

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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MAY 05 2014

THE STATE,

RESPONDENT,

SC Court of Appeals

V.

CESAR PORTILLO,

APPELLANT

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 5216

RETURN TO RESPONDENT'S PETITION FOR REHEARING

On April 9, 2014, this Court issued a published opinion affirming Petitioner Cesar Portillo's conviction, after jury trial, of criminal sexual conduct with a minor first degree. On April 24, 2014, pursuant to Rule 221(a), SCACR, both counsel for Petitioner Portillo and counsel for Respondent State petitioned this Court for rehearing. Petitioner argued that the Court misapprehended the highly prejudicial nature of the forensic interviewer's improper vouching testimony in light of the scant evidence of Petitioner's guilt in finding the error harmless. Additionally, Petitioner argued that the Court misapprehended the Rule 702, SCRE argument in regard to both the expert qualification and the testimony in regard to PTSD, finding the arguments unpreserved and

abandoned respectively. Respondent argued that, “To the extent that this Court’s opinion in this case could be construed as a determination that such testimony [forensic interviewer’s testimony regarding coaching, hand gestures and PTSD] constituted improper vouching, the State respectfully submits the court overlooked or misapprehended its argument regarding the admissibility of the testimony of the expert – who was testifying in Appellant’s case in his capacity as an expert in the field of child sexual assault – on those particular matters and petitions the Court for rehearing pursuant to Rule 221(a), SCACR.” (Respondent’s Petition for rehearing pp. 1-2). This Court requested returns from both parties. This return to Respondent’s petition for rehearing follows.

This Court, relying on State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), correctly found that the forensic interviewer’s testimony that the victim was not coached violates the prohibition on indirectly vouching for the minor’s believability and his testimony in regard to hand gestures and PTSD violates the prohibition on opining that the child’s behavior indicated the child was telling the truth. The testimony of the forensic interviewer was not limited to behavioral characteristics or rape trauma and constituted improper bolstering or vouching testimony. Respondent’s petition for rehearing should be denied.

The trial court, over objection, qualified Dr. Donald Elsey as an expert in the area of child sexual assault cases and child sexual assault forensic interviewing. (R. p. 214, line 19 – p. 215, lines 1-8). This Court correctly found that, pursuant to State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the trial court erred in qualifying Dr. Elsey as an expert in the field of forensic interviewing. This Court wrote, “Clearly, under Kromah, the trial court erred in qualifying Dr. Elsey as an expert in the field of forensic interviewing.” State v. Portillo, --- S.E.2d ---, 2014 WL 1385177 (S.C.Ct.App. April 9, 2014). Respondent does not challenge this finding.

Instead, relying on State v. White, 361 S.C. 407, 605 S.E.2d 540 (2004); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 794 (Ct.App. 1999) and State v. Shumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), cases decided prior to the decision in Kromah, Respondent argues that the expert testimony was proper as testimony regarding common behavioral characteristics or rape trauma evidence. Dr. Elsey's opinion that the minor's childlike language indicated that she had not been coached was not testimony regarding common behavioral characteristics or rape trauma evidence. It was, rather, a statement that indirectly vouches for the child's believability and an opinion that the child's behavior indicated the child was telling the truth. Both are prohibited by Kromah. Dr. Elsey's testimony regarding the hand gestures and PTSD symptoms was not testimony regarding common behavioral characteristics or rape trauma evidence but rather a clear violation of the prohibition on opining that the child's behavior indicated the child was telling the truth established in Kromah. The expert's testimony constituted improper vouching testimony.

At trial Dr. Elsey, as an expert forensic interviewer, testified about the RATAC¹ method. (R. p. 219, line 13 – p. 220, 221, lines 1-15). Dr. Elsey testified, “And it gives us an ability to know how the child's going to answer questions, and can they answer questions accurately. If a child at that point gives us all sorts of misinformation, we may stop at that point.” (R. p. 219, line 23 – p. 220, line 1). As there is no evidence that the interview stopped, the only conclusion to be drawn from Dr. Elsey's testimony is that the minor was not providing misinformation and

¹ As noted by the Court in Kromah, 401 S.C. at 356, 737 S.E.2d at 498, n.4, “The title of “forensic interviewer” is a misnomer. The use of the word forensic indicates that the interviewer deduces evidence suitable for use in court. It also implies that the evidence is deduced as the result of the application of some scientific methodology. The exact scientific methodology applied apparently defies identification. The RATAC style of interviewing is not scientific. It merely represents the objectives and topics of discussion between the interviewer and the child. Somehow RATAC is supposed to convert the interviewer into a human truth-detector whose opinions of the truth are valuable and suitable for the jury's consumption.”

Dr. Elsey believed her to be truthful. The testimony is specifically prohibited by Kromah as a statement that indirectly vouches for the child's believability and indicates to a jury that the interviewer believes the minor's allegation.

The State asked Dr. Elsey "And – and I want to focus just a little bit on some of the language that [the child witness] used in – in her disclosure to you – or during that forensic interview. As an expert in the field of – of child-sexual assault cases, what, in your opinion – that description that she used as 'shaking or slapping the privates,' what does that mean to you, in terms of her language?" (R. p. 236, lines 4-10). Dr. Elsey answered, "To me it – she was just telling what she was seeing. She didn't really know what it was. She didn't describe what it – what – what it would be called. She just described something that she said she saw." (R. p. 236, lines 17-20). The State asked the doctor, "In your expert opinion, is there any significance to her use of that type [childlike] of language?" (R. p. 237, lines 11-12). Dr. Elsey testified, "Yes. It appeared to me she, again was just describing what she said she was seeing. She wasn't using language that it seemed somebody else had given to her. It was just what she said she experienced." (R. p. 237, lines 13-16). The State asked Dr. Elsey, "And similarly, when she described what came out of Uncle Cesar's privates as – as 'yellow and smushy' or 'mushy' – I – I couldn't really tell – in – in your opinion as an expert, is there any significance to that description as well?" (R. p. 238, lines 9-13). Dr. Elsey responded, "Yes. Again, she never had a name for it. She just described it." (R. p. 238, lines 14-15).

In regard to the testimony from the expert that the minor had not been coached this Court wrote, "In this case, Dr. Elsey's testimony may violate two of the types of questions now prohibited by Kromah. For instance, Dr. Elsey's testimony that victim was not coached is arguably a prohibited 'statement that indirectly vouches for the child's believability.' See id. at 360, 737

S.E.2d at 500 (prohibiting such testimony by a forensic interviewer).” Dr. Elsey’s testimony indicating that the minor had not been coached is clearly prohibited as a statement that indirectly vouches for the child’s believability. Dr. Elsey’s testimony that the minor’s childlike language indicated that she had not been coached was not only a statement that indirectly vouches for the child’s believability but also an opinion that the child’s behavior indicated the child was telling the truth. The testimony is prohibited by Kromah.

When asked about the significance of hand gestures used by the child witness during the interview, Dr. Elsey testified, “Yes. Again, I think she was just trying to help me understand what she was trying to tell me, because I don’t think she fully understand – understood what she was describing.” (R. p. 237, lines 17 – p. 238, lines 1-2). Dr. Elsey also testified that the minor witness had symptoms of PTSD. Dr. Elsey testified, “There were concerns about her having some behavior changes they’ve noticed since she originally disclosed these things happening: not being able to sleep; some nightmares; affecting her school work, her ability to focus in school.” (R. p. 239, lines 23 – p. 240, lines 1-2). The State then asked, “And – and in your opinion as an expert, what are those symptoms, I guess – what did – what is the significance of those symptoms to you as an expert?” (R. p. 240, lines 3-5). Dr. Elsey answered, “Well, they’re – they’re concerning because they’re disturbing to the child. Is there a connection between what she – what she said happened to her and these? She said there was. She said there was a connection. So as a professional I would want to get help for that child and that family so she could help control those behaviors and not interrupt her sleep, her school, any aspect of her life.” (R. p. 240, lines 6-13). The witness’s testimony went too far.

In regard to the hand gestures and PTSD symptoms, this Court wrote, “Furthermore, Dr. Elsey’s testimony regarding hand gestures and PTSD symptoms may violate the prohibition on

opining: “that the child’s behavior indicated the child was telling the truth.” See id. (prohibiting a forensic interviewer from stated opinion testimony). However, Dr. Elsey’s testimony, as found by the trial court, was overall not as egregious as the type of opinion testimony generally found to be inappropriate vouching.” Egregious or not, the testimony unquestionably constituted improper vouching by opining that the child’s behavior indicated the child was telling the truth. See Kromah.

In the petition for rehearing, Respondent notes that in addition to testifying as an expert in forensic interviewing, Dr. Elsey was also testifying as an expert in the field of child sexual assault. Respondent then relies on cases finding behavioral characteristic and rape trauma evidence admissible. The trial court erred in qualifying Dr. Elsey as expert in forensic interviewing. The fact that he may have been qualified as an expert in child sexual assault does not render the improper vouching testimony admissible. As the Court wrote in Kromah:

Our courts have previously held that “[t]he assessment of witness credibility is within the exclusive province of the jury,” and that witnesses generally are “not allowed to testify whether another witness is telling the truth.” State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012); *see also* L.A. Bradshaw, Annotation, *Necessity and Admissibility of Expert Testimony as to Credibility of Witness*, 20 A.L.R.3d 684 (1968 & Supp.2012) (stating an expert witness should not vouch for the truthfulness of a witness). 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. State v. Hill, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct.App.2011); *cf.* Smith v. State, 386 S.C. 562, 564–65, 689 S.E.2d 629, 631 (2010) (observing the forensic interviewer interjected impermissible hearsay into the trial, which improperly bolstered the victim’s testimony; the forensic interviewer testified that the victim told her that the defendant had sexually assaulted her and that she found the victim’s statement “believable”).

Kromah, 401 S.C. at 358-359, 737 S.E.2d at 500.

The cases relied upon by Respondent in the petition for rehearing were all decided before the Court’s decision in Kromah. Post Kromah, expert testimony indicating that certain behavioral characteristics are consistent with the complainant being the victim of sexual abuse should no longer be admissible because such testimony opines that the minor witness’s behavior indicates that

the minor is telling the truth and indirectly vouches for the minor's believability. Dr. Elsey, however, did not testify that any purported PTSD characteristics were consistent with sexual abuse. Instead, Dr. Elsey indicated that there was a connection between the PTSD symptoms and the minor's allegation. This testimony in regard to the connection between the PTSD symptoms and the minor's allegation is improper because the testimony indirectly vouches for the child's believability and indicates to a jury that the interviewer believes the minor's allegation. The testimony goes far beyond the testimony regarding behavioral characteristics and rape trauma evidence found admissible in the cases decided prior to Kromah and relied upon by the Respondent. Dr. Elsey's other testimony indicating that the minor was not coached and his attaching significance to language, and hand gestures used in the forensic interview does not constitute testimony about behavioral characteristic and rape trauma. Respondent's reliance on cases dealing with behavioral characteristics and rape trauma is misplaced in regard to this testimony as well.

In State v. White, 361 S.C. 407, 605 S.E.2d 540 (2004), a witness qualified as an expert in post traumatic stress disorder testified that the victim's symptoms of nightmares, inability to concentrate and distrust were consistent with a recent trauma sufferer. Finding that the probative value outweighed the prejudicial effect, the South Carolina Supreme Court found that, "[Expert's] testimony is consistent with the probative purpose of admitting rape trauma evidence, i.e., to refute the defendant's contention that the sex was consensual and to prove that a sexual offense occurred." Id. 361 at 415, 605 S.E.2d at 544. The Court also found the expert's testimony cumulative to the testimony of a nurse and a doctor. In the present case Dr. Elsey's testimony was not cumulative and consent was not an issue. Dr. Elsey's testimony that the minor's childlike language indicated that she had not been coached and his testimony in regard to the significance of language and hand gestures used by the minor during the forensic interview is

simply not behavioral characteristic or rape trauma evidence as discussed in White. Instead, the witness's testimony indirectly vouches for the child's believability and improperly indicates that the minor's behavior indicates that she was telling the truth.

In regard to PTSD, Dr. Elsey did not testify that the minor's symptoms were consistent with a recent trauma sufferer as in White. Instead, Dr. Elsey testified, "Well, they're – they're concerning because they're disturbing to the child. Is there a connection between what she – what she said happened to her and these? She said there was. She said there was a connection. So as a professional I would want to get help for that child and that family so she could help control those behaviors and not interrupt her sleep, her school, any aspect of her life." (R. p. 240, lines 6-13). His testimony goes beyond the testimony found admissible in White and clearly violates the prohibition on vouching for the child's believability by improperly indicating to a jury that the interviewer believes the minor's allegation established by the Court in Kromah.

In State v. Weaverling, 337 S.C. 460, 523 S.E.2d 794 (Ct.App. 1999), this Court found that the trial court properly admitted the testimony of a witness qualified in the field of victims of sexual abuse that it was common for victims of past sexual abuse to become offenders themselves. The witness in Weaverling did not testify specifically in regard to the minor victim. Dr. Elsey's testimony was specific as to the minor and goes beyond the testimony about common characteristics of victims of sexual abuse found admissible in Weaverling.

In State v. Shumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), two witnesses testified about behavioral characteristics exhibited by the minor. In Shumpert the Court wrote:

After the rape was reported, the victim was interviewed by Heather Odell from the Department of Social Services and Ruth Strait, a mental health counselor. Both Odell and Strait testified at trial regarding the victim's behavior after the rape.

Odell testified the victim appeared withdrawn and nervous, was tugging at her clothing, and had a difficult time maintaining eye contact at their interview. She described the

victim as being in “a general state of nervousness and apprehension.” Based on her observations, Odell referred the case for crime victim counselling. Odell also testified the victim's behavior was not attributable to normal teenage hormonal changes and she therefore concluded “this was a case of criminal child sexual assault.”

Strait was qualified as an expert “in the field of sexual abuse.” She testified the victim was tearful, nervous, and had fluctuating eating habits, nightmares, lethargy, hypervigilance, and problems with anger and guilt. Strait further testified the victim's behavioral symptoms were typical for a victim of sexual abuse.

Id. 312 S.C. at 505, 435 S.E.2d at 861.

The Court found that Strait was properly qualified as an expert and found there was no issue raised at trial in regard to Odell’s qualification as an expert. The Court then found that the probative value of the rape trauma testimony outweighed the prejudicial effect. The rape trauma evidence in the Shumpert case, describing characteristics observed by the witnesses is specifically allowed by Kromah. Odell’s conclusion, however, that this was a case of criminal child sexual assault would not be admissible pursuant to Kromah and State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct.App. 2012).

Dr. Elsey’s testimony that the minor’s childlike language indicated that she had not been coached and his testimony in regard to the significance of hand gestures used by the minor during the forensic interview is simply not behavioral characteristic or rape trauma evidence as discussed in Shumpert. Dr. Elsey did not observe characteristics of trauma as the witnesses did in Shumpert. Dr. Elsey did not testify that the minor’s PTSD symptoms were typical of a victim of sexual abuse as the expert testified in Shumpert. Instead, Dr. Elsey’s testimony improperly vouched for the credibility of the minor witness.

Respondent’s reliance on United States v. Lukashov, 694 F.3d 1107 (9th Cir. 2012) and United States v. Betcher, 534 F.3d 820 (8th cir. 2008) is also misplaced. In Lukashov the Ninth Circuit Court of Appeals wrote:

The district court permitted Dr. Lorenz to testify about four general characteristics that she looks for in determining whether a child has been sexually abused: (1) spontaneous detail, (2) sexual knowledge, (3) sensory detail, and (4) age-appropriate language. In ruling this testimony admissible, the district court explained that Lorenz could “provide the jury with material that is beyond their general knowledge, specifically with respect to the idea that there are age-appropriate behaviors and language, age-appropriate capacities concerning knowledge around sex, that are significant to a pediatrician in her role.” The district court also let Lorenz give her opinion that T.F.'s medical exam and statements during the evaluation were consistent with her allegations of sexual abuse. The district court limited its ruling by cautioning that Lorenz could “not be asked any question that call[ed] for her to comment on either explicitly or implicitly the inherent credibility of [T.F.] as a witness.”

Id. 694 at 1116. The doctor’s testimony in Lukashov in regard to the characteristics she looks for in determining whether a child has been sexually abused would not be admissible pursuant to Kromah because it indicates to the jury that the interviewer believes the child’s allegation of sexual abuse. While the doctor’s role of determining whether a child has been sexually abused may be a valuable investigative tool for law enforcement, this type of testimony is improper in court before a jury. See Kromah, 401 S.C. at 357, 737 S.E.2d at 499, n. 5. It is up to the jury alone to determine if the minor has been sexually abused. The doctor’s opinion that statements made by the child made during the evaluation were consistent with her allegations of sexual abuse would also be inadmissible pursuant to Kromah.

In Lukashov the Ninth Circuit Court of Appeals then held:

We conclude that the district court did not abuse its discretion in allowing Dr. Lorenz to testify about the characteristics that she looks for when assessing a child victim's story of sexual abuse, and to opine that her evaluation of T.F. was consistent with T.F.'s allegations of sexual abuse. Lorenz's testimony was helpful to the jury because some jurors would not have a general understanding of an eight-year-old's sexual knowledge and vocabulary and the level of sensory detail to look for in a child's allegations of sexual abuse. See Fed.R.Evid. 702(a). By giving her opinion that her medical findings and observations were consistent with T.F.'s allegations of sexual abuse, Lorenz permissibly applied her expertise to aid the jury in understanding the evidence. See Whitted, 11 F.3d [782]at 786; Antone, 981 F.2d [1059] at 1062. Her testimony was limited and did not invade the jury's fact-finding function, as she did not comment on T.F.'s credibility or

state a diagnosis to the jury. See Whitted, 11 F.3d [782] at 786 (holding that doctor's diagnosis of child sexual abuse "went too far").

Lukashov, 694 F.3d at 1116-1117. Dr. Elsey's testimony in the present case goes beyond the testimony, inadmissible under controlling South Carolina law, but found admissible by the Ninth Circuit in Lukashov. Dr. Elsey's testimony was not limited and invaded the jury's fact finding function as he commented on the minor's credibility by testifying about the RATAC method indicating that he would have stopped the interview if the minor had provided misinformation, testifying that she was not coached, attaching significance to the language and hand gestures and indicating that there was a connection between what she said happened and her symptoms of PTSD.

There are two additional important distinctions between Lukashov and the present case. First, in Lukashov spermatozoa matching the DNA profile of the defendant were found in the child's panties. There was no forensic evidence found in the present case. The only physical evidence presented was testimony about some redness between the labial lips. (R. p. 177, lines 9-18). Second, in Lukashov the defendant alleged that the child's mother, with whom the defendant lived and had two children of their own, coached the child to make false allegations against him in order to gain leverage during the breakup of their relationship. No such allegations of coaching were made in the present case. Dr. Elsey, in fact, improperly testified that the minor had not been coached. Respondent's reliance on Lukashov is misplaced.

In United States v. Betcher, 534 F.3d 820 (8th Cir. 2008), a jury found the defendant guilty of 24 counts of production of child pornography, one count of receipt of child pornography and one count of possession of child pornography. In a statement to police, after the police found the pornography, the defendant admitted to possessing and receiving child pornography but denied producing child pornography. At trial the defendant's two young

granddaughters and their three friends testified that the defendant took the photographs of them. The defendant asserted at trial that the young girls took the photos of each other. An expert in child abuse testified about age appropriate sexual behavior, delayed disclosure, and sexual abuse. The defendant challenged the testimony as being irrelevant and more prejudicial than probative pursuant to Federal Rules of Evidence 401 and 403.

In finding no error in admitting the testimony from the child abuse expert the Eighth Circuit Court of Appeals wrote:

Federal Rule of Evidence 702 permits the district court to admit the testimony of a witness whose knowledge, skill, training, experience, or education will assist a trier of fact in understanding the evidence or determining a fact in issue. Kirkie, 261 F.3d at 765. *See* Fed R. Evid. 702. In the context of child abuse cases, a qualified expert can inform the jury as to behavioral characteristics of sexually abused children **in general**. Kirkie, 261 F.3d at 765. In this case, Dr. Levitt's testimony as to delayed disclosure helped the jury understand why the girls did not reveal they had been photographed until they were confronted with the images. Her testimony also helped explain why one granddaughter initially denied any photographs had been taken, and would not disclose who else was involved. Dr. Levitt's testimony regarding age appropriate sexual knowledge and conduct assisted the jury in evaluating the sexual content of the photographs and the victims' testimony as to who directed their poses.

Betcher, 534 F.3d at 826 (emphasis added) . The Court in Betcher found the **general** testimony from the child abuse expert relevant because it educated the jury on issues necessary to their determination of who produced the pornographic photos, the paramount question for the jury. The testimony in Betcher was not challenged as improperly vouching or bolstering the testimony of the minor witnesses.

Dr. Elsey's testimony, on the other hand, was challenged as improperly vouching or bolstering the testimony of the minor witnesses. Dr. Elsey's testimony did not generally inform the jury as to behavioral characteristics of sexually abused children as did the expert's testimony in Betcher. Dr. Elsey's testimony about PTSD is irrelevant and certainly went beyond expert testimony allowed by Rule 702, SCRE, when he indicated there was a connection between the

symptoms and what the minor's allegation. Dr. Elsey's testimony did not educate the jury on an issue to be determined by the jury, other than improperly implying that the minor's PTSD behavioral symptoms indicated she was telling the truth.

In United States v. Kirkie, 261 F.3d 761, 765-766 (8th Cir. 2001) the Court wrote:

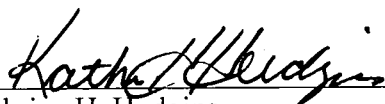
'In the context of child sexual abuse cases, a qualified expert can inform the jury of characteristics in sexually abused children and describe the characteristics the alleged victim exhibits.' United States v. Whitted, 11 F.3d 782, 785 (8th Cir.1993) (citing United States v. St. Pierre, 812 F.2d 417, 419-20 (8th Cir.1987)). While a physician may testify as to whether the medical evidence is consistent with the victim's allegations of sexual abuse, a physician may not opine as to whether the alleged abuse actually occurred or whether the victim is telling the truth. Id. at 785-86 (citations omitted).

Again, Dr. Elsey did not testify about general characteristics in sexually abused children and he did not simply describe characteristics the minor exhibited. Dr. Elsey's testimony far exceeds the behavioral characteristic testimony and rape trauma evidence allowed prior to Kromah. Pursuant to Kromah, expert testimony indicating that certain behavioral characteristics are consistent with being the victim of sexual abuse should no longer be admissible. The testimony in the present case, however, is not limited to behavioral characteristics or rape trauma. This Court correctly found that the forensic interviewer's testimony that the victim was not coached violates the prohibition on indirectly vouching for the minor's believability and his testimony in regard to hand gestures and PTSD violates the prohibition on opining that the child's behavior indicated the child was telling the truth.

CONCLUSION

Respondent mischaracterizes the expert's testimony as admissible behavioral characteristic testimony or rape trauma evidence. Even if this evidence is admissible post Kromah, the expert's testimony in this case did not constitute behavioral characteristic testimony or rape trauma evidence. This Court properly found the testimony improper as vouching or bolstering the credibility of the minor witness. Dr. Elsey's testimony far exceeded the limitations of Kromah and Whitner by offering improper bolstering testimony that invaded the province of the jury as to the determination of the minor witness's credibility. Credibility was a critical issue in the present case given the State offered very little evidence of guilt aside from the testimony and statements of the minor witness. The trial court's error in admitting Dr. Elsey's improper testimony, as an expert forensic interviewer, was not harmless and requires a new trial. See State v. Ellis, 345 S.C. 175, 178, 547 S.E.2d 490, 492 (2001) (An officer's improper opinion which goes to the heart of the case is not harmless.).

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

This 5th day of May, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

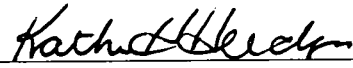
V.

CESAR PORTILLO,

APPELLANT

CERTIFICATE OF SERVICE

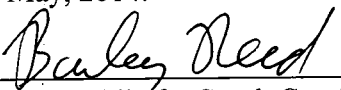
The undersigned attorney hereby certifies that a true copy of the Return to Respondent's Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, this 5th day of May, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of May, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.