ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

OCT 04 2016

S.C. SUPREME COURT

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

Opinion No. 5428 (S.C. Ct. App. Filed July 20, 2016)

13-GS-23-9298, 14-GS-23-5445A, 5446A & 5490A

THE STATE,

RESPONDENT,

V.

ROY L. JONES,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

CERTIFICATE OF COUNSEL 1

QUESTIONS PRESENTED 2

STATEMENT OF THE CASE 3

ARGUMENTS

1.
The Court of Appeals erred by holding the trial court did not abuse its discretion when it qualified Shauna Galloway-Williams as an expert in child sex abuse dynamics where the subject matter of her testimony was well within the realm of lay knowledge, was highly prejudicial to Petitioner, and improperly bolstered the complainants' credibility. 16

2.
The Court of Appeals erred by holding the trial court did not abuse its discretion when it qualified Shauna Galloway-Williams as an expert in child sex abuse dynamics where there was insufficient evidence of the reliability of the subject matter of her testimony and whether those matters had ever been subjected to peer review. 23

CONCLUSION 25

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 18, 2016.

QUESTIONS PRESENTED

1.

Did the Court of Appeals err by holding the trial court did not abuse its discretion when it qualified Shauna Galloway-Williams as an expert in child sex abuse dynamics where the subject matter of her testimony was well within the realm of lay knowledge, was highly prejudicial to Petitioner, and improperly bolstered the complainants' credibility?

2.

Did the Court of Appeals err by holding the trial court did not abuse its discretion when it qualified Shauna Galloway-Williams as an expert in child sex abuse dynamics where there was insufficient evidence of the reliability of the subject matter of her testimony and whether those matters had ever been subjected to peer review?

STATEMENT OF THE CASE

Procedural History

A Greenville County Grand Jury indicted Petitioner on June 24, 2014 for two counts of first degree criminal sexual conduct (CSC) with a minor, four counts of second degree CSC with a minor, two counts of lewd act upon a child, and one count of second degree CSC. R. 264-271. His case was called to trial on July 16, 2014 before the Honorable Robin B. Stilwell, and a jury. R. 1. Assistant Solicitor Kristie B. Hodge represented the state, and Alex R. Stalvey represented Petitioner. R. 1.

At the conclusion of the trial on July 17, 2014, the jury found Petitioner guilty of one count of first degree CSC with a minor, one count of second degree CSC with a minor, and two counts of lewd act. The jury acquitted Petitioner of the remaining five indictments. R. 247, l. 18 – 248, l.19. Judge Stilwell sentenced Petitioner to life without parole for both first degree CSC with a minor and second degree CSC with a minor, and fifteen years concurrent for each count of lewd act.[1] R. 251, ll. 5-23.

The Court of Appeals affirmed Petitioner's convictions and sentence on July 20, 2016. State v. Jones, Op. No. 5428 (S.C. Ct. App. Filed July 20, 2016); App. 1-16. Petitioner filed a petition for rehearing on August 4, 2016. App. 16-25. On August 18, 2016, the Court of Appeals denied the Petition for Rehearing. App. 26. Petitioner now files this petition for writ of certiorari to the Court of Appeals requesting review of the Court of Appeals' decision.

---

[1] Before trial, the state served Petitioner and his counsel with notice of its intent to seek life without parole (LWOP) due to Petitioner's 1985 conviction for second degree CSC. R. 250, ll. 2-5.

Evidence at Trial

Petitioner lived with his longtime girlfriend, Tammy Foster, and her two daughters, Older Sister and Younger Sister, from approximately 2004 until 2009. During this period, the family lived in three different houses in Greenville County. Tammy worked for the school district as a custodian and later for a nursing home. Petitioner received disability benefits because he suffers from sickle cell anemia, arthritis, and carpel tunnel syndrome. R. 201, ll. 17-23. However, Petitioner still worked odd jobs whenever he could and was paid "under the table." R. 203, l. 22 – 204, l. 3. Between his disability benefits and the money he earned doing odd jobs, Petitioner was a large financial contributor to the family.

Older Sister, who was twenty-six years old at the time of trial, testified that shortly after Petitioner moved in with her family in 2003 when she was fifteen years old, he began making sexual comments to her.[2] For example, she claimed Petitioner told her she "was getting thick," which was supposedly a compliment and meant that her breasts and butt were getting bigger. Older Sister said this was not a comment you would normally hear from a stepfather. R. 21, ll. 8-24. In addition to the uncomfortable comments, Older Sister claimed Petitioner began "groping" her. She maintained that he would touch her breasts, the front of her thighs, and her "bottom." R. 20, l. 8 – 21, l. 2. According to Older Sister, eventually this conduct progressed to oral sex and vaginal intercourse. R. 22, ll. 4-22; R. 25, ll. 8-10. She claimed the abuse continued until Petitioner moved

[2] The year Petitioner began dating Tammy Foster and moved in with the family is disputed. Tammy and Older Sister claimed Petitioner moved in sometime during 2003. R. 19, ll. 3-6; R. 81, ll. 16-17. Petitioner, on the other hand, maintained he was not released from federal prison until June 23, 2004 and did not begin dating Tammy until that time. R. 200, l. 18 – 201, l. 4.

out of the family home in 2009 when she was twenty-one years old.[3] R. 27, l. 24 – 28, l. 1. She also maintained that over one hundred sexual batteries occurred during this five to six year time period. R. 27, ll. 21-23.

Older Sister admitted Petitioner paid for her cell phone, her car payments, and often gave her spending money on a weekly basis. Petitioner helped financially support Older Sister until 2012 even though he ended his relationship with her mother, Tammy, and moved out in 2009. These allegations surfaced in June 2012 when Petitioner caught Older Sister stealing four thousand dollars from him and called Tammy to report the theft. R. 42, l. 21 – 46, l. 9.

Younger Sister, who was nineteen years told at the time of trial, testified that when she was going into the sixth grade, which was a couple of years after her mother and Petitioner began dating, Petitioner began "fondling" her by touching her breasts.[4] She claimed this conduct quickly progressed to vaginal intercourse. R. 54, l. 21 – 57, l. 18.

Younger Sister also claimed that when she "wouldn't let him [Petitioner] take advantage of [her]," Petitioner would "whup" her with a belt as punishment. R. 58, ll. 2-10. She testified that on one occasion when she was still in the fifth grade her mother came home and found Petitioner "whupping" her.[5] When her mother asked her why Petitioner was "whupping" her, Younger Sister told her mother that Petitioner "had been molesting" her. R. 58, ll. 11-20; R. 60, ll. 3-4. However,

---

[3] Petitioner was arrested in 2009 for assault and battery of a high and aggravated nature (ABHAN) after he and Older Sister allegedly got into a physical altercation. Petitioner spent over a year in jail. This is essentially when his relationship with Tammy Foster ended. R. 27, l. 24 – 30, l. 5.

[4] Younger Sister also testified that she thought she was ten years old when this abuse started. R. 57, ll. 11-12.

[5] Younger Sister initially testified that the sexual abuse started when she was going into the sixth grade. As seen, she later testified that she first disclosed the alleged abuse to her mother when she was still in the fifth grade. <u>See</u> R. 55, ll. 5-6 and R. 60, ll. 3-4.

her mother "just let it go" and continued to allow Petitioner to live with them. R. 59, ll. 13-23. Younger Sister claimed she never told anyone else about the alleged abuse because she thought "if my mom doesn't believe me," no one else will either. R. 60, ll. 21-24.

Younger Sister also testified that in September 2008 she had to have a physical to play basketball at school. When she went to the doctor for her physical, she tested positive for Trichomoniasis, a sexually transmitted disease (STD). She maintained that she was thirteen or fourteen years old at the time and had to take medication to treat the STD. The doctor asked Younger Sister in the presence of her mother, whether she was sexually active or whether "anyone [had] ever forced sex on [her]." She allegedly told the doctor "no." R. 61, l. 17 – 63, l. 7. Younger Sister claimed when she and her mother got home, her mother confronted Petitioner about the diagnosis and the two got into an argument. However, Petitioner continued to live in the home and date her mother. R. 64, l. 23 – 65, l. 5.

Like Older Sister, Younger Sister testified that Petitioner would buy her "anything [she] needed," including clothes. R. 66, ll. 6-7. Petitioner eventually moved out of their house, but he and her mother continued dating. Younger Sister did not indicate when Petitioner moved out. R. 65, ll. 11-21. She explained that it was not her idea to go to the police and report the allegations, but that they eventually did so after Older Sister was caught stealing money from Petitioner. R. 67, l. 22 – 68, l. 11.

Tammy Foster, Older Sister and Younger Sister's mother, testified that she began dating Petitioner in 2003 and that he moved in with her and the girls shortly thereafter. R. 81, l. 14 – 82, l. 11. She said Petitioner was home alone with the girls often when she was at work. R. 83, l. 22 – 84, l. 14. Tammy maintained that she and Petitioner had a healthy and regular sexual relationship. R. 85, l. 1-10.

One day, Tammy remembered Older Sister called her at work and told her she needed to come home. When she got home, Younger Sister told her Petitioner "had been touching us." Younger Sister allegedly said Petitioner "has been touching me, fondling me, sometimes he was having sexual relations with me." R. 85, l. 22 – 86, l. 17. Tammy confronted Petitioner about the allegations and he strongly denied it. R. 86, l. 23 – 87, l. 1. She admitted she was "afraid to believe it" and she continued to allow Petitioner to live in the house. Tammy said "it was hard for [her] to believe that he [Petitioner] would do something like this because we really loved each other." R. 88, ll. 1-9.

Tammy also testified about Younger Sister's physical for basketball and her Trichomoniasis diagnosis. She admitted she was in the room when the doctor asked Younger Sister about whether she was sexually active and Younger Sister denied it. R. 89, l. 12 – 90, l. 12. Tammy claimed when they got home from the doctor she confronted Petitioner about the diagnosis and Petitioner again denied sexually abusing Younger Sister. Petitioner asked Tammy how he could have given Younger Sister an STD, but not given it to Tammy as well since he was having sex with Tammy. Petitioner supposedly said Younger Sister likely got the STD from a boyfriend. R. 90, l. 13 – 91, l. 15. Tammy testified that she believed Petitioner and again continued to allow him to live in the home. R. 92, ll. 8-13.

Petitioner eventually moved out in 2009 after he and Older Sister got into a physical altercation and Petitioner went to jail. R. 94, ll. 6-9; R. 95, ll. 5-21. Tammy continued to see Petitioner even after he moved out. R. 96, ll. 1-3. She also knew that Older Sister continued to see him and was caught stealing money from him. They went to the police with these allegations shortly after Older Sister was caught stealing money from Petitioner. R. 97, l. 3 – 99, l. 23.

Petitioner took the stand in his own defense. He denied having ever improperly touched Older Sister or Younger Sister or having sexual intercourse with either. R. 201, ll. 9-16. He testified that he was a large financial provider for the family and would give them all of his money. He signed over his entire disability check to Tammy every month and she often would not have her half of the money to help pay the bills. Petitioner eventually "got tired of it" and moved out. R. 203, ll. 1-21. After he broke up with Tammy, he moved from Greenville to Spartanburg. However, Tammy, Older Sister, and Younger Sister would still visit him often. They would go out to eat when the women visited and Petitioner continued to give them money. He cosigned a loan with Older Sister so that she could purchase a car and he helped her make the monthly payments.

Petitioner and the family eventually had a falling out when Petitioner caught Older Sister stealing four thousand dollars from his dresser drawer. R. 205, l. 1 – 206, l. 8; R. 212, ll. 4-7.

There was absolutely no physical evidence of sexual abuse presented by the state.

Jury Deliberations

The jury began its deliberations on July 17, 2014 at 3:55 pm. At 8:55 pm, the court gave the jury an Allen charge. See Allen v. United States, 164 U.S. 492 (1896). Despite the late hour, the judge told the jury during this instruction that it would not be permitted to go home until it reached a verdict. R. 246, ll. 1-18. Specifically, the court stated:

> I recognized that it is late. I didn't want to stay here this late and I know y'all didn't either. The problem is **I can't send you home** once you begin your deliberations except in very exceptional circumstances. Because if y'all were to go home while you were in your deliberations, there is the possibility that you might begin talking to your spouse or your significant other about it and that would be deliberating.
>
> Also understand that if one of you, just one of you, failed to show up for court tomorrow then I would have to call a mistrial because we must have all twelve jurors. So, **we must stay, we must reach a verdict**. So, I ask you respectfully, please return to your jury room and continue trying to reach a verdict. Thank you.

R. 246, l. 19 – 247, l. 4 (emphasis added).

At 12:54 am, the jury finally reached a verdict after nearly nine hours of deliberating. The jury acquitted Petitioner of five of the nine counts against him, but found him guilty of the remaining four counts. During deliberations, the jury sent out eight notes to the court. While these notes were included in the record as court's exhibits, there was no mention of them on the record nor did the court reporter indicate at what time these notes were sent out by the jury.

The first note asked, "Can we have the text testimony of witnesses: (1) [Older Sister] [and] (2) [Younger Sister]?" R. 254. (Court's Exhibit No. 1). The second note asked, "What were the birthdays of both victims?" R. 255. (Court's Exhibit No. 2). The fourth note asked, "**If we cannot reach a unanimous decision on either counts what are our options?**" The court responded by writing on the note, "You must reach a unanimous decision as to each charge. Please clarify your question if this is not responsive." R. 257. (Court's Exhibit No. 4). The sixth note indicated, "**We are at a road block and do not see any way around it. At this point we do not for see coming to an unanimous decision on all charges**. Can we return a 'hung jury' on any one of the charges or all of the charges?" The court responded by asking, "Have you reached a unanimous verdict on any of the charges? If so, how many?" The jury wrote back, "0." R. 259-260. (Court Exhibit No. 6). It was presumably after this sixth note that the judge issued an Allen charge, but it is unclear from the record.

The seventh note read, "What were the reasons for the separation of dates for [Younger Sister] (2 counts)? (1) August 1, 2006 & January 3, 2009 [and] (2) January 4, 2009 & January 3, 2011." The court responded by writing on the note, "The dates correspond to the allegations in the indictments. If you need further clarification, please specify." R. 261-262. (Court's Exhibit No. 7).

The eighth and final note stated, "We have decided on 2 accounts [sic] & are trying very hard to move forward on the other 7." R. 263. (Court's Exhibit No. 8).

Galloway-Williams' Proffered Testimony and the Objection

At defense counsel's request, the court required the state to proffer Shauna Galloway-Williams' testimony.

Galloway-Williams is the executive director of the Julie Valentine Center in Greenville, South Carolina. The center works with children and adults who have been impacted by sexual or physical abuse and neglect. R. 155, l. 13 – 156, l. 2. Galloway-Williams is a licensed "professional mental health worker" in South Carolina and has a Bachelor's Degree in psychology and a Master's Degree in counseling. She maintained that she has conducted more than seven hundred and fifty forensic interviews throughout her career and has counseled over eight hundred other children and adults. R. 156, ll. 3-18.

Throughout her career, Galloway-Williams said she obtained more than one hundred and sixty hours of skill-based training and earned more than one hundred and twenty-five hours of continuing education credits. R. 157, ll. 3-9. She is also a member of several professional organizations, including the South Carolina Children's Advocacy Centers, the Silent Tears Foundation, and the South Carolina Professional Society on the Needs of Children. R. 156, l. 19 – 157, l. 2.

Lastly, Galloway-Williams is a professor in the Child Advocacy Program at the University of South Carolina (USC) Upstate. She normally teaches a course called Child Maltreatment. R. 157, ll. 10-13. She also speaks or provides training at conferences. R. 157, ll. 13-17. She recently presented at a conference for the National Association of Attorneys General. R. 158, ll. 9-13.

Without being specific, Galloway-Williams generally maintained that her organization "participate[s] in a statewide peer review as well as a national peer review." R. 157, ll. 21-22. She also claimed she stays current with research, publications, and articles in the field. R. 158, ll. 16-18.

Galloway-Williams asserted that the topic of her testimony, including delayed disclosure and the response of non-offending caregivers, has been the subject of many articles published in professional journals and trade publications. She claimed these articles have been subjected to peer review and uniformly accepted and recognized by child sex abuse experts and professionals. According to Galloway-Williams, counselors also rely on these principles when treating children who have been sexually abused. R. 160, ll. 11-23; R. 165, ll. 10-19.

On cross-examination, defense counsel asked Galloway-Williams whether she could provide any specific examples of peer reviewed articles or other publications on delayed disclosure or the response of non-offending caregivers. **She could not name any specific publications. She also could not name any studies that have looked into whether this subject or evidence is reliable.** R. 167, ll. 10-17. However, she maintained that the textbook she uses for the Child Maltreatment course she teaches discusses both delayed disclosure and the response of non-offending caregivers. This textbook is called Child Maltreatment and was written by Stefanie Keen, one of the professors at USC Upstate. R. 167, ll. 17-22.

Galloway-Williams explained that most of the research in the field is conducted by "asking survivors questions or asking those who have now disclosed." R. 168, ll. 9-11. However, she admitted that the Julie Valentine Center does not track the number of the children or adults they see who have delayed a disclosure nor do they track the number of false allegations. R. 168, ll. 12-20; R. 170, l. 18-21.

At the conclusion of Galloway-Williams' in-camera testimony, defense counsel argued she should not be qualified as an expert in child sexual abuse dynamics because her testimony (1) is not outside the realm of lay knowledge as required by Rule 702, SCRE and Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010); (2) its probative value is substantially outweighed by its prejudicial effect to Petitioner under Rule 403, SCRE; (3) its sole purpose is to bolster the complainants' credibility, which is prohibited under State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013); and (4) the subject matter of her testimony is unreliable. R. 174, l. 3 – 176, l. 5.

As to reliability, defense counsel argued that Galloway-Williams could not name or provide any studies or peer reviewed publications on the subject or did she discuss any methods that have been used to show this evidence is reliable. R. 174, l. 5 – 175, l. 2.

The Court's Ruling

The trial court ruled Galloway-Williams' testimony was admissible. Judge Stilwell stated "that generally speaking the state of South Carolina has accepted that expert testimony and behavioral evidence are admissible in cases of this nature." R. 177, ll. 12-14. Noting our Supreme Court's holding in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the court concluded that Galloway-Williams' testimony was not being offered "as a fact expert commenting on the credibility of the victims, but rather" her testimony was being offered to explain "delayed reporting and caregiver reporting." The court found both of these topics to be "outside of the common knowledge generally in the public and the jury pool." R. 177, ll. 17-22. Judge Stilwell also found the probative value of Galloway-Williams' testimony outweighed the prejudicial effect to Petitioner and thus there was no violation of Rule 403, SCRE. R. 177, ll. 14-16.

Moreover, the court stated:

> I will also tell you that the proposition that this isn't scientific testimony is well-received. But even if of course you consider this scientific within the ambit

> of an academic discipline and you review it in accordance with the holding in Jones, I think that there is sufficient publications and peer reviews which is evidenced by the fact [that it is] a part of an academic curriculum which teaches this field of study.
>
> And also that the methods have been applied at this time, that's evidence that the method is consistent with the recognized scientific laws or academic disciplinary laws or proceedings that are routinely applied to this field of study.
>
> I think the questions that were posed suggest that perhaps the methodology should be perfect. That's not the analysis because in any field of science or academic knowledge there must be a certain tolerance for imperfection, and we all acknowledge that.
>
> The threshold is reliability. And I find in this instance there is a threshold reliability that would give this court reason to believe that she's qualified to testify in the particulars of which her testimony has been offered. The questions that were posed to her I think are appropriate to determine whether in fact she as a witness is credible and goes to the value of her testimony to the jury.

R. 177, l. 23 – 178, l. 14.

Galloway-Williams' Testimony Before the Jury

Galloway-Williams repeated her qualifications before the jury and was qualified by the court as an expert in "child sex abuse dynamics" over defense counsel's objection. R. 180, l. 6 – 186, l. 5. Galloway-Williams explained delayed disclosure and maintained that it was common for children to delay disclosing sexual abuse. She testified that the main reason a child would delay disclosure is fear of the perpetrator or fear of the consequences of disclosing. She claimed the perpetrator may also be someone the child loves and trusts and that may make it harder for the child to disclose. R. 186, l. 8 – 190, l. 10.

Galloway-Williams also discussed how disclosure is a gradual process and partial disclosures are typical. R. 194, l. 16 – 195, l. 2. Moreover, she explained purposeful and unintentional disclosures and their causes. R. 192, l. 21 – 193, l. 11.

Lastly, Galloway-Williams explained the response of the non-offending caregiver and the reasons for their behavior. For example, she maintained that many parents are initially in denial and respond inappropriately. She said, "[S]ometimes parents get stuck in that denial and disbelief and they don't believe their children and they don't make a report and don't do anything. Sometimes parents do believe their children, but they don't have the resources or knowledge or skills or ability to do anything about it." R. 193, l. 12 – 194, l. 15.

On cross-examination, Galloway-Williams admitted she had never met with Older Sister, Younger Sister, or their mother, Tammy Foster, or talked to law enforcement about this case. She claimed her only knowledge was from discussions with the solicitor's office. R. 196, ll. 5-17.

State's Closing Argument

During her closing argument, the assistant solicitor used Galloway-Williams' testimony to bolster her case. She argued:

> You heard Shauna Galloway-Williams talk about that **this is unfortunately a common theme or thread that you see**. They have classes at the Center. People come and attend those classes and it helps them. And they have come voluntarily to say yes, I acted this way and I need help. It is true it is an unfortunate response by a non-offending caregiver, not knowing what to do. And the entire reason that we called Shauna Galloway-Williams is because I needed to understand how could this mom not say anything, how could she not do anything, how could these girls not talk about it. So, she was called to help educate me and you so you can understand this situation when you get back to the jury room to start deliberating.

R. 233, ll. 3-11 (emphasis added).

Petition for Rehearing

In his petition for rehearing, Petitioner urged the Court of Appeals to reconsider its decision in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015). Brown, which the Court of Appeals relied on heavily when rendering its opinion, reads this Court's holding in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), too narrowly. The intent of Kromah and the line

of cases that preceded it was to limit opinions vouching for the credibility of witnesses. Petitioner asserted that the state has simply renamed forensic interviewers as experts in spurious fields like "dynamics of child sexual abuse" and that this testimony does not aid the trier of fact, but instead invades the province of the jury.

Additionally, Petitioner argued in the petition for rehearing that the Court of Appeals erred by relying on the now outdated cases of State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) and State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Both Weaverling and Schumpert were decided long before this Court's opinions in Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) and State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), both of which emphasized the important gatekeeping role of trial courts in determining the admissibility of expert testimony under Rule 702, SCRE. Petitioner also stressed that Schumpert was decided before the Rules of Evidence were adopted in South Carolina and that Weaverling and Schumpert were decided before Kromah and the line of cases that preceded it, including State v. McKerley, 397 S.C. 461, 725 S.E.2d 139, (Ct. App. 2012), State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), and Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010).

Despite these arguments, the Court of Appeals denied the petition for hearing.

ARGUMENT

1.

The Court of Appeals erred by holding the trial court did not abuse its discretion when it qualified Shauna Galloway-Williams as an expert in child sex abuse dynamics where the subject matter of her testimony was well within the realm of lay knowledge, was highly prejudicial to Petitioner, and improperly bolstered the complainants' credibility.

Although Shauna Galloway-Williams was qualified as an expert in "child sex abuse dynamics," the law governing forensic interviewing is applicable here. There is simply no field of study regarding "child sex abuse dynamics" and the *real job* of Galloway-Williams is to conduct forensic interviews. Although the solicitor tried to take her testimony outside the ambit of forensic interviewing by creating a fictitious area of expertise, Galloway-Williams is simply a forensic interviewer as revealed through her testimony and our state's case law.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), this Court proclaimed: "[W]e state today that we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate." Id. at 357 n.5, 737 S.E.2d at 499 n.5. Moreover, in State v. Douglas, 380 S.C. 499, 502-503, 671 S.E.2d 606, 608 (2009), this Court held the trial court erred in qualifying a forensic interviewer as an expert because the testimony simply did not require expert qualification.

In Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), this Court specified the following three-prong test that must be considered by the trial judge before allowing the jury to hear expert testimony:

> First, **the trial court must find that the subject matter is beyond the ordinary knowledge of the jury**, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a

> specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, **the trial court must evaluate the substance of the testimony and determine whether it is reliable.**

Id. at 446, 699 S.E.2d at 175 (emphasis added).

Galloway-Williams's testimony, which focused on delayed disclosure and the response of a non-offending caregiver, was not beyond the ordinary knowledge of the jury. The reason that it is unnecessary to qualify a forensic interviewer as an expert or to qualify someone as an expert in the fictitious field of "child sex abuse dynamics" is because the information imparted by such a witness is within the jury's knowledge. Even without having any direct or indirect experience with the circumstances surrounding sexual abuse, a juror can understand that a victim of sexual abuse may not disclose immediately for a variety of reasons. Likewise, a juror can understand why a non-offending caregiver may not act immediately to protect a child from sexual abuse. The jury did not need expert testimony to explain this subject matter as it did not involve scientific, technical, or other specialized knowledge. See Rule 702, SCRE.

Older Sister and Younger Sister both provided an explanation as to why the now adult women delayed in disclosing and what eventually led each to disclose. For example, Older Sister and Younger Sister both claimed Petitioner made repeated threats and told them no one would believe them if they told. Younger Sister also said she was afraid she would be taken away from her mother if she disclosed. Furthermore, Tammy testified why she reacted the way she did when her daughters disclosed to her. Specifically, Tammy stressed her disbelief in the truth of the allegations, her love for Petitioner, and her fear of losing custody of her children to the Department of Social Services (DSS).

Older Sister, Younger Sister, and Tammy each explained their thoughts and actions to the jury. Expert testimony was not required for the jury to understand why the women delayed in disclosing and why Tammy responded the way she did. Again these subjects did not involve scientific, technical, or other specialized knowledge, and the jury was capable of deciding whether it believed the women's explanations for why they delayed in reporting their allegations and Tammy's reasons for failing to immediately act. See Rule 702, SCRE. Galloway-Williams' testimony as an "expert" was simply not needed, and it was improper bolstering. See Kromah, 401 S.C. at 357, 737 S.E.2d at 499 ("The label of expert should be jealously guarded by the court and never loosely bandied about.").

The **only** purpose of Galloway-Williams' testimony was to improperly bolster Older Sister and Younger Sister's testimony. See Kromah, 401 S.C. at 358, 737 S.E.2d at 499 ("It is undeniable that the primary purpose for calling a 'forensic interviewer' as a witness is to lend credibility to the victim's allegations."). The Court of Appeals held in State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) that it is improper for a witness to bolster the testimony of other witnesses. See Smith v. State, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (finding a "forensic interviewer's . . . opinion testimony improperly bolstered the Victim's credibility").

In McKerley, the trial court allowed a witness to testify as an expert in "forensic interviewing and child abuse assessment." 397 S.C at 463, 725 S.E.2d at 141. The "expert" had interviewed the alleged victim twice and concluded that both interviews were compelling for sexual abuse. She also determined that the victim's statements were consistent with other information she had on the case. Id. at 466, 725 S.E.2d at 142. The Court of Appeals determined there was no other way to interpret the language used in the expert's testimony other

than to mean she believed the victim was being truthful. It further held, "In light of [the expert's] extensive inadmissible testimony bolstering the credibility of the victim . . . we cannot say the erroneous admission of [the expert's] testimony did not contribute to the jury's decision," therefore finding harmful error. Id. at 467, 725 S.E.2d at 143.

This Court has also held that it is improper "for an expert to comment on the veracity of a child's accusations of sexual abuse." State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); see State v. Dawkins, 297 S.C. 386, 393-394, 377 S.E.2d 298, 302 (1989) (finding therapist indicating he believed victim's allegations were genuine was improper); see also State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000) (finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was improper vouching for child).

In Jennings, Shauna Galloway-Williams, the **same** witness at issue in this case, interviewed the three alleged victims of sexual abuse and issued a separate report for each child that was admitted into evidence. She concluded in her reports that each child provided a compelling disclosure of abuse by the defendant and that the children provided details that were consistent with the background information received from their mother, the police report, and the other children. 394 S.C. at 476-481, 716 S.E.2d at 92-95. This Court held that the conclusions in the reports improperly vouched for the children's veracity and, thus, the trial court abused its discretion by admitting the reports into evidence. It further held the error was not harmless because there was no physical evidence presented at trial and the children's credibility was the sole issue in the case. Id. at 94-95, 716 S.E.2d at 480.

It is clear from the record that the state in this case attempted to circumvent recent case law by presenting a witness who had not met with Older Sister and Younger Sister, but who was

familiar with the case, and presumably the women's testimony and specific allegations, as a result of discussions with the solicitor's office. While Galloway-Williams did not meet with Older Sister and Younger Sister, the state still used her to **indirectly comment on their credibility** and provide greater weight to their testimony.

Galloway-Williams' testimony was very likely interpreted by the jury to express that they should believe Older Sister and Younger Sister because their behavior is typical, expected, and complies with the behavior of the majority of other victims of sexual abuse. Her testimony strongly implied that because the women acted in the same manner as other victims of sexual abuse they must be telling the truth. Therefore, qualifying her as an expert and allowing her to testify was error for "[t]he assessment of witness credibility is within the exclusive province of the jury." McKerley, 397 S.C. at 464, 725 S.E.2d at 141 (citing State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)).

Not only was Galloway-Williams' testimony used to improperly bolster Older Sister and Younger Sister's testimony, it was also highly prejudicial to Petitioner and cumulative. Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence." Because Older Sister and Younger Sister had already testified as to why they disclosed when they did and what caused them to disclose, among other details, Galloway-Williams' testimony was merely cumulative. It was used solely by the state to reinforce and reiterate the reasoning for the women's actions and behavior. See Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) ("Improper corroboration testimony that is ***merely cumulative to the victim's testimony***, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.") (emphasis in original).

Galloway-Williams' testimony was also prejudicial to Petitioner because there was no physical evidence presented in the case and the sole issue was the credibility of Older Sister, Younger Sister, and their mother. Because the witnesses' credibility was the most critical determination of this case and Galloway-Williams' testimony was used solely to bolster their credibility, Petitioner was clearly prejudiced and should be granted a new trial. See Jennings, 394 S.C. at 480, 716 S.E.2d at 94-95 ("Because the children's credibility was the most critical determination of this case, we find the admissibility of the [forensic interviewer's] written reports was not harmless.").

Respectfully, Petitioner also urges this Court to overrule the Court of Appeals' holding in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) as it applies to this case. Brown, which the Court of Appeals relied on heavily when rendering its opinion in this case, reads Kromah too narrowly. The intent of Kromah and the line of cases that preceded it was to limit opinions vouching for the credibility of witnesses. The state has simply renamed forensic interviewers as experts in spurious fields like "dynamics of child sexual abuse." This testimony does not aid the trier of fact, but instead it invades the province of the jury.

Further, the Court of Appeals erred by relying on the now outdated cases of State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) and State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Both Weaverling and Schumpert were decided long before this Court's opinions in Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) and State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), both of which emphasized the important gatekeeping role of trial courts in determining the admissibility of expert testimony under Rule 702, SCRE. Significantly, Schumpert was decided before the Rules of Evidence were even adopted in South Carolina. Moreover, Weaverling and Schumpert were also decided before Kromah and the line of

cases that preceded it, including State v. McKerley, 397 S.C. 461, 725 S.E.2d 139, (Ct. App. 2012), State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), and Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), were published.[6]

The state's and the Court of Appeals' reliance on outdated cases such as Weaverling and Schumpert highlight the confusion that has arisen since this Court's opinion in Kromah. The state incorrectly contends that as long as the "expert" has not met with the minor complainants, he or she is free to comment on their credibility and bolster their testimony. However, it is obvious that the assistant solicitors trying these cases, like Petitioner's case, provide these "experts" with all of the details of the complainants' allegations. Consequently, the expert's testimony substantially mirrors the allegations raised by the complainants in each case and improperly bolsters their credibility as occurred in both Brown and Petitioner's case. Respectfully, this Court should grant certiorari to provide guidance to both the bench and bar and announce that so called "experts" in spurious fields like "dynamics of child sexual abuse" are no longer proper under modern case law.

For these reasons, this Court should reverse the decision of the Court of Appeals, reverse Petitioner's convictions and sentence, and remand for a new trial.

---

[6] See State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1997). Henry is another outdated case similar to Weaverling and Schumpert where the Court of Appeals held the "psychotherapist with a specialty in child sexual abuse" was properly qualified as an expert to render an opinion regarding the victim's post-traumatic stress disorder (PTSD). This "expert" also "explained the phenomenon of delayed disclosure of sexual abuse" and claimed "delayed disclosure is a very common trait among child sexual abuse victims." Id. at 273, 495 S.E.2d at 465.

2.

The Court of Appeals erred by holding the trial court did not abuse its discretion when it qualified Shauna Galloway-Williams as an expert in child sex abuse dynamics where there was insufficient evidence of the reliability of the subject matter of her testimony and whether those matters had ever been subjected to peer review.

"All expert testimony must satisfy the Rule 702, SCRE, criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009); See Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) (holding "the trial court must evaluate the substance of the testimony and determine whether it is reliable."). Rule 702, SCRE, provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

Recently, in State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), this Court held that State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) should apply in qualifying child abuse assessment experts because their testimony is non-scientific. "Under White, two threshold determinations must be made. First, the qualifications of the expert must be sufficient, and second, there must be a determination that the expert's testimony will be reliable." Chavis, 412 S.C. at 106-107, 771 S.E.2d at 339 (citing White, 382 S.C. at 273, 676 S.E.2d at 688). This Court held the trial court improperly qualified the child abuse assessment "expert" in Chavis because there was no evidence that her conclusions or impressions taken from the forensic interviews she conducted were accurate and her only peer review was another interviewer reviewing her work to ensure she was using the RATAC

protocol. Id. at 108, 771 S.E.2d at 339. The Court further noted that although there is "no formulaic approach for determining the foundational requirements of qualification and reliability in non-scientific evidence," "*evidence of mere procedural consistency does not ensure reliability* without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies." Id. (emphasis added).

Like the "expert" in Chavis, there was no evidence that Galloway-Williams' conclusions and claims were accurate or reliable. She testified about her experience and research, but provided **no specific information about what her research consisted of, whether it involved peer-reviewed studies, or whether the underlying research had been found to be reliable**.

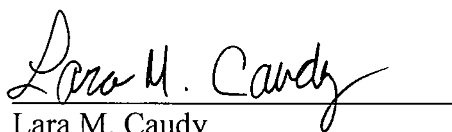
As defense counsel below pointed out, Galloway-Williams **could not identify or name a single study that supported her conclusions or opinions** nor did she state whether any of the articles, publications, or studies she relied on had been peer reviewed. The Court of Appeals apparently found the fact that Galloway-Williams named a single publication called *Child Maltreatment*, which she explained is a textbook that discusses delayed disclosure and the response of non-offending caregivers, was evidence of her *individual* reliability. Petitioner fails to see how her ability to name a textbook written by a USC Upstate professor is evidence that her opinions and conclusions are reliable. Galloway-Williams maintained that this textbook references articles about delayed disclosure and non-offending caregivers, but she never named these articles, stated whether they had been found to be reliable, nor indicted whether these articles had ever been peer reviewed.

Because there was no evidence of the reliability of Galloway-Williams' conclusions and opinions, the trial court failed to properly execute its gatekeeping function by qualifying her as an expert in "child sex abuse dynamics." Respectfully, this Court should find the trial judge abused his discretion, reverse Petitioner's convictions and sentence, and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the questions presented.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of October, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

Opinion No. 5428 (S.C. Ct. App. Filed July 20, 2016)

13-GS-23-09298, 14-GS-23-05445A, 05446A & 05490A

THE STATE,

RESPONDENT,

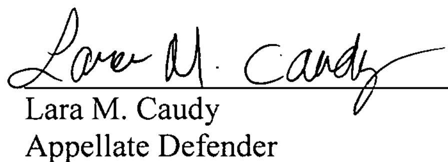
V.

ROY L. JONES,

PETITIONER

CERTIFICATE OF SERVICE

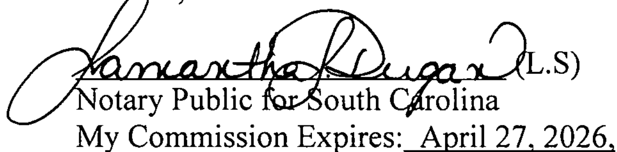
I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case have been served on Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Roy L. Jones, #129886, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of October, 2016.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day of October, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.