STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County
The Honorable Robin B. Stilwell, Circuit Court Judge
(Opinion No. 5428, S.C. Ct. App., filed July 20, 2016)
Appellate Case No. 2016-001933

THE STATE, Respondent,

v.

ROY L. JONES, Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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STATEMENT OF QUESTION ON APPEAL

Did the Court of Appeals properly affirm the circuit court's qualification of the State's witness as an expert in child sex abuse dynamics, and findings that the subject matter of her testimony was outside the realm of a lay juror, was more probative than prejudicial, and was not offered to bolster the victims' credibility? (Petitioner's Questions I and II).

STATEMENT OF THE CASE

In June 2014, the Greenville County Grand Jury indicted Petitioner Roy Lee Jones on two counts of first degree criminal sexual conduct with a minor, four counts of second degree criminal sexual conduct with a minor, two counts of lewd act, and one count of second degree criminal sexual conduct, arising from the molestation of two minor females over a significant period of time. The case was called for a jury trial on July 15, 2014, before the Honorable Robin B. Stilwell, Circuit Court Judge.

Prior to trial, Petitioner informed the court he intended to object to the State's proposed expert on the grounds her testimony would improperly bolster the victims' credibility. The State advised the court the witness was not a forensic interviewer, she never met or talked with the victims, and she would testify about "disclosure, delayed disclosure and generalities regarding those issues." The court indicated it would hear the objection prior to the expert's testimony during trial. (Record on Appeal [R.], pp. 6-7).

During jury qualification, the court asked if any jurors had either been a victim, or had a close relative who had been a victim, of a sex crime, and no jurors responded. The court then asked if any jurors had either been personally accused, or had a close relative who had been accused, of a sex crime, and again, no jurors responded. (Supplemental Record on Appeal [Supp. R., p. 1).

The victims, who were sisters, testified Petitioner started dating their mother in 2003, and eventually moved into their home. The older victim ("SF") testified Petitioner molested her from 2003 through 2009. The molestation began with fondling, and progressed to oral and vaginal intercourse. SF stated when she tried to stop him, Petitioner physically forced her to comply, threatened to harm her and her family using witchcraft, and frequently gave her gifts

and money to keep her from reporting the abuse. SF testified she did not report the molestation until 2012, when her aunt confronted her after her younger sister ("TF") disclosed Petitioner molested her. (R., pp. 16-41).

TF testified Petitioner sexually molested her from the age of nine or ten to fifteen. The molestation began with fondling and progressed to vaginal intercourse, and TF contracted a sexually transmitted disease from him. She stated the intercourse happened "[a]ny chance he got . . ., probably every day." TF finally told her mother about the molestation when Petitioner beat her for refusing to have sex with him, but her mother let Petitioner remain in the house and the molestation continued. She testified Petitioner gave her money, and then took it back after he molested her. To keep her from telling about the molestation, Petitioner threatened to harm her family using witchcraft, physically abused her, and took things like her phone away from her. (R., pp. 49-79).

The victims' mother ("Mother") testified about her relationship with Petitioner, and the victims' reports regarding Petitioner's molestation. She stated Petitioner denied the reports when she confronted him, and she wanted to believe him because she loved him. She further testified she did not report the allegations to authorities because she was afraid of losing her children.

In September 2008, Mother took TF to the doctor to get a physical required for school sports. The doctor informed them TF had a sexually transmitted disease, and asked if TF was sexually active. Rather than respond, TF just looked at Mother "like, asking if she should say." When Mother later confronted Petitioner at home, they got into an argument and she left the house. She finally kicked Petitioner out of the house in 2010. (R., pp. 80-107).

The State then proffered Shauna Galloway-Williams as an expert in child sex abuse dynamics to testify about delayed disclosure, the disclosure process, and behavioral

characteristics of non-offending caregivers. During an in-camera hearing, Galloway-Williams testified she is the clinical director of the Julie Valentine Center, which works with children and adults impacted by abuse and other types of trauma. She has a Bachelor's Degree in psychology and a Master's Degree in counseling, and is a licensed professional mental health worker. During her extensive clinical career, she conducted 750 or more forensic interviews, and had assessed and worked with an additional 800 or more clients. (R., pp. 152-156).

Galloway-Williams further testified she is a professor in the University of South Carolina Upstate Child Advocacy Program, where she teaches a Child Maltreatment course. She is a past president of the South Carolina Children's Advocacy Centers, a member of the Silent Tears Foundation, and she served on the Silent Tears South Carolina Task Force. She was also a board member for the South Carolina Professional Society on the Needs of Children. (R., pp. 156-157).

Throughout her career, Galloway-Williams participated in more than 160 hours of skill-based training, which included lectures and actual practice of related skills, and received more than 125 hours of continuing education credit for attendance at conferences and workshops. She testified all Center employees are required to stay current with research, publications, and articles related to child sexual abuse. She also provided training in the area of recognizing and responding to child sexual abuse and reporting, interviews and dynamics of sexual abuse, and was qualified as an expert in judicial proceedings nineteen times. (R., pp. 157-159).

Galloway-Williams also testified the vast majority of people will not experience child sexual abuse, and there are some very unique issues related to such abuse, including the type of abuse, identity of the offenders, how abuse happens, how children disclose, and why they do not disclose right away, which are not common knowledge. In addition, there are issues and

dynamics involved with non-offending caregivers and why they do not report the abuse. She stated these issues have been researched and discussed in published articles in professional journals, which are subject to peer review prior to publication, and are uniformly accepted and used by child sex abuse experts and professionals for counseling and treating child sex abuse victims. (R., pp. 159-166).

On cross-examination, Galloway-Williams was unable to recall specific citations to studies or articles addressing the reliability of delayed disclosure issues, but stated she could provide them, and all her hours of training included the studies and articles as the basis of fact. In addition, the textbook she uses to teach the Child Maltreatment class at USC-Upstate includes references to articles about delayed disclosure and non-offending caregivers. She then detailed the methodology used in most studies on delayed disclosure, and stated she was not aware of any research indicating the well published data is unreliable. (R., pp. 166-173).

Petitioner objected to Galloway-Williams testifying as an expert in child sex abuse dynamics on the grounds there was no evidence the underlying studies were reliable, and the substance of her testimony regarding delayed disclosure was not beyond the ordinary knowledge of the jury. In response, the State argued South Carolina courts allow behavioral characteristic testimony in child sex abuse cases, and it was clear from the jury qualification no one in the jury had any personal knowledge of child sex abuse. The circuit court overruled Petitioner's objection, finding the proffered expert testimony is admissible in child sex abuse cases, and delayed reporting by victims and caregivers is outside the common knowledge of the public in general and the jury pool specifically. (R., pp. 173-179).

Galloway-Williams testified before the jury about her credentials, and was qualified as an expert in child sex abuse dynamics over Petitioner's objection. During her direct testimony, she

testified in general terms about delayed disclosure, the disclosure process, and disclosure by non-offending caregivers, and did not make any specific references to the victims or Mother in this case. On cross-examination, she stated she never met with any of the witnesses in the case, including law enforcement, and she was contacted by the Solicitor's Office about testifying approximately one month prior to trial. (R., pp. 180-198).

After the circuit court denied his directed verdict motion, Petitioner testified and denied molesting either SF or TF, claiming the allegations were retaliation for him threatening to press charges against SF for stealing money from him. During a very contentious cross-examination, however, Petitioner admitted he never filed any charges against SF, and acknowledged (albeit reluctantly) he had a prior conviction for second degree criminal sexual conduct. (R., pp. 200-221, 252-253).

The jury found Petitioner guilty of second degree criminal sexual conduct with a minor (TF), first degree criminal sexual conduct with a minor (TF), lewd act upon a child (TF), and lewd act upon a child (SF), but acquitted him of all other charges. The circuit court sentenced him to life in prison on the two criminal sexual conduct convictions, and fifteen years incarceration on the lewd act convictions, all to run concurrent. (R., p. 247-251). This appeal followed.

ARGUMENT

The Court of Appeals properly affirmed the circuit court's qualification of the State's witness as an expert in child sex abuse dynamics, and findings that the subject matter of her testimony was outside the realm of a lay juror, was more probative than prejudicial, and was not offered to bolster the victims' credibility. (Petitioner's Questions I and II).

Petitioner contends the circuit court erred in qualifying Galloway-Williams as an expert on child abuse dynamics because there was insufficient evidence of reliability, the subject matter of her testimony was within the realm of lay knowledge, and it was highly prejudicial because it improperly bolstered the victims' credibility. These issues were clearly resolved in recent cases, and are meritless.

A. Expert Qualification (Petitioner's Issue II)

Relying exclusively on State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), Petitioner asserts the circuit court erred in admitting Galloway-Williams' testimony because she was unable to "identify or name a single study that supported her conclusions or opinions," or "whether any of the articles, publications or studies she relied on had been peer reviewed," and thus, there was no evidence her conclusions and claims were accurate and reliable.[1] In making this assertion, Petitioner grossly overstates the applicability of Chavis, and blatantly ignores evidence in the record, and the Court of Appeals analysis clearly reveals the fallacy of Petitioner's assertions. (Supplemental Appendix, pp. 5-11).

In Chavis, the trial court qualified two witnesses (Elliott and Griggs) as experts in child abuse assessment. Elliott, who had significant training and experience with the RATAC protocol

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[1]Petitioner does not contend Galloway-Williams' qualifications, as reflected by her vast knowledge, experience and training, were insufficient.

for forensic interviews, and conducted a forensic interview of the victim, testified it was her expert opinion the victim's disclosures reflected in a report issued by another forensic interviewer, who was unavailable to testify at trial, constituted disclosures of sexual abuse. 771 S.E.2d at 338-339.

The Supreme Court affirmed, with two justices finding Elliott was sufficiently trained in RATAC protocol, which she used during her forensic interviews, but there was no evidence her conclusions or impressions from those interviews were accurate, and therefore, the trial court erred in qualifying her as an expert. As to Griggs, who also conducted a forensic interview of the victim, the two justices assumed there was sufficient evidence of reliability as to her expert qualification, but held her testimony about recommending the victim not be around the defendant for any reason improperly bolstered the victim's credibility. *Id.* at 339-340. Ultimately, however, the two justices concluded both errors were harmless beyond a reasonable doubt. *Id.* at 340-341.[2]

Unlike the expert testimony at issue in Chavis, Galloway-Williams never interviewed the victims, Mother or law enforcement, and did not render any opinions or recommendations that could even remotely be regarded as specific to the victims, Mother, or the allegations against Petitioner in this case. In fact, she never expressed any conclusions specific to the case at all. Therefore, the discussion of individual reliability referenced in Chavis simply does not apply to this case.

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[2]Two justices concurred in the result, but disagreed with the conclusions of error as to both Elliott and Griggs. *Id.* at 342-343 (Toal, CJ, concurring in part and dissenting in part). The fifth justice dissented, finding the errors were not harmless and the conviction should be reversed. *Id.* at 343-345 (Hearn, AJ, dissenting).

Even if evidence of individual reliability was required, however, there is ample evidence in the record regarding the basis for, and reliability of, Galloway-Williams' expert testimony. In addition to her indisputably extensive knowledge, education, training and experience in the area of assessing and treating child sex abuse victims, Galloway-Williams is a professor at USC-Upstate and teaches a college level course entitled Child Maltreatment. She testified the textbook she uses to teach the course includes citation to studies and articles on the issue of delayed disclosure by child victims, as well as issues related to non-offending caregivers. She also testified the Center conducts groups for non-offending caregivers who did not initially act to protect the child, and she recently participated in a conference on that issue. (R., pp. 155-170)

The primary focus of Petitioner's argument regarding reliability is Galloway-Williams' inability to recall from memory the citations to specific studies and articles regarding delayed disclosure and non-offending caregivers, and dismisses her testimony regarding the textbook (discussed above), which is obviously a published authority.[3] It also ignores her testimony about the specific methodology used in studies on the subjects, as well as the lack of any studies indicating all the studies supporting her testimony were unreliable. (R., pp. 167-170). Considering her testimony in its entirety, it is clear Galloway-Williams' expert testimony was

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[3]The existence of a college level course entitled "Child Maltreatment," which includes the study of delayed disclosure and non-offending caregivers' responses, undermines Petitioner's contention there is "no field of study regarding 'child sex abuse dynamics.'" "What's in a name? That which we call a rose by any other name would smell as sweet." Shakespeare, William, Romeo and Juliet, Act II, lines 1-2. Child sex abuse dynamics is simply a name encompassing multiple aspects of child maltreatment, child sex abuse assessments and treatment.

based on accepted principles in the field of child sex abuse assessment and treatment, and inherently reliable.[4]

B. Necessity of Expert Testimony and Undue Prejudice (Petitioner's Issue I)

Expert testimony concerning 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. Weaverling, 337 S.C. 460, 523 S.E.2d 787, 794 (Ct.App.1999). It assists the jury in understanding some of the aspects of victims' behavior, and provides insight into a sexually abused child's often strange demeanor. *Id. See also* State v. Anderson, 413 S.C. 212, 776 S.E.2d 76, 79 (2015) ("Certainly we recognize that there is such an expertise [child abuse assessment]: this is the type of expert who can, for example testify to the behavioral characteristics of sex abuse victims.") (*citing* State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859, 862 [1993]; Weaverling, and State v. White, 361 S.E. 407, 605 S.E.2d 540 [2004])[5]; State v.

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[4]This type of expert testimony is recognized and admissible in numerous jurisdictions, and discussed in legal publications. *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) ("[F]rom 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]); *see also* Elizabeth Trainor, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case, 85 A.L.R. 5th 595 §3 (Originally published in 2001) (discussion of testimony regarding general behavioral characteristics of sex abuse victims and list of cases addressing the issue).

[5]Petitioner continues the defense bar's attempts to relegate Weaverling and Schumpert to "outdated" status after State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). This completely ignores this Court's affirmation of those cases in Anderson and Smith. Petitioner's suggestion this Court should overturn State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), on which the Court of Appeals relied in this case, overlooks the fact Brown raised the exact same issue Petitioner raises here, and this Court declined to hear the case on certiorari by Order filed August 5, 2015.

Smith, 411 S.C. 161, 767 S.E.2d 212, 217-18 (Ct. App. 2015) *(cert. denied* June 17, 2015) ("When sexual abuse occurs, particularly if the victim is a child, the victim may not be able to immediately disclose the abuse for numerous reasons, including the victim's feelings of shame over what happened and the victim's fear of or intimidation by the perpetrator. We find this was an appropriately general explanation [by an expert witness] of the medical or scientific reasons a child might not immediately disclose sexual trauma.")

Contrary to Petitioner's assertions, as expressly recognized by the Supreme Court in Anderson, the behavioral characteristics of child sex abuse victims is **not** a subject familiar to the common juror. Specifically in this case, based on responses to the court's questions during jury qualification, the seated jurors had no personal experience or knowledge from family members or otherwise as to child sex abuse, directly or indirectly. (TT, pp. 17, 202; Supp. R., p. 1, R., p. 176).

In the absence of experience dealing with child sex abuse, it is unreasonable to think a lay person has sufficient knowledge regarding the impact of sex abuse on children and their behavior for even a basic understanding of how abused children may respond to the abuse and/or the perpetrator. It is equally unreasonable to think a lay person has sufficient knowledge of non-offender caregiver behavior to understand how they may respond in such situations. Indeed, much of victims' and caregivers' actions seem counter-intuitive to people who have never experienced the horror of sexual abuse. Therefore, an expert with specialized training and experience dealing with child sex abuse victims and non-offending caregivers, such as Galloway-Williams, can assist the jury in understanding their behavior, particularly a delay in disclosing the abuse, partial disclosures, and reasons why a non-offending caregiver may not act

to protect a child victim.[6] *See* White, 605 S.E.2d at 544 (expert testimony and behavioral evidence may be **more** crucial when the victims are children, whose inexperience and impressionability often render them unable to effectively articulate events giving rise to criminal sexual behavior); State v. Brown, 411 S.C. 332, 768 S.E.2d 246, 250-251 (Ct. App. 2015) (*cert. denied* August 6, 2015) (expert testimony regarding common behavioral characteristic of sexual assault victims is helpful in explaining typical behavior patterns of adolescent sex abuse victims).

Galloway-Williams' testimony in this case is the type of expert behavioral testimony expressly approved in Schumpert, Weaverling, and White, cases Petitioner refers to as "outdated" in the Petition. Despite Petitioner's continued insistence the substance of her testimony was not outside the realm of ordinary lay jurors, a contention already soundly rejected by South Carolina courts, Galloway-Williams' 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).

Petitioner's contention Galloway-Williams' testimony was unduly prejudicial because she "indirectly" bolstered the victims' and mother's testimony again overlooks well-established law on that precise issue. *See* Brown, 768 S.E.2d at 252-253 (distinguishing improper bolstering when the expert conducted the forensic interview compared to independent mental health experts who address general behavioral characteristics). As the Court of Appeals found, Galloway-

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[6]A Texas court aptly described this type of testimony as "educator expert" evidence. Coble v. State, 330 S.W.3d 253 (Tx. Crim. App. 2010) (testimony about Texas prison classification system and prison violence was admissible as "educator-expert" evidence even though it did not relate to the defendant personally).

Williams "did not testify as a forensic interviewer, prepare a report for her testimony, or express an opinion or belief regarding the credibility of the Victims' allegations." Further, she "never interviewed Mother or the Victims, had no knowledge of the facts of the case beyond her discussions with the solicitor's office prior to trial, and did not make any of the statements our supreme court prohibited in Kromah." (Supplemental Appendix, pp. 12-13) (footnote omitted).

Finally, the Court of Appeals properly found the "high probative value" of Galloway-Williams' testimony outweighed any prejudicial effect to Petitioner. Her testimony "'was relevant to help the jury understand various aspects of victims' behavior and provided insight into the often strange demeanors of sexually abused children.'" (Supplemental Appendix, p. 14 [*citing* Brown]). It also "assisted in explaining the various reactions a nonoffender caregiver may have when learning about sexual abuse occurring in the home." *Id.*

The circuit court properly exercised its discretion in allowing Galloway-Williams testimony. The Court of Appeals properly affirmed the circuit court's ruling on this issue, and the Petition for Writ of Certiorari should be denied in its entirety.

CONCLUSION

Based on the foregoing, Respondent submits the Petition for Writ of Certiorari to the Court of Appeals should be denied in its entirety.

Respectfully submitted,

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November 10, 2016

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PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Return to Petition for Writ of Certiorari to the Court of Appeals on Petitioner depositing a copy in the United States mail, postage prepaid, addressed to:

Lara M. Caudy
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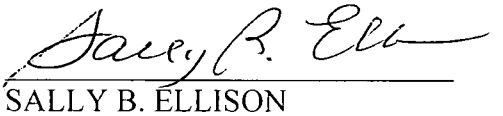
I further certify all parties required by Rule to be served have been served.

This 10th day of November, 2016.



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