

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to the Court of Appeals
Appeal from Richland County
Jocelyn J. Newman, Circuit Court Judge

S.C. SUPREME COURT

Unpublished Opinion No. 2025-UP-009 (S.C. Ct. App. filed January 8, 2025)
Lower Court Case No. 2021-GS-40-02232

THE STATE,

RESPONDENT,

V.

TERRY GERRARD GRIDINE,

APPELLANT

APPELLATE CASE NO. 2025-000362

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INDEX

INDEX i

FINAL BRIEF OF APPELLANT1

FINAL BRIEF OF RESPONDENT44

THE STATE V. GRIDINE, UNPUBLISHED OP. NO. 2025-UP-009 (S.C. Ct. App. filed
January 8, 2025).....78

PETITION FOR REHEARING.....86

ORDER DENYING PETITION FOR REHEARING102

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SC Court of Appeals

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Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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APPELLANT

APPELLATE CASE NO. 2021-001188

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS	4
ARGUMENT	

1.

The court erred where it prohibited Appellant from cross-examining Complainant on whether she was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged that Appellant sexually assaulted her, since Appellant was entitled to considerable latitude in cross-examining his accuser on her bias or motive to misrepresent 14

Standard of review 14
Discussion..... 14

2.

The court erred where it prohibited Appellant from testifying that Complainant was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged Appellant sexually assaulted her, since the testimony was admissible, and since the ruling improperly restricted Appellant's right to testify in his defense..... 23

Standard of review 23
Discussion..... 23

3.

The court erred where it prohibited Appellant from impeaching Complainant with her prior inconsistent statements about the alleged sexual assault, where Complainant continued to deny making the statements even after being presented with the prior inconsistent statements, since Appellant was entitled to confront his accuser, and since extrinsic evidence of such statements is admissible for impeachment under Rule 613(b), SCRE..... 27

Standard of review 27
Discussion..... 27

4.

The court erred where it prohibited Appellant from offering testimony from Tomeka Scott, Complainant's relative, that Complainant had a reputation and character for untruthfulness, since the reputation evidence was admissible as a hearsay exception and as a pertinent character trait of an alleged victim31

Standard of review31

Discussion.....31

5.

The court erred where it denied Appellant's motion for a new trial based on cumulative error, since the cumulative effect of the errors was so prejudicial as to deprive Appellant of a fair trial34

Standard of review34

Discussion.....34

CONCLUSION37

TABLE OF AUTHORITIES

Cases

<i>Ard v. Catoe</i> , 372 S.C. 318, 642 S.E.2d 590 (2007).....	22, 26
<i>Berger v. California</i> , 393 U.S. 314 (1969).....	17
<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973).....	16, 24, 36
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004).....	25
<i>Davis v. Alaska</i> , 415 U.S. 308 (1974).....	passim
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986).....	passim
<i>Faretta v. California</i> , 422 U.S. 806 (1975).....	23
<i>Greene v. McElroy</i> , 360 U.S. 474 (1959).....	15
<i>Harris v. New York</i> , 401 U.S. 222 (1971).....	24
<i>In re Oliver</i> , 333 U.S. 257 (1948).....	23, 31, 36
<i>Mancusi v. Stubbs</i> , 408 U.S. 204 (1972).....	17
<i>Pointer v. Texas</i> , 380 U.S. 400 (1965).....	15, 28
<i>Richardson v. Marsh</i> , 481 U.S. 200 (1987).....	15, 27
<i>Rock v. Arkansas</i> , 483 U.S. 44 (1987).....	passim
<i>Rutland v. State</i> , 415 S.C. 570, 785 S.E.2d 350 (2016).....	29
<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018).....	18, 34
<i>State v. Beekman</i> , 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 2013).....	34, 35
<i>State v. Blackwell</i> , 420 S.C. 127, 801 S.E.2d 713 (2017).....	16, 20
<i>State v. Blalock</i> , 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003).....	28, 29
<i>State v. Brewington</i> , 267 S.C. 97, 226 S.E.2d 249 (1976).....	18, 19
<i>State v. Brown</i> , 303 S.C. 169, 399 S.E.2d 593 (1991).....	15, 18, 20

<i>State v. Burdette</i> , 427 S.C. 490, 832 S.E.2d 575 (2019).....	35
<i>State v. Collins</i> , 235 S.C. 65, 110 S.E.2d 270 (1959).....	15
<i>State v. Daise</i> , 421 S.C. 442, 807 S.E.2d 710 (Ct. App. 2017)	35
<i>State v. Douglas</i> , 369 S.C. 424, 632 S.E.2d 845 (2006).....	passim
<i>State v. Durant</i> , 430 S.C. 98, 844 S.E.2d 49 (2020).....	35
<i>State v. Fossick</i> , 333 S.C. 66, 508 S.E.2d 32 (1998)	28, 30
<i>State v. Freeman</i> , 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995)	34, 36
<i>State v. Gilchrist</i> , 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998).....	17
<i>State v. Grace</i> , 350 S.C. 19, 564 S.E.2d 331 (Ct. App. 2002).....	15, 32
<i>State v. Gracely</i> , 399 S.C. 363, 731 S.E.2d 880 (2012).....	20
<i>State v. Graham</i> , 314 S.C. 383, 444 S.E.2d 525 (1994)	16
<i>State v. Johnson</i> , 334 S.C. 78, 512 S.E.2d 795 (1999)	34, 36
<i>State v. Jones</i> , 343 S.C. 562, 541 S.E.2d 813 (2001)	19
<i>State v. Lee-Grigg</i> , 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007)	26
<i>State v. Lyle</i> , 125 S.C. 406, 118 S.E. 803 (1923).....	18
<i>State v. McFarlane</i> , 279 S.C. 327, 306 S.E.2d 611 (1983).....	15
<i>State v. McLeod</i> , 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004).....	28
<i>State v. Mitchell</i> , 330 S.C. 189, 498 S.E.2d 642 (1998)	16
<i>State v. Mizzell</i> , 349 S.C. 326, 563 S.E.2d 315 (2002)	16
<i>State v. Pagan</i> , 369 S.C. 201, 631 S.E.2d 262 (2006)	26, 33
<i>State v. Peterson</i> , 287 S.C. 244, 335 S.E.2d 800 (1985)	35
<i>State v. Ross</i> , 445 P.3d 726 (Kan. 2019).....	34
<i>State v. Sims</i> , 348 S.C. 16, 558 S.E.2d 518 (2002)	19

<i>State v. Smith</i> , 315 S.C. 547, 446 S.E.2d 411 (1994)	15
<i>State v. Stokes</i> , 381 S.C. 390, 673 S.E.2d 434 (2009)	29, 30
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991).....	35
<i>United States v. Valenzuela-Bernal</i> , 458 U.S. 858 (1982).....	24
<i>Washington v. Texas</i> , 388 U.S. 14 (1967).....	24, 32

Constitution

U.S. Const. amend. V.....	24, 26, 36
U.S. Const. amend. VI	passim
U.S. Const. amend. XIV	passim

Rules

Rule 5, SCRCrimP	6, 19
Rule 403, SCRE	8, 17, 18
Rule 404, SCRE	passim
Rule 405, SCRE.....	12, 32, 33
Rule 608, SCRE.....	passim
Rule 611, SCRE	15
Rule 613, SCRE	passim
Rule 803, SCRE	12, 32, 33

Statutes

S.C. Code Ann. § 17-22-150.....	9, 20, 25
---------------------------------	-----------

Other authorities

98 C.J.S. Witnesses §§ 460.....	19
---------------------------------	----

STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred where it prohibited Appellant from cross-examining Complainant on whether she was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged that Appellant sexually assaulted her, since Appellant was entitled to considerable latitude in cross-examining his accuser on her bias or motive to misrepresent?

2.

Whether the court erred where it prohibited Appellant from testifying that Complainant was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged Appellant sexually assaulted her, since the testimony was admissible, and since the ruling improperly restricted Appellant's right to testify in his defense?

3.

Whether the court erred where it prohibited Appellant from impeaching Complainant with her prior inconsistent statements about the alleged sexual assault, where Complainant continued to deny making the statements even after being presented with the prior inconsistent statements, since Appellant was entitled to confront his accuser, and since extrinsic evidence of such statements is admissible for impeachment under Rule 613(b), SCRE?

4.

Whether the court erred where it prohibited Appellant from offering testimony from Tomeka Scott, Complainant's relative, that Complainant had a reputation and character for untruthfulness, since the reputation evidence was admissible as a hearsay exception and as a pertinent character trait of an alleged victim?

5.

Whether the court erred where it denied Appellant's motion for a new trial based on cumulative error, since the cumulative effect of the errors was so prejudicial as to deprive Appellant of a fair trial?

STATEMENT OF THE CASE

On September 14, 2021, a Richland County Grand Jury indicted Terry Gridine, Appellant, for third-degree criminal sexual conduct. R. *(indictment). Appellant was tried before the Honorable Jocelyn Newman and a jury, on October 11 and October 13 – 14, 2021. Appellant was represented by Tracy Pinnock and Kathleen Warren. April Sampson and Paul Walton prosecuted the case. r. 1.

Appellant was convicted as indicted and he was sentenced to ten years of imprisonment suspended upon the service of seven years of imprisonment and five years of probation. Appellant was ordered to register as a sexual offender. Tr. 419, l. 15 – 420, l. 1; R. 394.

This appeal follows.

STATEMENT OF FACTS

Appellant was fifty-six years old and a manager at Manchester Farms at the time of his trial. R. 267, ll. 16-19. He had no history of committing sex crimes and he had no history of inappropriate behavior with women. R. 383, ll. 18-22; R. 310, l. 22 – 313, l. 14; R. 145, l. 24 – 146, l. 7. Appellant had a girlfriend, Laura, as well as several children and grandchildren. Appellant came from a large “tightknit” family, which included multiple siblings, aunts, nieces, and nephews. R. 267, l. 23 – 273, l. 10. Appellant’s mother, a person who had “held the family together,” died in 2016. R. 270, l. 23 – 271, l. 24.

At the time of Appellant’s trial, Appellant’s aunt, S.W. (Complainant) was seventy-six years old. R. 114, ll. 23-25. Until October of 2017, Appellant had a “normal nephew/auntie relationship” with Complainant. However, Complainant was known in the family as someone who liked to “stir the pot.” R. 269, l. 21 – 270, l. 1. Some family members were wary of Complainant and did not trust her. R. 307, ll. 4-7.

On October 21, 2017, seven days before she accused Appellant of sexually assaulting her, Complainant was arrested for shoplifting. Complainant called Appellant from the detention center to get his help posting her bond. However, she was unable to reach Appellant. R. 165, l. 19 – 169, l. 5.

Several days later, on October 26, 2017, Appellant stopped by Complainant’s house to kill some time while waiting for his girlfriend, who lived “down the road” from Complainant, to get off work. R. 272, l. 22 – 273, l. 16. Appellant had been going by Complainant’s house to hang out “forever.” R. 272, l. 22 – 273, l. 3. Complainant’s son Junior was there for a while but he left, and Appellant stayed on visiting with Complainant. R. 76, l. 4 – 77, l. 1; R. 118, l. 120, l.3. That evening, Appellant admitted to Complainant that he had been thinking of committing

suicide; he was depressed by the approaching anniversary of his mother's death. Also that evening, Complainant confronted Appellant about his failure to answer the phone when she called him for help from the jail. According to Appellant, he later left and went to his girlfriend's house without incident. R. 275, l. 14 – 277, l. 23; R. 173, ll. 2-4; R. 166, ll. 14-20. Appellant denied sexually assaulting Complainant. R. 272, ll. 10-11.

Complainant agreed that on the night of the alleged incident Appellant admitted to her he had been contemplating suicide. R. 120, ll. 18-24. However, Complainant called police the following evening and she claimed that Appellant made crude sexual remarks to her, tore at her clothes, and penetrated her vagina with his fingers. Complainant alleged she hit Appellant with a lamp until he stopped. R. 57, l. 12 -58, l. 1; R. 123, l. 11 – 127, l. 24.

Appellant pleaded not guilty. Appellant believed his failure to help Complainant bond out of jail was the catalyst for falsely accusing him of sexual assault. R. 249, ll. 11-19. However, the jury was not permitted to hear much of the context provided above.

As to Issue 1, Appellant was prevented from cross-examining Complainant about a source of bias or motive to misrepresent: Appellant's failure to help Complainant with her recent arrest. On cross-examination, defense counsel attempted to question Complainant as follows.

Q Do you recall telling [Appellant] that you had tried to reach out to him because you needed help?

A No.

Q So you did not call him?

A No.

Q Because you had been arrested?

MS. SAMPSON: Objection, Your Honor.

A That was some weeks—

R. 156, ll. 2-10. The jury was excused and the solicitor objected to the defense's line of questioning pursuant to Rule 5, SCRCrimP. The solicitor incorrectly claimed that defense counsel was required to notify her of the defense's intention to cross-examine the complainant with this information because the State had filed a "Reciprocal Rule 5." R. 157, l. 4 – 158, l. 12. The solicitor argued that defense counsel should be limited to questioning Complainant about Appellant's refusal to help her with some unspecified matter: "They could say she called for assistance, he didn't give it, and based on that, that is motive." R. 170, ll. 1-3.

Defense counsel argued that she had not violated Rule 5 since this was "impeachment evidence." R. 158, ll. 20-24. "[Appellant] has been charged with CSC third against [Complainant]. The arrest or the bond sheet indicates that [Complainant] was arrested for shoplifting in Forest Acres, posted bond for that charge on October 21st. Six days later she was accusing [Appellant] of a sexual assault after, it is our understanding, from reaching out to him for help with posting her bond, which he did not do." R. 165, l. 19 – 166, l. 2. "Your Honor, it goes directly to our theory of defense, It shows that [Complainant] has a motive to make these allegations up, that she is biased against [Appellant]." R. 166, ll. 3-6. "[I]t is impeachment evidence. We have a right to present [Appellant's] defense. It is integral to our defense, the issue of motive and bias." R. 171, ll. 6-9. "So that was our intention with using it. We would not be going into any details, asking anything outside of, You were arrested, you contacted him about bond, he did not post it, you had to find somebody else. And that is it." R. 166, ll. 11-13.

Defense counsel further explained, You heard in opening statements also, [Appellant] is going to be testifying in his own defense, Your Honor. And part of his testimony . . . is that he

had the conversation with [Complainant], she told him she reached out to him, he was not there to assist her in getting out of jail.” R. 166, ll. 14-20.

Complainant’s testimony on the matter was proffered. Complainant agreed that she was arrested, she tried to get in touch with Appellant, could not reach Appellant, and had to call her sister. R. 168, l. 7 – 169, l. 5. *In camera*, Complainant was defensive and tried to minimize her attempt to reach Appellant.

BY MS. PINNOCK:

Q Ms. [Complainant], you were arrested—you called [Appellant] for help with posting your bond because you had been arrested, is that right?

A No.

Q You were not arrested?

A Yes.

Q Okay. And that was October 21st of 2017?

A I didn’t—

...

A I didn’t call him. I was trying to get in touch with him to get in touch with my daughter.

Q Okay. But you never talked to [Appellant] on the phone, did you?

A No.

Q Okay. And you had to find somebody else to come assist you?

A I couldn’t get him, so I called my sister.

Q Okay.

A It had nothing to do with him.

R. 168, l. 5 – 169, l. 5.

The court ruled the testimony was inadmissible but told the defense it could question Complainant generally that she had asked Appellant for help.

[T]he mention of an arrest, considering what the testimony is, is of course inflammatory, it is bad character evidence, it is – it has little probative value. And to the extent that it does have probative value, that value is outweighed by the potential of substantial unfair prejudice to the victim.

And so pursuant to rules 403, 404, and some extent 608, I'm going to sustain the objection. And I won't tell you what questions to ask, but I don't disagree with what [the solicitor] said in substance if this is about asking for help or financial help, or something like that. I'm not going to tell you whether you should ask that or not, of course, but there shall be no mention of the victim, the alleged victim's arrest.

R. 171, l. 14 – 172, l. 8.

Defense counsel asked, “Is Your Honor’s ruling limiting what [Appellant] can testify about?” R. 172, ll. 18-19. The court replied, “We’re not going to talk about the fact that she was arrested.” R. 172, ll. 20-21. Defense counsel objected to the limitation of her cross-examination of Complainant and to the potential restriction of Appellant’s testimony.

But the issue is, Your Honor, he was part of the conversation. And the actions from [Complainant] followed this conversation. If he can't explain to the jury why she had the motive and bias against him to a degree that would explain why she would be accusing him of a sexual assault and not just saying that he stole something from her house, needing to borrow ten dollars is not the same as not coming to get your family member out of jail.

R. 173, ll. 2-10.

The court withheld ruling on whether it would similarly restrict Appellant’s testimony. The court issued a curative instruction ordering the jury to disregard the last question and answer it had heard. R. 174, ll. 2-16. Defense counsel then asked Complainant, generically, whether

Appellant had been unresponsive when Complainant “reached out to [Appellant] for help.” R. 174, l. 21 – 205, l. 17.

As to Issue 2, after the court advised Appellant of his rights to testify in his own defense or to remain silent, the solicitor immediately asked whether Appellant intended to testify that Complainant tried to contact him from the jail, and argued that Appellant should be foreclosed from doing so. R. 247, l. 16 – 249, l. 6. The court asked defense counsel how Appellant knew about Complainant’s arrest and defense counsel again stated that Appellant was told so by the Complainant herself, the night of the alleged sexual assault. The solicitor then argued the testimony was inadmissible hearsay. R. 248, l. 10 – 249, l. 6.

Defense counsel observed that, “we would not have this issue if we had been allowed to cross-examine [Complainant] on that issue.” R. 249, ll. 8-10. “[W]e have been hamstrung at this point . . .” Tr. 280, ll. 1-2. Defense counsel argued that Appellant’s rights to due process and to present a defense by exploring bias and motive should override a hearsay objection on these facts. R. 250, ll. 4-16.

The court sustained the objection.

Okay. You were not barred yesterday from asking her whether she later told him that she called him or something that would give some nexus to what you are trying to do today . . . I’m not going to allow the hearsay testimony about something that he heard later that she might have done from the jail, and whatever. So that objection is sustained.

R. 250, l. 17 – 251, l. 15. The prosecutor continued to argue, claiming Complainant’s arrest was inadmissible on the grounds that the charge had been expunged, and cited § 17-22-150 and *State v. Joseph*, 328 S.C. 352 (Ct. App. 1997). R. 252, l. 6 – 254, l. 12. The court stated that it found those sources provided further support for the court’s ruling. R. 254, ll. 17-21.

Appellant went on to testify in his defense, but on this matter he only testified in general terms that the evening Complainant accused him of sexual assault, they had a discussion about the fact that Complainant had previously called him for assistance because she “needed help with something” but Appellant did not receive the call. R. 275, ll. 9-24.

As to the Issue 3, when testifying to the details of the alleged incident on direct examination, Complainant claimed that: 1) she was sitting in her recliner when Appellant came up behind her and gave her a hug and said he loved her before he went back outside, then Appellant came back inside and got on his hands and knees in front of her and made crude sexual comments; 2) Complainant pushed Appellant away and got up from her recliner, whereupon Appellant grabbed her and put his finger in her vagina; and 3) Complainant’s son was home when Appellant arrived but he left before the alleged assault. R. 123, l. 11 – 127, l. 5; R. 119, ll. 17-23.

However, Complainant had detailed the allegations a bit differently to Officer Christian, the responding officer who came to take the initial report. Officer Christian was the first witness to testify, he had already testified by the time Complainant took the stand. R. 2; R. 57, l. 12 – 58, l. 9. Officer Christian’s body-worn camera¹ captured Complainant’s claims that: 1) she was sitting in her recliner when Appellant came up behind her and put her in a choke hold so she pushed him away; 2) Complainant got up from the recliner and moved to the couch, then moved back to the recliner before Appellant sexually assaulted her; and 3) Appellant repeatedly asked Complainant if her son was home.

On cross-examination, defense counsel questioned Complainant about these details. At that time, Complainant claimed 1) she did not push Appellant’s arms off her when he came up

¹ Officer Christian’s body-worn camera footage was offered for identification as Defendant’s Exhibit #1 and is on file with this Court.

behind her recliner; 2) she did not move from her recliner to her couch, and did not get up from her recliner until Appellant initiated the sexual assault; and 3) that she had not told Officer Christian that Appellant kept asking if her son was home. Defense counsel reminded Complainant that Officer Christian's body-camera had captured her statements and Complainant listened to the audio through headphones. After listening to the audio, Complainant still claimed she had not said those things to Officer Christian. R. 183, l. 4 – 188, l. 4; R. 193, l. 12 – 194, l. 22.

After the State rested, the defense recalled Officer Christian in its case-in-chief. Officer Christian confirmed that Defense Exhibit #1 was the recording from his body-camera (the footage had not previously been introduced), and the defense attempted to play the relevant portions of the footage to impeach Complainant's testimony. The solicitor objected to hearsay and argued Appellant could not use the footage for impeachment because Officer Christian "can't impeach her statement." Defense counsel argued she had complied with Rule 613(b), SCRE. The court sustained the objection. R. 256, l. 6 – 265, l. 7. The jury did not hear the impeachment evidence.

As to Issue 4, defense counsel sought to offer evidence that Complainant had a reputation for untruthfulness via the testimony of Tomeka Scott. Appellant was Scott's uncle. Complainant was Scott's great-aunt. R. 314, l. 1-8. The solicitor asked for a proffer of Scott's testimony. R. 303, ll. 11-21. Scott testified in camera that she did not confide in Complainant because, "you hear from different family members, you know, that they would say, Well, you can't trust her, or, Don't get in mix with her too much, you know, just stuff like that. But I just keep my distance away from drama, period, so." R. 307, ll. 2-9. Scott was wary of Complainant. R. 307, ll. 2-9.

Scott testified that although the close, extended family used to get together a lot, it lately had held family gatherings only “every now and then.” R. 305, ll. 9-20.

The solicitor argued that since Scott avoided Complainant, she did not know Complainant well enough to testify about her and that her testimony was hearsay. Defense counsel argued, “That’s what reputation is, Your Honor, things that you hear from people. And there is a specific hearsay exception for this very thing, for reputation and character. R. 308, l. 12 – 309, l. 4. Defense counsel argued that the testimony was admissible pursuant to Rules 803(21), 404(a)(2), and 405, SCRE. R. 295, l. 22 – 297, l. 18.

The court ruled, “Based on the testimony that I just heard, that does not qualify for any exception, So the State’s objection is sustained.” R. 319, ll. 5-7.

After successfully preventing Appellant from presenting evidence of the complainant’s bias and motive to misrepresent as well as her reputation for untruthfulness, the solicitor unfairly argued in closing that Complainant was credible because, “Why does she need to come and make up a lie?” R. 330, ll. 10-11. “[W]hat bias does she have, what motivation would she have? And what is it? Other than it happened.” R. 331, ll. 3-5.

The case was, as defense counsel noted, a “he said/she said” credibility battle. R. 50, ll. 20-23. In addition to Complainant’s testimony, the State produced text messages between Complainant and Appellant after the alleged offense in which Appellant apologized for an unknown matter. Complainant then texted Appellant an accusation of sexual assault, and Appellant replied, “I don’t understand.” *See* State’s Exhibits #10 – 16.² The solicitor argued that Appellant was apologizing for the sexual assault. R. 332, ll. 8-11. Appellant testified he

² State’s Exhibits #9 – 15 are photographs of text messages between Appellant and Complainant and are on file with this Court.

apologized for sharing with Complainant the heavy news that he had been contemplating suicide. R. 280, l. 17 – 281, l. 23.

The solicitor also presented testimony from a physician's assistant at a pain management clinic that Complainant had been a patient at the clinic for fifteen years and had chronic low back pain. The physician's assistant said that Complainant was seen at the clinic on November 1, 2017, for a regular follow-up appointment and Complainant claimed her left side was sore from being assaulted and thrown to the ground. R. 97, l. 19 – 103, l. 15.

Although the jury deliberated for three hours and asked to be recharged on the law, Appellant was ultimately convicted as indicted. R. 367, l. 22 – 373, l. 13.

As to Issue 5, defense counsel moved for a new trial based on cumulative error. As seen, this was a “he said/she said” case. R. 50, ll. 20-23. Counsel cited to the jury's lengthy deliberations³ and argued, “And that was without some of the evidence that we had planned and hoped of presenting for his defense . . . we were not allowed to go into Ms. [Complainant's] arrest as being part of her motive and bias against [Appellant].” R. 379, l.23 – 380, l. 7. “We were not allowed to go into some of the reputation evidence that we were planning on presenting . . . And we believe that evidence could have made a difference if [Appellant] had been able to go into it. Your Honor, I would respectfully request a new trial.” R. 380, ll. 10-22.

The court denied the motion. R. 380, ll. 23-24. Appellant was sentenced to an active prison term of seven years, and he was ordered to register as a sexual offender. R. 389, l. 15 – 390, l. 1.

³ Counsel argued that the jury deliberated for two and a half hours but it appears from the transcript that the jury deliberated for three hours. R. 367, ll. 22-23; R. 372, ll. 14-21; R. 379, ll. 24-25.

ARGUMENT

1.

The court erred where it prohibited Appellant from cross-examining Complainant on whether she was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged that Appellant sexually assaulted her, since Appellant was entitled to considerable latitude in cross-examining his accuser on her bias or motive to misrepresent.

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. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (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.* at 429–30, 632 S.E.2d at 848.

Discussion

The trial court erred by improperly restricting Appellant’s right to cross-examine his accuser. Appellant was constitutionally entitled to considerable latitude in cross-examining Complainant, his accuser, on her bias and motives. Complainant said Appellant sexually assaulted her and Appellant said he did not. Appellant was not permitted to cross-examine Complainant on her potential bias or motive for falsely accusing him of a crime: that she called him to help bail her out of jail a week before and he did not answer. Complainant admitted these facts during her proffer. There were no eyewitnesses to the alleged offense. There was no forensic evidence. There was no confession. On the facts of this case, the error was not harmless.

“The Confrontation Clause of the Sixth Amendment, extended against the States by the Fourteenth Amendment, guarantees the right of a criminal defendant ‘to be confronted with the

witnesses against him.”” *Richardson v. Marsh*, 481 U.S. 200, 206 (1987) (quoting U.S. Const. amend. VI). The right of confrontation includes the right to cross-examine witnesses. *Id.* (citing *Pointer v. Texas*, 380 U.S. 400, 401 (1965)). “The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias.” *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) (citing *Davis v. Alaska*, 415 U.S. 308 (1974)). Accord *State v. Smith*, 315 S.C. 547, 551, 446 S.E.2d 411, 413 (1994) (“the right to meaningful cross-examination of an adverse witness is included in the defendant’s Sixth Amendment right to confront his accuser.”)

“[T]he exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Davis*, 415 U.S. at 316-17 (citing *Greene v. McElroy*, 360 U.S. 474, 496 (1959)). A witness’s credibility may be attacked “by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand.” *Davis*, 415 U.S. at 316.

“Considerable latitude is allowed in the cross-examination of an adverse witness for the purpose of testing bias.” *State v. Brown*, 303 S.C. at 171, 399 S.E.2d at 594 (citing *State v. McFarlane*, 279 S.C. 327, 306 S.E.2d 611 (1983); *State v. Collins*, 235 S.C. 65, 110 S.E.2d 270 (1959)). See also Rule 611(b), SCRE (“A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.”); *State v. Grace*, 350 S.C. 19, 33, 564 S.E.2d 331, 338 (Ct. App. 2002) (where there was no physical evidence to support the victim’s claims of sexual abuse and the State relied primarily on the credibility of the witnesses, “Appellant’s right to present a defense mandates that he be permitted to freely cross examine the witnesses about the credibility issues relevant to his defense.”)

“A criminal defendant may show a violation of the Confrontation Clause ‘by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness.’” *State v. Blackwell*, 420 S.C. 127, 150, 801 S.E.2d 713, 725 (2017) (quoting *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002); *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)). However, “trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Van Arsdall*, 475 U.S. at 679.

“As a general rule, a trial court’s ruling on the proper scope of cross-examination will not be disturbed absent a manifest abuse of discretion. This rule is subject, however, to the Sixth Amendment’s guarantee of a defendant’s right to a ‘meaningful’ cross-examination.” *State v. Mitchell*, 330 S.C. 189, 196, 498 S.E.2d 642, 645 (1998). “Before a trial judge may limit a criminal defendant’s right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate.” *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317. *See State v. Graham*, 314 S.C. 383, 385-86, 444 S.E.2d 525, 527 (1994); *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986).

“[T]he right to confront and to cross-examine is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process. But its denial or significant diminution calls into question the ultimate integrity of the fact-finding process and requires that the competing interest be closely examined.” *Chambers v. Mississippi*, 410 U.S.

284, 295 (1973) (internal quotations and citations removed) (citing *Mancusi v. Stubbs*, 408 U.S. 204 (1972); *Berger v. California*, 393 U.S. 314, 315 (1969)).

The evidence at issue here was admissible pursuant to Appellant's constitutional rights to confrontation and meaningful cross-examination. The trial court ruled the proposed cross-examination was inadmissible under Rules 403, 404, and 608, SCRE, finding the evidence was bad character evidence as to Complainant, it had little probative value, and that value was "outweighed by the potential of substantial unfair prejudice to the victim." R. 171, l. 14 – 172, l. 8. This ruling was not supported by the evidence. In this case, those rules provided a basis for admitting the evidence, not for excluding it. On October 27, 2017, after a lifetime of having a good relationship with her nephew, Complainant accused Appellant, who was in his fifties and had no history of inappropriate behavior with women, of sexually assaulting her. R. 310, l. 22 – 313, l. 14; R. 145, l. 24 – 146, l. 7; R. 392 During the proffer, Complainant admitted that she had been arrested on October 21, 2017, she had tried to contact Appellant but was unable to do so, and she wound up having to get her sister to assist her in bonding out of jail. R. 168, l. 5 – 169, l. 5.

Rule 403, SCRE permits the exclusion of relevant evidence if the probative value of the evidence "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." "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998). Here, the evidence was relevant since it went to Complainant's credibility. The evidence had a high probative value since it provided an explanation for Complainant's bias against Appellant and provided a motive for falsely accusing Appellant of this crime. This

evidence went to Complainant's motive for testifying; it did not suggest a decision on an improper basis. Complainant was not the person on trial. The other exceptions provided in the rule—misleading the jury, confusing the issues, and wasting time or presenting cumulative evidence—are plainly inapplicable. In addition to Appellant's rights to confrontation and cross-examination, Rule 403, SCRE provided an alternate basis for admitting the evidence.

Rule 404(b), SCRE provides that "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *See State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923) (as to whether evidence of other crimes falls within recognized exceptions, the acid test is its logical relevancy to the particular excepted purpose for which it is sought to be introduced). The evidence was not offered to show bad character, and it met one of the exceptions listed in 404(b) and *Lyle* because it went to the complainant's motive to fabricate the alleged assault. Rule 404(b) supported the admission of this evidence, as evidence of motive.

Rule 608(c), SCRE provides that, "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." As the South Carolina Supreme Court explained in *Smalls v. State*, 422 S.C. 174, 182–83, 810 S.E.2d 836, 840 (2018),

Evidence of a witness's bias can be compelling impeachment evidence, and for that reason "considerable latitude is allowed" to defense counsel in criminal cases "in the cross-examination of an adverse witness for the purpose of testing bias." *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). **Our courts have followed the "general rule" that "anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony,"** so that "on cross-examination, any fact may be elicited which tends to

show interest, bias, or partiality’ of the witness.” *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (quoting 98 C.J.S. Witnesses §§ 460, 560a). **“Rule 608(c) [of the South Carolina Rules of Evidence] ‘preserves [this longstanding] South Carolina precedent.’”** *State v. Sims*, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) (quoting *State v. Jones*, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001) and citing *Brewington*, 267 S.C. at 101, 226 S.E.2d at 250).

(emphasis added).

Here, it was not in dispute that Complainant was arrested a week before she accused Appellant of sexually assaulting her nor was it disputed that she had to reach out to family members to assist her in bonding out of jail. Appellant did not help her during this trying and embarrassing time. (It would have been particularly so for an elderly woman who had never before been arrested). The evidence had a legitimate tendency to throw light on Complainant’s bias and motive to misrepresent. Rule 608(c), SCRE provides another basis for permitting cross-examination on this matter.

Finally, the solicitor’s argument that pursuant to Rule 5, SCRCrimP, Appellant was required to give the prosecution notice that it intended to impeach Complainant with her arrest, was unsupported by law. Rule 5(b)(1)(A), SCRCrimP provides that certain defendants “on request of the prosecution, shall permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.” Here, the defense did not seek to enter any documents relating to Complainant’s arrest as evidence. Instead, the defense merely sought to cross-examine Complainant about the arrest. Rule 5 does not support the prosecution’s position.

The court ruled, in part, that as to Issue 2—Appellant’s own testimony—Appellant could not testify about Complainant’s arrest pursuant to the pretrial intervention (PTI) statute and *State*

v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997), because Complainant had completed PTI. Although the trial court did not cite these sources as support for its ruling on this issue, Issue 1, assuming *arguendo* that this ruling is relevant to Issue 1, Appellant will address it here. S.C. Code Ann. § 17-22-150(a) provides that successful PTI completion is intended to restore the offender to the status he occupied before arrest, and so he may not be convicted of perjury if he fails to acknowledge the arrest. *Joseph* held that because successful completion of the PTI program results in a noncriminal disposition of the charges, participation in the PTI program cannot be considered a conviction for purposes of impeaching a witness with a conviction of a crime of moral turpitude. *Id.*, 328 S.C. at 358, 491 S.E.2d at 278. None of this governed Appellant's rights to cross-examine Complainant. Appellant did not seek to impeach Complainant with a conviction for a crime of moral turpitude, but instead sought to explore her potential motives and bias through cross-examination about her arrest. *Joseph* should be distinguished from this case on its facts, and given the constitutional magnitude of this matter. Likewise, the PTI statute is not controlling since the Complainant was not being charged with perjury.

“A violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis.” *State v. Blackwell*, 420 S.C. at 156, 801 S.E.2d at 728 (quoting *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012)). *Accord State v. Brown*, 303 S.C. at 171, 399 S.E.2d at 594. “Whether such an error is harmless in a particular case depends upon a host of factors.” *Blackwell*, 420 S.C. at 156, 801 S.E.2d at 728. (quoting *Delaware v. Van Arsdall*, 475 U.S. at 684. “These factors include the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross

examination otherwise permitted, and, of course, the overall strength of the prosecution's case.” *Van Arsdall*, 475 U.S. at 684.

Here, the witness's testimony was important—the witness was Appellant's accuser in “he said/she said” sexual assault case. Her testimony was not cumulative to other evidence. As will be discussed in Issue 3, *infra*, Appellant's cross-examination of Complainant was also stymied by the court's ruling that Appellant could not be impeached with her prior inconsistent statements. The corroborating evidence in the case was minimal—it consisted only of text messages that were subject to multiple interpretations, including an innocent explanation provided by Appellant, and the fact that Complainant, who had a years-long history of back pain, continued to have back pain after the alleged assault.

The court's erroneous ruling limited the defense to a milquetoast exchange on whether Appellant had been unresponsive when Complainant generically “reached out to [Appellant] for help.” R. 174, l. 21 – 175, l. 17. In addition to limiting the defense to cross-examining Complainant generically about Appellant's failure to “help” Complainant, the trial court issued a curative instruction to the jury regarding defense counsel's question of whether Complainant had been arrested. This instruction struck Complainant's initial, deceptive response that her arrest was “some weeks” prior to her accusing Appellant of sexual assault. *See Davis*, 415 U.S. at 318 (“On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness”).

The State did not have a strong case. It rested on the word of Complainant. The solicitor argued several times in closing that Complainant had no motive to falsely accuse Appellant. R. 330, l. 10 – 331, l. 5. The solicitor's unfair reliance on Appellant's inability to cross-examine

Complainant on her motives further supports a finding the error was not harmless. *See Ard v. Catoe*, 372 S.C. 318, 335, 642 S.E.2d 590, 598 (2007) (“State’s heavy reliance on defense counsel’s failure to challenge this gunshot residue evidence highlights both the deficiency by counsel and the resulting prejudice.”) Even absent the denied cross-examination, the jury still deliberated for three hours. Appellant has established error and prejudice. U.S. Const. amend. VI; U.S. Const. amend. XIV; *Davis v. Alaska*, 415 U.S. at 316-17; *Van Arsdall*, 475 U.S. at 684.

2.

The court erred where it prohibited Appellant from testifying that Complainant was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged Appellant sexually assaulted her, since the testimony was admissible, and since the ruling improperly restricted Appellant's right to testify in his defense.

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. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (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.* at 429–30, 632 S.E.2d at 848.

Discussion

Appellant had the fundamental right to be heard in his defense. The trial court's limitation of his testimony about Complainant's bias and potential motive to misrepresent improperly infringed on this weighty interest.

“The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution. It is one of the rights that ‘are essential to due process of law in a fair adversary process.’” *Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (quoting *Faretta v. California*, 422 U.S. 806, 819, n. 15 (1975)). The Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law includes “a right to be heard and to offer testimony.” *Id.* (citing *In re Oliver*, 333 U.S. 257, 273 (1948)). “The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment, which grants a defendant the right to call ‘witnesses in his favor,’ a right that is guaranteed in the criminal courts of the States

by the Fourteenth Amendment.” *Id.*, 483 U.S. at 52 (citing *Washington v. Texas*, 388 U.S. 14, 17-19 (1967)).

“Logically included in the accused’s right to call witnesses whose testimony is ‘material and favorable to his defense,’ . . . is a right to testify himself, should he decide it is in his favor to do so. In fact, the most important witness for the defense in many criminal cases is the defendant himself.” *Id.* (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (internal citation omitted). “The opportunity to testify is also a necessary corollary to the Fifth Amendment’s guarantee against compelled testimony.” *Id.*, 483 U.S. at 52 (citing *Harris v. New York*, 401 U.S. 222, 225 (1971)).

“[T]he right to present relevant testimony is not without limitation. The right ‘may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.’ But restrictions of a defendant’s right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve.” *Rock*, 483 U.S. at 55-56 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973)). A State “may not apply a rule of evidence that permits a witness to take the stand, but arbitrarily excludes material portions of his testimony.” *Rock*, 483 U.S. at 55. “In applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant’s constitutional right to testify.” *Id.*, 483 U.S. at 55-56.

Although Appellant was permitted to testify, he was not permitted to testify about Complainant’s potential motive for falsely accusing him of sexual assault. It was not disputed that Complainant was arrested and unsuccessfully tried to contact Appellant in connection with her arrest. R. 168, l. 5 – 169, l. 5. Hearsay rules were insufficient to override Appellant’s right to testify in his defense on this critical matter of motive. *See Rock*, 483 U.S. at 55-56. Moreover, as

defense counsel correctly argued, the hearsay problem only existed because the solicitor objected and the court improperly foreclosed Appellant from cross-examining Complainant about the arrest in the first place. The State should not be able to improperly create a hearsay problem and then benefit by using hearsay as a stumbling block to Appellant's right to testify about the critical matter of Complainant's bias and motive to misrepresent.

Nor does the alleged expungement of Complainant's arrest prevent Appellant from testifying about the matter. S.C. Code Ann. § 17-22-150(a) merely provides in relevant part, that a person who successfully completes pre-trial intervention may not be found guilty of perjury if he later fails to acknowledge the arrest. Complainant had not been charged with perjury and the statute was inapplicable. Similarly, *State v. Joseph*, 328 S.C. 352, 378, 491 S.E.2d 275, 278 (Ct. App. 1997), does not support the trial court's ruling on this issue since that case dealt with the impeachment of a witness with the witness's own expunged conviction, not with a defendant's testimony about another's arrest. *Joseph* therefore does not control this issue.

The court abused its discretion when it restricted Appellant from testifying about Complainant's arrest on the grounds that it was hearsay. The purpose of hearsay rules is to guarantee the reliability of evidence and to preserve the right of confrontation for the defendant in a criminal case. U.S. Const. am. VI; *Crawford v. Washington*, 541 U.S. 36, 61 (2004). Appellant was the defendant in this case; he was the party with the right to confrontation. There was no reliability problem with this evidence: it was undisputed that Complainant had been arrested shortly before she accused Appellant of sexually assaulting her. As seen, a State "may not apply a rule of evidence that permits a witness to take the stand, but arbitrarily excludes material portions of his testimony," *Rock*, 483 U.S. at 55, but that is what happened here. Under these circumstances, the trial court's ruling here impermissibly restricted Appellant's right to

testify on his own behalf. *Rock*, 483 U.S. at 62; U.S. Const. amend. V; U.S. Const. am. VI; U.S. Const. am. XIV.

“An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant.” *State v. Lee-Grigg*, 374 S.C. 388, 414, 649 S.E.2d 41, 55 (Ct. App. 2007), *aff’d*, 387 S.C. 310, 692 S.E.2d 895 (2010). “No definite rule of law governs finding an error harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” *Id.*, 374 S.C. at 414, 649 S.E.2d at 55. “Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.” *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006).

The error was not harmless in this “he said/she said” criminal sexual conduct trial, since the error prohibited Appellant from explaining Complainant’s potential motive for falsely accusing him of the offense. The corroborative evidence was scant and subject to interpretation. There was nothing that conclusively established Appellant’s guilt, such as DNA or a confession. The solicitor’s unfair reliance in closing on Appellant’s inability to explain Complainant’s potential motive to fabricate the allegations further supports a finding the error was not harmless. *See Ard v. Catoe*, 372 S.C. 318, 335, 642 S.E.2d 590, 598 (2007) (“State’s heavy reliance on defense counsel’s failure to challenge this gunshot residue evidence highlights both the deficiency by counsel and the resulting prejudice.”) Even absent the denied cross-examination, the jury still deliberated for three hours. The error was material and prejudicial in relation to the entire case. *Lee-Grigg*, 374 S.C. at 414, 649 S.E.2d at 55.

3.

The court erred where it prohibited Appellant from impeaching Complainant with her prior inconsistent statements about the alleged sexual assault, where Complainant continued to deny making the statements even after being presented with the statements, since Appellant was entitled to confront his accuser, and since extrinsic evidence of such statements is admissible for impeachment under Rule 613(b), SCRE.

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. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (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.* at 429–30, 632 S.E.2d at 848.

Discussion

The details surrounding the sexual assault that Complainant alleged at trial were different from the details she alleged to Officer Christian when she reported the incident. When defense counsel cross-examined Complainant about these differences, Complainant denied making the prior inconsistent statements. After listening to her own recorded statements via headphones, Complainant still denied making them. R. 183, l. 4 – 188, l. 4; R. 193, l. 12 – 194, l. 22; Defense Exhibit #1. Defense counsel was therefore entitled to impeach Complainant with the inconsistent statements and the court’s exclusion of this evidence was error.

“The Confrontation Clause of the Sixth Amendment, extended against the States by the Fourteenth Amendment, guarantees the right of a criminal defendant ‘to be confronted with the witnesses against him.’” *Richardson v. Marsh*, 481 U.S. 200, 206 (1987) (quoting U.S. Const.

amend. VI). The right of confrontation includes the right to cross-examine witnesses. *Id.* (citing *Pointer v. Texas*, 380 U.S. 400, 401 (1965)). “[A] criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness.” *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986) (quoting *Davis v. Alaska*, *supra*, 415 U.S. 308, 318 (1974) (internal quotations and alterations omitted)).

Impeachment is an important part of confrontation. Rule 613(b), SCRE provides that,

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. **If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.** However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible.

(emphasis added). Under Rule 613(b), SCRE, “a proper foundation must be laid before admitting a prior inconsistent statement. It is mandatory that a witness be permitted to admit, deny, or explain a prior inconsistent statement.” *State v. McLeod*, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004).

Where a witness denies making a prior inconsistent statement, extrinsic evidence of the statements is admissible under Rule 613(b), SCRE. *State v. Fossick*, 333 S.C. 66, 69–70, 508 S.E.2d 32, 33 (1998). “Generally, where the witness has responded with anything less than an unequivocal admission, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement.” *State v. Blalock*, 357 S.C. 74, 80, 591 S.E.2d 632, 636 (Ct. App. 2003).

Although the solicitor claimed that Officer Christian was not the proper witness to admit the impeachment evidence, this argument is unsupported by law. In *Blalock*, 357 S.C. at 82, 591 S.E.2d at 637, this Court found the trial court acted within its discretion in admitting extrinsic evidence of a witness's prior inconsistent statement through the testimony of the police officer who had taken the witness's statement. *See also Rutland v. State*, 415 S.C. 570, 578, 785 S.E.2d 350, 354 (2016) (had witness denied making the statements, counsel "could have introduced as evidence the police report or the newspaper article, which we find also would have damaged [the witness's] credibility as to her version of events leading up to the shooting" pursuant to Rule 613(b)); *State v. Stokes*, 381 S.C. 390, 403, 673 S.E.2d 434, 440 (2009) (affirming trial court's admission of witness's prior inconsistent statement, where the written statement was admitted through detective).

Here, the relevant foundation was laid for the statements' admission under Rule 613(b) and the complainant denied making the statements. By impeaching a witness with her prior inconsistent statements, the witness's testimony is discredited, and her credibility suffers. *See Rutland*, 415 S.C. at 577–78, 785 S.E.2d at 353. The admission of extrinsic evidence to prove Complainant made the inconsistent statements here was relevant to the jury's consideration of Complainant's veracity and the weight her testimony should be afforded. Rule 613(b), SCRE; *Blalock*, 357 S.C. at 81, 591 S.E.2d at 636.

"In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall

strength of the State's case." *Fossick*, 333 S.C. at 70, 508 S.E.2d at 34 (citing *State v. Holmes*, 320 S.C. 259, 464 S.E.2d 334 (1995); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)).

Here, Complainant's testimony was of utmost importance to the prosecution's case and it was not cumulative to any other witness. The corroborating evidence was minimal and subject to interpretation. Appellant's cross-examination of Complainant was curtailed in another important way, as argued above in Issue 1. Finally, the State did not have a strong case, since the case was ultimately a credibility battle. Therefore, the error was not harmless. A reasonable jury might have received a significantly different impression of Complainant's credibility had Appellant been permitted to admit her prior inconsistent statements for impeachment. The court's decision to exclude the evidence was a manifest abuse of discretion that prejudiced Appellant. *Stokes*, 381 S.C. at 398, 673 S.E.2d at 438; *Van Arsdall*, 475 U.S. at 684.

4.

The court erred where it prohibited Appellant from offering testimony from Tomeka Scott, Complainant's relative, that Complainant had a reputation and character for untruthfulness, since the evidence was admissible as a hearsay exception and as a pertinent character trait of an alleged victim.

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. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (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.* at 429–30, 632 S.E.2d at 848.

Discussion

The court erred by improperly restricting Appellant's ability to present, in his defense, evidence that Complainant had a character and reputation for untruthfulness. The court's ruling that Scott's testimony was inadmissible under the evidence rules was an error of law. As seen, Scott's proffered testimony was that Complainant was considered so untrustworthy among the family that Scott did not confide in Complainant and kept her distance from Complainant. R. 305, l. 6 – 307, l. 9. This testimony was admissible on several grounds.

The Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law includes “a right to be heard and to offer testimony.” *Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (citing *In re Oliver*, 333 U.S. 257, 273 (1948)). “The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment, which grants a defendant the right to call ‘witnesses in his favor,’ a right that is guaranteed in the criminal courts of the States

by the Fourteenth Amendment.” *Id.*, 483 U.S. at 52 (citing *Washington v. Texas*, 388 U.S. 14, 17-19 (1967)). A State “may not apply a rule of evidence that permits a witness to take the stand, but arbitrarily excludes material portions of his testimony.” *Rock*, 483 U.S. at 55.

The credibility of Complainant was the ultimate issue in the case. Scott’s testimony went directly to Complainant’s character and reputation for untruthfulness—Scott said Complainant was reputed to be so untrustworthy she chose to generally avoid Complainant, and that family members warned her not to trust Complainant. The testimony was admissible as a hearsay exception. Rule 803(21), SCRE provides that the following is not excluded by the hearsay rule, even though the declarant is available as a witness: “Reputation of a person’s character among associates or in the community.” The comments to subsection twenty-one provide, “This section is included in the rules to ensure that reputation evidence is not excluded on the basis of hearsay.” The evidence was therefore admissible under a hearsay exception.

The evidence was also admissible to attack the complainant’s credibility in this “he said/she said” criminal sexual conduct case as a pertinent character trait. Rule 404(a)(3), SCRE provides that evidence of a person’s character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: (3) “Evidence of the character of a witness, as provided in Rules 607, 608, and 609.”

Rule 608(a), SCRE provides that, “The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness . . .” *See State v. Grace*, 350 S.C. 19, 26, 564 S.E.2d 331, 334 (Ct. App. 2002) (pursuant to Rule 608(a), defense witness was permitted to testify that prosecution witness did not have a reputation as being a truthful and honest person). Finally, Rule 405(a), SCRE provides that, “In all cases in which

evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion.”

Here, Scott was prepared to testify to Complainant’s character for untruthfulness in the form of her reputation within the extended family as untrustworthy. This evidence was admissible as a hearsay exception and was admissible given the nature of the case—a credibility battle. Because this case came down to credibility, the proffered evidence was highly probative. Appellant had a constitutional right to present the testimony of witnesses in his defense. It was error to arbitrarily apply Rules 803(21), 404(a)(3), 405(a), and 608(a), SCRE so as to exclude Scott’s testimony here. *Rock*, 483 U.S. at 55.

“Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.” *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006). Appellant was prevented from properly attacking the truthfulness of the complainant in this “he said/she said” criminal sexual conduct case. Appellant was prejudiced due to the nature of the case and the import of the excluded testimony.

5.

The court erred where it denied Appellant’s motion for a new trial based on cumulative error, since the cumulative effect of the errors was so prejudicial as to deprive Appellant of a fair trial.⁴

Standard of review

The appellate courts of South Carolina review questions of law *de novo*. *Smalls v. State*, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018). *See also State v. Ross*, 445 P.3d 726, 734 (Kan. 2019) (when analyzing claim of cumulative error, we use a *de novo* standard of review to determine whether totality of circumstances substantially prejudiced defendant and denied defendant a fair trial based on cumulative error).

Discussion

Each of the foregoing arguments independently entitles Appellant to relief: Appellant’s rights to confrontation and to present a defense were improperly limited as to the critical matters of Complainant’s bias, motive to misrepresent, prior inconsistent statements, and character and reputation for untruthfulness. However, the arguments should also be considered together since the cumulative effect of the erroneous rulings denied Appellant a fair trial.

“The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial.” *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013) (citing *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)). In *State v. Freeman*, 319 S.C. 110, 123, 459 S.E.2d 867, 875 (Ct. App. 1995), this Court found the “combined effect of the numerous unsolicited comments and the

⁴ Appellant hereby incorporates the discussion sections from Issues 1 – 4, above.

limitation of cross-examination unduly prejudiced [the appellant]. Although each point of error raised alone is insufficient to warrant a new trial, the cumulative effect is enough to require that relief.” “[T]he aggregation of errors may produce a cumulative effect of prejudice, where individually, the prejudice is insufficient to justify reversal.” *Id.* See also *State v. Durant*, 430 S.C. 98, 111, 844 S.E.2d 49, 55 n. 6 (2020) (“As to the cumulative error doctrine, because the trial court did not commit any reversible errors, we reject Durant’s contention that a new trial is warranted.”)

“An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.” *Beekman*, 405 S.C. at 237, 746 S.E.2d at 490. See also *State v. Peterson*, 287 S.C. 244, 245, 335 S.E.2d 800, 801 (1985)⁵ (reversal due to collective impact of numerous errors committed by the trial court); *State v. Daise*, 421 S.C. 442, 467, 807 S.E.2d 710, 722 (Ct. App. 2017) (errors insufficient to invoke cumulative error doctrine where any errors by circuit court were not prejudicial and did not combine to affect Daise’s right to a fair trial); *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986) (“the Constitution entitles a criminal defendant to a fair trial, not a perfect one”).

The following rights are among the minimum essentials of a fair trial: “A person’s right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented

⁵ overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), and overruled on other grounds by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

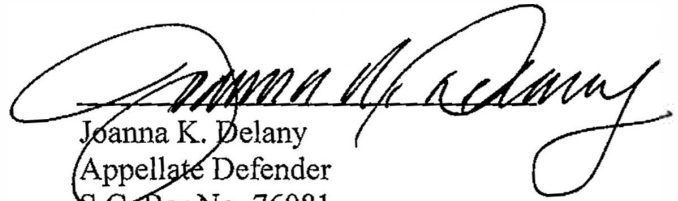
by counsel.” *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (quoting *In re Oliver*, 333 U.S. 257, 273 (1948)).

As argued in the issues above, the trial court erred when it denied Appellant the ability to testify in his own defense about Complainant’s bias and potential motive for falsely accusing Appellant of this crime, when it denied Appellant the ability to cross-examine Complainant about the same matter, when it denied Appellant the ability to impeach Complainant with her prior inconsistent statements to Officer Christian, and when it denied Appellant the opportunity to present evidence of Complainant’s reputation and character for untruthfulness. The solicitor unfairly relied on the erroneous rulings in closing argument. R. 331, ll. 3-5.

Assuming *arguendo* that this Court finds the errors discussed in the issues above were individually harmless, the cumulative effect of the errors prevented Appellant from receiving a fair trial. *In re Oliver*, 333 U.S. at 273. Appellant was denied a fair trial because he was erroneously prohibited from meaningfully challenging the State’s case on multiple fronts. Given the constitutional gravity of the errors here, this Court should apply the cumulative error doctrine. *Freeman*, 319 S.C. at 123–24, 459 S.E.2d at 875; *Johnson*, 334 S.C. at 93, 512 S.E.2d at 803; U.S. Const. amend. V; U.S. Const. amend. VI; U.S. Const. amend. XIV.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.


Joanna K. Delany
Appellate Defender
S.C. Bar No. 76081

This 19th day of December, 2022.

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions
The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-001188

THE STATE,

Respondent,

v.

TERRY GERRARD GRIDINE,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS.....	3
ARGUMENT.....	5
I. The trial court acted within its discretion when it disallowed cross-examination of the victim regarding an unanswered phone call she made to Gridine from jail where the evidence had little probative value and carried the danger of unfair prejudice.....	5
II. The trial court correctly excluded hearsay testimony from Gridine that the victim told him she had tried to call him from jail.....	12
III. Gridine was not prejudiced by the trial court's limitation of impeachment concerning whether she told the responding deputy that she "pushed [Gridine's] arms away" when he hugged her from behind and whether Gridine asked "whether her son was home" prior to the incident.....	17
IV. The trial court did not reversibly err by excluding evidence that the victim's great-niece had been told victim was untrustworthy because the proffered evidence was not limited to the victim's character for untruthfulness.....	22
V. This Court should not reverse pursuant to the cumulative error doctrine.	26
CONCLUSION.....	28

TABLE OF AUTHORITIES

Cases

<u>Chambers v. Mississippi</u> , 410 U.S. 284 (1973).....	8, 14, 16
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (1986).....	9
<u>Holmes v. South Carolina</u> , 547 U.S. 319 (2006).....	15
<u>Montana v. Egelhoff</u> , 518 U.S. 37 (1996).....	8, 15
<u>Norris v. Clinkscales</u> , 47 S.C. 488, 25 S.E. 797 (1896)	8
<u>Olden v. Kentucky</u> , 488 U.S. 227 (1988).....	10
<u>Rock v. Arkansas</u> , 483 U.S. 44 (1987).....	13
<u>Smalls v. State</u> , 422 S.C. 174, 810 S.E.2d 836 (2018).....	26
<u>State v. Beekman</u> , 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 2013).....	27
<u>State v. Charping</u> , 313 S.C. 147, 437 S.E.2d 88 (1993).....	10
<u>State v. Collins</u> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	5, 12, 17, 22
<u>State v. Grace</u> , 350 S.C. 19, 564 S.E.2d 331 (Ct. App. 2002).....	7
<u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997).....	18

Statutes and rules

Rule 103, SCRE	18
Rule 403, SCRE	5
Rule 404, SCRE	23
Rule 608, SCRE	23
Rule 609, SCRE	23
Rule 803(21).....	21

STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court acted within its discretion when it disallowed cross-examination of the victim regarding an unanswered phone call she made to Gridine from jail where the evidence had little probative value and carried the danger of unfair prejudice.
- II. Whether the trial court correctly excluded hearsay testimony from Gridine that the victim told him she had tried to call him from jail.
- III. Whether Gridine was prejudiced by the trial court's limitation of impeachment concerning whether she told the responding deputy that she "pushed [Gridine's] arms away" when he hugged her from behind and whether Gridine asked "whether [her son] was home" prior to the incident.
- IV. Whether the trial court reversibly erred by excluding evidence that the victim's great-niece had been told victim was untrustworthy because the proffered evidence was not specifically related to the victim's character for untruthfulness.
- V. Whether this Court should reverse pursuant to the cumulative error doctrine.

STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant Terry Gridine for Third Degree Criminal Sexual Conduct. He proceeded to jury trial on October 11–14, 2020, before the Honorable Jocelyn Newman, circuit court judge. Gridine was convicted as charged and sentenced to 10 years' incarceration, suspended on the service of seven years and five years of probation. This direct appeal follows.

STATEMENT OF FACTS

The victim in this case was Sara Webber, a 76-year-old woman living in Hopkins. (R.114). Appellant Terry Gridine was Webber's nephew. (R.117). When this crime occurred in 2017, Gridine was a frequent visitor to Webber's house. Gridine's mother (Webber's sister) had passed away the year before and Webber testified that she and Gridine had a "very good relationship" and she loved him like one of her own children. (R.117–119).

On October 26, 2017, Gridine stopped by Webber's home sometime between 9 or 11 o'clock in the evening. (R.119). They were talking and watching TV when Gridine began "saying some things . . . that weren't rational," including a threat to kill himself. (R.119). Webber believed Gridine was drinking alcohol, but she was not. (R.121–122). Gridine was also threatening to "[do] things to his ex." (R.122).

At one point, Gridine approached Webber from behind, hugged her, and said "Auntie, you know I love you." (R.123). Gridine "dropped to his knees and started putting his hand under [Webber's] clothes." (R.124). He began asking to have sexual relations with Webber. (R.124). Webber pushed him away and told him to stop, but Gridine began "pulling" and "tearing" Webber's clothes. (R.124-125). Webber was able to get out of the chair, but Gridine grabbed her and they "started wrestling." (R.125). They fell onto the sofa, with Gridine on top of Webber, until they fell onto the floor. (R.125). Webber felt like she was fighting for her life as Gridine continued to hold her down and reach beneath her underwear, eventually digitally penetrating her. (R.126–127). Webber was able to grab a lamp that was

on the floor and began hitting Gridine on the head with it. (R.127). Webber hit Gridine until the lamp broke, and Gridine "jumped up and ran." (R.127).

Webber called her son and told him what happened, and then called police. (R.134–135). She also called Gridine's older brother. (R.135). Webber began to go to the hospital, but police advised her that a sexual assault exam was not necessary because Gridine did not penetrate her with his penis. (R.136). Gridine scratched Webber's vulva during the attack, and she had to use medication to treat the injury. (R.137). Webber communicated with Gridine via text message after the event. These text messages were entered as State's Exhibits #9–15. (R.137). Webber confronted Gridine about the attack and Gridine asked her to call him, asked for forgiveness, and stated "I can't live with this." (R.289-293).

ARGUMENT

- I. **The trial court acted within its discretion when it disallowed cross-examination of the victim regarding an unanswered phone call she made to Gridine from jail where the evidence had little probative value and carried the danger of unfair prejudice.**

Gridine alleges the trial court committed reversible error by preventing him from cross-examining the victim about her unsuccessful attempt to contact him from jail after being arrested for shoplifting. The trial court excluded the evidence under Rule 403, SCRE, reasoning the evidence had little probative value and carried a substantial danger of unfair prejudice. Under the deferential standard of review for a trial court's 403 rulings, this Court should affirm.

A. 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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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. A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. Id., 409 S.C. at 534, 736 S.E.2d at 28.

B. Discussion.

The trial court acted within its discretion when it excluded evidence that Ms. Webber was arrested and jailed for shoplifting. The record supports the trial court's finding that the evidence had little probative value and carried a substantial risk of

unfair prejudice. Under the applicable deferential standard of review, this Court should affirm.

This issue arose during the cross-examination of the victim, Ms. Webber. Defense counsel asked whether Webber recalled "telling [Gridine] that you had tried to reach out to him because you needed some help?" (R.156). Webber responded "no." Defense counsel then asked if Webber had called Gridine "[b]ecause [she] had been arrested." The solicitor objected.

Defense counsel argued the arrest went to Webber's motive and credibility. (R.159). When the court asked defense counsel to explain how the arrest was relevant to Ms. Webber's credibility, defense counsel responded that "if she had denied it, then that would have called her credibility into question." (R.159, lines 18–19). Regarding motive, defense counsel asserted: "it is our understanding . . . [Webber] reach[ed] out to him for help with posting her bond, which he did not do." (R.156–166). Defense counsel argued this was the source of Webber's motive to falsely accuse him of sexual assault.

Gridine was allowed to proffer testimony from Ms. Webber. She denied she asked Gridine to help bail her out. Rather, she testified she "was trying to get in touch with him to get in touch with [her] daughter," but that Gridine did not answer and she never talked to him. (R.168). Ms. Webber then explained that she called her sister instead. (R.169). She explained: "I didn't need any help from [Gridine]. All I needed was to get in touch with my sister." (R.175). Gridine was just one of

multiple people she called in an attempt to get in touch with her sister. (R.145, line 3).

a. Rule 403 analysis.

Evidence supports the trial court's ruling excluding evidence of Ms. Webber's arrest under Rule 403, SCRE. Contrary to defense counsel's assertion, Gridine did not refuse Webber's request to bail her out of jail. Rather, he simply missed the call and she called her sister instead. Gridine apparently was not even aware at the time that Webber tried to call him, because defense counsel asserted later in trial that Webber merely told Gridine afterwards that she had tried to call him. (R.248). This testimony does not reasonably support a motive to falsely accuse Gridine of sexual assault. The trial court correctly found the proffered evidence had little probative value.

By contrast, the trial court found that evidence of her arrest amounted to "bad character evidence." (R.171, line 21). Ms. Webber was never convicted of shoplifting and had the arrest expunged from her record. (R.252). The arrest was not admissible under Rule 609, SCRE, because it did not result in a conviction. Rule 403 allows trial courts to exclude evidence that may lead to improper, emotional responses by a jury against a witness that may produce unfairly prejudicial attitudes towards that witness. See, e.g. State v. Grace, 350 S.C. 19, 28, 564 S.E.2d 331, 335 (Ct. App. 2002) (affirming trial court's exclusion of evidence pertaining to witness's prior suicide attempts).

The admission of evidence of Ms. Webber's arrest and jailing on suspicion of a crime for which she was not convicted carried the danger that the jury would draw negative inferences about her character that would unfairly influence their verdict. The record does not support Gridine's assertion that Webber became angry because Gridine refused to bail her out of jail. Rather, he simply missed her call and Webber called someone else. The evidence had little probative value and the record supports the trial court's decision to exclude it. Consistent with the extreme deference owed to a trial court's 403 rulings, this Court should affirm. See Norris v. Clinkscales, 47 S.C. 488, 25 S.E. 797, 801 (1896) (an abuse of discretion occurs when a trial court's ruling is "clearly untenable").

b. Due process analysis.

In addition to his Rule 403 claim, Gridine argues exclusion of evidence of Webber's arrest violated his right under the Confrontation Clause (applicable to the states via the Fourteenth Amendment's Due Process Clause) to present a complete defense. This claim fails because the trial court's ruling was properly based on a legitimate, non-arbitrary rule of evidence. This Court should affirm.

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. Chambers v. Mississippi, 410 U.S. 284, 294 (1973). However, "[t]he accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." Montana v. Egelhoff, 518 U.S. 37, 42 (1996). It is "normally 'within the power of the State to regulate procedures

under which its laws are carried out,' . . . and its decision in this regard is not subject to proscription under the Due Process Clause unless 'it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" Id. at 43. It is a "heavy burden" to show a due process claim based on the restriction of relevant evidence. Id. at 43.

While undue limitation of cross-examination may in some cases rise to the level of a Confrontation Clause violation, "[i]t does not follow, of course, that the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. . . . [T]he Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986).

The trial court's ruling limiting Gridine's cross-examination of Webber was within the trial court's discretion and did not rise to the level of a Confrontation Clause violation. The court did not prohibit "all inquiry into the possibility" of bias. Id. Instead, it excluded only the fact of Webber's arrest. Gridine was able to extensively cross-examine Webber regarding the consistency of her testimony and

the circumstances under which she reported the assault. While Gridine asserts this limited the cross-examination to a "milquetoast" exchange, it was within the trial court's discretion to impose reasonable limits on cross-examination.

c. Prejudice.

Exclusion of the fact that Webber was arrested did not influence the jury's verdict, and therefore did not prejudice Gridine. See State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1993) ("Error is harmless where it did not reasonably affect the result of the trial"); see also Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986) (rejecting per se reversal for a Confrontation Clause violation but finding prejudice from exclusion of cross-examination where a "reasonable jury might have received a significantly different impression of [witness's] credibility had respondent's counsel been permitted to pursue his proposed line of cross-examination").

Gridine was not prejudiced because the excluded evidence did not reasonably support the defense theory that the episode provided a motive for Webber to falsely accuse Gridine of sexual assault. Gridine never refused to help Webber, and was not even aware that she attempted to call him from jail until she told him. This is a far cry from defense counsel's earlier assertion that "[Webber] reach[ed] out to him for help with posting her bond, which he did not do." (R.165–166). Unlike other cases where courts have found a Confrontation Clause violation, the proposed cross-examination in this case did not have "strong potential to demonstrate the falsity of [Webber's] testimony." Olden v. Kentucky, 488 U.S. 227, 232 (1988). Given its low probative value, exclusion of cross-examination of Webber regarding the fact that

she had been arrested did not affect the result of trial and did not reasonably affect the jury's judgments as to her credibility. Gridine was allowed to cross-examine Webber about whether she "reached out to [Gridine] for help" (R.174–175). Webber agreed that she attempted to call Gridine for help reaching her daughter but was unable to reach him and had to use "some other avenue" (R.175). Thus, Gridine was able to at least partially elicit the information he desired. Of course, the jury had already heard defense counsel ask Ms. Webber about her arrest and undoubtedly understood the "help" to which defense counsel was referring. (R.156). This Court should affirm.

II. The trial court correctly excluded hearsay testimony from Gridine that the victim told him she had tried to call him from jail.

Gridine claims the trial court erroneously excluded testimony that the victim told Gridine she attempted to call him from jail. The trial court correctly excluded the evidence because it was hearsay and evidence of the victim's arrest had already been excluded under Rule 403, SCRE. The trial court's application of the hearsay rule was not "arbitrary" such that it rose to the level of a due process violation. This Court should affirm.

A. 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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Discussion.

Even though the trial court had already excluded evidence that the victim attempted to call Gridine from jail, Gridine attempted to introduce hearsay evidence to the same effect during his case in chief. The trial court correctly excluded the testimony because it did not fit within any hearsay exception. Likewise, the ruling did not amount to a due process violation. This Court should affirm.

Gridine attempted to offer testimony that the victim, Ms. Webber, told him at some point that she had attempted to call him from jail. He did not receive the call and did not refuse to help Ms. Webber. As argued in in the first argument section of this brief, the trial court acted within its discretion when it excluded evidence of Webber's arrest. This is the same issue, repackaged. However, this evidence was also improper hearsay. See Rule 801(c), SCRE ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Hearsay is not admissible except as provided by the rules of evidence or by other rules prescribed by the Supreme Court of this State or by statute. Rule 802, SCRE.

Gridine apparently concedes the evidence was hearsay. Brief of Appellant at 24–25. However, he argues the trial court should have ignored the rule against hearsay and admitted the evidence pursuant to his right to testify in his own defense. He cites Rock v. Arkansas, 483 U.S. 44 (1987), for the proposition that a state may not "arbitrarily" apply rules of evidence to exclude evidence from a testifying defendant. Brief of Appellant at 24. In Rock, the United States Supreme Court struck down Arkansas's "per se rule excluding a criminal defendant's hypnotically refreshed testimony." Rock v. Arkansas, 483 U.S. 44, 49 (1987). The Court chronicled the legal shift away from the common law prohibition against defendant's testifying at all in their own trial, to the modern rule guaranteeing defendants the right to testify in their own defense. Id. at 49–52. The Court concluded Arkansas's absolute prohibition on a defendant testifying after she had

undergone hypnosis unduly restricted the defendant's right to testify, in violation of her right to due process. The court held that "[w]holesale inadmissibility of a defendant's testimony is an arbitrary restriction on the right to testify in the absence of clear evidence by the State repudiating the validity of all posthypnosis recollections." Id. at 61.

The Rock court discussed Chambers v. Mississippi, 410 U.S. 284 (1973), an earlier Supreme Court case addressing a defendant's right to testify and to cross-examine potential exculpatory witnesses. Chambers involved several significant restrictions on a defendant's right to present a defense. First, Chambers was not allowed to cross-examine a witness who had confessed to the crime for which he was on trial because Mississippi rules did not allow a party to impeach its own witnesses. Second, Mississippi did not recognize a hearsay exception for declarations against penal interest and the trial court prevented several witnesses from recounting the third party's confession. The Supreme Court ruled that the restrictions cumulatively amounted to a due process violation, and explained that "the hearsay rule may not be applied mechanistically to defeat the ends of justice." Chambers v. Mississippi, 410 U.S. 284, 302 (1973). However, the Court made clear that the case presented an exceptional circumstance, writing that "perhaps no rule of evidence has been more respected or more frequently applied in jury trials than that applicable to the exclusion of hearsay." Chambers, 410 U.S. at 302. The Court concluded by explaining: "In reaching this judgment, we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect

traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures. Rather, we hold quite simply that under the facts and circumstances of this case the rulings of the trial court deprived Chambers of a fair trial." Id. at 302--3.

In Montana v. Egelhoff, 518 U.S. 37 (1996), the Supreme Court explained that "Chambers was an exercise in highly case-specific error correction." Montana v. Egelhoff, 518 U.S. 37, 52 (1996). "[T]he holding of Chambers—if one can be discerned from such a fact-intensive case—is certainly not that a defendant is denied 'a fair opportunity to defend against the State's accusations' whenever 'critical evidence' favorable to him is excluded, but rather that erroneous evidentiary rulings can, in combination, rise to the level of a due process violation." Id. at 53.

Later, in Holmes v. South Carolina, 547 U.S. 319 (2006), the Supreme Court reversed a conviction based on the undue restriction of evidence of third party guilt. The Holmes court explained the type of restriction on evidence that will give rise to a due process violation: "While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." Holmes v. South Carolina, 547 U.S. 319, 326 (2006).

Together, these cases explain that only in exceptional circumstances will the exclusion of evidence pursuant to valid state evidentiary rules rise to the level of a due process violation. This case does not present the application of an arbitrary rule of evidence, such as South Carolina's former rule conditioning the admissibility of third party guilt evidence on the strength of the State's case, or Arkansas's rule against a defendant's post-hypnosis testimony. Rather, the trial court's ruling in this case was a straightforward application of one of the most foundational rules of evidence: the rule against hearsay. See Chambers, 410 U.S. at 302 ("perhaps no rule of evidence has been more respected or more frequently applied in jury trials than that applicable to the exclusion of hearsay").

Even if the trial court erred, Gridine was not prejudiced. As explained in the argument section pertaining to Issue #1, evidence of Webber's arrest had little probative value. Gridine did not refuse Webber's request to bail her out of jail. Instead, Gridine simply missed her call and she called her sister instead. (R.174–175). The ruling did not affect the jury's verdict. This Court should affirm.

III. Gridine was not prejudiced by the trial court's limitation of impeachment concerning whether she told the responding deputy that she "pushed [Gridine's] arms away" when he hugged her from behind and whether Gridine asked "whether [her son] was home" prior to the incident.

Gridine argues the trial court erroneously prevented him from impeaching the victim's trial testimony with her prior statement to police. While the trial court did erroneously rule that impeachment with extrinsic evidence would violate the rule against hearsay, Gridine failed to preserve the issue because he did not proffer any specific portions of the video containing the statements. Furthermore, any error was harmless because the portions of Ms. Webber's statements Gridine identifies in his brief were not important to the case and did not reasonably affect the result of trial. This Court should affirm.

A. 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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Issue preservation.

This issue arose during the recall and direct examination by Gridine of the deputy who took Webber's initial statement. Deputy Christian recorded the interaction on his body-worn camera. Defense counsel was attempting to impeach

Webber's testimony, and offered the video into evidence. The solicitor objected on hearsay grounds. (R.258–259).

In arguing for the admissibility of the video, defense counsel stated: "there are two clips totaling 35 seconds that are prior inconsistent statements that were made by Ms. Webber during her testimony yesterday. When I was cross-examining her, she, even after listening to herself on video, denied making these statements." (R.261). Defense counsel never identified which statements she alleged were inconsistent, and never requested to proffer the evidence. The court sustained the objection.

Rule 103, SCRE, provides: "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . (2) In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context." Gridine did not comply with this rule because he did not specify which statements he alleged were inconsistent with Webber's trial testimony. Because Gridine did not specify which statements were inconsistent, this Court has no way of knowing which statements he planned to use to impeach Ms. Webber. This issue is not preserved for review. See State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (explaining objection must be raised on "specific ground" to preserve issue for appellate review).

C. Discussion.

In his brief, Gridine points to two portions of the record where Webber denied making a prior statement. The first concerns whether Ms. Webber told Deputy

Christian that she pushed Gridine's hands away as he hugged her around the neck from behind. (R.184–188). The second is whether she "told Deputy Christian that [Gridine] kept asking . . . if [her son] was home." (R.193–194).

As to whether Webber told Deputy Christian that Gridine asked whether her son was home, Webber did deny that Gridine "kept asking throughout the evening" whether her son was home. (R.193, lines 17–22). Defense counsel then played the body camera video through headphones so that only Webber could hear. When defense counsel asked again whether she had told Deputy Christian that Gridine kept asking whether her son was home, Webber responded, "that's not what I heard just now." (R.194, line 10). Webber continued: "I didn't hear me ask him whether my son was home or not. . . . I don't remember [Gridine] asking me whether my son was home. [Gridine] knew my son would not have been home because he was outside back and forth." (R.194).

Accordingly, while Webber did deny the statement, after being confronted with the body camera video she gave an equivocal answer and stated she did not remember Gridine asking about her son. Regardless, this exchange was inconsequential, and could not have made a difference in the result of trial. See State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1993) ("Error is harmless where it did not reasonably affect the result of the trial"). Whether Gridine asked whether her son was home was an unimportant fact compared with the remainder of Webber's statement describing how Gridine forcibly digitally penetrated her.

As to whether Ms. Webber told Deputy Christian that she pushed Gridine's hands away as he hugged her around the neck from behind, this evidence too was unimportant to the case, and Webber did not unequivocally deny the statement after being confronted with her original statement. In the video, Webber says "he was hugging me [from behind] and tried to push him away, tried to get him off of me," and gestures with her hands to indicate how she moved away from Gridine's hug. (Defendant's Exhibit #1 at 5:00). She then says she "moved over there," indicating that she moved to the seat to her right, and Gridine "became very aggressive." (Defendant's Exhibit #1 and 5:07). Webber then states that she "moved back over here," indicating she moved back to the place where she was sitting, which she referred to at trial as the "recliner."

When asked at trial whether she pushed Gridine away from behind, she responded that she "pushed him back" when he was kneeling in front of her, but denied she "push[ed] him away" when he was hugging her from behind. (R.182–184). Webber likewise denied that she "pushed [his] arms away" when he hugged her from behind. Defense counsel played a copy of Deputy Christian's body-worn camera to Webber through headphones so that only Webber could hear. (R.185). Defense counsel and Ms. Webber then engaged in a back-and-forth about the exact language Webber used when describing the event to Deputy Christian, with Webber insisting she told Deputy Christian she pushed Gridine away, but that she did not say that she pushed "his arms" away when he hugged her from behind. (R.185, line 17). Defense counsel then continued to question Webber about whether she told

Deputy Christian that she moved from her recliner to the couch and then back to the recliner.

This testimony was unimportant to the case. Defense counsel was splitting hairs about the exact language Webber used to Deputy Christian during an exhaustive and confusing cross-examination. Defense counsel's strategy was apparently to ask question after question about marginally relevant details of her statement to police in hopes Webber would either not remember the statement or mistakenly deny having made them. Again, whether Webber pushed Gridine's arms away when he initially hugged her does not seriously call into question her testimony that he subsequently attacked and sexually assaulted her.

While the trial court erroneously ruled impeachment with extrinsic evidence was improper, the ruling did not prejudice Gridine because the prior statements were not important to the case and did not affect the result of trial. Defense counsel apparently did not think so, because she did not bother to include this issue in her cumulative error argument during her motion for a new trial. (R.380). Webber never wavered in her recounting of the operative facts of the case. This Court should affirm.

IV. The trial court did not reversibly err by excluding evidence that victim's great-niece had been told victim was untrustworthy because the proffered evidence was not specifically related to the victim's character for untruthfulness.

Gridine argues the trial court erred by excluding reputation evidence of the victim's character for untruthfulness. However, Gridine did not properly proffer evidence related to the victim's untruthfulness, the pertinent character trait in this case. Rather, the proffer related to the victim's general character and the witness's opinion that she was not trustworthy. This is an important distinction, because the rules of evidence do not allow general "bad character" evidence. This Court should affirm.

A. 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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Discussion.

Gridine offered testimony from Tomeka Scott, his niece and the victim's great-niece. Gridine proffered testimony from Scott related to her earlier statement to police that she did not trust the victim. Gridine proffered the following testimony related to the victim's reputation:

Q: "What reason, if any, do you have to be wary of Ms. Webber?"

A: "Just things that, you know, you hear from different family members, you, they would say, well you can't trust her, or don't get in mix with her too much you know, stuff like that. But I keep my distance away from drama"

(R.307). When defense counsel asked, "Her general reputation is" the State objected to leading. The trial court sustained the objection. Defense counsel did not rephrase her question or pursue the line of inquiry any further.

Generally, evidence of a witness's general bad character is not admissible. See Rule 404(a), SCRE (providing "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"). However, the rules of evidence carve out specific exceptions which allow a party to elicit evidence about a witness's character in certain circumstances. Rule 404(a)(2), SCRE, allows "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused" Rule 404(a)(3) allows "evidence of the character of a witness, as provided in Rules 607, 608, and 609."

Rule 608, SCRE provides that the "credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness" Rule 609 allows impeachment of a witness with evidence of their conviction of certain crimes. Accordingly, in this case, Tomeka Scott's testimony regarding victim's reputation in the community was only proper to the extent it related to her character for truthfulness or untruthfulness.

Rule 803(21), SCRE, provides a hearsay exception for evidence of "Reputation of a person's character among associates or in the community." Accordingly, reputation evidence should not be excluded as hearsay. However, this is apparently the basis on which the trial court excluded the evidence in this case. (R.309).

Even though the evidence was not excludable on hearsay grounds, this Court should affirm on the alternate sustaining ground that the evidence would have been improper general character evidence. See Rule 220(c), SCACR (providing the appellate court may affirm on any ground appearing in the record). Scott's testimony that family members told her not to "trust" Ms. Webber could have been interpreted as an attack on her character generally, not just her character for untruthfulness. Relatives' warnings not to "trust" Ms. Webber could have meant she was a thief, a cheat, or possessed some other negative characteristic other than untruthfulness.

The trial court probably should not have cut off Scott's proffered response to a question about Ms. Webber's "general reputation." (R.307, line 10). The best practice is for trial courts to be liberal in allowing proffered testimony. But the objection was to leading, not to the substance of the underlying testimony. Defense counsel should have simply rephrased her question and tried again to elicit the desired information.

Although reputation evidence of a victim's character for truthfulness or untruthfulness is admissible, defense counsel did not properly elicit such testimony in this case. Rather, the questions called for an opinion as to the victim's general

character, which is not allowed. This Court should affirm on this alternate sustaining ground.

V. This Court should not reverse pursuant to the cumulative error doctrine.

Lastly, Gridine argues this Court should reverse pursuant to the cumulative error doctrine. The State disagrees. Any errors were harmless when viewed as a whole.

A. Standard of review.

While the standard of review for a cumulative error claim is not expressly stated in this Court's jurisprudence, the State asserts that this is a factual finding subject to abuse of discretion review. Compare with *Smalls v. State*, 422 S.C. 174, 195, 810 S.E.2d 836, 847 (2018) (describing PCR prejudice analysis as "findings of fact").

B. Issue Preservation.

When Gridine moved for a new trial after the jury's verdict, he raised only the court's rulings excluding evidence of Webber's arrest and its ruling excluding reputation evidence. (R.380). Accordingly, this court should not consider Issue 3 in its cumulative error analysis. See *State v. Beekman*, 405 S.C. 225, 236, 746 S.E.2d 483, 489 (Ct. App. 2013), *aff'd*, 415 S.C. 632, 785 S.E.2d 202 (2016) (applying rules of issue preservation to cumulative error claim). While Gridine did not use the phrase "cumulative error" in his argument, the State agrees this was the substance of his claim.

C. Discussion.

The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of

preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial. State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), aff'd, 415 S.C. 632, 785 S.E.2d 202 (2016). An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground. Id.

Issues 1 and 2 deal with the same underlying evidence: Webber's attempt to call Gridine from jail. As discussed above, this evidence had low probative value and the trial court's ruling should stand under abuse of discretion review. The trial court did not err in relation to this issue.

Issue 3 alleged the trial court erroneously prevented impeachment concerning certain statements Webber made to the responding deputy who took her original statement. While the trial court erred when it concluded Gridine was not entitled to impeach Webber with her original statement, the statements with which Webber was impeached were not important to the case and did not result in substantial prejudice.

Finally, Issue 4 dealt with the exclusion of reputation evidence from Webber's great-niece. This evidence was not properly limited to reputation for truthfulness. The trial court did not err in excluding it. This Court should affirm.

CONCLUSION

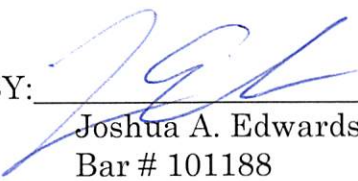
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 16, 2022

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions
The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2020-001188

THE STATE,

Respondent,

v.

TERRY GERRARD GRIDINE,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the 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."

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ATTORNEYS FOR RESPONDENT

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APPEAL FROM RICHLAND COUNTY

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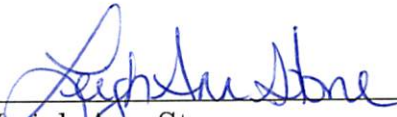
Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Final Brief of Respondent on Joanna Delaney, 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 16th day of December, 2022.



Leigh Ann Stone
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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.

Terry Gerrard Gridine, Appellant.

Appellate Case No. 2021-001188

Appeal From Richland County
Jocelyn Newman, Circuit Court Judge

Unpublished Opinion No. 2025-UP-009
Submitted October 1, 2024 – Filed January 8, 2025

AFFIRMED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Joshua Abraham Edwards, and
Solicitor Byron E. Gipson, all of Columbia, for
Respondent.

PER CURIAM: Appellant appeals his conviction for criminal sexual conduct 3rd degree and his sentence of ten years' imprisonment suspended upon the service of seven years and five years' probation. Appellant was also ordered to register as a

sexual offender. On appeal, he argues the circuit court erred by: (1) prohibiting him from cross-examining Victim on whether she was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week prior to the sexual assault, (2) prohibiting him from testifying that Victim was arrested and unsuccessfully attempted to reach him to help her obtain bail a week prior to the sexual assault, (3) prohibiting him from impeaching Victim with her prior inconsistent statements about the sexual assault, (4) prohibiting him from offering testimony from Victim's relative that Victim had a reputation and character for untruthfulness, and (5) denying his motion for a new trial based on cumulative error. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. Limiting Evidence of Victim's Bias¹

Appellant argues the court erred in limiting his cross-examination of Victim and limiting his own testimony regarding Victim's arrest for shoplifting a week prior to the alleged sexual assault. Appellant maintained Victim falsely accused him of sexual assault because she called him for assistance after her arrest and he did not help her. During cross-examination of Victim, the trial court limited the evidence by precluding any mention of the arrest or call from jail, but allowed Appellant to testify to and cross-examine Victim on her unsuccessful attempt to seek assistance from Appellant. During Appellant's cross-examination of Victim, the court relied on Rules 403, 404, and 608 of the South Carolina Rules of Evidence. During his own testimony, the court relied on Rules 403 and 801(c) of the South Carolina Rules of Evidence to exclude the evidence. We find no error in the court's rulings.

As to the limitations on Appellant's cross-examination of Victim, we find no reversible error. The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias. *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991); *see also State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (finding a defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause). Considerable latitude is allowed in the cross-examination of a witness for potential bias. *State v. Clark*, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994); *Brown*, 303 S.C. at 171, 399 S.E.2d at 594; *State v. McFarlane*, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983). On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness. *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317 (quoting *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976)). The appropriate question under a Confrontation

¹ We combine Appellant's first and second issues.

Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial. *Kentucky v. Stincer*, 482 U.S. 730, 730 (1987); *State v. Shuler*, 344 S.C. 604, 624, 545 S.E.2d 805, 815 (2001); *Starnes v. State*, 307 S.C. 247, 250, 414 S.E.2d 582, 583 (1991).

A criminal defendant may show a violation of the Confrontation Clause by "showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986) (quoting *Davis v. Alaska*, 415 U.S. 308, 318 (1974)). The Confrontation Clause does not, however, prevent a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. *Id.* at 679. "On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.* Before a trial judge may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate. *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317; *see* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (construing Rule 403, SCRE, to allow a judge to exclude relevant evidence if the danger of unfair prejudice substantially outweighs its probative value); Rule 402, SCRE ("Evidence which is not relevant is not admissible.") *State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012) ("This [c]ourt will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion."). "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." Rule 404(b), SCRE. However, such evidence may "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. A witness's credibility "may be attacked or supported by evidence in the form of opinion or reputation," but the following limitations apply: "(1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness

for truthfulness has been attacked by opinion or reputation evidence." Rule 608(a), SCRE.

Here, we find it was not error to limit cross-examination of Victim. Appellant argues Victim's unanswered phone call was to seek Appellant's help in obtaining bail following her shoplifting arrest, and because he did not answer, she falsely accused him of sexual assault. Victim denied this and claimed she was only calling Appellant so he could contact her daughter to help her obtain bail. When she could not get in contact with Appellant, Victim instead called her sister. We find the trial court did not abuse its discretion in prohibiting the mention of Victim's previous shoplifting arrest. Importantly, the trial court still allowed Victim to be questioned on whether she unsuccessfully sought assistance from Appellant prior to the sexual assault. The only limitation was that no mention of the arrest may be made. Appellant was still able to confront the witness through cross-examination.

We also find no reversible error in the limitation of Appellant's testimony on the issue. Evidence is relevant if it has "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 (emphasis added). Rule 403 allows trial courts to exclude evidence that may lead to improper, emotional responses by a jury against a witness that may produce unfairly prejudicial attitudes towards that witness. *See State v. Grace*, 350 S.C. 19, 28-29, 564 S.E.2d 331, 335-36 (Ct. App. 2002) (affirming trial court's exclusion of evidence pertaining to witness's prior suicide attempts); Rule 801(c), SCRE ("Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); Rule 802, SCRE ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."); *see also Rock v. Arkansas*, 483 U.S. 44, 55-56 (1987) (finding although the right to present relevant testimony is not without limitation, restrictions placed on a defendant's constitutional right to testify by a State's evidentiary rules may not be arbitrary or disproportionate to the purposes they are designed to serve). In *Rock*, the Supreme Court struck down Arkansas's "per se rule excluding a criminal defendant's hypnotically refreshed testimony." *Id.* at 49. The Court concluded Arkansas's absolute prohibition on a defendant testifying after she had undergone hypnosis unduly restricted the defendant's right to testify. *Id.* at 62. It held the "[w]holesale inadmissibility of a defendant's testimony is an arbitrary restriction on the right to testify in the absence of clear evidence by the State repudiating the validity of all posthypnosis recollections." *Id.* at 61.

The Supreme Court later explained the type of evidentiary restriction that will give rise to a due process violation:

While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.

Holmes v. South Carolina, 547 U.S. 319, 326 (2006).

As it relates to Appellant's own testimony, we do not believe the circumstances rose to the exceptional level required to show a due process violation. The trial court did not place arbitrary or disproportionate restrictions on Appellant's testimony. In contrast, the court allowed Appellant to testify to Victim reaching out for assistance prior to the sexual assault. His right to testify in his own defense was not so severely hampered, such as the absolute prohibition in *Rock*, to rise to the level of a due process violation. Because the exclusion of the evidence was based upon prior inadmissibility under Rule 403, inadmissible hearsay evidence, and it did not rise to the exceptional level required to show a due process violation, we find Appellant's right to testify in his defense was not violated.

2. Impeachment of Victim with Prior Inconsistent Statements

Appellant argues the trial court erred when it prohibited him from impeaching Victim with prior inconsistent statements about the sexual assault because Appellant was entitled to confront his accuser and extrinsic evidence is admissible for impeachment under Rule 613(b) of the South Carolina Rules of Evidence. The State concedes and we agree the trial court erred in prohibiting the extrinsic evidence; however, we find such error was harmless.

"[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (quoting *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)).

"Whether an error in the admission of evidence is harmless generally depends upon

its materiality in relation to the case as a whole." *State v. Brown*, 344 S.C. 70, 75, 543 S.E.2d 552, 554-55 (2001) (citing *State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990)).

We find such error was harmless considering the rest of the evidence, specifically the text messages sent from Appellant to Victim following the sexual assault. In the messages, Appellant admits that he "f....Up" and pleads for forgiveness from Victim. Further, when he was confronted with the events of the evening per Victim's messages, he does not deny the events, but rather states, "I can't live like this." We find these messages serve as a pseudo confession from Appellant and are very conclusive of his guilt. Further, the inconsistent statements the defense sought to introduce did not have any bearing on the actual allegations of sexual assault. They dealt with minor, collateral statements that we believe would not have affected the outcome of the jury. *See State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014) ("The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained.").

3. Reputation/Character Testimony Regarding Victim

Appellant argues the trial court erred when it prohibited him from offering testimony from Victim's relative that Victim had a reputation and character for untruthfulness. Appellant argues this testimony was admissible as a hearsay exception and as a pertinent character trait of Victim. We disagree.

Defense counsel sought to introduce evidence that Victim had a reputation for untruthfulness via the testimony of Tomeka Scott, Appellant's niece, and Victim's great-niece. The trial court proffered Scott's testimony regarding the reputation for untruthfulness. Scott testified that she did not have a close relationship with Victim and the two rarely saw each other or spoke. Scott even admitted she tried to avoid Victim because other family members warned her that Victim was untrustworthy. When defense counsel asked about Victim's general reputation, the State objected to leading. The court excluded Scott's testimony on the basis that it was hearsay and did not qualify as an exception.

Generally, evidence of a witness's general bad character is not admissible. *See* Rule 404(a), SCRE (providing "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 . . ."). However, the Rules of Evidence carve out specific exceptions which allow a party to elicit evidence about a witness's

character in certain circumstances. Several of the South Carolina Rules of Evidence apply here. Rule 404(a)(2) allows "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused" Rule 404(a)(3) allows "evidence of the character of a witness, as provided in Rules 607, 608, and 609." Rule 608(a) provides the "credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness" Rule 803(21) provides a hearsay exception for evidence of "[r]eputation of a person's character among associates or in the community." Accordingly, reputation evidence should not automatically be excluded as hearsay.

The State concedes, "[t]he trial court probably should not have cut off Scott's proffered response to a question about [Victim's] 'general reputation.'" But the objection was to leading, not to the substance of the underlying testimony. The State claims defense counsel should have simply rephrased her question and tried again to elicit the information. However, the State asserts even though the evidence was not excludable on hearsay grounds, this court should affirm on the alternate sustaining ground that the evidence would have been improper general character evidence. Pursuant to Rule 608, the testimony elicited from Scott was only proper to show her character for truthfulness or untruthfulness. However, during the proffer, the witness did not mention anything relating to Victim's character for untruthfulness. Rather, Scott focused on extended family members' warnings not to trust Victim. We find Scott's testimony could have been interpreted as an attack on Victim's character generally, not just her character for untruthfulness. Accordingly, we find the proffered testimony from Scott constituted inadmissible general bad character evidence and affirm on the State's alternate sustaining ground.

Even if the trial court erred in excluding the testimony of Scott, we find any error was harmless. We do not believe, considering the totality of the evidence, that had the jury heard about Scott's distant relationship with Victim, coupled with the testimony, that the outcome would have been different. *See Collins*, 409 S.C. at 537, 763 S.E.2d at 29 ("The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained.").

4. Cumulative Error Doctrine

Appellant argues the trial court erred when it denied his motion for a new trial based on cumulative error because the cumulative effect of the errors was so prejudicial as to deprive Appellant of a fair trial. We disagree.

We find no prejudicial errors combined to affect Appellant's right to a fair trial. *See State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), *aff'd*, 415 S.C. 632, 785 S.E.2d 202 (2016) ("The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial."); *id.* ("An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground."). As previously stated, we find the exclusion of evidence of the unanswered jail phone call was not error because the danger of unfair prejudice substantially outweighs its probative value. Further, even if the exclusion of Scott's testimony and the prior inconsistent statements made by Victim were errors, they did not prejudice Appellant in light of other evidence. Accordingly, Appellant's right to a fair trial was not affected by the exclusions.

AFFIRMED.²

THOMAS, HEWITT, and VINSON, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED**Jan 23 2025**

SC Court of Appeals

STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

Opinion No. 2025-UP-009

THE STATE,

RESPONDENT,

V.

TERRY GERRARD GRIDINE,

APPELLANT

APPELLATE CASE NO. 2021-001188

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Terry Gerrard Gridine respectfully requests this Court rehear this matter, as to Issues 1 – 3 and Issue 5, based upon the significant points overlooked and/or misapprehended by this Court. Appellant was tried for third-degree criminal sexual conduct. Appellant had information that went directly to Complainant’s motive to misrepresent—that one week before she accused Appellant of sexual assault, Complainant called Appellant from jail to get his help making bond on a shoplifting charge, but Appellant did not answer the call and did not assist her. Instead, Complainant was forced to call her sister. R. 165, l. 19 – 169, l. 5.

Appellant attempted to cross-examine Complainant about this fact, but the solicitor objected, making the wholly unsupportable argument that because the defense had not given the State notice that it intended to question the complainant about this, it should be limited to generically questioning Complainant whether he had refused to help her with an unspecified matter. R. 156, l. 2 – 170, l. 3.

Q Do you recall telling [Appellant] that you had tried to reach out to him because you needed help?

A No.

Q So you did not call him?

A No.

Q Because you had been arrested?

MS. SAMPSON: Objection, Your Honor.

A That was some weeks—

R. 156, ll. 2-10. The testimony was proffered. R. 168, l. 5 – 169, l. 5. *In camera*, Complainant was defensive and tried to minimize her attempt to reach Appellant.

BY MS. PINNOCK:

Q Ms. [Complainant], you were arrested—you called [Appellant] for help with posting your bond because you had been arrested, is that right?

A No.

Q You were not arrested?

A Yes.

Q Okay. And that was October 21st of 2017?

A I didn't—

...

A I didn't call him. I was trying to get in touch with him to get in touch with my daughter.

Q Okay. But you never talked to [Appellant] on the phone, did you?

A No.

Q Okay. And you had to find somebody else to come assist you?

A I couldn't get him, so I called my sister.

Q Okay.

A It had nothing to do with him.

R. 168, l. 5 – 169, l. 5.

The defense argued the testimony went to motive and bias. R. 166, ll. 3-6. The court ruled the cross-examination was inadmissible as “inflammatory” “bad character evidence” and limited Appellant to asking Complainant generically whether Appellant was unresponsive when she reached out to him for help. The court cited to Rules 403, 404, and 608, SCRE. R. 171, l. 14 – 175, l. 17. The court gave the jury a curative instruction ordering it to disregard the last question and answer it had heard. R. 174, ll. 2-16. Thus, Complainant's initial, deceptive response that the arrest was “some weeks” rather than six days before this accusation was struck. Respectfully, this Court's ruling that the trial judge committed no error, misapprehends or overlooks the significant diminution of Appellant's right to confront his accuser through cross-examination on bias and motive to misrepresent.

Once the State learned Appellant intended to testify in his defense, the solicitor preemptively objected to him testifying that Complainant tried to reach him for help bonding out on the shoplifting charge. The State argued this testimony was hearsay since Appellant had been

told this information by the complainant. R. 247, l. 16 – 249, l. 6. The defense responded that this would not be hearsay had it been allowed to cross-examine Complainant about it, and argued Appellant’s right to present a defense and right to due process should override a hearsay objection. The court sustained the objection. R. 249, l. 8 – 251, l. 15.

In closing argument, the solicitor asked the jury repeatedly why Complainant would lie about this. “[W]hat reason would she have to tell the same truth if it is a lie over and over and over?” R. 330, ll. 8-9. “Why does she need to come and make up a lie?” R. 330, ll. 10-11. “One of the things you get to think about is what bias does she have, what motivation would she have? And what is it? Other than it happened.” R. 331, ll. 2-5. Appellant had an answer to this question. He attempted to answer it two ways. He had the right to put his answer to this question for the jury. It was completely unfair for the solicitor to capitalize on the trial judge’s erroneous rulings in this way. This Court’s ruling that the trial court permissibly limited Appellant’s testimony about this matter, respectfully, misapprehends or overlooks the impropriety of the restriction on Appellant’s right to testify in his own defense.

Additionally, the State correctly conceded, and this Court found, that the trial court erred in preventing Appellant from impeaching Complainant with her prior inconsistent statements to law enforcement. Respectfully, however, this Court misapprehended the record when it concluded the error was harmless. On direct examination, Complainant claimed that: 1) she was sitting in her recliner when Appellant came up behind her and *hugged her* and said he loved her before he went back outside, then Appellant came back inside and got on his hands and knees in front of her and made crude sexual comments; 2) Complainant pushed Appellant away and *got up from her recliner*, whereupon Appellant grabbed her and put his finger in her vagina; and 3) Complainant’s son was home when Appellant arrived but he left before the alleged assault. R.

123, l. 11 – 127, l. 5; R. 119, ll. 17-23. However, Complainant told Officer Christian, the responding officer, who was equipped with body-worn camera,¹ that: 1) she was sitting in her recliner when Appellant came up behind her and *put her in a choke hold so she pushed him away*; 2) Complainant *got up from the recliner and moved to the couch*, then moved back to the recliner before Appellant sexually assaulted her; and 3) Appellant *repeatedly asked Complainant if her son was home*.

On cross-examination, defense counsel questioned Complainant about these details. At that time, Complainant claimed 1) she *did not push Appellant's arms off her* when he came up behind her recliner; 2) *she did not move from her recliner to her couch*, and did not get up from her recliner until Appellant initiated the sexual assault; and 3) *that she had not told Officer Christian that Appellant kept asking if her son was home*. Defense counsel reminded Complainant that Officer Christian's body-camera had captured her statements and Complainant listened to the audio through headphones. After listening to the audio, Complainant still claimed she had not said those things to Officer Christian. R. 183, l. 4 – 188, l. 4; R. 193, l. 12 – 194, l. 22. After the State rested, the defense recalled Officer Christian in its case-in-chief. Officer Christian confirmed that Defense Exhibit #1 was the recording from his body-camera (the footage had not previously been introduced), and the defense attempted to play the relevant portions of the footage to impeach Complainant's testimony. The solicitor objected to hearsay and argued Appellant could not use the footage for impeachment because Officer Christian "can't impeach her statement." Defense counsel argued she had complied with Rule 613(b), SCRE. The court sustained the objection. R. 256, l. 6 – 265, l. 7. The jury did not hear the impeachment evidence. Respectfully, this Court misapprehended or overlooked the content of

¹ Officer Christian's body-worn camera footage was offered for identification as Defendant's Exhibit #1 and is on file with this Court.

the inconsistent statements in the context of this case when it concluded the statements “did not have any bearing on the actual allegations of sexual assault.” These inconsistent statements related directly to the alleged sexual assault.

This Court also concluded the error was harmless given text messages² between Appellant and Complainant, which this Court found served as a “pseudo confession.” However, respectfully, the text messages were capable of two interpretations. The jury could have viewed the messages as corroborating either Complainant’s account of events or as corroborating Appellant’s account of events. They were not conclusive as to guilt. Appellant sent Complainant messages on October 27th stating he was sorry and he “f.... Up.” Complainant responded with a message containing detailed accusations about Appellant having tried “to have sex with your own Aunt.” Appellant responded the next day saying: “I don’t understand,” and “Can you call me for a second?” Complainant messaged Appellant asking where he was. Appellant responded, “Just want to say something to you,” and “I can’t live with this.” State’s Exhibit #9 – 15. While these messages were suspicious, Appellant provided an explanation for them that was not utterly implausible. Appellant testified he had confided to Complainant that he had been contemplating suicide and that his apology text and the “I f’d up” text were regarding telling her about his suicidal thoughts. Appellant stated his texts responding to Complainant’s sexual assault accusation of “I don’t understand,” and “can you call me for a second” were because he did not understand what she was talking about because there was no basis for the accusation. R. 280, l. 1 – 293, l. 6.

Finally, at the conclusion of the trial, Appellant moved for a new trial based on the cumulative error doctrine. The trial court denied the motion. R. 379, l. 23 – 380, l. 24. This

² The text messages were admitted as State’s Exhibit #9 – 15 and are on file with this Court.

Court concluded “no prejudicial errors combined to affect Appellant’s right to a fair trial,” and that even if errors were made, “they did not prejudice Appellant in light of other evidence.” Because of the errors noted above, and discussed in more detail below, respectfully, this Court misapprehended or overlooked the propriety of applying the cumulative error doctrine to this case, since the cumulative effect of the errors was such as to deny Appellant a fair trial.

1.

The court erred where it prohibited Appellant from cross-examining Complainant on whether she was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged that Appellant sexually assaulted her, since Appellant was entitled to considerable latitude in cross-examining his accuser on her bias or motive to misrepresent.

Respectfully, this Court’s conclusion there was no error—that the trial court permissibly limited Appellant’s cross-examination of Complainant—misapprehends or overlooks the considerable latitude to which Appellant was entitled on cross-examination. Appellant was entitled to explore Complainant’s potential bias and motive for falsely accusing him of sexual misconduct—that he did not help her bond out of jail a week before, a matter which Complainant confronted Appellant about for the first time the same night that she alleged he sexually assaulted her. “The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias.” *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) (citing *Davis v. Alaska*, 415 U.S. 308 (1974)). “Considerable latitude is allowed in the cross-examination of an adverse witness for the purpose of testing bias.” *State v. Brown*, 303 S.C. at 171, 399 S.E.2d at 594 (citing *State v. McFarlane*, 279 S.C. 327, 306 S.E.2d 611 (1983); *State v. Collins*, 235 S.C. 65, 110 S.E.2d 270 (1959)). It was error to deny Appellant the ability to present to the jury the complainant’s attempts to minimize the fact that she reached out to

Appellant for help with her arrest (as shown during the proffer), and her stricken, deceptive response about the timing of the arrest and timing of the accusation. Any juror would want to know if and why a complainant in a he-said/she-said sexual misconduct case such as this one had a motive to lie. Appellant had an answer to that question, and he should have been able to present it to the jury through cross-examination. The solicitor took advantage of the erroneous ruling by repeatedly asking the jury during closing argument what motive could the complainant have to lie.

Moreover, respectfully, the evidentiary rules cited as a basis for the trial court's rulings did not support limiting Appellant's cross-examination. The State would not have been unfairly prejudiced by this cross-examination. The complainant was not on trial facing imprisonment. This evidence was highly probative since it provided an explanation for Complainant's bias against Appellant and provided a motive for falsely accusing Appellant of this crime, and since the case turned on the credibility of Complainant. Rule 403, SCRE provided a basis for permitting the testimony rather than excluding it. The evidence was not offered to show bad character, and it met one of the exceptions listed in 404(b), SCRE and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923), because it went to the complainant's motive to fabricate the alleged assault. Rule 608(c), SCRE provides that, "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." The testimony had a legitimate tendency to throw light on Complainant's bias and motive to misrepresent.

The limitation imposed by the trial court, that Appellant could only generically ask if Appellant had failed to help her, rendered Appellant's cross-examination toothless. Moreover, the trial court struck the complainant's initial, deceptive response to counsel's question about the

timing of the arrest as it related to the timing of the accusation. Respectfully, the complainant's testimony cannot fairly be said to have been subjected to the crucible of cross-examination. Complainant's bias or motive to misrepresent was a key fact in issue. *See, e.g., State v. Gracely*, 399 S.C. 363, 373-74, 731 S.E.2d 880, 885-86 (2012) ("The trial court allowed defense counsel to cross-examine the witnesses regarding possible bias, but improperly prevented questioning which would have examined *the extent of that bias and the witnesses' possible motivations for testifying against Appellant.*" "The trial court's instruction improperly prevented Appellant from demonstrating the possible bias arising from these plea deals through an examination reaching the requisite degree of granularity.") (emphasis added); *State v. Grace*, 350 S.C. 19, 33, 564 S.E.2d 331, 338 (Ct. App. 2002) (where there was no physical evidence to support the victim's claims of sexual abuse and the State relied primarily on the credibility of the witnesses, "Appellant's right to present a defense mandates that he be permitted to freely cross examine the witnesses about the credibility issues relevant to his defense.") Appellant should have been permitted to cross-examine Complainant about the extent of her bias with granularity. U.S. Const. amend. VI; *Davis v. Alaska*, 415 U.S. at 316-17.

2.

The court erred where it prohibited Appellant from testifying that Complainant was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged Appellant sexually assaulted her, since the testimony was admissible, and since the ruling improperly restricted Appellant's right to testify in his defense.

As seen, the trial court ruled that Appellant himself could not testify that Complainant had unsuccessfully tried to call him from jail the week before to get his help making bail. The trial court excluded this testimony as hearsay since Appellant learned the information from

Complainant, who did not testify before the jury about this (although she did admit this during her proffer).

Respectfully, this Court misapprehended or overlooked Appellant's arguments regarding the right to testify in his defense. Although this Court ruled the restrictions on Appellant's testimony did not rise "to the exceptional level required to show a due process violation," Appellant's argument was not based solely on due process grounds, but is based also on Fifth and Sixth Amendment grounds. "The right to testify on one's own behalf at a criminal trial has sources in *several provisions* of the Constitution. It is one of the rights that 'are essential to due process of law in a fair adversary process.'" *Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (quoting *Faretta v. California*, 422 U.S. 806, 819, n. 15 (1975) (emphasis added)). The Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law includes "a right to be heard and to offer testimony." *Id.* (citing *In re Oliver*, 333 U.S. 257, 273 (1948)). "*The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment*, which grants a defendant the right to call 'witnesses in his favor,' a right that is guaranteed in the criminal courts of the States by the Fourteenth Amendment." *Id.*, 483 U.S. at 52 (citing *Washington v. Texas*, 388 U.S. 14, 17-19 (1967) (emphasis added)). "*Logically included in the accused's right to call witnesses whose testimony is 'material and favorable to his defense,' . . . is a right to testify himself*, should he decide it is in his favor to do so." *Id.* (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (internal citation omitted) (emphasis added)). "*The opportunity to testify is also a necessary corollary to the Fifth Amendment's guarantee against compelled testimony.*" *Id.*, 483 U.S. at 52 (citing *Harris v. New York*, 401 U.S. 222, 225 (1971)) (emphasis added). Although Appellant asserts he has shown a due process violation pursuant to the Fourteenth Amendment, he *also* asserts he has shown a

violation of his Sixth Amendment right to call witnesses in his favor, and his opportunity to testify as a corollary to the Fifth Amendment's guarantee against compelled testimony. Appellant's argument is that he was denied his right to testify and to present a complete defense. He does not have to meet the high bar of a due process violation to show reversible error. U.S. Const. amend. V; U.S. Const. amend. VI.

“[R]estrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve.” *Rock*, 483 U.S. at 55-56 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973)). A State “may not apply a rule of evidence that permits a witness to take the stand, but arbitrarily excludes material portions of his testimony.” *Rock*, 483 U.S. at 55. “In applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify.” *Id.*, 483 U.S. at 55-56. Although Appellant was permitted to testify, he was not permitted to testify about Complainant's potential motive for falsely accusing him of sexual assault. Hearsay rules were insufficient to override Appellant's right to testify in his defense on this critical matter of motive to misrepresent. *See Rock*, 483 U.S. at 55-56. Moreover, the hearsay problem only existed because the court improperly foreclosed Appellant from cross-examining Complainant about the arrest in the first place. The purpose of hearsay rules is to guarantee the reliability of evidence and to preserve the right of confrontation for the defendant in a criminal case. U.S. Const. am. VI; *Crawford v. Washington*, 541 U.S. 36, 61 (2004). Appellant was the defendant in this case; he was the party with the right to confrontation. There was no reliability problem with this evidence: it was undisputed that Complainant had been arrested shortly and tried to call Appellant for help with bail just before she accused Appellant of sexually assaulting her. As seen, a State “may not apply a rule of evidence that permits a witness to take the stand, but

arbitrarily excludes material portions of his testimony,” *Rock*, 483 U.S. at 55, but that is what happened. Under these circumstances, the trial court’s ruling here impermissibly restricted Appellant’s right to testify on his own behalf, such that it did rise to the high level of a due process violation. It also violated his Fifth and Sixth Amendment rights to testify in his defense. *Rock*, 483 U.S. at 62; U.S. Const. amend. V; U.S. Const. am. VI; U.S. Const. am. XIV.

3.

The court erred where it prohibited Appellant from impeaching Complainant with her prior inconsistent statements about the alleged sexual assault, where Complainant continued to deny making the statements even after being presented with the statements, since Appellant was entitled to confront his accuser, and since extrinsic evidence of such statements is admissible for impeachment under Rule 613(b), SCRE.

The State correctly conceded the court’s ruling prohibiting Appellant from introducing extrinsic evidence of Complainant’s prior inconsistent statements about the alleged assault was error, but this Court, respectfully, misapprehended or overlooked the content of the inconsistent statements when it concluded they “did not have any bearing on the actual allegations of sexual assault,” as they dealt with “minor, collateral statements.” These statements related directly to the alleged sexual assault—they were about what Appellant was doing and saying just prior to and during the alleged assault. They were not minor or collateral. Complainant told Officer Christian that Appellant put her in a choke hold so she pushed his arms away, but she stated on direct that Appellant hugged her just prior to the assault. On cross-examination, Complainant denied pushing Appellant’s arms away. Complainant told Officer Christian she moved from the recliner to the couch to the recliner after Appellant had her in the choke hold, but she stated on direct that she had just gotten up from the recliner when the assault happened. On cross-

examination, Complainant denied that she had moved from the recliner to the couch. Complainant told Officer Christian that Appellant kept asking if her son was home. On cross-examination Complainant denied telling Officer Christian that Appellant kept asking if her son was home. These inconsistent statements bore directly on the allegations. They also bore directly on whether Complainant was lying about them. Appellant was prejudiced by the exclusion.

This Court also concluded the error was harmless given text messages between Appellant and Complainant, which this Court found served as a “pseudo confession.” Respectfully, this Court misapprehended or overlooked that the record showed the text messages were capable of two interpretations. The jury could have viewed the messages as corroborating either Complainant’s account of events or as corroborating Appellant’s account of events. They were not conclusive as to guilt. Appellant provided an explanation for the messages that was not utterly implausible. Appellant testified he had confided to Complainant that he had been contemplating suicide and that his apology text and the “I f’d up” text were regarding telling her about his suicidal thoughts. Appellant stated his texts responding to Complainant’s sexual assault accusation with “I don’t understand,” and “can you call me for a second” were because he did not understand what she was talking about because there was no basis for the accusation. R. 280, l. 1 – 293, l. 6.

“In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness’s testimony to the prosecution’s case, whether the witness’s testimony was cumulative, whether other evidence corroborates or contradicts the witness’s testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State’s case.” *Fossick*, 333 S.C. at 70, 508 S.E.2d at 34 (citing *State v. Holmes*,

320 S.C. 259, 464 S.E.2d 334 (1995); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)). In this case, Complainant's testimony was of utmost importance to the prosecution and it was not cumulative to any other witness. Appellant's cross-examination of Complainant was curtailed in another important way, as argued above in Issue 1. The corroborating evidence was minimal and subject to interpretation. It was up to the jury to decide whether to believe Appellant's explanation for the text messages. *E.g.*, *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (where defendant admitted underlying facts of armed robbery and kidnapping, but maintained he did not have the requisite mens rea because he believed he was involved in a complicated CIA operation which required him to commit a staged robbery, improper jury instruction on "orders of another" required new trial). Notably, the jury deliberated for three hours. The error was not harmless.

5.

The court erred where it denied Appellant's motion for a new trial based on cumulative error, since the cumulative effect of the errors was so prejudicial as to deprive Appellant of a fair trial.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013) (citing *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Beekman*. 405 S.C. at 237, 746 S.E.2d at 490. The following rights are among the minimum essentials of a fair trial: "a

right to examine the witnesses against him, to offer testimony, and to be represented by counsel.” *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (quoting *In re Oliver*, 333 U.S. 257, 273 (1948)). As argued in the issues above, Appellant was erroneously prohibited from meaningfully challenging the State’s case on multiple fronts. Respectfully, this Court misapprehended or overlooked the propriety of applying the cumulative error doctrine to this case, since the cumulative effect of the errors was such as to deny Appellant a fair trial. These errors were not harmless, as discussed above. Given the constitutional gravity of the errors, Appellant was denied a fair trial, and this Court should apply the cumulative error doctrine. U.S. Const. amend. V; U.S. Const. amend. VI; U.S. Const. amend. XIV.

Rehearing should be granted to Appellant Terry Gerrard Gridine.

Respectfully submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
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Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of January, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

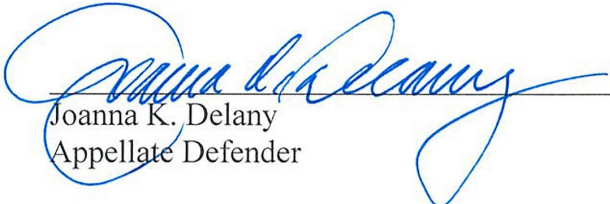
TERRY GERRARD GRIDINE,

APPELLANT

APPELLATE CASE NO. 2021-001188

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 Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Terry Gerrard Gridine, #386329, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 23rd day of January, 2025.



Joanna K. Delany
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ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

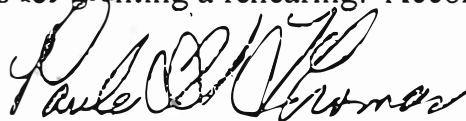
v.

Terry Gerrard Gridine, Appellant.

Appellate Case No. 2021-001188

ORDER

After careful consideration of the petition 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 petition for rehearing is denied.


Paul W. Turner

J.


3L LJA

J.


G. G. G.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Joanna Katherine Delany, Esquire
Joshua Abraham Edwards, Esquire
Byron E. Gipson, Esquire

FILED
Jan 28 2025
