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In re Juan P. Benitez, 266 A.3d 1221 (R.I. 2022)

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Criminal Law. *In re Juan P. Benitez*, 266 A.3d 1221 (R.I. 2022). The Rhode Island Supreme Court has included statements involving a psychological element as fitting within the definition of the medical exception to the hearsay rule because the psychological information discovered during an evaluation may be pertinent to diagnosis and treatment. Cumulative hearsay statements at issue can be admitted and considered harmless in regard to the other evidence presented at trial. Additionally, the Court determined that a medical professional relaying a statement from a patient falling within a hearsay exception does not constitute impermissible bolstering and is a reiteration without passing judgment.

FACTS AND TRAVEL

Mr. Benitez was charged on July 14, 2014, with one count of second-degree child molestation for having "engage[d] in sexual contact" with Nancy[1], his biological daughter, when she was fourteen years of age.[2] Nancy testified that he would "take his penis, and put it in [her] butt and rub it there."[3] In Nancy's testimony, she explained that the abuse started as a game and then evolved to something that would "happen a lot," and sometimes with her sisters in the room.[4] Nancy reported the abuse up to her paternal grandmother, who asked if she was certain this was abuse, attempted to minimize her experience, and was negligent by not investigating further.[5] Nancy told her mother about the abuse she endured because her mother had discovered that Nancy was cutting herself on her wrist with a knife.[6] She cut because she was traumatized and needed to distract herself from thinking about the

1. Pseudonym used for purposes of confidentiality.
2. State v. Benitez, 266 A.3d 1221, 1223 (2022).
3. *Id*. at 1224.
4. *Id*.
5. *Id*.
6. *Benitez*, 266 A.3d at 1224.

abuse she had suffered.[7] Nancy also testified that she felt like she needed to tell her mother about the abuse because if she was unable to see her sisters, she felt uneasy about not knowing if something similar could be happening to them.[8] Mr. Benitez was convicted of one count of second-degree child molestation, and Mr. Benitez appealed to the Rhode Island Supreme Court.[9]

ANALYSIS AND HOLDING

Mr. Benitez contended that the trial court (1) erred in permitting a physician, testifying as an expert witness, to testify to hearsay statements unrelated to medical diagnosis or treatment, and said statements were not merely cumulative but constituted impermissible bolstering and (2) that "the trial court impermissibly allowed the state to mislead the jury by impeaching a witness with a statement [that] he did not author, sign, or review."[10] The Rhode Island Supreme Court reviewed the trial court's "admission of evidence under the deferential abuse of discretion standard."[11] This standard ensures that the Court will not overturn a ruling by a trial justice on an evidentiary issue unless that ruling constitutes an abuse of discretion that prejudices the party.[12]

A. *Medical Diagnosis or Treatment Hearsay Exception*

Upon review, the Supreme Court initially sought to determine whether the testimony of Dr. Adewusi was a hearsay statement, as the defendant contended that it should be inadmissible for that reason.[13] The Court focused on the hearsay exception of allowing a hearsay diagnosis if it is a medical diagnosis or treatment exception.[14] The medical diagnosis exception provides that statements made in medical diagnosis or treatment, including describing

7. *Id.*
8. *Id.*
9. *Id.* at 1223.
10. *Id.*
11. *Benitez*, 266 A.3d at 1227; *see also* State v. Brown, 9 A.3d. 1240, 1247 (R.I. 2010).
12. *Benitez*, 266 A.3d at 1227; *see also* State v. Flori, 963 A.2d 932, 941 (R.I. 2009).
13. *Benitez*, 266 A.3d at 1227.
14. *Id.*; *see* State v Watkins, 92 A.3d 172, 187 (R.I. 2014); *see also* State v. Gaspar, 982 A.2d 140, 151 (R.I. 2009).

medical history, symptoms, or information pertinent to the diagnosis, are admissible.[15]

The Court has held that the test in determining the admissibility of hearsay "hinge[s] on whether what has been related by the patient will assist or is helpful in the diagnosis or treatment of [the patient's] ailment."[16] When statements made by the patient "enter the realm of assigning fault," they are considered unrelated to the treatment or diagnosis.[17] Here, the trial justice did not abuse their discretion in admitting Dr. Adewusi's testimony because the statements were reasonably pertinent to Dr. Adewusi's diagnosis and treatment of Nancy in determining not only the abuse she endured but the urgency of getting her treatment.[18] The trial court sufficiently ensured that the testimony complied with the medical diagnosis exception to the hearsay rule and did not constitute impermissible bolstering.[19] Additionally, Nancy did not have physical injuries but was in dire need of psychological treatment resulting from the abuse she endured.[20] The Court discussed that "a statement made to a treating physician is not per se inadmissible merely because it [contains a] patient's emotional state."[21] Just like a physical evaluation, it may be pertinent to diagnosis and treatment when an evaluation contains a psychological element.[22] Because Nancy had a history of self-harm, the relevance of her concern for her sisters, that her sisters were in the same room when the abuse occurred, that Nancy had disclosed the abuse to her family, and Nancy's paternal grandmother's reaction[23] are all significant to Nancy's psychological health, diagnosis, and treatment.[24] Due to the importance of treating the effect on Nancy's mental health of the abuse she alleges, the Court determined Dr. Adewusi's examination and need to collect all pertinent information needed to treat

15. *Benitez*, 266 A.3d at 1227; *see also* R.I. R. Evid. 803(4).
16. *Benitez*, 266 A.3d at 1228; *see Watkins*, 92 A.3d at 187 (quoting *Gaspar*, 982 A.2d at 151; *see also* State v. Ucero, 450 A.2d 809, 815 (R.I. 1982).
17. *Benitez*, 266 A.3d at 1228; *see also Gaspar*, 982 A.2d at 151.
18. *Benitez*, 266 A.3d at 1228.
19. *Id.*
20. *Id.*
21. *Id.*; *Watkins*, 92 A.3d at 188.
22. *Id.*
23. *Id.* at 1229.
24. R.I. R. EVID. 401.

Nancy was permissible and found no error in the trial justice's determination that the statements defendant objected to were "inextricably intertwined" with.[25]

B. *Impermissible Bolstering*

The defendant contended that his daughter's statements to Dr. Adewusi were hearsay and constituted impermissible bolstering.[26] Impermissible bolstering is "what typically occurs when one witness offer[s] an opinion regarding the truthfulness or accuracy of another witness'[s] testimony."[27]

The Court determined that the defendant's contention that Dr. Adewusi's testimony constituted impermissible bolstering was without merit because the prosecutor asked leading questions, and the doctor's testimony was very brief.[28] Dr. Adewusi did not express a specific view nor discuss the veracity of what Nancy explained; she relayed what Nancy had told her.[29] Critically, the Court has held that a medical professional's recitation of a patient's statement does not constitute impermissible bolstering.[30]

C. *Cumulative Evidence*

Cumulative evidence is "[evidence] tending to prove the same point to which other evidence has been offered."[31] The defendant's guilt can be sufficiently established when evidence is cumulative and not considered.[32] To determine whether the admission of certain evidence is harmless in the light of all the evidence admitted on that point, a retrospective test is applied.[33]

The Court determined that even if one or more parts of Dr. Adewusi's testimony did not fall exactly within the medical diagnosis exception to the hearsay rule, the statements are cumulative

25. *Benitez*, 266 A.3d at 1229.
26. *Id.* at 1224.
27. *Id.* n.4; *see also Watkins*, 92 A.3d at 190.
28. *Benitez*, 266 A.3d at 1228.
29. *Id.* at 1229 n.4.
30. *Id.*; *see Watkins*, 92 A.3d at 190.
31. *Benitez*, 266 A.3d at 1229; *see* State v. Lynch, 854 A.2d 1022, 1032 (R.I. 2004).
32. *Benitez*, 266 A.3d at 1229; see State v. Robinson, 989 A.2d 965, 979 (R.I. 2010).
33. *Benitez*, 266 A.3d at 1229; *see Watkins*, 92 A.3d at 189.

and harmless when taken in light of the other evidence given at trial.[34] Nancy had already specifically testified to each of the statements to which the defendant objected and was then subjected to a lengthy cross-examination.[35] Thus, Dr. Adewusi's testimony concerning these statements was a repetition of Nancy's testimony which included specific details that Dr. Adewusi's testimony did not.[36]

D. *State Impeaching Witness with Statement not Authored, Signed, or Reviewed by Witness*

Upon reviewing the transcript and the parties' arguments, the Court has determined that the defendant's contentions regarding the cross-examination of the witness, Mr. Harris, are waived.[37] The Court follows the raise-or-waive rule, which determines that a litigant cannot raise a new objection or advance a new theory if not raised before the trial court.[38] Defense counsel responded to the justice offering counsel a continuing objection with: "we'll see where it goes," and did not object thereafter.[39] Defense counsel objected to the possibility that the statement could be used for the witness's impeachment but did not object to any further questions asked of the witness.[40] A failure to object at trial in the context of the issue is a waiver of the evidentiary objection and cannot be raised on appeal.[41]

Furthermore, the statement was not used for the impeachment of the witness but instead to refresh the witness's recollection—which was permissible.[42] Rule 612 of Rhode Island Rules of Evidence discusses the permissible use of writing to refresh a witness's memory to testify.[43] When a witness's memory is refreshed, the

34. *Benitez*, 266 A.3d at 1229.
35. *Id.*
36. *Id.*
37. *Id.* at 1230.
38. *Id.*; *see also* State v. Doyle, 235 A.3d 482, 492 (R.I. 2020).
39. *Benitez*, 266 A.3d at 1230.
40. *Id.*
41. *Id.*; *see* State v. Tejeda, 171 A.3d 983, 1001 (R.I. 2017).
42. *Benitez*, 266 A.3d at 1230; *see also* State v. Souza 708 A.2d 899, 903 (R.I. 1998); *compare* R.I. R. EVID. 801(c).
43. R.I. R. EVID. 801(c).

witness's present memory of the event, rather than the writing, is used as evidence.[44]

COMMENTARY

The Rhode Island Supreme Court acknowledges the admissibility of hearsay statements under the medical diagnosis exception for statements made regarding psychological injuries.[45] A statement made to a treating physician that involves a patient's emotional state is not per se inadmissible because a medical evaluation involving a psychological element may be pertinent to the diagnosis and treatment of the patient.[46] Society has increasingly become compassionate towards those with mental illnesses. The hearsay exception rule was created when mental diagnosis and treatment were not as common as today. Because of our understanding of the seriousness and legitimacy of mental illness, the importance of using statements made to diagnose and treat mental illness is just as important as statements made explaining how a patient acquired a physical injury. In this case, even though Nancy did not have any physical injuries inflicted by her biological father, she was physically injuring herself because of the mental distress the abuse caused her. The statements made to Dr. Adewusi are significant in determining not only the seriousness and degree of abuse Nancy endured but additionally are key to establishing the urgency of getting Nancy proper treatment. By not allowing statements regarding a patient's mental state as a medical exception to the hearsay rule, we risk opening the floodgates to not getting victims adequate justice for the abuse they endure. Victims deserve a voice in the judicial process, and statements made regarding their mental diagnosis and treatment can provide significant evidence to not only find their abuser guilty but provide victims with adequate justice.

The purpose behind the medical exception to the rule against hearsay is to encourage patients to be truthful to their physicians where they expect to receive medical attention.[47] As doctors and physicians become more educated about mental illness and discover

44. *Benitez*, 266 A.3d at 1230; *see also* State v. Santiago, 81 A.3d 1136, 1141 (R.I. 2014).

45. *Id.* at 1228.

46. *Id.*; *Watkins*, 92 A.3d at 187.

47. *Benitez*, 266 A.3d at 1227; *see* State v. Pina, 455 A.2d 313 (R.I. 1983).

treatments for those illnesses, the Court must recognize and uphold the medical hearsay exception to all medical diagnoses and treatments. Admitting this evidence does not constitute impermissible bolstering, as more often than not, it is cumulative evidence as the patient has already testified regarding these statements allowing for cross-examination, assuming the physician recites the statement free of judgment.

The strictness behind the raise-or-waive rule ensures that objections are stated during the trial and does not risk opening the door to new objections or theories after a trial has occurred by allowing a possibility of an objection, this Court risks opening the floodgates to objections to *possibilities* after the trial has taken place. Indeed, the increased risk of judicial economy concerns appeals to objections thought of after trial—and risks delaying justice to those who seek it.

CONCLUSION

The Rhode Island Supreme Court affirmed the trial justice's decision to allow the admittance of a hearsay statement under the medical diagnosis or treatment exception regarding a patient's mental health. Moreover, the Court determined that even if the statement did not fall exactly within a hearsay exception, it is cumulative evidence as it is only further supported evidence that had already been presented at trial and overall was harmless.

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