

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED

May 13, 1996

FOR PUBLICATION
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)	
)	
Appellee,)	
)	
v.)	Hamilton Criminal
)	
DONALD C. MCCARY)	Hon. Douglas A. Meyer, Judge
)	
Appellant.)	
)	
)	
)	
)	No. 03S01-9410-CR-00106

DISSENTING OPINION

DROWOTA, J.

I agree with the majority that T. J.'s testimony, regarding his prior sexual acts with the defendant, was erroneously admitted. I also agree that the trial court erred by admitting the defendant's diary into evidence. However, after reviewing the entire record, I cannot agree that these errors "more probably than not affected the judgment" under Tenn. R. App. P. 36(b). Therefore, I would conclude that they were harmless and affirm the judgment of the Court of Criminal Appeals and the trial court.

Cases involving the sexual abuse of minors often present troubling credibility issues: the most problematic situation is perhaps that in which a child makes unsupported allegations of sexual abuse against the adult and then recants or changes his or her story when confronted by a parent, teacher or law enforcement official about these allegations. See e.g., State v. Bolin, ___ S.W.2d ___ (Tenn. 1996); State v. Ballard, 855 S.W.2d 557 (Tenn. 1993); State v. Anderson, 880 S.W.2d 720 (Tenn. Crim. App. 1994). When such charges are denied by the adult, judges and juries are often put in a quandary as to which party to believe; it is this type of situation that makes child sexual abuse cases among the most difficult of resolution.

In my opinion, however, the case before us does not present any such problems. On the contrary, the four minor victims here -- none of whom appeared to have any reason to harm the defendant -- all related remarkably similar, consistent stories of abuse by the defendant during a reasonably specific time frame. Not only did the victims' stories strongly corroborate one another, but they were also further buttressed by the admissible portion of T. J.'s testimony, in which he stated that the defendant told him about having sex with several boys, including two of the four victims.

Furthermore, the defendant admitted hugging and kissing the boys in an overly affectionate manner, as well as buying them extravagant gifts; he also admitted making the magazines and videotapes available to them. Finally, although the defendant denied engaging in sexual activity with the boys, he did not suggest any reason why they would falsely accuse him. Given the strength and consistency of the victims' testimony and the admissible portion of T.J.'s testimony,¹ coupled with the admissions made by the defendant, I have no doubt that the jury would have returned a verdict of guilty even without the erroneously admitted evidence. Since I believe that the evidentiary errors were harmless, I would affirm the judgment of the Court of Criminal Appeals and trial court.

FRANK F. DROWOTA III
JUSTICE

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Indeed, a majority of the Court of Criminal Appeals concluded that the State's evidence was "overwhelming" in this case.