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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2025-000846

THE STATE,

Respondent,

v.

EDWIN CARL HANEY,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

- I. "Did the Circuit Court err by denying Appellant's motion to dismiss based on double jeopardy?" (Int. App. Br. 1).
- II. "Did the Circuit Court err by denying Appellant's motion to subpoena victim records based on the relevance of that evidence to Minor Child's credibility?" (Int. App. Br. 1).
- III. "Did the Trial Court err by denying Appellant's motion for severance when the indictments are distinct offenses occurring on different dates, requiring different evidence, and are not admissible under Rule 404(b), SCRE?" (Int. App. Br. 1).
- IV. "Did the trial court err by denying Appellant's motion for suppression of untimely disclosed evidence of screenshot messages selected by Minor Child that corroborated the Minor Child's testimony?" (Int. App. Br. 1).
- V. "Did the Trial Court err by denying Appellant's motion to suppress a photograph of the mother's work schedule when the original best evidence should have been required to prove the work schedule corroborated the only specific date listed in an indictment?" (Int. App. Br. 1).
- VI. "Did the Trial Court err by denying Appellant's objections to the State's improper vouching and bolstering of Minor Child's credibility?" (Int. App. Br. 1).

STATEMENT OF THE CASE

In April 2022, a Richland County grand jury indicted Appellant for six counts of second-degree criminal sexual conduct (CSC) with a minor aged 11 to 14. (Indictment Nos. 2022-GS-40-02391, -02392, -02393, -02395, -02396, & -02397).¹ On May 20-21, 2024, Appellant proceeded to a jury trial before the Honorable Robert Hood. (Tr. Hood 1). On May 21, 2024, Judge Hood declared a mistrial. (Tr. Hood 241-42). On April 7-11, 2025, Appellant proceeded to a jury trial before the Honorable Heath P. Taylor. (Tr. Taylor 1). The jury returned a verdict of guilty on one count of second-degree CSC and not guilty on the remaining five counts. (Tr. Taylor 828-829). Judge Taylor sentenced Appellant to twenty years' imprisonment. (Tr. Taylor 859).

At trial, Juliane Becker, Victim's mother, testified at length about the circumstances surrounding Victim's disclosure of abuse. (Tr. Taylor 250-97). Becker testified that Victim has been legally blind since birth, with no vision in her left eye and minimal vision in her right. (Tr. Taylor 272). However, Victim can see well enough to read, write, and draw under the proper conditions and with technological aids. (Tr. Taylor 272-73). Becker testified that Appellant is not Victim's biological father and that she met Appellant in 2015 while they were both stationed overseas. (Tr. Taylor 250). Appellant and Becker eventually married, and Appellant moved in with Becker, Victim, and Victim's brother in 2016, when Victim was approximately ten years old. (Tr. Taylor 251). Shortly after, the family moved to South Carolina, where Appellant received a medical discharge from the Army and stayed at home full-time while Becker remained in the military. (Tr. Taylor 258-59).

¹ Indictment -2391 covered an alleged assault perpetrated on or about January 11, 2020. All other indictments covered a period of January 11, 2020, to March 30, 2021.

Beginning in 2021 Becker observed Victim rapidly gaining weight, isolating from her friends, and neglecting her hygiene. (Tr. Taylor 267-68). When Becker questioned Victim about her mental and physical health, Victim answered evasively until subsequently asking if she could attend therapy. (Tr. Taylor 267-77). Becker testified that Victim's unusual behavior combined with Appellant's strange reaction to Victim's therapy request led Becker to ask if anything had happened between Victim and Appellant. (Tr. Taylor 277). While Victim initially denied that anything happened, Victim disclosed to Becker in January 2022 that Appellant had repeatedly sexually abused her over the course of two years. (Tr. Taylor 277). Becker immediately called 911, and police responded to the scene. (Tr. Taylor 279). Becker testified that shortly after making the report, she found a pair of underwear in Victim's room that she believed were stained with blood, and she turned the item in to police. (Tr. Taylor 280). It was later clarified that test results for the underwear came back negative for blood or semen. (Tr. Taylor 296-97).

Leonard Cabe, an investigator with Richland County Sheriff's Department, testified that he interviewed Victim and that Victim made the following disclosures: Appellant had repeatedly sexually abused Victim between January 2020 to March 2021; Victim disclosed the abuse to an online friend called "Loaf" during that same period; Appellant committed all six of the acts as described in the State's indictments; and the abuse stopped when Becker became pregnant. (Tr. Taylor 307, 316-355).

Stephanie Schaller, a child abuse pediatrician and forensic medical examiner, testified that she conducted a forensic examination on Victim. (Tr. Taylor 387-92). Schaller testified that Victim's examination came back normal without any visible physical injuries. (Tr. Taylor 398). However, Schaller also emphasized that Victim's results were not inconsistent with sexual abuse,

as injuries to the rectum or vagina, even ones that cause bleeding, generally heal quickly and often without a scar. (Tr. Taylor 398-400).

Victim, then 18, testified at length about all six of the indicted incidents. She testified that the first incident occurred in early January 2020 when she was thirteen years old. She described the incident as Appellant sneaking into her room while she was sleeping and inserting his fingers into her vagina. (Tr. Taylor 448, 450-51) (Indictment GS-02395). Victim provided the exact date of the second incident—January 11—and testified that she remembered that date because it was the first time Appellant put his penis in her anus. (Tr. Taylor 454) (Indictment GS-02391). Victim testified that the third incident occurred around spring break of seventh grade, after Appellant returned from drinking with friends. (Tr. Taylor 460). Victim described being awake playing on her iPad when Appellant came into her room and began making small talk before putting his mouth on her vagina. (Tr. Taylor 460-467). Victim testified that Appellant again put his penis in her anus during the same incident. (Tr. Taylor 467-474) (Indictment GS-02393).

Victim testified that after the assaults, she would experience pain in her anus and that at the time, she worried about internal tearing, STDs, and pregnancy. (Tr. Taylor 475-76). Victim described frequent nightmares and insomnia and explained that after those initial assaults she began staying up through the night and no longer felt safe sleeping at home. (Tr. Taylor 478-79).

When describing the fourth incident, Victim testified that Appellant once again came into her bedroom at night after returning home from drinking with a friend. (Tr. Taylor 480-82). Victim testified that Appellant came into her room at night while she was playing a Pokémon game and inserted his penis into her anus. (Tr. Taylor 482-84) (Indictment GS-02396). The fifth incident was the only incident that did not occur in Victim's bedroom. (Tr. Taylor 492). Victim testified that Appellant texted her "come here," and when she came to his and her mother's room, he anally

penetrated her on the bed. (Tr. Taylor 492-95) (Indictment GS-02397). Victim testified that the sixth and final incident occurred after she moved into her new bedroom downstairs. (Tr. Taylor 506). Victim testified that while she was laying on her bed, Appellant entered her room, pulled down her underwear, and anally penetrated her. (Tr. Taylor 524) (Indictment GS-02392).

Victim also testified about several incidents where Appellant attempted to normalize his sexual conduct. (Tr. Taylor 498-505). Victim described two separate incidents where Appellant chose movies that contained prominent rape scenes and how Appellant would laugh and tease her when she expressed discomfort. (Tr. Taylor 498-501). Victim also testified about an incident where Appellant used a massage gun to massage her upper thighs before being interrupted by Victim's younger brother. (Tr. Taylor 505).

Victim testified that during the abuse period she made contemporaneous disclosures to an online friend named "Loaf." (Tr. Taylor 508-10). Victim read the contents of several chats she sent to "Loaf," which were entered into evidence over Appellant's objection. (Tr. Taylor 511-32; State's Ex. 49, 50, 54). Victim testified that the abuse ended in the spring of 2021, shortly before her mother announced she was pregnant. (Tr. Taylor 534-35). Victim testified that Appellant apologized to her before the announcement, blaming his PTSD and telling her he was going to seek therapy. (Tr. Taylor 532). Victim testified that while she was deeply affected by the abuse, she was scared to ruin her mother's marriage and her new sister's life by disclosing Appellant's actions. (Tr. Taylor 477-78). Victim emphasized that Appellant had been a model father and husband prior to the abuse and that until her mother sat her down to ask what was wrong, she had felt that it was better for the family if she dealt with the abuse by herself. (Tr. Taylor 477-78, 535-36).

The jury found Appellant guilty on one count of second-degree criminal sexual conduct with a minor and not guilty of the remaining charges. (Tr. Taylor 827-29). Judge Taylor sentenced Appellant to twenty years' imprisonment. (Tr. Taylor 859-60).

This appeal followed.

STANDARD OF REVIEW

A. Issues I, II, & III

"In criminal cases, an appellate 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. Parker*, 391 S.C. 606, 611-12, 707 S.E.2d 799, 801 (2011) (citation omitted). "[The] Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). "An abuse of discretion occurs when a trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C.369, 389, 529 S.E.2d 528, 539 (2000).

B. Issue IV

A lower court's ruling on discovery violations is reviewed under an abuse of discretion standard. *State v. Lawton*, 382 S.C. 122, 127, 675 S.E.2d 454, 457 (Ct. App. 2009). Moreover, for a ruling to be reversed, there must be a showing of both abuse of discretion and prejudice. *See State v. Landon*, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

C. Issue V

The trial court's determinations regarding the admissibility of evidence are within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. *State v. Sweet*, 374 S.C. 1, 4-5, 647 S.E.2d 202, 204 (2007). 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. Pagen*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). Generally, a trial court's exercise of sound discretion will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the complaining party. *Id.*

ARGUMENT

- I. Judge Rivers did not err in denying Appellant's motion to dismiss all six indictments for a purported double jeopardy violation because the State's conduct was not intentional nor meant to provoke a mistrial.**

A. Relevant Facts

a. First Trial

Appellant's first trial before Judge Hood ended in a mistrial following an alleged *Doyle* violation by the State. (Tr. Hood 440-41). This trial was plagued by issues, beginning with several lengthy pretrial debates around evidence admissibility and disclosures. (Tr. Hood 17-199). Following discussions, Judge Hood agreed to suppress the following pieces of evidence offered by the State: video clips from two graphic movies on the grounds of relevance (Tr. Hood 54-55); images of Victim and Victim's bedroom on the grounds of untimely disclosure (Tr. Hood 128-44); clips from the videogame "Pokémon" on the grounds of relevance (Tr. Hood 133-35); and text messages between Appellant and Victim's mother, in which Appellant stated he wanted to kill himself, on the grounds of relevance (Tr. Hood 191-99).

Following opening arguments, the State called Juliane Becker, Victim's mother, as its first witness. (Tr. Hood 140). Throughout Becker's testimony, the State struggled to control its witness, with Becker repeatedly providing inadmissible testimony to basic groundwork questions about her life with Appellant, including that Appellant had been disciplined by the military before and that Appellant was a terrible housekeeper. (Tr. Hood 141; 153; 232).

Becker also testified that after Victim's disclosure, she turned over a pair of Victim's underwear to law enforcement that she believed contained blood. (Tr. Hood 212-14). On cross examination, Appellant informed Becker that the underwear tested negative for blood, which she did not dispute. (Tr. Hood 214).

Midway through Appellant's cross-examination of Becker, Appellant asked a question about when Becker gave the State a copy of her work schedule, to which Becker answered, "[w]ell, sir, you have to understand this has been ongoing for two and a half years. It's very difficult to recollect everything that was submitted. . . . Especially because this is the third time we have gone to trial." (Tr. Hood 225).

Appellant objected, and Judge Hood removed the jury from the courtroom. (Tr. Hood 255). After discussions, Judge Hood admonished all parties present in the courtroom. (Tr. Hood 230). To Appellant, the trial court stated:

Now let me say this: You've got to stop asking these questions you're asking her I mean, the reason you're getting all these responses is because of the questions you're asking here. . . . You've asked her open ended questions. I mean, she said all kinds of stuff during her cross-examination that's not admissible because of the question you asked her.

(Tr. Hood 230).

The trial court went on to say,

The Court: Ms. Becker, I'm telling you, I'm begging with you, I'm pleading with you to answer the questions directly . . . we are one inch away from a mistrial

The Witness: Yes, Your Honor.

The Court: So I'm telling everybody right now, you're all one inch away from a mistrial. And you either start asking questions like you know what you're doing, or get somebody else to do it.

(Tr. Hood 231-32).

The State also called Investigator Leonard Cabe of the Richland County Sheriff's Department. (Tr. Hood 236). During the State's direct the following exchange occurred:

State: So you had an opportunity to meet with Mr. Haney?

Cabe: No, I- no, I didn't.

State: All right. Mr. Haney did not give you an interview, right?

Cabe: That's correct.

Mr. Phillips: Your Honor, may we approach?

(Tr. Hood 240-41).

Appellant objected, arguing that the State shifted the burden. The State defended its line of questioning and argued against Appellant's mistrial motion, attempting to differentiate its question about an interview from improper commentary on a defendant's Fifth Amendment right. (Tr. Hood 242). Ultimately, Judge Hood disagreed and declared a mistrial on the basis that the State's questioning was an improper comment on Appellant's Fifth Amendment right to stay silent. (Tr. Hood 242).

b. Second Trial

Prior to Appellant's second trial, Appellant filed a motion to dismiss based on a purported double jeopardy violation. (Defendant's Exhibit 2 – Motion to Dismiss). On August 19, 2024, Appellant proceeded to a pretrial hearing before the Honorable Martha Rivers. (Tr. Rivers 1). Appellant moved to dismiss all six of the State's indictments on the grounds that the State had intentionally provoked a mistrial in order to get around Judge Hood's adverse pretrial evidentiary rulings. (Tr. Rivers 9). Appellant highlighted Judge Hood's admonitions during Becker's testimony and argued that the State intentionally elicited improper and speculative testimony from Becker to goad Appellant into moving for a mistrial. (Tr. Rivers 12-13). In response, the State reiterated that while mistakes were made, it did not intend to force a mistrial. (Tr. Rivers 37). Further, the State noted that Appellant's questions on cross examination also elicited a number of inflammatory answers that contributed to Judge Hood's reprimand. (Tr. Rivers 37).

Judge Rivers ruled that there was insufficient information to determine the State intended to goad a mistrial. (R.* September 3 Order Denying Motion to Dismiss). Judge Rivers agreed with Judge Hood's evaluation of the circumstances, writing "[t]his court agrees with the trial court and Appellant that the prosecution's testimony was an inappropriate comment upon the defendant's

right to remain silent." (R.* September 3 Order Denying Motion to Dismiss). However, Judge Rivers acknowledged that the trial court's reprimands prior to that point were directed at both parties and that the record did not provide sufficient information to conclude that the State's conduct was intentional and meant to provoke a mistrial. (R.* September 3 Order Denying Motion to Dismiss). Judge Rivers stated:

It is clear the trial was less than ideal. . . . However, when looking at the items suppressed, those items do not appear to be so integral to the heart of this case to be the basis for goading of a mistrial. The pre-trial rulings in this case were not upsetting in this trial. The State was not allowed to play a clip from a Pokémon game, nor was the state allowed to play clips from an animated movie that the victim and defendant allegedly discussed and viewed together.

(R.* September 3 Order Denying Motion to Dismiss).

Judge Rivers ruled that "even seasoned attorneys make mistakes of this nature in trial. Therefore, the fact of the error itself is not enough to prove intent to goad a mistrial in violation of *Kennedy*. Looking at the trial as a whole, defendant has not provided sufficient evidence of intent to goad a mistrial." (R.* September 3 Order Denying Motion to Dismiss).

B. Argument

Appellant contends that during his first trial, the State engaged in intentionally improper conduct in order to goad him into a mistrial and that the State did so because of Judge Hood's unfavorable pretrial evidence rulings. That is incorrect. There is no evidence in the record of any intent by the State to goad a mistrial nor did the State have any motive to do so considering the evidence Judge Hood excluded during Appellant's first trial was, at best, only peripherally relevant. Accordingly, Judge Rivers did not abuse her discretion in denying Appellant's motion.

While generally the Double Jeopardy Clause of the United States and South Carolina Constitutions only attaches to prevent a defendant from being prosecuted twice for the same

offense after an acquittal, a conviction, or an improvidently granted mistrial, "even where the defendant moves for a mistrial, there is a narrow exception to the rule that the Double Jeopardy Clause is no bar to retrial" *State v. Mathis*, 359 S.C. 450, 459, 597 S.E.2d 872, 876-77 (Ct. App. 2004) (quoting *Oregon v. Kennedy*, 456 U.S. 667, 673-79 (1982)).

Since one of the principal threads making up the protection embodied in the Double Jeopardy Clause is the right of the defendant to have his trial completed before the first jury impaneled to try him, it may be wondered as a matter of original inquiry why the defendant's election to terminate the first trial by his own motion should not be deemed a renunciation of that right for all purposes. We have recognized, however, that there would be great difficulty in applying such a rule where the prosecutor's actions giving rise to the motion for mistrial were done "in order to goad the [defendant] into requesting a mistrial."

Mathis, 359 S.C. at 459, 597 S.E. at 877. Accordingly, "[t]he Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions." *United States v. Dinitz*, 424 U.S. 600, 611 (1976).

"Prosecutorial conduct that might be viewed as harassment or overreaching, even if sufficient to justify a mistrial on defendant's motion . . . does not bar retrial absent intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." *Parker*, 391 S.C. at 612, 707 S.E.2d at 802 (quoting *Oregon v. Kennedy*, 456 U.S. 667, 675-76).

Appellant argues that the State's intention to goad a mistrial can be shown by the State's use of Victim's mother, Julianne Becker, to elicit improper testimony. However, Appellant's assertion that the State engaged in "blatant conduct" intended to provoke a mistrial is undercut by

his reliance on a reprimand prompted by the cumulative mistakes of *both* parties. The State does not contest that the Victim's mother provided improper testimony that was non-responsive to the questions asked. However, Appellant has failed to demonstrate how a witness's behavior on the stand is indicative of any intention *by the State* to provoke a mistrial. *See generally Parker*, 391 S.C. at 612, 707 S.E.2d at 802 (holding that "a properly granted mistrial poses no double jeopardy bar to a subsequent prosecution."). Here, both parties encountered similar issues with the same witness, and both parties received improper answers to vague questions. Accordingly, the trial court's reprimand does not support Appellant's contention because it was prompted not by any blatant conduct by the State, but rather by the emotionally charged and largely non-responsive testimony of the mother of a rape victim. *See Mathis*, 359 S.C. at 461, 597 S.E.2d at 878 (holding that the State's failure to properly prepare a case is not itself evidence of intentional goading).

Moreover, Appellant's implication that the trial court was solely reprimanding the State is inaccurate. The trial court's reprimand occurred during *Appellant's* cross-examination and after Appellant objected to one of the witness's answers. In the ensuing break, the trial court made admonishments to everyone—the State, Appellant, and the witness herself. (Tr. Hood 231-32). The trial court then directly addressed Appellant, stating "I mean, the reason you're getting all these responses is because of the questions you're asking her You've asked her open ended questions" before further reprimanding both the State and Appellant to "start asking questions like you know what you're doing." (Tr. Hood 230-32).

Appellant also failed to identify any evidence that the State's question to Investigator Cabe—"Mr. Haney did not give you an interview, right?"—was intended to goad Appellant into moving for a mistrial. (Tr. Hood 240-41). Instead, Appellant attempts to re-litigate the same facts offered to Judge Rivers. Appellant's conclusory statements about "blatant conduct" fails to identify

any evidence that the State intended to violate the rules, as is required for double jeopardy to attach in these cases. *See generally United States v. Johnson*, 55 F.3d 976, 978 (4th Cir.1995) (noting that "*Kennedy* emphasized that intent to provoke a mistrial, rather than mere prosecutorial overreaching, is necessary to render meaningless a defendant's motion for a mistrial").

Moreover, the State had no identifiable reason to seek a mistrial. All evidence that was excluded from Appellant's first trial—text messages between Appellant and Becker, video clips of two explicit movies, and a video clip of a Pokémon game—were either also excluded at Appellant's second trial or not offered at all. Further, the affected pieces of evidence were peripheral to Appellant's case, just as Judge Rivers noted in her order. (Sept. 3 Order Denying Motion to Dismiss). Finally, Appellant's assertions ignore the reality that the State had no incentive to wait for another trial, considering the significant cost of re-trial and the difficulties inherent in prosecuting defendants whose formerly underage victims are visibly adults by the time of trial.

Accordingly, while awarding a mistrial was appropriate in Appellant's first trial, Appellant cannot, without any evidence of prosecutorial ill-intent, now use his mistrial to claim immunity from retrial. As Judge Rivers considered all the same facts Appellant now argues on appeal and because Appellant has failed to offer any factual or legal basis to dispute Judge River's ruling, his argument is without merit. *See Mathis*, 359 S.C. at 460, 597 S.E.2d at 877 (A "court's finding concerning the prosecutor's intent is . . . a factual one which we must accept unless it is clearly erroneous.") (quoting *United States v. Borromeo*, 954 F.2d 245, 247 (4th Cir. 1992); *see also United States v. Council*, 973 F.2d 251, 254 (4th Cir.1992) ("Deference should be given to the trial court in determining whether such an intent existed."); *United States v. Wentz*, 800 F.2d 1325, 1327 (4th Cir.1986) (noting the question of prosecutorial provocation is one of fact on which the findings of

the trial court may not be set aside unless clearly erroneous). Therefore, this Court should affirm Appellant's conviction and sentence.

II. Judge Newman did not abuse his discretion in denying Appellant's irrelevant and unspecific motion to subpoena Victim's electronic devices because the request was overbroad, unspecific, and amounted to a fishing expedition.

A. Relevant Facts

Prior to Appellant's first trial, Appellant filed a motion for confidential records, requesting to obtain Victim's counseling records, report cards, internet history, and download history from her cell phone and iPad. (Motion for Confidential Records). Notably, while the motion extensively discussed the counseling records Appellant wished to obtain, no explanation was provided for what information Appellant wanted from Victim's electronic devices. (Motion for Confidential Records).

On November 3, 2022, Appellant proceeded to a pretrial motions hearing before the Honorable Clifton Newman. (Tr. Newman 1). Appellant informed Judge Newman that while he was aware that the State did not have Victim's internet history or device downloads in its possession, Appellant would "like to see them because I think they would have some- probably some really relevant things on them." (Tr. Newman 11). The State responded that Appellant's request was a fishing expedition. (Tr. Newman 13). In his subsequent order, Judge Newman ruled that while Appellant could subpoena Victim's counseling records, there was "no statute or case law cited requir[ing] the action of this court," and the request for a subpoena for the internet history of the minor child's personal cell phone of iPad data was denied. (Order dated December 28, 2023).

Appellant attempted to resurrect this issue in a motion made prior to his second trial. (Tr. Taylor 113). Judge Taylor acknowledged Judge Newman's prior ruling before asking Appellant, "[w]hat's your basis for believing [the device] has impeachment [evidence]?" (Tr. Taylor 117). Appellant conceded that he did not have knowledge of any specific impeachment information but

argued that with the subpoena, he could "determine whether there is impeachment evidence that exists." (Tr. Taylor 118). Judge Taylor denied the motion. (Tr. Taylor 119).

B. Argument

Rule 13 of the South Carolina Rules of Criminal Procedure states: "A subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." Rule 13(a)(2), SCRCrimP. Moreover, once a court has ruled on a subpoena motion, that ruling remains in force even after a mistrial, as subpoena motions are not inextricably linked to the mechanics of trial itself. *See State v. Dennis*, 447 S.C. 323, 332, 926 S.E.2d 250, 254-55 (2026) ("Not every ruling issued before a defendant's trial must be relitigated after a mistrial [R]ulings before trial that bear no connection to and have no effect on the trial itself. . . . These types of rulings survive a mistrial and remain binding on the parties even after the trial process starts again.").

Appellant contends that Judge Newman abused his discretion in denying Appellant's request to subpoena Victim's devices for unspecified impeachment evidence. But that is wrong. Judge Newman properly exercised his discretion in denying Appellant's motion because Appellant failed to identify any relevant existing evidence that he believed in good faith existed on the Victim's phone, and was instead attempting to engage in a fishing expedition through a minor's personal devices.

Generally, subpoenas must be reasonable and specific, and the documents requested must be relevant. *See Bowman Dairy Co. v. United States*, 341 U.S. 214, 220 n.5 (1951). Accordingly, a judge commits no error in quashing a subpoena if the moving party fails to demonstrate "(1)

relevancy, (2) admissibility, and (3) specificity with respect to the document." *United States v. McDonald*, 444 F. App'x 710, 711 (4th Cir. 2011) (citing *United States v. Nixon*, 418 U.S. 683, 699-700 (1974)). Moreover, such requests cannot be "intended as a fishing expedition." *Id.*; see *Dennis* at 331, 926 S.E.2d at 254 ("This Court has repeatedly emphasized that, when a mistrial is granted, the parties must relitigate any prior rulings or matters inextricably linked to the trial itself.").

Appellant's unsupported assertion that Victim's cell phone and iPad evidence were critical for his defense fails for multiple reasons. First, Appellant's motion failed to establish the existence of any specific evidence on Victim's cell phone or iPad that would impact Victim's credibility. See *McDonald*, 444 F. App'x at 711 (holding a judge commits no error in quashing a subpoena that amounts to a "fishing expedition" (citing *Nixon*, 418 U.S. at 699-700)). Second, Appellant failed to identify how that theoretical evidence was relevant to his case, instead relying on conclusory assertions that the unidentified evidence *could* potentially impact credibility. Finally, Appellant's request for Victim's entire internet history and a download of both of her devices was overbroad. Appellant's request was functionally the kind of impermissible fishing expedition that is explicitly prohibited by Rule 13(a)(2). *Id.*

Accordingly, Judge Newman did not abuse his discretion in denying Appellant's motion to subpoena "internet history and downloads from the minor child's cell phone and iPad" because the request was overbroad, unspecific, and amounted to a fishing expedition. *Id.* (holding that defendant's "overbroad and unspecific" request for any and all of detective's records, files, and documents regarding the defendant's case was properly found by the district court to be a "fishing expedition"); see also *Nixon*, 418 U.S. at 699-700. (Motion for Confidential Records).

III. Judge Taylor did not abuse his discretion by declining to sever Appellant's indictments because the indictments arose under a single chain of circumstances, are proven by the same evidence, are of the same general nature, and no real right of Appellant was prejudiced.

A. Relevant Facts

During Appellant's pretrial hearing before his second trial, Appellant moved to sever his indictments on the grounds that they had been improperly joined. (Tr. Taylor 21). Appellant argued that because the indicted offenses occurred on different dates, involved different acts, allegedly required different evidence as proof of guilt, and would not be admissible under Rule 404(b) of the South Carolina Rules of Evidence if each charge was tried separately, the charges should all be tried separately. (Tr. Taylor 21-24). Appellant also filed a written motion on the issue. (Motion for Severance).

The State responded that all of the incidents happened between Appellant and the same Victim during COVID, that they all occurred in the same house and in the same manner, and that all of the indictments were part of a factual pattern of sexual abuse that required the same course of testimony from Victim as evidence. (Tr. Taylor 27-28). Judge Taylor ultimately denied the motion, ruling that under *State v. Tallent*,² indictments must arise out of a single chain of circumstances to avoid being severed. (Tr. Taylor 28-29). Judge Taylor found that in the light most favorable to the State, these indictments were from a single chain of circumstances from a course of alleged sexual abuse over a period of time that must be proved by the evidence of the same general nature, and that accordingly there was no prejudice to the defendant. (Tr. 28-29).

B. Argument

Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general

² 430 S.C. 438, 845 S.E.2d 508 (Ct. App. 2020).

nature, and (4) no real right of the defendant has been prejudiced. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996) *cert. denied*, 520 U.S. 1200 (1997). "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." *State v. Rice*, 368 S.C. 610, 614, 629 S.E.2d 393, 395 (Ct. App. 2006). "Offenses are considered to be of the same general nature where they are interconnected." *Rice*, 368 S.C. at 614, 629 S.E.2d at 395. "Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." *Id.*

Appellant contends Judge Taylor abused his discretion in denying Appellant's motion to sever his indictments, which covered five instances of penile penetration of Victim's anus and one instance of digital penetration of her vagina, spanning a two-year period and taking place all in the same home. Because the charged offenses covered a continuous practice of sexual assault of the same victim, as shown by the Victim's testimony, an interconnected pattern of abuse existed and was addressed using the same defense by Appellant at trial; therefore, Judge Taylor's ruling was correct as a matter of law. *See State v. McGaha*, 404 S.C. 289, 291-99, 744 S.E.2d 602, 603-07 (Ct. App. 2013) (affirming, under facts similar to this case, joinder of CSC with a minor and lewd act upon a child charges arising from the abuse of two sisters who were both abused by an individual in the same manner, in the same place, and during the same time frame); *State v. Beekman*, 415 S.C. 632, 637-38, 785 S.E.2d 202, 205 (2016) (holding there was "no dispute that Beekman's molestation of his two stepchildren involv[ed] connected transactions closely related in kind, place, and character," when "Beekman's victims were siblings and the molestation occurred (1) at the same place—the victims' home; (2) over the same period of time—the

eight-month period between November 2007 and July 2008; and (3) with the same modus operandi—Beekman taking advantage of the children's habit of watching television with him"); *McGaha*, 404 S.C. at 291-99, 744 S.E.2d at 603-07 (holding that joinder of CSC with a minor and lewd act upon a child charges arising from the abuse of two sisters was proper when they were both abused by the same individual in the same manner, place, and during the same time frame).

a. Single Chain

Appellant emphasizes that the charged offenses occurred at different locations during unknown times and dates. However, all charged offenses were alleged to have occurred within Appellant's home—five assaults in Victim's bedroom and one in Appellant's bedroom—over a two-year period. (Indictment Nos. 2022-GS-40-02391, -02392, -02393, -02395, -02396, & -02397). Moreover, there is no requirement that the charges "[arise] out of a single isolated incident" so long as they "arose from, in substance, a single course of conduct or connected transaction." *See State v. Tallent*, 430 S.C. at 445-47, 845 S.E.2d at 512-14 (quotation omitted). Importantly, all charged offenses concerned the same victim. *See Beekman*, 415 S.C. at 637-38, 785 S.E.2d at 205 (holding there was "no dispute that Beekman's molestation of his two stepchildren involv[ed] connected transactions closely related in kind, place, and character," when "Beekman's victims were siblings and the molestation occurred" in the same manner, place, and during the same time frame); *McGaha*, 404 S.C. at 291–99, 744 S.E.2d at 603-07 (Ct. App. 2013) (holding that joinder of CSC with a minor and lewd act upon a child charges arising from the abuse of two sisters was proper when they were both abused by the same individual in the same manner, place, and during the same time frame).

Here, because Appellant's improper conduct was continuous and spanned the entire charged period, the charges represent a single chain of circumstances. *Id.* (holding defendant's

indictments for CSC, lewd acts, and contributing to the delinquency of a minor over a period of several years and in different homes with the same victim "arose from, in substance, a single course of conduct or connected transactions").

b. Same Evidence

Appellant asserts that because the charged offenses required different evidence, the motion to sever should have been granted. However, joinder merely requires that the charges be proved by common evidence, like testimony from the same witnesses. *See Beekman*, 415 S.C. at 638, 785 S.E.2d at 205 (stating that although the defendant's charges were distinct crimes, testimony from many of the same witnesses was used to prove both charges and rejecting the defendant's argument that joinder required the charges to rely on identical evidence). Accordingly, because all of Appellant's indictments were proven by the same witness—namely, his Victim—the charges were all proved by common evidence. *See Tallent*, 430 S.C. at 446, 845 S.E.2d at 513 ("Second, the charges were proved by common evidence. All four charges were proved by the same witnesses—stepdaughter and her brothers."); *see also State v. Kirton*, 381 S.C. 7, 27, 671 S.E.2d 107, 117 (Ct. App. 2008) ("When a criminal defendant's prior bad acts are directed toward the same victim and are very similar in nature, those acts are admissible as a common scheme or plan." (citing *State v. Weaverling*, 337 S.C. 460, 471, 523 S.E.2d 787, 792-93 (Ct. App. 1999))).

c. Of the same General Nature

Appellant asserts that his motion should have been granted because the six indictments "illustrate the different types of sexual assaults." (Int. App. Br. 25). However, joinder does not require that all indicted acts be identical. Generally, "[o]ffenses are considered to be of the same general nature when they are interconnected." *See Rice*, 368 S.C. at 614, 629 S.E.2d at 395. Here, because Appellant's actions were part of an interconnected pattern of sexual abuse of the same

victim, all committed under the same roof and following the same modus operandi, the sexual assaults are of the same general nature. *See Tallent*, 430 S.C. at 446, 845 S.E.2d at 512-13 (holding that, even though Appellant was indicted and tried for both sexually abusing his stepdaughter and providing alcohol to her and her brothers in the same trial, the charges were all of the same general nature because "[t]he State presented evidence showing Tallent abused stepdaughter in the same locations and during the same time periods that he supplied her and her younger brother . . . with drugs and alcohol").

d. No prejudice

Finally, contrary to Appellant's assertions that Judge Taylor erred because the other charges were not admissible under Rule 404(b) of the South Carolina Rules of Evidence (presumably because of the alleged prejudice caused by the denial of Appellant's motion), the admissibility of the individual indictments in separate trials were the indictments to be severed is irrelevant to whether or not the indictments were properly joined in the first place. Moreover, the incidents would be admissible under 404(b) as evidence of a common scheme or plan. *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. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); *see also Kirton*, 381 S.C. at 27, 671 S.E.2d at 117 (Ct. App. 2008) ("When a criminal defendant's prior bad acts are directed toward the same victim and are very similar in nature, those acts are admissible as a common scheme or plan." (citing *Weaverling*, 337 S.C. at 471, 523 S.E.2d at 792-93)). Appellant suffered no strategic prejudice, as his defense to every count was the same: all of the allegations were fabricated by Victim because Victim was upset about the birth of her new sister.

Further, the jury's verdict is evidence against Appellant's prejudice argument, as the jury only convicted Appellant on one count. Given the jury's extended deliberation time, there is no evidence in the record that Appellant suffered unfair prejudice because of the joinder. Accordingly, Judge Taylor did not abuse his discretion by denying Appellant's motion.

IV. Judge Taylor did not abuse his discretion by denying Appellant's motion to suppress a screenshot of Victim's chat log messages disclosing Appellant's abuse because the State disclosed the messages to Appellant as soon as it became aware of their existence.

A. Relevant Facts

At the start of Appellant's second trial, Appellant moved to suppress a newly disclosed set of messages between Victim and her online friend "Loaf." (Motion to Suppress). The following timeline was established during pretrial discussions: on March 4, 2024, Appellant sent the State an email requesting all relevant chat logs they had from Victim's devices, and the State verified that all messages in their possession had already been disclosed. (Tr. Taylor 86). However, on April 1, 2024, the State received an additional, previously unknown screenshot of Victim's chat messages with "Loaf" from Victim. (Tr. Taylor 82-83). The State disclosed this new message to Appellant the same day. (Tr. Taylor 82-83).

The screenshot the State received and sent Appellant on April 1, 2024 reads:

So uhhh my stepdad used to uhhh rape me in my sleep or just play with me and i could honestly care less about it but thinking about it or more specifically how my mom would feel if i told her makes me panic and start crying and i already keep my toys from when i was lonely but happier around it makes me feel comfy or safe like i just forget about my problems but i never put them on my bed like i do with the giant hanako plush i have cause i had no reason to and uhh i do occasionally panic with every little noise i hear and can't sleep cause of it so him being there and being able to hug someone like i used to calms me plus when my stepdad is around and tries to grab me i feel a lot better if i have hanako separate us-

(Tr. Taylor 194-95) (State's Ex. 50). The message also specified that the incident Victim was disclosing occurred in January 2023, discussed Victim's reasons for not disclosing the abuse to her mother, and described Victim's pain levels during the assaults. (State's Ex. 50). On April 6, 2024, Victim sent several new chat log screenshots to the State, which the State again immediately forwarded to Appellant. (Tr. Taylor 87).

Appellant argued that the new screenshots were untimely under Rule 5 of the South Carolina Rules of Criminal Procedure and the General Session Docket Management Order before asking for the messages to be excluded. (Tr. Taylor 77-78). The State countered that no Rule 5 violation existed because it disclosed the messages to Appellant as soon as it became aware of the messages and a Rule 5 violation could only occur when the State knew of and had possession of the undisclosed evidence. (Tr. Taylor 94). The State asserted that after the first mistrial, Victim moved to Germany and no one at the solicitor's office was in contact with her until the second trial was initiated. (Tr. Taylor 203). The State emphasized that the information discussed in the newly disclosed chat logs—broken up and admitted at trial as State's Exhibits 49, 50, and 54—was materially similar or the same information as was in other messages disclosed to Appellant prior to Appellant's first trial back in 2024. (Tr. Taylor 204-05). Notably, the State explained that while the contents of State's Exhibits 49, 50, and 54 was "cumulative to what [Appellant] already had" in 2024, the State was interested in admitting State's Ex. 50 because it was the most concise version of the information. (Tr. 205-06).

After questioning the State on the cumulative nature of State's Exhibit 50, Judge Taylor repeatedly pressed Appellant on the potential prejudice of the new message, asking "[s]o what's the unfairness if the document is admitted? I've asked that several times." (Tr. Taylor 193). Appellant reiterated that the timing of the new screenshot was inappropriate but was unable to

identify any new information or specific prejudice arising from it. (Tr. Taylor 194-201). Following a lengthy argument from both sides, Judge Taylor denied Appellant's motion to suppress the April 1, 2024 screenshot but granted Appellant's motion to suppress the April 6 screenshot disclosures. (Tr. Taylor 212-13).

B. Rule 5, SCRCrimP.

Rule 5 of the South Carolina Rules of Criminal Procedure requires that "upon the request of the defendant the prosecution shall permit the defendant to inspect . . . documents . . . which are within the possession, custody, or control of the prosecution." Rule 5(a)(1)(C) SCRCrimP. "Under Rule 5, the court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the nondisclosed evidence, or enter such order as it deems just under the circumstances." *State v. Kerr*, 330 S.C. 132, 150, 498 S.E.2d 212, 221 (Ct. App. 1998) (citation omitted).

Furthermore, on May 24, 2023, our Supreme Court issued a General Sessions Docket Management Order requiring that:

The Solicitor shall not list any case on the proposed trial docket that the Solicitor does not reasonably expect to be ready for trial during the term of court. The Solicitor shall not list any case in which the State (the Solicitor and law enforcement) has not complied with Rule 5 and Brady at the time the proposed trial docket is transmitted to the CJAP and the Clerk of Court. As used in this Order, the term "discovery" is denied as any material subject to discovery under Rule 5, SCRCrimP.

General Session Docket Management Order (S.C. Sup. Ct. dated May 24, 2023, as amended on January 15, 2025).

C. Argument

Appellant contends that under the requirements of *Brady*, Rule 5, and the Trial Docket Order, Judge Taylor erred in denying his motion to suppress screenshots between Victim and

Victim's friend that corroborated Victim's testimony. However, because the State disclosed the evidence at issue as soon as it entered into their possession, Judge Taylor did not abuse his discretion in admitting State's Ex. 49, 50, and 54.

First, there was no Rule 5 violation as the State did not have the screenshot in their possession or otherwise know of their existence until April 1. (Tr. Taylor 82-83). Rule 5 requires that "upon the request of the defendant the prosecution shall permit the defendant to inspect . . . documents . . . which are within the possession, custody, or control of the prosecution." Rule 5, SCRCrimP. Here, the State fully complied with the requirements of Rule 5 by making all messages in their possession available to Appellant as soon as they were in the State's possession. The State cannot produce documents that are unknown to the State and outside of the State's possession. Therefore, because the State produced the screenshots in a timely manner after receiving them from Victim, the State complied with the requirements of Rule 5.

Moreover, the State did not run afoul of the General Sessions Docket Management Order because, as stated above, the State was unaware of the evidence when they listed Appellant's case on the proposed trial docket. The trial docket order does not require the State to be omnipotent; it requires only that prosecutors wait until they have disclosed all evidence in their possession before listing the case. Here, the State did exactly that. Victim provided the State with last minute, unsolicited screenshots, which the State expeditiously turned over to Appellant. Therefore, the State complied with the relevant disclosure rules. Thus, because the State had no knowledge of and was not in possession of Exhibit 49 prior to April 1, 2024, no Rule 5 or Docket Order violation occurred, and Judge Taylor did not abuse his discretion in denying Appellant's motion.

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D. Harmless Error

Moreover, even in the case that the State's evidence was untimely under any of the above doctrines, the message's admission was ultimately harmless because Appellant was already well aware the State planned to admit materially similar evidence of Victim's messages with her friend that were disclosed prior to April 1 and because the State had several other messages with the same contents that were timely disclosed in 2024 and were available to admit in the event that State's Ex. 49, 50, and 54 was excluded. *See Kirton*, 381 S.C. at 37, 671 S.E.2d at 122 ("[A]n insubstantial error not affecting the result of the trial is harmless when guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached."); *id.* (The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.").

V. Judge Taylor did not abuse his discretion in admitting State's Exhibit 45—a photograph of Becker's work schedule—because the exhibit was a proper duplicate admissible under Rule 1003 of the South Carolina Rules of Evidence.

A. Relevant Facts

During Appellant's second trial, Appellant made a pretrial motion to exclude a picture of Becker's work schedule. (Tr. Taylor 167). The State clarified that Becker's work schedule would show that on the night of one of the incidents, Becker was working away from the home, which would corroborate Victim's testimony that her mother wasn't home that night. (Tr. Taylor 167). Judge Taylor denied Appellant's authentication argument after some debate, at which point Appellant objected on best evidence grounds, claiming that the original was needed. (Tr. Taylor 170). Judge Taylor summarily denied that motion as well. (Tr. Taylor 170).

At trial, Juliane Becker testified that State's Exhibit 45 was a photograph of her work schedule which listed her January 11-12, 2020 overnight work assignment. (Tr. Taylor 264). State's Exhibit 45 was admitted over Appellant's objection. (Tr. Taylor 264).

B. The Best Evidence Rule

Better known as the best evidence rule, Rule 1002 of the South Carolina Rules of Evidence provides: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."

Rule 1003 of the South Carolina Rules of Evidence provides:

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Rule 1001 of the South Carolina Rules of Evidence defines "duplicate" as "a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

By comparison, Rule 1004 of the South Carolina Rules of Evidence provides that "[t]he original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if . . . [a]ll originals are lost or have been destroyed . . . [n]o original can be obtained . . . [the] party does not produce the original . . . [t]he writing, recording, or photograph is not closely related to a controlling issue."

While Rule 1002 requires the content of a writing, recording, or photograph to be presented for a witness to testify about the contents, Rules 1001 and 1003 permit the admission of photographs of writings, or "duplicates," in place of the original writings so long as there are no genuine questions as to the authenticity of the original. Alternatively, if no duplicate or original can be procured, testimony about the original may be permitted under Rule 1004. Notably, in South Carolina "[t]here is no case law . . . on the admissibility of a duplicate in [the context of Rule 1003], only on the admissibility of a duplicate as secondary evidence." Rule 1003, SCRE, Notes.

C. Discussion

The Best Evidence Rule is intended to prevent inaccurate or fraudulent testimony about absent writings at trial. Under SCRE Rule 1003, processes of reproduction that produce an exact copy of the original writing meet that purpose of inhibiting fraud. Accordingly, a photograph of a document is sufficient to permit witness testimony about its contents under the best evidence rule. *See United States v. Moore*, 710 F.2d 157, 158 (4th Cir. 1983) (holding that the State's offered photocopies of both sides of a piece of paper found in the wallet of alleged participant in a robbery was properly admitted as a duplicate over defendant's best evidence objection); *see also Commonwealth v. Talley*, 265 A.3d 485, 535 (Pa. 2021) (holding that a screenshot of a text message producing an exact copy of the messages, alongside witness testimony that the messages were exactly as they appeared on the witness's phone when she received them, met the requirements of the Best Evidence Rule).

The issue of whether an original was lost, destroyed, or unavailable as addressed in Rule 1004 is implicated only when a party is unable to present *any* version of the writing whatsoever but still wishes for the witness to testify to the contents. Here, the State had a version of the writing, just not an original. Accordingly, because the photograph of Becker's work schedule was an admissible duplicate under Rule 1003 and no genuine questions of the authenticity of the original were raised, Judge Taylor did not abuse his discretion in admitting a photograph of Becker's authenticated work schedule.

D. Harmless Error

Further, even if Judge Taylor erred in admitting State's Exhibit 45, any such error was harmless. Becker's work schedule showing that she was at work during one of Victim's assaults was not an essential or particularly impactful piece of the State's case. *See generally State v. Gault*,

375 S.C. 570, 574, 654 S.E.2d 98, 100 (Ct. App. 2007) (noting that "for an error of law to warrant reversal based on admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the verdict was influenced by the challenged evidence or the lack thereof").

Moreover, the photograph was cumulative to Becker's testimony that she worked outside the home overnight on January 11, 2020. *See State v. Galloway*, 436 S.C. 453, 467-68, 872 S.E.2d 646, 654 (Ct. App. 2022) (holding that improper testimony about a letter discussing defendant's abusive behavior in violation of the best evidence rule was harmless when it was cumulative to other admissible testimony about defendant's violent behavior); *Kirton*, 381 S.C. at 37, 671 S.E.2d at 122 (Ct. App. 2008) ("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.").

VI. Judge Taylor did not abuse his discretion in overruling Appellant's vouching objections because the statements to which Appellant objected and now complains of on appeal did not constitute vouching.

A. Relevant Facts

During Appellant's second trial, the State stated in opening arguments that, "[y]ou'll listen to [Victim], what she remembers, what she felt, what she experienced. Pay attention to what she tells you and ask yourself, why did she come to this courtroom today and tell you what she experienced if it is not true?" (Tr. Taylor 232). Appellant objected, and Judge Taylor overruled the objection. (Tr. Taylor 232-33).

During Appellant's cross-examination of Victim and following another mistrial motion from Appellant, Appellant asked Victim how many meetings she had with the State, and whether she had practiced what to say. (Tr. 585-86). On re-direct examination, the State asked Victim:

State: And finally Mr. Phillips asked you about your meetings with me. [Victim], what did I tell you was the number one rule . . . ?
When I met with you, what have I told you?

Victim: Speak your truth and nothing but the truth. That's about it.

(Tr. Taylor 599). Appellant's objection was overruled. (Tr. Taylor 599).

During the State's direct examination of Dr. Schaller, the State asked: "And, Dr. Schaller, if our- if the Court system had to rely on you coming to court and saying solely based . . . " and "And are you misleading this jury by saying . . . ?" (Tr. 426-27). Both questions were interrupted by Appellant's bolstering objections and were not answered by the witness. (Tr. 426-27).

During closing arguments, the State argued that "[b]ecause Dr. Schaller didn't see [Victim] until 2022 . . . she also studies and knows the demeanor of a child And she ethically and honestly comes into Court and tell you-." (Tr. Taylor 720). Appellant objected to the comment as improper vouching, which Judge Taylor sustained. (Tr. Taylor 721).

The State then argued, "[a]nd when asked by Ms. Foster, 'Why, [Victim], would you come in here and make this up?' you won't forget this, she says, 'Why would I do this to myself? Why would I put myself through this? Why would I make this up?'" (Tr. 721-22). Appellant's vouching objection was overruled. (Tr. 721-22).

During the jury charge Judge Taylor instructed the jury:

Necessarily, you must determine the credibility of witnesses who have testified. Credibility simply means believability. It is your duty, as jurors, to analyze and evaluate the evidence and determine which evidence convinces you of its truth. In determining believability of a witness who has testified in the case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe part of the testimony of a witness and reject the remaining part of the testimony of that very same witness. You may believe some of the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

(Tr. Taylor 792).

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B. Argument

"Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). However, where the State's argument merely "urge[s] the jury to accept the testimony most favorable to the government" when the jury is "faced with contradictory testimony" about the same circumstances, there is no improper vouching. *United States v. Pungitore*, 910 F.2d 1084, 1125 (3d Cir. 1990).

Here, Appellant contends that Judge Taylor abused his discretion by denying Appellant's objection to the State's 'improper' comments about Victim's credibility. However, Appellant fails to identify how the States comments were improper or what prejudice those comments allegedly had.

Initially, Appellant takes issue with a statement made by the State in closing concerning Dr. Schaller "ethically and honestly come[ing] into Court and tell[ing] you—"to which Appellant objected and the trial court sustained. (Tr. Taylor 721-22). Because the trial court sustained Appellant's objection to that comment and Appellant did not move to cure or for a mistrial, Appellant lacks an appealable issue regarding this statement. *See State v. Wilson*, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010) ("When an objecting party is sustained, the trial court has rendered a favorable ruling, and therefore, it becomes necessary that the sustained party move to cure, or move for a mistrial if such a cure is insufficient, in order to create an appealable issue.").

Addressing Appellant's remaining objections, the trial court did not abuse its discretion in overruling Appellant because, contrary to Appellant's assertions, the State's comments did not improperly vouch or bolster Victim's credibility.

Generally, a prosecutor's vouching for the credibility of a government witness raises two concerns: (1) such comments can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury; and (2) the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence. *United States v. Young*, 470 U.S. 1, 18 (1985); *United States v. Molina-Guevara*, 96 F.3d 698, 704 (3d Cir.1996).

In Appellant's case, the State's comments did not cross the line into vouching because the State neither offered its own opinion nor improperly insinuated that their witnesses were credible because of some evidence known to the State but unknown to the jury. The State's comment in opening that the jury should "pay attention" to Victim's testimony and "ask [themselves], why did she come to this courtroom today and tell you what she experienced if it is not true?" was not a violation of Appellant's rights. The State is allowed to "urge[s] the jury to accept the testimony most favorable to the government." *Pungitore*, 910 F.2d at 1125.

Similarly, the State's statement in closing reiterating Victim's testimony around "why would I make this up?" was not vouching or bolstering, as it was mere recitation of Victim's testimony. *Id.* Additionally, the State's question to Dr. Schaller concerning the court system relying on her testimony to convict Appellant in no way bolstered Victim or Dr. Schaller's testimony because Appellant objected to the question before the State asked it in full, and when the State did ask it in full, the question concerned expert testimony to prove rape when a victim presented no physical injury. (Tr. Taylor 426-27). Dr. Schaller stated that not all victims present physical injuries in rape cases. (Tr. Taylor 427).

Finally, the State's line of questioning to Victim on re-direct was not vouching or bolstering because it was intended not to bolster credibility, but to provide context and clarity around Appellant's earlier insinuation of prosecutorial coaching. The State understands that if the question came during direct examination, then Appellant might have had a meritorious vouching objection. *State v. Kelly*, 343 S.C. 350, 369-70, 540 S.E.2d 851, 860-61 (2001) (holding that State improperly bolstered witness's credibility by hinging it on the government's imprimatur when it ended witness's direct exam by asking "[w]hat did I tell you that I absolutely required regarding your testimony to this jury today?"), *rev'd and remanded on other grounds*, 534 U.S. 246 (2002). However, the record demonstrates that the State's question was not intended to bolster the witness but was instead an attempt to clarify a specific interaction for the jury after Appellant heavily implied that the State used private meetings with Victim to direct Victim on how to testify. *See State v. Foster*, 354 S.C. 614, 623, 582 S.E.2d 426, 431 (2003) (noting one who opens the door to evidence cannot complain of its admission); *State v. Robinson*, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991) ("Since appellant opened the door to this evidence, he cannot complain of prejudice from its admission."); *State v. Beam*, 336 S.C. 45, 53, 518 S.E.2d 297, 301 (Ct.App.1999) ("Beam cannot complain about the admission of evidence where he opened the door to the evidence."). Moreover, under the circumstances no "special knowledge" of the witness's credibility was implied. *See Shuler*, 344 S.C. at 629, 545 S.E.2d at 818 (finding no vouching when the solicitor did not "imply special knowledge" of the witness's credibility).

Therefore, Judge Taylor did not abuse his discretion by overruling Appellant's objections.

C. Harmless Error

If the State's comments were improper, the trial judge's failure to sustain Appellant's objections constitutes harmless error. As our Supreme Court held in *State v. Reyes*, minor

bolstering or vouching errors are cured where the trial judge's "credibility charge as a whole explained to the jury that it was the sole arbiter of witness credibility thus removing any improper influence that arose from the solicitor's questioning. Jurors are presumed to follow the law as instructed to them." 432 S.C. 394, 408-09, 853 S.E.2d 334, 342 (2020) (citing *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999)).

Reyes dealt with a similar bolstering issue, where the solicitor's imposition of "I" and "we" language into questions about the victim's ability to distinguish truth from lies was found to be improper bolstering. However, even though our Supreme Court in *Reyes* found that overwhelming evidence of the defendant's guilt did not exist, it affirmed on the grounds that the judge's "[instruction to] the jury to assess the credibility of a child witness through a more suspect lens," was sufficient to make the State's error harmless. *Id.* at 341-42, 432 S.C. at 408-09. Accordingly, as the trial court provided a similar instruction here, any error in the testimony elicited by the State at Appellant's trial was harmless. (Tr. Taylor 792).

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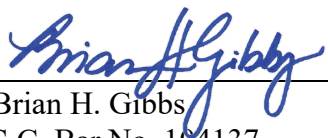
CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for second-degree CSC with a minor as well as his associated sentence.

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