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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
The Honorable Jocelyn Newman, Circuit Court Judge

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Appellate Case No. 2024-002003

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THE STATE,

Respondent,

v.

ONTARIO LAMAR STALEY,

Appellant.

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**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

- 1. The trial court did not abuse its discretion by admitting State's Exhibits 19, 20, 21, and 22 under S.C. Code Ann. § 19-5-520, as the court had an evidentiary basis for finding that the State's Exhibits were domestic records, and the State's Exhibits were further authenticated by witness testimony and their distinctive characteristics.**
- 2. The trial court did not err in admitting State's Exhibits 14, 15, and 16 because the court provided sufficient indicia of a 403 analysis during pre-trial, where the court noted that considering the over 860 pornographic images found on Appellant's device, the State's decision to offer only 4 explicit images was not needlessly cumulative. Furthermore, the trial court did not abuse its discretion in finding that the probative value of the exhibits was not substantially outweighed by the needless presentation of cumulative evidence, when the exhibits corroborated material elements of the State's case against Appellant.**

## STATEMENT OF THE CASE

Appellant Ontario L. Staley was indicted by a Richland grand jury in May 2022 on the following charges: two counts of trafficking in persons, victim under 18 years of age, first offense (2022-GS-40-03152 & 2022-GS-40-03157); two counts of sexual exploitation of a minor, second degree (2022-GS-40-03150 & 2022-GS-40-03151); and two counts of sexual exploitation of a minor, first degree (2022-GS-40-03148 & 2022-GS-40-03149). Appellant went to trial November 18-21, 2024, before the Honorable Jocelyn Newman and a jury. The jury found Appellant not guilty on both counts of sexual exploitation of a minor, second degree, and guilty on both counts of trafficking along with both counts of sexual exploitation of a minor, first degree. (R. 591:3-17).

The Court sentenced Appellant to sixteen years imprisonment for the first count of trafficking and seventeen years imprisonment for the second count of trafficking, to be served concurrently. (R. 617:22-618:8). Appellant was given credit for the 1,646 days he had already served on those charges. (R. 618:7-9). The Court then sentenced Appellant to three years imprisonment for each count of sexual exploitation of a minor, first degree, to be served consecutively. (R. 618:10-18). In aggregate, Appellant was sentenced to twenty-three years on all charges. (R. 619:16-24).

Appellant filed a timely notice of appeal.

## STATEMENT OF FACTS

While the exact timeline is disputed, on or around September of 2019, Naneka Perry contacted her estranged half-sisters Rayn Harris and Alicia Brimfield—then seventeen and sixteen respectively—and asked them to babysit her children. (R.240:4-241:21). Harris and Brimfield were raised together as half-sisters, but prior to 2019 the girls had very few encounters with Perry, who was over ten years older than them. (R. 240:9-15). At the time Perry, Harris, and Brimfield believed they shared a father; however, at trial it was clarified that Perry was not biologically related to either Harris or Brimfield. (R. 212:19-21).

Rayn Harris, who testified at trial, stated that she had been close with her father before his death and agreed to babysit Perry’s children with Brimfield because she was excited at the prospect of having a relationship with her half-sister. (R. 241:4-9). However, one night after babysitting the children, Appellant and Perry (who were dating and lived together at the time) approached Brimfield and Harris about an opportunity to make money, telling them that “basically [they would] be talking to men and if [they] talk good enough, [they could] get money from them.” (R. 242:5-243:11).

Harris testified that shortly after this she and Brimfield moved in with Perry and Appellant, at which point Appellant almost immediately asked them to take intimate photos with Perry. (R. 244:4-245:11). Harris clarified that it was Appellant’s idea to take the photos and identified State’s Exhibits 7, 8, 9, 10 and 14 as photographs Appellant took of her, and that Appellant chose her outfit and instructed her how to pose. (R. 245:7-246:5). These photos were later posted online in advertisements for prostitution. (R. 245:7-248:16) (State’s Exhibit 5).

Harris identified State’s Exhibit 14 as another photograph of her, Brimfield, and Perry taken by Appellant. (R. 246:9-25). State’s Exhibit 14 is a photograph of Brimfield lying across

Appellant's bed, with Perry kissing her upper thigh and Harris kneeling behind her, one hand on Brimfield's chest.

Harris testified that while she originally did not know exactly why Appellant took the intimate photographs of her, she later learned that Appellant posted them on SkiptheGames.com, a website where men can find sex workers and arrange meet ups. (R. 247:12-248:8). Harris testified that she only realized that Appellant expected them to do sex work after Brimfield was taken "on a call" and returned with money, which she gave to Appellant. (R. 249:11-250:17). Harris stated that shortly after that, Appellant asked her to go "on a call" where she had sex in exchange for money, which she then also gave to Appellant. (R. 251:18-252:10, 259:4-22).

Harris testified that she eventually saw the SkiptheGames.com advertisements for herself when Appellant showed them to her to help her "get an idea" about prospective customers and the specific services she was being advertised for. (R. 279:7-16, 293:15-20). Harris further testified that neither she nor Brimfield ever used Appellant or Perry's phones, nor did they have access to the SkiptheGames.com accounts. (R. 281:5-19). Appellant, and occasionally Perry,<sup>1</sup> would communicate with prospective customers on the girl's behalf and would simply tell the girls what they needed to do before they went on a call. (R. 252:2-25, 293:10-12). Harris testified that Appellant often used code words when communicating with costumers, like "roses" to denote expected payment, or "QV" to denote a quick visit under fifteen minutes. (R. 253:7-13).

Harris stayed with Perry and Appellant for around six months, leaving sometime before her eighteenth birthday. (R. 256:2-5). Harris stated that she stayed those six months despite the

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<sup>1</sup> Naneka Perry was originally charged as a co-conspirator and pled guilty to two counts of sexual exploitation of a minor, third degree, and two counts of trafficking in persons, victim under 18 years of age, prior to testifying at trial against Appellant. (R. 196:6-199:4).

abuse partly because she felt responsible for Perry's children, who she believed were her nieces and nephews, and partly because she'd been in a vulnerable state after her father's death and still held out hope about having a relationship with Perry and her estranged family. (R. 257:2-17).

Naneka Perry also testified at trial against Appellant. According to Perry, Appellant began sending her "on calls" to do sex work before Harris and Brimfield moved in. (R. 180:23-181:1; 183:9-23). Perry testified that SkiptheGames.com was the primary website Appellant used to post advertisements for prostitution and that she was sitting right beside Appellant when he made his accounts and posted his first advertisement. (R. 181:5-187:6, 218:6). Perry identified the email addresses Appellant registered with as his work email from Liberty Taxes and his personal email address, "staleyvstaley@gmail.com." (R. 217:8-10, 210:1-6, 236:11-25). Perry testified that it was Appellant who took the pictures, made the accounts, and posted the ads on SkiptheGames.com. (R. 217:6-10, 236:11-25).

Perry also testified that Appellant used phone numbers created through TextNow, a phone app that would provide users with a burner number that could be used through the app, in his SkiptheGames ads and to communicate with prospective customers. (R. 182:6-14; 191:16-192:10). Appellant would post an ad with a TextNow number for customers to call, and generally it was Appellant who spoke with customers to determine what services they wanted and to agree on a price. (R. 182:9-14). Perry clarified that while she sometimes communicated with customers, only Appellant decided if, when, and where the sex work happened, as well as the price of services. (R. 183:9-13; 221:9-223:21). Perry echoed Harris's testimony that Appellant often used short-hand or code words while communicating with customers (specifically "QV" for quick visit and "roses" for money) to try and hide his activities from police. (R. 182:14-183:8).

Perry testified that it was Appellant's idea for her, Harris, and Brimfield to take sexual pictures together, and that "he said because that us taking pictures together, that would make – bring more money in... because a lot of people, the Johns, would, you know, reply quicker to - the more girl - he would say, the more girls, the more merrier, meaning the more money." (R. 186:7-20). Perry identified the website Appellant posted the photos on as SkiptheGames.com. (R. 186:24-187:3).

Perry identified State's Exhibit 5 as a SkiptheGames.com ad posted on September 5, 2019, titled "Storm is here," which she testified was Appellant's nickname for Harris. (R. 186:24-187:15; 188:11-14). Perry identified State's Exhibits 6, 14, 15, and 16 as photographs taken by Appellant of herself, Brimfield, and Harris in Appellant's master bedroom. (R. 180:6-191:12). Perry affirmed that the date on the advertisement, September 5, was consistent with her recollection of the timeline of when Appellant began trafficking Harris and Brimfield. (R. 201:3-17).

Captain Heidi Jackson of the Richland County Sheriff's Department, who lead the investigation of Appellant's case as part of the Special Victims Unit, also testified at trial. (R. 137:14-9). Jackson testified that she became involved in the case after being alerted that there was a potential juvenile human trafficking victim at Perry's residence, and, using information from the investigation, Jackson input Appellant's phone number into Spotlight, a law enforcement database that compiles listings from ad providers whose websites frequently advertise sex work. (R. 139:2-142:7). The Spotlight search returned advertisements for sex work featuring Perry and two juveniles, later identified as Harris and Brimfield. (R. 142:16-22). Fearing the ads might be deleted, Jackson navigated directly to the website SkiptheGames.com, where she was able to access and print the ads. (R. 143:1-24). Jackson identified State's Exhibit 5 as a copy of one of the ads she printed out and noted that the ad was posted on September 5, 2019. (R. 143:8-25, 147:11-15).

Jackson identified State's Exhibits 6, 7, 8, 9, 10, and 11 as photographs appearing in that ad. (R.149:9-22).

The written content of State's Exhibit 5 is as follows:

Hi, fellas. I'm Storm. . . a young hottie looking to bring some excitement in your life. I'm a rare mix of exotic, erotic and satisfaction. Needs something wild and exciting, or calm and peaceful. No matter what you need, give me the chance to please you. My body is your playground and my kitty needs some attention. Please know I do limited texting, no card dates, nothing unprotected. You ask, conversation, will be ended. No law enforcement and most of all no young guys under 30. If you're okay with all that, call me at (803) 393-3730. I'll be waiting, daddy.

(R. 148:16-25).

The State also called Agent Logan Fey, a SLED agent in the human trafficking unit, who testified that when he ran Appellant's information through Spotlight he found multiple posts and accounts on SkiptheGames.com attributable to Appellant's information. (R. 381:10-384:12). Fey provided the account information he'd located on Spotlight to a customer service manager at SkiptheGames.com, who sent back four records: State's Exhibit 19, a certification of business records; State's Exhibit 20, an Excel spreadsheet of metadata for posts made by a SkiptheGames account registered to "staleyvstaley@gmail.com"; State's Exhibit 21, an Excel spreadsheet of metadata for posts made by a SkiptheGames account registered to "ostaleyliberty@gmail.com"; and State's Exhibit 22, an email to Agent Fey providing phone numbers and account information associated with the above email accounts. (R. 382:21-385:5).<sup>2</sup>

The State then called to the stand Major Ricky Johnson with the Richland County Sheriff's Office, who conducted the digital forensic inspection of Appellant's devices. (R. 463:18-457:17).

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<sup>2</sup> Agent Fey's testimony is covered at length in Issue 1.

Johnson testified that a forensic extraction on Appellant's Coolpad phone, labelled Item 6, identified several email accounts associated with the device, including:

- keshenstaley3570@gmail.com, ostaleyliberty@gmail, familyfund365@gmail, cowboysstatusbxga63@gmail, blacksuperman304@gmail, a304sdream63@gmail, mr.nashtime304@gmail, familyaffair2365@gmail, staleyvstaley@gmail, and lamtheblacksuperman304@gmail

(R. 478:7-25).

Johnson also found saved user sign-in information for SkiptheGames.com, Appellant's Cash App account, and several of Appellant's social media accounts on the device. (R. 479:5-480:15). The SkiptheGames.com sign-in data saved to Appellant's device was username "ostaleyliberty@gmail" and password "Staley63." (R. 480:9-15). Johnson testified that he also found a photo of Appellant's driver's license, "a lot" of selfies of Appellant, and photos of Appellant's genitals in the phone's camera roll. (R. 480:16-481:20).

Johnson found State's Exhibits 6 through 11—the photos posted in the SkiptheGames.com ads—in multiple places on Appellant's phone. (R. 481:22-483:2) (State's Exhibit 5). Johnson explained that the metadata of State's Exhibit 7 and 9 showed that the photographs were taken by that Coolpad phone on August 30, 2019, at Appellant's home. (R. 483:12-484:17). Johnson also found State's Exhibit 14, 15, and 16 on Appellant's device. (R. 483:3-11).

Johnson also performed a digital extraction on Item 31, a different Coolpad legacy phone belonging to Appellant. (R. 486:4-9). The device passcode was "Staley63," and located on the device was a TextNow account registered to the email address "ostaleyliberty@gmail.com." (R. 487:2-21). Johnson discovered a multitude of messages in the TextNow app, many of which were sent in September and October of 2019. (R. 487:22-488:5). Johnson testified that the messages:

[A]ppeared to me to be customers who were reaching out to – to this number based off of ads or photos because the people would call up

and say they wanted a date. And was asking about price for, you know, half hour. . . . The response would always be in roses when asked how much for a quick visit or for a half hour. It would be some type of 180 roses. They were suggestions of, when message said, “Do you do anal?” The person said, “That’s a fetish. It would be an extra 50 roses.” There were, “Do you do out calls?” “Which one are you in the photo?”

(R. 488:10-25).

Johnson then identified State’s Exhibit 23 as an email he discovered on the device from “newaccount@skipthegames.com” to “staleyvstaley@gmail.com”. (R. 489:4-490:8).<sup>3</sup> The email was sent on September 2, 2019, and Johnson read its contents onto the record:

Hi, there. We’ve received your request --We -- we have received your request to post an ad for the first time at skipthegames.com. Please verify your email staleyvstaley@gmail.com with us by clicking the below link. . . . If you’ve never attempted to post an ad with us, please just ignore this email. Someone has entered your email by mistake into our system. We won’t be emailing you again. Best of luck, Sophia Leonard, customer service. PS, if you have any questions, please don’t hesitate to email me at sophia@skipthegames.com.

(R. 490:9-491:1).

Appellant exercised his 5<sup>th</sup> Amendment right not to testify at trial. (R. 501:24-25). Following four hours of deliberations, the jury returned a verdict of not guilty on the two counts of sexual exploitation of a minor, second degree, guilty on the two counts of trafficking in persons, victim under 18, and guilty on both counts of sexual exploitation of a minor, first degree. (R. 591:3-17).

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<sup>3</sup> In the record, this email address is first incorrectly called “youaccount@skipthegames.com,” on page 489, line 14, but on the next page it is clarified that the correct email address is actually “newaccount@skipthegames.com.” (R. 490:8) (R. 646).

## STANDARD OF REVIEW

### Issue 1

A trial court's ruling on the admission or exclusion of evidence made based upon the South Carolina Rules of Evidence is reviewed under an abuse of discretion standard. State v. Wallace, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023) (citations omitted). In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). A trial court's ruling on an evidence question will not be reversed absent a finding that "the trial court has not acted within the discretion we grant to trial courts." Wallace at 541-42, 892 at 312. Generally, a trial court acts outside its discretion when its ruling is without evidentiary support or is controlled by an error of law. Id.

### Issue 2

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Appellate courts are "bound by the trial court's factual findings unless they are clearly erroneous." Id. "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. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). "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.

"Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006). "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." Id.

Therefore, an insubstantial error not affecting a trial's result is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached."

State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

## ARGUMENT

- I. **The trial court did not abuse its discretion by admitting State’s Exhibits 19, 20, 21, and 22 under S.C. Code Ann. § 19-5-520, as the court had an evidentiary basis for finding that the State’s Exhibits were domestic records, and the State’s Exhibits were further authenticated by witness testimony and their distinctive characteristics.**

### RELEVANT FACTS

During pre-trial, the State made a motion regarding intent to offer certified business records from SkiptheGames.com—State’s Exhibits 20, 21, and 22—and an affidavit regarding those business record—State’s Exhibit 19—from Samuel Hanka, a representative of SkiptheGames.com. (R. 9:13-18). The State supported its motion by citing § 19-5-520 of the South Carolina Code of Law, South Carolina Rules of Evidence Rules 902 and 803(6), as well as the Federal Rules of Evidence and Federal Statute 28 U.S.C. 1746. (R. 13:3-18). The State argued that under S.C. Code Ann. § 19-5-520, which allows a copy of a domestic record meeting the requirements of S.C. R. Evid. 803(6) to be authenticated without extrinsic evidence, State’s Exhibits 20, 21, and 22 could simultaneously satisfy both the authentication and hearsay rules through Hanka’s affidavit and Agent Logan Fey’s testimony. (R. 13:3-15:2). Appellant objected largely on hearsay grounds, only alluding to the issue of authentication by arguing “that’s the biggest fear in admitting evidence without the live testimony, because if you really can’t ask any questions, you can’t ask the documents any questions. So we got to be able to trust that the documents are exactly what they say they are.” (R. 16:4-23).

The court initially declined to rule on the State’s motion, noting concerns about the records’ ability to meet the standards set in S.C. R. Evid. 803 and S.C. R. Evid. 902, even using § 19-5-520. (R. 20:4-21:8). During trial the State proffered Agent Logan Fey’s testimony regarding the Skipthegames.com records for the court to try and resolve the authentication issues raised in pre-

trial. (R. 373:6-24). During the proffer, Agent Fey, a SLED agent in the human trafficking unit, testified that when he ran Appellant's information through Spotlight he found multiple associated accounts and postings on SkiptheGames.com. (R. 377:2-25). Having worked similar cases before, Fey knew that Search ISP, a law enforcement tool that compiles company contacts for legal requests, identified Samuel Hanka as the customer service manager and primary point of contact for legal requests to SkiptheGames.com. (R. 378:11-18, 381:2-9).<sup>4</sup> Fey further testified that SkiptheGames.com was domiciled outside of the United States, but that the company had an office in Los Angeles. (R. 380:7-17).

Fey testified that SkiptheGames.com replies to requests from law enforcement as part of their policy to comply with the Federal Fight Against Online Sex Trafficking Act (FOSTA), which he testified was standard practice when dealing with websites posting commercial sex acts. (R. 378:20-379:9; 454:4-8). Fey communicated with Hanka through the email address samuel@skipthegames.com and received a prompt response. (R. 378:10-19; 456:5-6).

Fey provided Hanka with the account information he found from his Spotlight search, and Hanka sent him records SkiptheGames.com had attributable to those accounts. (R. 381:10-384:12). The records identified two active accounts and a third non-active account:

- 1) Account One (phoenix), registered to the email ostaleyliberty@gmail.com and set up on August 27, 2019.
- 2) "Syn" (also posted by account one).
- 3) Account Two (storm), registered to the email staleyvstaley@gmail.com and set up on September 2, 2019.

(R. 645).

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<sup>4</sup> The name "Samuel Hanka" is consistently misspelled throughout the record as "Samuel Hancock." However, State's Exhibits 19 and 21 show that the contact's last name is "Hanka," not "Hancock."

Hanka also sent Fey two Excel spreadsheets, one for the “staleyvstaley” account (R. 639) and one for the “ostaleyliberty” account (R. 640), which provided the metadata for advertisements posted on those accounts. (R. 382:21-383:10). The Excel spreadsheets list the dates each ad was posted, the time they were posted, the URL name linking to the specific advertisement, the IP address and time zone of the poster, and whether or not the poster deleted the ad. (R. 383:21-384:2). Fey testified that the URL names on the spreadsheet matched the URL for the ads he found on SkiptheGames.com after his Spotlight search of Appellant’s information. (R. 384:6-12).

Hanka also sent Fey a certification of business records, identified as State’s Exhibit 19. (R. 384:13-19). This certification was signed and dated by Samuel Hanka under the penalty of perjury, certifying that Hanka was the custodian of the requested records, that he was authorized to certify the authenticity and accuracy of the records, that the records were kept in the course of regularly conducted business and were kept as a regular practice, and that the certification was intended to satisfy Fed. R. Evid. 902(11). (R. 384:13-385:5) (R. 638).

The State then indicated it would seek to enter State’s Exhibits 19, 20, 21, and 22 into evidence. (R. 385:6-16). Appellant opposed the admission, arguing that because Samuel Hanka was not testifying as a witness the defense had no opportunity to cross-examine him on how the records were maintained, the processes used, or other issues of credibility and legitimacy. (R. 386:4-24). Appellant referenced arguments made during pre-trial and maintained that admission of the evidence would be improper based on the witness’s availability. (R. 387:14-22).

In response, the Court stated “I think that any defect in the admissibility of the evidence was cured, or is cured by the proffer testimony of Fey. Yeah. So at this point it seems to be admissible over the Defendant’s objection.” (R. 388:12-19). Fey later testified before the jury, where he repeated his proffer testimony alongside additional details, including clarifying that

Hanka had located Appellant's SkiptheGames.com records using the username, account user information, and email addresses Fey found through his Spotlight search. (R. 433:19-434:19). Appellant contemporaneously objected to the admission of State's Exhibits 19-22 during Fey's testimony, and the exhibits were admitted over the objection. (R. 437:20-438:22).

The Defense conducted a rigorous cross-examination of Fey, during which the credibility of State's Exhibits 19-22 were questioned at length. (R. 444:1-462:21).

The disputed State's Exhibits are as follows:

- **State's Exhibit 19** – A certification of business records signed by Samuel Hanka, the customer service manager at SkiptheGames.com, certifying that the attached documents (State's Exhibits 20, 21, and 22) are records created and maintained by SkiptheGames.com, attested to under penalty of perjury.
- **State's Exhibit 20** – A one page Excel spreadsheet providing metadata about posts on SkiptheGames.com attributed to the email address staleyvstaley@gmail.com. The spreadsheet listed the date and time the ads were posted, each ads' corresponding URL link, the time zone the ad was posted from, the poster's IP address, and whether or not the ad was subsequently deleted.
- **State's Exhibit 21** – A five-page Excel spreadsheet providing metadata about posts on SkiptheGames.com attributed to the email address ostaleyliberty@gmail.com. The spreadsheet listed the date and time the ads were posted, each ads' corresponding URL link, the time zone the ad was posted from, the poster's IP address, and whether the ad was subsequently deleted.
- **State's Exhibit 22** – An email from Samuel Hanka to Logan Fey providing the phone numbers associated with the staleyvstaley@gmail.com account and the ostaleyliberty@gmail.com account on SkiptheGames.com.

**A. The court did not abuse its discretion in admitting State's Exhibits 19, 20, 21, and 22 into evidence under S.C. Code Ann. § 19-5-520, as the court had an evidentiary basis for finding that they were domestic records.**

Section 19-5-520 of the South Carolina Code states:

In addition to those matters provided by Rule 902, South Carolina Rules of Evidence, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(A) The original or a copy of a domestic record that meets the requirements of Rule 803(6), South Carolina Rules of Evidence, as

shown by a certification of the custodian or another qualified person that complies with a state statute or a court rule. Before the trial or hearing, the proponent shall give an adverse party reasonable written notice of the intent to offer the record and shall make the record and certification available for inspection so that the party has a fair opportunity to challenge the record.

(B) In a civil case, the original or a copy of a foreign record that is certified by the custodian or another qualified person and otherwise meets the requirements of subsection (A), modified as follows: the certification, rather than complying with a state statute or court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the jurisdiction where the certification is signed. The proponent also shall meet the notice requirements of subsection (A).

Under § 19-5-520, a domestic record that satisfies the requirements of the business records exception to hearsay under S.C. R. Evid. 803(6) does not have to be accompanied by extrinsic evidence of authenticity as a condition precedent to admissibility. S.C. Code Ann. § 19-5-520(A). Put simply, § 19-5-520 states that domestic business records are self-authenticating.

It is not contested that the records at issue are business records under S.C. R. Evid. 803(6). The only issue on appeal is whether those records were “domestic” as required by § 19-5-520(A). Accordingly, under the applicable abuse of discretion standard of review the trial court did not abuse its discretion in admitting the records as the court had an evidentiary basis for finding the records to be self-authenticating domestic records under § 19-5-520. See e.g., State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018) (noting that “[a] trial court’s ruling on [] admissibility ... constitutes an abuse of discretion where the ruling is unsupported by the evidence or controlled by an error of law.”).

In making its determination, the trial court had the following evidence before it in favor of admitting the exhibits as domestic records: 1) SkiptheGames.com had an office in Los Angeles; 2) Fey’s testimony that Samuel Hanka was the go-to point of contact for US law enforcement; 3)

Fey's testimony that SkiptheGames.com sent the records in their effort to comply with FOSTA in response to a request from law enforcement; 4) the data SkiptheGames.com processed was domestic data, specifically related to ads posted in Columbia, South Carolina for services offered in Columbia, South Carolina; 5) the records were certified under penalty of perjury, and; 6) SkiptheGames.com self-identified the records as domestic records, consistent with Fed. R. Evid. 902(11).<sup>5</sup>

In contrast, the only evidence presented to the trial court suggesting the records might be foreign was Fey's testimony that SkiptheGames.com was headquartered outside of the United States and had some servers located overseas. During discussions, the Defense argued at length about the reliability of the records, stating that "I have no idea where Samuel Hancock is. I mean, it sounds like these servers are maintained overseas. You know, they might have some kind of satellite office in Los Angeles." However, at no point did the Defense argue to the court that the records were not admissible because they were foreign and thus did not fit under § 19-5-520.<sup>6</sup>

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<sup>5</sup> Fed. R. Evid. 902(11) for Certified Domestic Records of a Regularly Conducted Activity provides "[t]he original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record--and must make the record and certification available for inspection--so that the party has a fair opportunity to challenge them."

<sup>6</sup> Due to Appellant's objection hinging on the general authenticity of the State's Exhibits and not the suitability of § 19-5-520 as a proper vehicle for authentication, it is possible that Appellant failed to preserve a specific enough objection to this issue. See Rule 103(a)(1), SCRE (noting that for an admissibility error to be preserved, the objection must include a specific ground "if the specific ground was not apparent from the context"); State v. Morales, 439 S.C. 600, 607-10, 889 S.E.2d 551, 555-57 (2023) (holding that defendant who objected on general 403 grounds to the admission of evidence had not preserved for appeal an objection to the test used by the court to admit the evidence).

Furthermore, the Defense offered no evidence to show that the records themselves were foreign records.<sup>7</sup> Accordingly, the State’s evidence provided an evidentiary basis for the trial court’s ruling.

Furthermore, the record reflects the trial court’s careful consideration of the arguments and objections of attorneys, applicable context, and the evidentiary rules prior to making its ruling. See Morris v. BB&T Corp., 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023). During pre-trial motions the trial court heard arguments from both parties and rejected part of the State’s argument, specifically noting that it would only use the South Carolina Rules of Evidence. The court then held the issue in abeyance. During trial the court had the State proffer Fey’s testimony outside the presence of the jury to further consider the issue. It was only after that testimony, and after the Defense was given the opportunity to re-raise any objections or concerns, that the court ruled the records admissible under S.C. Code Ann. § 19-5-520.

Accordingly, the trial court did not abuse its broad discretion by finding that there was an evidentiary basis tending to show the records were domestic and therefore admissible under § 19-5-520. See State v. Wallace, 440 S.C. 537, 543, 892 S.E.2d 310, 313 (2023) (holding that “if the record reflects the trial court exercise[ed] its discretion according to law, we will almost always affirm the ruling.” (quotation omitted)).

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<sup>7</sup> Since arguments made by counsel are not evidence, the trial court had no evidentiary basis to find that the records were foreign. See Venture Eng’g for DT LLC v. Horry Cnty. Zoning Bd. of Appeals, 433 S.C. 419, 431, 858 S.E.2d 638, 645 (Ct. App. 2021) (holding that the circuit court erred in relying on counsel’s argument as evidence); S.C. Dep’t of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (“Arguments made by counsel are not evidence.”).

**B. The court did not abuse its discretion in admitting State’s Exhibits 19, 20, 21, and 22 when the State’s Exhibits were properly authenticated under S.C. R. Evid. 901 by testimony and distinctive characteristics.**

“As a general rule, all relevant evidence is admissible.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014). However, “[a]ll evidence must be authenticated.” State v. Green, 427 S.C. 223, 229, 830 S.E.2d 711, 714 (Ct. App. 2019), aff’d as modified, 432 S.C. 97, 851 S.E.2d 440 (2020). “The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims.” Id. at 230, 830 S.E.2d at 714; see also Rule 901(a), SCRE (noting that “the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”).

Under S.C. R. Evid. 104(a), whether to admit evidence at trial is a preliminary question. See State v. Rich, 293 S.C. 172, 359 S.E.2d 281 (1987). Rule 901(a) of the South Carolina Rules of Evidence defines authentication as a “condition precedent” to admissibility, satisfied by evidence “sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901(a), SCRE. Furthermore, because authenticity is a condition precedent, conditional admission is within the court’s discretion and a trial court commits no error in admitting evidence where authenticity is established at trial after the admission. See State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (1999).

Accordingly, the role of the trial judge in authenticating an item is merely to determine whether, if believed, the proponent’s proffered evidence could convince a jury that the item in question is what the proponent claims it to be. Id. The ultimate question of whether a piece of evidence is in actuality authentic is a question for the fact-finder, and as such, the trial court, in its gate-keeping role need not be persuaded that the item is in fact authentic—it is enough for the

court to be persuaded that a jury could reasonably determine the evidence to be so. See Green, 427 S.C. at 229, 830 S.E.2d at 714. Importantly, in rendering its preliminary decision the trial court must necessarily assess and consider all of the foundation laid before the jury. Tienda v. State, 358 S.W.3d 633, 638-41 (Tex. Crim. App. 2012).

Under S.C. R. Evid. 901, there is no mandatory requirement for authentication beyond the proffered evidence being sufficient to support a conclusion that the matter in question is what its proponent claims. S.C. R. Evid. 901 explicitly notes that the listed examples of authentication in section (b)(1-10) are examples “by way of illustration only, and not by way of limitation.”

Furthermore, direct proof is not required to authenticate a particular piece of evidence, and, instead, evidence can be authenticated through indirect or circumstantial evidence. Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 576-577, 201 S.E.2d 372, 376 (1973); see Green, 427 S.C. at 231, 830 S.E.2d at 715 (recognizing there are many ways in which evidence can be authenticated and the specific means identified in our State’s evidentiary rules are “nonexclusive”); see also Commonwealth v. Meola, 125 N.E.3d 103, 114 (Mass. App. Ct. 2019) (recognizing “digital evidence may be authenticated circumstantially based on its contents and the surrounding circumstances”); State v. Anderson, 386 S.C. 120, 131, 687 S.E.2d 35, 41 (2009) (recognizing evidence can be authenticated through a “more generalized approach”).

Significantly, no matter what method is used to authenticate, the burden for doing so is not a high one. Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015); see United States v. Kaixiang Zhu, 105 F. Supp. 3d 585 (E.D.Va. 2015), aff’d, 854 F.3d 247, 257 (4th Cir. 2017) (noting that “[t]he burden to authenticate under Rule 901 is not high—only a prima facie showing is required.” (quotations omitted)). Under 901(b)(1), evidence can be authenticated through testimony of a witness with knowledge. Under 901(b)(4), evidence

can be authenticated through: “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.”

The trial court did not err in admitting State’s Exhibits 19, 20, 21, and 22, as the State presented sufficient evidence in support of the court’s finding that the exhibits in question were what the State claimed them to be, thereby meeting the threshold for authentication set in S.C. R. Evid. 901. In Appellant’s case, the State’s Exhibits were authenticated through a combination of contents, substance, and distinctive characteristics corroborated by testimony and other pieces of admitted evidence.

901(b)(1) – Testimony of a Witness with Knowledge

The first layer of authentication the State presented was the testimony of Agent Logan Fey, who testified that he received State’s Exhibits 19-22 after serving a FOSTA request on SkiptheGames.com. Combined with Perry and Harris’s testimony that SkiptheGames.com was the website Appellant used to post the located ads, and Perry’s testimony that Appellant had SkiptheGames.com accounts registered to staleyvstaley@gmail.com and ostaleyliberty@gmail.com, Fey had personal knowledge supporting the conclusion that the SkiptheGames.com records sent to him by Hanka were authentic. See People v. N.T.B., 457 P.3d 126, 133 (Colo. App. 2019) (holding that the investigating detective had sufficient personal knowledge to authenticate Dropbox and Comcast records when the detective testified that he issues the search warrants, the records were provided in response to those warrants, and when Appellant had acknowledged that he owned a Dropbox account tied to his work email).

901(b)(4) – Distinctive Characteristics and the Like

Furthermore, in light of the many available avenues by which evidence can be authenticated and looking to the evidentiary showings made during Appellant’s trial, the evidence

and testimony of the exhibits' distinctive characteristics offered by the State was sufficient to constitute a *prima facie* showing that the SkiptheGames.com records were what they purported to be. See Commonwealth v. Meola, 125 N.E.3d 103, 114 (Mass. App. Ct. 2019) (recognizing “digital evidence may be authenticated circumstantially based on its contents and the surrounding circumstances.”); United States v. Davis, 918 F.3d 397, 402 (4th Cir. 2019) (recognizing “contextual evidence” may be sufficient to make the *prima facie* showing necessary to authenticate evidence).

### **State’s Exhibit 19 – The Certification**

Fey testified that he received State’s Exhibits 19, 20, 21, and 22 by email from Samuel Hanka, via the email address samuel@skipthegames.com. The validity of Samuel Hanka as a genuine contact at SkiptheGames.com is circumstantially supported by Fey’s testimony that he obtained the records through a request from law enforcement, the procedure normally used for criminal investigations involving advertisements for sex work, and by SearchISP’s identification of Hanka as the contact for law enforcement seeking to serve FOSTA related requests on SkiptheGames.com. See M.T.V. v. State, 66 N.E.3d 960, 964 (Ind. Ct. App. 2016) (holding that records obtained from Facebook were properly authenticated under Fed. R. Evid. Rule 901 when the State demonstrated distinctive characteristics, provided an affidavit from Facebook’s record custodian, and a Detective’s testimony that “the procedure he used to obtain the Facebook records was an ordinary procedure that he had previously used for criminal investigations involving Facebook.”).

The authenticity of the disputed exhibits is further corroborated by State’s Exhibit 23. Agent Ricky Johnson, the digital forensic specialist for Appellant’s case, testified he discovered an auto-generated email from SkiptheGames.com customer service, email address

newaccount@skipthegames.com, to staleyvstaley@gmail.com on Appellant's device. The email included a live link to skipthegames.com/validate, and was signed off by a 'Sophia Leonard' from customer service, who also provided her email: sophia@skipthegames.com.

Here, there are two important distinctive characteristics of the email addresses sent by SkiptheGames.com: the address format and the mail server. First, the format of Hanka's email address, "samuel@skipthegames.com," is nearly identical to Sophia Leonard's customer service email address, "sophia@skipthegames.com." The shared format lends credibility to Hanka's asserted position as a customer service representative at Skip the Games. Second, both uncontested communications from SkiptheGames—the "new account@skipthegames.com" and the "sophia@skipthegames.com" email address—used a "@skipthegames.com" mail server, as did Samuel Hanka's contact. Accordingly, the email addresses are a distinctive characteristic by which Hanka can be inferred to be what the State purports him to be – an employee of SkiptheGames.com. See United States v. Bertram, 259 F. Supp. 3d 638, 641 (E.D. Ky. 2017) (holding that under 901(b)(4), information like sender's name, auto-signature, physical signature, references to workplace, and the email address can by itself provide identifying information sufficient to authenticate emails even when neither the sender nor receiver testify).

#### **State's Exhibit 20 - "staleyvstaley" Account**

Fey testified that the metadata in State's Exhibit 20 was, according to Hanka, from a SkiptheGames.com account registered to staleyvstaley@gmail.com. This information was corroborated by Perry's identification of staleyvstaley@gmail.com as one of the email addresses Appellant used to create SkiptheGames.com accounts, and Ricky Johnson's testimony that one of the saved email addresses found on Appellant's phone was staleyvstaley@gmail.com. See Wilson, 30 N.E.3d at 1269 (concluding that under 901(b)(4), witness testimony identifying a Twitter

account as belonging to defendant, in combination with the content posted on the account, including pictures and gang references, was more than sufficient to authenticate the Twitter posts as being authored by defendant).

Moreover, State's Exhibit 20 was cross-authenticated by uncontested evidence, namely State's Exhibit 23, the email from newaccount@skipthegames.com to staleyvstaley@gmail.com found on Appellant's phone. The email contained account verification instructions and was received around 8 p.m. on September 2. This email corroborates the metadata in State's Exhibit 20, which shows that the staleyvstaley@gmail.com's first post was at 9:44 p.m. on September 2.

Furthermore, Heidi Jackson's testimony also corroborated State's Exhibit 20. Jackson testified that State's Exhibit 5, which she pulled directly from SkiptheGames.com after she located the post through a Spotlight search of Appellant's phone number, included an advertisement from SkiptheGames.com entitled "Storm is Here," posted on 09/05/2019 at 8:44 a.m. in the Columbia area under the "female escorts" section. This post perfectly matches the third entry from the bottom in State's Exhibit 20, which shows a posting made on 09/05/2019 at 8:44 a.m. EST. The URL indicates the post was made under the "female escorts" and "Columbia area" section of the SkiptheGames.com and was titled "storm is here." The authenticity of the exhibit is further bolstered by Perry's testimony that "storm" was Appellant's nickname for Harris, whose picture was posted alongside the ad.

#### **State's Exhibit 21 - "ostaleyliberty" Account**

Fey testified that the information sent to him by Samuel Hanka stated that the metadata in State's Exhibit 21 was from a SkiptheGames.com account registered to ostaleyliberty@gmail.com. Perry corroborated this in her testimony that she witnessed Appellant use his Liberty Taxes email to sign up for a SkiptheGames.com account. Additionally, the saved SkiptheGames.com log-in

information found on Appellant's phone, username "ostaleyliberty@gmail.com," combined with the TextNow messages, account username ostaleyliberty@gmail.com, in which Appellant discussed ads posted on SkiptheGames.com with prospective clients, is further circumstantial evidence supporting the authenticity of State's Exhibit 21.

Furthermore, much of the metadata from State's Exhibit 21 is corroborated by distinctive characteristics shared with State's Exhibit 20, most significantly the shared IP numbers. Both State's Exhibits have posts from the IP 172.75.249.9 (Ex. 20 from 09/02-03/19, Ex. 21 from 09/02/19) and IP 172.75.253.124 (Ex. 21 from 09/28/19-10/17/19, Ex. 20 from 09/13/19-10/14/19). Additionally, both State's Exhibits share similar titles, with all of State's Exhibit 20's posts titled "Storm is Here," while State's Exhibit 21 has twenty-one posts titled "Here Comes Storm." All of the posts from both sets of records were made in the US/Eastern time zone, and none of the posts were ever deleted by the account owner. See U.S. v. Turner, 718 F.3d 226, 233 (3d Cir. 2013) (noting that internal consistency of offered documents is evidence favoring authenticity).

#### **State's Exhibit 22 – Letter from Samuel Hanka**

State's Exhibit 22 is a signed and letterheaded email from Hanka to Fey, listing the emails and phone numbers associated with each of Appellant's accounts. The authenticity of this email is supported by the distinctive letterhead "Skipthegames.eu" on top, and by Hanka's handwritten signature at the bottom. See JKT Co., Inc. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980) (holding that presence of official letterhead supported authenticity of document); Janssen Pharmaceuticals, Inc. v. Tolmar, Inc., 718 F. Supp. 3d 394 (D. Del. 2024) (holding that letterheads alone are insufficient to authenticate, but are an important characteristic favoring admission when other evidence corroborates authenticity).

In that email, the sign-up date for the staleyvstaley@gmail.com account is listed as September 2, 2019. This is corroborated by State's Exhibit 23, the email from SkiptheGames.com containing account verification instructions sent on September 2, 2019. Additionally, the account name (storm) is consistent with the metadata from State's Exhibit 20 where all of the posts were titled "Storm is Here," consistent with the title of State's Exhibit 5.

## **Conclusion**

In order for evidence to be considered 'authentic,' there must be sufficient evidence to allow a reasonable jury to believe that the offered item is in fact what it is purported to be. At Appellant's trial, the authenticity of State's Exhibits 19-22 was repeatedly and consistently corroborated by testimony from Appellant's victim, his accomplice, and multiple members of law enforcement. Furthermore, there was abundant circumstantial and contextual evidence, most notably Hanka's certification, the similar, distinctive email addresses shared by Hanka and other SkiptheGames employees, the matching metadata on State's Exhibits 5 and 20, and the saved "ostaleyliberty@gmail.com" log-in information for a SkiptheGames.com account found on Appellant's phone. Taken together, the State's evidence was more than sufficient to allow a reasonable jury to believe that Exhibits 19-22 were authentic SkiptheGames.com records. U.S. v. Reilly, 33 F.3d 1396, 1407 (3d Cir. 1994) (stating that "[f]inally, as the government argues, the messages in the radio-telegrams and their relationship to each other, to Fuentes's testimony, and to other evidence. . . satisfied the authenticity requirement. A letter or telegram 'may be authenticated by its contents with or without the aid of physical characteristics if the letter is shown to contain information that persons other than the purported sender are not likely to possess'.").

## Harmless Error

Even assuming the trial judge somehow erred in admitting State's Exhibits 19-22, their admission was harmless as Appellant's guilt was conclusively proven beyond a reasonable doubt through overwhelming evidence.

Generally, "[e]rror is harmless when it could not reasonably have affected the result of the trial." State v. Golson, 349 S.C. 421, 429, 562 S.E.2d 663, 667 (Ct. App. 2002). "In determining whether error is harmless beyond a reasonable doubt, we often look to whether the 'defendant's guilt has been conclusively proven ... such that no other rational conclusion can be reached'." State v. Ostrowski, 435 S.C. 364, 401, 867 S.E.2d 269, 288 (Ct. App. 2021) (quoting State v. Reyes, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (citations omitted)). "[O]verwhelming evidence of a defendant's guilt is a relevant consideration in the harmless error analysis." Id. (citations omitted).

Appellant was convicted on four counts: two counts of sexual exploitation of a minor, first degree under S.C. Code Ann. § 16-15-395 and two counts of trafficking in persons, minor victims under S.C. Code Ann. § 16-3-2020. Even without the introduction of State's Exhibits 19-22 the State presented overwhelming evidence that conclusively proved Appellant's guilt on both charges.

- i. Appellant's Sexual Exploitation of a Minor, First Degree Charges were conclusively proven beyond a reasonable doubt.*

Overwhelming evidence was presented at trial that Appellant "us[ed], induc[ed] coerc[ed], encourage[ed], or facilitate[ed] a minor to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation

depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.” S.C. Code Ann. § 16-15-395(A)(1). To secure a conviction the State had to prove beyond a reasonable doubt that Appellant’s conduct violated one of the above forms of exploitation; however, at trial the State presented overwhelming evidence that Appellant was guilty of nearly every form of exploitation provided for in § 16-15-395(A)(1). Accordingly, because the State presented overwhelming evidence independent of State’s Exhibits 19-22, including through the victim’s own testimony that Appellant trafficked and took sexual photographs of her, any error in the exhibits’ admission was harmless.

First, the State entered into evidence four sexually explicit photographs of the victims, which both Perry and Harris testified were taken by Appellant. Further, both Perry and Harris testified that the photographs were Appellant’s idea, that he styled, posed, and directed them for the photographs, and that Appellant took the photographs on his phone. Perry also identified Appellant’s bedroom as the background of the photos. See U.S. v. Halling, 232 F. App’x. 691, 692 (9th Cir. 2007) (holding that there was sufficient evidence Appellant “used” minor within the meaning of sexual exploitation statute when the testimony of her co-defendant and minor victim demonstrated that Appellant was present and participating in the production of the sexual content).

Moreover, Harris and Perry’s testimony was corroborated by forensic evidence from Appellant’s phone which showed that the photographs were taken with Appellant’s phone, saved in various places on his phone, and had been sent via messaging apps on his phone. See United States v. Wright, 774 F.3d 1085, 1092 (6th Cir. 2014) (holding that even without direct evidence that Appellant took the explicit photos of minor victim, there was sufficient circumstantial evidence to uphold his conviction for ‘producing’ the images when the photos were taken in his

hotel room, found on a thumb drive in Appellant's office, and on the hard drive of Appellant's computer).

Accordingly, any error in the admission of State's Exhibits 19-22 was entirely harmless and the State submits that Appellant's convictions for sexual exploitation of a minor, first degree should be affirmed.

ii. Appellant's Trafficking charges were conclusively proven beyond a reasonable doubt.

Next, overwhelming independent evidence was presented at trial that conclusively proved that Appellant "recruit[ed], entic[ed], solicit[ed], isolate[ed], harbor[ed] or transport[ed]" a victim "for the purposes of, sex trafficking" OR "benefit[ed], financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection," OR "aid[ed], abet[ed], or conspire[ed] with another person to violate the criminal provisions of this section." S.C. Code Ann. § 16-3-2020(A).

At trial, Harris testified that Appellant recruited her and Brimfield for sex work and transported them to locations where they had sex with clients selected by Appellant. See United States v. Corley, 679 F. App'x 1, 7 (2d Cir. 2017) (holding there was sufficient evidence to uphold appellant's trafficking charge when "[a]t trial, all three minor victims testified that Corley took them to an apartment, took pictures that he said he would use to advertise their sexual services, and gave them a phone from which they received calls from clients. Based on this testimony, a jury could infer that Corley knew in connection with the acts described above that each of the three minor victims would be caused to engage in a commercial sex act.").

Furthermore, both Harris and Perry testified that it was Appellant who communicated with prospective clients, set prices for the sex work, collected all profits, and otherwise handled all the practical aspects of Harris and Brimfield's exploitation. See State v. Marshall, 199 N.E.3d 665,

672 (Ohio Ct. App. 2022) (holding that testimony from Appellant's co-conspirator/girlfriend, his victims, and an investigating officer that Appellant decided when and where victims engaged in sex work, collected money from their sex work, and paid for their hotel rooms, was sufficient to establish the elements of trafficking in persons); see also Johnson v. Commonwealth, 822 S.E.2d 385, 388-89 (Va. Ct. App. 2019) (holding that testimony of trafficked woman that Appellant helped her write advertisements for sex work, travelled with her while she engaged in sex work, and collected money from her earned through sex work, was sufficient to support a conviction for sex trafficking).

Moreover, both Perry and Harris testified that Appellant communicated with clients in code phrases consistent with the messages found on Appellant's phone discussing commercial sex. See Seat v. Commonwealth, 905 S.E.2d 171, 176 (Va. Ct. App. 2024) (holding that Appellant's lengthy text message exchange with a detective posing as a sex worker was by itself sufficient to uphold a conviction for commercial sex trafficking).

Finally, the SkiptheGames.com advertisement Captain Jackson located online (State's Exhibit 5), taken in conjunction with Harris and Perry's testimony that said ad was posted by Appellant was further proof of Appellant's involvement in trafficking Harris and Brimfield. See Prescott v. State, 850 S.E.2d 812 (Ga. Ct. App. 2020) (holding that victim's testimony that Appellant forced her into sex work, corroborated by advertisements located online containing victim's description and picture, was sufficient to support Appellant's conviction for trafficking of persons for labor or sexual servitude).

Accordingly, the independent testimony and evidence offered at trial provided overwhelming and conclusive proof that Appellant was guilty beyond a reasonable doubt of trafficking Harris and Brimfield. While the admission of State's Exhibits 19, 20, 21, and 22 helped

highlight the full scope of Appellant’s scheme, they were unnecessary to secure Appellant’s conviction, as “connecting Appellant to the advertisements for sexual services containing photos of minors,” was not a required element of any of Appellant’s charges. (Brief of Appellant, 9). All the State had to prove under the § 16-3-2020 was that Appellant “recruit[ed]” or “transport[ed]” a minor victim for the purposes of sex trafficking, or that he “benefit[ed] financially or . . . aid[ed], abet[ed], or conspire[ed] with another person” to do so, which testimony at trial overwhelmingly demonstrated he did. Therefore, any error in admitting State’s Exhibits 19-22 was harmless beyond a reasonable doubt in light of the overwhelming evidence of Appellant’s guilt. See United States v. Paul, 885 F.3d 1099, 1103 (8th Cir. 2018) (holding that evidence connecting Appellant to posted online advertisements marketing victim for commercial sex acts was unnecessary to secure a trafficking conviction when the government did present evidence that Appellant coerced the victim into commercial sex acts, transported victim to and from locations, and benefited financially from victim’s commercial sex acts).

In conclusion, the trial court did not abuse its discretion in admitting State’s Exhibits 19-22, as the exhibits were properly authenticated, the court had an evidentiary basis for finding that they were domestic records, and the admissions were ultimately harmless because Appellant’s guilt was conclusively proven beyond a reasonable doubt. Appellant’s convictions should be affirmed.

**II. The trial court did not err in admitting State's Exhibits 14, 15, and 16, because the court provided sufficient indicia of a 403 analysis during pre-trial, where the court noted that considering the over 860 pornographic images found on Appellant's device, the State's decision to offer only 4 explicit images was not needlessly cumulative. Furthermore, the trial court did not abuse its discretion in finding that the probative value of the exhibits was not substantially outweighed by the needless presentation of cumulative evidence, when the exhibits corroborated material elements of the State's case against Appellant.**

#### **RELEVANT FACTS**

On the first day of trial and prior to the jury entering the courtroom, the State informed the court that it intended to enter several sexually explicit photographs into evidence. (R. 103:22-104:13). The court asked the Defense if they had any objections to the photographs themselves. (R. 105:22-106:2). After a brief discussion about authentication, the State presented the court with State's Exhibit 5, along with "the underlying photos associated with the ad", and "three additional photos the State [was] seeking to introduce," ultimately entered in as State's Exhibits 14, 15, and 16. (R. 108:1-15). Upon the trial court's review of State's Exhibits 5, 14, 15, and 16, the following exchange occurred:

THE COURT: I guess my question at this point -- because I don't know what the witness is going to say or how they'll introduce it. You know, I can rule on that at that time. **Because of the explicit nature of the photos, you know, the same way we get objections to autopsy photos if they're cumulative, or gory, or crime scene photos, or things like that. That's what I'm asking. The substance of this document, because of the explicit nature of it, is there any objection to this being entered assuming that they can lay the proper foundation, authenticate, et cetera?**

DEFENSE: Well, certainly, Judge, I mean, it -- we believe that it's prejudicial, but also given the background of what we're facing, right, in this case, I don't -- I mean, if I were -- Your Honor, I try to appreciate your perspective about it. But, you know, it's not -- the - - the Government believes that it has a number of things it's not offering. It's offering this one piece of evidence. So from that perspective, I mean, if it got the point where they were trying to put

in a lot more photos beyond this, right, then I would have an objection to cumulative nature and -- and that kind of thing. But I'm -- I hate -- I hate to say it as a Defense Lawyer in the case, but if I were them or if I were you, I would understand why this would probably be close to a necessary piece of evidence for them to be able to establish. Right. But I still don't -- I don't think that they're there to get it in yet, and they're going to have to clear those obstacles.

THE COURT: **Absolutely. I agree with everything you said.**

THE STATE: **Absolutely. The State is just trying to flush out, essentially, a 403(b) argument** outside of the presence of the jury, and to show that we are not trying to put in an unduly cumulative or unduly prejudicial photos. **We are limiting the scope of what we are entering in. . . . And as there are four SCM<sup>8</sup> charges, we are only seeking to enter in four graphics or photos to prove the necessary elements of the case. So those are the ones associated with the ad. And then we have three additional photos the State is seeking to introduce. There were over 860 photos that would qualify as child pornography located on the Defendant's device.** And we are limiting it to these photographs as far as what we are seeking to enter. . . .

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THE COURT: **Absolutely. Given the number of photos as alleged by the State, I think that that smaller number is appropriately limited. . . .** A single post, it appears, has -- can have a number of photographs associated with it or contained within it, but there are several posts. So they've chosen one of those -- Court's State's Exhibit 1 is all of them. State's Exhibit 5, is just one of those. And -- and so that's why I say they've appropriately limited it. They're not seeking to introduce Court's- State's Exhibit or what you have in your hand right now, Mr. Hayes. They've only selected one of those postings, which does have several photographs in it.

(R. 106:19-110:6) (emphasis added).

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<sup>8</sup> Erroneously written as "SCM" in the record. Refers to "SEM" Sexual Exploitation of a Minor charges.

During the State’s case-in-chief, the Defense made a contemporaneous objection to the admission of State’s Exhibits 14, 15, and 16 on “accumulation pursuant to South Carolina rule of evidence 403.” (R. 190:15-17). The court admitted the State’s Exhibits over the Defense’s objection, and the State’s Exhibits were briefly published to the jury to limit exposure, with redactions. (R. 190:18-19). The next day, the Defense re-iterated its objection to the court, who affirmed that in its view the State’s Exhibits were admissible. (R. 299:1-6).

At the State’s request, State’s Exhibits 6, 14, 15, and 16 were not sent back with the jury during deliberations due to their graphic nature. (R. 528:16-18).

#### **ARGUMENT**

Appellant contends that that the trial court committed reversible error by admitting three sexually explicit photographs of Appellant’s minor victims and co-defendant–State’s Exhibits 14, 15, and 16–into evidence. Appellant asserts two errors: (1) That the trial court erred in failing to conduct an on-the-record 403 balancing test, and (2) That the trial court erred in admitting the photographs because their probative value was substantially outweighed by the needless presentation of cumulative evidence.

S.C. R. Evid. Rule 403 provides, “Although relevant, evidence may be excluded if its probative value is substantially outweighed... by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. “Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point.” State v. Funderburke, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968). The purpose of an on-the-record 403 test is to provide the appellate courts with sufficient facts and information to provide insight into how or why the trial court struck the balance that it did. See K.S. by & through Seeger v. Richland Sch. Dist. Two, 445 S.C. 111, 122, 912 S.E.2d 240, 246 (2025). However, “[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.” State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

If “an on-the-record Rule 403 analysis is required, [we] will not reverse the conviction if the trial judge’s comments concerning the matter indicate he was cognizant of the evidentiary rule when admitting the evidence. . . .” State v. King, 349 S.C. 142, 156, 561 S.E.2d 640, 647 (Ct. App. 2002).

**1. The trial court did not err in admitting State’s Exhibits 14, 15, and 16, as it’s pre-trial statements were sufficient indicia of a Rule 403 analysis.**

South Carolina trial courts are not chained to textbook 403 balancing tests. In similar prior cases, this Court has held that when the record indicates that the trial court engaged in a 403-style analysis, even when that analysis is only circumstantially evident and does not include specific enunciations of the factors involved, then the requirements of 403 are satisfied. State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002).

In State v. King, this Court found that the trial court engaged in a 403 balancing test when, in response to an objection to the admission of Appellant’s past drug-related activities, the court stated that the evidence “goes to the sense he’s charged with possession with intent to distribute drugs found right there, it’s establishing his nexus or contact with that and she’s been there, seen that and all that. To my mind, it’s fair.” State v. King, 349 S.C. at 157, 561 S.E.2d at 647. In ruling, this Court held that when there is “some indicia of [the court’s] consideration of whether admission

of the testimony was fair” on the record, then there is “no error in the trial court’s ruling.” *Id.* at 157, 561 S.E.2d at 647; See also State v. Brayboy, 401 S.C. 207, 213-14, 736 S.E.2d 679, 682-83 (Ct. App. 2012) (finding the trial court did not commit reversible error when the court failed to specifically cite Rule 403, but the court’s statements on the record “indicated its consideration of whether the probative value of the conviction was substantially outweighed by the danger of unfair prejudice.”); see also Hunter v. Staples, 335 S.C. 93, 102, 515 S.E.2d 261, 266 (Ct. App. 1999) (affirming the trial judge’s ruling despite the trial court’s failure to “specifically enunciate the factors involved in reaching his ultimate decision” because it was “evident the judge considered Rule 609(a)(1) in conjunction with the Rule 403 balancing analysis”).

In Appellant’s case, the trial court did not err in failing to conduct a separate Rule 403 analysis following the Defense’s contemporaneous objection to State’s Exhibits 14, 15, and 16, as the court had conducted a Rule 403 analysis regarding the introduction of those photograph during pre-trial, where there was ample indicia of the court’s engagement with Rule 403. While the trial court does not specifically use the terms “probative” or “prejudicial,” it is the trial court itself that raises the issue with the Defense during pre-trial, stating:

Because of the explicit nature of the photos, you know, the same way we get objections to autopsy photos if they’re cumulative, or gory, or crime scene photos, or things like that. That’s what I’m asking. The substance of this document, because of the explicit nature of it, is there any objection to this being entered assuming that they can lay the proper foundation, authenticate, et cetera?

(R. 106:22-107:4).

In the discussion that followed, the Defense argued that the images were prejudicial, but conceded that they were also necessary to the State’s case, noting that “if it got to the point where they were trying to put in a lot more photos beyond this, right, then I would have an objection to

cumulative nature.” (R. 107:5-15). The Defense even conceded that the images were “close to a necessary piece of evidence for them to be able to establish.” (R. 107:16-20). Additionally, the State explicitly drew attention to its desire “to flush out. . . a 403(b) argument,” by only offering four photos out of the over 860 images of child pornography found on Appellant’s device to prove the necessary elements of Appellant’s four sexual exploitation of a minor charges. (R. 107:25-108:18).

In response the trial court acknowledged this balancing consideration, stating: “[a]bsolutely. Given the number of photos as alleged by the State, I think that that smaller number is appropriately limited,” indicating that in light of the volume of sexually explicit images found on Appellant’s devices, the court did not consider the State’s offering only four of those photographs into evidence to be needlessly cumulative. (R. 109:4-9). This pre-trial conversation is sufficient indication of the trial court’s 403 analysis under South Carolina law. When the Defense objected to the admission of State’s Exhibits 14, 15, and 16 during Naneka Perry’s testimony “on accumulation pursuant to South Carolina rule of evidence 403,” the trial court, having already explained its reasoning in pre-trial, was not required to interrupt the flow of trial and repeat that conversation in order to rule on Appellant’s contemporaneous objection about an already-covered issue. Accordingly, as the trial court had already offered a reasoning for its 403 ruling in pre-trial, no further on-the-record analysis was required.

**2. The trial court did not abuse its discretion in admitting State’s Exhibits 14, 15, and 16 as their probative value was not substantially outweighed by the danger of needlessly presenting cumulative evidence.**

Cumulative evidence “has repeatedly been defined to be additional evidence of the same kind to the same point” which “adds very little to the probative force of the other evidence in the case, so that if it were admitted its contribution to the determination of truth would be outweighed

by its contribution to the length of the trial....” K.S. by & through Seeger v. Richland Sch. Dist. Two, 445 S.C. 111, 912 S.E.2d 240 (2025) (quoting United States v. Williams, 81 F.3d 1434, 1443 (7th Cir. 1996)). “Determining whether evidence is cumulative necessarily requires an exercise of discretion on the part of the trial court. Determining whether evidence is ‘needlessly’ cumulative under Rule 403 requires the trial court to exercise another layer of discretion.” Id.

- i. State’s Exhibits 14, 15, and 16 were highly probative to the main issue in dispute – whether Appellant was involved in the creation of sexual exploitation images of the victims.

The trial court did not abuse its discretion in ruling that the probative value of State’s Exhibits 14, 15, and 16 were not substantially outweighed by the danger of the presentation of needlessly cumulative evidence, as the State’s Exhibits supported material elements of the State’s case, corroborated the testimony of the State’s witnesses, and did not require significant time or resources.

Appellant was charged under S.C Code Ann. § 16-15-395 with two counts of sexual exploitation of a minor, first degree,<sup>9</sup> and under S.C Code Ann. § 16-15-405 with two counts of sexual exploitation of a minor, second degree.<sup>10</sup> Appellant was charged with one count of each

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<sup>9</sup> As previously stated, S.C. Code Ann. § 16-15-395, reads: “An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he: uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.”

<sup>10</sup> S.C. Code Ann. § 16-15-405, second degree sexual exploitation of a minor defined, reads: “An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation

charge for each minor victim. It was, therefore, a necessary element of Appellant's charge that the State prove the existence of "material that contains a visual representation" of a minor engaged in sexually activity or appearing in a state of sexually explicit nudity. To this end, State's Exhibits 14, 15, and 16 were highly probative because Appellant's role in their creation *was* the crime charged. State's Exhibits 14, 15, and 16 are photographs depicting the victims in a state of sexually explicit nudity. Accordingly, because a necessary element of Appellant's charges was the existence of images depicting the victims in a state of sexually explicit nudity, State's Exhibits 14, 15, and 16 "substantiate[d] material facts" at issue in Appellant's trial and were therefore highly probative. State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014).

Furthermore, the images were particularly probative because they were used to corroborate Harris and Perry's testimony at trial. State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (holding "[t]he relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. . . . If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it."); State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (explaining it is not an abuse of discretion for a trial court to admit photographic evidence if it is offered to corroborate testimony). See Old Chief v. United States, 519 U.S. 172, 187-90 (1997) (noting that the prosecution is not expected to present the minimum form of evidence to support their charges, particularly when their evidence of choice contributes to an "evidentiary richness" and is more likely "to satisfy the jurors' expectations about what proper proof should be.").

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of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation."

The State had the burden to prove Appellant guilty beyond a reasonable doubt of the crimes of which he was accused. Accordingly, the State was not obligated to present only the bare bones of the evidence in their possession and rely on the jury to make inferences that every element of Appellant's charges were met. To the contrary, to meet its burden the State was obligated to ensure that every element of Appellant's charges was strictly met and that the jury was not left performing guesswork where relevant evidence was available to eliminate potential questions or doubts.

Accordingly, considering that one of the key facts in dispute at trial was whether or not Appellant was involved in the creation of the sexually explicit materials involving the victims, the State's ability to show the jury relevant images while the victim testified that Appellant took said photographs was powerful evidence, material to the issue in dispute. Therefore, State's Exhibits 14, 15, and 16 were highly probative.

*ii. State's Exhibits 14, 15, and 16 were not needlessly cumulative, as they were materially different from other photographs in evidence and from one another.*

Furthermore, State's Exhibits 14, 15, and 16 were not cumulative because they presented different information, were not virtually identical, and were material to the State's case. City of Bridgeport v. The Kasper Group, Inc., 899 A.2d 523 (Conn. 2006) (holding that "evidence should not be rejected as cumulative when it goes to the very root of the matter in controversy or relates to the main or ultimate issue in the case, the decision of which turns on the weight of the evidence introduced by the respective parties.").

Moreover, the fact that State's Exhibit 6 also depicts the victims in a state of sexually explicit nudity does not detract from the value of State's Exhibit's 14, 15, and 16 or render them cumulative, particularly in light of Appellant's four sexual exploitation of a minor charges. See Thompson v. State, 955 A.2d 802 (Md. Ct. App. 2008), judgment aff'd, 988 A.2d 1011 (Md. 2010)

(noting that cumulative photographs are admissible to assist the jury by illustrating or making more tangible relevant evidence).

In Appellant's case, State's Exhibits 14, 15, and 16 were not cumulative because they substantiated different elements of Appellant's charges, via:

- **State's 6:** Shows Harris's face and partial nudity while she is engaged in a sex act with Perry. However, Brimfield's face is not visible.
- **State's 14:** Shows both Brimfield and Harris nude, with their faces visible. Both victims are posed in a sexually suggestive manner, with Harris touching Brimfield's chest and Perry kissing Brimfield's upper thigh and glute.
- **State's 15:** Shows most of Harris's face and part of her nude torso, as well as her nude lower body. Brimfield's face is mostly obscured, but a portion of her chest is visible. Their pose insinuates Brimfield is about to perform oral sex on Harris.
- **State's 16:** Both victim's faces are partially obscured, and their genitals are not visible. Harris is posed to imply she is about to perform oral sex on Perry, and Brimfield is posed as if she is about to lick Perry's chest.

While State's Exhibit 6 clearly depicts Harris's face, Brimfield's face is obscured. While Harris and Perry testified to Brimfield's identity in the photo, State's Exhibit 14 clearly shows Brimfield's face and provided proof of her identity. Furthermore, while State's Exhibit 14 is the only image where Harris and Brimfield's faces are completely visible, eliminating any questions about identity, the victims are not actively engaged in explicitly sexual acts in the image. While the statute only requires that a reasonable person be able to infer their nudity is for the purpose of sexual stimulation, the inclusion of State's Exhibits 15 and 16, where the victims are posed to insinuate sexual acts, eliminates any potential ambiguity that could be argued to exist in how the victims are posed in State's Exhibit 14. See United States v. Heatherly, 985 F.3d 254 (3d Cir. 2021) (holding that videos of child sexual abuse were properly admitted into evidence when the videos

were necessary for the jury to appreciate that the videos were unambiguously sexual, and “demolished” any defense that the images were benign).

In sum, State’s Exhibit 14 provides a clear image of both victims, eliminating any arguments about their identity, State’s Exhibits 6 and 15 fulfill the necessary elements of the statute for Harris, and State’s Exhibit 16 fulfills the necessary elements for Brimfield. Moreover, State’s Exhibits 14, 15, and 16 are not cumulative of State’s Exhibit 6 because they came in for a different purpose. State’s Exhibit 6 was presented as evidence of the sex work advertisements posted by Appellant, while State’s Exhibits 14, 15, and 16 were offered as evidence towards Appellant’s sexual exploitation of a minor charges. See State v. Bowman, 644 S.E.2d 596, 599 (N.C. Ct. App. 2007) (holding that the admission of six photographs of victim’s body at the scene was not cumulative or excessive when the photos each showed a different view of the body, injury, or piece of evidence, and were accompanied by competent testimony).

Furthermore, State’s Exhibits 14, 15, and 16 were not cumulative because they were admitted to substantiate Harris and Perry’s testimony. See generally People v. Benavides, 105 P.3d 1099 (Cal. 2005) (holding that a photograph is not cumulative of testimony if it clarifies the testimony). The exhibits were initially admitted during Naneka Perry’s testimony, where she detailed the identity of each person in each image, the location of each photo, Appellant’s role in taking each photo, and Appellant’s purpose for each photo. (R. 189:12-191:24). The photos were then later used to corroborate Harris’s testimony that Appellant took explicit photos of her and Brimfield in his bedroom. (R. 246:9-247:24).

Importantly, though Appellant argues that the three exhibits were needlessly cumulative, Appellant does not provide any basis to support the conclusion that the probative value of the exhibits was outweighed by a detrimental effect on the efficiency of the trial process. All three

exhibits together were shown to the jury for less than a few minutes and their introduction had no discernable effect on the trial's efficiency. See Alvarado v. State, 912 S.W.2d 199, 212–13 (Tex. Crim. App. 1995) (noting that photographs of victims' bodies were cumulative of testimony but concluded that their probative value was not substantially outweighed by any detrimental effect on the efficiency of the trial process) (quotation omitted)); compare State v. Santamaria, 199 A.3d 754 (Ken. Ct. App. 2019) (holding that the trial court's admission of 14 photographs depicting the defendant and then-18-year-old victim engaged in "hardcore sexual acts" was not plain error when the images substantiated victims' testimony about the nature of their relationship); with State v. Donham, 29 Kan. App. 2d 78, 85-86, 24 P.3d 750, 757 (2001) (noting that trial court's admission of 100 different images of child sexual abuse into evidence was excessive).

Finally, the trial court's admission of the photographs, all of which were only briefly shown to the jury, falls far below the threshold of needlessly cumulative evidence. See U.S. v. Storm, 915 F. Supp. 2d 1196, 1205 (D. Or. 2012), aff'd, 612 F. App'x. 445 (9th Cir. 2015) (permitting the Government to show 39 slides of child sexual abuse material to the jury at trial); see also U.S. v. Schene, 543 F.3d 627, 643 (10th Cir. 2008) (affirming conviction where fewer than 10 images and videos out of 1,300 were shown to the jury); U.S. v. Dodds, 347 F.3d 893, 898 (11th Cir. 2003) (affirming conviction where 66 pictures out of 3,400 were shown to the jury); U.S. v. Becht, 267 F.3d 767, 769 (8th Cir. 2001) (affirming conviction where 39 images out of 11,000 were shown to the jury).

Accordingly, the State's deliberate selection of four photographs to match the four sexual exploitation of a minor charges is the antithesis of unnecessarily cumulative evidence, particularly given the over eight hundred and sixty images of child sexual abuse material the State gathered from Appellant's devices and his posted advertisements. Therefore, the court did not err in finding

State's Exhibits 14, 15, and 16 were not needlessly cumulative. Appellant's conviction should be affirmed.

**3. The admission of State's Exhibits 14, 15, and 16 into evidence did not prejudice Appellant.**

Furthermore, Appellant fails to identify how State's Exhibits 14, 15, and 16 aroused the prejudice of the jury as the photographs were neither inherently prejudicial nor needlessly numerous. Accordingly, even if they were erroneously admitted their admission was harmless.

"Even if evidence is cumulative, that alone is not sufficient to exclude its admission. The trial court's inquiry for excluding relevant evidence as cumulative involves determining when repetitive evidence becomes so prejudicial or inflammatory as to outweigh its probative value i.e., when the repetitive evidence becomes legally irrelevant." 29 Am. Jur. 2d Evidence § 350 (2025). "The probative value of the photos must be balanced against 'the danger of unfair prejudice.'" State v. Collins, 398 S.C. 197, 207, 727 S.E.2d 751, 757 (Ct. App. 2012), rev'd, 409 S.C. 524, 763 S.E.2d 22 (2014). "Prejudice that is 'unfair' is distinguished from the legitimate impact all evidence has on the outcome of a case." Id. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis." Id. (quoting 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 [scrutinized under Rule 403]." Id. (quoting Gilchrist, 329 S.C. at 630, 496 S.E.2d at 429).

"Photographs pose a danger of unfair prejudice when they have an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." Id. (quoting State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009)). "Like probative value,

unfair prejudice should be evaluated in the practical context of the issues at stake in the trial of the case.” Id.; See also State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001) (“The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.”); State v. Lee, 399 S.C. 521, 529, 732 S.E.2d 225, 229 (Ct. App. 2012).

Multiple courts have found that the admission of still images of child pornography itself does not rise by itself to the level of unfair prejudice when such images are at the heart of a case. See, e.g., United States v. Hay, 231 F.3d 630, 638–39 (9th Cir. 2000) (holding that the publication of three out of thirty-four pornographic State’s Exhibits to the jury was not unduly prejudicial); United States v. Campos, 221 F.3d 1143, 1148–49 (10th Cir. 2000) (holding that the district court did not err in allowing the jury to view the two pornographic images described in the indictment); United States v. Dean, 135 F.Supp.2d 207, 209–11 (D.Me. 2001).

Furthermore, any reaction the jury may have had to the exhibits was not extraneous to the case – they were reactions to evidence of the crime charged. Rule 403 “does not protect defendants from devastating evidence in general,” only unfairly prejudicial evidence. United States v. Long, 92 F.4th 481, 489 (3d Cir. 2024) (holding that various images of child sexual abuse materials were properly admitted to support defendant’s possession of child pornography charges and noting that “if jurors feel disgust towards [defendant] based on a belief that he intentionally collected child pornography, they are judging him for committing the charged offense. . . the emotional impact of the evidence stems from the disturbing nature of the alleged crime, not some extraneous concern”); see also State v. Collins, 409 S.C. 524, 532-37, 763 S.E.2d 22, 27 (2014) (overturning the Court of Appeals and holding that the trial court did not err in allowing seven pre-autopsy photos of a child mauled to death by dogs to be shown to the jury, when the key issue in dispute was the dangerous propensities of the dogs responsible for the child’s death).

State's Exhibits 14, 15, and 16 are disturbing only inasmuch as the crime itself is disturbing. Unlike autopsy photos or images of graphic injuries, the shocking and distressing character of the State's Exhibits is inextricably tied to—and is in fact completely dependent upon—the nature of Appellant's crime. Accordingly, the trial court did not err in finding that the probative value of State's Exhibits 14, 15, and 16 was not substantially outweighed by the danger of needlessly presenting cumulative evidence, and even if their admission was in error, the error was ultimately harmless. Appellant's conviction should be affirmed.

**CONCLUSION**

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

Respectfully submitted,

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March 26, 2026

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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
The Honorable Jocelyn Newman, Circuit Court Judge

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Appellate Case No. 2024-002003

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THE STATE,

Respondent,

v.

ONTARIO LAMAR STALEY,

Appellant.

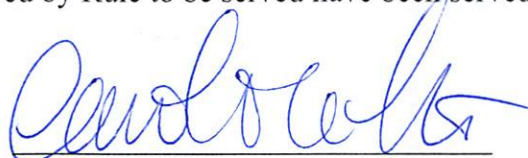
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**PROOF OF SERVICE**

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I, Caroline Collins, certify that I have served the within Final Brief of Respondent on Kathrine H. Hudgins, Esquire, counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.  
This 26<sup>th</sup> day of March, 2026.



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