STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2013-002390

THE STATE,

Respondent,

vs.

BRUCE DEWAYNE HALL,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit

Post Office Drawer 3368
Aiken, SC 29802
(803) 642-1557

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 10

The trial judge did not abuse his broad discretion by admitting into evidence a report containing statements the victim made to a nurse at the hospital shortly after the victim had been sexually assaulted by Appellant because the statements contained in the report were made by the victim for the purpose of obtaining medical diagnosis and treatment and were reasonably pertinent to the diagnosis of the victim, which meant the statements were admissible pursuant to the medical diagnosis and treatment exception to the hearsay rule. However, even assuming the trial judge somehow erred in admitting the report, any error was entirely harmless in light of the cumulative nature of the report to other properly admitted evidence and in light of the overwhelming evidence of Appellant's guilt presented during trial, including the testimony conclusively establishing Appellant's semen was discovered in the vagina of his eleven-year-old victim. 10

CONCLUSION 23

TABLE OF AUTHORITIES

South Carolina Cases:

Ex parte Dep't of Health & Envtl. Control, 350 S.C. 243, 565 S.E.2d 293 (2002). 11

Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995). 11

State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). 10

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). 17

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989). 10, 18

State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010). 12

State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978). 18, 19

State v. Blalock, 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003). 18

State v. Brown, 286 S.C. 445, 334 S.E.2d 816 (1985). 17

State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). 21

State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007). 11

State v. Burroughs, 328 S.C. 489, 492 S.E.2d 408 (Ct. App. 1997). 15

State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). 12

State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). 18

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). 12

State v. Gathers, 295 S.C. 476, 369 S.E.2d 140 (1988). 20

State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980). 11

State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003). 18

State v. James, 255 S.C. 365, 179 S.E.2d 41 (1971). 12

State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011). 19

State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). 17

State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971). 21

State v. Ladner, 373 S.C. 103, 644 S.E.2d 684 (2007). 12

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). 12

State v. McFarlane, 279 S.C. 327, 306 S.E.2d 611 (1983). 19

State v. Mitchell, 286 S.E.2d 572, 336 S.E.2d 150 (1985). 12, 21

State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007). 17

State v. Oglesby, 384 S.C. 289, 681 S.E.2d 620 (Ct. App. 2009). 18

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006). 21, 22

State v. Price, 278 S.C. 266, 294 S.E.2d 426 (1982). 14

State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006). 19

State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). 10

State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). 19

State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991). 17

State v. Tench, 353 S.C. 531, 579 S.E.2d 314 (2003). 20

State v. Thomason, 355 S.C. 278, 584 S.E.2d 143 (Ct. App. 2003). 10

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010). 11

State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005). 21

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). 20

State v. Wiley, 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010). 18

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). 11

Todd v. Joyner, 385 S.C. 421, 685 S.E.2d 595 (2009). 17

United States Supreme Court Cases:

United States v. Hastings, 461 U.S. 499 (1983). 18

White v. Illinois, 502 U.S. 346 (1992). 13

Other State and Federal Cases:

State v. Aguallo, 318 N.C. 590, 350 S.E.2d 76 (N.C. 1986). 16

State v. Lewis, 172 N.C. App. 97, 616 S.E.2d 1 (N.C. Ct. App. 2005). 14

United States v. Peneaux, 432 F.3d 882 (8th Cir. 2005). 15, 16

Webster v. State, 151 Md. App. 527, 827 A.2d 910 (Md. Ct. Spec. App. 2003). 15

Willingham v. Crooke, 412 F.3d 553 (4th Cir. 2005). 13, 16

Other Authorities:

S.C. Code Ann. § 63-7-310. 16

S.C. Code Ann. § 63-7-410. 16

Rule 801, SCRE. 12, 15

Rule 802, SCRE. 12

Rule 803, SCRE. 13, 17

Rule 804, SCRE. 13

STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his broad discretion by admitting into evidence a report containing statements the victim made to a nurse at the hospital shortly after the victim had been sexually assaulted by Appellant because the statements contained in the report were made by the victim for the purpose of obtaining medical diagnosis and treatment and were reasonably pertinent to the diagnosis of the victim, which meant the statements were admissible pursuant to the medical diagnosis and treatment exception to the hearsay rule. However, even assuming the trial judge somehow erred in admitting the report, any error was entirely harmless in light of the cumulative nature of the report to other properly admitted evidence and in light of the overwhelming evidence of Appellant's guilt presented during trial, including the testimony conclusively establishing Appellant's semen was discovered in the vagina of his eleven-year-old victim.

STATEMENT OF THE CASE

On August 7, 2006, Appellant Bruce Dewayne Hall was arrested in Lexington County after unsuccessfully trying to flee from officers who were attempting to apprehend him for sexually assaulting his eleven-year-old niece two days earlier in Aiken County. In January of 2007, the Aiken County Grand Jury indicted Appellant for one count of second-degree criminal sexual conduct with a minor, one count of committing or attempting to commit a lewd act upon a child, and one count of possession of a weapon during the commission of a violent crime. On April 22, 2008, a jury trial was commenced in the Aiken County Court of General Sessions with the Honorable D. Garrison Hill, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of second-degree criminal sexual conduct with a minor and committing or attempting to commit a lewd act upon a child and acquitted Appellant of possession of a weapon during the commission of a violent crime. Following the verdict, the trial judge sentenced Appellant to consecutive terms of imprisonment of twenty years for the criminal sexual conduct conviction and ten years for the lewd act conviction. Thereafter, on April 28, 2008, Appellant filed a motion for reconsideration of his sentence with the Aiken County Clerk of Court. Subsequently, on October 28, 2013, the trial judge denied the motion after belatedly discovering it had been filed. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

At approximately 7:30 p.m. on the evening of August 5, 2006, Betsy Sue Hendrix ("Mother"), who was the mother of the eleven-year-old victim ("Victim"), returned to the home in Batesburg, South Carolina, she shared with Victim. (Tr. p. 86). Upon arriving home, she discovered Victim was not there even though Victim was supposed to have returned from a visit to Mother's sister's house at noon that day.[1] (Tr. p. 86). Concerned, Mother immediately went to her sister's house to find Victim, but Victim was not there. (Tr. pp. 86-87). Mother then returned home and called Theresa Hendrix ("Aunt"), who was Victim's aunt and another of Mother's sisters, to alert her of Victim's disappearance. (Tr. pp. 76-77; p. 87). Aunt responded by quickly coming over to Mother's house, and the two began frantically searching for Victim in the wooded area surrounding the home. (Tr. p. 77; pp. 87-88).

Ultimately, the search proved to be unsuccessful, and Mother and Aunt returned to Mother's home at roughly 10:00 p.m. (Tr. pp. 77-78; pp. 87-88; p. 101). Shortly after they did so, they observed Victim walking down the road towards the home accompanied by Appellant Bruce Dewayne Hall, who was Victim's thirty-nine-year-old biological uncle.[2] (Tr. pp. 77-78; p. 88; p. 101). At that time, Victim was dirty and had debris in her hair, and her face was red. (Tr. p. 79). Based on Victim's condition and lengthy disappearance, Aunt asked Victim if Appellant had "messed" with her. (Tr. pp. 79-80; p. 89). In response to the question, Victim began to cry and confirmed Appellant had sexually assaulted her in the woods. (Tr. pp. 79-80). Aunt then immediately called 911

[1] Mother's house and Mother's sister's house were located in close proximity to each other and were separated by a large wooded area containing numerous footpaths. (Tr. p. 45; p. 93; p. 95).

[2] Appellant was the brother of Mother and Aunt and lived in a nearby home with the three's mother. (Tr. p. 81; pp. 85-86). Appellant was also one of Victim's three uncles. (Tr. p. 56).

while Appellant hurried behind Mother's house and escaped into the woods. (Tr. p. 80; p. 89).

Shortly thereafter, Victim was taken to the hospital in an ambulance. (Tr. p. 80; pp. 89-90). At the hospital, Victim met with Dr. Walter Jackson, a board-certified emergency medicine doctor, and Sylvia Scott, an emergency room nurse, and reported she had been sexually assaulted. (Tr. pp. 148-149; pp. 151-153; pp. 180-182). In response, Scott spoke with Victim about her medical history and the details of the sexual assault, and Dr. Jackson conducted a physical and genital examination of Victim. (Tr. p. 158; pp. 183-185). During the examination, Dr. Jackson discovered symptoms consistent with sexual assault, including the presence of dirt in Victim's vaginal area, redness and irritation inside of Victim's vagina and around her hymen, and the presence of a white discharge consistent with semen inside of Victim's vagina.[3] (Tr. pp. 183-185; p. 201). As a result, Dr. Jackson and Scott collected a blood sample and vaginal, rectal, and oral swabs from Victim, and Dr. Jackson prescribed some antibiotics to Victim as a preventative measure.[4] (Tr. pp. 153-154; pp. 160-161; p. 185).

After the examination concluded, Investigator Kimberly Sievers of the Aiken County Sheriff's Office met with Victim and interviewed her about the sexual assault.[5] (Tr. p. 124). During the interview, Victim disclosed she was sexually assaulted by Appellant in the woods between her home and her aunt's home. (Tr. pp. 125-126; p. 137). Specifically, Victim informed the investigator Appellant took her into the woods,

[3] During the examination, Scott also observed Victim had dirt in her vaginal area, in her underwear, and on her skin. (Tr. p. 152).

[4] Scott also collected a urine sample from Victim during the examination to ensure she was not pregnant and did not have a urinary tract infection. (Tr. pp. 163-164).

[5] Upon meeting with Victim, Investigator Sievers noticed Victim had leaf-like debris in her hair and her feet were very dirty and injured in a manner consistent with her having walked through the woods while not wearing shoes. (Tr. pp. 128-131).

kept her there for several hours, threatened her with a knife, forced her legs apart, and put his penis into her vagina. (Tr. pp. 137-142). Furthermore, Victim stated Appellant threatened to kill her if she told anyone about the sexual assault. (Tr. pp. 137-138).

Meanwhile, deputies from the Aiken County Sheriff's Office responded to Victim's residence and attempted to track down Appellant with a bloodhound. (Tr. pp. 91-92; pp. 112-114). During the search, the bloodhound picked up Appellant's scent at the rear of Mother's residence and led the deputies to two sets of footprints that appeared to have been left by an adult and a shoeless child. (Tr. pp. 96-97; p. 114). The deputies then searched that area and found several beer cans. (Tr. pp. 104-105; pp. 114-116). However, they were unable to locate Appellant that night. (Tr. p. 115).

Subsequently, on August 7, 2006, Appellant was observed standing in a wooded area in Lexington County near Highway 178, and several deputies from the Aiken County Sheriff's Office were quickly dispatched to that location. (Tr. pp. 118-119). Once there, the deputies discovered some footprints and followed them to an abandoned mobile home located off of the highway. (Tr. p. 120). At the mobile home, they encountered Appellant, who was crawling towards the woods located at the rear of the mobile home on his hands and knees in an apparent attempt to elude them. (Tr. p. 120). In response, the deputies immediately ordered Appellant to stop, but Appellant continued crawling towards the woods. (Tr. p. 120). The deputies then rushed in and arrested him. (Tr. pp. 120-121).

Following Appellant's arrest, medical personnel collected a blood sample from Appellant, and the sample was submitted for analysis along with the evidence collected during the medical examination of Victim. (Tr. p. 123; pp. 209-210). Thereafter, Lilly Gallman, a forensic D.N.A. analyst at S.L.E.D. and an expert in D.N.A. analysis,

analyzed the evidence and discovered semen was present on the vaginal and rectal swabs collected during the examination. (Tr. pp. 207-209; pp. 216-217). Gallman then developed D.N.A. profiles for Victim and Appellant and compared the profiles to the D.N.A. profile she developed from the semen. (Tr. pp. 220-221). Upon comparison, Gallman determined the D.N.A. profile developed from the semen conclusively matched Appellant's D.N.A. profile.[6] (Tr. p. 221; State's Ex. # 13 – S.L.E.D. Report).

Subsequently, Appellant was indicted for multiple offenses, including second-degree criminal sexual conduct with a minor, and he proceeded to trial. (Tr. pp. 11-12; Indictments). During trial, Victim recounted the events of August 5, 2006. (Tr. p. 45). Specifically, she testified she was visiting the home of one of her aunts that day and needed to return home. (Tr. pp. 45-46). She stated her aunt then told her she had to be escorted home by Appellant, and Appellant took her into the woods between the homes. (Tr. pp. 45-46). Thereafter, Victim indicated the two remained in the woods for a number of hours while Appellant drank several beers. (Tr. p. 46; pp. 66-67; pp. 69-70). Victim testified Appellant then pulled out a knife, held it to her throat, threatened to kill her, made her get down onto the ground and pull down her pants, and inserted his penis into her vagina until he ejaculated. (Tr. pp. 47-50; pp. 70-72). After that, Victim stated Appellant told her not to tell anyone what had occurred and then escorted her out of the woods. (Tr. p. 50; p. 73). Once they exited the woods, Victim indicated she saw Mother and Aunt and revealed to them Appellant had sexually assaulted her. (Tr. pp. 50-51; p. 74). Victim then identified Appellant in the courtroom as the man who raped her. (Tr. p. 53).

[6] Later, during trial, Gallman explained the odds of randomly selecting an unrelated individual having the same D.N.A. profile as the profiles developed from the semen and Appellant's blood were one in sixteen quadrillion. (Tr. p. 221).

Following Victim's testimony, Mother and Aunt testified about Victim's disappearance and the events that followed, and the officers who responded to Mother's home testified about their search for Appellant and the ensuing investigation into the sexual assault that resulted in Appellant's apprehension and arrest. (Tr. pp. 77-80; pp. 85-89; pp. 92-96; pp. 113-115; pp. 119-120). Additionally, Investigator Sievers testified about her forensic interview of Victim and stated on direct examination Victim disclosed she had been sexually assaulted in the woods between her home and her aunt's home on the date of the incident. (Tr. pp. 124-126). Then, on cross-examination, defense counsel questioned Investigator Sievers about the specific details relayed by Victim during the interview, and the officer recounted Victim told her Appellant forcefully spread her legs apart "so hard she thought that one of her bones cracked," put his penis into her vagina, and threatened to kill her with a knife if she told anyone what had occurred. (Tr. pp. 137-142). Furthermore, Investigator Sievers recounted Victim informed her the sexual assault "hurt really bad." (Tr. p. 139).

Thereafter, Scott testified about her medical examination of Victim and indicated Victim reported she had been sexually assaulted and was experiencing pain in her vaginal area. (Tr. p. 150; p. 153). Additionally, Scott stated Victim told her – for purposes of medical diagnosis and treatment – her assailant had grabbed her, told her to pull her pants down, held her down, and put his "weiner" inside of her. (Tr. pp. 150-151). Scott also testified Victim was "very, very upset" and had been crying at the time of the examination. (Tr. pp. 152-153). Furthermore, Scott indicated Victim appeared to be scared at the time and reported her assailant had threatened to slit her throat if she revealed the abuse. (Tr. p. 153).

Following Scott's testimony, Dr. Jackson testified about his examination of Victim and noted he found symptoms consistent with sexual assault during the genital examination. (Tr. pp. 183-185). He further indicated he documented his findings in a report and the report was kept in the normal course of the hospital's business. (Tr. pp. 185-186). In response, the solicitor moved for the report to be admitted into evidence, and defense counsel informed the trial judge he had a matter of law that needed to be addressed. (Tr. pp. 185-186). Thereafter, the trial judge excused the jury from the courtroom, and defense counsel asserted he objected to the first page of the report containing the information Victim provided about the sexual assault.[7] (Tr. pp. 186-187). In rebuttal, the solicitor argued Scott had already testified to the information contained on the first page of the report while contending the report was admissible pursuant to the medical diagnosis or treatment and business records exceptions to the general hearsay rule. (Tr. p. 187). The trial judge then asked defense counsel to clarify the basis of his objection, and defense counsel responded: "Your Honor, it's, obviously it's – well – how can I say it. It's hearsay in nature. And [I'm] not objecting to the rest of the document as being business records because obviously it's all business records. If part of it is, part of it – then it all is." (Tr. pp. 187-188). The trial judge then again asked defense counsel to clarify the nature of his objection, and defense counsel responded the evidence was unnecessary and redundant. (Tr. p. 188). Thereafter, the trial judge overruled the objection, finding the substance of the report had already been introduced into evidence

[7] Specifically, the first page of the report contained the following summary of the sexual assault: "Aug 5, 2006 – late evening – right before dark, in woods far from her house – with uncle who told her to go down another path – into woods – he pulled me down – told me to take my pants off – to pull them down – open my legs – and he stuck his 'weiner' in me – I was crying – he forced his weiner in me – I told him to stop[.]" (State's Ex. # 12 – Sexual Exam Report). Additionally, the report indicated Victim stated "he would kill her if she told anyone" and would "slit her throat." (State's Ex. # 12). The report also identified Victim's assailant as "uncle." (State's Ex. # 12). However, the report did not reference Appellant's name and did not identify Appellant as Victim's assailant or uncle. (State's Ex. # 12).

and a foundation had been laid establishing the information in the report was collected for purposes of medical diagnosis and treatment. (Tr. p. 188). The report was then admitted into evidence over defense counsel's objection. (Tr. p. 189).

Subsequently, Gallman was qualified as an expert in D.N.A. analysis without objection. (Tr. pp. 208-209). She then discussed the results of her analysis of the evidence collected in Appellant's case and confirmed Appellant's D.N.A. profile conclusively matched the D.N.A. profile developed from the semen recovered from Victim's body. (Tr. pp. 220-221).

Thereafter, at the conclusion of trial, the jury convicted Appellant of second-degree criminal sexual conduct with a minor and committing or attempting to commit a lewd act upon a child. (Tr. pp. 298-299). Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of thirty years. (Tr. p. 308).

ARGUMENT

The trial judge did not abuse his broad discretion by admitting into evidence a report containing statements the victim made to a nurse at the hospital shortly after the victim had been sexually assaulted by Appellant because the statements contained in the report were made by the victim for the purpose of obtaining medical diagnosis and treatment and were reasonably pertinent to the diagnosis of the victim, which meant the statements were admissible pursuant to the medical diagnosis and treatment exception to the hearsay rule. However, even assuming the trial judge somehow erred in admitting the report, any error was entirely harmless in light of the cumulative nature of the report to other properly admitted evidence and in light of the overwhelming evidence of Appellant's guilt presented during trial, including the testimony conclusively establishing Appellant's semen was discovered in the vagina of his eleven-year-old victim.

Appellant, whose semen was found inside the vagina of his eleven-year-old niece, contends the trial judge erred in admitting into evidence a report containing information Victim provided to a nurse at the hospital shortly after she was sexually assaulted. In support of that contention, Appellant maintains the information contained in the report constituted inadmissible hearsay and did not satisfy the requirements of any exception to the hearsay rule, including the exception for statements made for the purposes of medical diagnosis or treatment.[8] Initially, the trial judge did not abuse his broad discretion in

[8] Notably, it is highly questionable whether Appellant's appellate hearsay argument is preserved for appellate review. During trial, defense counsel initially objected to the first page of report being admitted into evidence, and the trial judge asked defense counsel for clarification as to the basis of his objection. (Tr. pp. 186-187). In response, defense counsel stated his objection was "hearsay in nature." (Tr. pp. 187-188). However, immediately after defense counsel made that statement, defense counsel conceded the report was a business record and asserted: "If part of it is [a business record], part of it – then it all is." (Tr. p. 188). Still uncertain as to the basis of defense counsel's objection due to defense counsel remarks, the trial judge then again asked defense counsel to specifically identify the basis of his objection to the report. (Tr. p. 188). At that point, defense counsel objected on the grounds the report was "not necessary" and "redundant." (Tr. p. 188). Because defense counsel did not specifically raise his objection on the basis of hearsay when asked to finally clarify the grounds for his objection and **never** asserted the report did not satisfy the requirements of the medical diagnosis or treatment exception to the hearsay rule as Appellant now alleges on appeal, Appellant is precluded from raising such an issue or argument for the first time on appeal. See State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A]n objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."); see also State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a party cannot properly argue one ground in support of an issue at trial and then an alternate ground in support of the same issue on appeal); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). Moreover, even if defense counsel's trial objection could be construed as

admitting the report containing Victim's statements about the sexual assault because Victim made those statements to a nurse at the hospital for purposes of obtaining treatment for the injuries she had sustained during the sexual assault and because those statements were reasonably pertinent to the provision of medical diagnosis and treatment to Victim. As a result, the report was admissible pursuant to the medical diagnosis or treatment exception to the hearsay rule. However, even if the trial judge somehow erred in admitting the report into evidence, any error was entirely harmless because the information contained in the report was merely cumulative to the unobjected-to testimony of several witnesses, including witnesses other than Victim, and because the other evidence presented during trial, including the evidence conclusively establishing Appellant's semen was present in Victim's vagina after the sexual assault, overwhelmingly and irrefutably established Appellant was guilty of the criminal sexual conduct and lewd act charges for which he was convicted. Accordingly, Appellant's convictions should be affirmed.

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 an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390

---

a hearsay objection despite the fact he specifically informed the trial judge he was objecting to the report because it was redundant and unnecessary, defense counsel directly conceded during trial the entire report constituted a business record, which would have rendered the report admissible pursuant to the business records exception to the hearsay rule. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal); see also Ex parte Dep't of Health & Envtl. Control, 350 S.C. 243, 250, 565 S.E.2d 293, 297 (2002) ("Medical records are admitted routinely as business records."). Accordingly, Appellant's argument on appeal should be rejected on issue preservation grounds. See Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 219, 464 S.E.2d 112, 113 (1995) (instructing unpreserved issues should not be addressed on appeal).

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. 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."). An appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

A. Propriety of the Trial Judge's Admission of the Report

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "The general rule is that hearsay is not admissible." State v. Ladner, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007); 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."). The rationale for excluding hearsay evidence is the admission of such evidence denies the adverse party an opportunity to cross-examine the declarant of the hearsay statement. State v. Mitchell, 286 S.E.2d 572, 573, 336 S.E.2d 150, 150-151 (1985); see State v. James, 255 S.C. 365, 370, 179 S.E.2d 41, 43 (1971)

("The hearsay rule signifies a rule rejecting assertions offered testimonially which have not been in some way subjected to the test of cross-examination."). However, notwithstanding the general prohibition against the admission of hearsay evidence, South Carolina's evidentiary rules recognize several exceptions under which hearsay evidence may properly be admitted. See Rule 803, SCRE (identifying several exceptions to the general prohibition against hearsay that are applicable regardless of whether the declarant is available as a witness); Rule 804, SCRE (identifying several exceptions to the general prohibition against hearsay that are applicable only if the declarant is unavailable as a witness).

As one of the recognized exceptions to the hearsay rule, the medical diagnosis or treatment exception allows for the admission of out-of-court statements of a declarant "made for the purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" despite the general prohibition against hearsay evidence. Rule 803(4), SCRE. In order for a statement to be admissible pursuant to the medical diagnosis or treatment exception, two conditions must be met: (1) the declarant's motive in making the statement must be consistent with the purpose of promoting diagnosis or treatment; and (2) the content of the statement must be such as is reasonably relied upon by a medical provider in making a diagnosis or providing treatment. Willingham v. Crooke, 412 F.3d 553, 562 (4th Cir. 2005). Significantly, the medical diagnosis or treatment "exception to the hearsay rule is premised on the notion that a declarant seeking treatment 'has a selfish motive to be truthful' because 'the effectiveness of medical treatment depends upon the accuracy of the information provided.' " Id.; see White v. Illinois, 502 U.S. 346, 356

(1992) ("[A] statement made in the course of procuring medical services, where the declarant knows that a false statement may cause misdiagnosis or mistreatment, carries special guarantees of credibility that a trier of fact may not think replicated by courtroom testimony.").

In the case sub judice, the statements of Victim contained in the challenged report satisfied the requirements for admission pursuant to the medical diagnosis or treatment exception to the hearsay rule. As a result, the trial judge did not abuse his broad discretion by admitting the report into evidence during Appellant's trial. See State v. Price, 278 S.C. 266, 269, 294 S.E.2d 426, 468 (1982) ("The trial court has broad discretion in the admission of evidence[.]").

Regarding the first requirement for admissibility pursuant to the medical diagnosis or treatment exception, Victim made the statements to the nurse and doctor at the hospital for the purposes of obtaining medical treatment for the pain she was experiencing as a result of the sexual assault. See State v. Lewis, 172 N.C. App. 97, 103, 616 S.E.2d 1, 5 (N.C. Ct. App. 2005) ("The first part of the inquiry seeks to determine the child's purpose in making the statement, not the interviewer's purpose in conducting the interview."). Critically, in Appellant's case, Victim was transported to a hospital by ambulance shortly after the sexual assault and was seen by both an emergency room nurse and an emergency medicine doctor in the medical setting of the hospital. At that time, Victim appeared to be scared and reported she was in pain. Under those circumstances, Victim's intent in reporting to the nurse the details of the recent sexual assault directly before she was examined by the doctor was clearly to receive medical care and treatment for the pain she was experiencing and the injuries she had sustained. See id. at 104, 616 S.E.2d at 5 (finding the juvenile victims' intent in making their out-of-

court statements was to obtain medical diagnosis and treatment where the statements were made in an atmosphere of medical significance directly before a physical examination was to be conducted).

Likewise, regarding the second requirement for admissibility pursuant to the medical diagnosis or treatment exception, Victim's statements were the type of statements reasonably relied upon medical personnel in providing treatment. Critically, Victim's statements about the time and location of the sexual assault were relevant to her treatment because they enabled the medical personnel to assess and determine when and how Victim's injuries were sustained.[9] See Webster v. State, 151 Md. App. 527, 546, 827 A.2d 910, 920-921 (Md. Ct. Spec. App. 2003) ("[W]hat happened to a sexual assault victim may be critically important in deciding where to examine her, what range of medical problems to look for, and, ultimately, how to treat her."). Additionally, Victim's statements to Scott detailing the physical force used during the sexual assault, including in regard to how she was pulled to the ground and how her assailant forced his penis inside of her, were highly relevant for purposes of Victim's diagnosis and treatment. See State v. Burroughs, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997) ("Certainly, a statement that the victim had been raped or that the assailant had hurt the victim in a particular area would be pertinent to the diagnosis or treatment of the victim."). Furthermore, Victim's statements about how the sexual assault led her to tears and about how her assailant threatened to kill her were relevant in regard to the treatment Victim needed for any emotional trauma she may have been experiencing as a result of the incident. See United States v. Peneaux, 432 F.3d 882, 894 (8th Cir. 2005) ("Due to the

[9] Moreover, those statements did not constitute hearsay. See Rule 801(d)(1), SCRE (instructing a sexual assault victim's out-of-court statements regarding the time and place of a sexual assault do not constitute hearsay when the victim testifies during trial).

nature of child sexual abuse, a doctor must be able to identify and treat not only physical injury, but also the emotional or psychological problems that typically accompany sexual abuse by a family member."); Willingham, 412 F.3d at 562 (finding an out-of-court statement in regard to the source of emotional trauma was admissible as a statement made for the purposes of medical diagnosis or treatment because it was relevant to the declarant's diagnosis and treatment for the emotional trauma). Finally, although the identity of a victim's assailant is typically not relevant to the medical treatment or diagnosis of that victim, Victim's statements indicating her assailant was her uncle without specifying which uncle were highly relevant towards her diagnosis and treatment because they enabled the medical personnel to explore and address any psychological problems Victim may have been experiencing and to protect Victim's medical well-being by ensuring as part of her treatment she had no further contact with the relative who had sexually abused her.[10] See State v. Aguallo, 318 N.C. 590, 597, 350 S.E.2d 76, 80 (N.C. 1986) ("First, a proper diagnosis of a child psychological problems resulting from sexual abuse or rape will often depend on the identity of the abuser. Second, information that a child sexual abuser is a member of the patient's household is **reasonably pertinent** to a course of treatment that includes removing the child from the home." (emphasis added));

[10] Notably, the nurse and doctor who treated Victim had an affirmative obligation to report Victim had been sexually assaulted pursuant to South Carolina's statutory reporting requirements regarding suspected cases of abuse or neglect, which further enhanced the importance of the information they obtained from Victim in regard to the sexual assault. See S.C. Code Ann. § 63-7-310 ("A physician, nurse, . . . or any other medical, emergency services, mental health, or allied health professional . . . must report . . . when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20."); see also Peneaux, 432 F.3d at 894 (finding the identity of a juvenile sexual abuse victim's abuser was reasonably pertinent to the victim's treatment where the victim's doctor testified she was required to report the abuse pursuant to a South Dakota reporting law). In fact, a knowing failure to report a suspected case of abuse or neglect when required constitutes a criminal offense in South Carolina. See S.C. Code Ann. § 63-7-410 ("A person required to report a case of child abuse or neglect or a person required to perform any other function under this article who knowingly fails to do so . . . is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.").

see also State v. Brown, 286 S.C. 445, 447, 334 S.E.2d 816, 817 (1985) ("The perpetrator's identity would **rarely**, if ever, be a factor upon which the doctor relied in diagnosing or treating the victim." (emphasis added)). Under those circumstances, the statements contained in the report were "reasonably pertinent" to Victim's diagnosis and treatment and, thus, were admissible during Appellant's trial. Rule 803(4), SCRE.

Due to the fact the report containing Victim's statements about the sexual assault satisfied all of the requirements for admission pursuant to the medical diagnosis or treatment exception to the hearsay rule, the trial judge did not abuse his broad discretion by admitting the report into evidence pursuant to that hearsay exception. See 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."); cf. Todd v. Joyner, 385 S.C. 421, 426, 685 S.E.2d 595, 597-598 (2009) ("We find that the records introduced through Dr. Friedman's testimony referring to complaints or statements Todd made to her physicians are not barred by the hearsay rule. . . . The medical history referenced by Dr. Friedman falls within the ambit of Rule 803(4) and therefore, does not run afoul of the hearsay rule."). Accordingly, Appellant's convictions should be affirmed.

B. Harmlessness of Any Error in the Admission of the Report

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our

analysis. Next we must determine whether the error was harmless."). An error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." Bailey, 298 S.C. at 5, 377 S.E.2d at 584; see United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]").

In the case at bar, even if the trial judge somehow erred in admitting the report containing Victim's statements, any error was entirely harmless in light of the fact the statements in the report were wholly cumulative to other, unobjected-to testimony presented during Appellant's trial. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."). Critically, during trial, Victim testified about the sexual assault in a manner entirely consistent with the information contained in the report. See State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence."); see also State v. Blalock, 357 S.C. 74, 82,

591 S.E.2d 632, 636 (Ct. App. 2003) ("Moreover, Detective Lindsey's publication of the prior statement was cumulative to Ms. Blalock's previous, unchallenged publication of the relevant portions of her statement."). Moreover, in addition to Victim's testimony, Investigator Sievers and Scott testified about the details Victim reported to them about the sexual assault, and those details covered all of the information contained in the written report. See State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (finding any error in the admission of hearsay testimony from one witness to be harmless where two other witnesses testified to the same information without objection); Blackburn, 271 S.C. at 329, 247 S.E.2d at 337 (finding any error in the improper admission of the victim's hearsay statements implicating Blackburn was harmless because the statements were cumulative to other evidence received in the case); see also State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) (finding an error resulting from the admission of improper hearsay evidence was harmless because the inadmissible evidence was merely cumulative to other evidence introduced during trial without objection). Because the report was merely cumulative to the other evidence introduced during trial, its admission could have resulted in no prejudice to Appellant, rendering any error in its admission entirely harmless.[11] See State v. McFarlane, 279 S.C. 327, 330, 306

[11] On appeal, Appellant appears to maintain the admission of the report containing Victim's statements was not harmless despite the fact it was admittedly cumulative to Victim's trial testimony while citing to Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), for the proposition improper corroboration testimony that is merely cumulative to a victim's testimony cannot be harmless. (App. Br. p. 16). Notwithstanding the fact the report was not cumulative simply to Victim's testimony in Appellant's case, Appellant's reliance on Jolly is misplaced in light of the Supreme Court's decision in State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011). Significantly, in the Jennings case, a majority of the Supreme Court abandoned the precise rule from Jolly Appellant now seeks to rely upon in his case to establish the alleged error in the admission of the report was not harmless. See Jennings, 394 S.C. at 482, 716 S.E.2d at 95 (Kittredge, J., concurring) ("I concur in result, but agree with Chief Justice Toal that the apparent categorical rule emanating from Jolly v. State and its progeny precluding a finding of harmless error goes too far. In my judgment, it may be a rare occurrence for the State to prove harmless error beyond a reasonable doubt in these circumstances. But these determinations are necessarily context dependent, and a categorical rule is at odds with longstanding harmless error jurisprudence." (citations omitted)); see also Jennings, 394 S.C. at 483, 716 S.E.2d at 95 (Toal, C.J., dissenting) ("I believe we should take this opportunity to overrule Jolly. In my opinion, these

S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence."); see also State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) ("The improper admission of hearsay is reversible error only when the admission causes prejudice.").

However, even if the cumulative nature of the report to other properly-admitted evidence was not sufficient to render any error in the admission of the report entirely harmless, the report's admission nonetheless could have had no impact on the verdict in Appellant's case in light of the absolutely overwhelming evidence of Appellant's guilt presented during trial. Most significantly, testimony was presented conclusively establishing Appellant's semen was discovered in Victim's vagina, which simply could not have occurred in a lawful manner and alone overwhelmingly established Appellant's guilt for the criminal sexual conduct and lewd act charges. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt). Additionally, Victim testified during trial about the sexual assault and identified Appellant as her assailant. Furthermore, Mother and Aunt testified about Victim's lengthy disappearance before they found her in Appellant's company, Aunt stated Victim quickly told her Appellant had sexually assaulted her after they found her with Appellant, and numerous witnesses testified about Victim's dirty and disheveled condition after she was found, which all corroborated Victim's account of the sexual assault. See State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond

---

cases create a rule of per se prejudice when testimony is cumulative to the victim's testimony. Such a rule is contrary to the traditional analysis of improperly admitted hearsay testimony, which requires a finding of prejudice."). Therefore, Appellant's appellate contentions in regard to the claimed harmfulness of the alleged error in his case are erroneous.

a reasonable doubt."). Similarly, testimony was presented establishing Appellant quickly fled back into the woods when Victim began speaking with Aunt after the sexual assault, and an officer recounted Appellant's desperate and bizarre attempt to evade arrest on his hands and knees several days after the incident. See State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) ("Flight or evasion of arrest is a circumstance to go to the jury."); State v. Walker, 366 S.C. 643, 656, 623 S.E.2d 122, 128 (Ct. App. 2005) ("[I]t can be inferred from his sudden disappearance that Walker was either expecting the police to arrest him or he was planning his escape."). Collectively, that undisputed evidence overwhelmingly established Appellant's guilt and rendered any conceivable error in the admission of the report containing Victim's statements about the sexual assault wholly insignificant and immaterial. See Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (finding the admission of improper hearsay evidence to be harmless where "there was abundant evidence in the record from which the jury could have found appellant guilty, notwithstanding the hearsay testimony"); see also State v. Key, 256 S.C. 90, 97, 180 S.E.2d 888, 891 (1971) ("The jury had before it positive identifications of each of the defendants. Such identifications were not denied. It is academic that failure of the defendants to testify created no inference of guilt against them. They did not have the burden of proving anything. However, undisputed testimony is more conclusive than testimony which is in dispute, and it is less difficult for this court to reason that guilt is conclusively proven when there is no denial, than when an accused person disputes the truthfulness of the State's evidence."). Under those circumstances, any possible error resulting from the admission of the report was entirely harmless and could have had no impact on the ultimate outcome of Appellant's case. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to

insubstantial errors not affecting the result."); Pagan, 369 S.C. at 212, 631 S.E.2d at 267 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."). Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 3, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
DEC 03 2014
SC Court of Appeals

Appeal from Aiken County
Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2013-002390

THE STATE,

Respondent,

vs.

BRUCE DEWAYNE HALL,

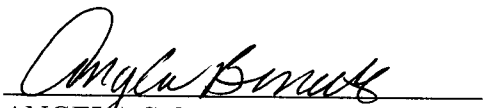
Appellant.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 3rd day of December, 2014.



ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

December 3, 2014

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Bruce Dewayne Hall – Appellate Case No. 2013-002390

Dear Ms. Caudy:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services