STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court Of General Sessions
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2022-001790

THE STATE, Respondent,

v.

CHARLES EUGENE PRICE, Appellant.

INITIAL BRIEF OF RESPONDENT

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II. The trial court did not err in allowing evidence of Appellant's other assaults because the conduct is inextricably intertwined and shows a common scheme or plan rather than propensity.

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant Charles Price for incest and criminal sexual conduct with a minor, second degree. He proceeded to a jury trial on October 24, 2022, before the Honorable D. Craig Brown. Price was convicted as charged and sentenced to twenty years' imprisonment for criminal sexual conduct with a minor and a consecutive ten years' imprisonment for incest. This direct appeal follows.

STATEMENT OF FACTS

Appellant and Sarah Price were married for approximately ten years. (Tr. p. 105). While the two were married, Appellant legally adopted both of Sara's children. (Tr. p. 124-5). The couple wanted to have a child together but were unable to do so due to Sarah's chemotherapy. (Tr. p. 128). Victim (Sarah's child) stated Appellant disciplined the children by punching, slapping, and spanking. (Tr. p. 112). Victim testified that Appellant even went as far as to choke her until she passed out. (Tr. p. 131).

Victim testified Appellant requested back rubs that progressed to sexual acts. (Tr. p. 110-11). Victim explained this abuse began when she was eight years old. (Tr. p. 105). Victim testified that the two began to engage in vaginal sex when she was around eleven years old. (Tr. p. 114). She testified the assaults occurred daily. (Tr. p. 115). In an attempt to prevent these assaults, Victim explained she neglected her personal hygiene. (Tr. p. 116). Victim testified that Sarah struggled with alcohol abuse during this time. (Tr. p. 115).

Victim testified she was fourteen when she found out she was pregnant. (Tr. p. 117). Victim testified that Appellant was the only person she was having sexual relations with at this time. (Tr. p. 123). She testified Appellant came up with a story that the father was a football player from another school. (Tr. p. 119). Victim stated she told people this, including Sarah. (Tr. p. 120). Victim gave birth at the age of fifteen. (Tr. p. 121-2). Victim also testified Appellant played a role in naming the child. (Tr. p. 124). Appellant and Sarah parted ways in 2019. (Tr. p. 143). After Appellant left the home, Victim disclosed that she was sexually abused by Appellant for ten years. (Tr. p. 140; 144). At this point, Victim also told Sarah that Appellant was the father of her child. (Tr. p. 123-4).

Victim testified that she originally told her husband that Appellant's brother (Victim's uncle) was the father[1]. (Tr. p. 126). She testified that while Appellant's brother was not the father, he did sexually assault her too. (Tr. p. 126-7).

At trial, SLED caseworker Boehm testified about DNA testing relating to this case. (Tr. p. 204). Boehm concluded that the DNA testing showed child's DNA was consistent as being the biological offspring of Victim and Appellant. (Tr. p. 219). Boehm explained that 99.99% of randomly tested men would be excluded as the father of Victim. (Tr. p. 219-20). Boehm explained that the general standard for indicating a strong likelihood for paternity is when the DNA results indicate it is 100 times more likely the subject, rather than a random participant is a parent. (Tr. p. 220-21). Here, Boehm found the genetic results of her testing were 130,000,000 times more likely if Appellant was the biological father as opposed to a randomly selected man. (Tr. p. 220-22). Boehm did not test a sample for Victim's uncle and was unable to include or exclude him as the father of Victim's child. (Tr. p. 242-3).

[1] Victim explained that she thought it would be "easier" to say her uncle was the father because he was a sex offender. (Tr. p. 147).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law. State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). 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. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845 (2006).

ARGUMENT

I. The trial court did not err in allowing blind expert testimony, because it aided the jury in understanding Victim's delayed disclosure and did not concern Victim's credibility.

The trial court correctly admitted Olszewski's testimony regarding Victim's delayed disclosure because it generally explained important concepts associated with the present case. The testimony in question explained grooming, accommodation syndrome, disclosure, and the dynamic of being abused by an authoritative figure. The testimony was critical for the jury to understand the unique psychological challenges associated with this type of abuse. Lastly, the testimony did not improperly bolster Victim's testimony because the blind expert testified about these topics in the aggregate and never concerned Victim's credibility.

Relevant facts

State expert Raymond Olszewski testified as a blind witness to explain some of the unique psychological concepts relevant to this type of abuse. (Tr. p. 157). Olszewski testified that he works as a child forensic interviewer and intake coordinator. (Tr. p. 157). Olszewski was qualified as an expert with no objection. (Tr. p. 158). Olszewski explained he had not seen the file and had not spoken to Victim. (Tr. p. 159). Olszewski answered questions relating to delayed reporting, grooming, typical progression of conduct, accommodation syndrome, the role of authoritative figures, and why children sometimes lie. (Tr. p. 160-66).

Discussion

"To be admissible, expert testimony must help a juror understand evidence that an inexperienced juror may be unable to form a correct judgment on without the expert's testimony." Criminal Law: Subjective Inquiry into A Defendant's State of Mind (citing State v. Anderson, 789 N.W.2d 227 (Minn. 2010)). Specifically, expert testimony concerning "the range

of responses to sexual assault encountered by experts is admissible." State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999).

All relevant evidence in some way "bolsters" the strength of the offering party's case, and a trial court may not exclude evidence that bolsters other evidence absent a constitutional, statutory, or rule-based principle of law providing for exclusion. State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 611 (Ct. App. 2014) (Few, C.J., concurring in part and dissenting in part). "Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness's veracity or where a prosecutor implicitly vouches for a witness's veracity by indicating information not presented to the jury supports the testimony." State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).

"The central point of the prohibition against improper bolstering is that a witness may not give an opinion for the purpose of conveying to the jury, directly or indirectly, that she believes the victim." 32 S.C. Jur. Witnesses § 63 (Citing Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017)).

"Improper bolstering" is testimony that indicates the witness believes the victim but does not serve some other valid purpose. Chappell v. State, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019). Yet, an expert's testimony is not improper bolstering when the expert witness gives no indication about the victim's veracity. Id.; See also Chamberlain v. State, 819 S.E.2d 303 (Ga Ct. App. 2018) ([o]fficer's testimony that victim's behavior was consistent with sexual abuse did not improperly bolster victim's credibility where the testimony did not directly address the credibility of the victim or express a direct opinion that the victim was sexual abused).

In State v. William R. Douglas, our Supreme Court found the testimony of a forensic interviewer did not rise to the level of vouching. State v. Douglas, 380 S.C. 499, 500, 671 S.E.2d

606, 607 (2009). In William Douglas, the interviewer testified about her previous training, experience, and job responsibilities. William Douglas, 380 S.C. 501, 671 S.E.2d 607. Further, the interviewer testified about building rapport with a child and making an agreement with the child to tell the truth. Id. Ultimately, the William Douglas Court found this did not rise to the level of vouching because interviewer never stated she believed the child or even that the child agreed to tell the truth. Douglas, 380 S.C. 504, 671 S.E.2d 609.

More recently, our Supreme Court affirmed the trial court in allowing a childhood-trauma expert's testimony regarding various indicators of child sexual abuse, followed by a response that she treated the victim. State v. Makins, 433 S.C. 494, 860 S.E.2d 666 (2021). The Makins Court found this did not amount to improper bolstering, because the "simple affirmation that she provided therapy to Minor" did not convey to the jury that the expert believed Minor. Makins, 433 S.C. 503, 860 S.E.2d 671. The Court warned that applying an "overly broad rule would mean the testimony of a child's treating therapist—even when there was a blind characteristics expert—always indirectly and improperly bolsters the child's credibility." Makins, 433 S.C. 504, 860 S.E.2d 672.

In State v. Chavis, our Supreme Court found a forensic interviewer's testimony to be improper bolstering. State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015). In the interviewer's testimony, she explained her recommendation that Victim and Appellant remain separate under all circumstances. Chavis, 412 S.C. 109, 771 S.E.2d 340 (2015). The court reasoned that the only interpretation for that statement was that the interviewer believed the victim. Id.

Here, the statements by Olszewski do not concern the credibility of Victim. The statements aided the jury in understanding the unusual responses associated with this type of abuse. As stated in Briggs, any statement that indirectly vouches for a child's believability, such

as stating the interviewer made a "compelling finding" should be avoided. Yet, Olszewski never made a statement of that kind. On the contrary he explained general principles, did not identify Appellant as the perpetrator, and did not refer to any specific facts.

Olszewski's testimony was necessary to understand Victim's behavior in response to this abuse. As our Supreme Court noted in White "[t]he inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior." State v. White, 361 S.C. 407, 414–15, 605 S.E.2d 540, 544 (2004). While Victim was not a minor at the time of trial, she was a minor at the time of the abuse. Olszewski's testimony pertains to Victim's response to the trauma she experienced as a minor and remains relevant even though she was an adult at the time of trial.

Further, Olszewski's testimony was necessary to establish that Appellant, not Victim's uncle was the father of the child. As noted by Appellant "the defense asserted it was supported by the evidence at trial appellant's brother, a convicted sex offender, was the person that sexually assaulted [Victim]". (Appellant's Brief at 8). The majority of the evidence supporting this theory was Victim's testimony and disclosures. Namely, Victim's disclosure to her husband that her uncle was the father. To refute this theory, it was necessary for the jury to hear Olszewski's blind testimony to understand that young victims respond to this type of abuse in unique ways. Under such circumstances, Olszewski's blind testimony was not, and could not, logically be constructed as a case-specific expression of his opinion concerning Victim's credibility.

This Court should affirm.

II. The trial court did not err in allowing evidence of Appellant's other assaults because the conduct is inextricably intertwined and shows a common scheme or plan rather than propensity.

The trial court did not err in admitting the evidence of Appellant's other bad acts since the evidence was not introduced to show Appellant's propensity for committing similar offences with other victims. Rather, the evidence shows continuous illicit conduct between the same parties which demonstrates a level of ongoing abuse and grooming.

Relevant Facts

Prior to trial, Appellant moved to exclude evidence of prior bad acts, arguing they were irrelevant to the specific indictments in question. (Tr. p. 50). The State argued the prior bad acts were necessary to show to show the grooming behavior and a possible explanation for Victim's delayed disclosure. (Tr. p. 51). The Court ultimately found the evidence admissible under Rule 404(b), SCRE. (Tr. p. 53). At trial, Victim testified that her abuse began with giving Appellant back rubs that escalated to oral sex[2]. (Tr. p. 110-11). Victim also stated Appellant disciplined her by punching, slapping, choking, and spanking. (Tr. p. 112; 131). Victim also testified that they engaged in sexual intercourse when she was just eleven years old. (Tr. p. 114).

Discussion

"Res gestae, the Latin phrase meaning 'things done,' can be used to refer to the events surrounding the issue being litigated, or 'other events contemporaneous with them.'" State v. Long, 801 A.2d 221, 238 (NJ. 2002) (Poritz, CJ concurring) (Citing Black's Law Dictionary (7th ed.1999)). Under the res gestae theory, sometimes evidence of other bad acts can be an integral

[2] Appellant properly renewed his objection prior to the admission of this testimony. (Tr. p. 110-12).

part of the crime charged, and evidence of the act may be needed to aid the fact finder. State v. Wood, 362 S.C. 520, 528, 608 S.E.2d 435, 439 (Ct. App. 2004). There must be temporal proximity to the prior act; showing the other act to be closely related to the charged crime. Id. The res gestae theory, or the inextricably intertwined doctrine, recognizes that "evidence inextricably intertwined with charged conduct is, by its very terms, not other bad acts and therefore, does not implicate Rule 404(b) at all." United States v. Gorman, 613 F.3d 711, 717–18 (7th Cir. 2010). This allows the prosecution to present a comprehensive story of the events, including acts closely linked in point of time and space. Handbook of Fed. Evid. § 404:5 (9th ed. 2023).

Similarly, in State v. L.P., the New Jersey Superior Court examined whether evidence of prior sexual assaults qualified as admissible res gestae evidence. State v. L.P., 768 A.2d 795, 796 (N.J. Super. Ct. App. Div. 2001). In that case, the court found testimony of defendant's prior assaults against the victim years prior to be admissible. Id. The court reasoned that the evidence allowed for a better understanding of the helplessness of Victim due to the fact that she was living with Defendant. Id.

Character evidence is not generally admissible, but under certain circumstances additional exceptions apply to other bad acts. Rule 405(b), SCRE. These acts presented may have been prior to or subsequent to the crime charged. State v. Atkins, 309 S.C. 542, 424 S.E.2d 554 (1992). Evidence of other wrong acts can be introduced to show motive, intent, identity, common scheme or plan, or absence of mistake or accident. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), incorporated in Rule 404(b), SCRE. Evidence is relevant if it tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE; State v. Cheeseboro, 346 S.C.

526, 552 S.E.2d 300 (2001). There must be more than simply a general similarity between the act and charged offense. State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997).

"If the defendant was not convicted of the prior crime, evidence of the [other] bad act must be clear and convincing." State v. Gaines, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008). "[A] factfinder's belief in a single witness's testimony alone can be sufficient to satisfy a party's burden to prove a fact by clear and convincing evidence." Silva v. Dos Santos, 68 F.4th 1247, 1255 (11th Cir. 2023); see also In re Emilee K., 153 A.3d 487, 497 (R.I. 2017) (testimony of a single witness can support a finding of fact by clear and convincing evidence).

Our Supreme Court has upheld the admission of other acts when the act indicates a continuousness of the conduct. State v. Richey, 88 S.C. 239, 70 S.E. 729, 730 (1911). In Richey, appellant was convicted of having carnal knowledge of a girl under fourteen. Id. 239, 70 S.E. 2d 729. The Richey Court affirmed the admission of testimony describing that nature of the relationship and how it continued on after victim had turned fourteen. Id. 239, 70 S.E. 2d 730. The Court considered the admissibility of the evidence under a rule that was substantially similar to our current Rule 404(b), SCRE. The Richey Court applied a test from The New York Court of Appeals, stating:

> Generally speaking, evidence of other crimes is competent to prove the specific crime charged, when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes, so related to each other that proof of one tends to establish the others; (5) the identity of the person charged with the commission of the crime on trial.

Richey, 239, 70 S.E. 2d 730 (quoting People v. Molineux, 61 N. E. 294).

The Court affirmed the admission of testimony because it was admissible to show continued intercourse, between the same parties, in appellant's home. Id.

Our courts have been hesitant to admit evidence of a prior bad act when there is no connection between incidents. State v. James Douglas, 302 S.C. 508, 397 S.E.2d 98 (1990) (evidence that Defendant had pulled the same gun on another person while horseplaying was not admissible because no connection shown between the two incidents); State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997) (evidence Defendant had committed prior thefts was not admissible since there was no evidence showing any similarity between the previous crimes and the current one); State v. Humphries, 346 S.C. 435, 551 S.E.2d 286 (Ct. App. 2001) (finding the State cannot use evidence of prior drug transactions that are similar to the charged offense but are otherwise unconnected). Specifically, when it comes to sexual abuse, our courts have found a logical connection did not exist between defendant's abuse of his stepdaughter more than 20 years prior and his current charges for sexual abuse of his biological daughters. State v. Perry, 430, S.C. 24, 842 S.E.2d 654 (2020).

Yet, this Court in State v. Weaverling held that a victim's testimony regarding a pattern of sexual abuse was properly admitted as part of a common scheme or plan exception in trial for criminal sexual conduct with a minor where the testimony showed the same illicit conduct with the *same victim* under the same circumstances over a period of several years. State v. Weaverling, 385 S.C. 148, 682 S.E.2d 892 (2009). Our Supreme Court in State v. Clasby, held that a victim's testimony regarding four prior incidents of uncharged sexual misconduct was admissible as evidence of common scheme or plan and stated that "each of the incidents established a pattern of escalating abuse which ultimately culminated in Clasby's digital penetration of B.C." State v. Clasby, 385 S.C. 148, 156, 682 S.E.2d 892, 896 (2009).

Here, the evidence of Appellant's other assaults are admissible under the res gestae doctrine. The assaults are inextricably intertwined and allow the State to present holistic relevant

evidence to tell the completely unfragmented story. Showing Appellant's ongoing assaults are necessary to establish he was the father of Victim's child, as Victim cannot know what instance in particular resulted in the conception of her child.

Similarly, the evidence is also admissible as an other bad act. The court properly found that the acts shows a motive, common plan, absence of mistake, and intent. First, Appellant's conduct was consistent in these instances, showing the motivation he had, the intent behind his actions, a common scheme, and an absence of any mistake. The continuation of conduct shows the grooming process and shows the intent on the part of Appellant. Unlike James Douglas, Hough, and Humphries there is a substantial connection between the acts here. Appellant repeatedly assaulted Victim for a period of ten years giving a substantial connection between the prior acts and the relevant offense.

Here, the evidence of other bad acts aligns closely with the facts in Clasby and Weaverling. The trial court did not abuse its discretion by admitting the testimony of Victim regarding Appellant's prior assaults because the evidence was not introduced to show the propensity of Appellant to commit the crime, but to show Appellant's a common scheme or plan. The State introduced the testimony to provide the jury with information that this sexual behavior by Appellant was not a single instance, but rather that it was a culmination of illicit conduct and grooming that resulted in the birth of a child. Just like in Weaverling, the testimony showed the same illicit conduct with the same Victim under the same circumstances over the course of several years.

Lastly, under Gaines the act must be shown by clear and convincing evidence. Here, the trial court did not abuse its discretion in finding the evidence to be clear and convincing. As noted in Silva, a single credible witness can satisfy the clear and convincing standard. Here, the

trial court found the witness credible, as did the jury. The jury convicted Appellant largely based upon the testimony of Victim and the DNA evidence. The State produced credible testimony and DNA evidence that satisfied its burden of proof.

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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