

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

Opinion No. 5892 (S.C. Ct. App. filed 3/25/2022)
Lower Court Case No. 2016-GS-42-02201

THE STATE,

RESPONDENT,

V.

THOMAS STEPHEN ACKER,

PETITIONER

APPELLATE CASE NO. 2022-000497

Brief of Petitioner

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ISSUES PRESENTED

1. Did the Court of Appeals err in finding that the trial judge properly allowed a witness to testify as an expert in the field of child maltreatment and child abuse dynamics when the State failed to prove the reliability of the substance of the expert's testimony?
2. Did the Court of Appeals err in finding that the trial judge properly allowed a witness to testify as an expert in the field of child maltreatment and child abuse dynamics when the witness testified that false denials were more common than false accusations, and testified about believability, improperly bolstering the credibility of the minor witness?

STATEMENT

In May of 2016, the Spartanburg County Grand Jury indicted Petitioner, Thomas Stephen Acker, for criminal sexual conduct with a minor first degree and disseminating obscene material to a minor twelve years of age or younger, indictments #2016-GS-42-2201, 2202. (R. pp. 201-205). On November 16, 2016, Petitioner proceeded to jury trial before the Honorable J. Derham Cole. Roger Poole and Paul Kreswell Neely represented Petitioner at trial. Bethany B. Miles prosecuted the case. The jury returned verdicts of guilty and Judge Cole sentenced Petitioner to twenty years for criminal sexual conduct with a minor and five years concurrent for the disseminating charge. (R. pp. 203, 206). A timely notice of intent to appeal was served on November 22, 2016, and the direct appeal perfected.

On October 10, 2019, a three judge panel of the South Carolina Court of Appeals heard oral argument in the case. Over two years later on January 19, 2022, the Court of Appeals affirmed the convictions in a published opinion. State v. Acker, 435 S.C. 716, 869 S.E.2d 873 (Ct. App. 2022). A timely petition for rehearing was filed on February 3, 2022. The panel of the Court of Appeals denied the petition for rehearing on March 25, 2022. This petition for writ was served on April 25, 2022. The return to petition for writ of certiorari was filed on May 23, 2022. A reply to the return was filed on June 2, 2022. On March 7, 2023, this Court granted the petition for writ of certiorari as to issues one and two but denied the petition for certiorari as to issues three, four, and five. This brief of petitioner follows.

STANDARD OF REVIEW

“The admissibility of an expert's testimony is a matter within the trial court's sound discretion and the determination will not be reversed on appeal absent an abuse of discretion. State v. Cope, 405 S.C. 317, 344–45, 748 S.E.2d 194, 208 (2013). A trial court's ruling on the admissibility of expert testimony constitutes an abuse of discretion where the ruling is unsupported by the evidence or controlled by an error of law. Maybank v. BB&T Corp., 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016).” State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018)

FACTS

Petitioner married the minor's maternal grandmother in December of 2002. (R. p. 55, lines 8-16). The two separated in May of 2007. (R. p. 55, lines 17-18). The grandmother testified that during the time she was married to Petitioner she would pick her granddaughter up from kindergarten and would watch her at the house she shared with Petitioner. (R. p. 56, line 22 – p. 57, 58, lines 1-11). During this time the minor's mother taught Bible study and asked her mother, the minor's grandmother, to help with the care of the minor. (R. p. 11, lines 21 – p. 12, lines 1-3). In the summer of 2014, seven years after Petitioner separated from the minor's grandmother, the minor began cutting herself. (R. p. 12, line 25 – p. 13, lines 1-2). The minor was first seen by a pastoral counselor at New Day Counseling Ministries in July of 2014. (R. p. 51, lines 10-22). According to the pastoral counselor, on September 11, 2014, the minor alleged abuse that took place at her grandmother's house beginning when she was five years old. (R. p. 52, lines 1-13).

On November 7, 2014, the minor's parents filed a report with the Spartanburg City Police Department. (R. p. 22, line 15 – p. 23, lines 1-7). An officer with the Spartanburg City Police Department made a referral for the minor to the Children's Advocacy Center. (R. p. 23, lines 13-14). The minor met with a counselor at the Children's Advocacy Center of Spartanburg, Union and Cherokee Counties on November 20, 2014. (R. p. 49, lines 14 – p. 50, lines 1-8). According to this counselor, the minor alleged abuse that took place at her nanny's house from when she was in kindergarten until she was eight or nine years of age. (R. p. 50, lines 9-21).

At the time of trial in November of 2016, the minor was seventeen years old. (R. p. 27, lines 1-2). When the minor was ten years old she was diagnosed with Ehlers-Danlos syndrome with Chiari malformation requiring multiple painful surgeries. (R. p. 27, line 25 – p. 28, lines 1-

10; p. 39, line 21 – p. 40, lines 1-25). At trial the judge, over objection, qualified Shauna Galloway –Williams¹ as an expert in child maltreatment and child abuse dynamics. (R. p. 106, line 25 – p. 107, lines 1-3). Galloway-Williams did not interview the minor in the present case. Petitioner testified at trial and denied all allegations. (R. p. 144, lines 6-10).

¹ Galloway-Williams’ qualification as an expert and failure to comply with a subpoena duces tecum requesting articles and publications upon which her opinions were based was recently addressed in State v. Galloway, Op. No. 5905, Howard Advance Sheet No. 14 (S.C. Ct. App. filed April 20, 2022). The trial in Galloway was held in May of 2018. In State v. Jones, 423 S.C. 631, 639, 817 S.E.2d 268, 272 (2018), this Court wrote, “Although Galloway-Williams did not identify by name the articles serving as the basis for her opinions, she indicated she could provide citations if given an opportunity to gather them.” The trial in Jones was held in 2014, four years before the trial in Galloway.

ARGUMENTS

- 1. The Court of Appeals erred in finding that the trial judge properly allowed a witness to testify as an expert in the field of child maltreatment and child abuse dynamics when the State failed to prove the reliability of the substance of the expert's testimony.**

The trial judge allowed Shauna Galloway-Williams to testify, over objection, as an expert in the field of child maltreatment and child abuse dynamics. The State, however, failed to prove that the subject matter of the expert testimony, child maltreatment and child abuse dynamics, was reliable. The Court of Appeals found that the expert's testimony was reliable because the testimony was based on her experience and the research conducted in her field, and this research was based on case studies for which the researchers analyzed cases of known abuse to determine whether there were similarities among cases. State v. Acker, 435 S.C. 716, 869 S.E.2d 873, 881 (Ct. App. 2022). The record reflects, however, that neither the expert nor the State provided the trial judge with any research material upon which the expert testimony was purportedly based. Neither the expert nor the State provided the trial judge with any case studies upon which the expert testimony was purportedly based. Respondent, citing State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018), argues that the expert's testimony was supported by peer-reviewed professional journals and publications that were uniformly accepted and recognized by child abuse experts. (Return to Petition for Writ of Certiorari pp. 9-10). Neither the expert nor the State provided the trial judge with the names of any peer-reviewed professional journals or publications.

Petitioner objected to allowing the State's witness, Shauna Galloway-Williams, to testify as an expert in the field of child maltreatment and child abuse dynamics arguing that the subject matter of the testimony was not reliable. (R. p. 96, lines 1-5). The judge overruled the objection stating, "And I do find the testimony is sufficiently reliable to be admitted because it is based

upon the requisite education, training and experience.” (R. p. 100, lines 7-9). The judge erred in allowing the witness to testify as an expert when the State failed to prove that the subject matter of the witness’s testimony was reliable.

Pursuant to Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), prior to admitting expert testimony the judge must determine that the testimony is reliable. “Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable. See State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (evaluating whether expert testimony on DNA analysis met the reliability requirements).” Id. 389 S.C. at 445-447, 699 S.E.2d at 175. In State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015) this Court wrote, “Both parties argue, and we agree, that State v. White should apply in qualifying child abuse assessment experts because their testimony is non-scientific.” In the present case the judge allowed the witness to testify as an expert in child maltreatment and child abuse dynamics. (R. p. 107, lines 1-4). Pursuant to Chavis, the witness testimony in the present case is non-scientific expert testimony. Non-scientific expert testimony must still satisfy the reliability requirement of Rule 702, SCRE, and Watson. State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). In White the Court wrote:

The State v. Council factors for scientific expert testimony are: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.

382 S.C. 265, 274, 676 S.E.2d 684, 688 n.7.

The Court noted that the Council factors are not as helpful when determining reliability of non-scientific evidence writing:

The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony. We have set forth above foundational requirements for Rule 702 expert testimony concerning dog tracking evidence.

We do not pretend to know the myriad of Rule 702 qualification and reliability challenges that could arise with respect to nonscientific expert evidence. Consequently, we offer no formulaic approach that will apply in the generality of cases. Yet the trial court in the discharge of its gatekeeping role in determining admissibility must initially answer the always present threshold questions of qualification and reliability.

State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 688–89 (2009). In the present case the trial court, in the discharge of its gatekeeping role, failed to determine the threshold question of reliability.

The Court in White addressed the reliability factors required for the admission of dog tracking testimony, non-scientific expert testimony, writing:

To provide uniformity, we think it advisable to adopt the following evidentiary framework to guide our bench and bar concerning dog tracking evidence. By extrapolating from our case law and other authorities, we conclude a sufficient foundation for the admission of dog tracking evidence is established if The evidence shows the dog handler satisfies the qualification of an expert under Rule 702; (2) the evidence shows the dog is of a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated.

382 S.C. at 272, 676 S.E.2d at 687. In the present case the trial judge found the expert testimony reliable “based upon the requisite education, training and experience.” (R. p. 100, lines 7-9). These factors go to the qualification of the witness not the reliability of the subject of the testimony. The State failed to show that the methods used or materials relied upon by Galloway-Williams to form her opinion as a non-scientific expert were reliable. The judge

abused his discretion in allowing the witness to testify as an expert when the State failed to prove that the substance of the testimony was reliable.

The challenge to reliability goes to the subject of the testimony rather than the individual qualification of the witness. Based on the ruling by the trial judge in the present case, expert testimony in regard to any matter - scientific, non-scientific, or “junk science” - would be reliable if the witness had the requisite education, training and experience. The qualification of the witness and the reliability of the subject of the witness’ testimony are two different findings the trial judge must make before admitting expert testimony. In White, this Court wrote:

We hold that the trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. The familiar evidentiary mantra that a challenge to evidence goes to “weight, not admissibility” may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.

382 S.C. at 274, 676 S.E.2d at 689. The trial judge must make a determination on the reliability of the non-scientific expert testimony based on factors other than the qualification of the witness. In the present case the State failed to provide the judge with any factors upon which he could base a reliability finding.

During the in-camera proffer Petitioner asked the witness, “The information that you have reviewed on your own in preparation for giving testimony, do you have any specific examples of studies that have looked at the evidence in those particular cases as being reliable?” (R. p. 79, lines 2-5). The witness answered, “So my testimony will be based on my experience in the field, as well and my education and training. And in our field the research that’s been done has primarily been done based on information that’s gathered from actual clients, case studies.” (R. p. 79, lines 6-10). The witness, however, did not identify any research, case study

or publication to support the substance of her testimony. The witness testified that although she was not published she was familiar with publications in the field. She testified “Well, as part of the – in most of the trainings that I go to there—the training itself is based on peer-reviewed articles, information. Just as part of my general education I continue to read peer-reviewed articles and information related to the field.” (R. p. 75, lines 3-7). The witness, however, did not provide any specific information about the publications or trainings. The judge asked the witness, “And has your experience revealed common factors that attribute to a delayed disclosure?” (R. p. 90, lines 17-18). The witness responded yes but offered no other source to support her testimony. The witness offered no statistics to demonstrate how often disclosure was delayed in allegations of child sexual abuse. The witness offered no support for her testimony in regard to grooming or behaviors. The State failed to demonstrate that the subject matter of the expert testimony was reliable.

In State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), this Court found that the State failed to show the individual reliability of one of the witnesses sufficient to allow her to testify as a child abuse assessment expert. The Court in Chavis wrote:

There is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence. *Id.* at 274, 676 S.E.2d at 688. However, evidence of mere procedural consistency does not ensure reliability without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies. We find no evidence in this record as to Mrs. Elliott's ability to draw reliable results from the RATAC procedures she consistently follows, and thus find that the threshold reliability requirement of Rule 702 is not met. Accordingly, we hold that the circuit court abused its discretion in allowing Mrs. Elliot to testify as an expert regarding the report by Mrs. Gist.

412 S.C. at 108, 771 S.E.2d at 339. As in Chavis, the State in the present case failed to establish that the witness’s testimony was reliable. Unlike Chavis, the error in the present case was not harmless.

While the witness testified that she read peer-reviewed articles and information related to the field, she failed to name one of these articles. The witness failed to identify any research, case study, publication or treatise to support the substance of her testimony. In the Court of Appeals' decision in State v. Jones, 417 S.C. 319, 333, 790 S.E.2d 17, 25 (Ct. App. 2016), aff'd as modified, 423 S.C. 631, 817 S.E.2d 268 (2018), decided prior to the trial in this case, this same witness was able to reference one textbook titled *Child Maltreatment* that included information about delayed disclosure and non-offending caregivers. The witness made no such reference in the present case.

In distinguishing Chavis this Court in Jones wrote:

Unlike the proposed expert in Chavis, Galloway-Williams did not testify about forensic interviewing methods nor the use of the RATAC protocol. Instead, her testimony focused on explaining the concept of delayed disclosure and the role of nonoffending caregivers in the dynamics of sexual abuse. Although Galloway-Williams did not identify by name the articles serving as the basis for her opinions, she indicated she could provide citations if given an opportunity to gather them. Additionally, she explained her opinions were supported by peer-reviewed professional journals and trade publications, all of which were uniformly accepted and recognized by child sexual abuse experts and professionals. Galloway-Williams also testified she participates in the peer review process and has given numerous presentations on the subject. When questioned on cross, she testified she was unaware of any organizations that found her methods unreliable and that, out of all cases involving delayed disclosure of child abuse, statistically two to four percent are considered false allegations.

State v. Jones, 423 S.C. 631, 639, 817 S.E.2d 268, 272 (2018). In contrast, in the present case this same witness failed to explain that her opinions were supported by peer-reviewed professional journals and trade publications, all of which were uniformly accepted and recognized by child abuse experts and professionals. This same witness failed to testify in the present case that her opinions were supported by peer-reviewed articles. Instead, she testified that she read peer-reviewed articles and training was based on peer reviewed articles. (R. p. 75,

lines 3-7). The false denial and false allegation testimony addressed in issue two was not addressed in Jones and requires additional indicia of reliability.

The trial court in the present case failed to perform its gatekeeping role pursuant to Rule 702, SCRE. The State failed to establish the foundational reliability requirement for the admission of the expert testimony. The trial judge's reliability determination was based on the education, training and experience of the witness. These factors go to the qualification of the witness, not the reliability of the testimony. The present case is analogous to cases in which the trial judge failed to make a reliability determination prior to admission of the testimony. In State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012), this Court found that the trial judge erred in admitting expert testimony before vetting it for reliability but found the error harmless. In the present the trial judge also erred in admitting the expert testimony before vetting it for reliability. The error, however, was not harmless.

“To deem an error harmless, this court must determine ‘beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.’” State v. Fonesca, 383 S.C. 640, 650, 681 S.E.2d 1, 6 (Ct.App. 2009) (quoting Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993)), *aff'd*, 393 S.C. 229, 711 S.E.2d 906 (2011); see also State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006) (“When guilty is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside a conviction for insubstantial errors not affecting the result.”); State v. Mizzell, 349 S.C. 326, 333-34, 563 S.E.2d 315, 319 (2002) (finding error is harmless beyond a reasonable doubt if the “reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt”); State v. Pradubsri, 403 S.C. 270, 281, 743 S.E.2d 98, 104 (Ct.App. 2013) (explaining the requirement that a reviewing court must review the entire record to determine the effect of an error on the

verdict in determining whether an error is harmless). Reviewing the entire record in the present case, guilt was not conclusively proven such that no other rational conclusion could be reached. The State presented no physical evidence. The State's case was based on the testimony of the minor. The State called as witnesses the minor's mother, father and grandmother, the minor, a police officer, a forensic interviewer, a pastoral counselor and Galloway-Williams. There were no eye-witnesses. The unreliable testimony given by Galloway-Williams, as an expert, was not harmless.

In affirming the convictions the Court of Appeals wrote:

Similarly, we find the circuit court did not abuse its discretion in determining Galloway-Williams's testimony here satisfied the reliability threshold. As in Jones, Chavis is distinguishable because Galloway-Williams was not qualified as a forensic interviewer and did not testify as to the specifics of this child's disclosure. Instead, she testified as a blind expert on child sexual abuse dynamics, addressing general concepts and characteristics of victims in such cases. Her testimony was based on her experience and the research conducted in her field, and this research was based on case studies for which the researchers analyzed cases of known abuse to determine whether there were similarities among cases. Thus, the circuit court did not err in admitting Galloway-Williams's testimony after properly considering its reliability.

State v. Acker, 435 S.C. 716, 869 S.E.2d 873, 881 (Ct. App. 2022). The Court of Appeals erred. The fact that Galloway-Williams was not qualified as a forensic interviewer and the fact that she did not testify to the specifics of the disclosure does not render the subject of her testimony to be reliable. Galloway-Williams failed to provide the trial judge with any research or case studies that could support the reliability of her testimony.

The trial judge in the present case abandoned his gatekeeping function by admitting expert testimony without a basis to find that the subject matter of the testimony was reliable. As Justice Scalia wrote in his concurring opinion in Kumho Tire Co. v. Carmichael, 526 U.S. 137, 158–59, 119 S. Ct. 1167, 1179, 143 L. Ed. 2d 238 (1999):

I join the opinion of the Court, which makes clear that the discretion it endorses—trial-court discretion in choosing the manner of testing expert reliability—is not discretion to abandon the gatekeeping function. I think it worth adding that it is not discretion to perform the function inadequately. Rather, it is discretion to choose among *reasonable* means of excluding expertise that is *fausse* and science that is junky. Though, as the Court makes clear today, the *Daubert* factors are not holy writ, in a particular case the failure to apply one or another of them may be unreasonable, and hence an abuse of discretion.

The trial court in the present case abandoned its gatekeeping function with regard to reliability.

Reliability findings are required to exclude fake expertise and junky science.

In State v. Herrera, 289 Neb. 575, 588, 856 N.W.2d 310, 324 (2014), the Nebraska Supreme Court wrote, “The purpose of this gatekeeping function is “to ensure that the courtroom door remains closed to ‘junk science’ that might unduly influence the jury, while admitting reliable expert testimony that will assist the trier of fact.” The judge in the present case failed to make a reliability determination risking the admission of “junk science” unduly influencing the jury. In United States v. Medina-Copete, 757 F.3d 1092, 1104 (10th Cir. 2014), the Tenth Circuit Court of Appeals wrote:

In exercising its gatekeeping role, the district court was required to determine whether *Almonte's* proposed testimony was sufficiently reliable. That other courts may have permitted “evidence relating to so-called narco saints” has minimal bearing on the issue in this case, which required the district court to determine whether a law enforcement officer and “cultural iconography hobbyist” can testify as an expert on “the use of Santa Muerte and drug trafficking.” When “established methods are employed in new ways, a district court may require further indications of reliability.” Attorney Gen. of Okla. v. Tyson Foods, Inc., 565 F.3d 769, 780 (10th Cir.2009). To the extent that the district court found that Almonte relied on “established methods,” its attempt to justify the Santa Muerte testimony under our “tools of the trade” jurisprudence was strained at best. And the record is devoid of “indications of reliability” related to Almonte's opinion testimony.

The judge in the present case was required to determine whether Galloway-Williams’ testimony was sufficiently reliable. The judge failed to make a reliability determination, instead simply finding that her testimony was reliable because it was based upon the requisite education,

training and experience, factors that go to qualification not reliability. The fact that this particular witness had been previously qualified as an expert 36 times (R. p. 76, lines 9-12) did not relieve the trial court from its duty as a gatekeeper to require the State to establish the reliability of the expert testimony in this case. The State failed to prove that the testimony with regard to risk factors, grooming, delayed disclosure, and general behavioral characteristics was reliable. The State also failed to prove that the testimony about false denials, false accusations, and believability, as discussed in issue two below, was reliable.

While the reliability determination does not require perfection, the State, as proponent of the expert testimony, must provide the trial judge with some information, other than education, training and experience, upon which to base a reliability determination. The present case is distinguished from Jones where at least there was a bare minimal reference to a textbook as a basis for which to support the reliability of the expert's opinion. There was no basis for which the trial judge to base his reliability determination in the present case. The witness failed to name any specific research, book or case study upon which the expert based her opinion. The fact that the witness was not qualified as a forensic interviewer and did not testify as to the specifics of the disclosure does not render her testimony reliable. The State failed to prove the reliability of the expert's testimony. The trial judge erred in admitting the testimony. The error requires reversal.

- 2. The Court of Appeals erred in finding that the trial judge properly allowed a witness to testify as an expert in the field of child maltreatment and child abuse dynamics when the witness testified that false denials were more common than false accusations, and testified about believability, improperly bolstering the credibility of the minor witness.**

In addition to lacking reliability, Galloway-Williams' testimony went beyond discussing risk factors, grooming, delayed disclosure and general behavioral characteristics when the State asked her on direct examination about false denials and false disclosures. (R. p. 111, lines 6-7). The witness discussed false denials and false disclosures and testified that it was more common for children to deny abuse when something happened than to make a false allegation of abuse when it did not happen. (R. p. 111, line 8 – p. 112, lines 1-10). Petitioner objected arguing that the testimony bolstered the credibility of the complaining minor witness as prohibited by State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). (R. p. 95, lines 10-12). The judge replied, "She's not addressing Minor's credibility. She's never met Minor. She couldn't possibly address her credibility. She's just going to discuss from what her experience has provided why people delay in disclosing sexual abuse. She's not going to talk about Minor because she's never met her and she doesn't know her and knows nothing about her case. So she can't be bolstering her credibility." (R. p. 95, lines 16-25). The judge then overruled the objection and stated:

It's not bolstering because the witness is simply testifying about things within her expertise. They may or may not specifically apply in this case, but the witness doesn't know anything about this case because she's not talked to anybody about it; she's not interviewed any witness; she's not interviewed the child; she's not interviewed the parents; she's not interviewed the police officers; she's not interviewed the counselors; she's not interviewed the Children's Advocacy interviewer. She knows nothing about the case, and she didn't even hear the witness' testimony.

So there's nothing that she could do that would – nothing she could reasonably do to bolster the witness' testimony because she doesn't even know what it is. The fact that she testifies to things that might be similar to those things experienced by the witness is not considered bolstering. It's simply an expert's explanation as to

certain behavior perhaps. But to that extent it might be supported. But it's not improper bolstering. So I still find the testimony to be admissible.

(R. p. 100, line 20 – p. 101, lines 1-15). The trial judge erred. The witness improperly bolstered the credibility of the minor witness even though she never met the minor witness. Petitioner renewed the objection immediately following the judge's ruling and again when the State moved to qualify the witness as an expert in front of the jury. (R. p. 100, lines 12-14; p. 107, line 3). Petitioner renewed the objection at the close of the State's case, the close of the Defense case and after the jury returned the verdicts. (R. p. 123, lines 17-19; p. 152, line 23 – p. 153, lines 1-2; p. 193, lines 15-19). The judge denied all of the renewed motions.

The trial judge erred. Improper bolstering can come from a witness, like the expert witness in the present case, who did not treat the complaining minor witness. See Chappell v. State, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019). While the State in the present case heeded the warnings of this Court in State v. Makins, 433 S.C. 494, 860 S.E.2d 666 (2021) and State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015), by calling an expert witness who did not treat the minor witness, the State went too far in asking the expert witness on direct examination about false denials and false disclosures. (R. p. 111, lines 6-7). The questioning on direct went beyond risk factors, grooming, delayed disclosure and general behavioral characteristics. The questioning improperly implied that the expert witness believed that the testimony of the minor witness was credible.

The expert's testimony in the present case that it was more common for children to deny abuse when something happened than to make a false allegation of abuse when it did not happen is analogous to this same witness's testimony in Chappell v. State, 429 S.C. 68, 74, 837 S.E.2d 496, 499 (Ct. App. 2019), that, "Children don't often lie about sexual abuse incidents." In Chappell the Court of Appeals found trial counsel ineffective for failing to object to the testimony that

improperly bolstered the minor witness's credibility. The improper bolstering in the present case requires a new trial.

During the direct examination of Galloway-Williams the State asked, "Okay. I want to talk to you about false denials and false disclosures. Can you explain to us what those are?" (R. p. 111, lines 6-7). The witness explained. "Well, a false denial or a – would be when there's actually knowledge or something to support that a child has actually been abused, and yet they're denying that it happened." (R. p. 111, lines 8-11). The witness then testified, "So what we see more often than false allegations of abuse with child disclosure, we see – tend to see more false denials, meaning that children are denying that something happened when, in fact, there may be something that did happen." (R. p. 111, lines 18-22). The State then asked the witness, "And what's a false disclosure?" (R. p. 111, line 23). The witness answered. "A false disclosure? That would be when the child has made a disclosure that didn't really happen." (R. p. 111, lines 24-25). The State then asked the witness which was more common and the witness again testified, "What's more common would be the false denial where we – where a child denies that something happened when, in fact, something did occur." (R. p. 112, lines 8-10). The witness' testimony improperly implied that the witness in the present case was credible because false denials are more common than false allegations. The prosecutor went too far with this line of questioning.

Witness credibility is to be determined by the jury. Witnesses are prohibited from testifying about the credibility of other witnesses. In State v. Makins, 433 S.C. 494, 860 S.E.2d 666, 670 (2021), this Court wrote:

"The assessment of witness credibility is within the exclusive province of the jury." State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). While experts can testify to their opinion, they are precluded from offering an opinion about the credibility of other witnesses. State v. Kromah, 401 S.C.

340, 358, 737 S.E.2d 490, 499 (2013). “Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter.” Id. at 358-59, 737 S.E.2d at 500. “A witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes the victim.” Briggs v. State, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017).

In State v. Barrett, 416 S.C. 124, 131, 785 S.E.2d 387, 390 (Ct. App. 2016), the South Carolina Court of Appeals wrote:

The assessment of witness credibility is within the exclusive province of the jury. State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977). Therefore, witnesses are generally not allowed to testify whether another witness is telling the truth. See Burgess v. State, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (stating it is improper for a solicitor to ask a defendant “to comment on the truthfulness or explain the testimony of an adverse witness” and “the defendant is in effect being pitted against the adverse witness”). Similarly, witnesses may not improperly bolster the testimony of other witnesses. See Smith v. State, 386 S.C. 562, 564, 569, 689 S.E.2d 629, 631, 633 (2010) (stating a forensic interviewer's opinion that she found the victim's statement believable “improperly bolstered the [v]ictim's credibility”). “For an expert to comment on the veracity of a child's accusations of sexual abuse is improper.” State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011).

Galloway-Williams’ testimony in the present case indirectly commented on the child witness’s credibility and improperly bolstered her testimony.

With regard to Galloway-Williams’ testimony that false denials are more common than false allegations, the Court of Appeals wrote:

Nor did Galloway-Williams's testimony about false denials being more common than false allegations improperly bolster Child's credibility. As stated previously, Galloway-Williams did not testify regarding Child; rather, she testified as to the general behavioral reactions of children who have been abused, risk factors, and the concepts of grooming and delayed disclosure. Although we acknowledge Galloway-Williams's testimony could be interpreted as having insinuated Child's testimony was credible because false allegations are not as common as false denials, Galloway-Williams's statement here is distinguishable from those in cases in which our courts have found there was no way to interpret the challenged statements *other than as* bolstering a victim's credibility. Compare State v. Makins, 433 S.C. 494, 505, 860 S.E.2d 666, 672 (2021) (holding dual expert's testimony served foundational purpose other than to vouch for minor's credibility but cautioning that the use of “one witness as both a characteristics expert and the

treatment witness is a risky undertaking” and the better practice is to use a blind witness as Anderson urged), *with State v. McKerley*, 397 S.C. 461, 465-67, 725 S.E.2d 139, 142-43 (Ct. App. 2012) (finding although the expert never directly stated she believed the victim, the jury could not interpret the expert's testimony in any way other than that she believed the victim was telling the truth); see also Chavis, 412 S.C. at 109, 771 S.E.2d at 340 (finding the circuit court erred when allowing an expert witness to testify about her recommendation that the victim “not be around the [defendant] for any reason” because this testimony could only be interpreted as indicating the expert believed the victim's allegations).

State v. Acker, 435 S.C. 716, 869 S.E.2d 873, 882 (Ct. App. 2022). The Court of Appeals erred.

The expert witness’s testimony went beyond discussing risk factors, grooming, delayed disclosure and general behavioral characteristics when the State asked her on direct examination about false denials and false disclosures. There is no way to interpret Galloway-Williams’ testimony in any way other than children who make allegations of sexual abuse, like the witness in this case, are credible because false allegations are not as common as false denials. The testimony went beyond explaining that children may deny abuse as a behavioral characteristic of child sex abuse victims. Instead, the testimony improperly reflected the expert’s opinion about the credibility of sex abuse allegations made by children, and, by inference, the credibility of the child witness in the present case.

The Court of Appeals’ reliance on Makins is misplaced. Makins did not address improper credibility testimony from a “blind expert.” Instead, as the Court wrote, “We address one primary issue in this appeal: by testifying both as an expert in characteristics of child trauma and child sexual abuse dynamics and as Minor's treating therapist, did Rich imply she thought Minor was truthful, thereby improperly bolstering Minor's credibility?” State v. Makins, 433 S.C. 494, 860 S.E.2d 666, 668 (2021). In finding that, under the specific facts of the case, the dual expert’s testimony did not improperly bolster the Minor’s credibility, the Court wrote:

Rich's simple affirmation that she provided therapy to Minor also differs from previous indirect vouching cases in which expert witness testimony was more extensive. See Briggs, 421 S.C. at 329, 806 S.E.2d at 720 (ruling forensic interviewer's testimony she made the determination the child understood the difference between the truth and a lie "indirectly revealed she believed the subsequent disclosure ... was the truth"); State v. Chavis, 412 S.C. 101, 108, 771 S.E.2d 336, 340 (2015) (holding forensic interviewer's testimony that child victim should "not be around [Petitioner] for any reason" improperly bolstered the child victim's credibility); Kromah, 401 S.C. at 359, 737 S.E.2d at 500 (ruling forensic interviewer's testimony about "a compelling finding of child abuse" was the equivalent of her stating the child was being truthful); State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (concluding there was no other way to interpret the language in the forensic interviewer's reports that each child had "provide[d] a compelling disclosure of abuse by [Petitioner]" than to mean she believed the children were truthful).

State v. Makins, 433 S.C. 494, 860 S.E.2d 666, 671 (2021). The Court in Makins noted that the dual expert's testimony did not contain direct or indirect bolstering writing, "The trial court's limitations on Rich's testimony achieved their purpose—her testimony contained no direct or indirect bolstering discernible to this Court. The trial court deftly navigated the issue and protected the proceeding from improper bolstering. We find no abuse of discretion in the trial court's decisions to deny Makins's motion for mistrial or to admit Rich's limited testimony." 433 S.C. at 860 S.E.2d at 672 (n. 2 omitted).

In contrast, in the present case the expert did not affirm that she provided therapy because she did not. Instead, the "blind expert" testified that false denials are more common than false allegations, testimony far more problematic than the "simple affirmation" in Makins. The "blind expert's" testimony in this case was not limited and indirectly implied that she believed the child witness because false denials are more common than false allegations. Importantly, the improper testimony took place during the direct examination by the State and not in response to cross-examination. The essence of Galloway-Williams' testimony about false denials being more

common that false allegations is to say that children do not lie about sexual abuse. This is improper.

In State v. Kromah, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013), this Court found that the forensic interviewer should not have been allowed to testify about a compelling finding of child abuse because that was the equivalent of Smith [the forensic interviewer] stating the Child was telling the truth. The fact that the witness in the present case did not interview the minor does not render her testimony admissible. A witness can improperly bolster the credibility of another witness without having had any direct contact with that witness. In the present case the expert's testimony was the equivalent of stating that the witness was telling the truth because false denials are more common than false allegations.

While the witness in the present case was not the forensic interviewer, she was qualified as an expert in the field of child maltreatment and child abuse dynamics. As noted by the Court in Kromah, "Smith was qualified as an expert and, although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts. The label of expert should be jealously guarded by the court and never loosely bandied about." 401 S.C. at 357, 737 S.E.2d at 499 (fn #5 omitted). As an expert witness, the jury would tend to attach more significance to Galloway-Williams's credibility determinations, making the error more prejudicial. Galloway-Williams, testifying as an expert, improperly suggested that the jury should believe the minor witness because children are more likely to deny that abuse occurred than make a false allegation of abuse.

In Chavis the Court found that the testimony of the second forensic interviewer improperly bolstered the credibility of the minor witness. The Court wrote, "Mrs. Griggs's

recommendation that Petitioner not be around Victim for any reason, can only be interpreted as Mrs. Griggs believing Victim's claim that Petitioner sexually abused her.” State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). As noted by the Court in Chavis, testimony indicating that the witness believed the minor witness is improper as it invades the province of the jury to determine credibility. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding error where there was “no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful”); State v. Dawkins, 297 S.C. 386, 393–94, 377 S.E.2d 298, 302 (1989) (finding admission of therapist's testimony indicating he believed victim's allegations were genuine was improper). The bolstering is especially damaging when given by a witness imbued with imprimatur of an expert. State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977) (“It is axiomatic that the credibility of the testimony of these witnesses is for the jury.”); State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). In the present case the witness’ testimony that false denials being more common than false accusations indicates to the jury that she, as an expert, believes the minor witness. Her testimony was improper.

Additionally, when discussing the fact that children with behavioral problems are at risk for abuse the witness testified, “They are more vulnerable to it for many reasons, one of them being that if they are troublemakers or seen as bad children and then they make a disclosure, an outcry, sometimes they’re not believed because they have a previous history of getting in trouble or making things up.” (R. p. 109, lines 6-10). This testimony improperly implied that children with behavioral problems who make allegations of sexual abuse, like the witness in this case, are credible and should be believed. This believability testimony, like the testimony about false denials being more common than false accusations, is improper because it goes to the credibility

of the minor witness. The witness should not have been allowed to testify about false denials, false accusations, or believability. The trial judge abused his discretion in admitting the testimony.

In finding that Galloway-Williams' believability testimony did not constitute improper bolstering the Court of Appeals emphasized that she was a "blind expert" and then wrote:

First, Galloway-Williams's testimony regarding disclosures by children with behavioral problems did not improperly bolster Child's credibility because the testimony was included in her general testimony addressing multiple risk factors that make certain children more vulnerable to abuse. *See State v. Barrett*, 416 S.C. 124, 131-33, 785 S.E.2d 387, 390-91 (Ct. App. 2016) (finding an expert's testimony regarding general behavioral characteristics did not improperly vouch for the victim's credibility because she never directly or indirectly commented on the victim's veracity and truthfulness or the credibility of the victim's claims and she did not limit her testimony to only those behavioral characteristics displayed by the victim). She did not comment on Child's credibility, and she did not seek to link her general characteristics testimony to any type of behavioral reaction Child may—or may not—have exhibited. *See id.*; *Brown*, 411 S.C. at 345, 768 S.E.2d at 253 (finding the expert did not improperly bolster the victim's credibility because she testified in broad terms about the reasons victims delay disclosing abuse and she never applied her testimony to the victims in the case).

State v. Acker, 435 S.C. 716, 869 S.E.2d 873, 881–82 (Ct. App. 2022). The Court of Appeals erred.

The witness's status as a "blind expert" did not prevent the witness from indirectly commenting on the child witness's credibility when the expert testified that children with behavioral problems are more vulnerable because they are **not believed** when they make a disclosure. The expert witness's testimony in the present case went beyond generally addressing risk factors that make certain children more vulnerable to abuse. The expert's testimony in the present case improperly reflected her opinion about the credibility of sex abuse allegations made by children with behavioral problems. The clear implication from the testimony is that children

with behavioral problems, like the witness in the present case, are credible and should be believed when they make an allegation of abuse.

The expert testimony in the present case went beyond the general behavioral characteristics discussed in State v. Barrett, 416 S.C. 124, 131, 785 S.E.2d 387, 390 (Ct. App. 2016) and State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), abrogated by State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018). In Barrett the South Carolina Court of Appeals wrote:

Barrett argues Twitty's testimony circumvented the mandates outlined in Kromah. We disagree. Although Twitty conducted Victim's forensic interview, she was not qualified as an expert forensic interviewer and her testimony fell within the parameters of Kromah. Regarding the forensic interview Twitty conducted, she testified as to the date, time, and place of the interview and her personal observations of Victim's demeanor. In fact, Twitty never directly or indirectly commented on the credibility of Victim's accounts of the alleged sexual assault. Moreover, she never addressed the veracity of Victim or opined whether Victim was being truthful. Conversely, on cross-examination, Twitty admitted children lie, she could not give a diagnosis, and she was "certainly not a human lie detector." She elaborated that the focus of her interview was to assess overall child safety and she was "not going in there looking for fact details to prove or not prove child sexual abuse."

Importantly, Twitty did not limit her testimony to explaining the exact behavioral characteristics Victim exhibited. Cf. Anderson, 413 S.C. at 219, 776 S.E.2d at 79 (holding the forensic interviewer "vouched for the minor when she testified only to those characteristics [that] she observed in the minor"). Although Twitty explained some of the behavioral patterns Victim exhibited—i.e., delayed reporting and sequence of reporting to peers before adults—she also explained additional characteristics that Victim did not display.

State v. Barrett, 416 S.C. 124, 132–33, 785 S.E.2d 387, 391 (Ct. App. 2016) (n. 2 omitted). The expert in Barrett never directly or indirectly expressed an opinion on the credibility of the witness, as the expert did in the present case.

In Brown the South Carolina Court of Appeals wrote:

Subsequently, Galloway–Williams testified she did not review any incident reports or statements associated with this case, never met with or interviewed the minor victims prior to trial, and was not present for their testimony during trial. In fact, her only knowledge about the case came from discussions with the Solicitor's

Office. According to Galloway–Williams, research indicates that between seventy and eighty percent of abused children delay disclosing the abuse into adulthood. Further, she stated children delay disclosing abuse for a number of reasons, including: (1) fear of consequences to themselves, the perpetrator, or someone the child loves; (2) the child's age; (3) the child's relationship to the perpetrator; (4) a lack of vocabulary or language to describe what has happened to them; (5) threats by the perpetrator; (6) grooming by the perpetrator; and (7) the perpetrator's normalization of the abusive conduct. Galloway–Williams further explained that most disclosures happen accidentally, and children generally reveal more details over time throughout the disclosure process. When children suffer chronic abuse, she stated it is more difficult for them to sort out the timing of individual incidents and the order in which they occurred. Galloway–Williams also explained that having a close and trusting relationship with the perpetrator can have a very strong impact on whether a child feels like he or she can disclose the abuse. Finally, she testified that child abuse victims will sometimes tolerate sexual abuse to maintain a relationship, particularly if the perpetrator is someone they love and trust.

State v. Brown, 411 S.C. 332, 337–38, 768 S.E.2d 246, 248–49 (Ct. App. 2015), abrogated by State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018). The general behavioral characteristic testimony from the same witness in Brown is distinguished from the testimony in the present case that false denials are more common than false accusations and that children with behavioral problems are more vulnerable because they are not believed when they make a disclosure. The testimony improperly implied that children do not lie about sexual abuse and improperly implied that children with behavioral problems, like the witness in the present case, should be believed when they make an allegation of abuse. The witness went too far in this case. In the present case Galloway-Williams expressed an opinion or belief regarding the credibility of child sex abuse victims' allegations.

In distinguishing State v. Jennings, 394 S.C. 473, 716 S.E.2d 91, (2011); State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989); and State v. Dempsey, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), the Court of Appeals in Brown wrote:

In Jennings, our supreme court held the written report prepared by a forensic interviewer regarding her interviews with the victims was inadmissible hearsay

and impermissibly vouched for the victims' credibility because the expert concluded the victims "provided a compelling disclosure of abuse." 394 S.C. at 480, 716 S.E.2d at 94. Both Dawkins and Dempsey involved therapists who actually treated the victims and offered testimony clearly indicating they believed the victims were telling the truth about the allegations of sexual abuse. Dawkins, 297 S.C. at 393–94, 377 S.E.2d at 302; Dempsey, 340 S.C. at 571, 532 S.E.2d at 309–10. Contrary to the experts in those cases, Galloway–Williams (1) was not testifying as a forensic interviewer, (2) never interviewed the victims, (3) did not prepare a report for her testimony, (4) did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations, and (5) did not express an opinion regarding the credibility of the minor victims in this case. Thus, we agree with the State's argument that the cases cited by Appellant are factually and legally distinguishable from this case.

State v. Brown, 411 S.C. 332, 344–45, 768 S.E.2d 246, 252–53 (Ct. App. 2015), abrogated by State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018). Galloway-Williams' testimony in the present case that false denials are more common than false allegations and testimony indicating that children with behavioral problems should be believed is analogous to providing a compelling disclosure of abuse as in Jennings. As in Dawkins and Dempsey, Galloway-Williams in the present case expressed an opinion or belief regarding the credibility of child sex abuse victims' allegations.

Additionally, with regard to the testimony about children with behavioral problems not being believed, the Court of Appeals wrote:

Additionally, there was no evidence that Child had behavioral problems such that others would be less likely to credit her disclosures. Rather, the testimony indicated Child did not exhibit behavioral or emotional problems until she began cutting her arms. Thus, as in Brown, we do not believe Galloway-Williams's general testimony in this case about children with behavioral problems potentially not being believed bolstered Child's credibility. See State v. Cartwright, 425 S.C. 81, 96, 819 S.E.2d 756, 764 (2018) (concluding the independent expert did not improperly bolster the victims' credibility because she never testified she believed the victims; rather, her testimony generally explained the potential reasons why children recant and the behaviors common to sexually abused children).

State v. Acker, 435 S.C. 716, 869 S.E.2d 873, 882 (Ct. App. 2022). The minor witness in the present case began cutting herself in the summer of 2014, seven years after Petitioner separated

from the child's grandmother. (R. p. 12, line 25 – p. 13, lines 1-2). The child was first seen by a pastoral counselor at New Day Counseling Ministries in July of 2014. (R. p. 51, lines 10-22). According to the pastoral counselor, on September 11, 2014, the child alleged abuse that took place at her grandmother's house beginning when she was five years old. (R. p. 52, lines 1-13). At the time of trial in November of 2016, minor witness was seventeen years old. (R. p. 27, lines 1-2). Again, the clear implication from the expert's testimony is that children with behavioral problems, like the witness in this case, should be believed when they make an allegation of abuse.

Galloway-Williams testimony in the present case was not general and went further than her testimony in Brown, as discussed above. The expert testimony in the present case went beyond the testimony from the expert about delayed disclosure and general behavioral characteristics in State v. Cartwright, 425 S.C. 81, 88, 819 S.E.2d 756, 759–60 (2018), where this Court wrote:

As part of its case, the State called Dr. Alicia Benedetto, a clinical psychologist, as an expert in "child sexual abuse dynamics." Over defense counsel's objection, the trial court qualified Dr. Benedetto as an expert in clinical psychology. Dr. Benedetto acknowledged that she had not talked to any witnesses or victims in the case. She explained that "Child Sexual Abuse Accommodation Syndrome" involved patterns of behavior that children engage in that may not make sense to adults. She stated that children often respond to sexual abuse in a different manner than adults. She acknowledged that a child's response, although different from an adult's, is not necessarily indicative of abuse or untruthfulness. She explained that, to maintain the secrecy of the abuse, it was common for an abuser to bribe or buy gifts for the abused children. Dr. Benedetto asserted that manipulation and fear also play roles in maintaining secrecy. Specifically, she testified "[children] may be afraid for their own safety or the safety of siblings or the safety of the other parent in the home." Additionally, she noted that sexual abuse may cause children to "act out" and abuse alcohol or drugs.


When asked about recantations, Dr. Benedetto maintained that "children routinely delay reporting" and any delay was not indicative of whether or not sexual abuse occurred. Dr. Benedetto added "[c]ertainly we're open to the possibility that it is a true recantation, but we also know that many times a child recants because of what happens after they tell. And, so, we want to be sure not to miss those cases."

The testimony from the expert witness in Cartwright, qualified as an expert in clinical psychology not an expert in “child maltreatment and child abuse dynamics,” was limited to general behavioral characteristics. The expert witness in Cartwright did not testify that children with behavioral problems are more vulnerable because they are not believed when they make a disclosure, improperly implying that children with behavioral problems who make allegations of sexual abuse should be believed. The expert witness in Cartwright did not testify that that false denials are more common than false allegations, improperly implying that children do not lie about sexual abuse.

The error in admitting the testimony was not harmless. The State’s case was based on the testimony of the minor and her credibility was a critical factor to be determined by the jury. The State presented no physical evidence. The improper bolstering requires reversal.

CONCLUSION

Based on the above arguments, this Court should reverse the convictions and remand for a new trial.


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This 4th day of April, 2023.