STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2014-001717

RECEIVED
APR 21 2016
SC Court of Appeals

THE STATE, ...RESPONDENT,

v.

CHAD STEPHEN HAYES, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN M. WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General
S.C. Bar No. 100073

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-2508

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

205 E. Main Street, 3rd Floor
Lexington, South Carolina 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Respondent's Statement of Issues on Appeal 1

Statement of the Case 2

Statement of Facts 3

Argument:

1. Appellant failed to preserve the issue of whether the trial court erred in qualifying Laurie Caldwell as an expert in child abuse assessment because he never objected at trial. Further, based on Caldwell's extensive experience the trial court properly qualified her as an expert. 8

2. Appellant failed to preserve the issue of whether the trial court erred in allowing Caldwell to testify as Victim Three's forensic interviewer in tandem with her testimony as an expert in child abuse assessment because he never objected to this alleged "dual role" at trial. Moreover, Caldwell never related any of her expert testimony to Appellant's case and he therefore suffered no prejudice from her testimony. 13

Conclusion 17

TABLE OF AUTHORITIES

Cases:

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 8

State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015) 13, 14, 15

State v. Barrett, Op. No 5395 (S.C. Ct. App. filed March 23, 2016) (Shearouse Adv. Sh. No. 12 at 74)..14,16

State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) 9, 15

State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011) 8

State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015) 11

State v. Dennis, 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013) 15

State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) 13

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998).................................. 15

State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1998)... 9

State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985) 11

State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) 10

State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) 9, 10

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Appellant failed to preserve the issue of whether the trial court erred in qualifying Laurie Caldwell as an expert in child abuse assessment because he never objected at trial. Further, based on Caldwell's extensive experience the trial court properly qualified her as an expert.

2. Appellant failed to preserve the issue of whether the trial court erred in allowing Caldwell to testify as Victim Three's forensic interviewer in tandem with her testimony as an expert in child abuse assessment because he never objected to this alleged "dual role" at trial. Moreover, Caldwell never related any of her expert testimony to Appellant's case and therefore he suffered no prejudice from her testimony.

STATEMENT OF THE CASE

Appellant was indicted at the July term of the grand jury for Lexington County for first-degree criminal sexual conduct (CSC) with a minor less than eleven years of age (2013-GS-32-1420), second-degree CSC with a minor between eleven and fourteen (2013-GS-32-1423), three counts of lewd act on a minor (2013-GS-32-1680, 2013-GS-32-1681, 2013-GS-32-1683), and contributing to the delinquency of a minor (2013-GS-32-1684). Appellant proceeded to trial by jury and was found guilty as charged He was sentenced by the Honorable Thomas A. Russo to three years' imprisonment for contributing to the delinquency of a minor, fifteen years' imprisonment for the second-degree CSC, and fifteen years' imprisonment for each count of lewd act, to be served concurrently. He was also sentenced to twenty-five years' imprisonment for the first-degree CSC conviction, to be served consecutively, for an aggregate sentence of forty years. Appellant filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Shortly after Mother met Appellant in 2008, she and her minor daughters (Victims) moved in with him.[1] (Tr.237, 258–60.) During this time, Victims and Mother became estranged from the rest of Mother's family, including Aunt with whom they had previously resided. In early September 2011, Aunt arranged for her younger brother to bring a cell phone to Victim One, who was in his class at school.[2] (Tr.239, 249.) Mother consequently called Aunt, who picked up Mother and removed Victims from school the following day. (Tr.239.) At the time, the victims were fifteen (Victim One), eleven (Victim Two), and ten (Victim Three). The next day, Mother and Victims left for Missouri with another family member. (Tr.239.) Shortly thereafter, Victim Three returned to South Carolina to live with Aunt, and Victim One joined her a few months later. (Tr.241.) Victim Three eventually disclosed to Aunt that Appellant sexually abused her and her sisters.[3] (Tr.242.) Aunt informed the school's guidance counselor, who reported the disclosure to the Lexington County Sheriff's Department. (Tr.243.)

The Department contacted Appellant about the allegations and he agreed to meet with Detective Stephen Collins. (Tr.555.) During the interview, Appellant admitted touching all three Victims on their breasts and their vaginal areas. (Tr.564.) However, he claimed he "never touched [Victim Two] in a sexual manner only to check for female problems. Felt her boobs for lumps and vigina [sic] for anything not normal, but [he] told

---

[1] Mother had four minor daughters, and Appellant was indicted on charges pertaining to each of them; however, the case proceeded only on indictments relating to three victims. The fourth daughter was not present at trial.

[2] Aunt's brother—Victims' uncle—was apparently significantly younger than Aunt and Mother.

[3] Mother remained in Missouri and was not present at trial. She apparently suffers from emphysema and chronic obstructive pulmonary disease. (Tr.406.) Victim Two also remained in Missouri and lives with one of her aunts; however, she was present and testified at trial. (Tr.406.)

her [he] was not a doctor."[4] (State's Ex.77; *see* Tr.565.) He further indicated he never touched Victim One "in a sexual manner. Only if she asked or [Mother] asked [him] to check on or see what [he] thought about a female problem she had. Only checked for lumps on her boobs and she had a problem with her vigina [sic] burning, itching and hurting. Also helped her shave her private part so she could learn how. She asked me to help her." (State's Ex.77; *see* Tr.567.) Finally, Appellant similarly asserted he had never touched Victim Three "in a sexual manner. Only asked for [him] to check for lumps on her boobs. Helped her take a bath but not touch her private because she asked for [him] to, [he] told her that her mom needed to help her." (State's Ex.77; *see* Tr.568.) Ultimately, he claimed he never did anything sexual with Victims, only helped them with "female problems." (Tr.569.) When asked to describe what he did when he touched Victims, Appellant explained he would "[c]heck their breasts for lumps (feel around on the breasts to see if [he] felt a knot or bump or lump. Check their vagina for redness or fill [sic] in around it for swelling or anything not normal to [him]." (State's Ex.77; *see* Tr.571.)

At the conclusion of the interview, Appellant was arrested and, after executing a search warrant on his home, investigators recovered a laptop. (Tr.592.) Investigators discovered nude pictures of all three Victims on the computer along with photos of Victim One in progressive stages of her pubic hair being groomed. (Tr.683.) They also found pictures of Victim Two with a shaved pubic area. (Tr.685.)

[4] Appellant was actually employed at a Michelin factory.

Appellant was charged with first-degree CSC with minor, second-degree CSC with a minor, three counts of lewd act on a minor, and contributing to the delinquency of a minor. The case proceeded to a jury trial.

All three victims testified a trial. Victim One explained that while living with Appellant he would "touch [them] between [their] legs and bite and touch [their] boobs." (Tr.261.) Specifically, she detailed that this touching occurred beneath her clothing—Appellant put his mouth on her breasts and digitally penetrated her. (Tr.267–68.) Victim One testified he would similarly touch Victims Two and Three. (Tr.268.) He took pictures of them showering or while they were changing, and he also physically abused them. (Tr.261.) On one occasion, Appellant also shaved Victim One's pubic area, photographing her while he did so. (Tr.296.) When her uncle started school with her, Victim One told him they needed help and thereafter Aunt sent her the cell phone. (Tr.286.)

Victim Two testified Appellant would touch her with his hands in and around her vaginal area, on her butt, and on her breasts, both under her clothes and over them. (Tr.410.) She similarly explained how Appellant touched the other Victims in the same areas and photographed them using the bathroom or showering. (Tr.411, 413.) Appellant also shaved Victim Two's vaginal area on multiple occasions and took pictures of it the first time. (Tr.415, 417.)

Victim Three also testified Appellant touched his mouth to her bare breasts and buttocks and digitally penetrated her on more than one occasion. (Tr.367–68.) She witnessed Appellant do the same to both her sisters, Victims One and Two. (Tr.368.) Additionally, she testified that on New Year's Eve one year, Appellant ordered her and

her sisters to take their shirts off so he could photograph them outside. (Tr.369–71.) She detailed that he took pictures of Victims One and Two in the bathroom, but could not remember whether Appellant also took pictures of her there. (Tr.371–72, 377.)

The State then called Laurie Caldwell, who had conducted a forensic interview with Victim Three while working as the primary forensic interviewer at a children's advocacy center. (Tr.490.) Caldwell holds a master's degree in social work, an associate's degree in criminal justice, and a bachelor's degree in interdisciplinary studies focusing on sociology and social work. (Tr.488, 508.) She has performed over two thousand forensic interviews during the course of her career. (Tr.495.) Caldwell explained the term forensic interview simply describes a manner of questioning designed for children, who are generally more susceptible to suggestion. (Tr.491.) The questions posed are open-ended to allow the child to supply her own narrative without leading by the examiner. (Tr.491.) The video of Victim Three's interview was then played for the jury without objection. (Tr.502.)

The State then offered Caldwell as an expert in child abuse assessment. In addition to her other qualifications, Caldwell worked on roughly two hundred cases involving sexual assaults on children during time she was previously employed with SLED. (Tr.505.) Appellant declined to stipulate to her expertise, but the trial court qualified her as an expert in child abuse assessment. (Tr.510–11.) Caldwell testified as to the general characteristics of delayed disclosure in sexual abuse cases, noting that the delay can result from threats of violence, or when a caretaker is the abuser or is complicit, thereby removing the child's obvious option for reporting. (Tr.513–14.) She explained the child may be otherwise reliant on or even fond of the perpetrator and not wish to have

them sent to prison. (Tr.514.) Caldwell also characterized how the abuser would "groom" the child, by developing a closeness or trust with his victim through gifts or special treatment, alcohol abuse, or sharing pornography with the child. (Tr.515.) She further clarified that delayed disclosure was actually more common and is widely accepted as the norm. (Tr.517.)

The jury ultimately found Appellant guilty as charged and he was sentenced to an aggregate of forty years' imprisonment. This appeal followed.

ARGUMENT

I.

Appellant failed to preserve the issue of whether the trial court erred in qualifying Laurie Caldwell as an expert in child abuse assessment because he never objected at trial. Further, based on Caldwell's extensive experience the trial court properly qualified her as an expert.

Appellant argues the trial court erred in qualifying Caldwell as an expert in child abuse assessment because she lacked sufficient knowledge, expertise, skill, training or education. Specifically, he argues Caldwell does not have a bachelor's degree in psychology or sociology, and has not published any peer reviewed articles. This argument is unpreserved, and Caldwell is extensively qualified.

As a threshold matter, Appellant failed to object to her qualifications at trial and this issue is therefore unpreserved. Although he questioned Caldwell as to the extent of her expertise, he never objected to her credentials; instead, he merely advised the trial court he did "not stipulate that she is an expert in child abuse." (Tr.510.) This general statement is insufficient to preserve the issue for review. "For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented and with sufficient specificity to inform the circuit court judge of the point being urged by the objector." *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (internal citation omitted). Not only did Appellant fail to present the trial court with any of the arguments he now alleges, he never even claimed that he was objecting at all. The Court should accordingly decline to address this question in the first instance, as to do so would be contrary to the well-established objective of issue preservation. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (noting

that preservation requirements are "meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments").

Turning to the merits, the State also submits the trial court properly qualified Caldwell as an expert based on her extensive experience. "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Brown*, 411 S.C. 332, 338–39, 768 S.E.2d 246, 249 (Ct. App. 2015) (alteration in original).

A witness can properly be qualified as an expert where "the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge." *State v. Henry*, 329 S.C. 266, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). In determining whether a witness' knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. *Id.* at 274, 495 S.E.2d at 467.

Appellant now claims it was error to qualify Caldwell as an expert because she: (1) does not have a degree in psychology, (2) never published a peer-reviewed article on the subject, and (3) has not attended specialized courses or continuing education in the field of child abuse assessment. Interestingly, Appellant fails to articulate why these specifics are absolute threshold necessities in qualifying an individual as an expert in child abuse assessment and not merely fodder for cross-examination as to the weight of

her testimony. *See White*, 382 S.C. at 273–74, 676 S.E.2d at 688 ("With respect to qualifications, a witness may satisfy the Rule 702 threshold yet the opponent may still challenge the amount or quality of the qualifications."); *State v. Schumpert*, 312 S.C. 502, 505, 435 S.E.2d 859, 861 (1993) ("Generally, however, defects in the amount and quality of education or experience go to the weight of the expert's testimony and not its admissibility."). Qualification of Caldwell as an expert is consistent with case law where expert testimony on the behavioral aspects of sex abuse victims has been offered. *See Schumpert*, 312 S.C. at 505–06, 435 S.E.2d at 861 (finding no abuse of discretion in qualifying witness as expert in the field of sexual abuse where witness held a "master's degree in social work and specialized in child and adolescent services" and "attended training seminars regarding sexual abuse survivors and worked on more than one hundred cases involving sexually abused children").

As the record demonstrates, Caldwell has extensive experience, having conducted over two thousand forensic interviews in her career as well as having worked on hundreds of cases during her employment at SLED. She attended the South Carolina Police Academy's child abuse investigative school as well as numerous seminars on interviewing child witnesses through Greenville Technical College, the Federal Bureau of Investigation, the Federal Law Enforcement Training Center, the Southern Police Institute, and the Children's Law Center. (Tr.492–93, Caldwell CV.) She holds a bachelor's degree in interdisciplinary studies, focusing on social work and sociology, and she holds a master's in social work. She further holds an associate's degree in criminal justice. She is a licensed social worker and she attends continuing education classes to maintain that certification. Caldwell also stated she has previously testified as an expert

in the same field. In light of this experience, the trial court clearly did not abuse its discretion in qualifying Caldwell as an expert.

Moreover, even if the qualification was in error, Appellant cannot demonstrate he suffered prejudice such that a reversal would be warranted. As a general rule, the appellate court will decline to set aside a conviction due to insubstantial errors not affecting the result. *State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). Determining whether an error is harmless depends on the circumstances of the particular case and no set rule governs this finding. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). Instead, the materiality and any prejudicial character of the alleged error must be determined from its relationship to the entire case. *Id.* An error is harmless when it could not reasonably have affected the result of the trial. *Id.*

Considering the substantial evidence of Appellant's guilt, any error was harmless beyond a reasonable doubt. All three victims testified Appellant fondled and digitally penetrated them and both of their sisters. They also confirmed each other's statements about Appellant photographing all of them in various stages of undress, which was corroborated by the photographs presented by the State. The jury also heard the forensic interview of Victim Three, which was admitted without objection, recounting similar claims of sexual abuse. Additionally, in Appellant's statement to Detective Collins, he *admitted* to touching Victims in and around their vaginal areas—which alone would constitute first- and second-degree CSC on Victim Two and Three—and on their breasts, in addition to acknowledging he shaved the pubic areas of Victims One and Two. Moreover, Caldwell's expert testimony only provided background information on common dynamics of child abuse and disclosure. Given the abundance of evidence

indicating Appellant's guilt, any error in qualifying Caldwell could not reasonably have affected the verdict at trial and therefore any alleged error was harlmess.

II.

Appellant failed to preserve the issue of whether the trial court erred in allowing Caldwell to testify as Victim Three's forensic interviewer in tandem with her testimony as an expert in child abuse assessment because he never objected to this alleged "dual role" at trial. Moreover, Caldwell never related any of her expert testimony to Appellant's case and therefore he suffered no prejudice from her testimony.

Appellant argues the trial court erred in allowing Caldwell to testify as both the forensic interviewer and as an expert in child abuse assessment. This argument is unpreserved and meritless.

Although Appellant now asserts it was error for Caldwell to testify in her capacity as a forensic interviewer in conjunction with presenting expert testimony on delayed disclosure, he failed to make this argument below. Before the trial court, he only expressed concern about Caldwell discussing the details of Victim Three's forensic interview during her testimony about delayed reporting; however, the solicitor clarified she did not intend to ask specifics about the case in the context of Caldwell's expert testimony and Appellant said then he "should be fine." (Tr.501). Appellant lodged no further objection to Caldwell's testimony, and therefore his argument before this Court is unpreserved. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("[F]or an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

Moreover, his argument is founded on a clear misunderstanding of the law. Contrary to Appellant's assertions, *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015), does not hold "it was reversible error for the Court to qualify the same individual as both forensic interviewer expert and as a child abuse assessment expert." (Appellant's

Br. 17.) Although the Supreme Court encouraged the "better practice" of utilizing an independent expert who had not examined the child, it by no means asserted the use of the same individual was categorical error, much less a presumptive reversible error.[5] *See Anderson*, 413 S.C. at 219, 776 S.E.2d at 79. This Court has recognized as much in *State v. Barrett*, Op. No 5395 (S.C. Ct. App. Filed March 23, 2016) (Shearouse Adv. Sh. No. 12 at 78–79) ("We note that although the *Anderson* court offered cautionary advice, it did not prohibit outright the practice of qualifying the forensic interviewer who conducted the alleged victim's forensic interview as an expert in child abuse assessment."). Although the Supreme Court ultimately reversed Anderson's convictions, the error was not that the witness in that case testified in dual capacities, but that the trial court refused to conduct a hearing to determine the witness's qualification as an expert in child abuse assessment and the trial court qualified her as an expert in forensic interviewing. *Id.* at 218, 776 S.E.2d at 79. Thus, the concerns in *Anderson* were the trial court's abdication of its gatekeeping function in expert qualification and the fact that South Carolina does not recognize forensic interviewing as an area of expertise. More importantly, the prejudice requiring reversal of Anderson's conviction stemmed from vouching occurring during the testimony, not from the simple fact that the witness was allowed to testify in distinct capacities. *Id.* at 219, 776 S.E.2d at 80.

Such prejudice is absent in this case. Caldwell's testimony delineated her separate roles and once she completed her testimony as to Victim Three's forensic

[5] It is important to recall that Caldwell only testified about her forensic interview with Victim Three, and no other forensic interviews were published to the jury. Therefore, this argument is confined to his convictions as to Victim Three, as she is the only one where Caldwell served in this "dual role" as the forensic interviewer and an expert on child abuse assessment. In terms of Victims One and Two, Caldwell's testimony would, consistent with the recommendation of *Anderson*, be offered by an independent witness.

interview, she did not relate those facts to her expert testimony on child abuse assessment. More importantly, she never indicated whether she believed Victim Three's disclosure. Accordingly, the Supreme Court's caution in *Anderson* is inapplicable because any "risk that the expert [would] vouch for the alleged victim's credibility" was ameliorated by Caldwell limiting her testimony as an expert to general information on aspects of delayed disclosure and the dynamics of child abuse.

Furthermore, although he argues Caldwell's testimony regarding delayed reporting mirrored the Victims' stories, this alone cannot be prejudicial error. *State v. Brown*, 411 S.C. 332, 345, 768 S.E.2d 246, 253 (Ct. App. 2015) ("The fact that her testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts."). Obviously, the State would have no reason to call an expert unless her opinion was germane to the evidence presented at trial. The mere fact that a State's witness is disfavorable to the defense does not a reversible error make. *See State v. Dennis*, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013) (internal quotation marks omitted) ("Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis."); *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) ("All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided."). Again, Caldwell did not connect the factors she discussed with Victim Three's disclosure. Instead, she confined her testimony to hypothetical situations and generalized characteristics of delayed reporting.

Moreover, not every instance she discussed was present here—Victims did not drink alcohol or do drugs with Appellant and Victims never indicated they were remotely "fond" of Appellant or enjoyed any special relationship of trust with him. This case is therefore more akin to *Barrett*, where this Court affirmed the trial court's qualification of the victim's forensic interviewer as an expert in child abuse assessment because the witness "did not limit her testimony to explaining the exact behavioral characteristics [the v]ictim exhibited" but "also explained additional characteristics that Victim did not display." Accordingly, no prejudice emanated from Caldwell testifying as both Victim Three's forensic interviewer and a child abuse assessment expert.

CONCLUSION

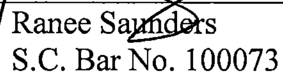
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN M. WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit



BY: ______________________
Ranee Saunders
S.C. Bar No. 100073

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-2508

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
April 21, 2016