STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD BARRETT,

APPELLANT

APPELLATE CASE NO. 2013-002158

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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1.

Whether the trial court erred in qualifying a forensic interviewer as an expert in "Child Sexual Abuse Characteristics and Behavior" and in denying appellant's motion to suppress the interviewer's testimony?

2.

Whether the trial court erred in denying appellant's motion for a continuance to obtain an expert witness to counter the forensic interviewer's testimony regarding the characteristics of child sexual abuse when the State announced its intention to introduce such expert testimony and produced discovery associated with its expert on the Thursday before appellant's Monday trial?

STATEMENT OF THE CASE

On August 23, 2012, a Beaufort County grand jury indicted appellant for second degree criminal sexual conduct with a minor, lewd act on a minor under the age of sixteen, and kidnapping. R. 333 and Supp. R. 1 (2012 Indictments). On March 28, 2013, appellant was reindicted for the same charges with the dates in the indictments changed after appellant issued a notice of alibi. Supp. R. 5 (2013 indictments). On May 20, 2013, appellant was tried before the Honorable Kristi Lea Harrington and a jury. R. 1. Mary Concannon and Benjamin Shelton represented the State. R. 2. Trasi Campbell represented appellant. R. 5, ll. 16 – 17. The jury acquitted appellant of kidnapping. R. 283, ll. 3 – 23. The jury convicted appellant of lewd act. R. 283, ll. 3 – 23. The jury could not reach a verdict on the criminal sexual conduct charge. R. 283, ll. 3 – 23.

Judge Harrington deferred sentencing so a presentence investigation could be conducted. R. 291, l. 24 – 292, l. 11. On October 2, 2013, Judge Harrington held a sentencing hearing and sentenced appellant to twelve years' imprisonment suspended upon the service of nine years' imprisonment and four years' probation. R. 323, l. 20 – 324, l. 18. The court also imposed GPS monitoring and required registration as a sex offender. R. 323 l. 20 – 324, l. 18. This appeal follows.

STATEMENT OF FACTS

The complainant in this child sex abuse case ("Minor") was fifteen years old at the time of trial and fourteen when she alleged the abuse occurred. R. 95, ll. 6 – 18. She was living with her mother and her mother's boyfriend ("Shawn"). R. 95, ll. 21 – 22. Appellant Gerald T. Barrett, Jr. ("Barrett") was a friend of her mother's. R. 97, ll. 7 – 8. Minor had known Barrett since she was "little." R. 97, ll. 11 – 13.

Minor claimed that on the day the abuse occurred, she attended the St. Patrick's Day parade in Hilton Head with her mother, Shawn, and their friends. R. 98, ll. 7 – 24. Minor went home after the parade and was babysitting a child. R. 98, l. 25 – 99, l. 12. During the evening, her mother and Shawn returned and their friends came over for a party. R. 99, ll. 13 – 21. R. 81, ll. 1 – 14. Barrett came to the party. R. 81, ll. 24 – 25.

According to Minor, the adults were on the porch and she was inside sitting on a couch watching television. R. 99, l. 19 – 100, l. 22. Barrett entered the room and sat down on the couch. R. 100, l. 23 – 101, l. 9. Minor moved to a chair. R. 101, ll. 10 – 12. Barrett followed her to the chair. R. 101, ll. 19 – 22. Minor claimed Barrett put his hand under her clothes and digitally penetrated her vagina. R. 102, ll. 16 – 103, l. 11. The solicitor asked Minor what she was doing "[w]hen he's doing this," and Minor replied, "Texting." R. 183, ll. 12 – 13.

Minor left the chair and went upstairs to her sister's room. R. 183, ll. 14 – 19. She awakened her sister and they talked, but Minor did not tell her sister about the alleged abuse. R. 103, l. 20 – 104, l. 8. Minor fell asleep in her sister's room and then moved to her room after waking up. R. 104, ll. 9 – 14. She got in the bed and went to sleep. R. 105, ll. 10 – 11. Even though she claimed she had just been the victim of a

sexual assault, Minor did not lock the door. R. 118, l. 21 – 119, l. 6. The doors to her room were made of glass and people could easily see into her room. R. 119, ll. 7 – 11.

Minor stated she was awakened by footsteps. R. 105, ll. 12 – 13. She pretended to be asleep. R. 105, ll. 14 – 15. Barrett laid down on the bed and began touching her "lower private area." R. 106, l. 10 – 107, l. 1. She alleged Barrett held her down and had sexual intercourse with her. R. 107, l. 13 – 108, l. 20. She did not scream or call for help. R. 108, ll. 21 – 22. Barrett "[j]umped up and left" after he heard a noise. R. 109, ll. 3 – 4. Minor went to the bathroom, urinated, and noticed blood and "[s]omething weird" that was white in color. R. 109, ll. 9 – 18. She took a shower, locked her door, and went to sleep. R. 109, ll. 15 – 23. Barrett received text messages from Barrett asking her to come downstairs, but she deleted them. R. 120, ll. 10 – 21. R. 123, l. 20 – 124, l. 1. Minor washed her clothes that she claimed had blood on them. R. 119, l. 21 – 120, l. 9.

Minor testified that she did not intend for adults to find out about the alleged abuse. R. 110, l. 17 – 112, l. 21. Minor claimed the first person she told about the alleged abuse was her little sister. R. 110, ll. 17 – 23. She testified that she "had to tell my grandma" because her sister told, "and my grandma made me tell her everything." R. 111, ll. 22 – 25. She testified that she told her peers (two female friends and her boyfriend) about the abuse before her step-grandmother found out from her little sister. R. 110, l. 24 – 111, l. 21.

Minor's step-grandmother was the State's first witness. R. 70, ll. 15 – 20. She stated that Minor told her about the abuse during Spring break. R. 71, ll. 18 – 22. She said that Minor told her the abuse occurred "around St. Patrick's Day." R. 72, ll. 7 – 8.

She first contacted Minor's father and then called law enforcement. R. 72, ll. 13 – 21. The step-grandmother could not remember telling law enforcement that the abuse occurred "one to two weeks prior to the conclusion of school," but admitted that if that information appeared in a report it might be more accurate than what she could remember. R. 74, ll. 11 – 21. The State's lead investigator admitted that in a report made to police on July 3, 2012, the step-grandmother stated, "[minor] advised the incident occurred one to two weeks prior to the conclusion of school." R. 198, ll. 10 – 14. At no point did the step-grandmother mentioning finding out about the abuse from Minor's sister and wringing the information from Minor. The witnesses were sequestered. R. 59, ll. 4 – 6.

Minor was examined by a pediatric nurse practitioner in August 2012. R. 165, ll. 19 – 20. R. 173, ll. 4 – 10. The nurse stated, "There were no findings on her exam." R. 173, ll. 9 – 10. She stated the hymen had no disruptions, tears, notches, or clefts. R. 173, ll. 11 – 20. The nurse testified this did not mean Minor had never had sex. R. 169, l. 17 – 171, l. 24.

Neither Minor's mother, sister, nor any of the other adults who were at the party testified. The jury acquitted Barrett of kidnapping. R. 283, ll. 18 – 20. The jury convicted Barrett of committing a lewd act. R. 283, ll. 21 – 23. The jury could not reach a verdict on the criminal sexual conduct charge. R. 283, ll. 10 – 14.

ARGUMENT

1.

The trial court erred in qualifying a forensic interviewer as an expert in "child sexual abuse characteristics and behavior" and in denying appellant's motion to suppress the interviewer's testimony.

Relevant Facts

Appellant filed a motion opposing the qualification of forensic interviewer Kendra Twitty ("Twitty") as an expert and to exclude her testimony. R. 9, ll. 11 – 25. Defendant's Ex. 9. Twitty conducted a forensic interview of Minor. R. 8, ll. 1 – 16. Citing State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), appellant argued that courts may not qualify forensic interviewers as expert witnesses and that their interviews are not scientific. Defendant's Ex. 9. Judge Harrington heard argument on this motion in conjunction with a motion for a continuance (raised in Issue 2 of this brief) prior to trial. R. 5, l. 22 – 17, l. 7.

The State conceded that Kromah barred qualification of a forensic interviewer as an expert. R. 11, ll. 7 – 12. However, the Thursday before the Monday that the trial began, the solicitor informed the defense they intended to introduce testimony of "Child Sexual Assault Accommodation Syndrome" through the forensic interviewer. R. 6, ll. 3 – 12. The solicitor argued that instead of qualifying the forensic interviewer as an expert in forensic interviewing, they should be allowed to qualify her as an expert "in the field of child sexual abuse counseling and treatment." R. 11, ll. 7 – 18. The solicitor stated her intention to have the forensic interviewer testify concerning "delayed reporting, who they report to, why they choose to report to the sort of individuals, different aspects

regarding, not [Minor] in particular, just general – generalized what – regarding these victims." R. 8, l. 19 – 9, l. 1. At the conclusion of the pretrial hearing, Judge Harrington denied the motion for continuance and deferred ruling on the expert issue until later in the trial. R. 16, l. 24 – 17, l. 7.

Following jury selection and other pretrial matters, the trial court again took up the issue of whether the forensic interviewer could be qualified as an expert and allowed to testify. R. 28, l. 1 – 50, l. 17. Appellant argued that the State should not be allowed to offer testimony outside of the bounds of Kromah. R. 28, ll. 1 – 22. The solicitor again reiterated that they would not intend to qualify Twitty as an expert in forensic interviewing but instead, pursuant to State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) "as an expert in sexual abuse counseling and treatment for a child's sexual abuse trauma recovery." R. 28, l. 23 – 29, l. 13. The solicitor stated that the forensic interviewer would not be testifying "specifically about [Minor]." R. 28, ll. 8 – 13.

When asked by the trial judge the relevance of this testimony, the solicitor stated:

> Well, [Minor] will be able to testify as to what she did after the sexual abuse occurred. And [Twitty]'s testimony is just shows – it is the State's intention to have [Twitty] testify that different patterns of behavior are commonplace in child sexual abuse victims.

R. 30, ll. 2 – 7. Appellant again objected that if "Ms. Twitty wants to testify as a child sexual abuse counseling and trauma expert, that's not relevant to this case." R. 30, ll. 18 – 20. Appellant further argued that such testimony about the late disclosure was tantamount to vouching for Minor's credibility. R. 31, ll. 1 – 12. After the trial judge asked the solicitor if the forensic interviewer would just be drawing inferences out of "textbooks," the solicitor responded Twitty would be basing her testimony on her training, education, and experience. R. 32, l. 21 – 33, l. 3. The solicitor further argued:

> The State's understanding of Kromah is that Kendra **Twitty would not be able to testify to bolster the credibility of Minor.** She could not testify regarding that. We have no intention of asking questions or eliciting any testimony regarding the truthfulness of [Minor's] testimony. **She can, though, lend credibility to her allegations**, and that is where the child sexual Abuse Accommodation Syndrome comes in and that's where the general findings of child sexual abuse victims comes into play with her expertise in those. We have no intention of her speaking **specifically to the credibility of [Minor]**, and I think that's where maybe I got confused over why it's a generalized testimony as opposed to specifics.

R. 34, l. 21 – 35, l. 9 (emphasis added).

Judge Harrington then asked for a proffer of Twitty's testimony. R. 37, l. 24 – 38, l. 1. Twitty attempted to explain "Child Sexual Abuse Accommodation Syndrome." R. 39, l. 23 – 41, l. 14. Twitty stated, "Pretty much, it's a way of adults understanding – understanding what children go through when they're sexually abused and how children handle themselves in an abnormal situation." R. 40, ll. 8 – 11. She stated the syndrome had five "associations" or "phases" or "components:"

> secrecy is one; helplessness is one; entrapment and accommodation is one; delayed disclosure on – delayed disclosure, nonconflicting or unconvincing disclosure; and retraction or recantation would be one as well. And I'm – I may be missing – no. I think that's it.

R. 40, ll. 12 – 20. Twitty stated that not all victims of sexual abuse have these characteristics, but some children have a combination of them. R. 40, l. 21 – 41, l. 4. Twitty opined that while some children who are abused "over excel in things," other children may do the opposite and "have behavior outbursts and get – turn to substance abuse, cutting, other behaviors that are – whatever they're doing to accommodate the abuse that's happening to them." R. 41, ll. 5 – 14. She admitted she had never been

through any special training specifically for "Child Sexual Abuse Accommodation Syndrome." R. 41, ll. 15 – 19.

Three times Twitty testified that a layperson would be able to recognize these characteristics just as she would. R. 42, ll. 7 – 10. R. 42, l. 24 – 43, l. 5. R. 43, ll. 21 – 23. Twitty also testified that "Child Sexual Abuse Accommodation Syndrome" was "not really a syndrome" but "[c]haracteristics, I guess you could say." R. 43, ll. 6 – 11. She agreed with defense counsel that accommodation syndrome could not prove that abuse has occurred. R. 45, ll. 8 – 10. Twitty said that it was not a diagnostic tool. R. 45, ll. 15 – 17. When defense counsel finally asked what use it had, Twitty answered the "use it provides to me is educating, I guess you would say, the laypeople, the families, the world about what it's like for a child that is sexually abused." R. 45, ll. 18 – 22. Twitty also admitted that the problems children have could be from "a lot of other issues, not necessarily just child sexual abuse." R. 46, l. 24 – 47, l. 7.

Following Twitty's proffered testimony, defense counsel argued that the State would use it only as "a rehabilitation tool" to explain defects in Minor's testimony such as the delay in reporting. R. 48, l. 14 – 49, l. 9. Defense counsel also argued that it was "pseudoscience" and should not be admitted. R. 49, ll. 5 – 9. Again citing Schumpert, the State argued it was admissible because Twitty's "specialized knowledge… gives rise to indicate that those particular characteristics could be indicative of child sexual abuse. **Not always, but sometimes.**" R. 49, ll. 10 – 19 (emphasis added). Judge Harrington decided to withhold ruling until she heard Minor's testimony. R. 50, ll. 15 – 17.

After Minor testified, Judge Harrington asked the solicitor what testimony she planned to elicit from Twitty. R. 125, l. 25 – 126, l. 2. The solicitor stated she planned to

elicit the date and time of the interview, the demeanor of Minor, and then qualify Twitty as an expert "regarding the behavior of and trauma of child sexual abuse victims." R. 126, ll. 3 – 17. Defense counsel argued the testimony was inadmissible, that the syndrome had never been approved as a field of expertise in South Carolina, and that it was irrelevant on the issue of delayed disclosure because defense counsel intentionally chose not to cross-examine Minor regarding how long it took her to report the sexual assault. R. 126, l. 24 – 127, l. 18.

Twitty, who was sitting on the witness stand, interjected, "And, actually, I would prefer not to testify to the Child Sexual Abuse Accommodation Syndrome." R. 128, ll. 5 – 7. The trial court replied, "You don't get to choose." R. 128, l. 8. The court ultimately ruled that she would allow "limited testimony… to discuss generally behavioral evidence as to delayed disclosure." R. 130, l. 21 – 131, l. 7. The trial judge noted defense counsel's exception to the ruling. R. 131, l. 8.

When Twitty took the stand before the jury, she testified that she worked at Hope Haven as a forensic interviewer and that she works "with children that **have been** sexually abused." R. 134, l. 20 – 135, l. 4 (emphasis added). Defense counsel objected and the objection was overruled. R. 135, ll. 5 – 24. Twitty described her interview with Minor and Minor's demeanor during the interview. R. 136, l. 4 – 137, l. 1. She told the jury that Minor was unable to verbalize the questions about the abuse and had to write down her answers. R. 137, ll. 1 – 15. After testimony about her qualifications, the State offered Twitty as an expert "as a mental health professional working with victims of child sexual abuse and trauma." R. 140, l. 23 – 141, l. 1. The defense objected and was allowed to conduct voir dire. Twitty could not remember ever being qualified as an

expert in this area in General Sessions Court. R. 141, ll. 8 – 18. The trial judge told the jury Twitty was qualified "in the area of – as a mental health professional, specifically in the area of child sexual abuse characteristics and behavior, to give opinion testimony in that area." R. 143, ll. 11 – 14.

After qualification, the solicitor asked what the term "delayed disclosure" meant. R. 144, ll. 6 – 7. Twitty testified "that kids usually never tell." R. 144, ll. 8 – 9. She opined that "research shows that kids usually tell when they're adults." R. 144, ll. 12 – 13. She listed multiple reasons why a child might not report abuse. R. 144, ll. 13 – 24. She described delayed disclosure as "a very common thing in the child sexual abuse field." R. 144, l. 25 – 145, l. 2. Matching Minor's testimony, Twitty testified that disclosure to adults usually happens by accident and that teenagers usually report abuse to their "peers." R. 145, ll. 2 – 19.

Discussion

The State sought to circumvent Kromah with Twitty's testimony. Admitting her testimony was error, especially in this case where the State did not seek to introduce the tape of the forensic interview. Twitty's testimony was simply irrelevant. In State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012), the Supreme Court held that a forensic interviewer's testimony was properly limited to the foundation necessary to introduce a video recording of a child's interview. See also State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009) (holding there is no need to qualify a forensic interviewer as an expert and Pleicones, J., calling forensic interviewers "human 'truth detectors'" in dissent). The Court stated that it had "confronted instances where the State has abused the statute and sought to have the forensic interviewer, improperly imbued with the imprimatur of an

expert witness, invade the province of the jury by vouching for the credibility of the alleged victim." Id. Discussing the qualification of the forensic interviewer in Kromah, the Supreme Court said, "[W]e state today that we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate." Id. at 357 737 S.E.2d at 499 n.5. The Court further noted that the "label of expert should be jealously guarded by the court and never loosely bandied about." Id. at 357, 737 S.E.2d at 499.

Even though the State called the forensic interviewer by a different name, the effect of her testimony was the same and it should have been excluded. The forensic interviewer tailored her testimony regarding delayed disclosure to fit the facts of this case. She testified that children usually "never tell" and an adult usually finds out by accident, which matched Minor's claims that she had to tell her step-grandmother because her sister told. R. 144, ll. 8 – 9. R. 145, ll. 2 – 19. R. 111, ll. 22 – 25. Twitty's testimony was tailored to match Minor's testimony that children usually tell peers, as Minor testified she told her friends and boyfriend before her step-grandmother discovered the allegations from the sister. R. 110, l. 24 – 111, l. 21. R. 145, ll. 2 – 19. The fact that Twitty testified about characteristics that matched Minor's allegations—especially after the jury learned that she had conducted a forensic interview of Minor—could only be offered to show that Twitty believed Minor's allegations. One of Twitty's first statements to the jury was that she worked with children who "**have been** sexually abused." R. 134, l. 20 – 135, l. 4 (emphasis added). The clear inference was that Twitty believed Minor had been abused.

Schumpert, the case cited by the State as supporting the admissibility of Twitty's testimony, does not support the trial court's ruling in this case. In Schumpert, the expert

observed the child and testified that the child exhibited symptoms of rape trauma that were consistent with abuse. Schumpert at 506-07, 435 S.E.2d at 861-62. Twitty did not opine that Minor suffered from rape trauma. Furthermore, Schumpert is arguably no longer good law after Kromah, especially when the proffered expert is a forensic interviewer masquerading as an expert by another name.

Furthermore, as defense counsel called it, Twitty's testimony amounted to "pseudoscience" and the trial court failed in its gatekeeping role to exclude such evidence. State v. White, 382 S.C. 265, 272-273, 676 S.E.2d 684, 687-688 (2009). In Mitchell v. Commonwealth, 777 S.W2d 930 (Ky. 1989) the Supreme Court of Kentucky excluded evidence regarding "Child Sexual Abuse Accommodation Syndrome." This syndrome involved delay of disclosure in abuse, secrecy, helplessness, entrapment and accommodation, and retraction. The alleged victim in Mitchell told Richard Welch, who held a Masters degree in clinical social work, that she did not report the sexual abuse immediately because she was afraid.

The Kentucky Supreme Court held that the state had failed to prove that the "so called Sexual Abuse Accommodation Syndrome" had attained a scientific acceptance. Mitchell, 777 S.W.2d at 932. The Court noted there was no testimony that sexual abuse by persons other than the accused could have produced the same symptoms in the victims.

The Kentucky court noted there was no testimony that all children who are sexually abused exhibited these symptoms, nor was there testimony that children who have not been sexually abused do not exhibit similar elements of the syndrome. The court found reversible error because: (1) there was no medical testimony that the syndrome is a generally accepted

medical concept and, (2) the testimony had no substantial relevance to the issue of the defendant's guilt or innocence. Id. at 933.

Twitty's testimony was identical to the evidence excluded in Mitchell. Her list of the five characteristics is the same, vague, unscientific list. No research or tests were cited for these characteristics and the forensic interviewer admitted that "some" children might exhibit a combination of the characteristics. R. 40, l. 21 – 41, l. 4. Further compounding the unscientific and illogical aspect of this purported syndrome, Twitty opined that children who were abused would either behave poorly or "over excel." R. 41, ll. 5 – 14. It seems that a "syndrome" that can be diagnosed by a sufferer having completely opposite symptoms is of little probative or descriptive value. If a medical doctor gives a test to a patient for tuberculosis, one result reveals that the patient has it and the other result reveals the patient does not. But in the case of Twitty's syndrome, no matter the result of the test, the victim could have been abused. This "syndrome" is not science, it was not relevant, it was not the proper subject for expert testimony, and it was not admissible. The Court should reverse.

2.

The trial court erred in denying appellant's motion for a continuance to obtain an expert witness to counter the forensic interviewer's testimony regarding the characteristics of child sexual abuse when the State announced its intention to introduce such expert testimony and produced discovery associated with its expert on the Thursday before appellant's Monday trial.

Barrett's trial started on a Monday. The previous Thursday, the State "dropped off" a "packet of information" at defense counsel's office. R. 6, l. 3 – 7, l. 2. The information was the State announcing its intention to introduce expert testimony on "Child Sexual Assault Accomodation Syndrome" through Twitty. R. 6, l. 3 – 7, l. 2. Defense counsel researched the issue over the weekend and determined that she needed time to hire an expert witness to contest the State's expert. R. 6, l. 3 – 7, l. 2. As defense counsel put it, "There are some research articles that, you know, label it and put it in the area of junk science, and there are others that find some credibility to it. And with no counter argument, I'm sort of left, in my opinion, being ineffective for Mr. Barrett." R. 6, l. 3 – 7, l. 2. When Judge Harrington asked defense counsel if she was prepared to proceed if this evidence were excluded, she responded, "I am." R. 7, ll. 3 – 5.

The solicitor admitted handing over this information on the Thursday before trial. R. 7, ll. 7 – 13. The State opposed the continuance, inexplicably by arguing that the expert evidence was "well established in the area of child sexual abuse cases." R. 7, ll. 7 – 13. Despite the fact that the State admitting putting defense counsel on notice of the expert testimony on Thursday, the State argued that since Twitty was the forensic interviewer, that appellant should have already been on notice. R. 7, l. 16 – 9, l. 10. Defense counsel readily

agreed that she knew of Twitty as the forensic interviewer, but argued that, after Kromah, she did not think expert testimony from Twitty would be admissible and did not know until Thursday that the State intended to introduce "Child Sexual Assault Accommodation Syndrome" evidence through Twitty. R. 9, l. 11 – 11, l. 4. The trial judge denied the motion for a continuance "based upon the fact that she was named as the interviewer." R. 16, l. 24 – 17, l. 7.

Failing to present expert testimony in response to the State's case prejudices a criminal defendant and the court should have granted a continuance in this matter. In McKnight v. State, 378 S.C. 33, 43-44, 661 S.E.2d 354, 359 (2008), the defendant received a new trial in part because he was prejudiced by counsel's failure to seek a continuance to secure a favorable expert's testimony. In State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002), the Court reversed based on the trial court's denial of a continuance to obtain transcripts of a previous trial.

While it is true, as stated in McMillian, that reversals for failure to grant a continuance are rare, most of the cases upholding the denial point to some failure on defense counsel's part. See, e.g., State v. Register, 323 S.C. 471, 482, 476 S.E.2d 153, 160 (1996) (defense counsel waited until a month before trial to investigate DNA evidence). But see State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105-06 (Ct. App. 2005) (finding that prosecution had no obligation to disclose sexual abuse expert). In this case, defense counsel was blameless. The State admitted not informing the defense of the expert testimony until it was too late for the defense to obtain its own expert. Defense counsel could not have anticipated this expert testimony would be admitted after Kromah. If the Court finds that such testimony was properly admitted and a proper subject for expert testimony, then the

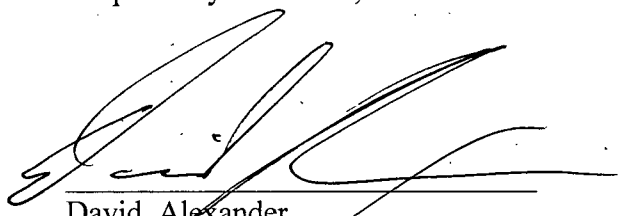
trial court abused its discretion in refusing to allow the defense time to obtain its own expert to counter this damaging evidence.

As discussed in Issue 1, Twitty was allowed to buttress Minor's testimony with opinions that bore the imprimatur of a court-qualified expert. Twitty admitted that studies had been done on false accusations and that delayed disclosure was more common in cases involving years of repeated abuse. R. 150, l. 17 – 151, l. 17. R. 164, ll. 10 – 14. These admissions show the importance of the defense having its own expert to rebut Twitty's testimony and that the defense could have obtained an expert to explain conflicts in the field and whether Twitty's opinions had any scientific basis. This case was close and the jury, in acquitting Barrett of kidnapping and failing to reach a decision on the criminal sexual conduct charge, necessarily disbelieved parts of Minor's story. Denying the continuance prejudiced Barrett and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and grant him a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 19th, 2015

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

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THE STATE,

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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2015.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.