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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Marvin H. Dukes, III, Circuit Court Judge
Appellate Case No. 2025-000433

THE STATE,

Respondent,

vs.

DARRYL JEROME WASHINGTON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Did the trial court err in precluding appellant from cross-examining the Complainant's mother under Rule 403, SCRE, about her own statements to a therapist regarding Complainant lying about bringing guns to school?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow abuse his broad discretion or otherwise err by preventing defense counsel from—for the identified purpose of attacking the minor victim's credibility and character and demonstrating the minor victim had a propensity to lie—cross-examining the minor victim's mother about an out-of-court statement she allegedly made to an unnamed therapist at some unspecified point in time regarding a different out-of-court statement that was purportedly made by the minor victim at another unspecified point to an unidentified individual through which the minor victim allegedly made a false claim he had brought guns to school in a backpack when that testimony: (1) had minimal probative value at best; (2) carried a high potential of unfair prejudice that substantially outweighed any probative value it could have possessed; and (3) was not properly admissible under any legitimate theory of admissibility?

STATEMENT OF THE CASE

In January of 2017, Appellant Darryl Jerome Washington, who was then thirty-eight years old, was arrested following an investigation into allegations he sexually abused a seven-year-old boy over the course of the preceding summer. In May of 2017, the Colleton County Grand Jury indicted Appellant for first-degree criminal sexual conduct with a minor. On February 26, 2025, a jury trial was commenced in the Colleton County Court of General Sessions with the Honorable Marvin H. Dukes, III, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a thirty-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In the summer of 2016, Akiba Bowers ("Mother") needed assistance with her then-seven-year-old son ("Victim") while she was working at her job as a gas station cashier. (R. p. 23). As a solution, Mother regularly dropped Victim off in Yemassee, South Carolina, at the home of Albertha and Henry Washington, whom she considered to be her aunt and uncle. (R. pp. 24-25; pp. 39-40; pp. 64-65; pp. 67-68; p. 70). During that time period, Victim spent approximately eight-and-a-half hours per day at the Washingtons' residence while Mother was at work. (R. pp. 24-25; p. 40). Unfortunately, Appellant, the Washingtons' thirty-eight-year-old unemployed adult son and Mother's cousin, was *also* residing in the home at the same time. (R. p. 19; p. 24; p. 65; pp. 67-68; pp. 73-75; p. 83).

Supposedly, the Washington family had a house rule that required Appellant to be with his parents whenever a child visited the home, and Appellant was purportedly *not* allowed to be in his room unsupervised during those times. (R. pp. 84-85). According to Appellant, that rule was in place "[b]ecause [he] kn[e]w if [he] d[id] stuff[, he was] going to get in trouble." (R. p. 85). Appellant—who was then a nearly-forty-year-old-year high school graduate—further claimed he was prohibited from having people in his room for the purpose of preventing him from "horsing around" and "possibly damaging the house." (R. p. 19; pp. 73-74; p. 89). Despite that alleged prohibition, Victim frequently played video games or watched movies with Appellant—who was a self-admitted fan of video games, television, and pornography—in Appellant's room during his visits to the home. (R. pp. 40-41; p. 74; p. 84).

After routinely spending substantial periods of time at the Washington household throughout the summer, Victim made a startling disclosure of sexual abuse toward the end of 2016. (R. p. 17; pp. 25-26; p. 43; p. 75). In response to it, Mother notified law enforcement, and

an investigation into the matter was rapidly initiated. (R. pp. 17-18; p. 26). As part of that investigation, Sandra Knapp, a forensic interviewer at Hopeful Horizons, conducted a forensic interview of Victim on December 22, 2016.[1] (R. p. 18; p. 57). Significantly, during that interview, Victim reported Appellant "played with," squeezed, and licked his penis and also put it in his mouth earlier that summer when he was at Appellant's house. (State's Ex. # 1 (Redacted Forensic Interview Recording)).

At the conclusion of the investigation into the reported sexual abuse, Appellant was arrested for first-degree criminal sexual conduct with a minor, and he was subsequently indicted for the same offense. (R. p. 19; p. 22; pp. 132-134). Ultimately, Appellant elected to proceed forward to trial.[2] (R. p. 1).

During Appellant's trial, Mother testified as one of the State's witnesses, and, as part of her testimony, she confirmed Victim spent a substantial period of time at the Washington residence during the summer of 2016 while she was working and Victim later disclosed he had been sexually abused at that location during those summer visits. (R. pp. 22-26). Thereafter, on cross-examination, defense counsel elicited testimony from Mother establishing Victim also stayed at the Washingtons' house on one occasion because he had been suspended from school. (R. p. 27). In response to defense counsel's questioning, Mother further reported Victim did *not* get suspended from school often but he did, in fact, have behavioral issues at school. (R. p. 27).

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[1] By that point, Victim, whose birthday is in the fall, was eight years old. (R. p. 37; p. 43; p. 57).

[2] Apparently, Appellant's defense counsel at the time of trial was the *fourth* attorney who represented him in the case, and at least one of Appellant's prior attorneys was replaced after Appellant's case had been placed on an earlier trial docket. (R. pp. 88-89). Those facts are only noteworthy because defense counsel—as part of his opening remarks to the jury—inappropriately asked the jurors to consider why it took seven years for the State to bring Appellant's case to trial. (R. p. 15).

Following that, defense counsel asked Mother if she had sent Victim to therapy for his behavioral issues, and the solicitor swiftly objected on relevancy grounds. (R. p. 27). In response, the trial judge excused the jury from the courtroom and conducted an in camera hearing on the matter. (R. pp. 27-28).

During that hearing, defense counsel contended Mother—at some unspecified point—purportedly made statements to unidentified personnel at a mental health facility about Victim having behavioral issues at school "concerning, claiming he had guns in his backpack, claiming he was going to shoot everyone." (R. p. 28). According to defense counsel, such statements went to Victim's "character" and "truthfulness" and also to Mother's credibility because she had purportedly "just stated that [Victim] didn't get in trouble at school or didn't get suspended."[3] (R. p. 28). In rebuttal, the solicitor argued what defense counsel was proposing was not a proper or admissible way to attack Victim's character in light of the mandates of Rule 404 of the South Carolina Rules of Evidence, and defense counsel responded by insisting he was not actually trying to introduce the testimony as evidence of a prior bad act. (R. pp. 28-29).

Following those remarks, the trial judge attempted to get clarity as to what testimony or evidence defense counsel was actually seeking to introduce. (R. p. 29). Defense counsel explained he was attempting to elicit testimony Mother told a therapist that Victim had stated he had a gun in a backpack at some unspecified point in time. (R. p. 29). Following that clarification, the solicitor argued the trial judge should exclude the testimony because: (1) a witness's character generally had to be established through opinion or reputation testimony as opposed to through proof of specific instances of conduct; (2) the proposed testimony would be overly prejudicial; (3) Mother did not even personally know whether the claim about guns in the

[3] In truth, Mother had not just stated that. (R. p. 27). Instead, Mother had stated Victim did not get suspended from school *often* but did have behavioral issues at school. (R. p. 27).

backpack was true; and (4) the defense had already been able to elicit testimony establishing Victim had behavioral issues at school. (R. pp. 29-30).

At that point, defense counsel asserted:

> Your Honor. [Mother] can, she can attest to that's what she said to the therapist, which is in the record.[4] Furthermore, Judge would point to Rule 405(b) specific instances of conduct in cases in which character or trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct. I'm not trying to bring in guns in a backpack, just for the shock value of guns in a backpack. I'm trying to say, [Victim] said I had guns in backpack. *It could have been donuts, it could have been books, it could have been anything I'm trying to bring in*. He said that, [Mother] said that he said that to a therapist, and *it wasn't true*.

(R. pp. 30-31) (emphasis added). In reply, the solicitor noted Mother's out-of-court statements to a therapist would constitute hearsay, and defense counsel responded by claiming he was *not* seeking to admit the statement to prove the truth of the matter asserted.[5] (R. p. 31).

Upon listening to the arguments of counsel, the trial judge explained the proposed testimony about guns, backpacks, and schools could be extremely prejudicial and sought confirmation from defense counsel as to whether the point he was trying to make through the testimony was "basically" whether Victim had ever lied to Mother. (R. p. 31). Defense counsel confirmed that indeed was "[e]ssentially" what he was trying to elicit. (R. p. 31).

Following that, the trial judge ruled the prejudice that would result from the proposed testimony about guns and backpacks would substantially outweigh any probative value such

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[4] It is not readily apparent what defense counsel meant by "in the record." (R. pp. 30-31).

[5] Since he had just explained he was attempting to prove Victim made a false statement through Mother's testimony, defense counsel *was*, in fact, attempting to prove the truth of the matter asserted—Victim purportedly falsely claimed to someone that he brought guns to school in a backpack—by eliciting testimony from Mother about the out-of-court statement she had supposedly made. (R. p. 31).

testimony possessed and, thus, that specific testimony would not be permitted. (R. pp. 32-33). However, he explained defense counsel would be free to question Mother generally as to whether Victim ever had not told her the truth. (R. pp. 32-33).

In response to the trial judge's ruling, defense counsel insisted "the mention of guns in the backpack" should be admissible because, in his view, it went "directly to the victim's character for truthfulness" and involved a "documented incident" of Victim "having no regard for anyone at the school and the consequences of this action[.]" (R. p. 33). At that point, the trial judge sought further clarification and questioned whether defense counsel was contending the desired evidence showed Victim had guns in his backpack or merely showed Victim said he did. (R. p. 33). Defense counsel responded: "He said --- he claimed he had guns in the backpack, *because he lied*. It shows his *propensity for lying*." (R. p. 33) (emphasis added). Upon hearing those remarks, the trial judge reaffirmed specific testimony about "guns and backpacks" would not be permitted because his determination was the testimony's high potential for prejudice substantially outweighed any probative value it could have had. (R. pp. 33-34).

Subsequent to that ruling, the jury returned to the courtroom, and defense counsel—without proffering or even attempting to proffer the testimony he had been seeking to admit—resumed his cross-examination of Mother. (R. p. 34). Through his continued cross-examination, defense counsel successfully elicited testimony establishing Victim had "gotten in trouble at school a few times," had "lied a few times" to Mother, had lied at school, had been disrespectful toward Mother, had gone to therapy "for [his] problems," and had hit other children at school.[6] (R. pp. 35-36). However, consistent with the trial judge's ruling, defense counsel did not elicit

[6] In response to defense counsel's questioning, Mother also denied Victim was disrespectful to adults in general, denied he hit his own little sister, and denied he cussed and raised his voice when speaking to his family members. (R. p. 36).

any testimony from Mother about any out-of-court statements she personally made to a therapist concerning the purported false out-of-court statement Victim was alleged to have made at some unspecified point to some unspecified person about bringing guns to school in a backpack. (R. pp. 34-36).

After Mother's testimony was completed, Victim also testified as part of the State's case. (R. pp. 37-45). During his testimony, Victim recounted Appellant—whom he identified in the courtroom—sexually abused him during the summer of 2016 by grabbing and fondling his penis and putting his mouth on it, and Victim explained that abuse occurred both in Appellant's room and in the bathroom at Appellant's residence. (R. pp. 39-42). Furthermore, Victim stated he waited a few months to disclose the abuse because he was scared. (R. p. 43).

In addition to Mother's and Victim's testimony, Investigator Kelly Padgett from the Colleton County Sheriff's Office testified about her investigation into the incident that culminated in Appellant's arrest, and Knapp confirmed she conducted a forensic interview of Victim in December of 2016 when he was still just eight years old. (R. pp. 16-22; pp. 57-58). Along with that, a redacted recording of the forensic interview was—without objection—admitted into evidence and played for the jury. (R. p. 58).

After all that testimony and evidence was presented, the State rested its case, and Appellant personally elected to testify in his own defense.[7] (R. p. 59; p. 62). During his

[7] Before Appellant testified, defense counsel recalled Victim to the witness stand, and Victim denied he was accused of doing the same thing he alleged Appellant did and denied being threatened into making the disclosure. (R. p. 63). Along with that, defense counsel offered testimony from Appellant's father. (R. pp. 64-72). During his testimony, Appellant's father confirmed Victim spent time with him and his family, which included Appellant, at their home but alleged he was "always" watching Victim along with his wife when Victim came over. (R. pp. 65-66). However, he further confirmed he did not watch Appellant when Appellant played video games and was not personally sure if Appellant and Victim played video games together during Victim's visits. (R. pp. 70-71).

testimony, Appellant confirmed he had been around Victim "a decent amount," alleged the two "were cool," asserted they had a good relationship, and denied the allegations of sexual abuse. (R. p. 75; p. 83; pp. 85-86). Additionally, as a potential explanation for why the minor victim would have accused him of the sexual abuse, Appellant recounted an incident in which he caused Victim to be punished. (R. pp. 81-82). More specifically, Appellant alleged he walked into Victim's house one time when Victim was approximately six or seven years old and caught Victim watching a "porno movie" on the computer. (R. p. 81; p. 86). Upon witnessing that occurrence, Appellant asserted he told Victim's mother, who "didn't do nothing," and then told Victim's grandmother, who responded by beating Victim with a belt and making him cry. (R. pp. 81-82). After that, Appellant claimed Victim was mad at him and did not like him, which was demonstrated both by Victim not saying anything to him the next summer at a cookout and by the "look in his eyes." (R. pp. 82-83; p. 86).

Following Appellant's testimony, the defense rested, too. (R. p. 90). The parties then presented their closing arguments[8] to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 104-116; pp. 118-120). The case was then submitted to the jury, and, after roughly ninety minutes of deliberations, the jury convicted Appellant as indicted. (R. p. 120; pp. 124-125).

[8] As part of his closing argument remarks, defense counsel suggested Victim—at age six or seven—apparently subscribed to the adage revenge is a dish best served cold and, consistent with that, waited more than a year to retaliate against Appellant for getting him punished for watching the "porno movie" by falsely accusing Appellant of sexual abuse at that delayed point in time. (R. pp. 105-106). In reply, the solicitor aptly pointed out that theory was nonsensical. (R. p. 106). The jury appears to have agreed. (R. p. 125).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a trial judge's evidentiary ruling on appeal, an appellate court will not reverse absent a clear abuse of discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Relatedly, an appellate court will not reverse a trial judge's ruling on the scope of cross-examination absent a showing of a prejudicial abuse of discretion. See State v. Sherard, 303 S.C. 172, 174, 399 S.E.2d 595, 596 (1991) ("It is well settled that the scope of cross-examination is within the trial judge's discretion, and this Court will not interfere absent a showing of prejudice by the complaining party."); see also State v. Turner, 373 S.C. 121, 130, 644 S.E.2d 693, 698 (2007) (recognizing the trial judge retains wide discretion in regard to the scope of cross-examination). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted).

ARGUMENT

The trial judge did not abuse his broad discretion or otherwise err by preventing defense counsel from—for the identified purpose of attacking the minor victim's credibility and character and demonstrating the minor victim had a propensity to lie—cross-examining the minor victim's mother about an out-of-court statement she allegedly made to an unnamed therapist at some unspecified point in time regarding a different out-of-court statement that was purportedly made by the minor victim at another unspecified point to an unidentified individual through which the minor victim allegedly made a false claim he had brought guns to school in a backpack because that testimony: (1) had minimal probative value at best; (2) carried a high potential of unfair prejudice that substantially outweighed any probative value it could have possessed; and (3) was not properly admissible under any legitimate theory of admissibility.

Appellant contends the trial judge reversibly erred by refusing to allow defense counsel to cross-examine Victim's mother—and *not* Victim himself—about a purported out-of-court statement she made to a therapist concerning Victim lying to someone at some unspecified point about bringing guns to school. In support of that contention, Appellant maintains evidence establishing Victim was willing to lie "about something with such severe legal consequences as bringing guns to school" demonstrated Victim "would also be willing to lie about sexual abuse." (App. Br. p. 8). Thus, in essence, Appellant's appellate argument amounts to an assertion that evidence from Victim's mother establishing Victim supposedly told some unrelated lie on a prior occasion in the past should have been admitted as evidence Victim had a propensity to lie and, therefore, acted in conformity with that propensity by falsely accusing Appellant of sexual abuse. Meanwhile, in making such a contention, Appellant tellingly does not even attempt to identify a basis upon which Victim's—or any witness's—credibility could properly and permissibly be impeached in such a manner and, instead of doing so, simply declares the evidence regarding Victim's alleged past lie was somehow "of immense probative value." (App. Br. p. 8). Appellant is wrong, and the trial judge did not abuse his discretion or otherwise err by placing reasonable limits on the scope of cross-examination and refusing to allow the patently-

inadmissible evidence defense counsel sought to elicit during trial. Appellant's conviction should be affirmed.

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, [South Carolina's evidentiary] rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE; see Taylor v. Illinois, 484 U.S. 400, 410 (1988) ("The accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence."). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

However, even if relevant, evidence must be excluded from trial if its probative value is substantially outweighed by—amongst other things—a danger of unfair prejudice or confusion of the issues. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see also New Oxford American Dictionary 1736 (3rd ed. 2010) (defining "substantially" as "to a great or significant extent"). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the

result generally hinges on the facts of each case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Meanwhile, unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see Old Chief v. United States, 519 U.S. 172, 181 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). However, unfair prejudice does *not* mean damage that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). Significantly, it is only unfair prejudice that must be avoided. Id.

When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have "particularly wide discretion[.]" Collins, 398 S.C. at 209, 727 S.E.2d at 757. As a result, a trial judge's ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry,

363 S.C. 93, 610 S.E.2d 494 (2005). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Id. at 358, 543 S.E.2d at 594.

With those principles in mind, Appellant sought in the case sub judice to impeach Victim's credibility, attack Victim's character, and prove Victim had a propensity to lie by eliciting testimony from Mother about an out-of-court statement she allegedly made to an unnamed therapist on an unknown date regarding a specific out-of-court statement that was purportedly made by Victim at an unspecified point in time to an unspecified individual through which Victim falsely claimed to have brought guns to school in a backpack. Notwithstanding the fact many of the key substantive details surrounding both Mother's and Victim's alleged out-of-court statements remain unclear and unknown,[9] the trial judge did not abuse his broad discretion or otherwise err by concluding whatever probative value that testimony may have possessed was substantially outweighed by its potential for unfair prejudice in light of the *other* cross-examination that was permitted.

[9] Because it is not fully clear precisely what testimony defense counsel actually would have been able to elicit from Mother during trial, it is highly questionable whether Appellant's current issue with that testimony's exclusion was properly preserved for appellate review. See State v. Cabbagestalk, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984) ("Failure to make an offer of proof precludes the appellant from raising the issue on appeal."); State v. Roper, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) ("It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."); State v. Santiago, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) ("[A] proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been."); see also Whitfield v. Schimpf, 444 S.C. 633, 648, 911 S.E.2d 310, 318 (2025) ("There certainly are instances in which an actual proffer of testimony is necessary to adequately convey to the trial court 'the substance of the evidence.' "); cf. State v. Simmons, 360 S.C. 33, 46, 599 S.E.2d 448, 454 (2004) (finding no issue was preserved for appellate review regarding the trial judge's refusal to allow a defense witness to testify further where "no proffer was made as to what [the defense witness's] testimony would have been had he been allowed to continue").

Demonstrating that fact, the trial judge permitted defense counsel—who confirmed the point he was trying to make through his cross-examination of Mother was "[e]ssentially" that Victim had previously lied—to elicit testimony establishing Victim had, in fact, lied in the past on multiple occasions to Mother *and* had also lied to people at school. Along with that, defense counsel was permitted to further attack the minor victim's credibility and character in a more general manner by being allowed to elicit testimony establishing Victim had exhibited behavioral issues at school, got in trouble at and was sometimes suspended from school, was disrespectful to Mother, hit other children, and had gone to therapy for his "problems." Thus, based on the scope of the cross-examination he did allow, the trial judge enabled defense counsel to make the *precise* point he identified as the one he was trying to make and thoroughly demonstrate to the jury that Victim had indeed told lies in the past. See State v. Lynn, 277 S.C. 222, 225, 284 S.E.2d 786, 788 (1981) (recognizing the scope of cross-examination rests largely within the trial judge's discretion); cf. Turner, 373 S.C. at 131, 644 S.E.2d at 698 ("Although [Turner] could not elicit testimony about the victim's specific mental illness and her specific medication, the gist of what [Turner] wished to elicit from her testimony was elicited. Therefore, [Turner] has not shown he was unfairly prejudiced by the limitation.").

Meanwhile, the fact Victim—a minor child—had told a lie at some point in his lifetime had, at best, minimal probative value. See Vanover v. State, 433 S.C. 31, 41-42, 856 S.E.2d 160, 165 (Ct. App. 2021) ("As one noted jurist explained, the fact that a teenage girl has a disordered past and lies a lot (who doesn't?) does not predict that she will make up stories about having sex. In other words, evidence that a witness has lied in the past has questionable value since very few people, other than the occasional saint, go through life without ever lying." (citations and internal quotations omitted)). And, the specific details of the lie defense counsel was seeking to elicit

through his cross-examination of Mother had even *less* probative value because Victim's purported lie—which did not in any way involve Appellant—bore no similarities whatsoever to an accusation of sexual abuse against someone else and, instead, involved a totally-unrelated claim that Victim *personally* had done something wrong by allegedly bringing guns to school in a backpack. See id. at 41-42, 856 S.E.2d at 165-166 ("The rationale for excluding prior false accusations that do not have a significant degree of similarity to the charge at issue is that those false claims *lack any meaningful probative value*. . . . For example, the fact that the alleged victim previously took her mother's car without permission, wrecked the car, and lied about the circumstances before recanting had no probative value with respect to the victim's allegation that she was raped." (emphasis added)).

Therefore, by placing reasonable limits on the scope of cross-examination and precluding defense counsel from questioning Mother about an out-of-court statement she had made concerning the specific details of a particular lie Victim had purportedly told in the past, the trial judge appropriately ensured evidence that was of, at best, limited probative value and otherwise inadmissible was not wrongly placed before the jury. More specifically, pursuant to well-established South Carolina law, Victim's prior act of lying about bringing guns to school in a backpack could *not* have properly been used—as defense sought to do—to suggest Victim had a propensity to tell lies and, thus, must have been acting in conformity with that propensity when he accused Appellant of sexually abusing him. See Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."); cf. State v. Powell, 518 P.3d 949, 957 (Or. Ct. App. 2022) ("[W]ithout a motive, the argument that because [the victim] had previously lied when confronted about school, she must have lied this time is inadmissible character evidence because

it requires propensity reasoning—that is, she lied before, so she must have lied this time."). Likewise, testimony from Mother about an out-of-court statement she previously made about an out-of-court statement Victim had purportedly made would have constituted rank hearsay that would not have been admissible under any recognized hearsay exception. See Rule 802, SCRE ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."); see also Chambers v. Mississippi, 410 U.S. 284, 302 (1973) ("In the exercise of this right [to present a defense], the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence."). Furthermore, pursuant to our state's legitimate evidentiary rules, specific instances of Victim's conduct could not, for the purpose of attacking his credibility, appropriately be proven through extrinsic evidence like Mother's testimony and, instead, could—at most—only be inquired into on cross-examination of Victim, which defense counsel never sought to do as far as the purported lie about bringing guns to school was concerned. See Rule 608(b), SCRE ("Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified."); cf. Vanover, 433 S.C. at 40, 856 S.E.2d at 164 ("[A]lthough there is no question trial counsel could have asked Daughter about the Doe allegation, Rule 608 would not be a vehicle for anyone to offer testimony regarding the allegation."). Under such circumstances, the limits the trial judge placed

on defense counsel's cross-examination of Mother were proper, permissible, and fully consistent with South Carolina law. See Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986) (recognizing the constitutional guarantee of an opportunity for effective cross-examination does *not* mean a criminal defendant is entitled to cross-examination that is effective in whatever way and to whatever extent the defendant might wish); cf. State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000) ("The trial court did not abuse its discretion in limiting the scope of cross-examination to comply with the South Carolina Rules of Evidence.").

Accordingly, since the testimony defense counsel was seeking to elicit possessed virtually no legitimate probative value, was not otherwise admissible, and carried a high potential for causing unfair prejudice and confusion, the trial judge did not abuse his broad discretion or otherwise err by excluding that testimony upon validly concluding its meager probative value was substantially outweighed by its prejudicial effect, and there are no proper grounds warranting a reversal of that sound discretionary ruling on appeal. See State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990) ("Although the Confrontation Clause 'tips the scales' in favor of permitting cross-examination if it could reasonably be expected to have an effect on the jury, a court may prohibit cross-examination for impeachment purposes when the probative value of the evidence the defendant seeks to elicit is substantially outweighed by the risk of prejudice."); State v. Sweat, 362 S.C. 117, 129, 606 S.E.2d 508, 515 (Ct. App. 2004) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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