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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Tanya A. Gee, Circuit Court Judge

Appellate Case No. 2016-000642

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SC Court of Appeals

THE STATE,

Respondent,

v.

JAMES WAYNE MILLER,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On August 11, 2012, Appellant James Wayne Miller ("Appellant") was arrested following the report of his sexual abuse of his seventeen-year-old daughter ("Victim"). During its October 2012 term of court, the Kershaw County Grand Jury indicted Appellant for second-degree criminal sexual conduct and incest. On March 14, 2016, Appellant proceeded to a jury trial in the Kershaw County Court of General Sessions with the Honorable Tanya A. Gee, circuit court judge, presiding. On March 18, 2016, the jury convicted Appellant as indicted. Judge Gee sentenced Appellant to twenty years' imprisonment for second-degree criminal sexual conduct and ten years' imprisonment for incest, with the sentences to be served consecutively. Thereafter, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In July of 2011, Appellant and his wife Tammy, along with their five children, visited friends in Camden for the Fourth of July holiday. (R. 98-99, 104). After spending time in Camden, Appellant decided to move his family from Summerville to Camden and found a two-story house to rent on Lake Wateree. (R. 104-105). The home needed some work before the family would be ready to move in, so Appellant and his sixteen-year-old daughter (Victim) stayed behind to fix up the home while the rest of the family, including Victim's twin sister, returned to Summerville to pack up their home. (R. 106-107). Appellant, who worked in construction and as a day laborer, often had assistance from Victim when working. (R. 102-106). Appellant and Victim stayed in the family's camper while fixing up the home. (R. 106-107).

One evening after a long day of working on the new home, Victim went inside the camper to go to bed while Appellant remained outside by a bonfire, drinking and socializing with a friend. (R. 107-108). Victim eventually fell asleep and woke up to her father performing oral sex on her. (R. 108). Appellant had Victim's legs pulled apart and pinned down so she could not move. (R. 108). She was able to shove him off and when she freed herself, she ran to the bathroom. (R. 108-109). Appellant apologized, said it was an accident, and promised it would not happen again. (R. 109-110). He pleaded with her to come out and go back to bed, promising he would remain on the couch. (R. 109-110). Victim finally acquiesced and returned to the bed, where she eventually fell asleep again. (R. 109-110). A short time later, Victim woke up to Appellant on top of her, pinning her down. (R. 110). Victim tried to break free, but was unable to get away. (R. 110-111). Appellant said he needed to finish what he started and vaginally penetrated Victim. (R. 110-111). After Appellant finished raping her, Victim fled to the

bathroom, where she remained for the rest of the evening. (R. 111). Appellant fell asleep as if nothing had happened. (R. 111).

The next morning, Appellant told Victim their family would be ruined if she told anyone about the abuse. (R. 111). He told her he had taken a pill in addition to drinking and was unable to control himself. (R. 112). He threatened that she needed to keep the assault a secret while forcefully grabbing her arm. (R. 112-113). Victim, afraid of Appellant and fearing the potential consequences to the rest of her family, made a decision not to tell her family about the abuse. (R. 112, 116). That night, Appellant again raped Victim, this time in the family's new home. (R. 113). Victim again tried to fight Appellant off but Appellant had pinned her down and she was unable to break free. (R. 113-14). Appellant continued to rape Victim several more times while the rest of the family was still in Summerville. (R. 114). Each time, Victim unsuccessfully tried to fight Appellant off. (R. 114). After each rape, Appellant threatened Victim that their family would be ruined if she told anyone. (R. 114, 116).

Victim hoped her father's sexual assaults would stop when the family moved into the new home, but Appellant continued to rape her. (R. 116). Initially, Victim and her twin sister shared a room in the new house. (R. 116-117). While her sister was asleep, Appellant would sneak into his daughters' bedroom, rape Victim, and then leave. (R. 117). After a few months, Appellant decided it would be good for Victim to have her own room due to on-going disputes with her twin sister. (R. 118, 120-21). As soon as Victim had her own room, Appellant began sleeping in Victim's room nightly. (R. 121, 209). This made Appellant's wife, also Victim's mother, upset and confused. (R. 121-122, 209). She confronted Appellant about the inappropriate sleeping arrangement and demanded Appellant return to their marital bed. (R. 209). In response, Appellant accused her of having perverted thoughts and said she was jealous of Appellant's close

relationship with Victim. (R. 210-211). Appellant refused to stop sleeping in Victim's bed. (R. 122, 211).

Appellant continued to rape Victim constantly in the family home. (R. 122). After a few months, Victim stopped physically resisting Appellant's constant rapes. (R. 122). Additionally, shortly after moving to Camden, Appellant began wearing a gun constantly, which he kept on a holster on his belt. (R. 123-124). Appellant routinely kept the gun attached to his pants while he was assaulting Victim. (R. 123-124). Appellant never had gun before he started raping Victim. (R. 123, 128, 214). In addition to assaulting Victim at the family home, Appellant also raped Victim when she accompanied him to jobsites for work. (R. 124-128). Victim did not want to continue assisting Appellant with work, but felt like she did not have a choice as her family depended on Appellant exclusively for money and he needed her help. (R. 124-125).

Appellant continued to threaten Victim to keep her from reporting the abuse. (R. 128-129). Victim routinely had bruising on her body from Appellant pinning her down while raping her. (R. 133-135). In addition to vaginally penetrating Victim, Appellant would also digitally penetrate her and fondle her breasts. (R. 135-136). When Appellant raped Victim, he would usually pull out and ejaculate to the side of her, but occasionally would wear condoms or ejaculate inside of her. (R. 138-139).

In August of 2012, Appellant had been raping Victim constantly for thirteen months. (R. 152). Victim felt increasingly helpless and withdrew from the rest of her family. (R. 151, 153-154). She feared the abuse would never end. (R. 151). On August 11, 2012, Victim eventually told her mother that Appellant had been touching her inappropriately. (R. 152, 154-157, 227). Victim's mother became hysterical and immediately called her sister to tell her about the abuse and request that she call law enforcement. (R. 158, 228). She did not tell Appellant she knew of

the abuse, concealed that she had called her sister, and made an excuse for why law enforcement was arriving. (R. 228-230).

Law enforcement officers from the Kershaw County Sheriff's Office arrived a short time later. (R. 159). When Appellant saw law enforcement approaching, he told Victim he wished she had warned him so he could say goodbye to the rest of the family. (R. 160). He then turned to law enforcement, and without any commands, unhooked his belt, emptied his pockets, and placed his hand behind his head. (R. 53, 75, 84). Law enforcement detained Appellant and walked him to a waiting patrol car. (R. 53). When Appellant walked by his wife, he told her it "wasn't all [his] fault" and he asked for one more kiss. (R. 236). After being detained, Corporal Houser of the Kershaw County Sheriff's Office advised Appellant of his right pursuant to Miranda and asked him if he wished to make a statement. (R. 54). Appellant responded that he understood his rights and then stated, "Whatever she says, that's what happened. If she said it, it's not a lie." (R. 54, 76, 93). At this point, Appellant had not yet been informed of the allegations made against him or why he was being placed under arrest. (R. 76, 84).

Thereafter, Appellant was transported to the Kershaw County Sheriff's Office, where he met with the investigator on call, Investigator Dill. (R. 53, 55, 92-93, 453-465). Appellant and Investigator Dill spoke in an interview room equipped with audio and visual recording devices that recorded their entire conversation. (R. 455-456). Investigator Dill advised Appellant of his right pursuant to Miranda and Appellant signed a waiver indicating he understood his rights and wished to speak with law enforcement. (R. 456-460, 595, State's Ex. No. 46). Appellant didn't deny the allegations and stressed he needed to make sure his story was "on the same page" as Victim's report because he did not want his statement to differ from hers. (R. 461). The

interview ended shortly thereafter and Appellant was transported to the detention center. (R. 462-463).

Upon arriving at the detention center, Appellant asked to speak with Investigator Dill again. (R. 463). Investigator Dill went to the detention center, asked Appellant if he wished to speak with him, and when Appellant answered affirmatively, transported Appellant back to the sheriff's office for another interview. (R. 463-464). When they returned to the sheriff's office, Investigator Dill brought Appellant into the same interview room equipped with recording equipment, advised him of his rights, and Appellant again signed a waiver indicating he understood his rights and wished to speak with law enforcement. (R. 464-468, 596, State's Ex. No. 47). In this second interview, Appellant admitted to placing his hand inside of Appellant's leg while she slept and telling his wife that "this is not all my fault." (R. 468, State's Ex. No. 47).

Appellant proceeded to a jury trial before the Honorable Tanya A. Gee on March 14, 2016. Prior to jury selections, Appellant moved for a continuance, citing debilitating back pain. (R. 9-15). The trial judge, noting Appellant failed to present any documentation supporting his assertion that he could not proceed forward with his trial based on a medical condition, denied his motion for a continuance. (R. 9-15). Following pre-trial motions and jury selection, the State presented testimony from various law enforcement officers as well as fact witnesses who knew Appellant and Victim.

One such witness was Victim's mother, who testified she had known Appellant since third grade and had been married to him for twenty years. (R. 197-198). She testified she had five children with Appellant, including Victim and her twin sister. (R. 197-198). She testified her and Appellant moved approximately thirty times throughout their marriage, including a final move to Camden July, 2011. (R. 201, 204). She testified she began noticing a change in Victim

when the family moved to Camden. (R. 203, 207-209). Additionally, she testified Appellant stopped sleeping in bed with her and she would routinely find him sleeping in Victim's bed. (R. 209-210). She testified she tried to physically remove Appellant from Victim's bed and told him she thought he was behaving inappropriately. (R. 209-210). Appellant responded by telling her she was jealous of Victim and how close they were. (R. 211). Additionally, she testified Appellant stopped regularly having sex with her when the family moved to Camden and only slept with her a couple of times during the thirteen-month period when he was raping Victim. (R. 213-214). She testified she tried to talk with Victim about the changes in her behavior and whether Appellant was abusing her and Victim denied any abuse and refused to speak with her. (R. 215-216). She testified she also noticed Appellant being inappropriate with Victim, including untying her swimsuit top, wrapping his legs around her, and feeling her breast. (R. 220-221). She testified Victim eventually confided in her on August 11, 2012 that Appellant had been touching her and she immediately got law enforcement involved. (R. 225-228).

Victim's twin sister also testified about inappropriate behavior between Appellant and Victim, including Appellant sharing a bed with Victim nightly and snuggling. (R. 269-270). She also testified Victim's behavior changed dramatically when the family moved to Camden. (R. 296). She also testified Appellant began carrying a gun in a holster on his belt when the family moved and that he had not done this with prior to living in Camden. (R. 298).

The family's next-door neighbor, Martha Penrod, also testified regarding the inappropriate behavior between Appellant and Victim. She recounted times she saw them behaving oddly together in the water and seeing them snuggling on a hammock. (R. 373). She further testified she had previously informed law enforcement twice that she was concerned Appellant was sleeping with Victim. (R. 387).

The State presented Dr. Susan Luberoff, who treated Victim and was admitted as an expert in child abuse pediatrics. (R. 269-285). Dr. Luberoff testified she examined Victim on August 17, 2012. (R. 272-273). Dr. Luberoff testified she noticed a notch on the seven o'clock position on Victim's hymen, which was consistent with penetrating trauma and finding of sexual abuse. (R. 277-285). The State also presented expert testimony on child abuse assessment from Dr. Allison Foster, a licensed clinical psychologist with extensive experience studying and treating child victims of sexual abuse, over Appellant's objections. (R. 396-451). Following deliberations, the jury convicted Appellant as indicted of second-degree criminal sexual conduct and incest.

ARGUMENT

I. The trial judge did not abuse her broad discretion by refusing to grant Appellant's continuance motion, where Appellant failed to present sufficient grounds that he was entitled to a continuance based on purported back injuries.

At the outset of his trial, Appellant, through defense counsel, moved for a continuance, citing chronic[1] back problems that had "escalated to the point that he need[ed] surgery." (R. 9). Defense counsel offered the following in support of Appellant's motion for a continuance:

> He went to the doctor, Dr. Julie Taylor on March 3rd of 2016, Your Honor, regarding some of his pain. At that time she medicated him with hydrocodone, Your Honor, and ordered an MRI. His MRI was conducted last Wednesday which was March 8th of 2016 and I would like to make this a court exhibit. It indicates that he has five different things wrong with his back and lumbar spine.

(R. 9). Defense counsel also presented an email sent from an unknown party (Scott Kerns) to "Julie Taylor" with a carbon copy to another unknown party (Suzie Kerns) with the subject listed as "MRI lumbar spine." (R. 9-10; 595). The only mention of Appellant's name is in a handwritten notation on the email, along with "DOS 3/8/16," but it is unclear who added the notations to the email. As the trial judge correctly noted, the parties to this email were all unknown, not present in court, and no affidavits were presented in support of Appellant's medical condition. (R. 14-15). Defense counsel asserted Appellant had been "blacking out" due to the pain associated with his condition based on accounts from Appellant's aunt and girlfriend. (R. 10). Defense counsel asserted she was concerned Appellant would not be able to aid her in any way, particularly noting he would not be able to assist in her formulation of questions for cross-examination of the State's lay witnesses. (R. 10-11). Defense counsel acknowledged the

[1] Appellant, both at trial an now on appeal, characterized his back pain as "chronic." However, the testimony presented at trial refutes this contention, as Victim and Appellant's former wife testified he was not previously in a wheelchair. (R. p. 102, 200). Furthermore, Appellant presented no documentation to show this was a longstanding or persistent problem. On the contrary, the prosecuting assistant solicitor noted Appellant's back problems seem to have first appeared on the eve of trial. (R. 13-14).

case had been pending for three years, but argued the delay was caused by the State's need to test additional evidence and coordinate the schedules of out-of-state witnesses. (R. 11).

The State objected to Appellant's continuance motion, noting while the case had been delayed due to the need for more testing at SLED and the coordination of out-of-state witnesses, both Appellant and the State had agreed to the trial's start date as a date certain in early January. (R. 12). Additionally, the State noted it had flown in multiple witnesses from out of state. (R. 12). Furthermore, the State highlighted Appellant did not have a history of back pain and this recent pain appeared to have materialized within the past week. (R. 12-13). Moreover, the State stressed Appellant did not provide anything from his medical providers indicating he needed emergency back surgery or that he was incapable of standing trial. (R. 13).

In response, the following exchange occurred between the trial judge and defense counsel:

> THE COURT: Do you have any affidavits from a doctor?
>
> MS. GOOD: No, I don't. No, I don't, you Honor.
>
> THE COURT: Okay. All right. Anything other than this exhibit which, I mean, again it's an e-mail that has handwritten on it James Miller and it has a numerical list up to five that states things like this is an inflammatory response and can cause pain, facets, DJD, can cause pain. There is compression on a nerve root that's described as right-sided radiculopathy. Other than these five findings, is there anything that you have about his medical health that would prevent him from having a trial today?
>
> MS. GOOD: No, ma'am, Your Honor. Just the fact that he's on these two medications and he's set to go see a neurosurgeon.

(R.14-15). Thereafter, the trial judge denied Appellant's continuance motion, noting she would accommodate Appellant's back issues as much as necessary with breaks. (R. 15).

At the start if the second day of trial, defense counsel again moved for a continuance citing Appellant's back issues. (R. 33). The trial judge inquired as to whether Appellant had an affidavit from a treating physician and defense counsel replied she did not. (R. 33). The trial judge again denied the continuance motion. (R. 33).

Following the State's case, defense counsel requested the trial judge order he be allowed to take his prescribed medications at the detention center, noting Appellant had **not** been allowed to take his medications since entering the detention center the day prior. (R. 482). The trial judge inquired to counsel what medications Appellant wished to take. (R. 482). At that point, Appellant interjected, "Oxycontin, Lortab, a steroid pill and two of the muscle swelling, makes the muscles go down or whatever. I don't know exactly what you call it. Something that reduces the swelling or whatever." (R. 482). When the trial judge expressed some concern over the multitude of medications, Appellant again interjected, "That's what they prescribed. I'm not taking any more than they're prescribing." (R. 482). The trial judge then asked to see Appellant's prescriptions. (R. 482). Upon her review, the trial judge noted the documentation for at least two of the prescriptions did not establish they were prescribed for Appellant. (R. 483). The trial judge noted the documentation clearly established the hydrocodone and the oxycontin were prescribed to Appellant and allowed the medication to be administered as prescribed, with Appellant taking one of the pills in the courtroom at 4:30 p.m. (R. 483-484).

On appeal, Appellant contends the trial judge abused her discretion by refusing to grant a continuance based on his purported back pain. In support of that contention, Appellant maintains he established good cause for a continuance, noting his physical, mental, and cognitive capacity was impaired by his back pain and the medication he was prescribed to treat it, thereby rendering him unable to assist counsel during his trial. Contrary to Appellant's contentions, Appellant failed to present the trial court with sufficient grounds to establish he could not assist with his

defense or proceed forward with his trial. Accordingly, the trial judge did not abuse her broad discretion in refusing to grant a continuance in Appellant's case. Appellant's convictions should be affirmed.

In South Carolina, trial judges are vested with broad discretion when faced with a decision as to whether to grant or deny a motion for a continuance, and such decisions are ordinarily left solely to the trial judge's discretion. State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005); see State v. Squires, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966) ("It is well settled in this jurisdiction, as well as in most others, that the trial court's refusal of a motion for continuance in a criminal case will not be disturbed in the absence of a clear and conclusive abuse of discretion."). On appeal, appellate courts typically show great deference to a trial judge in regard to such a decision. State v. Colden, 372 S.C. 428, 435, 641 S.E.2d 912, 916 (Ct. App. 2007). As a result, the denial of a continuance motion will not be disturbed on appeal absent a clear, prejudicial abuse of discretion. State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010); see State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant."). Significantly, "reversals of refusal of continuance **are about as rare as the proverbial hens' teeth**." Lytchfield, 230 S.C. at 409, 95 S.E.2d at 859 (emphasis added).

Here, Appellant has failed to establish sufficient grounds that he was entitled to a continuance directly before trial. The only evidence Appellant presented in support of his motion for a continuance was an email sent from an unknown person purportedly to Appellant's doctor, carbon copying another unknown person of the same last name, listing five back problems. The

email does not state Appellant suffers from these five conditions, and, in fact, the only reference to Appellant is that his name appears to have been hand written on a printout of the email after it was sent. Moreover, Appellant did not submit any medical records summarizing the findings of his MRI or any other medical records to support his allegedly debilitating condition. The trial court noted the lack of documentation when denying Appellant's continuance motion. (R. 14-15). In light of Appellant's lack of documentation, the fact that the trial was set for date certain and numerous witnesses had traveled from various other regions of the country to testify, the trial judge did not abuse her broad discretion by refusing to grant a continuance and delay the trial. See State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012) ("The denial of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion resulting in prejudice."); see also Morris v. Slappy, 461 U.S. 1, 11-12 (1983) ("Not every restriction on counsel's time or opportunity to investigate or to consult with his client or otherwise to prepare for trial violates a defendant's Sixth Amendment right to counsel. Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons. Consequently, broad discretion must be granted trial courts on matters of continuances; only an unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay' violates the right to the assistance of counsel." (citation omitted)).

Furthermore, the trial judge was in the best position to evaluate Appellant and determine whether he could proceed forward with trial. The trial judge, after personally observing Appellant both prior to trial and again after a full day of testimony, determined Appellant had the capacity to proceed forward and assist counsel with his defense. Now, Appellant is asking the

Court, based on a cold record, to overrule the trial judge's and substitute its discretion for hers. As the trial judge was able to personally observe and interact with Appellant and was in the best position to evaluate the credibility of Appellant and his claims of medical incapacity, her determination should not be overruled. See State v. Cochran, 369 S.C. 308, 317–18, 631 S.E.2d 294, 299–300 (Ct. App. 2006) (holding the trial judge determines the credibility of counsel and his or her arguments). See also Miller-El v. Cockrell, 537 U.S. 322, 339 (2003) ("Deference is necessary because a reviewing court, which analyzes only the transcripts . . . is not as well positioned as the trial court is to make credibility determinations."); Hernandez v. New York, 500 U.S. 352, 364-66 (1991) (holding that evaluation of a prosecutor's credibility "lies 'peculiarly within a trial judge's province'"); State v. Tutton, 354 S.C. 319, 325, 580 S.E.2d 186, 190 (Ct. App. 2003) ("The determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity."); State v. Shuler, 344 S.C. 604, 615-16, 545 S.E.2d 805, 810-11 (2001) ("Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and 'evaluation of the prosecutor's mind lies peculiarly within a trial judge's province.'") (quoting Hernandez, 500 U.S. at 364-66); State v. Casey, 325 S.C. 447, 454, 481 S.E.2d 169, 173 (Ct. App. 1997) ("The trial court must often base its decision on credibility determinations, and its rulings on discrimination are accorded great deference on appeal.").

In arguing the trial judge abused her discretion by refusing to grant a continuance, Appellant contends his case is similar to Winkler v. State, 418 S.C. 643, 795 S.E.2d 686 (2016), a capital post-conviction relief action where the South Carolina Supreme Court held the post-conviction relief court abused its discretion in denying Winkler's second motion for additional time. In Winkler, Winkler twice moved to amend the post-conviction relief court's scheduling

order to allow post-conviction relief counsel more time to obtain and analyze MRI and PET scans of his brain to investigate the possibility of brain damage. Id. at 647, 795 S.E.2d at 688. The court granted the first motion and extended the deadline for filing an amended application, but refused to extend all other deadlines, including the hearing date; the court denied Winkler's second motion entirely. Id. On review, the Supreme Court, relying on the Uniform Post-Conviction Procedure Act, specifically section 17-27-160(C), found the post-conviction relief court abused its discretion in denying Winkler's second motion for additional time because his counsel had established "good cause [was] shown to justify a continuance." Id. at 663, 795 S.E.2d at 697. See also S.C. Code Ann. § 17-27-160(C) ("Not later than thirty days after the filing of the state's return, the judge shall convene a status conference to schedule a hearing on the merits of the application for post-conviction relief. The hearing must be scheduled within one hundred eighty days from the date of the status conference, unless good cause is shown to justify a continuance.")

Despite Appellant's attempts to glean similarities between his case and Winkler's, the two cases are readily distinguishable. Winkler is a capital post-conviction relief action and Winkler's capital post-conviction relief counsel requested a second continuance to further investigate Winkler's purported brain damage after detailed documentation of their investigation into the issue. In the present case, a general sessions criminal trial arising out of Appellant's year-long sexual assault of his daughter, Appellant failed to provide any reliable documentation to support his purported medical condition—a back injury. Furthermore, the Winkler decision is clearly based upon the scheduling standards for capital post-conviction relief actions as set forth in Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-160(C). Thus, Appellant's reliance on Winkler and its "good cause" standard are misplaced.

Appellant also cites to State v. McMillan, 349 S.C. 17, 561 S.E.2d 602 (2002), to support his argument the trial judge abused her discretion in denying his continuance motion. In McMillan, following an initial mistrial, defense counsel moved for a continuance to allow for additional time to receive and review an already requested transcript of McMillan's first trial for impeachment purposes, particularly to impeach the only neutral witness who testified at McMillan's first trial. Id. The trial court denied McMillan's continuance motion. Id. On appellate review, the Supreme Court found, "**under the limited circumstances of this case** . . . the trial court abused its discretion in denying McMillian's motion for a continuance," citing the paramount importance of the credibility of the only neutral witness to testify in McMillan's case. Id. at 24, 561 S.E.2d at 605.

Again, Appellant's reliance on McMillan is misguided as it is readily distinguishable from the present case. In McMillan, the Supreme Court expressly states its holding is limited to the unique circumstances presented in McMillan's case. Appellant's case is not akin to McMillan and the reasons behind his continuance request differ vastly from McMillan's.

Appellant's case is also readily distinguishable from the other cases he cites in support of his argument. In State v. Tanner, 299 S.C. 459, 385 S.E.2d 832 (1989), the Supreme Court held the trial judge abused his discretion in failing to grant a continuance to allow Tanner time to examine blood, skin, and hair samples that were not provided to the defense until ten minutes prior to a pre-trial hearing, citing the possible exculpatory value of the samples. In Varn v. Green, 50 S.C. 403, 27 S.E. 862 (1897), the Supreme Court determined the trial judge abused its discretion in refusing to continue a civil trial to recover damages based on the incapacity of counsel due to illness. In State v. Williamson, 115 S.C. 315, 105 S.E.697 (1921), the Supreme Court held the trial judge abused his discretion in denying the defendant's continuance motion

based on his wife's late-stage pregnancy, where his wife was a material witness who had witnessed the murder. None of these cases support the proposition that a trial judge commits an abuse of discretion when she denies a continuance motion based on a purported physical condition of the defendant raised without proper evidentiary support.

For all the foregoing reasons, the trial judge did not abuse her exceptionally broad discretion by denying Appellant's continuance motion, as the ruling is supported by the record and not controlled by an error of law. See State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) ("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. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996) ("The trial court's refusal of a motion for continuance in a criminal case will not be disturbed absent a clear abuse of discretion."); Lytchfield, 230 S.C. at 409, 95 S.E.2d at 859 ("[R]eversals of refusal of continuance **are about as rare as the proverbial hens' teeth**.") (emphasis added). Appellant's convictions should be affirmed.

II. The trial judge did not abuse her broad discretion in permitting Dr. Allison Foster to testify as an expert in child abuse dynamics, where because the evidence and testimony presented during trial established Dr. Foster's testimony could assist the jury in understanding the issues raised in Appellant's case, Dr. Foster was personally qualified to testify as an expert, the subject matter of Dr. Foster's testimony met a threshold level of reliability in light of the her expert qualifications, and her testimony did not improperly bolster Victim's testimony. Furthermore, any error was harmless and had no impact on Appellant's case.

During pre-trial motions, the State announced its intention to present expert testimony on child abuse assessment from Dr. Allison Foster, a licensed clinical psychologist with extensive experience studying and treating child victims of sexual abuse. (R. 16-17, 406-410). The State informed the trial court Dr. Foster had never met or otherwise interacted with Victim and was completely unfamiliar with her case. (R. 16-17). The State explained her testimony would be limited to the "different range of responses and factors that play into victims of sexual abuse." (R. 17). In response, Appellant requested a proffer before Dr. Foster be allowed to testify before the jury, citing concerns over a lack of peer review and a non-clinical setting. (R. 18). The trial judge, citing State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015), noted Dr. Foster was not being called as a forensic interviewer and had not met Victim, but agreed a proffer would be necessary to determine if Dr. Foster could testify as an expert witness. (R. 19).

During Appellant's trial, the State proffered the testimony of Dr. Foster. (R. 405-421). Dr. Foster testified she is the chief psychologist at the Assessment and Resource Center (ARC) in Columbia, one of seventeen centers throughout South Carolina that treats sexually abused children. (R. 406). Dr. Foster testified she had worked at ARC in various capacities for the past twenty years and also had her own private practice focusing on forensic work with children and families. (R. 407). She testified she graduated with a Ph.D. in clinical psychology in 1996 and is a Department of Mental Health Assistant Professor at the University Of South Carolina School Of Medicine. (R. 407-408). Additionally, Dr. Foster testified she is a senior faculty member at a

forensic interview training course established fifteen years ago. (R. 408). She testified she also acts as faculty at national conferences on physical, sexual, and psychological child abuse, as well as teaches "law enforcement, child protective services, professionals, children's advocacy centers, forensic interviewers, therapists and other professionals." (R. 408). Dr. Foster testified she published a "monograph for the American Prosecutors Research Institute on child development," a chapter on the assessment of mental disorders in custody evaluations, and was in pre-publishing stages on research relating to forensic interview techniques. (R. 408).

Dr. Foster testified she had previously been qualified as an expert in child abuse assessment or dynamics of child abuse. (R. 409). She testified this field is studied, and this type of testimony is needed, because it explains behavioral and developmental issues the average lay person would not otherwise understand, such as delayed disclosure. (R. 409-410). The State moved to qualify Dr. Foster as an expert in child abuse assessment and Appellant had no objection. (R. 410-411).

Dr. Foster's proffer continued and she testified she has never met or interviewed Victim and has otherwise had no involvement in this case. (R. 411-412). She testified about different factors prevalent in child sexual abuse, including the perpetrator usually being a family member or adult acting as a parental figure. (R. 412). She testified:

> There are dynamics that the victims experience that typically capture under describing their feeling of helplessness, their sense of entrapment and the fact that they need to accommodate the abuse because they're really in a situation that they feel powerless to change . So there could be a period of accommodation followed sometimes by a process of disclosure that they often reach an age of maturation. In other words, they reach an age where they can consider maybe that they have options to tell or to get out of the situation, options that they perhaps couldn't recognize when they were younger.

(R. 413). When asked about delayed disclosure statistics, Dr. Foster testified over a thirty-year time span, researchers have concluded two-thirds of child sexual abuse victims in the United States do not come forward until adulthood. (R. 413-415). She testified delayed disclosure had been studied, and she cited numerous researchers and studies on the topic spanning thirty or more years. (R. 415-417). On cross-examination, Dr. Foster testified the research surrounding delayed disclosure had been peer-reviewed. (R. 419)

Following the proffer, Appellant objected to Dr. Foster's testimony, arguing it was intended to bolster Victim's credibility. (R. 422). Furthermore, Appellant claimed Dr. Foster's testimony would be pertaining to child sexual abuse accommodation syndrome, which had not been substantiated or peer reviewed. (R. 423-424).

The State replied Dr. Foster's testimony would be limited to behavioral characteristics often displayed by victims of sexual abuse that have come forward. (R. 424). The State asserted this testimony was outside the scope and general knowledge of the jury. (R. 424). Furthermore, the State argued this type of testimony was based on more than thirty years of studies and research in a widely-recognized field. (R. 424). The State again noted Dr. Foster has not met or otherwise interacted with the Victim. (R. 425).

The trial judge ruled

> All right. Well, I appreciate both of y'all making such good arguments on this. Obviously as you both are aware our Supreme Court has had a lot to say about experts in child abuse cases. You all clearly have researched this issue as I have and I am going to allow Dr. Foster to testify.
>
> In State versus Chavis which is a 2015 case from the Supreme Court, our Supreme Court acknowledged that expert testimony in child sexual assault cases is permissible so long as it meets the requirements of State versus White.

As Ms. Cavanaugh pointed out, State versus White has two threshold determinations. The first, that the qualifications of the expert must be sufficient. Everybody here has already conceded to the sufficiency of Dr. Foster's qualifications.

And the second determination that has to be made is reliability. I find that child abuse assessment is reliable based on Dr. Foster's testimony, that these factors that she testified to are based on 30 years of research. Some of those are from a clinical setting. Many of those are from data analysis. There are journal articles that are peer reviewed that discuss this particular science and again our Supreme Court in State versus Chavis acknowledge[d] that expert testimony in a child assault case is permissible.

State versus Schumpert, that was back in 1993, also allowed expert testimony in a child sexual assault case.

And I also want to note a couple of other cases. State versus Weaverling, and I'm going to quote from that case. There the Court of Appeals stated, "Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault."

In State versus White, that's a Supreme Court case that we have referred to for the factors to be considered, it's a 2009 case from our Supreme Court, the court stated, "Expert testimony on rape trauma may be more crucial in situations where children are victims."

And then, of course, our most recent case from the Supreme Court, State versus Anderson, which confirmed all those findings of White and Weaverling and again recognized there is an expertise in child abuse assessment but explained that to avoid improper bolstering the better practice is to not have a forensic interviewer who examined the alleged victim as an expert but rather to call an independent witness to testify to the characteristics of the victim.

Here that's exactly what the State is doing with Dr. Foster. She testified that she had no involvement with the investigation of this case and therefore I find her testimony to be admissible.

(R. 426-428). Thereafter, Dr. Foster was admitted as an expert in child abuse assessment before the jury and testified in a similar manner to her proffered testimony, including testimony

pertaining to delayed disclosure and the behavioral patterns commonly associated with juvenile victims of sexual abuse. (R. 429-451).

On appeal, Appellant contends the trial judge abused her discretion in allowing Dr. Foster to testify because "there was no evidence that Foster's conclusions and claims were accurate or reliable." Additionally, Appellant claims Dr. Foster's testimony was intended to improperly bolster Victim's testimony. However, Appellant's claims are without merit, as Dr. Foster testified regarding the reliability of her field of study and the testimony did not improperly bolster Victim's testimony. Accordingly, the trial judge did not abuse her broad discretion allowing Dr. Foster to testify as an expert in child abuse assessment. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial courts have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence.").

Likewise, a decision as to whether to admit or exclude expert testimony rests within the trial judge's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that

discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); see State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."). "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); see Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) ("A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair.").

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Id. at 445-46, 699 S.E.2d at 175. "The qualification of a witness as an expert falls largely within the discretion of the trial judge." State v. Myers, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE; see also State v. Irick, 344 S.C. 460, 465, 545 S.E.2d 282, 285 (2001) (explaining an expert's testimony is admissible where "it is relevant and based on some factual predicate in the record"). Before admitting expert testimony, the trial court must find (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

A witness can properly be qualified as an expert where "the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge." State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). In determining whether a witness's knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467; see State v. Peer, 320 S.C. 546, 554-555, 466 S.E.2d 375, 380 (Ct. App. 1996) ("The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony."). Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the

jury in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). Significantly, "[t]he test for qualification [as an expert] is a relative one that is dependent on the particular witness's reference to the subject[,]" and "defects in the amount and quality of education and experience go to the weight of the expert's testimony and not its admissibility." Lee v. Suess, 318 S.C. 283, 285-86, 457 S.E.2d 344, 346 (1995).

In addition to ensuring the expert is qualified, the trial court must also ensure the testimony "meets a threshold level of reliability, regardless of whether it is scientific or nonscientific." State v. Tapp, 387 S.C. 159, 165, 691 S.E.2d 165, 168 (Ct. App. 2010). In cases involving scientific expert testimony, the trial court should consider the following factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). However, in cases involving nonscientific expert testimony, the factors applied in an analysis of scientific evidence cannot readily be applied. See State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009) ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony."). Accordingly, no formulaic approach can or must be applied to determine reliability in cases involving nonscientific expert testimony. Id.

In sexual assault cases, expert testimony concerning common behavioral characteristics of sexual assault victims, and the range of responses to sexual assault encountered by experts, is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787, 794 (Ct. App. 1999).

Notably, this type of expert testimony assists the jury in understanding some of the aspects of victims' behavior, and provides insight into a sexually abused child's often strange demeanor. Id. See also State v. Anderson, 413 S.C. 212, 776 S.E.2d 76, 79 (2015) ("Certainly we recognize that there is such an expertise [child abuse assessment]: this is the type of expert who can, for example testify to the behavioral characteristics of sex abuse victims.") (citing State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859, 862 (1993); Weaverling, and State v. White, 361 S.E. 407, 605 S.E.2d 540 (2004)) ; State v. Smith, 411 S.C. 161, 767 S.E.2d 212, 217-18 (Ct. App. 2015) (cert. denied June 17, 2015) ("When sexual abuse occurs, particularly if the victim is a child, the victim may not be able to immediately disclose the abuse for numerous reasons, including the victim's feelings of shame over what happened and the victim's fear of or intimidation by the perpetrator. We find this was an appropriately general explanation [by an expert witness] of the medical or scientific reasons a child might not immediately disclose sexual trauma.")

This Court most recently addressed the propriety of expert testimony pertaining to child abuse assessment or dynamics in State v. Jones, 417 S.C. 319, 790, S.E.2d 17 (Ct. App. 2016), reh'g denied (Aug. 18, 2016), a case strikingly analogous to the case at bar. In Jones, Jones appealed his convictions for one count of first-degree criminal sexual conduct (CSC) with a minor, one count of second-degree CSC with a minor, and two counts of lewd act upon a child stemming for his years-long sexual abuse of his live-in girlfriend's two minor daughters. Id. During his trial, the State presented an expert witness who testified regarding child sex abuse dynamics; this expert had never met with any of the witnesses in this case, including law enforcement, and her only knowledge of the case came from discussions with the solicitor's office one month prior to trial. Id. at 326, 790 S.E.2d at 21. On appeal, Jones argued the circuit

court abused its discretion by allowing the State's witness to testify as an expert in child sex abuse dynamics because the subject matter of her testimony was not beyond the ordinary knowledge of the jury, the State failed to prove the reliability of the substance of her testimony, she improperly bolstered the victims' credibility, and her testimony was highly prejudicial. Id. at 323, 790 S.E.2d at 19. This Court rejected these arguments, finding the trial court properly admitted the expert's testimony. Id. Regarding Jones's challenge to the reliability of an expert witness, including that the State failed to prove the reliability of the expert's testimony—specifically whether it was subject to peer review, this Court rejected Jones's arguments (similar to the arguments Appellant raises in this case), finding the expert testimony regarding her methods were published in articles in professional journals and other publications, subjected to peer review, uniformly accepted and recognized within the area of child sex abuse experts and professionals, and relied upon for sexual abuse counseling and treatment, that the abuse center where the witness worked applied the same principles she explained in her testimony, and that those types of principles were being used by counselors across the country. Id. at 331-33, 790 S.E.2d at 23-25.

As to the Jones's claims the expert testimony improperly bolstered the victims' and their mother's testimony, this Court rejected his arguments, finding:

> [The expert] never commented on the credibility of Mother or the Victims, but rather offered admissible expert testimony regarding the general behavioral characteristics of child sex abuse victims and nonoffending caregivers, we find her testimony did not improperly bolster their testimonies. The fact that her testimony corroborated some of the Victims' reasons for delaying disclosure of the abuse, or Mother's failure to act when she became aware of it, does not mean [the expert]'s testimony improperly bolstered their accounts. See [State v. Brown, 411 S.C.332, 345, 768 S.E.2d 246, 253 (Ct. App. 2015)] (stating "[t]he fact that [the expert's] testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony

> improperly bolstered their accounts"); see also Weaverling, 337 S.C. at 474, 523 S.E.2d at 794 ("An expert may give an opinion based upon personal observations or in answer to a properly framed hypothetical question that is based on facts supported by the record." (quoting State v. Evans, 316 S.C. 303, 311, 450 S.E.2d 47, 52 (1994))). [The expert] merely offered reasons why children might delay disclosing instances of sexual abuse, as well as why a nonoffending caregiver may have an unusual reaction upon learning of the abuse, to assist the trier of fact's understanding of the complex dynamics of sexual abuse cases. Accordingly, we find the circuit court properly admitted [The expert]'s expert testimony because she did not improperly bolster the Victims' testimony, or Mother's testimony, at trial.

Jones, 417 S.C.at 335–36, 790 S.E.2d at 26.

In the present case, similar to Jones, Dr. Foster testified that her methods had been published in professional journals and publications and were subject to peer review, and were nationally-recognized. Furthermore, Dr. Foster's testimony never commented on the credibility of Victim, but rather, was limited "admissible expert testimony regarding the general behavioral characteristics of child sex abuse victims." The trial judge did not abuse her broad discretion in admitting Dr. Foster's testimony at trial. Appellant's convictions should be affirmed.

Moreover, assuming arguendo that the trial judge abused her broad discretion allowing the expert testimony of Dr. Foster, such error is harmless and had no impact on the jury's verdict, particularly in light of the overwhelming evidence the State presented establishing Appellant was guilty of second-degree criminal sexual conduct and incest. Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. See State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, (2013) (subjecting the erroneous qualification of a forensic interviewer to a harmless error analysis); see also Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) (stating error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained); State v. Watts, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct.App.1996) ("In applying

the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." (citing Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967))). The key factor for determining whether a trial error constitutes reversible error is "whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal citations omitted). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). 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). "Whether an error is harmless depends on the circumstances of the particular case." Tapp, 398 S.C. at 389, 728 S.E.2d at 475 (quoting State v. Mitchell, 378 S.C. 305, 316, 662 S.E.2d 493, 499 (2008). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it 'could not reasonably have affected the result of the trial.'" Id. (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)).

In the present case, the State presented substantial evidence of Appellant's guilt independent from the testimony of Dr. Foster, including: Victim's testimony that Appellant sexually assaulted her continuously over a thirteen-month period, Appellant's various statements admitting to various levels of culpability, Victim's mother and twin sister's testimony about Appellant sleeping in Victim's bed nightly, Dr. Luberoff's medical findings on Victim's hymen consistent with sexual abuse, and neighbor Martha Penrod's testimony about the inappropriate physical contact she observed between Appellant and Victim. Even assuming the trial judge

abused her broad discretion in allowing Dr. Foster to testify as an expert in child abuse assessment, Appellant's conviction should not be reversed because it could not have affected the result of Appellant's trial based on the vast and overwhelming evidence of guilt presented. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, this Court should affirm the judgment and conviction of the lower court.

Respectfully submitted,

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July 6, 2017

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Tanya A. Gee, Circuit Court Judge

Appellate Case No. 2016-000642

THE STATE,

Respondent,

v.

JAMES WAYNE MILLER,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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