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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2025-000314

THE STATE,

Respondent,

v.

CHRISTOVA PIERRE KNOWLIN,

Appellant.

FINAL BRIEF OF RESPONDENT

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I. Did the trial court err in refusing to allow Appellant to impeach a key fact witness with her pending drug charges?

II. Over Appellant's objection, the trial court allowed the State to ask Victim's mother, "How has this impacted your life?" and to enter a photograph of Victim prior to her injuries. Did the trial court err in allowing this irrelevant and needlessly prejudicial victim impact evidence?

Respondent's Counterstatements

I. Whether the trial court abused its discretion by declining to permit Appellant to question a witness concerning that witness's pending drug charges.

II. Whether the trial court abused its discretion by permitting the State to ask Victim's mother how Victim's severe injuries impacted Victim's mother's life and to enter a photograph of Victim prior to her injuries, where the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice.

STATEMENT OF THE CASE

In December 2023, an Horry County grand jury indicted Appellant for domestic violence of a high and aggravated nature (DVHAN). (R. 210-11). On February 11-12, 2025, Appellant proceeded to a jury trial before the Honorable Michael G. Nettles. (R. 1).

At trial, Brandon Young, a paramedic with Horry County Fire and Rescue, testified that on September 29, 2023, he responded to a 911 call for a female who had a seizure at Southern Breeze Hotel shortly after midnight. (R. 20-21). He was met outside the hotel by the hotel manager and Victim's "husband and/or boyfriend." (R. 21). Young stated that the man and the hotel manager were holding Victim up and that the man answered any questions Young had at that time. (R. 21). Noting that it was dark outside as he approached Victim, Young stated that he did not initially observe injuries to Victim except for swelling to her face and her slouched posture. (R. 22). He stated that the man helped Victim onto a stretcher and was insistent on getting in the ambulance with her. (R. 22). However, Young did not allow the man into the ambulance because the man was "rather pushy" and because guests were not allowed inside the ambulance post-Covid. (R. 22).

Young testified that despite Victim seeming to want to talk, the man answered all the questions. (R. 22-23). He clarified that his testimony was that Victim was not speaking, not that she *could not* speak. (R. 30). Young stated that after getting Victim inside the ambulance and away from the man, Victim's injuries "didn't seem familiar with a seizure-like activity" and appeared "more like she had been assaulted." (R. 25). Young asked Victim if she had been assaulted. (R. 25). Victim teared up. (R. 25). Young again asked Victim if she had been assaulted. (R. 25). Victim responded that she had been assaulted that night. (R. 25). According to Young, Victim spoke to him and his partner during the entire ride to the hospital. (R. 34). He stated that Victim had "significant swelling and bruising to her entire face, forehead, cheekbones, chin,

mouth, [and] both eyes." (R. 25). Young testified that in his experience, seizure patients usually hit some part of their body repeatedly, meaning that Victim's injuries would only be consistent with injuries from a seizure if she had multiple seizures before Young encountered her. (R. 25).

Young stated that he administered two doses of fentanyl to Victim and that Victim requested to not wear a C-collar brace because the brace made it more difficult for her to breathe due to swelling in her face. (R. 26). In Young's experience, seizure patients normally are not in so much pain that paramedics must administer two doses of fentanyl. (R. 27). Young did not administer seizure medication to Victim because he "had no indication that Victim had a seizure." (R. 27). Young stated that seizure patients are usually exhausted whereas Victim was alert and in extreme pain. (R. 34).

After Victim told Young that this incident resulted from an assault rather than from a seizure, he alerted the Myrtle Beach Police Department before leaving the incident site and asked law enforcement to meet the ambulance at the hospital. (R. 28).

Adam Sher, an officer with the Myrtle Beach Police Department, testified that he met the ambulance at the hospital and noticed that Victim's entire face was swollen and that Victim had minor scrapes and cuts on her hands and arms. (R. 35-38). He also noticed a "pretty massive laceration" to Victim's right eyebrow. (R. 38). State's Exhibit 2 is a still shot from his body camera footage of Victim's face. (R. 39; State's Ex. 2). Sher stated that Victim was able to speak "very little" and was unable to provide specifics on what happened. (R. 41). Based on what Victim told him, Sher was able to determine that a crime was committed and to generate a suspect. (R. 41).

Before the next witness testified, Appellant made a motion outside the presence of the jury regarding his ability to cross-examine Kimaysh Liles on her criminal history including then-pending drug charges. (R. 43-45). He stated that Liles had a criminal history including a

misdemeanor for a 2014 false report to Virginia law enforcement. (R. 43). The trial court stated that its initial thoughts were that the conviction would be admissible because it involved a crime of dishonesty, with which the State agreed. (R. 44). Appellant then indicated that Liles had pending criminal charges for drug related offenses. (R. 45). The trial court stated it was inclined to keep the pending charges out because they had yet to be prosecuted. (R. 45). The State agreed with the trial court and noted that the Attorney General's Office, rather than the Fifteenth Circuit Solicitor's Office, was prosecuting Liles's drug related charges. (R. 45). The State noted that no proffer or plea agreements had been made with Liles. (R. 46). The trial court stated that because the State, through the assistant solicitor as an officer of the court, said that no offers had been made to Liles, any evidence of the pending charges would not come in. (R. 46). Appellant then "accept[ed the assistant solicitor's] statement as an officer of the court." (R. 46).

Kimaysh Liles testified that she was the property manager at Southern Breeze Hotel at the time of the incident and also lived at the hotel at that time. (R. 48-49). Liles knew of Appellant because her brother was friends with him. (R. 49). She did not know Victim. (R. 49-50). On the night of the incident, Liles had a birthday party at the hotel attended by some hotel residents and friends. (R. 50). She confirmed that the hotel was more of a long-term rental rather than a short stay hotel. (R. 50-51). Liles stated that between 10 and 15 people were at her party, including Appellant, who was grilling. (R. 51). She testified that Victim was not initially at the party and that she told Appellant to go get Victim. (R. 51). Liles confirmed she had never met Victim before but knew Appellant was in a relationship with Victim. (R. 51-52).

Liles testified that Appellant and Victim had been staying together in a room at the hotel for approximately a month at the time of the incident. (R. 52). According to Liles, after Victim arrived, she just sat there and did not do much talking. (R. 53). During the party, Liles believed

Victim had a seizure because Victim began choking and her eyes rolled back in her head, which was similar to what Liles had seen happen to a family member with epilepsy. (R. 53). Liles stated that while Victim endured the seizure, Appellant became "a little aggressive" and told Victim to snap out of it. (R. 54). Appellant also repeatedly told Victim to stop because she was embarrassing him. (R. 54). Liles pushed Appellant out of the way and allowed Victim's seizure to run its course. (R. 54). She testified that Victim's seizure was not major and that EMS was not called at this point. (R. 55). Liles and Appellant helped Victim back to her room because "she couldn't walk." (R. 55). She stated that it was difficult to tell if Victim was able to orally communicate after this seizure because Victim did not talk much before the seizure and only nodded in response to questions Liles asked after the seizure. (R. 55-56). Liles did not notice any injuries on Victim prior to leaving Victim in her room. (R. 56).

Later in the evening, the hotel housekeeper alerted Liles to go back to Victim and Appellant's room. (R. 56-57). Liles let herself into the room with her master key. (R. 57). She saw Appellant "in the back of [Victim], and [Victim] was bent over the mattress." (R. 57). Liles confirmed she was generally familiar with epilepsy and what she saw in Victim and Appellant's room was not consistent with someone having a seizure. (R. 72). Liles noted that Appellant was not rendering appropriate care for someone who had just had a seizure. (R. 72). Liles testified that Victim was bleeding from her face and "other places" as if she had been hit on her body. (R. 58). Liles immediately went to Victim and backed Appellant away from Victim. (R. 58). After pulling Victim's pants up, Liles told her husband that she was taking Victim out of the room because Victim whispered to her not to leave her in the room. (R. 58).

Liles testified she drug Victim out of the room and noticed blood "all over" Victim. (R. 58). She confirmed that Victim and Appellant's room was messy with "[p]iles of bones on the floor,

blood all over the walls, mattresses . . . not aligned with, like, the box springs, the TV looked like it was slung." (R. 59). Liles glanced into the bathroom, which she stated was covered in blood with items everywhere. (R. 59). She took Victim downstairs and called 911, telling the operator that Victim had a seizure because Appellant was around and she "didn't want to make a problem bigger than it was, because [she] didn't know how [Appellant] would act if [she] told what really happened." (R. 59). Liles testified that she told Victim to tell EMS what happened after Victim got into the ambulance. (R. 60). She stayed with Victim until EMS arrived. (R. 60).

Liles stated that Victim looked worse than what was shown in State's Exhibit 3 because Victim was "leaking" blood from everywhere. (R. 61). She confirmed she had previously been charged with lying to police in 2014 regarding a domestic violence situation between herself and her then-significant other. (R. 61).

T'Keira Nelson, a housekeeper and resident at Southern Breeze Hotel, testified she was familiar with Appellant and noted that he lived at the hotel during the same time she did. (R. 74-75). Nelson knew of Victim but did not actually know her. (R. 75). She confirmed her room at the hotel was directly over Victim and Appellant's room. (R. 75). Nelson attended Liles's birthday party and recalled Victim having a seizure despite not personally observing the seizure. (R. 78-79). She stated that Appellant kept trying to tell Victim to wake up as well as poking her eyes. (R. 79). At some point after she left the party, Nelson ended up in Victim and Appellant's room. (R. 79). Nelson stated that her boyfriend was friends with Appellant and that it was common for them to hang out in Appellant's room. (R. 87). When she entered the room, she saw Victim on the toilet. (R. 80). She did not make note of what Victim was wearing because she was focused on Victim's swollen and bloody face. (R. 81). After seeing Victim in such a state and checking on her, Nelson went to tell Liles. (R. 81). Victim told Nelson that Appellant put her in this bloody

state. (R. 81). Nelson confirmed she hysterically knocked on Liles's door and told Liles that Victim had been beaten by Appellant. (R. 82). Nelson testified that Liles told her to stay in Liles's room because of how hysterical she was. (R. 82). Nelson confirmed she let law enforcement into Victim and Appellant's room when they arrived at the hotel and described the room as "destroyed." (R. 83).

Between witnesses, Appellant moved to prevent any testimony from Victim's mother that could be considered a victim impact statement. (R. 91). The State informed the court that Victim's mother would be testifying about Victim's injuries resulting from this incident and the impact those injuries had on Victim's mother. (R. 91). The trial court ruled that Victim's mother could discuss some type of impairment in a general way but not "how it affects her life." (R. 91). The trial court noted that Appellant would need to contemporaneously object to any testimony he found inappropriate. (R. 91). The State inquired as to whether Victim's mother could discuss how this impacted the mother's life because that was in her personal knowledge and had greatly affected her life as Victim's primary care giver. (R. 91-92). Appellant asserted that the appropriate time for such testimony would be at any potential sentencing hearing because the testimony would be irrelevant to prove any element of DVHAN. (R. 92). The trial court ruled that Victim's mother could, in a general way, discuss that Victim had disabilities due to the injuries she sustained and that Victim's mother helped Victim with any disability. (R. 92). The court noted that such testimony would be relevant to proving great bodily injury. (R. 92).

Helen Sorace, a patrol officer with the Myrtle Beach Police Department, testified that she went to the hotel in response to Liles's 911 call. (R. 94). She interviewed Appellant in the hallway after advising him of his *Miranda*[1] rights. (R. 95). Appellant told her that Victim had a seizure,

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

he became worried, and he went to the hotel manager. (R. 95). Appellant told her he had lived at the hotel with Victim for approximately a month. (R. 95-96). Sorace testified she conducted a protective sweep of Victim and Appellant's room. (R. 96). When she entered the room, she saw blood "everywhere," including on the walls, floors, and sheets. (R. 96). She also recalled seeing blood on Appellant's pant leg. (R. 99).

According to Sorace, Appellant claimed he was cleaning up the room with Victim after her medical event and before EMS was called. (R. 97). Appellant also claimed to be cleaning up the room during Victim's medical event. (R. 97). Sorace confirmed she followed up with the hotel about a week after the incident and found the hotel did not have any video footage. (R. 97).

Sorace confirmed that Appellant version of events as relayed to her consisted of Appellant and Victim attending a pool party earlier in the day where Victim had a seizure. (R. 100-01). Appellant then took Victim back to their room, where Victim "was supposed to take her medication." (R. 100-01). Appellant "was going to give [the medication] to [Victim.]" (R. 100-01). Appellant tried to drag Victim onto the far bed but left the room to get the hotel manager. (R. 100-01). Appellant did not return until 9:15 pm when he checked on Victim. (R. 102). He then left Victim in the room alone again. (R. 102). When he returned a second time, he found Victim on the bathroom floor, which is when he attempted to get her back in bed. (R. 102). Appellant then cleaned up both Victim and the room. (R. 102). Appellant called the hotel manager, who called 911. (R. 102).

Antonio Pepe, a medical doctor and trauma medical director at Grand Strand Medical Center, was qualified as a medical expert in emergency and trauma care. (R. 112-16). Pepe treated Victim and stated her injuries amounted to a level 1 clinical status, or the highest level of medical personnel activation. (R. 118). Pepe noted injures to "pretty much, every area to her face."

(R. 119). He listed her injuries as including: swelling and bruising to the left side of her face around her eye; a laceration to her right eyebrow; a laceration inside her mouth; an abrasion on top of her head; abrasions to the right hand and wrist area; abrasions to her nose; internal injuries to the left side of her face, including bones around her eye; brain bleeds in multiple areas; subarachnoid bleed found diffusely throughout head; subdural head bleeds on both sides of the head; and contusions in the brain matter. (R. 119-20). Pepe opined that Victim's injuries could be consistent with a fall if it was a significant fall; however, he noted his concern of injuries to both sides of the face, which he stated would be difficult to be caused by a single fall. (R. 121). He stated that Victim's injuries were more consistent with blunt force trauma to both sides of the head. (R. 121).

Pepe testified that Victim sustained mild to moderate brain injury. (R. 121). He stated that even a mild head injury with a concussion could have "very devastating effects" such as difficulty maintaining relationships, jobs, focus, memory, and learning at a higher level. (R. 122). Pepe testified that Victim underwent surgery to reconstruct her eye socket and stabilize other fractures in her face. (R. 122-23). He opined that Victim's injuries could result in a substantial risk of death, disfigurement, or protracted loss of an organ or bodily function. (R. 123-24). According to Pepe, Victim would have had a "very high" risk of death without medical intervention, especially given that Victim was on a blood thinner. (R. 124). Pepe stated Victim had no documented seizures during her roughly two-week hospital stay. (R. 125-26).

Natassja Brown, Victim's daughter, testified that due to Victim's traumatic brain injuries, Victim became slow with everything she did. (R. 135-37).

Priscilla Cromedy, Victim's mother, testified that she found out Victim was in the hospital a few days after the incident. (R. 140). When she first saw Victim at the hospital, Victim had

black and blue bruises on her face, could not stand, and was complaining of hip pain. (R. 141). Cromedy identified State's Exhibit 5 as a photograph of Victim before the incident. (R. 141; State's Ex. 5). Appellant objected that State's Exhibit 5 constituted victim impact evidence and was irrelevant. (R. 141-42). The trial court overruled Appellant's objection, stating that State's Exhibit 5 was relevant to show what Victim looked like at the time of the incident. (R. 141-42). Cromedy testified that due to the injuries Victim sustained, Victim was dealing with permanent impairment, including trouble walking and sitting normally. (R. 142).

When the State asked Cromedy how Victim's injuries had changed Cromedy's life, Appellant objected. (R. 143). The State argued that Cromedy was Victim's primary caregiver due to the permanent nature of Victim's injuries; thus, her testimony was relevant and its probative value outweighed any prejudice. (R. 143). The trial court stated the testimony was relevant because the State had to prove great bodily injury as an element of DVHAN and Cromedy's testimony was relevant to that element of DVHAN. (R. 143). The court stated it did not know if the testimony was unduly prejudicial and indicated that it would not allow any emotional rendition on Victim's state or condition. (R. 143). The court concluded that evidence presented by the State to establish that Victim was hurt and that Victim's injuries were continuing was relevant. (R. 143). Appellant then argued his position, stating that he believed Cromedy's testimony would be allowing undue victim impact testimony. (R. 143-44). He noted his objection was under Rule 403 of the South Carolina Rules of Evidence because he believed Cromedy's testimony was "more prejudicial than probative" and was also cumulative based on Cromedy's testimony that Victim had problems walking and sitting. (R. 143-44). The trial court reiterated that it would allow Cromedy to answer the State's question. (R. 144).

Cromedy testified that Victim's injuries impacted all of her family members' lives because Victim could not be left alone and could not do many things by herself. (R. 144-45). Cromedy stated that she, Victim's sister, and Victim's daughter all had to change their entire social and work lives to accommodate Victim's injuries. (R. 144-45). After Cromedy stated that Victim's injuries turned Cromedy's life upside down and caused "some major changes," the trial court stated, "Sustained. Sustained. I'll ask that you move on." (R. 144). After the trial court sent the jury out of the room, Appellant stated that Cromedy became emotional, "as I anticipated she would, tissues came out, all of the things I was concerned about happened." (R. 146). Appellant stated he did not immediately object because he felt the court had already ruled the question was admissible. (R. 146).

The jury found Appellant guilty of DVHAN, and the trial court sentenced him to twenty years' imprisonment. (R. 200, 208).

This appeal followed.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I. Assuming evidence of a witness's pending drug charges should have been admitted, any such error in limiting Appellant's cross-examination of the witness about her unrelated pending drug charges was harmless beyond a reasonable doubt.

The Sixth Amendment right to confrontation, as applicable to the states pursuant to the Fourteenth Amendment, guarantees that a criminal charge may be answered by the calling and questioning of favorable witnesses, the cross-examination of adverse witnesses, and the introduction of evidence. *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994); *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963).

"A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause." *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). "'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* § 560a (1957)); *see also* Rule 608(c), SCRE ("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.").

To establish a violation of the Confrontation Clause, a criminal defendant must show "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)). However, the trial court retains wide discretion to impose reasonable limitations on the scope of cross-examination. *State v. Sherard*, 303 S.C. 172, 174, 399 S.E.2d 595, 596 (1991); *accord Delaware v. Van Arsdall*, 475 U.S. at 679. "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. Only if the defendant can establish that he was unfairly prejudiced by such a limitation does that limitation constitute reversible error. *Id*.

However, a "violation of a defendant's Sixth Amendment right to confront the witness is not per se reversible error" if the "error was harmless beyond a reasonable doubt." *Graham*, 314 S.C. at 385, 444 S.E.2d 527. Whether an error is harmless in this context depends on the facts of each individual case as well as a set of non-exhaustive factors including:

> 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; *see Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318 (applying *Van Arsdall* factors). Further, "'[h]armless beyond a reasonable doubt' means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt," and in making such a determination, the reviewing court must review the entire record to determine what, if any, effect the error had on the jury's verdict. *Mizzell*, 349 S.C. at 334, 563 S.E.2d at 319.

Assuming that the trial court should not have limited Appellant's cross-examination of Liles concerning her then-pending drug charges and considering the *Van Arsdall* factors, much of Liles's testimony was either cumulative or corroborated by other witnesses. Like Liles, Nelson testified that Victim had a seizure at Liles's party earlier in the evening before the incident. (R. 78-79). Also like Liles, Nelson testified that she found Victim in Victim and Appellant's room in a bloody and emergent state before going to find Liles. (R. 81). Multiple witnesses, including Liles, testified that Victim and Appellant's room was destroyed or otherwise messy and covered in blood.

(R. 58-59, 83, 96). Multiple witnesses, including Liles, testified to the injuries they observed on Victim. (R. 25-27, 38, 58, 61, 81, 111, 119-125, 137, 141-145).

The only testimony that Liles provided which was not otherwise corroborated was the *reason* Liles told the 911 operator that Victim had a seizure despite Liles's assertion that she knew Victim's injuries were likely not caused by a seizure. (R. 59). While this testimony undoubtedly filled in a small gap in the timeline, it is in no way important to the jury determining Appellant's guilt for DVHAN. Paramedic Brandon Young testified that he responded to a 911 call for a seizure patient, that Victim told him in the ambulance, out of Appellant's presence, that she had been assaulted, and that Victim's injuries were not consistent with those of a seizure patient in his experience. (R. 20, 25, 27).

Therefore, the State's case, even without Liles's testimony, was strong, and the trial court's limitation of Appellant's cross-examination of Liles concerning her then-pending drug charges could not reasonably have affected the outcome of this trial. *Compare State v. Sims*, 348 S.C. 16, 26, 558 S.E.2d 518, 523-24 (2002) (holding the trial court limiting the scope of the appellant's cross-examination harmless where the State's case against the appellant was strong without resorting to the witness's testimony); *with Mizzell*, 349 S.C. at 334, 653 S.E.2d at 319 (holding the trial court's limitation of appellant's cross-examination of a witness was not harmless where that witness was the *only* witness to testify as an eyewitness to the petitioners' burglary despite much of the witness's testimony being cumulative or corroborated by other witnesses); *State v. Brown*, 303 S.C. 169, 171-72, 399 S.E.2d 593, 594 (1991) (holding that the appellant was unfairly prejudiced by the trial court's limitation of his cross-examination of a witness where that witness's testimony was a "critical part" of the State's case as the witness "provided the only evidence of appellant's knowing involvement" in the crime); *and State v. Gracely*, 399 S.C. 363, 376-77, 731

S.E.2d 880, 887 (2012) (holding that where a defendant's cross-examination of several witness, who were also his accomplices, was limited regarding their potential sentences, such limitation was not harmless because there was no evidence except for these witnesses with suspect credibility that linked the appellant to the indicted offense). Thus, based on the record before this Court, any alleged error in limiting Appellant's cross-examination of Liles regarding her then-pending drug charges did not contribute to the jury's verdict beyond a reasonable doubt.

II. The trial court did not abuse its discretion by permitting the State to ask Victim's mother, Cromedy, how Victim's severe injuries impacted Cromedy's life and to introduce a photograph of Victim prior to her injuries because this evidence was relevant to show that Victim suffered great bodily injury and the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice.

A. Preservation

Initially, to the extent Appellant argues the trial court erred in allowing Cromedy's answer to the State's question of how Victim's injuries impacted her life into evidence, this issue is not preserved for appellate review because Appellant did not contemporaneously object; rather, the trial court stopped Cromedy sua sponte for unknown reasons but likely because Cromedy became emotional. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed 2002))).

While Appellant did make a motion in limine well before Cromedy testified concerning Cromedy's testimony potentially containing a victim impact statement, the trial court specifically stated that Appellant still needed to object to anything he found inappropriate during Cromedy's testimony. (R. 91). During Cromedy's testimony, when the State asked Cromedy how Victim's

injuries had changed her life, Appellant immediately objected before Cromedy was able to respond in any way. (R. 143). The trial court reiterated its earlier ruling, stating that the question was relevant for the State's argument that Victim suffered great bodily injury. (R. 143). The trial court also indicated that it would not allow "any emotional rendition on what is going on." (R. 143). However, when Cromedy answered the State's question, Appellant did not object. (R. 145-46). Rather, the trial court, of its own volition, stopped Cromedy's testimony when she began to discuss how Victim's injuries changed her life rather than just Victim's life. (R. 145). Only *after* the trial court stopped the testimony and the jury left the room did Appellant indicate that he thought Cromedy's testimony reached the emotional level the trial court had previously indicated it would not allow. (R. 146).

Therefore, Appellant did not timely object to testimony that he believed went beyond the scope of what the trial court had earlier deemed admissible and instead later indicated his problem was with the testimony becoming overly emotional. (R. 146). Because Appellant failed to contemporaneously object to this testimony *rather than just the State's question*, the issue of whether the trial court abused its discretion in allowing Cromedy's testimony (despite the trial court stopping the testimony sua sponte) is not preserved for appellate review. *State v. Sweet*, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007) (holding that for an issue to be preserved for appellate review, a party must make a "contemporaneous objection that is ruled upon by the trial court").

B. Merits

A trial judge has broad discretion in ruling on the admissibility of testimony. *State v. Langley*, 334 S.C. 643, 647, 515 S.E.2d 98, 100 (1999). All relevant evidence is admissible. Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE; *see also State v. Alexander*, 303

S.C. 377, 401 S.E.2d 146 (1991). Although evidence is relevant, it may be excluded if the danger of unfair prejudice substantially outweighs its probative value. Rule 403, SCRE; *see also Alexander*, 303 S.C. 377, 401 S.E.2d 146. Further, a photograph should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate facts. *State v. Livingston*, 327 S.C. 17, 20, 488 S.E.2d 313, 314 (1997). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." *Id*. Even if the evidence was not relevant and thus improperly admitted, its admission may constitute harmless error if the irrelevant evidence did not affect the outcome of the trial. *Langley*, 334 S.C. at 647-48, 515 S.E.2d at 100.

Here, State's Exhibit 5 and Cromedy's testimony regarding Victim's lasting impacts from her injuries are both relevant to whether Victim sustained great bodily injury as required for DVHAN. *See* S.C. Code Ann. § 16-25-20(A)(1) (stating physical harm to one's own household member is illegal); S.C. Code Ann. § 16-25-65(A)(1) (defining DVHAN as causing physical harm to one's own household member "under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results"); S.C. Code Ann. § 16-25-10(2) ("'Great bodily injury' means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.").

State's Exhibit 5 showed Victim as she was before she sustained any injuries from this incident. As demonstrated by State's Exhibits 2, 3, and 4, Victim's face was swollen to an almost

unrecognizable state after the incident. Further, Dr. Pepe testified that Victim underwent surgery on her face to stabilize fractures around her eye socket. (R. 122). Therefore, State's Exhibit 5 was relevant for the jury to see what Victim looked like before her injuries and before undergoing surgery on her face so the jury could determine if she suffered serious and permanent disfigurement, which is one way to show great bodily injury. *See generally* § 16-25-10(2).

Further, any danger of unfair prejudice that State's Exhibit 5 may have had did not substantially outweigh the probative value as would be required to exclude State's Exhibit 5 under Rule 403. This photograph shows Victim with a small smile while otherwise not engaged in any activity. As the purpose for this photograph was to provide the jury with a baseline of what Victim looked like before her injuries and undergoing facial surgery, this picture was not prejudicial and cannot be said to have appealed to the emotions of the jury. This picture provided a visual starting point for the jury to determine whether Victim suffered great bodily injury.

Cromedy's testimony concerning Victim's lasting impacts from her injuries was relevant to show that Victim suffered protracted loss or impairment of the function of a bodily member or organ, which is another way the State could show great bodily injury. *See generally* § 16-25-10(2). Unlike *State v. Smith*, where our supreme court noted that witness testimony about *future* injuries or difficulties due to the victim's injuries was not relevant to an attempted murder charge where injuries are not an element of the crime charged, Cromedy testified that due to Victim's injuries and lasting impacts, Victim could not do many things by herself and could not be left alone. 430 S.C. 226, 234 n.9, 845 S.E.2d 495, 499 n.9 (2020); (R. 144-145). Moreover, DVHAN requires physical injury to the victim. § 16-25-65(A)(1). Therefore, Cromedy's testimony was relevant.

To the extent that Appellant argues that the danger of unfair prejudice resulting from Cromedy's testimony substantially outweighed the probative value of such testimony, this

argument is without merit. The probative value of this evidence included showing that Victim suffered a protracted loss or impairment of the function of a bodily member or organ, as is relevant to show great bodily injury. Cromedy testified that due to Victim's injuries, Victim had lasting impairment and complications. (R. 144-145). Despite Cromedy's alleged emotional state during the testimony, the prejudicial value of this evidence in no way substantially outweighs the probative value. *See State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) ("All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." (quoting *United States v. Rodriguez-Estrada*, 877 F.2d 153, 156 (1st Cir. 1989)) (emphasis in original)). As noted above, to the extent that Cromedy discussed any difficulty faced by herself or her family due to Appellant's injuries, this issue is not preserved for appellate review as Appellant did not contemporaneously object and the trial court stopped Cromedy's testimony sua sponte.

Therefore, because both State's Exhibit 5 and Cromedy's testimony were relevant and the probative value of both was not substantially outweighed by any danger of unfair prejudice, the trial court did not abuse its discretion by allowing their admission.

[*conclusion and signature block on following page*]

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for domestic violence of a high and aggravated nature, as well as his associated sentence.

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