

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

The Honorable Letitia H. Verdin, Trial Judge

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Dec 16 2024

S.C. SUPREME COURT

DAVID QUINTAN JONES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellant Case No. 2024-000090

BRIEF OF RESPONDENT

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PETITIONER’S STATEMENT OF THE ISSUES

I.

Whether the trial court erred in admitting the video recording of the child’s forensic interview when the totality of the circumstances failed to establish particularized guarantees of trustworthiness, as required by S.C. Code Ann. § 17-23-175?

II.

Whether the trial court erred in admitting the testimony of a “blind” expert witness in the field of “child sex abuse dynamics” in light of the expert’s inescapable bias as the CEO of the Julie Valentine Center and when the requirements of Rule 702, SCRE were not met?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

I.

Whether the trial court properly admitted the redacted version of the video recording of the Child's forensic interview after reviewing the factors in S.C. Code Ann. § 17-23-175(A)(1)-(4) and finding that the forensic interviewer conducted a trustworthy interview?

II.

Whether Appellant's argument is largely unpreserved for appeal and the trial court did not abuse its discretion in admitting the expert testimony of Ms. Galloway-Williams as a "blind" expert in the field of child sex abuse dynamics?

STATEMENT OF THE CASE

In April 2021, Petitioner David Quintan Jones was indicted by a Greenville County Grand Jury for five counts of 1st degree criminal sexual conduct (victim under the age of eleven) ("CSC") of his biological daughter. (App., pp. 515–527, Indictments).

On June 5-8, 2023, Petitioner's case was called to trial with the Honorable Perry H. Gravely presiding. Petitioner was represented by William Yarborough Esq., and Christy Sustakovitch and Walker Miller of the 13th Circuit Solicitor's Office prosecuted the case. (App., p. 1).

At the conclusion of trial, the jury returned a guilty verdict as to all five counts. (App. 478-479). Judge Gravely imposed a concurrent sentence of forty-five (45) years on each charge with 1496 days credit for time served. (App., p. 490; pp. 528–537, Sentencing Sheets).

On June 16, 2023, Petitioner, through counsel, filed a Notice of Appeal with the South Carolina Court of Appeals (*State v. David Quintan Jones*, App. Case No. 2023-000987). On June 21, 2023, Petitioner served the Notice of Appeal upon the State by hand delivery and filed a copy with the Greenville County Clerk of Court.

On June 22, 2023, the appeal was dismissed pursuant to Rule 203(b)(2), SCACR for service of the Notice of Appeal upon the State outside of the ten day time frame. Petitioner's subsequent motion to reinstate was denied and the Remittitur was issued on September 7, 2023.

Petitioner, through Counsel, filed a post-conviction relief application on July 31, 2023, seeking a belated direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) on the basis that his appellate rights were not knowingly, intelligently, or voluntarily waived. (App. 538–546). After conferring with Counsel for Respondent, Assistant Attorney General William Joseph Maye, a consent order granting the PCR application for a belated direct appeal was issued

by the Honorable R. Scott Sprouse on January 17, 2024. (App., pp. 547–548). A notice of appeal was accordingly filed with this Court on January 19, 2024. Petitioner filed the Petition for Writ of Certiorari accompanied by the brief pursuant to Rule 243(i)(1), SCACR.

Respondent now submits the Brief of Respondent and will respectfully show the Court:

STATEMENT OF FACTS

The charges arose following allegations of sexual abuse made by Petitioner's eight-year-old daughter ("Child"). At the time the allegations came to light, Child was living with her mother, Marita Jones, her father, Petitioner and her older brother, "Z.J." The family's home had burned down on April 1, 2019, and the family had to live in a hotel for a period of time and later lived with grandparents.

During the time period which the family was living in the grandparents' house, Child told Z.J. that she was being sexually abused. (App., p. 157; p. 192). Z.J. did not tell anyone about what his sister had told him but encouraged her to tell their mother. (App., p. 157; p. 192). When Child did tell Marita and Z.J. that Petitioner was her abuser, the three of them were in their vehicle in a Publix parking lot. (App., p. 290). Petitioner had run inside the store to get groceries and was not inside the vehicle at the time. (App., p. 290). Marita did not tell Petitioner at that time because she wanted to have Child checked out by a doctor, hopeful that a doctor could tell her what was going on. (App., pp. 291-292).

Marita took Child to an early doctor's visit the following Monday morning, under the guise that Child was having issues with her tonsils. (App. 292). Child's pediatrician, Dr. Erin Bhatia, testified that during that visit, Marita and herself talked privately, out of earshot from Child, and that the Child had told Marita that she "had intercourse in various ways," and asked Dr. Bhatia if she could tell if there were any signs of abuse. (App., pp. 119-120). Dr. Bhatia told Marita that she was not specialized in this area to make such a determination, however, upon a brief, cursory exam of the Child's vaginal area, Dr. Bhati testified that she did not see any indications of sexual abuse. (App., pp. 114-115; p. 125; p.p. 128-129). Marita confirms that Child did not hear her conversation with Dr. Bhatia and that though she was crying when talking

with Dr. Bhatia, she had to look strong when she went back into the room with Child. (App., p. 293). At the conclusion of the visit, Dr. Bhatia explained to Marita that she would have to report the allegation. (App., p. 294). As a pediatrician, Dr. Bhatia is a mandated reporter, and she was ultimately the one who reported Child's disclosure of sexual abuse to Department of Social Services (DSS) and authorities. (App., pp. 120-121; pp. 125-126; p. 129; p. 136.) Marita testified that she understood the allegation would have to be reported, but she didn't realize the police and DSS were involved until they contacted her. (App., pp. 294-295).

At around 4:30 pm that same day, DSS Investigator Dyneshia Kilgore arranged a meeting with the family and Greenville County investigators at the site of the former family home to begin their respective investigations. (App., p. 138; p. 295). Up until that point, Child had not disclosed the identity of the person abusing her. (App., p. 141; p. 251; State's Ex. 22). Upon the family's arrival, Greenville County Investigator Shannon McHale first took Child aside to speak with her away from her parents and her brother. (App., pp. 140-141; pp. 249-250). Child did not want to talk about it or reveal the perpetrator's identity because she felt uncomfortable getting anyone in trouble, and so she ultimately lied about a boy on the bus abusing her. (App., p. 195; p. 202; p. 253; p. 257; State's Ex. 22). At Investigator McHale's encouragement, she shortly thereafter gave more specific information, including the identity of the perpetrator. (App., pp. 253-254). Child also disclosed to Investigator Kilgore that she had been abused for the last three years approximately. (App. p. 144; pp. 194-195; p. 198). No arrest was made at that time, and the family was permitted to leave together; but as part of DSS's safety plan, Petitioner was to stay elsewhere and would not have contact with either child. (App., p. 252; pp. 256-257; p. 257; pp. 301-302; State's Ex. 22).

On April 24, 2019, Dr. Mary Ann Croswell performed a chronic sexual abuse exam on Child. Dr. Croswell, who has extensive experience in the “capacity as a child abuse pediatrician,” testified for the State as an expert witness in the field of pediatric child sexual abuse. (App., pp. 209–213). Dr. Croswell explained that a chronic sexual abuse exam is an examination that along with a head-to-toe examination and lab work, thoroughly examines the genital area with use of colposcope, a powerful light and magnification system for photo documentation. (App., pp. 214–215; p. 216–217; p. 219).

Child would not identify to Dr. Croswell the person sexually abusing her when her mother was of out the room. (App., p. 221). Child did not feel comfortable speaking about the topic without her mother with her and only disclosed that she was indeed the victim of abuse and by whom once her mother returned to the room. (App., pp. 221-222; pp. 227-228). Dr. Croswell testified that it was very important to learn the specific type of suspected sexual trauma to guide her during the genitals examination and speaks with the child to gain an independent account and medical history for this purpose. (App., p. 219). Child informed Dr. Croswell of the specific type of physical contact involved in the abuse, including oral, vaginal, and anal penetration, including penile penetration and contact, with the last abuse occurring that same month of April 2019. (App., p. 223).

As for the results, Dr. Croswell found no abnormalities in the examination of Child’s mouth and her throat swab and lab work for sexual transmitted diseases were all negative. (App., pp. 222–223; pp. 226-227). Dr. Croswell testified that Child’s anal/rectal examination and vaginal examination were also normal. (App., p. 224– 232). When asked how often such exams come back “normal, quote unquote” when there is a history of sexual abuse disclosed by the victim, Dr. Croswell opined that multiple studies show that an “overwhelming majority,” even as

high as 80 to 97% of the time, there will be no specific findings or physical evidence of sexual abuse during a genital examination. (App., p. 224-225). Dr. Croswell pointed to several factors to account for these results:(1) the mucosal tissue and nature of the hymen and muscles that make up the genital and anal area, respectively, which can heal rather rapidly, and (2) the victim's perception of the physical contact. (App., pp. 225-226; pp. 233-234). Dr. Croswell was therefore unsurprised that Child's vagina, anus, rectum, etc. showed no evidence or any physical sign that she had been a victim of vaginal and anal sexual abuse. (App., pp. 225-226). On cross-examination, Dr. Croswell reiterated that it was normal and expected to have a normal exam and untornd hymen even when, as was alleged in this case, the victim is a small girl who has been raped umpteen times by a full-grown man for several years starting when she was just five years old. (App., pp. 229-231). For additional support for this position, Dr. Croswell cited a specific study in which a majority of pregnant teenagers were found to have intact hymens. (App., p. 230; pp. 232-233).

Melissa Collins conducted a forensic interview of the Child on May 1, 2019. Ms. Collins testified that a forensic interview is neutral, fact-finding, interview with a child by a trained professional as part of an investigation. (App., p. 361). Ms. Collins testified that during the interview, it is just her and the child in the room with a camera that is explained to the child. (App., p. 362). She testified that she asks the child nonleading, non-suggestive questions and open-ended questions when possible and will clarify with follow up questions if needed. (App., p. 362). Ms. Collins testified that she conducted the interview with Child when Child was eight years old and that her mother brought her to the interview. (App., pp. 362-363). A redacted version of the forensic interview video was played for the jury. (State's Ex. 31).

Shauna Galloway Williams testified as an expert in child sexual abuse dynamics. (App., p. 349). Ms. Galloway Williams testified as to a child's delayed reporting of sexual abuse due to fear as to what may happen after they disclose the abuse, especially if it is a loved one or someone they know. (App., p. 351). She added that sometimes children do not have the words to describe what has happened to them and have no context for the sexual behavior. (App., p. 351). Ms. Galloway Williams testified that it is more common for children to be abused by someone they know, love and trust, and that the confusion from being abused by someone close to them makes it even more challenging to disclose the abuse. (App., p. 353). She identified the concept of grooming, and noted how the abuse can occur during caregiving activities such as bathing or changing clothes, making it hard for a child to comprehend what is happening to them. (App., pp. 354-355). Additionally, she elaborated on grooming, noting that gift giving by the abuser makes the child feels even more responsible for the behavior that's occurred, making it more difficult to tell someone what has happened. (App., p. 356). She also touched on the reasons why children may recant the disclosure of abuse. The child's fear of having to move or leave their home or face some other kind of consequence may lead the child to decide to change their statement (App., pp. 356-357). Ms. Galloway Williams testified that she had never met Child before and that her testimony serves to educate the jury on hallmarks of child sexual abuse. (App., 358).

Marita, Z.J., Child and Petitioner all testified at Petitioner's trial. Child maintained her allegations against Petitioner, and Z.J. testified that he no longer sees Petitioner as his father. (App., p. 148; pp. 183-192). Marita testified that she initially tried to protect Petitioner as well as her children, but after Child began to cut herself and attempted suicide, Marita testified that she now looks back and "hear[s] the stupidity," and has since divorced Petitioner and remarried.

(App., pp. 309-311). Petitioner testified that he did not abuse his daughter and that he loved his family. (App., pp. 382-383; pp. 385-386). He testified that he felt as if investigators did not look into the facts or investigate thoroughly enough to discover the truth. (App., pp. 383-384).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Cutter*, 261 S.C. 140, 199 S.E.2d 61 (1973). The Court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000). On review, this Court is limited to determining whether the trial judge abused his discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998).

The admission or exclusion of evidence is left to the sound discretion of the trial judge. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. *State v. Hamilton*, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct.App.2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

“The standard of review is critical to our analysis of both the trial court's denial of the mistrial motion and its evidentiary rulings.” *State v. Makins*, 433 S.C. 494, 501, 860 S.E.2d 666, 670 (2021). “If the standard of review were de novo, an appellate court could simply rule on the evidentiary and mistrial issues in accordance with its own view of the dynamic faced by the trial court.” *Id.* “However, under the deferential standard applicable here, an appellate court cannot disturb the trial court's rulings unless they lacked evidentiary support or were controlled by an error of law.” *Id.*

ARGUMENT

I. The trial court properly admitted the redacted version of the video recording of the Child’s forensic interview after reviewing the factors in S.C. Code Ann. § 17-23-175(A)(1)-(4) and finding that the forensic interviewer conducted a trustworthy interview.

Issue as Presented at Trial

A forensic interview was conducted and recorded on May 1, 2019, at the Julie Valentine Center by forensic interviewer Melissa Collins. (App., p. 269). During the interview, Child made detailed allegations against Petitioner for several kinds of sexual abuse, including groping, digital penetration, and oral, vaginal, and anal sex. (State’s Ex. 1, Ex. 31).¹

Prior to trial, defense counsel had filed a motion to exclude the video on the basis that the forensic interview lacked the particularized guarantees of trustworthiness required by statute and a hearing outside of the presence of the jury was held. Specifically, counsel argued that forensic interviewer asked the Child leading questions in the interview, rendering the entirety of the interview unreliable. (App., pp. 30–39).

Melissa Collins, who interviewed Child at the Julie Valentine Center, testified in camera regarding her training and experience conducting forensic interviews as well as the interview method utilized. (App., pp. 30–38). Ms. Collins testified forensic interviews involve “rapport building and then transition to the topic of concern, exploring the narrative of the report, if any. And then there’s a closure at the end.” (App., p. 32). Ms. Collins explained that in order to yield the most reliable information, forensic interviews use neutral, non-leading, open-ended questions that if needed, would be “followed by more specific clarifying questions,” which is what she

¹ State’s Ex. 1 comprises the unredacted video recording of the forensic interview and State’s Ex. 31 is the redacted version played for the jury. (App. p. 34; p. 364). *See infra* pp. 18–23 herein.

later called a “closed question necessary for clarification” with a return to open-ended. (App., p. 33; p. 36; pp. 37–38).

After reviewing the video, the Court again heard argument as to its the admissibility as well as any proposed redactions. (App., p. 71). The State argued the following:

The statement was given in response to questioning conducted during an investigative interview, which is required by statute. There’s an audio and a visual recording of the statement that’s been preserved by electronic means, as required by statute. The child is going to be testifying and will be subject to cross-examination about the offense. The State believes and would contend that the totality of the circumstances surrounding this, have a guarantee and trustworthiness to them, Your Honor. And for those different reasons, we would ask Your honor to allow admittance of this forensic interview.

(App., p. 72). In response, the defense argued::

First of all, I believe it’s classic hearsay. But backing up from there Your honor, the child’s going to be available to testify. They can testify to something that’s not - - the State can use to refresh their memory. I do - - although, the State has redacted a good chunk of stuff that was - - which I think was leading or inappropriate statements. However, you want to say that. And they’ve taken those out. But my feeling about the tape in total is that any bit of, you know a person comes talks to a child and they use any form of leading or improper statements, is what I was trying to conduct earlier, that once that starts, it - - it in total, it makes the entire tape no good. Because the child has been prompted, told you know, think about things this way - - and I would just ask the Court, and I know the Court looked at it, I’d ask the Court not to admit the tape.

(App., p. 72-73).

The State submitted proposed redactions to the video that would be published to the jury to prevent any undue influence of the jury – as is within the trial court’s discretion - including Child's statement that her mother told her to tell the truth and the rapport building portion where it is explained to the Child the importance of telling the truth. (App., p. 75). Defense counsel

noted that appropriate redactions had been made but maintained his objection for the record. (App., p. 76).

Over Defense Counsel's objections, the trial court ultimately found the video met the requirements of the statute in light of the portions redacted from the video and was therefore admissible. (App., pp. 68-69; p. 71; pp. 74-76). The trial court explained the ruling and reasoning as follows:

But I just think that maybe the way the statute is written, it specifically allows for not only the testimony but also the forensic interview. Although, there may have been some leading questions in there. I think with some of the redactions that had been provided and also I don't think that they're the type of leading questions that was in the form manipulating and takes away from the trustworthiness of the interview. It clearly - - the factors that I need to look at, I think that they properly established her training and investigative interviews. I think overall the questions as to the event were of a nature that were not leading and were open ended. There's definitely a detail[ed] account of the offense. I think it has an internal coherence, her overall testimony. And I think that overall it has a guarantee of trustworthiness and I'm going to allow it subject to the reactions [sic] [redactions].

(App., pp. 74-75). The redacted version of the video was ultimately played for the jury later on in the trial. (App., pp. 363-364; State's Ex. 31).

Discussion

“Subsection 17-23-175(A) of the South Carolina Code (2014) allows for the admissibility of an out of court statement of a child under the age of twelve if: ‘(1) the statement was given in response to questioning conducted during an investigative interview of the child; (2) an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F); (3) the child testifies at the proceeding and is subject to cross- examination on the elements of the offense and the making of the out-of-court statement; and (4) the court finds, in a hearing conducted outside the presence of the jury,

that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.” S.C. Code Ann. § 17-23-175(A).

“In determining whether a statement possesses particularized guarantees of trustworthiness, the court may consider, but is not limited to, the following factors: ‘(1) whether the statement was elicited by leading questions; (2) whether the interviewer has been trained in conducting investigative interviews of children; (3) whether the statement represents a detailed account of the alleged offense; (4) whether the statement has internal coherence; and (5) sworn testimony of any participant which may be determined as necessary by the court.’” S.C. Code Ann. § 17-23-175(A)(1)-(4).

Petitioner alleges error with the trial court’s consideration of the 4th factor in S.C. Code Ann. § 17-23-175(A), arguing that the totality of the circumstances fails to establish particularized guarantees of trustworthiness. (Petition at 20). Looking to the considered factors that the trial court addressed, the analysis is that of the reliability of the method of the forensic examiner and the application of that method, rather than the believability of the Child. Such a determination is for the jury to decide. *See State v. Reyes*, 432 S.C. 394, 401 853 S.E.2d 334, 338 (2020) (“[T]he credibility of a witness is exclusively for the jury to decide”). Petitioner does not challenge that Ms. Collins was appropriately trained to conduct investigative interviews of children, but that her questions in this particular interview were leading and prompted response from the Child, referencing the following questions:

“Did that stuff happen like some days or every day or something else?”

(Petition at 20).

“Child was asked twice ‘Did he say anything else?’ after she asked whether her father said anything while abusing her.”

(Petition at 20).

“The interviewer asked series of questions attempting to elicit whether her father ejaculated: ‘Did anything ever happen with your daddy's penis? .Like did any...Was there ever anything on his penis?...Was there ever anything like around his penis?...Like, did he ever put anything around it?...Okay, um, did anything ever come out of his penis?’”

(Petition at 20-21).

Ms. Collins testified that she asked opened ended questions when possible, then clarifying questions as needed after that. (App. 362). At trial, defense counsel maintained his objection, though noted that he was not in disagreement with the portions of the video he considered to entail leading questions. The jury does not have a complete understanding of the Child’s testimony if the forensic interview had not been admitted. In fact, Petitioner is now permitted to examine the Child on her statements within the video and her testimony at trial, and able to query her alleged inconsistencies. The inquiry here is on the method used by the forensic examiner, which the trial court found to be a proper method in conducting the interview. Though in an abundance of caution, the trial court requested the State and the defense to agree upon a redacted version identifying the disputed leading questions.

Petitioner also contends that outside influence contributed to the answers she gave in the interview. (Petition at 21). Petitioner notes that:

For instance, Child was the first to refer to what she alleged happened as "sexual abuse" and "sex" in the interview. When asked what "sex" is, Child did not remember but upon being questioned regarding her inability to remember, she did describe it as "Well...when the....well, when a boy who puts his penis in a girl's cauliflower."

(Petition at 21).

When asked what she called “the front part of a female, a girl or a lady, the front part of a female, where you would go to the bathroom,” Child responded that she called it “Cauliflower”

when she was eight years old. (App., p. 184). Upon further questioning of the terms the Child was using in the interview, Ms. Collins queried into the Child's understanding of the terms, to which the Child offered a limited explanation. Whether sexual abuse was discussed in front of the child, or whether she was instructed or coached to say something specific, the purpose of the interview is to allow for the victim to answer questions, and upon further inquiry, explain her answers. Such will give further insight into the nature of the abuse.

Petitioner argues that the trial court erred by addressing the relevant factors in accordance with the redacted video, rather than as a whole. Petitioner specifically contends that the statute does not "permit evaluation of a video with consideration of or subject to the redactions of leading questions or otherwise improper questions by the interviewer." (Petition at 22). However, that is not the case. S.C. Code Ann. § 17-23-175(A)(2) states "an out of court statement of a child is admissible if an audio and visual recording of the statement is preserved in film, videotape or other electronic means, except as provided in subsection (F)." Notably, the end of the statute reads that "[a]fter considering these factors and additional factors the court deems important, the court will make a determination as to whether the statement is admissible pursuant to the provisions of this section." No specification is made to redaction or cropping parts of the forensic interview and leaves the discretion of admissibility with the trial judge.

It is not the within the trial court's discretion to comment on the credibility of the victim, nor on whether the victim's statements in the forensic video are more or less likely true. The jury remains as the fact finder, and it is within their province to determine the credibility of the witnesses in each case. Here, Petitioner comments on the veracity of the Child's statement in the forensic interview, however the issue of credibility is for the jury to hear and determine. The trial court focused on the trustworthiness of the method in which the Child was examined, and

redacted portions that could be considered leading. The trial court notes that the questions do not appear to be manipulative, and the overall nature of the interview was open ended.

Therefore, the trial court did not abuse its discretion by admitting the redacted video into evidence, and properly considered the factors in accordance with S.C. Code Ann. § 17-23-175.

II. Appellant’s argument is largely unpreserved for appeal and the trial court did not abuse its discretion in admitting the expert testimony of Ms. Galloway-Williams as a “blind” expert in the field of child sex abuse dynamics.

Issue as Presented at Trial

By way of a pretrial motion, defense counsel set forth his objections to the admission of testimony from the State’s “blind” expert. Specifically, the witness in question was Ms. Shauna Galloway-Williams, being offered as blind expert in the field of child sex abuse dynamics. (App., p. 65).

Counsel for Appellant asserted that he “always” objects to the use of blind experts, and asserted that he believed there to be “an ongoing battle with – about blind experts. . . Just so you know, I object and I don’t think it’s relevant. I don’t think it – I think it’s much more prejudicial than probative” (App., p. 65, lines 5-12). The State countered the defense’s arguments by noting that the issue of using a blind expert witness for the purposes of child sex abuse dynamics has been established on settled precedent, and specifically referenced *State v. Brown* and its progeny of cases. The State then made clear that Ms. Galloway-Williams satisfied the blind witness categorization as she had never met victim, did not know the case, and was simply being called to educate the jury as to the dynamics of child sex abuses cases, a topic that is outside the general knowledge of the jury. For that purpose, the State argued that Ms. Galloway-Williams’ testimony would be appropriately admitted. In response, Appellant argued as follows:

Your Honor, there is a real argument about it. I think the Court’s aware of numerous cases that are out there. I mean, I don’t know why you need a blind expert to come in here and testify about the dynamics of child sexual abuse. The jury’s being told, these are the charges, this is what is before the court. They’re going to judge the witnesses, they’re going to judge the credibility of those witnesses. They don’t need a expert to come in here and say these are the dynamics of what happens.

...

And what happens over and over again, just like it did last time, is they start asking specific questions that kind of feedback into the – the – into what’s going on in this case. And there’s no point in it, Your Honor. The case should be on its own basis. And all that does is bring an issue in that’s not relevant and it’s not important to how the jury can determine the facts of the case, not some expert’s devine (sic) opinion about these are the dynamics of child sexual abuse.

(App., pp. 67-68). After hearing the arguments of counsel, the trial court noted that the Supreme Court had weighed in and has ruled that such is permissible expert testimony. However, the trial court noted that the specifics would still need to be addressed later during the trial, following objection. (App., p. 68).

In anticipation of Ms. Galloway-Williams soon taking the stand, Appellant renewed his previously stated objections to her providing expert witness testimony. Therein counsel asserted the following: “I think I put it on the record the other day about Ms. Galloway-Williams testimony. And that it’s – it’s not probative to any issue. She just – just discussing psychological opinions. And she couldn’t be talking about this individual case because all that is bolstering the State’s case because she has no personal knowledge of this particular case.” (App., p. 345, lines 9-16). The State responded again, noting that it relied upon the holding in *State v. Brown*, 411, S.C. 332. However, Appellant did not support his argument with any legal authority.

The court again inquired with the State that Ms. Galloway-Williams was in fact a blind expert witness, and the State confirmed such by noting that she has never met the Victim and has never reviewed the case file. No objections to these assertions were raised. The court then confirmed that, based upon *Brown*, it would permit the expert testimony. (App., pp. 345-346).

Ms. Galloway-Williams’ testimony began by noting that she was the current and long-serving CEO of Julie Valentine Center, a non-profit that undertakes the education, care,

treatment, and prevention of child abuse and sexual assault. She then shared her extensive education, training, and work experience in the area of child abuse and assault. At the conclusion of her testimony regarding qualifications, the State offered her as an expert in child sex abuse dynamics. Appellant did not conduct his own *vior dire* as to this expertise or to the discipline in question, but merely reasserted the previously ruled upon objections. The court then qualified her as an expert over the objections raised by the defense, and specifically referenced *State v. Jones* in support of its decision. (App., p. 346-350). Ms. Galloway-William's then provided the jury with an explanation of various topics and their general commonality, with no reference to Victim or her case-specific facts. These topics included: delayed reporting, source of abuse, impact and behavior of non-offending caregivers, duration of abuse, grooming, recantation, and coping behaviors. Ms. Galloway-Williams' ended her direct examination by informing the jury that she had never met with Victim, had not read the case file, and did not possess any knowledge concerning the facts of this case. Cross-examination demonstrated that Ms. Galloway-Williams received a salary for her work as CEO of the Julie Valentine Center and was only aware that Victim had come to the Julie Valentine Center for help.

Discussion

Appellant's arguments on appeal are not preserved for appellate review because Appellant has changed the nature of the appellant arguments raised, versus the objections raised at trial. Regardless, the trial court's ruling to admit the expert testimony was in adherence to existing controlling authority, was supported by the record, and was therefore fully within its proper exercise of discretion. As such, the conviction and sentence of the trial court should be affirmed.

First, and foremost, Appellant's arguments on appeal are not preserved for review. A defendant is not permitted to argue one ground below and another on appeal. *State v. Haselden*,

353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (citing *State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997); *State v. Caldwell*, 378 S.C. 268, 283, 662 S.E.2d 474, 482 (Ct. App. 2008). Appellant’s arguments on appeal assert that Ms. Galloway-Williams’ testimony strayed beyond “blind” expertise and into the category of “treating” expertise. While factually mistaken in light of the record testimony (*infra*), such an argument inherently suggests that Appellant understands blind expert testimony in this field to appropriate admissible, but that Ms. Galloway-Williams’ testimony did not fall within the appropriate parameters established by precedent. The appellate argument goes on to assert that her testimony was not demonstrated to be reliable under Rule 702. Neither argument was raised via objection or otherwise argued to the trial court. Instead, Appellant objected during pretrial matters to the use of a blind expert as being inherently irrelevant (essentially a Rule 401 argument)² and overly prejudicial compared to the probative value (essentially a Rule 403 argument). (App., p. 65; p. 68). To these arguments raised at trial, counsel provided no citation to authority which supported his position. The court then noted that the law supported the admission of blind witness testimony, and essentially provided a preliminary ruling pending the witness being offered as an expert later during trial. (App., p. 68).

As the trial neared conclusion, the State called Ms. Galloway-Williams. Appellant reasserted his previously raised objections, wherein he explicitly conceded that the witness does not have personal knowledge of Victim’s case. (App., p. 345). The State cited to *State v. Brown*, 411 S.C. 332, and noted that this type of expert testimony is permissible. Following the brief arguments of the parties, the trial court specifically inquired that Ms. Galloway-Williams was in fact a blind witness. The State confirmed this by informing the court that she had never met

² Defense counsel even notes that he “always” objects to blind experts in these types of cases, further demonstrating that he is objecting to the nature of blind witnesses and not any particular circumstances of this case.

Victim and never read the case file. Appellant did not raise any objection to these assertions, and the court ruled that the testimony would be admissible, presuming qualification. (App., pp. 345-346).

Ms. Galloway-Williams began her testimony by providing her extensive resume. The record demonstrates that Ms. Galloway-Williams was the CEO of the Julie Valentine Center, a center which provides “prevention, education, advocacy, crisis intervention, and counsel services to anyone who may have been impacted by child abuse and/or sexual assault.” (App., p. 350). Ms. Galloway-Williams testified that she had served as CEO for 15 years, had acquired multiple degrees in associated fields, and possessed more than 25 years of experience in the field of sexual assault care. (App., p. 346-349). *Of note*, Appellant did not conduct any *voir dire* to address concerns regarding the reliability of the science, nor did he object in any way to her qualification as an expert. Appellant likewise did not raise objection to the specific field of expertise in question, under Rule 702. Appellant merely renewed his prior objections. Subject to those objections the court ruled that her testimony was admissible under existing precedent of *State v. Jones*³ and qualified the witness as an expert in “child sex abuse dynamics.” (App., p. 348-349).

In light of the record and the specific objections raised by Appellant at trial, he has abandoned his original arguments under Rule 401 and 403 in favor of new appellant arguments concerning Ms. Galloway-Williams’ appropriateness as a “blind” expert and reliability under

³ The court did not provide specific citation but given the specific subject-matter and the specific witness, it is fairly certain that the court was referencing *State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018).

SCRE Rule 702.⁴ Such are not preserved for appellate review and appellate relief should therefore be denied.

In arguendo, even if Appellant's claims were preserved for review, controlling precedent soundly demonstrates that Ms. Galloway-Williams' testimony was properly admitted within the discretion of the court. *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). First, Ms. Galloway-Williams testified that she had never met Victim, had never read the case file, and did not have any knowledge of the facts of Victim's case. The only knowledge Ms. Galloway-Williams possessed was that Victim had come to the Julie Valentine Center. Contrary to Appellant's arguments, Ms. Galloway-Williams did not offer any testimony concerning Victim's diagnosis or trauma, nor did she provide any opinion testimony or make conclusions as to Victim's case. The lack of any factual connection to Victim, and the lack of any history of treatment of Victim, is more than sufficient to establish Ms. Galloway-Williams as a blind expert. See *State v. Makins*, 433 S.C. 494, 501, 860 S.E.2d 666, 670 (2021) (upholding the decision to deny a mistrial where appropriate blind witness testimony was offered by an expert that had provided treatment and received a disclosure of sexual abuse, but the expert's testimony offered no opinion as to the credibility of victim, nor any discussion of her clinical findings concerning Victim's diagnosis or trauma.) The case at hand is, by considerable degree, a far less contentious case than *Makins* and lacks any circumstances that would diminish the appropriate "blind expert" nature of the testimony provided.

⁴ While the nearly identical nature of *State v. Jones* to this case makes further development of the record unnecessary, *Jones* also specifically instructs that the appropriate procedure to challenge such an area of expertise is to have the testimony proffered and then determine whether all of the 702 requirements have been met. As Appellant failed to object in any way pursuant to rule 702, and with the precedent available, the lack of a proffer further renders the matter unpreserved and unnecessary. *Id.*, at 272, n.1.

Moreover, the trial court’s citation to *State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018) provided an explicit reliance upon precedent that “child sex abuse dynamics” is an appropriate expertise that is beyond the ordinary knowledge of the jury in these types of cases, and that testimony of this nature was reliable. In *Jones*, The Supreme Court reached this ruling despite the defendant’s argument that there was no testimony concerning the witness’s relied upon studies, literature, or peer reviewed research. Instead, the Court noted that:

Though she was admitted generally as an expert in child sex abuse dynamics, Galloway-Williams' testimony concerned two distinct concepts: delayed disclosure by sexual abuse victims and the behavior of nonoffending caregivers. As to the first area, the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized. *See State v. Anderson*, 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015) (“Certainly we recognize that there is such an expertise: this is the type of expert who can, for example, testify to the behavioral characteristics of sex abuse victims.”). Her testimony about delayed disclosure from sex abuse victims fits squarely within this commonly recognized category. However, the behavior of nonoffending caregivers presents a less settled question. Nevertheless, our review of the record indicates the trial judge did not abuse his discretion in finding the subject appropriate for expert testimony.¹ The State explained it was offering Galloway-Williams' testimony to educate the jurors on why a nonoffending caregiver may fail to act after learning sexual abuse was occurring, contrary to what a reasonable person would expect. Finding this testimony to be in a similar category as other behavioral testimony admissible in sexual abuse cases, the trial judge concluded it fell outside the scope of lay knowledge and was therefore admissible.

...

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.

Id. In fact, the arguments relied upon by Appellant are the same as were unfounded in *Jones*, and they are being asserted against the exact same expert and the exact same qualified expertise as was utilized in *Jones*: Ms. Galloway-Williams, as a child sex abuse dynamics. *Id.*, at 270-272. The only apparent distinction here is that Ms. Galloway-Williams' expertise was offered in perhaps a more generalized manner via questioning of "common or uncommon," and where the cross-examination by Appellant was extremely limited and failed to address any subject-matter that brought into question reliability or source authorities. Consequently, Appellant's arguments that the court abused its discretion and that the testimony of Ms. Galloway-Williams was "inescapabl[y] biased", improperly corroborated Victim's testimony, or failed for lack of reference or citation to authorities is both unfounded and directly contradicted by controlling precedent that the trial court explicitly relied upon in its ruling.

There was no abuse of discretion in this case. Therefore, the conviction and sentence of the trial court should be affirmed.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully submits the Court should affirm Petitioner's conviction and sentence.

Respectfully submitted,

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December 16, 2024

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