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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES EUGENE PRICE,

APPELLANT

APPELLATE CASE NO. 2022-001790

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred allowing state's expert, Raymond Olszewski's, testimony where his testimony regarding child abuse dynamics: (1) was unnecessary as N.P. was an adult at the time of trial, (2) was not probative of any fact at issue, and (3) indirectly bolstered N.P's testimony?

2.

Whether the trial court erred by allowing N.P. to testify regarding other alleged prior bad acts of appellant in violation of Rule 404(b), SCRE?

STATEMENT OF THE CASE

On December 9, 2021, a York County grand jury indicted appellant for criminal sexual conduct (CSC) with a minor, second degree and incest. *R (indictments). On October 24, 2022, appellant's case was called to trial before the Honorable D. Craig Brown and a jury. R. 1. Benjamin Hasty represented appellant and assistant solicitors, Christopher Epting and Sharon Ohayon, represented the state. R. 1.

On October 26, 2022, the jury found appellant guilty as indicted. R. 320. Judge Brown sentenced appellant to consecutive terms of ten years' imprisonment for incest and twenty years' imprisonment for CSC with a minor, second degree. R. 333-34.

This appeal follows.

STANDARD OF REVIEW

1.

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. *State v. Price,* 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas,* 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." *State v. Kromah,* 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (quoting *Douglas,* 369 S.C. at 429–30, 632 S.E.2d at 848) (internal quotation marks omitted). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Grubbs,* 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing *Means v. Gates,* 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct.App.2001)). To show prejudice, the appellant must prove "that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg,* 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citing *Means,* 348 S.C. at 166, 558 S.E.2d at 924).

2.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, "[a]s a threshold matter, ... determine whether the proffered evidence is relevant." *Clasby,* 385 S.C. at 154, 682 S.E.2d at 895. "If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)" to show, *inter alia,* the existence of a common scheme or plan. *Clasby,* 385 S.C. at 154,

682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. *See State v. Gillian,* 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); *see also* Rule 403, SCRE ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...").

ARGUMENT

1. The trial court erred allowing state's expert, Raymond Olszewski's, testimony where his testimony regarding child abuse dynamics: (1) was unnecessary as N.P. was an adult at the time of trial, (2) was not probative of any fact at issue, and (3) indirectly bolstered N.P's testimony.

Introductory facts

Appellant met Sarah Price[1] and her two children in 2008. R. 105, ll. 17-24. Sarah and appellant were married for approximately ten years. R. 105, ll. 15-20; 108, ll. 11-24. Appellant legally adopted both of Sarah's children during their marriage. R. 124, l. 20-125, l. 2. In 2016, while they were married, Sarah's 15-year-old daughter had a child that was conceived while she was 14. R. 116, l. 16-117, l. 6; 121, ll. 24-2016; 122, ll. 2-11. In 2019, appellant and Sarah separated. R. 134, ll. 7-8. In 2020, Sarah's daughter, N.P.[2], alleged appellant sexually abused her and was the father of her child. R. 134, ll. 8-12; 135, ll. 18-24.

At trial, N.P. testified she told her husband that appellant's brother, Joey Price, was the father of her child. N.P. claimed she believed it would be easier to blame Joey because he was a sex offender.[3] R. 126, ll. 16-24; 142, ll. 1-3; 147, ll. 8-19. N.P. testified Joey had sexually abused her two years before she became pregnant, but she denied Joey was the father of her child because they did not have penetrative sex. R. 126, l. 23-127, l. 25; 142, l. 10-143, l. 4. DNA evidence at trial reflected it was 130 million times more likely that appellant was the true

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1 The transcript does not reflect what Sarah's last name was prior to marrying appellant.

2 The alleged victim was an adult at the time of trial. For ease of reference counsel for appellant will refer to the alleged victim by her initials throughout the brief.

3 Evidence at trial reflected appellant's brother, Joey Price, was convicted for the sexual assault of his own 15-year-old daughter. R. 149, 4-18.

biological father of minor child's, child than if a random unrelated man was the father. R. 220, ll. 6-21; State's exhibit 3.

Relevant facts

Prior to trial, defense counsel moved to exclude the testimony of state's witness, Raymond Olszewski, arguing his testimony was only offered to improperly bolster N.P.'s testimony. R. 46, ll. 17-20. Defense counsel also asserted Olszewski's testimony regarding child abuse dynamics was no longer necessary or helpful because N.P. was an adult that would be testifying at trial and therefore the testimony was "purely improper bolstering." R. 48, ll. 2-14. In response, the solicitor contended that Olszewski was a blind witness who had not met with the minor child and did not know anything about the case. R. 47, ll. 12-25. The court declined to exclude the testimony of Olszewski. R. 48, ll. 20-24.

At trial, Raymond Olszewski testified as the state's expert in child abuse dynamics. R. 157-80. Olszewski claimed he had not reviewed this case file, met with the minor child, or been told any information about the case. R. 159, ll. 12-18. Olszewski testified regarding delayed reporting, grooming, accommodation syndrome, and generalities regarding disclosure of sexual abuse by child victims. Throughout his testimony Olszewski highlighted "familial situations" a number of times. R. 162-64. Additionally, the solicitor asked Olszewski questions that were fact specific to appellant's case including the following questions.

> How might someone who is new [to] the role of an authoritative figure, for example, a stepdad taking on the role of guardianship for the first time, how might that affect the dynamic between the offender and the victim?
> . . .
> And if that authoritative figure happened to be a police officer, how would you see - - why might a child not be able to tell anybody else about it?

R. 164, l. 25-165, l. 17.

Discussion

It was the state's theory that appellant's position as a police officer was the reason N.P. waited several years to disclose the abuse. The state improperly used Raymond Olszewski's testimony to drive that narrative home. R. 91, ll. 6-11; 271, ll. 1-3. Expert testimony was not required in this case where N.P. was an adult at the time of trial. Olszewski's testimony was not relevant or probative in this case where there was no question N.P. had been sexually abused as a child. The only question at trial was whether it was appellant or his brother that fathered N.P.'s child. The trial court's failure to exclude Olszewski's testimony prejudiced appellant where his testimony indirectly bolstered N.P.'s testimony. Olszewski highlighted familial situations throughout his testimony and the solicitor pointedly asked questions that mirrored the alleged facts in this case.

"A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020) (quoting *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015)). "A trial court's ruling on the admissibility of expert testimony constitutes an abuse of discretion whe[n] the ruling is unsupported by the evidence or controlled by an error of law." *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018).

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "Before admitting expert testimony, a trial court must qualify the expert and determine whether the subject matter of the expert's proposed testimony is reliable, as required by Rule 702, SCRE." *Prather*, 429 S.C. at 599, 840 S.E.2d at 559. "While

both scientific and nonscientific expert testimony require the trial court make a finding of reliability, there is no formulaic approach for determining the reliability of nonscientific testimony." *Jones*, 423 S.C. at 638–39, 817 S.E.2d at 272.

Initially, the trial court erred by admitting the testimony of Raymond Olszewski where it was not necessary to assist the jury in understanding the evidence or determining any fact at issue. N.P. was an adult at the time of the trial and testified capably on her own behalf regarding the alleged facts in this case. Moreover, the defense never asserted N.P. was not sexually assaulted as a minor. It was undisputed that N.P. gave birth to a child that was conceived when N.P. was 14 years old. Instead, the defense asserted and it was supported by evidence at trial appellant's brother, a convicted sex offender, was the person that sexually assaulted N.P. and fathered her child.

"[E]xperts are permitted to give an opinion, (but) they may not offer an opinion regarding the credibility of others. *State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). "A witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes the victim." *Briggs v. State*, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017). When this witness is qualified as an expert the impermissible harm is compounded. *Id*.

Our courts have held "[t]he assessment of witness credibility is within the exclusive province of the jury," and witnesses generally are "not allowed to testify whether another witness is telling the truth." *Kromah,* at 358–59, 737 S.E.2d at 499–500 citing *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012); *see also L.A. Bradshaw, Annotation, Necessity and Admissibility of Expert Testimony as to Credibility of Witness,* 20 A.L.R.3d 684 (1968 & Supp.2012) (stating an expert witness should not vouch for the truthfulness of a

witness).

Olszewski's testimony indirectly bolstered N.P.'s testimony. While the state claimed Olszewski was a blind witness, throughout his testimony he repeatedly highlighted situations of familial child abuse, which is what was alleged here. Additionally, the state asked specific questions of Olszewski that mirrored the facts alleged by N.P. The solicitor asked about a stepfather relationship. Appellant was N.P's stepfather who legally adopted her. The solicitor also asked a specific question about whether the abuser being a police officer would affect N.P.'s behavior. N.P referenced appellant's job as a policeman throughout her testimony describing her mother as the nicer parent. R. 106, ll. 1; 107, ll. 5-8; 109, ll. 19-24; 131, ll. 20-25; 145, ll. 13-14. N.P. testified she was frightened to disclose the abuse due to appellant's job as a police officer. R. 129, ll. 6-25; 130, l. 20-131, l. 7; 148, ll. 3-6.

Olszewski's testimony was not required and was offered for the sole purpose of indirectly bolstering N.P.'s testimony.

2. The trial court reversibly erred by allowing N.P. to testify regarding other alleged prior bad acts of appellant in violation of Rule 404(b), SCRE.

Relevant facts

Prior to the start of trial defense counsel moved to exclude any evidence of alleged prior bad acts. Counsel contended these accusations were irrelevant to the indicted allegations and should be excluded as improper character evidence intended only for the purpose of showing conformity of character or behavior. R. 50, l. 17-51, l. 13. The solicitor asserted they intended to introduce evidence of a pattern of grooming in order to show motive and intent and cited *State v. Dinkins*, 435 S.C. 541, 868 S.E2d 181 (Ct. App. 2021) in support. R. 51, l. 14-52, l. 17. The court denied defense counsel's motion and ruled pursuant to *Dinkins* the evidence would be allowed. R. 62, l. 18-63, l. 6.

Over defense counsel's objection N.P. testified appellant asked her to rub his back often and then it "escalated" to appellant "asking [her] to masturbate him." R. 109, l. 17-111, l. 6. She testified appellant further escalated to asking her to perform "oral sex," and stated that he would "make us swallow it." R. 111, ll. 10-22. N.P. testified that when she was eleven appellant began having penetrative sex with her. R. 114, l. 5-14.

N.P. also testified appellant disciplined her. Over defense counsel's objection N.P. claimed appellant's discipline escalated to "punches, slaps, throwing anything that would be nearby that would be hurtful." R. 112, ll. 2-20. N.P. said when appellant was upset, he would slap, punch, and choke her until she passed out. R. 131, ll. 8-17.

Discussion

"[E]vidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of

the particular crime charged." *State v. Lyle*, 125 S.C. 406, 415, 118 S.E. 803, 807 (1923) However, there are certain well-established exceptions to this general rule:

> [E]vidence 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.

Id.; Rule 404(b), SCRE ("Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.").

Though *Lyle* does not distinguish between sexual offenses and non-sexual offenses, *Lyle* exceptions are usually applied differently to sexual offenses. *Compare Lyle,* 125 S.C. 406, 118 S.E. 803 (a forgery case), to *State v. Nelson,* 331 S.C. 1, 501 S.E.2d 716 (1998) (a child molestation case, distinguishing the application of the *Lyle* exceptions for motive and intent from cases that were not sexual in nature). *State v. Fonseca*, 383 S.C. 640, 647–48, 681 S.E.2d 1, 4 (Ct. App. 2009), aff'd, 393 S.C. 229, 711 S.E.2d 906 (2011).

In finding evidence inadmissible to prove motive for the sexual offense, the Court in *State v. Nelson* reasoned:

> [T]he motive for the alleged crimes involved in the present case [is] apparent. A person commits or attempts to commit [a sexual offense] for the obvious motive of sexual gratification. Since motive cannot be deemed to have been a material issue at [defendant's] trial ... testimony [as to prior bad acts] was not admissible to prove [intent].

State v. Nelson, 331 S.C. 1, 11, 501 S.E.2d 716, 721 (citing *State v. Smith*, 84 Ohio App.3d 647, 617 N.E.2d 1160, 1172 (1992)) (internal citations omitted).

In *Dinkins* this Court held the "admission of evidence of defendant's prior acts against

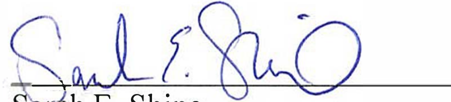
victim was not an abuse of discretion." *State v. Dinkins*, 435 S.C. 541, 868 S.E.2d 181 (Ct. App. 2021). In that case the state sought to admit seven prior acts of Dinkins and the trial court admitted two of the seven. The first was an instance where Dinkins reached under the victim's nightgown and touched her vaginal area and the second was an instance where Dinkins kissed victim on the back of her neck. This Court found the acts were "logically connected within the pattern of grooming, which included an escalation of the conduct towards this child." *Id*. at 556, 868 S.E.2d at 188.

This case differs significantly from *Dinkins*. Notably it appears Dinkins did not deny the alleged prior acts but instead argued the behaviors were innocent, or not intended sexually. Here, appellant firmly denied having committed any sexual abuse of N.P. including any sexual acts that occurred before the indicted allegations. Additionally, the *Dinkins* Court noted that the trial court used its discretion admitting only two of the seven acts offered by the state. Here, all the alleged prior acts, which included *daily* sexual and physical abuse for ten years, were allowed in.

Even if the Court finds N.P.'s allegations of other sexual acts by appellant admissible under *Dinkins*, N.P.'s allegations of severe physical abuse were not logically connected to a pattern of grooming as argued by the state and were highly prejudicial to appellant. These alleged instances of extreme physical abuse over the span of ten years were offered to paint appellant as a terrible man and a child abuser.

CONCLUSION

Based on the foregoing arguments, appellant respectfully requests this Court reverse his convictions and sentences and remand his case for a new trial.



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Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of September, 2024.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

September 6, 2024.

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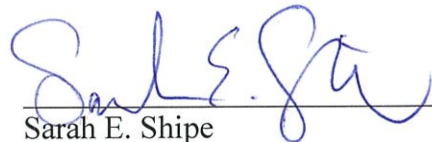
CHARLES EUGENE PRICE, APPELLANT

APPELLATE CASE NO. 2022-001790

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Andrew D. Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 6th day of September, 2024.



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