STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2014-001507

THE STATE,

Respondent,

vs.

MARK STANLEY PETERS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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To the extent Peters is challenging the reliability or subject matter of the expert's testimony, that argument was not properly preserved for appellate review because it was never raised to the trial judge. Moreover, the Court of Appeals' determination the reliability argument was not preserved for appellate review is the law of the case because it was not challenged by Peters in his petition for rehearing. However, regardless of any issue preservation concerns, the Court of Appeals correctly affirmed the trial judge's decision to qualify Galloway-Williams as an expert and permit her to testify in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse because she was qualified to testify on that subject based on her education, knowledge, training, and experience and because her testimony was beyond the common knowledge of the typical juror, could have assisted the jury in understanding the evidence presented during trial, and met a threshold level of reliability.

STATEMENT OF THE CASE

Procedural History

In May of 2009, Petitioner Mark Stanley Peters was arrested following investigations into allegations he sexually assaulted a thirteen-year-old girl and an eight-year-old girl during separate incidents. In May of 2010, the Pickens County Grand Jury indicted Peters for two counts of committing or attempting to commit a lewd act upon a minor child. On December 13, 2011, a jury trial was commenced in the Pickens County Court of General Sessions with the Honorable G. Edward Welmaker, circuit court judge, presiding. At the conclusion of trial, the jury convicted Peters as indicted. Following the verdict, the trial judge sentenced Peters to concurrent terms of imprisonment of 155 months for each of the convictions. Peters then timely filed and perfected an appeal.

On appeal, the Court of Appeals unanimously affirmed Peters' convictions in an unpublished opinion. State v. Peters, Op. No. 2014-UP-187 (S.C. Ct. App. filed May 7, 2014). Thereafter, Peters petitioned the Court of Appeals for rehearing, and the petition was denied. Peters then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Beginning on Friday, April 24, 2009, Victim 1, a thirteen-year-old girl, spent the weekend with her best friend, Gabby P. ("Gabby"), and Gabby's family. (R. pp. 3-5; p. 39). On Monday, April 27, 2009, Gabby's mother, Jacqueline Peters ("Jacqueline"), dropped Victim 1 and Gabby off at school in the morning. (R. p. 19). At the end of the school day, Victim 1 returned to her home and called her stepmother, Ruth Jones. (R. pp. 19-20; p. 40). During the call, Jones became concerned Victim 1 was upset about something and began to question her to find out if anything had occurred. (R. pp. 19-20; p. 41). As part of the questioning, Jones asked Victim 1 if something happened with

Gabby's father, Petitioner Mark Stanley Peters, and Victim 1 began crying without verbally responding to the question.[1] (R. pp. 41-42).

Concerned, Jones quickly went home and was greeted at the door by Victim 1.[2] (R. p. 20; pp. 42-43). Victim 1 hugged her, began to cry, and disclosed she was sexually abused by Peters after she went to sleep at his home that weekend. (R. p. 43). In response, Jones quickly reported the incident to law enforcement, and Deputy Eddie Burgess of the Pickens County Sheriff's Office responded to Victim 1's home and took a statement from her about the incident. (R. p. 20; pp. 43-44; pp. 84-85; pp. 98-99). Thereafter, Detective Rita Burgess of the Pickens County Sheriff's Office began an investigation into Victim 1's allegations, and the investigation culminated with Peters' arrest on May 8, 2009. (R. pp. 83-87).

Following Peters' arrest, Shane Gunter, Peters' next-door neighbor, saw on a news program Peters had been arrested for the sexual assault. (R. p. 49; p. 76). He then located a news article on Peters' arrest and read it to each of his daughters individually to make sure nothing similar had happened to them. (R. pp. 76-78). Three of his daughters did not react to the article, but his eight-year-old daughter, Victim 2, began to cry and seemed to be withholding something. (R. p. 50; p. 78). Gunter then asked Victim 2 if something like what was described in the article had happened to her when she visited Peters' home, and Victim 2 confirmed it had. (R. pp. 78-79). In response, Gunter contacted the Pickens County Sheriff's Office, and Detective Burgess came and spoke with Victim 2. (R. p. 79; pp. 88-89). During Detective Burgess' conversation with Victim 2, Victim 2 disclosed she had been sexually abused by Peters in his basement in

[1] Peters was fifty-three years old at the time. (R. p. 105).

[2] Around that time, Jones began to continuously receive phone calls from Jacqueline and Gabby, and they left messages requesting Victim 1 call them back. (R. p. 45).

November or December of 2008. (R. pp. 51-55; pp. 89-90). Based on Victim 2's disclosure, Peters was again arrested. (R. pp. 90-91).

Subsequently, Peters was indicted for two counts of committing or attempting to commit a lewd act upon a minor child, and he proceeded to trial. (R. pp. 239-242). During trial, Peters' victims testified about the incidents involving Peters with Victim 1 testifying first. (R. pp. 4-18; pp. 51-58). During her testimony, Victim 1 stated she spent the weekend with Peters' family and returned to Peters' home after church on a Sunday night in April of 2009. (R. pp. 4-5). When she arrived back at Peters' home, Victim 1 testified Peters, who was intoxicated, wrestled with Gabby, tried to wrestle with her, and tickled her. (R. p. 5). Subsequently, Victim 1 indicated she went to sleep in Gabby's bedroom on a pallet on the floor. (R. p. 5; p. 7). After midnight, Victim 1 testified she woke up and discovered Peters kneeling beside her and touching her vagina and stomach on the outside of her clothing. (R. pp. 8-10; p. 21; p. 31). When she woke up, Victim 1 indicated Peters asked her if she wanted him to leave or to come back, and she told him to leave her alone. (R. p. 10). Victim 1 stated Peters then ran his fingers through her hair and temporarily left the bedroom before returning several minutes later. (R. pp. 10-11). When he returned, Victim 1 testified he stood naked in the doorway to the bedroom and made an inappropriate remark. (R. p. 11). Victim 1 stated Peters then asked her if she wanted to go downstairs with him, but she did not respond. (R. p. 11). Thereafter, Victim 1 indicated Peters left the bedroom and went back downstairs, and she quickly went to Jacqueline's bedroom and told her what Peters had done. (R. pp. 12-14). After she disclosed the abuse, Victim 1 testified Jacqueline responded Peters had done it to her as well, told her to get into her bed with another of Peters' daughters, MacKenzie P. ("MacKenzie"), and went downstairs. (R. pp. 14-15). Shortly thereafter, Victim 1 stated

Jacqueline returned to the bedroom and said she was sorry it happened. (R. p. 15). After that, Victim 1 indicated Peters came into the bedroom, argued with Jacqueline, offered to take her home, and used the bathroom in the bedroom with the door open. (R. pp. 15-17). Victim 1 testified Peters then told her that he was sorry if she thought anything happened before picking up MacKenzie and going back downstairs. (R. pp. 16-17). Subsequently, Victim 1 indicated she tried to sleep through the rest of the night, went home after school on the following day, revealed the sexual abuse to her mother, and spoke with a law enforcement officer about the incident. (R. pp. 18-20). Thereafter, on cross-examination, defense counsel questioned Victim 1 about her failure to call out to Jacqueline when Peters was sexually assaulting her, her failure to ask Jacqueline to take her home on the night of the incident, her failure to immediately call her parents from Peters' home, her failure to reveal the abuse to anyone at her school before going home, and her failure to try to move away from Peters during the incident. (R. pp. 24-27; pp. 32-33).

Subsequently, Victim 2 testified about another incident involving Peters. (R. pp. 51-58). Regarding the incident, Victim 2 indicated she was sleeping on an air mattress in Peters' basement with MacKenzie in November or December of 2008 when she woke up and found Peters kneeling beside her. (R. pp. 51-53; p. 55). As he knelt beside her, Victim 2 testified Peters touched her chest and vagina underneath and over her clothing, kissed her chest, and attempted to kiss her vagina. (R. pp. 53-55). Victim 2 indicated she pretended to be asleep until Peters eventually stopped, Peters ran his hand through her hair, and then Peters left the room. (R. pp. 54-56). After Peters left, Victim 2 testified she ran upstairs to her sister, who was sleeping in Gabby's bedroom. (R. p. 56). Victim 2 indicated she did not reveal the abuse to her sister but was crying and scared and wanted to go home. (R. pp. 57-58). After she went into Gabby's room, Victim 2 stated

Peters and Jacqueline came into the room and her sister asked them if they could go home. (R. p. 58). However, Victim 2 indicated Peters and Jacqueline refused, telling them it was too dark and their parents were probably asleep.[3] (R. p. 58). Subsequently, Victim 2 testified she revealed the abuse when her father asked her about it. (R. p. 59). Thereafter, on cross-examination, defense counsel questioned Victim 2 about her failure to reveal the abuse to her parents or anyone else shortly after it happened, her failure to call her parents from Peters' home, and her failure to wake up MacKenzie during the incident.[4] (R. p. 59; p. 63; p. 65).

Following the victims' testimony, the State offered the testimony of Shauna Galloway-Williams, the executive director of a child abuse and sexual assault recovery center, in regard to common behavioral characteristics exhibited by sexually-abused minors. (R. p. 136). At the outset of her testimony, Galloway-Williams indicated she was a licensed professional counselor, did clinical work and conducted forensic interviews at the center, was trained in working with families and children where there were allegations of abuse and neglect, had a bachelor's degree in psychology and a master's degree in counseling, and had received over one-hundred hours of forensic interviewing training. (R. pp. 137-138). She further indicated she previously testified in court as an expert in counseling juvenile victims of sexual abuse over forty times. (R. p. 138). However, she noted she did not meet with or conduct forensic interviews of either of Peters' victims. (R. p. 137).

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[3] Victim 2's sister also testified during trial and confirmed her sister came into Gabby's bedroom crying hysterically around 1:00 a.m. on the night of the incident and said she wanted to go home. (R. pp. 68-69; p. 74). Victim 2's sister stated she then repeatedly asked Peters and Jacqueline to let them go home but her requests were refused. (R. p. 69).

[4] Similar to his cross-examination of Victim 2, defense counsel questioned Victim 2's sister about her failure to simply leave Peters' home, her failure to use the phone in Peters' house to call her parents, and her failure to go home and get help for Victim 2. (R. pp. 71-73).

Thereafter, the State moved for Galloway-Williams to be qualified as an expert in the field of counseling juvenile victims of sexual abuse, and defense counsel objected, arguing:

> I do not believe she's qualified to testify in this case, because she's not able to assist this jury with any question before them, as she has not met any of the people involved in the case. And as I believe the standard for a juror – I'm sorry, for an expert, they may testify as to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the fact at issue. She is not aware of any of the evidence in the case or any of the facts in issue.

(R. pp. 138-139). In response, the solicitor asserted the witness could assist the jury by helping them understand why juveniles delay disclosure, partially disclose, and accidentally disclose in sexual abuse cases. (R. p. 140). The trial judge then qualified Galloway-Williams as an expert, ruling:

> I find that the witness is qualified as an expert and has the requisite knowledge and skill that qualifies an expert in child counseling, based upon her education and experience. I further find that the subject matter in this particular case would be beyond the ordinary knowledge of a juror requiring expert explanation of some of the factors that will certainly come into play in this particular case. I believe the testimony being offered would be reliable based upon the expertise of the witness.

(R. p. 140).

Once she was qualified as an expert, Galloway-Williams instructed the jury on the manner in which sexual abuse was typically disclosed by juvenile victims. (R. pp. 141-153). Specifically, she explained approximately eighty percent of sexually-abused juveniles in substantiated cases of abuse did not immediately disclose the abuse for a variety of reasons, including due to fear, guilt, responsibility, and shame. (R. pp. 141-144; pp. 154-155). She further indicated accidental and partial disclosures were common and that juvenile victims were generally more confident in making detailed disclosures when they had time and space separating them from their abuser. (R. pp. 145-148).

Additionally, Galloway-Williams explained the concept of grooming, noting abusers frequently used things like giving gifts, giving special attention, and tickling to develop trust with a child and to get the child comfortable with physical contact. (R. pp. 151-152). Finally, she explained the timing of a child's disclosure did not alone establish if the child was telling the truth. (R. p. 155).

Subsequently, the State rested its case, and Peters elected to testify in his own defense. (R. p. 157; p. 159). During his testimony, Peters acknowledged Victim 1 and Victim 2 frequently slept over at his home but denied sexually assaulting either of the girls. (R. pp. 160-161; p. 167; pp. 169-170; p. 173). Regarding the incident with Victim 1, Peters stated Victim 1 spent time with the family on a weekend in April of 2009 and behaved normally. (R. pp. 161-163). On Sunday, Peters stated he drank beer throughout the day, the girls went to church with neighbors, the girls returned home and went to bed, he said goodnight to them, and then he went downstairs. (R. pp. 164-165). At some point after he went downstairs, Peters stated his wife came down to talk to him, but Peters denied either speaking with anyone else until the next morning, seeing Victim 1 or his daughters again after they went to bed, approaching or touching Victim 1, or entering his daughter's bedroom unclothed. (R. pp. 165-167). Regarding the incident with Victim 2, Peters indicated Victim 2 was sleeping over one night when he heard sounds coming from upstairs. (R. pp. 170-171). In response, Peters testified he went upstairs to see what was happening and was informed by his wife Victim 2 had experienced a bad dream. (R. p. 171). Peters indicated his wife then handled the situation, and he denied performing any inappropriate act on Victim 2 at any time. (R. p. 171; p. 173). He further noted Victim 2 did not make any allegations against him until he was arrested for the incident involving Victim 1. (R. pp. 171-172).

Thereafter, on cross-examination, Peters admitted wrestling with the victims. (R. p. 175). He further admitted he went upstairs after his wife came down and spoke to him following the incident with Victim 1. (R. p. 180). After speaking with his wife, Peters stated he went upstairs, argued with his wife in her bedroom, and used the bathroom with the door open. (R. pp. 181-182). In contradiction to his earlier testimony, Peters also indicated he spoke with Victim 1 and asked her if she wanted to go home.[5] (R. p. 183). However, Peters denied apologizing to Victim 1 at that time.[6] (R. p. 184).

Following Peters' testimony, the defense rested its case. (R. p. 189). Thereafter, defense counsel and the solicitor presented their closing arguments to the jury. (R. pp. 191-225). During defense counsel's closing argument, defense counsel attacked the credibility of the victims by pointing out Victim 1 did not disclose the sexual abuse when she had an opportunity to do so at school and Victim 2 did not immediately disclose the abuse, did not tell her sister or parents about the abuse sooner, did not go home immediately after the abuse occurred, and did not provide a fully-detailed statement when she initially disclosed the abuse. (R. p. 192; p. 199; pp. 201-202; p. 204). Subsequently, at the conclusion of trial, the jury convicted Peters as indicted. (R. p. 237). Following the verdict, the trial judge sentenced Peters to an aggregate term of imprisonment of 155 months, and Peters appealed. (R. p. 238).

On appeal, the Court of Appeals affirmed Peters' convictions. (App'x pp. 1-3). In affirming, the Court of Appeals addressed Peters' trial argument asserting Galloway-

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[5] Notably, Peters also contradicted his earlier testimony regarding his drinking habits. (R. p. 165). Specifically, on direct examination, Peters claimed he did not "drink alcohol at all" before admitting he drank beer "on a regular basis" on the weekends. (R. p. 165). Thereafter, on cross-examination, Peters admitted he was a regular drinker and had a few beers every day. (R. p. 177).

[6] Earlier during trial, Jacqueline testified both she and Peters apologized to Victim 1 after she reported the incident with Peters. (R. pp. 118-119).

Williams was not qualified as an expert because she had not met the victims and knew nothing about the facts of the case and determined the trial judge committed no error in qualifying her as an expert, instructing:

> Williams testified she was a licensed professional counselor, with a bachelor's degree in psychology and a master's degree in counseling. She stated most of her training included working specifically with children and families in situations where there were allegations of abuse and neglect. She attended training seminars regarding sexual abuse survivors and worked on multiple cases involving sexually abused children.
>
> Although Williams testified she conducts forensic interviews as a part of her job duties, she confirmed she did not conduct a forensic interview in this case. Furthermore, the State did not proffer her as an expert forensic interviewer of children, and Peters repeatedly argued Williams did not conduct a forensic interview. The State did not call Williams as a forensic interviewer to lend credibility to the victims' allegations. In fact, Williams never directly or indirectly commented on the credibility of the victims' accounts of the alleged sexual assaults.
>
> Instead, Williams's testimony simply explained the effects a sexual trauma may have on a child's subsequent behavior following the trauma. We find the probative value of her testimony outweighed any alleged prejudicial effect. Moreover, the fact that Williams had never met either of the victims in this case, nor had she met any of the parties involved, goes to the weight of her testimony, not its admissibility.

(App'x pp. 2-3) (citations and footnote omitted). Furthermore, the Court of Appeals determined Peters' appellate claims regarding the reliability of Galloway-Williams' testimony were not properly preserved for appellate review because Peters did not object to the reliability of Galloway-Williams' testimony during trial. (App'x p. 3).

ARGUMENT

To the extent Peters is challenging the reliability or subject matter of the expert's testimony, that argument was not properly preserved for appellate review because it was never raised to the trial judge. Moreover, the Court of Appeals' determination the reliability argument was not preserved for appellate review is the law of the case because it was not challenged by Peters in his petition for rehearing. However, regardless of any issue preservation concerns, the Court of Appeals correctly affirmed the trial judge's decision to qualify Galloway-Williams as an expert and permit her to testify in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse because she was qualified to testify on that subject based on her education, knowledge, training, and experience and because her testimony was beyond the common knowledge of the typical juror, could have assisted the jury in understanding the evidence presented during trial, and met a threshold level of reliability.

Peters contends the Court of Appeals erred in affirming the trial judge's decision to qualify Galloway-Williams as an expert and permit her to testify in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse. In support of that contention, Peters maintains Galloway-Williams should not have been qualified as an expert because she did not personally meet with or interview the victims or other parties involved with his case and because the subject matter of her expert testimony was allegedly not reliable. Initially, to the extent Peters is challenging the reliability or subject matter of Galloway-Williams' expert testimony, the Court of Appeals correctly concluded that argument was not properly preserved for appellate review because it was never raised to the trial judge. Moreover, Peters is now precluded from raising that argument on certiorari because he did not challenge the Court of Appeals' finding the argument was unpreserved in his petition for hearing. However, even if that argument was somehow properly preserved for appellate review, the Court of Appeals' correctly affirmed the trial judge's admission of Galloway-Williams' expert testimony because she possessed expert qualifications based on her education, knowledge, training, and experience regardless of whether she met with or interviewed

the victims or other parties involved in Peters' case and her testimony regarding the common behavioral characteristics exhibited by juvenile victims of sexual abuse was sufficiently reliable to warrant its admission. For those reasons, the trial judge did not abuse his discretion in qualifying Galloway-Williams as an expert and admitting her testimony, and the Court of Appeals properly affirmed the trial judge's ruling. Peters' petition for a writ of certiorari should be denied.

A. Correctness of the Court of Appeals' Issue Preservation Finding and Applicability of the Law of the Case Doctrine

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). If a party does not properly raise an issue during trial in accordance with those issue preservation requirements, that party is procedurally barred from raising the issue on appeal. State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Similarly, if a ruling or decision is not challenged or appealed, an objection to the ruling or decision is waived, and the ruling or decision becomes the law of the case. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (finding unchallenged and unappealed rulings are the law of the case). Significantly, the law of the case doctrine is applicable to issues raised on appeal, and a ruling or decision of the Court of Appeals becomes the law of the case if it is not challenged in both a petition for rehearing submitted to the Court of Appeals and in a petition for a writ of certiorari submitted to the Supreme Court. See Rule 242(d)(2), SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the

petition for writ of certiorari as a question presented to the Supreme Court."); cf. Moseley v. All Things Possible, Inc., 395 S.C. 492, 495, n. 4, 719 S.E.2d 656, 658 (2011) ("That finding [of the Court of Appeals] is the law of the case, for the Moseleys did not seek certiorari on that issue."); South Carolina Dep't of Soc. Servs., 393 S.C. 387, 393, 712 S.E.2d 452, 456 (2011) ("Because these rulings [of the Court of Appeals] have not been challenged, they are the law of the case.").

In the case sub judice, Peters contends on certiorari the Court of Appeals erred in affirming the trial judge's qualification of Galloway-Williams as an expert because the subject matter of her expert testimony was not based on scientific, technical, or specialized knowledge and was not sufficiently reliable. However, just as the Court of Appeals found, Peters did not raise such a contention to the trial judge. Instead, during trial, Peters simply contended Galloway-Williams was not **personally** qualified to testify as an expert because she had not met with any of the people involved in the case and was not aware of any evidence or facts in the case.[7] Significantly, because Peters did not challenge the subject matter or reliability of Galloway-Williams' testimony during trial, Peters was precluded from doing so for the first time on appeal. See, e.g., State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (holding a party cannot argue one ground in support of a motion during trial and then another ground in support of the motion on appeal). For that reason, the Court of Appeals correctly found Peters' appellate argument in regard to the subject matter and reliability of the expert testimony was not preserved for appellate review. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997)

[7] Specifically, defense counsel argued: "I do not believe she's qualified to testify in this case, because she's not able to assist this jury with any question before them, as she has not met any of the people involved in the case. And as I believe the standard for a juror – I'm sorry, for an expert, they may testify as to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the fact at issue. She is not aware of any of the evidence in the case or any of the facts in issue." (R. pp. 138-139).

("Appellant is limited to the grounds raised at trial."); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**." (emphasis added)).

Now, on certiorari, Peters appears to be contending the Court of Appeals erred in finding his argument regarding the subject matter and reliability of the expert's testimony was not preserved for appellate review. Significantly though, Peters did not challenge the Court of Appeals' issue preservation ruling in any manner in his petition for rehearing submitted to that court. (App'x pp. 4-10). Accordingly, notwithstanding the fact the Court of Appeals' issue preservation ruling was correct, that ruling – even if it was wrong – is the law of the case and cannot properly be challenged on certiorari. See State v. Barroso, 328 S.C. 268, 271, 493 S.E.2d 854, 855 (1997) ("This holding [of the Court of Appeals] was not challenged by the State, and therefore is the law of the case."). Peters' petition for a writ of certiorari should be denied.

B. Propriety of the Qualification of Galloway-Williams as an Expert

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Id. at 445-446, 699 S.E.2d at 175. "The

qualification of a witness as an expert falls largely within the discretion of the trial judge." State v. Myer, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

> 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. Before admitting expert testimony, the trial judge must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 514, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

A witness can properly be qualified as an expert where "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, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). In determining whether a witness' knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467. Instead, an expert can become sufficiently qualified to be able to provide

an opinion helpful to the trier of fact in many ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). "[D]efects in the amounts 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." Henry, 329 S.C. at 274, 495 S.E.2d at 467.

In addition to ensuring the expert is qualified, the trial judge must also ensure the testimony "meets a threshold level of reliability, regardless of whether it is scientific or nonscientific." State v. Tapp, 387 S.C. 159, 165, 691 S.E.2d 165, 168 (Ct. App. 2010). In cases involving scientific expert testimony, the trial court should consider the following factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). However, in cases involving nonscientific expert testimony, the factors applied in an analysis of scientific evidence cannot readily be applied. See State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009) ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony."). Accordingly, no formulaic approach can or must be applied to determine reliability in cases involving nonscientific expert testimony. Id.

In the case at bar, the Court of Appeals correctly affirmed the trial judge's qualification of Galloway-Williams as an expert witness in light of her education, knowledge, training, and experience in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse. Based on that education, knowledge,

training, and experience, Galloway-Williams was qualified and able to testify before jury in regard to an area of expertise that was beyond the common knowledge of the typical juror and was critical for the jurors to be able to evaluate and understand the behavior exhibited by the victims prior to their disclosures of the sexual abuse.

Critically, in cases such as Peters' case where there are allegations of juvenile sexual abuse, "[e]xpert testimony concerning child abuse typically comes from two sources: medical evidence provided by physicians and **behavioral science evidence** provided by psychiatrists, psychologists, and social workers." State v. Morgan, 326 S.C. 503, 508, 485 S.E.2d 112, 115 (Ct. App. 1997) (emphasis added), overruled on other grounds by State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). Significantly, in South Carolina, our appellate courts have consistently recognized "[e]xpert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible." State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999).

"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 State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) ("The purpose of rape trauma evidence is to prove the elements of criminal sexual conduct since such evidence may make it more or less probable the offense occurred."). Rape trauma and behavioral characteristic evidence is often crucial in child sexual abuse cases because "[t]he inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior." White, 361 S.C. at 414-415, 605 S.E.2d at 544. Furthermore, rape trauma and behavioral characteristic evidence is also particularly important to explain the often unusual behavior exhibited by victims

of sexual abuse that might be beyond the knowledge of the average juror. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 ("It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor."); see also People v. Carroll, 95 N.Y.2d 375, 387, 740 N.E.2d 1084, ___ (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[.]"); see generally United States v. Lukashov, 694 F.3d 1107, 1117 (9th Cir. 2012) ("[The expert witness'] 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."); People v. Baenziger, 97 P.3d 271, 275 (Colo. Ct. App. 2004) ("Because the 'lay notion of what behavior logically follows the experience of being raped may not be consistent with the actual behavior or which social scientists have observed from studying rape victims,' expert testimony explaining these reactions is helpful to the jury in determining whether this delay should support the conclusion that the sexual assault did not occur.' " (citations omitted)). Accordingly, as this Court has recognized, "both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect." State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993).

In Peters' case, Galloway-Williams had specialized knowledge regarding the common behavioral characteristics exhibited by juvenile victims of sexual abuse based on her education, knowledge, training, and experience. Specifically, Galloway-Williams had an educational background in psychology and counseling, had over one-hundred

hours of training in forensic interviewing, was a licensed professional counselor, and was the executive director of a center directly involved with the counseling of juvenile victims of sexual abuse. In her roles as a counselor and the executive director of the center, Galloway-Williams personally performed clinical work, conducted forensic interviews, reviewed studies related to the behavior exhibited by juvenile sexual abuse victims, and testified as an expert in counseling juvenile victims of sexual abuse over forty times. As a result, Galloway-Williams possessed specialized knowledge in an area of expertise beyond the common knowledge of the average juror. See id. at 505-506, 435 S.E.2d at 861 ("[The witness] testified she had a master's degree in social work and specialized in child and adolescent services. She attended training seminars regarding sexual abuse survivors and worked on more than one hundred cases involving sexually abused children. We find no abuse of discretion in her qualification as an expert [in the field of sexual abuse]."). Furthermore, Galloway-Williams' specialized knowledge was in an area that was critical for the jury to be able to properly evaluate and understand the evidence and testimony related to the victims' behavior following the sexual abuse. See State v. Rogers, 293 S.C. 505, 506, 362 S.E.2d 7, 8 (1987) ("Evidence of behavioral traits of a sexual abuse child victim may be offered to explain inconsistencies in the behavior of the alleged victim."), overruled on other grounds by State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Finally, Galloway-Williams' testimony on the subject of the common behavioral characteristics of juvenile victims of sexual abuse was sufficiently reliable to warrant its admission as it was based on her own personal experiences as a counselor in cases involving juvenile victims of sexual abuse and on studies conducted on substantiated cases of sexual abuse involving juvenile victims. See State v. J.Q., 130 N.J. 554, 573, 617 A.2d 1196, 1206 (N.J. 1993) ("There does not appear to be a dispute

about acceptance within the scientific community of the clinical theory that CSAAS identifies or describes behavioral traits commonly found in child-abuse victims."); see also John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y 1, 45-46 (2010) ("Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome." (footnotes omitted)). Accordingly, for those reasons, the trial judge did not abuse his broad discretion in qualifying Galloway-Williams as an expert and permitting her to testify during trial on the common behavioral characteristics exhibited by juvenile victims of sexual abuse, and the Court of Appeals committed no error in affirming the trial judge's ruling.

In arguing to the contrary, Peters initially contends – just as he contended during trial – Galloway-Williams was not qualified to testify as an expert because she did not personally meet with the victims and, thus, her testimony allegedly could not have assisted the jury. However, contrary to that contention and just as the Court of Appeals found, there is no requirement whatsoever for an expert to actually interview a victim or know the specific facts of a case before the expert can offer expert testimony during a trial. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 787[8] ("There is no requirement the

[8] Notably, despite Peters' unsupported contentions to the contrary, the Court of Appeals' reliance on the decision in Weaverling was not erroneous because that decision has not been overruled either expressly or implicitly by any subsequent appellate decisions in South Carolina.

sexual assault victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony. The fact that the expert does not personally interview the victim bears on the weight of the behavioral evidence not on its admissibility."); see also State v. Roenfeldt, 241 Neb. 30, 39, 486 N.W.2d 197, 204 (Neb. 1992) ("The reasoning for a rule allowing an expert to testify about sexual abuse in generalities, **without being familiar with the alleged victim**, is that '[f]ew jurors have sufficient familiarity with child sexual abuse to understand the dynamics of a sexually abusive relationship,' and 'the behavior exhibited by sexually abused children is often contrary to what most adults would expect.' " (emphasis added, brackets in original, and citation omitted)); State v. Kaufman, 187 Ohio App. 3d 50, 85, 931 N.E.2d 143, 170 (Ohio Ct. App. 2010) (holding an expert witness was properly permitted to testify on general background information regarding delayed disclosure by juvenile victims of sexual abuse even though the expert did not know any of the specific facts related to Kaufman's victims); see generally Coble v. State, 330 S.W.3d 253, 288-289 (Tex. Crim. App. 2010) (finding expert testimony about under-reporting of prison violence in official data compilations, the state prison classification system, and the opportunities for violence inside prison from a witness with specialized knowledge on those subjects to be admissible despite Coble's claim the testimony did not relate to him personally and noting the testimony was relevant as "educator-expert" evidence). Instead, experts are permitted to acquire their expertise in a broad variety of ways and can testify in regard to that expertise so long as the testimony would help the jury in understanding the evidence **or** in determining a fact in issue. See Rule 702, SCRE ("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." (emphasis added)); see also Fields, 376 S.C. at 556, 658 S.E.2d at 86 ("[T]here are a variety of ways in which a person can become so skilled or knowledgeable in a field that their opinion in a scientific, technical, or specialized area can assist the trier of fact in determining a fact or in understanding the evidence."); Peterson v. Nat'l R.R. Passenger Corp., 365 S.C. 391, 400, 618 S.E.2d 903, 908 (2005) ("The experts' lack of first-hand knowledge . . . goes to the weight of the testimony, not its admissibility."). Galloway-Williams' expert testimony was extremely important because it could have helped the jury understand the evidence related to the victims' behavior and disclosures of the abuse, which could potentially have been misunderstood without the benefit of that testimony.[9] Cf. State v. Carpenter, 147 N.C. App. 386, 393, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (holding expert testimony indicating delayed and incomplete disclosures are not unusual in cases of child abuse was "clearly instructive and helpful to the jury in understanding the evidence" because the nature of the juvenile sexual abuse places lay jurors at a disadvantage). Accordingly, the trial judge did not err in qualifying Galloway-Williams as an expert and permitting her to testify even though she had not met with the victims and was not familiar with the specific facts of their disclosures, and the Court of Appeals correct affirmed the trial judge's ruling.

Furthermore, beyond his challenge to Galloway-Williams' personal qualifications to testify as an expert, Peters also contends – for the first time on appeal – the trial judge should not have admitted Galloway-Williams' expert testimony because the subject matter of it allegedly was not based on scientific, technical, or specialized knowledge and

[9] Notably, Galloway-Williams' expert testimony was particularly important in Peters' case in light of the fact defense counsel's questioning of the witnesses and argument to the jury focused on the victims' delayed disclosures and other behavior following the sexual assaults. (R. pp. 24-27; pp. 32-33; p. 59; p. 63; p. 65; pp. 71-73; p. 192; p. 199; pp. 201-202; p. 204).

was not sufficiently reliable. Notwithstanding any issue preservation concerns, the trial judge committed no error in admitting Galloway-Williams' expert testimony. Critically, behavioral science evidence, including behavioral science evidence in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse, has historically been recognized as admissible by the majority of courts in the United States. See People v. Spicola, 16 N.Y.3d 441, 465, 947 N.E.2d 620, ___ (N.Y. 2011) (recognizing the majority of states allow the introduction of expert testimony to explain delayed disclosure and other behavioral characteristics exhibited by juvenile victims of sexual abuse); see also Baenziger, 97 P.3d at 275 ("It has been repeatedly held that rape trauma syndrome evidence is reasonably reliable."); State v. Crespo, 114 Conn. App. 346, 373, 969 A.2d 231, 248 (Conn. App. Ct. 2009) ("Such expert testimony, related to the issue of delayed reporting of sexual abuse, falls within the type of social framework testimony that has been deemed relevant in assessing a victim's conduct in cases of sexual abuse."); Harris v. State, 283 Ga. App. 374, 381, 641 S.E.2d 619, 625 (Ga. Ct. App. 2007) (recognizing experts are properly permitted to testify in regard to the typical patterns of behavior exhibited by rape victims); State v. Reyna, 290 Kan. 666, 685, 234 P.3d 761, 775 (Kan. 2010) ("[C]ase law supports the conclusion that the testimony of general behavioral traits of sexual abuse victims is helpful to the jury and, therefore, admissible."); Sanderson v. Commonwealth, 291 S.W.3d 610, 619 (Ky. 2009) (Scott, J., concurring in part and dissenting in part) ("[M]ost states allow [child sexual abuse accommodation syndrome] 'rehabilitative' testimony offered to explain the puzzling conduct of the victim in order to meet the defense's attack on the victim's credibility."); see generally Elizabeth Trainor, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case, 85 A.L.R. 5th 595 (listing

cases in which courts have found testimony on the common behavioral characteristics of victims of sexual abuse to be reliable and unreliable). Moreover, such evidence has also historically and specifically been recognized as proper and admissible by South Carolina courts. See Schumpert, 312 S.C. at 505-506, 435 S.E.2d at 861-862 (holding an expert in the field of sexual abuse was properly qualified to testify in regard to the victim's behavioral characteristics and the fact those characteristics were typical for victims of sexual abuse); Weaverling, 337 S.C. at 474-475, 523 S.E.2d at 794 (instructing expert testimony concerning the common behavioral characteristics exhibited by juvenile victims of sexual abuse was relevant, helpful, and admissible); see also White, 361 S.C. at 415, 605 S.E.2d at 544 (recognizing rape trauma evidence is admissible in sexual assault cases involving either adult or juvenile victims); State v. Whaley, 305 S.C. 138, 142, 406 S.E.2d 369, 371-372 (1991) (holding expert testimony in regard to factors that could affect eyewitness identifications was admissible); State v. Hill, 287 S.C. 398, 400, 339 S.E.2d 121, 122 (1986) (holding expert testimony on battered woman's syndrome, which involves testimony on the common characteristics that are exhibited by women abused over an extended period of time, is admissible if the expert is qualified on the subject). Thus, the expert in Peters' case testified on subject matter that has been recognized as highly relevant, proper, and admissible in the majority of jurisdictions in the country, including in South Carolina.

Importantly, Galloway-Williams' expert testimony regarding the common behavioral characteristics exhibited by juvenile victims of sexual abuse was based on her own experiences counseling minor victims of abuse, her clinical work and work as a licensed professional counselor, her education and training, and her review of statistics derived from studies involving substantiated cases of abuse. See J.Q., 130 N.J. at 573,

617 A.2d at 1206 ("There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS identifies or describes behavioral traits commonly found in child-abuse victims."); see also Schumpert, 312 S.C. at 505-506, 435 S.E.2d at 861 ("[The witness] testified she had a master's degree in social work and specialized in child and adolescent services. She attended training seminars regarding sexual abuse survivors and worked on more than one hundred cases involving sexually abused children. We find no abuse of discretion in her qualification as an expert [in the field of sexual abuse]."); see generally Whaley, 305 S.C. at 142, n. 2, 406 S.E.2d at 372 (rejecting the suggestion expert testimony on factors that might affect eyewitness identifications was not sufficiently reliable to warrant its admission during trial due to the fact the subject was a legitimate area of psychological study and had generated a large body of work). Under those circumstances, Galloway-Williams' testimony met the threshold level of reliability necessary to warrant its admission during trial, and it was ultimately up to the jury to determine the weight to assign to her expert testimony. See White, 382 S.C. at 274, 676 S.E.2d at 689 (instructing the trial judge must determine whether an expert is qualified and the subject of the expert's testimony meets a **threshold** level of reliability before permitting the expert to testify); see also Perry v. New Hampshire, ___ U.S. ___, 132 S. Ct. 716, 728 (2012) ("[T]he jury, not the judge, traditionally determines the reliability of evidence."); Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 596 (1983) ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.").

Even more significantly, Galloway-Williams did **not** testify she believed the victims, the victims had been sexually abused, the victims were telling the truth, the

victims' behavior suggested they were telling the truth, the victims' disclosures were compelling, or she had even met with or interviewed the victims. Cf. State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013) (instructing forensic interviewers should not testify about a child's veracity or tendency to tell the truth, vouch for a child's believability, state they made a compelling finding of abuse, assert they believed the child, or indicate the child's behavior suggests the child was telling the truth); State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding a forensic interviewer's testimony constituted improper vouching where the interviewer testified the victims provided compelling disclosures of abuse by Jennings and provided details consistent with the background information provided by the victims' mother, the police report, and other children); State v. McKerley, 397 S.C. 461, 465-466, 725 S.E.2d 139, 142 (Ct. App. 2012) (finding a forensic interviewer's testimony to be improper where the interviewer testified about giving an opinion as to whether something happened and about consistent information and compelling findings). Instead, the expert simply explained common behavioral characteristics exhibited by juvenile victims of sexual abuse while cautioning the jury aspects of those behavioral characteristics such as delayed disclosure did not establish a child **was or was not** telling the truth. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 ("It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor."); see also State v. Gonzalez, 150 N.H. 74, 78, 834 A.2d 354, 358 (N.H. 2003) ("We have recognized that a layperson is not capable of making such observations because 'a child's delayed disclosure of abuse, and recantation of statements about abuse, may be puzzling or appear counterintuitive to lay observers when they consider the suffering endured by a child who is continually being abused.' Because of its counterintuitive nature, expert

testimony may be permitted to educate the jury about apparent inconsistent behavior by a victim following an assault ant to 'provid[e] useful information that is beyond the common experience of an average juror.' " (brackets in original and citations omitted)).

For those reasons, the expert did not improperly bolster or vouch for the credibility or believability of the victims in offering her highly relevant and helpful expert testimony, and her expert testimony was admissible under South Carolina's evidentiary rules. See Rule 702, SCRE ("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."). Accordingly, the trial judge committed no error in admitting her testimony, and the Court of Appeals correctly affirmed the trial judge's ruling. See State v. Douglas, 367 S.C. 498, 521, 626 S.E.2d 59, 71 (Ct. App. 2006) ("Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror."), rev'd in part on other grounds, 380 S.C. 499, 671 S.E.2d 606 (2009); see also Henry, 329 S.C. at 273, 495 S.E.2d at 466 ("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."). Peters' petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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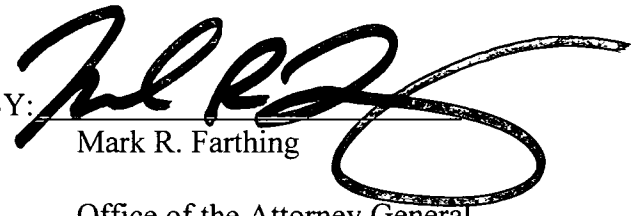
BY: 
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September 15, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2014-001507

THE STATE,

Respondent,

vs.

MARK STANLEY PETERS,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served. This 15th day of September, 2014.

Ellen R. DuBois

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