

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robert Brandon Neeley, Appellant.

Appellate Case No. 2023-001259

Appeal From Lexington County
Debra R. McCaslin, Circuit Court Judge

Unpublished Opinion No. 2026-UP-413
Submitted July 1, 2026 – Filed August 19, 2026

AFFIRMED

Appellate Defender Sarah Elizabeth Shipe, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General John Benjamin Aplin,
and Senior Assistant Deputy Attorney General Mark
Reynolds Farthing, all of Columbia, for Respondent.

PER CURIAM: Robert Brandon Neeley appeals his convictions for first-degree burglary, first-degree criminal sexual conduct (CSC), kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime, as well as

his aggregate sentence of seventy-four years' imprisonment. On appeal, Neeley argues the trial court abused its discretion when it (1) allowed the sexual assault nurse examiner (SANE nurse) to testify about the details of the victim's sexual assault that were relayed to her by the victim and were beyond the scope of time and place of the sexual assault and were not relevant to the diagnosis and treatment of the victim's injuries in accordance with Rule 803(4) of the South Carolina Rules of Evidence and (2) admitted, pursuant to Rule 106 of the South Carolina Rules of Evidence, the SANE nurse's testimony regarding what the victim had told the SANE nurse about Neeley leaving her cell phone in her car and the details of the assault and resulting injuries. We affirm pursuant to Rule 220(b), SCACR.

1. Initially, we hold Neeley's argument that the trial court admitted statements beyond the time and place restrictions of Rule 801(d)(1)(D) of the South Carolina Rules of Evidence is not preserved because Neeley did not move to exclude these statements under this rule, he only moved to exclude the statements under Rule 803(4). *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). Regarding Neeley's argument that he was prejudiced when the State referenced the SANE nurse's testimony in its closing argument, we hold this argument is not preserved because Neeley did not contemporaneously object to the State's closing arguments on this basis. *See id.* at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

Next, regarding Neeley's argument that the SANE nurse's testimony was hearsay because the victim had already been medically cleared by the time she saw the SANE nurse, we hold evidence supports that the victim's statements to the SANE nurse were made for the purpose of additional medical treatment.

Further, we hold the majority of the statements admitted through the SANE nurse were admissible under Rule 803(4); however, the trial court abused its discretion when it admitted the statement about using mouthwash and showering. Although that statement was admitted in error, the error was harmless because looking at the character and materiality of the error in context of the entire case, the statements describing how Victim washed up could not have reasonably affected the outcome of the trial. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *Glinyanay v. Tobias*, 436 S.C. 137, 145, 871

S.E.2d 193, 198 (Ct. App. 2022) ("To be admissible under Rule 803(4), the statement must be (1) made for the purpose of and be reasonably pertinent to medical diagnosis or treatment; (2) describe the patient's medical history, past or present symptoms, pain or sensations, or the inception or general character of their cause or external source; and (3) reasonably relied upon by the medical professional."); *State v. Curry*, 370 S.C. 674, 680, 636 S.E.2d 649, 652 (Ct. App. 2006) ("[E]rror is harmless where it could not reasonably have affected the trial's outcome."); *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008) ("No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.").

2. We hold the trial court abused its discretion when it admitted, pursuant to Rule 106, the SANE nurse's testimony about the victim's statement regarding what Neeley told her about the cell phone because the video recording was not introduced into evidence. Further, the victim's testimony recounting what was said in the video recording was not tantamount to admitted evidence because the victim's statements were not quotes nor were the statements extensive. *See Pagan*, 369 S.C. at 208, 631 S.E.2d at 265 ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 106, SCRE ("When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."); *State v. Taylor*, 333 S.C. 159, 171, 508 S.E.2d 870, 876 (1998) (citing federal cases that indicate that, under Rule 106, an adverse party may introduce the remainder of a writing or recorded statement when a party extensively quotes from a writing or recorded statement); *id.* (indicating Rule 106 is applied "where a party's use of a writing or recorded statement is 'tantamount to the introduction of the [document] into evidence'" (alteration in original) (quoting *Rainey v. Beech Aircraft Corp.*, 784 F.2d 1523, 1529 (11th Cir.), *reh'g granted and vacated*, 791 F.2d 833 (11th Cir. 1986) (mem.)). Nevertheless, the error was harmless because although the statement could contradict Neeley's defense that the encounter was consensual, the statement could not have reasonably affected the jury's result at trial in light of the other evidence that contradicted Neeley's defense. *See Curry*, 370 S.C. at 680, 636 S.E.2d at 652 ("[E]rror is harmless where it could not reasonably have affected the trial's outcome."); *Page*, 378 S.C. at 483, 663 S.E.2d at 360 ("No definite rule of law governs the finding that an error was harmless; rather, the materiality and

prejudicial character of the error must be determined from its relationship to the entire case.").

To the extent that Neeley argues the trial court abused its discretion when it admitted, pursuant to Rule 106, the SANE nurse's testimony about the nature of the victim's assault and her injuries, we hold this argument is not preserved for appellate review because the ruling that Neeley challenges on appeal is different from the ruling the trial court made regarding Rule 106. The State moved under Rule 106 to present information relevant to the victim's statements to the SANE nurse and an investigator about her knowledge that Neeley had left her cell phone in her car. Later, the State clarified that it wanted to present evidence of the victim's fear and why she did not immediately report the assault. The trial court indicated that it agreed with the State's position and indicated its final ruling on the Rule 106 motion would be that Neeley had "open[ed] the door for [the State] to correct what the whole sentence is." Therefore, any evidence about the nature of the assault and the victim's injuries, which Neeley asserts was admitted pursuant to Rule 106, did not fall within the scope of the trial court's ruling. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal.").

AFFIRMED.¹

THOMAS, MCDONALD, and TURNER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.