STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-212841

THE STATE, ...RESPONDENT

v.

ALBERT BRANDEBERRY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly overruled Appellant's objection to expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Appellant?

2. Whether the trial court properly charged the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated?

STATEMENT OF THE CASE

Albert Brandeberry (Appellant) was indicted at the June 12, 2012, term of the grand jury for Greenville County for lewd act upon a child (2011-GS-23-3885) and criminal sexual conduct (CSC) with a minor – first degree (2011-GS-23-3886). He was represented by Jim Bannister, Esquire, of the Greenville County Bar. The State was represented by Assistant Solicitor Lisa A. Bentley, of the Thirteenth Circuit Solicitor's Office. (R.p.1). On August 6-9, 2012, Appellant proceeded to trial by jury before the Honorable Letitia H. Verdin pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment for CSC with a minor – first degree and fifteen (15) years' concurrent imprisonment for lewd act upon a minor. (R.p.459-462; SROA.p.1-2; R.p.541, lines 4-10). On August 17, 2012, Appellant timely served and filed a "Motion to Reconsider Sentence and Motion for a New Trial." In the motion he renewed his objections from trial, asked the trial court to grant a new trial, and alternatively asked the court to reduce his sentence. On August 23, 2012, the trial court denied the requests. (R.p.458). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

The victim was sexually abused by her grandfather, Appellant, from the time she was seven years old until she was eleven. (R.p.130, line 13-p.150, line 20). She disclosed the abuse to her father, Harold Brandeberry, who ended Appellant's contact with the victim; however, he did not report the abuse to authorities and six months later began sexually abusing the victim himself. (R.p.152, line 10-p.159, line 17). Harold Brandeberry was convicted of CSC with a minor in the second degree for the sexual abuse of his daughter and is currently serving a twelve-year sentence in the South Carolina Department of Corrections. (R.p.278, line 15-p.280, line 9). In the case now on appeal before this Court, Appellant was tried and convicted of CSC with a minor in the first degree and lewd act upon a minor, and is currently serving a twenty-year sentence.

Pretrial

On August 6, 2012, the trial court convened a hearing to address a number of pretrial motions, several of which concerned issues particularly related to cases involving the alleged sexual abuse of a child. (R.p.2-p.34). First, Appellant moved to limit any testimony which would corroborate the victim's account of the sexual assaults to only "the time and place" of the incidents pursuant to Rule 801(d)(1)(D) of the South Carolina Rules of Evidence. The solicitor said the State intended to comply with the limitations in the Rules. (R.p.6, line 23-p.7, line 7). Next, Appellant moved to prohibit "any bolstering of statements of credibility as it relates to the victim's disclosure." He specifically mentioned possible expert testimony about "delayed disclosure," arguing it was "sort of a backhanded way of bolstering credibility by saying, okay, credible cases involve children who report in a delayed fashion. This child reported in a delayed fashion." The solicitor acknowledged the State intended to call Shauna Galloway-Williams as an expert witness

and hoped to have her testify about child sexual abuse trauma, the reasons children delay disclosure, and family dynamics; however, she noted Galloway-Williams would not discuss the "compelling nature of disclosure" because the victim never disclosed the abuse to her. The solicitor then explained that the State also planned to call the victim's therapist as a witness, but would not seek to qualify her as an expert and did not intend to elicit testimony about credibility, believability, or the compelling nature of the victim's disclosure. Appellant said he might have some objections to Galloway-Williams's expertise, whether or not her testimony was needed to assist the trier of fact, and whether the type of evidence being offered could serve as a basis for a reliable opinion under a Rule 702 [SCRE] analysis. The trial judge said she would allow ample time for further arguments and for Appellant to conduct voir dire on Galloway-Williams when she was called as a witness at trial. (R.p.8, line 9-p.11, line 22).

Trial – Opening Statements and State's Case

The following morning, the jury was qualified, selected, and sworn. (R.p.35, lines 1-13; p.36, line 1-p. 37, line 5; p.39, lines 5-17). The trial judge then gave a preliminary jury charge which included detailed instructions on the jury's duty to determine the believability or credibility of each witness. (R.p.39, line 19-p.48, line 24). During opening statements, the solicitor told the jury that because of the secretive nature of child sexual abuse there would be no video of the crime, no fingerprints from a crime scene, and no photographs of injuries, so the testimony from the victim is where they would "hear the details of the crime." (R.p.53, lines 5-11). In response, Appellant told the jury the most pervasive thing they would hear in the case was the fact that the victim was raised in a household with Harold Brandeberry (the victim's father and Appellant's

son), who is a "manipulative, incestuous, child molester." Appellant described several ways Harold Brandeberry had been manipulative and asked the jury to pay attention to testimony about how the allegations "came out" against Appellant, particularly the date and manner in which they were "first revealed." (R.p.60, lines 18-23; p.61, line 22-p.62, line 8).

The State then presented testimony and evidence from a series of witnesses, including the victim. First, the State called Greta McCall, a licensed mental health counselor, to the stand. She testified she met the victim in her professional capacity in November of 2010 and counseled her for over a year. The victim had been referred for counseling in regard to sexual abuse that was perpetrated by her father (Harold Brandeberry). During the course of counseling, at their third session on December 2, 2010, the victim disclosed additional sexual abuse from someone other than her father. The victim told McCall the prior incidents of abuse started when she was six or seven years old and ended around the age of twelve, but McCall did not remember the victim disclosing a place where the abuse occurred. McCall testified the victim said she had disclosed the prior abuse to her father when she was twelve years old. (R.p.64, line 5-p.71, line 6). On re-direct examination, McCall testified the victim was able to clearly distinguish the sexual abuse by two different perpetrators and there was never any blurring between the two. (R.p.87, lines 14-23).

Next, the State called Greenville County Sheriff's Office Investigator Heather Hubert to the stand. Hubert first met with the victim at the victim's house on September 21, 2010, after receiving a report from the Department of Social Services (DSS) of sexual abuse involving her father, Harold Brandeberry. The victim told Hubert her mother,

Kelly Brandeberry, had observed some of that abuse. She initially told Hubert it began when she was about ten years old and lasted until September of 2010, but she later stated it didn't begin until she was twelve years old. The victim described the abuse in narrative form and said it happened both in the family home and inside a camper when they went on camping trips. (R.p.91, line 23-p.99, line 18). Hubert met with the victim a second time on December 10, 2010, after receiving a new report from DSS about sexual abuse involving someone other than her father. The victim told Hubert the abuse happened from age seven up until age twelve, that it occurred in her family home, and that it did not overlap with the sexual abuse committed by her father. (R.p.99, line 22-p.104, line 2).

The State then called Detective Matthew Tuttle from the Finley, Ohio, Police Department. In February of 2011, Tuttle received a report from the Greenville County Sheriff's Office involving a sexual abuse allegation and agreed to conduct a courtesy interview of Appellant in Finley, Ohio. On March 10, 2011, Tuttle went to Appellant's house and met with Appellant and his wife Noreen. He advised Appellant of the allegations and though Appellant initially acted surprised, he later said he had first learned of the allegations a few years earlier from his son Harold. Appellant told Tuttle that after Harold's family moved to South Carolina Appellant would come down during the summers to visit for a couple of days to a week and would sleep on the couch or sometimes in his own room. Appellant denied the allegations and did not admit any wrongdoing. He said the victim was generally truthful and honest, but not about these allegations. Tuttle ended the interview when Appellant became upset and started talking about killing himself. (R.p.117, line 6-p.123, line 16).

Next, the victim took the stand. Now seventeen years old, she described her family and the period of time they lived together in Greenville after moving to South Carolina from Ohio. She then described the sexual abuse she suffered at the hands of Appellant from the time she was seven until she was twelve. The victim explained the abuse occurred when Appellant visited, usually for a week or two during the summer. She testified Appellant slept on a sofa bed while he was visiting, and that during the day she and her younger brother stayed home with him instead of going to day camp like they did the rest of the summer. The victim described escalating sexual abuse over the course of several summers which included Appellant rubbing the victim's vagina through her clothes, Appellant making the victim rub his penis, Appellant performing oral sex on the victim, Appellant making the victim perform oral sex on him until he ejaculated, and Appellant penetrating the victim's vagina with his fingers. She testified the sexual abuse ended the summer before she turned twelve. (R.p.130, line 13-p.150, line 20). The victim testified she was eleven when she finally realized what Appellant was doing was wrong. She reported the abuse to her father in December of 2006, sometime after her 12th birthday but before Christmas. The victim testified her father said he was sorry, said he would take care of it and protect her, and promised it would never happen again. She did not see Appellant again until 2010. (R.p.152, line 10-p.155, line 9). The victim testified she did not tell her mother what Appellant had been doing to her because her father said he had taken care of it. (R.p.155, line 10-p.157, line 17).

The victim testified that during the summer she was twelve, six months after disclosing Appellant's sexual abuse to her father, her father then started molesting her. She said the sexual abuse perpetrated by her father was different from the abuse

perpetrated by Appellant. The victim's father abused her at home in his recliner and in the family camper, neither of which the family owned when Appellant previously came to visit. She testified the sexual abuse from her father came to light when her mother saw them together at a campground and confronted her. The victim first denied the abuse but on September 20, 2010, she broke down and admitted to her mother it was true. She testified she had previously talked to her mother about sexual abuse by her father because he admitted he was having "unclean thoughts" about the victim, but her mother simply promised she would keep them off the recliner and apart. (R.p.157, line 18-p.159, line 17).

The State then called the victim's mother, Kelly Wilkinson, to the stand. Wilkinson explained her married name had been Kelly Brandeberry, but she reverted to her maiden name when her divorce from Harold Brandeberry was finalized in June of 2012. She testified Appellant started coming from Ohio to South Carolina to visit the family in 2001 when the victim was seven. He normally came for a week during the summer and slept on the couch, but also came one year for Christmas. Usually the victim and her younger brother John went to day camp during the summer, but when Appellant came to visit, they would stay home with him instead. Wilkinson didn't observe anything unusual about Appellant's behavior with the victim when he visited. She testified Appellant stopped coming to visit around 2008 when the victim was twelve. Wilkinson testified Harold made all the decisions in their family and she had no say. If she questioned him, he became verbally abusive, calling her "fat" and "bitch." Wilkinson said the children were not allowed to question their father's decisions. She said she never had a "sex talk" with the kids because Harold would not let her. Wilkinson recounted the

September, 2010 camping trip when she discovered her husband and the victim in bed together under the covers. After the trip, she confronted the victim, who first denied any sexual contact but later admitted sexual abuse had been going on for three years. Wilkinson first called her pastor, who then called the police. She testified the victim never disclosed any other sexual abuse besides from her father. (R.p.173, line 19-p.190 line 4). On cross-examination, Wilkinson acknowledged giving a statement to police that Harold and the victim told her Harold had engaged in inappropriate touching with the victim approximately a year before the 2010 camping trip. She said at the time they both apologized, and Harold asked her to hold him accountable by keeping him from ever being with the victim under a blanket. Wilkinson testified Harold promised never to do it again, and she believed him. She said she ultimately decided the best thing for everyone was to deal with the issue within the family. (R.p.195, line 10-p.200, line 23).

Expert Witness – State's Proffer

After Wilkinson completed her testimony, the trial judge excused the jury and asked the solicitor to describe the expert testimony the State sought to elicit from Galloway-Williams. The solicitor said she wanted Galloway-Williams to discuss sexual abuse trauma and how victims cope and respond. Specifically, she sought testimony on: (1) family dynamics and sexual abuse; (2) delayed disclosure; and (3) the escalation of sexual abuse, from confusing touches to actual abuse. The judge asked how the solicitor believed the testimony would assist the trier of fact. The solicitor argued that child sexual abuse is outside the scope of the average person and average juror's knowledge, and that hearing from someone who lives with it and studies it on a daily basis would

help them understand. Relying on this Court's opinion in State v. Weaverling,[1] she argued it was appropriate to have Galloway-Williams offer expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assaults. The solicitor argued the testimony would be relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. The trial judge questioned the propriety of testimony about escalation of sexual abuse and asked how it would not simply be testimony to suggest Appellant acted in conformity with a typical pedophile's behavior. The solicitor argued testimony about such "grooming" behavior and a pedophile's initial innocuous touching, such as a massage or back rub, could confuse a child to the point he or she would not disclose actual abuse when it eventually occurred, which relates to delayed disclosure. The court asked Appellant to respond. (R.p.206, line 18-p.210, line 11).

Appellant complained that Galloway-Williams was not actually treating the victim in this case and would be basing her opinions on experiences with other child sexual assault victims who gave common descriptions of patterns of abuse. He argued this would amount to her implicitly saying that since Appellant's actions fit into this pattern, he also committed sexual abuse. Appellant argued he did not think the concept of escalating abuse required expert testimony because the jury would understand confusing touching. He then argued that each and every one of the topics the State wanted Galloway-Williams to discuss was equivalent to testimony that the victim was credible simply because she disclosed in a way that is typical of sexual assault victims. Appellant argued that such testimony essentially corroborates the victim's testimony, and

[1] 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).

should not be allowed. The trial judge took the matter under advisement. (R.p.210, line 12-p.213, line 17).

The following morning, still outside the presence of the jury, the State sought to qualify Galloway-Williams as an expert witness. Galloway-Williams testified she is Executive Director of the Julie Valentine Center, a child abuse and sexual assault recovery center in Greenville. Before becoming Executive Director she served as Clinical Director, and before that was a forensic interviewer both for the center and the Department of Mental Health. She holds a bachelor's degree in psychology, a master's degree in counseling, and is a Licensed Professional Counselor. Galloway-Williams testified she serves as the vice president of the board for the SC Network of Children Advocacy Centers and serves on the board of the SC Professional Society on the Abuse of Children. She is required to complete at least 22 hours of continuing education credits every two years and has personally taught seminars and courses on expert witness testimony relating to trauma. She has been working specifically with children and adolescents for eleven years and has completed approximately 145 hours of training specifically related to child sexual abuse and forensic interviewing. Galloway-Williams testified the matters relating to child sexual abuse that she intended to testify about in Appellant's trial had been published in professional journals. She said the principles have been subject to peer review, are uniformly accepted and recognized within the field of sexual abuse counselors and professionals, and are reasonably relied upon in the field of child sexual abuse and treatment. Based on this testimony, the State sought to qualify Galloway-Williams as an expert in "child sexual abuse and treatment" and asked for a

finding that her treatment and knowledge are reliable under Rule 702, SCRE. (R.p.216, line 1-p.223,line 17).

Appellant asked if the trial court would have the State proffer the testimony before Appellant conducted voir dire so he could cross-examine Galloway-Williams on both her qualifications and her proposed testimony as it relates back to her expertise. The judge agreed and the State proffered the expert testimony. Galloway-Williams testified she did not previously know the victim in this case and met her for the first time in the elevator that morning. She said she had never discussed the factual allegations in Appellant's case with anyone, had never counseled the victim, and had no personal knowledge regarding the case. Galloway-Williams explained "delayed disclosure" or "delayed reporting" as the behavioral phenomenon of a child not telling anyone immediately after a sexual assault. She said it is very common for children not to tell right away, with the primary reason being fear, either that something bad will happen to them, or something bad will happen to someone else when they tell. Galloway-Williams also described "piecemeal or partial" disclosure as a common characteristic where child sexual abuse victims fail to reveal all of the facts at the initial disclosure, and reveal more details the more comfortable they get with the person they have told. She testified that when it comes to delayed disclosure, it could be days, weeks, or years before a child may tell. Galloway-Williams went on to describe other factors that contribute or relate to delayed disclosure in child sexual abuse victims including lack of sexual language or knowledge, inability to provide a complete chronology of events, accidental disclosure, family dynamics, and access to someone they trust. (R.p.223, line 18-p.234, line 12).

On cross-examination, Galloway-Williams acknowledged she does not actually conduct the research projects on which she relies, but noted the Julie Valentine Center tracks and maintains data which is shared with national groups who compile statistics which are used in the research. She explained that all of her testimony about delayed disclosure and behavioral traits of child sexual abuse victims was based on this research, her training, and her own extensive experience with victims. (R.p.234, line 13-p.258, line 5). After hearing the testimony, the trial court ruled it would not allow the State to ask whether it was more common for a family member to sexually abuse a child, or whether a child who has been victimized once is more likely to be a victim again later, and noted the State did not ask any questions about "grooming." (R.p.258, lines 8-24). Appellant argued:

> Thank you, Judge. Going back to my general opposition to this testimony, it simply is that in describing what is couched in terms of this happens oftentimes, this is common and then ultimately overlaying in her opinion that that is common and normal for children to disclose in various ways, shapes or forms, it is a backhanded way of saying that because [the victim] fits into what we understand to be kind of the common way that children disclose, then she should be given credibility. Although the expert is not saying that, that's the clear inference that's trying to be drawn. That's where I think we get into bolstering of the child's disclosure is improper.

(R.p.259, lines 4-18). Ultimately, the trial court referred to State v. Weaverling and ruled that a properly qualified expert in the field could give testimony as to the effects of sexual abuse on a child, including delayed disclosure. The court found such information might not be in the common knowledge of the jurors and decided to allow testimony in Appellant's case with regard to delayed disclosure. The solicitor noted the State was okay with the ruling and wanted to simply "keep it clean and above water without question." (R.p.259, line 19-p.260, line 16).

Trial - Continued

Following the ruling on Galloway-Williams, the jury returned to the courtroom and the trial resumed. The State called the victim's fourteen-year-old brother John Brandeberry to the stand. He testified he remembered Appellant coming to their house to visit over four or five summers before he stopped visiting three years before the trial, and he described how Appellant drove a red truck, bought them toys, and slept on the couch. (R.p.264, line 18-p.271, line 3).

Next, the State called Harold Brandeberry to the stand. Harold testified he currently lived in the Turbeville Correctional Facility where he was serving a twelve-year sentence for CSC with a minor – second degree, for the sexual abuse of his daughter, the victim in this case. He identified Appellant sitting at the defense table in the courtroom and said Appellant, who is his father, visited the family at least once a year up until 2007. Harold testified that in December of 2006, the victim disclosed to him that she had been sexually abused. He said the victim told him the abuse had been going on for three years, in their house. Harold reported the disclosure to his wife, Kelly, and they agreed to confront the person the victim said had abused her. He testified he and Kelly confronted Appellant by way of a telephone call, and that their pastor was present during the call; however, Harold did not report the abuse to the police or anyone else. Harold testified he started his own sexual relationship with the victim after the disclosure, when she was 14 or 15 years old. (R.p.275, line 3-p.289, line 1).

Finally, the State called Galloway-Williams to the stand and presented nearly identical testimony about her qualifications as was previously proffered. Over Appellant's objection, the court qualified Galloway-Williams as "an expert in the area of

child sexual abuse and treatment." (R.p.301, line 17-p.309, line 11). The trial judge then gave the following instruction:

> Ladies and Gentlemen, normally, a person cannot give opinion testimony. Normally, when a person testifies, he or she must testify as to something they have seen, heard, smelled, something like that. However, there is an exception when someone is qualified because of education or experience they are permitted to give their opinion in certain areas if the Court qualifies them that way. This witness will be qualified in the area of child sexual abuse and treatment to give opinion testimony in that area. That does not mean that you must accept the opinion but it is evidence for you to use in any way you see fit.

(R.p.309, lines 11-23).

Galloway-Williams then testified she did not previously know the victim in this case and met her for the first time in the elevator that morning. She said she had no personal knowledge regarding the case and explained her purpose in testifying was to share information about child sexual abuse and the dynamics associated with it, which are not of common knowledge. Galloway-Williams explained "delayed disclosure" as referring to children not telling about sexual abuse right away. She said in her experience, delayed disclosure was very common, with the primary reason being fear that something will happen to them, something will happen to someone else, or that they will not be believed. Galloway-Williams also described "partial or piecemeal disclosure" as a common characteristic where child sexual abuse victims fail to reveal all of the facts at the initial disclosure, and reveal more details the more comfortable they get with the person they have told. Galloway-Williams testified child victims do not necessarily reveal events in chronological order because they do not really understand the concept of time, and instead relate events to a specific event or period in their lives, like a birthday or holiday, or when they had a particular teacher. She testified children also often lack

sexual language which makes it difficult to describe what has happened to them. Galloway-Williams testified that when a family member is committing the abuse it often makes it harder to disclose because there are positive relationship characteristics aside from the abuse. She testified that when the perpetrator is in the home the child also may not feel safe to disclose the sexual abuse, but that a variety of factors can prompt disclosure after a period of time, such as an upcoming visit from the abuser, or someone simply asking. (R.p.309, line 24-p.316, line 6).

On cross-examination, Appellant used various studies and statistics to challenge Galloway-Williams' personal experiences and opinions about delayed disclosure. She acknowledged one study which concluded that within known responses, 42 percent of the children disclosed the abuse in less than 48 hours, and only 15 percent delayed disclosure by more than six months. Appellant also successfully elicited testimony regarding "parental indoctrination" and "suggestibility" to support the defense theory that Harold Brandeberry was a manipulative child molester who coerced or convinced the victim to make up the abuse allegations against Appellant. (R.p.316, line 7-p.329, line 5). On re-direct examination, Galloway-Williams testified that even though the study showed 42 percent of sexually abused children did not delay disclosure, this mean 58 percent delayed to some extent. (R.p.329, line 7-p.330, line 25). At the close of Galloway-Williams' testimony, the State rested and the jury exited the courtroom. Appellant moved for a directed verdict and renewed his previous motions and objections. The trial court denied the motion for a directed verdict and noted all prior objections. (R.p.333, line 7-p.334, line 9).

Discussion of Jury Charges

Appellant next asked to address the trial court's jury charges. He said he had been looking at the charge and noticed it included language from South Carolina Code Section 16-3-657 in regard to uncorroborated testimony of a victim of a CSC case. Appellant advised the trial judge he was aware of State v. Rayfield,[2] which contradicts his position, but nevertheless argued the language should not be charged. He argued it violated a number of substantial rights, including his due process right, his right to a fair and impartial jury, and his 6th Amendment right to a fair and impartial jury. Appellant further noted that pursuant to Rayfield, the trial court is not required to charge section 16-3-657 and that it is simply a permissible charge. He asked the trial court not to charge the statutory language. The trial judge took the matter under advisement. (R.p.335, line 13-p.337, line 5).

Trial – Appellant's Defense

Appellant elected not to testify; however, he called one witness in his defense. Appellant's wife, Noreen Brandeberry, testified that almost from the beginning of their marriage in 1983 Appellant was unable to perform sexually because he could not get an erection. She testified he got a penile implant in the late 1980's, which he had for nine or ten years, but later had it removed after suffering severe pain in his testicles and discovering it had erupted. Noreen claimed the implant was removed in 1996 and Appellant never got a replacement. She testified after the implant was removed, he was again unable to get an erection despite their attempts, and that he did not have a penile implant between 2001 and 2006. Noreen testified she once saw the victim's father, Harold Brandeberry, spank the victim and throw her on the couch when he got mad. She

[2] 369 S.C. 106, 631 S.E.2d 244 (2006).

testified the victim seemed to be very scared of her father and that the victim's mother also seemed scared of Harold. (R.p.339, line 19-p.354, line 21).

After the defense rested, the trial court found: "So far as charging 16-3-657, your objection is noted on that. And I'll make your motion a part of the record. But I'm going to deny your motion. I'm going to charge that code section anyway." Based on the ruling, Appellant asked the court to consider additional charges about the burden of proof and defining "uncorroborated." The judge took the additional requests under advisement. (R.p.364, line 2-p.370, line 1). The following morning the trial court announced it was including Appellant's requested definition of uncorroborated in its entirety in the jury charge.

The parties then made closing arguments. Appellant thoroughly presented his theory of defense, arguing that Harold Brandeberry was the only person to sexually abuse the victim. He argued Harold is a manipulative, controlling pedophile who had "five years to work on [the victim] before it comes out where she believes that [Appellant] is the one that molested her." He focused on the delay in the victim's disclosure to attack her credibility, noting it was "10 times the amount of time that we were talking about in this study." Appellant also attacked the victim's credibility by arguing Harold's sexual abuse must have had an impact on her ability to perceive things accurately and that the sexual trauma impacted her perception of reality. (R.p.373, line 24-p.405, line 11). Next, the solicitor argued the State's theory of the case. She briefly mentioned Galloway-Williams and her general explanation of delayed disclosure, but spent the vast majority of her closing argument discussing testimony from the victim and other fact witnesses. (R.p.405, line 12-p.432, line 7).

Prior to the jury charge, Appellant renewed his motion in regard to the instruction on uncorroborated testimony of a witness. (R.p.433, lines 9-13). The trial judge then charged the jury on the law, starting with an instruction that it was the jury's exclusive duty to determine the facts. The trial court then charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, reasonable doubt, direct evidence, circumstantial evidence, and credibility of witnesses. (R.p.434, line 1). In regard to expert witnesses, the trial judge specifically charged the jury as follows:

> The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for a witness we call an expert witness. A witness who, by education and experience, has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons for that opinion.
>
> You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education or experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

(R.p.441, line 24-p.442, line 20). In regard to the victim's testimony, the trial court charged:

> The testimony of a victim need not be corroborated and the defendant may be convicted solely on the basis of the victim's testimony. The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore inconsistencies. Furthermore, it does not mean that you should accept without question the victim's testimony and ignore evidence that conflicts with her version of events. In other words, this term does not permit you as jurors to violate your obligation to consider all the evidence.

(R.p.445, lines 14-25).

At the end of the charge, Appellant noted he had no objection to the charge other than what he already raised. After deliberating for approximately an hour and a half, the jury found Appellant guilty as indicted. He was sentenced to twenty (20) years' imprisonment for CSC with a minor – first degree, and fifteen (15) years' concurrent imprisonment for lewd act upon a minor. (R.p.459-462; SROA.p.1-2; R.p.451, lines 4-10).

ARGUMENT

I.

The trial court properly overruled Appellant's objection to expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Appellant.

Appellant argues the trial court erred in qualifying Galloway-Williams as an expert in "child abuse and treatment" and in allowing her to explain "delayed disclosure" as a common behavioral characteristic of sexually abused children, because her testimony "improperly bolstered the child's testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits."[3] He contends this was a deliberate "approach" taken by the State to circumvent the principles explained by our supreme court's recent decision in State v. Kromah.[4] Appellant claims "the purpose of this testimony was to improperly bolster the credibility of the accusing witness" and that "it was meant to have the jury conclude that the accusing witness in this case fit into a 'normal pattern' of an abused person." (Brief of Appellant p.10) (emphasis added). The State disagrees and submits Appellant's argument is entirely without merit.

Appellant seems to argue that during the trial in his case, the State was attempting to introduce the exact type of testimony prohibited by Kromah by simply using a title

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[3] Appellant seems to confuse "bolstering" with "vouching." While vouching constitutes an expression of belief or opinion regarding the credibility or honesty of a witness, bolstering is an implication by the government that the testimony of a witness is corroborated by evidence known to the government but not known to the jury. United States v. Jones, 471 F.3d 535, 544 n.3 (4th Cir. 2006).

[4] 401 S.C. 340, 737 S.E.2d 490 (2013). In Kromah, the supreme court held a forensic interviewer should not have been allowed to testify about a "compelling finding" of child abuse, as that was the equivalent of stating the child was telling the truth. Id. at 359, 737 S.E.2d at 500. In a footnote, the court also found: "we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate."

other than "forensic interviewer" to describe Galloway-Williams' expert qualifications, and then eliciting testimony from her that would effectively vouch for the victim's credibility. Nothing could be further from the truth. There is simply no evidence in the record to suggest the State was engaged in any sort of strategy, "backdoor attempt," or deliberate "approach" to elicit improper testimony intended to vouch for the victim's credibility. To the contrary, the solicitor repeatedly expressed her intent to limit all of the State's evidence, including testimony from expert witness Galloway-Williams, to that which was appropriate and admissible under the South Carolina Rules of Evidence. The State submits Appellant has either mistakenly misrepresented the solicitor's motivations to be something other than what is reflected in the record, or he has intentionally manufactured nefarious motivations where none exist. In either case, there is no support for the contention that the State was deliberately seeking to bypass or otherwise avoid the precedent recognized by our supreme court in Kromah. Therefore, the State initially asks this Court to reject Appellant's contentions about the State's motives outright, and to rebuke Appellant for advancing such an argument.

Additionally, the State asks this Court to find the substance of Appellant's argument to be without merit. The State submits the trial court acted well within its broad discretion in qualifying Galloway-Williams as an expert in child sexual abuse and treatment based on her education, training, and experience. Furthermore, the trial court properly admitted Galloway-Williams' expert testimony pursuant to Rule 702, SCRE, because she possessed technical or specialized knowledge which could assist the jury to understand the evidence or determine a fact in issue, namely what delay in the victim's

disclosure might say about her credibility, particularly in light of each party's theory of the case. Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). Indeed, the qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support. Morris, 376 S.C. at 206, 656 S.E.2d at 368; Gooding, 326 S.C. at 252, 487 S.E.2d at 598; Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995).

Analysis / Discussion

The South Carolina Rules of Evidence provide:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Thus, there are several criteria that must be considered by the court in deciding whether to admit expert testimony. First, the court must determine if the scientific, technical, or specialized knowledge purportedly held by the witness would assist the jury to understand the evidence or determine a fact in issue. Second, the court must determine if the proffered witness in fact possesses scientific, technical, or specialized knowledge to qualify as an expert. Finally, in its general gatekeeping function, the court must determine if the type of expert testimony offered meets a "reliability threshold" for the jury's ultimate consideration. White, 382 S.C. at 269-70, 676 S.E.2d at 686; State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011).

There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge. State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App.1997); State v. Goode, 305 S.C. 176, 406 S.E.2d 391 (Ct. App.1991). The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. Wilson v. Rivers, 357 S.C. 447, 593 S.E.2d 603 (2004). For a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony. Mizell v. Glover, 351 S.C. 392, 570 S.E.2d 176

(2002); Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App.2003); see also Gooding, 326 S.C. at 252-53, 487 S.E.2d at 598 ("To be considered competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'"). An expert is not limited to any class of persons acting professionally. Gooding, 326 S.C. at 253, 487 S.E.2d at 598; Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002). There is no exact requirement concerning how knowledge or skill must be acquired. Honea v. Prior, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988).

The party offering the expert testimony has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); Henry, 329 S.C. at 274, 495 S.E.2d at 466. Generally, however, defects in the amount and quality of the expert's education or experience go to the weight to be accorded the expert's testimony and not to its admissibility. Id.; Morris, 376 S.C. at 203, 656 S.E.2d at 366; Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 580, 560 S.E.2d 624, 629 (Ct. App. 2001).

During the State's proffer, Galloway-Williams testified extensively about her experience, education, training, and continuing education. She explained the matters relating to child sexual abuse that she intended to testify about in Appellant's trial had been published in professional journals. She said the principles have been subject to peer review, are uniformly accepted and recognized within the field of sexual abuse counselors and professionals, and are reasonably relied upon in the field of child sexual

abuse and treatment. The trial court found that she qualified as an expert under Rule 702 because her specialized knowledge and opinions could assist the jury to understand the evidence or determine a fact at issue. The State submits that in light of the evidence proffered, the trial court clearly did not abuse its discretion in qualifying Galloway-Williams as an expert in child sexual abuse and treatment.

As to the general nature of the testimony, behavioral characteristics of child sexual assault victims are not within the range of knowledge of the average juror. Indeed, Galloway-Williams had acquired by study or practical experience such knowledge of such behavioral characteristics as would enable her to give guidance and assistance to the jury in resolving a factual issue which was beyond the scope of the jury's good judgment and common knowledge, namely whether, as argued by Appellant, the victim's delayed disclosure eroded her credibility. Henry, supra; Goode, supra. In other words, Galloway-Williams was better qualified than the fact finder to form an opinion on the subject of the victim's behavior as a reaction to sexual assault. This is all that was required for the trial court to qualify her as an expert and to admit her testimony. Ellis, supra; Mizzell, supra; Gooding, supra. It was simply a judgment call made in the trial court's sound discretion. It does not rise to the level of an abuse of that discretion simply because Galloway-Williams based some of her knowledge on personal experience. Indeed, nothing in the record shows the trial court's decision was based on a factual conclusion without evidentiary support. Morris, supra; Gooding, supra; Seuss, supra. Furthermore, because Galloway-Williams was properly qualified as an expert witness, any further objections to her qualifications went to the weight of her testimony, not its admissibility. Martin, 391 S.C. at 515-16, 706 S.E.2d at 44. Finally, the State

submits that in light of the trial court's jury charge on expert witnesses, Galloway-Williams' testimony could not have been given greater weight than that of a lay witness and, therefore, could not have been unduly prejudicial to Appellant. State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009).

For all of these reasons, the State submits the trial court's qualification of Galloway-Williams as an expert in child sexual abuse and treatment, and admission of her testimony under Rule 702, SCRE, did not constitute an abuse of discretion. Additionally, to the extent Galloway-Williams should not have been qualified as an expert, Appellant suffered no prejudice from her testimony because she described general behavioral characteristics and did not directly or indirectly vouch for the victim's credibility.

As to the specific testimony about delayed disclosure, the State submits the trial court likewise exercised appropriate discretion in allowing testimony concerning delayed disclosure. Expert testimony on common behavior by victims of sexual abuse is allowed in South Carolina. Weaverling, 337 S.C. at 474, 523 S.E.2d at 794 ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible."). "Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault." Id., at 475, 523 S.E.2d at 794; see also People v. Carroll, 740 N.E.2d 1084, 1090 (N.Y. 2000) ("We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]"). Indeed, this kind of testimony has been accepted by courts in many

jurisdictions for approximately a quarter of a century. The Supreme Court of Hawaii observed in 1990 that "sexual abuse of children 'is a particularly mysterious phenomenon.'" State v. Batangan, 799 P.2d 48, 51 (Haw. 1990) (quoting State v. Castro, 756 P.2d 1033, 1044 (Haw. 1988)).

The Hawaii Supreme Court quoted with approval the observations of other courts as follows:

> While jurors may be capable of personalizing the emotions of victims of physical assault generally, and of assessing witness credibility accordingly, tensions unique to trauma experienced by a child sexually abused by a family member have remained largely unknown to the public. . . . [T]he routine indicia of witness credibility – consistency, willingness to aid the prosecution, straight forward rendition of the facts – may, for good reason be lacking. As a result jurors may impose standards of normalcy on child victim/witnesses who consistently respond in distinctly abnormal fashion.

Batangan, at 51 (quoting State v. Moran, 728 P.2d 248, 251 (Ariz. 1986) and State v. Middleton, 657 P.2d 1215, 1222 (Or. 1983) (Roberts, J., concurring)).

The Batangan court further observed:

> Child victims of sexual abuse have exhibited some patterns of behavior which are seemingly inconsistent with behavioral norms of other victims of assault. Two such types of behavior are delayed reporting of the offenses and recantation of allegations of abuse. Normally, such behavior would be attributed to inaccuracy or prevarication. . . . In these situations it is helpful for the jury to know that many child victims of sexual abuse behave in the same manner. Expert testimony exposing jurors to the unique interpersonal dynamics involved in prosecutions for intrafamily child sexual abuse . . . may play a particularly useful role by disabusing the jury of some widely held misconceptions . . . so that it may evaluate the evidence free of the constraints of popular myths.

Batangan, at 51-52 (citations and internal quotation marks omitted). The Minnesota Supreme Court found: "Background data providing a relevant insight into the puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children." State v. Myers, 359 N.W.2d 604, 610 (Minn. 1984).

The Alabama Criminal Court of Appeals found that an expert's testimony on delayed disclosure based on her specialized knowledge was admissible and "clearly assisted the jury to understand the evidence presented" regarding the victim's ten year delay in disclosing abuse. W.R.C. v. State, 69 So.3d 933, 939 (Ala. Crim. App. 2010) (noting "other jurisdictions have held similar testimony to be admissible in child-sexual-abuse cases"). The New Jersey Supreme Court declared the following: "There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS [Child Sexual Abuse Accommodation Syndrome] identifies or describes behavioral traits commonly found in child abuse victims." State v. J.Q., 617 A.2d 1196, 1206 (N.J. 1993) (finding testimony about CSAAS is admissible to show victim displayed symptoms of child abuse or to explain delayed disclosure or recantation, but not to establish guilt or innocence).

The State called Galloway-Williams as an expert because the victim disclosed the sexual abuse to others several years after it first occurred. Generally, "[e]xpert testimony that abused children often delay reporting the abuse . . . informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused." Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. App. Ct. 2003). Further,

"[D]isclosure in child abuse cases is generally delayed because of coercion, guilt, or some other reason, [and thus] there will be no physical evidence to corroborate the victim's allegations. Therefore . . . expert testimony will . . . assist the jury in understanding the evidence." People v. Beckley, 456 N.W.2d 391, 402 (Mich. 1990). Galloway-Williams's testimony focused primarily on the occurrence and reasons for delayed disclosures in victims of child sexual abuse, information typically beyond the knowledge of a lay juror. See State v. Carpenter, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (finding expert testimony on delayed disclosure is "clearly instructive and helpful to the jury in understanding the evidence since the nature of the sexual abuse of children places lay jurors at a disadvantage"). "Indeed, the majority of states permit expert testimony to explain delayed reporting, recantation, and inconsistency . . . ." People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011). The trial court did not abuse its discretion in admitting this testimony as it is clearly admissible under Weaverling and case law from the majority of jurisdictions that goes back decades.

Appellant argues Galloway-Williams' testimony nevertheless should have been excluded as prejudicial to him because the effect of this testimony on the jury was to show that the victim acted in the same manner as other children had acted who had been sexually abused. Appellant's argument lacks merit because Galloway-Williams's testimony was not prejudicial to Appellant in the manner that Appellant argues.

Under Rule 403, SCRE, in order for evidence to be excluded as prejudicial, the probative value of the evidence must be substantially outweighed by the danger of unfair prejudice. "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732

S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be unfair prejudice before the evidence will be excluded. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229.

"The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). Thus a trial court's decision regarding the comparative probative value and prejudicial effect of relevant evidence will be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.", State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In the instant case, for the reasons discussed above, the testimony had tremendous probative value. As is obvious to those involved in the criminal justice system, the phenomenon of delayed disclosure by sexually abused children really does exist. Appellant fails to show otherwise. However, this information is not within the knowledge of laymen and is proper general information to provide in the form of expert testimony.

On the other hand, Galloway-Williams' testimony cannot be found to have been unfairly prejudicial to Appellant's case. As explained above, Galloway-Williams'

testimony was admissible and proper in this case. Galloway-Williams did not compare the victim to other child victims during her testimony. In fact, Galloway-Williams never even mentioned the victim's case while testifying. The Supreme Court recently explained: "[I]t 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. Kromah, 401 S.C. 340, 358-59, 737 S.E.2d 490, 500 (2013). In this case Galloway-Williams did not opine on Victim's veracity. Accordingly, this case is readily distinguishable from Kromah and other cases where the expert testimony was found to be unfairly prejudicial to the defendant. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding the admission of the forensic interviewer's written report into testimony to be error because the reports stated that each child "provided a compelling disclosure of abuse by appellant."); State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012) (finding the forensic interviewer's "opinion as to whether she thinks something happened [was] nothing other than her inadmissible opinion as to whether the victim was telling the truth").

Accordingly, Galloway-Williams' expert testimony was proper in this case because it aided the trier of fact in understanding the victim's behavior in the case. Galloway-Williams was not required to know or testify to any facts of this case in order to testify as an expert. The testimony also was not unfairly prejudicial to Appellant because the testimony was presented in a general manner and never touched upon the victim's truthfulness or even discussed the victim's version of events.

Further, given the corroborating testimony regarding the time and place of the sexual abuse and the trial court's charge to the jury to give no greater weight to the

testimony of the expert, any error from admission of Galloway-Williams' testimony was harmless. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). For all of these reasons, Appellant's conviction should be affirmed.

II.

The trial court properly charged the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated.

Appellant argues the trial court erred by instructing the jury that it could convict him based on uncorroborated testimony from the victim. He contends the jury instruction improperly emphasized the testimony of one witness, was an improper charge on the facts, and was fundamentally unfair and infringed on his right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitutions. The State disagrees and submits Appellant's arguments are without merit because they have previously been raised to and rejected by both this Court and the South Carolina Supreme Court.

Standard of Review

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009).

Analysis / Discussion

Section 16-3-657 of the South Carolina Code (2003) provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." These criminal statutes, which encompass various forms and degrees of criminal sexual conduct, include criminal sexual conduct with a minor in the first degree for which Appellant was charged. S.C. Code Ann. § 16-3-655 (Supp. 2013). In State v.

Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), our supreme court held it was not error to charge § 16-3-657 to the jury as long as the charge as a whole comports with the law. Id. at 509, 435 S.E.2d at 863. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), the court recognized Schumpert and concluded that while a trial judge is not required to charge § 16-3-657, when the judge chooses to do so, giving the charge does not constitute reversible error when "this single instruction is not unduly emphasized and the charge as a whole comports with the law." Id. at 118, 631 S.E.2d at 250. Because the jury in Rayfield was thoroughly instructed on the State's burden of proof and the jury's duty to find the facts and judge the credibility of witnesses, the court determined the trial judge fully and properly instructed the jury on those principles, and found the charge on § 16-3-657 was not error. In State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011) this Court recognized the continuing validity of Schumpert and Rayfield, and the propriety of the § 16-3-657 jury charge.

The arguments made by Appellant are essentially the same as those raised and rejected by our courts in Rayfield and Orozco. As in those cases, the trial court here properly charged the jury that the State had the burden of proving the defendant guilty beyond a reasonable doubt, that the jury had the duty to find the facts and determine the credibility of the witnesses, and that the jury should disregard any indication from the trial judge that she might believe a fact to be true or not. Thus, the trial court thoroughly instructed the jury on the State's burden of proof and the jury's duty to determine the facts and judge the credibility of witnesses. Further, the only charge given by the trial court in regard to the corroboration of the victim's testimony was in regard to CSC with a minor and was that "the testimony of a victim need not be corroborated and the defendant

may be convicted solely on the basis of the victim's testimony." (R.p.445, lines 12-16). Thus, this single instruction was not unduly emphasized. Not only was it not emphasized, it was tempered by the additional instruction specifically requested by Appellant that:

> The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore inconsistencies. Furthermore, it does not mean that you should accept without question the victim's testimony and ignore evidence that conflicts with her version of events. In other words, this term does not permit you as jurors to violate your obligation to consider all the evidence.

(R.p.445, lines 16-25). Given these instructions as a whole, there was no reversible error and appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: _____
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
June 10, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-212841

THE STATE,.....RESPONDENT

v.

ALBERT BRANDEBERRY,.....APPELLANT.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: _____
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
June 10, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-212841

THE STATE, ...RESPONDENT

v.

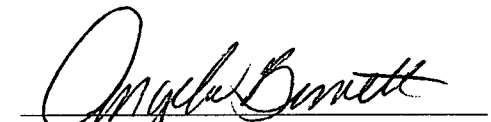
ALBERT BRANDEBERRY, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 10, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 10th, day of June, 2014.



Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

June 10, 2014

Robert M. Dudek, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

Re: The State v. Albert Brandeberry
Appellate Case No. 2012-212841

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 9 enclosed)
Victim Services