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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001262

THE STATE,

Respondent,

v.

JOSEPH CAMPBELL WILLIAMS II,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES

I.

Evidence of a victim's prior false allegations of sexual abuse may be admissible if the defendant proves their falsity and relevance. While Williams alleged Victim made prior false allegations against others, he conceded evidence of the falsity of the allegations was inadmissible and did not proffer any evidence to prove Victim made the allegations, that they were false, or that they were sufficiently recent and similar to be relevant. Though he claims the trial court erred by limiting his cross-examination of Victim, the trial court did not make any adverse ruling limiting his questioning in this regard. Did the trial court err?

II.

An out-of-court statement admitted for its truth is hearsay. Williams attempted to introduce evidence that he refused to be alone with Victim because she had made false allegations of abuse against others. There was no evidence presented that Williams had any personal knowledge of any prior accusations and Williams made no attempt to prove the falsity of the accusations. Williams was allowed to testify that he refused to be alone with Victim because he was afraid she would make up an accusation against him. Did the trial court commit reversible error by excluding the hearsay statements?

STATEMENT OF THE CASE

A Pickens County grand jury indicted Joseph Williams for one count of 1st Degree Criminal Sexual Conduct with a Minor (CSCM 1st) and one count of 2nd Degree Criminal Sexual Conduct with a Minor (CSCM 2nd). Appellant proceeded to jury trial before the Honorable Perry H. Gravely on August 31, 2017. Appellant was convicted on both counts and sentenced to 30 years' incarceration for CSCM 1st degree and 10 years' incarceration for CSCM 2nd, to be served concurrently. He appealed two of the trial court's evidentiary rulings and the Court of Appeals affirmed his convictions in an unpublished opinion. Unpublished Opinion No. 2020-UP-199 (S.C. Ct. App. filed July 1, 2020). This Court granted certiorari on May 7, 2021.

FACTS

Appellant Joseph Williams was Victim's stepfather. (R.p.308-09). Williams married Victim's mother in 2006, but had lived with her since late 2001 or early 2002, when Victim was around six years old. (R.p.261-62). In November 2013, Victim called the Pickens County Sheriff's Office and reported that Williams sexually abused her as a child. (R.p.62-64). At trial, Victim testified that Williams began molesting her when she was seven or eight years old. (R.p.91). What initially began as rubbing of Victim's legs and torso progressed to digital penetration, cunnilingus, and fellatio. (R.p.91-94, 131). Victim testified the abuse continued until shortly before her thirteenth birthday. (R.p.94, 105). Williams thoroughly attacked Victim's credibility during cross-examination. (R.p.116-62). The State presented evidence that Victim exhibited behavioral problems from the age of six, and demonstrated sexual "acting out" behavior from the age of eight. (R.p.216-23). The State presented evidence that Victim's mother "was never supportive of her in her allegations." (R.p.240-1).

Williams testified he never engaged in sexual behavior with Victim. (R.p.303). Williams and Victim's mother both testified that Victim was never left alone with Williams, and that Victim intermittently lived with her grandparents for extended periods of time. (R.p.253-59, 309). Williams' neighbor, brother, and sister-in-law testified that Victim normally stayed with her grandparents and they never knew her to spend the night in the same house as Williams. (R.p.287, 299-300, 294-295). The State presented reply testimony from Victim's grandfather that,

contrary to the defense witnesses' testimony, he knew that Williams was "often" home alone with Victim. (R.p.334).

The issues on appeal center around Williams' attempt to discredit Victim's testimony by showing she made unfounded allegations of abuse against others prior to accusing Williams. Although Williams complains that the trial court prevented him from effectively attacking Victim's credibility by limiting evidence about these prior accusations, Williams conceded that testimony concerning the truth or falsity of the prior allegations was inadmissible and did not proffer any evidence to prove the falsity of the alleged prior allegations. Regardless, the issue permeated the trial from beginning to end and substantial testimony was presented regarding Victim's history of abuse. These facts will be discussed in more detail in the argument section.

ARGUMENT

- I. **Williams' argument that the trial court erred by excluding evidence about Victim's alleged prior false rape allegations is not preserved for review because Appellant conceded at trial that such evidence was inadmissible and did not attempt to proffer testimony proving the falsity of the alleged prior accusations. Even if preserved, Williams failed to establish the falsity of the prior accusations, a prerequisite to the introduction of such testimony.**

Williams claims the trial court erroneously prevented him from proving Victim made false rape allegations against others before accusing Williams, citing State v. Boiter, 302 S.C. 381, 396 S.E.2d 364 (1990). This argument is not preserved for review because Williams never attempted to prove the falsity of Victim's purported prior allegations. Rather, he explicitly stated it would be impermissible for him to do so. Because Williams did not proffer any evidence or make any attempt to admit evidence of false allegations under Boiter, there was no trial court ruling denying any request to admit testimony concerning the purported allegations. Likewise, the trial court did not limit Williams' cross-examination related to this matter. Accordingly, this issue is not preserved for review. Even if preserved, Williams' argument fails because there is no evidence in the record establishing the falsity and relevance of the purported prior allegations required under Boiter. This Court should affirm.

A. Standard of review.

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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). The appellate court “will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion.” State v. Fuller, 425 S.C. 468, 476, 822 S.E.2d 910, 914 (Ct. App. 2019). “[C]onsiderable latitude and discretion should be allowed the trial [court] in determining the admissibility of impeaching testimony.” State v. Williams, 409 S.C. 455, 468, 761 S.E.2d 770, 777 (Ct. App. 2014). The appellate court may affirm any ruling, order, decision or judgment upon any ground appearing in the record. Rule 220(c), SCACR.

B. Relevant facts.

The issue of prior false allegations was first broached during a pretrial conference when the solicitor informed the court that the prosecution and defense agreed that evidence of Victim's prior sexual experiences was inadmissible under the "rape shield" law, S.C. Code §16-3-659.1. (R.p.39). Defense counsel agreed not to "pry into any of her sexual habits," but maintained he intended to question Victim about why she did not report the abuse sooner. Defense counsel asserted that Victim made allegations of abuse against two others "at the time," and argued this was relevant to the credibility of Victim's delayed disclosure. (R.p.40). The State argued that evidence about distant, dissimilar prior accusations was not relevant. (R.p.40–41). The trial court agreed to take up the issue in more detail at a later time. (R.p.41).

During his opening statement, defense counsel referenced "comments" and "opinions" that "professionals" made about Victim as a result of counseling sessions when Victim was a child. (R.p.57–58). The State objected that defense counsel was commenting on inadmissible hearsay. (R.p.57). The court cautioned defense counsel not to "get into anything that may or may not be admissible." (R.p.57). Defense counsel continued, specifically referencing Victim's counseling sessions "at age six, at age seven, at age eight, at age nine, at age eleven and age fourteen," and linked these counseling sessions to attempts to "get her way" regarding "issues with her mother and her father" (R.p.57–58). The clear insinuation of defense counsel's statement was that Victim lied as a child about being sexually abused in order to "get her way" with her parents. This improper opening statement was the first of many attempts by the defense to put incompetent evidence before the jury regarding the Victim's purported prior allegations, despite defense counsel's representations to the trial court that he had no intention of introducing evidence about the specifics of those purported allegations.

Following testimony from two State witnesses, the court excused the jury and heard arguments on the admissibility of evidence concerning prior allegations of abuse. Defense counsel referenced records from Behavioral Health Services of Pickens County pertaining to "the victim reporting acts of sexual abuse." (R.p.74). Defense counsel asserted there were "handwritten letters where the victim had accused others of raping her and doing similar acts that she is now complaining of

in this act." (R.p.74). Defense counsel explained how he believed the reports were relevant:

Those [allegations] were investigated, at time by Pickens City and at times by Pickens County. . . . There are statements that I would like to pass up to counselors as to, you know, that this young lady was certainly able and willing, candid in coming forward and saying that these other two people had done these things to her. **At the same time, she never once reported that my client did those things to her.** I think that is a fair question under the situation.

The counselors that are going to testify, there is evidence that . . . they were counseling her for sexual abuse. **It would be confusing to this jury if you did not allow me to ask those questions because it might infer that that counseling was as to my client, and it was not.** It was sexual abuse that she had alleged by these two other individuals.

(R.p.74–75) (emphasis added).

Defense counsel went on to discuss yet another instance of sexual abuse against Victim "during the period of time that these offenses actually occurred" (R.p.75). He asserted that a third individual "pled guilty and went to jail for abusing her." (R.p.75). He argued this incident was relevant for the same reasons as the other accusations: because "**[d]uring that entire time she never once said my client was doing that.**" She complained about three other individuals doing these things to her and didn't . . . say that my client was guilty of the same thing." (R.p.75) (emphasis added). Defense counsel indicated he wanted to "ask[] her and the counselors and [the detective] those questions." (R.p.76).

The solicitor argued defense counsel's proposed line of questioning would violate the rape shield statute, but agreed that defense counsel "could be limited in how he asks it But he can't get up there and say, 'isn't it true that you said

somebody raped you, and they didn't?" (R.p.76). She argued that Williams should not be allowed to "get into cases of other people, other sexual acts that may or may not have been done to my victim. . . . If he says . . . 'were you in counseling for an unrelated matter,' and he can even say of a sexual nature, but he can't get into the facts of those cases." (R.p.77). The solicitor pointed out the dubious nature of the purported statements, noting the letters were written in cursive and dated from the time when Victim would have been four or five years old. (R.p.77). Defense counsel did not offer the letters as exhibits.

The court asked for clarification whether the statements "related to the other matters and have nothing to do with this one" (R.p.78). The prosecutor agreed. Defense counsel responded: "**I would never ask her the questions that [the prosecutor referenced] . . . you know, 'did you accuse somebody and it was later unfounded?' That would absolutely be impermissible.**" (R.p.78) (emphasis added).

The solicitor made one final objection that testimony into the specifics of the prior allegations would rely on hearsay and pitting Victim's disclosures against her mother's representations to Victim's counselors about what Victim privately told her mother about the prior allegations. She argued: "it's hearsay on hearsay and complicates the issue." (R.p.79).

The court took a recess to review case law and returned to ask defense counsel "exactly what you propose that you're going to ask." (R.p.79). Defense

counsel repeated his intent to inquire into Victim's alleged prior accusations. He explained:

I don't think the status of those are relevant, of what happened. But the fact that she was accusing others . . . I submit that it is fair for the jurors to believe . . . that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true.

(R.p.80) (emphasis added). When pressed by the court to answer which specific questions he would ask, he responded: "Isn't it true . . . that during this same period of time that you discussed to your counselors that the same type of events had occurred with three other individuals?" (R.p.80–81). The solicitor responded that she believed it would be appropriate for defense counsel to ask Victim: "Well, you were able to speak to a counselor about possible sexual abuse with other perpetrators, why didn't you speak to the counselor about this supposed sexual abuse." (R.p.81). However, the solicitor argued the victim's prior disclosures should not be referred to as "allegations of similar conduct" because it suggested the facts around the prior accusations were similar to the allegations against Williams. (R.p.82). **Defense counsel agreed** not to use the word "similar." (R.p.82).

The court ruled that he would allow Williams to "get into the fact that she was in counseling, that she discussed sexual abuse with other individuals."

(R.p.83). The court noted the parties were "fairly close on what [they] agreed on."

(R.p.82). The court indicated he would not allow the detective who investigated the rape Victim reported at age 14 to discuss the specifics of that case.¹ (R.p.83).

¹ Neither party called the detective to testify at trial.

Finally, the court instructed both parties not to mention the fact that another victim had accused Williams of sexual abuse. (R.p.84).

Victim testified in detail that Williams sexually abused her over the course of several years. (R.p.91–105). Defense counsel extensively cross-examined Victim about her testimony and attacked her credibility. He confronted inconsistencies in her trial testimony, statements to police, and testimony at a preliminary hearing. (R.p.118–26, 131–32, 149–50). He questioned whether Victim was "in a pretty difficult argument" with her mother when she reported Williams' abuse to police, and introduced Facebook posts wherein Victim threatens to start "World War 3" shortly before reporting Williams' abuse to police. (R.p.127, 154).

Defense counsel thoroughly questioned Victim's failure to disclose Williams' abuse earlier. He questioned whether Victim disclosed Williams' abuse to an ex-boyfriend. (R.p.128–30). He showed that the Victim claimed in 2011 on a government form that she was not the "victim of sexual abuse." (R.p.152).

Most germane to this appeal, he questioned Victim about her time in "counseling from 2002 through 2011" (R.p.132). He asked whether her counselors asked specifically whether Williams ever abused her. Victim replied that she did not remember. (R.p.133). He then continued to question her about whether she denied to her counselors that Williams abused her. (R.p.135). Victim admitted she never told her counselors that Williams physically abused her. (R.p.137).

Victim testified that her mother was not supportive during her counseling sessions, and that **she was not allowed to speak for herself**. (R.p.136). She

explained her mother "told them what she thought my problem was and she went from there." (R.p.136). Defense counsel asked whether "there were times when you told your counselor that your mother had physically abused you?" (R.p.137). Victim agreed. (R.p.137). Defense counsel then asked whether Victim told her counselors that other men had physically abused her. Victim replied that she did not recall making any such allegations. (R.p.137). Defense counsel asked whether she had been referred to Behavioral Health Services at age eight "for lying and telling exaggerated stories[.]" Victim replied that she did not remember. (R.p.138).

Finally, defense counsel asked whether Victim was fearful of disclosing to her counselors that "people had sexually abused [her]." She replied she had "always been fearful of saying anything" about Williams' abuse. (R.p.140). Defense counsel then asked: "But you weren't fearful of telling them about others?" Victim replied: "I don't know what you're talking about." (R.p.141).

The solicitor objected and the court held an in camera hearing. (R.p.143–44). The solicitor argued that defense counsel was attempting to elicit specifics about separate allegations of abuse, and expressed concern that it was Victim's mother who actually told the counselors Victim had been abused. (R.p.142–43). **The court ruled the question was proper.** (R.p.144). When the court indicated that the solicitor seemed to be concerned about follow-up questions, defense counsel stated: "I really wasn't going to ask another question about it," and indicated he would "move on." (R.p.145). Resuming cross-examination, defense counsel asked again: "[Y]ou weren't fearful of telling your counselor that others had sexually abused you,

were you?" (R.p.147). Victim again responded that she was "still confused on what you're talking about with that. **I don't recall telling them about any other incidents.**" (R.p.147) (emphasis added). Defense counsel then stated: "That's all I'm going to ask you about that line of questioning." (R.p.147).

The State called Angie Farmer, counselor at Behavioral Health Services of Pickens County. (R.p.201–03). Farmer chronicled Victim's history of treatment at the center from age six up through the time of trial. She testified Victim was originally referred for treatment at age six for "lying, defiance, foul language, false reports of abuse, some anger issues. She was having night terrors." (R.p.216) (emphasis added). Victim began treatment roughly one year after Williams moved in with the family. (R.p.215, 261).

Farmer testified that Victim was again referred for counseling at age eight and "there were reports" that Victim "had been touched inappropriately by two separate men," had "seen some pornographic materials," and "had knowledge of adult ideas" and "desires to engage in adult behaviors" (R.p.217). Farmer testified that **Victim's mother reported** "that she may have been physically abused. The client had accused the two men of previously trying to rape her" (R.p.218). Farmer testified **Victim's mother** "gave [the] history" that Victim was lying. (R.p.218). Farmer further testified that the "reports" of inappropriate touching were "addressed in some of the therapy sessions there." (R.p.217).

Farmer continued that, at age twelve, Victim was again referred for behavioral issues. Farmer noted that "sexual abuse history was identified during

that assessment also." (R.p.219). Farmer continued that, at age fourteen, Victim was again referred for counseling and "reported being raped by another individual," and continued to suffer from depression, anxiety, and other behavioral problems. (R.p.220).

On cross-examination, Farmer agreed with defense counsel's assertion that Victim exhibited symptoms of sexual abuse before Victim's eighth birthday.² (R.p.226). She noted that during Victim's age six visit, there was "a denial of sexual abuse but there were allegations of physical abuse." (R.p.227). Defense counsel asked Farmer whether her records indicated that Victim's "mother had a communication with your employee that the prior acts of the rape that you talked about with the other men had been unfounded." (R.p.228). The trial court sustained a hearsay objection to this question. (R.p.229). Defense counsel then asked whether Victim "reported being raped by three different individuals other than my client" between 2003 and 2009. (R.p.233). Farmer responded: "I would not use the word 'raped.' She was sexually assaulted by two men. She used the word 'rape,' 'attempted rape.' She was sexually assaulted by two men and then raped by another." (R.p.234). Defense counsel specifically asked Farmer: "There is no question that this young lady has been sexually abused during the time in which this indictment covers?" Farmer responded, "that's correct." (R.p.235). Defense counsel then asked whether Victim reported sexual abuse by Williams during this

² Defense counsel mischaracterized Victim's testimony, implying Victim testified Williams' abuse started at age eight. Victim testified the abuse began when she was seven, not eight. (R.p.91).

time. Farmer confirmed Victim did not report abuse by Williams until 2013, when Victim was seventeen years old. (R.p.235).

C. Error preservation.

The Court of Appeals correctly held Williams' argument is not preserved for review because he conceded at trial that he could not question Victim about the falsity of her prior allegations and did not proffer any evidence that could have made evidence of the prior accusations admissible under State v. Boiter. On the contrary, he explicitly stated that he did not believe it would be appropriate for him to even ask Victim whether she "accuse[d] somebody and it was later unfounded[.]" (R.p.78). Defense counsel candidly admitted: "**That would absolutely be impermissible.**" (R.p.78). Instead, he told the court that he only intended to show Victim "was certainly able and willing, candid in coming forward and saying that these other two people had done these things to her. At the same time, she never once reported that my client did those things to her." (R.p.74–75).

Later, defense counsel again explicitly stated that he did not intend to prove the falsity of the alleged prior allegations. He explained: "**I don't think the status of those are relevant, of what happened.** But the fact that she was accusing others . . . I submit that it is fair for the jurors to believe . . . that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true." (R.p.80). Williams' stated purpose was to cast doubt on the credibility of Victim's delayed disclosure by showing she had the opportunity to disclose, openly discussed other instances of sexual abuse with her

counselor, but did not disclose abuse by Williams. He never argued he was entitled to attempt to prove the falsity of the prior allegations. Instead, he attempted to sneak in references and innuendos about the purported prior allegations through hearsay and improper cross-examination.

Williams now claims on appeal that "evidence of [the allegations'] falsity was excluded," and that the trial court "repeatedly cut off the defense," preventing him from "present[ing] evidence relevant to a Boiter analysis." Brief of Petitioner at 13. He asserts Williams "sought to introduce evidence of [Victim's] prior false allegations" Brief of Petitioner at 7. The record shows this assertion is simply untrue. Williams never proffered any evidence seeking to prove the falsity of the prior allegations. Because Williams did not make a Boiter argument or proffer at trial, this argument is not preserved for review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (explaining an argument not raised and ruled on by the trial court is not preserved for appeal). Tellingly, Williams does not provide any citations to the record to support his claims. He does not even identify a specific court ruling upon which to assign his claim of error. See Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App.2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.")

Defense counsel was allowed to ask each question he posed of Victim during cross-examination. When defense counsel asked Victim why she wasn't "fearful of telling [her counselors] about [other instances of abuse]," the court overruled the

State's objection to the question, ruling "it's a proper question." (R.p.144, lines 23–24). The court allowed defense counsel to resume his cross-examination and defense counsel asked again: "[Y]ou weren't fearful of telling your counselor that others had sexually abused you, were you?" (R.p.147). Victim responded that she did not "recall telling them about any other incidents." (R.p.147). Defense counsel then stated: "That's all I'm going to ask you about that line of questioning." (R.p.147). Williams was able to pursue his desired line of questioning. Because Williams got what he asked for, there is no adverse ruling to review relating to Williams' cross-examination of Victim.

The trial court sustained only one objection to Williams' cross-examination of Victim or Farmer. The court sustained a State's objection to defense counsel's question asking Farmer to read from a report and repeat what "the mother told" a Behavioral Health employee about whether the "prior acts of the rape that you talked about with the two other men had been unfounded." (R.p.228). The trial court correctly excluded the evidence as hearsay.

Williams is right about one thing: "[t]here is nothing in the record that would suggest the trial court considered, much less conducted, a proper analysis under Boiter." Brief of Petitioner at 14. This is exactly right—because defense counsel never sought to prove the falsity of the prior allegations under Boiter! It was the defendant's burden to produce evidence supporting this claim. State v. Boiter, 302 S.C. 381, 384, 396 S.E.2d 364, 365 (1990). He did not even attempt to do so. Williams did not give the trial court an opportunity to exercise its discretion.

Stephens v. CSX Transportation, Inc., 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012) (finding “[b]ecause Stephens did not present this argument to the trial court, the court was not given the opportunity to exercise its discretion as to that argument, and the argument is not preserved for appeal”). Failure to make an offer of proof precludes consideration of an issue on appeal. State v. Cabbagestalk, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984). The Court of Appeals correctly found this issue is not preserved for review. This Court should affirm.

D. Discussion.

Even if preserved, Williams failed to establish the admissibility of evidence concerning Victim's alleged false prior accusations. As discussed above, Williams did not proffer any evidence or make any attempt to show the falsity of Victim's purported prior accusations. While State v. Boiter established a rule allowing impeachment related to prior false allegations of sexual assault if certain elements are met, Williams did not establish any of those elements.

Generally, “[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence.” Rule 608(b), SCRE. However, in Boiter, this Court held that evidence of a victim’s prior false allegation of abuse may be admissible to impeach the victim’s credibility in some circumstances. In order to be admissible, the defendant must first show that the prior allegation was false. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). The court must then consider the remoteness in time of the accusation. Id.

Finally, the court must consider the factual similarity between the prior and present accusation to determine relevance. Id. See also Vanover v. State, 433 S.C. 31, 41, 856 S.E.2d 160, 165 (Ct. App. 2021), reh'g denied (Apr. 5, 2021) (noting that in other jurisdictions, generally speaking, "prior false allegations are allowed if the allegations 'suggest a pattern' that casts 'substantial doubt' on the charges at issue").

1. Williams failed to establish Victim made false allegations of rape.

The first step required to admit evidence of prior allegations under Boiter is for the defendant to establish the falsity of a prior accusation. Williams failed to do so. In fact, he failed to clearly establish that Victim made two of the purported allegations at all.

Because Williams did not attempt to proffer evidence showing Victim made false rape allegations, the only evidence arguably supporting his Boiter claim came during his cross-examination of Victim and her counselor, Angie Farmer. Defense counsel acknowledged that Victim was sexually abused at age fourteen. (R.p.235, lines 8–10). Williams' claim therefore must rest on vague references to "two other men" who reportedly abused Victim at an earlier age. However, it is unclear from the testimony that Victim personally made a report of this sexual abuse. She denied making these reports at trial. (R.p.147). Instead, she testified her mother "told them what she thought [her] problem was," and explained she was not allowed to "speak for [her]self" in counseling. (R.p.136).

Regarding the age six visit, Farmer testified that Victim was referred for "false reports of abuse" and that there were "allegations of physical abuse **by DSS.**" (R.p.216). Regarding the age eight visit, Farmer testified only that there were "reports" of abuse by two separate men. (R.p.217). The counselor testified that **Victim's mother** reported that Victim was sexually abused at age ten. (R.p.218, lines 12–25). While Farmer testified that at Victim's age twelve sessions, "sexual abuse history was identified during that assessment also," Farmer did not specifically testify that Victim reported the abuse. Only regarding the age fourteen visit did Farmer specifically testify that Victim herself reported being raped. (R.p.220). Defense counsel recognized this was not a false allegation. (R.p.235).

The closest defense counsel came to establishing that Victim even made the allegations in question was when he asked Farmer whether Victim "reported being raped by three different individuals other than my client" between 2003 and 2009. (R.p.233). Farmer responded: "I would not use the word 'raped. She was sexually assaulted by two men. She used the word 'rape,' 'attempted rape.' She was sexually assaulted by two men and then raped by another." (R.p.234). Defense counsel asked a follow-up question whether Farmer "said on direct examination that in one of the cases that was referred to you that **there was allegations** [sic] of sexual abuse by two men that were not my client. Correct?" Farmer responded, "Correct." (R.p.234). She continued that Victim "reported a rape by another individual," referencing the substantiated report Victim made at age fourteen, which defense

counsel acknowledged as true. (R.p.235). The evidence that Victim personally made allegations against "two other men" at all was equivocal at best.

Because Williams failed to establish that Victim even made the allegations in question, he is also unable to show the allegations were false. There is no evidence in the record clearly explaining the circumstances of the purported allegations. Victim denied making them. (R.p.147). However, it is clear from the above-cited testimony that **Victim's mother** was the source of several of these reports when Victim was a child. It is also clear that Victim had a troubled relationship with her mother, who testified for Williams at trial. Williams proffered absolutely zero evidence to support his assertion that Victim made false allegations against others. Williams failed to meet his burden to establish the first element of Boiter: that Victim made a false accusation of rape. See State v. Boiter, 302 S.C. at 383, 396 S.E.2d at 365 (affirming exclusion of evidence of victim's prior accusation where "[t]he defense presented no evidence to establish its falsity").³ This Court should affirm.

2. Williams failed to show the relevance of Victim's purported prior allegations.

Not only did Williams fail to establish Victim made prior false accusations, he failed to demonstrate that any such allegations were relevant in this case. Boiter

³ Boiter does not explicitly state the evidentiary standard governing a trial court's admission of prior false allegations. If this Court deems it necessary to enunciate a standard, it should employ the same standard necessary to admit evidence of prior bad acts under Rule 404, SCRE: clear and convincing evidence. State v. Holder, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009) ("Evidence of prior bad acts that are not the subject of a conviction must be establishing by clear and convincing evidence.").

requires that after the circuit court is satisfied that a witness made a false accusation of rape, the court must consider the remoteness in time and the factual similarity between the prior and present accusation. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). Williams presented no evidence to satisfy these elements.

The record contains no evidence about the specific allegations Victim supposedly made against the two unnamed men. It is thus impossible to address the factual similarity between these purported allegations and the allegations against Williams. Furthermore, the allegations were remote in time from the allegations against Williams. Allegations made by an 8-year-old girl have little bearing on the credibility of a 21-year-old. See Vanover, 433 S.C. at 41, 856 S.E.2d at 165 (citing Redmond v. Kingston, 240 F.3d 590, 591 (7th Cir. 2001) (Posner, J.), for the proposition that “[t]he fact that a teenage girl has a disordered past and lies a lot (who doesn't?) does not predict that she will make up stories about having sex”). Williams failed to show the relevance of the purported prior allegations. See Boiter, 302 S.C. at 384, 396 S.E.2d at 365–66 (“The trial court determined that the bare accusation of an eight year old child made nine years earlier was too remote to be of sufficient probative value. We find no abuse of discretion on the part of the trial judge.”). Even if preserved, Williams has failed to establish this element of Boiter.

- 3. Williams suffered no prejudice because he was able to accomplish his stated purpose of attacking Victim's credibility by showing she did not take advantage of prior opportunities to**

disclose the abuse, despite being willing to disclose other instances of abuse.

As discussed in the error preservation section above, Williams has failed to identify any ruling where the court improperly prevented him from introducing competent evidence proving Victim made false allegations of rape. As a result, he cannot demonstrate error in any specific ruling. But even if this Court finds the trial court erred, Williams did not suffer any prejudice. He was able to accomplish his stated purpose of showing Victim did not take advantage of prior opportunities to disclose Williams' abuse, despite being willing to disclose other instances of abuse. Accordingly, even if the trial court somehow erred, Williams suffered no prejudice. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial.").

Williams attacked Victim's credibility throughout trial, including during his cross-examination of Victim, his opening statement, and closing argument. But even apart from his attacks on her credibility, Williams accomplished his stated purpose in inquiring into Victim's history of counseling for alleged abuse: that Victim had the opportunity to disclose Williams' abuse when she was undergoing counseling sessions, discussed allegations against others, but did not report abuse by Williams. According to defense counsel's own representations to the court, this was his reason for inquiring into past allegations. (R.p.80). As discussed above, substantial evidence was presented (through Victim and her counselor) showing unequivocally that Victim had opportunities to disclose Williams' abuse while undergoing counseling, discussed other instances of abuse, but Victim did not

disclose Williams' abuse at that time. The issue of Victim's alleged prior allegations was constantly before the jury. Williams accomplished his stated purpose. He should not be heard to complain about rulings he never requested from the trial court, and from which he suffered no prejudice. This Court should affirm.

II. The trial court correctly excluded minimally probative, highly prejudicial hearsay testimony concerning what Williams was told about Victim's purported prior allegations of abuse.

In a closely related argument, Williams next claims the trial court erred by excluding testimony that Williams refused to be alone with Victim because he was told she had made false allegations of sexual abuse against others. His brief appears to allege the trial court improperly excluded evidence by his wife and brother to the effect that Williams told them he refused to be alone with Victim because she had made false allegations against others. Brief of Petitioner at 20. This argument is not preserved for review because Williams does not identify a specific ruling excluding evidence offered by his wife and brother. The issue is waived. Even if preserved, the argument fails. The only adverse ruling related to Williams' wife or brother is found on page 298 of the record; this testimony was properly excluded as hearsay.

If this Court interprets Williams' argument to allege the trial court improperly prevented **him** from offering testimony (and this Court finds that argument preserved), the argument is meritless. Williams' testimony concerning what he heard about Victim's purported prior allegations was rightly excluded

because it was inadmissible hearsay and carried a substantial danger of unfair prejudice. There was no evidence presented that Williams witnessed Victim make allegations of abuse against others. His statements of belief in that fact presumably rested on the statements of another, presumably Victim's mother. Statements of memory or belief, or a declarant's reasons for experiencing a particular state of mind, are not admissible to prove a declarant's state of mind. Furthermore, Williams had already conceded that evidence of prior false allegations was inadmissible and did not attempt to prove the falsity of the purported accusations, as discussed in the previous section. The Court was acting on its prior rulings and defense counsel's own concessions when it excluded the testimony. Finally, Williams was allowed to give substantially the same testimony, thereby accomplishing his stated purpose of showing he refused to be alone with Victim. He suffered no prejudice. This Court should affirm.

A. Standard of review.

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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014).

B. Error preservation.

Williams' argument is not preserved for review because it is not stated with sufficient particularity to allow Respondent and this Court to ascertain the argument. Williams' issue statement alleges the trial court refused "to allow

witnesses to offer testimony to explain [his] state of mind." Brief of Petitioner at 18. While Williams does not clearly identify which witnesses were improperly prevented from testifying, his argument refers to testimony from his wife and brother relating to Williams' refusal to be alone with Victim. Brief of Petitioner at 18 and 20. Williams asserts "[t]estimony by Petitioner's wife and brother relating to Petitioner's knowledge of the prior false allegations the defense sought to offer explained the Petitioner's state of mind as being fearful of being alone with the prosecutrix. It was therefore not excludable as hearsay." Brief of Petitioner at 20. However, Williams never cites to the record to identify a specific ruling excluding testimony from his wife or brother. The trial court did not exclude any such testimony from his wife, but did exclude testimony from his brother regarding what Williams told him about his "relationship" with Victim. (R.p.298). Regardless, Williams has waived the issue by failing to state it with sufficient particularity to allow Respondent and this Court to ascertain his argument. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue.").

If this Court interprets Williams' argument to allege the trial court erred by preventing **him** from testifying explicitly that he refused to be alone with Victim because he knew she made prior false allegations against others (as the Court of Appeals apparently did), the argument is likewise unpreserved for review because it

is not stated in his issue statement. Rule 208(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal."). While Williams does cite to the trial court's exclusion of a portion of Williams' testimony (found at R.p.306–08) as one example of the trial court's "evidentiary rulings at various points throughout the trial" in which the court "failed to state clearly the basis for excluding any mention of the prior false allegations," he does not clearly argue that this ruling is the foundation of his argument. Williams' issue statement cites the trial court refusal to allow "witnesses" to offer testimony about Williams' state of mind. While Williams could feasibly be understood to be one of the "witnesses" referred to, the phrasing of the issue statement suggests the basis for his argument is testimony from witnesses other than himself.

Because Williams has not clearly stated the basis for his argument, this Court should deem the issue abandoned. Respondent and this Court should not have to "grope in the dark" to ascertain Williams' allegations of error. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue.").

Even if this Court finds Williams did not waive the argument, it is nonetheless unpreserved because it is a different argument than he made at trial. At trial, he sought to justify admission of his own statement as showing his "motive and intent." (R.p.304). There is no "motive" or "intent" exception to the hearsay rule. Likewise, he never argued the evidence fit within the "statement for the purpose of medical diagnosis or treatment" exception. Because he did not make these arguments at trial, they are not preserved for review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal). This Court should affirm.

C. Discussion.

a. The trial court correctly excluded hearsay testimony from Williams' brother regarding Williams' stated reasons for refusing to be alone with Victim.

If this Court decides Williams has sufficiently alleged error in the exclusion of his brother's testimony regarding what Williams told him "about his relationship" with Victim, the Court should reject the argument. The brother's testimony was correctly excluded as hearsay with little probative value and a substantial danger of unfair prejudice. (R.p.298). Williams' brother had already improperly testified that Victim made prior "false allegations," testimony the trial court correctly struck as hearsay. (R.p.297). Williams' statements to his brother about "his relationship" with Victim were part of an out-of-court narrative that took place during an unspecified conversation. Defense counsel's question about what Williams told his brother about his relationship with Victim was an improper attempt to elicit

hearsay testimony. Rule 801(c), SCRE ("Hearsay' is 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.").

Furthermore, Williams' purported reasons for refusing to be alone with Victim during his conversations with his brother had no probative value. What mattered was his brother's corroboration of Williams' story that he refused to ever be alone with Victim. This was Williams' purpose in offering the testimony, and he was allowed to achieve his purpose through his brother's testimony that Victim and Williams never had an opportunity to be alone together. (R.p.299). Williams' attempts to admit evidence of Victim's alleged prior allegations through the back door were not probative and were properly thwarted by the trial court.

The specific content of Williams' statements to his brother were completely unnecessary to prove his point: that he did not have the opportunity to molest Victim because he was never alone with her. For this reason, the exclusion of Williams' brother's testimony about what Williams told him about his relationship with Victim had low probative value and did not affect the result of trial. Accordingly, Williams suffered no prejudice from its exclusion. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial."). This Court should affirm.

b. The trial court correctly excluded Williams' hearsay testimony relating to what he heard about Victim's purported prior allegations.

If this Court decides Williams properly alleges the trial court erred by excluding his own testimony and decides to consider the merits of the argument, it should reject the argument because the trial court correctly limited Williams' testimony to exclude improper hearsay evidence concerning what Williams heard about Victim's alleged prior allegations against others. Additionally, specific evidence concerning the substance of the alleged accusations had low probative value and carried the danger of unfair prejudice. Furthermore, Williams had already conceded evidence about Victim's alleged prior allegations was inadmissible and was able to elicit substantially the same testimony. He suffered no prejudice from the court's ruling that properly limited his testimony to exclude hearsay evidence. This Court should affirm.

As discussed at length in the first argument section, Williams conceded at the outset of trial that he could not properly introduce evidence concerning Victim's alleged prior accusations of abuse against others. (R.p.78). Yet during the presentation of his case, he backtracked on this view and attempted to introduce precisely this type of evidence. But rather than admit it properly through competent non-hearsay testimony pursuant to Boiter, he attempted to sneak the evidence in through the back door as hearsay.

The trial court correctly recognized the testimony was hearsay. (R.p.306). Williams never claimed to have personal knowledge of the facts underlying Victim's alleged prior allegations. Accordingly, he was merely repeating the assertions of others. See Rule 801, SCRE (providing "hearsay" is 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). See also Vanover v. State, 433 S.C. 31, 40, 856 S.E.2d 160, 165 (Ct. App. 2021), reh'g denied (Apr. 5, 2021) (explaining PCR applicant's testimony about purported prior false allegations by victim was hearsay because there was "no first-hand account of Daughter's accusation").

Williams attempts to justify the admission of hearsay evidence by asserting that it showed his "state of mind," presumably referencing Rule 803, SCRE, which provides that a "statement of the declarant's then existing state of mind" may be admissible despite the rule against hearsay. Rule 803(3), SCRE (emphasis added). This argument is not preserved because Williams did not make it to the trial court. Even if preserved, the argument is meritless. The "state of mind" exception only applies to a declarant's state of mind. Williams was not the declarant of the Victim's purported prior allegations. There was no evidence presented that Williams personally witnessed or had any firsthand knowledge of Victim's purported allegations against the two unnamed individuals. Rather, he was the mere recipient of this knowledge from others. Accordingly, the testimony was hearsay.

Furthermore, the "state of mind" exception allows testimony concerning the emotions or sensations the declarant is feeling when the statement is made. It does not allow the witness to repeat the declarant's reason for experiencing the state of mind. See State v. Tennant, 394 S.C. 5, 16, 714 S.E.2d 297, 302–03 (2011) (citing United States v. Cohen, 631 F.2d 1223, 1225 (5th Cir.1980) and explaining "the

state-of-mind exception does not permit the witness to relate any of the declarant's statements as to why he held the particular state of mind, or what he might have believed that would have induced the state of mind. **If the reservation in the text of the rule is to have any effect, it must be understood to narrowly limit those admissible statements to declarations of condition—'I'm scared'—and not belief—'I'm scared because [someone] threatened me'.**) The rule plainly states it does not allow for admission of "a statement of memory or belief to prove the fact remembered or believed" Rule 803(3), SCRE. Williams' interpretation of the rule would allow unlimited hearsay as long as the underlying fact or statement had some purported effect on the declarant. This would eviscerate the rule against hearsay. See State v. Garcia, 334 S.C. 71, 76, 512 S.E.2d 507, 509 (1999) ("The purpose of this exclusion is 'to avoid the virtual destruction of the hearsay rule which would otherwise result from allowing state of mind, provable by a hearsay statement, to serve as a **basis for an inference of the happening of the event which produced the state of mind.**'") (emphasis added). The Court of Appeals correctly held the trial judge did not abuse its discretion by excluding Williams' purported reasons for avoiding being alone with Victim.

Likewise, Williams' testimony did not fit within the hearsay exception for statements made for the purpose of medical diagnosis or treatment. Rule 803(4), SCRE. As noted above, this argument is not preserved for review because it was not made to the trial court. (R.p.304–05). Even if preserved, the argument is meritless. Again, the "declarant" for hearsay purposes is whoever told Williams

about the purported prior allegations (presumably Victim's mother). There was no evidence presented that Williams witnessed or had personal knowledge of Victim's purported false allegations, despite ample opportunity and incentive for Williams to produce such evidence. Likewise, there was no testimony that Victim's alleged statements were made for the purpose of medical diagnosis or treatment, and no evidence concerning the nature of the purported abuse. The Court of Appeals correctly held this hearsay statement did not fit with this hearsay exception. The trial court did not abuse its discretion by excluding it.

Furthermore, the hearsay had very little probative value and carried substantial prejudice against Victim. See Rule 403, SCRE (providing that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence"). Williams claimed he intended to offer the evidence to explain why he refused to be alone with Victim. But the specifics of the purported allegations were not probative of Williams' actions; rather, his testimony that he feared being accused was sufficient to explain his actions and explain his testimony that he did not have the opportunity to molest Victim. This is exactly what happened at trial; the trial court allowed Williams to testify that he refused to be alone with Victim because he feared being accused of improper behavior, but properly prohibited him from repeating the specifics of what he was

told regarding the allegations. (R.p.309). See Tennant, 394 S.C. at 16, 714 S.E.2d at 302–03.

Finally, Williams was not prejudiced by the trial court's ruling. He was allowed to offer substantially the same evidence to accomplish his stated purpose of showing that he refused to be alone with Victim, and accordingly could not be guilty of molesting her. (R.p.304). In his brief, Williams confirms that the purpose of the testimony was to prove he "never had an opportunity to commit the alleged offenses." Brief of Petitioner at 18. Williams was allowed to introduce this evidence through his own testimony, as well as the testimony of his wife, brother, and another friend. In fact, Williams was able to go even further when he testified he avoided being alone with Victim because he "was fearful that she might make up some sort of accusation[.]" (R. 309). The import of this statement was crystal clear to the jury, which had been bombarded throughout the trial with testimony concerning Victim's history of sexual assault and her alleged prior accusations against others. As discussed above, the jury heard testimony about Victim's history of counseling, her "unfounded" allegation of abuse against an unnamed person, and vague testimony about another purported allegation. Furthermore, Victim's mother testified Victim fabricated allegations of abuse against her. (R.p.264–65). When announcing its ruling, the trial court noted testimony about the alleged prior allegations was "already in the record anyway but I don't think he can say it." (R.p.307). The issue permeated the trial and continued through Williams' closing argument wherein defense counsel alleged Victim was "a veteran at this. She has

accused people all her life of sexually abusing her.” (R. 382-83). It was painfully obvious that the "accusations" to which Williams referred were prior allegations of sexual abuse against others. Williams was not only able to make his point that he refused to be alone with Victim, but also that the reason for his refusal was Victim's alleged history of "accusations" against others. That Williams was not able to go even further by inserting improper hearsay regarding the specifics of what he heard about the purported prior allegations did not prejudice his case. In addition to being legally correct, the trial court's ruling did not make a bit of difference in the outcome of trial. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial.").

If Williams wanted to prove specifics about Victim's purported prior allegations (i.e. that they were false allegations), he should have done so with competent evidence in an in camera hearing pursuant to Boiter. He did not even attempt to do so. His subsequent attempt to make this point by innuendo through improper hearsay evidence was properly thwarted by the trial court. The testimony was inadmissible under the rules of evidence and its exclusion did not reasonably affect the result of trial. This Court should affirm.

CONCLUSION


For all the foregoing reasons, the State respectfully asks that this Court affirm the conviction and sentence of the lower court.

Respectfully submitted,

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July 28, 2021