STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

THE STATE, Respondent,

v.

CHARLES DENT, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

In October 2014, the Beaufort County Grand Jury indicted Appellant for two counts of criminal sexual conduct with a minor, first degree (2014-GS-07-1673, 2014-GS-07-1674). In March 2018, the Beaufort County Grand Jury indicted Appellant for two amended counts of disseminating obscene material to a minor twelve years of age or younger (2014-GS-07-1671, 2014-GS-07-1672). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Appellant was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of one count of criminal sexual conduct with a minor, first degree (2014-GS-07-1673) and both counts of disseminating obscene material to minor twelve years of age or younger. The jury acquitted Appellant of the remaining count of criminal sexual conduct with a minor, first degree (2014-GS-07-1674). Following the verdict, the trial judge sentenced Appellant to a term of thirty years' imprisonment for criminal sexual conduct with a minor, first degree and, and fifteen years' imprisonment for each count of disseminating obscene material to a minor twelve years of age or younger. All sentences ran concurrently, resulting in an aggregate sentence of thirty years' imprisonment. Appellant filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Appellant's motion. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

The victim (Victim) in this case was born on April 11, 2005. (Indictment 2014-GS-07-1673). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (Tr. 282). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (Tr. 551). Mother is Appellant's daughter and Victim is Appellant's granddaughter. (Tr. 283, 355). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Appellant's suggestion. (Tr. 602-03). Initially, Mother, Victim and Brother lived in a two bedroom townhome that was paid for by Appellant. (Tr. 603). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (Tr. 605). The family moved after Appellant decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (Tr. 239). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (Tr. 251). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (Tr. 251). Camelo asked Victim if anyone had ever done anything inappropriate with her. (Tr 251). Victim made an initial disclosure of abuse by Appellant to Camelo. Camelo then told Mother who reported the abuse to law enforcement on June 10, 2014. (Tr. 288, 343). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (Tr. 404, State's Exhibit #16). After her first interview, Victim

made a second disclosure to Camello. (Tr. 252). In light of the second disclosure, Victim participated in a second forensic interview on July 25, 2014. (Tr. 404, State's Exhibit #17).

Victim disclosed that Appellant "[s]tarted kissing me, like on my face, my mouth. He started licking my belly, like my belly button and started, like, touching me in weird places. And he took pictures of his private parts and told me to take pictures of mine." (Tr. 354, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Appellant. (Tr. 357). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Appellant touched her vagina, breasts and buttocks. Sometimes, the touching was underneath her clothes, other times it was over her clothes. Victim also disclosed that Appellant showed her pictures of his penis and a pornographic video. (Tr. 356-57, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Appellant's penis went inside her mouth. She also disclosed that Appellant touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Appellant's penis on certain occasions that almost got in her mouth. She described Appellant's "urine" as being white, looking like "flour", and that it stained the carpet. (State's Exhibit #17).

Appellant testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Appellant was convicted of all counts except indictment number 2014-GS-07-1674 which alleged criminal sexual conduct with a minor, first degree.

STANDARD OF REVIEW

I., X.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003).

II., VII.

"Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). "A jury charge is correct if, when read as a whole, the charge adequately covers the law." State v. Logan, 405 S.C. 83, 90-91, 747 S.E.2d 444, 448 (2013). "A jury charge that is substantially correct and covers the law does not require reversal." State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011).

III.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." Id.

IV.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)).

V., VI., IX.

"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. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). "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).

VIII.

When a timely and proper challenge to the sufficiency of an indictment has been raised, what the trial judge is called upon to determine is: "whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense intended to be charged." State v. Tumbleston, 376 S.C. 90, 96-97, 654 S.E.2d 849, 852 (Ct. App. 2007).

XI.

"An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013).

ARGUMENT

I.

The trial judge properly denied Appellant's request for a directed verdict of acquittal on indictment number 2014-GS-07-1673 because the State produced evidence that Victim performed fellatio on Appellant during the time frame of the indictment.

Appellant initially argues the trial judge erred by denying his motion for a directed verdict of acquittal on indictment number 2014-GS-07-1673 because the State failed to present any evidence of Victim performing fellatio on Appellant during the time frame of the indictment. Specifically, Appellant argues Victim alleged that fellatio only occurred during the time frame that she lived in the first townhouse in Bluffton and not the second townhouse. Accordingly, Appellant argues a directed verdict should have been granted for indictment no. 2014-GS-07-1673 because the indictment alleged abuse during the time frame when Victim's family lived in the second townhouse. Appellant's argument is without merit. Appellant's argument misrepresents the record and ignores evidence indicating fellatio occurred in the second townhouse. In Victim's second forensic interview, she stated that fellatio with Appellant occurred more than once but she only identified a specific location of abuse for the first occasion when she was forced to perform fellatio on him. (State's Exhibit #17). At trial, Victim testified that fellatio only occurred once, but she did not specify a time or a location where it occurred. (Tr. 357). Therefore, when taken in the light most favorable to the State, the trial judge properly denied Appellant's motion for a directed verdict when evidence existed that Victim performed fellatio on Appellant during the relevant time frame in indictment number 2014-GS-07-1673. The jury then properly determined the weight of that evidence.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court

"views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." Lindsey, 355 S.C. at 20, 583 S.E.2d at 742. When an appellate court reviews the sufficiency of the evidence to support a criminal conviction, "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original).

Here, the State presented evidence that Victim performed fellatio on Appellant through Victim's testimony at trial and through Victim's second forensic interview on July 25, 2014. Although Victim gave contradictory answers regarding how many times she performed fellatio on Appellant, evidence was still presented from which a reasonable fact finder could conclude that Victim performed fellatio on Appellant during the relevant time frame of indictment number 2014-GS-07-1673. Appellant incorrectly asserts that Victim only alleged that fellatio occurred at the first townhouse. In her second forensic interview, Victim asserts that she performed fellatio on Appellant "more than one time." (State's Exhibit #17). Victim does not say that fellatio only occurred at the first house. Victim is only specifically asked by the forensic interviewer where the first instance of fellatio occurred. (State's Exhibit #17). Victim is not asked to specifically identify where and when each instance of fellatio occurred. The logical implication of Victim's second interview is that she performed fellatio on Appellant more than one time and at least one of those incidents happened at the first townhouse during the time frame listed in indictment number 2014-GS-07-1674. Northing in the interview specifically precludes fellatio from having

occurred at the second townhouse during the time frame of indictment number 2014-GS-07-1673.

At trial, Victim deviated from her statements in the second forensic interview regarding how many times she performed fellatio on Appellant. Victim testified she only performed fellatio on Appellant once. (Tr. 357). However, she never specified where or when that instance took place. In fact, when Victim began to testify on direct examination about Appellant's abuse, she was asked a broad question by the assistant solicitor: "But do you remember anything about what was done to you while you lived in *those houses*?" (Tr. 354, lines 15-16) (emphasis added). Victim then began to describe Appellant's abusive acts towards her, culminating in Appellant forcing her to perform fellatio on him. (Tr. 354-57). The assistant solicitor never asked Victim to specify when or where the abuse took place, nor did Appellant on cross-examination. (Tr. 358-70).

When considering the aforementioned evidence in the light most favorable to the State, the trial judge properly determined that evidence existed from which the jury could find that Victim performed fellatio on Appellant during the time frame listed in indictment number 2014-GS-07-1673, indictment number 2014-GS-07-1674, or both. Because that evidence existed, it was then incumbent upon the jury to determine the weight of that evidence. Ultimately, the jury concluded the State only proved that fellatio occurred during the time frame of indictment number 2014-GS-07-1673. In his closing argument, Appellant encouraged the jury to consider the possibility that Appellant was only guilty of one of the indicted charges and not both because of Victim's conflicting statements. (Tr. 714). However, despite Victim's conflicting statements, evidence existed from which the jury could determine that fellatio happened in either time frame.

Therefore, the trial judge properly denied Appellant's motion for a directed verdict of acquittal. Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly instructed the jury on the complete statutory definition of sexual battery because it was the correct definition of sexual battery and it adequately covered the law.

Appellant next argues the trial judge erred by instructing the jury on the complete statutory definition of sexual battery rather than limiting the definition to fellatio. Appellant contends that by charging the whole definition of sexual battery, the trial judge allowed the State to argue that Appellant was guilty of a sexual battery other than fellatio. Accordingly, Appellant asserts that an impermissible variance in the indictment resulted. Appellant's argument is meritless. The trial judge charged the complete and correct definition of sexual battery in his charge to the jury. The instruction was not misleading or confusing because the State only attempted to prove that Appellant forced Victim to perform fellatio. Accordingly, Appellant was free to, and ultimately did, encourage the jury to only consider whether fellatio occurred when they deliberated. Therefore, the trial judge did not err in refusing to limit the definition of sexual battery to fellatio.

The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Adkins, 353 S.C. at 318, 577 S.E.2d at 464. "A jury charge that is substantially correct and covers the law does not require reversal." State v.

Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). "The trial court is required to charge only the current and correct law of South Carolina." Mattison, 388 S.C. at 479, 697 S.E.2d at 583. "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." Jackson, 297 S.C. at 526, 377 S.E.2d at 572. "As a general rule where the law governing a case is expressed in a statute, the court in its charge not only may, but should use the language of the statute, and may indeed be guilty of error if it employs language which constitutes a departure in an essential respect from the statute." Fields v. Gregory, 230 S.C. 39, 94 S.E.2d 15, 21 (1956) (quoting 53 Am.Jur., Trial, para. 542, at page 433).

S.C. Code Ann. § 16-3-655(A) provides:

> (A) A person is guilty of criminal sexual conduct with a minor in the first degree if:
> (1) The actor engages in sexual battery with a victim who is less than eleven years of age;

S.C. Code Ann. § 16-3-655(A)(1). Sexual battery is defined by S.C. Code Ann. § 16-3-651(h) in the following manner:

> "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

S.C. Code Ann. § 16-3-651(h).

Here, the trial judge charged the jury on the definition of sexual battery exactly as it is written S.C. Code Ann. § 16-3-651(h). (Tr. 741). Therefore, the trial judge charged the complete, current, and correct law of South Carolina. The definition was not misleading or confusing to the jury because the jury was told by the trial judge and the State that fellatio was the specific sexual battery the State was seeking to prove. The trial judge read both indictment numbers 2014-GS-

07-1673, and 2014-GS-07-1674 during jury qualifications. (Tr. 37-38). Each indictment specifically listed fellatio as the sexual battery the State intended to prove. In its opening statement, the State identified fellatio as the only sexual battery they intended to prove. (Tr. 227). In the State's direct examination of Victim, Victim was only asked about fellatio. (Tr. 351-58). In closing argument, the State argued that fellatio was the sexual battery that Appellant was guilty of committing.[1] (Tr. 695, 702). Therefore, the jury was clearly told which form of sexual battery the State intended to prove.

Appellant argues that by instructing the jury on the complete definition of sexual battery, the trial judge created a variance in the indictment. Appellant confuses the concept of a variance in an indictment with his argument that the trial judge improperly instructed the jury on the definition of sexual battery. These are two separate allegations of error. To the extent that Appellant wishes to raise an improper variance in the indictment as an issue on appeal, he failed to raise that ground in the Statement of Issues on Appeal in his brief. (Initial Brief of Appellant 1). See Rule 208(b)(B) SCACR. If this Court gives Appellant the benefit of the doubt and assumes he did raise the issue in his brief, he did not properly preserve the issue for appeal at trial. Appellant moved to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 which alleged that Appellant disseminated obscene material to a minor, but he did not move to quash indictment numbers 2014-GS-07-1673 and 2014-GS-07-1674 which alleged criminal sexual conduct, first degree. (Tr. 5-10). See S.C. Code Ann. § 17-19-90 ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards."). Only the latter two

[1] The State did make a passing reference to the other forms of sexual battery Victim disclosed in her second interview which Appellant objected to. However, this was the only reference to another form of sexual battery made by the State at trial. The State later emphasized in their closing argument that Appellant was guilty of fellatio. (Tr. 693).

indictments that Appellant did not attempt to quash are relevant to this issue. The issue of a variance in an indictment is only relevant on appeal if an appellant alleges that a trial judge erred by refusing to quash an indictment. See State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991); State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (S.C. Court App. 2007). Because Appellant did not move to quash the indictments alleging criminal sexual conduct, first degree, the issue of an impermissible variance in those indictments is not preserved for appeal. Appellant's convictions and sentences should be affirmed.

III.

Because Appellant only objected to the reliability of one subject of Tessa Trask's testimony, Appellant did not preserve any other issues with her testimony for appeal. Even if Appellant did preserve this issue for appeal, the trial judge nevertheless properly admitted Trask's testimony because her testimony was reliable as a blind expert for the limited purpose of describing general concepts in sexual abuse cases and she did not offer an opinion on the credibility of Victim's disclosure. If the trial judge erred in admitting Trask's testimony about trauma, any error was harmless because the testimony did not prejudice Appellant and was even used to Appellant's advantage at trial.

Appellant next argues the trial judge erred in admitting the testimony of Tessa Trask because the record does not contain any evidence that her theories are reliable. Appellant's argument is without merit. As an initial matter, Appellant only objected to the reliability of Trask's definition of trauma. Therefore, any issues with the remainder of Trask's testimony have not been preserved for appeal. If this Court determines that Appellant has preserved this issue for appeal, the trial judge nevertheless properly admitted Trask's testimony because Trask testified as a "blind" expert witness whose testimony was offered to educate the jury on general concepts in sexual abuse cases such as trauma, disclosure, and grooming. Trask did not testify about forensic interviewing and thus her testimony is distinguishable from the testimony warned against by our Supreme Court in State v. Chavis. If this Court determines Trask's testimony was

admitted in error, any error was harmless because Trask did not testify about the credibility of Victim's disclosure or any other topic that would prejudice Appellant.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." Id. "Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony's probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). To determine if the underlying science is reliable, the trial judge should apply the factors set out in State v. Jones. Id. See State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); State v. Jones, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001).

In order to admit non-scientific evidence under rule 702 SCRE, the trial court must still make a determination as to the proposed testimony's reliability. State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). However, while the trial court still serves an important gatekeeping function in such cases, "the foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony." White, 382 S.C. at 274, 676 S.E.2d at 688. Accordingly, there is no formulaic approach that a trial court can

or must apply to determine reliability in cases involving nonscientific expert testimony. Id. The trial judge is merely required to "assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact." White, 382 S.C. at 274, 676 S.E.2d at 689. "State v. White should apply in qualifying child abuse assessment experts because their testimony is non-scientific." Chavis 412 S.C. at 106, 771 S.E.2d at 338. "There is always a possibility that an expert witness's opinions are incorrect. However, whether to accept the expert's opinions or not is a matter for the jury to decide." State v. Jones, 423 S.C. 631, 639-40, 817 S.E.2d 268, 272 (2018).

Error Preservation

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011).

To determine whether this issue is preserved for appeal, it is instructive to review Appellant's specific objections prior to and during the trial. Prior to trial, Trask testified about her qualifications in an *in camera* hearing. After cross-examining Trask, Appellant requested the trail judge to review "the substance of the testimony to determine that it's reliable." (Tr. 163, lines 18-19). Appellant added "I'm not clairvoyant. So I think they need to proffer, at least, a summary of her testimony." (Tr. 163, lines 23-25). The State complied with Appellant's request by proffering a summary of Trask's testimony (Tr. 164-65). Trask said she would testify about

trauma, the similarities between trauma and ADHD, disclosure in sexual assault cases, coaching, lying and confusion in sexual assault cases, grooming, and risk factors of sexual abuse. (Tr. 164-65). Appellant responded to the proffer by saying he was concerned about Trask's testimony regarding trauma and ADHD as well as the potential for testimony about coaching and lying. (Tr. 166-67). Appellant and the State stipulated that Trask would not testify about coaching or lying, thus eliminating one of Appellant's potential concerns. (Tr. 168). Court was then adjourned for the day. (Tr. 170).

The following day Trask testified before the jury. The State tendered Trask as an expert in the field of "behavioral characteristics of child victims of sexual abuse." (Tr. 373, lines 20-21). Appellant objected "subject -- to the proceedings we had yesterday." (Tr. 373, lines 23, 25). Trask was tendered as an expert in the relevant field by the trial judge. Trask testified about trauma and offered her own "working definition of trauma just based on research, training, experience –." (Tr. 374, lines 24-25). Appellant objected on the basis of the reliability of Trask's definition and noted that her definition had not been peer reviewed. (Tr. 375). The trial judge overruled Appellant's objection. Trask testified about trauma and the additional topics in her pretrial proffer. Appellant did not offer any further objections. (Tr. 375-82).

A review of the record reveals that Appellant specifically objected to Trask's testimony regarding trauma on the grounds that her definition of trauma was not reliable. This objection was Appellant's only objection to the content of Trask's testimony. Appellant asked for the clarity of a proffer to determine which specific objections he may have with Trask's testimony. After Trask proffered her testimony, Appellant only raised concerns about her testimony as it related to trauma, ADHD, and coaching. Appellant and the State stipulated that neither side would ask about coaching at trial. When Trask testified at trial, Appellant only objected to her

testimony regarding trauma. Appellant did not object to Trask's testimony about disclosure, grooming, or the risk factors of sexual abuse. Therefore, Appellant did not preserve any issue with Trask's testimony for appeal other than her testimony regarding trauma.

Testimony Properly Admitted

If we assume for the sake of argument that Appellant preserved the issue of the reliability of Trask's testimony regarding subjects other than trauma, the trial judge nevertheless properly admitted Trask's testimony. Trask testified about general concepts in sexual abuse cases as a blind expert. Trask did not meet with Victim, nor did she review the case file. (Tr. 158, 372-73). Trask did not offer an opinion on Victim or the credibility of her disclosure. (Tr. 384, 386). The facts presented here differ from the facts in State v. Chavis. Unlike the expert in Chavis, Trask did not testify about forensic interviewing or the use of the RATAC method. The expert in Chavis relied on her expertise in the aforementioned subjects to offer an opinion that a disclosure of abuse had occurred to a different forensic interviewer. Chavis 412 S.C. at 107, 771 S.E.2d at 339. Our Supreme Court expressed concern that the expert in Chavis had no way to discern what her rate of error was. Therefore, the Court found the trial judge erred in qualifying the expert because there was no evidence the expert could draw reliable results from the procedures she consistently applied. Chavis 412 S.C. at 108, 771 S.E.2d at 339.

Here, Trask testified about general concepts of abuse, not a method of interviewing that produces quantifiable results. Trask's testimony was similar to the expert testimony analyzed by the Supreme Court in State v. Jones. In Jones, like the present case, the State's expert did not testify about forensic interviewing methods. Rather, the State's expert testified about the general concepts of delayed disclosure and the role of non-offending care givers in child sexual abuse cases. The Supreme Court noted that the State's expert did not identify the specific articles that

formed the basis of her opinion, but she could provide specific citations if asked. Jones, 423 S.C. at 639, 817 S.E.2d at 272. Ultimately, the Court held the State's expert met the threshold reliability requirement to provide an expert opinion. Jones, 423 S.C. at 640, 817 S.E.2d at 272. Although Trask also did not cite to specific articles as the source of her expertise, she nonetheless provided a sufficient explanation of her qualifications for the trial judge to make a determination that her testimony was reliable. Ultimately, as the trial judge noted, the jury was free to determine whether they accepted or rejected Trask's opinions. The trial judge properly admitted Trask's testimony.

Harmless Error

An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

If this Court determines the trial judge erroneously admitted Trask's testimony, any such error was harmless. As noted above, the only topic of Trask's testimony that Appellant objected to was her definition of trauma. However, Trask's testimony about trauma did not prejudice Appellant and was even beneficial for some of Appellant's arguments. When describing what trauma in a sexual abuse case might look like, Trask noted that the presence of trauma symptoms "aren't necessarily proof that it did or did not occur." (Tr. 377, lines 22-23). Furthermore, Trask

readily acknowledged that she did not interview Victim and was not offering an opinion on Victim's credibility (Tr. 384). Trask acknowledged on cross-examination that a child could suffer trauma from the loss of a loved one. (Tr. 385). Appellant used Trask's admission to his advantage by arguing in closing that the suicide of Victim's uncle could have had a traumatic effect on her. (Tr. 707-09). Thus, Appellant not only suffered no prejudice from Trask's testimony regarding trauma, but he used the testimony to his advantage to argue for alternative explanations of Victim's behavior. Any error in the admission of Trask's testimony was therefore harmless. Appellant's convictions and sentences should be affirmed.

IV.

The trial judge properly admitted pictures of Victim into evidence because they were properly authenticated by Victim, they were relevant, and their probative value was not substantially outweighed by the danger of unfair prejudice. If the photos were admitted in error, any error was harmless.

Appellant next argues the trial judge erred in admitting photographs of Victim. Specifically, Appellant alleges error in the admission of State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15. Appellant contends the State did not establish an appropriate chain of custody, the photographs were not properly authenticated, the photos were irrelevant, and finally, even if relevant, the probative value of the photos was substantially outweighed by their prejudicial effect. Appellant's arguments are each meritless. The State was not required to prove a chain of custody because the State did not obtain the photos nor did they seek to prove the photos came directly from Appellant's camera or camcorder. At least some of the photos were obtained by Appellant and provided to the State. (Tr. 440-43). Additionally, all of the photographs were properly authenticated by Victim as an accurate depiction of her during the time frame alleged in the indictments. Furthermore, the photos were relevant because they depicted where the abuse took place and at least two of the photos were sexualized images of Victim that demonstrated

Appellant's inappropriate relationship with her. The photos probative value was not substantially outweighed by the danger of unfair prejudice. Even if the photos were admitted in error, any error was harmless beyond a reasonable doubt. Because Appellant argues multiple errors by the trial judge within this issue, it is instructive to address Appellant's arguments sequentially.

Chain of Custody

The State initially sought to introduce evidence of child pornography found on Appellant's computer in Alabama as a prior bad act under Rule 404(b) SCRE. (Tr. 412-13). Ultimately, the State decided not to offer evidence of the child pornography. (Tr. 427). However, the State did proffer the testimony of Lieutenant Joey Stone and Detective Arthur Agee, both law enforcement officials from Alabama, to enter photos of Victim found on Appellant's camera and camcorder in Alabama. (Tr. 460-514). The trial judge ruled that the State could not admit the photos through the Alabama law enforcement officials because the witness who extracted the photos was unavailable for trial. (Tr. 518). In light of the trial judge's ruling, the State recalled Victim to authenticate the photos. Victim identified herself in the photos as well as where they were taken. (Tr. 550-59). Victim opined that Appellant may have taken the photos but she couldn't be sure. The photos were admitted into evidence. (Tr. 559).

As an initial matter, some of the photos Appellant claims were admitted in error were obtained by Appellant's expert, not the State. (Tr. 440-43). Therefore, the State could not establish a chain of custody without the assistance of Appellant's expert. However, even if the State could prove a chain of custody for all of the photos, photos are non-fungible evidence and as such do not require the establishment of a strict chain of custody. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). Secondly, in light of the trial judge's initial ruling, the State did not seek to prove the photos were taken from Appellant's electronic devices.

Rather, the photos were offered to show the jury the location of the crimes and Victim's age and appearance when she was living in Beaufort County. Therefore, the State was not required to establish a chain of custody because they did not attempt to prove where the photos were recovered from. The State merely attempted to prove that Appellant took the photos based on Victim's testimony. Thus, a chain of custody was unnecessary.

Authentication

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901, SCRE. Evidence must be authenticated before it can be admitted. State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003). "'The burden to authenticate . . . is not high', and requires only that the proponent 'offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'" Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting United States v. Hassan, 742 F.3d 104, 132 (4th Cir. 2014)). "The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Id.

Here, the State authenticated the photos through Victim's testimony. In regard to State's Exhibits #1, #3, and #4, Victim identified herself in each photo and the house that she lived in at the time the photo was taken. (Tr. 550-54). In regard to State's Exhibits #6, #11, #13, and #15, Victim identified herself in each photo and stated the photos were taken in one of the two houses in Beaufort County. (Tr. 555-59). Victim also offered an opinion about who took the photo for State's Exhibits #6, #13, and #15. (Tr. 556-59). Victim opined that Appellant may have taken the

photos but she could not be sure. The State successfully authenticated the photos for the limited purpose of showing Victim's appearance during the relevant time period and the locations where Victim alleged that abuse occurred. Victim was able to definitively say each photo depicted her in one of the two houses she lived in during her time in South Carolina. Victim speculated that Appellant took the pictures that were offered as State's Exhibits 6, 13, and 15. However, as the trial judge appropriately noted, Victim's uncertainty regarding who took the pictures was a factor to be considered by the jury when assessing the weight of the evidence. (Tr. 545). The trial judge correctly ruled there was sufficient evidence to support a finding that the photos were in fact photos of Victim in the locations where abuse was alleged during the relevant time frames.

Relevance and Prejudicial Effect

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401 SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403 SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993))."All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." Id. "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." Collins, 409 S.C. at 534, 763 S.E.2d at 28.

Here, the photos of Victim were offered for a limited, but probative purpose. The State grouped the photos into two categories. State's exhibit numbers 1, 3, and 4 were offered for the limited purpose of showing the age of Victim and the location of abuse. State's exhibit numbers 6, 11, 13, and 15 were offered to show the age of Victim and the location of abuse, but they were offered for an additional purpose as well. While not overtly sexual, State's exhibits 6, 11, 13, and 15 are sexualized images that demonstrate the inappropriate relationship Appellant had with Victim. Put another way, the images are not the type of images one would expect a grandfather to take of his granddaughter. It is against these probative purposes that the trial judge weighed the danger of unfair prejudice. The images are not overtly sexual. By themselves, the photos do not establish that Appellant sexually assaulted Victim or disseminated obscene material. However, when taken in context with Victim's testimony, the jury could have determined that Appellant and Victim had an inappropriate relationship. Or in the alternative, the jury could have found them to be innocent or determined that Appellant did not take them. The State intended the second set of photos to prejudice Appellant. (State's Exhibit #6, #11, #13, #15). However, any prejudice suffered by Appellant was minimal because of the ambiguous nature of the photos. The level of prejudice, if any, certainly did not substantially outweigh the probative value of the photos. The trial judge did not abuse his discretion in admitting the photos.

Harmless Error

If this Court determines the trial judge erred in admitting the photos, any error was harmless beyond a reasonable doubt. The primary evidence offered by the State against Appellant was the testimony of Victim. The photos of Victim offered to give context to Victim's testimony, but they did not prove or disprove whether Appellant committed a sexual battery against Victim or disseminated obscene material to her. The photos were not overtly sexual and

Appellant could have plausibly argued they were innocent photographs. Appellant did not choose to argue this point but instead argued the State had not proven where the photos came from. (Tr. 712). Appellant thereby disputed that he took the photos or was ever in possession of them. Ultimately, the jury reached their verdict on Appellant's guilt or innocence based on the credibility of Victim's testimony. The photos of Victim did not affect the outcome of the trial. Any error in their admission was harmless.

V.

The trial judge properly allowed John Camelo to testify regarding his personal observations of Victim's behavior because he did not discuss the substance of Victim's disclosure or offer an opinion on her credibility.

Appellant next contends the trial judge erred in allowing John Camelo to testify regarding his personal observations of Victim's behavior and the reasons he found Victim's behavior to be concerning. Appellant argues that Camelo's testimony was used as a "back door introduction of opinion evidence prohibited by Anderson, Kromah, and Jennings." (Initial Brief of Appellant 48). Appellant's argument is meritless. Appellant misunderstands the restrictions placed upon the State by the Kromah, Jennings, and Anderson line of cases. In Anderson, our Supreme Court expressed concerned that "the common practice is to present the forensic interviewer to jurors as a 'human lie-detector'" State v. Anderson, 413 S.C. 212, 220, 776 S.E.2d 76, 80 (2015). Here, Camelo did not testify as a forensic interviewer nor did he offer an opinion on the credibility of Victim's disclosure. Camelo testified as an outcry witness under Rule 801(d)(1)(D) SCRE and he described his personal observations of sexual behavior by Victim. Camelo's observations were not based on his law enforcement experience but on his personal experience as a victim of sexual abuse and his experience raising a stepdaughter who was the same age as Victim. (Tr. 250). Because Camelo did not offer an opinion on the credibility of Victim's disclosure or offer an

opinion that Victim had been sexually abused, Camelo's testimony was properly admitted by the trial judge.

"For an expert to comment on the veracity of a child's accusations of sexual abuse is improper." State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011). A forensic interviewer testifying at trial should avoid "a direct opinion as to a child's veracity of tendency to tell the truth" or "any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a 'compelling finding' of abuse." State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013). However a forensic interviewer may properly testify regarding "any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer." Id.

Here, Camelo did not testify as a forensic interviewer nor did he testify as an expert witness in any subject. First and foremost, Camelo was an outcry witness who testified to the time and place of Victim's first and second disclosures pursuant to rule 801(d)(1)(D) SCRE. Camelo did not reveal the substance of the disclosures or offer his opinion on the veracity or trustworthiness of the disclosures. (Tr. 251-52). Secondly, Camelo testified about the troubling aspects of Victim's behavior that he personally witnessed. Victim's troubling behavior caused Camelo to ask Victim if anyone had engaged in inappropriate behavior with her. (Tr. 250-51). After being questioned by Camelo, Victim ultimately made a disclosure of abuse to him. Camelo did not comment on the credibility of the disclosure or offer an opinion as to whether abuse had in fact occurred. Even if Camelo had testified as an expert, his observations about Appellant's demeanor and troubling behavior would have still been admissible under the restrictions of Kromah.

Appellant asserts "the Solicitor cleverly questioned John Camelo about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness." (Initial Brief of Appellant 47). Appellant's assertion is contradicted by the record. On direct examination, the assistant solicitor asked Camelo "Have you ever worked in a law enforcement capacity?" (Tr. 240, lines 15-16). As Camelo began to discuss his prior law enforcement experience, Appellant objected and an *in camera* hearing took place to address Appellant's objection. (Tr. 240-49). Outside the presence of the jury, Appellant then speculated that he thought Camelo might testify that "he has some sort of training to be able to detect child sexual abuse." (Tr. 241, lines 16-17). The assistant solicitor clarified that she would not ask Camelo whether he thought Victim was being sexually abused. (Tr. 244).

When the jury returned to the courtroom, Camelo was only asked about his personal experience as a victim of child sexual abuse and his experience raising a stepdaughter. (Tr. 250). It is therefore misleading for Appellant to assert the State asked about Camelo's experience as a police officer in order to offer an opinion about the credibility of Victim's disclosure when Appellant merely feared such a question may be asked. In actuality, the State never asked Camelo for his opinion regarding whether Victim was sexually abused nor did they ask him about the credibility of Victim's disclosure. Camelo merely testified about concerning behavior that he personally witnessed which lead him to ask Victim if she had been abused. Accordingly, the concerns expressed by our appellate courts in Kromah and its progeny are not present in this case. The trial judge properly admitted Camelo's testimony. Appellant's convictions and sentences should be affirmed.

VI.

The trial judge properly sustained the State's objection to the question posed to John Camelo about whether he broke up with Mother because she was a stripper who used drugs when the question was irrelevant and Appellant was not prejudiced by the ruling because the statement was not a prior inconsistent statement and Appellant was free to elicit the same information from Mother on cross-examination but he chose not to.

Appellant next claims the trial judge erred by not allowing Appellant to ask John Camelo if he broke up with Mother because she was a stripper who used marijuana. Specifically, Appellant argues that he was prejudiced by his inability to cross-examine Camelo about a prior inconsistent statement. Furthermore, Appellant fears the jury may have believed Camelo and Mother ended their relationship solely because of Victim's allegations of abuse. Appellant's arguments are without merit. The trial judge properly limited Appellant's cross examination of Camelo because Appellant's question was irrelevant to any issue at trial. To the extent Appellant wished to impeach Camelo with a prior inconsistent statement, he would be unable to do so even if the trial judge allowed the question because Camelo never said he broke up with Mother because she was a stripper who smoked marijuana. To the extent that Appellant wished to inform the jury that Mother was a stripper who smoked marijuana, he was capable of asking Mother that question on cross-examination but he chose not to. Therefore, the trial judge properly sustained the State's objection to Appellant's question and even if the trial judge's ruling was incorrect, Appellant was not prejudiced by the ruling.

The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "A court's ruling on the admissibility of evidence will not be reversed on

appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." Id.

Appellant's assertion that "the prosecution solicited testimony from John Camelo about the reason for his ending the romantic relationship with [Mother]" is misleading and inaccurate. (Initial Brief of Appellant 48). The relevant portion of the State's direct examination of Camelo reads as follows:

> Q: At some point, did your relationship with [Mother] end?
>
> A: Yes.
>
> Q: When was that?
>
> A: Very shortly after – after all of this initiated, which, unfortunately, became very stressful, a very stressful, strange situation. And I just felt it was best to end the relationship.

(Tr. 255-56, lines 24-5). The State asked Camelo about if and when he broke up with Mother, not why. When Appellant cross-examined Camelo, the following exchange occurred:

> Q: Right. And you said that – earlier, you talked about you and [Mother] breaking up; isn't that right?
>
> A: Correct.
>
> Q: And you attributed it to the stress of this; is that right?
>
> A: On my part.
>
> Q: Okay. You had, also, learned some information about [Mother's] background, hadn't you?
>
> A: What information are you, specifically, asking me about?
>
> Q: That she had been a stripper in Florida and had smoked marijuana –
>
> Ms. Luttrell: Objection, you Honor. Relevance.
>
> The Court: Sustained.

(Tr. 261-62, lines 25-13). Appellant asked Camelo about his concerns regarding Mother's past based on the notes summarizing a pretrial interview between the solicitor's office and Camelo. (Court's Exhibit #6). The State provided the notes to Appellant in discovery. Appellant claims that Camelo said during the interview that he broke up with Mother because of her history as a stripper and her drug use. (Tr. 263). The State denied that Camelo made this statement during the interview and the notes from the interview appear to support this contention. (Tr. 264, Court's Exhibit #6). Following the State's objection to Appellant's question, the trial judge listened to *in camera* testimony from Camelo about his reasons for breaking up with Mother. Camelo proceeded to deny that he broke up with Mother because of her past:

> Q: Was one of the reason that the relationship broke up because you learned that [Mother] used to be a stripper in Florida and that she smoked marijuana?
>
> A: I – it wasn't a reason for me separating myself from her.
>
> Q; Did you tell Ms. Luttrell and Ms. Winston that after you started dating [Mother], you learned that she used to be a stripper in Florida and she smoked marijuana, and you decided this was a relationship – was not relationship that you wanted to continue? Did you make those statements –
>
> A: It's not a relationship I would want to have with anyone.
>
> Q: And part of that was her background as a stripper and the fact that she smoked marijuana?
>
> A: Perhaps.

(Tr. 266, lines 6-21).

The trial judge properly sustained the State's objection to Appellant's questions regarding Mother's history as a stripper and Camelo's reasons for breaking up with her. First and foremost, the questions are irrelevant to the ultimate issue at trial. Whether Camelo broke up with Mother because she used to be a stripper is irrelevant to whether Appellant forced Victim to perform fellatio on him or whether Appellant showed Victim pornography. Therefore, the trial judge did

not abuse his discretion sustaining the State's objection. Even if the trial judge erred in sustaining the objection, Appellant would not have been successful in impeaching Camelo with a prior inconsistent statement, because Camelo's statement was not inconsistent. Camelo denied that he broke up with Mother because of her past and equivocated about whether he made the statement in the first place. Had Appellant attempted to impeach Camelo with the notes from his interview, he would have been unsuccessful, because the notes did not say what Appellant claimed they did. (Court's Exhibit #6). Therefore, Appellant suffered no prejudice from the trial judge's ruling. To the extent that Appellant wished to elicit the sordid details about Mother's past, he was free to do so when he cross-examined Mother. Appellant chose not to do so.[2] (Tr. 302-30). Appellant's convictions and sentences should be affirmed.

VII.

When read as a whole, the trial judge's jury instruction on circumstantial evidence was proper because it adequately covered the law and closely resembled the language approved by the South Carolina Supreme Court in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997). However, even if the trial judge erred in not instructing the jury using the recommended charge in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), any error was harmless because the State did not rely on circumstantial evidence to convict Appellant.

Appellant contends the trial judge erred by deviating from the recommended circumstantial evidence charge in State v. Logan. Appellant's argument is meritless. While the trial judge did not give the Logan charge verbatim, the jury instruction, when read as a whole, adequately covered the State's burden of proof and the difference between circumstantial and direct evidence. However, even if the trial judge erred in not reading the exact charge from Logan, any error was entirely harmless because the evidence presented against Appellant was direct evidence, not circumstantial.

[2] Appellant did mention that Mother was a stripper in his closing argument. (Tr. 722).

In State v. Logan, our Supreme Court endeavored to "articulate for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the State's burden and the jury's responsibility." State v. Logan, 405 S.C. 83, 94-95, 747 S.E.2d 444, 450 (2013). The Supreme Court ultimately affirmed Logan's conviction but attempted to craft an ideal jury charge on circumstantial evidence and reasonable doubt. While the Court did craft a recommended jury charge for circumstantial evidence and reasonable doubt, the charge was a recommendation and not a requirement. The Court noted that trial courts were not prevented from issuing alternative circumstantial evidence charges found in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) or State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). Logan 405 S.C. at 100, 747 S.E.2d at 452-53. The language articulated in Logan is allowed if requested by a defendant. Logan 405 S.C. at 100, 747 S.E.2d at 453.

Here the trial judge read the following instructions to the jury on circumstantial evidence and reasonable doubt. As to circumstantial evidence the trial judge instructed:

> Now, there are, also, two sources – or two types of evidence, rather. And I'm talking about now is there's direct evidence and circumstantial evidence. Direct evidence is the testimony of someone who claims to have direct and actual knowledge of a fact, such as an eyewitness. Direct evidence is evidence that if it is believed immediately establishes a fact.
>
> Circumstantial evidence. Circumstantial evidence is indirect evidence. Put another way, circumstantial evidence is proof of a chain of fact from which you could find that another fact exists, even though it has not been proven to you directly.
>
> The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. You may consider both kinds. And there's not a greater degree of certainty required of one over the other.

(Tr. 736-37, lines 10-1). As to reasonable doubt, the trial judge instructed:

> [Appellant], in these four indictment, has plead not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against [Appellant] beyond a reasonable doubt.

....

> [Appellant] is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you – every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of a crime.
>
> What is a reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.
>
> ....
>
> If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

(Tr. 738-39, lines 5-10, lines 18-4, lines 10-15).

Appellant requested that the trial judge read the exact recommended jury charge articulated in Logan. (Tr. 668). Ultimately, the trial judge did not read the exact Logan charge as requested by Appellant but still adequately instructed the jury on the definition of circumstantial evidence, reasonable doubt and the State's burden of proof. In fact, the trial judge's instruction closely resembled the language explicitly approved by our Supreme Court in State v. Grippon. Grippon, 327 S.C. at 83-84, 489 S.E.2d at 464. Furthermore, the trial judge's instruction was accompanied by a thorough and correct reasonable doubt charge. Because the jury instruction given by the trial judge contained the correct law and closely resembled a jury instruction explicitly approved by our Supreme Court, the trial judge did not err by refusing to read the Logan charge verbatim.

Harmless Error

Even if the trial judge erred by not instructing the jury using the recommended charge from State v. Logan, any error was harmless. The evidence presented against Appellant at trial was direct evidence. Victim testified as an eyewitness to the crimes that Appellant was accused of. Appellant testified she was forced to perform fellatio on Appellant and that Appellant showed her pictures of his penis as well as a pornographic video. (Tr. 357, State's Exhibit #16 and #17). The State presented little, if any, circumstantial evidence against Appellant. The only evidence that could possibly be considered circumstantial were the sexualized photographs of Victim. (State's Exhibit #6, #13, #15). Even these exhibits are better classified as direct evidence because they were authenticated and entered into evidence through Victim. (Tr. 559). Therefore, Appellant was not prejudiced by the trial judge's circumstantial evidence charge because no circumstantial evidence was used against him. Thus, any error in the trial judge's circumstantial evidence charge was harmless. Appellant's convictions and sentences should be affirmed.

VIII.

The trial judge properly refused to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because a defect in an arrest warrant is not a proper ground for quashing an indictment. Even if the trial judge could have quashed the indictment based on a defect in the underlying arrest warrant, the arrest warrant was not defective because S.C. Code Ann. § 16-15-435 does not apply to the statute Appellant was charged with violating.

Appellant next argues the trial judge erred by refusing to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the State did not follow the procedures set out in S.C. Code Ann. § 16-15-435(A) in obtaining Appellant's arrest warrants for disseminating obscene material to a minor under the age of 12. Appellant's argument is without merit. The manner in which Appellant's arrest warrant was obtained is irrelevant to a determination of the sufficiency of the indictment. A defect in an arrest warrant is not a proper ground for quashing an

indictment. However, even if the trail judge could have quashed the indictment based on a defect in the arrest warrant, there were no defects in Appellant's arrest warrants for dissemination of obscene material to a minor. Appellant claims S.C. Code Ann. § 16-15-435(A) requires a circuit solicitor to apply for an arrest warrant rather than a police officer. However, S.C. Code Ann. § 16-15-435(A) explicitly does not apply to the statute Appellant was charged with violating. Therefore, the requirement that a circuit solicitor apply for an arrest warrant is inapplicable to the charge of disseminating obscene material to a minor.

In South Carolina, an indictment issued by a grand jury is generally required before an individual can be held to answer in any court for a criminal offense. See S.C. Const. art. I, § 11. Generally speaking, an indictment is a "notice document." State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). When a timely and proper challenge to the sufficiency of an indictment has been raised, what the trial judge is called upon to determine is: "whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense intended to be charged." Tumbleston, 376 S.C. at 96-97, 654 S.E.2d at 852. An arrest warrant is not required to present an indictment to the grand jury. "[A] grand jury may indict for any crime, certainly any which is not within the exclusive jurisdiction of a magistrate or other inferior court, whether or not there has been a prior proceeding before a magistrate and an arrest warrant issued." State v. Walker, 232 S.C. 290, 295-96, 101 S.E.2d 826, 829 (1958). "[I]t is well established that 'the illegality of an initial arrest [does] not bar the accused person's subsequent prosecution and conviction of the offense charged.'" State v.

Griffin, 416 S.C. 266, 268, 785 S.E.2d 786, 787 (2016) (quoting State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978)).

Here, the supposed defect in Appellant's arrest warrants for disseminating obscene material to a minor are completely irrelevant to the sufficiency of Appellant's indictments. Indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 sufficiently informed Appellant of what allegation he was called to answer and they sufficiently informed the trial judge of what judgement he would have to pronounce. Appellant's original arrest warrants are irrelevant when evaluating the sufficiency of his indictments. Appellant was certainly free to challenge the sufficiency of his arrest warrants in Magistrate's Court prior to the grand jury returning true bill indictments against him. Had Appellant chosen to challenge his arrest warrants in Magistrate's Court, the appropriate remedy would have been a dismissal of the charges by the magistrate. However, Appellant would not have been released from custody because he had also been arrested on two warrants charging criminal sexual conduct with a minor, first degree. Even if Appellant got his charges dismissed based on defects in his arrest warrant, the Solicitor could have directly presented indictments to the grand jury charging Appellant with the same offenses. The trial judge did not have the authority to dismiss Appellant's arrest warrants, but even if the trial judge had such authority, it would have no bearing on the sufficiency of Appellant's indictments.

Assuming for the sake of argument that Appellant's arrest warrants are relevant to the sufficiency of his indictments, there were no defects in the arrest warrant. Appellant was arrested and charged with disseminating obscene material to a minor 12 years of age or younger pursuant to S.C. Code Ann. § 16-15-355. S.C. Code Ann § 16-15-355 provides:

> An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably

should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

S.C. Code Ann. § 16-15-355. The statute that Appellant claims the State did not comply with is S.C. Code Ann. § 16-15-435(A). Section 16-15-435(A) provides:

> (A) A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.

S.C. Code Ann. § 16-3-435(A). Appellant was arrested for two violations of § 16-15-355. Section 16-15-355 is not listed as one of the statues which requires an arrest warrant to be requested by a circuit solicitor. Therefore, § 16-3-435(A) is inapplicable to the arrest warrants Appellant was served with. Thus, there were no defects in the warrants.

The text of S.C. Code Ann. § 16-15-355 does include a reference to S.C. Code Ann. § 16-15-305 in regards to the definition of obscenity. However, this reference does not impose the warrant requirement articulated in § 16-15-435(A) on § 16-15-355. Section 16-15-305 primarily defines obscenity and other terms listed in the statute. Therefore, it was necessary to incorporate by reference within section 16-15-355. In addition to defining statutory terms, S.C. Code Ann. § 16-15-305 also establishes a separate crime of dissemination of obscene material in general which carries a five year maximum sentence rather than the fifteen year maximum sentence mandated under § 16-15-355. Therefore, it is likely the General Assembly specifically chose to impose a requirement that an arrest warrant be sought by a circuit solicitor for only three crimes. Our legislature chose to impose that requirement only for sections 16-15-305, 16-15-315, and 16-15-325. S.C. Code Ann. § 16-15-435(A). If the legislature intended for that requirement to be extended to the crime of disseminating obscene material to a minor, they would have listed § 16-15-355 with the other statutes identified in § 16-15-435(A). Therefore, a county solicitor need

not seek an arrest warrant for a violation of section 16-15-355. Appellant's convictions and sentences should be affirmed.

IX.

The issue of whether the trial judge erred in admitting pictures of Victim because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A) is not preserved for appeal, because Appellant did not object on that ground at trial. However, even if this issue is properly preserved, the State did not use the photos to prove Appellant had disseminated obscene material to a minor. Therefore, the requirements of § 16-15-435(A) were irrelevant to the trial judge's decision to admit the photos.

Appellant's next argument contends the trial judge erred by not suppressing State's Exhibits #1, #3, #4, #6, #11, #13, and #15 because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A). Appellant's argument is meritless. As an initial matter, Appellant did not preserve this issue for appeal. Appellant objected to the introduction of the photographs and as seen in Appellant's fourth issue raised on appeal, he articulated many grounds for his objection at trial. (Initial Brief of Appellant 46). However, Appellant did not object to the introduction of the photos on the grounds that the County Solicitor failed to request his arrest warrants for disseminating obscene material to a minor. Therefore, this issue is not preserved for appeal. See State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001) (A party may not argue one ground at trial and an alternate ground on appeal.)

However, if this Court assumes Appellant properly preserved this issue for appeal, the issue is nonetheless meritless. State's Exhibit #'s 1, 3, 4, 6, 11, 13, and 15 were not offered to prove Appellant was guilty of disseminating obscene material to a minor under S.C. Code Ann. § 16-15-355. The State never contended the aforementioned exhibits were obscene material. The aforementioned exhibits are photos of Victim, at least some of which, the State argued were sexualized and thus demonstrated the inappropriate relationship Appellant had with Victim. The

photos were irrelevant to the jury's deliberations regarding the charges for dissemination of obscene material to a minor. Appellant admitted the photos were irrelevant to the charge of disseminating obscene material to a minor in his closing argument. (Tr. 712-13). To prove that Appellant disseminated obscene material to a minor, the State argued Appellant showed Victim photographs of his penis and forced Victim to watch a pornographic video. Both the State and Appellant acknowledged from the beginning of the trial that the jury would not see the alleged photos of Appellant's penis nor would they see any pornographic videos, because the State never recovered these items.[3] The lone evidence presented by the State to prove these crimes was the testimony of Victim. (Tr. 356-57, State's Exhibit #16). Therefore State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15 were irrelevant to the jury's determination of whether Appellant disseminated obscene material.

As referenced in this brief's previous argument, the warrant requirement of S.C. Code Ann. § 16-15-435(A) does not apply to a charge of disseminating obscene material to a minor under § 16-15-355. However, if the requirement did apply, it would have no bearing on the trial judge's decision to admit or exclude the photographs of Victim. The photos were not obscene and neither side sought to prove they were. The State offered the photos into evidence for reasons that were entirely unrelated to proving whether Appellant had disseminated obscene material to a minor. Therefore, Appellant's argument is entirely irrelevant in evaluating the trial judge's decision to admit the photos. Appellant's convictions and sentences should be affirmed.

[3] Notably, at least some of the photographs Appellant contends were admitted in error were not recovered by the State, but by Appellant's expert. (Tr. 440-43).

X.

The trial judge properly denied Appellant's request for a directed verdict of acquittal on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the State produced evidence that Appellant disseminated obscene material to a minor.

Appellant once again argues another error by the trial judge based on the State's failure to comply with the warrant requirement of S.C. Code Ann. § 16-15-435(A). However, Appellant additionally argues the trial judge erred by not granting a directed verdict of acquittal because the State did not enter the actual obscene material disseminated to Victim into evidence. Appellant's argument is meritless. The State conceded from the beginning of trial that the photo of Appellant's penis and the pornographic videos would not be entered into evidence. These items were never recovered by law enforcement. Instead, the State relied on the testimony of Victim as well as the disclosures made in Victim's first forensic interview. Victim's testimony was direct evidence that Appellant disseminated obscene material to a minor. Therefore, the trial judge correctly denied Appellant's motion for a directed verdict and allowed the jury to consider what weight they would assign to the State's evidence.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." Bennett, 415 S.C. at 235, 781 S.E.2d at 353. "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." Lindsey, 355 S.C. at 20, 583 S.E.2d at 742.

Here the State presented evidence through Victim's testimony that Appellant showed her pictures of his penis and forced her to watch a pornographic video. (Tr. 356-57, State's Exhibit

#16). The State was not in possession of the photographs of Appellant's penis or the pornographic video. Therefore, Victim's description of the two items was the only evidence presented but it was nonetheless evidence of Appellant disseminating obscene material to a minor. The trial judge was only called upon to determine if evidence existed, not the weight of the evidence. When viewed in the light most favorable to the State, evidence of the relevant offense existed. It was then the jury's duty to determine the weight of that evidence. Whether the county solicitor applied for the arrest warrants underlying indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 was irrelevant to the trial judge's evaluation of the evidence at the directed verdict stage. As is often stated in instructions to juries in our state, arrest warrants and indictments are not evidence of an offense. Therefore, the manner in which the arrest warrants were obtained was entirely irrelevant to whether the State produced evidence at trial that Appellant disseminated obscene material to a minor. The trial judge correctly denied Appellant's motion for a directed verdict on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672. Appellant's convictions and sentences should be affirmed.

XI.

Appellant did not preserve any issue regarding the cumulative error doctrine for appellate review because the issue was not raised to and ruled upon by the trial judge but rather it was raised for the first time via a post-trial motion. Even if Appellant preserved the issue for appeal, Appellant abandoned the issue by raising it in a conclusory and unsupported manner. Additionally, Appellant's trial was not rendered unfair as a result of any errors, cumulative or otherwise.

Appellant argues that each of the errors alleged in his brief entitle him to a new trial on their own merit. However, in the alternative, Appellant asserts the "intertwined" nature of the errors combine to enhance their prejudice against Appellant thereby entitling him to a new trial. Appellant's argument is without merit. As an initial matter, Appellant failed to preserve this issue for appeal. Appellant did not argue the cumulative error doctrine to the trial judge during

the trial, but rather raised it for the first time in a post-trial motion. Even if Appellant properly preserved this issue for appeal, Appellant abandoned the issue by raising it in a conclusory and unsupported manner. Finally, Appellant's trial was not rendered unfair by any errors, cumulative or otherwise and Appellant has failed to identify any errors entitling him to a new trial.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." Dunbar, 356 S.C. at 142, 587 S.E.2d at 693. A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). "[C]onclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review." State v. Crocker, 366 S.C. 394, 399, n. 1, 621 S.E.2d 890, 893 (Ct. App. 2005). "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." State v. Howard, 384 S.C. 212, 217, 682 S.E.2d, 42, 45 (Ct. App. 2009). "Appellant is limited to grounds raised at trial." State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997).

Here, Appellant failed to raise any issue based on the cumulative error doctrine. Appellant raised the issue for the first time in a post-trial motion. (Appellant's post trial motion). Even if this Court determines that Appellant properly preserved this issue for appeal, Appellant abandoned the issue by addressing it in a conclusory and unsupported manner in his brief. Appellant cites appellate authority to establish that there is, in fact, a doctrine in South Carolina known as the cumulative error doctrine; however, Appellant does not explain how the cumulative error doctrine applies to his case other than to say "Many of [Appellant's] questions on appeal are intertwined, thereby compounding the prejudice." (Initial Brief of Appellant 52).

Appellant's single sentence, conclusory argument and analysis are insufficient to preserve this issue for appeal. Even if this Court determines that Appellant properly preserved this issue for appeal, Appellant has failed to identify any errors, cumulative or otherwise that entitle him to a new trial. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 18, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 18 2019
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

THE STATE, Respondent,

v.

CHARLES DENT, Appellant.

PROOF OF SERVICE

I, Sally Ellison, 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:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This eighteenth day of July, 2019.

Sally Ellison

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ALAN WILSON
ATTORNEY GENERAL

July 18, 2019

E. Charles Grose, Esquire
404 Main Street
Greenwood, SC 29646

RE: State v. Charles Dent
Appellate Case No. 2018-001257

Dear Mr. Grose:

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

Sincerely,

Scott Matthews

Scott Matthews
Assistant Attorney General
Bar # 101464

JSM/ab
Enclosures

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