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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL SCOTT VALDARIO,

APPELLANT

APPELLATE CASE NO. 2024-001170

INITIAL BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a mistrial when the trial court during the portion of the jury charge on the presumption of innocence erroneously charged the jury that Appellant had pled guilty to the indictments?

STATEMENT OF THE CASE

Appellant was indicted in September 2021 by a Lexington County grand jury for two counts of sexual exploitation of a minor first-degree and two counts of sexual exploitation of a minor second-degree. R. (Indictments). The state, represented by Assistant Attorneys General Bethanie B. Miles and Nicholas G. Pauel, called the case to trial on July 8, 2024, before the Honorable Walton J. McLeod, IV and a jury. Appellant was represented by Anna Williams Young and Robert T. Williams. Tr. 1. Appellant was found guilty as indicted. Tr. 229, l. 21-Tr. 230, l. 8. The trial court sentenced Appellant to four years of incarceration on each first-degree charge, sentences to be served consecutively, and two years of incarceration on each second-degree charge, to be served concurrently. Tr. 249, l. 18-Tr. 250, l. 2.

STANDARD OF REVIEW

In criminal cases, an appellate court's review extends only to corrections of errors of law. State v. Benton, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024) citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A trial court's mistrial decision is reviewed for an abuse of discretion. Id. citing Renico v. Lett, 559 U.S. 766, 774 (2010). "A mistrial should be declared cautiously and only in the most urgent circumstances for plain and obvious reasons." Id. "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Cook, 440 S.C. 308, 316, 891 S.E.2d 35, 39 (Ct. App. 2023) quoting State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010).

ARGUMENT

The trial court erred in denying Appellant's motion for a mistrial when the trial court during the portion of the jury charge on the presumption of innocence erroneously charged the jury that Appellant had pled guilty to the indictments.

Relevant Facts

At trial the state alleged that Appellant had manipulated his niece, L.V., into creating sexually explicit images and videos of herself that she would share with Appellant at his request. L.V. was fifteen-to-sixteen years old at the time of these incidents.[1] The state relied on screenshots taken by L.V. that purported to show the improper conversations between herself and Appellant. Tr. 64, l. 3-Tr. 71, l. 4. The state did not present forensic evidence that the "Michael" in the screenshots was in fact Appellant. The state did not identify the cellphone number of the party alleged to be Appellant, and did not offer any cellphone records of Appellant that showed he contacted V.S. The evidence that the person in the screenshots was Appellant was solely the testimony of V.S. Tr. 120, ll. 20-25.

Defense counsel called John Ackerman, an expert in cellphone forensics, to testify that the display names in the screenshots provided by L.V. could be easily altered and changed by the end user, which in this case would have been L.V. to any display name. Thus, there was no way to verify who the "Michael" in the screenshots actually was. Tr. 146, ll. 12-Tr. 148, l. 2; Tr. 152, ll. 4-19. The defense also presented evidence that L.V.'s cellphone had potentially been tampered with after L.V.'s parents had confiscated her phone but prior to it being turned over to police. Tr. 153, l. 5-158, l. 7

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[1] At the time of trial, L.V. was twenty years old. Tr. 60, ll. 20-23.

After the parties had rested and given closing arguments, the trial court proceeded to charge the jury on the applicable law. At the start of the jury charge section dealing with the presumption of innocence the trial court charged the jury,

> THE COURT: *Now the defendant has pled guilty to these indictments* and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove his or her innocence. I charge you that it is an important rule of the law that the defendant in a criminal trial no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which the indictment has issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.
>
> *Did I say guilty*?
>
> MS. YONGE: Yes, Your Honor.

Tr. 216, l. 24-Tr. 217, l. 11 (emphasis added).

The trial court informed the jury it had misspoke and then recharged the presumption of innocence section stating "[t]o be very clear, the defendant has pled not guilty to these indictments…" Tr. 217, ll. 12-21. After the jury charge concluded and the jury was excused, Counsel Young moved for a mistrial on the basis that the court erroneously informed the jury that the defendant had pled guilty. Counsel Young recognized that the trial court had not intended "to say it that way" but was concerned the jury would improperly infer that the court had an opinion on the facts of the case and that was why the court misspoke. Tr. 225, ll. 11-17.

The trial court agreed that the mistrial motion "was a good motion to make" and that counsel had a duty to make the motion. The court continued,

> *I tried to correct it.* As soon as I was made aware, I did it. That was obviously unintentional. It doesn't say that in the jury charge and they'll have a copy of it. In an abundance of caution, I'm gonna bring them back in here and I'm gonna tell them again that that was an unintentional mistake. I'll feel better if I do it. I'm gonna deny the motion for a mistrial. *I didn't look at them because I was shocked -- too shocked to look at them after I did it.*

> Hopefully they knew it was an honest mistake, so. But seriously I apologize for that. *I've read these charges many, many times and sometimes you slip up, but that's not the place to slip up.*

Tr. 225, l. 18-226, l. 8 (emphasis added). When the jury was brought back into the courtroom the trial court stated,

> Ladies and gentlemen, just I need to speak with you one more time for myself. I made an error in reading the charge on the law, *the presumption of innocence. You may have noticed it, but I inadvertently said that the defendant had plead guilty to the indictments.* That is absolutely not true. He pled not guilty. The charge on the law says he pled not guilty. *For whatever reason I missed a word, so my apologies.* I want to be very clear. I have no -- I have zero opinion on the facts in this case, but I want you to understand that *the written law is right here, it's correct, and I just misspoke* when I was reading it. *So please disregard any confusion that may have caused from you when I was charging you on the law of the case, okay*?

Tr. 226, l. 13-227, l. 1 (emphasis added).

Counsel Young objected to the additional instruction as insufficient to cure the prejudice and renewed the motion for a mistrial. The trial court denied the motion as it "cured [the error] as well as it could possibly be cured." Tr. 227, ll. 7-18.

Discussion

The trial court erred when it charged the jury that Appellant had pled guilty to the indictments. The error occurred during a critically important portion of the jury charge on the presumption of innocence. Even the trial court recognized the gravity of its error, "sometimes you slip up, *but that's not the place to slip up.*" The trial court's own shock and inability to look at the jury following the misstatement highlighted the prejudice suffered by Appellant – the ultimate authority in the courtroom had told the jury that Appellant admitted guilt and the curative instruction did not disabuse that misstatement from their minds. That bell simply could not be unrung. Respectfully, the trial court should have granted the mistrial motion for the plain

and obvious reason that the presumption of innocence had been severely undermined and that the jury could have inferred the statement made by the trial court reflected the court's opinion of the guilt of Appellant.

"The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. White, 371 S.C. 439, 443–44, 639 S.E.2d 160, 162 (Ct. App. 2006) (cleaned up). "Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case." Id. "It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial." Id. "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Id.

Our Supreme Court has explained that "the proper general rule is this: 'The American cases hold generally that there must be a manifest necessity for the discharge of the jury and leave the courts to determine in their discretion whether under all the circumstances of each case such necessity exists.'" State v. Bilton, 156 S.C. 324, 342, 153 S.E. 269, 276 (1930) (emphasis removed). "The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." State v. Kelsey, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998). Therefore, "[t]he trial judge should first exhaust other methods to cure possible prejudice before aborting a trial." White 371 S.C. at 444, 639 S.E.2d at 162 (cleaned up).

"Generally, a curative instruction is deemed to have cured any alleged error." State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129-130 (Ct.App.2005). Accordingly,

> great care should be exercised in the "delicate, difficult and important matter" of instructing the jury to disregard incompetent

> evidence. The jury should be *specifically instructed to disregard the evidence, and not to consider it for any purpose during deliberations. A mere general remark excluding the evidence does not cure the error.*

White 371 S.C. at 446, 639 S.E.2d at 163 quoting State v. Smith, 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986) (internal citations omitted) (emphasis added). A mistrial may still be required if on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced. White, 371 S.C. at 446–47, 639 S.E.2d at 164 citing State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996). "Error is not, however, always rendered harmless by instructions to the jury to disregard improperly admitted evidence or to give it only a limited effect. The test is one of prejudice." 75A Am. Jur. 2d Trial § 1032 (footnotes omitted).

"A fundamental concept of our system of justice is that every person charged with a crime has an absolute right to a fair and impartial trial." State v. Kennedy, 272 S.C. 231, 234, 250 S.E.2d 338, 339 (1978). "Basic to this concept is the requirement of neutrality on the part of the trial judge, and it is imperative that he exercise a high degree of restraint, caution, and circumspection in making remarks or comments in the presence of the jury." Id. "Article V of the South Carolina Constitution prohibits judges from charging juries in respect to matters of fact." State v. Patterson, 337 S.C. 215, 234, 522 S.E.2d 845, 854–55 (Ct.App.1999) citing State v. Robinson, 274 S.C. 198, 203, 262 S.E.2d 729, 731 (1980). "The trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of the accused or as to controverted facts." State v. Smith, 288 S.C. 329, 331, 342 S.E.2d 600, 601 (1986), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). "It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury." Sosebee v. Leeke, 293 S.C. 531, 535, 362 S.E.2d 22, 24

(1987). This is partly because statements made by the trial court are "viewed as definitive and binding statements of the law" and carry great weight with the jury. Boyde v. California, 494 U.S. 370, 384-85 (1990).

In State v. Brisbon, 323 S.C. 324, 330-31, 474 S.E.2d 433, 437 (1996), our Supreme Court considered whether a trial court's misstatement warranted the granting of a mistrial. Brisbon had moved for a mistrial after the trial court mistakenly charged the jury during the witness credibility charge that in determining credibility it should take into account whether the defendant was forthright or hesitant. Brisbon argued the reference to "defendant" focused attention solely on his credibility to the exclusion of other witnesses and that a mistrial was the only avenue of correcting the error. Our Supreme Court disagreed holding that the statement was a slip of the tongue, not an affirmative comment on the evidence by the trial court. Most significantly, the Court noted that Brisbon could not show prejudice because the charge did not state the defendant was untruthful and could easily been interpreted as emphasizing Brisbon's forthrightness as it did his hesitancy. Id. 323 S.C. at 331-32, 474 S.E.2d 437-38.

Appellant's case is distinguishable from Brisbon, *supra*. While in both cases the trial court's comments were unintentional, in Appellant's case the prejudice was extreme. The trial court commented on Appellant's guilt, striking directly at the heart of the presumption of innocence. The jury, when it first heard the court's misstatement could interpret it two ways: that Appellant had at some point attempted to plead guilty or that the trial court thought Appellant was guilty. The trial court then noticed its error aloud and attempted to correct course but was too shocked to even look at the jury as it continued charging the law. Once the slip of the tongue of this magnitude had occurred, the damage had been done.

Further, the trial court's instruction did not cure the error, but further emphasized it and placed it in greater focus. When the jury was brought back out the trial court explained where it was in the jury charge that the error occurred, emphasizing that it was discussing the bedrock principal of the presumption of innocence. The court then repeated the error to the jury, all but ensuring that if any juror had somehow not heard the original misstatement, that juror was now aware that the trial court had stated Appellant had pled guilty. The court further highlighted the error by emphasizing that the written jury charge which it was reading from and which the jury was provided was correct. Finally, the trial court failed to tell the jury to disregard the misstatement and to not consider the misstatement, instead only telling the jury to disregard its confusion. State v. White, 371 S.C. 439, 443–44, 639 S.E.2d 160, 162 (Ct. App. 2006) (Great care should be exercised in the "delicate, difficult and important matter" of instructing the jury to disregard incompetent evidence. The jury should be specifically instructed to disregard the evidence, and not to consider it for any purpose during deliberations. A mere general remark excluding the evidence does not cure the error.).

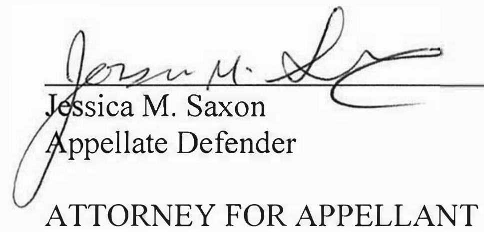
Finally, the evidence is this case was not overwhelming. The state relied upon printed screenshots provided by L.V. to convict Appellant but never forensically connected those screenshots to Appellant. The cellphone number used to request and receive the messages and videos from L.V. was never identified nor was any cellphone number ever connected to Appellant. Because there was no forensic evidence tying Appellant to the crimes, the trial was essentially a battle in credibility. The jury had to choose if it believed L.V. that the screenshots were what she claimed them to be or if it believed Appellant that he had not requested or received any messages. Given the grievous nature of the error, the emotional nature of the charges, and the lack of conclusive evidence demonstrating guilt, the trial court should have

granted the mistrial motion. See White, 371 S.C. at 446–47, 639 S.E.2d at 164 citing State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996) (A mistrial may still be required if on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced.).

The trial court's reaction and subsequent instruction only exacerbated the prejudice suffered by Appellant. Undoubtedly, the trial court holds great authority – not only in the eyes of the jury, but in the eyes of the parties as well as a reviewing court. The great level of authority inherent in the trial court is why the law requires the trial court to be neutral and to exercise great caution, restraint, and circumspection when speaking in the presence of the jury. The unintentionality of the error does not lessen the prejudice it brought on Appellant. Here, the error by the trial court struck at the very heart of the presumption of innocence and could have been perceived by the jury as the court's belief in Appellant's guilt. No instruction could undo the harm Appellant suffered and it was out of manifest necessity, for extremely plain and obvious reasons, that the trial court should have granted Appellant's motion for a mistrial. See State v. White, 371 S.C. 439, 443–44, 639 S.E.2d 160, 162 (Ct. App. 2006) (cleaned up) (A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons.).

CONCLUSION

Based upon the forgoing argument, Appellant respectfully request this Court find the trial court erred in failing to grant a mistrial and remand this matter back to the Court of General Sessions of Lexington County for a new trial.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of August, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL SCOTT VALDARIO,

APPELLANT

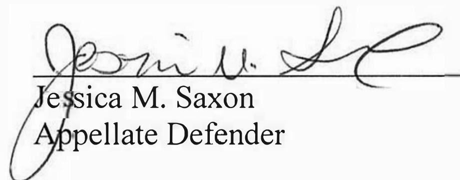
APPELLATE CASE NO. 2024-001170

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s): 2021-GS-32-6073, -6074, -6075, -6076
(2) Trial Transcript dated July 8-10, 2024, pp: 53-83, 119-123, 143-168, 182-250

I certify that this designation contains no matter which is irrelevant to this appeal.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 15th day of August, 2025.

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APPELLATE CASE NO. 2024-001170

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 15th day of August, 2025.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT