

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

January 22, 2020

[Cite as *01/22/2020 Case Announcements #2, 2020-Ohio-95.*]

APPEALS NOT ACCEPTED FOR REVIEW

2019-1422. State v. Sharier.

Wayne App. No. 18AP0015, 2019-Ohio-3533.

Donnelly, J., dissents, with an opinion.

Stewart, J., dissents.

DONNELLY, J., dissenting.

{¶ 1} Steven Sharier was sentenced to five years in prison for unlawful sexual contact with a minor, in violation of R.C. 2907.04(A), based largely on the testimony of the victim, K.W. Essentially, the jury found K.W.’s testimony more credible than Sharier’s. But Sharier was prevented—over defense objection—from cross-examining K.W. on the topic of whether she had previously accused another person of sexual abuse and then recanted. This evidence would have borne directly on the credibility of K.W. As the dissenting judge in the court of appeals wrote, “the jury should have been able to hear and evaluate that evidence, particularly given the importance of credibility in this case.” 2019-Ohio-3533, ¶ 27 (Carr, J., dissenting).

{¶ 2} In ruling against allowing the evidence, it appears that the trial court misapplied Ohio’s rape-shield law, R.C. 2907.02(D), and *State v. Boggs*, 63 Ohio St.3d 418, 588 N.E.2d 813 (1992). The court of appeals acknowledged that the trial court erred in applying the rape-shield law, 2019-Ohio-3533 at ¶ 12, but did not fully address this issue, because it concluded that Sharier’s counsel did not object with adequate specificity. The court therefore reviewed the issue under the stringent plain-error standard, *id.* at ¶ 9, 13, instead of the less rigorous de novo standard

used for appellate review of preserved errors. We should accept jurisdiction to determine whether objecting to the application of the rape-shield law on one basis is enough to preserve a different error also related to the misapplication of the rape shield law. Given that—according to appellant’s memorandum in support of jurisdiction—the trial judge stated, “maybe I’m wrong, but, I think under *Boggs*, under rape shield, you can’t get it in,” I am confident that trial judges throughout Ohio would benefit from our review of this issue.

{¶ 3} Because I would accept jurisdiction, I dissent.
