

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari to the Court of Appeals  
Appeal from Chester County  
Brian M. Gibbons, Circuit Court Judge

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**Feb 11 2025**

**SC Court of Appeals**

Opinion No. 2024-UP-408 (S.C. Ct. App. filed December 4, 2024)

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THE STATE,

RESPONDENT,

V.

BRADLEY MARK CORLEW,

APPELLANT

APPELLATE CASE NO. 2021-000989

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APPENDIX

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FINAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUES ON APPEAL**

- I. Did the trial judge err by allowing the state to introduce inadmissible character evidence where (1) no exception found within Rule 404(b), SCRE, applied, (2) where the evidence was not necessary for presentation of the context of the charged offenses, and (3) where the danger of unfair prejudice substantially outweighed the probative value of the evidence?
- II. Did the trial judge err by admitting into evidence a purported medical questionnaire in which the alleged victim of sexual abuse identified Appellant as her abuser where the danger of unfair prejudice substantially outweighed any probative value and where the evidence was needlessly cumulative due to its corroborative nature of the alleged victim's trial testimony?
- III. Did the trial judge err by allowing an expert witness to describe the contents of photographs allegedly found on Appellant's phone, specifically of an erect penis, pornographic images involving bondage downloaded from the internet, and pornographic "photographs of very young women" downloaded from the internet, where the judge concluded the danger of unfair prejudice from the photographs themselves outweighed any probative value offered by the photographs?
- IV. In violation of Appellant's federal and state constitutional right to confrontation, did the trial judge err when he placed Appellant in a position in the courtroom so that two witnesses could not see Appellant when the witnesses testified, without any evidence to support the necessity of moving Appellant?

**STATEMENT OF THE CASE**

On December 17, 2019, a Chester County grand jury indicted Appellant for criminal sexual conduct with a minor in the first degree and criminal sexual conduct with a minor in the second degree. R. 460. On October 27, 2020, a Chester County grand jury indicted Appellant for incest. R. 464. The state, represented by Candice Lively and Kaitlyn Easler, called the case to trial before the Honorable Brian M. Gibbons and a jury on August 30, 2021 – September 2, 2021. R. 54. William Frick and Kay Boulware represented Appellant. R. 15. The jury found Appellant guilty as charged. R. 442, ll. 1-10. Judge Gibbons sentenced Appellant to life imprisonment without the possibility of parole for criminal sexual conduct with a minor in the first degree, to twenty years imprisonment for criminal sexual conduct with a minor in the second degree, and to ten years imprisonment for incest. R. 449, l. 19 – R. 450, l. 6.

On September 7, 2021, Appellant served his notice of appeal. This brief follows.

## ARGUMENT

I. The trial judge erred by allowing the state to introduce inadmissible character evidence where (1) no exception found within Rule 404(b), SCRE, applied, (2) where the evidence was not necessary for presentation of the context of the charged offenses, and (3) where the danger of unfair prejudice substantially outweighed the probative value of the evidence.

### **Standard of review**

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003). In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An 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." Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. Mattison, 352 S.C. at 583, 575 S.E.2d at 855.

If there is any evidence to support the admission of bad act evidence, the trial court's ruling will not be disturbed on appeal. State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App.

2004); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004). In order for an error to warrant reversal, the error must result in prejudice to the defendant. See State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000); see also State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890 (1995) (explaining that error without prejudice does not warrant reversal).

### **Relevant facts**

On August 11, 2021, the state filed a “motion in limine for admission of *res gestae* evidence and common scheme or plan.” R. 453. The state moved to elicit testimony through the alleged victims in the case “of ongoing multiple acts of abuse perpetrated upon them *and their siblings*” by Appellant. R. 453 (emphasis added). The state also wanted to elicit testimony about “abuse inflicted upon them by the co-defendant, Sarah Lacy.” R. 455. According to the state, “[t]he purpose of this testimony [was] to assist the jury in understanding the context of the crimes” charged. R. 453. Thus, the state argued the evidence was part of the *res gestae* of the criminal charges for which Appellant stood trial. R. 454.

Further, the state argued the evidence was admissible pursuant to the common plan or scheme exception found within Rule 404(b), SCRE. R. 454. Although citing the relevant case law, the state incorrectly argued that similarities among the acts *alone* were sufficient to support admissibility. R. 454. The state also argued the testimony established “a logical relevance to the underlying crime(s)” to support admission. R. 454.

On August 11, 2021, Judge Gibbons heard argument on the state’s motion. R. 1. The state explained there were nine children living in the home along with Appellant and Lacy. R. 6, ll. 19-23. The state claimed that it was “a sort of lifestyle to normalize sexual behaviors between both of the defendants and their sexual activities, as well as having the children join in on the sexual activities as well.” R. 7, ll. 1-4. According to the state, if the judge ruled the evidence of other

crimes committed by other people and against other people inadmissible, then the state would likely be unable to try the case. R. 7, ll. 5-9 (“it would tie our hands and be almost impossible to divvy out the type of abuse that was going on with each individual child because they were often”). After recognizing the state could not show a similar pattern of abuse, the state claimed it “clearly” showed “the logical connection between the events of sexual abuse that was going on between the children at the hands of these defendants.” R. 8, ll. 2-14. According to the state, this was “one of these particularized situations that is very unique, very specific ... in regards to how these children were systematically abused on a daily basis.” R. 8, ll. 15-19.

Defense counsel argued that “similarity is not enough” in order for evidence of prior bad acts to constitute common plan or scheme. R. 9, ll. 6-15. Here, all the state produced was “similarity” and failed to show any type of logical connection. R. 9, l. 16. Further, defense counsel argued the danger of unfair prejudice outweighed the evidence’s probative value. R. 9, ll. 17-21; R. 11, ll. 2-4. Judge Gibbons took the matter under advisement. R. 12, ll. 24-25.

The parties reconvened on August 18, 2021. R. 15. The state reiterated its position that if the judge excluded the evidence of prior bad acts the state would be unable “to actually present a full picture to the jury.” R. 18, ll. 9-15. Further, the state reiterated its argument, without explanation or the proffering of evidence, that “there [was] that logical connection” and “it would meet the requirement of clear and convincing evidence.” R. 18, ll. 18-22.

Judge Gibbons granted the state’s request to present the evidence of prior bad acts, and importantly, noted that the defense was “protected in the record.” R. 19, ll. 4-6. Noting that trial counsel could make a contemporaneous objection “without having to stand up every single time

something is said.” R. 19, ll. 6-9. He explained that defense counsel could simply note his objection for the record during the trial. R. 19, ll. 9-15.<sup>1</sup>

Minor 1, Appellant’s biological daughter, explained that Appellant and Sarah Lacy were in a romantic relationship. R. 178, ll. 2-3; R. 178, ll. 12-17. Appellant and his five children lived in a house in Chester with Sarah and her four children. R. 182, ll. 11-24. Appellant worked as a truck driver while Sarah stayed home. R. 183, ll. 1-2; R. 194, ll. 19-20. Appellant would be “gone for like two days at a time” for his job as a truck driver. R. 214, ll. 18-22.

After explaining sexual abuse allegedly perpetrated on her by Appellant and Sarah, Minor 1 testified that the only other child in the room when these things would happen was Minor 2. R. 189, ll. 19-22. Minor 1 also claimed she often saw Appellant hitting Sarah. R. 194, ll. 1-12. She further claimed that Sarah urinated on Minor 1’s brother a few times. R. 195, ll. 21-24.

During her first forensic interview on September 12, 2019, Minor 1 called Sarah a “sexual and physical abuser.” State’s Exhibit #1. Minor 1 then described the sexual abuse she, Minor 2, and Minor 1’s brother suffered at the hands of Sarah. State’s Exhibit #1. According to Minor 1, Sarah had “sex stuff,” including “ding-a-lings.” State’s Exhibit #1. Sarah would stick these inside Minor 1 and make Minor 1 use them on herself. State’s Exhibit #1. Minor 1 indicated Sarah would make Minor 1 touch Sarah sexually as well – either with her hand or the ding-a-ling. State’s Exhibit #1. Minor 1 believed that Sarah sexually abused her brother because Sarah took him into a room and closed the door. State’s Exhibit #1. Minor 1 was emphatic throughout the first interview that Appellant did not know of this sexual abuse and he was not abusive to her or any of

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<sup>1</sup> During the trial, when the state sought to introduce State’s Exhibit #1, which was digital media containing the first and second forensic interviews of Minor 1, defense counsel renewed his objection by stating, “Previous object as ruled upon.” R. 162, ll. 6-9. Similarly, defense counsel renewed his objection when the state sought to introduce State’s Exhibit #2, which was the forensic interview of Minor 2. R. 162, ll. 20-24. State’s Exhibits #1 and #2 are on file with this Court.

the children. State's Exhibit #1.

On September 25, 2019, a forensic interviewer talked to Minor 1 again. State's Exhibit #1. Minor 1 claimed she lied previously. State's Exhibit #1. According to Minor 1, she lied about Appellant; he did abuse her. State's Exhibit #1. Minor 1 explained that Sarah started sexually abusing her while Appellant was at work. State's Exhibit #1. However, Appellant subsequently joined Sarah in sexually abusing her. State's Exhibit #1.

During this second forensic interview, Minor 1 also claimed that she saw Sarah try to have sex with her brother. State's Exhibit #1. Minor 1 also believed Sarah and Appellant made her brother watch them have sex. State's Exhibit #1. When the forensic interviewer asked if she ever saw Appellant and Sarah make Minor 2 and Minor 1's brother have sex, Minor 1 claimed that once while watching a movie, she saw hands moving under covers. State's Exhibit #1.

Minor 2, Sarah Lacy's biological daughter, described being sexually abused by Appellant, but she claimed Minor 1 would leave the room prior to any abuse occurring. R. 228, l. 23 – R. 229, l. 4. The state played Minor 2's forensic interview, which covered much more ground, for the jury. State's Exhibit #2.

During her forensic interview, Minor 2 graphically described physical abuse allegedly suffered by Sarah at Appellant's hands. State's Exhibit #2. Minor 2 then described being sexually abused by Appellant. State's Exhibit #2. She claimed her mother, Sarah, tried to stop the abuse, but Appellant would hit Sarah in order to continue abusing Minor 2. State's Exhibit #2.

Minor 2 claimed Appellant forced Minor 1's brother to "do it" to Sarah. State's Exhibit #2. She further claimed that Appellant would make all the kids watch him and Sarah have sex. State's Exhibit #2. Minor 2 alleged that Appellant made her – Minor 2 – have sex with Minor 1's brother. State's Exhibit #2. According to Minor 2, Appellant held her while she had sex with the

brother. State's Exhibit #2.

Minor 2 claimed Appellant beat her brother when he urinated on himself. State's Exhibit #2. Appellant would use drop cords to beat them. State's Exhibit #2. Minor 2 even claimed two other children were forced to have sex. State's Exhibit #2.

## **Discussion**

### *Common scheme or plan*

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. Rule 404(a), SCRE. "Rule 404(b) prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial." State v. Perry, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). "In any criminal case, however, evidence the defendant committed similar criminal acts has the inherent tendency to show this propensity." Id. "Proof that a defendant has been guilty of another crime equally as heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty." Id. (internal quotation omitted). "Thus, evidence of a defendant's other crimes serves the prohibited purpose of showing he has a propensity to engage in criminal behavior." Id. In essence, evidence of other bad acts is not admissible to prove a person's guilt; however, such evidence may be admissible to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

"To be admissible, the bad act must logically relate to the crime with which the defendant has been charged." State v. Gaines, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008). "Whether evidence of other distinct crimes properly falls within any of the recognized exceptions noted is often a difficult matter to determine." Lyle, 125 S.C. at 406, 118 S.E. at 807. "The acid test is its logical relevancy

to the particular excepted purpose or purposes for which it is sought to be included.” Id. “[T]he dangerous tendency and misleading probative force of this class of evidence require that its admission should be subjected by the courts to rigid scrutiny.” Id. Judges must resolve the question of admissibility “in the light of the consideration that the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors.” Id. Therefore, “if the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.” Id.

In addition, if the defendant were not convicted of the prior bad act, evidence of the conduct must be clear and convincing. Gaines, 380 S.C. at 29, 667 S.E.2d at 731; State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). “Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. “Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.” State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

Recently, in a trilogy of cases decided on the same day, the South Carolina Supreme Court overruled State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) concerning evidence constituting the common plan or scheme exception found within Rule 404(b), SCRE, in criminal sexual conduct cases. State v. Durant, 430 S.C. 98, 106-107, 844 S.E.2d 49, 53 (2020); State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020); State v. Cotton, 430 S.C. 112, 844 S.E.2d 56 (2020). In order to understand Rule 404(b), SCRE, all three decisions must be read in tandem.

The Court explained that Wallace was an outlier in the case law as it held only a close degree of similarity was necessary to establish the required connection between the prior bad act

and the charged offense. Perry, 430 S.C. at 35-37, 842 S.E.2d at 660-61. According to the Court, “[t]he decision in Wallace effectively created a new rule of evidence, and rendered meaningless the restrictive application of the common scheme or plan exception that is so deeply embedded in our precedent.” Id. After overruling Wallace, the Court explained that in order for the common plan or scheme exception to apply, “the state must demonstrate to the trial court that there is in fact a scheme or plan common to both crimes, and that evidence of the other crime serves some purpose other than using the defendant’s character to show his propensity to commit the crime charged.” Id. at 44, 842 S.E.2d at 664-665.

After ensuring the Bench and Bar were well aware that the logical connection test applies when determining admissibility of other crimes evidence to show common scheme or plan, the Court held evidence of prior bad acts allegedly committed by Perry were not admissible. Id. at 38, 842 S.E.2d at 661. Perry was charged with criminal sexual conduct with two of his daughters. Id. at 27, 842 S.E.2d at 655. First daughter testified that Perry first assaulted her when she was between five and seven years old. Id. She claimed that after the first incident, he would digitally penetrate her early in the morning during her weekend visitations with him. Id. She asserted the assaults often involved physical force, and that Perry threatened she would get into trouble if she told. Id. The assaults stopped when she was sixteen years old. Id. at 27, 842 S.E.2d at 656.

The second daughter claimed the sexual assaults against her started when she was about ten years old. Id. Perry would digitally penetrate her early in the morning. Id. The assaults did not involve any physical force, and they stopped when she turned twelve. Id. Perry had told her not to tell because she would get into trouble. Id. at 28, 842 S.E.2d at 656.

The state introduced the testimony of Perry’s stepdaughter ostensibly under the common plan or scheme exception within Rule 404(b), SCRE. Id. Stepdaughter testified that when she was nine-

years old Perry digitally penetrated her. Id. This occurred periodically over the next four years. Id. The assaults included an incident in the bathtub. Id. She further claimed that Perry told her not tell because no one would believe her. Id. The alleged assaults against Stepdaughter occurred twenty-two to twenty-seven years prior to the offenses for which Perry stood trial. Id.

The Court held the sexual assault of Stepdaughter was “not substantially similar” to the assaults of the biological daughters. Id. at 37, 842 S.E.2d at 661. The assaults started at different ages, occurred within a different frequency, varied regarding use of physical force, and involved different forms of ensuring silence. Id. at 38, 842 S.E.2d at 661-662. The Court was unpersuaded that the dissimilarities in the girls’ ages could be made similar by describing the ages as pre-pubescent. Id. at 39, 842 S.E.2d at 662. The Court was also unpersuaded that the dissimilarity of the locations of the alleged assaults could be made similar by claiming all occurred within the home. Id. Put bluntly and succinctly, the Court held it could not be said that Perry had a “monopoly” on his criminal method simply because of the similarities present: father figure, in the home, in a bedroom, and beginning in the pre-pubescent years. Id. at 40, 842 S.E.2d at 662.

Looking for that logical connection, the Court held there was not any fact in the crimes charged that was made more or less likely to be true by the testimony of the stepdaughter. Id. at 40, 842 S.E.2d at 663. “It is not enough to meet the ‘logical connection’ standard for admission of other crimes under the common scheme or plan exception to Rule 404(b) that the defendant previously committed the same crime.” Id. at 41, 842 S.E.2d at 663. “‘Repetition of the same act or same crime does not equal a ‘plan.’”” Id. (quoting State v. Perez, 432 S.C. 491, 502, 816 S.E.2d 550, 556 (2018) (Hearn, J., concurring). “The common scheme or plan exception demands more. There must be something in the defendant’s criminal process that logically connects the ‘other crimes’ to the crime charged.” Id. See State v. Parker, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993) (holding there was

no connection between the other crime and the charged crime in order to support the common plan or scheme exception where there was only a general similarity between the two); State v. Rivers, 273 S.C. 75, 78, 254 S.E.2d 299, 300 (1979) (holding evidence of prior bad acts should have been excluded where the Court was “[u]nable to clearly perceive the connection between the acts”).

The Court held that the prior acts in dispute were admissible where the defendant “had a particularly unique method of committing his attacks common to all the girls.” State v. Durant, 430 S.C. 98, 106-107, 844 S.E.2d 49, 53 (2020). The Court explained that

Durant exercised his position of trust, authority, and spiritual leadership to hold private prayer meetings with teen girls who had grown up in his church. He told them he was praying for their health and good fortune, and represented that part of this process was touching them sexually and having intercourse. Durant then warned the girls of misfortune if they refused or told anyone. Moreover, he used scripture as a means of grooming the children into performing sex acts.

Id. The Court held that the facts demonstrated the requisite logical connection between the prior acts of sexual abuse and the one forming the basis of the crime charged. Id.

The Court affirmed the admission of prior bad acts where the similarities between the prior acts and current criminal charge were extensive and a logical connection existed. Cotton, 430 S.C. at 114, 844 S.E.2d at 57. Cotton met a young woman online, picked her up in his car to take her on a date, and quickly became aggressive, forcing her to perform oral sex on him in the car. Id. at 113-114, 844 S.E.2d at 57. Then, he drove to a secluded location, threatened to shooting the woman, raped her outside the car, and drove her home. Id. at 114, 844 S.E.2d at 57. The prior bad act evidence consisted of testimony from another woman that she met Cotton online, he picked her up in his car to take her on a date, and he became aggressive quickly. Id. He forced her to perform oral sex on him in the car. Id. He then drove to a secluded location where he raped her. Id. Afterward, he drove her home. Id.

The Court, in Perry, explained its ruling in Cotton: “We affirmed the admission of the

evidence under the common scheme or plan exception. The similarities between the two incidents were extensive. The trial court discussed these similarities at length in its pre-trial ruling. But the ‘other crimes’ evidence in Cotton had more than just similarity.” Perry, 430 S.C. at 43-44, 842 S.E.2d at 664. The trial court supplied a logical connection between the prior bad act evidence and a specific, disputed fact in the case before the jury. Id. The trial court also “conducted an extensive, on-the-record analysis of the balance between the unfair prejudice that would result from the evidence against the probative value in the logical connection.” Id.

Here, the state simply failed to show any logical connection between the prior bad act evidence and the charged offenses. The state alleged Appellant committed sexual batteries against Minor 1 and Minor 2. Whether Appellant physically assaulted Sarah, his co-defendant, was not connected to the alleged sexual assaults at all. There was simply no relationship between the two. Likewise, the testimony regarding Sarah’s sexual contact with Appellant’s son was not connected to the charged offenses. Without question, Minor 2’s claims that she was forced to have sex with Appellant’s son was not related to the offenses for which Appellant stood trial. Frankly, any acts involving the other seven children were unconnected to the charges against Appellant.

The state wanted to present these prior bad acts to convince the jury that Appellant was a sexual deviant, and as such, he had likely committed the charged offenses of sexual battery. According to the state, the children lived in a “house of horrors” created by Appellant and Sarah, which involved sexual assaults between the adults and among even the children, physical beatings between the adults and the adults and the children, lack of sanitation, deficiencies in hygiene, and a general mood of hyper-sexualization. This so-called “house of horrors” was not connected at all to the charged offenses as it had no tendency to prove a fact in dispute or that Appellant committed the charged offenses. The state used the prior bad acts for the very purpose for which they are

prohibited – propensity.

*Res gestae*

Evidence is admissible as part of the *res gestae* of the charged offenses when it provides part of the context of the crime or is necessary to the full presentation of the case or is “intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context.” State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996) (quoting United States v. Masters, 622 F.2d 83, 86 (4<sup>th</sup> Cir. 1980) (internal citations omitted)). A prior bad act is admissible under the theory of *res gestae* when it is “so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other.” Id. See also State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001) (stating “the *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred”); State v. Gilmore, 396 S.C. 72, 83, 719 S.E.2d 688, 694 (Ct. App. 2011) (explaining “the State may prove the actions of the defendant when those actions are part of the crime, not separate”); State v. Adams, 354 S.C. 361, 379-380, 580 S.E.2d 785, 794-795 (Ct. App. 2003) (permitting evidence of other crimes when the evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘*res gestae*’ “or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...’ [and is thus] part of the *res*

*gestae* of the crime charged”).

None of the prior bad act evidence presented by the state was necessary to complete the story of the alleged crimes. Nor was it necessary to prove the immediate context of the crimes. Sarah’s sexual assaults of Appellant’s son had nothing to do with Appellant’s alleged assaults of Minor 1 and Minor 2. There was no context this evidence provided that was related to the charged offenses. The same must be said of the other prior bad act evidence, including the physical assaults and the sex acts performed in front of the other seven children. Most disturbingly, the jury heard Minor 2’s claim that she was forced to have sexual intercourse with Appellant’s son. This evidence was not linked in point of time or circumstances of the crimes charged such that a jury could not understand fully one without the other.

*Danger of unfair prejudice substantially outweighs probative value*

Finally, even if the evidence fit within one of the enumerated exceptions and was proven by clear and convincing evidence, the trial court erred in admitting it as “its probative value was substantially outweighed by the danger of unfair prejudice.” See Rule 403, SCRE. Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE; see also State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011). The first step requires a determination of the probative value of the evidence.<sup>2</sup> The second step requires an evaluation of the danger of unfair prejudice resulting from the introduction of the

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<sup>2</sup> “‘Probative’ means ‘[t]ending to prove or disprove.’” State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). According to this Court, “[p]robative value” is the measure of the importance of that tendency to the outcome of a case.” Id. at 610, 759 S.E.2d at 165. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

evidence.<sup>3</sup> The third step requires balancing of the probative value and unfair prejudice. “When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). Unfair prejudice means an undue tendency to suggestion a decision on an improper basis, commonly, but not necessarily, an emotional one. Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001)); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)( providing that “[e]vidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one”).

Finally, the prior bad act evidence was of low probative value as none of it went to the charged offenses. Rather, the evidence posed a high danger of unfair prejudice as it was used to argue Appellant was of a bad character because he created a “house of horrors” for the children in his care. The evidence posed the high danger of unfair prejudice that the jury would view Appellant’s conduct as propensity evidence. Knowledge of this so-called “house of horrors” allowed the jury to render a verdict on an improper one – an emotional reaction to a chaotic home.

Balancing the low probative value of the prior bad acts against the extremely high danger of unfair prejudice required exclusion of the evidence. The danger of unfair prejudice substantially outweighed the probative value. The trial judge erred in allowing the jury to consider the evidence, which was presented by two live witnesses and in the forensic interviews over several days of the trial. Most importantly, the prior bad acts involving sexual deviancy presented too great a danger of

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<sup>3</sup> “‘Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis.’” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6<sup>th</sup> Cir. 1993)).

unfair prejudice that the jury would use those acts for the improper purpose – of deciding the case on an emotional basis or as propensity evidence. See State v. Cross, 427 S.C. 465, 474, 832 S.E.2d 281, 286 (2019) (describing evidence of a prior sex crime as “exceedingly high” in a criminal sexual conduct trial).

II. The trial judge erred by admitting into evidence a purported medical questionnaire in which the alleged victim of sexual abuse identified Appellant as her abuser where the danger of unfair prejudice substantially outweighed any probative value and where the evidence was needlessly cumulative due to its corroborative nature of the alleged victim's trial testimony.

### **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. Simmons, 423 S.C. 552, 561, 816 S.E.2d 566, 571 (2018) (quoting State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 494-495 (2013)). “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. (quoting Kromah, 401 S.C. at 349, 737 S.E.2d at 494-495). “A trial court has particularly wide discretion in ruling on Rule 403 objections.” State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012); see also State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) (“A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances”).

### **Relevant facts**

Dr. Susan Lamb, a child abuse pediatrician at Prisma Health Midlands, reviewed the work of Nurse Practitioner Shelby Brady, who examined Minor 1 in October of 2019. R. 295, ll. 20-25; R. 305, ll. 4-25; R. 307, ll. 3-5. Minor 1 was eleven-years old at the time. R. 307, ll. 3-5. According to Dr. Lamb, Minor 1 was referred to her office due to concerns of physical abuse, neglect, emotional abuse, and sexual abuse. R. 307, ll. 8-11. Minor 1 “was diagnosed with having experienced sexual abuse there and also being exposed to an environment where there was physical

abuse and other inappropriate behaviors going on.” R. 307, ll. 17-20.

Dr. Lamb explained she and her staff have individuals complete “an adolescent questionnaire kind of based on if the children look like they’re kind of acting more like teenagers at that time, and it does have questions about engaging in any consensual sexual activity.” R. 308, ll. 1-5. The nurse practitioner asked Minor 1 to complete this questionnaire. R. 308, l. 5. See also SUPP R. 1.

When the state sought to introduce the questionnaire as an exhibit, defense counsel objected on the bases of “cumulative and under 403.” R. 309, l. 2. The trial judge overruled the objection, “finding that it is more probative than prejudicial under Rule 403.” R. 309, ll. 3-5. See also SUPP R. 1. Thereafter, Dr. Lamb informed the jury that Minor 1 stated on the questionnaire that she had been sexually abused. R. 309, ll. 12-19. To question #12 on the questionnaire, which was admitted into evidence and in the jury room during deliberations, Minor 1 reported that she had been “sexually abused and had sex with [Appellant].” SUPP R. 1.

The physical exam of Minor revealed a “normal genital exam, normal physical exam,” and she was negative for all sexually transmitted diseases. R. 309, l. 20 – R. 310, l. 3. Nevertheless, Dr. Lamb claimed that a normal genital exam was “absolutely consistent” with the history of sexual abuse reported by Minor 1. R. 310, ll. 4-8. Dr. Lamb then referred to “a study of 500 girls reporting greater than ten penetrative acts,” in which “86 percent of those children had normal exams.” R. 310, ll. 8-13. She claimed that based on this study, “by and large the majority of children will have normal exams even if they have experienced repeated penetration.” R. 310, ll. 13-15.

## **Discussion**

All criminal defendants are entitled to a fair trial. U.S. Const. Amend. VI; S.C. Const. Art. 1, § 14. The South Carolina Rules of Evidence are designed to ensure a fair trial occurs. Pursuant to

those rules, all relevant evidence is generally admissible; however, even relevant evidence must 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. Rule 402, SCRE; Rule 403, SCRE. A determination on the admissibility of relevant evidence requires consideration of the evidence's probative value, the danger of unfair prejudice posed by the evidence – or – the needless presentation of cumulative evidence, and the balancing of those considerations.

#### *Probative value*

When looking at Rule 403, SCRE, the starting point for analyzing evidence under the rule is determining the probative value of the evidence offered. “‘Probative’ means ‘[t]ending to prove or disprove.’” State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). According to this Court, “‘[p]robative value’ is the measure of the importance of that tendency to the outcome of a case.” Id. at 610, 759 S.E.2d at 165. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

#### *Danger of unfair prejudice*

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. “The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.” State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001); see also Matter of Campbell, 427 S.C. 183, 193, 830 S.E.2d 14, 19 (2019). “‘Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a]

decision on an improper basis.” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)).

According to the United States Supreme Court, “[t]he 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.” Old Chief v. United States, 519 U.S. 172, 180 (1997). “Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion.” United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003). Unfair prejudice means an undue tendency to suggestion a decision on an improper basis, commonly, but not necessarily, an emotional one. State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011) (citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001)); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (providing that “[e]vidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one”).

#### *Needless presentation of cumulative evidence*

Even prior to the adoption of the Rules of Evidence, trial courts inherently had the general discretionary power to exclude evidence that was merely cumulative and to limit the number of witnesses to be heard on behalf of a party to establish a single point or proposition of fact. State v. Lyle, 125 S.C. 406, \_\_\_, 118 S.E. 803, 814 (1923). Nevertheless, few reported cases address the propriety of a trial court’s admission or exclusion of evidence on the basis that the evidence was needlessly cumulative.

This Court affirmed a trial judge’s refusal to admit an actual truck into evidence in a trial involving breach of contract and various other civil claims where the trial judge ruled the truck was

needlessly cumulative to other evidence already admitted. Wright v. Craft, 372 S.C. 1, 33-34, 640 S.E.2d 486, 503-504 (Ct. App. 2006). This Court explained that the trial court “admitted a number of photographs of the truck into evidence, and the jurors were allowed to review the photographs as they deliberated.” Id. at 34, 640 S.E.2d at 504. Additionally, “the jurors heard testimony regarding the condition of the truck, both after the accident and at the time of trial.” Id. “Admitting the actual truck itself into evidence would have been cumulative, causing needless waste of time.” Id. Thus, this Court held, the trial court did not abuse its discretion. Id.

In another case reaching the opposite conclusion, this Court held a trial judge’s admission of a photographic lineup, which was cumulative to the witness’s in-court identification of the defendant, was not needlessly cumulative where the “central theme” of the “defense was discrediting [the witness]’s identification” of the defendant. State v. Stephens, 398 S.C. 314, 320, 728 S.E.2d 68, 72 (Ct. App. 2012). By consistently attacking the reliability of the identification, the defendant made the photographic lineup far more important than it might otherwise have been, thereby increasing its probative value. Id. at 321, 728 S.E.2d at 72. “The increased probative value resulting from [the defendant]’s attacks on the reliability of [the witness]’s identification also means the photos were not ‘needlessly’ cumulative.” Id.

### *Balancing act*

Once a court has determined the probative value and the danger of unfair prejudice of evidence – or the cumulative nature of the evidence – the court must balance these considerations. State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013). “When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). Only after balancing the probative value and the danger of unfair prejudice – or the

cumulative nature of the evidence – may the court determine if the danger of unfair prejudice outweighs the probative value of the proffered evidence as required by Rule 403, SCRE, or if the presentation of cumulative evidence is needless.

#### *Analysis*

Applying this analytical framework to the present case reveals that balancing of the low probative value of the improperly corroborative evidence offered by the state and the extreme danger of unfair prejudice posed by the evidence necessitated the exclusion of the questionnaire. The framework also reveals the evidence was unquestionably cumulative – and needlessly so.

The starting point for determining the probative value, danger of unfair prejudice, and cumulative nature of the evidence is with the ultimate issue before the jury. The question before the jury was – did Appellant commit a sexual battery against his daughter, Minor 1? Although Minor 1's statement on the questionnaire was relevant and probative of this question, the questionnaire was unnecessary as the same evidence was presented through the testimony of Minor 1, her forensic interviews, and the testimony of Sarah Lacy. Thus, the questionnaire was undisputedly cumulative to other evidence presented. Furthermore, the questionnaire was needlessly cumulative as there was no need to use the evidence to buttress Minor 1's identification of her father, Appellant, as there was in Stephens, supra. The questionnaire served no purpose other than to show Minor 1 previously and consistently accused Appellant of sexual misconduct.

The danger of unfair prejudice from questionnaire is very high in the present case. While not directly on point, the case law in South Carolina regarding hearsay related to criminal sexual conduct cases as well as the medical diagnosis exception to hearsay provide guidance when determining exactly the danger of unfair prejudice posed by the questionnaire.

A statement is not hearsay if the declarant testifies at the trial, is subject to cross-examination

concerning the statement, and the statement is “consistent with the declarant’s testimony in a criminal sexual conduct case ... where the declarant is the alleged victim and the statement is limited to the time and place of the incident.” Rule 801(d)(1)(D), SCRE. The Supreme Court made clear the necessity of the statement remaining limited to time and place of the alleged incident. Jolly v. State, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994). If the statement goes beyond time and place, then it is hearsay and in order to be admissible, it must fall within one of the exceptions to the general rule against hearsay. State v. Burroughs, 328 S.C. 489, 497, 492 S.E.2d 408, 412 (Ct. App. 1997) (citing Rule 802, SCRE). This limitation on the hearsay exception illustrates the substantial danger of unfair prejudice when an out-of-court statement made by one alleging sexual abuse goes beyond time and place of the alleged abuse. Here, Minor 1’s statement on the questionnaire specifically named Appellant (her dad) as the abuser. The out-of-court statement provided through the questionnaire violated Rule 801(d)(1)(D), SCRE, as it exceeded the time and place limitation.

South Carolina case law points to prosecutors attempting to circumvent the hearsay rules regarding identity of alleged perpetrators through the medical diagnosis exception to hearsay. When a statement is “made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment,” it is allowed into evidence as an exception to the rule against hearsay. Rule 803(4), SCRE. “A physician’s testimony as to a patient’s history should only include those statements related to him by the patient upon which the physician relied in reaching medical conclusions.” State v. Camele, 293 S.C. 302, 304-305, 360 S.E.2d 307, 308 (1987).<sup>4</sup>

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<sup>4</sup> See also State v. Watkins, 92 A.3d 172, 187-188 (R.I. 2014) (providing that whether a statement is admissible under the medical diagnosis exception depends on whether what was related by the patient “will assist or is helpful in the diagnosis or treatment” of the patient’s illness and holding “the simple

The Supreme Court explained that a patient's history as told to the doctor is admissible only as to the information upon which the doctor relied in reaching his professional opinion. State v. Brown, 286 S.C. 445, 446, 334 S.E.2d 816, 816-817 (1985) (citing Gentry v. Watkins-Carolina Trucking Co., 249 S.C. 316, 154 S.E.2d 112 (1967)). In Brown, the doctor told the jury that the child-patient stated "Mr. Carl" performed certain sex acts on her. The Court held defense counsel's objection to the perpetrator's identity as unnecessary for diagnosis or treatment should have been sustained. Id. at 446, 334 S.E.2d at 817. Further, the Court stated "[t]he perpetrator's identity would rarely, if ever, be a factor upon which the doctor relied in diagnosing or treating the victim." Id. at 447, 334 S.E.2d at 817. Therefore, "[a] doctor's testimony as to history should include only those facts related to him by the victim upon which he relied in reaching his medical conclusions. The doctor's testimony should never be used as a tool to prove facts properly proved by other witnesses."

Id.<sup>5</sup>

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fact that a statement could be helpful in diagnosis is not in itself sufficient for admission under Rule 803(4); there must be a proper foundation establishing that the challenged statements were in fact made for purpose of treatment or diagnosis"). "The rationale for the exception is that a patient has a strong motivation to be truthful about information that will form the basis of his diagnosis and treatment, making statements in this regard inherently trustworthy." Tracy A. Bateman, Admissibility of Statements Made for Purposes of Medical Diagnosis or Treatment as Hearsay Exception under Rule 803(4) of the Uniform Rules of Evidence, 38 A.L.R.5<sup>th</sup> 433; see also United States v. Iron Shell, 633 F.2d 77, 83-84 (8th Cir. 1980)(explaining the "rationale behind the rule" is its focus on the patient and its reliance "upon the patient's strong motive to tell the truth because diagnosis or treatment will depend in part upon what the patient says. It is thought the declarant's motive guarantees trustworthiness sufficiently to allow an exception to the hearsay rule").

<sup>5</sup> See also State v. Camele, 293 S.C. 302, 304-305, 360 S.E.2d 307, 308 (1987) (holding a doctor's testimony that the alleged victim of sexual assault told the doctor that the defendant committed the assault was error "because the statement implicating the [defendant] did not assist in her finding that the child had been sexually abused"); State v. Burroughs, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997) (holding the testimony of a nurse that the alleged victim of a sexual assault told the nurse that her assailant asked for a hug before the assault "in no way can be viewed as 'reasonably pertinent' to the victim's diagnosis or treatment"); State v. Simmons, 423 S.C. 552, 564, 816 S.E.2d 566, 573 (2018) (holding a doctor's testimony regarding whom a child named as an alleged abuser was not made for purposes of medical diagnosis or treatment).

Particularly helpful for determining the danger of unfair prejudice in this case is the harmless error analysis conducted by the state appellate courts related to the inadmissible hearsay in the cases discussed supra. The Supreme Court held the erroneous admission of identification hearsay testimony was not harmless where there was no physical evidence in the case and the state's only evidence was the children's account of what occurred. State v. Simmons, 423 S.C. 552, 564, 816 S.E.2d 566, 573 (2018). This Court found the admission of inadmissible hearsay was not harmless where the alleged victim's testimony was "extremely crucial" to the outcome of th[e] case regarding the alleged sexual relationship between her and Vail, and there was otherwise an absence of overwhelming evidence of Vail's guilt." Vail v. State, 402 S.C. 77, 91, 738 S.E.2d 503, 511 (Ct. App. 2013).

In a similar case, the Supreme Court held a defendant suffered prejudice where his lawyer failed to object to improper corroborative evidence related to a forensic interview. Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). The Court explained Smith was prejudiced by the failure because the outcome of the case hinged on the alleged victim's credibility regarding identification of the perpetrator, and there was otherwise an absence of overwhelming evidence of guilt. Id. at 568-569, 689 S.E.2d at 633. According to the Court, "[t]he forensic interviewer's hearsay testimony impermissibly corroborated the victim's identification of Smith as the assailant, and the forensic interviewer's subsequent opinion testimony improperly bolstered the victim's credibility." Id. The Court was convinced of the prejudicial nature of the testimony due to the prosecutor's heavy reliance on it during closing argument "to overcome inconsistencies" in the alleged victim's testimony. Id. There was "no valid claim of overwhelming evidence of Smith's guilt" in the case. Id. The Court determined that confidence in the outcome was undermined due to the weak case against Smith and the corroborative nature of the improperly admitted testimony. Id.

Here, the questionnaire served to show Minor 1 had consistently identified Appellant as

someone who sexually abused her. This presented the danger of unfair prejudice that is inherent in evidence cumulative to the alleged victim's testimony. It is precisely the cumulative effect that enhances the devastating impact of improper corroboration evidence. See Thompson v. State, 423 S.C. 235, 248-249, 814 S.E.2d 487, 494 (2018) (citing State v. Barrett, 299 S.C. 485, 487, 386 S.E.2d 242, 243 (1989)). The low probative value of the questionnaire was substantially outweighed by this danger of unfair prejudice. The trial judge erred by allowing the jury to consider it.

III. The trial judge erred by allowing an expert witness describe the contents of photographs allegedly found on Appellant's phone, specifically of an erect penis, pornographic images involving bondage downloaded from the internet, and pornographic "photographs of very young women" downloaded from the internet, where the judge concluded the danger of unfair prejudice from the photographs themselves outweighed any probative value offered by the photographs.

### **Standard of review**

As previously mentioned, the admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “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.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013). Furthermore, “[a] trial court has particularly wide discretion in ruling on Rule 403 objections.” State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012); see also State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) (“A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances”).

### **Relevant facts**

Paula Stevens, an officer with the Fort Mill Police Department, who was qualified as an expert in digital forensics by the trial judge, extracted and processed digital information obtained from Appellant's cell phone. R. 275, ll. 17-22; R. 278, ll. 1-3; R. 280, ll. 2-16. Based on her knowledge of the investigation, Stevens “tagged” information from the extraction that she found “interesting.” R. 281, ll. 21-25. When the state offered the phone extraction into evidence, defense counsel objected because the defense was “not sure exactly what's being moved into evidence as

far as what kind of images or pictures or anything.” R. 284, ll. 1-7. With no elaboration, the judge overruled the objection. R. 284, l. 8.

Stevens then described items that she found of interest on the phone’s extraction. First, she found a “live photograph,” which was “actually a short video clip” of “an erect penis and a flash, and there is a couch in the background with what potentially could be a child’s face behind the couch.” R. 284, l. 11 – R. 285, l. 3. She also tagged “four photos that had an erect penis with a blanket over it.” R. 285, ll. 4-6. She noticed that the next photograph was within the same time period based on the time stamp. R. 285, ll. 6-7. The next photograph showed “two children underneath a similar blanket at the same time that photograph - - roughly the same time that photograph was being taken.” R. 285, ll. 7-10. Stevens had no idea to whom the erect penis belonged. R. 285, ll. 11-13. However, she claimed the “live photographs” were user generated and not downloaded from the internet. R. 287, ll. 4-10.

Stevens also claimed there was pornography, including pornography involving bondage, on the phone. R. 286, ll. 2-6. The bondage photographs showed females who were “either tied up or bound in some type of way during a sexual act.” R. 286, ll. 7-10. Furthermore, there were “visual images and pornography of very young looking women ... where it would say teen porn as kind of the dot com at the bottom.” R. 286, ll. 11-14. These images were “downloaded from a public facing pornography website.” R. 287, ll. 11-16.

When the solicitor attempted to publish the actual images that were “tagged for interest” by Stevens, she was unable to get the technology to work. R. 291, ll. 8-10. The solicitor had Stevens describe the photo of the “erect penis with a couch in the background with what appeared to potentially be a child’s face behind the arm of the couch” yet again. R. 290, l. 23 – R. 291, l. 1. Realizing the technological problem, the solicitor commented, “She’s described it in her testimony

and that might be what I have to do.” R. 291, ll. 12-13.

Later, defense counsel received the trial judge’s permission to address the photographs seized from the phone through the extraction that the solicitor intended to publish, after having worked out the technical glitch. R. 366, ll. 19-22. Defense counsel clarified the previous objection – “one, we weren’t entirely sure what was going to be presented,” and two, counsel objected to the photographs the solicitor intended to publish to the jury “under 402 as irrelevant, and 403, more prejudicial than probative in this matter.” R. 366, l. 23 – R. 367, l. 4. Counsel elaborated, “It’s a picture of a penis. There’s allegations that he looked at pornography, ... and a child that is in one of these pictures where he is displaying his penis.” R. 367, ll. 4-7. The alleged child in the photograph was “not one of the children that is a victim of the cases that [were being tried].” R. 367, ll. 7-10.

The trial judge then had the solicitor mark the photographs for identification purposes only so that he could examine them and make a ruling on the objection. R. 367, ll. 17-25; State’s Exhibits #27, #28, #29, #30, & #31. After another witness testified on behalf of the state, the judge made his ruling on the admissibility of the actual photographs. The judge concluded that based upon his review of the photographs, he would not allow any of them to be admitted into evidence “under a Rule 403 analysis.” R. 388, ll. 13-15. After hearing the judge’s ruling, the solicitor remarked, “I think that the testimony of the digital forensic expert was enough.” R. 388, ll. 16-17.

During her closing argument, the solicitor relied heavily upon the “[e]xpert digital forensics” presented in the case. R. 410, ll. 11-12. The solicitor recalled for the jury Stevens’ testimony of “an erect penis being stimulated and what appeared to be a child’s face in the background behind the couch.” R. 410, ll. 13-16. According to the solicitor, there was “another one with a timestamp with an erect penis and a bedspread showing children in the bed where

someone was stimulating their penis sleeping at the same time.” R. 410, ll. 16-19. Stevens, the solicitor reminded the jury, said the image “was a picture that whoever had the phone took.” R. 410, ll. 20-22. Sarcastically, the solicitor argued, “Well, maybe he let someone else borrow his phone so they could record their penis with his children, you can definitely believe that happened.” R. 410, ll. 22-25.

### **Discussion**

The South Carolina Supreme Court set out the framework for a proper Rule 403, SCRE, analysis several years ago. State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014). As described *supra*, the trial court must examine the specific probative value and determine whether the unfair prejudice substantially outweighs such value. Id. at 534-537, 763 S.E.2d at 28-29. The Collins Court emphasized that simple prejudice is not sufficient, but the objecting party must show *unfair* prejudice. Id.

Although the actual photographs were not admitted into evidence, the jury heard and considered Stevens’ graphic description of the photographs. The jury was led to believe that Appellant had a photograph of his erect penis on his phone and that at least one of his children were very near the vicinity of his erect penis due to the child’s image in the background of a photograph and the time stamp on other photographs. Further, the jury was led to believe that Appellant was a sexual deviant based upon pornography, bondage pornography, and potential child pornography on his cell phone. The solicitor capitalized on this erroneously admitted evidence in her closing to paint Appellant as subhuman. Such highly inflammatory propensity evidence is inadmissible under Rule 403. See State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998).

While Nelson concerns the inadmissibility of character evidence, it explains the inflammatory nature of the unfair prejudice in this case. In Nelson, the state prosecuted the Nelson

for molesting a three year old child. Id. The state introduced evidence that portrayed the Nelson as a pedophile. Examples of the evidence were videotapes of the Mr. Knozit show, Save the Children advertisements, a photo album of young girls, and Nelson's membership in the Punky Brewster fan club. Id. "Punky Brewster" was a sitcom from the time featuring a child actress in the titular role as Punky Brewster. Id.

None of the evidence improperly admitted in Nelson was pornographic, but the Court reversed because it was only reflected "on an aspect of [Nelson]'s character, i.e. that he is a pedophile." Id. The evidence here is far more unfairly prejudicial than photo albums and a fan club membership. Furthermore, the description of the photographs was presented through an expert in digital forensics. Her testimony carried with it the "imprimatur of an expert witness" heightening the danger of unfair prejudice. See State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). The trial judge erred by allowing Stevens, the state's expert in digital forensics, to describe inadmissible photographs, involving pornography and sexual deviancy, found on Appellant's cell phone to the jury.

IV. In violation of Appellant's federal and state constitutional right to confrontation, the trial judge erred when he placed Appellant in a position in the courtroom so that two witnesses could not see Appellant when the witnesses testified, without any evidence to support the necessity of moving Appellant.

#### **Standard of review**

Appellant has been unable to find a case discussing the standard of review to be used by appellate courts when reviewing a trial court's violation of a defendant's right to be present at all critical stages of the trial by physically placing the defendant within the courtroom so that multiple witnesses cannot see the defendant. However, Appellant has found cases discussing the standard of review used when reviewing other aspects of violations of the Confrontation Clause. Those cases employ an abuse of discretion standard. See State v. Ravenell, 387 S.C. 449, 454, 692 S.E.2d 554, 557 (Ct. App. 2010) (stating that in criminal cases, the appellate court sits to review errors of law only regarding trial in absentia); State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008) (applying an abuse of discretion standard to a challenge to a defendant's ability to present a defense).

Although not directly on point as this case involves a violation of the right to confrontation based upon the placement of Appellant in the courtroom in a position in which the witnesses could not see him at all, the standard of review in a case concerning a trial judge allowing videotaped or closed-circuit testimony is instructive. The Supreme Court held that "[a] trial court's decision to allow videotaped or closed-circuit testimony is reversible only if it is shown that the trial judge abused his discretion in making such a decision." State v. Bray, 342 S.C. 23, 27, 535 S.E.2d 636, 639 (2000) (internal quotation omitted). See also State v. Johnson, 422 S.C. 439, 449, 812 S.E.2d 739, 744 (Ct. App. 2018) (explaining that where there is evidence to support a trial court's ruling

to allow testimony via two-way video, it will not be overturned for an abuse of discretion)

### **Relevant facts**

The state's key witnesses were Minor 1 and Minor 2. After the opening statements, the trial judge indicated that he was going to move Appellant's physical position within the courtroom "when the children testify." R. 75, ll. 2-11. The trial judge recognized that Appellant had "a right of confrontation," and claimed he was "not going to disturb that right." R. 75, ll. 2-11. The judge claimed he was "going to modify [Appellant's right to confrontation] just a bit." R. 75, ll. 2-11. Specifically, the judge was going to ask that Appellant sit where an investigator was seated when Minor 1 and Minor 2 testified. R. 75, ll. 2-11. The judge surmised this would be "in the best interest of the children." R. 75, ll. 2-11. Further, the judge declared that in this way "he is able to see and able to confront, in air quotes," as far as the judge was concerned. R. 75, ll. 2-11.

Trial counsel noted that based on the position of the defense table, he did not think Appellant could be seen from the witness stand as it was. R. 75, ll. 13-18. Trial counsel objected to moving Appellant by offering to keep Appellant at the end of the table, which was practically in the grand jury box. R. 75, ll. 13-18. Based on this objection, trial counsel agreed to decide later. R. 75, ll. 19-20. However, the judge noted that he had moved a defendant before "on cases that have gone up the appellate route," and even had "people turn around and look the other way." R. 76, ll. 2-9. Based upon these experiences, the judge believed "this [was] in [his] discretion" and he did not want the children "to make eye contact" with Appellant. R. 76, ll. 2-9.

The state argued that moving Appellant to a position in which the key witnesses could not see him was not a violation of "any form of confrontation" because, in the state's view, "[c]onfrontation [concerned] his ability to, you know, talk to the lawyer, assist with cross examination, he does not have to be glaring into the eyes of the children." R. 76, ll. 10-14.

Immediately prior to Minor 1's testimony, the trial judge, as promised, moved Appellant's physical position within the courtroom. R. 172, l. 22 – R. 173, l. 22. The jury then heard from Minor 1 and Minor 2 while Appellant sat in a position in which the witnesses could not see him.

### **Discussion**

One of the most basic rights contained in the Confrontation Clause of the Sixth Amendment of the United States Constitution is the right to be present at all stages of criminal proceedings. Illinois v. Allen, 397 U.S. 337, 338 (1970). Additionally, the right is guaranteed by the South Carolina Constitution:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

S.C. Const. art. I, § 14. Further, section S.C. Code Ann. § 17-23-60 states: "Every person accused . . . shall have a right to . . . meet the witnesses produced against him face to face."

"[T]he Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." Coy v. Iowa, 487 U.S. 1012, 1016 (1988). The "literal right to 'confront' the witness at the time of trial" forms "the core of the values furthered by the Confrontation Clause." California v. Green, 399 U.S. 149, 157 (1970). The Confrontation Clause protects a criminal defendant's "right physically to face those who testify against him." Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987). "[T]here is something deep in human nature that regards face-to-face confrontation between accused and accuser as 'essential to a fair trial in a criminal prosecution.'" Coy, 487 U.S. 1012. "It is always more difficult to tell a lie about a person 'to his face' than 'behind his back.'" Id. at 1019. "The phrase still persists, 'Look me in the eye and say that.'" Id. at 1018. "The Confrontation Clause does not, of course, compel the witness to

fix his eyes upon the defendant; he may studiously look elsewhere, but the trier of fact will draw its own conclusions.” Id. at 1019.

#### The Confrontation Clause:

(1) insures that the witness will give his statements under oath—thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the ‘greatest legal engine ever invented for the discovery of truth’; [and] (3) permits the jury that is to decide the defendant’s fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility.

Green, 399 U.S. at 158 (footnote omitted). Together, these “elements of confrontation” serve to safeguard “that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo-American criminal proceedings.” Maryland v. Craig, 497 U.S. 836, 846 (1990). “[F]ace-to-face confrontation enhances the accuracy of factfinding by reducing the risk that a witness will wrongfully implicate an innocent person.” Id. Without question, United States Supreme Court precedent establishes that the Confrontation Clause reflects a preference for physical face-to-face confrontation. Id. at 849. “That the face-to-face confrontation requirement is not absolute does not, of course, mean that it may easily be dispensed with.” Id. at 850.

In a case similar to the instant one, the United States Supreme Court held the state trial court erred it forced the defendant to be behind a screen when his accusers testified. Coy, 487 U.S. at 1020. Coy was charged with sexually assaulting two thirteen-year-old girls. Id. at 1014. Relying upon a state statute, the trial court approved the use of a large screen to be placed between Coy and the witness stand during the girls’ testimony. Id. The screen enabled Coy to see the witnesses, but the witnesses could not see him at all. Id. at 1015. In answering whether Coy’s right to confrontation was in fact violated by the screen, which was specifically designed to enable the complaining witnesses to avoid viewing Coy as they testified, the Court held it was “difficult

to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter." Id. at 1020.

The Court rejected the state's argument that the confrontation interest was outweighed by the necessity of protecting victims of sexual abuse. Id. at 1020-1021. Leaving for another day the question of whether exceptions to the holding that the Confrontation Clause requires face-to-face confrontation, the Court explained that any exceptions "would surely be allowed only when necessary to further an important public policy." Id. at 1021. The Court rejected an argument that such an important public policy was satisfied by the Iowa statute permitting such testimony as it "could hardly be viewed as firmly rooted" having been passed in 1985. Id. The Court also noted that because "no individualized findings that these particular witnesses needed special protection, the judgment here could not be sustained by any conceivable exception." Id.

In Maryland v. Craig, 497 U.S. 836, 844 (1990), the United States Supreme Court reached the question left open in Coy – whether any exceptions exist to the face-to-face requirement of confrontation. More precisely, in Craig, the Court addressed the constitutionality of Maryland's statutory procedure that allowed a child victim to testify without seeing the defendant via a one-way closed-circuit television. Craig, 497 U.S. at 841. The Court held that "a state's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court." Id. at 853.

After reviewing the history and purpose of the Confrontation Clause, the Craig Court held that "a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial *only* where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured." Id. at

850 (emphasis added). The Court explained that “if the state makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.” Id. at 855. In applying this two-pronged standard, the trial court is required to make a fact-specific finding of necessity in order to allow substitution of video for live testimony. Id. at 855-56 (“The requisite finding of necessity must of course be a case-specific one.”). “The trial court must hear evidence and determine whether use of [the special procedure] is necessary to protect the welfare of the particular child witness who seeks to testify.” Id. at 855. “The trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant.” Id. at 856. “Denial of face-to-face confrontation is not needed to further the state interest in protecting the child witness from trauma unless it is the presence of the defendant that causes the trauma.” Id. “Finally, the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis*, i.e., more than ‘mere nervousness or excitement or some reluctance to testify.’” Id.

The South Carolina Supreme Court addressed whether the trial court’s factual findings regarding the necessity of a child witness to testify via closed-circuit television were supported by sufficient evidence. State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000). The South Carolina Legislature adopted a statute mandating that courts “treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate.” S.C. Code Ann. § 16-3-1550(E). In Bray, the trial judge allowed an alleged victim of child sexual abuse testify using closed-circuit television. Id. at 26-27, 535 S.E.2d at 638. The

Supreme Court reversed because the trial judge failed to set for case-specific reasons for using the procedure. Id. at 31, 535 S.E.2d at 641.

First, the Court explained the procedure a trial court must use when attempt to protect a child witness. Id. at 29, 535 S.E.2d at 640. The “trial judge must make a case-specific determination of the need for videotaped testimony. In making this determination, the trial court should consider the testimony of an expert witness, parents or other relatives, other concerned and relevant parties, and the child.” Id. (quoting State v. Murrell, 302 S.C. 77, 81, 393 S.E.2d 919, 921 (1990)). Bray’s trial judge granted the state’s request for a special procedure based upon a finding of a young child who was molested and the testimony of the child’s mother and an expert that showed the child’s family, except for the mother, did not believe the child. Id. at 30, 535 S.E.2d at 640. The Court rejected the notion that one reasonable inference to be drawn from the judge’s statements was a finding that the alleged victim would be harmed by testifying in the presence of Bray. Id. The Court was “unable to ascertain precisely the basis of the trial court’s ruling.” Id.

Although there was evidence indicating the alleged victim was afraid of testifying in the presence of Bray, there was more generalized testimony concerning her fear of the courtroom and other relatives. Id. at 30-31, 535 S.E.2d at 640. Due to the failure of the trial court to set forth case-specific findings of fact supported by evidence presented, the Supreme Court reversed and remanded for a new trial. Id. at 31, 535 S.E.2d at 640. While not mandating it, the Court reiterated “that the better practice in these cases, when possible, is for the trial judge to personally interview the child witness prior to determining whether use of CCTV is necessary.” Id. at 31, 535 S.E.2d at 641. See also State v. Lewis, 324 S.C. 539, 548, 478 S.E.2d 861, 866 (Ct. App. 1996) (reversing a trial court’s ruling allowing a child witness to testify via closed-circuit testimony where the

witness testified she would be scared to talk about private things if Lewis were present and she would be nervous or uncomfortable to have Lewis present as this failed to show more than *de minimis* risk of trauma); State v. Rogers, 293 S.C. 505, 507-508, 362 S.E.2d 7, 8 (1987), overruled on other grounds by State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (reversing where the trial judge allowed a witness to testify via videotape without an evidentiary showing of necessity; the judge's general remarks about children feeling uncomfortable testifying in open court in these types of cases was not sufficient).

In addition to the requirement of a case-specific determination for the need of alternative testimony, the trial court must "place the child in as close to a courtroom setting as possible." State v. Murrell, 302 S.C. 77, 80-81, 393 S.E.2d 919, 921 (1990). Finally, "the defendant should be able to see and hear the child, should have counsel present both in the courtroom and with him, and communication should be available between counsel and [the defendant]." Id.

The South Carolina Supreme Court found no violation of a defendant's right to confrontation where the trial judge required the defendant sit at the far end of the defense table where the children who were testifying could not see her as they testified. State v. Lopez, 306 S.C. 362, 365-366, 412 S.E.2d 390, 392-393 (1991). The Court held the state made an adequate showing of necessity for the alternative procedure to be employed. Id. The state introduced a letter from a psychologist suggesting the children not testify, but requesting safeguards if the children did so. Id. at 364, 412 S.E.2d at 391. The state also "testified without objection that another expert had also concluded the children would be traumatized by testifying in front of Lopez." Id. at 366, 412 S.E.2d at 392. Finally, the judge personally interviewed the children. Id. Thus, the Court concluded there was adequate evidentiary support for the trial court's finding of the necessity of instituting a procedure to prevent the children witnesses from testifying while face-

to-face with Lopez. Id. at 366, 412 S.E.2d at 393. See also In the Interest of Cisco K., 332 S.C. 649, 654-655, 506 S.E.2d 536, 539 (Ct. App. 1998) (affirming the family court’s reliance on the testimony of an expert witness regarding the necessity of using closed-circuit television for testimony); cf. State v. Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct. App. 2018) (addressing the Confrontation Clause where a witness testifies via two-way video testimony).

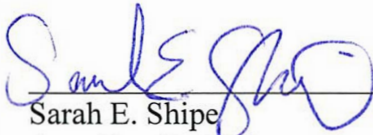
While a violation of the Confrontation Clause in this matter is subject to harmless error pursuant to Chapman v. California, 386 U.S. 18 (1967), the “assessment of harmlessness cannot include consideration of whether the witness’s testimony would have been unchanged, or the jury’s assessment unaltered, had there been confrontation; such an inquiry would obviously involve pure speculation, and harmlessness must therefore be determined on the basis of the remaining evidence.” Coy, 487 U.S. at 1021-1022. See also State v. Lewis, 324 S.C. 539, 551-552, 478 S.E.2d 861, 867-868 (Ct. App. 1996) (holding the state failed to show a violation of Lewis’s right to confrontation was harmless beyond a reasonable doubt where the child’s testimony was “the heart of the state’s case”).

On remand, the Iowa Supreme Court held the error in allowing the minor witnesses in a criminal sexual conduct case to testify behind a screen, which prevented the witnesses from seeing the defendant was not harmless beyond a reasonable doubt. State v. Coy, 433 N.W. 2d 714, 714 (Iowa 1988). The court noted the witnesses’ testimony was the only direct evidence of Coy’s guilt. Id. With that evidence stricken, the remaining evidence was all circumstantial and merely connected Coy to the offenses. Id. Although the court concluded the circumstantial evidence was “persuasive,” the evidence was not “overwhelming.” Id. According to the court, “[t]he remaining evidence was clearly not so overwhelming that it can be said beyond a reasonable doubt that the defined error did not contribute to the jury’s finding of guilt.” Id.

Here, the state made no showing that alternative procedures were necessary in order for Minor 1 and Minor 2 to testify as required by controlling law from the United States Supreme Court and the South Carolina Supreme Court. The trial judge failed to make any fact-specific findings to justify the special procedure he employed that prevented the witnesses from seeing Appellant as they testified. There was absolutely no evidence presented that the children would suffer trauma from testifying while face-to-face with Appellant, and likewise, there was no finding of this kind by the trial judge. There was absolutely no evidence presented that the special procedure was necessary to protect the welfare of the particular witnesses, and likewise, there was no finding of this kind by the trial judge. Although the judge indicated he was acting “in the best interest of the children” by requiring Appellant not be seen by the witnesses, there was no evidence in the record to support his comment. The judge simply did not want the children to make eye contact with Appellant, and he believed it was completely within his discretion to move Appellant so that eye contact would not be made because he had acted in this fashion in other cases that had gone up on appeal. The judge’s decision here runs contrary to controlling precedent, and it must be reversed.

**CONCLUSION**

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 3<sup>rd</sup> day of April, 2023.

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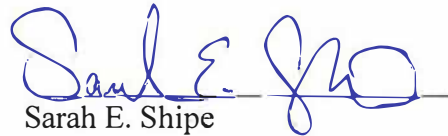
**Apr 03 2023**

**SC Court of Appeals**

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."

April 3, 2023



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County  
Brian M. Gibbons, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

BRADLEY MARK CORLEW,

Appellant.

Appellate Case No. 2021-000989

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**FINAL BRIEF OF RESPONDENT**

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**RESPONDENT'S STATEMENT OF ISSUES ON APPEAL****I.**

The trial court did not err in admitting evidence that was res gestae of the crimes, and all the charged conduct and contemporaneous extrinsic acts were part of the common scheme or plan to subject both Appellant's children and his accomplice's children to a continuous cycle of sexual assault and abuse to serve Appellant and his accomplice's insatiable appetite for sexual depravity.

**II.**

The trial court did not err in allowing a medical questionnaire with Daughter's written answers into evidence and Appellant was not prejudiced since the objected to sentence was cumulative to the forensic interview from nineteen days earlier.

**III.**

Appellant did not object to testimony describing photographs found on his phone, and when the trial court later in the trial sustained his objection to the photographs being introduced into evidence, Appellant did not move to strike prior testimony or ask for further relief, therefore Appellant received the relief requested. Any error is harmless in light of the overwhelming evidence of guilt.

**IV.**

The record fails to support Appellant's claim that Appellant was seated where the victims were completely unable to see him, and nonetheless Appellant's counsel acquiesced in Appellant's final seating arrangement.

### **STATEMENT OF THE CASE**

Appellant was tried and the jury convicted him for criminal sexual conduct in the first degree, criminal sexual conduct in the second degree, and incest at the conclusion of the trial before the Honorable Brian M. Gibbons on August 30 – September 2, 2021. The two victims were Applicant's own daughter (Daughter) and his girlfriend and accomplice, Sarah Lacy's daughter (Sarah's daughter). Judge Gibbons sentenced Appellant to life imprisonment for first degree criminal sexual conduct, twenty years' imprisonment for the second degree offense, and ten years' imprisonment for incest.

## STATEMENT OF FACTS

Chester Police Officer Keesha Tobias was the first witness for the State. She testified the Rock Hill Police Department contacted the Chester City Police Department, referring a possible domestic violence incident reported by Sarah Lacy (Sarah). Officer Tobias met with Sarah on August 22nd or 23rd – Sarah brought her four minor children with her. Sarah complained she was abused by her live-in boyfriend with her minor children in the home. When asked by the prosecutor, Officer Tobias testified Sarah said the abuser's name was Brad Corlew. R. pp. 78-80.

However, the conversation eventually changed from the discussion of mere domestic violence to some self-incriminating statements on Sarah's part, including reports of sexual abuse against the children. Sarah's children were taken into protective custody. R. pp. 80-81; pp. 86-87. Officer Tobias explained:

[Sarah] said sexual abuse had taken place against her children, she, you know, openly admitted to that in a statement form and verbally on body cam. She said that some of her children and other children have been isolated in rooms without food sometimes. Sexual abuse. Physical abuse, attacking the children, beating the children for not doing something.

R. p. 87, lines 6-12. Sarah identified Appellant as the person committing the abuse. R. p. 57, lines 13-17. Officer Tobias learned Appellant had five children of his own and learned those children were now living with Heather Judd. R. pp. 91-93.

Appellant's daughter (Daughter) was thirteen years' old at the time of trial and she now lived with her grandparents. She is the oldest of five siblings. Appellant is her biological father. She did not have a relationship with her biological mother. Samantha Corlew, Appellant's wife who died in 2017, was like a mother to her. R. pp. 165-80. After Samantha died, the family moved from Chester to Florida to live with a relative. However, Appellant started a relationship with Sarah Lacy. She

and her children moved with Appellant and his children back to Chester. R. pp. 181-82.

Daughter testified Appellant and Sarah would have sex on the sofa in front of her and invite her to join in. She refused. They started bringing her in bed with them, with her in the middle so they both could probe her body, touching her breasts and vagina, both with and without clothes on. At first, the contact was outside her vagina, but later the contact included digital penetration. They made her touch Appellant's penis and Sarah's vagina. Appellant started having intercourse with Daughter. Sometimes Appellant became frustrated by the difficulty he encountered in achieving penile penetration of his daughter: "I mean, he would get mad at me sometimes because I couldn't take it and he said that 'you should be able to,' and stuff like that." R. p. 187, line 10 – p. 188, line 8. The intercourse happened a lot and additionally, Sarah inserted sex toys inside Daughter's vagina and butt. Appellant also used the sex toys on Daughter. R. p. 188. When asked if she considered telling anybody about the sexual abuse, Daughter explained, "I didn't really think about it, because like the way my dad made it sound was that it was like normal to do." R. p. 189, lines 10-16.

Daughter testified Sarah's daughter was also present sometimes, and she saw Appellant and Sarah use sex toys on Sarah's daughter too. Appellant tried vaginal penile penetration with Sarah's daughter but "she couldn't take it." R. pp. 189-90. Sarah took pictures and videos of Daughter's vagina. Daughter believed she sent the pictures to Appellant. R. p. 191. Appellant made Daughter put her mouth on his penis and he sometimes ejaculated in her mouth. He also put his penis in her butt. When asked how all this made Daughter feel, she answered she did not know, she was used to it. R. pp. 191-92.

There was physical violence too. One time on vacation, Appellant threw Daughter across the room and slapped her for taking some quarters out of Sarah's purse. Appellant also hit Sarah. Daughter was used to it. R. p. 194. **On cross-examination**, defense counsel asked if Son was kept

out of school for an injury, and when Daughter confirmed this, defense counsel then asked who injured Son. Both Appellant and Sarah injured Son. R. pp. 217-18.

Sarah urinated and defecated on the floor in the house. All the children did the same because the parents told them to. Sarah urinated on Daughter's brother. R. p. 195.

Eventually, Appellant, Daughter, and her siblings left Sarah's to live with Heather Judd. None of the sexual conduct occurred at Judd's house. When she had to return to Sarah's house, Daughter cried. After Sarah went to the police, Appellant told Daughter not to tell anyone because they would get in trouble. She did not tell because she did not want to get Appellant in trouble. R. pp. 197-200. Appellant and Judd had an "emergency marriage."

Daughter liked living with Judd. The sexual abuse ended when they moved in with Judd. Daughter testified she loves Appellant. She did not disclose Appellant's abuse in the first interview because she did not want to be taken away by DSS. But when she went into emergency foster care anyway, she disclosed the sexual abuse in her second forensic interview. R. p. 206, p. 208. She explained on redirect examination she figured out by the time of the second interview that what happened to her was wrong. R. p. 223.

The second victim, Sarah's daughter, also thirteen years old at the time of trial, testified Appellant rubbed her breasts, touched her vagina, put his penis in her vagina, and ejaculated.<sup>1</sup> R. pp. 227-28. Sarah's daughter testified she would go into Appellant's bedroom to watch a movie, but instead Appellant would undress her. R. p. 228. Appellant digitally penetrated Sarah's daughter's butt and attempted penile penetration of her butt and her vagina. R. p. 229. Sometimes Sarah's daughter bled and Appellant would tell her to shower. R. p. 230. Sarah's daughter testified Appellant said to not tell her mother. He threatened to make her eat sardines or put her in the corner.

R. p. 230; p. 233.

Appellant used sex toys and dildos, some vibrating, on Sarah's daughter. Appellant sometimes cuffed Sarah's daughter or Sarah. Most of these items came from Adam and Eve. R. p. 231. Sarah's daughter testified Appellant showed her a DVD she thought was disgusting showing sex toys being "testing out" which came with an order from Adam and Eve. R. p. 233. Sarah's daughter testified sometimes the toilet was clogged and they went to the bathroom in a bucket and they would not empty it for two weeks to a month. R. p. 232. Asked how she was doing since being away from Appellant, Sarah's daughter answered, "I've been good. I've had a few memories but none that would bring it back for a long time." R. p. 233, lines 13-14. Asked if the incidents she described happened all the time, Sarah's daughter replied, "Almost always." R. p. 234, lines 11-16. On cross-examination, Sarah's daughter admitted Sarah told her what Sarah did to Appellant's daughter (Daughter). Sarah apologized to her daughter and said it was Appellant's fault. R. p. 236.

Sarah Lacy testified she met Appellant on a dating website. She testified she pled guilty to both solicitation of a minor and unlawful conduct towards a child and was sentenced to an aggregate fifteen year sentence. R. p. 245. Sarah admitted she participated in sexual acts with the children. She testified she penetrated Daughter with a dildo. Sometimes this was alone, sometimes this was with Appellant. Sarah also digitally penetrated Daughter and witnessed Appellant commit both digital and penile penetration on Daughter. Sarah explained she would "open up" Sarah's daughter with a dildo for Appellant so Appellant could put his penis inside Sarah's daughter. She testified this happened multiple occasions. R. pp. 246-48.

Sarah claimed this conduct was at Appellant's request, and she complied because she was afraid for the children and her own safety. This went on for about a year. R. p. 248. Sarah admitted

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<sup>1</sup> Sarah's daughter suffers from severe diabetes and cerebral palsy. R. p. 111.

she saw both Daughter and Sarah's daughter perform oral sex on Appellant multiple times. R. p. 248. She corroborated Sarah's daughter's testimony that as a result of sexual contact, Sarah's daughter bled one time. R. p. 249.

Sarah confirmed Appellant told her to urinate on the children and they also urinated on her. Appellant had Sarah record one of the children urinating on the floor. R. pp. 249-50. Sarah confirmed they purchased sex toys from Adam and Eve and testified "everyone" could watch pornography and "everyone" could use the sex toys. Appellant wanted Sarah to videotape herself having sex with the children and videotape the children having sex with each other. R. pp. 250-51.

Appellant and Sarah were in contact after she reported abuse to the police. They took a road trip together, and during the trip, Appellant disposed of evidence on her phone. When they returned to Chester, Sarah was arrested. They continued to write letters back and forth. R. pp. 255-56. In these letters, Appellant told Sarah not to let law enforcement "play" her and he was happy he did not have to break his loyalty with her, assuring her he did not tell law enforcement too much. R. pp. 256-61

On cross-examination, Sarah confirmed Appellant beat her. R. pp. 266-67. Sarah also testified on redirect that Appellant threatened that Heather Judd would have somebody beat Sarah in jail if she did not recant her allegations against Appellant. R. p. 272.

#### **Daughter's first forensic interview**

Daughter was first interviewed on September 12, 2019. In the first interview, she identified Sarah as a sexual and physical abuser (State's Ex 1, Int. 1, 4:15-4:30), and her focus is on Sarah's crimes – Daughter did not disclose any sexual abuse by Appellant. Daughter disclosed she and Sarah fought in a hotel in Virginia, Sarah pulled out Daughter's younger sister's hair, and Sarah tied

up Son with twine.<sup>2</sup> (State's Ex 1, Int. 1, 7:45-8:10; 14:40 – 15:10). Sarah slapped and punched Daughter, and threw her on the floor. (State's Ex 1, Int. 1 25:30-26:00). Sarah tried to play with Daughter's genitals, used toys on Daughter, and tried to touch Daughter's genital area. (State's Ex 1, Int. 1 circa 7:00; 19:30-19:45). Daughter also disclosed Sarah would walk around the house naked, urinate on Son, and defecate and urinate on the floor. (State's Ex 1, Int. 1 21:00-22:45). Daughter admitted Appellant and Sarah would physically fight and Appellant even punched Sarah in the face, but typified this violence as protecting her from Sarah and explaining it was not like Appellant punched Sarah for no reason. (State's Ex 1, Int. 1 30:45 – 31:45).

#### **Daughter's second forensic interview**

Two weeks later, on September 26, 2019, Daughter was interviewed again. Quickly Daughter apologized for lying in the first interview. (State's Ex 1, Int. 2, 0:30-1:00). Daughter explained Appellant told her not to tell on him. But Daughter explained she thought Appellant was a good man who made mistakes. He never did the things he did to her until he met Sarah. (State's Ex 1, Int. 2, 2:40-3:15).

She further detailed the sexual abuse Sarah inflicted, explaining Sarah used a fake “ding-a-ling” on Daughter and also digitally penetrated Daughter. Sarah told Daughter not to tell. Sarah used lubricant on Daughter. Sarah also made Daughter touch Sarah. (State's Ex 1, Int. 2, 12:15-12:45). She confirmed Sarah walked around the house naked. (State's Ex 1, Int. 2, 13:45-14:00). Sarah also sexually abused Sarah's daughter and Son. (State's Ex 1, Int. 2, 15:00-15:30). Daughter explained eventually Appellant began to “pitch in” as an accomplice to Sarah's sexual abuse. This is when they began to take pictures or videos sometimes. (State's Ex 1, Int. 2, 15:45-16:10).

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<sup>2</sup> Appellant made the same accusation against Sarah in his interview with law enforcement. State's 6, Pt. 1 (15:00-15:30).

Appellant started having sex with Daughter. (State's Ex 1, Int. 2, 18:00-19:00). Daughter explained Sarah told her to go to sleep and then Appellant put his hands in Daughter's pants and touched the vaginal and anal areas, including digital penetration of the vagina. Appellant also used sex toys on Daughter. (State's Ex 1, Int. 2, 19:00-19:20). Further, Appellant made Daughter put her hand on Appellant's penis and made Daughter perform oral sex on Appellant. (State's Ex 1, Int. 2, 22:15-22:45).

Daughter also saw Sarah's daughter rub Appellant's penis and Appellant attempted penile penetration on Sarah's daughter. She observed Appellant digitally penetrate Sarah's daughter with a sex toy one time. Sarah was present sometimes for the sexual abuse and sometimes not. Sarah and Appellant also made Daughter watch them have intercourse although Daughter indicated she turned around. (State's Ex 1, Int. 2, 23:00 – 24:45). Sarah performed oral sex on Daughter once. (State's Ex 1, Int. 2, circa 32:15). Sarah urinated on two of the boys. (State's Ex 1, Int. 2, 45:45-46:15).

Daughter was still sympathetic towards Appellant, attempting to convince the interviewer that Appellant had changed since then. (State's Ex 1, Int. 2, circa 25:00). Daughter exclaimed it broke her heart that Appellant was in jail. (State's Ex 1, Int. 2, 42:45-43:00). She explained she did not disclose abuse because she did not want to put the family "through this." (State's Ex 1, Int. 2, 27:30 – 27:45).

#### **State's Exhibit 2: Sarah's daughter's forensic interview**

Sarah's daughter described watching Appellant beat Sarah. State's Exhibit 2 (4:30-5:15). She described an instance where Sarah and her children moved to a hotel and Appellant found them. State's Exhibit 2 (7:00-7:25). Sarah's daughter talked about Appellant punching a hole in the wall. State's Exhibit 2 (circa 13:00). Then the interview's focus changed to the sexual assaults. Sarah's daughter described digital penetration of her vagina by Appellant. State's Exhibit 2 (11:15-12:30).

Sarah's daughter also testified Son was made to touch Sarah's daughter's vagina. State's Exhibit 2 (13:30-14:00). She was made to touch Son's penis. State's Exhibit 2 (15:00-15:30).

Appellant touched Sarah's daughter's vagina and butt and this included digital penetration. State's Exhibit 2 (17:30-18:15). She was also made to rub Daughter. State's Exhibit 2 (19:30-19:45). Sarah's daughter disclosed Sarah told her Son was forced to "go down" on Sarah. State's Exhibit 2 (21:00-22:00). Sarah's daughter further recounted that the children were made to watch Appellant and Sarah have sex. State's Exhibit 2 (22:15-23:10). She testified one time, she was made to have intercourse with Son while at the same time Appellant and Sarah had intercourse. State's Exhibit 2 (24:30-25:00). Appellant also took pictures of Sarah's daughter with her clothes off. State's Exhibit 2 (26:00-26:15).

Sarah's daughter told the interviewer Appellant had pink and black dildos and a vibrator. Appellant used all of them on Sarah's daughter. State's Exhibit 2 (27:45-28:00). Daughter used the dildo on Sarah's daughter and rubbed Sarah's daughter. State's Exhibit 2 (28:15-28:30). Appellant also made Sarah's daughter put her mouth on Appellant's penis. State's Exhibit 2 (31:15-31:30).

Dr. Lamb examined both victims. Daughter had a normal exam, which is not atypical of sexual abuse. On the other hand, Sarah's daughter had a healed injury diagnostic of penetration into the vagina. R. p. 314. Dr. Lamb testified Sarah's daughter's injury was older than two weeks. Specifically, the injury was a laceration through the hymen, and it healed with a small piece of missing tissue. This injury to the hymen likely caused bleeding. R. pp. 314-15.

Investigator Brian Sanders of the Chester Police Department received information concerning domestic violence from the Rock Hill Police Department and interviewed Sarah on August 23. When allegations of sexual abuse arose, they arranged for her four children to be taken into emergency custody. R. p. 324, p. 327. Sarah was arrested on September 16. R. p. 326; p. 328.

Sarah reported that Appellant sexually abused both Daughter and Sarah's daughter. R. p. 334.

### **Appellant's statements to law enforcement**

Investigator Sanders interviewed Appellant. Appellant accused Sarah of wanting them to have sex in front of the children and claimed he refused. Appellant took out the phone and showed explicit texts about the children he said Sarah sent him, and also showed videos of her defecating on the floor. He said Sarah touched her oldest daughter. R. pp. 339-41. Appellant provided law enforcement with a statement alleging abusive conduct by Sarah. R. pp. 345-46.

Appellant was interviewed twice. Two recordings of the same first interview on August 29, 2019 are contained on the flash drive admitted into evidence. One is separated into four parts, and one seems to be a single continuous recording. Respondent cites to the four part version of Appellant's January 2019 statement.

Appellant disclosed that Sarah beat the children. State's 6, Pt. 1, circa 14:45. Appellant related that one time Sarah hog-tied Son and face-timed Appellant to show him. State's 6, Pt. 1, 15:00-15:30. Another time, Sarah pulled out Daughter's sister's hair. State's 6, Pt. 1 15:45-16:15. Appellant testified that one time Sarah hit Daughter when Daughter mouthed off. Daughter kicked Sarah, then Sarah punched Daughter before Appellant intervened and told her not to hit his daughter. State's 6, Pt. 2 16:15-7:00. Appellant described other incidents of physical abuse, but then claimed nothing sexual occurred. State's 6, Pt. 2 19:45-20:00.

Appellant started contradicting himself. He told law enforcement that Sarah would talk about touching the children, either each other's children or any children. State's 6, Pt. 2 25:45-26:15. Appellant volunteered that Sarah would defecate on the floor. She would talk about touching her own children. Appellant then claimed he would "play along" although he denied in engaging in any sexual conduct with the children. State's 6, Pt. 2, 27:00 to end.

Appellant told law enforcement that Sarah had sex toys she left out all over the house and the children would carry the sex toys around. He denied ever touching the children and said, as far as he knew, that Sarah did not sexually abuse the children. State's 6, Pt. 3, 4:00-5:30; 10:30-11:00. She sent Appellant pictures of herself defecating or texts wishing she could urinate on him. State's 6, Pt. 4, 8:30-9:45 She would send videos of her masturbating while the children were around. State's 6, Pt. 4, 11:45-12:00. Appellant told law enforcement Sarah wanted to have sex with Appellant in front of the children, but he refused. Also, Sarah would be naked in bed with the children. State's 6, Pt. 4, 11:45-13:30. Appellant denied he ever touched any of the children, but admitted he "might have" role-played with Sarah when she talked about wanting to sexually abuse the children. State's 6, Pt. 4, 16:45-17:00.

The second interview occurred on September 16, 2019. Much of the same ground is covered, but importantly, Appellant admits he saw Sarah sexually assaulting Daughter, specifically Sarah was rubbing Daughter in the first residence they shared. He claimed his phone was in his hand to call the police on Sarah, but he did not do it. State's 6, Sept. Int. 44:30-46:40. This followed on the heels of law enforcement's question as to whether he was aware of the sexual abuse. Appellant answered, "Yes and no." State's 6, Sept. Int. 40:20-40:35. Then he said she was doing sexual things to the kids. State's 6, Sept. Int. 40:35-40:38. Appellant said Sarah would text, talking about wanting to have sex with their kids, and he admitted he would talk dirty with her. Sarah would talk about getting the girls pregnant – he said he would not do it. State's 6, Sept. Int. 47:00-48:30. Sarah would use dildos on them and have them use them on each other. State's 6, Sept. Int. 50:00-50:30.

Heather Judd is an employee of the Chester County Detention Center and Appellant's ex-wife. Judd and Appellant knew each other from some time ago and reconnected during June 2019. Appellant and his children soon moved in with Judd. R. pp. 119-22. When she had to work and

Appellant was on the road, Judd would drop Appellant's children off at the house to stay with Sarah. The children would cry because they did not want to be left with Sarah. R. pp. 123-25. Appellant and Judd married in Gatlinburg on August 30, but shortly afterwards, he left the household and moved into his truck. R. pp. 126-27. Judd also disclosed that Appellant traded his phone to Wal-Mart. R. p. 129.

Judd learned Appellant was with Sarah on September 6, but Appellant claimed he was trying to get evidence to show Sarah was lying about the allegations she made against Appellant. R. p. 130. Appellant sent letters to Judd claiming Sarah wanted Appellant to do bad things to the kids Sarah wanted to have sex with Appellant in front of the kids but Appellant would not do it. Appellant claimed he was a victim too. Appellant claimed Sarah let the children watch pornography, not Appellant. R. pp. 142-45. Appellant wrote Judd several letters and in one letter, Appellant explained:

[Sarah] would lie and say she didn't hurt them, so I began to pretend to act like I liked her abusing them so she would be honest with me about doing it. If she felt like I liked it she would tell me, but I didn't like it. I would come home and yell at her and shit for doing it.

R. p. 141, lines 12-16. Despite Appellant's allegations against Sarah, Appellant still directed Judd to leave his children at Sarah's house when she went to work. R. p. 154.

Shauna Galloway-Williams testified as an expert in child sexual abuse dynamics. She explained one of the main reasons for delayed disclosure of sexual abuse by children is fear. Disclosure is also affected by the commission of abuse by authority figures that children assume are acting in their best interests. R. pp. 375-76.

Galloway-Williams explained how a child observing domestic violence would interpret that as an indirect threat when "a child is witnessing this person who may be harming them also being

aggressive or hurtful to other people.” The child may internalize that to believe they would be harmed or another person will be harmed if they report the sexual abuse. R. p. 378, lines 11-21.

The perpetrators may engage in behaviors “in a way to normalize that for children, or essentially what we might consider grooming where you’re introducing a child to sexual behavior, sexual knowledge over a period of time . . . .” R. p. 379, lines 13-19. Galloway-Williams further explained, “It may involve sexual jokes, sexual pictures, introducing children to pornographic images, normalizing a behavior that essentially wouldn’t be normal for a child at that developmental age.” R. p. 379, lines 19-22.

## STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Jenkins, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015). The first three issues in this appeal involve the trial court’s decision to allow evidence: The admission or exclusion of evidence is a matter addressed to the trial court’s sound discretion and will not be reversed absent a manifest abuse of the trial court’s discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). “An error without prejudice does not warrant reversal.” State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005).

The last issue concerns an alleged constitutional error, but as will be shown, little information is soundly known about this allegation. “Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences ‘a feel of the case’ which oftentimes may not be detected from a cold printed record.” State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983); United States v. Ford, 548 F.3d 1, 7 (1st Cir. 2008) (finding one could draw different inferences from the defendant’s gesture. On the cold record, the Court of Appeals could not recreate the gesture demonstrated to the district court. “Instead, this type of inquiry recommends our deferential review of the lower court’s factual findings.”).

## ARGUMENT

### I.

**The trial court did not err in admitting evidence that was res gestae of the crimes, and all the charged conduct and contemporaneous extrinsic acts were part of the common scheme or plan to subject both Appellant's children and his accomplice's children to a continuous cycle of sexual assault and abuse to serve Appellant and his accomplice's insatiable appetite for sexual depravity.**

Appellant complains the trial court erred in not limiting extrinsic acts committed by Appellant or his accomplice, Sarah. Appellant never renewed this in limine objection and never complained about evidence of most of the conduct Appellant now complains about on appeal. Further, the extrinsic acts, all occurring in the same time frame as the charged sexual abuse, provides context for the crime and is part of the common scheme or plan to normalize sexual behaviors within the household for continuous debauchery for Appellant and Sarah's prurient gratification. Most of the conduct involves the continuous course of conduct between Appellant, accomplice Sarah, and the two victims, Daughter and Sarah's daughter.

#### **How the issue arose**

On August 11, 2021, the trial court heard the State's motion to admit extrinsic bad act evidence at trial. The prosecutor's argument for admission was principally under the res gestae theory, but the prosecutor also relied on Rule 404(b), SCRE. The prosecutor explained: "I actually even kind of hesitated to even file this motion, but in an abundance of caution, I felt that I should bring all of it to the Court's attention in order for us to have a good clean slate whenever we go into the courtroom. This case is so multilayered in regards to the type of abuse that was actually suffered by all the children." R. p. 6, lines 10-18. The prosecutor explained Appellant and Sarah's residence "clearly became a sort of lifestyle to normalize sexual behaviors between both of the defendants and

their sexual activities, as well as having the children join in on the sexual activities as well.” R. p. 6, line 23 – p. 7, line 4. The prosecutor explained it would be impossible to parse out the varying occurrences of abuse because: “It was all going on together.” The prosecutor noted the two victims were eyewitnesses to some of the abuse on the other. R. p. 7, lines 5-12. Making an argument that contemplated a possible severance motion, the prosecutor advised, “[I]t would really fracture the case for the State if we had to just specifically talk about one victim at a time.” R. p. 7, lines 16-22. Later the prosecutor observed, “I don’t necessarily think that it even gets into necessarily a common scheme or plan because they materially witnessed each other’s abuse.” R. p. 8, lines 20-22.

The only argument defense counsel offered in response to *res gestae* was the legally inaccurate assertion “that *res gestae* is nothing but a back doorway to get to 404(b) . . . .” Then defense counsel argued under State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020), there needed to be a logical connection and the evidence needed to be subject to a Rule 403, SCRE analysis. R. p. 9, lines 6-21. Then muddying analysis, defense counsel discussed the outcry hearsay exception and its limits, which was not the subject of the motion. R. pp. 9-10. Doing violence to the rules of evidence and the concept of hearsay (which is limited to concerns about statements by an out of court declarant), defense counsel argued the children **witnessing** abuse to the other children could only testify as to time and place. R. p. 10, lines 8-11. Making it unclear whether the topic was the admission of extrinsic acts or in actuality, joinder of charges, defense counsel expressed concern about “combining both of these cases.” R. p. 10, lines 16-22. The prosecutor explained there were no hearsay concerns because “both of these children experienced and personally witnessed what the defendant was doing to each of them.” R. p. 12, lines 8-11.

Whether defense counsel was aware that the topic was *res gestae* or whether the topic was joinder, defense counsel summarized, “So trying to parse that out, I don’t know how you’re going to

do it, if you try to put both of them together.” R. p. 12, lines 19-23. The trial court took the matter under advisement. R. pp. 12-13.

The trial court made its preliminary ruling during an August 18 pretrial hearing. First the trial court asked if either party wanted to be heard further. The prosecutor noted the research it submitted to the trial court regarding *res gestae* and common scheme or plan. The prosecutor noted suppression of evidence would cause the prosecution to be unable to present a full picture to the jury because the two victims were witnesses to each other’s abuse. The prosecutor noted that pursuant to Perry, there was a logical connection between the acts. R. p. 18. Defense counsel advised the trial court that defense counsel did not have any additional argument. R. p. 19, lines 2-3.

The trial court ruled as follows:

. . . I’m going to allow the evidence in over the defense’s position, you’re protected in the record, Mr. Frick. You know, if this matter does go to trial obviously you can make your contemporaneous objection without having to stand up every single time something is said. I mean, you’re protected in the record right now. I’m allowing the State to go into that to establish that what they call a common scheme or plan, but certainly you’re entitled to an objection as to under a 403 analysis whether it’s substantially more probative than prejudicial, and, you know, you can simply do that at trial by just noting your objection for the record to protect your client.

R. p. 19, lines 4-15.

**Error preservation: the objection was for something else, the objection to extrinsic evidence was never renewed.**

First the issue is not preserved for review. Sophistically, Appellant claims he preserved the issue when State’s Exhibits 1 & 2 were introduced at trial. See R. p. 136. However, it was not the objection to the prosecution’s in limine *res gestae* and Rule 404(b) motion Appellant renewed. Instead, Appellant’s counsel appeared to be renewing the objection to the forensic interviews based

on the hearing held on August 18, 2018, in which the trial court was required to review the admissibility of the forensic interviews under S.C. Code § 17-23-175. R. pp. 19-52. Appellant's counsel argued he was concerned about outside influences suggesting answers for the children in the interview. R. p. 51, line 23 – p. 52, line 11. The trial court overruled Appellant's counsel's objection. R. p. 38, lines 12-19. This coaching objection appears to be what was renewed, and not the objection to the State's motion to admit extrinsic acts.

“[I]t is the responsibility of trial counsel to preserve issues for appellate review.” Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750, 759 (1997). “[A] specific objection to the admission of evidence must be made to preserve the issue for appeal.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996). “The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.” Id. “The same ground argued on appeal must have been argued to the trial judge.” Id. The exact name of the legal doctrine employed does not need to be used to preserve an argument, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. I’On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) (“Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.”).

A ruling *in limine* is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion *in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially

prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary, and is subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016). “We caution Bench and Bar that these pre-trial motions are granted to prevent prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence.” Floyd, 295 S.C. at 521, 369 S.E.2d at 843.<sup>3</sup>

In the present case, during the in limine motion for extrinsic acts, defense counsel only made passing reference to sexual misconduct involving children other than the two victims, and defense counsel did not request any redactions for any of the interviews. R. 28, lines 18-22. Defense counsel did not complain or request suppression of evidence of physical abuse or sexual abuse perpetrated by Sarah. Further, defense counsel never offered a legitimate argument against *res gestae*, the principal grounds argued in support of admission by the prosecution. The renewal of the previous objection by defense counsel upon admission of the forensic interviews seems based on the prior coaching objection during the §17-23-175 hearing, and certainly, the trial court cannot be expected to interpret that objection as an objection to the *res gestae*/Rule 404(b) evidence. Therefore the issue is not preserved for review.

#### **Res Gestae/common scheme or plan**

The prosecutor explained in stark and clear terms the environment that Appellant engaged and perpetuated a multitude of sexual assaults on both victims:

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<sup>3</sup> The present case is not a constitutional issue and the ruling was clearly not final. See generally State v. Jones, 435 S.C. 138, 866 S.E.2d 558 (2021) (finding renewing objection is not warranted

[Y]ou will hear the testimony of not only [Daughter], his own daughter, but also of [Sarah's daughter], the ten year old, who's going to tell you they started having sex in front of them; Brad, the defendant, and Sarah. It became a way of life. She would leave – Sarah would leave her sex toys and dildos out, they used those on the children. It was a way of life. It was a repetitive way of life. They were isolated, they were under his control. They didn't go to friends' houses, they didn't go to church, some of them were kept out of school. They lived in that home on a daily basis being exposed to all kinds of sexual acts. It became normal. It became their way of life. And children are resilient, they learn to live with it, but it's still a brutal crime.

R. p. 67, line 12 – p. 68, line 1. All the extrinsic acts were admissible as *res gestae*, because it provides context to the crime. The presence of dildos and pornography, the physical abuse and neglect, the defecation and urination, the acts in front of or involving other children were all contemporaneous with the charged acts and part of the grooming of the two oldest daughters, Daughter and Sarah's daughter.

Further, this investigation began with Sarah's complaint that Appellant physically abused her, followed by Appellant's complaint that Sarah physically abused and neglected the children. Sarah's original complaint against Appellant also led to conversation that was incriminating as to Sarah and furthered and enlarged the investigation as to the welfare of the children. Thus, this evidence helps explain the necessity for conducting forensic interviews of all the children, including the forensic interviews for Daughter and Sarah's daughter which were admitted into evidence at trial.

"The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582

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following a court ruling on a constitutional issue because the ruling is final).

(1999). This Court held that to constitute part of the *res gestae* of an offense, it is important the extrinsic acts have a close temporal proximity to the charged crime. State v. Martucci, 380 S.C. 232, 258, 669 S.E.2d 598, 612 (Ct. App. 2008).

“Even though a defendant is not charged with every crime committed during a criminal transaction, every aspect of it relevant to the crime charged may be presented at trial.” Altman v. State, 495 S.E.2d 106, 108 (Ga. Ct. App. 1997); State v. McGee, 408 S.C. 278, 288, 758 S.E.2d 730, 735-36 (Ct. App. 2014) (“When evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the *res gestae*.”) (internal quotation marks omitted) (quoting State v. Preslar, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005)).

This Court noted the following:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘*res gestae*’” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other’ [and is thus] part of the *res gestae* of the crime charged.”

Preslar, 364 S.C. at 474, 613 S.E.2d at 385 (citations omitted).

When evidence is relevant under the *res gestae* theory, the trial court must still undergo a Rule 403 balancing test to determine whether the probative value is substantially outweighed by the danger of unfair prejudice. McGee; Rule 403, SCRE.

In the instant case, the extrinsic acts consisted of conduct either Daughter or Sarah’s daughter observed or were subjected to. The acts were contemporaneous to the charged acts. The physical

abuse explains why neither child disclosed the sexual abuse they suffered until forensic interviews precipitated by Sarah's accusations and admissions. Further, Son's sexual abuse was witnessed by Daughter and Sarah's daughter, and what they witnessed served to normalize sexual behavior in the household, as did the sexual behavior between Appellant and Sarah. Son's sexual acts with Sarah's daughter constitutes part of the charged conduct as Son would be considered an innocent agent in his sexual conduct directed by the parents towards Sarah's daughter. The pornography further establishes the normalization of sexual activity in the household. Further Sarah's conduct, including urination, defecation, and nudity would be acts by her and not Appellant, but does further normalize sexual behavior due to the ensuing exposure of genitals and normalization of the excretion off fluids: urine, defecation, and ultimately ejaculate.

**Rule 404(b) SCRE: Common scheme or plan**

Further, in the instant case, both the charged and uncharged conduct constitutes individual manifestations of the same common scheme or plan to sexualize and normalize sexual activity within the household between the adults and the children. The common scheme was to create a cascade of debauchery within the household for Appellant and Sarah's joint venture for degenerate gratification.

"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." Rule 404(b), SCRE. Evidence of prior bad acts must logically relate to the charged offense, and the probative value of the evidence must outweigh any danger of unfair prejudice. State v. Holder, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009). "The acid test of admissibility is the logical relevancy of the other crimes." State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325 (1998).

Most of the extrinsic acts constitute evidence of continuing illicit conduct between Appellant, Sarah, and the two victims, Appellant's daughter and Sarah's daughter. In State v. Richey, 88 S.C. 239, 70 S.E.2d 729 (1911), Richey was charged with carnal knowledge of a girl under fourteen years of age. The Supreme Court found evidence that he continued this relationship beyond the age of fourteen years of age admissible, holding: "acts prior and also subsequent to the act charged in the indictment, when indicating a continuousness of illicit intercourse, are admissible in evidence as showing the relation and mutual disposition of the parties." Id. at 242 70 S.E. at 730.

In State v. Weaverling, 337 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999), this Court favorably quoted Supreme Court precedent that held the common plan or scheme exception "is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse between the same parties." (quoting State v. Whitener, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955)); see also State v. McClellan, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (holding the "prosecutrix's testimony regarding prior attacks was admissible under [the common scheme] exception to show the continued illicit intercourse forced upon her by Appellant.").

In State v. Tutton, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003), the Court of Appeals observed, favorably citing both Weaverling and McClellan, that common scheme or plan evidence is admissible when there is a pattern of continuous illicit conduct because the pattern "clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in a similar fashion." This Court affirmed the admission of prior bad act evidence, finding "a clear pattern of escalating sexual abuse" satisfying the requirements of the common scheme or plan exception. State v. Kirton, 381 S.C. 7, 36, 671 S.E.2d 107, 122 (Ct. App. 2008).

In the instant case, the two victims, Sarah's daughter and Daughter were subjected to intercourse, digital penetration, and penetration with objects. All this is proper charged conduct. Further illicit conduct includes being made to view sexual activity between Appellant and Sarah, viewing Sarah walking naked in the house, the presence of pornography, and the availability of sexual toys within the household. This is all conduct clearly geared toward grooming the victims and normalizing sexually charged conduct within the household. Sarah urinating or defecating on the floor, physically abusing the children, making Son urinate on her, and engaging in sexual activity with Son, or engaging in sexual activity when Appellant is not present are Sarah's, not Appellant's, extrinsic acts, and therefore beyond the scope of Rule 404(b), SCRE. The charged and uncharged conduct all occurred in the same time frame, the several months to a year Appellant, Sarah, and all their children lived together. Further, defense counsel never objected to acts by Sarah being allowed into evidence.

Appellant complains about conduct involving Son. Evidence established Appellant and Sarah made Sarah's daughter and Son engage in sexual activity with each other concurrently with Appellant and Sarah engaging in sexual activity. First, Appellant's actions constitute criminal sexual conduct with a minor through an innocent agent, and therefore represents proper testimony of continuous illicit conduct between parties. "One may commit a crime through the agency of another." State v. Johnson, 255 S.C. 14, 176 S.E.2d 575 (1970) (manager could be guilty of selling merchandise in violation of Sunday Closing Law even though cashier sold the items where the cashier was doing exactly what she was employed to do). Further, Son's involvement in the acts in the victims' presence or his acts with the victims represents further grooming and yet another manifestation of normalizing sexual behavior for Sarah's daughter and Appellant's daughter, or maintaining a sexually charged atmosphere within the household.

In Tutton, this Court observed:

Sex crimes may be unique in this respect because they commonly involve the same victims engaged in repeated incidents occurring under very similar circumstances. The reason for the general admissibility of such evidence under these circumstances is self-evident – where there is a pattern of continuous conduct shown, that pattern clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in in a similar fashion. . . . Where there is a pattern of continuous misconduct, as commonly found in sex crimes, that pattern supplies the necessary connection to support the existence of a plan. Presumably, this is so because the same evidence that establishes the continuous nature of the assaults will generally suffice to prove the existence of the common scheme or plan as well. In Weaverling and McClellan, the sheer volume of repeated occurrences, together with the close similarities in the assaults, evidenced a pattern of continuous illicit conduct.

State v. Tutton, 354 S.C. at 328-29, 580 S.E.2d at 191 (emphasis added). In the instant case, no doubt the sheer multitude of sexualized activity constituting both charged conduct and extrinsic acts evidenced a clear pattern of continuous illicit conduct.

#### **Rule 403 analysis**

“Unfair prejudice means an undue tendency to suggest a decision on an improper basis.” State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” State v. Dennis, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013) (internal quotation marks omitted). “All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided.” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (internal quotation marks omitted).

In the instant case, two people with shared depraved and lascivious interests got together to

sexually assault their oldest children. Each one allowed the other unfettered access to sexually assault their own children. Of course, each one also sexually assaulted their own children. Sarah and Appellant used sexual toys to “open” up their eldest daughters. Sarah described a multitude of times both daughters were forced to have oral sex. The intercourse and other sexual assaults occurred, as Sarah’s daughter described “almost always.” The sexual assaults included both vaginal and anal penetration committed by penile penetration, digital penetration, and penetration with objects. Many acts were committed in joint participation of both adults. Appellant was committing numerous instances of incest and allowing another adult to sexually assault his daughter. There is simply little shock value to add from the uncharged conduct, but the extrinsic acts are probative because they provide the context and demonstrate that the acts were all part of the same common scheme or plan.

Further, Son’s victimization may have been uncharged conduct, but Son did not testify at trial. The testimony supporting the charged and uncharged acts came from the same three witnesses, Daughter, Sarah’s daughter, and Appellant’s accomplice, Sarah.

In State v. Aiken, 322 S.C. 177, 470 S.E.2d 404 (Ct. App. 1996), this Court found multiple prior robberies the accomplice testified were committed together admissible because like the charged case, they all took place in the same part of Orangeburg, on or near the Highway 21 bypass. Additionally, they were all committed by a black man with his face partially concealed. Id. at 181, 470 S.E.2d at 406. Notably, this Court found the chance of unfair prejudice was small because if the jury found the accomplice credible, the jury would have no reason to consider the other robberies. Id.

Likewise, if the jury found the three witnesses’ testimony credible, the jury had no reason to consider the extrinsic acts testified to by the same three witnesses since they provided extensive

testimony supporting the charged conduct. The danger of unfair prejudice in the instant case was negligible.

While Appellant selects a handful of extrinsic acts and insists without much explanation they are extremely prejudicial, any uncharged acts pale in comparison to the overwhelming evidence of guilt. There is physical evidence of sexual assault as to Sarah's daughter. Further, Daughter saw Sarah's daughter assaulted, Sarah's daughter corroborated much of Daughter's testimony, and Sarah corroborated both victims' accounts. Appellant confirmed he was aware of Sarah's sexual assaults of his own daughter, admitted to role playing with Sarah in texts discussing sexually assaulting their children, and at one point told Judd he acted as if he was alright with the abuse so Sarah would tell her about it. Any error is undoubtedly harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

## II.

**The trial court did not err in allowing a medical questionnaire with Daughter's written answers into evidence and Appellant was not prejudiced since the objected to sentence was cumulative to the forensic interview from nineteen days earlier.**

Appellant complains the trial court erred in failing to sustain Appellant's objection under Rule 403, SCRE to a questionnaire filled out by Daughter (Supp. R. 1-2) being admitted into evidence. The questionnaire was clearly probative because it contained a report of sexual abuse and was not prejudicial because Daughter provided a more detailed account of sexual abuse only three weeks earlier during her second forensic interview. Further, the "cumulative" nature of the evidence was hardly prejudicial to Appellant and the trial court did not abuse its discretion in declining to

exclude the evidence. Therefore, the trial court did not err in allowing the questionnaire into evidence.

### **How the issue arose**

Dr. Susan Lamb testified a nurse practitioner under Dr. Lamb's direction examined both Daughter and Sarah's daughter. Dr. Lamb explained when a person is examined for whom there are concerns of sexual assault, the first thing is to determine if there is evidence that needs to be recovered. The medical staff also gets a history from the victim "so they kind of tell you what has gone on, what has occurred, that directs where you're going to look." R. pp. 297-98 (direct quote p. 298, lines 1-3).

Dr. Lamb then discussed the questionnaire (Supp. R. pp 1-2):

So at the age of 11, you know, she is not old enough to consent to a sexual encounter. We do perform an adolescent questionnaire kind of based on if the children look like they're kind of acting more like teenagers at that time, and it does have questions about engaging in any consensual sexual activity.

R. p. 307, line 25 – p. 308, line 5. Dr. Lamb explained the teenagers are given the form to fill out by themselves in a back room, and the answers on the form are in Daughter's handwriting. R. p. 308, lines 10-22. When the prosecution moved to admit the questionnaire into evidence, defense counsel lodged an objection: "Objection to be cumulative and under 403." R. p. 309, line 2.

Dr. Lamb published that Daughter responded negatively to the question, "Have you ever had sex because you wanted to?" However, Daughter wrote underneath in a blank space, "But [I've] been sexually abused." R. p. 309, lines 15-19; Supp. R. pp 1-2. On the second page of the exhibit, question 12 asks, "Is there anything else that you would like to discuss with the provider?" Here, Daughter wrote, "[I've] been sexually abused and had sex with my dad." Supp. R. p. 2. However, this second statement was not published to the jury during trial.

For evidence to be admissible, it must be relevant. Rule 402, SCRE. Relevant evidence is “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.” Rule 401, 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, and it is not required that the inference sought should necessarily follow from the fact proved.” State v. Sweat, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App. 2004). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006). A trial court’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Determination of relevancy is largely within the discretion of the trial court and will not be reversed absent an abuse of that discretion. Sweat, 362 S.C. at 127, 606 S.E.2d at 513. “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

“‘Unfair prejudice means an undue tendency to suggest a decision on an improper basis.’” State v. Stephens, 398 S.C. 314, 320, 728 S.E.2d 68, 71-72 (Ct. App. 2012) (*quoting* State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). “All evidence is meant to be prejudicial; it is only **unfair** prejudice which must be [scrutinized under Rule 403].” State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424, 429 (Ct. App. 1998) (emphasis added) (*quoting* United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989)). In determining whether the danger of unfair prejudice outweighs the probative value of evidence, the court must consider the entire record, and the

determination will turn on the facts of each case. Lyles, 665 S.E.2d at 206 (*citing State v. Gillian*, 373 S.C. 601, 646 S.E.2d 872, 876 (2007)).

In the instant case, defense counsel failed to explain to the trial court how the questionnaire was prejudicial. It clearly was relevant because Daughter reported sexual abuse. One of the grounds upon which a trial judge may sustain an objection under Rule 403, SCRE is “considerations of . . . needless presentation of cumulative evidence.” In the instant case, the pertinent portions of Exhibit 20 are cumulative in the sense that it is more evidence Daughter reported sexual abuse, but it was not cumulative in context because it was part of Dr. Lamb’s explanation of the course of treatment for Daughter when she was under Dr. Lamb’s care for treatment of possible sexual abuse.

Despite acknowledging that the objection was limited to Rule 403, SCRE and not to hearsay, Appellant nonetheless complains Daughter’s answers constitute improper hearsay. This is a blatant attempt to backdoor an issue not presented to the trial court, but Appellant’s hearsay arguments are not preserved for review. State v. Smith, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999) (The ground raised in support of a claim of error on appeal must be the same ground offered in support of the objection at trial). Daughter’s report of sexual abuse falls within the parameters of Rule 801(d)(1)(D), SCRE (allowing statement of declarant where the declarant is an alleged victim of a sexual assault and the statement is limited to the time and place of the incident) – except for three words: “with my dad.”

However, “with my dad” is admissible under Rule 803(4), SCRE, because the statement was made for purposes of a medical diagnosis. The form itself makes itself clear at the top: “Please answer the questions below. What you write is PRIVATE – only people who need it to do their jobs can see it. Tell the truth. Your honest answers will help the provider who is going to see you

today.” State’s Exhibit 20. See United States v. Peneaux, 432 F.3d 882 (8th Cir. 2005) (a doctor must be able to identify physical and emotional problems that accompany child sexual abuse).

In the instant case, this was not only a report of sexual abuse, but a report of incest. As the Supreme Court of North Carolina has stated:

First, a proper diagnosis of a child’s psychological problems resulting from sexual abuse or rape will often depend on the identity of the abuser. Second, information that a child sexual abuser is a member of the patient’s household is reasonably pertinent to a course of treatment that includes removing the child from the home.

State v. Aguallo, 350 S.E.2d 76, 80 (N.C. 1986) (citing United States v. Renville, 779 F.2d 430 (8th Cir. 1985); see also, State v. Geboy, 764 N.E.2d 451, 462 (Ohio App. 2001) (“The rule does not expressly limit its scope to statements regarding the declarant’s physical or bodily condition. In fact, the rule has been interpreted as to include diagnosis and treatment of psychological injuries as well as physical ailments.”); Valmain v. State, 5 So.3d 1079, 1084 (Miss. 2009) (finding “the identity of the child’s sexual abuser was pertinent to treatment, therefore reasonably relied upon by the treating physician, although the perpetrator was not a member of the child’s household” and noting that “the paramount concern in treatment of sexual abuse is to ensure that a child is not returned to the environment that fostered, allowed, or permitted the abuse”).

Further, any error is merely cumulative to numerous statements by Daughter during the second forensic interview accusing Appellant of sexual assaults, including intercourse. State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006) (finding inadmissible hearsay merely cumulative); see also State v. Mitchell, 330 S.C. 189, 199-200, 498 S.E.2d 642, 647-48 (1998) (noting the Constitution requires a criminal defendant to receive a fair trial, not a perfect one). The present case does not present a scenario where a witness testifies to a declarant’s statement. Instead, in the present case, the out of court statement, Daughter’s handwritten answer to a questionnaire, was

brought to court and viewed by the jury. Its hearsay nature and its limitations of proof are patent to the jury and therefore not prejudicial even if hearsay was presented as a ground for objection. But again, the scope of Appellant's objection was based on Rule 403, and the trial court did not abuse its discretion in finding the evidence was more probative than prejudicial.

### III.

**Appellant did not object to testimony describing photographs found on his phone, and when the trial court later in the trial sustained his objection to the photographs being introduced into evidence, Appellant did not move to strike prior testimony or ask for further relief, therefore Appellant received the relief requested. Any error is harmless in light of the overwhelming evidence of guilt.**

Appellant complains the trial court erred in allowing testimony in contravention of Rule 403, SCRE. The problem with this argument is Appellant never made that objection. Paula Stevens from the Fort Mill Police Department used extraction software, including Cellbrite, to download the contents on Appellant's cell phone. After laying foundation for the download, the prosecution moved a flashdrive of the download into evidence. Defense counsel made the following objection: "Your Honor, yes, we would object to that. We're not sure exactly what's being moved into evidence as far as what kind of images or pictures or anything." R. p. 284, lines 1-7. Defense counsel did not explain why defense counsel did not know what was being moved into evidence. The trial court overruled defense counsel's "not sure" objection. R. p. 284, line 8. Nothing was preserved for review.

Stevens described for the jury items found on the cellbrite download: One of the items downloaded was a photograph of a man's aroused penis with a child's face visible behind the couch. Another photograph depicts an erect penis and a separate picture of a child under a similar blanket taken at the same time. There was also pornography on the phone. R. pp. 284-87. The defense did not lodge any objection to this testimony or any testimony during the remainder of Stevens' direct examination. Technical issues prevented the prosecution from publishing the photographs to the jury. R. p. 291.

After Stevens, two more witnesses testified for the State. Then prior to the State's last

witness testifying, defense counsel sought to “clarify” the “not sure” objection:

One, I want to clarify our objection yesterday. Our objection to the phone dump as we did object to yesterday was, one, we weren't entirely sure what was going to be presented. But we do object to the pictures that she does intend to introduce under 402 as irrelevant, and 403, more prejudicial than probative in this matter. It's a picture of a penis. There's allegations that he looked at pornography, and I believe she's going to talk about a child that is in one of these pictures where he is displaying his penis. To my knowledge that child is not one of the children that is a victim of the cases we are trying so that is my objection.

R. p. 366, line 23 – p. 367, line 10.

The prosecution explained the photographs were to rebut Appellant's claim during his interview “that he would never do anything in front of any children . . . . It was found on his phone, it was still saved on his phone . . . .” R. p. 368, lines 1-9. The prosecutor, in response to defense counsel's inquiry, indicated she did not intend for the jury to view the phone dump. R. p.369, lines 4-7. The trial court took the matter under advisement and allowed the proposed pictures to be marked as Court's exhibits. R. pp. 366-367. The jury never saw those pictures because the trial court later sustained defense counsel's objection under Rule 403, SCRE. Defense counsel did not make any motions to strike any previous testimony. Tr. pp. 388-89.

“Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review.” State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Following the “not sure” objection, Stevens' subsequent testimony was not timely objected to. State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) finding the objection untimely where counsel did not object after several pages of testimony). Further, defense counsel never objected to Steven's testimony on the basis of Rule 403, SCRE. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (to preserve for review an alleged error in admitting

evidence, the objection must sufficiently bring into focus the precise nature of the alleged error so the error may be understood by the trial judge. The party may not argue one ground at trial and another on appeal). The ground asserted on appeal must be supported by the objection raised at trial. State v. Silver, 314 S.C. 483, 486, 431 S.E.2d 250, 251 (1993).

As for the pictures themselves, the trial court sustained defense counsel's subsequent objection and defense counsel asked for no further relief. Although the photographs are inexplicably designated for the record on appeal by opposing counsel, the jury never saw the photographs. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000) (where an appellant objects and the objection is sustained but he fails to move for a curative instruction or request a mistrial, he has received what he asked for and cannot be heard to complain on appeal) *rev'd in part on other grounds*, 349 S.C. 576, 564 S.E.2d 103 (2002); State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (holding where one party obtains from the trial court the only relief sought, this Court has no issue to review on appeal).

Since the jury never saw the content of the download, defense counsel's objections to the photographs were sustained, defense counsel never interposed an objection to Stevens' description of the photographs, and defense counsel never sought to strike the testimony, the trial court did not err and the issue is not preserved for review. The purported error is harmless beyond a reasonable doubt. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) (Error is harmless when it could not reasonably have affected the result of the trial).

## IV.

**The record fails to support Appellant's claim that Appellant was seated where the victims were completely unable to see him, and nonetheless Appellant's counsel acquiesced in Appellant's final seating arrangement.**

Appellant complains his rights under the Confrontation Clause were violated because he was moved to where the victims were unable to see him. The record does not support his claim, instead Daughter's testimony shows the opposite. Further, the record is insufficient for review and the issue is not preserved for review. In the end, defense counsel never raised a Confrontation Clause argument, but instead acquiesced in the final seating arrangements.

**How the issue arose.**

Prior to the first witness being called, the trial court noted he previously indicated to the parties:

[C]ertainly as a right of confrontation and I'm not going to disturb that right, but I am going to modify it just a bit. Instead of [Appellant] sitting where he's sitting now I'm going to ask that he have a seat where Investigator Reynolds is seated tomorrow when the children testify. I think that would be, you know, in the best interest of the children. **That way he is able to see and able to confront**, in air quotes, as far as I'm concerned and I think that's reasonable. Any objection to that?

R. p. 75, lines 2-12 (emphasis added).

**Defense counsel responded:**

Your Honor, I would just say, the way the table is twisted I can barely see the witness box from here. I don't think he can be seen. In normal circumstances it's hard to see the witness box. But we will keep him at the end of the table, which is practically in the grand jury box.

R. p. 75, lines 13-18.

In response, the trial court asked the lawyers to "look at it and we'll make a determination."

R. p. 75, lines 19-20. The trial court asked Investigator Reynolds if he could see and a speaker, presumably the investigator, responded, “There’s a glare, I can’t see, Your Honor.” R. p. 75, line 24.

The speaker moved and responded to the trial court’s subsequent inquiry, “I can see.” R. p. 75, line 25 – p. 76, line 1. The trial court indicated that he may have the defendant seated “to the right of Mr. Nielson” or “where Kenny is standing right now, . . .” R. p. 76, lines 2-8. The trial court explained, “That way the children **don’t have to** make eye contact.” R. p. 76, lines 8-9. The prosecutor responded that she felt the arrangement did not violate the Confrontation Clause and the defendant did not “have to be glaring into the eyes of the children.” R. p. 76, lines 10-14. None of the participants indicated the children would be wholly unable to see Appellant when they testified.

The trial court advised:

Okay. We’ll make that determination contemporaneously but that’s where I’m leaning toward, **if there’s any other argument about that we can deal with that at the time.** I think right now I’m going to have him seated two seats down from where Mr. Nielson is seated right there right in front of – right behind where Kenny is standing right now, . . . .

R. p. 76, lines 15-21 (emphasis added). Defense counsel advised he would have further argument. R. p. 76, line 22 – p. 77, line 1. Note in the first seat, there was a glare, not an obstruction. In the second seat the investigator tested, he could see – there is no indication a witness that could be seen from that vantage point would be unable to see the observer. Also note while defense counsel indicated he would present an argument, he never made the argument even when the opportunity presented itself.

The issue of Appellant’s seating was revisited shortly before Daughter testified. Before bringing the jury back in, the trial court asked the attorneys if there was anything else and defense counsel replied, “Yes, the seating of my client.” R. p. 172, lines 19-22. The following colloquy

ensued:

Defense counsel: Judge, I can tell you, if you're in that grand jury box it's elevated and you're going to be able to see eye level. I'm telling you right now, if you sit in that chair where he is as low as possible, or if you want him to move a little bit further, we put Kenny in the box and all I can see was the top of his head.

Court: From where he was sitting. I don't care if he sees, I don't want her to see.

Prosecutor: Your Honor, why don't we have him sit in [the] orange taped seat in the grand jury box, that way he's not only blocked by, you know, just distance but also by your bench.

Court: That's what I was thinking about.

Prosecutor: Yes, sir, and I think that will take care of it.

(Break in the proceedings.)

Court: All right. So when the children testify I'm going to have the defendant sit over there where the orange tape is. Okay?

Defense counsel: **Can we just go ahead and do that?**

Court: Yeah, exactly. So Mr. Corlew, I need you – you can take whatever you're looking at and go sit over there. Kenny, point to where the orange tape is. Right there. Thank you, sir.

R. p. 172, line 24 – p. 173, line 22 (emphasis added).

The trial court seemed to be arranging seating where the victims did not have to look at Appellant, but record fails to conclusively indicate the victims would be unable to look at Appellant or that Appellant did not see the victims when testifying. Therefore, the record does not support that Appellant was placed “in a position in which the witnesses could not see him at all,” as claimed by Appellant in his brief. Br. of App. p. 33. Appellant also misstates the record, the trial court said the basis for moving the defendant was, “That way the children don't **have** to make eye contact.” This is different from the trial court completely foreclosing the victims' ability to make eye contact, as

Appellant alleges in his brief. See Br. of App. p. 34.

Indeed, the record reflects that the victims were able to see Appellant. During Daughter's testimony, when the topic turned to the beginning of Appellant's sexual abuse, the following testimony was produced:

Q: All right. Tell the jury kind of the first thing that happened in Chester between your dad and Sarah that was kind of weird.

A: **Do I have to look at him or wait?**

Q: I'm sorry?

A: Okay.

Q: Did you understand my question? Do you want me to repeat it?

A: Oh, no, I understand.

R. p. 183, lines 17-25 (emphasis added). Presumably Appellant is the "him" Daughter references in her question to the prosecutor. So it appears Daughter could have looked at Appellant if she wanted.

### **Coy and Craig**

Appellant relies principally on Coy v. Iowa, 487 U.S. 1012 (1988). Justice Scalia described the use of a screen in the courtroom as follows:

The trial court approved the use of a large screen to be placed between appellant and the witness stand during the girls' testimony. After certain lighting adjustments in the courtroom, the screen would enable appellant dimly to perceive the witnesses, but the witnesses to see him not at all.

[Coy] objected strenuously to use of the screen, based first of all on his Sixth Amendment confrontation right. . . .

Coy at 1015. The majority found the procedure, made without any determination of need, violated the Confrontation Clause. Justice Scalia wrote: "A witness 'may feel quite differently when he has to repeat his story looking at the man whom he will harm greatly by distorting or mistaking the facts.

He can now understand what sort of human being that man is.” Id. at 1019. The opinion, couched in terms of men confronting men from Roman times forward, explained:

The face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs.

Id. at 1020. Nonetheless, even Justice Scalia noted, “The Confrontation Clause does not, of course, compel the witness to fix his eyes upon the defendant, he may studiously look elsewhere, but the trier of fact will draw its own conclusions.” Id. Five justices joined Justice Scalia’s opinion, but Justice O’Connor also filed a concurring opinion, joined by Justice White, explaining:

I write separately only to note my view that those rights are not absolute but rather may give way in an appropriate case to other competing interests so as to permit the use of certain procedural devices designed to shield a child witness from the trauma of courtroom testimony.

Child abuse is a problem of disturbing proportions in today’s society. Just last Term, we recognized that child abuse is one of the most difficult problems to detect and prosecute, in large part because there often are no witnesses except the victim. . . . Many States have determined that a child victim may suffer trauma from exposure to the harsh atmosphere of the typical courtroom and have undertaken to shield the child through a variety of ameliorative measures. We deal today with the constitutional ramifications of only one such measure, but we do so against a broader backdrop.

Id. at 1022-23 (J. O’Connor concurring).

Justice O’Connor’s concurrence foreshadowed the Supreme Court’s subsequent holding in Maryland v. Craig, 497 U.S. 836 (1990), which found statutes allowing child victims to testify via closed circuit television when the state court makes the appropriate findings. Due to the lack of objection, Craig’s holding is not implicated in the present case, but Justice O’Connor’s observations are helpful:

[T]he right guaranteed by the Confrontation Clause includes not only

a personal examination . . . but also (1) insures that the witness will give his statements under oath – thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the greatest legal engine ever invented for the discovery of truth; and (3) permits the jury that is to decide the defendant’s fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing credibility.

Craig, 497 U.S. at 845-46 (cleaned up, with citations and internal quotation marks omitted).

Therefore, the Craig court explained:

The combined effect of these elements of confrontation – physical presence, oath, cross-examination, and observation of demeanor by the trier of fact – serves the purposes of the Confrontation Clause by ensuring that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo-American criminal proceedings.

Craig, 497 U.S. at 846.

Unlike Coy, defense counsel in the present case never argued Appellant’s rights under the Confrontation Clause were violated. In the end, little, if nothing is known about the final seating arrangements except that defense counsel seemed contented with the final seating. Daughter’s offhand remark shows that at a minimum, she could look at Appellant if she wanted to or was directed to do so. For these reasons, this Court should not review this issue.

“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). An objection should be sufficiently specific to bring the exact error to the trial court’s attention. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). “[I]t is the responsibility of trial counsel to preserve issues for appellate review.” Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750, 759 (1997).

In the instant case, defense counsel suggested he would later present an argument concerning

seating arrangements, but never did present this argument. The issue is not preserved and the record is inadequate for review. Notably, counsel acquiesced in the final arrangements. State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642 (1998) (stating a defendant cannot acquiesce in an issue at trial and then complain about it on appeal). The trial court suggested seating the defendant “where the orange tape is.” Defense counsel agreed, replying, “Can we just go ahead and do that?” Tr. p. 161. It therefore appears from the record that defense counsel was satisfied or at peace with the final arrangements. The issue is not preserved.

Further, the record does not support the concept that the victims could not see Appellant at all – indeed Daughter’s unsolicited question suggests they could see Appellant if they chose to. Therefore, the record discloses that Craig’s list of the elements of confrontation are satisfied. Craig, supra. Accordingly, the convictions and sentences should be affirmed.

**CONCLUSION**

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 7, 2023

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Chester County  
Brian M. Gibbons, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

BRADLEY MARK CORLEW,

Appellant.

Appellate Case No. 2021-000989

**CERTIFICATE OF COUNSEL**

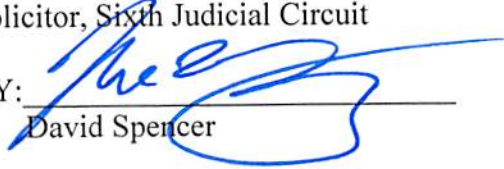
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 7, 2023

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

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Appeal From Chester County  
The Honorable Brian M. Gibbons, Circuit Court Judge

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Appellate Case No: 2021-000989

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THE STATE,

Respondent,

v.

BRADLEY MARK CORLEW,

Appellant.

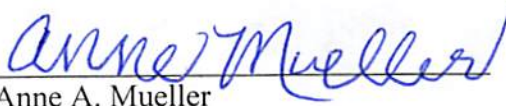
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**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the Final Brief Of Respondent on Sarah E. Shipe, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.  
This 7<sup>th</sup> day of April 2023.

  
Anne A. Mueller  
Legal Assistant

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Bradley Mark Corlew, Appellant.

Appellate Case No. 2021-000989

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Appeal From Chester County  
Brian M. Gibbons, Circuit Court Judge

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Unpublished Opinion No. 2024-UP-408  
Heard September 24, 2024 – Filed December 4, 2024

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**AFFIRMED**

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Appellate Defender Sarah Elizabeth Shipe, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General John Benjamin Aplin, both of  
Columbia, and Solicitor Randy E. Newman, Jr., of  
Lancaster, all for Respondent.

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**PER CURIAM:** Bradley Corlew appeals his convictions of criminal sexual conduct (CSC) with a minor in the first degree, CSC with a minor in the second degree, and incest. Corlew contends the trial court erred in (1) allowing the State to introduce

bad acts evidence pursuant to Rule 404(b), SCRE, and as part of the res gestae of the crimes alleged; (2) admitting into evidence an adolescent questionnaire wherein one of the victims identified Corlew as her abuser; (3) allowing an expert witness to describe sexually explicit photographs found on Corlew's phone; and (4) requiring Corlew to move his seating position in the courtroom in a manner that allegedly violated Corlew's constitutional right to confrontation. We affirm.

## FACTS

This case centers around Corlew's sexual abuse of two victims: Minor 1, Corlew's daughter, and Minor 2, the daughter of Corlew's girlfriend, Sarah Lacy. At the time of trial, both victims were thirteen years old. When the abuse occurred, nine children lived in the home with Corlew and Lacy. According to the State, the environment in the home was "sort of a lifestyle to normalize sexual behaviors between [Corlew and Lacy] and their sexual activities, as well as having the children join in on the sexual activities as well."

At trial, Minor 1 and Minor 2 testified in detail about the abuse they experienced in the home. Additionally, the State presented evidence of bad acts to the jury. For example, the jury watched videos of Minor 1's two forensic interviews,<sup>1</sup> during which she stated (1) Lacy used sex toys on Minor 1, (2) Lacy forced Minor 1 to masturbate, (3) Lacy sexually abused Minor 1's brother and on at least one occasion tried to have sex with him, and (4) Corlew and Lacy forced Minor 1's brother to watch them have sex. Minor 2, during her forensic interview, stated that (1) Corlew forced her brother to have sex with Lacy, (2) Corlew would make all the children watch while he and Lacy had sex, (3) Corlew beat Minor 2's brother when Minor 2's brother urinated on himself, (4) Corlew held her while she was forced to have sex with Minor 1's brother, (5) Corlew physically abused Lacy, and (6) two other children in the house were forced to have sex with each other. Minor 1 and Minor 2 also referenced many of these events in their testimony.

At the conclusion of the trial, the jury convicted Corlew of first-degree CSC with a minor, second-degree CSC with a minor, and incest, and the trial court sentenced him to life imprisonment, twenty years' imprisonment, and ten years' imprisonment, respectively. This appeal followed.

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<sup>1</sup> During Minor 1's first forensic interview, she insisted that Corlew had nothing to do with the sexual assault she suffered and that instead, Lacy was responsible for all of it. Minor 1 recanted this account in her second interview and described Corlew's involvement.

## LAW AND ANALYSIS

### I. Res Gestae and Rule 404, SCRE

Corlew argues the trial court erred in granting the State's pretrial motion seeking to admit several pieces of bad acts evidence pursuant to Rule 404, SCRE, and as part of the res gestae of the crimes with which Corlew was charged. We first consider whether this issue is preserved before turning to the merits of the argument.

#### A. Preservation

During the pretrial phase, the trial court heard arguments on two issues:<sup>2</sup> (1) the State's motion to admit evidence of Corlew's bad acts through testimony and video recordings of forensic interviews with the victims, and (2) the admissibility of the video recordings under 17-23-175 of the South Carolina Code (2014).<sup>3</sup>

The State sought to introduce evidence that Corlew abused not only Minor 1 and Minor 2 but also their siblings. The State also attempted to introduce evidence that Corlew had physically abused Lacy. The State argued this evidence was admissible as evidence of a common scheme or plan by Corlew to "normalize daily sexual activities with all the children present and some actively participating when he required it." Furthermore, the State maintained the evidence was admissible as part of the res gestae of the crimes. Because multiple children were often abused simultaneously, the State contended, "it would tie [its] hands and be almost impossible to divvy out the type of abuse that was going on with each individual child."

Corlew argued that the State established, at best, similarity, which is not enough to qualify as a common scheme or plan. Corlew also made a Rule 403, SCRE, argument that the danger of unfair prejudice substantially outweighed the evidence's probative value. The trial court ruled in favor of the State, informing Corlew:

[Y]ou're protected in the record right now. I'm allowing the State to go into that to establish what they call a

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<sup>2</sup> While only the first is pertinent to this appeal, it is unclear whether counsel's later objection preserved for appellate review the first or the second issue.

<sup>3</sup> Section 17-23-175 governs the admissibility of an out-of-court statement by a child under twelve years of age.

common scheme and plan, but certainly you're entitled to an objection as to under a Rule 403 analysis whether it's substantially more [unfairly prejudicial than probative], and, you know, you can simply do that at trial by just noting your objection for the record to protect your client.

During the trial, the State moved to admit into evidence videos of the forensic interviews, which included some of the bad acts evidence. The trial court noted Corlew's objection for the record and overruled it.

South Carolina courts do not follow the plain error rule. See *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) ("[T]he plain error rule does not apply in South Carolina state courts."). "Instead, a party must have a contemporaneous and specific objection to preserve an issue for appellate review." *Id.* "[I]t is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error." *State v. Geer*, 391 S.C. 179, 193, 705 S.E.2d 441, 448 (Ct. App. 2010) (quoting *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007)). However, appellate courts are to be "mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner" and, thus, should not apply preservation rules in a manner that "elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023).

The State argues Corlew's objection only renewed the pretrial argument that the forensic interviews were inadmissible pursuant to section 17-23-175 (governing admission of statements given by children during investigative interviews). Corlew maintains that his objection renews the pretrial argument against allowing into evidence Corlew's extrinsic bad acts. Although Corlew had the duty to bring to the trial court's attention the specific nature of his objection, we hold the question is nonetheless preserved. A contrary application of the preservation rule may be "hyper-technical" and would suppress consideration of an otherwise meritorious issue, particularly given that the trial court appears to have invited Corlew to simply note his objection for the record, which he did.

However, Corlew only renewed his objection with regard to the videos of the forensic interviews, *not* the victims' testimony. Thus, we limit our review to the bad acts that were brought in through the videos, rather than by live witness testimony, because any concerns with the testimony were not preserved.

## B. Merits

"The [res gestae] theory of admissibility recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact-finder in understanding the context in which the charged crime occurred." *State v. McGee*, 408 S.C. 278, 287, 758 S.E.2d 730, 735 (Ct. App. 2014) (quoting *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999)). "The evidence admitted must logically relate to the crime with which the defendant has been charged." *Id.* (quoting *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009)).

Further, Rule 404(b), SCRE, provides,

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.

For the common scheme or plan exception to apply, "The State must demonstrate to the trial court that there is in fact a scheme or plan common to both crimes, and that evidence of the other crime serves some purpose other than using the defendant's character to show his propensity to commit the crime charged." *State v. Perry*, 430 S.C. 24, 44, 842 S.E.2d 654, 665 (2020). "Repetition of the same act or same crime does not equal a 'plan.'" *Id.* at 41, 842 S.E.2d at 663 (quoting *State v. Perez*, 423 S.C. 491, 502, 816 S.E.2d 550, 556 (2018) (Hearn, J., concurring)). Instead, "There must be something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged." *Id.*

Corlew contends that much of the bad acts evidence was unconnected to the crimes with which he was charged.

### 1. Evidence That Corlew Was Violent Towards Lacy

Beginning with the evidence that Corlew physically assaulted Lacy, we hold this evidence was introduced "for some purpose other than to show the accused is a bad person or he acted in conformity with" his bad acts. *See State v. Benton*, 338 S.C. 151, 156, 526 S.E.2d 228, 230 (2000). Specifically, this evidence, coupled with

testimony of the State's expert, was meant to explain any delay by the victims in disclosing the sexual abuse of which Corlew was accused.

The State qualified Shauna Galloway-Williams as a blind expert in the field of child sexual abuse dynamics. Galloway-Williams testified,

So another one of the reasons that children delay disclosure is because of fear and threats. . . . And sometimes those threats are indirect in the sense--or in the case of domestic violence, that might be an indirect threat where a child is witnessing this person who may be harming them also being aggressive or hurtful to other people. And they may internalize that if I tell or if I do something then that may happen to me or--and/or this may mean that something would happen to the other person that may be harmed.

Together with this testimony, the introduction of evidence that Corlew was violent towards Lacy preempted credibility concerns caused by any delay in the victims' disclosure of the sexual abuse. Because the State did not use the evidence to prove the charged crimes were in conformity with Corlew's violence towards Lacy, we conclude that this evidence was properly admitted. *See State v. Galloway*, 443 S.C. 229, 244, 904 S.E.2d 866, 874 (2024) ("[I]t was not error for the trial court to admit the testimony about [the defendant's violence towards a third party living in the victim's home] because it is clear the State did not elicit the testimony for the purpose of demonstrating [the defendant]'s propensity to be *sexually* violent. Instead, the State offered the evidence to explain why the victim did not disclose the abuse when she was a child.").

## **2. Evidence of Abuse Towards the Other Children**

Turning to the evidence related to the other children in the home, we agree with Corlew that the trial court erred in admitting the evidence. These acts did not constitute evidence of a common scheme or plan. The State used this evidence to show Corlew acted in conformity with the bad acts in committing the charged crimes.

As our supreme court stated in *Perry*,

[A] very high percentage of sexual crimes against children are committed just like [the defendant]'s alleged crimes: by father figures, in the home, in a bedroom, beginning in the pre-pubescent years. The fact [that the defendant]'s crimes fit this general pattern does not give [the defendant] a "monopoly" on his criminal method.

430 S.C. at 40, 842 S.E.2d at 662; *cf. State v. Durant*, 430 S.C. 98, 106–07, 844 S.E.2d 49, 53 (2020) (affirming admission of bad acts evidence under Rule 404(b) because of the defendant's "particularly unique method of committing his attacks" by holding private "prayer meetings," a method the court found was "common to all the girls"). Likewise, normalization of sexual behavior is, sadly, far from a particularized criminal method in cases such as this one. The State did not identify any specific patterns by which this criminal method was unique in the present case. *Cf. State v. McClellan*, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (holding bad acts evidence admissible under Rule 404(b) when the defendant's particularized plan for sexually assaulting his daughter "parallel[ed] that of her sisters: the initial attack occurred around age twelve; [the defendant] entered their room and chose one of them, who would be forced to submit; he gave to each the same explanation for his actions; and he quoted to each [a] Biblical verse").

We acknowledge that a defendant's common scheme or plan need not involve facts that are strictly unique when compared to other cases. However, more than mere similarity is required for evidence to be admissible under Rule 404(b). See *Perry*, 430 S.C. at 38–39, 842 S.E.2d at 661–62 (acknowledging similarities between a defendant's bad acts and the charged crime but noting these did not amount to a logical connection). Here, the bad acts evidence merely showed Corlew had a propensity to commit sexual crimes against Minor 1 and Minor 2. Consequently, we hold the trial court erred in admitting this evidence.

### 3. Other Bad Acts

The State suggests testimony that Lacy urinated and defecated on the floor in the house was properly admitted because it "normalize[d] sexual behavior due to the ensuing exposure of genitals and normalization of the excretion of[] fluids: urine, defecation, and ultimately [ejaculation]." We reject this "logical connection" argument. While admittedly disturbing, evidence of *Lacy's* behavior does not "reasonably tend[] to prove a material fact" of *Corlew's* charged crimes. *Perry*, 430 S.C. at 44, 842 S.E.2d at 665 (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923)). The State presented this evidence to emphasize how sexual behavior

had been normalized in the home. However, we agree with Corlew that much of the evidence had little logical connection to the crimes with which he was charged. Accordingly, we hold the trial court erred in allowing this evidence.

#### **4. Res Gestae**

We reject the State's argument that the above evidence was admissible as part of the res gestae of the charged crimes. "[T]he res gestae exception is necessary because 'it would be virtually impossible to prove that the accused committed the crime charged without also introducing evidence of the other acts.'" *Id.* at 69, 842 S.E.2d at 678 (Kittredge, J., dissenting) (quoting *State v. Curry*, 330 N.E.2d 720, 725 (Ohio 1975)); *see also McGee*, 408 S.C. at 287, 758 S.E.2d at 735 ("The res gestae theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact-finder in understanding the context in which the crime occurred." (quoting *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999))).

We are unpersuaded that the State needed the bad acts evidence to prosecute the case. Large portions of both Minor 1's and Minor 2's forensic interviews were relevant to the elements of the crimes with which Corlew was charged. A more focused presentation of the children's forensic interviews, combined with their testimony, would have been sufficient for the jury to reach a decision without the need for additional context to understand Corlew's alleged crimes.

#### **C. Harmless Error**

Notwithstanding these admissibility errors, we hold the errors were harmless. *See State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("Error is harmless where it could not reasonably have affected the result of the trial."); *see also State v. Young*, 420 S.C. 608, 628, 803 S.E.2d 888, 899 (Ct. App. 2017) ("[T]he harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986))).

Even if the trial court excluded all references to the other bad acts that took place in the home, the abundant remaining evidence was more than sufficient to establish Corlew's guilt beyond a reasonable doubt. Both Minor 1 and Minor 2 testified in explicit detail about instances of sexual abuse occurring "almost every

night and [every day]". These instances were corroborated by Lacy's testimony and physical evidence from Minor 2's genital exam. We cannot imagine that a jury faced with this evidence would fail to convict.

Thus, although the trial court erred in admitting some of the bad acts evidence, we hold the errors were harmless.

## II. Admissibility of the Adolescent Questionnaire

Corlew argues that the trial court erred in admitting into evidence an adolescent questionnaire in which Minor 1 identified Corlew as her abuser because the questionnaire was substantially more prejudicial than probative in contravention of Rule 403, SCRE. Specifically, Corlew maintains that the questionnaire was needlessly cumulative and the resulting prejudice was unfair because it constituted inadmissible hearsay.<sup>4</sup>

### A. Needlessly Cumulative

We first analyze Corlew's argument that the questionnaire was needlessly cumulative. Rule 403 provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed . . . by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point." *State v. Funderburke*, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968). Even if the evidence was cumulative, we disagree that it was *needlessly* cumulative.

"We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

In *State v. Stephens*, the defendant asserted on appeal that the trial court should have excluded a photographic lineup from evidence because it was needlessly

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<sup>4</sup> Corlew does not contend that the questionnaire should have been suppressed under Rules 801 to 806, SCRE. Instead, Corlew wants this court to conduct a hearsay analysis for the purpose of supplying the "unfair prejudice" that is required for suppression under Rule 403.

cumulative to a witness's in-court identification of the defendant. 398 S.C. 314, 320, 728 S.E.2d 68, 72 (Ct. App. 2012). This court observed that the defendant's trial strategy was to "consistently attack[] the reliability of [the witness]'s identification of [the defendant]." *Id.* at 321, 728 S.E.2d at 72. This strategy increased the probative value of the photographic lineup by making it more important, and therefore "the photos were not 'needlessly' cumulative." *Id.* This court consequently affirmed. *Id.*

Here, the probative value of the questionnaire outweighed its cumulative effect. At the heart of any criminal-sexual-conduct-with-a-minor case is the credibility of the witnesses, who are often the minor victims themselves. Thus, the questionnaire was probative because of its potential to support Minor 1's credibility—a central issue in Corlew's trial. As a result, we hold that the questionnaire was not *needlessly* cumulative and that the trial court acted within its discretion in overruling Corlew's objection on this point.

### **B. Danger of Unfair Prejudice**

Next, we consider Corlew's contention that because the questionnaire was inadmissible hearsay, the danger of unfair prejudice resulting from its admission substantially outweighed its probative value. Although Corlew objected to the admission of the questionnaire "under [Rule] 403," he did not make any arguments about hearsay. Because an "objection must be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge," we hold that Corlew's attempt to bootstrap a hearsay analysis into a Rule 403 analysis is unpreserved. *See* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 195 (3d ed. 2016); *see also* *State v. Hudgins*, 319 S.C. 233, 237, 460 S.E.2d 388, 390 (1995) (finding the appellant's objection "on the general ground that the prejudicial impact outweighed the probative value" was different from the ground raised on appeal and the issue was thus unpreserved), *overruled in part on other grounds by* *State v. Collins*, 329 S.C. 23, 495 S.E.2d 202 (1998)).

## **III. Admissibility of Investigator Stevens's Testimony**

The State qualified Investigator Paula Stevens as an expert in digital forensics. Investigator Stevens extracted photographs and videos stored in Corlew's phone and flagged those she deemed potentially relevant to law enforcement. The State sought to introduce a zip file containing the flagged photographs and videos into evidence, at which point Corlew objected, stating, "Your Honor, yes, we would object to that. We're not sure exactly what's being moved into evidence as far as what kind of

images or pictures or anything." The trial court overruled this objection. The State then elicited testimony from Investigator Stevens describing the contents of some of the flagged photographs.<sup>5</sup>

The next day, the parties returned to the admissibility of the photographs. Corlew stated he wished to clarify his objection "to the phone dump," claiming the photographs were irrelevant and more prejudicial than probative. He did not make any motion to strike Investigator Stevens's earlier description of the photographs, nor did he ask for any curative instructions. The trial court reviewed the photographs and held that none of the photographs were admissible under Rule 403. The State took no exception to the ruling because it felt "the testimony of [Investigator Stevens] was enough."

On appeal, Corlew contends that Investigator Stevens's testimony should have also been excluded from evidence under Rule 403. He further argues that his clarification of his earlier objection to the admission of the photographs preserved the issue for appellate review.

Contemporaneous objections are required to properly preserve an error for appellate review. *State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994); *see also State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004) (finding that "counsel's objection came too late" when counsel raised no objection to an inquiry "until several pages of testimony concerning the [evidence] had been taken").

The admissibility of Investigator Stevens's testimony is not preserved for appellate review. Although Corlew raised an objection while Investigator Stevens was on the witness stand, this objection pertained to the State's desire to publish the photographs from Corlew's phone to the jury. Corlew did not object at any point during Investigator Stevens's testimony in which she described the contents of the photographs. Corlew's clarification the next day still seemingly pertained to the admission of the photographs themselves as he made no effort to bring the trial court's attention to the fact that Investigator Stevens had already described the photographs to the jury, even when the State decided these descriptions precluded the need to show the jury the photographs. Thus, we hold this issue is unpreserved.

#### **IV. Confrontation Clause**

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<sup>5</sup> Technical difficulties prevented the State from showing the jury the photographs Investigator Stevens described.

Corlew argues the trial court violated his constitutional right to confrontation by moving his seat in the courtroom prior to the testimony of the two minor victims.

After the parties made their opening statements, the trial court stated it was going to move Corlew's position in the courtroom during the testimony of Minor 1 and Minor 2. Corlew's counsel expressed concern that Corlew would be unable to see the witness box and that the witnesses would be unable to see Corlew under the proposed seating configuration. The trial court advised the parties that it would hear contemporaneous objections on the matter when the time came.

Later, before Minor 1 testified, Corlew reminded the trial court about the issue. The court replied, "From where [Corlew] was sitting[,] I don't care if [Corlew] sees, I don't want [Minor 1] to see." The State suggested that Corlew be seated "in [the] orange taped seat in the grand jury box." From this seat, Corlew would be blocked from Minor 1's view by the bench. Corlew's counsel consented to this arrangement and asked that Corlew be allowed to move immediately.

The Sixth Amendment of the United States Constitution provides for a defendant's right "to be confronted with the witnesses against him." U.S. Const. amend. VI. South Carolina's constitution contains the same right. S.C. Const. art I, § 14. The right also appears in section 17-23-60 of the South Carolina Code (2014): "Every person accused . . . shall have a right to . . . meet the witnesses produced against him face to face." Though this right has been interpreted in numerous contexts, federal jurisprudence has made clear that the clause encompasses the "literal right to 'confront' the witness at the time of trial." *California v. Green*, 399 U.S. 149, 157 (1970). This right is in part predicated on the notion that "[i]t is always more difficult to tell a lie about a person 'to his face' than 'behind his back.'" *Coy v. Iowa*, 487 U.S. 1012, 1019 (1988).

In *Coy*, the United States Supreme Court reversed a defendant's criminal conviction after holding that the state trial court violated the defendant's right to confrontation by allowing a one-way screen to be installed between the defendant and two witnesses—both thirteen-year-old girls whom he was accused of sexually assaulting. *Id.* at 1014, 1022. The screen "enable[d the defendant] dimly to perceive the witnesses, but the witnesses to see him not at all." *Id.* at 1015. The Court noted, "It is difficult to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter. *Id.* at 1020.

In *Maryland v. Craig*, the Supreme Court further clarified that "a defendant's right to confront accusatory witnesses may be satisfied absent a physical,

face-to-face confrontation at trial *only* where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured." 497 U.S. 836, 850 (1990). However, "[a] trial court *must* hear evidence and determine whether use of [the special procedure] is necessary to protect the welfare of the particular child witness who seeks to testify." *Id.* at 855 (emphasis added). The Court outlined several other required findings, including that the child witness would be traumatized by the presence of the defendant and that the emotional distress suffered by the child witness in the presence of the defendant be more than "de minimis." *Id.* at 856.

Here, the trial court made none of the findings outlined in *Craig*. The trial court appeared to be under the impression that the confrontation clause only requires that the defendant be allowed to see the witness—and not vice versa—which runs against *Coy*.<sup>6</sup> However, Corlew's counsel consented to Corlew's ultimate seating arrangement, and no further objection was made. Thus, we hold that any issue with Corlew's final seating arrangement was not preserved for appellate review. *See, e.g., State v. Bryant*, 372 S.C. 305, 315–16, 642 S.E.2d 582, 588 (2007) (if appellant conceded that a trial court ruling was not prejudicial, he could not assert on appeal that the ruling denied him a fair trial); *State v. Jackson*, 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005) (appellant waived any argument he had when he acquiesced the next morning and stated he would ask witness if he had administered a polygraph and "leave it at that").

## CONCLUSION

For the foregoing reasons, the trial court's order is

**AFFIRMED.**

**KONDUROS, GEATHERS, and MCDONALD, JJ., concur.**

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<sup>6</sup> We are particularly concerned with the trial court's statement: "I've done [alternative seating arrangements for defendants] before, and I've done it on cases that have gone up the appellate route. I've had people turn around and look the other way."

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHESTER COUNTY  
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

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Appellate Case No. 2021-000989

THE STATE, .....RESPONDENT,

v.

BRADLEY MARK CORLEW, .....APPELLANT.

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**PETITION FOR REHEARING**

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On December 4, 2024, this Court issued an unpublished opinion that affirmed Appellant Bradley Mark Corlew's convictions and sentences of life imprisonment for criminal sexual conduct (CSC) with a minor in the first degree, twenty (20) years' consecutive imprisonment for CSC with a minor in the second degree, and ten (10) years' consecutive imprisonment for incest. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. filed December 4, 2024). In affirming Corlew's convictions, this Court correctly held that, notwithstanding any trial court errors in granting Respondent's (the State's) pretrial motion seeking to admit several pieces of bad acts evidence pursuant to Rule 404(b), SCRE, and as part of the *res gestae* of the crimes alleged, any such errors were harmless because they could not have reasonably affected the result of the trial.

This Court properly concluded that even if the trial court excluded all references to the other bad acts, the abundant remaining evidence was more than sufficient to establish Corlew's guilt beyond a reasonable doubt.

Underlying that ruling, however, this Court found: (1) Corlew's objection to the bad acts evidence was preserved for appellate review and (2) the circuit court erred in admitting the evidence in the first place. First, the Court held that Corlew's challenge, at least as to the admission of bad acts through publication of the video recordings of forensic interviews with the victims, was preserved for appellate review despite the State's argument to the contrary. The Court then held that although evidence Corlew was violent to his girlfriend, Sarah Lacy (Lacy), was properly admitted, the trial court erred in admitting: (1) evidence of Corlew's abuse towards other children in the home and (2) evidence of other bad acts by Lacy. In regard to Corlew's abuse towards the other children, this Court found the bad acts failed to constitute admissible evidence of a common scheme or plan because "more than mere similarity is required" and the evidence "merely showed Corlew had a propensity to commit sexual crimes against [the victims]." In regard to Lacy's bad acts, this Court found the evidence emphasizing how sexual behavior had been normalized in the home "had little logical connection to the crimes for which [Corlew] was charged." The Court further rejected the State's argument that the evidence was admissible as part of the *res gestae* of the charge crimes because it was "unpersuaded that the State needed the bad acts evidence to prosecute the case." It held a more focused presentation of the victims' forensic interviews, combined with their testimony, would have been sufficient for the jury to reach a decision without the need for additional context to understand Corlew's crimes.

Based on the totality of these rulings, the State respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR, on grounds that this Court may have misapprehended or overlooked several important points when finding the bad acts objection was preserved for review and the trial court erred in admitting the bad acts evidence.<sup>1</sup> First, the State submits a more precise consideration of our error preservation rules shows the bad acts objection was not preserved for appellate review because the trial objection was an effort to exclude introduction of the forensic interviews in their entirety rather than an objection to the portions that included reference to the bad acts. Second, long-standing and well-established precedent supports the trial court's decision to admit the bad acts evidence under Rule 404(b), SCRE, as a pattern of continuous illicit conduct which had a logical connection to the charged crimes. Third, additional precedent supports the trial court's decision to alternatively admit the bad acts evidence under the *res gestae* theory of admissibility because it constituted a full presentation of the offenses without unnecessary fragmentation of the contextually relevant explanation of the home environment and the crimes committed in that home. Under such circumstances, the State believes this Court should reconsider both its error preservation finding and its subsequent finding of trial court error in Corlew's case.

#### **A. Relevant Facts & Procedural History**

As succinctly set forth by this Court in its opinion:

This case centers around Corlew's sexual abuse of two victims: Minor 1, Corlew's daughter, and Minor 2, the daughter of Corlew's girlfriend, Sarah Lacy. At the time of trial, both victims were thirteen years old. When the abuse occurred, nine children

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<sup>1</sup> Although this Court correctly affirmed Corlew's convictions and sentence, the State is currently seeking rehearing solely for the purpose of best ensuring its procedural and substantive arguments are not waived or foreclosed in any future proceedings that may occur in Corlew's case. See *State v. Black*, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. *State v. Humphries*, 354 S.C. 87, 91, n. 2, 579 S.E.2d 613, 615, n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

lived in the home with Corlew and Lacy. According to the State, the environment in the home was "sort of a lifestyle to normalize sexual behaviors between [Corlew and Lacy] and their sexual activities, as well as having the children join in on the sexual activities as well."

At trial, Minor 1 and Minor 2 testified in detail about the abuse they experienced in the home. Additionally, the State presented evidence of bad acts to the jury. For example, the jury watched videos of Minor 1's two forensic interviews, during which she stated (1) Lacy used sex toys on Minor 1, (2) Lacy forced Minor 1 to masturbate, (3) Lacy sexually abused Minor 1's brother and on at least one occasion tried to have sex with him, and (4) Corlew and Lacy forced Minor 1's brother to watch them have sex. Minor 2, during her forensic interview, stated that (1) Corlew forced her brother to have sex with Lacy, (2) Corlew would make all the children watch while he and Lacy had sex, (3) Corlew beat Minor 2's brother when Minor 2's brother urinated on himself, (4) Corlew held her while she was forced to have sex with Minor 1's brother, (5) Corlew physically abused Lacy, and (6) two other children in the house were forced to have sex with each other. Minor 1 and Minor 2 also referenced many of these events in their testimony.

*State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. filed December 4, 2024).

### **B. Preservation**

In his brief, Corlew argued he adequately preserved the bad acts issue for appeal by objecting when State's Exhibits 1 & 2 (the forensic interviews of the victims) were introduced at trial. (R.p.162). However, that trial objection was clearly *not* a renewal of the objection to the State's in limine bad acts motion, which necessarily, would *only* have been a valid objection to *portions* of those forensic interviews—the portions that referenced the challenged bad acts and not the charged crimes themselves—rather than an objection to the interviews *in toto*. Instead, Corlew's counsel appeared—and under any reasonable interpretation sounded—to be renewing the objection to introduction of the *entirety* of the forensic interviews, particularly when he claimed to only be renewing a single "objection" rather than multiple "objections." Indeed,

when the State asked to “move State’s Exhibit Number 1 into evidence,” counsel responded: “Previous *objection* as ruled upon,” to which the trial court stated: “Yeah. All right. *Objection* overruled.” (R.p.162, lines 6-9) (emphasis added). A similar, singularly based and renewed “objection” was repeated in regard to State’s Exhibit 2. (R.p.162, lines 20-25). Yet, the *only* pretrial objection Corlew made to the admission of the *entirety* of the interviews was argued at the hearing held on August 18, 2018, in which the trial court was required to review the admissibility of those interviews under S.C. Code § 17-23-175.<sup>2</sup> (R.p.19-p.52). Corlew’s counsel challenged the trustworthiness of the statements and argued he was concerned about “coaching” and about “outside influence[s]” suggesting answers for the children in the interview. (R.p.51, line 23-p.52, line 11). The trial court overruled counsel’s objection. (R.p.52, lines 12-19). This “coaching” objection is what was renewed at trial, and not the objection to the State’s motion to admit particular bad acts described in portions of the statements.

In its opinion, this Court condemned a “hyper-technical” application of the error preservation rule that could “suppress consideration of an otherwise meritorious issue.” However here, the State submits no such hyper-technical application is espoused. Instead, counsel simply failed to meet his responsibility to preserve the bad acts issue for appeal by failing to adequately renew his objection, on *this* ground. *I’On v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 759 (1997). A ruling *in limine* is not a final ruling on the admissibility of evidence. *State v. Griffin*, 339 S.C. 74, 528 S.E.2d 668 (2000); *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999). A pre-trial ruling on the admissibility of evidence is preliminary, and is subject to change based on

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<sup>2</sup> The Code requires that, prior to admitting a prior out-of-court statement of a child under twelve, the trial court must determine, “in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.” S.C. Code Ann. § 17-25-175(A)(4) (Supp. 2014).

developments at trial. *Id.* Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016).

In the present case, during the in limine motion for bad acts, counsel only made passing reference to sexual misconduct involving children other than the two victims, and counsel did not request any specific redactions for any of the bad acts described in the forensic interviews. R. 28, lines 18-22. Defense counsel did not complain about or request suppression of evidence of physical abuse or sexual abuse perpetrated by Lacy. Further, defense counsel never offered a legitimate argument against *res gestae*, the principal grounds argued in support of admission by the prosecution. The “renewal” of the previous “objection” by defense counsel when the State sought to admit the forensic interviews was entirely based on the prior coaching objection made during the section 17-23-175 hearing, and was clearly an effort to exclude those interviews *in their entirety*. Certainly, the trial court should not be expected to have interpreted that objection as an objection to the piecemeal *res gestae* / Rule 404(b) evidence. Trial counsel, at the very least, had the obligation to renew his objection with enough specificity so the trial court, the parties in this appeal, and this Court would not have to speculate as to which objection—rather than objections—was or were being renewed. Therefore, the bad acts issue was not preserved for review and the State respectfully asks this Court to reconsider its decision to address the merits of this issue in this appeal.

## C. Merits

### 1. Rule 404(b), SCRE – Common Scheme or Plan

In the instant case, both the charged and uncharged conduct constitute individual manifestations of the same common scheme or plan to sexualize and normalize sexual activity within the household between the adults and the children. The common scheme was to create a cascade of debauchery within the household for Corlew and Lacy’s joint venture for degenerate gratification, culminating in the charged sexual assaults. This uncommon, constant, and extreme normalization of sexual activity *was* Corlew’s scheme. As such, it was admissible evidence in the sound discretion of the trial court under Rule 404(b), SCRE.

In *State v. Weaverling*, 337 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999), this Court favorably quoted Supreme Court precedent that held the common scheme or plan exception “is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse between the same parties.” (quoting *State v. Whitener*, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955)); *see also State v. McClellan*, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (holding the “prosecutrix’s testimony regarding prior attacks was admissible under [the common scheme] exception to show the continued illicit intercourse forced upon her by Appellant.”).

In *State v. Tutton*, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003), this Court again held, favorably citing both *Weaverling* and *McClellan*, that common scheme or plan evidence is admissible when there is a *pattern of continuous illicit conduct*, because the pattern “clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in a similar fashion.” Five years later, this Court

similarly affirmed the admission of prior bad act evidence, finding “a clear pattern of escalating sexual abuse” satisfying the requirements of the common scheme or plan exception. *State v.*

*Kirton*, 381 S.C. 7, 36, 671 S.E.2d 107, 122 (Ct. App. 2008). In *Tutton*, this Court observed:

Sex crimes may be unique in this respect because they commonly involve the same victims engaged in repeated incidents occurring under very similar circumstances. The reason for the general admissibility of such evidence under these circumstances is self-evident – where there is a pattern of continuous conduct shown, that pattern clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in a similar fashion. . . . Where there is a pattern of continuous misconduct, as commonly found in sex crimes, that pattern supplies the necessary connection to support the existence of a plan. Presumably, this is so because the same evidence that establishes the continuous nature of the assaults will generally suffice to prove the existence of the common scheme or plan as well. In *Weaverling* and *McClellan*, **the sheer volume of repeated occurrences**, together with the close similarities in the assaults, evidenced a pattern of continuous illicit conduct.

*Tutton*, 354 S.C. at 328-29, 580 S.E.2d at 191 (emphasis added).

In the instant case, no doubt the sheer multitude of sexualized activity constituting both charged conduct and bad acts evidenced a clear pattern of continuous illicit conduct and showed the logical connection required by our supreme court in *State v. Perry*, 430 S.C.24, 842 S.E.2d 654 (2020). The trial court properly admitted the bad act evidence under Rule 404(b), SCRE, after appropriately balancing the probative value of the evidence against its prejudicial effect. Therefore, the State respectfully asks this Court to reconsider its finding of trial court error regarding Rule 404(b), SCRE.

## 2. *Res Gestae*

In his opening statement, the solicitor explained in stark and clear terms the environment that Corlew created, an environment where he was able to perpetrate a multitude of sexual

assaults on both victims. (R.p.67-p.68). This environment included the bad acts addressed by this Court. The State submits all the extrinsic acts were admissible as *res gestae*, because they provided context to the crimes and constituted a full presentation of the offenses without unnecessary fragmentation of the contextually relevant explanation of the home environment and the crimes Corlew was able to commit in that home. The presence of dildos and pornography, the physical abuse and neglect, the defecation and urination, and the other acts committed in front of or involving other children, were all contemporaneous with the charged acts and part of the grooming of the two victims. Also, the evidence helped explain the necessity for conducting forensic interviews of all the children and the circumstances of their disclosures.

“The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred.” *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). This Court held that to constitute part of the *res gestae* of an offense, it is important the extrinsic acts have a close temporal proximity to the charged crime. *State v. Martucci*, 380 S.C. 232, 258, 669 S.E.2d 598, 612 (Ct. App. 2008). “Even though a defendant is not charged with every crime committed during a criminal transaction, every aspect of it relevant to the crime charged may be presented at trial.” *Altman v. State*, 495 S.E.2d 106, 108 (Ga. Ct. App. 1997); *State v. McGee*, 408 S.C. 278, 288, 758 S.E.2d 730, 735-36 (Ct. App. 2014) (“When evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the *res gestae*.”) (internal quotation marks omitted) (quoting *State v. Preslar*, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005)).

In the instant case, the extrinsic acts consisted of conduct either Minor 1 or Minor 2 observed or was subjected to. The acts were in close proximity to or contemporaneous with the charged acts. The physical abuse explains why neither child disclosed the sexual abuse they suffered until forensic interviews precipitated only by Lacy's accusations of physical abuse by Corlew and admissions of her own acts. Further, Son's sexual abuse was witnessed by the victims, and what they witnessed served to normalize sexual behavior in the household, as did the adult sexual behavior between Corlew and Lacy, which was done in front of the victims. Additionally, Lacy's conduct, including urination, defecation, and nudity would be acts by her and not Appellant, but does further normalize sexual behavior due to the ensuing exposure of genitals and normalization of the excretion of fluids: urine, defecation, and ultimately ejaculate.

While a "more focused presentation of the victims' forensic interviews" was certainly possible, it would have fragmented the context of the crimes, leading to confusion ranging from questions about how the assaults could have occurred in a household where two adults and nine children were often present, to questions about why the victims would have delayed disclosure of the horrendous abuse. The trial court did not abuse its discretion in admitting the bad acts as part of the *res gestae*. Consequently, the State respectfully asks this Court to reconsider its finding of trial court error regarding the *res gestae* theory of admissibility.

#### **D. Conclusion**

For all the foregoing reasons combined with the reasons articulated in the State's brief and during oral argument before this Court, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue an order affirming Corlew's

convictions and sentence on grounds that: (1) the argument was not preserved for appellate review and/or (2) the trial court did not err in admitting any of the bad acts testimony, both under Rule 404(b), SCRE, and as part of the *res gestae*, but retaining this Court's conclusion that any possible error was harmless beyond a reasonable doubt.

Respectfully submitted,

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RANDY E. NEWMAN, JR.  
Solicitor, Sixth Judicial Circuit

BY:   
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina  
December 12, 2024

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHESTER COUNTY  
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

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Appellate Case No. 2021-000989

THE STATE, .....RESPONDENT,

v.

BRADLEY MARK CORLEW, .....APPELLANT.

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**PROOF OF SERVICE**

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I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Petition for Rehearing*, dated December 12, 2024, on Appellant by sending an electronic copy via email to Sara E. Shipe, counsel of record for Appellant, at the address listed for counsel in AIS:

I further certified that all parties required by Rule to be served have been served. This 12<sup>th</sup> day of December, 2024.



Susan Spencer  
Legal Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3727

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

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Opinion No. 2024-UP-408

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THE STATE,

RESPONDENT,

V.

BRADLEY MARK CORLEW,

PETITIONER

APPELLATE CASE NO. 2021-000989

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PETITION FOR REHEARING

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On December 4, 2024, this Court affirmed appellant's convictions and sentences where appellant argued the trial court erred in allowing the state to introduce bad acts pursuant to Rule 404(b), SCRE, and as part of the res gestae of the crimes alleged; (2) admitting into evidence an adolescent questionnaire wherein one of the victims identified appellant as her abuser; (3) allowing an expert witness to describe sexually explicit photographs found on appellant's phone; and (4) requiring appellant to move his seating position in the courtroom in a manner violative of appellant's constitutional right to confrontation. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. Filed Dec. 4, 2024).

Appellant respectfully requests rehearing pursuant to Rule 221(a), SCACR, as to issue one, regarding the trial court's admission of evidence of bad acts considering the significant points overlooked and/or misapprehended by this Court discussed below.

### Preservation

In its opinion this Court found appellant only renewed his pretrial objection to the admission of bad act evidence as to the forensic interview videos and not the victims' testimony. However, as pointed out by the Court in the opinion, during pretrial motions the trial granted the state's request to present the evidence of prior bad acts, and importantly, noted that the defense was "protected in the record." R. 19, ll. 4-6. The trial court specifically instructed counsel should make a contemporaneous objection "without having to stand up every single time something is said." R. 19, ll. 6-9. The court explained that defense counsel could simply note his objection for the record during the trial. R. 19, ll. 9-15.<sup>1</sup>

Counsel for appellant relied on the trial court's verbal assurance that the objection was "protected in the record." Counsel's objection was to both the victims' testimony and to the forensic interview videos. Counsel objected at the first mention of this the prior bad act evidence and his objection is preserved for appellate review.

### Evidence

Regarding the evidence that appellant physically harmed Lacy, this Court held the evidence was admissible finding it was introduced for some purpose other than to show the accused is a bad person or acted in conformity with prior bad acts. This Court found specifically; this evidence

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<sup>1</sup> During the trial, when the state sought to introduce State's Exhibit #1, which was digital media containing the first and second forensic interviews of Minor 1, defense counsel renewed his objection by stating, "Previous object as ruled upon." R. 162, ll. 6-9. Similarly, defense counsel renewed his objection when the state sought to introduce State's Exhibit #2, which was the forensic interview of Minor 2. R. 162, ll. 20-24. State's Exhibits #1 and #2 are on file with this Court.

was used by the state to explain any delay by the victims in disclosing the alleged abuse. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. Filed Dec. 4, 2024). In support of its holding this Court cited *State v. Galloway*, 443 S.C. 229, 904 S.E.2d 866 (2024) ([i]t was not error for the trial court to admit the testimony about [the defendant’s violence towards a third party living in the victim’s home] because it is clear the State did not elicit the testimony for the purpose of demonstrating [the defendant’s] propensity to be sexually violent. Instead, the [s]tate offered the evidence to explain why the victim did not disclose the abuse when she was a child).

This case is distinct from *Galloway*, where the victim in that case disclosed the abuse she endured as a child in elementary school several years later when she was thirty-seven. There was no delay of disclosure to explain away in appellant’s case. The minors alleged the sexual abuse was ongoing until they were separated from appellant. The minors were thirteen at the time of trial. The evidence could not have been used to explain a delay in disclosure where there was none in this case. Furthermore, whether appellant physically assaulted Lacy, his co-defendant, was not connected to the alleged sexual assaults at all. There was simply no relationship between the two.

This Court correctly found evidence related to the other children in the home and was erroneously admitted where the acts did not constitute evidence of a common scheme or plan and was used to show propensity. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. Filed Dec. 4, 2024). Additionally, this Court correctly found evidence related to other bad acts—testimony that Lacy urinated and defecated on the floor—was erroneously admitted where the evidence had “little logical connection” charged offenses. *Id.* at 7-8. This Court correctly held none of the bad act evidence was admissible as part of the res gestae of the charged crimes stating, “[w]e are unpersuaded that the [s]tate needed the bad acts evidence to prosecute the case. *Id.* at p. 8.

### Reversible Error

The state presented these prior bad acts to convince the jury that appellant was a sexual deviant, and as such, he had likely committed the charged offenses of sexual battery. According to the state, the children lived in a “house of horrors” created by appellant and Lacy, which involved sexual assaults between the adults and among even the children, physical beatings between the adults and the adults and the children, lack of sanitation, deficiencies in hygiene, and a general mood of hyper-sexualization. This so-called “house of horrors” was not connected at all to the charged offenses as it had no tendency to prove a fact in dispute or that appellant committed the charged offenses. The state used the prior bad acts for the very purpose for which they are prohibited – propensity.

This Court held the errors were harmless stating “the abundant remaining evidence was more than sufficient to establish [appellant’s] guilt beyond a reasonable doubt.” *Id.* at 8.

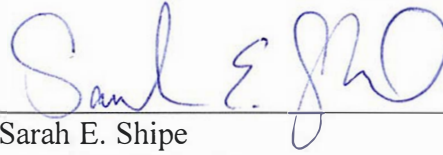
Error is harmless where it could not reasonably have affected the result of the trial. *In re Harvey*, 355 S.C. at 63, 584 S.E.2d at 897; *State v. Burton*, 326 S.C. 605, 610, 486 S.E.2d 762, 764 (Ct.App.1997). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); *State v. Adams*, 354 S.C. 361, 380–381, 580 S.E.2d 785, 795 (2003). Thus, an insubstantial error not affecting the result of the trial is harmless when guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978); *State v. Weaverling*, 337 S.C. 460, 471, 523 S.E.2d 787, 793 (Ct.App.1999); see also *State v. Williams*,

321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) (instructing that error in admission of evidence is harmless where it is cumulative to other evidence which is properly admitted).

As with any improper evidence, the next step is to determine whether the erroneous admission qualifies as a harmless error. *See In re Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) (“No definite rule of law governs this finding [of harmless error]; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” (quoting *Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009))). We do not weigh the evidence when determining this. Instead, we ask “whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012).

The trial court’s admission of these shocking acts allegedly committed by appellant were not “insubstantial error[s] not affecting the result” of trial but rather were *critical* errors which certainly affected the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Moreover, because the objection was preserved as to both the testimony and the forensic interviews the evidence was not cumulative to other evidence. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The state’s case against appellant was far from compelling where beyond the two minor testimonies it presented, one normal physical exam and one exam with with injury explaining that both could be consistent nor not consistent with sexual trauma, and Lacy’s dubious and self-serving testimony. This disturbing and improper evidence contributed to the guilty verdict. *Matter of Bilton*, 432 S.C. 157, 581 S.E.2d 442 (2020).



Sarah E. Shipe  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

This 19th day of December, 2024.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

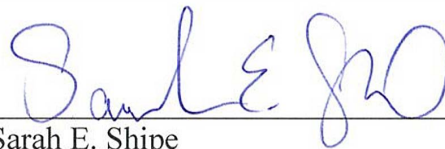
BRADLEY MARK CORLEW,

PETITIONER

APPELLATE CASE NO. 2021-000989

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon J. Ben Aplin, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Bradley Mark Corlew, #385931, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of December, 2024.



Sarah E. Shipe  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

# The South Carolina Court of Appeals

The State, Respondent,

v.

Bradley Mark Corlew, Appellant.

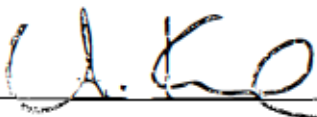
Appellate Case No. 2021-000989

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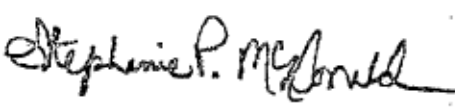
## ORDER

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After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
Sarah Elizabeth Shipe, Esquire  
Randy E. Newman, Jr., Esquire  
John Benjamin Aplin, Esquire

**FILED**  
**Jan 13 2025**