, the trial judge put only one paragraph in the jury instructions to convey that the lawyers' statements were not evidence, but only helpful to understand the application of law. *Id.* The same general instruction was sent back to the jury after closing remarks had concluded, but without any further explanation that it referred to the prosecutor's prejudicial statements. *Id.* The Court found that the judge's actions were insufficient, vague, allowed the statements to continue, and did not "overcome the likelihood of prejudice." *Id.* at 603, 886 A.2d at 895 (citing *Hill v. State*, 355 Md. 206, 226, 734 A.2d 199, 210 (1999); *Wilhelm v. State*, 272 Md. 404, 423-24, 326 A.2d 707, 720 (1974)).

At the end of its analysis, the Court touched on the issue of corroborative evidence. Although this issue was moot based on the fact that it related to the second allegation, which was reversed by the Court of Special Appeals, the Court of Appeals held that corroborative evidence is not required in rape cases if the victim testifies. *Id.* at 606, 886 A.2d at 897. Even if it were required, there was enough independent evidence to support Lawson's conviction in the first incident, based on the fact that Lawson had an opportunity to commit the crime. *Id.* at 607, 886 A.2d at 897. Nigha's testimony was corroborated by the social worker regarding the first incident and partially corroborated regarding the second. *Id.* at 607, 886 A.2d at 897-98. In addition, Lawson admitted to knowing Nigha during the time of the crime and that he would come to the house when only the children were home. *Id.* Therefore, the jury had enough evidence to conclude that Lawson had an opportunity to commit the crime. *Id.*

In this holding, the Court of Appeals of Maryland effectively explains the constitutional admissibility of the testimony of a social worker and other professionals, who are required under law to report statements of abuse received from a minor declarant. The public policy of this admission is to protect children from abuse, report and investigate allegations of abuse of children, and allow competent professionals acting in the course of their duties to testify along with

the victim in giving corroborative evidence. In addition, the Court is emphasizing the importance of giving every person an impartial trial and recognizing that when a trial judge's actions are inadequate to cure prejudicial effect, the appellate courts must intervene to correct this plain error.