STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-000394

THE STATE, ...RESPONDENT

v.

CHRISTOPHER LEE MEADOWS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases:

Rules:

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly admitted testimony from the State's expert on child sexual abuse dynamics regarding delayed disclosure and general behavioral characteristics of child sex abuse victims where that expert testimony assisted the jury to understand the evidence and did not improperly bolster the child victim's testimony.

STATEMENT OF THE CASE

Christopher Lee Meadows (Appellant) was indicted at the August, 2011 term of the grand jury for Pickens County for criminal sexual conduct with a minor in the second degree (2011-GS-39-01339). He was represented by Assistant Public Defender John Dejong, of the Thirteenth Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitor Sam Tooker of the Thirteenth Circuit Solicitor's Office. (R.p.1). On February 24-25, 2014, Appellant proceeded to trial by jury before the Honorable James R. Barber, III, pursuant to which he was found guilty as indicted. He was sentenced to sixteen (16) years' imprisonment. (R.p.278-280; R.p.271, line 5-p.277, line 12). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

In 2010, Appellant initiated an inappropriate relationship with the minor victim, which culminated in Appellant sexually abusing the thirteen-year-old girl by having sexual intercourse with her seven or eight times between November of 2010 and March of 2011. Appellant was dating the victim's mother at the time, and engaged the victim in sexually explicit conversations and text messages before he escalated the relationship to include sexual abuse. (R.p.24, line 15-p.30, line 18; p.77, line 16-p.93, line 3).

During jury qualification the trial judge asked if any members of the jury panel or any of their immediate family members had ever worked for any organization, agency or business which investigated and/or counseled victims of alleged sexual assault. There was no response. The trial judge also asked if any member of the jury panel or any immediate family member had ever been the victim of any type of sexual assault, sexual assault and battery, or any other crime against a person. Five individual jurors approached the bench with information. Three of those five were excused by the trial judge for cause, and the two others were stricken from the panel during jury selection, leaving no seated juror who professed prior knowledge, from family members or otherwise, about sexual abuse or typical behavioral characteristics of victims of sexual abuse. (R.p.5, line 1-p.20, line 21; p.21, lines 10-13; p.22, lines 13-15).

At trial, after the jury was sworn, the trial court gave preliminary instructions which included the following comment: "Conceivably we can have what is called an expert witness and that is somebody who has special knowledge, skill, experience, [or] training in some specialized field. If we have an expert, the expert can offer an opinion in his or her areas of expertise. Fact witnesses can only tell you what facts they are – they have." (R.p.23, lines 9-14). During opening statements, the solicitor told the jury

Appellant was charged with a crime because he had sex with the victim when she was only thirteen years old. He explained Appellant was dating the victim's mother when he began a sexual relationship with the victim. The solicitor noted there was no force or coercion involved and that the victim would claim she consented to the sex; however, it was impossible for a child to consent to sex under the law. He said the case the State would present was based primarily on the victim's testimony and as a result it was a case that "comes down to credibility." (R.p.24, line 15-p.30, line 18). In response, Appellant told the jury to focus on the presumption of innocence. He said he would not address reasonable doubt or credibility until the end of the trial when the jury had heard all of the evidence. (R.p.30, line 22-p.35, line 4).

The State then presented testimony and evidence from a series of witnesses, including the victim. First, the State called Sergeant Matthew Brannen of the city of Pickens Police Department to the stand. In April of 2011 he received a report of a possible sex crime with a minor and went to the Pickens County Law Enforcement Center to meet with the victim, her mother, and a friend of the family (Robert William Futrell) who had driven them to the police station. Brannen spoke to the victim and described her as being sad and disappointed and as suppressing her emotions. During the talk, the victim disclosed the time and place of the sexual encounters. She told Brannen the first encounter happened a couple of days after Thanksgiving in 2010 and that she had sex with the person a total of seven or eight times, mostly at 300 John Street in the city of Pickens. (R.p.37, line 9-p.41, line 25). On cross-examination Brannen clarified that although the victim was sad and crying at the meeting, she was not hysterical. (R.p.42, line 4-p.44, line 8).

Next, the State called Robert William Futrell to the stand. Futrell and the victim's mother were close friends and he said he had known the victim since she was born. Futrell then described Appellant as his "best friend" and said they had been best friends for years. One day as Futrell was driving the victim to a birthday party, he received a text message from the victim's mother. Based on that message, he asked the victim if anything was going on between her and Appellant. Based on her response Futrell called the victim's mother, drove to pick her up, and then drove them to the police department. Later that night, Futrell had a conversation with Appellant. Futrell testified Appellant threatened him and said he was going to kill him because Appellant thought Futrell had made up the story about Appellant and the victim. Futrell said he got a weapon because he believed Appellant's threats were serious. (R.p.44, line 22-p.51, line 16).

The State then called the victim's two younger sisters to the stand. Sister 1, who was thirteen years old at the time of trial, was the first person the victim told about her involvement with Appellant. She did not initially go to her mom or to the police with the information because she was scared. The victim showed Sister 1 text messages she had received from Appellant, including one where Appellant asked the victim to go riding in the car with him so they could have sex. A couple of times when Sister 1 and Sister 2 would come in from playing outside they discovered the victim and Appellant in their mother's bedroom, all by themselves, under the covers. Sister 1 and Sister 2 ultimately reported the relationship to their mother, who then asked Appellant to get his stuff out of the house. After Appellant moved out, the victim repeatedly asked Sister 1 to sleep in her room and spend the night with her. (R.p.54, line 18-p.62, line 17).

Sister 2, who was fifteen years old at the time of the trial, testified she first learned what was going on when she was told by Sister 1, and later heard about the relationship from the victim. She was supposed to keep the relationship a secret but decided to tell her mother because it was wrong. Sister 2 remembered Appellant and the victim sometimes disappearing for an hour or two at a time, saying they were going to Walmart, but then returning without having purchased anything. The victim never specifically told Sister 2 when or where the sex occurred. Sister 2 went with the victim and her mother to the police department when the crimes were first reported to the police and described the victim as being upset and crying. (R.p.66, line 16-p.70, line 25).

Next, the sixteen-year-old victim took the stand. She described her home life and the sexual abuse she suffered at the hands of Appellant. The victim was twelve when her mother started dating Appellant. He moved in with them a couple of months later. The victim testified the sexual encounters took place about a year later, when she was thirteen. After moving in, Appellant did not take on a "fatherly" role in the household; however, everything "revolved around him." The victim said she and Appellant started communicating through text messages shortly after she broke up with her boyfriend, and that their conversations soon turned to sexual topics, like Appellant asking whether she was a virgin. Appellant also asked the victim to send him photos of her, and the two exchanged sexually explicit pictures. The victim testified that on Black Friday of 2010, the day after Thanksgiving, Appellant asked her mom if the victim could ride with him so that they could get to know each other better. After dropping Appellant's cousin off, Appellant parked in a parking lot and he and the victim began touching each other. Eventually their pants were off and they were "getting started," but stopped before they

had sex because the victim's mother kept calling. The victim was jealous because Appellant was still with her mom, even though she knew her own relationship with Appellant was wrong. She testified she and Appellant had sex seven or eight times either in parking lots or her mom's room at the house, but they stopped shortly after February of 2011. The victim testified Appellant shaved his genitals all the time so that he had no body hair on them. (R. p.77, line 16-p.86, line 15).

The victim acknowledged exchanging a lot of text messages with Appellant and sharing some of those messages with Sister 1, including one in which Appellant said he wanted to have sex. The victim told Sister 1 what was going on but asked her to keep it a secret. She explained she needed to tell someone to get it off of her chest because she knew it was wrong, but she also did not want the relationship to stop. The victim testified she felt guilty, like she was hurting her mother. The victim said Appellant ended the sexual relationship because she was actively trying to stop him from marrying her mother, which made him mad. She testified that sometimes the sex happened in the house and that Appellant would usually bring her Gatorade® and a Slim Jim® as an excuse to go meet her in the bedroom. (R.p.86, line 16-p.93, line 3). On cross-examination, Appellant attacked the victim's credibility. He questioned her about the accuracy of her disclosure to the police, her emotional state at the time of that disclosure, and the fact that she originally denied any sexual contact when questioned by mother. (R.p.93, line 4-p.109, line 23).

The State then called the victim's mother, Georgia, to the stand. She referred to Appellant as her "ex-boyfriend" and explained they were together for a total of four-and-a-half years, one-and-a-half years before the allegations and three more years after.

Georgia met Appellant when the victim was a baby and had known him seventeen years. She first suspected something was going on between the victim and Appellant in March of 2011 when she found text messages from the victim to Appellant on his phone, and responses Appellant sent back. Georgia recognized the number as belonging to the victim and recognized the name assigned to that number matching the nickname Appellant used for the victim, which was "punk." In one text message the victim asked Appellant to bring her a Slim Jim® and some Gatorade® so he could give her a big kiss goodnight. Georgia asked the victim about the text messages and she denied they were hers. (R.p.110, line 21-p.116, line 25).

Georgia recalled a particular instance when Appellant asked her if the victim could ride with him to take his cousin home. She thought this was significant because usually Appellant would ask them all to go, but this time he only asked about the victim. When Georgia questioned whether the victim should go because it was already late on a school night, Appellant reacted defensively and said: "I can't believe you would think I would do something like that." However, Georgia had not accused Appellant of wanting to do anything to warrant this reaction. Georgia testified Appellant had kept his genitals "clean shaved" in 2011. Finally, Georgia recounted Black Friday of 2010 when Appellant and the victim were gone for over two hours on a purported trip to Walmart, and returned with just a box of candies and a card. (R.p.117, line 1-p.121, line 25). On cross-examination Georgia said the victim would not talk to her about the situation with Appellant. (R.p.131, line 20-p.132, line 5).

The State then called Georgia's sister, Betty Ipina to the stand. The victim went to live with Ipina in North Carolina about a week after the allegations were made and

stayed with her for almost two years. Sister 1 and Sister 2 eventually moved to North Carolina to live with her as well. Ipina testified that after moving in, the victim was initially depressed and would sometimes cut herself, but she went through counseling at school and later seemed happy and positive. The victim never disclosed anything about Appellant to Ipina. (R.p.132, line 23-p.136, line 24). On cross-examination, Appellant asked Ipina if, when the girls returned to their mother, Georgia and Appellant still had a relationship. Ipina responded: "No. She had to go through parenting classes and stuff in order for her to regain custody. And that was one of the circumstances that she regain custody is she had to stay away from - - keep the kids away from him, any contact, until the court hearing was over." (R.p.137, lines 3-20).

At the start of the second day of trial Appellant reminded the trial judge that, in regard to the State's expert witness, he would be moving to prohibit her from testifying and would be asking the State to proffer her testimony before a ruling. (R.p.147, lines 5-18). The State then called Pickens police detective Travis Riggs to the stand. Riggs investigated the allegations, which included interviewing the victim. She told Riggs the sexual encounters happened between Thanksgiving of 2010 and March of 2011, either in her home at 300 John Street or in a vehicle in an unknown location. Riggs testified the victim was nervous at the beginning of the interview and then became ashamed and saddened and eventually began crying. Riggs also interviewed Futrell and the victim's sisters and then secured a warrant for Appellant's arrest. He attempted to obtain Appellant's cell phone and the victim's cell phone to check them for text messages; however, Appellant had broken his cell phone and it was damaged too badly to recover any information, and the victim had erased all of the text messages from her phone.

Riggs then sought cell phone records from Verizon. He said the company did not have records of the content of the text messages between the two numbers, but was able to provide call logs showing the times and dates of the text message sent from and received by from each phone. (R.p.148, line 22-p.156, line 13).

The State then called Verizon's records custodian, Karen Milbrodt, and introduced the call logs into evidence before recalling Detective Riggs. (R.p.160, line 1-p.163, line 4). Riggs testified that between November 22, 2010, and March 5, 2011, there were a little over 1,700 texts from Appellant to Georgia, compared to 4,657 texts from Appellant to the victim, and 4,300 texts from the victim to Appellant. (R.p.164, line 14-p.165, line 24).

When the State finally called Galloway-Williams to the stand, the trial court excused the jury to hear arguments on Appellant's motion to prohibit her testimony. Appellant noted that based on prior experience with Galloway-Williams, he expected the State would elicit testimony about late reporting, grooming, and other behavioral characteristics of child sex abuse victims. He argued "this is nothing more than bolstering or an attempt to bolster the alleged victim's testimony." Appellant further argued that, under Rule 702, the testimony would not help the jury to understand the evidence or determine a fact in issue. He contended there would be no evidence the jury needed help to understand and that it was simply "an attempt by the state to backdoor bolster the allegations as made by the alleged victim." The solicitor acknowledged the State intended to offer Galloway-Williams as an expert to explain why the victim may have reacted the way she did in regard to trying to keep the abuse a secret, but would not

ask her to offer an opinion that, in fact, the abuse occurred. The trial judge asked the solicitor to proffer the testimony. (R.p.165, line 25-p.170, line 7).

Galloway-Williams testified she is Executive Director of the Julie Valentine Center where she performs administrative and executive functions and sometimes conducts forensic interviews. She holds a bachelor's degree in psychology, a master's degree in counseling, and is licensed as a professional counselor in South Carolina. As the State proceeded to question Galloway-Williams about her qualifications and reliability, the trial judge interrupted to ask if Appellant was even contesting her qualifications. Appellant said he was not questioning her qualifications but argued that if Galloway-Williams was not offering an opinion, her testimony would not fit under Rule 702. (R.p.170, line 8-p.172, line 19).

The trial court asked the solicitor to proceed so it could hear what Galloway Williams had to say. 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 "normalization of sexual activity" and "relationship dynamics" and how these concepts influence the process of disclosure. She described "grooming" as the act of preparing a child or "testing the waters" with a child in an attempt to make the child more comfortable with the ultimate act that is going to be committed. Finally, Galloway-Williams explained the term "compliant victim" as describing a victim who may not see

herself as a victim because she either participated in the act or failed to fight back. (R.p.172, line 20-p.179, line 13).

Appellant elected not to cross-examine Galloway-Williams and continued to argue that nothing in her testimony would aid the trier of fact. He contended the testimony would constitute "pure bolstering." The solicitor responded the testimony would assist the trier of fact in determining a fact in issue and therefore was admissible pursuant to Rule 702. Appellant disagreed and claimed the testimony being offered was "closely akin" to the forensic interviewer testimony recently ruled inadmissible by this Court and should be excluded. The solicitor noted the cases referenced by Appellant deal with forensic interviewing and specific testimony about the credibility of the disclosure. He argued this case was distinguishable because Galloway-Williams was only explaining the dynamics of disclosure and grooming and not testifying the victim was telling the truth. Ultimately the trial court denied Appellant's motion and held Galloway-Williams would be allowed to testify because she could provide information which could assist the jury in its province to determine credibility of all witnesses. (R.p.178, line 14-p.184, line 14).

Following the ruling, the jury returned to the courtroom and the State proceeded to question Galloway-Williams. Appellant renewed his objection to the testimony and asked that it be recognized as an ongoing objection through the entirety of her testimony. The objection was noted by the trial court. The State then presented nearly identical testimony about qualifications as was previously proffered. Without objection, the trial court qualified Galloway-Williams as an expert in the "dynamics of childhood sexual

abuse." (R.p.184, line 22-p.188, line 25). The trial judge then gave the following instruction:

> Ladies and gentlemen, I'm going to find the witness can be qualified as an expert in the dynamics of child sexual abuse, and under our rules of scientific, technical or other specialized knowledge will assist you, the trier of facts, in understanding any evidence or determining any issue that may be in controversy. A witness can be qualified as an expert by virtue of his or her experience, training, knowledge, skill or education and may testify in the form of opinions. Now, you are to give this witness's testimony such weight and credibility as you deem appropriate, as you will with any and all witnesses who will testify in this case.

(R.p.189, lines 1-13).

Galloway-Williams then explained her purpose in testifying was to provide information about the dynamics of child sexual abuse. She testified she had not been in contact with the victim in the case, did not know any of the parties involved, had not viewed the victim's written statement, and had not seen any evidence in the case. Galloway-Williams explained "delayed disclosure" as a term for describing how children do not tell 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 or something will happen to someone else. She explained the role guilt and shame play in child sexual abuse and delayed disclosure. Galloway-Williams also explained the impact of an abuser being in a position of authority over the victim and overall relationship dynamics. She provided information about the "normalization of sexual activity" and "grooming." Finally, Galloway-Williams described the term "compliant victim" and how disclosure can be even more challenging for older victims who look at themselves as willing participants in the abuse. (R.p.189, line 16-p.197, line 24).

On cross-examination, Appellant asked Galloway-Williams about false allegations of sexual abuse. She testified that statistically they were a "very low number," explaining that while false allegations do happen, only between two and four percent or allegations are false. Galloway-Williams testified it was much more likely to have a false denial where there is other proof of the abuse than the chances of a purely false allegation, according to the research. (R.p.198, line 3-p.200, line 23). At the close of Galloway-Williams' testimony, the State rested and the jury exited the courtroom. Appellant moved for a directed verdict and the trial court denied the motion. (R.p.201, line 10-p.203, line 6).

After the defense rested, the parties made closing arguments. First, the solicitor described the elements of the crime and reminded the jury that this was primarily a case about credibility. He talked about general methods to evaluate credibility and discussed the testimony given by the victim and each of the witnesses. The solicitor noted the jury should evaluate Galloway-Williams credibility based in part on her experience and training. He then discussed the other evidence presented at trial including the cell phone call logs. The solicitor recounted testimony about the victim's emotional state and the disclosure in the context of the general information provided by Galloway-Williams, arguing Appellant engaged in grooming and that the victim behaved like a compliant victim. (R.p.216, line 18-p.246, line 2).

Appellant then presented his theory of defense, contending the victim was making "false allegations" and that the case came down to her testimony. He attacked the victim's credibility by focusing on her inconsistencies, her lack of details, and her emotional state. Appellant argued she was motivated by jealousy and hatred and decided

to raise allegations of sexual abuse to get Appellant out of the house. (R.p.246, line 7-p.259, line 14).

The trial judge then charged the jury on the law including the State's burden of proof, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, the roles of the judge and the jury, the jury's duty to determine the facts and the credibility of witnesses, and the elements of the offense. After deliberating for approximately forty-five minutes, the jury found Appellant guilty as indicted. He was sentenced to sixteen (16) years' imprisonment. (R. p. 278-208; R.p.259, line 15-p.277, line 12).

ARGUMENT

I.

The trial court properly admitted testimony from the State's expert on child sexual abuse dynamics regarding delayed disclosure and general behavioral characteristics of child sex abuse victims where that expert testimony assisted the jury to understand the evidence and did not improperly bolster the child victim's testimony.

Appellant argues the trial court erred in admitting the testimony of Galloway-Williams as an expert in the "dynamics of childhood sexual abuse" and in allowing her to explain common behavioral characteristic of sexually abused children, because her testimony "contained nothing that would assist the trier of fact" and "improperly bolstered" the victim's credibility. He claims the trial court also "failed in its gatekeeping role to exclude such evidence" under Rule 702. Appellant contends Galloway-Williams gave only vague descriptions of commonsense concepts that were well within the realm of lay jurors. He argues the State sought to "circumvent" the principles explained in our supreme court's recent decision in State v. Kromah[1] in a "thinly veiled attempt to bolster [victim's] testimony." (Brief of Appellant). The State disagrees and submits Appellant's arguments are entirely without merit.

Appellant acknowledges this Court's recently published opinion in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), wherein the Court considered and rejected claims identical to the ones raised in the instant appeal. However, he notes that a petition for certiorari is currently pending before the Supreme Court on a very similar

[1] 401 S.C. 340, 737 S.E.2d 490 (2013). In Kromah, the Supreme Court held a forensic interviewer should not have been allowed to testify about a "compelling finding" of child abuse, as that was the equivalent of stating the child was telling the truth. Id. at 359, 737 S.E.2d at 500. In a footnote, the court also found: "we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate."

issue in State v. Peters, and that Brown intends to petition for rehearing in his case.[2] He urges this Court to reconsider its decision in Brown as it applies to this case, arguing Brown reads Kromah too narrowly. Appellant acknowledges Kromah dealt specifically with forensic interviewers but argues the "intent" of Kromah and the line of cases that preceded it was to limit all opinions vouching for the credibility of witnesses, and that the State has simply renamed forensic interviewers as experts in "spurious field like dynamics of child sexual abuse" in an effort to "circumvent" Kromah.

The State strongly disagrees with Appellant's characterization of the solicitor's motives in this case and the motives Appellant generally attributes to the State as a whole in prosecutions for child sexual abuse. Where a prosecutor identifies an admittedly qualified expert in the study and treatment of child sexual abuse and then seeks to introduce, within the parameters of well-established precedent and the Rules of Evidence, testimony from that expert in an effort to provide information which might help jurors understand the often confusing behavior of young victims of sexual abuse, that prosecutor is not attempting to do anything which approaches circumvention of precedent. Indeed, in Appellant's case the solicitor specifically acknowledged the line of cases addressing vouching by forensic interviewers and sought to introduce only evidence our appellate courts have already deemed admissible. See State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) ("[B]oth 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. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) ("Expert testimony

[2] Since the filing of Appellant's initial brief, this Court has denied Brown's petition for rehearing and Brown timely submitted a petition for a writ of certiorari with the Supreme Court. That petition for certiorari is now pending.

concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.").

The State also disagrees with Appellant's attempt to expansively read Kromah and asks this Court, as it did in Brown, to find the substance of Appellant's argument to be without merit. 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 the victim's compliant behavior and the delay in her disclosure might say about her credibility. It likewise was admissible as rape trauma evidence to prove the sexual abuse occurred. Schumpert, 312 S.C. at 506, 435 S.E.2d at 862. As correctly recognized in Brown, Kromah prohibits improper bolstering. Not any and all evidence which might have the effect of bolstering, corroborating, or otherwise supporting the victim's testimony about alleged sexual abuse is improper. Indeed, under Appellant's theory medical testimony should be excluded if it bolsters the victim's testimony about a sexual assault because it would constitute indirect vouching for her credibility. Kromah simply does not stand for such a proposition. Appellant's conviction should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417

(2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). Indeed, the qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support. Kromah, 401 S.C. at 349, 632 S.E.2d at 495; Morris, 376 S.C. at 206, 656 S.E.2d at 368; Gooding, 326 S.C. at 252, 487 S.E.2d at 598; Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995). To show prejudice, the appellant must prove that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof. Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005); Brown, 411 S.C. at 339, 768 S.E.2d at 249 (Ct. App. 2015).

Analysis / Discussion

The South Carolina Rules of Evidence provide:

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

Rule 702, SCRE. Thus, there are three criteria that typically 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).[3]

Here, Appellant does not challenge whether Galloway-Williams possessed the specialized knowledge to qualify as an expert in her field. Instead, he focuses on the first prong of the test and contends the jury did not require expert knowledge to understand why the minor victim delayed disclosing the abuse. However, just as in Brown, Galloway-Williams' specialized knowledge of the behavioral characteristics of child sex abuse victims was relevant and crucial in assisting the jury's understanding of why children might be compliant in sexual abuse and might delay disclosing the sexual abuse until confronted. Indeed, the juries in Appellant's case and in Brown had a similarly limited knowledge of sexual abuse. In regard to the jurors who were ultimately seated, the qualifications and responses to questions during voir dire demonstrated they would not have any prior knowledge about sexual abuse or common behavioral characteristics of victims of such abuse. Also, like Brown, Appellant attacked the victim's credibility on

[3] Although Appellant briefly mentions "reliability" at trial and again on appeal, he never actually articulated an argument to the trial judge that Galloway-Williams testimony did not meet a general reliability threshold. Indeed, by admitting she was qualified as a child abuse expert and only arguing her testimony would not assist the trier of fact, he effectively abandoned any particular challenge to the reliability of her testimony under White. In any event, Galloway-White was eminently qualified and she testified on cross examination that her testimony was based on research; thus, the State submits there is sufficient evidence of her reliability in the record.

cross-examination, and in his argument to the jury. He questioned the victim about the accuracy of her disclosure to the police, her emotional state at the time of that disclosure, and the fact that she originally denied any sexual contact when questioned by mother. (R.p.93, line 4-p.109, line 23). Thus, the expert testimony was appropriately admitted to assist the jury to understand the competing theories in the case.

Finally, and again as in Brown, the evidence itself presented behavior which may have been perplexing to the jury. The victim was compliant with Appellant's requests for sex and participated in the sexual abuse. She eventually disclosed the sexual relationship to her sisters but then asked them to keep it a secret. The victim only disclosed the sexual abuse to her mother when confronted with information that had been provided by her younger sisters, and then she acted sad, upset, and emotionally suppressed when reporting the abuse to the police. As noted by this Court in Brown: "Such behavior undoubtedly became a fact at issue in this case, raising questions of credibility or accuracy that might not be explained by experiences common to the jurors." Brown, 411 S.C. at 341, 768 S.E.2d at 251. Where both the solicitor and Appellant argued credibility was the main issue in the case, expert testimony which helped the jury to assess credibility was entirely appropriate, particularly because Galloway-Williams did not directly or indirectly vouch for the victim. As this Court succinctly explained in Brown:

> We believe the unique and often perplexing behavior exhibited by child sex abuse victims does not fall within the ordinary knowledge of a juror with no prior experience—either directly or indirectly—with sexual abuse. The general behavioral characteristics of child sex abuse victims are, therefore, more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victim's testimony.

Brown, 411 S.C. at 342, 768 S.E.2d at 251. In other words, Galloway-Williams was better qualified than the fact finder to offer possible explanations for 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 and it gave the jury useful information it could use to exercise its duty to evaluate the credibility of each witness.

Galloway-Williams' testimony also was sufficiently limited so as not to improperly bolster the victim's testimony or unfairly prejudice Appellant. Galloway-Williams: (1) was not testifying as a forensic interviewer, (2) never interviewed the victim, (3) did not prepare a report for her testimony, (4) did not express and opinion or belief regarding the credibility of the victim's allegations, and (5) did not express an opinion regarding the credibility of the victim in this case. Thus, the cases relied upon by Appellant are factually and legally distinguishable from his case. Brown, 411 S.C. at 345, 768 S.E.2d at 252-53. As in Brown, "The fact that [Galloway-Williams'] testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts." Id. at 345, 768 S.E.2d at 253. Since Galloway-Williams did not inappropriately vouch for the victim's allegations, she did not improperly bolster the victim's testimony. For the same reason, any prejudice Appellant experienced from submission of Galloway-Williams' testimony to the jury was substantially outweighed by its probative value. "[T]he concerns our supreme court expressed in Kromah regarding forensic interviewers testifying as experts in child sexual abuse cases are inapplicable to the instant case because the danger of

prejudice—which could result from the jury giving undue weight to the expert testimony of a forensic interviewer who interviews the victim and expresses an opinion as to the child's credibility—is simply not present here." Brown, 411 S.C. at 348, 768 S.E.2d at 254.

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

CONCLUSION

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

Respectfully submitted,

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Columbia, South Carolina
June 17, 2015

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In The Court of Appeals

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APPEAL FROM PICKENS COUNTY
James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-000394

THE STATE,.....RESPONDENT

v.

CHRISTOPHER LEE MEADOWS,.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 17, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 17th day of June, 2015.

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