STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions
The Honorable Eugene C. Griffith, Circuit Court Judge

Appellate Case No. 2023-001872

THE STATE,

Respondent,

v.

WILLIAM BENTON OSWALD,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether the trial court abused its discretion by admitting evidence of Oswald's prior acts of sexual violence against his younger brother when Oswald later abused his daughters using the same method.

II. Whether the trial court properly admitted testimony that a police officer told Daughter 1 she would have to travel to Estill to file a police report, and whether Oswald was prejudiced.

III. Whether the trial court properly refused to declare a mistrial and instead gave a curative instruction when a witness testified Oswald offered to take a polygraph examination, and whether Oswald was prejudiced.

STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant William Oswald for three counts of criminal sexual conduct with a minor (CSCM) in the first degree. The State alleged Oswald raped his two daughters (Daughter 1 and Daughter 2) when they were children in the 1990s. Oswald proceeded to jury trial before the Honorable Eugene C. Griffith on November 27–December 1, 2023. The jury convicted Oswald as charged and the court sentenced him to 20 years' incarceration for the count stemming from his abuse of Daughter 1 and 20 years' incarceration for each of the two counts stemming from his abuse of Daughter 2. The counts related to Daughter 2 were ordered to be served concurrently with each other, but consecutively to the sentence related to Daughter 1. This direct appeal follows.

STATEMENT OF FACTS

These charges arose from Oswald's alleged sexual abuse of his two biological daughters when they were children in the 1990s. The eldest daughter, Daughter 1, testified Oswald sexually abused her throughout her early childhood. She estimated the abuse started when she was 4–6 years old. She testified about an incident at the family home in Estill where Oswald vaginally raped her as she lay on her stomach in the guest bedroom. R.p.85. The family moved to the Columbia area and for a time lived with the children's grandparents, and Oswald vaginally raped Daughter 1 there as well. R.p.88, 101. On one occasion, Oswald digitally penetrated her and masturbated in front of her while she was in the bathtub. R.p.97. Daughter 1 disclosed the abuse to her grandmother, but nothing happened as a result. R.p.100. The family then moved to South Congaree in Lexington County, and Oswald vaginally raped Daughter 1 in the new house as well. R.p.101–03. The rapes stopped when she hit puberty in the fifth grade, but Oswald continued to abuse her by showing her pornography and through inappropriate non-sexual contact. R.p.103–04, 108–09, 147. Daughter 1 also testified to Oswald's physical abuse. R.p.82. She was "consistently reminded that my dad was in charge, that he had authority, and he said it my entire childhood, you need to respect my authority." R.p.82.

After high school, Daughter 1 went to Columbia College on a soccer scholarship, met her future husband, and got married in her junior year of college. R.p.112. She disclosed the abuse to her husband during college. R.p.115. Daughter

1 endured psychological and health challenges as an adult and eventually disclosed to her therapist that she had been sexually abused as a child. R.p.132–38. She later disclosed the abuse to her mother, who replied that she already knew. R.p.139–40. Her mother testified and corroborated that Daughter 1 disclosed the abuse to her, but denied that she already knew. R.p.321. After continuing health struggles, Daughter 1 was admitted to a psychiatric hospital. R.p.143. When she was released, she received a call from her younger sister (Daughter 2). Her sister told her their father had sexually abused her too. R.p.143. Both sisters then reported the abuse to South Congaree and Richland County police. R.p.144–49.

Daughter 2 testified and recounted Oswald's physical and sexual abuse. R.p.439. She described an episode in Estill where Oswald became angry that her grandmother had bathed her with her friends. Oswald digitally penetrated her vagina while scolding her. R.p.441. On another occasion, Oswald digitally penetrated her vagina and anus while she was bathing. R.p.447. Oswald then put his finger in her mouth. R.p.447. When the family moved to the Columbia area, the sexual abuse of Daughter 2 became more frequent after Daughter 1 hit puberty. R.p.449. Oswald raped Daughter 2 digitally and with his penis. R.p.451. The abuse stopped when Daughter 2 hit puberty around age 11. R.p.453. Daughter 2 attempted suicide at 11 years of age, in high school, and again as an adult. R.p.454, 481, 496. When Oswald found out about her first suicide attempt, he beat her severely with a belt. R.p.456. Daughter 2 testified that after her last suicide attempt, she woke up in the hospital and found her father fondling her breast.

R.p.497. She reported this to police. When she was released from the hospital following her last suicide attempt, she decided to report Oswald's history of sexual abuse to police, and she and Daughter 1 went to the police stations together to file reports. R.p.499–500.

Oswald testified in his own defense at trial and denied the allegations. R.p.570. He claimed the daughters' allegations surfaced after he refused Daughter 1's husband's demand for Oswald to "sell our house and give them the money." R.p.632–633. Oswald also claimed he offered to "switch houses" with Daughter 2 shortly before she came forward to police, and that Daughter 2 was "depressed" and "very unhappy" about her living situation. R.p.654–55.

ARGUMENT

I. The trial court acted within its discretion when it admitted evidence of Oswald's prior acts of sexual violence.

Oswald alleges the trial court abused its discretion by admitting evidence of his prior sexual abuse of his brother to prove subsequent acts of abuse against his daughters. Because there was a logical connection between the prior abuse and charged acts, the trial court acted within its discretion by admitting the prior conduct under Rule 404(b), SCRE. This Court should affirm.

Standard of review.

The admission of prior bad act evidence under Rule 404(b), SCRE, is reviewed for an abuse of discretion. State v. Cotton, 430 S.C. 112, 114, 844 S.E.2d 56, 57 (2020).

Discussion.

Before trial, the State signaled its intention to introduce prior bad act evidence under Rule 404(b), SCRE, which 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." To establish admissibility under Rule 404(b), the State must show "a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged." State v. Perry, 430 S.C. 24, 31, 842 S.E.2d 654, 658 (2020). The evidence must also pass a Rule 403 analysis, whereby

evidence must be admitted unless its probative value is substantially outweighed by the danger of unfair prejudice. Id.

The State proffered testimony from Oswald's younger brother (Brother). Brother testified that Oswald anally raped him multiple times as a child, and that the abuse stopped when he was around 10 years old, around the year 1980. R.p.10, 15. The State elicited testimony showing Oswald exploited his position of authority and physical dominance to commit incest against his brother. Brother explained: "[Oswald] was in charge of us. I mean, he was the oldest of four brothers. And so if mom and dad was not around, he was there, and it was you do . . . what he tells you to do. . . . He was in charge." R.p.9. He further explained that Oswald threatened him not to disclose the abuse. R.p.9. He testified about a specific incident where Oswald raped him from behind in the family bathroom when no one else was home. R.p.7–8.

The State then proffered evidence from Daughter 1, who recalled an incident where Oswald vaginally raped her from behind in their family home when no one else was home. R.p.35–37. Afterwards, he warned her not to tell anyone. R.p.37. She explained she was afraid of Oswald. R.p.37. She described Oswald's authoritarian parenting style and physical abuse. R.p.37.

After hearing arguments from counsel and reading Oswald's pretrial brief, the trial court ruled Brother's testimony was admissible. He cited Oswald's exploitation of his position of authority, warnings against disclosure, the incestuous

nature of the abuse, and the ages of the victims as similarities between the prior acts and charged crimes. R.p.60–61.

The record supports the trial court's ruling. Under the deferential "abuse of discretion" standard of review, there were sufficient similarities between the events to show the existence of a plan and a logical connection between the prior acts and charged crimes, especially the charge related to Daughter 1. See Morris v. BB&T Corp., 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023) (explaining "when a trial court's . . . thought process of applying sound principles of law to the court's view of the facts and circumstances is evident in the record of proceedings. . . the appellate court will defer to the trial court's exercise of discretion, even when the judges on the appellate court might have made the decision differently"); State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances."); State v. Lyles, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008) ("A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence. If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.") (internal citation omitted).

The State did not introduce general character evidence or evidence of other dissimilar criminal acts to prove Oswald was merely a bad person or possessed an

"evil character." See Perry, 430 S.C. at 29, 842 S.E.2d at 657. Rather, the prior act evidence concerned the same specific type and method of abuse Oswald was alleged to have committed against his daughters. Repetition of a specific method is evidence of a scheme or plan. See State v. McClellan, 283 S.C. 389, 391, 323 S.E.2d 772, 773 (1984) (prior sexual abuse against different daughters was admissible because the "method of attack was common to all three daughters"). The evidence served a "legitimate purpose," and the trial court acted within its discretion by admitting it. Perry, 430 S.C. at 30, 842 S.E.2d at 657.

The common scheme or plan exception does not require that the prior acts overlap temporally, or that they are part of a continuous course of conduct. See State v. Blanton, 316 S.C. 31, 33, 446 S.E.2d 438, 440 (Ct. App. 1994) ("That the alleged acts perpetrated against the two witnesses occurred some seven to eight years prior to the alleged molestation of J., is not alone dispositive."); State v. Scott, 405 S.C. 489, 501, 748 S.E.2d 236, 243 (Ct. App. 2013) (eleven years); State v. Tutton, 354 S.C. 319, 332, 580 S.E.2d 186, 193 n.5 (Ct. App. 2013) ("Remoteness in time, however, is not dispositive."). Rather, prior acts are admissible if they were committed using the same type of scheme or plan. The existence of a common scheme or plan is probative because it corroborates the testimony of the victim of the charged crime by showing the defendant utilized the same method in the past. Perry, 430 S.C. at 40, 842 S.E.2d at 663 (explaining common scheme or plan exists when there is a "fact in the crimes charged that was made more or less likely to be true by the [prior act] testimony").

Oswald criticizes the supreme court's opinion in Perry because it emphasized the similarities between the prior and charged acts in its analysis of the logical connection between the acts, even though the court—in the same opinion—explained that similarities in themselves are not sufficient to show a logical connection under Rule 404(b). The Perry opinion explains that similarities between prior and charged acts can illustrate a logical connection, even if the mere presence of some similarities is not the entire 404(b) "test." Thus the court's citation to cases such as McClellan, which are grounded on this theory. See also State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703 (Ct. App. 2000), aff'd, 348 S.C. 32, 558 S.E.2d 527 (2002) (in burglary case, admitting three prior burglaries committed in similar fashion because "the other crimes were not of just a general similarity, but were so closely connected to the crimes charged that the similarity enhanced the probative value of the evidence"). Oswald points out the dissimilarities between the prior and charged acts in this case, but this Court has stressed that the State is not required to show "a perfect match between two crimes" to establish a common scheme or plan. State v. Hillary, 441 S.C. 239, 258, 892 S.E.2d 541, 551 (Ct. App. 2023).

In this case, the circumstances of Oswald's abuse of his brother helped illustrate the method by which he abused his daughters and thereby corroborated their testimony. All of the victims were family members and Oswald was in a position of authority over them. They were within the same age range, 11 years old or younger during the periods of time when the rapes occurred. The rapes stopped by the time the victims reached puberty. R.p.108, 231, 449, 453. Oswald

threatened Brother and Daughter 1 not to disclose the rapes. R.p.122, 231. Oswald was physically bigger and stronger than his victims. Daughter 1 and Brother both described being raped from behind. R.p.85, 101, 230. Finally, the rapes of Daughter 1 and Brother occurred in the family home when other adults were not present. R.p.95, 99, 228. The trial court noted the similarities between the crimes, particularly the incestuous nature of the relationships and Oswald's abuse of his position of authority. R.p.563. These similarities establish a logical connection between the crimes. See Perry, 430 S.C. at 34, 842 S.E.2d at 659 (explaining a logical connection may exist when a defendant holds a monopoly on "the method used" to commit sexual assaults).

Oswald used a "particularized plan" for sexually assaulting his brother and daughters. Id. at 42, 430 S.E.2d at 663. Oswald's method was exploitation of his "position of . . .authority" over his victims. State v. Durant, 430 S.C. 98, 106, 844 S.E.2d 49, 53 (2020); see also United States v. Roberts, 185 F.3d 1125, 1142 (10th Cir. 1999) (holding evidence of prior sexual assaults was properly admitted where defendant, "by virtue of his position, abuse[d] young female employees without fear of reprisal"); State v. Scott, 405 S.C. 489, 501, 748 S.E.2d 236, 243 (Ct. App. 2013) (finding common scheme or plan where, among other similarities, "[a]buse occurred when the child was under Appellant's physical custody and control and when Appellant was the only adult present," and trial court noted defendant's "position of authority"); State v. Sexsmith, 157 P.3d 901, 906 (Wash. App. 2007) (finding

common scheme or plan where "Sexsmith was in a position of authority over both girls").

Like Durant, Oswald used his position of authority and physical dominance to isolate and sexually assault pre-pubescent family members and intimidate them into keeping his abuse a secret. Oswald's abuse of Brother demonstrated his subsequent abuse of his daughters was carried out according to a common design, lending credibility to their testimony. Although the prior bad acts were not admissible simply to show Oswald was a bad person generally, they were admissible to prove Oswald acted methodically to exploit his position of authority to commit incest. For the foregoing reasons, the evidence fits within the common scheme or plan exception.

Even if the Court finds the trial court erred by admitting Brother's testimony, it should conduct a harmless error analysis. Error is harmless when there is not a reasonable probability the error affected the verdict. State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). The evidence against Oswald was strong. While Oswald attempts to portray the victims' testimonies as inconsistent and suspect, both daughters' testimonies were extremely detailed and credible. For example, Daughter 2 testified she remembered hearing the theme song from the X-files and knew her father would soon come to her bedroom to rape her. R.p.452–53. Oswald's wife corroborated Daughter 1's testimony that she disclosed the abuse to her. R.p.321. She also testified—in response to a direct question from defense counsel—that she believed Oswald molested Daughter 2. A forensic psychiatrist

testified Daughter 1's symptoms were consistent with major depressive disorder, PTSD, and anxiety disorders. R.p.380. Daughter 2 attempted suicide multiple times. Oswald testified at length and the jury had the opportunity to assess the credibility of his version of events. The jury rejected his testimony. This Court should affirm.

II. The trial court properly admitted testimony about the circumstances of Daughter 1's delayed disclosure, and Oswald was not prejudiced.

Oswald complains that Daughter 1 was allowed to testify that, during the process of disclosing Oswald's abuse in the various jurisdictions where it occurred, a police officer in Estill told her she would have to come to Estill to file a report. Oswald argues this "opened the door" to improper testimony from Daughter 1 that the Estill officer believed her report, which he alleges was bolstering. This bolstering argument is not preserved for review because it was not raised below, and Oswald cannot bootstrap the argument onto an unrelated objection. Regardless, the trial court properly admitted Daughter 1's testimony explaining her delayed disclosure of Oswald's sexual abuse, and Oswald was not prejudiced. This Court should affirm.

Standard of review.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Issue preservation.

Oswald's bolstering argument is not preserved for review. Oswald did not object to the alleged bolstering on page 233 of the transcript that he identifies in his brief. R.p.151, line 10. This likely explains why Oswald attempts to bootstrap this argument onto a prior—and distinct—hearsay objection on page 232 of the transcript. R.p.150, line 22–23. Oswald never objected to bolstering at trial, and he may not raise this argument on appeal. See State v. Sheppard, 391 S.C. 415, 421,

706 S.E.2d 16, 19 (2011) (explaining a "party must have a contemporaneous and specific objection to preserve an issue for appellate review"); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

Discussion.

Even if preserved, Oswald has not shown reversible error. Daughter 1 testified that she contacted the Estill police department about filing a report, but was told she would "have to travel to Estill" to do so. R.p.150, line 21. This statement was not hearsay because it was not admitted for its truth, but rather to explain its effect on the listener. See State v. White, 425 S.C. 304, 310, 821 S.E.2d 523, 527 (Ct. App. 2018). The testimony was proper to show the circumstances of Daughter 1's disclosure, which is crucial evidence in any case involving delayed disclosure. See State v. Acker, 435 S.C. 716, 735, 869 S.E.2d 873, 883 (Ct. App. 2022). Predictably, Oswald attacked Daughter 1's failure to file a report with the Estill police department, which demonstrates why the explanation was necessary. R.p.160.

Further, the statement was not prejudicial to Oswald. Daughter 1 had already testified at length about the abuse that occurred in Estill. She subsequently testified that an Estill police officer discouraged her from filing a report. R.p.151. Oswald did not object to this testimony.

Finally, even if Oswald's bolstering argument was preserved for review, he has not shown reversible error. The State did not present any testimony from an

Estill police officer indicating she believed (or did not believe) Daughter 1's report. Daughter 1's statement that no one ever told her they "didn't believe [her]" was likely prompted by her observation of defense counsel's pretrial strategy of discrediting Brother's testimony by aggressively asserting law enforcement did not believe him. R.p.24–25. Oswald has not shown reversible error. This Court should affirm.

III. The trial court properly refused to declare a mistrial and instead gave a curative instruction when a witness testified Oswald offered to take a polygraph examination.

The trial court properly refused to grant a mistrial based on a witness's statement that Oswald volunteered to take a polygraph examination when confronted with the allegations against him. While the results of polygraph tests are inadmissible at trial, the passing reference to Oswald's willingness to take the test did not warrant the extreme remedy of mistrial. The trial court properly chose to give a curative instruction instead, and the thorough instruction cured any prejudice. This Court should affirm.

Standard of review.

The decision to grant or deny a mistrial is within the sound discretion of the trial court. State v. Brown, 389 S.C. 84, 94, 697 S.E.2d 622, 627 (Ct. App. 2010). The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law. Id. South Carolina courts favor the exercise of wide discretion of the trial court in determining the merits of such a motion in each individual case. Id.

Discussion.

A mistrial should be granted only when absolutely necessary. State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 614 (Ct. App. 2012). A trial judge should exhaust other available methods to cure prejudice before aborting trial. State v. Moyd, 321 S.C. 256, 263, 468 S.E.2d 7, 11 (Ct. App. 1996). Where the prejudicial effect is minimal, a mistrial need not be granted in every case where incompetent evidence is received and later stricken and a curative instruction is

given. Id. The general rule is that no mention of a polygraph test should be placed before the jury. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007). It is thus incumbent upon the trial judge to ensure that should such a reference be made, no improper inference be drawn therefrom. Id.

Oswald cites State v. McGuire, 272 S.C. 547, 253 S.E.2d 103 (1979), to support his argument that the mention of the polygraph was reversible error, but that case is distinguishable. There, a witness testified he agreed to take a polygraph, but then testified the defendant, McGuire, was offered a polygraph as well. It was never explained whether McGuire actually took a polygraph, but none was offered at trial. The supreme court held this was error, explaining the jury was left "to speculate and to conclude that he refused to take the test." Id. at 551, 253 S.E.2d at 105. The court did not state whether this alone would warrant reversal, as the court had already held there was additional error in the court's refusal to allow cross-examination of a state's witness concerning prior convictions and in premature jury deliberations. There is no indication the trial court gave a curative instruction regarding the reference to the polygraph examination.

By contrast, in this case the testimony was clear that Oswald volunteered to take a polygraph. If anything, this tended to support his innocence. Cf. State v. Britt, 235 S.C. 395, 423, 111 S.E.2d 669, 684 (1959) (finding reversible error in repeated comments on defendant's refusal to take polygraph). Moreover, the comment was made in passing and there was no assertion that Oswald actually took a polygraph, much less that he failed one. See Bruno v. State, 347 S.C. 446,

452, 556 S.E.2d 393, 396 (2001) (finding no prejudice from brief reference to polygraph with no intimation as to results of test); Ellenburg v. State, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006) (explaining "the mere mention of a polygraph during testimony is not prejudicial where, as here, no results are introduced into evidence").

Importantly, the trial court instructed the jury to disregard the comment, explained that polygraph examinations are inadmissible at trial, and reiterated the State's burden of proof. The court explained:

> A question was asked of her and her response was that Mr. Oswald offered to take a polygraph examination. So I want to . . . draw attention to why that was an improper response, not by her, but in court. The United [States] Supreme Court has never allowed polygraph examination results, good or bad, coming into court. They've been determined to be somewhat unreliable. They're not admitted. So whether or not a polygraph was given to anyone in any trial . . . those results don't come in at all. So the reference that he said, that it is not to be considered by you in your deliberations and your consideration of any of the issues in the court. As I told you, the state's got the responsibility to prove he's guilty beyond a reasonable doubt. He has no burden, no responsibility for proving anything. He doesn't have to prove his innocence; he doesn't have to disprove his guilt. So reference of that sort, something that's not even admissible is just irrelevant. And I don't want you to be concerned about that. I want you to disregard her response as to what he said. Thus, you all are going to consider the evidence which has been introduced and anything that I [have] now stricken from the record can't be considered. So you all can't discuss that. You know, wonder why, I wonder what happened. Totally not relevant. Out of bounds.

R.p.334–35. This thorough instruction cured any prejudice. This Court should affirm.

CONCLUSION

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

Respectfully submitted,

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APPEAL FROM RICHLAND COUNTY

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THE STATE, Respondent,

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PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Final Brief of Respondent on Clarence Rauch Wise, 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 29th day of April, 2025.

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Attachments: OSWALD William - Final Brief of Respondent.pdf

Good Morning Mr. Wise,

Attached please find the Final Brief of Respondent in The State v. William Benton Oswald (2023-001872). This brief will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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