RECEIVED
APR 06 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2014-001092

THE STATE,

Respondent,

vs.

NORMAN QUINTON HUNT,

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

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

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 11

The trial judge did not abuse his broad discretion by admitting the testimony of Appellant's biological daughter, who was sexually abused by Appellant for a number of years beginning approximately nineteen to twenty years before Appellant began sexually abusing his most recent victim, because Appellant's daughter's testimony constituted evidence of the existence of a common scheme or plan due to its numerous significant similarities to the testimony of Appellant's most recent victim, including in regard to Appellant's close genetic connection to his victims, the similar ages of the victims when the abuse occurred, the identical gender of the victims, the similar manner in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, the similar high frequency of the abuse, and Appellant's provision of numerous gifts to both victims, and because the probative value of Appellant's daughter's testimony was not substantially outweighed by its potential for undue prejudice. However, even assuming the trial judge somehow erred in admitting Appellant's daughter's testimony, any error was entirely harmless in light of the other overwhelming evidence of Appellant's guilt presented during trial. 11

CONCLUSION 30

TABLE OF AUTHORITIES

Cases:

State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). 14

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989). 27

State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000). 28

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

State v. Blanton, 316 S.C. 31, 446 S.E.2d 438 (Ct. App. 1994). 16, 21, 22

State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009). 24

State v. Cutro, 332 S.C. 100, 504 S.E.2d 324 (1998). 14

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). 27

State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008). 26

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). 28

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). 13

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998). 25

State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007). 15

State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973). 16

State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980). 12

State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989). 24

State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001). 13, 25

State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003). 27

State v. Hubner, 362 S.C. 572, 608 S.E.2d 463 (Ct. App. 2005). 16, 17

State v. Hubner, 384 S.C. 436, 683 S.E.2d 279 (2009). 17, 23

State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). 26

State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). 29

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). 13

State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008). 13

State v. Marlowe, 156 S.C. 363, 153 S.E. 340 (1930). 28

State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008). 13, 26

State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct. App. 2004). 15

State v. McCombs, 410 S.C. 90, 762 S.E.2d 744 (Ct. App. 2014). 23

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). 13

State v. McFarlane, 279 S.C. 327, 306 S.E.2d 611 (1983). 28

State v. Miller, 266 S.C. 409, 223 S.E.2d 774 (1976). 27

State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007). 26

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006). 13

State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). 14

State v. Scott, 405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013). 18, 19, 21, 22, 23, 24

State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991). 27, 28

State v. Simmons, 308 S.C. 80, 417 S.E.2d 92 (1992). 27

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010). 12

State v. Tutton, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003). 22, 23

State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). 14, 15, 21, 22, 25

State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009). 16

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). 12

Other Authorities:

Rule 401, SCRE. 14

Rule 403, SCRE. 25

Rule 404, SCRE. 13

STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his broad discretion by admitting the testimony of Appellant's biological daughter, who was sexually abused by Appellant for a number of years beginning approximately nineteen to twenty years before Appellant began sexually abusing his most recent victim, because Appellant's daughter's testimony constituted evidence of the existence of a common scheme or plan due to its numerous significant similarities to the testimony of Appellant's most recent victim, including in regard to Appellant's close genetic connection to his victims, the similar ages of the victims when the abuse occurred, the identical gender of the victims, the similar manner in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, the similar high frequency of the abuse, and Appellant's provision of numerous gifts to both victims, and because the probative value of Appellant's daughter's testimony was not substantially outweighed by its potential for undue prejudice. However, even assuming the trial judge somehow erred in admitting Appellant's daughter's testimony, any error was entirely harmless in light of the other overwhelming evidence of Appellant's guilt presented during trial.

STATEMENT OF THE CASE

In May of 2012, Appellant Norman Quinton Hunt was arrested after his minor granddaughter reported he sexually abused her for a number of years. In February of 2013, the Greenville County Grand Jury indicted Appellant for one count of committing or attempting to commit a lewd act upon a minor child. In January of 2014, the Greenville County Grand Jury additionally indicted Appellant for one count of first-degree criminal sexual conduct with a minor pursuant to S.C. Code Ann. § 16-3-655(A)(1), one count of first-degree criminal sexual conduct with a minor pursuant to S.C. Code Ann. § 16-3-655(A)(2), and one count of second-degree criminal sexual conduct with a minor. On May 12, 2014, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable J. Derham Cole, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of life without parole for first-degree criminal sexual conduct with a minor pursuant to S.C. Code Ann. § 16-3-655(A)(1), thirty years for first-degree criminal sexual conduct with a minor pursuant to S.C. Code Ann. § 16-3-655(A)(2), twenty years for second-degree criminal sexual conduct with a minor, and fifteen years for committing or attempting to commit a lewd act upon a minor child. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In April of 2012, Christina Bateman ("Aunt") received a telephone call from her sister, Olivia Hunt ("Mother"). (Tr. pp. 145-146). During the call, Mother recounted – over the sounds of her husband ("Father") screaming and yelling in the background – her then-thirteen-year-old daughter ("Victim") disclosed she had been sexually abused by Appellant Norman Quinton Hunt, who was Victim's biological grandfather and Father's father. (Tr. p. 86; pp. 146-147; p. 174). In response, Aunt immediately left her house in Tennessee, drove to Mother's home in Greenville, South Carolina, and picked up Victim, Mother, and Victim's younger brother ("Brother"), to get them out of the home and bring them to Tennessee. (Tr. pp. 147-148).

After returning to Tennessee, Aunt spoke to Victim on the following morning, and Victim disclosed during their conversation she had been sexually abused by Appellant from when she was five years old until she was twelve years old in numerous locations, including in Appellant's home and in the parking lots of different stores. (Tr. pp. 148-149). Based on Victim's disclosure, Aunt decided to call the police but did not initially do so because Mother informed her she was scared. (Tr. pp. 149-150). However, on April 13, 2012, Aunt decided she had to report the abuse, called the Greenville County Sheriff's Office, and relayed Victim's disclosure of sexual abuse to law enforcement personnel.[1] (Tr. pp. 149-150).

Thereafter, Investigator Mike Brown of the Greenville County Sheriff's Office arranged to meet with Victim and spoke with her about the sexual abuse. (Tr. pp. 212; pp. 215-218). During their conversation, Victim disclosed she was sexually abused in

[1] During trial, Aunt testified Mother also attempted to contact the Greenville County Sheriff's Office at the same time Aunt called to report the sexual abuse. (Tr. p. 150).

numerous places, including in the parking lots of businesses, in Appellant's workplace, and in Appellant's home. (Tr. pp. 216-217). Subsequently, Victim was taken into emergency protective custody and referred for a forensic interview and medical examination. (Tr. pp. 223-224). During the forensic interview, Victim again disclosed she was sexually abused by Appellant from the ages of five to twelve in a variety of locations, including in Appellant's home, in Appellant's place of business, and in the parking lots of various stores. (Tr. p. 225; pp. 269-270). Thereafter, during the medical examination, Dr. Mary Croswell, an expert in pediatrics and child sexual abuse, discovered a moderate notch in Victim's hymenal tissue that potentially could have resulted from an injury to Victim's vagina. (Tr. pp. 192-195; p. 199).

Subsequently, Appellant was arrested and indicted for numerous offenses of a sexual nature, and he proceeded to trial. (Tr. pp. 24-25; Indictments). During trial, Victim, who was then fifteen years old, testified about the sexual abuse she suffered at Appellant's hands from the ages of five to twelve. (Tr. p. 86; p. 91). Specifically, Victim recounted she and Brother spent nearly every weekend during their childhoods at Appellant's home, and she stated she was sexually abused almost every single time she visited with Appellant, whom she did not know until she was five years old, beginning shortly after she started going to his home at the age of five and continuing until she was twelve years old. (Tr. pp. 92-93; pp. 102-103; p. 116; p. 139). Regarding the nature of the abuse, Victim indicated Appellant touched her vagina outside of and underneath her clothing with his hands and his penis, digitally penetrated her vagina, fondled her breasts outside of and underneath her clothing, performed oral sex on her, made her perform oral sex on him, made her touch his penis, attempted to insert his penis into her vagina until she cried out in pain, and made her "hump" his penis. (Tr. pp. 94-104; p. 107; pp. 109-

110; pp. 111-112; p. 117; pp. 119-121). Regarding the locations the abuse occurred, Victim testified Appellant sexually abused her in his home, in the parking lots of malls and other businesses, in his truck and car, in his cubicle at his place of work after the other employees had left, in his bathtub, in his garage, and in a vehicle during a trip to Dollywood when the other members of her family were asleep. (Tr. p. 93; p. 99; pp. 101-102; p. 104-112; p. 114; pp. 119-121). Additionally, Victim recounted Appellant frequently bought her things and would sexually abuse her after he had given her gifts. (Tr. pp. 108-109; p. 115). Victim further noted Brother was present on some occasions when Appellant sexually abused her in his vehicle but was forced to lie down in the back seat during the abuse, and she also indicated Brother walked into the bedroom and caught them while she was on top of Appellant in the bed on one occasion. (Tr. pp. 118-119). Furthermore, Victim recounted Appellant took nude photographs of her or showed her pornographic movies on some occasions. (Tr. pp. 111-113; pp. 120-121). Regarding the end of the sexual abuse, Victim testified she stopped going to Appellant's home once she realized what he was doing to her was wrong and informed her parents.[2] (Tr. pp. 116-117; pp. 123-124). However, Victim stated her parents did not immediately report the sexual abuse to police. (Tr. pp. 123-125; pp. 127-128). Instead, Victim indicated she was presented with a debit card and used the card to purchase things for herself until the abuse was revealed to Aunt and she was taken to Tennessee. (Tr. pp. 124-125; pp. 127-128). After that, Victim testified she was removed from home and law enforcement got involved, which occurred roughly a year after she informed her parents of the sexual abuse. (Tr. p. 87; p. 123; p. 125).

[2] Upon informing her parents of the sexual abuse, Father forced Victim to call Appellant and tell him she "told on him." (Tr. p. 123).

In addition to Victim's testimony, Brother, who was roughly one year younger than Victim, testified about his own experiences during his and his sister's frequent visits to Appellant's home. (Tr. pp. 89-90; p. 154; pp. 156-157). Specifically, during one of the visits, Brother recounted he walked into his grandparent's bedroom, observed Appellant kissing Victim on the bed while she was lying on top of him, and was ordered to get out of the bedroom by Appellant. (Tr. p. 157). After that, Brother indicated he reported what he observed to one of his father's friends but Victim denied the allegations. (Tr. p. 160). During other visits, Brother stated he rode in Appellant's truck with Appellant and Victim, was ordered by Appellant to lie in the back seat while Victim sat in the front seat with Appellant, and was commanded to lie back down when he tried to sit up. (Tr. pp. 162-163). Brother further indicated he believed something inappropriate was happening during those moments in the truck. (Tr. p. 163). Additionally, Brother recounted he was ordered outside to purportedly find Appellant's keys while Appellant and Victim remained alone inside of the house and was ordered to remain in the bathtub alone on other occasions. (Tr. pp. 163-165). Brother further noted Appellant purchased more gifts for Victim during their visits.[3] (Tr. pp. 161-162).

Aside from the testimony of Victim and Brother, Aunt – along with the investigators from the Greenville Sheriff's Office and the forensic interviewer – testified about the details of Victim's disclosure of the sexual abuse, and Dr. Crosswell testified about her findings during the medical examination of Victim, which she noted were consistent with the information reported to her by Victim. (Tr. pp. 148-149; p. 193; p. 199; pp. 216-217; p. 200; p. 225; p. 270). Additionally, testimony was presented

[3] During trial, Mother confirmed Appellant bought more gifts for Victim than Brother. (Tr. pp. 187-188). Mother further noted the gifts Appellant purchased for Victim included expensive clothing, jewelry, and diamonds. (Tr. pp. 186-187).

establishing a checking account and savings account were opened in the names of Victim and Mother after Victim disclosed the sexual abuse to her parents, and Mother confirmed she personally opened the accounts after she was asked to do so by Appellant following Victim's revelation of the sexual abuse and used the accounts to purchase things along with Victim after Appellant presumably deposited funds into the accounts.[4] (Tr. pp. 71-80; pp. 177-188). Furthermore, certified copies of an indictment and sentencing sheet establishing Appellant had previously been convicted of second-degree criminal sexual conduct were admitted into evidence without objection in order to establish Appellant had previously been convicted of an offense listed in S.C. Code Ann. § 24-3-430(C). (Tr. pp. 273-275).

Thereafter, the jury was excused from the courtroom, and the solicitor called Telena Burrow, who was Appellant's biological daughter, to the witness stand to proffer testimony related to Appellant's sexual abuse of her in the past. (Tr. pp. 275-276). During her testimony, Burrow indicated she met Appellant for the first time in 1983 when she was nine years old after he obtained custody of her upon the death of her mother. (Tr. pp. 276-278). After that, Burrow stated Appellant began sexually abusing her when she reached the age of eleven after Appellant's wife and stepson moved out of Appellant's home. (Tr. pp. 279-281). Regarding the nature of the abuse, Burrow testified Appellant touched her breasts and vagina both on top of and underneath her clothing and forced her to engage in sexual intercourse with him when they were alone together. (Tr. pp. 280-281). Regarding the location of the abuse, Burrow stated Appellant sexually abused her in his residence, in a motel while they were on a trip

---

[4] During her testimony, Mother confirmed both she and Father had charges of unlawful conduct towards a child and extortion pending at the time of Appellant's trial.

together, and in his place of business. (Tr. p. 282). Additionally, Burrow noted the abuse occurred frequently and Appellant bought her numerous gifts during the time period he was abusing her. (Tr. pp. 282-283). Burrow testified the abuse continued until she was thirteen years old and stopped after she reported the abuse to a friend, which ultimately led to the police being notified of Appellant's conduct. (Tr. pp. 281-282).

Following Burrow's in camera testimony, the solicitor moved for the trial judge to permit the witness to testify before the jury pursuant to Rule 404(b), SCRE. (Tr. p. 284). In support of that motion, the solicitor argued Burrow's testimony was admissible pursuant to the common scheme or plan exception in light of the fact the similarities between Appellant's prior bad acts involving Burrow and Appellant's acts of sexual abuse involving Victim outweighed any dissimilarities between those acts. (Tr. p. 285). Specifically, the solicitor noted there was a high degree of similarity between the prior bad acts and Appellant's most recent acts based on Appellant's genetic relationship to both victims, the similar ages of the victims at the time the abuse occurred, the similar locations where the abuse occurred, and the similar manner of the abuse of both victims. (Tr. pp. 289-290). Furthermore, the solicitor asserted the prior bad act evidence's potential for undue prejudice was reduced by the fact the jury was already aware Appellant had previously been convicted of a prior sexual offense based on the admission of the evidence related to his prior conviction for second-degree criminal sexual conduct with a minor in order to establish an element of one of the first-degree criminal sexual conduct with a minor charges. (Tr. pp. 285-286).

In response, defense counsel contended Burrow's testimony was not admissible pursuant to Rule 404(b), SCRE, and was "prejudicial" pursuant to Rule 403, SCRE. (Tr. p. 287-288; pp. 290-291). In support of that contention, defense counsel contended the

prior bad acts were too remote in time to constitute evidence of a common scheme or plan and further asserted the prior bad acts and indicted offenses were dissimilar because the ages of the victims were different when the abuse occurred, the locations were different in light of the fact Burrow never said she was abused in a vehicle, and the manner of abuse was different in light of the fact the abuse of Burrow involved inappropriate touching and sexual intercourse while the abuse of Victim involved inappropriate touching and oral sex. (Tr. p. 288).

After considering the arguments of counsel and reviewing the pertinent case law related to the issue, the trial judge decided to admit Burrow's testimony pursuant to Rule 404(b), SCRE, and Rule 403, SCRE. (Tr. pp. 292-293; p. 296). In reaching that decision, the trial judge indicated he reviewed the relevant factors, including the age of the victims, the relationship between the victims and Appellant, the locations where the abuse occurred, the manner in which the abuse occurred, the frequency of the abuse, and the existence of promises and rewards, before determining a close degree of similarity existed between the prior bad acts and the indicted offenses. (Tr. pp. 293-294). Furthermore, the trial judge found the probative value of the evidence was not substantially outweighed by a danger of unfair prejudice in light of the close degree of similarity between the acts coupled with the fact the passage of time between the events was merely the result of a lack of opportunity on Appellant's part to engage in the acts in the intervening time.[5] (Tr. pp. 295-296).

---

[5] Specifically, regarding the remoteness of the prior bad act evidence to Appellant's most recent crimes, the trial judge explained: "I think the Defense has requested that I consider the fact that the allegations made by Ms. Burrow are too remote in time in relation to the allegations made by [Victim] in this particular case. Remoteness is sometimes relative. And in this particular case, if you accept the allegations made by [Victim] as being true and you accept the fact [Appellant] has previously been convicted of a crime with a close degree of similarity in those allegations, then the remoteness question is not as – doesn't have the same degree of prejudice as it would ordinarily where you have a significant period of time passing

Thereafter, Burrow, who was forty years old at the time of trial, testified before the jury about how she was sexually abused by her biological father, Appellant, on a frequent basis beginning in approximately 1984 or 1985 when she was eleven years old and continuing until she was thirteen years old. (Tr. pp. 300-307). Specifically, Burrow revealed Appellant abused her by fondling her breasts and vagina on top of and underneath her clothing and by engaging in sexual intercourse, and she stated Appellant abused her at a variety of locations, including at his house, at his place of work, and at a motel when they were on a trip together. (Tr. pp. 303-306). Furthermore, Burrow noted Appellant was very generous to her during the time period he was abusing her and bought her clothing and other gifts until she revealed the abuse to her friend and then to the police. (Tr. pp. 307-308).

Following Burrow's testimony, both the solicitor and defense counsel rested their cases, and the trial judge submitted the case to the jury. (Tr. p. 309; p. 317; p. 380). Subsequently, the jury convicted Appellant as indicted. (Tr. pp. 380-381). The trial judge then sentenced Appellant to life imprisonment for one count of first-degree criminal sexual conduct with a minor along with concurrent terms of imprisonment for Appellant's other offenses. (Tr. pp. 384-385).

---

between two unrelated events of abuse. But in this particular case, when you take into account all of the relevant factors and the close degree of similarity, and if you accept the allegations made as being true, then it would appear and the evidence does tend to show that [Appellant] took the opportunity that he had to commit these incidents of abuse. And if you only have two opportunities and you take those opportunities to commit the abuse, then the fact that there's some period of time passing between one particular course of events or occurrences and another particular course of events or occurrences, then that remoteness factor is of – has little bearing on the admissibility of that particular evidence." (Tr. pp. 294-295).

ARGUMENT

The trial judge did not abuse his broad discretion by admitting the testimony of Appellant's biological daughter, who was sexually abused by Appellant for a number of years beginning approximately nineteen to twenty years before Appellant began sexually abusing his most recent victim, because Appellant's daughter's testimony constituted evidence of the existence of a common scheme or plan due to its numerous significant similarities to the testimony of Appellant's most recent victim, including in regard to Appellant's close genetic connection to his victims, the similar ages of the victims when the abuse occurred, the identical gender of the victims, the similar manner in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, the similar high frequency of the abuse, and Appellant's provision of numerous gifts to both victims, and because the probative value of Appellant's daughter's testimony was not substantially outweighed by its potential for undue prejudice. However, even assuming the trial judge somehow erred in admitting Appellant's daughter's testimony, any error was entirely harmless in light of the other overwhelming evidence of Appellant's guilt presented during trial.

Appellant contends the trial judge committed reversible error by admitting the testimony of Appellant's daughter, who was sexually abused by Appellant approximately nineteen to twenty years before Appellant began sexually abusing his granddaughter, as evidence of the existence of a common scheme or plan during Appellant's trial for sexually abusing his granddaughter. In support of that contention, Appellant maintains the prior bad act evidence was inadmissible because it was not sufficiently similar to Appellant's more recent acts involving his granddaughter, was too temporally remote, and was more prejudicial than probative. To the contrary, the trial judge properly admitted the testimony of Appellant's daughter because her testimony was highly similar to the testimony of Appellant's granddaughter, including in regard to Appellant's close genetic connection to his victims, the similar ages of the victims when the abuse occurred, the identical gender of the victims, the similar manner in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, the similar high frequency of the abuse, and Appellant's provision of numerous

gifts to both victims, and constituted proof of the existence of Appellant's common scheme or plan to sexually assault young female children who were biologically related to him. As a result, the trial judge did not abuse his broad discretion in admitting the testimony regarding Appellant's prior bad acts. However, even assuming the trial judge somehow erred in admitting Appellant's daughter's testimony, any error was entirely harmless in light of the other overwhelming evidence of Appellant's guilt presented during trial, and the admission of the challenged evidence could not have impacted the verdict. 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 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).

In an appeal from a decision regarding the admission of prior bad act evidence, the appellate court is limited to determining whether the trial judge abused his discretion. Wilson, 345 S.C. at 6, 545 S.E.2d 829. "If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008). Furthermore, in reviewing such a ruling, the trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

ANALYSIS

A. Admissibility of the Prior Bad Act Evidence

Generally, evidence of prior bad acts is not admissible to prove a defendant's guilt for the charged crime. State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). However, under Rule 404(b), SCRE, evidence of prior bad acts may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." See also State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (recognizing evidence of other crimes is competent to prove a charged offense if it

tends to establish: (1) motive; (2) intent; (3) the absence of mistake or accident; (4) the existence of a common scheme or plan; or (5) identity).

In determining whether to admit evidence of prior bad acts, the trial judge must first determine if the evidence is relevant. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). If a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

After determining the prior bad act evidence is relevant, the trial judge must next determine if the prior bad act evidence falls within one of the permissible exceptions of Rule 404(b), SCRE. Wallace, 384 S.C. at 433, 683 S.E.2d at 277. One such exception is the common scheme or plan exception, which necessitates a close degree of similarity or connection between the prior bad act and the charged offense. State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325 (1998). Regarding the common scheme or plan exception, the Supreme Court has instructed:

> Such evidence is relevant because proof of one is strong proof of the other. When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. Where the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).
>
> Although not a complete list, in this type of case, the trial court should consider the following factors when determining whether there is a close

> degree of similarity between the bad act and the crime charge: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery. We emphasize that these factors are set out merely for guidance and that other factors may be relevant in weighing the similarities and the dissimilarities between the crime charged and the bad act evidence.

Wallace, 384 S.C. at 433-434, 683 S.E.2d at 277-278 (citations omitted). Thus, the required connection between prior bad acts and a charged offense is established by a close degree of similarity, and no further connection is required for admissibility. Id. at 434, 683 S.E.2d at 278. "Requiring a 'connection' between the crime charged and the bad act evidence **is simply a requirement that the two be factually similar** and does not add an additional layer of analysis." Id. at 434, n. 5, 683 S.E.2d at 278 (emphasis added).

Finally, after determining the prior bad act evidence is relevant and falls within a permissible exception of Rule 404(b), SCRE, the trial judge must weigh the probative value of the evidence against its prejudicial effect. State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004). "The probative value of evidence falling within one of the Rule 404(b) exceptions must substantially outweigh the danger of unfair prejudice to the defendant." Wallace, 384 S.C. at 435, 683 S.E.2d at 278. The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result generally hinges on the facts of each specific case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). "Where the evidence of the bad acts is so similar to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh its prejudicial effect, it is admissible." Mathis, 359 S.C. at 463, 597 S.E.2d at 879. "Stated differently, evidence which is 'logically relevant

to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.' " State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (quoting State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973)).

In State v. Blanton, 316 S.C. 31, 32, 446 S.E.2d 438, 439 (Ct. App. 1994), Blanton was arrested and charged with first-degree criminal sexual conduct with a minor after Blanton's granddaughter alleged Blanton sexually molested her on several occasions. During trial, two other girls were permitted to testify over Blanton's objection about being sexually abused by Blanton approximately seven or eight years before Blanton sexually abused his granddaughter. Id. Following trial, Blanton appealed his conviction and asserted the prior bad act evidence was not sufficiently similar to the charged offense to constitute evidence of a common scheme or plan. Id. However, this Court disagreed and noted the following similarities existed between the prior bad act evidence and the incident involving Blanton's granddaughter:

> All three of the female victims were approximately the same age. Each was subjected to requests both for the performance of cunnilingus and fellatio. All of the alleged activities took place in Blanton's house or his vehicle. In each instance, Blanton took advantage of his relationship with the victim for his sexual gratification.

Id. at 33, 446 S.E.2d at 439. Based on those similarities, this Court found the evidence of the prior bad acts was admissible and affirmed Blanton's conviction. Id.

Similarly, in State v. Hubner, 362 S.C. 572, 575, 608 S.E.2d 463, 464 (Ct. App. 2005), Hubner was arrested and charged with six counts of committing a lewd act upon a child after allegations arose he sexually abused a girl who attended his church. During trial, the victim testified she met Hubner through his involvement with the church youth group and their relationship gradually progressed to being sexual in nature. Id. at 575-

576, 608 S.E.2d at 464. The victim stated Hubner – over the course of two years – reached into her pants, massaged her, touched her breasts, hugged her, fondled her between her vagina and rectum, told her he loved her, forced her to touch his penis, used religion to gain her acquiescence, gave her gifts, touched her vagina in a swimming pool, kissed her, and fondled her vagina in a garage. Id. at 575-579, 608 S.E.2d at 464-467. In addition to the victim's testimony, the State sought to introduce the testimony of a witness who was molested by Hubner approximately fourteen to fifteen years earlier. Id. at 579, 608 S.E.2d at 466. During an in camera hearing, the witness stated Hubner – over the course of two months – hugged her and fondled her breasts while she was babysitting, massaged her vagina and buttocks through her clothes, masturbated in front of her, engaged in sexual intercourse with her, threatened to kill her if she revealed the abuse to anyone, kissed her, slapped her, involved other people in their sexual encounters, and offered her money to perform sexual acts on him. Id. at 579-581, 608 S.E.2d at 466-467. Following the hearing, the trial judge ruled the witness' testimony regarding the hugging, kissing, and inappropriate touching was admissible as evidence of the existence of a common scheme or plan. Id. at 582, 608 S.E.2d at 467. Following the trial, Hubner appealed his convictions and asserted the prior bad act evidence should not have been admitted. Id. at 575, 608 S.E.2d at 464. On appeal, this Court reversed Hubner's convictions after finding the acts were not sufficiently similar to be admissible under the common scheme or plan exception. Id. at 585, 608 S.E.2d at 469. However, the Supreme Court subsequently reversed this Court's decision and affirmed Hubner's convictions after finding the trial judge properly admitted the evidence of the prior sexual assaults. State v. Hubner, 384 S.C. 436, 437, 683 S.E.2d 279, 280 (2009).

Likewise, in State v. Scott, 405 S.C. 489, 492-493, 748 S.E.2d 236, 239-239 (Ct. App. 2013), Scott was arrested and charged with numerous offenses, including one count of second-degree criminal sexual conduct with a minor and and three counts of committing a lewd act upon a child, following an investigation into allegations he sexually abused his four biological daughters when they were minors. During trial, the State sought to admit evidence regarding Scott's prior acts of sexual abuse to establish the existence of a common scheme or plan through the testimony of two unrelated witnesses who alleged Scott sexually abused them when they were minors approximately eleven years before Scott first began sexually the oldest of his four daughters, who had not yet been born at the time Scott engaged in the sexual abuse of his earlier victims. Id. at 492-493, 748 S.E.2d at 238-239. In response, defense counsel objected to the admission of that testimony on the grounds it was too remote and its probative value was substantially outweighed by the danger of unfair prejudice. Id. at 499, 748 S.E.2d at 242. However, the trial judge permitted Scott's prior victims to testify over objection, and Scott was ultimately convicted of numerous offenses. Id. at 496-497, 748 S.E.2d at 240-241. Subsequently, Scott appealed his convictions, arguing the prior bad act evidence was not sufficiently similar to the charged crimes to establish the existence of a common scheme or plan and was so remote its probative value was substantially outweighed by the danger of unfair prejudice. Id. at 492, 748 S.E.2d at 238. On appeal, this Court affirmed. Id. In affirming, this Court first concluded Scott's prior victims' testimony was admissible pursuant to Rule 404(b), SCRE, because the many similarities existing between the charged crimes and the prior bad acts, including in regard to the ages of the victims at the time of the abuse, the locations and situations where the victims were abused, and the nature of the abuse, outweighed any of the dissimilarities, which included

the facts Scott was not biologically related to his prior victims and did not abuse his prior victims in all the same ways he abused his daughters. Id. at 503, 748 S.E.2d at 244. Furthermore, this Court determined the probative value of the prior bad act evidence was not substantially outweighed by a danger of unfair prejudice despite the fact Scott had abused his prior victims eleven years before he began the abuse of his daughters. Id. at 508-509, 748 S.E.2d at 247.

In the case sub judice, the trial judge did not abuse his broad discretion by admitting the testimony of Appellant's daughter concerning Appellant's prior bad acts because Appellant's daughter's testimony constituted evidence of the existence of Appellant's common scheme or plan to sexually assault young female children who were biologically related to him. Notably, during trial, Victim, who was Appellant's biological granddaughter, testified she was sexually abused by Appellant shortly after she met him for the first time at the age of five with the abuse continuing until she was approximately twelve years old. Her testimony further established the sexual abuse occurred in a variety of locations, including in Appellant's home, in Appellant's place of business, and in a vehicle while she was on a trip with Appellant and the rest of her family. Regarding the nature of sexual abuse, Victim's testimony established Appellant sexually abused her in a variety of ways, including by inappropriately touching her breasts and vagina both on top of and underneath her clothing, performing oral sex on her and forcing her to perform oral sex on him, forcing her to touch his penis, and attempting to engage in sexual intercourse with her. Additionally, Victim's testimony established she was sexually abused by Appellant on a frequent basis nearly every single time she visited with him for a number of years. Furthermore, Victim's testimony demonstrated Appellant frequently bought her gifts during the time period he was sexually abusing her.

Similar to Victim's testimony, Burrow testified she did not meet Appellant, who was her biological father, until she was nine years old and was sexually abused by him beginning just over a year later with the abuse continuing until she was thirteen years old. Burrow's testimony further established the sexual abuse occurred in variety of locations, including in Appellant's home, in Appellant's place of business, and during a trip she took with Appellant. Regarding the nature of sexual abuse, Burrow's testimony established Appellant sexually abused her in a variety of ways, including by inappropriately touching her breasts and vagina on top of and underneath her clothing and by engaging in sexual intercourse with her. Additionally, Burrow's testimony established she was sexually abused by Appellant on a frequent and routine basis numerous times a week for several years. Furthermore, Burrow's testimony demonstrated Appellant frequently bought her gifts during the time period he was sexually abusing her.

Thus, in Appellant's case, each of Appellant's victims was a female family member that had a direct biological relationship to him. Moreover, Appellant did not meet either of the victims until later in the victims' lives, and he began sexually abusing the victims, who were both young children and were not yet teenagers at the time Appellant met them, not long after they came into his life and continued to abuse them on a frequent and continuous basis for several years after meeting them until the abuse was revealed to others. Additionally, although Victim was subjected to oral sex while Burrow was forced to engage in sexual intercourse with Appellant, both girls were otherwise sexually abused in highly similar manners, with Appellant inappropriately touching both

girls' breasts and vaginas on a routine basis.[6] Likewise, although Burrow did not testify she was sexually abused in Appellant's vehicle, both girls testified they were sexually abused by Appellant in a variety of locations, including in Appellant's home, during trips with Appellant, and in the highly unusual location of Appellant's place of business.[7] Furthermore, both girls recounted Appellant was generous with them and gave them numerous gifts during the time period he was abusing them. Accordingly, the testimony of Appellant's most recent victim, Victim, was highly similar to the testimony of Appellant's earlier victim, Burrow, in regard to: (1) the approximate age of the victims when the abuse occurred; (2) the biological connection of the victims to Appellant; (3) the gender of the victims; (4) the locations where Appellant abused the victims; (5) the nature of the abuse; (6) the frequent and continuous manner in which Appellant abused the victims; and (7) the generous way Appellant treated the victims when he was not abusing them. See Wallace, 384 S.C. at 434, n. 5, 683 S.E.2d at 278 ("Requiring a 'connection' between the crime charged and the bad act evidence is simply a requirement that the two be factually similar and does not add an additional layer of analysis."); cf. Blanton, 316 S.C. at 33, 446 S.E.2d at 439 (finding the prior bad acts were sufficiently

---

[6] Notably, although Appellant did not engage in sexual intercourse with Victim, he did attempt to do so. (Tr. p. 99).

[7] In an attempt to minimize the significance of Appellant's abuse of the children at his place of business, Appellant contended at trial and contends on appeal the abuse in Appellant's workplace was really not similar because Appellant abused Victim at his workplace after hours on a weekday once all the other employees had left while Appellant abused Burrow at his workplace on the weekend when no other employees were present. (Tr. pp. 290-291; App. Br. p. 4). Significantly, when viewing the circumstances of Appellant's abuse of his victims at his workplace, the critical similarities, including the fact Appellant elected to abuse his victims at his place of employment when no one else was present, outweighed the much less significant differences, such as the fact one victim was abused during a weekend when Appellant was alone with her at his workplace while the other victim was abused during a weekday when Appellant was alone with her at his workplace. See Wallace, 384 S.C. at 433, 683 S.E.2d at 278 ("When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)."); cf. Scott, 405 S.C. at 501, 748 S.E.2d at 243 ("Although we recognize that these points of distinction do exist, we find the trial court did not abuse its discretion in determining these distinctions were insufficient to outweigh the many other similarities."). As a result, Appellant's act of abusing both of his victims at his workplace was a highly significant factor establishing the existence of his common scheme or plan.

similar to the charged offense to be admissible where the victims in all of the acts were approximately the same age, each of the victims was subjected to the same type of sexual abuse in the same locations, and Blanton took advantage of his relationship with the victims for sexual gratification in each of the acts). Furthermore, those similarities between the acts outweighed any dissimilarities, which established a clear and logical connection between the earlier acts and more recent crimes. See Wallace, 384 S.C. at 434, 683 S.E.2d at 278 ("In sum, there are similarities in the class of the victim, timing, place, and warning that outweigh any dissimilarity."); cf. Scott, 405 S.C. at 501, 748 S.E.2d at 243 (finding prior bad act evidence to be admissible where some distinctions existed between the prior bad act testimony and the testimony of Scott's most recent victims but the distinctions did not outweigh the significant similarities). As a result, Burrow's testimony was properly admitted towards establishing the existence of Appellant's common scheme or plan to sexually abused young female children who were biologically related to him, and the trial judge's decision to admit that testimony did not constitute an abuse of discretion. See Wallace, 384 S.C. at 433-434, 683 S.E.2d at 278 ("When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b). . . . A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility.").

Moreover, the trial judge's decision to admit the prior bad act evidence was not rendered erroneous due to the fact Appellant began abusing Burrow a number of years before he began abusing Victim in light of the fact temporal remoteness of prior bad act evidence does not automatically render that evidence inadmissible during trial. Blanton, 316 S.C. at 33, 446 S.E.2d at 440; see State v. Tutton, 354 S.C. 319, 332, n. 5, 580 S.E.2d 186, 193 (Ct. App. 2003) ("Remoteness in time, however, is not dispositive."). In

Appellant's case, Appellant began abusing Burrow approximately nineteen to twenty years before he began sexually assaulting Victim. Although the gap between the prior sexual abuse and the abuse involving Victim was somewhat lengthy, the delay was explained by the fact Victim had not yet been born at the time Appellant was sexually abusing Victim coupled with the fact Appellant did not meet Victim until she was five years old. Therefore, the lapse in time between the prior abuse and the more recent abuse did **not** result from the abandonment of the common scheme or plan based on the testimony and evidence presented during trial and, instead, resulted from the fact Appellant could not resume his common scheme or plan until Victim had been born and was introduced into his life. See State v. McCombs, 410 S.C. 90, 101, 762 S.E.2d 744, 750 (Ct. App. 2014) ("The circuit court does not necessarily err when it permits testimony about a bad act occurring many years prior to the charged crime. In fact, evidence of prior bad acts that occurred many years before the charged crime is often admissible to prove a common scheme or plan." (citations omitted)); Scott, 405 S.C. at 504-505, 748 S.E.2d at 244-245 ("[E]vidence of bad acts occurring many years before the charged crime is often admissible to demonstrate a common scheme or plan. Thus, the trial court did not err in admitting the bad act evidence, simply because the evidence was purportedly too temporally remote." (citations omitted)). Accordingly, the remoteness of the prior bad act evidence related to Appellant's sexual abuse of his daughter did not render the evidence inadmissible or diminish the probative value of the evidence that stemmed from its numerous similarities to Appellant's more recent offenses involving his granddaughter. See Tutton, 354 S.C. at 330, 580 S.E.2d at 192 ("It goes without saying that the conduct need not be continuous to fall within the common scheme or plan exception."); see also Hubner, 384 S.C. at 437, 683 S.E.2d at 280 (reversing a decision in

which prior bad act evidence concerning incidents that occurred approximately fourteen to fifteen years before the charged offense was found to be inadmissible); State v. Hallman, 298 S.C. 172, 174, 379 S.E.2d 115, 116-117 (1989) (admitting evidence of prior bad acts occurring roughly seven years before the charged offense); Scott, 405 S.C. at 508, 748 S.E.2d at 247 (finding evidence of Scott's prior sexual abuse of earlier victims was admissible pursuant to the common scheme or plan exception despite the fact Scott's most recent victims had not been born at the time Scott sexually abused his earlier victims).

Finally, the trial judge properly concluded the probative value of Burrow's testimony was not substantially outweighed by a danger of unfair prejudice. Critically, in Appellant's case, the prior bad act evidence was extremely probative and significant due to the lack of conclusive physical evidence corroborating Victim's testimony. Due to the fact Victim delayed disclosing the sexual abuse coupled with the fact the sexual abuse occurred on a chronic basis, no conclusive physical evidence of the sexual abuse could be obtained.[8] For that reason, the testimony of Burrow was extremely probative and significant because it established the existence of a common scheme or plan on Appellant's part and constituted strong proof of the highly similar incidents involving Victim based on the similarities between the Appellant's prior abuse of Burrow and Appellant's subsequent abuse of Victim. Accordingly, the probative value of the prior bad act evidence was extremely high. Cf. State v. Clasby, 385 S.C. 148, 158-158, 682 S.E.2d 892, 898 (2009) ("Given there was no physical evidence to corroborate B.C.'s testimony regarding the indicted offense of CSC with a minor, first degree and lewd act

---

[8] During trial, Dr. Croswell explained most medical examinations in cases involving chronic sexual abuse do not result in the discovery of any specific evidence establishing sexual abuse occurred because many types of abuse do not typically cause injuries while injuries to the genital area typically heal very rapidly. (Tr. pp. 194-197).

upon a child, we find her testimony of Clasby's sustained illicit conduct was extremely probative to establish the charge criminal sexual conduct underlying the offense of lewd act upon a child."). In light of the high probative value of the evidence, the potential for undue prejudice that could have resulted from the admission of the evidence was not sufficient to substantially outweigh the evidence's probative value. See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is **substantially outweighed by the danger of unfair prejudice**, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (emphasis added)); see also State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (" 'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' " (citations omitted)). Therefore, the trial judge did not abuse his broad discretion in weighing the probative value of the prior bad act evidence against its potential for undue prejudice. See Hamilton, 344 S.C. at 358, 543 S.E.2d at 594 ("If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.").

In Appellant's case, the prior bad act evidence introduced during trial through the testimony of Appellant's biological daughter was strikingly similar to the testimony of Victim, who was Appellant's biological granddaughter, in regard to the Appellant's biological connection to the victims, the similar ages of the victims when the abuse occurred, the manner in which the abuse occurred, the nature of the abuse, the locations where the abuse occurred, and Appellant's provision of numerous gifts to the victims. See Wallace, 384 S.C. at 434, 683 S.E.2d at 278 ("Here, the similarities between the acts

include petitioner's relationship to the victims (his stepdaughters), abuse beginning at about the same age, abuse occurring in the family home when the mother was absent, and an admonishment not to tell because no one would believe it. In sum, there are similarities in the class of victim, timing, place, and warning that outweigh any dissimilarity."); see also State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008) ("Where there is a close degree of similarity between the crime charged and the prior bad act, both this Court and the Court of Appeals have held prior bad acts are admissible to demonstrate a common scheme or plan."). Therefore, like in Blanton, Hubner, Scott, and numerous other cases, the prior bad act evidence was relevant and admissible as proof of the existence of a common scheme or plan, and its high probative value substantially outweighed its potential for undue prejudice. For those reasons, the trial judge did not abuse his broad discretion in admitting the testimony regarding Appellant's prior bad acts. 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."); see also Martucci, 380 S.C. at 253, 669 S.E.2d at 609 ("If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal."). Appellant's convictions should be affirmed.

B. Harmlessness of Any Error in the Admission of the Prior Bad Act Evidence

After an error is discovered, the appellate court must then determine whether the error was harmless. 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."). 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). 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 generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "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." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at bar, notwithstanding the admission of the testimony of Appellant's daughter regarding Appellant's highly similar prior acts of sexual abuse, Victim testified during trial about the sexual abuse she suffered at Appellant's hands without contradiction or rebuttal, and her testimony in regard to the abuse was corroborated in a substantial and significant way through the testimony of Brother, who confirmed he caught Appellant kissing Victim while she was lying on top of Appellant in Appellant's bed on one occasion and further noted he was regularly forced to lie in the back seat of Appellant's truck while Appellant did something seemingly improper with Victim in the front seat. See State v. Miller, 266 S.C. 409, 413, 223 S.E.2d 774, 776 (1976) ("The positive, uncontradicted identification of appellants and their codefendant as the perpetrators of the crime charged and their apprehension a short time later in the identified getaway car, with the incriminating evidence found therein, so overwhelmingly establishes their guilt as to render any violation of Bruton 'harmless beyond a reasonable doubt.' "); see also State v. Simmons, 308 S.C. 80, 83, 417 S.E.2d 92, 94 (1992) (recognizing an error in the admission of evidence can be rendered harmless when other direct or circumstantial evidence is presented that corroborates the evidence).

Additionally, numerous witnesses testified about Victim's consistent disclosures of the sexual abuse after it was finally revealed, and Dr. Croswell noted she discovered a moderate notch in Victim's hymen, which could have been caused by sexual abuse and was consistent with the information provided to her by Victim. Furthermore, Mother testified about how Appellant asked her to open bank accounts in Victim's name after Victim initially revealed the sexual abuse to her and how Appellant presumably deposited money into those accounts for several months after that, which was significant evidence of an effort on Appellant's part to influence Victim and her parents into not revealing the sexual abuse to the authorities. See State v. Marlowe, 156 S.C. 363, 366, 153 S.E. 340, 341 (1930) ("If a defendant seeks to bribe witnesses not to testify against him, evidence to that effect is always competent.").

Critically, based on the presentation of the other evidence of guilt independent of Appellant's daughter's testimony, Appellant's guilt was overwhelmingly established, and any error in the admission of Appellant's daughter's testimony could not reasonably have had any impact on the verdict.[9] 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); Sherard, 303 S.C. at 176, 399 S.E.2d at

[9] Moreover, despite Appellant's contentions to the contrary, the potential for the admission of Burrow's testimony to have resulted in undue prejudice to Appellant was greatly reduced by the admission of the evidence establishing Appellant had previously been convicted of second-degree criminal sexual conduct with a minor, which was admitted without objection **and** without limitation. See generally State v. Benton, 338 S.C. 151, 156, 526 S.E.2d 228, 231 (2000) (explaining a trial judge should "**on request**" instruct the jury on the limited purpose for which prior crime evidence can be considered when such evidence is admitted to prove an element of a crime (emphasis added)). Based on the admission of the evidence related to Appellant's prior conviction, the jury would have been aware of the fact Appellant had previously committed a sex offense involving a minor victim, which is the exact same fact Appellant sought to prevent the jury from learning by objecting to Burrow's testimony, **even if** the trial judge had not permitted Burrow to testify during the trial. Accordingly, because the jury learned of Appellant's prior sex offense through the admission of unobjected-to evidence independent of Burrow's testimony, the challenged testimony's potential for undue prejudice – along with its potential to impact the verdict – was substantially minimized in Appellant's case. See State v. McFarlane, 279 S.C. 327, 330, 306 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.").

597 ("[An appellate court] will not set aside a conviction due to insubstantial errors not affecting the result."). Therefore, the trial judge's decision to admit Appellant's daughter's testimony would not warrant a reversal of Appellant's convictions even if that decision was an erroneous one. See State v. Kromah, 401 S.C. 340, 362, 737 S.E.2d 490, 501 (2013) (finding an error in the admission of improper testimony to be harmless where that error could not have reasonably affected the outcome of trial in light of the other evidence that was presented). 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

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: ______________________
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

April 6, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
APR 06 2015
SC Court of Appeals

Appeal from Greenville County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2014-001092

THE STATE,

Respondent,

vs.

NORMAN QUINTON HUNT,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, 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:

Thomas J. Quinn, Esquire
109 Laurens Road
Building 4, Suite D
Greenville, South Carolina 29607

I further certify that all parties required by Rule to be served have been served.
This 6th day of April, 2015.

ANNE A. MUELLER
Legal Assistant

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

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
APR 06 2015
SC Court of Appeals

April 6, 2015

Thomas J. Quinn, Esquire
109 Laurens Road
Building 4, Suite D
Greenville, South Carolina 29607

RE: State v. Norman Quinton Hunt – Appellate Case No. 2014-001092

Dear Mr. Quinn:

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

Please note the Initial Brief of Appellant contains personal data identifiers in the form of the minor victim's unredacted name on pages 3, 4, 5, 6, and 7. Pursuant to the Order of the South Carolina Supreme Court, dated April 15, 2014, entitled RE: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, this information, along with any other personal data identifiers, must be fully redacted from the Initial Brief of Appellant, the Final Brief of Appellant, and the Record on Appeal in a manner consistent with the order.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

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