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**Dec 08 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
The Honorable Edward W. Miller, Circuit Court Judge

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Appellate Case No. 2021-000598

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THE STATE,

Respondent,

v.

DUSTIN GEOFFREY READY,

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Appellant.

**FINAL BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUE ON APPEAL**

The trial judge did not abuse his discretion in not asking defense counsel's proposed voir dire question.

## **STATEMENT OF THE CASE**

Appellant was indicted in March of 2018 for three counts of Criminal Sexual Conduct with a Minor first degree. Appellant proceeded to a jury trial on May 17-19, 2021, in the Greenville County Court of General Sessions before the Honorable Edward W. Miller. Chase Harbin, Esquire represented the Appellant. After the State rested its case, they decided to move forward on only one count of Criminal Sexual Conduct with a Minor first degree. The jury found Appellant guilty and he was sentenced to thirty years' imprisonment. This appeal follows.

## STATEMENT OF FACTS

On October 7, 2017 Patrick Kelly with the Greenville County Sherriff's Office, responded to a call that a nine year old girl had been sexually assaulted. (R. 56). When he arrived at the hospital and spoke with Minor, she disclosed to him the sexual abuse. (R. 56) Minor stated that it most recently happened "that Thursday and Friday" [October 5-6, 2017]. (R. 56).

The case was assigned to Airien Grimstad with the Greenville County Sherriff's Office. (R. 109). Grimstad spoke with Jessica Bell, Minor's Mother, about setting up a forensic interview at the Julie Valentine Center. (R. 109). Minor went to the forensic interview on October 27, 2017, where she spoke with Christine Carlberg. (R. 196). Minor disclosed sexual abuse to Carlberg in the interview and stated she could not remember the first time the abuse occurred, but that the most recent time happened within the month prior to the interview. (R. 197-98). Minor disclosed in the forensic interview that Dustin Ready, Appellant, inappropriately touched her several times.

Grimstad spoke with Appellant who denied that any abuse occurred. (R. 113). Grimstad ultimately obtained three warrants because minor disclosed multiple incidents that happened at different locations. (R. 113). At trial Minor testified that Appellant touched her in and on her "private part" with his hands. (R. 158). She also testified that he performed oral sex on her. (R. 159). Minor stated that Appellant would rub his penis on her vagina as well as her butt. (R. 159-60).

## STANDARD OF REVIEW

“In general, both the scope of *voir dire* and the manner in which it is conducted are within the sound discretion of the trial judge.” State v. Bennett, 369 S.C. 219, 226, 632 S.E.2d 281, 285 (2006) “To constitute reversible error, a limitation on questioning must render the trial ‘fundamentally unfair.’ Id. (Citing State v. Hill 361 S.C. 297, 308, 604 S.E.2d 696, 702 (2004)).

## ARGUMENT

### **The trial judge did not abuse his discretion in not asking defense counsel's proposed voir dire question.**

Appellant argues the trial judge abused his discretion in not asking defense counsel's proposed voir dire questions. Appellant's argument lacks merit because it is well within the judge's discretion how voir dire will be conducted. Prior to trial, defense counsel presented the court with what appears to be thirty proposed voir dire questions. (R. 16).<sup>1</sup> Defense Counsel seemed to have a problem with the trial judge not asking one question in particular, number 28. (R. 19-20). The exact wording of the question is unclear, but from the record the question seemed to ask whether a person would believe a child just because they were a child. (R. 19-20). The trial judge ruled that he was not going to ask that question. (R. 20).

"The responsibility of the trial court is to focus the scope of voir dire examination as described by S.C. Code Ann. §14-7-1020.<sup>2</sup> The manner in which these questions are pursued and the scope of any additional voir dire is within the sound discretion of the trial court." Wilson v. Childs, 315 S.C. 431, 438, 434 S.E.2d 286, 291 (Ct. App. 1993). Rule 47(a), SCRPC, provides the trial judge broad discretion in regard to voir dire. "The trial court is not required to ask every question submitted by counsel. Wilson at 438, 434 S.E.2d 286, 291.

"A juror should not, prior to trial, be required to assert which witnesses he will believe nor what type of witness he will believe. This is true because a juror should believe those witnesses whose credibility appeal to him after he has heard

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<sup>1</sup> The Appellant bears the burden of providing a record on appeal sufficient for intelligent review and from which an appellate court can determine whether the trial court erred. Taylor v. Taylor, 294 S.C. 296, 363 S.E.2d 909 (Ct. App. 1987).

<sup>2</sup> "The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called." S.C. Code Ann. §14-7-1020

all of the testimony. The question invades the province of the jury to determine individual credibility in the context of the entire case.”

State v. Adams, 279 S.C. 228, 236, 306 S.E.2d 208, 212 (1983).

Our Supreme Court held that a trial judge did not err in preventing counsel from questioning jurors on whether they would give more weight to testimony from police officers than a lay witness. State v. Davis, 309 S.C. 326, 334-335, 422 S.E.2d 133, 139 (1992). Appellant tries to differentiate the question in this case of whether prospective jurors would believe a child simply because they were a child because the question itself doesn't compare a child to other witnesses as does the question in Davis. There are two main problems with this assertion. The first issue is that the exact wording of the question is not available to us, and we can only speculate about whether or not that it contained a comparison to other witnesses. The questions were not made a court exhibit and are not part of the record, leaving us to speculate as to the number of questions actually presented and to guess as to the exact nature of the questions. The second issue still infers a comparison in believing a child over other witnesses even if the wording was imprecise.

By not asking one of defense counsel's proposed questions the trial judge did not render the trial fundamentally unfair and therefore was not an abuse of the trial judge's discretion. During jury qualifications the potential jurors were told that Appellant was charged with criminal sexual conduct with a minor first degree and that the indictment alleges that Appellant did commit a sexual battery on a minor, who was less than 11 years of age. (R. 24). They were told that this case involved allegations of sexual molestation of a child and asked if that information would be too sensitive for them to make a decision based solely on the evidence presented. (R. 29). They were asked if anyone had ever had any involvement with the Julie Valentine Center, which is a nonprofit organization that works with sexual assault and child abuse victims. (R. 29). Finally with all of that information provided, they were asked if there was “any member of the jury panel who knows

of any reason whatsoever why you shouldn't serve in this case with particular emphasis on your ability to be fair and impartial to both the State and defense and to base any decision in this case solely on the evidence presented in the courtroom and the law as I would give it to you." (R. 29-30). All jurors indicated that they could be fair and impartial.

Further, before the jury was sent to deliberate, defense counsel gave a closing argument in which he stated "We all want to believe children. We all want to protect them, but that's not what this is about." (R. 253). He also stated "It's a difficult truth, I think, to face that children do lie." (R. 253). He then proceeds to thoroughly go through how he believed the evidence showed that minor was lying. After closing arguments the trial judge gave the jury charge which included a credibility charge and explained to the jurors that it was their duty to determine which witnesses to believe, how much they want to believe and what evidence is true. (R. 270-71). There is no evidence in the record that not giving defense counsel's proposed question in voir dire rendered the trial fundamentally unfair. Therefore, the trial judge properly exercised his discretion and therefore this court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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