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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case No. 2015-000611

THE STATE,

Respondent,

vs.

ORLANDO MARTINEZ COLEMAN,

Appellant.

FINAL BRIEF OF RESPONDENT

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II.

The trial judge committed no error in qualifying a witness as an expert and permitting her to testify in regard to the fact juvenile victims of sexual abuse frequently delay disclosing such abuse because the witness was personally qualified to testify on that subject matter based on her education, knowledge, training, and experience and because her testimony was beyond the common knowledge of the typical juror, could have assisted the jury in understanding the evidence presented during trial, met a threshold level of reliability, did not improperly vouch for or bolster the victim's testimony, and was not unduly prejudicial to Appellant.

STATEMENT OF THE CASE

In October of 2013, Appellant Orlando Martinez Coleman was arrested following an investigation into allegations he sexually abused a minor child when she was six or seven years old. In December of 2014, the York County Grand Jury indicted Appellant for two counts of first-degree criminal sexual conduct with a minor. In February of 2015, the York County Grand Jury issued amended indictments again charging Appellant with two counts of first-degree criminal sexual conduct with a minor. On March 16, 2015, a jury trial was commenced in the York County Court of General Sessions with the Honorable Roger L. Couch, circuit court judge, presiding. At the conclusion of trial two days later, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a concurrent term of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In September of 2013, Delissa Patterson ("Mother"), the mother of an eight-year-old girl ("Victim"), contacted law enforcement officers with the Rock Hill Police Department and alerted them Victim had disclosed she was sexually assaulted by Appellant Orlando Martinez Coleman at Paces River Apartments, an apartment complex located in Rock Hill, South Carolina, when Victim and her family had lived there a few years earlier. (R. pp. 104-105; p. 109; pp. 117-120; pp. 188-189; p. 195). In response, Detective Ryan Thomas began an investigation into the reported sexual abuse. (R. p. 119).

As part of his investigation, Detective Thomas referred Victim to a child advocacy center for a forensic interview, and an interview was conducted on September 24, 2013. (R. p. 119; p. 206). During that interview, Victim again disclosed she was sexually abused and described an incident occurring on a staircase and another incident occurring at a tennis court. (R. pp. 206-207; p. 211). However, Victim was unsure when the incidents occurred and was unable to provide a specific time frame for the sexual abuse. (R. p. 211).

Thereafter, on the following day, Detective Thomas made contact with Appellant, who was twenty years old at the time, and briefly spoke with him about the allegations at his residence. (R. p. 120; p. 128; p. 155). During their conversation, Appellant acknowledged he knew Victim and indicated he remembered she sometimes wore revealing clothing. (R. pp. 145-146; State's Ex. # 2 (Recording of Statements)). However, he denied ever touching Victim and claimed he had never done anything inappropriate to any children. (R. pp. 145-146; State's Ex. # 2).

A few weeks later, Detective Thomas arrested Appellant for sexually assaulting Victim. (R. pp. 122-123). Following the arrest, Detective Thomas informed Appellant of his rights and

again spoke with him about the allegations. (R. pp. 123-127; p. 127). During that interview, Appellant acknowledged he frequently hung out with Victim's brother. (State's Ex. # 2). However, once again, he insisted he did not do anything improper to Victim and claimed he pushed her off every time she tried to get into his lap. (State's Ex. # 2).

Subsequently, Appellant was indicted for two counts of first-degree criminal sexual conduct with a minor, and he proceeded to trial. (R. p. 2; pp. 25-26; pp. 253-256; pp. 257-260). At the outset of trial, defense counsel moved to quash the second of the two indictments issued in Appellant's case while also moving to restrict any witnesses from offering testimony that might bolster or vouch for Victim's credibility. (R. p. 3). In support of the motion to quash the second indictment, defense counsel cited to the decision in State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015), and argued the indictment and information provided to her did not provide sufficient notice for Appellant to adequately and effectively defend against the allegations raised in his case. (R. pp. 3-6). Furthermore, defense counsel asserted the time frame in which the alleged incidents occurred had shifted and, while conceding it is frequently difficult for a victim to pinpoint the specific date on which an incident occurred, contended she could not pinpoint a date for a potential alibi defense in the event such a defense was available. (R. pp. 4-5). In rebuttal, the solicitor noted Victim was nine years old at the time of trial and was unable to remember the dates on which the incidents occurred. (R. p. 5). Based on that fact, the solicitor indicated she could not pinpoint the dates of the incidents with more specificity or certainty than the time frames provided in the indictments. (R. pp. 5-6). The trial judge then took the matter under advisement. (R. pp. 7-8).

Thereafter, following a recess, the trial judge confirmed he reviewed the indictments issued in Appellant's case along with the decision in Baker and asked the solicitor to discuss the

manner in which the indictment process proceeded. (R. pp. 10-12). In response, the solicitor recounted Appellant was originally indicted for two counts of first-degree criminal sexual conduct with a minor in relation to an incident on a staircase and another incident at a tennis court after Appellant rejected an offer that would have permitted him to plead guilty to a single charge. (R. p. 12). Initially, the solicitor noted the indictments alleged a time frame for the incidents extending from 2010 to 2012, but she indicated she was able to narrow the time frame down further after she ascertained when Appellant moved to Paces River Apartments, the apartment complex where the incidents occurred, following an unsuccessful attempt to take the case to trial in January of 2015.[1] (R. pp. 12-13). At that point, the solicitor stated she advised defense counsel she intended to amend the indictments to narrow the time frame and obtained the amended indictments in February of 2015.[2] (R. p. 13). However, the solicitor indicated she had been unable to limit the time frame of the incidents any further based on the information provided by Victim. (R. pp. 13-14).

Following the solicitor's remarks, defense counsel asserted Appellant was initially arrested on an arrest warrant alleging a single incident that occurred on September 1, 2011, and she noted she was provided in October or November of 2013 with an incident report that

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[1] Originally, the indictments issued by the York County Grand Jury stated: "That on or about and between August 24, 2010 and June 15, 2012 in York County, South Carolina, the Defendant, Orlando Coleman, did commit the criminal offense of Criminal Sexual Conduct with a Minor in the First Degree, in that the Defendant, Orlando Coleman, did engage in a sexual battery with a minor victim who was less than eleven (11) years of age at the time of the incident, to wit: the Defendant Orlando Coleman . . . did commit the sexual battery upon and with victim, [Victim], by digitally penetrating her vagina with his finger. All in violation of Section 16-3-655(A)(1), South Carolina Code of Laws (1976, as amended)." (R. pp. 253-256).

[2] Following the amendments, the indictments issued by the York County Grand Jury stated: "That on or about and between May 13, 2011, and June 15, 2012, in York County, South Carolina, the Defendant, Orlando Martinez Coleman, did commit the criminal offenses of Criminal Sexual Conduct with a Minor in the First Degree, in that the Defendant, Orlando Coleman, did engage in a sexual battery with a minor victim who was less than eleven (11) years of age at the time of the incident, to wit: the Defendant, Orlando Coleman . . . did commit the sexual battery upon and with victim, [Victim], by digitally penetrating her vagina with his finger. All in violation of 16-03-0655(A)(1), *South Carolina Code of Laws* (1976, as amended). Against the peace and dignity of the State, and contrary to the statute in such case made and provided." (R. pp. 257-260).

referenced two separate incidents – one on a staircase and one at a tennis court – that were alleged to have occurred in the summer of 2011. (R. pp. 14-15). Defense counsel further noted she was provided with a recording of Victim's forensic interview in which Victim did not reference the time frame of the incidents. (R. p. 15). Based on that information, defense counsel stated she began investigating the case under the assumption the incidents occurred in the summer of 2011 and obtained the lease contract for Appellant's family from Paces River Apartments. (R. p. 16). After that, defense counsel asserted she was provided with information in September of 2014 from the solicitor indicating the incidents might have occurred between January and June of 2012, and she further noted the solicitor subsequently provided additional information in January of 2015 indicating the incidents might have occurred while Victim was in first grade between 2011 and 2012. (R. p. 16). Because she initially believed the incidents were alleged to have occurred in 2011, defense counsel argued the defense had been put "in a different position" in regard to defending against an allegation alleged to have occurred when Appellant was not residing at Paces River Apartments. (R. pp. 18-19). However, defense counsel conceded Victim never identified a specific date of the incidents and efforts had been made to try to identify the pertinent dates. (R. pp. 19-20). Thereafter, in reply, the solicitor noted the information provided by defense counsel was largely accurate but reiterated the State had consistently alleged from the outset of the case the time frame of the incidents extended into 2012. (R. pp. 20-22).

After considering the arguments of counsel and the Baker decision, the trial judge found the time frame alleged in the indictments was reasonable under the circumstances while also finding the solicitor made a good faith effort to narrow the time frame as much as possible under the circumstances. (R. pp. 22-23). Furthermore, the trial judge found the indictments were

sufficient given the nature of the alleged offenses to allow Appellant to respond to the charges against him. (R. p. 23). As a result, the trial judge denied Appellant's motion to quash the second indictment. (R. pp. 22-23). However, the trial judge indicated he would amend the indictments to reflect one related to an incident alleged to have occurred on a staircase while the other related to an incident alleged to have occurred at a tennis court.[3] (R. pp. 23-24).

Thereafter, the trial proceeded forward, and the solicitor proffered the testimony of Laurie Caldwell, a witness with substantial experience in regard to juvenile victims of sexual abuse. (R. pp. 45-46). During the proffer, Caldwell testified she had a master's degree in social work, had previously worked as a SLED agent conducting investigations in cases involving children and vulnerable adults, had worked at a child advocacy center for over three years after working at SLED, and had then returned to working for SLED. (R. pp. 47-48). Likewise, she indicated she had approximately twenty-eight years of experience in child abuse and physical abuse investigations and had previously testified as an expert in regard to the topics of delayed disclosure, juvenile issues with chronology, and behavioral issues of juvenile victims of sexual abuse. (R. pp. 49-50). Additionally, Caldwell noted she had received training from numerous sources focused on child sexual abuse, had received specialized training on the subject of juvenile forensic interviews, had taught courses all over the country on juvenile forensic interviewing, had received training specifically regarding delayed disclosures, had trained others in regard to delayed disclosures and behavioral indicators of sexual abuse, and had received training in trauma-focused cognitive behavioral therapy for children. (R. pp. 47-56). Furthermore, Caldwell noted she had reviewed research materials related to those subjects, including materials on delayed disclosure, and had personal experience in regard to delayed disclosure from conducting over two thousand forensic interviews. (R. pp. 54-55). However,

[3] No objections were raised to the trial judge's amendments to the indictments. (R. p. 24; p. 216).

she conceded she had not personally published any papers or personally conducted any research, and she noted did not know her own personal error rate. (R. pp. 52-54).

As the proffer continued, Caldwell explained she had personally observed and encountered delayed disclosures, and she noted both her personal experience and the relevant research established children most frequently delay disclosing abuse. (R. pp. 58-59). Moreover, Caldwell indicated the consensus amongst the clinical community is delayed disclosures are common, and she noted she had personally reviewed research regarding delayed disclosures that was peer reviewed and was based at least in part on substantiated cases of sexual abuse. (R. pp. 59-60). Additionally, Caldwell testified delayed disclosures occurred in most of the cases in which she had been involved, and she noted her knowledge on the subject was based on her training, review of pertinent materials, and personal experience conducting forensic interviews. (R. pp. 59-60; p. 63). Furthermore, she indicated she did not interview Victim in Appellant's case and had not been provided any information about the case from the solicitor. (R. p. 69).

At the conclusion of the proffer, the trial judge clarified the solicitor simply intended to offer Caldwell's testimony to establish delayed disclosure is common and not to draw conclusions regarding Victim. (R. p. 72). Defense counsel then objected on a number of grounds, arguing Caldwell's testimony would constitute improper bolstering and vouching, Caldwell was not personally qualified as an expert because she lacked "credentials" and "subspecialties" in the field in which she was being offered, Caldwell's training was not "independent," Caldwell's personal experience was insufficient, the fields of expertise in which Caldwell was being offered were unreliable, and the testimony would be unduly prejudicial. (R. pp. 70-76). In response, the solicitor noted Caldwell had extensive training and experience and was capable of helping the jury understand a field of knowledge that was not widely known. (R.

pp. 77-78). Furthermore, the solicitor asserted Caldwell would not be vouching for Victim as Caldwell did not personally know the victim in Appellant's case. (R. p. 78).

At that point, the trial judge sought clarification from the solicitor as to what Caldwell was being offered to establish, and the solicitor explained Caldwell would simply be establishing delayed disclosure is common while indicating she intended to ask about the subject of delayed disclosure, ask if children have difficulty remembering dates and times, and ask what behavioral issues are observed in juvenile victims of sexual abuse.[4] (R. pp. 78-79; pp. 82-85). The trial judge then inquired of defense counsel if she was aware of anything suggesting delayed disclosure is not common, and defense counsel conceded she had not discovered anything disputing the fact delayed disclosures occurred in the majority of abuse cases. (R. pp. 85-87). Thereafter, the trial judge ruled Caldwell could testify as an expert based on her own personal experience. (R. p. 89). However, the trial judge ruled Caldwell would be limited to testifying delayed disclosures are common and children have difficulty remembering dates and times, and he noted anything outside of those areas would be objectionable. (R. pp. 89-90).

As the trial continued forward, Victim, who was nine years old at the time, testified about the abuse she suffered at Appellant's hands when she was younger. (R. p. 92; pp. 97-98). Specifically, she stated Appellant did things to her that made her "feel uncomfortable" on two occasions when she lived at Paces River Apartments. (R. p. 93). Regarding the first incident, Victim stated she was with her brother and cousins on a staircase, they eventually left, and Appellant asked her to sit on his lap when they were gone. (R. pp. 97-99). After that, she indicated Appellant put his hand in her pants, touched her vagina underneath her underwear, and

[4] Although the solicitor indicated she intended to ask Caldwell during trial about children's memory issues in regard to dates and times and about behavioral issues exhibited by juvenile victims following sexual abuse, the solicitor ultimately did not ask such questions when Caldwell testified before the jury, and Caldwell limited her testimony to simply explaining delayed disclosures are more common amongst juvenile victims of sexual abuse. (R. pp. 163-164; pp. 167-168).

digitally penetrated her until her brother and cousins returned. (R. pp. 100-101). Similarly, regarding the second incident, Victim stated she was with her cousins at a tennis court when Appellant approached. (R. p. 102). After that, she testified Appellant again put his hand underneath her underwear and digitally penetrated her vagina. (R. pp. 102-103). Subsequently, Victim indicated she did not see Appellant again until her family moved to a new apartment complex. (R. pp. 103-104). Once there, she stated she disclosed the abuse to her mother, and she noted she was unable to remember when the abuse occurred other than that it occurred when she was in first grade in 2011 and 2012. (R. pp. 104-106).

In addition to Victim's testimony, Detective Thomas testified about his investigation into the allegations of abuse, which culminated in Appellant's arrest, and an assistant manager from Paces River Apartments confirmed Appellant and his mother lived at the apartment complex from May 13, 2011, to November 14, 2011. (R. pp. 117-128; pp. 169-170). Also, Puja Amin, the forensic interviewer who interviewed Victim during the investigation, recounted Victim disclosed she was sexually abused on two occasions but was unable to provide a specific time frame for the abuse. (R. pp. 202-207; p. 211). Additionally, Victim's brother confirmed he frequently hung out with Appellant, who was older, at the apartment complex, and he noted he saw Appellant at the apartment complex even after Appellant moved away. (R. p. 172; pp. 174-179). Victim's brother further noted Victim reacted badly when Appellant visited with him after they moved to a new apartment complex shortly before the abuse was disclosed. (R. pp. 181-183). Similarly, Mother recounted she lived at Paces River Apartments with Victim, her other children, her sister, and her sister's children from 2010 to 2012, and she indicated Victim began playing outside at the apartment complex in May of 2011. (R. pp. 188-190). Mother further testified Victim's behavior changed once they moved to a new apartment complex in 2013, and

she indicated Victim cried whenever Appellant was around. (R. pp. 190-193). After that, Mother indicated Victim reported she was sexually abused, and she stated she quickly reported the allegations to the authorities once they were disclosed to her. (R. p. 195).

Likewise, as part of the State's case, Caldwell was called to the witness stand and testified before the jury. (R. p. 158). During her testimony, Caldwell discussed her educational background, specialized training, and experience in regard to child abuse and juvenile forensic interviewing. (R. pp. 158-161). She was then qualified as an expert in the field of delayed disclosure over defense counsel's objection. (R. pp. 161-162). After that, Caldwell explained to the jury a delayed disclosure meant abuse was not immediately reported and indicated delayed disclosures were more common than not. (R. p. 163). The solicitor then asked Caldwell if it would be common for a six-year-old victim to delay disclosure, and Caldwell responded: "It is more common for a six year old, and all other ages of children, to delay in reporting their sexual abuse." (R. p. 164). Following that question and response, defense counsel objected, and the trial judge excused the jury from the courtroom. (R. p. 164). The trial judge then sustained the objection and asked the solicitor "to ask the question as it relates to [Caldwell's] experience and her practice." (R. pp. 165-166). At that point, defense counsel asked for the question to be stricken, and the trial judge stated he would do so if defense counsel wished him to call attention to the matter. (R. p. 166). Defense counsel then appeared to ask the trial judge to strike the question outside the presence of the jury, and the trial judge indicated the only reason to do so would be for the jury's benefit while again offering to strike the question. (R. p. 166). In response, defense counsel stated: "I just want to make sure the record is preserved for that." (R. p. 166). Caldwell then resumed her testimony before the jury, indicated she had performed over two thousand forensic interviews of children of all ages over the course of the last twenty years,

and noted delayed disclosures were much more common based on her experience. (R. pp 167-168).

Subsequently, at the conclusion of the evidentiary phase of trial, both the State and the defense rested their cases, and Appellant's case was submitted to the jury following the presentation of closing arguments and jury instructions.[5][6] (R. pp. 217-248). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 249). Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of twenty-five years. (R. pp. 251-252).

[5] During her closing argument, defense counsel focused the jury's attention on the fact Appellant had candidly admitted in his conversations with Detective Thomas he knew and had been in contact with Victim but repeatedly denied ever inappropriately touching her. (R. pp. 226-227). Additionally, defense counsel used her closing argument to attack the credibility of Victim by calling the jury's attention to perceived inconsistencies in Victim's statements regarding the sexual abuse. (R. pp. 224-231).

[6] As part of his jury instructions, the trial judge instructed the jurors on evaluating the testimony of expert witnesses and explained they were "not to give the opinion or the testimony of an expert witness any greater weight simply because that person was declared to be an expert." (R. pp. 240-241).

ARGUMENT

I.

The trial judge properly denied Appellant's motion to quash the second of two first-degree criminal sexual conduct with a minor indictments because the indictments issued in Appellant's case were sufficient to fully provide him with the required notice in regard to the charges he was facing and the thirteen-month time frame alleged in the indictments was not unconstitutionally overbroad in light of the fact it could not be narrowed further based on the young age of the victim coupled with her inability to remember the precise dates and times of the sexual assaults and did not prevent Appellant from combating the charges against him.

Appellant contends the trial judge reversibly erred by refusing to quash the second indictment issued in his case. In support of that contention, Appellant relies almost exclusively on our Supreme Court's opinion in State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015), a sharply-divided plurality decision, while maintaining the thirteen-month time frame alleged in the second indictment was unconstitutionally overbroad and denied him both proper notice and an opportunity to prepare a complete alibi defense. Contrary to Appellant's contention, the indictments issued in Appellant's case were not unconstitutionally overbroad and provided sufficient notice such that the trial judge was able to know what judgment to pronounce in the event of a conviction, Appellant was able to know what he was called upon to answer, and Appellant was apprised of the elements of the offenses charged. Furthermore, the thirteen-month time frame alleged in the indictments was not unconstitutionally overbroad and, instead, was sufficiently specific – particularly in light of the young age of the victim and the victim's inability to be any more specific regarding the timing of the sexual abuse – such that Appellant was capable of combating the charges raised against him. Accordingly, under those circumstances, there was no legitimate basis upon which to quash either of the indictments issued in Appellant's case, and the trial judge properly denied Appellant's motion to quash the second of those indictments. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "In appeals of pretrial rulings, [the appellate court] is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). Importantly, a trial judge's ruling on a matter "will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

ANALYSIS

In South Carolina, an indictment issued by a grand jury is generally required before an individual can be held to answer in any court for a criminal offense. See S.C. Const. art. I, § 11 ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger."); see also S.C. Code Ann. § 17-19-10 ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except [under certain circumstances]."). Generally speaking, an indictment is a "notice document." State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The primary purpose of an indictment is " 'to put the defendant on notice of what he is called upon to answer, *i.e.*, to [apprise] him of the elements of the offense and to allow him to

decide whether to ple[a]d guilty or stand trial.' " State v. Smalls, 364 S.C. 343, 346-347, 613 S.E.2d 754, 756 (2005) (citation omitted).

When evaluating an indictment, the indictment shall be considered to be sufficient if "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent conviction." State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980); see S.C. Code Ann. § 17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."). "[T]he true test of an indictment's validity is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." State v. Smalls, 336 S.C. 301, 307, 519 S.E.2d 793, 796 (Ct. App. 1999).

If a defendant wishes to challenge the sufficiency or validity of an indictment, the defendant must move to quash or dismiss the indictment prior to the jury being sworn. See S.C. Code Ann. § 17-19-90 ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards."). Such a motion challenging the sufficiency or validity of the indictment raises "a question of whether a defendant properly received notice he would be tried for a particular crime." State v. Tumbleston, 376 S.C. 90, 96, 654 S.E.2d 849, 852 (Ct. App.

2007); see also State v. Garrett, 305 S.C. 203, 206, 406 S.E.2d 910, 911 (Ct. App. 1991) ("A motion to quash an indictment addresses the sufficiency of the indictment, not the sufficiency of the State's evidence."), overruled on other grounds by State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993).

When a timely and proper challenge to the sufficiency of an indictment has been raised, what the trial judge is called upon to determine is: (1) whether the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce and the defendant to know what he is called upon to answer and to be able to make a decision as to whether to plead guilty or stand trial; and (2) whether the defendant is apprised of the elements of the offense intended to be charged. Tumbleston, 376 S.C. at 96-97, 654 S.E.2d at 852. In making such a determination, the trial judge must look to the indictment with a practical eye and examine the surrounding circumstances that existed prior to trial in order to determine whether the defendant was prejudiced in the sense that defendant was taken by surprise and unable to combat the charges against him as a result of the indictment. State v. Wade, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991). If an indictment satisfies the requisite conditions and, thus, is facially valid, the trial judge should deny the defendant's motion to quash or dismiss the indictment. See State v. Williams, 301 S.C. 369, 371, 392 S.E.2d 181, 182 (1990) (holding a motion to dismiss an indictment was properly denied because the indictment was facially valid and instructing the validity of an indictment is not affected by the character of the evidence considered by the grand jury); see also Tumbleston, 376 S.C. at 98, 654 S.E.2d at 853 ("[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.").

Notably, in State v. Wade, our Supreme Court considered a challenge to the sufficiency of a first-degree criminal sexual conduct with a minor indictment that alleged Wade sexually abused the victim at some unspecified point in time during a twenty-four-month span of time. Id., 306 S.C. at 80, 409 S.E.2d at 781. In finding that indictment to be sufficient and not overbroad, the Supreme Court rejected Wade's contention the broad span of time alleged in the indictment denied him an ability to prepare a defense to the charged offense, noting Wade proceeded with a defense of complete denial and further noting an ordinary individual would not be able to account for his whereabouts for purposes of an alibi defense even if the span of time alleged was just a month or some shorter period of time. Id. at 83-84, 409 S.E.2d at 783. Furthermore, the Supreme Court noted the time span alleged in the indictment was narrowed "as much as possible under the circumstances" based on the fact the victim was eight years old and unable to pinpoint the exact date on which the offense occurred. Id. at 84, 409 S.E.2d at 783. In light of those circumstances, the Supreme Court analyzed the indictment in Wade's case and determined it was neither unconstitutionally overbroad nor prejudicial to Wade in the sense it took him by surprise and prevented him from combating the charges against him. Id. at 86, 409 S.E.2d at 784.

Similarly, in State v. Tumbleston, this Court considered a challenge to the sufficiency of two indictments alleging Tumbleston sexually assaulted his granddaughter during a forty-two-month span of time. Id., 376 S.C. at 93, 654 S.E.2d at 850-851. In finding the indictments to be sufficient, this Court noted a two-pronged test had been adopted for determining whether a purportedly overbroad indictment was sufficient that required a court to determine whether time was a material element of the offense charged and whether the time period alleged in the indictment occurred prior to the return of the indictment. Id. at 98-99, 654 S.E.2d 853-854.

Applying that test to Tumbleston's case, this Court concluded both prongs were satisfied as time was not an element of the charged sexual offenses and the indictments were issued prior to the time periods in which the offenses were alleged to have occurred. Id. at 99, 654 S.E.2d at 854. Furthermore, this Court rejected Tumbleston's contention the broad time period specified in the indictments prevented him from adequately preparing his defense in light of the fact the indictments contained the necessary elements of the offense coupled with the fact Tumbleston proceeded forward with a defense of denial that was simply disbelieved by the jury. Id. at 102, 654 S.E.2d at 855.

More recently, in State v. Baker, 411 S.C. 583, 588, 769 S.E.2d 860, 863 (2015), our Supreme Court considered a challenge to the sufficiency of multiple indictments that alleged sexual offenses involving minor victims occurred over a six-year span of time. In finding those indictments to be insufficient, a two-justice plurality joined by a single additional justice in result only noted the indictments in Baker's case originally alleged the sexual abuse occurred during an identifiable span of the summers of three separate years but were amended approximately two weeks before trial to **expand** the time frame of the allegations to cover a period extending continuously over the course of six years.[7] Id. at 590, 769 S.E.2d at 864. In light of that exceedingly broad six-year time frame coupled with the lack of specificity included in the indictments, the plurality concluded the indictments were unconstitutionally overbroad due to the fact no defendant "could effectively defend himself against a six-year time frame." Id. at 591-

[7] Notably, because the decision in Baker was a plurality decision, the portion of the decision reached on the narrowest ground constituted the precedential portion of that decision. See Marks v. United States, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .' "). In Baker, Justice Pleicones's concurrence **in result only** constituted the narrowest ground upon which the plurality's decision was reached. See Baker, 411 S.C. at 592, 769 S.E.2d at 865 (reversing Baker's case after two justices specified particular reasons why they believed reversal was appropriate while a single justice agreed reversal was appropriate but joined in the result only without specifying any grounds as to why he believed the case should be reversed). Thus, the decision in Baker has **no** precedential value beyond the peculiar facts of that particular case.

591, 769 S.E.2d at 864-865. Furthermore, the plurality concluded Baker was personally prejudiced in his case based on the short preparation time he had in light of when the overbroad indictments were issued coupled with the fact potentially exculpatory evidence was destroyed prior to his trial. Id. at 590-591, 769 S.E.2d at 864. As a result, the plurality concluded the indictments issued in Baker's case were unconstitutionally overbroad and the trial judge erred in refusing to grant his motion to quash. Id. at 592, 769 S.E.2d at 865. However, the plurality expressly noted the indictments would have been sufficient "[h]ad [they] alleged that the conduct occurred during the summer months of the years 1998 through 2004, i.e., June 1 until September 1" – a span of time covering twenty-one total months. Id. at 592, n. 5, 769 S.E.2d at 865.

In the case sub judice, Appellant was indicted for two counts of first-degree criminal sexual conduct with a minor, and the indictments issued in his case included the relevant language from the statutes defining the offenses with which Appellant was charged. See S.C. Code Ann. § 16-3-655(A)(1) (explaining a person is guilty of first-degree criminal sexual conduct with a minor if "the actor engages in sexual battery with a victim who is less than eleven years of age"). Under those circumstances, the indictments were sufficient to provide Appellant with notice that apprised him of the elements of the charged offenses, allowed him to decide whether to plead guilty or stand trial, and enabled the trial judge to know what judgment to pronounce in the event Appellant was convicted. See Edwards v. State, 372 S.C. 493, 496, 642 S.E.2d 738, 739 (2007) ("[A]n indictment is a notice document. The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is

convicted."); see also State v. Jacobs, 238 S.C. 234, 243, 119 S.E.2d 735, 739-740 (1961) ("An indictment is ordinarily sufficient if it is in the language of the statute.").

Moreover, time was not an element of charged offenses of first-degree criminal sexual conduct with a minor. See State v. Thompson, 305 S.C. 496, 501, 409 S.E.2d 420, 423 (Ct. App. 1991) ("The specific date and time is not an element of the offense of first degree criminal sexual conduct."). In light of that fact, the solicitor was **not** required to identify the specific date and time each of the charged crimes occurred with exactitude in order for the indictments to be constitutionally sufficient. See State v. Wingo, 304 S.C. 173, 175, 403 S.E.2d 322, 323 (Ct. App. 1991) ("Where time is not an essential element of the offense, the indictment need not specifically charge the precise time the offense allegedly occurred. . . . Here, both indictments sufficiently notified Wingo of the offenses with which he was charged since time is not a material element of either the offense of first degree criminal sexual assault or the offense of contributing to the delinquency of a minor and since the indictments allege the commission of the offenses during periods that preceded the date of the indictments."); see also United States v. Kimberlin, 18 F.3d 1156, 1159 (4th Cir. 1994) (" 'Where a particular date is not a substantive element of the crime charged, strict chronological specificity or accuracy is not required.' " (citation omitted)). Instead, the solicitor was only required to fully apprise Appellant of the information available to the State regarding the time, place, and date of the crimes, and she did just that to the best of her abilities in Appellant's case. See State v. Wilcox, 808 P.2d 1028, 1033 (Utah 1991) ("[W]e have recognized that there are notice problems, especially as to the date, place, and time inherent in prosecutions based on the testimony of very young victims. . . . If we were to hold that in all such circumstances, no offense could be charged because the alleged victim is too young to testify with certainty concerning the times, dates, or places where the

abuse occurred, we would leave the youngest most vulnerable children with no legal protection. An abuser could escape prosecution merely by claiming that the child's inability to remember the exact dates and places of the abuse impaired the abuser's ability to prepare an alibi defense. In frank recognition of this fact, we have been less vigorous in requiring specificity as to time and place when young children are involved than would usually be the case where an adult is involved. . . . We have suggested that **so long as the elements of the crimes are covered by the factual allegations and the defendant is fully apprised of the State's information regarding the time, place, and date of the crimes, any lack of factual specificity goes not to the constitutional adequacy of notice, but to the credibility of the State's case**." (emphasis added)); see also S.C. Code Ann. § 17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.").

Significantly, subsequent to Appellant's arrest, the solicitor provided Appellant and the defense with all the information available to the State regarding when the sexual abuse occurred. Specifically, as acknowledged by defense counsel during trial, the solicitor provided her with information more than a year before trial that established Victim was unable to specifically identify the dates and times of the sexual abuse and that suggested the abuse occurred at some point in 2011. Then, as the case proceeded forward closer to trial, the solicitor continued to provide defense counsel with updated information about the case as it became known to her and alerted defense counsel in September of 2014, which was roughly five months before

Appellant's case ultimately went to trial, the sexual abuse potentially occurred as late as June of 2012 based on her discussions with Victim. Thereafter, in December of 2014, which was approximately three months before Appellant's case was ultimately tried, the solicitor obtained indictments that – consistent with the information available to the solicitor – indicated the sexual abuse occurred between August 24, 2010, and June 15, 2012, a twenty-two month span of time. Finally, approximately two weeks before trial, the solicitor obtained amended indictments that **significantly narrowed** the previously identified time frame of the sexual abuse to a defined period extending from May 13, 2011, to June 15, 2012, a span of time covering just thirteen months that unquestionably preceded the date the indictments were issued.

Critically, when viewing those facts and circumstances with a practical eye while also taking into consideration the young victim's inability to be more precise in identifying the dates and times of the sexual abuse, the time periods alleged in the indictments issued in Appellant's case were reasonable and sufficient to provide Appellant with adequate notice to prepare his defense without being unconstitutionally overbroad. Cf. Tumbleston, 376 S.C. at 102, 654 S.E.2d at 855 ("We reject the notion that a specified time period prevented Tumbleston from adequately preparing his defense to the charges. Reading the indictments objectively from a reasonable person's view, we conclude they contain the necessary elements of the offenses charged and sufficiently apprise Tumbleston that he must be prepared to address his conduct towards [the victim] between 2001 and June of 2004."). Notably, the thirteen-month time frame alleged in the indictments was much, much more narrow than the six-year time period found to be improper in the Baker decision. Even more notably, the time period alleged in Appellant's case was **substantially** shorter than the twenty-one-month span of time the plurality indicated would have been sufficiently specific to pass constitutional muster in Baker. Furthermore,

although the indictments in Appellant's case were amended only two weeks before trial, the late amendment to the indictments – unlike the late amendment in Baker – **reduced** as opposed to expanded a time frame that Appellant had been aware of for at least a period of approximately three months before trial.

Moreover, in light of the surrounding circumstances that existed prior to trial, the indictments in Appellant's case did **not** prejudice Appellant to the extent he was taken by surprise and unable to combat the charges against him as a result of the indictment. Importantly, Appellant was fully aware from a point shortly after his arrest Victim, who was between the ages of six and seven when she was sexually assaulted and who was only nine years old by the time of trial, was not able to specifically identify the dates and times of the incidents, and defense counsel was capable of exploiting Victim's uncertainty – which the jury was also unquestionably made aware of – to attack her credibility during trial. Likewise, Appellant's defense based on his discussions with Detective Thomas was a complete defense of denial as opposed to an alibi defense, which was not available to Appellant in light of the fact he did **not** dispute he knew and had contact with Victim, and the time frame identified in the indictments in no way impacted his ability to deny the charges during trial. See State v. Cozza, 71 Wash. App. 252, 259-260, 858 P.2d 270, 275 (Wash. Ct. App. 1993) ("[W]hether single or multiple incidents of sexual contact are charged, a defendant has no due process right to a reasonable opportunity to raise an alibi defense. Although our ruling does not allow the defendant to use the child's inability to recall dates as a sword to escape a trial, he or she can use the long time frame to attack the credibility of the child witness. In addition, the defendant may also deny the conduct, or offer innocent explanations for the child's sexual knowledge. Moreover, the requirement that the defendant be proved guilty beyond a reasonable doubt adequately protects the defendant's rights. The trier of

fact hears both that the child witness cannot specify a date and that the defendant is thereby precluded from raising an alibi defense. Both are considered in the deliberations that require guilt to be found beyond a reasonable doubt." (citations omitted)); see also People v. Fritts, 72 Cal. App. 3d 319, 326, 140 Cal. Rptr. 94, 97 (Cal. Ct. App. 1977) ("Since appellant's alibi defense was not specific as to dates but total, in that he made a blanket denial of ever having molested his stepdaughter, he was not prejudiced by the manner of charging [him with a lewd act alleged to have occurred sometime during a twelve-month time span]."); State v. Brim, 2010 S.D. 74, __, 789 N.W.2d 80, 84 (S.D. 2010) ("The lack of precise dates of the abuse did not deprive Brim of his defense. . . . Brim's defense was a complete denial of any sexual act occurring during the entire period of time covered by the indictment."). Furthermore, Appellant and defense counsel were aware of the general time frame being alleged in regard to the timing of the sexual abuse at least three months before Appellant's trial took place and were aware of the reduced time frame several weeks before trial when the solicitor provided additional information and obtained the amended indictments, which gave Appellant a much better opportunity to prepare his defense than the defendant was afforded in Baker. See generally State v. Register, 323 S.C. 471, 482, 476 S.E.2d 153, 160 (1996) ("The parties knew in September that this case was set for trial in January and full discovery had been afforded to Register from September forward. The fact that Register's counsel waited until the middle of December to investigate the evidence does not warrant a continuance.").

For those reasons, the indictments issued in Appellant's case – like the indictments issued in Wade and Tumbleston – were sufficiently specific to provide Appellant with the required notice in regard to the charges he was facing and were not unconstitutionally overbroad, particularly in light of the fact the thirteen-month time frame identified in the indictments could

not be narrowed any further due to the victim's age and inability to remember with complete precision. Cf. Wade, 306 S.C. at 86, 409 S.E.2d at 784 (finding an indictment alleging the charged incident occurred at some point during a twenty-four-month span of time was not unconstitutionally overbroad where the time frame identified in the indictment had been narrowed as much as possible under the circumstances); Tumbleston, 376 S.C. at 102, 654 S.E.2d at 855 (rejecting Tumbleton's contention the indictments issued in his case, which alleged the charged incidents occurred at some point during a forty-two-month span of time, were unconstitutionally overbroad). Accordingly, the trial judge properly refused to quash the second indictment issued in Appellant's case.[8] See Tumbleston, 376 S.C. at 94, 654 S.E.2d at 851 ("The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion."). Appellant's convictions should be affirmed.

[8] Notably, Appellant did not challenge the sufficiency of the first indictment, which contained the exact same thirteen-month time span alleged to be overbroad in the second indictment, as unconstitutionally overbroad, and, thus, the sufficiency of the first indictment – along with the sufficiency of the thirteen-month time frame alleged in that indictment – is the law of Appellant's case. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (explaining unchallenged and unappealed rulings are the law of the case).

II.

The trial judge committed no error in qualifying a witness as an expert and permitting her to testify in regard to the fact juvenile victims of sexual abuse frequently delay disclosing such abuse because the witness was personally qualified to testify on that subject matter based on her education, knowledge, training, and experience and because her testimony was beyond the common knowledge of the typical juror, could have assisted the jury in understanding the evidence presented during trial, met a threshold level of reliability, did not improperly vouch for or bolster the victim's testimony, and was not unduly prejudicial to Appellant.

Appellant contends the trial judge abused his discretion by qualifying Caldwell as an expert in the field of delayed disclosure and permitting her to testify about that subject matter during trial. In support of that contention, Appellant maintains there was no particular need for expert testimony on delayed disclosure during his trial, Caldwell was not "sufficiently" qualified to testify as an expert on delayed disclosure, Caldwell's testimony on delayed disclosure did not meet a threshold level of reliability, Caldwell's testimony improperly vouched for and bolstered Victim's testimony, Caldwell actually testified as an improper forensic interviewing expert, and Caldwell's testimony was unduly prejudicial. To the contrary, Caldwell was personally qualified as an expert witness based upon her education, knowledge, training, and experience in the field of delayed disclosures of abuse by juvenile victims. Based on her education, knowledge, training, and experience, Caldwell possessed specialized knowledge on a subject matter beyond the common knowledge of the typical juror that was critical for the jurors to be able to evaluate and understand Victim's failure to immediately disclose the sexual abuse she suffered at Appellant's hands. Likewise, Caldwell's testimony met a threshold level of reliability. As a result, Caldwell's testimony satisfied all the requirements for it to be admitted as proper expert testimony during trial. Moreover, Caldwell's testimony did not improperly vouch for or bolster Victim's testimony, and the probative value of her testimony was not substantially outweighed by any potential for it to result in undue or unfair prejudice to Appellant. Under those

circumstances, the trial judge did not abuse his broad discretion by qualifying Caldwell as an expert witness and permitting her to testify about the frequency of delays in disclosures of abuse by juvenile victims. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Likewise, a decision as to whether to admit or exclude expert testimony rests within the trial judge's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); see State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)

("A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair.").

ANALYSIS

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Id. at 445-446, 699 S.E.2d at 175. "The qualification of a witness as an expert falls largely within the discretion of the trial judge." State v. Myer, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

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

Rule 702, SCRE. Before admitting expert testimony, the trial judge must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 514, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying

science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

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's 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; see State v. Peer, 320 S.C. 546, 554-555, 466 S.E.2d 375, 380 (Ct. App. 1996) ("The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony."). Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the jury in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). Significantly, "[t]he test for qualification [as an expert] is a relative one that is dependent on the particular witness's reference to the subject[,]" and "defects in the amount and quality of education and experience go to the weight of the expert's testimony and not its admissibility." Lee v. Suess, 318 S.C. 283, 285-286, 457 S.E.2d 344, 346 (1995).

In addition to ensuring the expert is qualified, the trial judge must also ensure the testimony "meets a threshold level of reliability, regardless of whether it is scientific or nonscientific." State v. Tapp, 387 S.C. 159, 165, 691 S.E.2d 165, 168 (Ct. App. 2010). In cases involving scientific expert testimony, the trial court should consider the following factors: (1) the

publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). However, in cases involving nonscientific expert testimony, the factors applied in an analysis of scientific evidence cannot readily be applied. See White, 382 S.C. at 274, 676 S.E.2d at 688 ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony."). Accordingly, no formulaic approach can or must be applied to determine reliability in cases involving nonscientific expert testimony. Id.

Critically, in cases such as Appellant's case where there are allegations of juvenile sexual abuse, "[e]xpert testimony concerning child abuse typically comes from two sources: medical evidence provided by physicians and **behavioral science evidence** provided by psychiatrists, psychologists, and social workers." State v. Morgan, 326 S.C. 503, 508, 485 S.E.2d 112, 115 (Ct. App. 1997) (emphasis added), overruled on other grounds by State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). Regarding such testimony, appellate courts in South Carolina have consistently and repeatedly recognized "[e]xpert testimony concerning common behavioral characteristics of sexual assault victims and **the range of responses to sexual assault encountered by experts** is admissible." State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) (emphasis added); see also State v. Anderson, 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015) ("Certainly we recognize that there is such an expertise [in the field of child abuse assessment]: this is the type of expert who can, for example, testify to the behavioral characteristics of sex abuse victims.").

Significantly, "[s]uch testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault." Weaverling, 337 S.C. at 475, 523 S.E.2d at 794; see State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) ("The purpose of rape trauma evidence is to prove the elements of criminal sexual conduct since such evidence may make it more or less probable the offense occurred."). Moreover, rape trauma or behavioral characteristic evidence is often crucial in child sexual abuse cases because "[t]he inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior." White, 361 S.C. at 414-415, 605 S.E.2d at 544. Furthermore, rape trauma and behavioral characteristic evidence is also particularly important to explain the often unusual behavior exhibited by victims of sexual abuse that might be beyond the knowledge of the average juror. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 ("It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor."); see also United States v. Lukashov, 694 F.3d 1107, 1117 (9th Cir. 2012) ("[The expert witness's] testimony was helpful to the jury because some jurors would not have a general understanding of an eight-year-old's sexual knowledge and vocabulary and the level of sensory detail to look for in a child's allegations of sexual abuse."); People v. Baenziger, 97 P.3d 271, 275 (Colo. Ct. App. 2004) ("**Because the 'lay notion of what behavior logically follows the experience of being raped may not be consistent with the actual behavior or which social scientists have observed from studying rape victims,'** expert testimony explaining these reactions is helpful to the jury in determining whether this delay should support the conclusion that the sexual assault did not occur.' " (citations omitted and emphasis added)); People v. Carroll, 95 N.Y.2d 375, 387, 740 N.E.2d 1084, __ (N.Y. 2000) ("We have long held that expert testimony regarding rape trauma

syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]"). Accordingly, "both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect." State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993).

In the case at bar, testimony was presented establishing Victim did not immediately disclose the sexual abuse inflicted upon her by Appellant and, instead, delayed disclosing that abuse for roughly two years. Based on that testimony, expert testimony was needed in Appellant's case to educate the jury in regard to delayed disclosures so the jurors would be able to appropriately consider and evaluate the evidence regarding Victim's delayed disclosure during trial in light of the fact the subject matter of delayed disclosures is a field of specialized knowledge outside the common knowledge and experience of ordinary jurors. See State v. Brown, 411 S.C. 332, 341, 768 S.E.2d 246, 251 (Ct. App. 2015) (finding expert testimony in a child sexual abuse case, including testimony in regard to delayed disclosures, was necessary and relevant to a fact in issue because Brown's victims delayed disclosing the abuse for nearly three years and because ordinary jurors might not have experience with issues such as delayed disclosure); see also Rule 702, SCRE ("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." (emphasis added)). For that reason, the State was required to – and did – present an expert in the field of delayed disclosure in order to educate the jury on that subject matter. See Anderson, 413 S.C. at 221, n. 6, 776 S.E.2d at 80 (recognizing it

is necessary for a witness to be an expert to testify in regard to delayed disclosures in sexual abuse cases).

Beyond the necessity of the expert testimony in Appellant's case, Caldwell, the expert offered by the State, was personally qualified to testify as an expert in the field of delayed disclosure as she possessed specialized knowledge regarding the behavior of juvenile victims of sexual abuse, including in regard to delayed disclosures of abuse, based on her education, knowledge, training, and experience. Specifically, Caldwell had an educational background in social work along with a master's degree in that field, had participated in and conducted training on forensic interviewing **and** delayed disclosures over the course of the last **twenty years**, was the director of forensic services at a child advocacy center for several years, had personally conducted **over two thousand forensic interviews** of children ranging in age from three to seventeen, had investigated cases involving crimes against children for many years while working at SLED, had personally reviewed research in the field of delayed disclosure, had previously been qualified as an expert witness in that field, and had personally observed and encountered delays in disclosures during her many years both investigating abuse cases and conducting forensic interviews in such cases. See State v. Barrett, 416 S.C. 124, 130, 785 S.E.2d 387, 390 (Ct. App. 2016) (finding the trial judge properly found a forensic interviewer to be qualified as an expert in the field of "behavioral characteristics displayed by child abuse victims" where the forensic interviewer testified she was a licensed professional counselor, she had a master's degree in clinical psychology, she had training that involved working with children in situations involving allegations of sexual abuse, she had worked on multiple cases involving sexually abused children, and she had attended training seminars and educational courses regarding sexual abuse); see also State v. Carpenter, 147 N.C. App. 386, 393, 556 S.E.2d 316,

321 (N.C. Ct. App. 2001) ("Vaughn was adequately qualified in the area of child sex abuse evaluations and interviews based on her extensive experience, training, and education. Vaughn had received a masters degree in social work and later had an internship lasting two years at Duke University Medical Center where she interviewed suspected victims of child sexual abuse. At the time of trial, Vaughn was a licensed clinical social worker and her job involved evaluating and interviewing children and families when it was suspected that the children had been maltreated. Prior to this employment, Vaughn had several other jobs in which she interviewed and evaluated child victims of sexual abuse. In fact, Vaughn estimated that she had interviewed a couple thousand children throughout her career. Thus, Vaughn was properly qualified as an expert in the area of child sex abuse evaluations and interviewing."); see generally State v. Morris, 376 S.C. 189, 204, 656 S.E.2d 359, 367 (2008) ("Despite Appellant's argument to the contrary, the status of [the witness's] law license is completely irrelevant to his qualification as an expert. The evidentiary rule governing the qualification of experts says nothing about professional licensing requirements, and a licensing requirement seems wholly incompatible with Rule 702's operational framework."). As a result, Caldwell possessed specialized knowledge in an area of expertise beyond the common knowledge of the average juror. See Brown, 411 S.C. at 342, 768 S.E.2d at 251 (holding the subject of delayed disclosure is beyond the ordinary knowledge of a jury and necessitates expert testimony from a qualified expert); see also Schumpert, 312 S.C. at 505-506, 435 S.E.2d at 861 ("[The witness] testified she had a master's degree in social work and specialized in child and adolescent services. She attended training seminars regarding sexual abuse survivors and worked on more than one hundred cases involving sexually abused children. We find no abuse of discretion in her qualification as an expert [in the field of sexual abuse]."). Furthermore, Caldwell's specialized

knowledge was in an area that was critical for the jury to be able to properly evaluate and understand the evidence and testimony related to Victim's failure to immediately disclose what had been done to her following the sexual abuse. See State v. Rogers, 293 S.C. 505, 506, 362 S.E.2d 7, 8 (1987) ("Evidence of behavioral traits of a sexual abuse child victim may be offered to explain inconsistencies in the behavior of the alleged victim."), overruled on other grounds by State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); see also State v. Roenfeldt, 241 Neb. 30, 39, 486 N.W.2d 197, 204 (Neb. 1992) ("The reasoning for a rule allowing an expert to testify about sexual abuse in generalities, **without being familiar with the alleged victim**, is that '[f]ew jurors have sufficient familiarity with child sexual abuse to understand the dynamics of a sexually abusive relationship,' and 'the behavior exhibited by sexually abused children is often contrary to what most adults would expect.' " (emphasis added, brackets in original, and citation omitted)); State v. Kaufman, 187 Ohio App. 3d 50, 85, 931 N.E.2d 143, 170 (Ohio Ct. App. 2010) (holding an expert witness was properly permitted to testify on general background information regarding delayed disclosure by juvenile victims of sexual abuse even though the expert did not know any of the specific facts related to Kaufman's victims). Accordingly, the trial judge did not abuse his broad discretion in finding Caldwell was personally qualified to testify as an expert in regard to delayed disclosures.

Likewise, in addition to Caldwell being personally qualified to testify as an expert, Caldwell's testimony on the subject matter of delayed disclosures by juvenile victims of sexual abuse was sufficiently reliable to warrant its admission as it was based on her own personal experiences in numerous cases involving juvenile victims of sexual abuse coupled with her review of research and studies conducted on cases of sexual abuse involving juvenile victims, including substantiated cases of abuse. See John E. B. Meyers, Expert Testimony in Child

Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y 1, 45-46 (2010) ("Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome." (footnotes omitted)). Moreover, behavioral science evidence, including behavioral science evidence regarding delays in disclosures by juvenile victims of sexual abuse, has historically been recognized as admissible by the majority of courts in the United States, including courts in South Carolina. See Schumpert, 312 S.C. at 505-506, 435 S.E.2d at 861-862 (holding an expert in the field of sexual abuse was properly qualified to testify in regard to the victim's behavioral characteristics and the fact those characteristics were typical for victims of sexual abuse); Weaverling, 337 S.C. at 474-475, 523 S.E.2d at 794 (instructing expert testimony concerning the common behavioral characteristics exhibited by juvenile victims of sexual abuse was relevant, helpful, and admissible); see also State v. Crespo, 114 Conn. App. 346, 373, 969 A.2d 231, 248 (Conn. App. Ct. 2009) ("Such expert testimony, related to the issue of delayed reporting of sexual abuse, falls within the type of social framework testimony that has been deemed relevant in assessing a victim's conduct in cases of sexual abuse."); Harris v. State, 283 Ga. App. 374, 381, 641 S.E.2d 619, 625 (Ga. Ct. App. 2007) (recognizing experts are properly permitted to testify in regard to the typical patterns of behavior exhibited by rape victims); People v. Spicola, 16 N.Y.3d 441, 465, 947 N.E.2d 620, __ (N.Y. 2011) (recognizing the majority of states allow the introduction of expert testimony to explain delayed disclosure and

other behavioral characteristics exhibited by juvenile victims of sexual abuse). Notably, demonstrating the general acceptance and reliability of such evidence, the trial judge – before qualifying Caldwell as an expert – asked defense counsel if she was aware of any information of any kind casting doubt on Caldwell's conclusion delayed disclosures were common amongst juvenile victims of sexual abuse, and defense counsel conceded in response she was **not** aware of any information that would cast doubt on the reliability of that conclusion. Cf. State v. Jones, 273 S.C. 723, 732, 259 S.E.2d 120, 125 (1979) (finding the trial judge properly exercised his discretion in admitting expert testimony on "bite-mark" evidence where "[t]here was no showing that the techniques and theories employed were other than accepted by the photographic and dental communities"). Under those circumstances, the trial judge committed no error in finding the subject matter of Caldwell's testimony regarding delayed disclosures met a threshold level of reliability such that it was admissible.

Finally, beyond satisfying all the necessary requirements to be admitted as expert testimony, Caldwell's testimony did **not** improperly bolster or vouch for Victim's credibility or result in any undue or unfair prejudice to Appellant. Specifically, Caldwell, who had no personal experience with Victim, did not testify she believed Victim, Victim had actually been sexually abused, Victim was telling the truth, Victim's behavior suggested she was telling the truth, or Victim's disclosure was compelling. Cf. State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015) (finding testimony to constitute improper bolstering in a child sexual abuse case where the witness testified she recommended Chavis not be around the victim for any reason, which could only be interpreted as a statement the witness believed the victim's claim Chavis had sexually abused her); State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013) (instructing forensic interviewers should not testify about a child's veracity or tendency to tell

the truth, vouch for a child's believability, state they made a compelling finding of abuse, assert they believed the child, or indicate the child's behavior suggests the child was telling the truth); State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding a forensic interviewer's testimony constituted improper vouching where the interviewer testified the victims provided compelling disclosures of abuse by Jennings and provided details consistent with the background information provided by the victims' mother, the police report, and other children); State v. McKerley, 397 S.C. 461, 465-466, 725 S.E.2d 139, 142 (Ct. App. 2012) (finding a forensic interviewer's testimony to be improper where the interviewer testified about giving an opinion as to whether something happened and about consistent information and compelling findings). Instead, Caldwell simply explained juvenile victims of sexual abuse of all ages frequently and commonly delay disclosing that abuse, and her testimony on that subject matter was exceedingly brief and limited.[9] Cf. Brown, 411 S.C. at 344-345, 768 S.E.2d at 252-253 (holding expert testimony regarding the high frequency of delayed disclosures in child sexual abuse cases did not constitute improper bolstering); State v. Smith, 411 S.C. 161, 171, 767 S.E.2d 212, 218 (Ct. App. 2014) (finding an expert witness did not improperly vouch for the juvenile victim in a sexual assault case where the expert did not give an indication as to his belief in regard to the victim's truthfulness and, instead, offered testimony that was "an appropriately general explanation of the medical or scientific reasons a child might not immediately disclose sexual trauma"). As a

[9] On appeal, Appellant identifies Caldwell's statement "[i]t is more common for a six-year-old, and all other ages of children, to delay in reporting their sexual abuse" as testimony improperly vouching for and bolstering Victim's testimony due to the fact Victim was approximately six years old at the time she was sexually abused. Notwithstanding the fact Caldwell's statement did not single out a particular age of child as it clearly conveyed six-year-olds **and all other ages of children** commonly delay disclosing abuse, Appellant's appellate challenge to that particular portion of Caldwell's testimony is not properly preserved for appellate review because the trial judge **sustained** defense counsel's objection to the question and defense counsel only moved for the testimony to be stricken from the record **outside** the presence of the jury. See State v. Saltz, 346 S.C. 114, 129, 551 S.E.2d 240, 248 (2001) ("The requirement that a party move to strike objectionable testimony applies when an objection has been *sustained.*"); see also State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (finding when "the appellant obtained the only relief he sought, this court has no issue to decide"); State v. Parris, 387 S.C. 460, 465, 692 S.E.2d 207, 209 (Ct. App. 2010) ("When the defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide.").

result, Caldwell did not improperly bolster or vouch for the credibility or believability of Victim, and the probative value of her testimony, which was very high in light of the fact Victim delayed disclosing the sexual abuse, outweighed any potential for undue or unfair prejudice.[10] See State v. Douglas, 367 S.C. 498, 521, 626 S.E.2d 59, 71 (Ct. App. 2006) ("Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror."), rev'd in part on other grounds, 380 S.C. 499, 671 S.E.2d 606 (2009); see also Brown, 411 S.C. at 347, 768 S.E.2d at 254 (holding expert testimony regarding the field of delayed disclosure had a high probative value because it "was relevant to help the jury understand various aspects of the victims' behavior and provided insight into the often strange demeanors of sexually abused children"); see generally State v. Gonzalez, 150 N.H. 74, 78, 834 A.2d 354, 358 (N.H. 2003) ("We have recognized that a layperson is not capable of making such observations because 'a child's delayed disclosure of abuse, and recantation of statements about abuse, may be puzzling or appear counterintuitive to lay observers when they consider the suffering endured by a child who is continually being abused.' Because of its counterintuitive nature, expert testimony may be permitted to educate the jury about apparent inconsistent behavior by a victim following an assault ant to 'provid[e] useful information that is beyond the common experience of an average juror.' " (brackets in original and citations omitted)). Accordingly, the trial judge committed no error in admitting Caldwell's expert testimony.

[10] Significantly, any prejudice that could have resulted to Appellant from the jury being aware juvenile victims of sexual abuse frequently delay disclosing such abuse was from the legitimate probative force of that evidence in relation to the issues raised by the evidence presented in his case. See State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) ("The prejudice Gilchrist seeks to escape is the prejudicial impact any criminal defendant faces when the State produces relevant evidence that implicates guilt of a crime charged. '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.' " (citation omitted)).

In conclusion, the trial judge properly qualified Caldwell as an expert based on her education, knowledge, training, and experience and permitted her to testify on a reliable and accepted area of specialized knowledge that could have been helpful to the jury in understanding the evidence presented during trial. See Rule 702, SCRE ("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."). Under those circumstances, the trial judge did not abuse his broad discretion by admitting Caldwell's expert testimony on the subject of delayed disclosures of sexual abuse. See Henry, 329 S.C. at 273, 495 S.E.2d at 466 ("There is no abuse of discretion as long as 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."). Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

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November 18, 2016

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case No. 2015-000611

THE STATE,

Respondent,

vs.

ORLANDO MARTINEZ COLEMAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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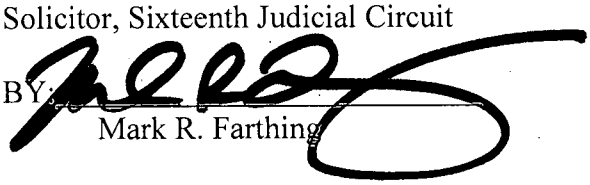
BY: 
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