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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Greenville County
Hon. Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2021-000711

The State, Respondent,

v.

William Lee Carpenter, Petitioner.

Opinion No. 2021-UP-182 (S.C. Ct. App. filed May 19, 2021)

BRIEF OF RESPONDENT

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II. Whether the South Carolina Court of Appeals erred in upholding the trial court's decision to allow the state to introduce a picture of Petitioner's girlfriend, naked in a bathtub and covered in feces, since this photograph was irrelevant to the charges against him, unduly prejudicial, and improperly interjected Petitioner's character as an issue in this case.

III. Whether the South Carolina Court of Appeals erred in upholding the trial court's decision to allow the state to introduce evidence of computer searches conducted on Petitioner's computer related to his sexual preferences when those searches were irrelevant to the charges against him, unduly prejudicial, and interjected Petitioner's character as an issue in this case.

COUNTER-STATEMENT OF ISSUES ON CERTIORARI

I. Petitioner raises issues and arguments which are not properly before this Court. Issues I and III as raised by Petitioner were never raised in his Petition for Rehearing and are, therefore, not appropriate for certiorari review. Additionally, Issue III states the issue is related to the computer searches for enemas in its initial paragraph, but Petitioner fails to provide any argument or citation related to the computer searches for enemas and instead only addresses the photograph of Petitioner's girlfriend. Finally, to the extent Petitioner is raising Rule 404, SCRE as a basis for reversal, this was never presented to the trial court as the only issues raised related to relevance and being unduly prejudicial.

II. On the merits, the trial court correctly admitted the testimony and evidence of Petitioner's "niche sexual preferences," including the photograph of Petitioner's girlfriend covered in feces and the computer searches for enemas, because: 1) the evidence and testimony was relevant to demonstrate the intent behind Petitioner's actions and to prove beyond a reasonable doubt that the "novel sexual fetishes" actually were of a lewd and lascivious nature; and 2) the evidence was more probative than prejudicial given it was necessary to educate the jury that people including Petitioner obtained sexual gratification from feces, to prove the children were not making up outlandish claims or that Petitioner was not mentally unstable, and to prove a necessary element of the crime. Further, the admission of the evidence was entirely harmless given the extensive testimony by Petitioner regarding his own fetishes and sexual interests, as well as his own discussion of the photograph, which went far beyond that admitted by the State.

STATEMENT OF THE CASE

Procedural History

The Greenville County Grand Jury indicted Petitioner on four counts of first degree criminal sexual conduct (CSC) with a minor, two counts of exposing another to HIV, two counts of third degree CSC with a minor, and two counts of unlawful conduct. (Indictments) He proceeded to trial before the Honorable Letitia H. Verdin and a jury between September 10-13, 2018. The jury found him guilty as charged. (R.579; App. 585). He was sentenced to a total of thirty years in prison with sentences for each charge to run concurrent. (R.585; App. 591). Petitioner served and filed a timely Notice of Appeal.

After briefing, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences in an unpublished opinion. See State v. Carpenter, Op. No. 2021-UP-182 (S.C. Ct. App. filed May 19, 2021). Petitioner served and filed a Petition for Rehearing on May 20, 2021, which was subsequently denied by Order filed June 25, 2021. Petitioner has served and filed a Petition for Writ of Certiorari raising four issues. This Court granted certiorari as to three issues and Petitioner filed his Brief of Petitioner on August 11, 2022. This Brief of Respondent follows.

Factual Background

The two child victims told horrific stories of abuse at the hands of the person they called "the monster," their grandfather. (R.247; 293; App. 250; 296). The female and male child victim were siblings living with their grandfather, their grandfather's girlfriend, and other family members. At the time of trial the female child victim was only eleven years old and male child victim was only twelve. (R.243; 290; App. 246; 293).

According to the female child victim, her grandfather vaginally raped her on his couch while her grandfather's girlfriend held her down by her shoulders. (R. 248-249; App. 251-252). The rape ended with her crying that she wanted to go to her room. On a second occasion, Petitioner's girlfriend again held down the child victim while Petitioner digitally penetrated his granddaughter. (R.250; App. 253).

Finally, she explained that Petitioner "put his poop on my and my brother's back." Petitioner called the two children to his room and put "his poop" on their back. They then had to scrub it off of each other with a rag. (R.250-251; App. 253-254). The female child victim did not understand why her grandfather was smearing feces on her back, but she felt "grossed out."

According to the male child victim, his grandfather "put a syringe in my butt" and sprayed water into his anus. (R.295-296; App. 298-299). As a result of Petitioner putting the enema into the child, the male child victim defecated. After the "poop came out," the male child victim's grandfather "rubbed it all over" the male child's back. (R.296-297; App. 299-300). After smearing feces on the child's back, Petitioner anally raped his grandson. (R.297; App. 300). Finally, the male child victim explained that his grandfather made him urinate in a bottle and then "made me drink my own pee." (R.297-298; App. 300-301).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.

"A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

ARGUMENT

I. **Petitioner raises issues and arguments which are not properly before this Court. Issues I and III as raised by Petitioner were never raised in his Petition for Rehearing and are, therefore, not appropriate for certiorari review. Additionally, Issue III states the issue is related to the computer searches for enemas in its initial paragraph, but Petitioner fails to provide any argument or citation related to the computer searches for enemas and instead only addresses the photograph of Petitioner's girlfriend. Finally, to the extent Petitioner is raising Rule 404, SCRE as a basis for reversal, this was never presented to the trial court as the only issues raised related to relevance and being unduly prejudicial.**

Several issues and arguments raised by Petitioner are not properly preserved for review on certiorari by this Court. Petitioner failed to raise any claims related to Issue I and III of his Brief of Petitioner in his Petition for Rehearing.[1] Additionally, Issue III as raised has been abandoned because Petitioner provides no argument related to the computer searches and instead continues to argue related to the photograph which is the subject of Issue II. Finally, any arguments related to Rule 404, SCRE, are not preserved for review because the issue was never raised at the trial court where the only objections were for relevance and undue prejudice from admission.

RULE 242, SCACR

The South Carolina Appellate Court Rules provide: "Only those questions raised in the Court of Appeals **and in the petition for rehearing** shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." Rule 242(d)(2), SCACR (emphasis added). This Court has specifically stated it will not review an issue which was not presented to

[1] The State notes that it is highly questionable whether any issue related to the general testimony or the internet searches referenced in Questions I and III were preserved for review on appeal because Petitioner never renewed his objections at the time the relevant evidence was admitted at trial. See State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (holding ordinarily an evidentiary ruling in limine is not final and an objection contemporaneous with the evidence's admission is required to preserve the issue for appeal).

the Court of Appeals in the party's Petition for Rehearing. Simmons v. Berkeley Elec. Coop., Inc., 419 S.C. 223, 235, 797 S.E.2d 387, 393 (2016) (declining to reach the merits of an argument and finding: "Because Simmons failed to raise this issue in his petition for rehearing before the Court of Appeals, we find it unpreserved for our review.") (citing Sloan v. S.C. Dep't of Transp., 365 S.C. 299, 307–08, 618 S.E.2d 876, 880 (2005) (providing that in order for an issue to be preserved for the Supreme Court's review, the issue must have been raised in a petition for rehearing before the Court of Appeals)); see also, Mazloom v. Mazloom, 392 S.C. 403, 403, 709 S.E.2d 661 (2011) ("As to the sufficiency of the evidence to support a breach of fiduciary duty, we find that this portion of the question is not preserved for review because it was not raised in the petition for rehearing to the court of appeals.").

A review of Petitioner's Petition for Rehearing shows the only issue he raised related to the admission of the photograph. The only arguments presented related to the ability to address intent without admitting the photograph and the graphic nature of the photograph making it more prejudicial than probative. Petitioner never maintained any case law or facts overlooked related to the admission of the internet searches or the general testimony related to his fetishes. In making the arguments presented about the photograph, Petitioner conceded the State's ability to admit testimony as necessary to establish intent, directly refuting Issue I. As a result, neither Issue I nor Issue III are properly before this Court for review on certiorari.

RULE 404, SCRE

No argument related to Rule 404, SCRE was made to the trial court or in the Petition for Rehearing. At trial, counsel only objected to "relevance" and "under Rule 403." (App.164). See e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."); State v. Haselden, 353

S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal). Additionally, it is clear Rule 404 was never cited or addressed in Petitioner's Petition for Rehearing as a ground for reversal. As a result, Rule 404 is not a proper basis on certiorari for overturning the trial court's decision to admit the testimony and evidence.

ABANDONED ISSUE

Finally, Petitioner has abandoned any argument related to his Issue III. On appeal to the Court of Appeals, the issue was raised in a conclusory single paragraph. In Petitioner's Petition for Writ of Certiorari, and now in his Brief of Petitioner, his Issue III purports to relate to the internet searches for enemas. While the Issue and the introductory paragraph mentions the admission of the internet searches regarding his sexual preferences and the use of enemas for sexual gratification, the actual argument he presents relates solely to the admission of the photograph. As a result, Issue III should not be considered. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority); see also, State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (holding argument abandoned when defendant failed to cite any authority in specific support of his assertion).

As a result, neither Issue I not Issue III is properly before this Court and neither should be addressed on the merits. Additionally, no argument was made related to Rule 404 to the trial court or in Petitioner's Petition for Rehearing and it should not be considered on appeal.

II. **On the merits, the trial court correctly admitted the testimony and evidence of Petitioner's "niche sexual preferences," including the photograph of Petitioner's girlfriend covered in feces and the computer searches for enemas, because: 1) the evidence and testimony was relevant to demonstrate the intent behind Petitioner's actions and to prove beyond a reasonable doubt that the "novel sexual fetishes" actually were of a lewd and lascivious nature; and 2) the evidence was more probative than prejudicial given it was necessary to educate the jury that people including Petitioner obtained sexual gratification from feces, to prove the children were not making up outlandish claims or that Petitioner was not mentally unstable, and to prove a necessary element of the crime. Further, the admission of the evidence was entirely harmless given the extensive testimony by Petitioner regarding his own fetishes and sexual interests, as well as his own discussion of the photograph, which went far beyond that admitted by the State.**

On the merits, the State submits the photograph, the internet searches, and the general testimony were properly admitted to rebut any possible defenses raised by Petitioner and to demonstrate Petitioner's intent and motive regarding the use of the enema on the male victim and the smearing of the feces on both child victims was of a sexual nature even though that was against the common sense and understanding of the jury. The evidence was highly probative and, while certainly graphic and disgusting, not unduly prejudicial in light of the nature of the crime for which Petitioner was accused.

The Court of Appeals properly concluded the evidence and testimony "of [Petitioner's] niche sexual preferences" was relevant "because it corroborated the testimony of the child witnesses and the unusual activities they reported as being associated with the alleged abuse." In this case both third degree CSC with a minor charges related to the smearing of feces on the children. In order to establish third degree CSC, section 16-3-655(C) provides:

> A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under

> sixteen years of age, with the **intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor** or the child.

S.C. Code Ann. § 16-3-655(C) (Supp. 2018) (emphasis added). The average juror would never believe someone obtained sexual gratification from anything to do with feces or urine—an element of the offense of third degree CSC with a minor the State was required to prove. As even Petitioner notes, his sexual fetish is "strange" and "novel." (App. 754). The State had to provide evidence to corroborate the children's seemingly outlandish claims, and to educate the jury, so that the jury would not dismiss the accusations out of hand.

The prior act of Petitioner's girlfriend photographed in a sexual manner while covered in feces demonstrates that the use of feces arouses, appeals to, or gratifies the lust, passion, or sexual desires **of Petitioner**. An expert's testimony that there are people who obtain sexual gratification from feces or the use of feces would not provide the direct connection to Petitioner unless a full evaluation of Petitioner was performed. The photograph of Petitioner's girlfriend provides the nexus required so that the jury would understand that Petitioner himself finds sexual gratification from feces. No average juror would believe that seeing someone smeared in feces or the smearing of feces on the backs of children could be sexually gratifying. The relevance and high probative value of the photograph demonstrating **Petitioner's** use of feces with his girlfriend in a sexual manner came from disabusing the jury of the notion that the behavior was not of a sexual nature.

It is the need for the nexus to Petitioner that differentiates this case from State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014) raised by Petitioner. In Collins, the pathologist fully described the injuries sustained by the child. The majority of this Court found the admission of the photos unnecessary because "the detailed and graphic testimony of the pathologist was more

than sufficient to enable the State to establish the elements of the offense." Id. at 539, 763 S.E.2d at 30 (Kittredge, J. concurring). Here, the photo did much more than merely describe the general concept of coprophilia (a disorder defined by a marked interest in excrement or the use of feces for sexual gratification). The photo directly tied the fetish to Petitioner and corroborated the children's testimony that Petitioner likes the use of feces in his sexual activities.

As the Appeals Court of Massachusetts explained coprophilia "is a sexual fetish that is well beyond the common experience of jurors, and even discordant with common sense . . . ." Com. v. Lawton, 976 N.E.2d 160, 170 (Mass. App. Ct. 2012). In Lawton, prosecutors sought to have an expert define and describe coprophilia in an attempt to explain the victim's testimony that the defendant repeatedly tried to get the victim to defecate either in his hand or in a bag. The trial court admitted the testimony and the appellate court affirmed indicating: "As the judge properly noted during pretrial proceedings, [the expert's] testimony would be important to refute any suggestion that the victim had made up an outlandish thing that has never been known to happen." Id.

This case is very similar to Lawton. The children's descriptions of the abuse center around their grandfather smearing feces on them. To call this behavior unusual is a Brobdingnagian understatement. The jury needed a point of reference to understand that the children's stories were believable and to place them in the sexual context necessary to convict for third degree CSC with a minor.

Petitioner maintains this testimony is prohibited by State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). In Nelson, the State sought to admit a number of toys, tapes of children's shows, storybooks, photographs of young children, and statements made by the defendant that he fantasized about children. Over the defendant's objection, the trial judge ruled the evidence was

probative of whether the defendant was a pedophile. The court found that pedophilia was "not of a 'character issue' but a 'personality characteristic.'" Id. at 5, 501 S.E.2d at 718.

This Court found the evidence was solely admitted to show propensity to commit the crimes against the minor victims. The argument that motive or intent was shown through the evidence was found to be "a cleverly disguised way of asserting Petitioner committed the crimes because he has a propensity to commit sexual offenses." Id. at 12, 501 S.E.2d at 722. The evidence admitted in Nelson demonstrated Nelson was a pedophile, and the only reason the Court found to admit evidence Nelson was a pedophile was to show his propensity to commit crimes against children.

This case is clearly distinguishable because the State is not seeking to admit evidence which demonstrates a "character issue" or a "personality characteristic." In Nelson, the offered evidence was relevant only to show that the defendant was a pedophile. The fact that the defendant was a pedophile spoke only to his propensity to commit the charged offense, and evidence thereof was inadmissible. In the instant case, the evidence is being admitted because the average person would never believe anyone would obtain sexual gratification from smearing feces on another person; however, this is exactly what the State sought the jury to find.

In deciding Nelson, the Court relied in part on State v. Smith, 617 N.E.2d 1160 (Ohio App. 1992), *cert. denied*, 612 N.E.2d 1244 (1993), from the Ohio Court of Appeals. In Smith, the Ohio Court of Appeals found "the question of motive is generally relevant in all criminal trials, even though the prosecution need not prove motive in order to secure a conviction." Id. at 1172 (quoting State v. Curry, 330 N.E.2d 720 (Ohio 1975)). The Ohio Court then found the admission of the prior bad act evidence was not necessary to establish the general motive behind the crime of gross sexual imposition because the defendant's motive or intent was not a material

issue in the trial. In the instant case, unlike Nelson or Smith, the motive behind smearing feces on another person is not clearly identifiable to the average juror. The photo of Petitioner's girlfriend covered in feces in a sexual manner demonstrated and was highly probative of proving his motive for smearing feces on the children was also sexual in nature.

The Nelson Court also cited to People v. Bagarozy, 522 N.Y.S.2d 848 (N.Y. App. Div. 1987), a case involving the oral sodomy of underage youths. The Court in Bagarozy explained:

> In many cases, the requisite criminal intent is readily inferrable from the act itself. **Where, however, the nature of the act is equivocal and a particular intent cannot be inferred, extrinsic proof is admissible to negate the existence of an innocent state of mind.** In such cases, evidence of other similar acts is permitted under the intent exception.

Id. at 854 (citations omitted and emphasis added). The Court continued: "The rationale underlying the admission of such proof is that the successive repetition of similar unlawful acts tends to reduce the likelihood of the actor's innocent intent on the particular occasion in question." Id. (citation omitted). The Court in Bagarozy, like the South Carolina Supreme Court in Nelson, found the actions of the defendant were not equivocal, so evidence of intent or motive was not necessary. In the instant case, the behaviors of Petitioner were very equivocal. They were "novel," "strange," and "niche." They are also "disturbing" and "shocking." (App.753). The smearing of feces on another person is not so unequivocally sexual in nature as to not require proof of the intent behind Petitioner's behaviors. Instead, this case is the clear exception to Nelson, Smith, and Bagarozy in which additional evidence is necessary so the jury can completely understand what has taken place and what it is being asked by the State to find Petitioner did in order to convict him of both first and third degree CSC with a minor.

Additionally, as noted above, one of the elements the State is required to prove in order to establish third degree CSC with a minor is that the acts were done with the "intent of arousing,

appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child." S.C. Code Ann. § 16-3-655(C). In all criminal prosecutions, "[t]he government must prove beyond a reasonable doubt every element of a charged offense." Victor v. Nebraska, 511 U.S. 1, 5, 114 S.Ct. 1239, 127 L.Ed.2d 583 (1994) (citing In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)); see Dervin v. State, 386 S.C. 164, 168, 687 S.E.2d 712, 713 (2009) ("Due process requires the State to prove every element of a criminal offense beyond a reasonable doubt." (citing State v. Brown, 360 S.C. 581, 595, 602 S.E.2d 392, 400 (2004))).

If the argument Nelson stands for the proposition the State need not prove intent during its case in chief is accepted, then the State is in effect entitled to a directed verdict on an issue. This Court confronted a similar situation in State v. Odom, where the Court found taking judicial notice of a driver's license birthdate "was tantamount to a directed verdict on the element of the accused's age, a practice which is clearly forbidden." State v. Odom, 412 S.C. 253, 267, 772 S.E.2d 149, 156 (2015). As one of the elements the State is required to prove is that Petitioner smeared feces on the children with the intent to arouse or satisfy his sexual gratification, the State is allowed and required to put forth the evidence presented in this case.

Additionally, the State sought to prove a sexual battery occurred when Petitioner inserted an enema into his grandson. A sexual battery includes the insertion of an object. However, there is also an exception in the statute: "'Sexual battery' means . . . any intrusion, however slight, of any part of a person's body **or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.**" S.C. Code Ann. § 16-3-651(h) (Supp. 2018). The insertion of an enema has a clear medically recognized basis for treatment of constipation. The State had to prove the insertion of the enema by Petitioner into his grandson was not for purposes of

treatment, but was instead a sexual battery being committed on the child. Petitioner's online searches for enemas and their use in sexual activities was highly probative evidence tending to prove the State's theory that the insertion of the enema was a sexual battery and not a medically recognized treatment that is an exception to the definition.[2]

The photo of Petitioner's girlfriend covered in feces in a sexual posture as well as the searches on Petitioner's computer were directly relevant to the charges brought against Petitioner and were highly probative of the first-degree CSC with a minor related to the male child victim having an enema placed in his anus as well as both third-degree CSC with a minor charges related to Petitioner's smearing of feces on the backs of both children. Petitioner could have raised the medical purposes exception to a sexual battery as a defense to the first-degree CSC charge related to the insertion of the enema. Additionally, he could have asserted the claims of the children regarding the smearing of feces were so outlandish it should not be believed. The evidence was properly admitted because it was highly probative and established Petitioner's intent in committing the crimes against his grandchildren. As the Court of Appeals properly found: "Although this evidence was disturbing, it was clearly relevant to the alleged abuse the witnesses reported experiencing and highly probative given the uncommon nature of the alleged abuse." The trial court did not abuse its wide discretion in admitting the evidence and testimony because both were appropriate under both 401 and Rule 403, SCRE.[3]

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[2] It is significant to note that the jury was charged the definition of sexual battery and was charged the medically recognized treatment exception. (R.572; App. 578).

[3] As further evidence of the trial court's use of discretion in admitting the photograph and other evidence, the State sought to submit to the court numerous images, videos, computer searches, and other items that were found in a search of Petitioner's electronics. The State greatly limited what it sought to admit. The trial court, in the epitome of a use of discretion, further limited the type and amount of evidence the State was entitled to admit in front of the jury. (Supp. App. 11-41).

Harmless Error

Additionally, any error in the admission of the evidence was entirely harmless in light of the extensive testimony by Petitioner. During his direct examination, Petitioner's counsel mentioned the photograph and then asked: "I don't want to embarrass you further, but I want to talk to you a little bit about your sex life and your sex history." (R.433; App. 436). The testimony that was elicited and presented by Petitioner after that question went far beyond anything necessary to address the picture and rendered any possible error in the admission of any of the State's evidence harmless. See State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (any error in admission of evidence cumulative to other unobjected to evidence is harmless).

Petitioner testified:

> A I am a bisexual, submissive bottom.
>
> . . . .
>
> Q When you say "submissive," what does -- what does it mean to be a submissive?
>
> A I like to give up control to someone I can trust. I have a whole world out there that feels like you have to control all of the world around you all the time. My release comes from turning over that control to a dominant figure that I can trust, and doing what they say and following their instructions . . . .
>
> Q Do you have any interest in dominant sex?
>
> A No. I am strictly a submissive.
>
> Q When you say you are a "bottom," what does that mean?
>
> A That means if there's any penetration going on, I want it to be me.

. . . .

Q When did you first get involved in sexual activity where feces or urine would have been incorporated?

A 20 years ago or so.

Q Did it just start all of a sudden all of the time?

A No. I just -- I had a lover that was into it. He introduced me into it some. As a submissive, that is one more form of subjugation and degradation that shows I'm willing to give up and subjugate myself to whatever that dominant wants.

Q And I don't know -- again, talking about personal things, that submissiveness, are you just in general -- do you like waste products, feces and urine? Or is it something else?

A I mean, it's – I'm submissive in any matter of whatever the dominant tells me to do. That's just another part of the subjugation and degradation that goes along with a submissive experience.

(R.434-436; App. 437-439). Petitioner's discussion clearly went well beyond anything the State put into evidence. His testimony did not stop there, but continued to describe in great detail the creation of the photo admitted by the State:

Q So the government showed us this picture that was on your telephone. Let's start -- I'm not going to make -- not going to look at it again, but that was a picture you had on your cell phone; right?

A Yes, sir.

. . . .

Q Okay. Now that picture is a little bit different from what you've been describing because you are not in a submissive role there, are you?

A No -- well, I am, cause it was something she had requested and she wanted as the dominant partner. She had seen me experience it and seen the enjoyment I got out of it and was curious about it. So she asked me and told me to do it for her so that she could experience it one time.

> Q What was -- what was the part of that that made -- that fulfilled you?
>
> A Pleasing her.
>
> Q Pleasing her. And that picture was on a Sunday at your house during the time that William and Dalina and all the kids lived there; right?
>
> A Yeah.
>
> Q Where did that take place?
>
> A In my bathroom.
>
> Q Would you have locked the doors to your bedroom?
>
> A Oh, yeah. My bedroom door had a key deadbolt on it. So once we locked it on the inside, it wasn't -- and it was a Sunday morning. Everybody was asleep. We were quiet. We were in my bathroom quietly.
>
> Q When that was over, did you immediately turn the shower on and clean up?
>
> A Oh, yeah. We stood up, took a shower, got dressed, and went on about our day.

(R.437-439; App. 440-442). Clearly, Petitioner's testimony went far beyond what the State did and was entered without a reservation of his objection related to the admission of any evidence related to the photo, the computer searches, feces, or enemas. Ohler v. United States, 529 U.S. 753, 755 (2000) (finding it to be a "well-established commonsense principle" that "[g]enerally, a party introducing evidence cannot complain on appeal that the evidence was erroneously admitted."). Petitioner argues the photo "only served to corroborate that Petitioner has novel sexual fetishes" but acknowledges the harmlessness of this corroboration because "[h]e also testified before the jury that he did!" (App. 754). Accordingly, the admission of the State's

evidence, even if in error, was entirely harmless because it was merely cumulative—and not even as prejudicial—to other evidence in the record introduced by Petitioner.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Court of Appeals opinion should be affirmed.

Respectfully submitted,

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