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SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY  
Court of General Sessions

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2015-000235

THE STATE,

Respondent,

v.

BRYANT CHRISTOPHER GURLEY,

Appellant.

**FINAL BRIEF OF RESPONDENT**

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ATTORNEYS FOR RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

### I.

The trial court properly admitted the video recording of Victim's forensic interview because it met the requirements of the statute and did not contain statements that constituted improper bolstering.

### II.

The trial court properly qualified Kathy Crawford, Victim's counselor, as an expert in sexual assault trauma and properly admitted her testimony regarding how children disclose sexual abuse, normal behavior for child victims, and types of symptoms a child might show.

### III.

The trial court correctly allowed the State to present rebuttal testimony that was responsive to evidence introduced by Appellant regarding Victim's mother's character.

### IV.

Appellant's argument that Victim's mother's testimony regarding things Victim explained to her is not preserved, but even if preserved, the trial court properly limited Victim's mother's testimony to time and place.

### V.

Appellant's argument that the cumulative prejudice of multiple errors requires a new trial is not preserved, but even if preserved, the trial court conducted a fair trial and Appellant is not entitled to a new trial.

## STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant for lewd act on a minor. (R.1-2) On January 26–29, 2015, Appellant proceeded to a trial before the Honorable William H. Seals, Jr., and a jury. Marcus Woodson, Esquire, represented Appellant, and Assistant Solicitor Catherine Wyse, Esquire, represented the State. The jury found Appellant guilty, and Judge Seals sentenced him to eight years' imprisonment. (R. 298–299.)

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

## STATEMENT OF FACTS

One morning when Victim's mother (Mother) was getting her ready for school, Victim reported to her mother that Appellant, a family friend, had touched her private area. (R. 12, line 18–R. 13, line 8.) Mother first called Appellant's mother, Denise Gurley, and had Victim tell Denise what happened. (R. 13, lines 14–24.) Mother then spoke to someone at a children's center who advised her to call law enforcement. (R. 14, lines 1–3.) She met with an officer at her home and he filed a report. (R. 14, lines 4–8; R. 35, line 18–R. 36, line 14.) The officer, Deputy John Austin Meggs of the Florence County Sheriff's Office, then contacted Investigator Jennifer Floyd. (R. 35, line 4–R. 36, line 25; R. 38, lines 16–19.) Based on information she received, Investigator Floyd got a warrant for Appellant's arrest for lewd act on a minor. (R. 40, line 16–R. 41, line 15.)

Appellant was charged as an adult and proceeded to trial. (R. 42, lines 4–7.) The State began by calling Mother to the stand. (R. 5.) She explained how she and her daughters had stayed with her friend Denise and her family after Mother was divorced. (R. 8, line 8–R. 9, line 23.) Appellant would spend weekends at the Gurley home. (R. 10, lines 14–16.) Mother testified Victim disclosed to her that Appellant had touched her inappropriately. (R. 12, lines 17–23.) When the solicitor asked Mother to describe where the incidents took place, defense counsel objected on hearsay grounds. (R. 15, lines 22–25.) The trial court overruled the objection, citing the time and place exception to hearsay in this type of case. (R. 16, lines 2–3.) Mother then began describing the incidents: one in the living room, one in the back seat of the car, one in her bedroom. (R. 16, line 9–R. 17, line 7.) Defense counsel again objected to hearsay, and the trial judge held a bench conference. (R. 17, lines 8–13.) Defense counsel argued it went way beyond time and place because she was saying what Victim said. (R. 17, lines 14–17.)

Defense counsel argued, “I mean she’s testifying what the girl told her. Unless she— she’s going to say she saw him go in the bedroom.” (R. 18, lines 5–7.) The solicitor stated, “That’s exactly what she said.” (R. 18, line 9.) The trial court asked, “She’s testifying as to what she saw?” and then stated, “If she’s not, you can object. If she’s doing that, it’s fine.” (R. 18, lines 9–14.) The State asked Mother, “Those were where [Victim] told you these incidents occurred?” to which she replied, “Yes.” (R. 18, lines 20–22.) Appellant did not object. The State then asked, “And those are things that you saw yourself?” to which she replied, “As she explained them to me, I could see in my— remember back in my mind the exact everything she was explaining to me. I just never pinpointed to what she was trying to explain to me happened.” (R. 18, line 23–R. 19, line 2.) Appellant still did not object.

One of the incidents Mother described was when she drove Victim and Appellant to her mother’s house in Lake City. She recounted that when they were ready to leave, Victim started crying and kicked the car door, saying she did not want to get in the back seat. (R. 16, lines 17–25.) Victim’s grandmother, Lillie Daniels, also testified about the incident where Victim did not want to get in the car and cried. (R. 23, lines 1–8.) Samantha Toney, Victim’s sister, likewise testified about the incident. (R. 26–27.) She recalled that when they left to go back to Florence, Victim was not happy about getting in the back seat and begged not to ride back there. (R. 27, lines 1–9.)

Investigator Jennifer Floyd of the Florence County Sheriff’s Office testified regarding her involvement in the case. She made appointments for Victim to have a forensic interview and a medical examination. (R. 39, lines 6–11.) Based on what Victim disclosed during the forensic interview, Investigator Floyd secured a warrant for Appellant’s arrest for lewd act on a minor. (R. 40, lines 16–25.)

The State called Kathy Crawford, and Appellant objected based on the assumption Crawford was going to testify about what Victim said, arguing Victim had to testify first in accordance with section 17-23-175. (R. 65, lines 1–11.) The State offered to allow Victim to testify first but also argued the witness did not fall under that particular statute because she was not the forensic interviewer. (R. 66, line 2–R. 67, line 4.)

The State called Victim to the stand. (R. 69, lines 9–10.) Victim testified she was sexually assaulted by Appellant. (R. 71, line 5–18.) She testified he put his hands on her private parts four times. (R. 72, lines 18–23.) She recounted that the incidents happened “[f]irst upstairs, then on the couch, then under the covers, then in the back of the car.” (R. 72, line 24–R. 73, line 6.) The State showed Victim three pictures she had drawn and asked her to identify them. (R. 73, lines 7–9.) Victim explained that Exhibit Number 2 showed her under the covers with Appellant; that Exhibit Number 3 showed her telling her mom about what was happening, specifically that she was sexually assaulted; and that Exhibit Number 4 showed her in the back of the car with Appellant, feeling scared. (R. 73, line 10–R. 74, line 7.) The trial court admitted the exhibits into evidence without objection. (R. 74, lines 9–16.)

On cross-examination, defense counsel questioned Victim about Exhibit Number 4, the drawing of the car trip to Lake City. (R. 79, lines 7–18.) Victim testified that she had drawn her mother in the front seat behind the wheel, but she stated her mother was not actually in the car when the incident took place because she was inside the house talking to her grandmother. (R. 79, line 19–R. 80, line 8.) Defense counsel asked her whether they were getting ready to leave at that point or if they had just gotten there, and Victim told him they were getting ready to leave. (R. 80, line 23–R. 81, line 1.) She then explained that the only one who got out of the car was her mother and that everyone else

stayed in the car the whole time. (R. 81, lines 13–25.) Victim testified Appellant slid over toward her in the back seat and touched her. (R. 82, lines 9–17.) The next incident defense counsel questioned her about happened in the music room upstairs during a family get-together. (R. 84, lines 12–18.) He asked her whether she remembered saying that a friend walked up and that was why it stopped and she said, “Yes, sir.” (R. 85, lines 5–8.) Victim remembered another incident in the living room but could not remember the fourth incident. (R. 87, line 17–R. 88, line 25.)

Next the State offered Kathy Crawford, a licensed counselor, as an expert in the area of sexual assault trauma, to which Appellant objected. (R. 96, lines 9–13.) He argued her testimony was improper bolstering and that her testimony should be limited. (R. 97, lines 14–18.) He made a motion in limine that “she not be allowed to testify to anything regarding this child because she’s going to have to get into statements the child made.” (R. 97, lines 19–22.) Specifically, he complained that none of her interviews were recorded “like the statute says.” (Rr.974, lines 22–23.) The State explained it was offering her as an expert witness to talk about how children disclose, what “normal” behavior is for a child abuse victim, and some questions about time and place regarding Victim and whether Victim drew the pictures. (R. 98, lines 1–16.) The trial court overruled Appellant’s objection but encouraged him to continue to object if something specific came up that needed addressing. (R. 98, lines 21–23.)

After engaging in voir dire with Crawford, Appellant then argued he only got her records last week and did not have time to obtain his own expert to refute her testimony. (R. 100, lines 5–14.) The solicitor maintained she provided everything about the expert timely and the only new material provided in the last week was some information regarding PTSD Crawford had just given her the week before trial. (R. 100, lines 16–23.)

The trial court overruled Appellant's objection. (R. 101, lines 24–25.) The trial court qualified Crawford as an expert in the area of child sexual trauma over Appellant's objection. (R. 102, lines 17–24.)

Crawford testified about patterns of behavior for victims of sexual trauma and cited some studies that indicated about 75% of children do not disclose immediately. (R. 103, lines 1–25.) At that point, Appellant objected to the studies as hearsay, which the trial court overruled. (R. 103, lines 12–20.) Appellant also objected when the State asked what kinds of indicators might make her think sexual abuse is going on, but the trial court overruled it. (R. 104, lines 21–25.) Crawford testified she began working with Victim in May 2013 and described how Victim chose to draw pictures rather than talk or write about what happened to her. (R. 108, lines 11–15; R. 109, lines 2–13.) She identified three drawings Victim had done depicting incidents of abuse. (R. 109, line 18–R. 110, line 24.) The State asked Crawford if she had ever worked with a child who had been coached, and she answered, “The times that I believed that I have worked with children that have been coached is usually when they are coached by the offender not to tell.” (R. 112, lines 7–11.) The State then asked if she saw any signs of coaching with Victim, and Appellant objected, arguing she could not render an opinion on that and that it was a jury question. (R. 112, lines 17–22.) The trial court overruled the objection. (R. 112, line 21.)

Crawford testified Victim was very detailed in her descriptions of the incidents, even remembering what she was wearing at the time and what pictures were on the wall. (R. 113, lines 2–24.) Crawford explained she was able to diagnose patients through her state licensure as a counselor and that her normal business practice was to submit a date of service and a diagnosis to insurance companies. (R. 115, lines 8–15.) She diagnosed

Victim based on the symptoms she presented with. (R. 115, lines 16-22.) Appellant objected when the State asked what Victim's diagnosis was, and the trial court overruled. (R. 115, lines 23-25.) Crawford testified her diagnosis of Victim was adjustment disorder with anxiety and depression with traits of PTSD, post-traumatic stress disorder, which is something she normally sees in victims of sexual assault. (R. 116, lines 2-8.) When the State asked if Victim was consistent with other children who have been sexually abused, Appellant objected and the trial court held the following bench conference:

The Court: Is that getting into the credibility and the believability of the child?

[The State]: Well--

The Court: It's touching on it.

[The State]: If you want me to stay away from it, I will.

The Court: That would probably be a good idea based on recent case law.

(R. 116, lines 17-25.) The State agreed, and the trial court sustained the objection. (R. 117, lines 1-5.)

Next, the State proffered the testimony of Sally Williamson in order to introduce the forensic interview video so that the trial judge could watch it and make a ruling. (R. 131, line 15-R. 134, line 23.) Appellant had no objection. (R. 134, lines 24-25.) After the trial court viewed the video, Appellant objected on several bases. (R. 135, lines 14-23.) First, he argued the third prong of the statute was not complied with because Victim did not testify regarding the making of the statement. (R. 135, line 24-R. 136, line 5.) Second, he argued that after Victim talked about the third incident, she answered, "No," when asked if there were any other incidents, but the interviewer questioned her about

whether something happened in the bedroom. (R. 136, lines 6-11.) He argued that the statement was inconsistent with her testimony at trial. (R. 136, lines 11-19.) Third, he argued the interviewer gave her opinion by saying Appellant broke the rules. (R. 136, line 20-R. 137, line 1.)

The solicitor argued the third prong of the statute was satisfied because the victim was made available for cross-examination such that Appellant could have asked her about her statement in the video, and she also pointed out the statute does not mandate having to ask the victim about the video. (R. 137, lines 6-13.) As for the second objection about a leading question concerning the fourth incident, she explained that Victim began the interview by telling the interviewer all the places the incidents took place, so when the interviewer asked about the bedroom she was merely reminding Victim about something she had already said earlier. (R. 137, lines 15-23.) She further pointed out that any inconsistencies between the video and the trial testimony could be addressed in closing argument. (R. 137, lines 24-25.) Finally, the State explained the interviewer's statement, "B.G. broke the rules" as a way to make the child victim feel safe rather than making her own statement about Appellant. (R. 138, lines 3-23.) The trial court agreed with the State, ruled that the statute had been complied with, and found the video admissible. (R. 138, lines 24-25.)

Ms. Williamson then testified before the jury, confirming Exhibit 1 was a DVD of a video of her forensic interview with Victim on March 12, 2013, and explaining her interview approach. (R. 143, line 1-R. 146, line 25.) The State then moved Exhibit 1 into evidence without objection. (R. 146, line 25-R. 147, line 9.) Williamson described Victim's demeanor during the interview and testified regarding the time and place of the disclosures she made. (R. 147, lines 11-25.) She stated she believed four separate

disclosures were made and testified she submitted a written report to law enforcement. (R. 148, lines 1-7.) The State then published the video to the jury, subject to Appellant's previous objections, which the trial court overruled. (R. 148, lines 9-19.) Following the viewing of the video, Appellant conducted cross-examination. (R. 148, line 24-R. 151, line 19.) After a brief redirect, the State rested. (R. 151, line 21-R. 152, line 16.)

Appellant renewed all motions and specifically revisited his objection regarding coaching when Kathy Crawford was on the stand. (R. 152, lines 21-25.) He argued that even though Crawford was not a forensic interviewer, any expert should not indicate her opinion about whether a child victim is telling the truth, based on State v. Kromah.<sup>1</sup> He asserted that by saying the child was not coached, Crawford was basically saying she believed the child was telling the truth. (R. 154, lines 3-11.) He then moved for a directed verdict "based on the gross inconsistency of the testimony." (R. 154, lines 12-14.) The trial court denied all motions. (R. 155, lines 8-14.)

Appellant presented a defense, calling multiple witnesses including family members, a neighbor, two pastors, and two witnesses who testified regarding their knowledge of Victim's mother. Ken Gurley, Sr., Appellant's father, testified about picking up Victim's mother sometimes when she needed his truck. (R. 207, lines 2-11.) Specifically, he explained that she would sometimes not have Victim with her when he picked her up and he felt concerned for the child's welfare being left in a hotel alone. (R. 207, lines 11-18.)

After the defense rested, the State decided it needed to call two rebuttal witnesses based on what the defense put into evidence. (R. 284, line 24-R. 285, line 2.) The State wanted to call Victim's former teacher to rebut allegations and inferences made by the

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<sup>1</sup> 401 S.C. 340, 737 S.E.2d 490 (2013).

defense that Victim's mother was not a good mother because she used to leave her alone in a hotel room. (R. 287, lines 2-8.) The State argued the testimony was relevant because the non-biased teacher could provide testimony that Victim's mother was a good mother and took excellent care of her. (R. 287, lines 19-23.) Appellant argued he only elicited one incident from Gurley, Sr., involving the leaving of the child and it was not related to school or even to the cleanliness of the child and that testimony about her being a good mother in general would be character evidence, not rebuttal. (R. 287, line 25-R. 288, line 11.) The trial judge pointed out that the defense's argument the whole time involved Victim's mother's character, including testimony about buying clothes and cars and not paying, saying she had money she did not have, and leaving the child unattended and he allowed the rebuttal testimony and pointed out that Appellant would have the opportunity to cross-examine her. (R. 288, lines 12-23.)

The State called Suzette New, Victim's former teacher, to the stand. (R. 289, lines 5-9.) She testified she taught Victim the year before when she was in the third grade and described her as a very good student who did everything she was supposed to. (R. 287, line 20-R. 290, line 10.) She described Victim's mother as someone who brought treats for her birthday, helped with the Christmas party, would come if needed, and signed everything that needed to be signed. (R. 290, line 14-R. 291, line 3.) She also stated that Victim's mother asked for extra work for her daughter and helped her with it. (R. 291, lines 6-13.) She testified she never thought Victim's mother neglected Victim. (R. 292, lines 3-5.) Appellant did not object, and he did not cross-examine her. (R. 292, lines 9-10.)

Ultimately, the jury found Appellant guilty, and the trial court sentenced him to eight years' imprisonment. (R. 298–299.)

## ARGUMENT

### I.

**The trial court properly admitted the video recording of Victim's forensic interview because it met the requirements of the statute and did not contain statements that constituted improper bolstering.**

Appellant argues the trial court erred in admitting the video recording of the forensic interview because the interviewer expressed an opinion concerning the child's disclosures. Specifically, he argues the interviewer's statement to Victim that "[Appellant] broke the rules" was impermissible bolstering because it was the equivalent of telling the child she believed her. On the contrary, the interviewer's statement did not improperly bolster the child or express an opinion regarding her credibility. The statement was made by the interviewer to the child and did not express the interviewer's belief the child was being truthful. Thus, the trial court correctly admitted the video, and this Court should affirm its ruling.

Our appellate courts have made clear forensic interviewers should not opine whether a victim of criminal sexual conduct has told the truth or in any way vouch for or bolster the victim's credibility. See also State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015); State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011).

"[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). "For an expert to comment on the veracity of a [victim's] accusations of sexual abuse is improper." State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011).

Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the

complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror. Generally, the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain the assessment of witness credibility . . . within the exclusive province of the jury.

State v. Taylor, 404 S.C. 506, 514-15, 745 S.E.2d 124, 128 (Ct. App. 2013) (citations and internal quotations omitted).

During the forensic interview, the interviewer said to Victim, “[Appellant] broke the rules.” Appellant argues that by making this statement to Victim, the interviewer was telling the child she believed her and, in essence, telling the jury she believed her. He argues allowing the jury to hear her say that statement in the video was the same as if the interviewer stated to the jury that Appellant broke the rules. However, it is not the same. The interviewer made the statement to Victim, not to the jury, in the context of telling Victim nothing was her fault and she was proud of her. It was also a follow-up to the beginning of the interview when the interviewer asked Victim to point out the parts of the body nobody is allowed to touch and then asked her if anyone had ever done that, to which she replied that Appellant did. This is no different from repeating something a child said to carry the conversation forward.

Appellant compares the statement to the expert’s recommendation in Chavis that the victim not be around the defendant for any reason, where the Court found the recommendation could only be interpreted as believing the victim’s claim of sexual abuse. While a recommendation to keep an accused away from a child victim would indicate an interviewer believes the allegations made by the child, nothing about a statement to a child about people breaking the rules when they touch your private parts

indicates believability or makes any sort of credibility determination. And the harm meant to be prevented by the prohibition against improper bolstering is so that the jury will not be told whether to believe the child. A statement *to the child* is simply not the same as a recommendation to a third party. The State admits that in some circumstances, a statement to a child victim could certainly indicate the interviewer believed her: for instance, if the interviewer told the child she believed her or thanked her for telling the truth. However, that is not what happened in this case. Saying that Appellant broke the rules simply processed what Victim told her by combining their conversation about people not being allowed to touch certain parts and Victim's statement that Appellant did.

Similarly, Appellant claims the comment fits within State v. Kromah's list of types of statements a forensic interviewer should avoid—"a direct opinion as to a child's veracity," "any statement that indirectly vouches for the child's believability," and "any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter." 401 S.C. at 360, 737 S.E.2d at 500. In explaining how this case is like Kromah, Appellant mentions the interviewer's report of a "compelling finding" of abuse being equivalent to stating the child was telling the truth. However, the situation in Kromah was completely different because it involved trial testimony of the forensic interviewer where she stated *to the jury*, "I made a decision that the child had given compelling—a compelling finding." Id. at 351, 737 S.E.2d at 496. Furthermore, Appellant compares this situation to State v. Jennings, 394 S.C. at 480, 716 S.E.2d at 94, where the interviewer there also reported the children made "compelling disclosures" and the Court determined it could only be interpreted to mean she believed the children were being truthful. The word "compelling" is itself a qualitative assessment of credibility similar to "convincing" or "believable." No such qualitative remark was made here.

Unlike in the above cases, the comment here was not part of the interviewer's testimony to the jury. Rather, it was part of the forensic interview itself and was said *to the child*. Thus, even though the jury viewed the video and heard the interviewer say the statement to the child, the same dangers of improper vouching simply do not exist here. Making a statement back to a child that reflects what she has told the interviewer is not the same as an interviewer making a recommendation that a victim not be around a defendant or a report that a child has made a compelling disclosure. Not only does this situation differ because it did not involve testimony stated before the jury, it also had nothing to do with improper vouching for the child's truthfulness. Rather, after listening to Victim tell her version of what happened, the interviewer was wrapping up the session by telling her she was proud of her, assuring Victim she was not in trouble, reminding her that she had done nothing wrong, and telling her Appellant broke the rules because "nobody ever gets to touch your private parts." (State's Exhibit 1-DVD of forensic interview.) As the State pointed out at trial, the statement about Appellant breaking the rules was done for Victim's benefit and was meant to make Victim feel safe, not to make a judgment or "blanket statement" about Appellant's credibility. (R. 138, lines 2-25.) None of this type of rapport between interviewer and child victim has been deemed improper by our Courts. Indeed, the comment would have been equally appropriate whether the interviewer actually believed the victim or not.

We know what constitutes improper bolstering by a forensic interviewer as a result of the Supreme Court's guidance in Kromah. The Court specifically listed the kinds of statements that a forensic interviewer should avoid at trial: that the child was told to be truthful; a direct opinion as to a child's veracity or tendency to tell the truth; any statement that indirectly vouches for the child's believability, such as stating the

interviewer has made a “compelling finding” of abuse; any statement to indicate to a jury that the interviewer believes the child’s allegations in the current matter; or an opinion that the child’s behavior indicated the child was telling the truth. Kromah, 401 S.C. at 360, 737 S.E.2d at 500. While the list was not meant to be exclusive, the statement made to the Victim here, “B.G. broke the rules,” certainly does not fit “squarely within these categories,” as Appellant argues.

Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). “The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (citations and internal quotation marks omitted). Here, any error is harmless given Victim’s clear trial testimony and the lack of any direct testimony about Appellant “breaking the rules.”

## II.

**The trial court properly qualified Kathy Crawford, Victim's counselor, as an expert in sexual assault trauma and properly admitted her testimony regarding how children disclose sexual abuse, normal behavior for child victims, and types of symptoms a child might show.**

Appellant argues the trial court erred in qualifying Victim's counselor as an expert in sexual assault trauma and in admitting her testimony regarding how children disclose sexual abuse, normal behavior for child victims, and types of symptoms a child might show. On the contrary, the trial court correctly qualified her and allowed her testimony, and this Court should affirm the trial court's decision.

### 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 a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013); State v. Brown, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). 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 the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Kromah, 401 S.C. at 349, 737 S.E.2d at 495; Douglas, 369 S.C. at 429-30, 632 S.E.2d at 848; 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).

Expert testimony about common behavioral characteristics of sexual assault victims, and the range of responses to sexual assault encountered by experts, is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) (*cert. denied* Aug. 6, 2015). It assists the jury in understanding some aspects of victims' behavior and provides insight into a sexually abused child's often strange demeanor. Id.; see also State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859, 862 (1993) (expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value outweighs the prejudicial effect); State v. White, 361 S.C. 407, 605 S.E.2d 540, 544 (2004) (expert behavioral testimony is admissible in prosecutions where the victim of sexual abuse is an adult); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) (expert behavioral testimony was relevant and simply explained effects of sexual abuse on a victim's subsequent behavior); State v. Lujan, 967 P.2d 123 (Ariz. 1998) (when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors—like reactions of

child victims of sexual abuse—expert testimony on general behavioral characteristics of such victims should be admitted).<sup>2</sup>

Crawford’s testimony in this case is the type of expert behavioral testimony approved in Schumpert, White, Brown and Weaverling. Her testimony was relevant and assisted the jury in understanding the evidence and determining a fact in issue. See Rule 702, SCRE (expert with specialized knowledge may testify if it will assist the trier of fact to understand the evidence or determine a fact in issue). Therefore, the circuit court properly exercised its discretion in allowing her testimony.

All relevant evidence in some way bolsters the strength of the offering party’s case, and a trial court may not exclude evidence that bolsters other evidence absent a constitutional, statutory or rule-based principle of law providing for exclusion.

State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 611 (Ct. App. 2014) (Few, C.J., concurring in part and dissenting in part), *cert. denied*, February 4, 2015. “Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror.” State v. Taylor, 404 S.C. 506, 745 S.E.2d 124, 128 (Ct. App. 2013) (quoting State v. Douglas, 367 S.C. 498,

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<sup>2</sup>In addition to South Carolina, numerous jurisdictions considering this issue found behavioral traits testimony is appropriate testimony for an expert in child sex abuse cases. See John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol’y 1, 45-46 (2010) (“Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome.” [footnotes omitted]). Therefore, acceptance of such testimony is well established and wide spread.

626 S.E.2d 59 (Ct. App. 2006), *rev'd in part on other grounds*, 380 S.C. 499, 671 S.E.2d 606 (2009)) (emphasis added). Generally, bolstering is prohibited to prevent a witness from testifying whether another witness is credible, which is exclusively within the province of the jury. *Id.*; see also *Brown*, 411 S.C. at 343-44, 768 S.E.2d at 252; *State v. McKerley*, 397 S.C. 461, 725 S.E.2d 139, 141 (Ct. App. 2012). It is improper for a witness to state an opinion about the credibility of a victim in a child sexual abuse case. *Kromah*, 737 S.E.2d at 500.

At trial, the State called Kathy Crawford, a licensed counselor with a Master's degree in psychology. When asking about her experience, the State asked, "[W]hat has been your assessment of children who have been victims of sexual assault?" and Appellant objected, arguing the solicitor was asking what Crawford's assessment in general of children who have been victims of sexual assault was. (R. 95, lines 1-11.) At that time, the trial judge reminded the State that it had not yet qualified Crawford as an expert. (R. 95, lines 12-18.) He also reminded both parties about "recent case law" and said, "So we're not going there." (R. 95, lines 19-24.) In response, the State replied, "And I already told her that—that there was no mention of the truthfulness at all." (R. 95, line 25-R. 96, line 1.) Once the State moved to qualify Crawford as an expert in the area of sexual assault trauma, Appellant objected. (R. 96, lines 9-13.) He renewed his prior objection based on the fact that Crawford had some interaction and treatment of the child victim. He also pointed out that Crawford was going to testify about general reasons children might have post-traumatic stress disorder (PTSD). He argued all of that is improper bolstering, asserting that Crawford would "sit there and explain the child's testimony piece by piece when she hasn't submitted any records to me or the solicitor." He asked the trial court to limit the testimony. (R. 97, lines 5-18.) He articulated that he

was making a motion in limine, asking that Crawford not be allowed to testify to anything regarding this particular child because “she’s going to have to get into statements the child made.” (R. 97, lines 19–22.) Further, he argued the interviews were not “recorded like the statute says.” (R. 97, lines 22–24.)

The State told the trial court it was offering Crawford as an expert witness to talk about how children disclose, what normal behavior is for a child, and what kind of outward symptoms a child might show. Further, the solicitor stated she would ask Crawford about time she spent with Victim but only to include time and place and whether she drew some pictures. She confirmed she had no notes from Crawford. (R. 98, lines 1–16.) The trial court overruled Appellant’s motion in limine but encouraged him to object if something specific came up and allowed him to question Crawford. (R. 98, lines 21–24.) Appellant then complained that he had only received records last week and that he was unable to get an expert to refute what Crawford would say about typical behavior. (R. 100, lines 5–14.) The solicitor admitted she gave Appellant information about PTSD the week before trial because that was when it was provided to her. (R. 100, lines 19–23.) The trial court overruled Appellant’s objection. (R. 101, lines 24–25.)

Initially, the State submits the trial court acted well within its broad discretion in qualifying Crawford as an expert in “sexual assault trauma” based on her education, training, and experience. Furthermore, the trial court properly admitted Crawford’s expert testimony pursuant to Rule 702, SCRE, because she possessed scientific, technical or other specialized knowledge which could assist the jury to understand the evidence or to determine a fact in issue. Her diagnosis of adjustment disorder with anxiety and depression with traits of PTSD was based on the information she received from Victim and her mother, and symptoms presented by Victim. Victim’s detailed testimony was the

strongest evidence of the sexual abuse committed by Appellant; thus, her credibility was central to the jury's determination of the facts in issue. To the extent that credibility could be challenged or attacked by Appellant because of the manner in which Victim disclosed the abuse, Crawford's evaluation of Victim's psychological symptoms, diagnosis of PTSD, and therapy could assist the trier of fact. Thus, her testimony was clearly relevant. In addition, despite Appellant's claims to the contrary, Crawford's testimony can be construed as serving the precise purpose for which it was offered, as a professional explanation for what a layperson may believe to be the victim's unusual course of disclosure. As such, Appellant's case is absolutely distinguishable from Kromah and other cases which involved testimony of a non-scientific "forensic interviewer" who offered either: (1) a "direct opinion as to the child's veracity," (2) a statement that "indirectly vouches for the child's believability," (3) a statement "to indicate to a jury that the interviewer believes the child's allegations in the current manner," or (4) "an opinion that the child's behavior indicated the child was telling the truth." Kromah, 401 S.C. at 360, 737 S.E.2d at 500. The testimony was properly admitted and did not improperly bolster the victim's credibility; therefore, Appellant's convictions should be affirmed.

#### Improper bolstering

Appellant argues Crawford's testimony, particularly her response to whether Victim was coached, was "improper opinion testimony elicited to bolster and vouch for the child's credibility." (App.Br.8.) Specifically, he argues Crawford's response that Victim was very detailed and consistent could only have been for the purpose of conveying to the jury Crawford's belief that Victim was being truthful. After the solicitor asked the question, Appellant objected and was overruled. Then Crawford

began describing how detailed Victim was about the location of where the abuse happened, right down to what pictures were on the walls and what clothes she was wearing. She then went on to discuss what incidents Victim told her about and again reiterated how detailed and consistent her descriptions were. However, the State submits this issue is not preserved for this Court's review because Appellant did not object to those statements. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

In the event this Court determines the issue is properly preserved, Appellant's argument that Crawford's statements were similar to those in McKerley is completely without merit. In State v. McKerley, a forensic interviewer testified she found the child victim's interview to be **compelling for sexual abuse** and then articulated what she looks for in making such a determination including accuracy of information, level of detail, and whether the victim's statements were consistent with other information. 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012). So the interviewer in McKerley only used the words "detail" and "consistent" to further elaborate on how she could tell the child's interview was "compelling for sexual abuse." This Court's decision in McKerley that this type of statement by a forensic interviewer indicates she believes the victim is being truthful is consistent with State v. Jennings and other cases that have been decided since, including Kromah.

Here, the situation is vastly different. Crawford never made a statement that in any way indicated she made "a compelling finding." The terms "detailed" and "consistent" were troublesome in McKerley because they were part of the forensic interviewer's explanation of what a compelling finding was. In explaining what a

compelling finding would be, the interviewer in McKerley stated, “The compelling findings are the things that we look at, that we talked about looking at earlier in terms of how the disclosure comes about in the interview with me; whether it is detailed, does it have consistency, does it have the sensory level of detail that a child typically wouldn't have, or *only would have if something had happened to them.*” McKerley, 397 S.C. at 467, 725 S.E.2d at 142.

Improper qualification as expert and additional improper bolstering

Next, Appellant argues Crawford’s testimony was inadmissible because the trial court should not have qualified her as an expert witness. Specifically, he argues “characteristics of child victims of sexual abuse and delayed disclosure” are not proper subjects for expert testimony. On the contrary, our appellate courts have found this type of expert testimony proper. Thus, this Court should affirm the trial court’s ruling.

This Court and the South Carolina Supreme Court have acknowledged the benefit and necessity of expert testimony in child sexual abuse cases. “Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” Weaverling, 337 S.C. at 474, 523 S.E.2d at 794. “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 (emphasis added); see also State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) (acknowledging the importance of rape trauma and behavioral evidence in a sexual abuse case whether the victim is an adult or a child); Schumpert, 312 S.C. 502, 435 S.E.2d 859 (finding both expert testimony and behavioral evidence are admissible as rape trauma evidence).

Most recently, in State v. Anderson, our Supreme Court confirmed the findings of Schumpert, Weaverling, and White when it stated, “Certainly we recognize that there is such an expertise [as child abuse assessment]: this is the type of expert who can, for example, testify to the behavioral characteristics of sex abuse victims.” 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015). Although the Court in Anderson determined the “better practice” was to not have the individual who examined the victim testify because it runs the risk of vouching for the victim’s credibility, it did not go so far as to rule that any time an expert has examined the child the result is reversible error. The Anderson court reversed based on the improper vouching allowed by the trial judge. That type of vouching did not happen here.

Further, this Court, as well as the South Carolina Supreme Court, has allowed behavioral testimony to be admitted at trial. In Schumpert, 312 S.C. 502, 435 S.E.2d 859, the South Carolina Supreme Court considered expert testimony regarding rape trauma syndrome. The expert testified to behavior and characteristics commonly found in sexual assault victims. The Supreme Court overturned its holding in State v. Hudnall, 293 S.C. 97, 359 S.E.2d 59 (1987) (finding expert testimony of common behavioral characteristics of a child victim of sexual abuse only admissible to rebut a defense claim the victim’s response was inconsistent with such a trauma), and specifically found: “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.” Id. at 506, 435 S.E.2d at 862.

This Court had a chance to address similar behavior testimony in State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). In Weaverling, an expert testified regarding behavior and characteristics of a sexual abuse victim. This Court

stated: “Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” *Id.* at 474, 523 S.E.2d at 794 (citing Frenzel v. State, 849 P.2d 741 (Wyo. 1993); see also State v. Lujan, 967 P.2d 123 (Ariz. 1998) (opinion testimony describing behavioral characteristics outside jurors’ common experience is permitted as long as it meets other admissibility requirements)). This Court explained:

**Such testimony is relevant** and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child’s often strange demeanor.

Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 (emphasis added and citations omitted); see also Lujan, 967 P.2d 123 (when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors—like reactions of child victims of sexual abuse—expert testimony on general behavioral characteristics of such victims should be admitted).

In State v. Brown, 411 S.C. 332, 341, 768 S.E.2d 246, 250 (Ct. App. 2015) (*cert. denied* Aug. 6, 2015), this Court cited its holding in Weaverling that expert testimony in the areas of child abuse dynamics and disclosure “was properly admitted because it was **relevant** and explained the effect of sexual abuse on a victim’s subsequent conduct.” (emphasis added). This Court also cited White, 361 S.C. at 415, 605 S.E.2d at 544, in which the Supreme Court “confirmed the admissibility of expert testimony and behavioral evidence in sexual abuse cases, holding such testimony was **relevant** regardless of the victim’s age.” (emphasis added). Accordingly, this Court found the expert’s “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 delay disclosing sexual abuse . . . .” Brown, 411 S.C. at 341-42, 768 S.E.2d at 251 (emphasis added).<sup>3</sup>

Furthermore, other jurisdictions have recognized the value of such testimony. See, e.g., State v. Reser, 767 P.2d 1277, 1282 (Kan. 1989) (“There are numerous cases from other jurisdictions where expert testimony regarding characteristics of sexually abused children has been held properly admitted as providing helpful background information to the jury.”); People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011) (recognizing the majority of states permit expert testimony to explain delayed reporting, recantation, inconsistency, and other traits of abused children); State v. Carpenter, 556 S.E.2d 316 (N.C. Ct. App. 2001) (finding no error in allowing expert testimony regarding the fact delayed and incomplete disclosure is not unusual in cases of child sexual abuse); State v. Roenfeldt, 486 N.W.2d 197, 204 (Neb. 1992) (finding rationale behind rule allowing expert to testify about sexual abuse in generalities is that few jurors understand the dynamic and it is often contrary to what a typical adult would expect); State v. Cardany, 646 A.2d 291, 294 (Conn. App. Ct. 1994) (“It is natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents of abuse whether or not the defense emphasizes the delay in cross-examination. Thus, testimony that explains to the jury why a minor victim of sexual abuse might delay in reporting the incidents of abuse should be allowed as part of the state’s case-in-chief.”); State v. Perry,

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<sup>3</sup> Appellant argued in his brief that if the Supreme Court reversed Brown, this case should also be reversed. The Supreme Court denied certiorari on August 6, 2015. Appellant also argued even if Brown was upheld, this case goes outside the parameters of Brown because the counselor interviewed this victim. However, all this Court said in Brown was that the interviewers in Kromah, Smith, and McKerley had each indicated they believed the victim was being truthful. Thus, the significance of those experts, interviewing the victims was that it led to their improper vouching for the victims’ credibility. That did not happen here, where the counselor did not improperly bolster or vouch for the victim’s credibility.

218 P.3d 95 (Or. 2009) (finding expert testimony on the phenomenon of delayed disclosure by victims of child sexual abuse admissible); State v. Friday, 73 So.3d 913, 931-32 (La. Ct. App. 2011) (allowing broad testimony “about the general characteristics of sexual abuse victims, namely how such victims delay disclosure and some of the reasons why disclosure may be delayed, such as fear or shame”); Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. Ct. App. 2003) (“Expert 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.”); McCoy v. State, 629 S.E.2d 493, 494 (Ga. Ct. App. 2006) (finding testimony about child sexual abuse syndrome, including testimony about delayed disclosure, admissible); Keri v. State, 347 S.E.2d 236, 238 (Ga. App. 1986) (finding expert testimony assisted jury in understanding why sexually abused children are secretive, why they were frightened, why they act out and become disciplinary problems, and why the children could not give specific dates for the acts they say were committed by the defendant); State v. Robins, 297 P.3d 1213, 1217 (Mont. 2013) (upholding the use of experts to explain the complexities of child sexual abuse, recognizing it is a topic that most jurors have no common experience with, and thus educate and enlighten the jury so it can then make an informed decision when assessing the victim’s credibility); Wheat v. State, 527 A.2d 269, 273 (Del. 1987) (finding that “[e]xposing jurors to the unique interpersonal dynamics involved in prosecutions for . . . child sexual abuse can provide jurors with possible alternative explanations for complainant actions and statements that are, to average laypeople, “superficially bizarre,” “seemingly unusual,” “seemingly inconsistent,” or normally attributable to “inaccuracy or prevarication”).

Further, the trial court charged the jury regarding expert testimony. The trial court explained the jury was to give the expert's testimony "the weight you think it deserves." (R. 294, lines 20–22.) The trial court also told the jury it could disregard the opinion of the expert entirely and was not required to accept the expert's opinion even if it is not contradicted. Additionally, the trial court explained: "An expert witness'[s] testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert." (R. 295, lines 3–5.)

Accordingly, the trial court properly qualified Crawford as an expert in sexual assault trauma given her background, experience, and education as well as the fact her testimony as an expert would assist the trier of fact. Her testimony educated the jury regarding the "normal" behaviors of child sexual abuse victims and disabused the jury of any misconceptions regarding "normal" behavior. Specifically, the "specialized knowledge" of Crawford "assist[ed] the trier of fact to understand the evidence or determine a fact in issue" by providing the jury with the tools and information necessary to properly judge the credibility of the victim and determine whether she was sexually abused by Appellant. See Rule 702, SCRE. Crawford's testimony assisted the jury in understanding the evidence, including Victim's delay in disclosing the abuse. The trial court's ruling should be affirmed.

#### Non-compliance with S.C. Code Ann. § 17-23-175

Appellant argues Crawford's testimony regarding Victim's drawings and statements was inadmissible under S.C. Code Ann. § 17-23-175 because they were not recorded as required by subsection (A). However, the statute applies to "questioning conducted during an investigative interview of the child." See S.C. Code Ann. § 17-23-175 (providing an out-of-court statement by a child under twelve is admissible if given in

response to questioning conducted during an investigative interview of the child). Appellant objected on this basis at trial, and the trial court overruled the objection without specifically addressing the statute. While he now argues on appeal that subsection (F) required the trial court to conduct an analysis and make findings, he did not argue that at trial, nor did he request the trial court make those findings. Thus, this issue is not preserved for review by this Court. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”).

Furthermore, the only reference to out-of-court statements made by the child was in the following testimony from Crawford: “And [Victim] was very detailed about the location of where it happened, and she was so detailed she even told me what pictures were on the walls, what clothes she wore the time that she was in the car,” “[S]he described the room. There was a couch. There was [sic] photos on the wall. I think a computer and maybe an aquarium there.” (R. 113, lines 2–5, 13–16.) Appellant made no objection to these statements. To the extent Appellant is arguing the drawings are statements that should have been recorded, they are “recorded” in the only way a drawing could be.

### III.

**The trial court correctly allowed the State to present rebuttal testimony that was responsive to evidence introduced by Appellant regarding Victim's mother's character.**

Appellant argues the trial court erred in allowing rebuttal testimony that was not responsive to any evidence introduced by Appellant and that was improper character evidence. However, the trial court correctly allowed Victim's teacher to testify regarding her impression of Victim's mother in response to testimony Appellant presented through Ken Gurley, Sr., that Victim's mother left Victim alone in a hotel room, implying she was not a good mother. This Court should affirm the trial court's ruling.

In criminal cases, the appellate court only reviews errors of law and is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. Huckabee, 388 S.C. 232, 240, 694 S.E.2d 781, 785 (Ct. App. 2010). The admission of reply testimony is within the sound discretion of the trial court and will only result in reversal if the admission of such testimony is found to be prejudicial. Id. (citing State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998); see also State v. Todd, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986) ("The admission of reply testimony is within the sound discretion of the trial judge, and there is no abuse of discretion if the testimony is arguably contradictory of and in reply to earlier testimony."); State v. Stewart, 283 S.C. 104, 106–07, 320 S.E.2d 447, 449 (1984) ("The admission of testimony which is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion.")).

An appellant cannot complain about the admission of evidence where he opened the door to the evidence. See State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991)

(where appellant opened door to evidence, he cannot complain of prejudice from its admission); State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981) (appellant cannot complain of prejudice from admission of evidence if he opened the door to its admission). Further, when a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially. State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984). A party may not complain of error caused by his own conduct. State v. Beam, 336 S.C. 45, 52-53, 518 S.E.2d 297, 301 (Ct. App. 1999).

When Appellant objected to Victim's teacher—Suzette New—testifying, the solicitor explained to the trial judge that because Appellant made some inferences that Victim's mother was not a good mother, she intended to introduce New's testimony to rebut that allegation. Specifically, the solicitor intended to call New to testify that Victim was well cared for and that her mother was incredibly attentive and participated in school activities. (R. 286, line 14–R. 287, line 8.) The trial court then asked her to explain how the testimony was relevant to the case, and she stated that Appellant had put the issue in front of the jury when he brought forth testimony about Victim's mother's character by asking Ken Gurley, Sr., about her being a liar, stealing things from the family, and promising money she could not pay. Specifically, the solicitor noted it was very relevant to the fact that Victim's mother was a good mother who took excellent care of her child. (R. 287, lines 9–23.)

Appellant then argued the only incident mentioned involved the mother leaving her child, not anything related to being clean, and therefore was not relevant. He argued rather than rebutting that one allegation, she was presenting character evidence. However, even though Appellant initially questioned Victim's mother regarding

instances of character that would show truthfulness or non-truthfulness, he went beyond that in asking about a specific instance of leaving the child alone in a hotel room. At that point, he opened the door by attacking her as a bad mother. Subsequently, the trial court pointed out that all of those issues had already been brought up when Appellant argued throughout the trial about Victim's mother's character, including "references to buying clothes and buying cars and not paying for the cars and having money that she didn't have and whether she left the child at so-and-so unattended." (R. 288, lines 13–19.) The trial court allowed the rebuttal witnesses and gave Appellant the opportunity to cross-examine as he saw fit. Appellant made no objections during New's testimony and did not cross-examine her.

One of Appellant's arguments as to this testimony by New is that it was character evidence of the child victim because it described her "in the most complementary of terms." (App.Br.15.) He argues that because he did not offer any character evidence regarding Victim, but only her mother, it was improper for the State to offer any because there was nothing to rebut. Specifically, he cites Rule 404(a)(2): "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor."

To the extent Appellant is arguing the solicitor elicited improper character evidence regarding Victim, this argument was not made at trial and is not preserved for this Court's review. Appellant did not object to any of the testimony he now argues "describe[d] the child in the most complementary of terms." (App.Br.15.) In fact, he

made no objections during New's testimony and cannot now complain. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

However, to the extent the issue is preserved, the testimony was elicited to reflect on Victim's mother's character, not on Victim herself. Any "complementary" things New had to say about Victim were said to show that her mother took good care of her for the purpose of rebutting the defense's allegation of her being a bad mother, not to introduce character evidence about Victim.

#### IV.

**Appellant's argument that Victim's mother's testimony regarding things Victim explained to her is not preserved, but even if preserved, the trial court properly limited Victim's mother's testimony to time and place.**

Appellant argues the trial court erred in allowing testimony of Victim's mother that exceeded the limitation on admission of out-of-court statements of the sexual assault, except as to time and place. Specifically, Appellant contends Victim's mother's testimony exceeded time and place because she testified to things Victim had explained to her and, thus, the testimony was improper bolstering hearsay testimony. However, because Appellant did not object to that particular portion of the testimony, the issue is not preserved for review. To the extent Appellant did object to the mother's testimony, the trial court placed proper limitations on it regarding time and place in accordance with the rules of evidence.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Here, Appellant made no objection to the portion of the testimony he now complains exceeded the scope of time and place restrictions.

When Victim's mother (Mother) began testifying about the sexual abuse, the State asked her whether Victim told her where and when these incidents occurred. (R. 15, lines 16–23.) Appellant objected on the grounds of hearsay, arguing Victim had not testified yet. (R. 15, line 24–R. 16, line 1.) The trial court overruled the objection, correctly noting that "[w]here and when is the exception to the hearsay rule in cases like this." (R. 16, lines 2–3.) Mother then continued to testify about what Victim told her occurred, describing where the incidents took place. (R. 16, lines 7–25.) While describing one

incident, Mother stated that Appellant “went in the room to her again.” (R. 17, lines 6–7.) Appellant objected on the basis of hearsay, and the trial judge held a bench conference. (R. 17, lines 8–13.) He argued the testimony was going way beyond time and place because Mother was testifying to what Victim said and that Appellant went in the room and what he did. (R. 17, lines 14–17.) The following exchange took place:

The Court: What was your question just now?

[The State]: I just asked her to tell me where the incidents occurred, and she said that the daughter was in the bedroom and she had gotten her dressed for church and she was wearing her dress. And then she was with Denise and with Mr.—Mr. Gurly, the father, and he was arching her eyebrows. That’s what she said.

[Appellant]: But—well—and then she went beyond that and she said that he went into the bedroom with the girl. That’s not in any of the reports, but—

The Court: I think that’s her testimony. You can cross her.

[Appellant]: But—well—and that’s—I mean she’s testifying what the girl told her. Unless she—unless she’s going to say she saw him go in the bedroom.

[The State]: Yes, she did. That’s exactly what she said.

The Court: She’s testifying as to what she saw?

[Appellant]: She’s not testified to this before.

[The State]: Yeah.

[Appellant]: She’s not said that before.

The Court: **If she’s not, you can object.** If she’s doing that, it’s fine.

(R. 17, line 18–R. 18, line 14.) (emphasis added.)

The State then asked Mother if those were where Victim told her the incidents occurred, and she said yes. Next, the State asked if she saw those things for herself, and

Mother answered, “As she explained them to me, I could see in my—remember back in my mind the exact everything she was explaining to me. I just never pinpointed to what she was trying to explain to me happened.” (R. 18, line 20–R. 19, line2.) Appellant did not object. Because the Court specifically told Appellant to object if Mother was not testifying to what she saw, the State submits either Appellant was satisfied by her answer that she saw the things that happened and then put it all together after hearing Victim’s explanation and, thus, did not feel an objection was appropriate, or he simply did not object. Either way, Appellant’s lack of objection to this question and answer, after being told by the trial court to object if Mother was exceeding limitations, forfeits any claim to an issue because it was not preserved.

The South Carolina Rules of Evidence define hearsay as: “[A] statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. The Rules, however, further provide that:

A statement is not hearsay if . . . The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident.

Rule 801(d), SCRE.

Appellant argues in his brief that the prejudicial effect of allowing testimony by Victim’s mother that based on Victim’s explanation, she could remember back in her mind everything that happened but did not “pinpoint” what she was trying to explain to her until then “is the very kind of corroboration testimony prohibited under the limitation as to time and place.” (App.Br.18.) Specifically, he argues “no other testimony or

corroborative evidence tended to establish an incident in the bedroom, and the child herself gave inconsistent accounts with respect to an incident in the bedroom.”

(App.Br.18.) In the forensic video, Victim clearly described an incident in the bedroom. On direct, Victim also testified that four incidents occurred: “First upstairs, then on the couch, **then under the covers**, then in the back of the car.” (R. 73, lines 5–6.) (emphasis added.) Only on cross-examination did Victim waiver regarding whether one of the incidents occurred in the bedroom. However, this inconsistency does not render the rest of Victim’s testimony invalid. The jury was charged with making its own determination regarding Victim’s credibility (as well as the other witnesses’) and was able to consider the forensic interview video, Victim’s testimony on both direct- and cross-examination, the counselor’s testimony, Victim’s drawings, and Victim’s mother’s testimony.

Victim’s mother actually testified, “[W]hile I was getting my eyebrows arched, [Appellant] went in the room to her again.” (R. 17, lines 6–7.) She never testified that was only something Victim told her. But even if the mother had testified that Victim was the one who said something about Appellant going into the bedroom, that testimony would be relatively insignificant in the larger context.

V.

**Appellant's argument that the cumulative prejudice of multiple errors requires a new trial is not preserved, but even if preserved, the trial court conducted a fair trial and Appellant is not entitled to a new trial.**

Appellant argues the cumulative prejudice of multiple errors requires a new trial. However, this issue is not preserved for review because no such claim was made at trial. See State v. Beekman, 405 S.C. 225, 236-37, 746 S.E.2d 483, 489-90 (Ct. App. 2013) (finding cumulative error doctrine issue not preserved when appellant did not specifically raise doctrine to the trial court or argue he was entitled to a new trial based upon errors made during the trial). Furthermore, “[a]n appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.” Beekman, 405 S.C. at 237, 746 S.E.2d at 490. Rather than showing how the errors adversely affected his right to a fair trial, Appellant merely restated the errors he had already fully argued in his brief and alleged the combination of errors had tainted the proceedings based on the prejudicial effect. As discussed in detail above, the trial court did not err. If it did, any errors were harmless and no cumulative prejudicial effect existed that so tainted the trial it deprived Appellant of his right to a fair trial.

**CONCLUSION**

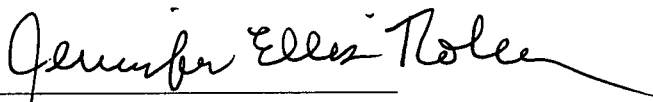
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 1, 2016

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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Court of General Sessions

William H. Seals, Jr., Circuit Court Judge

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Appellate Case No. 2015-000235

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THE STATE,

Respondent,

v.

BRYANT CHRISTOPHER GURLEY,

Appellant.

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**CERTIFICATE OF COUNSEL**

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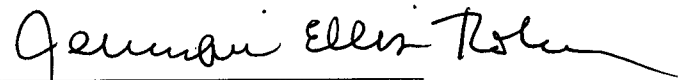
The undersigned hereby certifies the Final Brief of Respondent complies with Rule  
211(b), SCACR.

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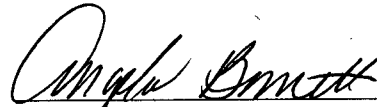
**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.  
This 1<sup>st</sup> day of March, 2016.



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SC Court of Appeals