STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2016-000208

THE STATE,

Respondent,

vs.

AARON VAN HENDRIX,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's appellate challenge to the trial judge's decisions regarding the redaction of the forensic interview recordings was not properly preserved for appellate review because the specific arguments Appellant is currently asserting on appeal were never presented to or ruled upon by the trial judge and are vastly different from the arguments and statements actually made by defense counsel during trial.

STATEMENT OF THE CASE

In May of 2014, Appellant Aaron Van Hendrix was arrested following an investigation into allegations he and an accomplice sexually abused the accomplice's three minor children. In June of 2015, the Pickens County Grand Jury indicted Appellant for two counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor. On January 25, 2016, a jury trial was commenced in the Pickens County Court of General Sessions with the Honorable Perry H. Gravely, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of twelve years for third-degree criminal sexual conduct with a minor. Appellant then filed a timely notice of appeal.[1]

[1] Appellant's accomplice, Stacy Carol Riden, was indicted for two counts of first-degree criminal sexual conduct with a minor, one count of third-degree criminal sexual conduct with a minor, and one count of unlawful conduct towards a child, and Riden, who was not initially present for trial, was tried together with Appellant. Like Appellant, Riden was convicted as indicted, and the trial judge sentenced Riden to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor and fifteen years for third-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of ten years for unlawful conduct towards a minor.

STATEMENT OF FACTS

On December 29, 2013, Deputy Adam McJunkin of the Pickens County Sheriff's Office travelled to the residence of Mark and Lisa Riden ("Grandfather" and "Grandmother") in response to allegations the couple's three minor grandchildren had been sexually abused by Stacy Carol Riden, who was the children's biological mother, and Appellant Aaron Van Hendrix, who was Riden's former live-in boyfriend.[2] (R. pp. 143-145; pp. 169-170; p. 174; p. 197; p. 202; pp. 207-208; p. 240; p. 384). At that time, the children – a seven-year-old boy ("Victim 1"), the boy's seven-year-old twin sister ("Victim 2"), and the twins' three-year-old younger sister ("Victim 3") – were living at their grandparents' residence and had been residing there for approximately eight or nine months, but they had previously resided with Appellant and Riden at a mobile home located in Easley, South Carolina. (R. pp. 142-144; pp. 154-155; p. 169; p. 175; p. 177; pp. 195-196; pp. 201-203; p. 211; p. 261; p. 383; p. 392; p. 396; p. 460).

After the allegations arose, Investigator Marvin Nix of the Pickens County Sheriff's Office began an investigation into the reported sexual abuse and referred the children to the Julie Valentine Center, a child abuse and sexual assault recovery center, for forensic interviews. (R. pp. 237-238; pp. 240-241; p. 255; p. 260; p. 298). Following the referral, Shauna Galloway-Williams, the executive director of the Julie Valentine Center, interviewed Victim 2 in February of 2014. (R. p. 50; p. 301). During the interview, Victim 2 indicated she previously lived with Appellant and Riden and asserted Riden physically abused her and did other "bad stuff" during that time. (State's Ex. # 1 (Victim 2's First Interview Recording)). Specifically, regarding the other "bad stuff," Victim 2 recounted Riden held her down by her hair while Appellant rubbed and digitally penetrated her vagina over her clothing in front of Victim 1 and Victim 3. (State's

[2] Grandmother was the children's step-grandmother while Grandfather was the children's maternal grandfather. (R. p. 239; p. 459).

Ex. # 1). Additionally, Victim 2 stated Appellant and Riden regularly talked about sex in front of them, watched pornographic movies, engaged in sex acts in front of her, took a lot of pills and "medicine," and pulled her into the shower on one occasion while they were using it together. (State's Ex. # 1). Furthermore, she indicated Riden told her not to reveal the abuse, and she noted Appellant sometimes wore Riden's clothing and used her nail polish. (State's Ex. # 1).

Thereafter, in March of 2014, Galloway-Williams interviewed Victim 1 and Victim 3. (R. p. 50; p. 201). During Victim 1's interview, Victim 1 stated Appellant and Riden did bad things to him and his siblings. (State's Ex. # 3 (Victim 1's First Interview Recording)). Specifically, Victim 1 recounted Appellant rubbed and poked his "privates," touched him underneath his clothing, and tried to make him touch his "privates" on multiple occasions, and he indicated Riden rubbed and poked his privates as well. (State's Ex. # 3). He also stated Riden held both him and Victim 2 down while Appellant sexually abused them, and he indicated his father observed the abuse once. (State's Ex. # 3). Additionally, he recounted Riden was physically abusive towards him along with Appellant, and he indicated Riden sometimes forced them to watch a pornographic movie. (State's Ex. # 3). Furthermore, Victim 1 indicated Appellant and Riden threatened to kill them if they revealed the sexual abuse. (State's Ex. # 3). Similarly, during Victim 3's interview, Victim 3 recounted Appellant touched her "down there" and made her touch him "down there" in Riden's presence. (State's Ex. # 5 (Victim 3's Interview Recording)). Additionally, she vacillated somewhat on whether Riden inappropriately touched her but indicated she thought she did. (State's Ex. # 5). Victim 3 also stated she observed Riden hold Victim 1 down so Appellant could touch his groin area. (State's Ex. # 5).

Following the interviews, Dr. Mary Croswell, a medical doctor and an expert in child abuse pediatrics, conducted a physical examination of each of the children. (R. pp. 269-271; pp.

279-280). In examining Victim 1 and Victim 2, Dr. Croswell found nothing abnormal. (R. pp. 274-278; p. 281; p. 293). However, in examining Victim 3, Dr. Croswell found labial adhesions in Victim 3's vaginal area, which potentially could have resulted from non-accidental trauma but also could have resulted from accidental trauma or other causes.[3] (R. pp. 284-285).

Thereafter, Galloway-Williams again conducted a forensic interview of Victim 1. (R. p. 307). During the second interview, Victim 1 stated Appellant and Riden touched his and his siblings' "privates," sucked on them, licked them, and made them do reciprocal acts, and he recounted he witnessed the sexual abuse being committed upon Victim 2 and Victim 3. (State's Ex. # 4 (Victim 1's Second Interview Recording)). He further indicated Appellant and Riden put their fingers into his buttocks. (State's Ex. # 4). Additionally, he recounted he observed Appellant and Riden injecting themselves with needles, stated he observed bleeding from his siblings' "privates" after they were digitally penetrated, and again confirmed Appellant and Riden threatened to kill them if they revealed the abuse. (State's Ex. # 4). He also stated his father observed the abuse occur on some occasions but did nothing to stop it. (State's Ex. # 4). Furthermore, as to why he did not reveal all the details of the abuse during the first interview, Victim 1 indicated he failed to do so because he was scared. (State's Ex. # 4).

Likewise, Galloway-Williams also conducted a second interview of Victim 2. (R. p. 307). During that interview, Victim 2 recounted Appellant and Riden performed oral sex on her and her siblings and forced her and her siblings to perform oral sex on them. (State's Ex. # 2 (Victim 2's Second Interview Recording)). Additionally, Victim 2 indicated she and her younger sister bled from their vaginas after they were digitally penetrated, and she stated Appellant and Riden showed them pornographic movies. (State's Ex. # 2). Victim 2 further

[3] During the examination of Victim 3, Dr. Croswell also found evidence of cavities and more dental breakdown than expected for someone Victim 3's age. (R. pp. 282-284; p. 291).

revealed her father witnessed the sexual abuse without intervening, and she indicated her father and one of Appellant's sisters inappropriately touched her on one occasion. (State's Ex. # 2). Furthermore, Victim 2 stated she did not fully reveal the abuse during the first interview because she was scared and nervous. (State's Ex. # 2).

Meanwhile, Investigator Nix met with both Appellant and Riden, and he interviewed each of them in regard to the allegations of sexual abuse. (R. p. 242; p. 244; pp. 246-247). During the interview with Riden, Riden denied the allegations and indicated she was surprised by them. (R. pp. 244-245). However, she confirmed Appellant had lived with her and her children for a period of time and also noted the children's father had stayed with them sometimes. (R. pp. 245-246). Similarly, during the interview with Appellant, Appellant did not make any admissions regarding the sexual abuse. (R. pp. 247-250). However, Appellant acknowledged he wore Riden's clothing on one occasion while he was residing with her and her children for a period of time. (R. pp. 247-248; p. 250; p. 260). He further indicated the children's father stayed with them sometimes, and he stated one of Riden's sisters took her clothes off at the residence on one occasion. (R. pp. 248-249).

At the conclusion of the investigation into the sexual abuse allegations, Investigator Nix arrested both Appellant and Riden. (R. pp. 250-251; p. 259). Appellant and Riden were subsequently indicted for numerous charges, including multiple counts of criminal sexual conduct with a minor, and their cases were jointly called to trial. (R. p. 10; pp. 75-76; pp. 573-578).

At the outset of trial, defense counsel for both Riden and Appellant objected to the admission of any of the recordings of the five forensic interviews conducted of the minor victims, and testimony was presented from Galloway-Williams in order to establish the

admissibility of those recordings. (R. pp. 25-27; pp. 31-40). Following the presentation of that testimony, the trial judge indicated he would personally review the recordings. (R. p. 41). At that point, Appellant's defense counsel asserted his objection to the recordings was based on the fact the recordings – when taken together – allegedly established "things" were placed into the children's minds by their caregivers, and he contended the recordings should be found to be inadmissible as a matter of law for that reason.[4] (R. pp. 42-43). Riden's defense counsel then objected to the recordings as unconstitutional, violative of Riden's Sixth Amendment rights, unduly prejudicial in light of the "playful interactions" involving the children, inadmissible as impermissible hearsay, and improperly corroborative and bolstering. (R. pp. 45-47). Riden's defense counsel further argued Victim 3's recording should be excluded as insufficiently trustworthy in light of the fact Victim 3 stated she only thought the things involving Appellant happened. (R. pp. 46-47). Following those contentions, Appellant's defense counsel moved to join all Riden's defense counsel's motions and objections and further asked to be considered to have joined in all Riden's defense counsel's future motions and objections as the trial went forward unless he explicitly stated he did not wish to join in a particular one, and the trial judge indicated he had no problem with Appellant's defense counsel's request. (R. p. 56).

Thereafter, as the trial continued forward, the trial judge indicated he had reviewed the forensic interview recordings, found the recordings of Victim 1's and Victim 2's interviews satisfied the requirements for admission, and ruled the recording of Victim 3's interview was inadmissible because it allegedly lacked sufficient coherence. (R. p. 66; pp. 88-89; p. 92). The trial judge then discussed redactions that had been proposed by Riden's defense counsel with the

[4] Earlier, in objecting to the admission of any of the recordings, Appellant's defense counsel had contended the recordings were "leading and suggestive" and noted Victim 3 indicated she was unsure about whether the sexual abuse involving Riden really happened at one point during a forensic interview. (R. p. 27).

parties. (R. p. 91; pp. 565-566). During the discussion, the trial judge agreed for various portions of the recordings to be redacted, including portions containing statements related to the children's father.[5] (R. pp. 96-98; pp. 102-108; pp. 110-111). However, the trial judge rejected Riden's defense counsel's request for other portions to be redacted, including portions in which the children recounted they personally witnessed their siblings being abused. (R. pp. 93-94; pp. 97-101; pp. 104-110).

As the discussion regarding redactions continued, the solicitor noted the trial judge had not yet ordered a portion of the recording of Victim 2's second interview to be redacted in which Victim 2 indicated her father had touched her, and the solicitor requested for that portion of the recording to also be redacted in light of the fact the other portions related to father were being redacted at defense counsel's request. (R. p. 111). In response, the trial judge indicated he believed it "would be appropriate to redact that." (R. p. 111). At that point, Appellant's defense counsel stated: "Your Honor, part of what you're redacting about the father it seems to me is relevant to my defense. And I guess when they ask is the father there, you know, the child says the father is there. The father is going to testify he was not there." (R. pp. 111-112). The trial judge then responded:

> Well, I'm going to allow anything to where the children said when something was going on father was there and mother was there because I think that goes to the unlawful neglect claim of the mother, because she didn't, you when, when he was doing things. But as far as just general stuff about the father, I don't think that would be appropriate on these videos.

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[5] When the trial judge directed several portions of the recordings involving statements related to the victims' father to be redacted at Riden's defense counsel's request, defense counsel for Appellant did not raise any objections or make any other comments about the matter as he had earlier stated he would do if he did not wish to join in Riden's defense counsel's motions and objections. (R. p. 56; pp. 105-108).

(R. p. 112). Following that statement, the trial judge asked the parties if there was "[a]nything further" in regard to the recordings, and Riden's defense counsel simply renewed her earlier objections while Appellant's defense counsel remained silent. (R. p. 112).

Subsequently, the trial proceeded forward, and the children testified about the sexual abuse they suffered at the hands of Appellant and Riden. (R. pp. 142-206). During his testimony, Victim 1 recounted Appellant and Riden inappropriately touched his and his sisters' "privates" and forced him to perform oral sex on them, and he indicated they threatened to kill him if he revealed the abuse. (R. pp. 144-147; p. 150). Additionally, Victim 1 recounted – during questioning from Appellant's defense counsel – his father was sometimes present at the home he lived in during the time period in which the abuse was occurring, but Victim 1 specifically indicated he did not believe his father was actually present when the abuse occurred and was not there laughing when the abuse was happening. (R. pp. 164-165). Similarly, Victim 2 recounted Appellant and Riden touched her "privates," made her touch their "privates," and made her perform oral sex on them. (R. pp. 169-170). She further indicated she saw Appellant and Riden touch her siblings' "privates," and she stated she did not reveal the abuse because Appellant and Riden threatened her. (R. pp. 170-173). Furthermore, she indicated – during questioning from Appellant's defense counsel – her father was sometimes present at the home she lived in at the time of the sexual abuse but never actually witnessed the sexual abuse occur. (R. pp. 173-174). Likewise, Victim 3 recounted she was inappropriately touched on a "bad place" by Appellant and Riden. (R. pp. 197-198).

Following the children's testimony, the law enforcement officers who responded when the sexual abuse was disclosed testified about the details of their investigation and about the

statements made by both Appellant and Riden.[6] (R. pp. 207-211; pp. 237-266). Additionally, Dr. Croswell testified about her findings during her physical examinations of the children, and she noted it was "[q]uite rare" for physical findings to be made in child sexual abuse cases. (R. pp. 269-286; pp. 291-293). Furthermore, Galloway-Williams informed the jury she conducted forensic interviews of the children, and the recordings of the four interviews of Victim 1 and Victim 2 were admitted into evidence over objection and played for the jury with redactions. (R. pp. 298-304; pp. 306-307; p. 310). In particular, a single portion of one the recordings in which Victim 1 stated his father watched the sexual abuse occur sometimes and laughed when it happened was redacted and not shown to the jury.[7] (R. pp. 567-572; State's Ex. # 4). Likewise, portions of one the recordings in which Victim 2 stated her father was informed of the sexual abuse and did nothing, her father observed the sexual abuse being committed by Appellant and Riden, and her father engaged in the sexual abuse along with Riden's sister were redacted and were not played for the jury.[8] (R. pp. 567-572; State's Ex. # 2). However, other portions of the recordings in which Victim 1 indicated his father knew about and observed the sexual abuse being committed by Appellant and Riden and did nothing to stop it were **not** redacted and were

[6] During Investigator Nix's testimony, he specifically noted no one – including the victims' father and Riden's sisters – other than Appellant and Riden was arrested and charged in connection to the abuse of the victims. (R. pp. 259-260).

[7] Specifically, that portion begins approximately fifty minutes and thirty-five seconds into the recording of Victim 1's second interview. (State's Ex. # 4).

[8] Specifically, those portions begin approximately twenty-five minutes and fifty seconds, approximately forty-two minutes and fifty seconds, approximately forty-four minutes and thirty seconds, and approximately forty-five minutes and thirty-five seconds into the recording of Victim 2's second interview. (State's Ex. # 2). Notably, the first of those portions was redacted specifically at Riden's defense counsel's request, and Appellant's defense counsel had earlier joined in all Riden's defense counsel's motion and objection unless expressly stated otherwise. (R. p. 56; p. 99; pp. 565-566).

played for the jury.[9] (R. pp. 567-572; State's Ex. # 3; State's Ex. # 4). Similarly, others portions of the recordings in which Victim 2 stated her father observed the sexual abuse being committed by Appellant and Riden and responded solely by laughing, her father was informed of the sexual abuse and did not do anything in response, her father and Riden's sister were present when she and the other victims were shown inappropriate movies, and her father sometimes slept in the same bed with Appellant and Riden were **not** redacted and were played for the jury.[10] [11] (R. pp. 567-572; State's Ex. # 1; State's Ex. # 2).

Thereafter, the solicitor continued forward with the State's case and called Christine Carlberg to the witness stand. (R. p. 318). During her testimony, Carlberg – who had no contact with the victims, had not seen any recordings of the victims' statements, and had not read any statements from the victims – was qualified as an expert in child abuse dynamics. (R. pp. 328-

[9] Specifically, those portions begin approximately thirteen minutes and forty-five seconds into the recording of Victim 1's first interview and approximately twenty-five minutes and forty seconds into the recording of Victim 1's second interview. (State's Ex. # 3; State's Ex. # 4).

[10] Specifically, those portions begin approximately twenty minutes and forty seconds into the recording of Victim 2's first interview and approximately thirty-nine minutes and thirty seconds, approximately forty-one minutes and ten seconds, approximately forty-one minutes and forty seconds, and approximately forty-six minutes and five seconds into the recording of Victim 2's second interview. (State's Ex. # 1; State's Ex. # 2)

[11] After the redacted recordings were played for the jury, defense counsel for Riden noted a portion of Victim 1's second interview where the child mentioned statements made by Grandmother was supposed to have been redacted but was not. (R. p. 310). As a result, Riden's defense counsel moved for a mistrial, for the testimony to be stricken, or for a curative instruction to be given to the jury. (R. p. 310). In response, the trial judge agreed to give a curative instruction as requested but indicated he did not believe a mistrial was necessary under the circumstances. (R. p. 310). Defense counsel for Riden then noted a portion of the recording where Victim 1 discussed "horror movies" he had seen was inadvertently not played for the jury, and the trial judge indicated he would have that portion played. (R. pp. 311-312). Thereafter, the trial judge advised the jurors a portion of one of the recordings that was supposed to have been redacted was mistakenly played for them and asked them to disregard anything mentioned in the recordings in regard to what someone else said. (R. p. 316). Following those remarks, counsel for all parties, including Appellant, specifically indicated they had no objections. (R. p. 317). The portion of the recording of Victim 1's interview that was inadvertently not played was then played for the jury. (R. pp. 317-318).

329; pp. 331-332). Upon being qualified as an expert, Carlberg generally discussed delays in disclosure of sexual abuse and explained general concepts related to the disclosure process, grooming, and coaching for the jury. (R. pp. 330-362).

At the conclusion of Carlberg's testimony, the solicitor rested the State's case, and Riden testified in her own defense. (R. pp. 365-366; p. 380). During her testimony, Riden denied the allegations in total, stated she never touched or rubbed her children's genitals in an inappropriate manner, claimed she would never perform digital penetration or oral sex on her children, and indicated she did not know why the allegations were being made or if the children were coached. (R. pp. 380-383; p. 391; pp. 395-396). Additionally, she indicated she never observed anyone else, including Appellant, engage in inappropriate interactions with the children, stated she would have killed Appellant if she discovered he was abusing her children, and denied Appellant ever sexually abused the children. (R. p. 383; pp. 385-386; p. 396; p. 419).

Following Riden's testimony, Riden rested her case, and Appellant also elected to testify in his own defense. (R. p. 421; p. 442). During his testimony, Appellant – like Riden – completely denied the allegations and claimed the children were not sexually assaulted. (R. pp. 445-446; p. 448). However, Appellant conceded he had no idea what happened in the home after he moved out in December of 2012. (R. p. 444; pp. 447-448).

In addition to Appellant's testimony, Mark Lusk, who was the children's biological father, testified as a part of Appellant's defense.[12] (R. p. 424; p. 452). During Lusk's testimony, Lusk indicated he never saw anything inappropriate occurring at Riden's residence when Appellant and the children were living there. (R. p. 426; p. 429). He also specifically denied he

[12] Luanne Queen, who was Appellant's mother, also testified in Appellant's defense, indicated she interacted several times with Appellant and the children, and noted the children always seemed happy and free of signs of physical abuse or injury. (R. pp. 452-456).

ever sexually abused the children or witnessed anyone sexually abusing the children. (R. pp. 436-437; p. 441). Furthermore, Lusk denied ever getting into a bed with Appellant, and he unsubtly implied he would have killed anyone he saw hurt or do anything inappropriate to his children. (R. p. 429; p. 436).

Thereafter, Appellant rested his case, and the State called Grandfather in reply. (R. p. 457; p. 459). During his testimony, Grandfather confirmed Lusk asked him to come and get the children because there was no food in Riden's house, people were coming and going from that location, and Lusk was afraid the children would starve or be hurt if they were not removed from the home. (R. p. 461). He further stated he spoke with Riden after she was arrested and she denied the charges. (R. pp. 461-462). However, Grandfather indicated Riden stated she was influenced by drugs if she had anything to do with the allegations and expressed remorse about missing warning signs regarding Appellant. (R. p. 462; p. 464).

Following the presentation of that evidence and testimony, the parties presented their closing arguments to the jury, the trial judge instructed the jury on the law, and the case was submitted to the jury. (R. pp. 472-545). Subsequently, after deliberations, the jury convicted both Appellant and Riden of all the indicted charges. (R. pp. 555-557). The trial judge then imposed aggregate terms of imprisonment of thirty-seven years on Appellant and thirty-five years on Riden. (R. pp. 563-564).

ARGUMENT

Appellant's appellate challenge to the trial judge's decisions regarding the redaction of the forensic interview recordings was not properly preserved for appellate review because the specific arguments Appellant is currently asserting on appeal were never presented to or ruled upon by the trial judge and are vastly different from the arguments and statements actually made by defense counsel during trial.

Appellant contends the trial judge committed reversible error by ordering the redaction of the portions of one of the forensic interview recordings in which "the children claim[ed] the father was involved in the abuse."[13] In support of that contention, Appellant maintains the evidence of Lusk's abuse of the children was relevant because it was "fantastic" and, thus, made the children's allegations less credible. Additionally, Appellant maintains the question of whether Lusk "witnessed the abuse" was at issue during trial, and, therefore, the jury was entitled to compare Lusk's credibility to the credibility of the children. Furthermore, Appellant maintains the exclusion of the challenged portions of the forensic interview recordings violated the rule of completeness and impaired his defense due to the fact the children's "more fantastic claims" were redacted. Importantly though, none of those arguments was raised to the trial judge. Instead, during trial, defense counsel moved for the exclusion of all the forensic interview recordings in their entirety and sought the redaction of multiple portions of the recordings, including portions related to the victims' father's action, before indicating he believed portions establishing the victims claimed their father was "there" during the abuse were relevant to Appellant's defense and should be played for the jury. Significantly, at that point, the trial judge **agreed** for the portions establishing the victims stated their father was present during the abuse to be played for the jury, and Appellant's defense counsel did not raise any further objections or

[13] Although Appellant appears to be suggesting "the children" collectively claimed their father participated in the abuse, Victim 2 was the only one of the children to ever make such a claim at any point during the forensic interviews. (State's Ex. # 1; State's Ex. # 2; State's Ex. # 3; State's Ex. # 4; State's Ex. # 5).

arguments. Under those circumstances, the trial judge responded to the arguments actually raised by Appellant's defense counsel during trial and granted the relief that defense counsel sought, and Appellant's defense counsel acquiesced in the trial judge's ruling. As a result and because the appellate arguments Appellant is now seeking to raise on appeal were never presented to the trial judge, Appellant's appellate challenge to the trial judge's decisions regarding the redaction of the recordings was not properly preserved for appellate review and cannot appropriately be considered or addressed for the first time on appeal. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

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 judges 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."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and **arguments**." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added).

In order for an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see also JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 185 (3rd ed. 2016) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

Regarding the requirement for sufficient specificity, an issue must be raised in a sufficiently specific manner to call attention to the **exact error** to the trial court. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005); see State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A]n objection should be sufficiently specific to bring into focus

the precise nature of the alleged error **so it can be reasonably understood by the trial judge**." (emphasis added)). Importantly, "[a] party need not use the exact name of a legal doctrine in order to preserve it[.]" State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). However, in order for an issue to be preserved for review, "it must be clear that the argument has been presented on that ground." Id. Critically, "[w]here an objection and the ground therefor is not stated in the record, there is no basis for appellate review." State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991); see State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) ("It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal.").

Moreover, in order for an issue to properly be preserved for appellate review, a party cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). Significantly, on appeal, an appellant is limited **solely** to the grounds raised at trial. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

In the case sub judice, Appellant is contending on appeal the trial judge reversibly erred by redacting portions of the one of the recordings of the victims' forensic interviews in which the victims claimed their father was involved in the sexual abuse. In seeking a reversal of his conviction on that basis, Appellant maintains: (1) the children's "fantastic" claims regarding abuse perpetrated by their father were relevant to their credibility; (2) those claims were relevant

to the question of whether Lusk witnessed the abuse; and (3) the exclusion of those claims violated the rule of completeness and impaired his defense in light of their "fantastic" nature.

However, during trial, Appellant's defense counsel did **not** raise a specific objection to the trial judge's decision to redact the portion of Victim 2's second forensic interview recording in which Victim 2 indicated Lusk and Riden's sister also engaged in the sexual abuse. Similarly, Appellant's defense counsel did **not** raise an objection to the redaction of any part of the forensic interview recordings pursuant to the rule of completeness. Likewise, Appellant's defense counsel did **not** argue to the trial judge Victim 2's statements related to her father's and Riden's sister's participation in the sexual abuse were significant to Appellant's defense based on their relevance to the children's credibility or based on their allegedly "fantastic" nature.

Instead, during the course of trial, Appellant's defense counsel merely raised an unsuccessful objection to the admission of all the forensic interview recordings in their entirety on grounds totally unrelated to Lusk's actions before successfully seeking and obtaining – through his request to be considered to have joined in all Riden's counsel's motion and objections unless expressly stated otherwise – the redaction of various portions of the forensic interview recordings, including portions directly related to Lusk.[14] Aside from that, the only other action on the part of Appellant's defense counsel related to the trial judge's decisions regarding the redaction of the forensic interview recordings came in response to the solicitor's request for the portion of one of the forensic interview recordings that contained Victim 2's statements about her father's participation in the sexual abuse to be also redacted. Specifically, when the solicitor made that particular request and the trial judge indicated he agreed with it,

[14] Notably, Appellant is **not** pursuing on appeal defense counsel's trial objection to the admission of all the forensic recordings in their entirety and, therefore, has abandoned that particular objection for appellate purposes. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (finding unchallenged and unappealed rulings are the law of the case).

Appellant's defense counsel responded by asserting an unspecified "part" of the matter the trial judge was redacting related to Lusk "seem[ed]" to be relevant to Appellant's defense before identifying the part he perceived to be significant to the defense as the part in which the children indicated Lusk was merely **present** at the time of the abuse. At that point, the trial judge specifically indicated he was going to allow the matter Appellant's defense counsel had just identified as significant, which was any part in which the children said their father was present "when something was going on," and defense counsel did not raise any further objections when presented with the opportunity to do so. Thus, the trial judge agreed to allow the presentation of the portions of the forensic interview recordings Appellant's defense counsel identified as pertinent to the defense, and Appellant's defense counsel acquiesced in that ruling in light of the fact he made no further requests for relief or arguments related to the trial judge's redaction decisions. See Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party cannot acquiesce to a ruling on an issue during trial and then complain of an error with the issue on appeal); see also State v. Parris, 387 S.C. 460, 465, 692 S.E.2d 207, 209 (Ct. App. 2010) ("When the defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide.").

Because Appellant's defense counsel did not raise **any** of the arguments Appellant is now attempting to raise on appeal, the trial judge judge was wholly denied an opportunity to consider, address, or rule upon those arguments in deciding the evidentiary issues involved in the trial. See Queen's Grant, 368 S.C. at 372-373, 628 S.E.2d at 919 ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (citations omitted)). Critically, without first giving the trial judge an opportunity to consider his claims regarding the redaction of the forensic

interview recordings and the applicability of the rule of completeness, Appellant is precluded from raising such claims for the first time on appeal. See State v. Sheppard, 391 S.C. 415, 424, 706 S.E.2d 16, 20 (2011) ("This argument . . . was not raised to the trial judge; therefore, the issue is not preserved for appellate review."); see also I'On, 338 S.C. at 422, 526 S.E.2d at 724 ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred."); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton's challenge to the trial judge's refusal to give a requested charge was not preserved for appellate review where Benton "argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence)."); Adams, 354 S.C. at 380, 580 S.E.2d at 795 (declining to address one of the grounds raised on appeal in support of Adams' mistrial motion when that particular ground was never presented to the trial judge). As a result, Appellant's appellate challenge to the trial judge's ruling on the redaction of the forensic interview recordings is not properly preserved for appellate review and simply cannot appropriately be raised or addressed for the first time on appeal. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); see also State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"); cf. State v. Gulledge, 321 S.C. 399, 404-405, 468 S.E.2d 665, 669 (Ct. App. 1996) ("Gulledge . . . argues the State did not prove she had the resources to pay $210,000.00 in restitution and the trial court failed to state its findings and the underlying facts and circumstances of

them. Because this argument was neither raised to nor addressed by the trial court, we need not deal with it." (citation omitted)). Appellant's convictions should be affirmed.[15]

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[15] Because Appellant's defense counsel wholly failed to raise the arguments Appellant is now raising on appeal, the trial judge obviously never ruled upon those particular arguments, which makes it somewhat difficult to respond to or address the merits of Appellant's appellate claims. See State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 488-489 (2007) ("Because Appellant did not argue these grounds in support of his objection at trial, Appellant's argument is not preserved for review. . . . **If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.**" (emphasis added)); see also State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed[.]"). However, in light of the fact the jury was tasked with determining whether the State had proven beyond a reasonable doubt Appellant and Riden had sexually abused the victims as opposed to whether Lusk or some other party had **also** sexually abused the victims, the trial judge could have potentially excluded the portion of the lone forensic interview recording containing a reference to abuse committed by Lusk on a variety of different grounds, including on the ground it could have served to confuse the jury about the actual issues that needed to be resolved during the trial. See State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (instructing evidence, including relevant evidence, must be excluded from trial if its probative value is substantially outweighed by the danger of unfair prejudice); State v. Williams, 409 S.C. 455, 466, 761 S.E.2d 770, 777 (Ct. App. 2014) ("[T]he evidence could have confused the issues at trial or misled the jury as to the sexual misconduct in question."); State v. Oglesby, 384 S.C. 289, 294, 681 S.E.2d 620, 622 (Ct. App. 2009) (instructing Rule 106 of the South Carolina Rules of Evidence only requires the admission of "that portion of the remainder of any statement which explains or clarifies the previously admitted portion"); see also State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001) ("A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence. If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." (citations omitted)), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, to the extent that portion of the recordings was pertinent to the impeachment of the victims' testimony, the portions of the recordings Appellant's defense counsel identified to the trial judge as being pertinent to the issue of impeachment were, in fact, played for the jury and the jury heard the victims state Lusk observed the sexual abuse during their forensic interviews while also hearing the victims' and Lusk's trial testimony indicating the opposite was true, which rendered any error in the exclusion of the evidence Appellant now contends on appeal would have had additional impeachment value insignificant and harmless. See State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) ("Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide."); see also State v. Gunn, 313 S.C. 124, 137-138, 437 S.E.2d 75, 82 (1993) (instructing "[t]he exclusion of impeaching evidence is not prejudicial where it has no meaningful impact on a witness's credibility" and finding no error in the exclusion of impeachment evidence during the trial of Gunn and his co-defendants in light of the abundance of other impeachment evidence that existed in the case); Duncan v. State, 281 S.C.

CONCLUSION

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

Respectfully submitted,

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435, 439, 315 S.E.2d 809, 811 (1984) ("[T]he **additional** impeaching evidence of the inconsistent statement would not have had a meaningful impact on Davis' credibility. Reversal is not required." (emphasis added)); cf. State v. Stokes, 345 S.C. 368, 374, 548 S.E.2d 202, 205 (2001) ("[E]ven assuming *arguendo*, as Stokes claims, that the redacted portions of his statement were relevant to demonstrate the victim voluntarily accompanied them on the night of her murder, any error in the redaction is harmless. Both Stokes' letter and the testimony of Norris Martin amply demonstrate that Connie Snipes voluntarily went with Stokes and Syphrette to Branchville, and that she willingly walked into the woods with Martin and Stokes. Accordingly, the jury was well aware that she had accompanied them voluntarily, and Stokes had failed to demonstrate any prejudice from the redactions.").

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Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2016-000208

THE STATE,

Respondent,

vs.

AARON VAN HENDRIX,

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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PROOF OF SERVICE

I, Destiny Blue, certify I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

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I further certify that all parties required by Rule to be served have been served.
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