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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of General Sessions
Hon. D. Craig Brown, Circuit Court Judge

Appellate Case No. 2018-001493

THE STATE,

Respondent,

v.

JUSTIN BRADLEY CAMERON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUES ON APPEAL

I.

In a CSC case, a witness may give corroboration testimony concerning a victim's out-of-court disclosure of abuse if the substance of the disclosure is limited to the "time and place" of the abuse. In this case, the trial judge instructed a corroboration witness to testify only "whether or not [the victim] said anything," but not to repeat "what was said." Did the court err?

STATEMENT OF THE CASE

A Clarendon County grand jury indicted Appellant, Justin Cameron, for one count of First Degree Criminal Sexual Conduct with a Minor. Cameron proceeded to jury trial before the Honorable D. Craig Brown on August 7, 2018. The State presented testimony that for approximately one month in the summer of 2015, Victim and his mother lived with an acquaintance, David Flowers, in Turbeville. (Tr.p.65–70). Victim's mother had recently been evicted from the Hope Home in Florence and did not adequately care for Victim. (Tr.p.104–05; 115; 146). Flowers allowed the mother and Victim to stay at his home with him and his two sons. Victim was just shy of seven years old at the time. (Tr.p.85; 279, line 18).

In early July, the mother's brother, Justin Cameron, came to stay with Flowers for approximately a week. (Tr.p.73–77). Victim, ten years old at the time of trial, testified that one night "Uncle Justin" came into the bedroom where he was sleeping and penetrated him orally and anally with his penis. (Tr.p.97–101). Cameron promised to reward him with a ninja turtle toy if he kept the rape a secret. (Tr.p.100, lines 16–17). Victim testified he told one of Flowers' sons about the rape at that time. (Tr.p.102). Flowers' son corroborated that Victim told him what happened. (Tr.p.134). He further testified he told Victim's mother about Victim's disclosure at that time. (Tr.p.134). Flowers and his son confirmed that Cameron came to stay with them for about a week that July.

Shortly after the rape, DSS took custody of Victim and placed him with a temporary foster family. (Tr.p.114–15). The foster family observed right away that Victim was experiencing digestive blockage and incontinence, and they took him to the hospital. (Tr.p.115–116). Victim testified without objection that he told his adopted mother at that time "what happened." (Tr.p.106). The State presented corroborating "time and place" testimony from the

adopted father. (Tr.p.116–118). This exchange forms the entire basis for this appeal, and will be discussed at length in the argument section of this brief.

Cameron presented an alibi defense centered on the contention that he could not have raped Victim because he was in Rock Hill during the time period covered by the indictment, including a period he was in jail from July 17 through September 28 of that year. (Tr.p.207–10). The defense presented testimony that Cameron had been ordered to perform community service at a church he burglarized in Rock Hill, and that a church member, Shirley Milsaps, took him under her wing and treated him like a member of the family. Milsaps testified the church paid for Cameron to stay in a motel and that she gave him a ride to the church "basically every day" so he could perform his community service. (Tr.p.205). Milsaps claimed to have recollection, two years after the time in question, of picking Cameron up from the motel every single day during the time in question. (Tr.p.230–32). Cameron testified in his own defense and denied going to Turbeville that summer. (Tr.p.250–51).

The jury convicted Cameron as charged. He was sentenced to 25 years' incarceration. This direct appeal follows.

STANDARD OF REVIEW

The admission of evidence rests in the sound discretion of the trial court, whose ruling will not be reversed absent a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

ARGUMENT

I.

The trial court correctly limited a corroborating witness's time and place testimony in a CSC case to "whether or not [the victim] said anything" and precluded the witness from recounting "what was said." Even if the court erred, the testimony did not affect the outcome of trial.

Cameron claims the trial court erroneously "allow[ed] the State to ask" the victim's adopted father "whether the Victim had identified Appellant as the person who sexually assaulted him." Brief of Appellant at 31. The trial court did no such thing. To the extent the solicitor's question called for improper testimony, the court *sustained the objection.* The trial court reframed the question and specifically instructed the witness that he could only say "whether or not he said anything, but I will not allow you to go into what was said." (Tr.p.117). The record is clear that the trial court understood the correct rule of law and directed the witness to stay within those bounds. Furthermore, Cameron's bolstering argument is not preserved for review because he not specifically object on that basis at trial, raise an objection to the relief that was granted, request a curative instruction, or move to strike the solicitor's question. Finally, even if the court erred, the testimony did not affect the result of the case. The testimony in question related solely to the identity of the assailant, and everyone in the courtroom was aware Cameron was the alleged perpetrator. This Court should affirm.

a. Applicable law.

Hearsay is not admissible except as provided by the rules of evidence or by other rules prescribed by the Supreme Court or by statute. Rule 802 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. Rule 801(c) SCRE. However, in a criminal sexual conduct case, a statement is not hearsay if: (1) the declarant testifies at the trial or hearing and is

subject to cross-examination concerning the statement; (2) the statement is consistent with the declarant's testimony, and; (3) the statement is limited to the time and place of the incident. Rule 801(d)(1)(D) SCRE. Under the common law, when the victim in a CSC case takes the stand and testifies, "evidence that she complained of an assault may be introduced to corroborate her testimony . . . . [but] the particulars or details are not admissible but so much of the complaint as identifies 'the time and place with that of the one charged' may be shown." State v. Munn, 292 S.C. 497, 500, 357 S.E.2d 461, 463 (1987), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Cox, 274 S.C. 624, 627, 266 S.E.2d 784, 786 (1980). Additionally, a declarant's prior consistent statement is admissible as substantive evidence when offered to rebut an express or implied charge of fabrication. Rule 801(d)(1)(B).

b. The trial court correctly directed the witness to give only "time and place" corroboration testimony.

Cameron claims the trial court erroneously "allow[ed] the State to ask" the victim's adopted father "whether the Victim had identified Appellant as the person who sexually assaulted him." Brief of Appellant at 31. This claim is meritless. Even if the solicitor's question arguably called for testimony beyond what the rules allow, the trial correctly instructed the juror to say only whether Victim "said anything" about the assault, and instructed him not to repeat "what was said." (Tr.p.117). This was a correct ruling and Cameron has not shown an abuse of discretion.

The court's ruling should be viewed in context. The State called Phil Dante, Victim's adopted father, to give background and corroborating testimony about Victim's disclosure. Dante explained he and his wife agreed to foster Victim for a weekend while DSS found a permanent home. The Dantes took Victim to the hospital because he was experiencing digestive

problems and "basically hadn't gone to the bathroom" in a long time. (Tr.p.116). The solicitor then carefully elicited "time and place" testimony as follows:

> Solicitor: Did Marcus, I guess, this is a yes or no question. Did [the victim] [tell] you about the incident?
> Defense attorney: Objection, Your Honor, to hearsay.

(Tr.p.116–17). This objection was baseless. The question whether Victim told Mr. Dante "about the incident" was plainly allowable corroboration evidence pursuant to Rule 801(d)(1)(D). Defense counsel objected generally on the basis of "hearsay" even though the rule expressly permits "time and place" hearsay testimony in CSC cases where the declarant has already testified. In this case, the victim's testimony directly preceded Mr. Dante's.

In response to defense counsel's objection, the trial court asked the solicitor to repeat the question. The solicitor did so, but added an extra phrase.[1] She asked: "Did [the victim] [tell] you about the incident that happened between him and his uncle." (Tr.p.117, lines 7–8). While the State understands Cameron's argument that the question called for testimony beyond what is allowed under Rule 801(d)(1)(D), it was still a yes or no question and was not intended to elicit an open-ended response about the contents of the victim's statement. Defense counsel did not appear to even notice the distinction. Instead of honing his objection based on the difference in the two questions, defense counsel made the same exact objection: "Objection to hearsay, Your Honor." (Tr.p.117).

The trial court did not overrule the objection. Instead, he reframed the question in the language of the rule: "I'll allow you to answer whether or not he said anything, but I will not

[1] Respondent submits that the inclusion of the phrase "between him and his uncle" was not intended to elicit improper testimony. The solicitor's original question was carefully crafted to avoid eliciting inadmissible hearsay, and only after being asked to repeat the question following defense counsel's spurious objection did the solicitor add the five words Cameron alleges necessitate reversal of his conviction. The solicitor had no wrongful intent.

allow you to go into what was said. It's a yes or no answer." (Tr.p.117, lines 11–14). The witness answered simply: "Yes." Defense counsel raised no objection to the court's ruling.

The solicitor then elicited the remainder of the allowable 801(d)(1)(D) evidence:

> Solicitor: And did he [tell] you about, did he [tell] you where it happened?
> Witness: Yes.
> Solicitor: Okay. Where did it happen?
> Witness: He said he was staying with his mother—
> Defense counsel: Objection. . . . He's now testifying as to what [the victim] said.

(Tr.p.117). Again, the solicitor's question was proper under Rule 801(d)(1)(D), and again defense counsel made a meritless hearsay objection. Again, the trial court made a correct legal ruling: "He's testifying as to time and place which I believe are allowed under the statute, are allowed under the rules. You're not allowed to testify as to what he told you other than time or place as provided under our rules." (Tr.p.118). The witness went on to testify that the victim said "it was in the summer." (Tr.p.118, line 19). Defense counsel raised no further objection.

The trial court committed no error. Everything he said and did was consistent with the law. Cameron's entire argument is based on an unartful question that would never have been asked if his lawyer had not made a spurious objection to the solicitor's original, proper question. The trial court effectively sustained the objection by reframing the question and directing the witness to answer, yes or no, whether the victim made a disclosure without giving details of what was said. The only actual evidence offered was the witness's one-word response: "Yes." The trial court committed no error of law. This Court should affirm.

c. <u>The issue raised on appeal is not preserved for review because defense counsel did not raise the exact alleged error with specificity to the trial court, move to strike the solicitor's question, or request a curative instruction or any other relief following the court's ruling.</u>

Cameron should not be allowed to raise this issue on appeal because he acquiesced in the trial court's ruling. Furthermore, it is not clear that defense counsel objected at trial on the same basis he now raises on appeal. He asks this court to infer that his objection to the solicitor's second question was different than his objection to her first question, even though his stated objection was exactly the same. If that was his intent, his objection was not sufficiently specific to bring the distinction to the attention of the trial court, and it is not clear that the trial court ever ruled on the issue as raised in this appeal.

On appeal, Cameron claims the solicitor's question elicited improper bolstering testimony beyond what is allowed by Rule 801(d)(1)(D). But defense counsel never uttered the word "bolstering" at trial, nor did he cite to a specific provision of the hearsay rule. Instead, he made a vague one-word objection to "hearsay." While normally such an objection would be sufficient to preserve an issue for appeal, that is not so where the evidence is being offered pursuant to a narrow exception to the rule. If not for the exception created by Rule 801(d)(1)(D), Mr. Dante's corroboration testimony would indeed be hearsay because it concerned an out-of-court statement offered for its truth: that the victim told Mr. Dante he had been raped. This was how the trial court understood the objection, and ruled accordingly. This understanding is reasonable considering defense counsel objected to the solicitor's first question, which did not include the complained-of language of the second question.

If defense counsel truly meant to raise a bolstering objection because he believed the solicitor's question called for testimony beyond what is allowed under the rule, he would have not have objected to the solicitor's first question. A more reasonable explanation is that defense counsel never meant to raise a bolstering objection to the solicitor's second question based on its

additional content, but was instead raising a generic, meritless hearsay objection based on the fact that the witness was relaying an out-of-court statement.

If he intended to make a separate objection to the second question, or was unsatisfied with the court's ruling, he should have supplemented and clarified his objection. He did not do so. Stone v. State, 419 S.C. 370, 386, 798 S.E.2d 561, 570 (2017) ("Without an objection . . . the trial court has no opportunity to exercise its discretion."); State v. Parris, 387 S.C. 460, 466, 692 S.E.2d 207, 210 (Ct.App.2010) (explaining where a defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide); State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 615 (Ct. App. 2012) ("Where an objection is sustained, the trial court has rendered a favorable ruling to the party, and it therefore 'becomes necessary that the sustained party move to cure, or move for a mistrial if such a cure is insufficient, in order to create an appealable issue.'"). Accordingly, defense counsel's objection to the solicitor's second question was at best too vague to bring to the court's attention the issue he now raises on appeal. This Court should not entertain such an appellate argument. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("In order to preserve for review an alleged error in admitting evidence, an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."). Cameron acquiesced in the trial court's ruling and has failed to preserve the issue for appellate review. State v. Wright, 416 S.C. 353, 371, 785 S.E.2d 479, 488 (Ct. App. 2016) (explaining a party may not acquiesce in a ruling and then complain on appeal).

d. Even if the trial court erred, Cameron was not prejudiced.

Even if the trial court erred, the error was harmless. Appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Byers, 392 S.C. 438, 447,

710 S.E.2d 55, 60 (2011). Phil Dante's testimony was limited to a simple one-word response to the court's reframed "time and place" question. The witness never said, "[the victim] told me his Uncle Justin raped him." It is not even clear from the exchange that the victim actually identified Cameron as the perpetrator to Mr. Dante at that time. Of course, at the time of trial Mr. Dante knew that Cameron was the alleged perpetrator, but he never said the victim told him so at the time of the disclosure. Cameron's whole argument is based around a somewhat ambiguous one-word answer to a question that never would have been asked if defense counsel had not made a spurious objection to the solicitor's original question. This is not reversible error.

Even assuming the solicitor's question whether the victim told Mr. Dante "about the incident that happened between him and his uncle" raised the danger that a juror could have perceived the testimony as bolstering, the alleged bolstering only concerned the identity of the perpetrator. Everyone in the courtroom knew Cameron was the alleged perpetrator. The indictment alleging the same was the whole reason the jurors were there in the first place. The victim had just given damning testimony explaining in detail how his uncle raped him, and that nothing like that had ever happened to him before or since. (Tr.p.101).

This case stands in stark contrast to Thompson v. State, 423 S.C. 235, 240, 814 S.E.2d 487, 489 (2018), reh'g denied (June 12, 2018), cited in Cameron's brief. There, the Supreme Court found Thompson was prejudiced by his lawyer's failure to object to bolstering testimony where: (1) a DSS caseworker testified the victim "revealed to me that she was being sexually abused by [Petitioner]"; (2) an expert witness who conducted a forensic interview of the victim testified "Victim disclosed chronic sexual abuse by Petitioner in the form of vaginal penetration, anal penetration, and oral sex" and that the victim's disclosure was credible; and (3) a police

officer testified that victim's disclosures were "consistent with her training and experience." Id., 423 S.C. 240–42, 814 S.E.2d 489–90. Thus, multiple witnesses, including an expert, gave explicit corroborating testimony not only to the victim's disclosure of identity, but to all the particulars of the disclosure, and an opinion that the disclosure was "compelling." That is bolstering.

Another example of prejudicial bolstering is State v. Simmons, 423 S.C. 552, 565, 816 S.E.2d 566, 573 (2018), reh'g denied (Aug. 2, 2018). There, the trial court admitted hearsay testimony of identity and other details by a medical professional. The evidence was admitted over defense counsel's *specific* objection that the testimony exceeded the "time and place" corroboration allowed by Rule 801(d)(1)(D). To make matters worse, the solicitor highlighted the bolstering nature of the testimony in her closing argument. Finally, the judge's ruling (that the testimony was admissible under the medical diagnosis exception to the hearsay rule) was legally erroneous. Again, that is a far cry from this case.

Cameron has not cited a single case where an appellate court overturned a conviction due to a single witness's corroborative testimony consisting only of the perpetrator's identity, much less one where the alleged bolstering was limited to a one-word response to a judge's reframing of a solicitor's question. Further, Jolly[2] and Dawkins[3] rely on the now-defunct rule that hearsay that is "merely corroborative" cannot be harmless. The Supreme Court has since clarified that corroborative hearsay is always subject to a harmless error analysis, even in a CSC case. See State v. Jennings, 394 S.C. 473, 482, 716 S.E.2d 91, 95 (2011) (Kittredge, J., concurring). Because the exchange in question did not have an appreciable bolstering effect and could not have affected the outcome of trial, Cameron has not shown prejudice. Combined with the fact

[2] Jolly v. State, 314 S.C. 17, 443 S.E.2d 556 (1994).
[3] Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001).

that the trial judge improperly excluded rebuttal testimony offered in response to Cameron's charge that Victim was fabricating his story, Cameron's trial was more than fair.[4] (Tr.129–31). This Court should affirm.

[4] The trial court erroneously excluded the particulars of Victim's disclosure to Gage Flowers from Flowers' testimony apparently out of a mistaken belief that only the victim could offer rebuttal testimony. Although the State elected to press forward with the trial, Judge Brown's erroneous ruling excluding this highly probative evidence shows that if either party was prejudiced by Judge Brown's evidentiary rulings, it was the State. See Rule 801(d)(1)(B).

CONCLUSION

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

Respectfully submitted,

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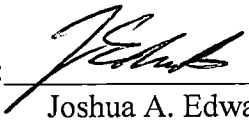
BY: 
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