STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2017-001867

THE STATE,

Respondent,

v.

JOSEPH CAMPBELL WILLIAMS II,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Appellant's argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Appellant conceded this issue at trial.

II.

The trial court did not err by preventing Appellant from testifying about the veracity of Victim's prior accusations of abuse because Appellant had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony.

STATEMENT OF THE CASE

Appellant was indicted by a Pickens County grand jury for one count of criminal sexual conduct with a minor in the first degree and one count of criminal sexual conduct with a minor in the second degree. Appellant proceeded to trial before the Honorable Perry H. Gravely on August 31, 2017. Appellant was represented by Scott Dover, Esquire. Respondent (the State) was represented by Assistant Solicitor Shannon Odom. Appellant was convicted on both counts and sentenced to 30 years' incarceration for CSC with a minor 1st degree and 10 years' incarceration for CSC with a minor 2nd degree, to be served concurrently. This appeal follows.

STATEMENT OF FACTS

Appellant was Victim's stepfather. Tr. 308-09. Appellant married Victim's mother in 2006, but had lived with Mother since late 2001 or early 2002, when Victim was around six years old. Tr. 261-62. Victim began behavioral therapy at age six, and was referred to counseling for various issues on nine separate occasions. Tr. 208-210. During counseling that occurred when Victim was eight, ten, and twelve years old, either Victim or Mother reported that Victim had been sexually abused by two men (neither of which was Appellant). Tr. 217-219. At age fourteen, Victim reported that she had been raped by a third person. Tr. 220. Victim did not report that Appellant had abused her during these counseling sessions. Tr. 235-36.

In November 2013, Victim called the Pickens County Sheriff's Office and reported that Appellant sexually abused her as a child. Tr. 62-64. At trial, Victim testified that Appellant began molesting her when she was seven or eight years old. Tr. 91. What initially began as rubbing Victim's legs and torso progressed to digital penetration, cunnilingus, and fellatio. Tr. 91-94; 131. Victim testified the abuse continued until shortly before her thirteenth birthday. Tr. 94; 105. Victim testified that she did not recall making allegations of abuse against any other men during her age eight to twelve counseling sessions. Tr. 137.

Appellant testified he never engaged in sexual behavior with Victim. Tr. 303. Appellant and Mother both testified that Victim was never left alone with Appellant, and that Victim intermittently lived with her grandparents for extended periods of time. Tr. 253-59; 309. Appellant's neighbor, brother and sister-in-law all testified that Victim normally stayed with her grandparents and they never knew her to spend the night in the same house as Appellant. Tr. 299-300; 294-295; 287.

ARGUMENT

I.

Appellant's argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Appellant conceded this issue at trial.

Appellant claims the trial court prevented him from presenting evidence of Victim's prior false rape allegations in violation of *State v. Boiter*, 302 S.C. 381, 396 S.E.2d 364 (1990). However, Appellant misstates the facts. Appellant conceded at trial that it would be improper to inquire about these alleged false prior allegations, and did not attempt to do so. Therefore, this issue is not preserved for appellate review. *State v. Benton*, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (holding an issue conceded at trial is not preserved for review).

The admission of evidence is within the discretion of the trial court and will not be reversed absent a prejudicial abuse of discretion. *State v. Hill*, 409 S.C. 50, 55, 760 S.E.2d 802, 805 (2014). 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. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

In camera, the court heard arguments regarding the admissibility of evidence of prior allegations. Tr. 73. Appellant agreed that he was not entitled to ask Victim about other unfounded allegations because this would violate the rape shield law, S.C. Code §16-3-659.1. Appellant argued instead that testimony regarding the prior accusations was admissible for the limited purpose of conveying to the jury that (1) the abuse for which Victim was previously counseled was not related to Appellant, and (2) Victim was willing to discuss other instances of sexual abuse, but did not accuse Appellant at that time. Tr. 75-78.

Defense counsel stated: "I would never ask her [those questions]— you know, 'did you accuse some body and it was later unfounded.' That would absolutely be impermissible. I certainly think that I can ask her the question, 'in 2009, in counseling didn't you report, you know, report A, B and didn't report my client?'" Tr. 78. Later, defense counsel stated: "I don't think the status of those [other incidents] are relevant of what happened. But the fact that she was accusing others- here you've got- I submit that it is fair for the jurors to believe that this young lady just felt so much, whatever her feelings were, that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true." Tr. 80.

The court allowed Appellant to pursue this theory during trial, and Appellant raised this line of questioning during his cross-examinations of Victim, expert witness Shauna Galloway-Williams, and counselor Angela Farmer, and advanced the theory again in his closing argument. Tr. 137, 196, 235, 382. In contrast, the inadmissibility of evidence of the falsity of the prior allegations was conceded at trial, and is being argued for the first time on appeal. This is improper. "An argument not raised and ruled on by the trial court is not preserved for appeal." *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). "A litigant cannot concede an issue at trial and then raise it on appeal." *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 81, 716 S.E.2d 877, 885 (2011); *State v. Mitchell*, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (stating a defendant cannot acquiesce in an issue at trial and then complain about it on appeal).

In *Boiter*, the Supreme Court held that evidence of a victim's prior false allegation of abuse may be admissible to impeach the victim's credibility in some circumstances. In order to be admissible, the defendant must first show that the prior allegation was false. *Boiter*, 302 S.C.

at 383-84. The court must then consider the remoteness in time of the accusation. *Id.* Finally, the court must consider the factual similarity between the prior and present accusation to determine relevance. *Id.* Not only did Appellant fail to satisfy any of the *Boiter* factors, Appellant never even referenced *Boiter*. He did not proffer witnesses testimony, law enforcement records, inquire on cross-examination, or even argue to the court that he should be allowed under *Boiter* to offer this evidence. Defense counsel noted that at least one of the persons accused by Victim pled guilty to the assault, Tr. 75, and accepted that "there is no question that this young lady has been sexually abused[.]" Tr. 235, l. 8-11. Appellant did not give the court an "opportunity to exercise its discretion" on the issue. *Stephens v. CSX Transportation, Inc.*, 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012). Instead, he conceded the issue away. Because Appellant conceded this issue at trial, it is not preserved for review.

II.

The trial court did not err by preventing Appellant from testifying about the veracity of Victim's prior accusations of abuse because Appellant had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony.

Appellant next claims that the trial court erred by preventing Appellant from testifying that he refused to be alone with victim because she had made false allegations of sexual abuse against others. This argument fails because Appellant had already conceded that evidence of prior false allegations was inadmissible. The Court was simply acting on its prior ruling, which defense counsel accepted. Furthermore, Appellant was allowed to give substantially the same testimony, and argued the point in his closing. Therefore, Appellant suffered no prejudice.

Although Appellant had previously conceded that evidence regarding the falsity of prior allegations was not admissible under the rape shield law, defense counsel nevertheless objected to the court's exclusion of Appellant's testimony that he refused to be alone with Victim because she had made false allegations in the past. Tr. 303. Defense counsel argued that the falsity of the prior allegations was relevant to Appellant's state of mind, explaining why he refused to be alone with Victim. Tr. 304. However, because Defense counsel had already conceded that the falsity of prior allegations was inadmissible under the rape shield law, he had no cause to complain about the exclusion of the evidence when offered in this form. Appellant failed to make the showing required by *Boiter* that the referenced allegations were false, and declined to pursue this defense strategy. The limitation of Appellant's testimony followed from the court's earlier ruling, which Appellant acquiesced in.

Furthermore, the trial judge correctly ruled that the testimony would have constituted hearsay. Tr. 306. Because Appellant declined to attempt to prove the falsity of the prior allegations with competent evidence, his only basis for knowing the veracity of the prior

allegations was through the statements of others. Appellant did not call the accused persons to testify about the falsity of the prior accusations, nor did he offer law enforcement testimony or other evidence to establish their falsity. As discussed above, Appellant actually conceded that Victim had been abused by others. The trial court correctly ruled that the evidence as offered was inadmissible hearsay.

Finally, Appellant has failed to show prejudice from the alleged error. The court allowed Appellant to testify that he avoided being alone with Victim because he "was fearful that she might make up some sort of accusation[.]" Tr. 309. The jury had already heard Angela Farmer's testimony that Victim's record indicated that she had made a prior false allegation of abuse that proved unfounded.[1] Tr. 216. The jury also heard defense counsel question Farmer about a medical record that indicated the first two allegations of sexual assault had been unfounded.[2] Tr. 228. Finally, in his closing argument defense counsel argued: "remember, she's a veteran at this. She has accused people all her life of sexually abusing her." Tr. 382-83. The point was clear—Appellant was afraid Victim would make up allegations against him, and never allowed himself to be alone with her. The falsity of the prior allegations had already been conceded as irrelevant and inadmissible, and was properly excluded.

While it is true that Appellant's attack on Victim's credibility was weakened by his failure to show the prior allegations were in fact false, this error belongs to the defense attorney, not the court. "The Court of Appeals does not sit to relieve self-inflicted wounds." *Rish v. Rish by and Through Barry*, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988) (Bell, J., concurring).

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[1] Unlike Appellant's testimony, Farmer's testimony came on direct examination and was not subject to a hearsay objection.

[2] The judge sustained a hearsay objection to this question.

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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ATTORNEYS FOR RESPONDENT

April 5, 2018

STATE OF SOUTH CAROLINA
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APPEAL FROM PICKENS COUNTY
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Appellate Case No. 2017-001867

THE STATE,

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v.

JOSEPH CAMPBELL WILLIAMS, II,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his counsel of record, J. Falkner Wilkes, Esquire, 114 Whitsett Street, Greenville, SC 29601.

I further certify that all parties required by Rule to be served have been served.
This 5th day of April, 2018.

Anne Mueller

Anne A. Mueller
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

April 5, 2018

J. Falkner Wilkes, Esquire
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RE: State v. Joseph Campbell Williams, II
Appellate Case No.: **2017-001867**

Dear Mr. Wilkes:

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

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/aam
Enclosures

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