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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions
The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-001188

THE STATE,

Respondent,

v.

TERRY GERRARD GRIDINE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court acted within its discretion when it disallowed cross-examination of the victim regarding an unanswered phone call she made to Gridine from jail where the evidence had little probative value and carried the danger of unfair prejudice.
- II. Whether the trial court correctly excluded hearsay testimony from Gridine that the victim told him she had tried to call him from jail.
- III. Whether Gridine was prejudiced by the trial court's limitation of impeachment concerning whether she told the responding deputy that she "pushed [Gridine's] arms away" when he hugged her from behind and whether Gridine asked "whether [her son] was home" prior to the incident.
- IV. Whether the trial court reversibly erred by excluding evidence that the victim's great-niece had been told victim was untrustworthy because the proffered evidence was not specifically related to the victim's character for untruthfulness.
- V. Whether this Court should reverse pursuant to the cumulative error doctrine.

STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant Terry Gridine for Third Degree Criminal Sexual Conduct. He proceeded to jury trial on October 11–14, 2020, before the Honorable Jocelyn Newman, circuit court judge. Gridine was convicted as charged and sentenced to 10 years' incarceration, suspended on the service of seven years and five years of probation. This direct appeal follows.

STATEMENT OF FACTS

The victim in this case was Sara Webber, a 76-year-old woman living in Hopkins. (Tr.p.144–45). Appellant Terry Gridine was Webber's nephew. (Tr.p.147). When this crime occurred in 2017, Gridine was a frequent visitor to Webber's house. Gridine's mother (Webber's sister) had passed away the year before and Webber testified that she and Gridine had a "very good relationship" and she loved him like one of her own children. (Tr.p.147–49).

On October 26, 2017, Gridine stopped by Webber's home sometime between 9 or 11 o'clock in the evening. (Tr.p.149). They were talking and watching TV when Gridine began "saying some things . . . that weren't rational," including a threat to kill himself. (Tr.p.149). Webber believed Gridine was drinking alcohol, but she was not. (Tr.p.151–52). Gridine was also threatening to "[do] things to his ex." (Tr.p.152).

At one point, Gridine approached Webber from behind, hugged her, and said "Auntie, you know I love you." (Tr.p.153). Gridine "dropped to his knees and started putting his hand under [Webber's] clothes." (Tr.p.154). He began asking to have sexual relations with Webber. (Tr.p.154). Webber pushed him away and told him to stop, but Gridine began "pulling" and "tearing" Webber's clothes. (Tr.p.154–55). Webber was able to get out of the chair, but Gridine grabbed her and they "started wrestling." (Tr.p.155). They fell onto the sofa, with Gridine on top of Webber, until they fell onto the floor. (Tr.p.155). Webber felt like she was fighting for her life as Gridine continued to hold her down and reach beneath her underwear, eventually digitally penetrating her. (Tr.p.156–57). Webber was able

to grab a lamp that was on the floor and began hitting Gridine on the head with it. (Tr.p.157). Webber hit Gridine until the lamp broke, and Gridine "jumped up and ran." (Tr.p.157).

Webber called her son and told him what happened, and then called police. (Tr.p.164–65). She also called Gridine's older brother. (Tr.p.165). Webber began to go to the hospital, but police advised her that a sexual assault exam was not necessary because Gridine did not penetrate her with his penis. (Tr.p.166). Gridine scratched Webber's vulva during the attack, and she had to use medication to treat the injury. (Tr.p.167). Webber communicated with Gridine via text message after the event. These text messages were entered as State's Exhibits #9–15. (Tr.p.167). Webber confronted Gridine about the attack and Gridine asked her to call him, asked for forgiveness, and stated "I can't live with this." (Tr.p.10–15).

ARGUMENT

- I. **The trial court acted within its discretion when it disallowed cross-examination of the victim regarding an unanswered phone call she made to Gridine from jail where the evidence had little probative value and carried the danger of unfair prejudice.**

Gridine alleges the trial court committed reversible error by preventing him from cross-examining the victim about her unsuccessful attempt to contact him from jail after being arrested for shoplifting. The trial court excluded the evidence under Rule 403, SCRE, reasoning the evidence had little probative value and carried a substantial danger of unfair prejudice. Under the deferential standard of review for a trial court's 403 rulings, this Court should affirm.

A. Standard of Review.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. Id., 409 S.C. at 534, 736 S.E.2d at 28.

B. Discussion.

The trial court acted within its discretion when it excluded evidence that Ms. Webber was arrested and jailed for shoplifting. The record supports the trial court's finding that the evidence had little probative value and carried a substantial risk of

unfair prejudice. Under the applicable deferential standard of review, this Court should affirm.

This issue arose during the cross-examination of the victim, Ms. Webber. Defense counsel asked whether Webber recalled "telling [Gridine] that you had tried to reach out to him because you needed some help?" (Tr.p.186). Webber responded "no." Defense counsel then asked if Webber had called Gridine "[b]ecause [she] had been arrested." The solicitor objected.

Defense counsel argued the arrest went to Webber's motive and credibility. (Tr.p.189). When the court asked defense counsel to explain how the arrest was relevant to Ms. Webber's credibility, defense counsel responded that "if she had denied it, then that would have called her credibility into question." (Tr.p.189, lines 18–19). Regarding motive, defense counsel asserted: "it is our understanding . . . [Webber] reach[ed] out to him for help with posting her bond, which he did not do." (Tr.p.195–96). Defense counsel argued this was the source of Webber's motive to falsely accuse him of sexual assault.

Gridine was allowed to proffer testimony from Ms. Webber. She denied she asked Gridine to help bail her out. Rather, she testified she "was trying to get in touch with him to get in touch with [her] daughter," but that Gridine did not answer and she never talked to him. (Tr.p.198). Ms. Webber then explained that she called her sister instead. (Tr.p.199). She explained: "I didn't need any help from [Gridine]. All I needed was to get in touch with my sister." (Tr.p.205). Gridine was

just one of multiple people she called in an attempt to get in touch with her sister.
(Tr.p.205, line 3).

a. Rule 403 analysis.

Evidence supports the trial court's ruling excluding evidence of Ms. Webber's arrest under Rule 403, SCRE. Contrary to defense counsel's assertion, Gridine did not refuse Webber's request to bail her out of jail. Rather, he simply missed the call and she called her sister instead. Gridine apparently was not even aware at the time that Webber tried to call him, because defense counsel asserted later in trial that Webber merely told Gridine afterwards that she had tried to call him. (Tr.p.278). This testimony does not reasonably support a motive to falsely accuse Gridine of sexual assault. The trial court correctly found the proffered evidence had little probative value.

By contrast, the trial court found that evidence of her arrest amounted to "bad character evidence." (Tr.p.201, line 21). Ms. Webber was never convicted of shoplifting and had the arrest expunged from her record. (Tr.p.282). The arrest was not admissible under Rule 609, SCRE, because it did not result in a conviction. Rule 403 allows trial courts to exclude evidence that may lead to improper, emotional responses by a jury against a witness that may produce unfairly prejudicial attitudes towards that witness. See, e.g. State v. Grace, 350 S.C. 19, 28, 564 S.E.2d 331, 335 (Ct. App. 2002) (affirming trial court's exclusion of evidence pertaining to witness's prior suicide attempts).

The admission of evidence of Ms. Webber's arrest and jailing on suspicion of a crime for which she was not convicted carried the danger that the jury would draw negative inferences about her character that would unfairly influence their verdict. The record does not support Gridine's assertion that Webber became angry because Gridine refused to bail her out of jail. Rather, he simply missed her call and Webber called someone else. The evidence had little probative value and the record supports the trial court's decision to exclude it. Consistent with the extreme deference owed to a trial court's 403 rulings, this Court should affirm. See Norris v. Clinkscales, 47 S.C. 488, 25 S.E. 797, 801 (1896) (an abuse of discretion occurs when a trial court's ruling is "clearly untenable").

b. Due process analysis.

In addition to his Rule 403 claim, Gridine argues exclusion of evidence of Webber's arrest violated his right under the Confrontation Clause (applicable to the states via the Fourteenth Amendment's Due Process Clause) to present a complete defense. This claim fails because the trial court's ruling was properly based on a legitimate, non-arbitrary rule of evidence. This Court should affirm.

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. Chambers v. Mississippi, 410 U.S. 284, 294 (1973). However, "[t]he accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." Montana v. Egelhoff, 518 U.S. 37, 42 (1996). It is "normally 'within the power of the State to regulate procedures

under which its laws are carried out,' . . . and its decision in this regard is not subject to proscription under the Due Process Clause unless 'it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" Id. at 43. It is a "heavy burden" to show a due process claim based on the restriction of relevant evidence. Id. at 43.

While undue limitation of cross-examination may in some cases rise to the level of a Confrontation Clause violation, "[i]t does not follow, of course, that the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. . . . [T]he Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986).

The trial court's ruling limiting Gridine's cross-examination of Webber was within the trial court's discretion and did not rise to the level of a Confrontation Clause violation. The court did not prohibit "all inquiry into the possibility" of bias. Id. Instead, it excluded only the fact of Webber's arrest. Gridine was able to extensively cross-examine Webber regarding the consistency of her testimony and

the circumstances under which she reported the assault. While Gridine asserts this limited the cross-examination to a "milquetoast" exchange, it was within the trial court's discretion to impose reasonable limits on cross-examination.

c. Prejudice.

Exclusion of the fact that Webber was arrested did not influence the jury's verdict, and therefore did not prejudice Gridine. See State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1993) ("Error is harmless where it did not reasonably affect the result of the trial"); see also Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986) (rejecting per se reversal for a Confrontation Clause violation but finding prejudice from exclusion of cross-examination where a "reasonable jury might have received a significantly different impression of [witness's] credibility had respondent's counsel been permitted to pursue his proposed line of cross-examination").

Gridine was not prejudiced because the excluded evidence did not reasonably support the defense theory that the episode provided a motive for Webber to falsely accuse Gridine of sexual assault. Gridine never refused to help Webber, and was not even aware that she attempted to call him from jail until she told him. This is a far cry from defense counsel's earlier assertion that "[Webber] reach[ed] out to him for help with posting her bond, which he did not do." (Tr.p.195–96). Unlike other cases where courts have found a Confrontation Clause violation, the proposed cross-examination in this case did not have "strong potential to demonstrate the falsity of [Webber's] testimony." Olden v. Kentucky, 488 U.S. 227, 232 (1988). Given its low probative value, exclusion of cross-examination of Webber regarding the fact that

she had been arrested did not affect the result of trial and did not reasonably affect the jury's judgments as to her credibility. Gridine was allowed to cross-examine Webber about whether she "reached out to [Gridine] for help" (Tr.p.204–05). Webber agreed that she attempted to call Gridine for help reaching her daughter but was unable to reach him and had to use "some other avenue" (Tr.p.205). Thus, Gridine was able to at least partially elicit the information he desired. Of course, the jury had already heard defense counsel ask Ms. Webber about her arrest and undoubtedly understood the "help" to which defense counsel was referring. (Tr.p.186). This Court should affirm.

II. The trial court correctly excluded hearsay testimony from Gridine that the victim told him she had tried to call him from jail.

Gridine claims the trial court erroneously excluded testimony that the victim told Gridine she attempted to call him from jail. The trial court correctly excluded the evidence because it was hearsay and evidence of the victim's arrest had already been excluded under Rule 403, SCRE. The trial court's application of the hearsay rule was not "arbitrary" such that it rose to the level of a due process violation. This Court should affirm.

A. Standard of review.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Discussion.

Even though the trial court had already excluded evidence that the victim attempted to call Gridine from jail, Gridine attempted to introduce hearsay evidence to the same effect during his case in chief. The trial court correctly excluded the testimony because it did not fit within any hearsay exception. Likewise, the ruling did not amount to a due process violation. This Court should affirm.

Gridine attempted to offer testimony that the victim, Ms. Webber, told him at some point that she had attempted to call him from jail. He did not receive the call and did not refuse to help Ms. Webber. As argued in in the first argument section of this brief, the trial court acted within its discretion when it excluded evidence of Webber's arrest. This is the same issue, repackaged. However, this evidence was also improper hearsay. See Rule 801(c), SCRE ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Hearsay is not admissible except as provided by the rules of evidence or by other rules prescribed by the Supreme Court of this State or by statute. Rule 802, SCRE.

Gridine apparently concedes the evidence was hearsay. Brief of Appellant at 24–25. However, he argues the trial court should have ignored the rule against hearsay and admitted the evidence pursuant to his right to testify in his own defense. He cites Rock v. Arkansas, 483 U.S. 44 (1987), for the proposition that a state may not "arbitrarily" apply rules of evidence to exclude evidence from a testifying defendant. Brief of Appellant at 24. In Rock, the United States Supreme Court struck down Arkansas's "per se rule excluding a criminal defendant's hypnotically refreshed testimony." Rock v. Arkansas, 483 U.S. 44, 49 (1987). The Court chronicled the legal shift away from the common law prohibition against defendant's testifying at all in their own trial, to the modern rule guaranteeing defendants the right to testify in their own defense. Id. at 49–52. The Court concluded Arkansas's absolute prohibition on a defendant testifying after she had

undergone hypnosis unduly restricted the defendant's right to testify, in violation of her right to due process. The court held that "[w]holesale inadmissibility of a defendant's testimony is an arbitrary restriction on the right to testify in the absence of clear evidence by the State repudiating the validity of all posthypnosis recollections." Id. at 61.

The Rock court discussed Chambers v. Mississippi, 410 U.S. 284 (1973), an earlier Supreme Court case addressing a defendant's right to testify and to cross-examine potential exculpatory witnesses. Chambers involved several significant restrictions on a defendant's right to present a defense. First, Chambers was not allowed to cross-examine a witness who had confessed to the crime for which he was on trial because Mississippi rules did not allow a party to impeach its own witnesses. Second, Mississippi did not recognize a hearsay exception for declarations against penal interest and the trial court prevented several witnesses from recounting the third party's confession. The Supreme Court ruled that the restrictions cumulatively amounted to a due process violation, and explained that "the hearsay rule may not be applied mechanistically to defeat the ends of justice." Chambers v. Mississippi, 410 U.S. 284, 302 (1973). However, the Court made clear that the case presented an exceptional circumstance, writing that "perhaps no rule of evidence has been more respected or more frequently applied in jury trials than that applicable to the exclusion of hearsay." Chambers, 410 U.S. at 302. The Court concluded by explaining: "In reaching this judgment, we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect

traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures. Rather, we hold quite simply that under the facts and circumstances of this case the rulings of the trial court deprived Chambers of a fair trial." Id. at 302–3.

In Montana v. Egelhoff, 518 U.S. 37 (1996), the Supreme Court explained that "Chambers was an exercise in highly case-specific error correction." Montana v. Egelhoff, 518 U.S. 37, 52 (1996). "[T]he holding of Chambers—if one can be discerned from such a fact-intensive case—is certainly not that a defendant is denied 'a fair opportunity to defend against the State's accusations' whenever 'critical evidence' favorable to him is excluded, but rather that erroneous evidentiary rulings can, in combination, rise to the level of a due process violation." Id. at 53.

Later, in Holmes v. South Carolina, 547 U.S. 319 (2006), the Supreme Court reversed a conviction based on the undue restriction of evidence of third party guilt. The Holmes court explained the type of restriction on evidence that will give rise to a due process violation: "While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." Holmes v. South Carolina, 547 U.S. 319, 326 (2006).

Together, these cases explain that only in exceptional circumstances will the exclusion of evidence pursuant to valid state evidentiary rules rise to the level of a due process violation. This case does not present the application of an arbitrary rule of evidence, such as South Carolina's former rule conditioning the admissibility of third party guilt evidence on the strength of the State's case, or Arkansas's rule against a defendant's post-hypnosis testimony. Rather, the trial court's ruling in this case was a straightforward application of one of the most foundational rules of evidence: the rule against hearsay. See Chambers, 410 U.S. at 302 ("perhaps no rule of evidence has been more respected or more frequently applied in jury trials than that applicable to the exclusion of hearsay").

Even if the trial court erred, Gridine was not prejudiced. As explained in the argument section pertaining to Issue #1, evidence of Webber's arrest had little probative value. Gridine did not refuse Webber's request to bail her out of jail. Instead, Gridine simply missed her call and she called her sister instead. (Tr.p.204–05). The ruling did not affect the jury's verdict. This Court should affirm.

III. Gridine was not prejudiced by the trial court's limitation of impeachment concerning whether she told the responding deputy that she "pushed [Gridine's] arms away" when he hugged her from behind and whether Gridine asked "whether [her son] was home" prior to the incident.

Gridine argues the trial court erroneously prevented him from impeaching the victim's trial testimony with her prior statement to police. While the trial court did erroneously rule that impeachment with extrinsic evidence would violate the rule against hearsay, Gridine failed to preserve the issue because he did not proffer any specific portions of the video containing the statements. Furthermore, any error was harmless because the portions of Ms. Webber's statements Gridine identifies in his brief were not important to the case and did not reasonably affect the result of trial. This Court should affirm.

A. Standard of review.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Issue preservation.

This issue arose during the recall and direct examination by Gridine of the deputy who took Webber's initial statement. Deputy Christian recorded the interaction on his body-worn camera. Defense counsel was attempting to impeach

Webber's testimony, and offered the video into evidence. The solicitor objected on hearsay grounds. (Tr.p.288–89).

In arguing for the admissibility of the video, defense counsel stated: "there are two clips totaling 35 seconds that are prior inconsistent statements that were made by Ms. Webber during her testimony yesterday. When I was cross-examining her, she, even after listening to herself on video, denied making these statements." (Tr.p.291). Defense counsel never identified which statements she alleged were inconsistent, and never requested to proffer the evidence. The court sustained the objection.

Rule 103, SCRE, provides: "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . (2) In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context." Gridine did not comply with this rule because he did not specify which statements he alleged were inconsistent with Webber's trial testimony. Because Gridine did not specify which statements were inconsistent, this Court has no way of knowing which statements he planned to use to impeach Ms. Webber. This issue is not preserved for review. See State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (explaining objection must be raised on "specific ground" to preserve issue for appellate review).

C. Discussion.

In his brief, Gridine points to two portions of the record where Webber denied making a prior statement. The first concerns whether Ms. Webber told Deputy

Christian that she pushed Gridine's hands away as he hugged her around the neck from behind. (Tr.p.214–18). The second is whether she "told Deputy Christian that [Gridine] kept asking . . . if [her son] was home." (Tr.p.223–24).

As to whether Webber told Deputy Christian that Gridine asked whether her son was home, Webber did deny that Gridine "kept asking throughout the evening" whether her son was home. (Tr.p.223, lines 17–22). Defense counsel then played the body camera video through headphones so that only Webber could hear. When defense counsel asked again whether she had told Deputy Christian that Gridine kept asking whether her son was home, Webber responded, "that's not what I heard just now." (Tr.p.224, line 10). Webber continued: "I didn't hear me ask him whether my son was home or not. . . . I don't remember [Gridine] asking me whether my son was home. [Gridine] knew my son would not have been home because he was outside back and forth." (Tr.p.224).

Accordingly, while Webber did deny the statement, after being confronted with the body camera video she gave an equivocal answer and stated she did not remember Gridine asking about her son. Regardless, this exchange was inconsequential, and could not have made a difference in the result of trial. See State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1993) ("Error is harmless where it did not reasonably affect the result of the trial"). Whether Gridine asked whether her son was home was an unimportant fact compared with the remainder of Webber's statement describing how Gridine forcibly digitally penetrated her.

As to whether Ms. Webber told Deputy Christian that she pushed Gridine's hands away as he hugged her around the neck from behind, this evidence too was unimportant to the case, and Webber did not unequivocally deny the statement after being confronted with her original statement. In the video, Webber says "he was hugging me [from behind] and tried to push him away, tried to get him off of me," and gestures with her hands to indicate how she moved away from Gridine's hug. (Defendant's Exhibit #1 at 5:00). She then says she "moved over there," indicating that she moved to the seat to her right, and Gridine "became very aggressive." (Defendant's Exhibit #1 and 5:07). Webber then states that she "moved back over here," indicating she moved back to the place where she was sitting, which she referred to at trial as the "recliner."

When asked at trial whether she pushed Gridine away from behind, she responded that she "pushed him back" when he was kneeling in front of her, but denied she "push[ed] him away" when he was hugging her from behind. (Tr.p.212–14). Webber likewise denied that she "pushed [his] arms away" when he hugged her from behind. Defense counsel played a copy of Deputy Christian's body-worn camera to Webber through headphones so that only Webber could hear. (Tr.p.215). Defense counsel and Ms. Webber then engaged in a back-and-forth about the exact language Webber used when describing the event to Deputy Christian, with Webber insisting she told Deputy Christian she pushed Gridine away, but that she did not say that she pushed "his arms" away when he hugged her from behind. (Tr.p.215, line 17). Defense counsel then continued to question Webber about whether she

told Deputy Christian that she moved from her recliner to the couch and then back to the recliner.

This testimony was unimportant to the case. Defense counsel was splitting hairs about the exact language Webber used to Deputy Christian during an exhaustive and confusing cross-examination. Defense counsel's strategy was apparently to ask question after question about marginally relevant details of her statement to police in hopes Webber would either not remember the statement or mistakenly deny having made them. Again, whether Webber pushed Gridine's arms away when he initially hugged her does not seriously call into question her testimony that he subsequently attacked and sexually assaulted her.

While the trial court erroneously ruled impeachment with extrinsic evidence was improper, the ruling did not prejudice Gridine because the prior statements were not important to the case and did not affect the result of trial. Defense counsel apparently did not think so, because she did not bother to include this issue in her cumulative error argument during her motion for a new trial. (Tr.p.410). Webber never wavered in her recounting of the operative facts of the case. This Court should affirm.

IV. The trial court did not reversibly err by excluding evidence that victim's great-niece had been told victim was untrustworthy because the proffered evidence was not specifically related to the victim's character for untruthfulness.

Gridine argues the trial court erred by excluding reputation evidence of the victim's character for untruthfulness. However, Gridine did not properly proffer evidence related to the victim's untruthfulness, the pertinent character trait in this case. Rather, the proffer related to the victim's general character and the witness's opinion that she was not trustworthy. This is an important distinction, because the rules of evidence do not allow general "bad character" evidence. This Court should affirm.

A. Standard of review.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Discussion.

Gridine offered testimony from Tomeka Scott, his niece and the victim's great-niece. Gridine proffered testimony from Scott related to her earlier statement to police that she did not trust the victim. Gridine proffered the following testimony related to the victim's reputation:

Q: "What reason, if any, do you have to be wary of Ms. Webber?"

A: "Just things that, you know, you hear from different family members, you, they would say, well you can't trust her, or don't get in mix with her too much you know, stuff like that. But I keep my distance away from drama"

(Tr.p.337). When defense counsel asked, "Her general reputation is" the State objected to leading. The trial court sustained the objection. Defense counsel did not rephrase her question or pursue the line of inquiry any further.

Generally, evidence of a witness's general bad character is not admissible. See Rule 404(a), SCRE (providing "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"). However, the rules of evidence carve out specific exceptions which allow a party to elicit evidence about a witness's character in certain circumstances. Rule 404(a)(2), SCRE, allows "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused" Rule 404(a)(3) allows "evidence of the character of a witness, as provided in Rules 607, 608, and 609."

Rule 608, SCRE provides that the "credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness" Rule 609 allows impeachment of a witness with evidence of their conviction of certain crimes. Accordingly, in this case, Tomeka Scott's testimony regarding victim's reputation in the community was only proper to the extent it related to her character for truthfulness or untruthfulness.

Rule 803(21), SCRE, provides a hearsay exception for evidence of "Reputation of a person's character among associates or in the community." Accordingly, reputation evidence should not be excluded as hearsay. However, this is apparently the basis on which the trial court excluded the evidence in this case. (Tr.p.339).

Even though the evidence was not excludable on hearsay grounds, this Court should affirm on the alternate sustaining ground that the evidence would have been improper general character evidence. See Rule 220(c), SCACR (providing the appellate court may affirm on any ground appearing in the record). Scott's testimony that family members told her not to "trust" Ms. Webber could have been interpreted as an attack on her character generally, not just her character for untruthfulness. Relatives' warnings not to "trust" Ms. Webber could have meant she was a thief, a cheat, or possessed some other negative characteristic other than untruthfulness.

The trial court probably should not have cut off Scott's proffered response to a question about Ms. Webber's "general reputation." (Tr.p.337, line 10). The best practice is for trial courts to be liberal in allowing proffered testimony. But the objection was to leading, not to the substance of the underlying testimony. Defense counsel should have simply rephrased her question and tried again to elicit the desired information.

Although reputation evidence of a victim's character for truthfulness or untruthfulness is admissible, defense counsel did not properly elicit such testimony in this case. Rather, the questions called for an opinion as to the victim's general

character, which is not allowed. This Court should affirm on this alternate sustaining ground.

V. This Court should not reverse pursuant to the cumulative error doctrine.

Lastly, Gridine argues this Court should reverse pursuant to the cumulative error doctrine. The State disagrees. Any errors were harmless when viewed as a whole.

A. Standard of review.

While the standard of review for a cumulative error claim is not expressly stated in this Court's jurisprudence, the State asserts that this is a factual finding subject to abuse of discretion review. Compare with Smalls v. State, 422 S.C. 174, 195, 810 S.E.2d 836, 847 (2018) (describing PCR prejudice analysis as "findings of fact").

B. Issue Preservation.

When Gridine moved for a new trial after the jury's verdict, he raised only the court's rulings excluding evidence of Webber's arrest and its ruling excluding reputation evidence. (Tr.p.410). Accordingly, this court should not consider Issue 3 in its cumulative error analysis. See State v. Beekman, 405 S.C. 225, 236, 746 S.E.2d 483, 489 (Ct. App. 2013), aff'd, 415 S.C. 632, 785 S.E.2d 202 (2016) (applying rules of issue preservation to cumulative error claim). While Gridine did not use the phrase "cumulative error" in his argument, the State agrees this was the substance of his claim.

C. Discussion.

The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of

preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial. State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), aff'd, 415 S.C. 632, 785 S.E.2d 202 (2016). An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground. Id.

Issues 1 and 2 deal with the same underlying evidence: Webber's attempt to call Gridine from jail. As discussed above, this evidence had low probative value and the trial court's ruling should stand under abuse of discretion review. The trial court did not err in relation to this issue.

Issue 3 alleged the trial court erroneously prevented impeachment concerning certain statements Webber made to the responding deputy who took her original statement. While the trial court erred when it concluded Gridine was not entitled to impeach Webber with her original statement, the statements with which Webber was impeached were not important to the case and did not result in substantial prejudice.

Finally, Issue 4 dealt with the exclusion of reputation evidence from Webber's great-niece. This evidence was not properly limited to reputation for truthfulness. The trial court did not err in excluding it. This Court should affirm.

CONCLUSION

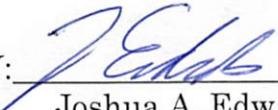
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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