ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM SUMTER COUNTY

Court of General Sessions

W. Jeffrey Young, Circuit Court Judge



---

Appellate Case No. 2014-001298

---

THE STATE,

Respondent,

v.

JAMES GREGORY YOUNGER,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

---

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

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

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM SUMTER COUNTY

Court of General Sessions

W. Jeffrey Young, Circuit Court Judge

---

Appellate Case No. 2014-001298

---

THE STATE,

Respondent,

v.

JAMES GREGORY YOUNGER,

Appellant.

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

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

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**:



**Other Authorities**:

## STATEMENT OF ISSUE ON APPEAL

Appellant's argument is not preserved, but even if preserved, the trial court properly overruled defense counsel's objection to the victim's testimony regarding what Appellant told her about a prior felony charge because the statement was not hearsay, was relevant, and had probative value.

## STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant for third-degree criminal sexual conduct and second-degree assault and battery. (R.p.350) On June 9-11, 2014, Appellant proceeded to a trial before the Honorable W. Jeffrey Young and a jury. James R. Snell, Esquire, represented Appellant, and Assistant Solicitors John P. Meadors and Tyler Brown represented the State. The jury found Appellant guilty of third-degree criminal sexual conduct, and Judge Young sentenced him to ten years' imprisonment. (R. p.346-347, 348 ) The jury found Appellant not guilty of second-degree assault and battery.

On June 12, 2014, Appellant filed a Notice of Appeal.

## STATEMENT OF FACTS

In March 2012, Victim met Appellant when he began taking classes at her yoga studio. (R. p.130, line 23-R. p.131, line 9.) Appellant introduced himself as Jay Gregory. (R. p 131, lines 23-25, R p 132, lines 1-8.) The two began spending time together, and the relationship turned intimate in May 2012 (R p 134, line 2-R p.135, line 25.) In July 2012, the intimate part of the relationship ended, but the two remained friends. (R. p.140, line 15-R. p.141, line 21.)

On September 19, 2012, he came to her house to return her house key. (R. p.148, lines 7-13.) After eating dinner together, Appellant and Victim began having consensual sexual relations, which ended prematurely when Appellant lost his erection. (R. p.150, line 16-R p.151, line 20.) He then asked her if he could try again, this time with her lying on her stomach. (R. p.151, line 22-R. p.152, line 15.) He entered her vaginally from behind while lying on top of her and had her arms behind her back. (R p.152, line 15-R. p 153, line 1.) As the sexual intercourse started getting rougher than usual, he placed his left arm around her collar bone area and his right hand over her mouth. (R. p 153, lines 1-5.) She felt her neck being squeezed very tightly and could not breathe, and the next thing she remembered was coming to from being unconscious. (R. p.153, lines 9-15.) When she regained consciousness, Victim felt wetness, pain, and burning in her rectum. (R. p.153, line 9-19, line 5.) The area was bleeding and torn. (R. p.156, lines 6-16.) Appellant told her he did not realize she became unconscious and explained that he accidentally "slipped" while they were having sex. (R p.155, lines 14-25.)

Victim thought it was an accident at first but became concerned by the amount of bruising. (R. p.162, lines 2-9.) After sending a picture of the injury to her friend Malissa McIntosh, she decided to go to the police department and report the assault. (R p.164,

line 19-R. p.165, line 14.) U.S Marshals arrested Appellant in North Carolina on December 6, 2012, and he was charged with third-degree criminal sexual conduct and second-degree assault and battery. (R p.283, line 23-R. p.284, line 3; R.p.358)

In limine Hearing

Pretrial, the State introduced a Lyle[1] issue, during which Victim testified in camera (R. p.3-37 ) After hearing Victim and two prior victims testify, the trial court ruled the prior bad act evidence inadmissible. (R. p.37-105; R. p 106, lines 8-19.) At that point, defense counsel brought up testimony by Victim that Appellant told her about a prior allegation himself. (R. p.107, lines 1-5.) The trial court ruled that if Appellant said something about it, then Victim could state it. He clarified that the other two victims would not be allowed to testify. (R. p.107, lines 6-8 ) Defense counsel then argued it should be excluded as inadmissible hearsay because "it's a non-statement against self penal interest" and moved in limine to prohibit the introduction of that evidence. (R. p.107, lines 9-14.) The trial court ruled that because Appellant made the statement, it could be used against him as testified to by Victim. (R. p.107, lines 20-23.)

Trial

At trial, the State called Victim. (R. p.127, lines 8-14.) She testified that when she met Appellant in March 2012, he introduced himself as Jay Gregory. (R. p.131, line 23-R. p.132, line 11.) She stated that in June of that year, she said something to him about his son's last name, and he finally divulged to her that his last name was actually Younger. (R. p.139, lines 3-7 ) He explained he gave her the wrong name because "[h]e said he had done things in his past, and that people would always judge him. And if he would have disclosed his full name and age, then I could have google searched and seen

[1] 125 S.C. 406, 118 S.E. 803 (1923).

these things from his past and he would have been immediately judged. And I would have not given him a chance to get to know him or anything." (R. p.139, lines 12-18.) Specifically, she testified, "He said that he was—had a felony charge from when he was 19 or 20 years old. It was an assault." (R. p.139, lines 20-22.) At that point, defense counsel objected, and the trial court overruled the objection. (R. p.139, lines 23-24.) Victim went on to describe what Appellant told her:

> It was an assault. I don't remember exactly what the legal term is as far as the—but he had beat up a guy really badly coming out of a restaurant. They had a disagreement and a fight, a really bad fight And then an assault on a female; that he had a really aggressive girlfriend that cracked him over the head with a lamp. And that he put her in a choke hold, a sleeper hold because he knew jiu jitsu. And he was defending himself is what he said.

(R p 140, lines 1-10.)

Victim described how around July 4, she realized Appellant was not interested in a committed relationship (R. p.140, line 19-R. p.141, line 5.) She did not want to be sexually active if he was unable to be in a committed relationship, so the intimate relationship stopped but they remained in each other's lives (R. p.141, lines 3-21.) They still hung out, cooked dinner, practiced yoga, read daily devotionals, and watched Christian documentaries together. (R. p.142, lines 1-8.) On August 13, he came to her house, upset that he was being excused from his job and worried about his lease ending in September. (R. p.143, line 24-R. p.144, line 23.) He asked if he could move in with her after staying at her house for about two weeks. (R. p.145, lines 2-11.) At first she said yes, but then they decided it would not be a good idea. (R. p.145, lines 12-18 )

Victim testified that on September 19, after not seeing Appellant for about three weeks, she texted him about getting her house key back from him. (R. p.147, line 9-R.

p.148, line 9.) He came to her house around 6:00 that night and she prepared dinner while they drank wine.[2] (R. p.149, lines 21-22; R. p.150, lines 14-25.) After dinner, he started kissing her in the kitchen, which led to going into her bedroom and engaging in sexual relations. (R. p.151, lines 2-6.) She testified that she wanted to get intimate with him at that time. (R. p.151, lines 7-11.) After they began having sex, Appellant was unable to hold an erection and they stopped. (R p.151, lines 14-20.) He then asked if they could start again, asking her to lie down on her stomach. (R. p.151, line 22-R. p.152, line 15.) He lay on top of her from behind and entered her vaginally. (R. p.152, lines 15-21.) Victim testified as follows:

> [Victim]: Things progressed. And I remembered at one time, he had my arms behind my back. And it started getting rougher than usual And I remember his left arm was around this area. Like the collar bone area I would say. And he placed his right hand over my mouth. And then I just remember things getting just a lot of tight pressure around my neck.
>
> [The State] From him?
>
> [Victim]· From him. And I just had a moment of thinking I can't breath[e]. And that my neck was being squeezed on very tightly. And the next thing I remember is coming up from being unconscious.
>
> [The State]. So you couldn't breath[e].
>
> [Victim]: I could not.
>
> [The State]: Had you all ever done that before as far as over the mouth and choking?
>
> [Victim]. Never.

[2] Victim testified she had one glass of wine while preparing dinner and another glass with dinner. (R. p.150, lines 20-22.)

[The State]: I mean tell these folks is that some kind, I don't know what you call it. Is that some kind of little game you all played?

[Victim]: Never.

[The State]: So this had never been done before to you?

[Victim]: Correct, no.

[The State]: And did you in fact become unconscious? Tell these ladies and gentlemen.

[Victim]: Yes, I was unconscious

[The State]: Prior to going unconscious, did you say, James Gregory Younger, put your penis in my anus?

[Victim]: No.

[The State]: Had you ever done that before with him?

[Victim]: Never.

[The State]: Not to get personal, but I am going to get personal. Had you ever had anybody else in your anus?

[Victim]: I've never had anal sex.

[The State]: Did you want to have anal sex?

[Victim]: No.

(R. p.152, line 25-R. p.154, line 14.)

Victim testified that when she came to from being unconscious, she felt wet with a lot of burning and pain, and "felt like I had even used the bathroom from that area." (R. p.154, lines 17-20.) That made her embarrassed, so she immediately got up and felt disoriented (R. p.155, lines 1-5.) She went into the bathroom and saw that there was blood on the toilet tissue when she wiped. (R. p.155, lines 5-14.) When she asked

Appellant what happened, he said he "accidently slipped one time " (R. p.155, lines 14-18.) She asked him if he choked her unconscious and he said he did not realize his arm was around her neck so tight and that he did not realize she had gone unconscious. (R p.155, lines 18-22.) Appellant suggested they take a bath and afterward, he said there was blood on the sheets and put them in the washing machine. (R. p.157, lines 3-16.) Victim testified she felt faint and nauseated and fell to her knees, so she got into her bed (R. p.157, line 16-R. p.158, lines 2.) She remembered sitting in her bathroom and looking at her rectum, which was swollen and black (R p 158, lines 3-6.) Having told Victim he was a nurse at one time, Appellant looked at her rectum, said he saw a tear, and opined that perhaps his "slip" had torn a hemorrhoid. (R. p.158, lines 7-11.) He then applied antibiotic ointment to the wound. (R. p.158, lines 11-14.)

Victim testified that the next morning, it was painful to use the bathroom and she was unable to wipe the area, so she had to rinse off in the bathtub. (R. p 160, lines 4-10.) She had bled on her underwear all through the night, and Appellant put them in the washing machine. (R. p.160, lines 10-15.) After Appellant left her house, Victim cancelled the yoga classes she was scheduled to teach and stayed home thinking about what had happened. (R. p.160, line 22-R. p.161, line 24.) At that point, Appellant was texting her and checking on her, and she was thinking it was an accident, but that evening she texted Appellant that she was concerned about the amount of bruising and asked him to explain what happened while she was unconscious. (R. p.162, lines 2-9.) She testified, "Once I started questioning, he stopped responding." (R. p.162, lines 10-12.) She testified she did not want to think she had been violated by someone she trusted and allowed into her home, and who was part of her yoga family. (R. p.163, lines 4-7.)

Victim testified that on Saturday, September 22, she was still having discomfort and was concerned about the bruising, so she took a picture of her rectum with her camera phone and sent it to Appellant. (R. p.162, lines 23-25; R. p.164, lines 6-16; SROA p.1, lines 7-24.) Appellant did not respond. (Tr. 200, lines 17-18.) Victim also showed the picture to her friend Malissa, who accompanied her to the police department the following Monday, September 24, to report the assault. (R. p.164, line 19-R. p.165, line 14.)

Kathy Saunders, a sexual assault nurse examiner, examined Victim on October 4, 2012, after receiving a call from the Sumter Police Department to follow up on a reported assault. (R. p 238, lines 21-23; R. p.239, lines 5-15 ) Saunders testified that Victim described pain and bleeding in the rectal area and was very tearful as she described the assault (R. p.241, lines 12-15; R. p.244, lines 1-2.) Though Saunders testified Victim's rectum appeared normal during the exam, she stated that would not be inconsistent following a violent entry on September 19 because of the time that had passed and the stretching and accommodation of the rectal muscle, and she emphasized that people heal quickly from that type of forced entry: between two and seven days.[3] (R. p.247, lines 6-25, R. p.248, lines 1-6 ) During cross-examination, Saunders testified she did not observe any bruising or ligature marks on Victim's neck or throat area, or any signs showing she was forcibly choked.[4] (R. p.252, line 17-R. p.252, line 6.) On redirect, the

---

[3] On the date of Victim's examination, it had been fifteen days since Appellant sexually assaulted her

[4] According to studies on chokeholds used by law enforcement, "The summary experience with choking for control of suspects—also called the 'carotid restraint hold,' 'shime waza,' or '**the sleeper hold**'—is that death can ensue without the intent of the officer, and **without leaving external marks on the body**." Hawley DA, McClane GE, Strack BG, A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases, 21(3) J. of Emergency Med 317-22 (2001) (emphasis added).

trial court qualified Saunders as an expert in sexual assault. (R. p.259, line18-R. p.261, line 22 ) The State showed her State's Exhibit 1, the photograph Victim took of her rectum, and asked her to describe what she saw. (R. p.261, line 25-R. p.262, line 2.) She described the injuries as follows:

> There is the area of the perianal tissue, which is the skin right around the opening to the rectal area with kind of red, it appears to be kind of a purply blue color pattern bruising around the entire perianal area, with swelling of the perianal tissue . . And also lateral on the skin or just outside of the perianal area. Bruising of more of the buttocks tissues as well.

(R. p.262, lines 3-12.) The State asked her, based on her training and observations, whether one slip in Victim's anus would be consistent with the injuries in the photograph. (R. p.262, lines 13-17.) She answered, "Certainly if it was a general slip, it wouldn't have caused a bruise that appears to be a[s] significant [a]s what is resembled on this photograph. It would have taken **substantial force** to cause such bruising both to the perianal, which is around the opening of the buttocks, as well as to the lateral, the side tissue, of the rectum." (R. p.262, line 24-R. p.263, line 6.) (emphasis added )

Ultimately, the jury found Appellant guilty of third-degree criminal sexual conduct but not guilty of second-degree assault and battery. The trial judge sentenced him to ten years' imprisonment. (R p 346-347, 348.)

## ARGUMENT

**Appellant's argument is not preserved, but even if preserved, the trial court properly overruled defense counsel's objection to the victim's testimony regarding what Appellant told her about a prior felony charge because the statement was not hearsay, was relevant, and had probative value.**

Appellant argues the trial court erred in overruling defense counsel's objection to allowing Victim to place his character into issue with a prior felony charge. However, because Appellant did not object to the testimony on that basis at trial, the issue is not preserved for this Court's review. And even if this Court finds the issue is preserved, Appellant made the statement to Victim regarding his past crimes, it was not hearsay, and it was relevant and probative; thus, it was admissible. The trial court did not err by allowing the testimony.

A trial judge's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Adams, 354 S.C. 361, 377, 580 S E 2d 785, 793 (Ct. App. 2003). Only errors so substantial that they result in a verdict that would not otherwise have been rendered require reversal. State v. Jolly, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct App. 1991). A defendant seeking reversal based on error in admission of evidence has the burden of showing that evidence was prejudicial State v McElveen, 280 S.C. 325, 327, 313 S.E.2d 298, 299 (1984).

"As a general rule, statements or declarations made by one accused of a crime are admissible against him." State v Plyler, 275 S.C. 291, 270 S.E 2d 126 (1980). So long as the evidence meets the threshold test of admissibility by being relevant, the trial court may properly admit it. "'Relevant evidence' means evidence having any tendency to

make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

Appellant argues the following line of questioning should not have been admitted:

> [The State]: And did he tell you why he had told you his wrong name?
>
> [Victim]: He did.
>
> [The State]: What did he say?
>
> [Victim] He said he had done things in his past, and that people would always judge him. And if he would have disclosed his full name and age, then I could have google searched and seen these things from his past and he would have been immediately judged And I would have not given him a chance to get to know him or anything And, yes.
>
> [The State]. Was he specific?
>
> [Victim]: Yes. He said that he was—had a felony charge from when he was 19 or 20 years old. It was an assault.
>
> [Appellant]: Object
>
> The Court: Overruled.
>
> [The State]: Go ahead.
>
> [Victim]. It was an assault. I don't remember exactly what the legal term is as far as the—but he had beat up a guy really badly coming out of a restaurant. They had a disagreement and a fight, a really bad fight. And then an assault on a female; that he had a really aggressive girlfriend that cracked him over the head with a lamp. **And that he put her in a choke hold, a sleeper hold because he knew jiu jitsu.** And he was defending himself is what he said.
>
> [The State]. So those were his words to you as to why he had given you a false name.
>
> [Victim]: Yes.

(R. p.139, line 8-R. p.140, line 13.) (emphasis added )

During the pretrial Lyle hearing, the trial judge ruled that two other victims of Appellant could not testify. Despite the fact that both women testified to being rendered unconscious and anally raped by Appellant, the trial judge found too many dissimilarities, too remote a temporal link, and a prejudicial effect that substantially outweighed the probative value. (R p.104-106.) After the trial judge's ruling, defense counsel questioned him about the scope of his ruling and the following exchange took place:

> [Appellant]: I think there was some testimony or reference that [Victim,] the complaining witness, alleged that [Appellant] had told h[er] about a prior allegation himself.
>
> The Court: If he says something about that, then she can state it But the other two ladies are not allowed to testify.
>
> [Appellant]: Your Honor, **could I make a motion to exclude that as, I think it would be otherwise inadmissible hearsay, as it's a non-statement against self penal interest**. And I would like to make a motion in limine to prohibit the introduction of that evidence
>
> [The State]: Your Honor, when he gives a false name. And then goes on for several weeks and then ultimately says well this is my real name. Here's why I gave you the false name I think somehow I need to explain that to the jury.
>
> The Court: I think—I mean he made the statement. I'm not so concerned about that. He made the statement then that can be used against him as far as from her, he made that statement.
>
> [Appellant]: Thank you.

(R. p.107, lines 1-24.) (emphasis added.)

Initially, the State submits the issue of improper character evidence is not preserved. Defense counsel's motion in limine regarding Victim's testimony concerning Appellant's disclosure to her of a prior allegation stopped short of arguing it placed Appellant's character in evidence. Rather, defense counsel merely argued it was inadmissible hearsay because "it's a non-statement against self penal interest." (R. p.107, lines 11-12.) Later, when Victim was testifying before the jury, his objection was simply, "Object." (R. p.139, line 23.) Frankly, the State is not certain what Appellant meant by the terms "non-statement" and "self penal." However, it is apparent neither objection encompassed an argument about character evidence, which is the only issue argued on appeal. Therefore, Appellant's argument that "[t]he trial court erred in overruling defense counsel's objection to the victim's placing appellant's character into issue with a prior felony charge" is not preserved and should be dismissed for that reason See State v. Dunbar, 356 S C. 138, 587 S.E.2d 691 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a party may not argue one ground at trial and a different ground on appeal)

However, if the Court finds the issue is preserved, Appellant's argument still fails on the merits The statements Appellant made to Victim explaining why he gave her a false name when he first met her and did not divulge his real name until she asked about his son's last name are relevant for two reasons. First, using a false name so that Victim could not Google him and find out about his past is part of the manner in which he induced Victim to trust him so that she would become willing to participate in intimate relations with him. Appellant built their relationship over time by gaining Victim's trust, even to the point of doing daily Christian devotionals with her, so that he could

manipulate her into allowing him to put his hands around her throat and mouth and choke her without her becoming scared and stopping him With sexual offenders of children, "[g]rooming" is "the process of cultivating trust with a victim and gradually introducing sexual behaviors until" victimization is possible. United States v. Johnson, 132 F.3d 1279, 1283 n.2 (9th Cir. 1997). Similarly, sexual abusers of adults often use similar methods of gaining trust to pave the way for a sexual assault. Here, Appellant gave a false name, became a student at Victim's yoga studio, and participated in Christian activities with her, all as a way to gain her trust and become intimate with her. Indeed, Victim trusted him so much that it took her several days to process what he had done to her and understand he had actually sexually assaulted her. As she explained, she did not want to think she had been violated by someone she trusted and allowed into her home, and who was part of her yoga family. In his closing argument, the Solicitor talked about why Appellant gave Victim a false name. He stated, "He didn't want her looking in to his past and see. Well the defense may argue, well she stayed with him. He's good. She's already been with him four to six weeks with the wrong name. . . . I submit to you he knew what he was doing. . . . A misrepresentation to develop a relationship." (R. p.309, lines 1-25.)

Second, the testimony about his assault charge concerning a girlfriend involved the statement "that he put her in a choke hold, a sleeper hold because he knew jiu jitsu." This is certainly relevant to the present case because it shows he knew how to put someone in a sleeper hold to choke her Because he choked Victim into unconsciousness so he could sexually assault her anally, that information is relevant to the crime. Accordingly, the testimony provided by Victim regarding Appellant's statements about his past has probative value that is not substantially outweighed by prejudice.

"'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 A party's own statement offered against him is not hearsay. Rule 801(d)(2), SCRE.

Victim's testimony regarding Appellant's statements were admissions of a party opponent, and therefore, did not constitute hearsay under Rule 801(d)(2), SCRE. The part explaining why he gave her a false name was an admission of using false pretense to induce her to trust him so that he would be able to carry out the act of choking her unconscious and sexually assaulting her [5] The part where he explained "that he put [a girlfriend] in a choke hold, a sleeper hold because he knew jiu jitsu" was an admission that he knew how to choke someone, which is of course relevant to the manner in which this crime was committed. See State v. Hughes, 336 S.C 585, 521 S.E.2d 500, 505 (1999) (defendant's out of court statements were against defendant's own interest and were admissible under Rule 801(d)(2)).

Additionally, the testimony was not offered for the truth of the matter asserted, and, therefore, it was not hearsay under Rule 801(c) Victim simply testified regarding what Appellant told her his reason was for giving her a false name when he met her. The State made clear in its questioning that the purpose of this testimony was only to explain why Appellant gave Victim a false name. The testimony was not hearsay because it was not offered to actually provide evidence of Appellant's criminal record, but rather simply to explain Appellant's inducement of Victim to trust him through the use of a false name so that she could not Google him and find out about this past.

---

[5] Victim testified that she said something to Appellant about his son's last name in June 2012, and that was when he finally divulged to her that his last name was actually Younger. (R. p.139, lines 3-7.)

Moreover, the testimony was part of the *res gestae* of the crime. "The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). Under *res gestae*, evidence of other crimes is admissible:

> when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae'" or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . .' [and is thus] part of the res gestae of the crime charged."

Id. at 512-13, 514 S.E.2d at 582-83 (citations omitted).

Here, Victim's testimony regarding the explanation Appellant gave her for why he used a false name is part of the "context of the crime." It helps "complete the story" by showing Appellant's inducement of Victim to trust him so that he had the opportunity to choke her unconscious, sexually assault her anally, and feel confident she would believe him when he said he only "slipped" and, thus, not report the sexual assault to law enforcement because of that trusted relationship he had established. When defense counsel asked Victim on cross-examination: "And [Appellant] did nothing that was characterized as being anything other than gentle and nurturing. Like he was concerned and cared for you[?]," she answered, "Gentle, nurturing, **manipulative**." (R. p 205, lines 8-11.) (emphasis added.)

The evidence was not hearsay, was relevant and probative to the issues, and provided a background and explanation of the relationship Appellant built with Victim to

induce her to trust him so that he could have the opportunity to accomplish a brutal sexual assault while she was unconscious. Accordingly, the trial court properly admitted the testimony, and this Court should affirm its decision.

## CONCLUSION

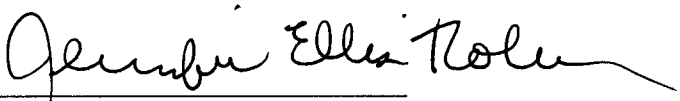
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

May 4, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals



APPEAL FROM SUMTER COUNTY
Court of General Sessions
W. Jeffrey Young, Circuit Court Judge

Appellate Case No 2014-001298

THE STATE,

Respondent,

v.

JAMES GREGORY YOUNGER,

Appellant

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

ERNEST A FINNEY, III
Solicitor, Third Judicial Circuit

BY: Jennifer Ellis Roberts
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

May 4, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM SUMTER COUNTY

Court of General Sessions

W. Jeffrey Young, Circuit Court Judge



---

Appellate Case No. 2014-001298

---

THE STATE,

Respondent,

v.

JAMES GREGORY YOUNGER,

Appellant.

---

**PROOF OF SERVICE**

---

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

Robert M. Pachak, 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 4th day of May, 2015.

Angela Bennett
ANGELA BENNETT
Administrative Assistant

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