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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable George M. McFaddin, Jr., Circuit Court Judge
Appellate Case No. 2023-000820

THE STATE,

Respondent,

vs.

RICKY LEROY SINGER, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

COUNTER-STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

ARGUMENT 3

The trial judge did not abuse his broad discretion over evidentiary matters by permitting the introduction of testimony establishing approximately 700 files of child sexual abuse material were found on Appellant's computer in total even though Appellant was only charged with seven counts of sexual exploitation of a minor because: (1) the evidence of the additional child sexual abuse material files was relevant and highly probative of Appellant's knowledge and intent along with an absence of mistake or accident; and (2) the probative value of the limited testimony presented was not substantially outweighed by its potential for unfair prejudice under the specific circumstances involved. 3

<u>Relevant Facts</u>. 3

<u>Standard of Review</u>. 7

<u>Analysis</u>. 8

CONCLUSION 17

TABLE OF AUTHORITIES

South Carolina Cases:

Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). 8

State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). 8

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). 7

State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010). 8

State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (Ct. App. 2012). 9

State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014). 9

State v. Dickerson, 341 S.C. 391, 535 S.E.2d 119 (2000). 9

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). 7

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). 10

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998). 9, 15

State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007). 9

State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001). 9, 10

State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009). 12

State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). 12

State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987). 12

State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008). 9

State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (1999). 12

State v. Robinson, 426 S.C. 579, 828 S.E.2d 203 (2019). 16

State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004). 16

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010). 7

State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971). 12

State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009). 8

State v. Williams, 350 S.C. 172, 564 S.E.2d 688 (Ct. App. 2002). 12

United States Supreme Court Cases:

Old Chief v. United States, 519 U.S. 172 (1997). 9

Other State Cases:

Antoniello v. State, 542 S.W.3d 878 (Ark. Ct. App. 2018). 10, 11, 13

Gerron v. State, 524 S.W.3d 308 (Tex. App. 2016). 15

People v. Alexander, 235 P.3d 873 (Cal. 2010). 15

State v. Schneider, 483 S.W.3d 495 (Mo. Ct. App. 2016). 13

State v. Zocco, 935 N.W.2d 554 (Wis. Ct. App. 2019). 14

Other Federal Cases:

United States v. Brown, 862 F.2d 1033 (3d Cir. 1988). 13

United States v. King, 254 F.3d 1098 (D.C. Cir. 2001). 13

United States v. Long, 328 F.3d 655 (D.C. Cir. 2003). 16

United States v. Simpson, 152 F.3d 1241 (10th Cir. 1998). 14, 15

United States v. Summers, 666 F.3d 192 (4th Cir. 2011). 8

Statutory Provisions and Rules:

S.C. Code Ann. § 16-15-405. ....11, 14

S.C. Code Ann. § 16-15-410. ....12, 14

Rule 401, SCRE. 8

Rule 402, SCRE. 8

Rule 403, SCRE. 8, 16

Rule 404, SCRE. 13

Other Authorities:

New Oxford American Dictionary (3rd ed. 2010). 8

STATEMENT OF ISSUE ON APPEAL

"Whether the trial court erred by admitting testimony that 650 images and 50 videos of child pornography were found on a computer where Appellant was on trial for only seven counts of sexual exploitation of a minor, and where the State acknowledged that Appellant was not charged for possessing or sharing the additional images or videos?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his broad discretion over evidentiary matters or otherwise err by permitting the introduction of testimony establishing approximately 700 files of child sexual abuse material were found on Appellant's computer in total even though Appellant was only charged with seven counts of sexual exploitation of a minor when: (1) the evidence of the additional child sexual abuse material files was relevant and highly probative of Appellant's knowledge and intent along with an absence of mistake or accident; and (2) the probative value of the limited testimony presented was not substantially outweighed by its potential for unfair prejudice under the specific circumstances involved?

STATEMENT OF THE CASE

In October of 2017, Appellant Ricky Leroy Singer, Jr. was arrested after child sexual abuse material was discovered on a laptop found in his bedroom during a warrant-based search. In October of 2020, the Sumter County Grand Jury indicted Appellant for one count of second-degree sexual exploitation of a minor and six counts of third-degree sexual exploitation of a minor. On May 8, 2023, a jury trial was commenced in the Sumter County Court of General Sessions with the Honorable George M. McFaddin, Jr., circuit court judge, presiding. At the conclusion of the State's case, the trial judge—with agreement from the prosecutor—granted a directed verdict on one of the third-degree sexual exploitation of a minor charges.[1] Thereafter, at the conclusion of the three-day trial, the jury convicted Appellant of all the remaining indicted charges. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of six years for each of his six convictions. Appellant then timely filed a notice of appeal.

[1] The prosecutor agreed to the grant of a directed verdict because the video file associated with the charge was unable to be played for the jury due to technical issues. (Tr. II pp. 10-11).

ARGUMENT

The trial judge did not abuse his broad discretion over evidentiary matters by permitting the introduction of testimony establishing approximately 700 files of child sexual abuse material were found on Appellant's computer in total even though Appellant was only charged with seven counts of sexual exploitation of a minor because: (1) the evidence of the additional child sexual abuse material files was relevant and highly probative of Appellant's knowledge and intent along with an absence of mistake or accident; and (2) the probative value of the limited testimony presented was not substantially outweighed by its potential for unfair prejudice under the specific circumstances involved.

Relevant Facts

In July of 2017, Investigator Kevin Atkins, the chief investigator for the South Carolina Attorney General's Office's internet crimes against children section and an expert in online undercover investigations involving peer-to-peer software, discovered a particular user was sharing child sexual abuse material via a BitTorrent peer-to-peer file sharing client. (Tr. I p. 90; p. 92; p. 94; pp. 102-103). In response, Investigator Atkins used a special law enforcement program to initiate a single-source download of a known child sexual abuse material video file from the user.[2] (Tr. I p. 95; pp. 105-107). Through his efforts, Investigator Atkins was able to obtain a partial download of the file from the user, and he verified it constituted "authentic" child sexual abuse material. (Tr. I p. 72; pp. 99-100; p. 107).

After doing so, Investigator Atkins continued with his investigation and acquired the IP address and subscriber information associated with the user who had been the illegal file's source. (Tr. I p. 106; p. 108). Notably, Appellant was the registered subscriber, the address linked to his account was one for a particular residence located in Sumter, and his email address was identified as bigbadjr@twc.com. (Tr. I p. 110). Investigator Atkins then passed that

[2] According to an expert that later testified during Appellant's trial, the illicit file involved—"Baby J"—was a particularly well-known one in the context of child sexual abuse material. (Tr. I p. 75). In fact, he indicated "if you look for child pornography[,] you're going to find baby J." (Tr. I p. 75).

information along to Investigator Samantha Sherod of the Sumter County Sheriff's Office to allow her to continue with the investigation. (Tr. I p. 113).

Based on what was provided to her, Investigator Sherod obtained a search warrant for Appellant's residence in Sumter and was ultimately allowed inside by Brenda Quiroz, who lived with Appellant at the time and was his sister. (Tr. I pp. 113-115; p. 146). During the ensuing search of the residence, Investigator Sherod located a computer in Appellant's bedroom, and she obtained access to it after Quiroz provided Appellant's log-in credentials to her. (Tr. I p. 116; p. 118). Investigator Sherod then searched the computer and found child sexual abuse material on it. (Tr. I p. 116). As a result, the computer was swiftly seized, and Appellant was arrested. (Tr. I p. 119; Arrest Warrants).

Subsequently, Investigator David Grubbs, the internet crimes against children section's chief forensic investigator and an expert in computer forensics, conducted an examination of the seized computer. (Tr. I p. 121; p. 125). During that examination, he found 654 image files and fifty video files of child sexual abuse material. (Tr. I p. 132; p. 143). In addition to those files, he found several user accounts, including one named bigbad_000 or bigBA_000. (Tr. I pp. 134-136; p. 139). That particular user account as associated with several emails contained on the computer, including one entitled "Ricky," that were sent or received by the email address bigbadrjr@yahoo.com. (Tr. I pp. 133-134). Furthermore, the same user account was—based on the information that could still be accessed on the computer—associated with the use of BitTorrent peer-to-peer software that had been used to actively search for and download child sexual abuse material over a span of a few years. (Tr. I p. 133; pp. 135-139). The full name connected to that user account was Appellant's. (Tr. I p. 139). Contrastingly, there were no

signs or “artifacts” suggesting any of the *other* user accounts on the computer had been used to access, obtain, or interact with child sexual abuse material files. (Tr. I p. 139).

In light of what was uncovered, Appellant was subsequently indicted for one count of second-degree sexual exploitation of a minor along with six counts of third-degree sexual exploitation a minor with each of those seven charges being related to a particular child sexual abuse material file either partially downloaded from or found on Appellant’s computer. (Tr. I pp. 6-7; Indictments). Ultimately, Appellant elected to proceed forward to trial. (Tr. I pp. 6-7).

Toward the outset of that trial, the prosecutor moved for the State to be permitted to present testimony—without presenting the actual files themselves—of the child sexual abuse material files that were found on Appellant’s computer *in addition to* the individual files that gave rise to his indicted charges. (Tr. I pp. 31-32; p. 41; p. 55). As support for that motion, the prosecutor argued the additional files were admissible pursuant to Rule 404(b) of the South Carolina Rules of Evidence to show intent, an absence of mistake or accident, and the existence of a common scheme or plan. (Tr. I p. 31; pp. 41-42). Likewise, the prosecutor argued the additional files were part of the res gestae of Appellant’s crimes since they were located on his computer along with the specific files for which the State elected to criminally charge him. (Tr. I p. 32). Beyond that, the prosecutor contended the evidence would not be unduly prejudicial to Appellant because he intended to limit what would be shown to the jury.[3] (Tr. I pp. 41-42).

In response, defense counsel conceded Rule 404(b) “probably [wa]s very favorable” to the State’s position on the admissibility of the evidence concerning the additional child sexual abuse material files and appeared to acknowledge such evidence was relevant, particularly in

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[3] Notably, to minimize the potential for any unfair prejudice, the prosecutor even chose to play just a few seconds of the video files connected to Appellant’s *indicted* charges. (Tr. I pp. 57-58; p. 107; pp. 131-132).

light of his intention to challenge whether the State could prove the required knowledge element of the charged offenses. (Tr. I pp. 39-40; p. 55). Nevertheless, defense counsel contended his objection to the evidence was focused on Rule 403 of the South Carolina Rules of Evidence as he believed it would be "unfairly prejudicial" to permit the introduction of "tons of alleged videos." (Tr. I pp. 40-41). However, in making that particular argument, defense counsel readily acknowledged he recognized it was a "tough sell for [him] to make to the Court" under the circumstances involved. (Tr. I p. 41).

After considering the arguments of counsel, the trial judge ruled he would permit the State to introduce testimony about the existence of the additional child sexual abuse material files found on Appellant's computer. (Tr. I pp. 56-57). However, the trial judge further explained the testimony would have to be presented in a manner consistent with the "boundaries" proposed by the prosecutor and the introduction of the actual additional files themselves would not be permitted. (Tr. I pp. 56-57).

As the trial continued on, Investigator Atkins, Investigator Sherod, and Investigator Grubbs recounted the details of the investigation that led to Appellant's arrest and the discovery of his cache of child sexual abuse material files. (Tr. I pp. 90-111; pp. 113-119; pp. 121-145). Likewise, Quiroz verified Appellant was her brother and lived with her around the time of the incident, and she explicitly denied ever personally searching for child sexual abuse material files or using a BitTorrent client. (Tr. I pp. 146-147).

In addition to that testimony, the partial video file Investigator Atkins was able to obtain from Appellant was admitted into evidence and a brief portion of it was played for the jury as support for Appellant's second-degree sexual exploitation of a minor charge. (Tr. I pp. 103-104; p. 107). Likewise, Investigator Grubbs's digital report was admitted into evidence, and, through

it, the image files and most of the video files that gave rise to Appellant's third-degree sexual exploitation of a minor charges were displayed for the jury.[4] (Tr. I pp. 128-132). Meanwhile, consistent with the prosecutor's proposal and the trial judge's ruling, none of the other image files or video files found on Appellant's computer were admitted into evidence or shown to the jury. (Tr. I p. 132). However, Investigator Grubbs briefly testified—over defense counsel's objection—he found approximately 650 image files and fifty video files of child sexual abuse material in total on Appellant's computer during his forensic analysis of it. (Tr. I p. 132; p. 145).

After all that testimony and evidence was presented, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law.[5] (Tr. II pp. 19-35). The jury then began its deliberations. (Tr. II p. 38). A little over an hour later, the jurors unanimously convicted Appellant of all the charges submitted to them. (Tr. II pp. 49-50).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to

[4] As previously noted, one of the video files was not able to be played for the jury, and, therefore, the trial judge granted a directed verdict on the charge connected to that file. (Tr. II pp. 10-11).

[5] As part of his brief closing argument remarks, the prosecutor noted approximately 700 additional child sexual abuse material files were discovered on Appellant's computer. (Tr. II p. 20). Meanwhile, as part of his closing argument remarks, defense counsel argued Appellant's case hinged "not [on] what's on the computer" but on "whether [Appellant] knew about it and whether he knew it was being distributed." (Tr. II pp. 22-23).

the trial court."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Significantly, "[a]n abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); see United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

Analysis

All relevant evidence is admissible, and only relevant evidence should be admitted at trial. Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

However, even if relevant, evidence must be excluded from trial if its probative value is *substantially* outweighed by—amongst other things—the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see also New Oxford American Dictionary 1736 (3rd ed. 2010) (defining "substantially" as "to a great or significant extent"). The determination of the probative value of evidence relative to its potential prejudicial

effect must be based on the entire record and the result generally hinges on the facts of each case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Meanwhile, unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see Old Chief v. United States, 519 U.S. 172, 181 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). However, unfair prejudice does *not* mean damage to a defendant's case that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). That is true because all evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant, and it is only unfair prejudice that must be avoided. Id.

When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have "particularly wide discretion[.]" Collins, 398 S.C. at 209, 727 S.E.2d at 757. As a result, a trial judge's ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Hamilton, 344 S.C. 344,

358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Hamilton, 344 S.C. at 358, 543 S.E.2d at 594.

In the case sub judice, Appellant contends the trial judge reversibly erred by allowing testimony to be presented that established approximately 650 image files and fifty video files of child sexual abuse material in total were found on his computer. As support for that contention, Appellant notes he was only charged with seven counts of sexual exploitation of a minor. Based on that, Appellant maintains the probative value of the testimony about the other child sexual abuse material files found on his computer along with the ones for which he was charged was substantially outweighed by a danger of unfair prejudice. More specifically, Appellant alleges the testimony was "needlessly cumulative" and possessed an "extremely low" probative value because it was purportedly not "required" to prove any element of the charged offenses while its danger of unfair prejudice was purportedly exceedingly high because it portrayed him as a "hoarder of vast quantities of the illicit materials." Therefore, Appellant maintains the trial judge erred by failing to exclude the testimony pursuant to Rule 403.

Notably, in Antoniello v. State, 542 S.W.3d 878 (Ark. Ct. App. 2018), the Arkansas Court of Appeals recently considered—and flatly rejected—a strikingly-similar argument to the one now being raised by Appellant through his appeal. In that case, the Arkansas Attorney General's Office's cyber-crimes unit conducted an investigation after discovering Antoniello downloaded child sexual abuse material using a BitTorrent client. Id. at 879. During an ensuing search of Antoniello's home, a computer was recovered that contained over 3,000 image files and video files of child sexual abuse material. Id. at 879-880. Based on what was uncovered,

Antoniello was charged with thirty counts of distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child, and he ultimately proceeded forward to trial on those charges. Id. at 879. During trial, testimony was presented over an objection raised by Antoniello pursuant to Rule 403 of the Arkansas Rules of Evidence about the thousands of child sexual abuse material files—which were not themselves introduced—found on his computer even though he was not charged with any criminal offenses specifically related to those particular files. Id. at 880. At the conclusion of trial, Antoniello was convicted as charged, sentenced to an aggregate 300-year sentence, and appealed, arguing the trial judge reversibly erred by permitting the testimony about the uncharged files. Id. at 879. On appeal, the Arkansas Court of Appeals rejected Antoniello's argument and affirmed. Id. In affirming, the Arkansas Court of Appeals instructed:

> One of the elements the State is required to prove is that the defendant *knowingly* distributed, possessed, or viewed matter depicting sexually explicit conduct involving a child. The number of images found on Antoniello's computer is probative of his intent, lack of mistake, and knowledge and was thus properly admitted under Rule 404(b). We cannot say that the circuit court judge abused its discretion in allowing the State to prove its case as conclusively as possible by referring to the total number of images found on Antoniello's computer.

Id. at 881 (emphasis added).

Similar to the defendant in Antoniello, Appellant was indicted for both second-degree and third-degree sexual exploitation with a minor for distributing and possessing child sexual abuse material. To prove his guilt for those charges based on the allegations involved, the State was required to demonstrate to the jury beyond a reasonable doubt Appellant distributed child sexual abuse material, was in actual or constructive possession of such illicit material, *and* had knowledge of its character or content when committing such acts. See S.C. Code Ann. § 16-15-

405(A) ("An individual commits the offense of second degree sexual exploitation of a minor if, *knowing the character or content of the material*, he . . . distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation." (emphasis added)); S.C. Code Ann. § 16-15-410(A) ("An individual commits the offense of third degree sexual exploitation of a minor if, *knowing the character or content of the material*, he possesses material that contains a visual representation of a minor engaging in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation." (emphasis added)); see also State v. Muhammed, 338 S.C. 22, 26, 524 S.E.2d 637, 639 (1999) ("Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of its presence."). As a result, any evidence—including circumstantial evidence—bearing on Appellant's knowledge of the child sexual abuse material he was accused of distributing and possessing was particularly relevant, probative, and important during his trial since knowledge was an *indispensable* element of the charged crimes. See State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) ("Possession may be inferred from circumstances."); State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 775 (1981) (recognizing constructive possession can be established by circumstantial evidence); State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred."); State v. Williams, 350 S.C. 172, 175, 564 S.E.2d 688, 690 (Ct. App. 2002) (recognizing knowledge can be inferred from circumstantial evidence); cf. State v. Hernandez,

382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) ("In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially.").

And, critically, just as was true in Antoniello, the testimony concerning the numerous additional child sexual abuse material files found on Appellant's computer constituted powerful evidence of Appellant's knowledge of its *and* the charged files' presence and nature by: (1) demonstrating Appellant's intent to obtain and view such material; and (2) reducing the possibility those files either were accidentally or mistakenly downloaded onto to Appellant's computer without his awareness, which was something that logically was less and less likely to have occurred the more and more files that were present. Antoniello, 542 S.W.3d at 881; see 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."); see also United States v. King, 254 F.3d 1098, 1100 (D.C. Cir. 2001) ("To be sure, in cases where a defendant is charged with unlawful possession of something, evidence that he possessed the same or similar things at other times is often quite relevant to his knowledge and intent with regard to the crime charged."); cf. United States v. Brown, 862 F.2d 1033, 1038 (3d Cir. 1988) (concluding Brown's knowledge for purposes of proving his guilt for a charge related to knowingly receiving child pornography was established in part by the admitted evidence of other child pornography found in his home, which constituted proof of his strong interest in receiving such material, and finding "no difficulty" with the admissibility of the evidence of uncharged pornography for purposes of establishing Brown's knowledge and intent along with an absence of mistake or accident); State v. Schneider, 483 S.W.3d 495506 (Mo. Ct. App. 2016) (concluding evidence establishing thousands of child

pornography files were found on Schneider's computers and hard drives in addition to the files that gave rise to his charges was admissible because "such evidence tended to prove that Schneider did not mistakenly download a few illegal files among his legal adult-pornography files"); State v. Zocco, 935 N.W.2d 554, __ (Wis. Ct. App. 2019) (unpublished decision) ("[T]he evidence of the uncharged child pornography recordings found on the four CDs taken on the same date as the external hard drive and fifth CD was both inextricably intertwined with the evidence regarding the charged child pornography recordings on the external hard drive and fifth CD and was also necessary to complete the story of the crime on trial. The jury could have reasonably found that this evidence tended to make Zocco's knowing possession of the charged child pornography recordings more probable than it would have been without the evidence, and it was therefore relevant to establishing his guilt." (citation omitted)). Thus, that testimony was—just as the trial judge recognized—highly relevant and probative of Appellant's guilt for the required elements of the charged crimes, including the knowledge element that defense counsel candidly conceded would be the focus of Appellant's defense. S.C. Code Ann. § 16-15-405(A); S.C. Code Ann. § 16-15-410(A); see United States v. Simpson, 152 F.3d 1241, 1248 (10th Cir. 1998) (concluding the district court judge did not abuse his discretion by admitting further evidence of child pornography in addition to the two images that gave rise to Simpson's indictments because such evidence was "necessary" to prove Simpson's intent and lack of mistake or accident).

Meanwhile, the challenged testimony's potential for unfair prejudice was greatly minimized by the manner through which the evidence of the additional child sexual abuse material files was *and* was not presented during Appellant's trial. More specifically, the prosecutor did *not* introduce any of the illicit files themselves but, instead, only established their

existence through testimony. And, significantly, the testimony itself was exceedingly brief *and* lacking in any details about the specific contents of the files for which Appellant was not charged. Under such circumstances, the limited manner by which the testimony about the additional child sexual abuse material files was introduced helped ensure Appellant did not suffer any prejudice from that evidence's admission aside from that caused by its legitimate probative force. Gilchrist, 329 S.C. at 630, 496 S.E.2d at 429; cf. Simpson, 152 F.3d at 1248-1249 (rejecting a challenge to the admission of evidence of uncharged child pornography that was raised pursuant to Rule 403 of the Federal Rules of Evidence based on the steps the district court judge took to prevent any undue prejudice from resulting from the evidence's admission); Gerron v. State, 524 S.W.3d 308, 322 (Tex. App. 2016) ("The testimony about the images that were found during the forensic examination of Gerron's computer was . . . brief and not particularly detailed regarding the substance of the images beyond that they depicted children. This factor also favors admission. We therefore cannot say that the trial court abused its discretion in admitting the 491 photographs or the testimony regarding the images found during the search of Gerron's computer."). Therefore, just as the trial judge recognized, the challenged testimony's potential for unfair prejudice did not substantially outweigh its probative value under the circumstances involved. See People v. Alexander, 235 P.3d 873, 924 (Cal. 2010) (explaining evidence need not be excluded when comparing its probative value to its potential prejudicial effect *unless* it poses an intolerable risk to the fairness of the proceedings or the reliability of the outcome).

Because the probative value of the limited testimony presented about the additional child sexual abuse material files found on Appellant's computer along with the charged files was not *substantially* outweighed by the evidence's low potential to cause any improper prejudice to

Appellant, the trial judge did not abuse his broad discretion by admitting that limited testimony, and there are no exceptional circumstances present in Appellant's case that would warrant a reversal of that discretionary evidentiary ruling on appeal. Rule 403, SCRE; see State v. Sweat, 362 S.C. 117, 129, 606 S.E.2d 508, 515 (Ct. App. 2004) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances."); see also State v. Robinson, 426 S.C. 579, 607, 828 S.E.2d 203, 217 (2019) (recognizing it is conceivable the discretionary rulings of two different trial judges who reached opposite conclusions from the same set of circumstances will both be affirmed on appeal due to the deferential nature of the abuse of discretion standard of review); cf. United States v. Long, 328 F.3d 655, 663 (D.C. Cir. 2003) ("Because the evidence of Long's possession of the uncharged photographic evidence was probative of disputed elements—possession and intent—of the charged offenses, the district court did not abuse its discretion in allowing admission of certain of the non-charged photographs in Long's home."). Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

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