

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

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

Appellate Case No. 2025-000362

THE STATE,

Respondent,

v.

TERRY GERRARD GRIDINE,

Petitioner.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON CERTIORARI 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT..... 5

 I. The trial court acted within its discretion when it limited Gridine’s cross-examination of the victim to exclude evidence the victim was arrested and unsuccessfully attempted to call Gridine from jail, instead allowing testimony the victim “reached out to [Gridine] for help” where evidence of the arrest had limited 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 tried to call him from jail where the testimony carried the same danger of unfair prejudice as Gridine’s attempted cross-examination. 15

 III. Gridine was not prejudiced by the trial court's limitation of impeachment concerning whether the victim told a 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. 22

CONCLUSION 28

TABLE OF AUTHORITIES

Cases

<u>Chambers v. Mississippi</u> , 410 U.S. 284 (1973).....	10, 12, 17–18
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (1986).....	11–13
<u>Holmes v. South Carolina</u> , 547 U.S. 319 (2006).....	18–19
<u>Montana v. Egelhoff</u> , 518 U.S. 37 (1996).....	11, 18
<u>Nevada v. Jackson</u> , 569 U.S. 505 (2013)	19
<u>Norris v. Clinkscales</u> , 47 S.C. 488, 25 S.E. 797 (1896)	10
<u>Olden v. Kentucky</u> , 488 U.S. 227 (1988).....	14
<u>Pennsylvania v. Ritchie</u> , 480 U.S. 39 (1987)	20
<u>Rish v. Rish By & Through Barry</u> , 296 S.C. 14, 370 S.E.2d 102 (Ct. App. 1988)	10
<u>Rock v. Arkansas</u> , 483 U.S. 44 (1987).....	16–17
<u>State v. Aleksey</u> , 343 S.C. 20, 538 S.E.2d 248 (2000)	5
<u>State v. Charping</u> , 313 S.C. 147, 437 S.E.2d 88 (1993).....	13
<u>State v. Collins</u> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	15, 22
<u>State v. Grace</u> , 350 S.C. 19, 564 S.E.2d 331 (Ct. App. 2002).....	8
<u>State v. Gracely</u> , 399 S.C. 363, 731 S.E.2d 880 (2012)	14
<u>State v. Joseph</u> , 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997)	9
<u>State v. Lyles</u> , 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008).....	7
<u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997).....	23
<u>United States v. Santiago</u> , 477 F. App'x 922 (3d Cir. 2012)	8

STATEMENT OF THE ISSUES ON CERTIORARI

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

- II. Whether the trial court correctly excluded Gridine's hearsay testimony that the victim told him she had tried to call him from jail where the testimony carried the same danger of unfair prejudice as Gridine's attempted cross-examination.

- III. Whether Gridine was prejudiced by the trial court's limitation of impeachment with extrinsic evidence concerning whether the victim told a 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.

STATEMENT OF THE CASE

A Richland County grand jury indicted Petitioner 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' incarceration and five years of probation. His conviction was affirmed by the court of appeals in an unpublished opinion. State v. Gridine, Op. No. 2025-UP-009 (S.C.Ct.App. filed January 8, 2025). Gridine's petition for rehearing was denied on January 28, 2025. Gridine filed a petition for writ of certiorari on February 27, 2025, which this Court granted in part on June 3, 2025. Petitioner filed a brief on July 24, 2025. This Brief of Respondent follows.

STATEMENT OF FACTS

The victim in this case was Sara Webber, a 76-year-old woman living in Hopkins. (R.114). Petitioner 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 sex 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, and then 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). On October 27, Gridine sent Webber a message saying “Please forgive me. PLEASE!” Webber confronted Gridine about the attack, saying:

“[Y]ou tried to force yourself on me”;

“You assaulted me by putting your hand inside my vagina”;

“You violated my body.”

Gridine responded, “I don’t understand,” and asked Webber to call him. Gridine then texted, “I can't live with this.” (R.289–293).

ARGUMENT

- I. **The trial court acted within its discretion when it limited Gridine’s cross-examination of the victim to exclude evidence the victim was arrested and unsuccessfully attempted to call Gridine from jail, instead allowing testimony the victim “reached out to [Gridine] for help” where evidence of the arrest had limited 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 properly limited the evidence under Rule 403, SCRE, because the victim’s arrest had limited probative value and carried the substantial danger of unfair prejudice. Gridine was not prejudiced because he elicited testimony the victim reached out to him “for help” but was unable to reach him, thereby establishing his theory of the victim’s motive to fabricate her accusation. This Court should affirm.

A. Standard of Review.

The appellate court 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. State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000).

B. Discussion.

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 produced a copy of a bond form showing Ms. Webber was arrested on October 21, 2017, and posted bail. (R.156, 159). 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. Counsel argued “the Due Process Clause allows us to present a complete defense” (R.166).

Gridine proffered testimony from Ms. Webber. She denied asking 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 called her sister instead. (R.169).

The trial court ruled Gridine could not elicit evidence of the victim's arrest, stating evidence of an arrest would be “inflammatory” and would have little probative value. (R.171). However, the court explained Gridine could elicit testimony that she asked Gridine for help or otherwise phrase her questions in a way to minimize the danger of unfair prejudice. (R.171–72). The court explained: “I

won't tell you what questions to ask . . . 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 alleged victim's arrest." (R.172).

Gridine then elicited testimony that the victim "reached out to [him] for help . . . in October of 2017" but was "not able to get through to him." (R.174–75). The victim 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.175, line 3).

a. Rule 403 analysis.

The trial court properly excluded evidence of Ms. Webber's arrest under Rule 403, SCRE, which provides: "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."

Evidence of Ms. Webber's arrest carried the danger of unfair prejudice. Unfair prejudice means "an undue tendency to suggest a decision on an improper basis." State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). 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 outweigh the legitimate probative force of the evidence and improperly influence their verdict. See Id. at 338, 665 S.E.2d at

207 (“By potentially insinuating a key witness for the State is a drug dealer and drugs were present next to the victim, the testimony could unfairly impugn the character of [the State’s witnesses] and cloud the issues.”); 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 State witness’s prior suicide attempts); United States v. Santiago, 477 F. App'x 922, 927 n.6 (3d Cir. 2012) (explaining “courts may exclude probative evidence pursuant to Rule 403 in criminal cases based on concerns that the government will be unfairly prejudiced”).

Ms. Webber was never convicted of shoplifting and had the arrest expunged from her record. (R.252). Thus the arrest was not admissible under Rule 609, SCRE, because it did not result in a conviction and therefore was not admissible to attack Ms. Webber’s credibility as defense counsel originally argued.

Ms. Webber’s failed attempt to contact Gridine was arguably relevant under Rule 608(c) to show “bias, prejudice, or motive to misrepresent.” However, all evidence is subject to Rule 403’s requirement that, “although relevant,” its probative value must not be “substantially outweighed by the danger of unfair prejudice” and will not lead to “confusion of the issues”

Even if Webber’s arrest was relevant, a reasonable juror would not credit Gridine’s theory of bias because it was undisputed that Gridine did not ignore or rebuff any request for help with bail; he simply missed Webber’s call. This does not reasonably support Gridine’s theory that this would induce Webber to fabricate an allegation of rape. This is much different from Gridine’s original theory that

Webber was “arrested, contacted him about bond, he did not post it, [Webber had] to find somebody else.” (R.196). This supposed refusal of Webber’s request for help never happened. The probative value of the actual facts—a mere missed phone call—was low.

The trial court did not completely foreclose Gridine’s ability to pursue this theory. The trial court acted within its discretion when it limited evidence of Ms. Webber’s arrest, instead allowing Gridine to elicit testimony that Webber “reached out to [him] for help” (R.174). This lessened the danger of unfair prejudice while still allowing Gridine to establish his theory that Ms. Webber had a motive to fabricate her story. Gridine complains the trial court’s ruling rendered the impeachment evidence “toothless,” but, as the trial court pointed out, defense counsel was free to formulate her questions so as to bring out the probative value of the episode without introducing the unfairly prejudicial aspect of the victim’s arrest and jailing. See State v. Joseph, 328 S.C. 352, 360, 491 S.E.2d 275, 279 (Ct. App. 1997) (in context of impeaching witness with expunged conviction, explaining “[a]llowing impeachment through a carefully worded question about the underlying conduct, but not the arrest, would ensure that all litigants are able to present all relevant information to the jury”); Grace, 350 S.C. at 28, 564 S.E.2d at 335 (affirming exclusion of witness’s suicide attempts where “the circuit court did not preclude all reference to questions regarding [witness’s] stability”) (emphasis added).

The trial court's 403 balancing is entitled to great deference on appeal. Lyles, 379 S.C. at 339, 665 S.E.2d at 207 ("If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal."). Consistent with this deferential standard of review, 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"); Rish v. Rish By & Through Barry, 296 S.C. 14, 15–16, 370 S.E.2d 102, 103 (Ct. App. 1988) ("It is not always easy to determine when and if a trial judge has abused his discretion. Overly simplified, abuse of discretion involves the extent of disagreement. When an appellate court is in agreement with a discretionary ruling or is only mildly in disagreement, it says that the trial judge did not abuse his discretion. On the other hand, when the appellate court is in substantial or violent disagreement, it says that there has been an abuse of discretion.").

b. Confrontation Clause analysis.

Gridine argues exclusion of evidence of Webber's arrest violated his right of confrontation. But the right to confrontation is not absolute. The trial court's ruling was supported by the rules of evidence and Gridine was able to meaningfully cross-examine the victim without eliciting evidence of her arrest.

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). This includes "a right to examine the witnesses against him" Id. But, "[o]f course, the 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.” Id. at 295.

“The 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) (quoting Taylor v. Illinois, 484 U.S. 400, 410 (1988)). Instead, “the introduction of relevant evidence can be limited by the State for a ‘valid’ reason” Id. 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 (quotation marks omitted). A defendant has a “heavy burden” to show a due process violation 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. . . .

Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986). “[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.”

Id. 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 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” Id. at 680 (emphasis added).

The trial court’s ruling limiting Gridine’s cross-examination of Webber was within the 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, as the court did in Van Arsdall. Id. at 679. Instead, it excluded only the “marginally relevant” fact of Webber’s arrest. Id. Gridine was free to extensively cross-examine Webber regarding the consistency of her testimony, the circumstances under which she reported the assault, and her failed attempt to contact Gridine for “help.” It was within the trial court’s discretion to impose reasonable limits on cross-examination, and counsel was free to formulate her questions in such a way as to emphasize the importance of the matter with which Webber needed help without eliciting the fact that she had been arrested and jailed for a crime for which she was never convicted.

There was a compelling interest supporting the exclusion of the victim’s arrest—the interest in accurate fact-finding. See Chambers, 410 U.S. at 295 (analyzing State’s “competing interest” in restriction of cross-examination, partly on basis of archaic “voucher” rule). Rule 403 is meant to guard against evidence which

suggests a decision on an improper basis. In this case, the victim's arrest carried the danger of unfair prejudice which could "cloud the issues" and negatively impact the jury's ability to accurately determine the facts of the case. The trial court acted within its discretion in limiting the testimony.

c. Prejudice.

Exclusion of the fact that Webber was arrested did not reasonably 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"); Van Arsdall, 475 U.S. at 684 ("The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt."). Factors affecting the harmlessness of restriction of cross-examination include the importance of the witness's 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 the overall strength of the prosecution's case. Van Arsdall, 475 U.S. at 684.

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 he 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 misleading 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 [the victim’s] testimony.” Olden v. Kentucky, 488 U.S. 227, 232 (1988). Many of these cases involve testifying co-defendants or other witnesses who received immunity or another major benefit in exchange for their testimony, a circumstance which reasonably supports an inference of bias. See State v. Gracely, 399 S.C. 363, 369, 731 S.E.2d 880, 883 (2012).

Given its low probative value, limiting the 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 assessment of 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 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). Defense counsel argued in closing that Ms. Webber was biased against Gridine because “he wouldn’t help her” and “he wasn’t there for her.” (R.343). Finally, the State introduced Gridine’s damning text messages which revealed his consciousness of guilt. (State’s Exhibits #9–15). This Court should affirm.

II. The trial court correctly excluded hearsay testimony from Gridine that the victim told him she tried to call him from jail where the testimony carried the same danger of unfair prejudice as Gridine’s attempted cross-examination.

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 rules of evidence was not “arbitrary” such that it rose to the level of a due process violation. Further, the excluded evidence 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. 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 pursuant to its prior 403 ruling and because it did not fit

within any hearsay exception. This evidentiary ruling did not amount to a due process violation.

Gridine attempted to offer testimony that the victim told him on the night of the alleged assault that she had attempted to call him from jail. (R.248). The State objected on hearsay grounds, and the trial court sustained the objection. (R.251). However, the court referred to its prior ruling excluding evidence of Webber's arrest under Rule 403, SCRE. (R.250–51). As with the court's prior ruling, Gridine was allowed to elicit testimony that Webber told Gridine she had reached out to him for "assistance" because she needed "help with something," just not that she had been arrested. (R.275).

This testimony was hearsay, but the State did not object. 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."); Rule 801(d)(1)(A), SCRE (providing prior inconsistent statements by a testifying witness are not hearsay). This is likely because the testimony was cumulative to Webber's testimony, and the court correctly limited both Webber and Gridine's testimony to exclude evidence of Webber's arrest. Thus this issue is essentially the same as Issue #1, and comes down to the trial court's discretion to exclude evidence which carries the danger of unfair prejudice.

Gridine apparently concedes the evidence was hearsay. However, he argues the trial court should have admitted the evidence pursuant to his right to testify in his own defense. He cites Rock v. Arkansas for the proposition that a state may not

“arbitrarily” apply rules of evidence to exclude evidence from a testifying defendant. 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 defendants 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, 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 ‘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 “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, 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). See also Nevada v. Jackson, 569 U.S. 505, 509 (2013) (“Only rarely have we held that the right to present a complete defense was violated by the exclusion of defense evidence under a state rule of evidence.”).

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 constitutional 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 two of the most foundational rules of evidence: the rule against hearsay and Rule 403’s prohibition of evidence where its probative value is substantially outweighed by the danger of unfair prejudice.

Gridine argues the trial court arbitrarily applied the rule against hearsay because the victim admitted in camera that she attempted to call him from jail and therefore the hearsay testimony was reliable. But as Gridine appears to concede, the testimony did not fit within any exception to the rule. Further, and more

importantly, the trial court's ruling was not based solely on the rule against hearsay. It was an extension of the court's prior ruling that evidence of the victim's arrest was inadmissible under Rule 403. Gridine offered the same evidence in a different form when he attempted to testify that the victim told him she had attempted to call him from jail. As discussed above, the trial court properly limited evidence of the victim's arrest, and its decision is entitled to substantial deference.

Gridine argues the court of appeals erred by analyzing his claim solely as a due process violation, rather than as a violation of his right to compulsory process. But Gridine did not cite the Compulsory Process Clause at trial. Further, Gridine has not explained why the result should be different under the Compulsory Process Clause. See Pennsylvania v. Ritchie, 480 U.S. 39, 56 (1987) (explaining "compulsory process provides no greater protections in this area than those afforded by due process"). Gridine was not prevented from presenting a defense; he was simply limited to a defense which complied with the rules of evidence.

C. Prejudice

Even if the trial court erred, Gridine was not prejudiced. As explained above, evidence of Webber's arrest had low probative value because Gridine was permitted to offer testimony that the victim "reached out to [him] for help," but he missed her call and she called her sister instead. (R.174–175). He was allowed to testify that Webber told him on the night of the assault that she had reached out to him because she needed "help with something." (R.275). Thus Gridine was able to establish his theory of the case even though the court excluded the unfairly

prejudicial evidence of Webber's arrest. Further, even if Gridine had been able to elicit all the information he wanted, his theory of the case was not believable. A rational juror would not have accepted his claim that his aunt would falsely accuse him of sexual assault merely because he missed her phone call from a strange number. 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 of one of Webber's statements 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. The court of appeals correctly affirmed.

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 attempted to impeach

Webber's testimony with her prior statement 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). Counsel acknowledged Webber changed “some of the portions of her testimony” after being confronted with the prior recorded statement. (R.265). 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.

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). Deputy Christian's body camera video was marked as Defense Exhibit #1, and it shows Webber did tell the officer that Gridine asked whether her son was home.

The trial court ruled Gridine could not admit extrinsic evidence of Webber's statement to impeach this testimony. If this Court determines this issue is preserved for review, the State concedes that Webber's trial testimony was inconsistent with her recorded statement in this regard, and therefore impeachment should have been allowed. See Rule 613(b), SCRE. However, Gridine was not

prejudiced because this ruling could not reasonably have affected 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, 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. Webber ultimately agreed 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 17–19: “I said I pushed him away. I didn’t say arms.”). This was accurate: in the video, Webber told Christian she “pushed him away”; she did not say she “pushed his arms” away. 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.¹

Thus while Webber initially denied that she pushed Gridine’s arms away when he approached her from behind and hugged her, she eventually admitted she told the deputy she “pushed him away.” Thus Webber’s recorded statement to police was not “inconsistent” with the testimony she gave after being confronted with the statement at trial, and extrinsic evidence was not amissible to impeach it. See Rule 613(b), SCRE (“If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.”). Again, because defense counsel did not specify which statements she alleged were inconsistent with Webber’s trial testimony, and acknowledged Webber “changed [portions of] her testimony” after hearing her prior recorded statement, it is unclear whether this issue is even preserved for review. (R.265).

¹ This testimony is somewhat confusing because Webber’s couch is apparently a reclining couch, and defense counsel asked variously about the “recliner,” “chair,” “sofa,” and “couch.”

Even if this Court determines Gridine was entitled to impeach this testimony with the deputy's video, Gridine was not prejudiced. This testimony involved minor distinctions in Ms. Webber's statements. While Webber's testimony was obviously important as a general matter, 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 it. Again, whether Webber "pushed" Gridine's arms when he initially hugged her does not seriously call into question her testimony that he subsequently attacked and sexually assaulted her. 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 key facts of the case.

Gridine also complains that the court of appeals included Gridine's incriminating text messages in its harmless error analysis. The messages, wherein Gridine begs Ms. Webber for forgiveness directly after the alleged sexual assault, were highly relevant to the court's harmless error analysis. The court of appeals did not cherry pick the messages or interpret them in the worst possible light. The court took the most straightforward, reasonable view of the messages. Gridine complains the court of appeals invaded the province of the jury by conducting a harmless error analysis, but the appellate court must necessarily take into account

the facts and strength of the State's case when determining the prejudicial effect of trial error. This Court should affirm.

CONCLUSION


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

Respectfully submitted,

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