ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2016-002368

THE STATE, ...RESPONDENT

v.

THOMAS STEPHEN ACKER,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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I.

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II.

Appellant failed to preserve the issue of whether Grandmother's statement that Appellant wrote her a letter stating he had been addicted to pornography was evidence of a bad act because the judge never ruled on the argument. Furthermore, Appellant admitted as much in his testimony and therefore any error in admission was harmless as cumulative.

III.

The trial court properly denied Appellant's motion for a directed verdict for his charge on dissemination of obscene material because a reasonable juror could have found him guilty beyond a reasonable doubt.

STATEMENT OF THE CASE

During the May 2016 term of the Spartanburg Grand Jury, Appellant was indicted for first-degree criminal sexual conduct with a minor (CSC) and dissemination of obscene material to a child twelve years of age or younger. He proceeded to trial before the Honorable J. Derham Cole and was ultimately convicted as charged by a jury. Judge Cole sentenced him to an aggregate sentence of twenty years in prison.

STATEMENT OF FACTS

In 2014, when Victim was fifteen, she began visiting a counselor for treatment of depression and concern of self-harm. (R.52.) During a session in September, Victim disclosed to her counselor that she had been sexually abused at her grandmother's house when she was five years old. (R.52.) The counselor informed Victim's parents, who reported the abuse to the Spartanburg City Police Department. (R.22–23.) Ultimately, Appellant, who had been married to Victim's grandmother (Grandmother), was arrested and charged with CSC and dissemination of obscene material to a minor. (SROA.1–2.)

At trial, Victim testified that when she was five years old, she would go to Grandmother's house after school. (R.30.) Victim stated Appellant sexually assaulted her while Grandmother worked in her home office,. (R30.) Specifically, Victim stated Appellant would take off her pants as well as his pants. (R.31.) Then he would touch her chest and her private parts, including digital penetration. (R.31.) Victim explained that after he touched her, Appellant would touch himself and then make her touch his penis as well. (R.33.) This would occur while Victim was napping in the guest bedroom of the home. (R.46.) Victim also testified that Appellant would hold her neck and force her to watch pornography on his computer while he touched himself. (R.34.) These events began when in kindergarten and continued until Victim was seven. (R.35.) Victim further stated that she told no one of the abuse until 2014, when she opened up to her counselor. (R.35.) She indicated she had not told anyone previously because Appellant threatened to kill Grandmother if she told anyone, and, even if she were to tell someone, no one would believe her. (R.35.)

Victim's grandmother also testified at trial and explained that after divorcing Appellant in 2008, she remained in contact with Appellant via e-mails, letters, and occasional visits to her home or place of employment. (R.58–59.) During her testimony, Appellant's counsel objected

when Grandmother was asked during direct examination if she had ever received a letter from Appellant that mentioned viewing pornography. (R.59.) After a discussion on the record, the objection was overruled. (R.59.) Grandmother then testified that Appellant admitted to her that he had been addicted to pornography for fifty-two years. (R.60.)

After Grandmother's testimony, the jury was excused and the court allowed Appellant to state the grounds for the objection raised before Grandmother testified to being informed of Appellant's addiction to pornography. (R.67.) Appellant objected to the testimony on three separate grounds: that the testimony was incompatible with Rule 401, Rule 403, and Rule 404, SCRE. (R.67–68.) Appellant asserted that the testimony was not relevant due to the length of the addiction and that there was "too much room left for speculation by the jury and as to what the nature of the addition is and to what extent and what form it could take." (R.67.) Were the court to find the testimony to be relevant, Appellant argued the prejudicial effect would outweigh the probative value under Rule 403 "because, basically, the same reason I just stated." (R.67.) Under Rule 404, the objection was on the basis of the evidence being character evidence and not admissible under any exception. (R.68.) Because the testimony had already been presented, Appellant requested a mistrial. (R.68.) The State responded that the evidence was relevant and more probative than prejudicial because it indicated pornography was in the home during the time frame in which the allegations occurred. (R.69.) The court ultimately ruled that the evidence of Appellant's pornography addiction was admissible because it was relevant to the charge of dissemination of obscene material to a minor, that its probative value outweighed the danger of prejudice caused by its admission, and that, accordingly, the evidence was admissible under Rules 401 and 403. (R.69.) The court did not rule on whether the evidence was admissible under Rule 404 and Appellant did not ask it so to do.

Shauna Galloway-Williams, the executive director of a facility that provides education and prevention services to victims of child abuse and sexual assault, was called by the State to testify at trial. (R.73.) *In camera*, Galloway-Williams stated that she possesses a bachelor's degree, a master's degree, and has in excess of 150 hours of specialized training in interviewing and assessing children who have allegedly been the victims of child maltreatment. (R.74.) She also explained she remained well-informed of publications in her field and worked for the past fifteen years as a licensed professional counselor to people who have suffered sexual abuse. (R.75.) She noted she was an adjunct faculty member at U.S.C. Upstate and taught a class on child maltreatment. (R.75.) Galloway-Williams also stated she had been qualified as an expert in circuit court thirty-six times previously. (R.76.) The State then offered Galloway-Williams as an expert in child maltreatment and child abuse dynamics, at which point Appellant's counsel objected and proceeded to voir dire the witness. (R.76.)

Upon questioning, Galloway-Williams explained child sexual abuse dynamics as being a field in which the ways children disclose information about sexual abuse are studied. (R.77.) She stated that children will delay disclosure for long periods of time because they are usually abused by someone close to them and they may fear the outcome of the disclosure, may feel responsible for the occurrences, or may have even been threatened not to disclose the abuse. (R.77–78.) When her lack of peer-reviewed materials was discussed, Galloway-Williams explained that she is a clinician and conducts no research or writing of her own. (R.78–79.) Accordingly, her testimony is based on her experience, education, and training, with much of the information used in her field being gained through case studies of actual victims. (R.79.) Converse to "hard sciences" which produce empirical data based on studies replicating results, the studies used in her field are primarily longitudinal in nature. (R.79.) After prompting, Galloway-Williams again emphasized that the distinction between her field and a "hard science"

is the ability of a hard science to replicate studies, where a group can be exposed to a condition repeatedly to get an identical result. (R.80.) Instead, her field entails looking at cases of child abuse and being able to find correlations in the circumstances and the behavior exhibited by children. (R.81.) She further testified that, in some cases, delayed disclosure has been found to report an incident of abuse that, in fact, did not occur. (R.85.) Galloway-Williams clarified she had never met Victim, had contact with her parents, nor had any contact with her counselors. (R.88.) In response to questions from the court, Galloway-Williams testified that, in conducting interviews with over 900 children and providing therapy to between 1,500–2,000 children, she has found common factors that can attribute to delayed disclosure. (R.90.) During redirect examination, Galloway-Williams again confirmed her lack of contact with Victim or her family. (R.91.)

The State explained to the court that it intended to have Galloway-Williams testify regarding risk factors, grooming, delayed disclosure, and other behaviors within the field of child sexual abuse dynamics. (R.92.) Appellant's counsel objected to Galloway-Williams' being qualified as an expert in her field on four grounds: that her testimony contained material that was "all within the realm of the domain of a common person"; that the probative value of her testimony is outweighed by its prejudicial effect and that this contention "speaks for itself"; that the purpose of the testimony was to bolster Victim's credibility; and that the subject matter of her testimony is unreliable due to the fact that her area of expertise is "non-scientific." (R.93–96.) The court rejected each of these objections in turn, stating respectively: that there is no evidence the jury has independent knowledge of delayed disclosure; that the testimony is "relevant to issues in this case"; that the testimony is not improper bolstering because it does not address Victim with particularity and Ms. Galloway-Williams has never met nor knows anything about Victim; and that her testimony is reliable while she is a clinician and while reliability akin to that

in "hard sciences" is impossible, since it requires replication of experiments. (R.94–97; 99–101.) Accordingly, Galloway-Williams' expert testimony was deemed to be admissible. (R.101).

Before the jury, Galloway-Williams was qualified as an expert witness in child maltreatment and child abuse dynamics and Appellant's general objections prior to her testimony were overruled. (R.107.) Her testimony was much the same as in the *in camera* hearing, with her again confirming that she has never met Victim, nor had any contact with any matter concerning Victim. Regarding risk factors, Galloway-Williams testified that children are much more vulnerable to abuse than adults. (R.108.) She also testified regarding grooming and stated that, where grooming consists of creating a more trusting relationship between a child victim and her abuser, grooming can result in delayed disclosure because it can make it more difficult for the child to report the abuse. (R.110–11.) Galloway-Williams explained the difference between false denials and false disclosures and stated without objection that false denials—"where a child denies that something has happened, when, in fact, something did occur"—are far more common than false disclosures. (R.111–12.) She also testified that delayed disclosures are common. (R.115.) According to Galloway-Williams, children frequently disclose abuse when they are older and better able to comprehend the abuse. (R.116.) Children's behavior after abuse can manifest across a broad spectrum that includes depression and self-harm. (R.116.) During cross-examination, Galloway-Williams again stated there are cases when delayed reporting occurs but no sexual abuse has been experienced by the child. (R.120.) Additionally, she opined on redirect that, based upon her experience, the vast majority of cases involving delayed reporting contain actual disclosure, as opposed to containing incidents in which no abuse could be identified. (R.121.)

At the close of the State's evidence, Appellant's counsel moved for a directed verdict, stating generally that no reliable or credible evidence had been presented by the State to support a guilty verdict against Appellant. (R.122.) This was denied. (R.122.)

Appellant then testified in his own defense. (R.124.) Appellant stated that he and Grandmother would occasionally pick up Victim from kindergarten. (R.141.) He denied ever assaulting Victim and he also denied showing her pornography. (R.141, 143.) Appellant acknowledged that he had told his wife that he "had some problems, but it is not entirely pornography." (R.143.) During questioning by the State, however, Appellant testified that he began having contact with pornography from an early age and, when asked if he admitted to Grandmother that he had been addicted to pornography for fifty-two years (including the time during which the abuse of Victim took place), Appellant assented. (R.149.) Appellant again stated that he did not abuse Victim, and that he believed that Victim's allegations were a result of a dream or fantasy. (R.151.)

Appellant renewed all prior motions, which were again denied. (R.153.) After closing statements and jury charges, the jury was excused to deliberate. Ultimately, the jury found Appellant guilty of CSC and guilty of disseminating obscene material to a minor twelve years of age or younger. (R.192.) Prior to sentencing, Appellant's counsel moved for a new trial based on his earlier motions for directed verdict and renewed all previous motions; these were denied. (R.193.) Appellant was sentenced to twenty years' imprisonment for the CSC conviction and five years' imprisonment for dissemination of obscene material to a minor, with the sentences to be served concurrently. (R.199.) This appeal follows.

ARGUMENTS

I.

The trial court properly allowed Shauna Galloway-Williams to testify as an expert in child maltreatment and child abuse dynamics because her testimony (1) explained concepts outside the ken of the jury; (2) was reliable in its substance; (3) did not bolster Victim's credibility; and, (4) was not prejudicial such that the prejudice substantially outweighed the probative value.[1]

Appellant challenges the admission of testimony by Shauna Galloway-Williams as within the common knowledge of an ordinary juror and unreliable. Additionally, he challenges the substance of the testimony as improper bolstering and more prejudicial than probative. Appellant's assertions are predominantly unpreserved and, despite his attempts to distinguish his case, ultimately contrary to well-settled law. The State addresses each in turn.

Pursuant to Rule 702 of the South Carolina Rules of Evidence, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." "Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). "Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate." *Id.* at 446–47, 699 S.E.2d 169, 175. "Whether a witness has qualified as an expert, and whether his opinion is admissible on a fact in issue, are

[1] The State has consolidated Appellant's first four issues to streamline its response and avoid repetition.

matters resting largely in the discretion of the trial judge." *Prince v. Associated Petroleum Carriers*, 262 S.C. 358, 365, 204 S.E.2d 575, 579 (1974) (per curiam). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Brown*, 411 S.C. 332, 338–39, 768 S.E.2d 246, 249 (Ct. App. 2015) (alteration in original).

A. Galloway-Williams' Testimony was Properly Admitted Under Rule 702, SCRE

i. This argument was not presented to the trial court and it is therefore unpreserved

Appellant argues that Galloway-Williams' testimony did not fall outside the knowledge of a juror and was therefore inadmissible as expert testimony. In so doing, Appellant seeks to draw a distinction with the jurisprudence regarding delayed disclosure testimony and limits his challenge to her testimony on risk factors, grooming, and typical behaviors. (Appellant's Br.6–7.) However, at trial, his challenge to the testimony was limited to his assertion that delayed disclosure is common knowledge. (R.93–94.) Appellant's argument on appeal is distinct from the one he lodged at trial and is therefore unpreserved. *State v. Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). Additionally, he cannot claim he believed her testimony was confined to that topic because the State asserted her testimony would include "risk factors, behaviors children could exhibit, [and] grooming." (R.93.) Moreover, he never objected on this point during her testimony. Accordingly, this issue is unpreserved. *State v. Cope*, 405 S.C. 317, 338–39, 748 S.E.2d 194, 205 (2013) ("It is axiomatic that an issue cannot be raised for the first time on appeal. Prohibiting an appellant from raising an issue for the first time on appeal ensures that the trial court is able to rule properly after it has considered all relevant facts, law, and arguments." (internal citations and quotations omitted)); *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520,

523 (2005) ("To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court.").

ii. The substance of the witness's testimony lies outside the ordinary knowledge of the jury

Turning to the merits, Appellant's contention that, unlike delayed disclosure, risk factors, grooming, and common behavior of sexual abuse victims are all subjects within the ken of an average juror, fails. The analysis in *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), does not support the limitations Appellant attempts to read into the opinion. To the contrary, the Court's conclusion to its analysis stated "we hold the circuit court properly admitted Galloway-Williams' expert testimony because child abuse dynamics and delayed disclosures were subjects beyond the ordinary knowledge of the jury." *Brown*, 411 S.C. at 342, 768 S.E.2d at 251. Thus, this Court has previously addressed and rejected the very argument Appellant now asserts and it therefore must similarly fail. *Id.* ("We believe the unique and often perplexing behavior exhibited by child sex abuse victims does not fall within the ordinary knowledge of a juror with no prior experience—either directly or indirectly—with sexual abuse. The general behavioral characteristics of child sex abuse victims are, therefore, more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victims' testimony."); *State v. Jones*, 417 S.C. 319, 330, 790 S.E.2d 17, 23 (Ct. App. 2016) (addressing a similar challenge to expert testimony about delayed disclosure and child sex abuse dynamics and concluding "we decline to depart from our holding in *Brown* on this settled question of law").

B. Galloway-Williams' Testimony was Reliable

i. Appellant failed to present his argument to the trial court and it is therefore unpreserved

Appellant also argues the trial court erred in determining Galloway-Williams' testimony was reliable because it based this conclusion on her expertise, as opposed to the reliability of the actual substance of her testimony.

During the course of voir dire, Appellant focused his questioning on the lack of scientific methodology applied in the witness's field and in his objection to the testimony he states, "I asked her several questions about the reliability, the scientific. It's the non-scientific area, clearly." (R.96.) When the trial court asked if he was suggesting the purposeful infliction of sexual abuse to test the reliability of the result, counsel answered in the negative and simply said, "I'm just arguing for the sake of advocating for my client." (R.97.) Appellant now contends that although the witness referenced publications and trainings, she failed to provide specifics. However, he never asked for specifics, nor did he object on that basis, and he is therefore precluded from making that assertion now.[2] *State v. Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). Furthermore, Appellant never objected to the trial court's conclusion that the testimony was reliable because of her education, experience, and training, as improper grounds for its holding; thus the argument is unpreserved. *State v. Young*, 255 S.C. 198, 199, 178 S.E.2d 142, 142 (1970) ("It is elementary that questions not raised in the trial may not be raised for the first time on appeal.").

[2] Appellant also complains that "[t]he witness testified that there is a unique set of characteristics and information associated with child abuse but she never specified or identified those characteristics." (Appellant's Br.13.) However, she clearly identified characteristics in her testimony or Appellant would have little prejudice to complain about. That the witness did not illustrate them in the first instance to the trial court is immaterial. It would have been inappropriate for the trial court to exclude expert testimony because it disagreed with the substance of the opinions offered. The court was only concerned with whether the existence of characteristics Galloway-Williams could explain to the jury would aid in its understanding of behaviors.

ii. The testimony was reliable

The trial court properly admitted Galloway-Williams' testimony because it was reliable under established jurisprudence. In *State v. Jones*, 417 S.C. 319, 333, 790 S.E.2d 17, 25 (Ct. App. 2016), this Court found similar testimony by the same witness admissible based on the witness's discussion of her methods. Although Appellant boldly asserts, "Testimony about the 'methods' used by the witness does not establish that child abuse dynamics testimony is reliable" (Appellant's Br.14), he does so while openly ignoring this Court's case law stating the complete opposite. In fact, he specifically cites the language in *Jones* holding that "[i]n light of Galloway-Williams' testimony regarding her methods, we are unable to conclude the circuit court abused its discretion in finding Galloway-Williams' testimony reliable." (Appellant's Br.14. (quoting *Jones*, 417 S.C. at 333, 790 S.E.2d at 25)). In this case, the witness discussed that the research she relies on is based on case-studies of children who had been sexually abused as well as her own extensive experience working with sexually abused children. Despite Appellant's probing during trial, it cannot be reasonably asserted that the test for reliability in this area of expertise is repeatability. In its broad discretion, the trial court determined her testimony was reliable based on her discussion of her methods, as is proper under *Jones*. Accordingly, there was no abuse of discretion and admission of the testimony was proper.

C. Galloway-Williams' Testimony was Not Improper Bolstering

i. Appellant failed to object to the testimony he now attacks and this argument is therefore unpreserved

Appellant alleges Galloway-Williams' testimony constituted improper vouching for and bolstering of Victim because in her testimony she stated false denials were more common than false allegations. This testimony was never objected to at trial and is therefore unpreserved. *Johnson*, 363 S.C. at 58, 609 S.E.2d at 523 ("To preserve an issue for review there must be a

contemporaneous objection that is ruled upon by the trial court."). Although Appellant did object based on bolstering, this objection—raised prior to the witness testifying—did not encompass his present concern and he is not permitted to change his allegation of error on appeal. *Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). To the contrary, Appellant simply stated that "the sole purpose [of the expert testimony] is to bolster [Victim's] credibility, completely prohibited by *Kromah*." (R.95.) Not only does this general assertion fail to encompass the argument he makes now, but the argument also fails because *Kromah* addresses situations where an expert who examined the victim indicates she believed the allegations. *See State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013) ("[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others."). Here, as the trial court noted, this was a non-issue because the witness never interviewed Victim.

ii. The expert testimony was not improper bolstering

Nevertheless, Appellant claims that even though the witness did not examine Victim, she was improperly allowed to vouch for the veracity of the statement by testifying that false denials were more prevalent than false accusations—thus drawing the inference that it is more likely one would falsely deny than accuse. It is unclear exactly how Appellant connects that testimony to Victim's credibility. The witness did not state that verifiable accusations were more prevalent than false ones, only that false denials are. There is no evidence Victim was asked whether she was abused so she was never even given the opportunity to deny. Additionally, Galloway-Williams' testimony does not conclude that false accusations are rare or even uncommon, thereby possibly suggesting it is unlikely Victim is lying.

D. The Probative Value of the Testimony was not Substantially Outweighed by the Prejudice

Appellant again attempts to draw a distinction with the testimony on delayed disclosure and solely challenges the portion of Galloway-Williams' testimony regarding the characteristics and behaviors of victims of abuse. However, Appellant fails to offer any substantive argument as to what about the testimony was so prejudicial that the prejudice substantially outweighed any probative value. At trial, the entirety of the objection is a reference to Rule 403 and the conclusory statement that this point "speaks for itself." (R.95.) This is insufficient to preserve an objection. *State v. Varvil*, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) ("A general objection is ordinarily insufficient to preserve an issue for appeal.").

Furthermore, Appellant similarly fails on appeal to clarify how the prejudice emanating from the substance of the testimony substantially outweighed the probative value. Appellant attacks the fact that "the expert did not and could not testify that [Victim's pattern of depression and self-harm] was the result of abuse." (Appellant's Br.22.) However, Galloway-Williams did testify that behavior after abuse can include depression and self-harm, depending upon the child. (R.116.) It was therefore quite probative. Appellant mostly just echoes the three preceding arguments—asserting the probative value is limited because the information is within the common knowledge of the jury and it is prejudicial because it is unrealiable and improper bolstering. As discussed *supra*, the State disagrees with these conclusions. Accordingly, the testimony was properly admitted.

II.

Appellant failed to preserve the issue of whether Grandmother's statement that Appellant wrote her a letter stating he had been addicted to pornography was evidence of a bad act because the judge never ruled on the argument. Furthermore, Appellant admitted as much in his testimony and therefore any error in admission was harmless as cumulative.

Appellant argues the trial court erred in allowing Grandmother to testify that Appellant had written her a letter admitting he had been addicted to pornography for fifty-two years. This argument is unpreserved and any error is harmless and therefore not reversible.

Although he predicated this argument on Rule 401, Rule 403, and Rule 404(b) at trial, he limits his challenge to a contention that this statement was evidence of bad acts in contravention of Rule 404(b), SCRE. However, the trial court's ruling did not address this argument, but instead limits its holding to "why [it] admitted [the evidence] pursuant to 401 and 403." (R.69.) It is therefore unpreserved, as an issue must be raised to and ruled upon by the trial court to properly preserve it for appeal. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

Furthermore, Appellant admitted in his testimony that he "told [Grandmother] that [he] had some problems, but it is not entirely pornography." (R.143.) On cross-examination, in response to questioning by the State, Appellant admitted he had informed Grandmother he had an addiction to pornography. Accordingly, Grandmother's testimony was merely cumulative and therefore harmless. *State v. Price*, 368 S.C. 494, 499–500, 629 S.E.2d 363, 366 (2006) (holding that error in admitting evidence that was merely cumulative to unobjected-to testimony

was harmless). Accordingly, there was no reversible error in the admission of Grandmother's testimony.

III.

The trial court properly denied Appellant's motion for a directed verdict for his charge on dissemination of obscene material because a reasonable juror could have found him guilty beyond a reasonable doubt.

Appellant argues the trial court erred in not granting his motion for a directed verdict on the charge of dissemination of obscene material because there was no evidence the material was obscene. However, Victim's testimony provides direct evidence of the offense and therefore the question of his guilt was properly submitted to the jury.

When reviewing the denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the State. *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). "The Court's review is limited to considering the existence or nonexistence of evidence, not its weight." *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004).

Victim testified Appellant showed her pornography, which she clarified as videos of people having sex. As Appellant admits, there is no requirement that the State proffer the actual material. Instead, the statute prescribes the determination of obscenity as a consideration of whether:

> (1) to the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (C) of this section; [or]
> (2) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex . . . .

S.C. Code Ann. § 16-15-305 (2015). Appellant complains Victim's testimony is insufficient to prove the material was of the nature that it represented sexual conduct in a "patently offensive" way or that it appealed to the "prurient interest in sex." To the contrary, Victim stated Appellant forced her to watch "pornography," which she further described as "videos of people having sex." (R.34.) To the extent Appellant considered this insufficient to characterize the material as appealing to the prurient interests, he could have explored the content more on cross-examination. Victim clearly indicated her sense that what she viewed was "pornography," which by design appeals to the prurient. Whether her characterization conforms to the jury's own sense of community standards is a matter of fact left to its discretion. Accordingly, the trial court did not err in failing to grant Appellant's motion for directed verdict on the dissemination of obscene material charge.

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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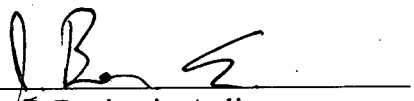
BY: 
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CERTIFICATE OF COUNSEL

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

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