THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

Opinion No. 2015-UP-015 (S.C. Ct. App. filed January 14, 2015)

Appellate Case No: 2015-000607

State of South Carolina, ... Respondent,

v.

Albert Brandeberry, ... Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

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

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

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

Other Counsel of Record:
Robert M. Dudek, Chief Appellate Defender
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343
Attorney for Petitioner

INDEX

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly affirmed the trial court's decision to admit expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Petitioner

2. Whether the Court of Appeals properly affirmed the trial court's decision to charge the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated.

STATEMENT OF THE CASE

Albert Brandeberry (Petitioner) was indicted at the June 12, 2012 term of the grand jury for Greenville County for lewd act upon a child (2011-GS-23-3885) and criminal sexual conduct (CSC) with a minor – first degree (2011-GS-23-3886). He was represented by Jim Bannister, Esquire, of the Greenville County Bar. Respondent (the State) was represented by Assistant Solicitor Lisa A. Bentley of the Thirteenth Circuit Solicitor's Office. (R.p.1). On August 6-9, 2012, Petitioner proceeded to trial by jury before the Honorable Letitia H. Verdin pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment for CSC with a minor – first degree and fifteen (15) years' concurrent imprisonment for lewd act upon a minor. (R.p.459-462; SROA.p.1-2; R.p.541, lines 4-10). On August 17, 2012, Petitioner timely served and filed a "Motion to Reconsider Sentence and Motion for a New Trial." In the motion he renewed his objections from trial, asked the trial court to grant a new trial, and alternatively asked the court to reduce his sentence. On August 23, 2012, the trial court denied the requests. (R.p.458). Petitioner timely filed a notice of intent to appeal and his convictions were affirmed in an unpublished opinion from the Court of Appeals. State v. Brandeberry, Op. No. 2015-UP-015 (S.C. Ct. App. filed January 14, 2015) (App.p.1-p.2). Petitioner submitted a timely Petition for Rehearing and by Order filed February 19, 2015, the Petition was denied. (App.p.3-p.11). On March 31, 2015, Petitioner submitted a Petition for a Writ of Certiorari to this Court and now this Return on behalf of Respondent (the State) follows.

STATEMENT OF FACTS

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

Prior to trial, Petitioner moved to prohibit "any bolstering of statements of credibility as it relates to the victim's disclosure." He specifically mentioned possible expert testimony about "delayed disclosure," arguing it was "sort of a backhanded way of bolstering credibility by saying, okay, credible cases involve children who report in a delayed fashion. This child reported in a delayed fashion." The solicitor acknowledged the State intended to call Shauna Galloway-Williams as an expert witness and hoped to have her testify about child sexual abuse trauma, the reasons children delay disclosure, and family dynamics. Petitioner said he might have some objections to Galloway-Williams's expertise, whether or not her testimony was needed to assist the trier of fact, and whether the type of evidence being offered could serve as a basis for a reliable opinion under a Rule 702 [SCRE] analysis. The trial judge said she would allow ample

time for further arguments and for Petitioner to conduct voir dire on Galloway-Williams when she was called as a witness at trial. (R.p.8, line 9-p.11, line 22).

During opening statements, the solicitor told the jury that because of the secretive nature of child sexual abuse the testimony from the victim is where they would "hear the details of the crime." (R.p.53, lines 5-11). In response, Petitioner told the jury the most pervasive thing they would hear in the case was the fact that the victim was raised in a household with Harold Brandeberry (the victim's father and Petitioner's son), who is a "manipulative, incestuous, child molester." Petitioner described several ways Harold had been manipulative and asked the jury to pay attention to testimony about how the allegations "came out" against Petitioner, particularly the manner in which they were "first revealed." (R.p.60, lines 18-23; p.61, line 22-p.62, line 8).

The State then presented testimony and evidence from a series of witnesses, including the victim. Now seventeen years old, she described the sexual abuse she suffered at the hands of Petitioner from the time she was seven until she was twelve. The victim explained the abuse occurred when Petitioner visited during the summer. She testified Petitioner slept on a sofa bed while he was visiting, and that during the day she and her younger brother stayed home with him instead of going to day camp like they did the rest of the summer. The victim described escalating sexual abuse over the course of several summers which included Petitioner rubbing the victim's vagina through her clothes, Petitioner making the victim rub his penis, Petitioner performing oral sex on the victim, Petitioner making the victim perform oral sex on him until he ejaculated, and Petitioner penetrating the victim's vagina with his fingers. She testified the sexual abuse ended the summer before she turned twelve. (R.p.130, line 13-p.150, line 20). The

victim testified she was eleven when she finally realized what Petitioner was doing was wrong. She reported the abuse to her father in December of 2006, sometime after her twelfth birthday but before Christmas. The victim testified her father said he was sorry, said he would take care of it and protect her, and promised it would never happen again. She did not see Petitioner again until 2010. (R.p.152, line 10-p.155, line 9). The victim testified she did not tell her mother what Petitioner had been doing to her because her father said he had taken care of it. (R.p.155, line 10-p.157, line 17).

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

The victim's mother, Kelly Wilkinson, recounted the September, 2010 camping trip when she discovered her husband and the victim in bed together under the covers. After the trip she confronted the victim, who first denied any sexual contact but later admitted sexual abuse had been going on for three years. Wilkinson called her pastor,

who then called the police. She testified the victim never disclosed any other sexual abuse besides from her father. (R.p.173, line 19-p.190 line 4).

After Wilkinson finished testifying, the trial judge excused the jury and asked the solicitor to describe the expert testimony the State sought to elicit from Galloway-Williams. The solicitor said she wanted Galloway-Williams to discuss sexual abuse trauma and how victims cope and respond. Specifically, she sought testimony on: (1) family dynamics and sexual abuse; (2) delayed disclosure; and (3) the escalation of sexual abuse, from confusing touches to actual abuse. After hearing detailed arguments from the parties regarding the admissibility of the testimony, the trial judge took the matter under advisement. (R.p.206, line 18-p.213, line 17).

The following morning, the State sought to qualify Galloway-Williams as an expert witness. Galloway-Williams testified she is Executive Director of the Julie Valentine Center, a child abuse and sexual assault recovery center in Greenville. She holds a bachelor's degree in psychology, a master's degree in counseling, and is a Licensed Professional Counselor. Galloway-Williams testified she serves as the vice president of the board for the SC Network of Children Advocacy Centers and serves on the board of the SC Professional Society on the Abuse of Children. She is required to complete at least 22 hours of continuing education credits every two years and has personally taught seminars and courses on expert witness testimony relating to trauma. She has been working specifically with children and adolescents for eleven years and has completed approximately 145 hours of training specifically related to child sexual abuse and forensic interviewing. Galloway-Williams testified the matters relating to child sexual abuse that she intended to testify about in Petitioner's trial had been published in

professional journals. She said the principles have been subject to peer review, are uniformly accepted and recognized within the field of sexual abuse counselors and professionals, and are reasonably relied upon in the field of child sexual abuse and treatment. The State sought to qualify Galloway-Williams as an expert in "child sexual abuse and treatment" and asked for a finding that her treatment and knowledge are reliable under Rule 702, SCRE. (R.p.216, line 1-p.223, line 17).

At Petitioner's request, the State then proffered the substantive expert testimony. Galloway-Williams explained "delayed disclosure" or "delayed reporting" as the behavioral phenomenon of a child not telling anyone immediately after a sexual assault. She said it is very common for children not to tell right away, with the primary reason being fear, either that something bad will happen to them, or something bad will happen to someone else when they tell. Galloway-Williams also described "piecemeal or partial" disclosure as a common characteristic where child sexual abuse victims fail to reveal all of the facts at the initial disclosure, and reveal more details the more comfortable they get with the person they have told. She testified that when it comes to delayed disclosure, it could be days, weeks, or years before a child may tell. Galloway-Williams went on to describe other factors that contribute or relate to delayed disclosure in child sexual abuse victims including lack of sexual language or knowledge, inability to provide a complete chronology of events, accidental disclosure, family dynamics, and access to someone they trust. (R.p.223, line 18-p.234, line 12).

After hearing the testimony, the trial court referenced Weaverling and ruled that a properly qualified expert in the field could give testimony as to the effects of sexual abuse on a child, including delayed disclosure. The court found such information might

not be in the common knowledge of the jurors and decided to allow testimony in Petitioner's case with regard to delayed disclosure. The solicitor she wanted to simply "keep it clean and above water without question." (R.p.258, line 1-p.260, line 16).

After hearing testimony from the victim's younger brother and her father, the State called Galloway-Williams to the stand. She presented nearly identical testimony about her qualifications as was previously proffered. Over Petitioner's objection, the court qualified Galloway-Williams as "an expert in the area of child sexual abuse and treatment." (R.p.301, line 17-p.309, line 11). The trial judge then gave the following instruction:

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

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

Galloway-Williams then testified she had no personal knowledge regarding the case and explained her purpose in testifying was to share information about child sexual abuse and the dynamics associated with it, which are not of common knowledge. Galloway-Williams explained "delayed disclosure" as referring to children not telling about sexual abuse right away. She said in her experience, delayed disclosure was very common, with the primary reason being fear that something will happen to them, something will happen to someone else, or that they will not be believed. Galloway-Williams also described "partial or piecemeal disclosure" as a common characteristic

where child sexual abuse victims fail to reveal all of the facts at the initial disclosure, and reveal more details the more comfortable they get with the person they have told. Galloway-Williams testified child victims do not necessarily reveal events in chronological order because they do not really understand the concept of time, and instead relate events to a specific event or period in their lives, like a birthday or holiday, or when they had a particular teacher. She testified children also often lack sexual language which makes it difficult to describe what has happened to them. Galloway-Williams testified that when a family member is committing the abuse it often makes it harder to disclose because there are positive relationship characteristics aside from the abuse. She testified that when the perpetrator is in the home the child also may not feel safe to disclose the sexual abuse, but that a variety of factors can prompt disclosure after a period of time, such as an upcoming visit from the abuser, or someone simply asking. (R.p.309, line 24-p.316, line 6).

On cross-examination, Petitioner used various studies and statistics to challenge Galloway-Williams' personal experiences and opinions about delayed disclosure. She acknowledged one study which concluded that within known responses, 42 percent of the children disclosed the abuse in less than 48 hours, and only 15 percent delayed disclosure by more than six months. Petitioner also successfully elicited testimony regarding "parental indoctrination" and "suggestibility" to support the defense theory that Harold Brandeberry was a manipulative child molester who coerced or convinced the victim to make up the abuse allegations against Petitioner. (R.p.316, line 7-p.329, line 5). On re-direct examination, Galloway-Williams testified that even though the study showed 42 percent of sexually abused children did not delay disclosure, this mean 58 percent

delayed to some extent. (R.p.329, line 7-p.330, line 25). After the State rested, Petitioner moved for a directed verdict and renewed his previous motions and objections. The trial court denied the motion and noted all prior objections. (R.p.333, line 7-p.334, line 9).

Petitioner next asked to address the trial court's planned jury charges. He said he had been looking at the charge and noticed it included language from South Carolina Code Section 16-3-657 in regard to uncorroborated testimony of a victim of a CSC case. Petitioner advised the trial judge he was aware of State v. Rayfield,[1] which contradicts his position, but nevertheless argued the language should not be charged. He argued it violated a number of substantial rights, including his due process right, his right to a fair and impartial jury, and his Sixth Amendment right to a fair and impartial jury. Petitioner further noted that pursuant to Rayfield, the trial court is not required to charge section 16-3-657 and that it is simply a permissible charge. He asked the trial court not to charge the statutory language. The trial judge took the matter under advisement. (R.p.335, line 13-p.337, line 5).

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

[1] 369 S.C. 106, 631 S.E.2d 244 (2006).

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

Prior to the jury charge, Petitioner renewed his motion in regard to the instruction on uncorroborated testimony of a witness. (R.p.433, lines 9-13). The trial judge then charged the jury on the law, starting with an instruction that it was the jury's exclusive duty to determine the facts. The trial court then charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, reasonable doubt, direct evidence, circumstantial evidence, credibility of witnesses, and gave a detailed instruction on expert witnesses. (R.p.434, line 1-p.442, line 20). In regard to the victim's testimony, the trial court charged:

> The testimony of a victim need not be corroborated and the defendant may be convicted solely on the basis of the victim's testimony. The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore inconsistencies. Furthermore, it does not mean that you should accept without question the victim's testimony and ignore evidence that conflicts

with her version of events. In other words, this term does not permit you as jurors to violate your obligation to consider all the evidence.

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

CERTIORARI

Petitioner argues that, in regard to the expert witness testimony, this Court should grant certiorari because the cases relied upon by the Court of Appeals, Schumpert and Weaverling, can no longer be considered to be good law. He argues that based on this Court's recent decisions in Kromah[2] and State v. Chavis, Op. No. 27491 (decided February 4, 2015) (Shearouse Adv. Sh. No. 5 at 20), the Court should overrule Schumpert and Weaverling, reverse the Court of Appeals, and remand for a new trial. In regard to the jury charge about the victim's uncorroborated testimony, Petitioner argues this Court should grant certiorari because the charge is gratuitous and denied him a fair trial. He contends it is time for this Court to revisit Rayfield, reverse the Court of Appeals, and grant him a new trial. The State disagrees with both of these arguments and submits the Court of Appeals properly relied upon the well-reasoned and time-tested opinions from this Court in Schumpert, Weaverling, and Rayfield in affirming the trial court's decisions both to admit the expert testimony about child sexual abuse and to charge the jury on uncorroborated victim testimony. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of applying existing precedent to the particular facts and circumstances of Petitioner's case. Kromah and Chavis do not

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

overrule Schumpert and Weaverling, and they do not support a different result under the facts of Petitioner's case. Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

ARGUMENT

I.

The Court of Appeals properly affirmed the trial court's decision to admit expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Petitioner.

On appeal to the Court of Appeals, Petitioner argued the trial court erred in qualifying Galloway-Williams as an expert in "child abuse and treatment" and in allowing her to explain "delayed disclosure" as a common behavioral characteristic of sexually abused children, because her testimony "improperly bolstered the child's testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits." He contended this was a deliberate "approach" taken by the State to circumvent the principles explained by this Court's recent decision in State v. Kromah. Petitioner continues to promote this argument in his petition for certiorari. The State submits Petitioner's argument is without merit.

Petitioner seems to argue that during the trial in his case, the State was attempting to introduce the exact type of testimony prohibited by Kromah by simply using a title other than "forensic interviewer" to describe Galloway-Williams' expert qualifications, and then eliciting testimony from her that would effectively vouch for the victim's credibility. Nothing could be further from the truth. There is simply no evidence in the record to suggest the State was engaged in any sort of deliberate strategy to elicit improper testimony intended to vouch for the victim's credibility. To the contrary, the

solicitor repeatedly expressed her intent to limit all of the State's evidence to that which was appropriate and admissible under the South Carolina Rules of Evidence. The State submits Petitioner has either mistakenly misrepresented the solicitor's motivations to be something other than what is reflected in the record, or he has intentionally manufactured nefarious motivations where none exist. In either case, there is no support for the contention that the State was deliberately seeking to bypass or otherwise avoid the precedent recognized by this Court in Kromah.

Whatever the case, the substance of Petitioner's argument is without merit. The trial court acted well within its broad discretion in qualifying Galloway-Williams as an expert in child sexual abuse and treatment based on her education, training, and experience. Furthermore, the trial court properly admitted Galloway-Williams' expert testimony pursuant to Rule 702, SCRE, because she possessed technical or specialized knowledge which could assist the jury to understand the evidence or determine a fact in issue, namely what delay in the victim's disclosure might say about her credibility, particularly in light of each party's theory of the case. Nothing in State v. Chavis alters this analysis. Indeed, here there was evidence of more than mere procedural consistency. The State presented evidence Galloway-Williams was able to draw reliable results from the procedures and principles she applied. The Court of Appeals should be affirmed.

In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or

prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). Indeed, the qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

The South Carolina Rules of Evidence provide:

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

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

There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge. State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App.1997); State v. Goode, 305 S.C. 176, 406 S.E.2d 391 (Ct. App.1991). The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. Wilson v. Rivers, 357 S.C. 447, 593 S.E.2d 603 (2004). For a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony. Mizell v. Glover, 351 S.C. 392, 570 S.E.2d 176 (2002); Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App.2003). An expert is not limited to any class of persons acting professionally. Gooding, 326 S.C. at 253, 487 S.E.2d at 598; Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002). There is no exact requirement concerning how knowledge or skill must be acquired. Honea v. Prior, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988).

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

During the State's proffer, Galloway-Williams testified extensively about her experience, education, training, and continuing education. She explained the matters relating to child sexual abuse that she intended to testify about in Petitioner's trial had been published in professional journals. She said the principles have been subject to peer review, are uniformly accepted and recognized within the field of sexual abuse counselors and professionals, and are reasonably relied upon in the field of child sexual abuse and treatment. The trial court found that she qualified as an expert under Rule 702 because her specialized knowledge and opinions could assist the jury to understand the evidence or determine a fact at issue. The State submits that in light of the evidence proffered, the trial court clearly did not abuse its discretion in qualifying Galloway-Williams as an expert in child sexual abuse and treatment. The findings are consistent with this Court's opinion in Chavis and the Court of Appeals properly affirmed.

As to the general nature of the testimony, behavioral characteristics of child sexual assault victims are not within the range of knowledge of the average juror. Indeed, Galloway-Williams had acquired by study or practical experience such knowledge of such behavioral characteristics as would enable her to give guidance and assistance to the jury in resolving a factual issue which was beyond the scope of the jury's good judgment and common knowledge, namely whether, as argued by Petitioner, the victim's delayed disclosure eroded her credibility. Henry, supra; Goode, supra. In other words, Galloway-Williams was better qualified than the fact finder to form an opinion on the subject of the victim's behavior as a reaction to sexual assault. This is all that was required for the trial court to qualify her as an expert and to admit her testimony. Ellis, supra; Mizzell, supra; Gooding, supra. It was simply a judgment call made in the

trial court's sound discretion. It does not rise to the level of an abuse of that discretion simply because Galloway-Williams based some of her knowledge on personal experience. Indeed, nothing in the record shows the trial court's decision was based on a factual conclusion without evidentiary support. Morris, supra; Gooding, supra. Furthermore, because Galloway-Williams was properly qualified as an expert witness, any further objections to her qualifications went to the weight of her testimony, not its admissibility. Martin, 391 S.C. at 515-16, 706 S.E.2d at 44. Finally, the State submits that in light of the trial court's jury charge on expert witnesses, Galloway-Williams' testimony could not have been given greater weight than that of a lay witness and, therefore, could not have been unduly prejudicial to Petitioner. State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009).

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

As to the specific testimony about delayed disclosure, the State submits the trial court likewise exercised appropriate discretion in allowing it. "Expert 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."); see also People v. Carroll, 740 N.E.2d 1084, 1090 (N.Y. 2000) ("We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]"). Indeed, this kind of testimony has been accepted by courts in many jurisdictions precisely because it provides relevant insight into the often puzzling aspects of a child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility. Weaverling, 337 S.C. at 475, 523 S.E.2d at 794; State v. Batangan, 799 P.2d 48, 51-52 (Haw. 1990); State v. Myers, 359 N.W.2d 604, 610 (Minn. 1984); State v. J.Q., 617 A.2d 1196, 1206 (N.J. 1993). Accordingly, "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). The State called Galloway-Williams as an expert because the victim disclosed the sexual abuse to others several years after it first occurred. Generally, "[e]xpert testimony that abused children often delay reporting the abuse . . . informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused." Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. App. Ct. 2003). Further, "[D]isclosure in child abuse cases is generally delayed because of coercion, guilt, or some other reason, [and thus] there will be no physical evidence to corroborate the victim's allegations. Therefore . . . expert

testimony will . . . assist the jury in understanding the evidence." People v. Beckley, 456 N.W.2d 391, 402 (Mich. 1990).

Galloway-Williams's testimony focused primarily on the occurrence and reasons for delayed disclosures in victims of child sexual abuse, information typically beyond the knowledge of a lay juror. See State v. Carpenter, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (finding expert testimony on delayed disclosure is "clearly instructive and helpful to the jury in understanding the evidence since the nature of the sexual abuse of children places lay jurors at a disadvantage"). "Indeed, the majority of states permit expert testimony to explain delayed reporting, recantation, and inconsistency . . . ." People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011). The trial court did not abuse its discretion in admitting this testimony as it is clearly admissible under Weaverling and case law from the majority of jurisdictions that goes back decades. Schumpert and Weaverling are still good law in South Carolina, and the Court of Appeals properly applied them in affirming the trial court.

Petitioner argues Galloway-Williams' testimony nevertheless should have been excluded as prejudicial to him because the effect of this testimony on the jury was to show that the victim acted in the same manner as other children had acted who had been sexually abused. Petitioner's argument lacks merit. Under Rule 403, SCRE, in order for evidence to be excluded as prejudicial, the probative value of the evidence must be substantially outweighed by the danger of unfair prejudice. "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be unfair prejudice before the evidence will be

excluded. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229.

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

In the instant case, for the reasons discussed above, the testimony had tremendous probative value. The phenomenon of delayed disclosure by sexually abused children really does exist; however, this information is not within the knowledge of laymen and is proper general information to provide in the form of expert testimony. On the other hand, Galloway-Williams' testimony cannot be found to have been unfairly prejudicial to Petitioner's case. Galloway-Williams did not compare the victim to other child victims during her testimony. In fact, Galloway-Williams never even mentioned the victim's case while testifying. As this Court explained: "[I]t is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter." State v. Kromah, 401 S.C. 340, 358-59, 737 S.E.2d 490, 500 (2013). In this case

Galloway-Williams did not opine on the victim's veracity. Accordingly, this case is readily distinguishable from Kromah and other cases where the expert testimony was found to be unfairly prejudicial to the defendant. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding the admission of the forensic interviewer's written report into testimony to be error because the reports stated that each child "provided a compelling disclosure of abuse by Petitioner."); State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012) (finding the forensic interviewer's "opinion as to whether she thinks something happened [was] nothing other than her inadmissible opinion as to whether the victim was telling the truth"). Galloway-Williams' expert testimony was proper because it aided the trier of fact in understanding the victim's behavior. She was not required to know or testify to any facts of this case in order to testify as an expert. The testimony also was not unfairly prejudicial to Petitioner because it was presented in a general manner and never touched upon the victim's veracity or even discussed the victim's version of events.

Further, given the corroborating testimony regarding the time and place of the sexual abuse and the trial court's charge to the jury to give no greater weight to the testimony of the expert, any error from admission of Galloway-Williams' testimony was harmless. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). For all of these reasons, the Court of Appeals properly affirmed Petitioner's convictions and sentence.

II.

The Court of Appeals properly affirmed the trial court's decision to charge the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated.

Petitioner argues the Court of Appeals erred by finding no error in the trial court instructing the jury that it could convict him based on the victim's uncorroborated testimony. He contends the jury instruction improperly emphasized the testimony of one witness, was an improper charge on the facts, and was fundamentally unfair and infringed on his right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitutions. The State disagrees and submits Petitioner's arguments are without merit because they have previously been raised to and rejected by both the Court of Appeals and this Court.

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). Section 16-3-657 of the South Carolina Code (2003) provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." These criminal statutes, which encompass various forms and degrees of criminal sexual conduct, include criminal sexual conduct with a minor in the first degree for which Petitioner was charged. S.C. Code Ann. § 16-3-655 (Supp. 2013). In State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), this Court held it was not error to charge § 16-3-657 to the jury as long as the charge as a whole comports with the law. Id. at 509, 435 S.E.2d at 863. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006),

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

The arguments made by Petitioner are essentially the same as those raised and rejected by our courts in Rayfield and Orozco and were appropriately rejected by the Court of Appeals. As in those cases, the trial court properly charged the jury that the State had the burden of proving Petitioner guilty beyond a reasonable doubt, that the jury had the duty to find the facts and determine the credibility of the witnesses, and that the jury should disregard any indication from the trial judge that she might believe a fact to be true or not. Further, the only charge given by the trial court in regard to the corroboration of the victim's testimony was in regard to CSC with a minor and was that "the testimony of a victim need not be corroborated and the defendant may be convicted solely on the basis of the victim's testimony." (R.p.445, lines 12-16). Thus, this single instruction was not unduly emphasized. Not only was it not emphasized, it was tempered by the additional instruction specifically requested by Petitioner that:

> The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore

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

(R.p.445, lines 16-25). Given these instructions as a whole, there was no reversible error and there is no reason to "revisit" Rayfield. Petitioner's convictions should be affirmed.

CONCLUSION

Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission to fully brief the issues contained herein.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

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

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

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
April 29, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

Opinion No. 2015-UP-015 (S.C. Ct. App. filed January 14, 2015)

Appellate Case No: 2015-000607

State of South Carolina, ... Respondent,

v.

Albert Brandeberry, ... Petitioner.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for a Writ of Certiorari*, dated April 29, 2015, on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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

I further certified that all parties required by Rule to be served have been served. This 29th day of April, 2015.

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

ALAN WILSON
ATTORNEY GENERAL

April 29, 2015

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

RE: The State, Respondent, v. Albert Brandeberry, Petitioner
Appellate Case No. 2015-000607

Dear Mr. Dudek:

I am enclosing two (2) copies of the Return to Petition for a Writ of Certiorari in the above-referenced case.

Sincerely,

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

JBA/ab
Enclosures

cc: Honorable Daniel E. Shearouse
(original and six copies enclosed)
Victim Services