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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Honorable William H. Seals, Jr., Circuit Court Judge

Opinion No. 2016-UP-411 (S.C. Ct. App. Filed September 21, 2016)
12-GS-33-00194

THE STATE,

PETITIONER,

V.

JIMMY TURNER,

RESPONDENT

APPELLATE CASE NO. 2016-002204

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

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STATE'S QUESTION PRESENTED

Did the Court of Appeals err in reversing Respondent's conviction where it: (1) improperly equated the circumstances of Respondent's case with the circumstances present in Chavis and (2) failed to conduct a proper harmless error analysis because the alleged error could not reasonably have affected the outcome of the trial?

RESPONDENT'S COUNTER QUESTION PRESENTED

In a case with no physical evidence of abuse where the child complainant initially identified someone other than respondent as her abuser, did the Court of Appeals properly apply this Court's decision in State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015) where, just like in Chavis, the State's expert was the forensic interviewer who conducted the interview of the child, was qualified as an expert in "child abuse assessment," and told the jury that she recommended therapy, no contact with respondent, and that her opinions were "evidence based?"

STATEMENT OF THE CASE

On May 10, 2012, a Marion County grand jury indicted respondent Jimmy Turner for first degree criminal sexual conduct with a minor under eleven years of age and lewd act. R. 272. On August 7, 2012, respondent was tried before the Honorable Thomas A. Russo, and a jury. Aug. 7, 2012, R. 1. Fitzlee H. McEachin represented the State. Aug. 7, 2012, R. 1. Marcus Woodson represented respondent. Aug. 7, 2012, R. 1. **The result was a hung jury.** Aug. 7, 2012, R. 2, l. 6 – 7, l. 17.

On February 5, 2013, respondent was **again tried** before the Honorable William H. Seals and a jury. R. 8. The same attorneys represented the State and respondent. R. 8. The jury convicted respondent. R. 263, l. 14 – 264, l. 17. Judge Seals sentenced respondent to concurrent terms of life imprisonment on the CSC conviction and fifteen years' imprisonment for lewd act. R. 270, ll. 14 – 21.

On September 7, 2016, a panel of the Court of Appeals consisting of Judges Williams, Thomas, and Geathers heard oral argument on respondent's appeal. App. 323. On September 21, 2016, the Court of Appeals reversed in an unpublished per curiam decision. App. 323. After the State's petition for rehearing was denied, it sought certiorari at this Court.

ARGUMENT

In this case with no physical evidence of abuse where the child complainant initially identified someone other than respondent as her abuser, the Court of Appeals properly applied this Court's decision in *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015) where, just like in *Chavis*, the State's expert was the forensic interviewer who conducted the interview of the child, was qualified as an expert in "child abuse assessment," and told the jury that she recommended therapy, no contact with respondent, and that her opinions were "evidence based."

No Reasons Exist to Grant Certiorari in this Case

The sole reason the State contends certiorari is warranted in this case is because the Court of Appeals' decision is in conflict with State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015). State's Pet. Cert. at 9-10. The State did not assert any other reasons for granting certiorari. Nor could it. Chavis controls and no novel question of law exists. See Rule 242(b)(1), SCACR. The Court of Appeals' decision was unanimous, per curiam, and unpublished. See Rule 242(b)(2), SCACR. The case does not contain a substantial constitutional issue. See Rule 242(b)(4), SCACR. Finally, no federal question exists, much less any conflict with any decision of the United States Supreme Court. Rule 242(b), SCACR.

Simply put, the State cannot show any reason for this Court to grant certiorari absent its erroneous contention that the Court of Appeals did not follow Chavis. As respondent will show, the Court of Appeals followed Chavis to the letter and properly reversed. Certiorari from this Court is not warranted.

The Court of Appeals Properly Applied Chavis

The Court of Appeals' application of Chavis to respondent's case was easy because the errors are identical. In Chavis, this Court held it was error to allow an expert in child abuse

assessment to testify regarding her recommendation that the victim "'not be around [Respondent] for any reason.'" Chavis at 108, 771 S.E.2d at 340. The Court held that the expert's "recommendation that Appellant not be around Victim for any reason, can only be interpreted as [the expert] believing Victim's claim that Appellant sexually abused her. This type of testimony is improper." Id. at 109, 771 S.E.2d at 340. The Court further held that even if the qualification of the expert was not error, allowing her to testify about her recommendation was erroneous. Id. The reason for the error was that it improperly bolstered the complainant's credibility. Id.

In respondent's case, the State's expert witness was Sally Williamson ("Williamson"). Williamson conducted the forensic interview of the child complainant ("Minor"), which was admitted into evidence and played for the jury. (State's Ex. 12). Williamson also testified after extensive argument about the boundaries of her testimony. R. 111, l. 4 – 122, l. 12. Respondent argued Williamson should not be allowed to vouch for Minor's credibility or discuss whether the child had been coached. R. 111, ll. 6 – 112, l. 21. Appellant cited State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (2011); State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012); and State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). R. 111, l. 6 – 112, l. 17. He noted to the trial judge that in the previous trial, the forensic interviewer gave an opinion that Minor's behavior indicated she was telling the truth. R. 113, ll. 8 – 14. Kromah was decided between the first trial that resulted in a hung jury and the instant trial.

The State replied that Kromah did not bar Williamson's testimony because it did not plan on admitting Williamson as an expert in forensic interviewing, but instead in "the field of child sexual abuse assessment and treatment." R. 114, l. 4 – 115, l. 24. The solicitor admitted he could not ask Williamson whether the child was telling the truth, but told the court there were

"other things" that were "certainly within the purview of her expertise" and that her testimony should be allowed. R. 116, ll. 2 – 18.

The solicitor said that he did plan to ask Williamson about coaching and appellant objected. R. 117, ll. 12 – 16. The solicitor argued it was not improper under Kromah because the case only dealt with forensic interviewers and "not somebody who was qualified as an expert in child sexual abuse assessment and treatment." R. 117, ll. 18 – 23. Defense counsel told the trial judge that Williamson "holds herself out as a forensic interviewer" and that the State's strategy was, after Kromah, to have her say "I'm really not a forensic interviewer, I'm a child sexual expert." R. 117, l. 24 – 118, l. 4. The solicitor replied that forensic interviewing was "only a small portion" of what Williamson does. R. 118, ll. 5 – 15. Trial counsel argued that Williamson should not be allowed to testify regarding coaching and that her purpose should only be to admit the tape of the forensic interview. R. 120, l. 14 – 121, l. 2. The trial judge overruled appellant's objections. R. 121, ll. 7 – 11.

After asking Williamson her name, solicitor's next question asked her current occupation. R. 123, ll. 15 – 18. **Williamson replied, "I'm a forensic interviewer."** R. 123, l. 19. After prompting from the solicitor, she said she was "also a therapist as well." R. 123, ll. 23 – 25. The solicitor offered Williamson "as an expert in child sexual abuse assessment and treatment." R. 127, ll. 10 – 12. During voir dire, appellant asked Williamson whether the work she did in this case was as a forensic interviewer or as a counselor. R. 128, ll. 7 – 9. Williamson said, "I conducted a forensic interview with this child." R. 128, l. 10. Defense counsel then objected to having her qualified as an expert in child abuse assessment, but the trial judge overruled the objection and qualified the expert. R. 130, ll. 14 – 23.

Williamson then testified about the concept of delayed disclosure and stated that, "most sexual abuse is not disclosed at all." R. 131, ll. 2 – 22. Williamson was asked about the concept of "partial disclosure," which she explained as when a child discloses abuse "but says it happened to a friend." R. 132, ll. 20 – 25. She described "partial disclosure" as the child trying to say something happened either in a dream or that a person tried to do something to them but did not succeed, or might say something happened one time that actually happened ten times. R. 132, l. 20 – 133, l. 12.

The solicitor then asked Williamson to define "active disclosure." R. 133, ll. 13 – 20. Williamson defined an "active disclosure" as one in which "there has been no part of inconsistency or no inconsistent piece in the disclosure. The child has been clear and concise in their disclosure and has not strayed from the original disclosure in any way." R. 133, ll. 13 – 20. The solicitor asked if partial disclosures and active disclosures were common and Williamson said they were. R. 133, ll. 21 – 23. Respondent objected to this question and his objection was overruled. R. 133, l. 24 – 134, l. 5.

The tape of the forensic interview was played during Williamson's testimony. R. 142, ll. 13 – 16. The following questioning took place soon after the video was played for the jury:

> Q. Okay. Now, Sally, as an expert in the field of child abuse assessment and treatment, **do you look to see if a victim has been coached or influenced by any sort of third-party?**
>
> MR. WOODSON: And, Your Honor, I renew my objection at this time.
>
> THE COURT: I'm going to overrule those objections.
>
> BY MR. MCEACHIN:
>
> Q. Do you look to see if a victim has been coached or has some sort of influence by a third party before speaking to you?
>
> A. We do throughout interview.

Q. What do you look for?

A. We look for a few different pieces. We look for what we call congruents in child's behavior, which is basically does their behavior in some way go along with pieces of information that [they're] disclosing through the interview. And we also look for any inconsistencies that might arise through the interview in the victim's disclosure of what happened.

Q. And when you say any inconsistencies we saw the video is that why you'll sometimes revert back and ask a same question again a little bit further in interview to see if you get a consistent answer?

A. Yes, that's correct and sometimes why I rephrase the question as well.

Q. All right. If you could explain to the jury about the concept of peripheral facts. I think you talked about congruency but could you go a step further there?

A. Peripheral facts are other pieces of information that we look to obtain during a victim's statement such as do you remember where you were, do you remember what the room look like, what you were wearing, what did – were there descriptors like the bed spread for example, what did the bed spread look like, what time of day was it. So basically helps us to build a picture of what occurred and when where it occurred.

Q. Okay. After that interview, you had with [Minor] on December 2nd did, you have any other contact with her after that time period?

A. No, I did not.

Q. And as a result of [Minor]'s disclosure that she had been assaulted, what if any recommendations, did you make?

A. I made a recommendation of therapy as I always do when a child discloses any form of abuse and typically that's trauma focused therapy of some sort, it's evidence based and also no contact with the alleged perpetrator.

MR. WOODSON: Your Honor, I would object to that last question same grounds.

THE COURT: Overruled.

BY MR. MCEACHIN:

Q. So in essence you recommended therapy for her?

A. I did, yes.

R. 144, l. 4 – 146, l. 7 (emphasis added).

The jury was excused and appellant argued "that last question about a recommendation, I think bolsters the child's credibility because if she's testifying that there need to be a recommendation, she's basically telling the jury I found something, then this child's credible. Therefore, this child needs some counseling and I think that bolsters the child's credibility and I would ask for a mistrial." R. 146, l. 20 – 147, l. 2. Defense counsel further argued that Williamson had implied that she had "made some sort of finding and this child needs counseling. There's no way you can say a child needs counseling unless you believe the allegations are true." R. 147, ll. 21 – 25. The trial judge overruled the objection, stating that Williamson did not "state any opinions at all. She just said I recommend counseling." R. 148, ll. 21 – 23.

The error in permitting this testimony from Williamson is identical to the error in Chavis. Just as in Chavis, Williamson testified that she recommended no contact with Respondent. Even worse than Chavis is her recommendation for counseling. Williamson also said this was "evidence based." These recommendations cannot be interpreted in any other way than that Williamson believed Minor's allegations. Under Chavis, these statements by Williamson are error. See also State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); State v. Dawkins, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989). "This type of bolstering, especially when made by a witness imbued with imprimatur of an expert witness, improperly invades the province of the jury." Chavis at 109, 771 S.E.2d at 340. The Court of Appeals correctly ruled that under Chavis, the trial court erred in admitting this testimony.

The Error in this Case Cannot be Harmless

The State complains that the Court of Appeals did not conduct "a proper harmless error analysis." State's Pet. Cert. at 1. The entire case rested on Minor's credibility, which was very much in question. When the outcome of a sexual abuse case turns on the credibility of the complainant, a bolstering error is not harmless. See State v. Anderson, 413 S.C. 212, 219, 776 S.E.2d 76, 79-80 (2015). Just like in Anderson, no physical evidence of abuse existed. Id. The State attempts to manufacture an issue for certiorari by contending that the Court of Appeals interpreted Chavis as imposing a bright line rule that when there is no physical evidence, reversal is automatic. Much to the contrary, the Court of Appeals easily recognized the substantial credibility problems with Minor's claims.

First and foremost among the problems with Minor's allegations is that she intitially claimed her mother's boyfriend, Vincent—**not respondent**—sexually abused her. R. 55, l. 25 – 56, l. 10. She was released from school to her mother and Minor's story literally **changed overnight.** R. 51, ll. 14 – 18. (State's Ex. 12). It cannot be seriously contended that when a complainant first names someone other than the defendant as her abuser—someone who had access to the child—and then changes her story in a fashion that suits her mother, that an error bolstering the complainant's shaky credibility is harmless.

The Allegations at School

Annette Wardy ("Wardy") worked as a behavioral specialist in classrooms with children who had emotional disturbances. R. 26, l. 19 – 27, l. 17. She worked alongside the classroom teacher. R. 27, ll. 15 – 24. Complainant ("Minor") was a student in her class. R. 28, l. 22 – 29, l. 6. In December 2011, Minor had "a meltdown" in class. R. 31, l. 19 – 32, l. 13. Minor told Wardy that her mother's boyfriend ("Vincent") was "bothering her sexually." R. 33, ll. 14 – 17.

Wardy reported what Minor told her and the school reported the allegations to social services and law enforcement. R. 33, l. 18 – 34, l. 7.

Minor did not mention respondent at the school. R. 36, ll. 14 – 17. Minor told Wardy the abuse happened at her house, in her bed, while she was sleeping. R. 184, l. 18 – 185, l. 1. R. 186, ll. 12 – 16. Minor's mother was home. R. 185, ll. 12 – 16. Minor repeated her story to Wardy, the teacher, and the school nurse and again did not mention respondent. R. 36, l. 22 – 37, l. 12.

Florence County Sheriff's Deputy Vincent Hanna ("Hanna") arrived at the school to investigate. R. 187, l. 19 – 188, l. 5. He spoke with Minor. R. 188, ll. 6 – 7. Minor told Deputy Hanna that the abuse happened at her mother's house in Florence. R. 188, ll. 21 – 25.

Minor's Mother Arrives at the School

After Minor reported her allegations against Vincent to her teachers, the school called Minor's mother, Pearlene Commissiong ("Mother"), and she went to the school. R. 48, l. 15 – 50, l. 3. Mother first spoke with a uniformed law enforcement officer. R. 50, ll. 1 – 9. Mother was then taken into an office where she met with a teacher, a worker from DSS, and Minor. R. 50, ll. 10 – 18. The meeting lasted an hour and a half. R. 51, ll. 1 – 13. An appointment was set up for a forensic interview the next day at the Care House. R. 51, l. 17 – 25. Mother was allowed to take Minor home with her. R. 51, ll. 14 – 18.

Mother testified that she and Minor lived in Florence in the fall of 2011. R. 43, ll. 1 – 3. No one else lived with them. R. 44, ll. 3 – 6. Mother's aunt was named Janie Mae Thompson ("Thompson") and lived in Marion. R. 42, ll. 5 – 19. Mother worked the night shift at the hospital. R. 44, ll. 9 – 20. On the weekends, Mother worked 12 hour shifts from 7:00 AM to 7:00 PM. R. 44, ll. 16 – 25. When Mother worked, Minor stayed with Thompson in Marion. R.

45, ll. 1 – 15. Mother's uncle JW, her cousin Faye Thompson ("Faye"), and Faye's boyfriend, respondent, lived in Thompson's house in Marion. R. 46, l. 19 – 47, l. 4. Mother had dated Vincent for approximately five years. R. 52, ll. 1 – 5. Vincent would stay nights with Mother and Minor. R. 52, ll. 8 – 18.

Minor Changes Her Story

The solicitor concluded his direct examination of Mother with the following:

> Q. All right. At any point in time, Pearlene, from when you got the phone call from the school up until today's date, have you ever told [Minor] to tell anybody anything?
>
> A. No, sir.
>
> Q. With regard to this case?
>
> A. No, sir.
>
> Q. Have you ever told her to change any story?
>
> A. No, sir.
>
> Q. Nothing along those lines?
>
> A. No, sir.

R. 54, ll. 2 – 11.

The reason for the solicitor's odd questioning quickly became apparent on cross-examination. R. 55, l. 25 – 56, l. 10. Minor's initial allegation at the school was against Vincent, not respondent. R. 55, l. 25 – 56, l. 10. The following occurred on cross-examination:

> Q. Okay. And did you have any discussion with [the school resource officer] about it? And don't say what he said, but did you all have a conversation or did he just tell you and you kept going?
>
> A. No, I mean, we talked about it.
>
> Q. All right. And the allegation was not against Jimmy Turner; is that correct?

A. That's correct.

Q. Okay. And the allegation was against Vincent, I think, you said Brunson; is that correct?

A. That's correct.

Q. Okay. And you didn't believe your daughter; is that correct?

A. I was very upset at the time with everything that was going on. I mean, kind of hit me all of a sudden, so I was very upset.

Q. Right. And so you said it couldn't have happened. He couldn't have done it; is that correct?

A. I said that to – I'm not understanding your question.

Q. You said at the school that Vincent couldn't have done it?

A. I said I was upset at the school. I'm not understanding what your – I'm not understanding your question.

Q. When you were told that your daughter was accusing your boyfriend of abuse, you said that could not have happened?

A. When I found out that [Minor] was touched, I was very upset. I said how – I was in disbelief that it happened period, that's what I was upset about.

...

Q. Okay. So is it your testimony today that when she made an allegation against Vincent that you believed her. I'm not sure if you answered my previous question. So did you believe –

A. I was upset about everything that was going on. I believe she was touched, yes. No child would come up and make that up, yes, I believe she was touched.

Q. But you don't believe it was by Vincent?

A. When the allegations came out, no I didn't believe it was Vincent. I was very upset though.

Q. Okay. And your daughter knew you were upset?

A. Yes, she was upset also, sir, at the time when I saw her.

R. 55, l. 21 – 57, l. 17 (emphasis added).

Mother admitted that when they left the school Mother was crying and emotional in the car. R. 58, ll. 12 – 15. **Mother denied that she discussed the situation with Minor in the car.** R. 59, ll. 7 – 10. Mother claimed she had been directed by the social worker not to question Minor and that she did not talk to Minor about her allegations at all. R. 59, ll. 11 – 21. However, on redirect, Mother contradicted herself and claimed that Minor told her in the car outside of the school that the alleged abuse occurred in Marion, not their home in Florence as she told the school officials. R. 62, l. 19 – 63, l. 20. She told the solicitor that Minor did not indicate in the car ride home that Vincent had abused her. R. 66, ll. 9 – 12.

Mother denied calling Vincent that night and telling him about the accusations. R. 59, ll. 22 – 25. Mother also categorically denied that Vincent had ever been alone with Minor, even though Mother often spent the night at Vincent's house and Minor often played with Vincent's daughter. R. 60, l. 14 – 61, l. 9.

Mother took Minor to the Care House for a forensic interview the next day. R. 53, ll. 2 – 10. Mother met with the forensic interviewer, Sally Williamson ("Williamson") at the Care House. R. 53, ll. 2 – 16. During the forensic interview, Minor claimed respondent abused her and denied Vincent abused her. (State's Ex. 12)

Minor's Trial Testimony

Minor was eight years old at the time of trial. R. 92, ll. 17 – 18. Minor claimed that respondent performed vaginal and anal sex on her and forced her to perform oral sex on him. R. 98, l. 5 – 100, l. 17. Minor admitted telling Wardy that Vincent did it and that the abuse happened at her house in Florence when she had a sleepover with some of her friends. R. 100, ll.

5 – 17. R. 103, ll. 13 – 23. Minor claimed that respondent threatened to kill her if she "didn't say it was Vincent." R. 100, l. 24 – 101, l. 9.

Minor and Mother's testimony were contradictory on several points. Minor claimed she told Mother on the car ride home from the school that it was not Vincent. R. 101, ll. 12 – 19. Minor admitted that her mother was crying in the car and they talked about the allegations both in the car, and later about it that evening. R. 104, ll. 8 – 22. She claimed not to remember what her mother told her that evening. R. 104, ll. 23 – 24. Also contradicting her mother's testimony, Minor denied that Vincent ever slept over at her house. R. 103, l. 24 – 104, l. 1.

At trial, Minor claimed the abuse happened at Thompson's house when both Thompson and Faye were at home. R. 106, ll. 17 – 21. Minor claimed she would loudly ask for help, but nobody would come. R. 107, ll. 6 – 13. Minor did not ask Thompson or Faye for any help or tell them about the abuse after it happened. R. 107, ll. 14 – 24.

Minor's Forensic Interview

During the forensic interview, when discussing respondent and the alleged abuse, Minor is almost playful and frequently changes positions in her chair. (State's Exhibit 12). She is rarely serious, somber, or emotional when she describes oral, anal, and vaginal sex. (State's Exhibit 12). When Williamson asked Minor if anything ever came out of respondent's penis, Minor told her "green stuff." (State's Exhibit 12). Near the end of the forensic interview, Williamson asked Minor whether she had ever told anyone that someone else abused her. (State's Exhibit 12). Minor hesitated. (State's Exhibit 12). Williamson told Minor that it was okay if she had said that someone else did it because sometimes kids get confused. (State's Exhibit 12). Minor then denied ever saying anyone else ever touched her private parts. (State's Exhibit 12).

At this point, Minor's demeanor changed from being playful to sitting up straight in her chair with her head looking at her feet. (State's Exhibit 12). Williamson asked Minor if she was telling the truth. (State's Exhibit 12). Williamson then told Minor that she had spoken with Minor's mother who had said something about Vincent. (State's Exhibit 12). Williamson then asked if Minor had ever told anyone that Vincent had touched her private parts. (State's Exhibit 12). Minor replied that she was nervous and that was why she said that. (State's Exhibit 12). Williamson asked if Vincent had ever touched her private parts. (State's Exhibit 12). Minor said only if she hugged him. (State's Exhibit 12). Minor sat very still and replied "no" to questions about touching or being touched by Vincent. (State's Exhibit 12). Williamson then said she wanted to make sure that she understood—that Minor had first said Vincent, but was really nervous when she first accused Vincent. (State's Exhibit 12). Williamson then asked who she really meant when she accused Vincent and Minor named respondent. (State's Exhibit 12). Williamson then exited the room. (State's Exhibit 12).

The Defense Case – Faye and Thompson

Faye testified that Thompson's house was "fairly small." R. 197, ll. 16 – 17. The house had three bedrooms and a dining area. R. 195, ll. 4 – 5. Faye testified that she could not recall any time when respondent looked after Minor by himself. R. 195, ll. 18 – 20. Respondent worked at McCall Farms and also had a paper route. R. 195, l. 21 – 196, l. 10. Thompson took care of Minor during the day. R. 196, ll. 18 – 19. Faye testified she never sent Minor into her room to get anything for her. R. 197, ll. 1 – 3. Faye never recalled Minor being in a closed room with respondent. R. 198, ll. 17 – 19. She never heard Minor scream for help. R. 197, ll. 4 – 6. Minor never acted fearful around respondent. R. 197, ll. 7 – 8. She never told Faye that anything was wrong. R. 197, ll. 9 – 11.

Thompson testified that Mother and Minor lived with her in Marion when they first moved to South Carolina from New York. R. 210, ll. 17 – 19. When Mother got a job in Florence, she would leave Minor with Thompson for "weeks after weeks." R. 210, l. 20 – 211, l. 1. Minor stayed with Thompson "so much until I would beg her mother to come get her and she wouldn't." R. 211, ll. 9 – 15. Thompson testified that "welfare had to get into it and make her come get her and take her home," but the solicitor's objection to this statement was sustained and it was stricken. R. 211, ll. 9 – 20.

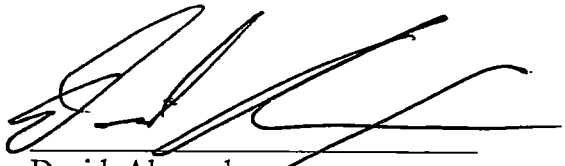
Thompson testified that Minor was never alone with respondent. R. 212, ll. 5 – 7. Thompson contradicted Mother's testimony about Vincent. R. 216, ll. 16 – 217, l. 14. She testified that there were times that Minor was alone with Vincent. R. 216, l. 16 – 217, l. 14. Thompson never noticed Minor behave unusually towards respondent. R. 217, ll. 15 – 17. She never heard Minor scream for help. R. 217, ll. 18 – 20. She testified that because her house was so small, if Minor had screamed she would have heard it and gone running to see about it. R. 217, l. 21 – 218, l. 4.

As the Court of Appeals undoubtedly recognized after reviewing the testimony described above, Minor's credibility was the central question in the case. Further compounding the severity of the error, the improper testimony was elicited from the expert witness who performed the forensic interview. Anderson at 218, 776 S.E.2d at 79 ("The better practice, however, is not to have the individual who examined the alleged victim testify, but rather to call an independent expert."). The Court of Appeals correctly interpreted Chavis, applied it to the facts of this case, and reversed. The Court should deny the State's petition for certiorari.

CONCLUSION

For the foregoing reasons, the State's petition for certiorari should be denied.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of December, 2016.

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THE STATE,

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RESPONDENT

CERTIFICATE OF SERVICE

I certify that a copy of the Return to Petition for Writ of Certiorari to the Court of Appeals in this case has been served on J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jimmy Turner, #247271, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 8th day of December, 2016.

David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day of December, 2016.

(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.