ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2017-000160

THE STATE,

Respondent,

vs.

WILLIE THOMAS GRAY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Initially, to the extent Appellant is contending on appeal the trial judge erred by admitting into evidence certain medical records due to the fact they allegedly contained irrelevant and inadmissible bad character evidence, that particular argument was not properly preserved for appellate review because it was neither raised by defense counsel nor ruled upon by the trial judge during trial. However, notwithstanding any issue preservation concerns, the trial judge did not abuse his broad discretion by admitting the medical records as extrinsic evidence of the victim's prior inconsistent statements because the victim did not unequivocally admit she made the statements contained within the records during trial, which meant the records were admissible as impeachment evidence and as substantive evidence of the contents of the victim's earlier unadmitted and contradictory statements.

STATEMENT OF THE CASE

In September of 2014, Appellant Willie Thomas Gray was arrested following an investigation into a brutal beating that left his girlfriend with multiple injuries, including a broken arm. In December of 2014, the Greenwood County Grand Jury indicted Appellant for attempted murder. On January 17, 2017, a jury trial was commenced in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of the lesser-included offense of assault and battery of high and aggravated nature. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of fifteen years. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In the early morning hours of July 3, 2014, Officer Mike Sathre of the Greenwood Police Department was on patrol in Greenwood, South Carolina, when he heard the sound of a woman screaming loudly. (R. pp 10-12). Upon hearing the sound, the officer quickly headed in its direction, found Janice Holloway ("Victim") either walking down the street or lying on the sidewalk, and observed a man briskly walking away from the area.[1] (R. pp. 12-11; pp. 38-39). At that point, Officer Sathre spoke with Victim, and Victim pointed to the man, who began to run away. (R. pp. 20-21). A short time later, Captain Jeff Crisp of the Greenwood Police Department arrived on the scene and asked Victim, who was lying on the sidewalk moaning in pain, what happened. (R. p. 9; p. 21; p. 134). Immediately in response, Victim revealed she had been beaten by her boyfriend, Appellant Willie Thomas Gray, with a lead pipe. (R. p. 21; p. 59; p. 134). The officers then began to search the area for Appellant while emergency medical personnel rapidly responded to the scene to assist Victim. (R. p. 22; p. 35; p. 127).

Shortly thereafter, Coray Deblois, a paramedic with Greenwood County Emergency Medical Services, began treating Victim's injuries, which included multiple areas of bruising and swelling. (R. pp. 127-128). During the treatment, Victim, who was alert and oriented, reported her boyfriend struck her multiple times with a pipe and hit her in the arm as she attempted to shield her face from his blows. (R. p. 60; pp. 128-129). Victim further reported she was in immense pain and indicated she was nauseous, which was a symptom consistent with severe pain. (R. p. 129). Due to Victim's injuries, Deblois transported her to Self Regional Medical Center by ambulance. (R. p. 22; p. 102; pp. 119-120; p. 134).

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[1] During trial, it was revealed Officer Sathre died shortly after the incident. (R. pp. 10-11). As a result of his untimely death, it is not clear whether the victim was upright or prone when the officer first encountered her. (R. p. 13; p. 39).

At the hospital, Shirolyn Fredette, a nurse in the emergency department, met with Victim and spoke with her about what had occurred. (R. pp. 119-120; p. 124). During their conversation, Victim, who was crying, reported her boyfriend had assaulted her with a lead pipe, she was in immense pain, she was afraid of her partner, she was in a threatening relationship, her significant other was overly protective, she felt controlled, she had been hit or shoved, and she was verbally abused. (R. pp. 121-122; p. 124). Victim was then treated by Dr. John Short, a board-certified physician and expert in emergency medicine, and the doctor discovered Victim's right arm bone was shattered in multiple places, Victim had abrasions to her neck and abdomen, and Victim had bruising to her right arm and legs. (R. pp. 99-102; pp. 109-110). As to how those injuries were inflicted, Victim informed the doctor she had been assaulted by her boyfriend with a lead pipe, and she advised Captain Crisp of the same thing when he travelled to the hospital to meet with her again.[2] (R. p. 103; pp. 135-136; p. 140).

Once Victim's treatment was complete, she was released from the hospital and returned to her home.[3] (R. p. 102; p. 116). A little while later, Detective Tony Gary of the Greenwood Police Department went to Victim's residence and spoke with her about what had occurred. (R. pp. 142-144). During their conversation, Victim reported she met up with Appellant at the time of the incident and he jumped on her, assaulted her, beat her up, and then ran away. (R. pp. 146-148; pp. 150-151). After that, Victim indicated Appellant returned with pipe, verbally insulted her, told her she was going home, punched her in the head, and began hitting her with the pipe.

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[2] During her conversation with Captain Crisp at the hospital, Victim further reported she had angered Appellant on the night of the incident by accusing him of engaging in "sexual relations" with one of his cousins, noted he was intoxicated at the time, and indicated he became violent when he was drinking. (R. p. 135).

[3] In total, Victim was at the hospital for approximately four hours. (R. p. 116; p. 126). Prior to her release, a splint was placed on her arm, her arm was put into a sling, and she received prescriptions for pain medication and antibiotics. (R. p. 118; p. 126).

(R. pp. 66-67; pp. 147-149; pp. 150-151). At that point, Victim indicated she "hollered," and police officers quickly responded to her location. (R. p. 147).

Based on Victim's statements and injuries, law enforcement officers continued to search for Appellant, but their efforts were initially unsuccessful. (R. p. 137; p. 152). However, a few months after the incident, Appellant was finally located and arrested. (R. p. 79; p. 153). Appellant was then indicted for attempted murder, and he proceeded forward to trial. (R. p. 2; pp. 250-251).

During trial, Victim offered a strikingly different account of the incident from the one she had presented to the responding officers and medical personnel shortly after she was brutally beaten.[4] (R. pp. 41-45). Specifically, through her trial testimony, Victim claimed she was not actually assaulted by Appellant at all. (R. p. 44; p. 87). Instead, she alleged she caught him having sex with another woman the day before the incident, swore she would get even with him, and later went to a party at the home of an individual she only knew as "Keisha."[5] (R. pp. 42-43). At that party, Victim asserted she was drinking and ingesting drugs, and she indicated she fought with two women and a man over drugs.[6] (R. pp. 43-44). As they fought, Victim alleged one of the women began hitting her with an object and continued to do so until someone threatened to call the police. (R. pp. 44-45). After that, Victim claimed she left the party and encountered Appellant, who tried to apologize to her. (R. p. 45). Victim asserted she then asked

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[4] At the outset of her testimony, Victim asserted she was only testifying pursuant to a subpoena, and the trial judge determined the solicitor could treat her as a hostile witness. (R. p. 34; p. 41; p. 50).

[5] When questioned about the party, Victim was unable to provide the full name of a single living person who was present at it. (R. pp. 71-72).

[6] According to the results of testing conducted at the hospital, Victim had no alcohol in her system, but she did test positive for cocaine. (R. pp. 105-106).

him to leave her alone and "hollered" at him, and an officer arrived on the scene shortly after that while Appellant was trying to "get [her]" and "take [her] home." (R. p. 45).

At that point, the solicitor asked Victim if she had presented a different story to the police, and defense counsel objected. (R. p. 45). The trial judge then conducted an in camera hearing on the matter, and defense counsel explained she objected because she believed the solicitor had solely called Victim as a witness to impeach her with her prior inconsistent statements and introduce those statements into evidence as substantive proof. (R. p. 48). In response, the trial judge noted Rule 607 and Rule 613 of the South Carolina Rules of Evidence specifically permitted a party to impeach its own witness with prior inconsistent statements and, based on that, sought further clarification of the objection being raised. (R. pp. 48-49). Defense counsel then asserted an old rule from cases that pre-dated the adoption of the evidentiary rules prohibited parties from impeaching their own witnesses absent surprise, which she contended could not be established in Appellant's case.[7] (R. p. 49). However, the solicitor pointed out the adoption of the evidentiary rules altered the law on prior inconsistent statements, and the trial judge agreed, ruling he would permit the solicitor to impeach Victim pursuant to Rule 607, Rule 613, and Rule 801 of the South Carolina Rules of Evidence. (R. pp. 54-55).

Thereafter, as Victim's testimony continued, Victim acknowledged she had earlier told both Captain Crisp and Deblois her boyfriend hit her multiple times with a lead pipe. (R. pp. 57-60; p. 63). However, when asked by the solicitor—without objection—about her statements to Fredette, Victim indicated she could not remember telling the nurse she was assaulted by her boyfriend with a pipe, was scared of her boyfriend, felt controlled, and was in a frightening

[7] Specifically, defense counsel cited to State v. Bendoly, 273 S.C. 47, 254 S.E.2d 287 (1979), for the proposition a party could not impeach its own witness unless the party was surprised by the witness's hostility at trial. (R. p. 49).

relationship. (R. pp. 61-62). Similarly, Victim asserted she could not remember telling Dr. Short her boyfriend had assaulted her, and she claimed she could not remember what she told Detective Gary. (R. p. 61; p. 82). Furthermore, Victim reaffirmed her claim she had lied about what Appellant did to her, and she rhetorically asked why she would still be with Appellant if he had tried to kill her. (R. p. 68; p. 87). Likewise, she asserted she loved Appellant, wanted to have a future with him, and did not want him to be prosecuted for the assault.[8] (R. p. 71; p. 80; p. 86).

Following Victim's testimony, the jury was excused from the courtroom, and the solicitor indicated she intended to introduce some medical records through her next witness, who was a records custodian from the hospital. (R. pp. 88-89). Regarding those records, the solicitor stated she had agreed to redact some information from them that could be connected to or construed as being related to some prior incidents, and she noted defense counsel had some further issues with certain information contained within the records. (R. p. 89). At that point, defense counsel contended portions of the records, including portions containing Victim's statements to Fredette about being in a controlling relationship, were inadmissible hearsay that did not fall into any valid hearsay exceptions. (R. pp. 89-90). The trial judge then asked if the records fell within the business records exception, and the solicitor responded she believed they did. (R. p. 90). Furthermore, the solicitor asserted some portions of the challenged information fit within the medical diagnosis and treatment exception while the other portions constituted extrinsic evidence of prior inconsistent statements that had not been admitted by Victim. (R. p. 91). In response, defense counsel conceded Fredette could personally testify to the prior inconsistent statements subject to her earlier objection but maintained it was a different matter for the records themselves

[8] During cross-examination, Victim also revealed she got Appellant's initials tattooed onto her neck at some point after the incident. (R. p. 86).

to be "black and white in front of the jury." (R. pp. 91-92). Defense counsel further maintained some of the information could be hearsay within hearsay even if the records were admissible pursuant to the business records exception. (R. p. 92). Ultimately though, the trial judge found Fredette would be permitted to testify to what Victim said to her based on Victim's trial testimony while noting defense counsel had "kind of acknowledged that." (R. pp. 92-93). Furthermore, based on his earlier ruling regarding Victim's prior inconsistent statements, the trial judge ruled the medical records would be admissible as extrinsic evidence of those unadmitted statements. (R. pp. 93-94).

After the trial judge ruled on the matter, the trial proceeded forward, and the redacted medical records from Victim's hospitalization following the assault were admitted into evidence over defense counsel's objection.[9] (R. pp. 96-97). Likewise, Dr. Short testified about Victim's statements at the hospital, and Fredette confirmed Victim expressed fear of her partner, reported being in a threatening relationship, reported having an overly protective significant other, reported feeling controlled, stated she had been shoved or hit, and reported she was verbally abused over defense counsel's renewed objection to the prior inconsistent statement evidence.[10] (R. pp. 91-92; p. 122). Similarly, Captain Crisp, Detective Gary, and Deblois all confirmed Victim told them she had been assaulted by her boyfriend with a pipe when they encountered her shortly after the incident, and the officers recounted the various details of the assault reported by Victim, including that Appellant had verbally insulted her, informed her she was going home,

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[9] Before the medical records were admitted, the records custodian confirmed they were kept and maintained as part of the hospital's regular practices. (R. pp. 95-97).

[10] On cross-examination, defense counsel elicited testimony from the doctor and nurse indicating Victim's injuries were not life-threatening. (R. pp. 113-114; pp. 125-126). However, Dr. Short opined a beating with a lead pipe could potentially have led to fatal injuries. (R. p. 107).

jumped on her, grabbed her, and punched her in addition to hitting her with the pipe. (R. pp. 128-129; pp. 134-136; p. 140; pp. 146-148; pp. 150-151).

Thereafter, at the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. p. 161; pp. 164-208). In instructing the jury on the law, the trial judge identified the elements of the indicted offense of attempted murder while also explaining the elements of the lesser-included offenses of assault and battery of a high and aggravated nature, second-degree assault and battery, and third-degree assault and battery. (R. pp. 202-206).

Subsequently, Appellant's case was submitted to the jury, and the jury ultimately convicted Appellant of the lesser-included offense of assault and battery of a high and aggravated nature. (R. p. 210). Following the verdict, Appellant candidly stated he was "sorry," and the trial judge sentenced him to a fifteen-year term of imprisonment. (R. pp. 216-217).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Significantly, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); 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."). "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).

ARGUMENT

Initially, to the extent Appellant is contending on appeal the trial judge erred by admitting into evidence certain medical records due to the fact they allegedly contained irrelevant and inadmissible bad character evidence, that particular argument was not properly preserved for appellate review because it was neither raised by defense counsel nor ruled upon by the trial judge during trial. However, notwithstanding any issue preservation concerns, the trial judge did not abuse his broad discretion by admitting the medical records as extrinsic evidence of the victim's prior inconsistent statements because the victim did not unequivocally admit she made the statements contained within the records during trial, which meant the records were admissible as impeachment evidence and as substantive evidence of the contents of the victim's earlier unadmitted and contradictory statements.

Appellant contends the trial judge committed reversible error by admitting the medical records from Victim's hospital visit on the date of the incident and by refusing to redact portions of those records. In support of his appellate contentions, Appellant maintains the medical records contained irrelevant, inadmissible, and prejudicial evidence of his bad character. Furthermore, Appellant maintains the medical records were not automatically admissible due to the fact they were business records and were allegedly unduly emphasized during trial based on the fact they were submitted to the jury. Notably though, Appellant does *not* maintain the trial judge erred by finding the records constituted evidence of Victim's prior inconsistent statements.[11] Initially, to the extent Appellant is challenging the medical records on appeal as irrelevant and inadmissible character evidence, that particular argument was not properly preserved for appellate review because it was never raised to or ruled upon by the trial judge at any point during trial. However, notwithstanding any issue preservation concerns, the trial judge properly admitted the medical records into evidence during trial because those records constituted business records, which meant they fit into a valid hearsay exception, and constituted

[11] Perhaps tellingly, Appellant never mentions the phrase "prior inconsistent statement" a single time in his appellate brief despite the fact the medical records were actually admitted by the trial judge as extrinsic evidence of Victim's prior inconsistent statements. (App. Br. pp. 1-10).

extrinsic evidence of Victim's unadmitted prior inconsistent statements, which were not hearsay pursuant to our evidentiary rules. Under those circumstances, the trial judge did not abuse his broad discretion by admitting the medical records as extrinsic evidence of Victim's prior inconsistent statements, and, regardless of whether it was right or wrong, the trial judge's ruling finding the records were admissible as prior inconsistent statement evidence is the law of the case in light of the fact it has not been challenged on appeal. Appellant's conviction should be affirmed.

A. Appellant's Failure to Preserve Any Argument Regarding Alleged Bad Character Evidence

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).

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). Moreover, 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.").

In the case sub judice, Appellant contends on appeal the trial judge erred by refusing to redact portions of Victim's medical records and by submitting those records to the jury. In raising that particular contention, Appellant maintains the records contained irrelevant and inadmissible evidence of his bad character through Victim's statements that were allegedly about his past actions. Importantly though, defense counsel did *not* at any point during trial challenge the portion of the medical records containing Victim's statements as irrelevant evidence of Appellant's bad character or prior bad acts. Instead, defense counsel asserted any prior inconsistent statements by Victim should have been excluded under law that was not applicable due to an absence of surprise while further maintaining the statements contained within the records, which the trial judge found to be admissible as prior inconsistent statements, should have been excluded because they did not fit within a valid hearsay exception even though the records themselves did.[12] As a result, the trial judge was never presented with an opportunity to

[12] Notably, as our Supreme Court has recognized, defense counsel's contention regarding the necessity of surprise before a witness could be impeached with a prior inconsistent statement was wholly incorrect due to the adoption of the South Carolina Rules of Evidence. See State v.

consider or rule upon the bad character argument Appellant is now raising on appeal and, in fact, did not consider or rule upon such an argument. 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)); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

Accordingly, because Appellant is raising an entirely different argument in regard to the medical records on appeal from the one raised to the trial judge and the trial judge never ruled upon Appellant's current argument, Appellant's appellate argument on bad character evidence was not properly preserved for appellate review and cannot appropriately be raised or considered 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. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton's appellate 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)"). Appellant's conviction should be affirmed.

Byram, 326 S.C. 107, 114, n. 7, 485 S.E.2d 360, 364 (1997) (recognizing the former law regarding the admission of prior inconsistent statements made by a party's own witness was superseded by the adoption of the South Carolina Rules of Evidence, which permit a party to attack the credibility of its own witness without first establishing hostility and surprise).

B. Propriety of the Ruling Admitting the Medical Records Containing the Victim's Prior Inconsistent Statements

If a witness makes a statement on a particular issue and then subsequently contradicts that prior statement during his or her trial testimony, the prior contradictory statement is important evidence tending to discredit the witness's trial testimony. State v. Suber, 82 S.C. 159, 161, 63 S.E. 684, 685 (1909); see Rutland v. State, 415 S.C. 570, 577-578, 785 S.E.2d 350, 353 (2016) (recognizing the existence of a prior inconsistent statement can discredit a witness and cause his or her credibility to suffer during trial). As a result, a prior inconsistent statement, which is *not* hearsay, can be admitted as evidence to impeach the declarant if he or she testifies during trial, is subject to cross-examination, and presents testimony inconsistent with the prior statement. See Rule 801(d)(1)(A), SCRE (instructing a statement is *not* hearsay if the declarant testifies at the trial, the declarant is subject to cross-examination concerning the statement, and the statement is inconsistent with the declarant's testimony); see also State v. Lynn, 277 S.C. 222, 224, 284 S.E.2d 786, 788 (1981) ("If a witness admits a prior inconsistent statement, he has impeached himself, and further evidence is inadmissible."). Furthermore, such a statement can also be "admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-399, 673 S.E.2d 434, 438 (2009); see State v. Copeland, 278 S.C. 572, 581, 300 S.E.2d 63, 69 (1982) ("Henceforth from today, we will allow testimony of prior inconsistent statements to be used as substantive evidence when the declarant testifies at trial and is subject to cross examination. . . . We believe the adoption of this rule will more effectively aid in the discovery of the truth, and more adequately insure the freedom of the innocent and the conviction of the guilty.").

Rule 613 of the South Carolina Rules of Evidence governs issues involving the admissibility of prior inconsistent statements. State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d

224, 229 (Ct. App. 2010); see Rutland, 415 S.C. at 572, 785 S.E.2d at 351 ("Prior inconsistent statements are admissible pursuant to Rule 613, SCRE."). Pursuant to the rule, extrinsic evidence of a prior inconsistent statement is admissible if a witness—after being advised of the substance of the statement, the time and place the statement was made, and the person to whom it was made—does not admit making the statement after being given an opportunity to explain or deny it. Rule 613(b), SCRE; see State v. Galloway, 263 S.C. 585, 591, 211 S.E.2d 885, 888 (1975) ("The requirement of notice is met when the cross-examiner advises the witness of the substance of the prior statement and the time when, the place where and the person to whom it was made."). "However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible." Rule 613(b), SCRE.

"When the issue is whether the witness admitted making the prior inconsistent statement, the admission *must be unequivocal*." Carmack, 388 S.C. at 201, 694 S.E.2d at 229 (emphasis added); see State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2004) ("In determining whether a witness has admitted making a prior inconsistent statement and thereby obviated the need for extrinsic proof, the courts of our state and other jurisdictions have held that the witness must admit making the prior statement unequivocally and without qualification."). Significantly, "where the witness has responded with anything less than an unequivocal admission, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement." Blalock, 357 S.C. at 80, 591 S.E.2d at 636. Moreover, a trial judge's decision as to whether to admit such extrinsic evidence will not be reversed absent a manifest abuse of discretion resulting in prejudice to the defendant. Carmack, 388 S.C. at 201, 694 S.E.2d at 229.

In the case at bar, Victim was the only witness capable of providing direct evidence as to the identity of the person who caused the injuries she suffered as there were apparently no other

witnesses to the incident. Immediately after the assault, Victim consistently and repeatedly identified Appellant as her assailant to multiple individuals, and she informed Fredette, the nurse who initially treated her at the hospital, she had been beaten by her boyfriend with a pipe, she was afraid of the person who had just beaten her with a pipe, she was in a threatening relationship with the person who had just beaten her with a pipe, she felt controlled by an overly protective significant other, she had been hit or shoved, and she had been verbally abused. However, through her trial testimony, Victim recanted her prior statements, denied her injuries were inflicted by Appellant, professed her love for Appellant, and attributed her earlier identification of Appellant as her assailant to anger caused by his infidelity. Thus, the central and most critical issue that had to be resolved by the jury during Appellant's trial was which version of events provided by Victim was the most credible one. See State v. Needs, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) (explaining the resolution of witness credibility issues is within the province of the jury and noting the jury must determine which of a witness's contradictory statements is the truth).

In order to impeach Victim's trial testimony and establish her earlier version of events was what had actually occurred, the solicitor properly and correctly sought to elicit evidence of Victim's prior inconsistent statements. See Copeland, 278 S.C. at 581, 300 S.E.2d at 69 (recognizing prior inconsistent statements can be admitted as impeachment evidence and as substantive evidence). To elicit that evidence, the solicitor questioned Victim's about her earlier statements during trial, and Victim admitted *some* of the prior inconsistent statements when given the opportunity to explain or deny them. However, when asked—without objection—about her statements to Fredette, Victim specifically indicated she could not remember telling the nurse she was assaulted by her boyfriend with a pipe, was scared of her boyfriend, felt

controlled, or was in a frightening relationship.[13] Therefore, pursuant to our evidentiary rules, the solicitor was permitted to introduce extrinsic evidence of Victim's unadmitted prior inconsistent statements. See State v. Moses, 390 S.C. 502, 522, 702 S.E.2d 395, 406 (Ct. App. 2010) ("This wide latitude [to allow extrinsic evidence proving a prior inconsistent statement] extends to a witness indicating an inability to recall or to remember a previous statement[.]"); see also State v. Miller, 262 S.C. 369, 371, 204 S.E.2d 738, 738-739 (1974) (holding extrinsic evidence of a witness's prior inconsistent statement was admissible where the witness admitted he signed the prior statement but stated he did not remember when asked about the contents of the statement).

Because the solicitor was permitted to introduce extrinsic evidence of Victim's prior inconsistent statements, it was entirely appropriate for the trial judge to admit the medical records, which actually contained Victim's prior inconsistent statements.[14] See Blalock, 357

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[13] Significantly, Victim's fear of the person who had just beaten her with a pipe and feelings of being in a controlling and threatening relationship were highly relevant as evidence of a possible reason she might have misrepresented what actually occurred through her testimony during trial. See Rule 608(c), SCRE ("Bias, prejudice or *any motive to misrepresent* may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." (emphasis added)); see also State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) ("Rule 608(c) preserves South Carolina precedent holding that generally, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony." (citations and internal quotations omitted)); cf. Wilson v. Commonwealth, 438 S.W.3d 345, 349-350 (Ky. 2014) ("Fear can affect a witness's testimony and, thus, if a witness has reason to fear someone about whom the witness is testifying, evidence of that fear is admissible for impeachment purposes. The witness's fear may well stem from the individual's prior bad acts, . . . but as we have recently recognized impeachment is a purpose other than propensity to engage in misconduct which can render collateral 'bad acts' evidence relevant. . . . [S]ome evidence of the prior domestic violence between the two was relevant to prove that [Wilson's girlfriend] had reason to fear Wilson and that that fear could affect her testimony.").

[14] Notably, the medical records themselves were particularly important as Fredette's testimony established she could not independently recall her interactions with Victim on the date of the incident without the assistance of the records. (R. pp. 119-122).

S.C. at 80, 591 S.E.2d at 636 (recognizing trial judges have "wide latitude" to admit extrinsic evidence of an unadmitted prior inconsistent statement). Accordingly, the trial judge did not abuse his broad discretion by admitting the medical records, which constituted business records, as extrinsic evidence of Victim's prior inconsistent statements, which in no way constituted hearsay due to the fact they were prior inconsistent statements.[15] See Carmack, 388 S.C. at 201, 694 S.E.2d at 229 ("A decision to admit extrinsic evidence of a prior inconsistent statement will not be reversed absent a manifest abuse of discretion that prejudiced the defendant."); see also Rule 801(d)(1)(A), SCRE (instructing a prior inconsistent statement made by a testifying witness is *not* hearsay); Rule 803(6), SCRE (instructing records of regularly conducted activity are not excluded by the hearsay rule); cf. Blalock, 357 S.C. at 80, 591 S.E.2d at 636 ("Considering we are governed by an abuse of discretion standard, we cannot say under these facts that the trial judge erred in admitting extrinsic evidence of Ms. Blalock's prior inconsistent statement.").

However, even assuming the medical records were somehow not admissible as extrinsic evidence of Victim's prior inconsistent statements, Appellant has *not* argued on appeal the trial judge erred by finding the records were admissible pursuant to our evidentiary rules governing

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[15] Relying on State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982), Appellant maintains on appeal the medical records were unduly emphasized solely because they were admitted into evidence. Notwithstanding the fact nothing was done during trial to emphasize the medical records more than any of the other evidence and testimony that was presented, the circumstances of Gulledge were very different from the circumstances of Appellant's case as, in Gulledge, the problem stemmed from the fact *a transcript* prepared from an actual piece of evidence was introduced in addition to the evidence and testimony, which did *not* occur during Appellant's trial. See State v. Gulledge, 277 S.C. 368, 371-372, 287 S.E.2d 488, 490 (1982) (finding a transcript prepared from a recording was improperly sent to the jury room but holding the recording itself along with testimony about the substance of the recording was properly admitted into evidence); see also Torres, 390 S.C. at 626, 703 S.E.2d at 230 ("We find Gulledge is readily distinguishable from the present case. Gulledge held that allowing the jury to take a tape recording *transcript* into the jury room placed undue emphasis on that evidence. . . . Nothing in Gulledge supports the idea that the tape recording was not appropriately introduced. Instead, Gulledge provides that the trial judge should not have allowed the jury to take the tape *transcripts* into the jury room." (emphasis added)).

prior inconsistent statements. Cf. Sheppard v. State, 357 S.C. 646, 662, 594 S.E.2d 462, 471 (2004) ("[T]he trial court ruled the statement was admissible under Rule 803(3), SCRE. Because [Sheppard] does not appeal the trial court's ruling that the statement is a Rule 803(3) exception to the hearsay rule, that ruling is the law of the case. Accordingly, the trial court did not err by admitting Lynch's testimony." (citation and footnote omitted)). Under those circumstances, the trial judge's unchallenged ruling finding the medical records were admissible as extrinsic evidence of Victim's prior inconsistent statements is the law of the case regardless of whether it was right or wrong, and there is no proper basis upon which to disturb that ruling on appeal. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (explaining unchallenged and unappealed rulings are the law of the case); see also State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010) ("Where the ruling of a trial judge is based on more than one ground, an appellate court must affirm unless the appellant appeals all grounds upon which the ruling was based."); Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a trial court's decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."); cf. State v. Branham, 392 S.C. 225, 230, 708 S.E.2d 806, 809 (Ct. App. 2011) ("[B]ecause the court also alternatively ruled that Branham made an untimely discovery motion and Branham did not contest that finding, we find this alternative ground constitutes an independent basis to uphold the decision finding Branham's continuance request untimely."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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June 22, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2017-000160

THE STATE,

Respondent,

vs.

WILLIE THOMAS GRAY,

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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