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**Feb 22 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Kershaw County  
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2019-001743

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THE STATE,

Respondent,

v.

JONATHAN WILLIAM RAY,

---

Appellant.

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

Assuming for argument's sake that the trial judge erred by admitting Appellant's prior convictions without conducting an on-the-record balancing of the State v. Colf factors, was any error harmless in light of the evidence produced against Appellant at trial?

## STATEMENT OF THE CASE

In October 2018, a Kershaw County Grand Jury indicted Appellant for second degree criminal sexual conduct with a minor. On September 30-October 4, 2019, Appellant proceeded to trial before a jury in the Kershaw County Court of General Sessions with the Honorable G. Thomas Cooper, Jr., presiding. Appellant was represented by Arthur Aiken, Esq. The State was represented by Assistant Solicitors Curtis Pauling and Donna Green of the Fifth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant as charged. Following the verdict, the trial judge sentenced Appellant to a term of eight years' imprisonment and required Appellant to register as a sex offender. Appellant timely filed a notice of appeal and an initial brief.

## STATEMENT OF FACTS

In May 2017, the victim in this case (Victim) and her father (Father) moved from Texas to Kershaw County, South Carolina. (R. 89-91). Victim was born in 2003 and was thirteen years old in May 2017. (R. 22-23). Appellant was twenty-two years old in May 2017. (R. 197). When Victim and Father arrived in South Carolina, Father took Victim to stay at her maternal grandparent's house for approximately one week. (R. 94-96, 106). Two of Victim's cousins, Joshua Porte and Trevon Coe, were also living at her grandparent's home in May 2017. (R. 22). Appellant was dropped off at Victim's grandparent's home by his girlfriend, Alexis Cunningham, on the same night Victim arrived to begin her stay. (R. 30). Appellant stayed the night in one of the house's bedrooms. (R. 32-33). Victim slept on the couch in her grandparent's room. (R. 30).

On the third night of Victim's stay, Appellant sent Victim a text message asking her to come to his room. (R. 44). Victim went to Appellant's room and sat on the edge of the bed. (R. 48). Appellant began to rub Victim's thighs and removed her pants. (R. 50-51). After removing Victim's pants, Appellant forced his penis into Victim's vagina. (R. 52). Appellant eventually stopped his assault of Victim and told Victim "don't tell nobody or we'll get in trouble." (R. 54, line 11). Victim left Appellant's room and went to the bathroom where she discovered she was bleeding from her vagina. (R. 55). Victim was a virgin prior to Appellant's assault. (R. 74). Victim disclosed her assault to her sister and Father in March 2018. (R. 60, 100, 125). Father called law enforcement. (R. 101).

Investigator Carmen Ford of the Kershaw County Sheriff's Office arranged for Victim to give a forensic interview and undergo a medical examination. (R. 126). Dr. Michael Foxworth examined Victim in April 2018. (R. 162). Foxworth's examination revealed two transections of

Victim's hymen. (R. 163). Victim also tested positive for chlamydia. (R. 164). Appellant tested positive for chlamydia in August 2017. (R. 171, 175). Sometime after Victim's disclosure, Victim was contacted via social media by Cunningham. (R. 258). Cunningham wrote to Victim: "Saying he gave you gonorrhea, but he's clean and so am I. I just got checked yesterday. When did this happen, because if you're lying and someone is getting you to lie, it's gonna be trouble and that's on both of my children." (R. 259, lines 6-10). Victim asked Cunningham to stop contacting her. (R. 66). At the conclusion of trial, Appellant was convicted as charged.

## STANDARD OF REVIEW

“The admission of evidence concerning past convictions for impeachment purposes remains within the trial [court’s] discretion, provided the [trial court] conducts the analysis mandated by the evidence rules and case law.” State v. Dunlap, 346 S.C. 312, 324 550 S.E.2d 889, 896 (Ct. App. 2001). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

## ARGUMENT

**Even assuming for the sake of argument that the trial judge erred by admitting Appellant's prior convictions without conducting an on-the-record balancing of the State v. Colf factors, any error was harmless in light of the evidence produced against Appellant at trial.**

Appellant argues the trial judge erred in allowing the State to impeach Appellant with evidence of his prior convictions for breaking and entering into an automobile because the trial judge failed to conduct an on-the-record balancing test of the State v. Colf<sup>1</sup> factors. Additionally, Appellant argues the prior convictions were admitted in error because the Colf factors weigh against admission. The State concedes the trial judge failed to conduct an on-the-record balancing test<sup>2</sup>. (R. 191-92). However, to the extent the trial judge erred by admitting Appellant's prior convictions without conducting an on-the-record analysis of the Colf factors, any error is harmless in light of the evidence produced against Appellant at trial.

“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). “No definite rule of law governs this finding; rather, the

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<sup>1</sup> State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

<sup>2</sup> Had the trial judge performed an on-the-record balancing test of the Colf factors, the balancing of those factors would have weighed in favor of the admission of Appellant's prior convictions. First, Appellant's prior convictions have impeachment value. Notably, the South Carolina Supreme Court recently affirmed a trial judge's ruling that a prior conviction for breaking and entering an automobile had impeachment value. See State v. Robinson, 426 S.C. 579, 599-600, 828 S.E.2d 203, 213-214 (2019). Second, Appellant's prior convictions occurred a mere two years prior to trial, and thus the second Colf factor weighs in favor of admission. (R. 191). Third, the lack of similarity between criminal sexual conduct with a minor and breaking and entering an automobile weigh in favor of admission. Finally, while Appellant's testimony was certainly important to his defense, the centrality of his credibility weighs in favor of admission. Appellant readily acknowledges that credibility was central to this case (Initial Brief of Appellant 15) and as our Supreme Court recently noted in Robinson “when credibility is central to a case, the introduction of prior convictions for impeachment purposes becomes even more legitimate.” Robinson, 426 S.C. at 606, 828 S.E.2d at 217. Thus, the trial judge did not abuse his discretion in admitting Appellant's prior convictions.

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). “Error is harmless when it could not reasonably have affected the result of the trial.” State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). “[W]here guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result.” State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d 129, 132 (1984).

The jury did not convict Appellant because of his prior breaking and entering into an automobile convictions. The jury ultimately convicted Appellant because they found Victim’s testimony more credible than Appellant’s. The jury was aided in this determination by physical evidence that corroborated Victim’s version of events. For example, Dr. Foxworth testified Victim’s hymen was transected which was indicative of “sexual contact or trauma and particularly in this area of the posterior hymen.” (R. 163, R. 164 lines 5-6). This evidence corroborated Victim’s claim that she had previously engaged in sexual activity prior to her physical examination in April 2018 and suffered bleeding from her vagina as a result. (R. 55, 74). Victim’s claim that Appellant was the person who sexually abused her was corroborated by evidence that Victim and Appellant each tested positive for the sexually transmitted disease chlamydia. (R. 164, 175). The jury also heard evidence that Appellant’s girlfriend contacted Victim and threatened her after Victim disclosed Appellant’s assault to law enforcement. (R. 64-66, 259). The jury was convinced of Appellant’s guilt by the credibility of Victim’s testimony and the accompanying physical evidence, not by Appellant’s prior convictions for an unrelated offense. Appellant’s conviction and sentence should be affirmed.

**CONCLUSION**

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

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies the Final Brief of Respondent complies with Rule  
211(b), SCACR.

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