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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable William Seals, Circuit Court Judge
Appellate Case No. 2024-002044

In the Matter of the Care and Treatment of
Paul Shuler, II,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Judge Seals did not abuse his discretion by admitting evidence of Appellant's unconvicted offenses because: 1) Appellant waived his objections to admission of the evidence; and 2) the evidence was highly probative of the expert's opinion of Appellant's personality disorder diagnosis and his risk assessment, was not unduly graphic, and danger of unfair prejudice did not substantially outweigh the probative value of the evidence.

STATEMENT OF THE CASE

Pursuant to Rule 208(b)(2), SCACR, the State adopts Appellant's procedural Statement of the Case.

STATEMENT OF FACT.S

On September 6, 2016, Paul Shuler, II (Appellant) was convicted in Horry County of Criminal Sexual Conduct (CSC) in the First Degree for the violent rape of a 20-year-old female whom Appellant lured into a motel room with a ruse concerning modeling prospects, and CSC in the Second Degree for acts committed upon an 11-year-old female who was then Appellant's karate student. Appellant was sentenced to imprisonment for 10 years for each crime, the sentences to be served concurrently. Additional charges of kidnapping and impersonating a law enforcement officer arising from the rape of the 20-year-old female, and of CSC in the Third Degree and Contributing to the Delinquency of a Minor involving a third victim, a 13-year-old female, were dismissed.

Prior to Appellant's release from incarceration, the State of South Carolina, Respondent, initiated a civil commitment action pursuant to the South Carolina Sexually Violent Predator Act, sections 44-48-10 through 44-48-180 of the South Carolina Code (2018 and Supp. 2025) (SVPA), seeking Appellant's commitment for long-term control, care, and treatment as a sexually violent predator. Pursuant to section 44-48-90, the matter was called for a jury trial on November 18,

2024, before the Honorable William Seals, Circuit Court Judge.[1]

At the civil commitment trial, the State presented the court appointed evaluator, Christopher Gillen, Ph.D., of the South Carolina Department of Behavioral Health and Developmental Disabilities – Office of Mental Health (OMH)[2] who was assigned to conduct Appellant's evaluation pursuant to subsection 44-48-80(D). Dr. Gillen testified about his professional qualifications and his protocol for sex offender evaluations, which included, in this case, reviewing forensic records and reports concerning Appellant, conducting over eight hours of clinical interviews of Appellant, interviewing persons acquainted with Appellant, administering a personality test to Appellant, and completing assessment instruments used in the field of sex offender evaluation. After reviewing these data, explaining their significance, and summarizing his analyses of them, Dr. Gillen stated his opinion to a reasonable degree of scientific certainty that Appellant suffers from a personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. (R.p.58-125).

Throughout the trial, Appellant objected to Dr. Gillen's testimony about Appellant's prior offenses that did not result in convictions as documented in official reports and victim statements (the "unconvicted offenses"). Dr. Gillen explained that details of the unconvicted offenses are,

> important because they go to assessment of relevant mental abnormalities, potential personality disorders that someone might have, and what's really important is how relevant those might be to someone's sexual offense history. The second piece is

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[1] Documentation substantiating Appellant's predicate convictions pursuant to section 44-48-30(1)(a), the dismissed offenses, and other offenses, is found at State's Exhibit 1 of the transcript of Appellant's civil commitment trial. References to the transcript of Appellant's civil commitment trial are designated "CT." below.

[2] Formerly the South Carolina Department of Mental Health. Act No. 3 of 2025 eff. April 28, 2025, 2025 S.C. Acts _____.

> that it's relevant with scoring accurately and reliably the different risk assessment tools that speak directly to whether [Appellant] is going to be likely to do this type of behavior again in the future.

(R.p.85, line 21-p.86, line 5; p.131, lines 1-20). Dr. Gillen affirmed that "the best indicator of future conduct [is] past conduct." (R.p.67, lines 24-25).

Dr. Gillen noted that Appellant had enticed his 20-year-old female victim, "M.L.," into an isolated location with an elaborate, pre-planned ruse, and there restrained her with handcuffs against her will. When M.L. vigorously resisted Appellant's attempts to initiate sex, Appellant presented a law enforcement type badge and represented himself to be a law enforcement officer in an effort to overcome M.L.'s resistance. When that effort failed, Appellant violently raped M.L. Appellant was on release on bond on the charge of CSC in the Second Degree for acts committed upon his 11-year-old female victim when he raped M.L. On another occasion, Appellant provided alcohol and a pill believed to have been a narcotic to his 13-year-old female victim. In Dr. Gillen's opinion, these offenses show lack of impulse control, lack of remorse, and severe difficulty controlling sexual behavior, all indicative of "other specified personality disorder with antisocial and narcissistic features." (R.p.92, line 4-p.110, line 5).

Following completion of the State's case-in-chief, during direct examination by Appellant's counsel, Appellant testified as follows concerning his unconvicted offense of CSC in the Third Degree:

> Q: And then I know that there was some testimony, you know, about a 13-year-old girl. And I think – correct me if I'm wrong – around May 23rd of 2014. That's a day that you were accused of molesting a 13-year-old on May 23rd, 2014. Does that sound about right to you?
>
> A: Yes, ma'am.
>
> Q: You were never convicted for that, were you?
>
> A: No, ma'am.

Q: Those charges were dropped; right?

A: Yes, ma'am.

Q: Okay. And, yet, they happened in close proximity to this first incident; right?

A: Yes, ma'am.

Q: And so, nothing happened with the 13-year-old?

A: I'm not going to say that.

Q: What does that mean?

A: I did offer her $20 to be able to touch –

Q: And hold on one second. You understand you have a right against self-incrimination?

A: Yes, ma'am.

Q: And you understand those charges have been dealt with and you have never been convicted?

A: Yes, ma'am.

Q: And yet, there's still something you want to say about that?

A: Yes, ma'am.

Q: What do you want to say about that?

A: That, even though I did – I mean, that I was never convicted, I mean, that – I owe it to the courts, I owe it to the community and to the victim to be straight up and honest, and to myself, that – and definitely to my mom – I did offer the girl $20 to touch her breasts. She declined.

(R.p.210, line 5-p.211, line11).

Appellant also corroborated Dr. Gillen's recitation of the facts of Appellant's rape of M.L. Specifically, Appellant testified, "every single thing that Dr. Gillen said happened in the audition actually happened." (R.p.212, lines 2-3). The "audition" to which Appellant referred was the ruse

Appellant concocted to manipulate females into having sex with him under false pretenses. (R.p.79, line 15-p.81, line 25).

At the conclusion of the trial, the jury found beyond a reasonable doubt that Appellant is a sexually violent predator as defined by the SVPA, and Judge Seals ordered Appellant committed to the custody of OMH for long-term control, care, and treatment. (R.p.276); Order of Commitment filed November 19, 2024) (R.p.1). This appeal followed.

STANDARD OF REVIEW

Pursuant to Rule 208(b)(2), SCACR, the State adopts Appellant's statement of the standard of review.

ARGUMENT

(1) By entering into evidence his own testimony corroborating Dr. Gillen's testimony of Appellant's prior unconvicted offenses, Appellant waived his objections to admission of that evidence.

Throughout the trial Appellant objected to admission of testimony on various grounds including unfair prejudice, relevance, hearsay, and speculation concerning both the crimes of which Appellant was convicted in 2016 and the unconvicted offenses. In this appeal Appellant has abandoned all argument concerning the convicted crimes and all grounds for objection to admission of evidence about the unconvicted offenses other than failure to satisfy the balancing test of Rule 403, SCRE with respect to unfair prejudice. (Initial Brief of Appellant (IBOA), p.4). *See State v. McLaughlin*, 307 S.C. 19, 24, 413 S.E.2d 819, 821 (1992) (exceptions not argued in the party's brief are deemed abandoned); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

Appellant argues the State's evidence of Appellant's unconvicted offenses fails the balancing test of Rule 403, SCRE, and therefore admission of that evidence constituted reversible error. (IBOA, pp.9–11). However, in *State v. O'Neal*, 210 S.C. 305, 42 S.E.2d 523 (1947), our

Supreme Court held,

> It is not necessary for this court to say whether the admission of this testimony constituted error or prejudicial error. An examination of the record shows that counsel for appellant brought out the same evidence upon their cross-examination of the witness. . . .
>
> *An objection to the admission of evidence is waived where the same or similar evidence has been elicited by the objector. . . . Under this well known rule, the appellants are in no position to complain of the court's ruling.*

Id. at 312, 42 S.E.2d at 526 (citation omitted; emphasis added); 23A: C.J.S. *Criminal Procedure and Rights of Accused* § 1720 (2025) ("An objection to evidence may be waived by offering or eliciting the same or similar evidence[3] . . . on direct examination of one's own witnesses[4]. . . .").

Here, Appellant admitted unconvicted offenses under direct examination in open court before the jury and over the cautionary admonition of his counsel. This is not the situation the Supreme Court faced in *State v. Brewton*, 442 S.C. 169, 898 S.E.2d 132 (2024). There:

> Brewton twice objected to the admissibility of his 1999 conviction on the ground of remoteness [in time], and the trial court twice overruled the objection. Brewton's attempt to lessen the impact of the two prior convictions by requesting they be referred to as crimes of dishonesty was not a waiver of his objection.

Id. at 178, 898 S.E.2d at 136. Here, Appellant did not seek at trial to "lessen the impact of prior convictions" arguably erroneously admitted; rather, Appellant sought to omit from the record clinically significant details of his unconvicted offenses.

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[3] Citing *O'Neal*, *id.*, and *State v. Day*, 225 W. Va. 794, 696 S.E.2d 310 (2010); *State v. Dunn*, 10 Wis. 2d 447, 103 N.W.2d 36 (1960); *U.S. v. Smith*, 726 F.2d 183 (5th Cir. 1984); *People v. Cole*, 24 A.D.3d 1021, 807 N.Y.S.2d 166 (3d Dep't 2005); *U.S. v. Bramson*, 139 F.2d 598 (C.C.A. 2d Cir. 1943); *Phillips v. State*, 166 Tex. Crim. 206, 312 S.W.2d 644 (1958)).

[4] Citing *Sykes v. City of Crystal Springs*, 216 Miss. 18, 61 So. 2d 387 (1952); *State v. Leslie*, 14 Ohio App. 3d 343, 471 N.E.2d 503 (2d Dist. Montgomery County 1984).

In admitting the truthfulness and accuracy of Dr. Gillen's recitation of the facts of Appellant's rape of M.L., Appellant admitted the charges of kidnapping in violation of section 16-3-910,[5] and impersonating a law enforcement officer in violation of section 16-17-720.[6] In admitting he attempted to persuade a 13-year-old female to permit him to touch her breast, Appellant admitted the charges of CSC in the Third Degree in violation of section 16-3-655 and contributing to the delinquency of a minor in violation of subsections 16-17-490(1) and (10).[7]

Pursuant to *O'Neal*, by testifying as he did, Appellant waived all objection to admission of the evidence he now seeks to exclude. Pursuant to Rules 208(b)(2) and 220(c), SCACR, the State respectfully asks this Court to dismiss this appeal. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("[A] respondent . . . may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

(2) The admitted evidence was highly probative to the expert's opinion of Appellant's personality disorder diagnosis and his risk assessment, was not unduly graphic, and the danger of unfair prejudice did not substantially outweigh the probative value of the evidence.

Consideration of unconvicted offenses is permitted in determining whether an offender is a sexually violent predator. *In re Care & Treatment of Ettel*, 377 S.C. 558, 562, 660 S.E.2d 285, 287 (Ct. App. 2008) ("[P]ast convictions and unconvicted offenses not resulting in convictions that bear on whether a person is a sexually violent predator are admissible in a SVP case."); *White v. State*, 375 S.C. 1, 9, 649 S.E.2d 172, 176 (Ct. App. 2007) ("[W]hile a conviction cannot occur

[5] CT., State's Exhibit 1, Arrest Warrant 2015A2610900199.

[6] CT., State's Exhibit 1, Arrest Warrant 2015A2610202126.

[7] CT., State's Exhibit 1, Arrest Warrant No. 2014A2610201442.

without the commission of an offense, an offense can occur without necessarily resulting in a conviction. As such, both convictions and offenses not resulting in convictions can be considered under the Act based on the . . . usual and customary meaning [of the term 'offense'].").

Dr. Gillen, whose qualifications and status as an expert in forensic psychology and sex offender evaluation were not challenged at trial, testified that the facts of Appellant's unconvicted offenses were important and necessary to formulation of his opinion concerning Appellant's mental status and likelihood of reoffending. In *In re Care & Treatment of Chandler v. State*, 382 S.C. 250, 676 S.E.2d 676 (2009), our Supreme Court acknowledged,

> [c]onsideration of a person's past criminal history is directly relevant to establishing whether a person has been convicted of a sexually violent offense under section 44-48-30(1)(a), which in turn bears directly on whether one suffers from a mental abnormality under section 44-48-30(1)(b).

Id. at 258, 676 S.E.2d at 680. Here, as in *Chandler*, the State's evidence of Appellant's unconvicted offenses is directly relevant to the issues presented to the jury at Appellant's commitment trial.

Appellant having abandoned all arguments other than failure of the evidence of Appellant's unconvicted offenses to satisfy the balancing test of Rule 403, SCRE with respect to unfair prejudice, the State turns now to that assertion.

Pursuant to Rule 403, SCRE, admission of the State's evidence concerning Appellant's unconvicted offenses was not unfairly prejudicial, and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *Matter of Campbell*, 427 S.C. 183, 193, 830 S.E.2d 14, 19 (2019). The determination of prejudice must be based on the entire record and will generally turn on the facts of each case. *Id.* As this Court observed in *State v. Heath*, 433 S.C. 506, 860 S.E.2d 673 (Ct. App. 2021):

> Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder. A trial court is not required to exclude relevant evidence merely because it is unpleasant or offensive. The standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of *unfair* prejudice that *substantially* outweighs the probative value of the evidence.

Id. at 514, 860 S.E.2d at 677 (emphases in original; citations, internal quote marks, and alterations omitted).

In a civil commitment trial pursuant to the SVPA, the trier-of-fact is required to determine whether a person who has been convicted previously of a sexually violent offense "suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." Section 44-48-30(1). Dr. Gillen's testimony established that evidence of unconvicted offenses is important to accurately diagnose whether Appellant suffers from one or more mental conditions affecting his emotional or volitional capacity that predispose(s) him to commit sexually violent offenses for the purpose of his sexual gratification. Sections 44-48-30(3), (4).

Here, evidence of Appellant's unconvicted offenses illuminated and substantiated the factors considered by Dr. Gillen in completing his assessment of Appellant's mental status and the risk posed by Appellant if he is released into the community without treatment. In particular, Appellant's use of handcuffs in kidnapping 20-year-old M.L., and of alcohol and drugs in molesting his 13-year-old female victim, expresses Appellant's willingness to control and coerce his victims into gratifying Appellant's sexual appetites despite his victims' nonconsent; Appellant's planning and implementation of the "audition" ruse to lure females into a vulnerable position, and his impersonation of a law enforcement officer to suppress resistance, expresses Appellant's willingness to lie and deceive to achieve his ends, circumventing his victims'

nonconsent; and his offenses while on bonded release from confinement for other sexual offenses expresses Appellant's inability to control his behavior, all of which were material to Dr. Gillen's diagnosis. This information also was required by the risk assessment instruments used by Dr. Gillen to determine that Appellant poses a high risk of reoffending if released into the community without treatment. Finally, this evidence also provided the jury a basis to evaluate Dr. Gillen's expert opinions.

Review of the entire trial transcript demonstrates that Dr. Gillen and the State's attorney refrained from reciting unnecessary graphic details, confining their remarks to clinically significant information expressed in unsensational terms.

CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Judge Seals' rulings and the jury's verdict finding beyond a reasonable doubt that Appellant is a sexually violent predator as defined by the SVPA. Respectfully submitted,

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