

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Appellate Case No. 2018-001745

The Honorable Letitia H. Verdin, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

William Lee Carpenter.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	2
Argument I	3
Argument II.....	5
Argument III	6
Argument IV.....	6

TABLE OF AUTHORITIES

Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) 4

South Carolina Rule of Evidence, Rule 403..... 3

South Carolina Rule of Evidence, Rule 404(b) 3,6

ARGUMENTS

- I. **The issue of the improper admission of the obscene photograph pursuant to 404(b) of the South Carolina Rules of Evidence is properly preserved. Additionally, the improper admission of the search terms and results is likewise preserved.**

Respondent argues that objections to the obscene photograph and the search terms and results from appellant's computer are not properly preserved. Respectfully, this is inaccurate. Respondent's brief fails to note that these issues were exhaustively argued during a pre-trial hearing on September 6, 2018. Tr. 26-38. Additionally, trial counsel filed written motions specifically raising a 404(b) objection to the admission of the photographs, as well as motions to prevent the State from discussing appellant's sexual preferences altogether. *** At the conclusion of the hearing on September 6, 2018, the trial court judge indicated that the material was admissible, and that she had made her ruling based on both 404(b) grounds and 403. Tr. 38.

Photographic evidence

When the evidence was admitted during trial, counsel renewed his objection. The State argues that because counsel mentioned relevance and Rule 403, but did not mention 404(b) that he therefore abandoned that claim. That is an ambiguous reading of the objection. Trial counsel stated: "Your Honor, we previously objected for relevance and—under Rule 403, and *renew those previous grounds.*" Tr. 161, ll. 5-7 (emphasis added). The passage reads as though counsel intended to communicate that ground raised before and argued extensively earlier were on-going. It is clear—

since this was a central issue in the case—that trial counsel did not abandon this claim. Any other reading needlessly puts form over substance. Counsel’s objection was as specific as our rules require. To preserve an issue for appeal, specific grounds in support of the objection must be clearly stated. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). The objection must be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge. *Id.* The trial court was well-familiar with trial counsel’s objections as evidenced by her review of his written motion and the lengthy pre-trial hearing. Trial counsel renewed the objections at the time the evidence was sought to be admitted. Respectfully, this Court should find that the objection to the photograph was properly preserved for appellate review.

The search terms and results

After the officer testified to the photograph at issue in the argument above, he immediately testified to the search terms and results. Counsel’s objection at page 161 appear to apply to his objections to these search terms and results. Given that the arguments at the pre-trial hearing tended to conflate the issues, it is likely that both trial counsel and the judge understood counsel’s objections to apply to both the photograph and the search terms and results from the computer. Again, the trial court judge thoroughly reviewed trial counsel’s objections at the pre-trial hearing. Counsel objected when the material was introduced. Respectfully, this Court should find that trial counsel’s objection to the search terms and results from appellant’s computer is properly preserved for this Court’s review.

II. Appellant is entitled to prevail on the merits of his claims.

The obscene photograph showing a woman covered in feces as part of an erotic experience should not have been admitted at appellant's trial, and appellant was prejudiced by its admission. Indeed, the trial court recognized its highly inflammatory quality by sealing the photograph at some point during these proceedings. In transporting this exhibit to this Court, it has remained under seal. Respondent argues that showing the jury this exhibit was necessary because "the average person would never believe someone obtained sexual gratification from anything to do with feces or urine" without it. Respondent's Brief, p. 6. But the State could have used expert testimony to make that point without the need to show the jury this picture. But, as appellant argued in his initial brief, the State made the conscious decision not to use an expert but to rely on the photograph since "a picture is worth a thousand words..." Tr. 34, l. 3. To the extent that this Court finds this evidence probative at all, surely the State had other means of conveying to the jury what coprophilia is without subjecting them to such a shocking picture. The picture was gratuitous and shocking, and appellant was prejudiced by its improper admission.

Respondent also argues that computer searches were admissible because appellant could have raised a certain defense—that an enema could have had a medically recognized purpose and therefore its use was not illegal. But, appellant did not raise that defense. His defense was, categorically, that he did not do it. Had appellant raised that defense, perhaps the State could have offered testimony in

rebuttal. Instead, the State used this testimony to show that appellant had deviant sexual fetishes and therefore was more likely to have committed these acts against his grandchildren, an improper inference in violation of SCRE Rule 404(b).

III. The admission of this evidence was not harmless.

Respondent argues that the admission of all this evidence was harmless in light of appellant's testimony to the jury. Respectfully, appellant disagrees. The State was allowed to introduce an obscene photograph and computer searches and results during its case in chief. Appellant had the constitutional right to try to defend himself from the State's accusations and to push back against this improperly admitted evidence. In admitting his unorthodox sexual proclivities to the jury, appellant maintained his innocence of these crimes. Respondent now argues that appellant's exercise of his right to defend himself renders the State's error "harmless." Respectfully, appellant should not be punished, nor the State rewarded, because appellant had to confront the improper evidence the State introduced against him.

IV. The trial court judge violated appellant's right to a public trial when she removed a family member from the courtroom while a child witness was testifying without making the required findings.

For the reasons argued in appellant's initial brief, the trial court committed reversible error by closing the courtroom without complying with the law as articulated by the United States Supreme Court.

Respectfully submitted,



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January 6, 2020

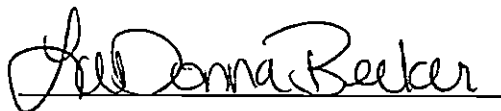
STATE OF SOUTH CAROLINA)
)
COURT OF APPEALS)
)
William Lee Carpenter)
)
)
Appellant,)
)
vs.)
)
State of South Carolina)
)
Respondent.)

CERTIFICATE OF SERVICE

Appellate Case No. 2018-001745

I hereby certify that a copy of the Initial Reply Brief of Appellant was mailed, prepaid postage on this date, 6th of January 2020, to the following address: William Blich Jr., South Carolina Attorney General's Office, PO Box 11549, Columbia, South Carolina 29211.

January 6, 2020



LaDonna Beeker

Paralegal

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APPELLATE AND FEDERAL CRIMINAL LAW

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To Whom It May Concern,

Please find enclosed filing for William Carpenter's appellate case 2018-001745. Let us know if you have any questions.

Sincerely,

LaDonna Beeker

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