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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

The Honorable George C. James, Jr., Circuit Court Judge

Case No.: 2012-GS-45–0285

The State, ...Respondent,

v.

Willie Marion Brown, ...Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This case is a criminal action which was initiated by the return of indictments on October 25, 2012, charging the Defendant-Appellant, Willie Marion Brown (hereinafter "Appellant" or "Brown") with two counts of first degree criminal sexual conduct with a minor under S.C. Code Ann. § 16-3-655 (A)(1) and one count of committing a lewd act on a minor under S.C. Code Ann. § 16-15-0140. Brown pleaded not guilty, and a jury trial was held in the Williamsburg County Court of General Sessions on May 20 through 23, 2014. The jury returned verdicts finding Brown guilty on each charge (Trial Tr. 519-20). The trial court sentenced Brown to thirty-five years imprisonment for the CSC counts and fifteen years for the lewd act count, with all sentences to run concurrently. (Trial Tr. 532). A judgment to this effect was entered on May 23, 2014.[1]

By way of background, the evidence presented by the State at trial included the testimony of the alleged victim (hereinafter referred to as "Victim"), the testimony of a 404(b) witness (hereinafter referred to as "Witness"), and the testimony of Gay Allen Cook, a child and family therapist who was qualified as an expert in child abuse and trauma. Defense counsel filed a pre-trial motion to exclude Witness's testimony on the grounds that her testimony referred to alleged prior bad acts committed by Brown which were irrelevant to the issues at trial and were otherwise prohibited as impermissible character evidence. After hearing pretrial arguments, the trial court denied the motion, *in limine*, finding that

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[1] Appellant filed a Motion for Reconsideration of Sentence on June 2, 2014, and in a July 21, 2014 order, the trial court reduced Appellant's sentence to twenty-eight years imprisonment for the CSC counts and fifteen years for the lewd act count, with all sentences to run concurrently.

Witness's testimony was clear, convincing and "compelling" evidence, the alleged bad acts committed by Brown against both Witness and Victim shared close degrees of similarity and indicated a common plan or scheme, and that the probative value of Witness's testimony would not substantially outweigh the danger of unfair prejudice to the Defendant. (Trial Tr. 195-200). Defense counsel renewed the motion to exclude Witness's testimony as she was called to testify before the jury. (Trial Tr. 311-313). Subsequently, in overruling the renewed motion of defense counsel at trial, the trial court applied the analyses of our state supreme court in State v. Wallace, 683 S.E.2d, 384 S.C. 428 (2009) and our court of appeals in State v. Scott, 748 S.E. 2d, 405 S.C. 489 (Ct. App. 2013) and admitted the testimony of Witness regarding Brown's alleged prior bad acts. (Trial Tr. 319-322). Before Witness testified before the jury, defense counsel submitted an objection to admission of her entire testimony, which was again denied. (Trial Tr. 325). Additionally defense counsel objected at trial to the admission of the testimony of Gay Allen Cook on the grounds that her testimony would unduly bolster Victim's testimony and would be extremely prejudicial to the defendant. (Trial Tr. 394-96; 408-10). The trial court disagreed and ruled to admit Ms. Cook's testimony (Trial Tr. 410-12). In its ruling, the trial court noted specifically that Ms. Cook could include in her testimony that she had previously met with Victim regarding the alleged sexual abuse by Brown. (Trial Tr. 411).

On June 2, 2014, Brown filed a timely motion for a new trial, alleging that it was error for the trial court to admit the testimony of Witness and the testimony of Gay Allen Cook. On July 21, 2014 the trial court issued an order which denied Appellant's motion for a new trial. Appellant received written notice of entry of this order on July 23, 2014.

Subsequently, Brown served a timely notice of appeal from the denial of the motion for a new trial on July 31, 2014.

ARGUMENT

I. THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF THE 404(B) WITNESS BECAUSE THE ALLEGED PRIOR BAD ACTS OF SEXUAL ABUSE BY APPELLANT AGAINST THE 404(B) WITNESS AND THE CHARGED OFFENSES WERE NOT SUFFICIENTLY SIMILAR FOR EVIDENCE OF THE PRIOR BAD ACTS TO BE ADMISSIBLE TO SHOW COMMON SCHEME OR PLAN, AND THE PROBATIVE VALUE OF THE BAD ACT EVIDENCE WAS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE TO THE APPELLANT.

"Perhaps no tenet of evidence law in the context of 'prior bad acts' is more firmly established than the principle that propensity or character evidence is inadmissible to prove *the specific crime charged.*" State v. Tuffour, 364 S.C. 497, 613 S.E.2 814 (Ct. App. 2005) *vacated on other grounds* 371 S.C. 511, 641 S.E.2d 24 (2007) (emphasis added). As stated in State v. Lyle,

> That contention is grounded upon the familiar and salutary general rule, universally recognized and firmly established in all English–speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged.

State v. Lyle, 125 S.C. 406, 118 S.E. 803, 807 (1923). The South Carolina Rules of Evidence provide very limited exceptions to the admission of evidence of other crimes or bad acts to prove a defendant's guilt of a charged crime. See Rule 404(b), SCRE. The South Carolina Supreme Court has eloquently noted the difficulty courts face in determining whether evidence of prior bad acts is admissible under one of these exceptions:

> Whether evidence of other distinct crimes properly falls within any of the

> recognized exceptions noted is often a difficult matter to determine. The acid test is its logical relevancy to the particular excepted purpose or purposes for which it is sought to be introduced. If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime. But the dangerous tendency and misleading probative force of this class of evidence require that its admission should be subjected by the courts to rigid scrutiny. Whether the requisite degree of relevancy exists is a judicial question to be resolved in the light of the consideration that the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors. Hence, if the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.

Id. at 416-417, 807 (citations omitted). Our state Supreme Court has provided an analysis to guide lower courts in determining whether prior bad act evidence is admissible under the "common scheme or plan" exception in the context of a criminal sexual abuse trial. State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) (Pleicones, J. dissenting). In order for evidence of sexual abuse of another victim to be admissible in a criminal sexual conduct trial, the proferred evidence must be deemed relevant, there must be a close degree of similarity between the bad act and the crime charged indicating a common scheme or plan, and the probative value of the proferred evidence must not substantially outweigh the danger of unfair prejudice to the defendant. Id. at 432-35, 277-79. In Wallace, the Court set forth factors the trial court should consider in reaching its determination as to whether there is a close degree of similarity between the bad act and the charged crime: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence. Id. at 433-34; 278. Although the trial court applied the

Wallace analysis in considering whether to admit the testimony of Witness regarding her alleged child sexual abuse by Brown, the court's ruling to admit Witness's testimony was in error.

Under the Wallace analysis, the similarities between the charged offenses and the alleged prior bad acts did not outweigh the dissimilarities; therefore, Witness's testimony was not admissible under the Rule 404(b) exception regarding common scheme or plan.

"When determining whether evidence of prior bad acts is admissible as common plan or scheme, the trial court must analyze the similarities and dissimilarities between the *crime charged* and the bad act evidence to determine whether there is a close degree of similarity. Wallace, 384 S.C. at 433. "When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." Id. Appellant does not dispute the trial judge's finding under the first two Wallace factors that there were close degrees in similarity with respect to the ages of the Victim and Witness when the alleged abuse took place and with respect to the relationship between the Victim and Witness and the Appellant. However, beyond the similarities evident in an analysis of the first two factors, Appellant submits that the dissimilarities evident in an analysis of the remaining factors far outweigh the similarities.

As to the third Wallace factor, Appellant disputes the trial judge's finding that there was a close degree in similarity in the locations of the alleged bad acts and charged crimes. Two of the three charged crimes occurred at a house on Clearview Street in Kingstree (Trial Tr. 231; 234), while nearly all of the alleged bad acts testified to by Witness occurred at a house at a separate location on Gilland Avenue in Kingstree. (Trial Tr. 327-45).

Furthermore, as discussed more fully below, although one alleged bad act and one charged crime occurred at Brown's farmhouse in Cades, the former bore no close degree in similarity to the latter. (Trial Tr. 231; 335-37). With respect to the fourth factor, the trial judge concluded, and the Appellant agrees, that there was no evidence in any of the instances that there was use of coercion or threats. (Trial Tr. 320). As to the fifth Wallace factor, Appellant disputes the trial judge's finding that the alleged prior bad acts bore a close degree in similarity to the charged offenses.[2] With respect to the fifth factor, the Court in Wallace stated that the manner of occurrence, i.e., *the type of sexual battery* is a factor to consider in determining the existence of a close degree of similarity. Id. at 434, 278 (emphasis added). The Appellant in this case was charged with two counts of first degree criminal sexual conduct with a minor and one count of committing a lewd act on a minor. As to these charged crimes, the Victim testified at trial as follows:

(1) On one occasion at Brown's farmhouse when Victim was around nine or ten years old, Brown sat Victim on a bed in her mom's old room, took off her pants, spread her legs, and put his mouth on her vagina. (Trial Tr. 231). Victim also testified that Brown probably placed his hands around her vagina but never in her vagina. (Id.).

(2) On one occasion at Brown's Clearview Street home when Victim was ten years old, Victim went to an upstairs bathroom and complained to Brown that she was "not feeling well in [her] private area". (Trial Tr. 234). Victim

[2] Notably, the trial judge acknowledged his own struggle with determining specific similarities in the types of sexual battery testified to by Victim and Witness. (Trial Tr. 320).

testified that Brown then examined Victim's vagina by placing his fingers inside of her vagina. (Trial Tr. 235).

(3) On one occasion when Victim was ten years old, Victim was steering a four-wheeler, and Brown was sitting behind her. Brown placed his hands on her breasts and said, "honk, honk." (Trial Tr. 242)

Victim also testified as to alleged bad acts committed by Brown that were *not specific* to the crimes for which he was charged. Victim testified as follows:

(1) On one occasion at Brown's pond house in Nesmith when Victim was eight or nine years old, Brown took it upon himself to teach Victim about sex by placing a condom on a cucumber in front of her and then sitting her on a bed and demonstrating various sexual positions with their clothes on. (Trial Tr. 229-30).

(2) On one occasion at Brown's farmhouse, Victim was in a tanning bed when she heard a camera going off and assumed that Brown had taken pictures of her. (Trial Tr. 232-33).

(3) On another occasion, when Victim was between eight and ten years old, Brown took a close up picture of her vagina for educational purposes and explained to her what would happen when she had sex for the first time. (Trial Tr. 233-34).

(4) There were always clear shower curtains in the bathroom at the Clearview home, and sometimes Brown would come into the bathroom when Victim was showering, "kind of push the shower curtain aside and just basically pop

in and say hey." (Trial Tr. 235-36). A clear shower door was also installed at the farmhouse, but Brown did not come into the bathroom while she was taking a shower there. (Trial Tr. 236).

(5) Brown would "accidentally" come into a small bathroom in the Clearview home while Victim was using it, so Victim got into the habit of going in, locking the door, and turning the lights off to use the bathroom. (Trial Tr. 237).

(6) Once when she was around ten years old, Victim walked into her bedroom in the Clearview home and discovered a brown bag on her bed that contained a vibrator. Victim wrote "I do not want this!!" on the bag and placed it on Brown's bed. (Trial Tr. 237-39). Brown later asked her if she was using the vibrator, and she told him no. (Trial Tr. 238).

(7) When Victim was around ten or eleven years old, Brown had Victim promise to let him see her naked for "so many times" in exchange for Brown purchasing Victim a locket she wanted for Christmas. (Trial Tr. 239-41).

On the other hand, the specific prior bad acts to which Witness was permitted to testify at trial were as follows:

(1) Brown started bathing Witness when she was around seven years old while her mother would go to night school. (Trial Tr. 329). This took place at their home on Gilland Avenue. (Trial Tr. 330). Brown began playfully tickling Witness while he was bathing her, and the tickling eventually developed into inappropriate touching. (Trial Tr. 329). Brown would pour dish soap into

the tub to make bubbles and would sit in the bathroom while she bathed. (Id.). Over time Brown would be bathing her and touching her while she was in the tub. (Trial Tr. 330). Brown washed Witness with a wash cloth, and sometimes the washcloth would slip and there would be skin to skin contact. (Trial Tr. 338). Whenever she got out of the tub, he would playfully towel Witness off; sometimes the towel slipped, and there would be skin to skin contact. (Id.). Then Brown would go into her room and want her to lay down on the bed and check out her privates to see if there were any bubbles "down there". (Id.). Inappropriate touching during bathing occurred at least twenty plus times. (Trial Tr. 340).

(2) After being told by her mother that Brown could explain sex better than she could, Witness had a discussion about sex with Brown. (Trial Tr. 332-334). Both Witness and Brown were clothed. (Trial Tr. 333). Witness remembered that Brown's penis was erect during the discussion. (Trial Tr. 334). Brown never touched her underneath her clothes or had her remove her clothes during the sex talk. (Id.) Witness was around seven years old at the time. (Trial Tr. 332).

(3) On one occasion, at the farmhouse on McCutcheon Road, Brown had his fingers "all around" Witness's vagina, and although Witness testified that she wouldn't say there was full digital penetration, maybe "a little bit of his finger did penetrate." (Trial Tr. 335-36). Brown never performed oral sex on her.

(Trial Tr. 335). Witness was around nine years old at the time. (Trial Tr. 337).

(4) Brown would come into the bathroom while Witness was taking a shower and "kind of pull the curtain open and ask [her] random questions". (Trial Tr. 337). Subsequently, the shower curtain was replaced with a clear one so it wasn't necessary to pull the curtain back anymore. (Trial Tr. 337-38). Brown came into the bathroom while she was either in the tub or shower at least fifteen times or more. (Trial Tr. 338).

(5) On one occasion at the Gilland Avenue home, Brown and Witness's mother were in a hot tub, naked, and Witness got into the hot tub with her bathing suit on. (Trial Tr. 343). Witness observed that Brown had an erection. (Trial Tr. 343-44).

The manners of occurrence of the alleged bad acts to which Witness was permitted to testify bore no close degree of similarity *to the specific crimes* for which Brown was charged. Unlike the crimes for which Appellant was charged, the bad acts pertaining to Witness did not involve oral sex, grabbing of the breasts, or digital penetration of the nature described by Victim in her testimony. The alleged "inappropriate touching" to which Witness testified happened when Brown bathed her, began as playful tickling and advanced to skin to skin contact of her private areas, occurred over twenty times, and took place at least two years before the charged crimes allegedly took place. The oral sex, digital penetration, and breast-grabbing charges regarding Victim did not take place during bathing, did not begin as playful tickling, and each occurred one time. Furthermore, neither Witness's

testimony regarding "inappropriate touching," nor her testimony regarding the hot tub incident bore any logical relevancy to the crimes for which Brown was charged. See Lyle, *supra*, at 416-417, 807. Accordingly, since the similarities between the charged offenses and the alleged prior bad acts did not outweigh the dissimilarities, the trial court's ruling to admit Witness's testimony was, respectfully, erroneous.

The probative value of the bad act evidence submitted through the testimony of Witness substantially outweighed the danger of unfair prejudice to the Appellant.

Pursuant to Rule 403, although evidence may be deemed relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. In his dissenting opinion in Wallace, Justice Pleicones stated: "our cases holding that evidence of other acts of sexual misconduct is admissible in a trial for criminal sexual conduct with a minor as a 'common scheme or plan' . . . ha[s], in effect, created an exception to the rule's exclusion of propensity evidence. Wallace, 384 S.C. at 435-36; 683 S.E.2d at 279. Justice Pleicones admonished that "thorough scrutiny is warranted" because although our courts "have repeatedly held in non-sexual offense cases that, 'the mere presence of similarity only serves to enhance the potential for prejudice', . . . under the majority's view, similarity is the touchstone of admissibility in child sexual offense cases." Id. at 436, 279 (citations omitted). Justice Pleicones' statements in Wallace have proven true for nearly every appellate court decision regarding the admissibility of bad act evidence in criminal sexual conduct cases since the Wallace opinion was published[3], including State v.

[3] The only exception discovered during a review of the case law was State v. Fonseca, 393 S.C. 229, 711 S.E.2d 906 (2011), where in a majority opinion delivered by Justice Pleicones, the South Carolina Supreme Court affirmed the court of appeals' opinion reversing a conviction on the grounds that the State had provided no compelling argument of any similarities between a

Scott, 405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013), which was cited by the trial court in this case in its decision to admit Witness's testimony. See State v. Hubner, 384 S.C. 436, 683 S.E.2d 279 (2009) (Based on its decision in Wallace, the S.C. Supreme Court reversed the court of appeals' holding that a trial judge committed reversible error in admitting evidence of a prior sexual assault against a different victim.); State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009) (affirming the admission of a victim's testimony regarding four incidents of prior sexual abuse by the defendant against the victim as evidence of a common scheme or plan); ; State v. McCombs, 410 S.C. 90, 762 S.E.2d 744 (Ct. App. 2014) (holding that it was reversible error for the trial court to deem a 404(b) witness's testimony inadmissible based upon a finding that the dissimilarities outweighed the similarities with respect to the 404(b) witness's testimony and the victim's testimony); State v. Scott, 748 S.E.2d 236 (Ct. App. 2013) (affirming the trial court's decision to admit evidence of the defendant's prior bad acts against other victims occurring eleven to twenty years prior to the crime charged because the related testimony was sufficiently similar to the crime charged, and was neither too remote nor was the testimony's probative value substantially outweighed by the danger of unfair prejudice); State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013) (holding that the trial court acted within its discretion in joining for trial multiple sexual offense charges involving two child victims based on a finding in the record that evidence of the defendant's crimes against each victim would be admissible in a separate trial as to the other); State v. Petty, No. 2013-UP-144, 2013 WL 8507852 (Ct. App. Apr. 10,

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2001 bad sexual act and the 2003 charged sexual act with the same victim. State v. Fonseca, 383 S.C. 640, 681 S.E.2d 1 (Ct. App. 2009).

2013) (finding no abuse of discretion in admitting evidence regarding defendant's molestation of a daughter during his trial for molestation of another daughter); State v. Taylor, 399 S.C. 51, 731 S.E.2d 522 (Ct. App. 2012) (affirming the trial court's decision to admit evidence of the defendant's other rape of the same victim as demonstrating a common scheme or plan); State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012) (holding that the trial court did not abuse its discretion in admitting a witness's testimony regarding prior bad sexual acts by the defendant under the common scheme or plan exception); State v. Nash, No. 2012-UP-075, 2012 WL 10830174 (Ct. App. Feb. 8, 2012) (affirming the admission of prior bad sexual acts under the common plan or scheme exception); State v. Campbell, No. 2010-UP-228, 2010 WL 10079886 (Ct. App. Apr. 1, 2010) (affirming the trial court's admission of the sexual abuse of a different child under the common scheme or plan exception to Rule 404(b)). More importantly, Justice Pleicones' dissent in Wallace has proven true with respect to Appellant's criminal trial, because even though similarities existed in the bad acts alleged in Victim and Witness's testimonies, the lack of specific similarities between the alleged bad acts against Witness and the crimes charged lessened the probative value of the propensity evidence.[4] *Cf.* Scott, 405 S.C. at 508, 745 S.E.2d at 247 (Even though the court of appeals determined that the probative value of the proferred sexual assault propensity evidence did not substantially outweigh the danger of unfair prejudice to the defendant, the court determined the following in its Rule 403 analysis:

> The bad act testimony was not only similar to the Victims' allegations, it relied upon *a high level of specificity that extended to even the most peculiar*

[4] It is important to note, that the trial judge acknowledged that he struggled with the Rule 403 analysis even more than his analysis of the Wallace factors. (Trial Tr. 169-70).

> *conduct alleged by Victims*, such as the bath time assaults, followed by area-focused drying and full-body motioning, "hunching," laughing following an incident of abuse, and a perverse version of hide-and-seek. This *high level of specificity regarding very peculiar conduct* further increases the already great probative weight.)

(emphasis added). As mentioned above, the bad acts to which Witness testified lacked the "high level of specificity regarding very peculiar conduct" with respect to the manners of occurrence of the charged crimes. Therefore, the probative value of the propensity evidence did not substantially outweigh the danger of unfair prejudice to the Appellant, and respectfully, it was erroneous for the trial court to admit it.

Furthermore, the "mere presence of similarities" between Witness's testimony regarding uncharged bad acts and Victim's testimony regarding *other uncharged bad acts* has unfairly prejudiced the Appellant. This was most evident in the testimony regarding the clear shower curtain. At trial, Victim testified that there were always clear shower curtains in the bathroom at the Clearview home, and sometimes Brown would come into the bathroom when Victim was showering, "kind of push the shower curtain aside," and pop in and say hello. (Trial Tr. 235-37). A clear shower door was also installed at the farmhouse, but Brown did not come into the bathroom while she was taking a shower there. (Trial Tr. 236). Subsequently, Witness testified that Brown would come into the bathroom at the Gilland Avenue home while she was taking a shower and "kind of push the shower curtain aside and just basically pop in and say hey." (Trial Tr. 337). The shower curtain was eventually replaced with a clear one so it wasn't necessary to pull the curtain back anymore. (Trial Tr. 337-38). This testimony, pertaining to similar bad acts between two different victims that were not specific to the crimes charged, was textbook propensity evidence. It

served no other purpose than to confuse the jury as to the ultimate issue in the case, which was whether the Appellant was guilty of the acts against Victim for which he was charged. This was evidenced by the jury's request to review the testimony regarding the clear shower curtain after deliberations began. (Trial Tr. 512-17). After the jury reviewed the shower curtain testimony, they resumed deliberations, and rendered a guilty verdict within a half hour. The only logical conclusion to be drawn from this is that based on the shower curtain testimony, the jury believed that Brown was a pervert who liked to peek at his naked, young step-daughters through the shower curtain, and because he committed this perverted act, he must be guilty of the three criminal charges for which he was being tried. Accordingly, since the probative value of Witness's testimony did not substantially outweigh the danger of unfair prejudice to the Appellant, the trial court, respectfully, erred in admitting her testimony.

II. THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF GAY ALLEN COOK REGARDING HER MEETING WITH THE VICTIM ABOUT THE ALLEGED SEXUAL ABUSE BY THE APPELLANT BECAUSE THIS TESTIMONY, ALONG WITH MS. COOK'S OTHER TESTIMONY REGARDING DELAYED REPORTING AND GROOMING, IMPROPERLY BOLSTERED THE CREDIBILITY OF THE VICTIM.

Our courts have clearly stated that "where credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to the victim's testimony is not harmless." State v. Jennings, 394 S.C. 473, 479, 94716 S.E.2d 91, 94 (2011) (citations omitted). Also, an expert witness cannot vouch for the credibility of a victim in his or her testimony. Id. at 480, 94. In this case, the Appellant exercised his right not to present a defense on his behalf; therefore, an ultimate issue in the case was whether the jury believed

the Victim's testimony. Over defense counsel's objection, the trial court admitted the testimony of Gay Allen Cook, who was qualified as an expert in the area of child sex abuse and trauma, regarding delayed reporting of child sex abuse victims and grooming by perpetrators. (Trial Tr. 417-18). Significantly, the court also ruled that Ms. Cook could testify regarding meeting with Victim about the alleged sexual abuse by the Defendant. (Trial Tr. 411). The admission of Ms. Cook's testimony permitted the State in its case-in-chief to improperly bolster Victim's testimony.

Although Ms. Cook never directly testified that she believed what Victim told her, her testimony permitted the jury to draw the inference that what Victim testified to was true. See State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012) ("Smith [the forensic interviewer] never testified directly that she believed what the victim stated in her interviews or in her testimony. McKerley argues, however, that there is no way to interpret Smith's testimony other than as her opinion that the victim was telling the truth. We agree."). Ms. Cook testified that offenders groom their victims by making victims feel comfortable around them, build trust, and spend time and money on them. (Trial Tr. 419). She further testified regarding how the absence of a biological parent can play a role in this grooming process, and the victim often fills that void with a close relationship to a step-parent who becomes the grooming offender. (Trial Tr. 419-20). She also testified that the child does not realize she's being groomed and that the offender will often "test the waters." (Trial Tr. 422). Additionally, Ms. Cook offered her expert opinion on delayed reporting by victims of child sex abuse. She stated that often victims will wait to report when they are no longer dependent on the offender for food, clothing, education, or housing. (Trial Tr. 422-

23). She concluded her testimony by stating that she had met with Victim in November of 2011 (Trial Tr. 425).

Once Ms. Cook testified that she had met with Victim in November of 2011, which was the date that Victim testified that she reported the sexual abuse by Brown, the only reasonable inference the jury could conclude was that Victim told the truth about the sexual abuse. Had Ms. Goodman not disclosed her relationship with Victim to the jury, then her testimony would have been perceived as an expert commenting on the concepts of delayed reporting and grooming as they pertain in general to child sexual abuse victims. However, once she disclosed her relationship with Victim, the jury immediately deduced that a therapist was vouching for the credibility of her client by explaining the same characteristics of child sexual abuse victims that were evident in Victim's prior testimony. As in many CSC cases, this case turned primarily on the veracity of the victim. Given the importance of Victim's credibility to the jury, the trial court, respectfully, erred in the admission of Ms. Cook's testimony.

CONCLUSION

Based on the foregoing reasons, the Appellant, Willie Marion Brown, respectfully requests that this Court reverse the guilty verdicts against Appellant on all three aforementioned criminal charges and remand this matter to the trial court for a new trial.

Respectfully submitted,

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