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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-000938

THE STATE,

RESPONDENT,

V.

WILLIAM HOWARD HEATH,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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II. The trial judge properly admitted Victim's responses to questions from police officers which occurred soon after the alleged assault as hearsay exceptions.

III. The trial judge erred in sentencing Appellant to life imprisonment because the maximum penalty for first-degree CSC was amended during the middle of the date range alleged in the indictment and the State did not provide evidence indicating whether Appellant's conduct specifically occurred after the date on which the amended statute went into effect.

STATEMENT OF THE CASE

In August 2016 and April 2018, a Lexington County grand jury indicted Appellant for first-degree criminal sexual conduct (CSC) with a minor, second-degree CSC with a minor, and two counts of third-degree CSC. On May 7–11, 2018, Appellant appeared before the Honorable R. Knox McMahon, and a jury, for trial. Deputy Solicitor Suzanne Mayes, Esquire, and Assistant Solicitor Kate Usry, Esquire, represented the State; Wayne Floyd, Esquire, and Colin Spangler, Esquire, represented Appellant. The jury found Appellant guilty as charged and the trial judge sentenced him to consecutive sentences of life imprisonment, twenty years' incarceration, ten years' incarceration, and ten years' incarceration for the respective charges of first-degree CSC with a minor, second-degree CSC with a minor, third-degree CSC, and third-degree CSC.

Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Victim, who was twenty years' old at the time of trial, testified to years of abuse she received from Appellant, her father. She recalled the abuse began when she was in the second grade, approximately seven or eight years' old, and lived on Peachland Drive. The incidents involved Appellant: (1) performing oral sex on Victim; (2) rubbing his penis on Victim's vagina; (3) digital manipulation of the interior and exterior of her vagina. She tried to resist these assaults, but Appellant struck her or used other physical force against her. He also threatened further harm to Victim if she disclosed the abuse to anyone. The assault continued over the years at the family's various homes, including their Smith Pond Road residence, where the family moved to when Victim was approximately fourteen or fifteen years' old. Around this time, Appellant escalated the abuse, forcing Victim to perform fellatio and using Victim's hand to stimulate his penis. He would ejaculate inside Victim's mouth, on her body, or on occasion into cloth objects. The abuse continued throughout Victim's high school career and to their third home on Nazareth Road. (R.p.104, line 12–R.p.116, line 19).

Victim recalled a specific assault which occurred during her senior year around December 1, 2014 at the Smith Pond Road residence. She recalled the event because December 1st is Appellant's birthday. Either on that day or sometime after midnight on the December 2nd, Appellant rubbed his penis on Victim and groped her. During the assault, he had his iPad with him and used it to watch pornographic videos. He had often used the iPad for such purposes throughout Victim's high school career. (R.p.135, line 10–R.p.137, line 9; R.p.162, line 20–R.p.163, line 6).

On April 26, 2015, Appellant again assaulted Victim. Again, he used his iPad to watch pornographic videos. At trial, Victim identified State's Exhibit 22 as a still image from the

pornographic video Appellant watched during the April 2015 assault. During this particular assault, Appellant removed Victim's clothes and "straddled [her] legs and then . . . rub[bed] his private parts against [hers] from the back." He also "used his fingers" and "his mouth" on Victim from behind her. Before Appellant climaxed, Victim escaped and locked herself in her bedroom. She contacted her Aunt and revealed the abuse. The Aunt contacted police who in turn went to Victim's home. Victim gave a statement to police, and told them "[a]lmost every single thing" about the history of his abuse. (R.p.119, line 22–R.p.130, line 13; R.p.139, line 21–R.p.145, line 19; State's Exhibit 22).

Shauna Galloway Williams, an expert in the area of child sexual abuse assessment and treatment testified about the commonality of delayed disclosure in child sex abuse cases. She noted that it may take years for children to report abuse and that numerous factors, such as fear, familial relationships with the abuser, and normalization of the behavior can all factor into the delay. On the process of normalization, Williams explained children are often groomed for abusive behavior through the introduction of sexual material, such as magazines, movies, and other materials, including pornography. (R.p.170, line 11–R.p.195, line 7).

Brigitte Deguzman, the nurse who performed the sexual assault examination on Victim, noted Victim informed her that her father had licked her anus. Deguzman collected Victim's clothing, swabbed her body for DNA evidence, and performed pubic hair combings. (R.p.207, line 8–R.p.229, line 6).

Officer Caleb Black was the first office to arrive at Victim's home on the night of April 26, 2015. He arrived within ten minutes of the police station receiving the call. When he spoke with Victim, "her eyes were red. She was crying. She was obviously upset." When he asked what happened, Victim disclosed Appellant had "made [her] do things that [she] did not want to

do," including rubbing his Penis on her and that her father and physically forced her to perform oral sex on him." While he waited for other officers to arrive on the scene, Victim cried into her pillow. (R.p.270, line 18–R.p.272, line 23; R.p.277, line 13–R.p.280, line 13).

Trial counsel objected to Officer Black's testimony regarding Victim's statements, claiming they were hearsay. The State responded by arguing they were hearsay exceptions based on the exceptions for excited utterances and statements confirming time and place. He noted Victim spoke with Officer Black shortly after a startling event—the sexual assault—and made under the stress of that excitement. Trial counsel countered by arguing the assault occurred "maybe a half hour earlier" and should not be considered an excited utterance based on that length of time. Pointing to prior rulings by the Supreme Court of South Carolina,[1] the State argued an excited utterance can be made hours after an event occurs, provided the utterances arise from the Victim's excited state. Further, evidence from other witnesses as to the complained sexual assault are admissible to corroborate the time and place the assault occurred. After hearing the parties' arguments, the trial judge concluded the statements were admissible in full due to the excited utterance exception, res gestae, and information regarding timing and location of the assault through the time and place exception. (R.p.272, line 24–R.p.277, line 4).

Similarly, Officer Marlo McCann of the Lexington County Sheriff's Office testified Victim was upset and scared when she found her at the house and that she stated she had been assaulted that night and on multiple occasions previously. Trial counsel moved for a mistrial, arguing Officer McCann exceeded the time and place exception when she testified Victim

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[1] *See State v. Blackburn*, 271 S.C. 324, 327–28, 247 S.E.2d 334, 336 (1978) (stating excited utterances, made in excess of one hour, can be used as evidence of res gestae); *State v. Quillien*, 263 S.C. 87, 97, 207 S.E.2d 814, 819 (1974) (explaining excited utterances must be "substantially contemporaneous with the litigated transaction, and finding the trial court did not err in concluding a victim's statements made in the emergency room after her rape qualified as such an exception).

informed him she had been assaulted multiple times in the past. In response, the State noted Officer McCann's testimony was proper because she could testify as to the time and place of each assault disclosed to her. Agreeing with the State, the trial judge denied the motion. (R.p.281, line 24–R.p.290, line 3; R.p.371, line 9–R.p.375, line 11).

Agent Donna Money of SLED analyzed the DNA recovered from Victim and her clothing. DNA collected from saliva[2] in the interior rear of Victim's underwear contained the mixture of two DNA profiles, with the major contributor of the DNA being Appellant. Additional, a hair collected from Victim's rectal swab matched Appellant's DNA profile. (R.p.332, line 18–R.p.350, line 10).

Michael Phipps, a Lexington County Sheriff's Deputy, an expert in forensic examinations of digital device, analyzed Appellant's iPad and generated an extraction report using the information and electronic "artifacts" found on it. Deputy Phipps discovered data files related to pornography which were logged on the device on December 2, 2014 (Image A), and April 26, 2015 (Image B). These artifacts were created by hitting the "home" button on the device and it taking a "screenshot" of what the user was viewing at that moment. Officer Phipps admitted he had no way of knowing how long an image was open on the iPad before the home button was hit and a snapshot is created. (R.p.357, line 18–R.p.370, line 16; State's Exhibits 22, 37, 38).

Trial counsel objected to the admission of Image A, claiming images which were not generated on the alleged offense date were not relevant to the crimes charged. Trial counsel conceded Image B was relevant, but objected to displaying it to the jury, claiming displaying a pornographic image would unfairly prejudice the jury against Appellant. He believed mentioning Deputy Phipps's testimony about the existence of Image B to the jury, was the extent

[2] SLED serologist Courtney Thompson was the agent who verified the substance found was saliva before sending it to Agent Money for DNA analysis. (R.p.301, line 23–R.p.314, line 13).

of the admissibility of the information. In response, the State noted both images corresponded to the indicted charges and corroborated Victim's testimony; notably Victim testified the December 1, 2014 assault "went into, potentially, December 2 (2015)" so it felt Image A, similar to Image B, was relevant and admissible. The trial judge ruled the images were probative of Appellant's guilt because they corroborated Victim's testimony. (R.p.365, line 20–R.p.370, line 23).

He testified Image A had a "watermark" graphic in the bottom corner which read "IncestTV.com." Phipps noted the website hosted videos which primarily contained videos of adults role-playing incest scenarios. State's Exhibits 22, 34, 35, and 36 were artifacts created on August 26, 2015 at 12:25 AM, 9:39 PM, 10:39 PM, and 11:19 PM. Image B (State's Exhibit 22), which was the artifact created at 10:39 PM, contained a watermark reading "daughterdestruction.com." Phipps confirmed this website, similar to IncestTV.com, is pornographic in nature. (R.p.376, line 1–R.p.399, line 17).

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. *Id.* "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.*

ARGUMENT

I.

The trial judge properly admitted pornographic images found on Appellant's iPad because said images were associated with specific incidents of criminal sexual conduct for which Appellant was charged and corroborated Victim's testimony. Further, any alleged error in the admission of these images is harmless given the overwhelming evidence of Appellant's guilt.

Appellant argues the trial judge erred in admitting pornographic images from Appellant's iPad possessing watermarks of "IncestTV.com" and "DaughterDestruction.com." The State disagrees with these allegations of error. Initially, the State notes questions regarding the watermarks specifically are not preserved for review because Appellant failed to argue their impropriety to the trial judge and instead argued only the general relevance and prejudice of the images. As to the merits of Appellant's claim, trial judge properly exercised his discretion when he determined the images were relevant and corroborated Victim's testimony that Appellant watch pornography while abusing her. Finally, any alleged unfair prejudice is harmless given the overwhelming evidence of Appellant's guilt, including the saliva and hairs recovered from Victim and her underwear the night of the final sexual assault.

Issue Preservation

In order for an issue to be preserved for appellate review, 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, 912–13 (Ct. App. 2004); *see also* JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "If a party fails to

properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Regarding the requirement that a timely objection be raised, a defendant must make a contemporaneous objection to a perceived error during trial in order to preserve the issue for further review. *State v. Blalock*, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); *see State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review."). Thus, when a perceived error arises, the defendant must object at the first opportunity to do so or the issue is waived. *State v. Sullivan*, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993); *see State v. Williams*, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) ("A defendant must object at his first opportunity to preserve an issue for appellate review."); *see also State v. King*, 349 S.C. 142, 157, n.1, 561 S.E.2d 640, 647 (Ct. App. 2002) ("[N]o objection was made contemporaneously with this testimony so as to preserve the issue for review. King's belated objection to subsequent testimony came too late.").

In the instant, Appellant failed to provide issues regarding the watermarks for Appellate review because the issue was never raised to the trial judge, denying him the opportunity to rule on the matter. Appellant's objections to the admission of the images, were: (1) Image A, created on December 2, 2014, was "no[t] relevant" to the crime occurring on or about December 1, 2014; and (2) generally displaying pornographic images to the jury. No mentions of the watermarks were made during the in camera discussion of the exhibits, nor were any specific objections made when the witnesses mentioned the watermarks during their testimony or the State sought to introduce them into evidence. Notably, the trial judge could have taken action on these watermarks; if he felt they created a danger of unfair prejudice and were not probative of Appellant's guilt, he could have ordered the watermarks redacted while still allowing the images

to be admitted into evidence. Accordingly, the specific issue of the watermarks is not properly preserved for review by this court.

Analysis

Moreover, the trial judge did not abuse his discretion in admitting the images into evidence. "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.* "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Lyles,* 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct.App.2008) (internal quotation marks omitted).

"To constitute *unfair* prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995) (quoting *State v. Alexander*, 303 S.C. 377, 377, 401 S.E.2d 146, 149 (1991)) (emphasis added). "The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case." *State v. Gray*, 408 S.C. at 610, 795 S.E.2d at 165.

Here, the trial judge properly allowed Image A and Image B into evidence because the corroborated Victim's testimony. Victim testified Appellant watched pornography during the later years of his abuse of her. Because of this testimony, the State sought to introduce only images recovered during the periods of time for which Appellant was indicted. Victim recalled watching pornography on both occasions and specifically identified Image B as an image from

the video Appellant watched the night of April 26, 2015 and was created during the window of time Victim testified she was assaulted that night.

In its brief, Appellant concedes the existence of, at least Image B, was "undeniably relevant and probative" of Appellant's guilt. (Br. of Appellant, p.10). However, he claims the only way the State should have been permitted to present this information to the jury is through Detective Phipps's statements the images existed. However, "a defendant cannot dictate the manner in which the prosecution tries its case by stipulating to certain facts or by not challenging an element of the offense" and "the prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense." *See Estelle v. McGuire*, 502 U.S. 62, 69 (1991); *State v. Martucci*, 380 S.C. at 249, 669 S.E.2d at 607 (citing *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000)) ("The State has the right to prove every element of the crime charged and is not obligated to rely upon a defendant's stipulation.").

Respondent also submits that Appellant's argument the images, by nature of being pornographic, were inappropriate for the jury does not rely on the proper test for admissibility. It has long been established that "[a] trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive." *Martucci*, 380 S.C. at 250, 669 S.E.2d at 607. *See also Farris v. State*, 328 So.2d 640, 641 (Ala.Crim.App. 1976) ("The colored photograph in question is clearly ghastly; but, gruesomeness is not grounds for excluding this type of evidence, if relevant. ... This photograph was properly admitted into evidence notwithstanding the unpleasant subject matter. We cannot, and should not, gloss over the fact that violent death is itself loathsome."). Simply, gruesomness alone does not render the photograph inadmissible. *State v. Collins,* 409 S.C. 524, 535–36, 763 S.E.2d 22, 28 (2014).

Appellant claims his case is similar to that of *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998) in which this Court found the admission of stuffed animals, homemade videotapes containing recorded segments taped from children's television programs, excerpts from children's story books, a photo album of young girls, and a wallet containing the petitioner's driver's license and a membership card to the official Punky Brewster fan club were improper because the evidence did not have any probative value to the crime for which Nelson was charged and was solely evidence pertaining to his character. Notably, such is not the case in the instant matter; even Appellant concedes the images, which corroborated Victim's testimony, were relevant to the determination of his guilt. Accordingly, the trial judge properly exercised his discretion in admitting Images A and B.

Harmless Error

Finally, any error in the introduction of these photographs must be viewed as non-prejudicial and harmless beyond a reasonable doubt, since it could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). At worst, the photographs were cumulative to the other evidence, *i.e.* the testimony on the wounds, condition of the body, and the crime scene. *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587, 588 -589 (1942) ("The photographs, it is true, were only corroborative of the spoken word, and proved to be unnecessary in this particular case, but they were no more than harmless surplusage. They showed material conditions which existed, and were not inflammable fuel to be

consumed by the minds of the jurors, nor do we think that they were calculated to arouse the prejudices of the jury."). *See also State v. Haselden,* 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 299, 662 S.E.2d 489, 491 (Ct. App. 2008) (evidence "merely cumulative, insubstantial" did not affect the result of trial and considered harmless).

Even if the trial judge erred in admitting the images, either in their entirety or just the watermarks, any alleged error is harmless given the overwhelming evidence of Appellant's guilt. Again, Appellant neither disputed at trial, nor does he presently, challenge the idea that the existence of Image B was properly admissible to corroborate Victim's testimony. Combined with Appellant's saliva and hairs recovered from Victim after the April 26, 2015 assault, Victim's testimony was not just persuasive, but overwhelmingly convincing. Reversing Appellant's conviction for a trial in which the evidence would again prove his guilt would only be a waste of judicial resources.

II.

The trial judge properly admitted Victim's responses to questions from police officers which occurred soon after the alleged assault as hearsay exceptions.

Appellant claims the trial judge erred in admitting Officer Black's testimony regarding Victim's statements she made the night of the attack were improper because they did not qualify as exceptions to the rule against hearsay. The State disagrees with this allegation of error. As noted by the trial judge, Victim's statements were excited utterances and present sense impressions of her assault that night.

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801 (c), SCRE. Generally, hearsay is not admissible unless it falls within an exception. Rule 802, SCRE. Hearsay is not admissible unless it is pursuant to an exception provided by the South Carolina Rules of Evidence or other means. Rule 802, SCRE. A statement consistent with the victim's testimony in a criminal sexual conduct case is not hearsay when it is limited to the time and place of the incident. Rule 801(d)(1)(D), SCRE.

Hearsay is also admissible if it falls within the excited utterance exception, which allows statements "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Rule 803 (2), SCRE. There are three elements that must be met to find a statement qualifies as an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress or excitement; and, (3) the stress or excitement must be caused by the startling event. *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007). "[T]he intrinsic reliability of an excited utterance derives from the statement's spontaneity which is

determined by the totality of the circumstances surrounding the statement when it was uttered." *Id.* at 119-20, 644 S.E.2d at 693; *see also State v. Sims*, 348 S.C. 16, 20, 558 S.E.2d 518, 521 (2002) (explaining the "rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication").

The examination of the totality of the circumstances and determination of whether a statement falls within the excited utterance exception is left to the sound discretion of the trial court. *Ladner*, 373 S.C. at 116, 644 S.E.2d at 691. While the passage of time between the startling event and the statement is one factor to consider, it is not the dispositive factor. Even statements made after extended periods of time can be considered an excited utterance as long as they were made under continuing stress. *Sims*, 348 S.C. at 21-22, 558 S.E.2d at 521. Other factors useful in determining whether a statement qualifies as an excited utterance include the declarant's demeanor, the declarant's age, and the severity of the startling event. *Id.* at 22, 558 S.E.2d at 521.

The improper admission of hearsay evidence is not necessarily reversible error, but is subject to a harmless error analysis. *State v. Graham*, 314 S.C. 383, 386, 444 S.E.2d 525, 527 (1994). Appellate courts must determine whether the error was harmless beyond a reasonable doubt. *Id.* Moreover, whether an error is harmless depends on the particular circumstances of the case. *Id.* The circumstances include, but are not limited to, the importance of the witness' testimony in the State's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination, and the overall strength of the State's case. *Id.* Error is only harmless "when it 'could not have reasonably affected the result at trial.'" *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (citation omitted).

Initially, the State notes that, generally, Officer Black could, at the very least, testify as the time (that night) and place (Victim's home) of the assaults that night. *See* Rule 801(d)(1)(D), SCRE.

In the instant case, the trial judge did not abuse his discretion in finding Officer Black's challenged testimony fell within the excited exception to the hearsay rule. Officer Black testified Victim was upset and crying. Further, Officer Black testified he arrived at Victim's home within ten minutes after the police station received the call. Appellant's sole claim was to why Victim's statements could not be an excited utterance are based on the fact trial counsel estimated officers spoke with Victim thirty minutes after the assaults. Not only is this estimation not supported by specific evidence, but time is only one factor in determining whether a statement qualifies as an excited utterance; this Court has found that statements made after greater time intervals may qualify under the exception. *See Sims,* 348 S.C. at 21-22, 558 S.E.2d at 521. Most importantly, Victim spoke with officers within the same place she was assaulted, locked in her room, and displaying behaviors traditionally associated with upset persons.

Further, the trial judge did not abuse his discretion in finding Victim's statements were a present sense impression. South Carolina courts have never set a specific time frame of what constitutes a present sense impression. *See State v. Parvin*, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2018) (noting that the only time frame which this Court has set for a present sense impression was in *State v. Burroughs*, 328 S.C. 489, 499, 492 S.E.2d 408, 413 (Ct. App. 1997), when it specified such an impression must occur within ten hours of the statements being made). Here, Appellant's statements were made minutes after the assault, while she and Appellant were still in the home. Thus, the trial judge, in his discretion, found Appellant's statements were a present sense impression.

Finally, similar to Issue I, any error in the admission of these statements was harmless. Officer Black merely recounted that Victim told her a sexual assault happened on the night of April 26, 2015. Victim testified to these same facts and forensic evidence, including Appellant's saliva recovered from her underwear, supported her testimony. Thus, any alleged error in the admission of these statements was harmless.

III.

The trial judge erred in sentencing Appellant to life imprisonment because the maximum penalty for first-degree CSC was amended during the middle of the date range alleged in the indictment and the State did not provide evidence indicating whether Appellant's conduct specifically occurred after the date on which the amended statute went into effect.

The State agrees with Appellant's allegation of errors on this issue. This Court should remand Appellant's conviction for first degree CSC with a minor for resentencing pursuant to the version of the Statute which existed at beginning of the time frame listed in the indictment for this charge.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed for Appellants charges of second-degree CSC with a minor and both counts of third-degree CSC. However, Appellant's conviction for first-degree CSC with a minor should be remanded for resentencing pursuant to the version of the statute which existed at that time.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies this 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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