STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2016-000112

THE STATE,

Respondent,

v.

RODNEY MICHAEL ALEXANDER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant was indicted during the August 2013 term of the Grand Jury for Greenville County for two counts of criminal sexual conduct in the second degree (2013-GS-23-007632, 2013-GS-23-007633) and one count of lewd act upon a child (2013-GS-23-007631). Appellant proceeded to a trial by jury from October 6-9, 2015, in Greenville, South Carolina. At the conclusion of trial, Appellant was found guilty as indicted. He was sentenced by the Honorable R. Keith Kelly to imprisonment for a term of twenty years for each count of second-degree criminal sexual conduct, with those sentences running concurrently. Judge Kelly sentenced Appellant to imprisonment for a term of five years for lewd act upon a child, with that sentence to be served consecutively to the sentences for criminal sexual conduct in the second degree, for an aggregate sentence of twenty five years' imprisonment. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On September 14, 2012, Christina Farner's son received a phone call from Victim. Tr. p. 92. Farner's son and Victim previously dated while in middle school. Tr. p. 91. Victim informed Farner's son she had run away from home and was scared and upset. Tr. p. 92. Farner's son asked her to help Victim, so Farner went and picked Victim up in a "bad part of town." Tr. p. 92. Farner knew Victim lived with her grandparents, so Farner took Victim home with her and told her to call her grandparents and let them know she was safe. Tr. p. 93. After letting Victim call her grandmother, Farner asked Victim why she ran away. Tr. p. 96. Victim then disclosed to Farner that she ran away because she was being sexually abused while living in her grandparent's house. Tr. p. 96. Victim then told Farner specific details about the abuse. Tr. p. 97 Farner described Victim's demeanor as "serious" and that "she started crying and so did I." Tr. p. 97.

Victim was sixteen years old at the time of trial. Tr. p. 154. Victim explained Appellant came into her life when he married her paternal grandmother. Tr. p. 156. Victim testified Grandmother's relationship with Appellant began when she was a toddler. Tr. pp. 158-59. Victim noted, "I've always been close to my grandma. She's always been like my go to person. . . . And him being with her, he was like a grandfather to me. Like I loved him just as much as I loved my grandma." Tr. p. 159. Victim lived back and forth between her mother's house, her grandparent's house, and foster homes. Tr. pp. 157-58. Victim recalled Appellant always treated her as special, noting "I had a new toy every day." Tr. p. 159.

Victim explained that while she was still a small child Appellant began touching her inappropriately. Tr. pp. 159-60. Victim elaborated:

> He just started touching me in my genital area, you know, and getting me to touch him. And, to me, at that point in time, it was kind of normal like because I - - I

> didn't know any better. And when my grandma got home, I would have a new toy, like he would take me to the toy store before she got home. So I wouldn't, you know, be thinking about, you know, what just happened. You know, that wouldn't cross my mind. I would be like, "Grandma, look at my new toy." That's all I would be worried about, my shiny new object that I just got.

Tr. p. 160. Victim testified the abuse occurred four or five times a week when she stayed at her grandparent's house. Tr. p. 160. Victim stated the abuse usually occurred in Appellant's bedroom and included vaginal touching both on top of her clothing and underneath her clothing. Tr. p. 162. Victim disclosed Appellant also asked Victim to touch his genitals and that, "It was like - - it was like a game. Like the farther I went, the more points I got. And then like the higher my points built up, that's how much money I got to spend when we went to the store." Tr. pp. 162-63.

Victim testified Appellant worked as a mechanic and worked in multiple auto shops. Tr. p. 174. Victim recounted one instance of abuse when she was around nine years old that occurred at Appellant's auto shop where Appellant digitally penetrated her. Tr. pp. 180-81.Victim told Appellant "I don't want to do this" and "It hurts me," which caused Appellant to hold her while she cried and assure her it would never happen again. Tr. p. 180. Victim then disclosed another episode of abuse where Appellant told her to lay down in her grandmother's car while he was working in the auto shop. Tr. pp. 181-82. Victim testified:

> So I went, and I was in her car, and I wasn't quite asleep yet, but I was getting there. And he came outside the car. And - - and he like walked up to the car, he opened the door, and he slid me to the edge of the seat. And I was on my stomach. And then he pulled my pants down, and he just started touching me, and then he penetrated me and - - and, obviously, I knew it wasn't his finger because I had felt that before, and I knew that wasn't what I was feeling. And then after he finished, like I squirmed a little bit, but I just tried my best not to move. And after he finished, he just like - - as he pulled my pants up, slide me back inside of the car. So I just rolled over. I buckled my pants. I mean, he left me in the car for I don't know how long. It felt like an eternity. And he came back and got me out of the car, and he was like, "Hey, you want to go get something to eat?" And I was like, "Sure, Papa. Why not."

Tr. p. 182. Victim stated that throughout the years of abuse, there were three instances of penile penetration. Tr. pp. 185-86.

Victim testified the abuse finally stopped on September 14, 2012. Tr. p. 189. Three days after the last instance of abuse, Victim, Appellant, and Grandmother were at DJJ for a meeting regarding a fight Victim was involved in at school. Tr. p. 191. Victim noted that during the meeting her grandmother defended her actions, which prompted her to think, "It was like I was in the wrong, so she's on my side whether I'm right or I'm wrong, and she's going to be there for me." Tr. p. 191. After the meeting, Victim finally worked up the courage to tell Grandmother about Appellant's abuse and asked her to come to the restroom with her. Tr. pp. 191-92. In the restroom, Victim disclosed to Grandmother that Appellant had been touching her. Tr. p. 192. Victim testified Grandmother hugged her and told her no one would ever touch her again. Tr. p. 192. Grandmother then drove them back to the house, where she told Victim to go to her room. Tr. p. 192. Victim testified, "I went to my room. I didn't shut the door. I wanted to hear everything. And I just heard him saying, 'No, that's crazy. I would never do that.' And she came back into my room, and she looked me dead in the face and she said, 'He says you're lying, so you're lying.'" Tr. p. 192. After being told she was a liar, Victim stated she didn't know what she wanted to do and just wanted to get out of their house. Tr. pp. 192-93. Victim subsequently escaped from the home through her bedroom window. Tr. p. 206. Victim stated she "Just started walking. I didn't know where I was going to go." Tr. p. 206. Victim eventually called Farner's son which resulted in Christina Farner coming to pick her up. Tr. pp. 206-07.

Victim's mother ("Mother") testified at trial. Tr. pp. 104-40. Mother was sixteen years old when she had Victim. Tr. p. 106. Mother recounted that DSS has been involved in her life since Victim was only one week old. Tr. pp. 106-08. Mother told DSS that she could not care for

Victim, so Victim's father and Grandmother received custody of her. Tr. pp. 107-08. Grandmother had custody of her from 1998 until 2004. Tr. p. 108. In 2004, Mother and Grandmother got into a physical altercation because Mother observed Appellant rocking Victim back and forth on his lap while Victim was wearing only a yellow nightgown. Tr. p. 109. Mother testified she knew it was inappropriate, because, "it wasn't nothing that you, you know, do to a child." Tr. p. 110. Mother then noted, "Me and [Grandmother] got into an altercation, and I tried to fight her, and police and stuff got called." Tr. p. 114. Grandmother then turned Victim in to DSS and relinquished custody. Tr. p. 114. Victim was then in foster care from June of 2004 to August of 2005. Tr. pp. 114-15. Mother regained custody of Victim in August of 2005. Tr. p. 114. Mother then lost custody of Victim again in July of 2007 after she left all of her children at home by themselves. Tr. pp. 117-18. Victim lived with her aunt until November of 2007, when she returned to Mother's custody. Tr. p. 119. In July 2008, Mother was accused of shaking another one of her children, and she again lost custody of Victim. Tr. pp. 121-22. Victim's aunt gained custody of her again, however she spent weekends with Appellant and Grandmother. Tr. pp. 121-22. Mother then regained custody of Victim in January of 2009. Tr. p. 122. While Mother had custody, Victim would regularly visit Appellant and Grandmother. Tr. pp. 122-23. Mother recalled Victim being Appellant's "favorite" and that he regularly showered her with gifts. Tr. p. 123. Mother once again lost custody of Victim in April of 2012. Tr. p. 125. Mother lost custody of Victim this time because of an incident where she abused Victim, stepping on her hand which required a trip to the hospital. Tr. pp. 126-28. Victim returned to the custody of Appellant and Grandmother until September of 2012 when she disclosed Appellant's abuse. Tr. p. 128.

ARGUMENT

I.

The trial judge's error in charging the jury pursuant to S.C. Code Ann. § 16-3-657 that the Victim's testimony need not be corroborated was harmless, as it was an insubstantial error not affecting the result of trial.

Relevant Facts

During his charge to the jury, the trial judge instructed in part, "Section 16-3-657 of the South Carolina code provides that the testimony of the victim in criminal sexual conduct prosecutions need not be corroborated by other testimony or evidence." Tr. pp. 624-25. Defense Counsel objected to the charge, arguing, "Our objection would be that it points out to the jury or sheds light or focuses the jury's attention on the victim's testimony and would be improper in this case." Tr. p. 630. The trial judge overruled Defense Counsel's objection, ruling:

> Your objection is noted, but the Court finds that it is a proper charge, and it's one sentence long. And furthermore, the record will show that the Court did not elaborate, did not dwell on that, and if we need to, I can make - - well I don't need to. We've got a record. But it is exactly - - in our charge, it's exactly one sentence long. So I did not dwell on it in any fashion whatsoever and moved on.

Tr. p. 631.

Discussion

Appellant contends the trial court committed reversible error by instructing the jury that the testimony of the victim in criminal sexual conduct prosecutions need not be corroborated by other testimony or evidence. Appellant further avers the error could not be harmless because Victim's credibility was the centerpiece of the State's case. Appellant identifies statements made by the Solicitor during closing argument where she emphasized that Victim is the only person the jury had to believe in the case to find Appellant guilty.[1] Appellant's argument that any error

[1] Appellant fails to acknowledge this is a correct and proper statement of the law in South Carolina regardless of the propriety of the Court charging the language of the statute to the jury.

could not be harmless is wholly without merit. The trial judge's single sentence jury charge did not garner the requisite harm to warrant reversal. Further, the Solicitor undoubtedly would have argued during closing argument that Victim was the only person the jury needed to believe regardless of whether the trial judge charged the jury that the testimony of the victim need not be corroborated.

As quoted above, the trial court, pursuant to the Supreme Court's decision in State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006), instructed the jury that a rape victim's testimony need not be corroborated.[2] This instruction, previously found appropriate and consistent with the legislature's remedial intent by our Supreme Court in Rayfield,[3] ten years later was found confusing and unconstitutional by the same Court in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). In Stukes, the trial court instructed the jury on the no-corroboration requirement. While deliberating, the jury sent the trial court a note, asking: "[T]he South Carolina law that the victim's testimony in CSC . . . does not need to be corroborated, . . . does that law imply that the victim's testimony **must be accepted as being true**?" (emphasis added). Rather than respond directly to the jury's question, the trial court recharged the general law on credibility. The jury immediately returned a guilty verdict. Stukes, 416 S.C. at 497, 787 S.E.2d at 482. The Supreme Court observed "it is inescapable that this charge confused the jury" as "illustrated by the jury's query as to whether our law implies a victim's testimony must be accepted as being true." Id. at 499, 787 S.E.2d at 483. If it is "inescapable" that the jury in Stukes was confused because it asked whether the charge required that it accept the victim's

[2] S.C. Code Ann. § 16-3-657 provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." Instructing the jury on this statute was first found acceptable in State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

[3] Given Rayfield's finding that the instruction was consistent with legislative intent, the trial court would have been remiss to not give the instruction and not carry out the legislative intent. Ten years passed between Rayfield and Stukes and the legislature did not alter the statute.

testimony as true then it should be equally inescapable that the jury in Appellant's case was not confused because it asked no such question and clearly was unafraid of asking questions of the trial judge, as the jury asked to be re-charged on reasonable doubt.

Turning to the trial court's reaction to the jury note in Stukes, the Supreme Court lamented, "In our view the trial court's decision to merely recharge credibility, as opposed to answer the question in the negative, did nothing to inform the jury on this issue." Id. This lamentation strongly suggests that if the trial court had answered in the negative, the Stukes court would have found the error harmless. The Supreme Court's subsequent finding that the instruction was prejudicial because the case hinged on victim's credibility must be taken in the context in which it was made. That context was a unique situation where a confused jury who asked if the charge mandated a finding of guilt and was then not offered clarification that it did not. It was under these circumstances that the Stukes Court focused on credibility and the lack of other evidence.

In the instant case, Appellant complains the corroboration charge was harmful because "complainant's credibility was the centerpiece of the state's case and the solicitor's emphasis on the improper charge in closing, the error in this case cannot be harmless under Stukes." App. Br. p. 9. However, the corroboration instruction is a correct statement of law; juries may convict if they believe the victim's testimony regardless of the lack of corroboration. If the jury correctly applied the law, there is no prejudice. The prejudice in Stukes arose when the jury appeared to "inescapably" misunderstand the instruction based on its note to the trial court. See State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975) (noting jurors are presumed to follow the trial court's instructions). In the current case, there is no evidence the jury misunderstood the trial court's correct statement of law. Therefore, any error was harmless.

II.

The trial judge properly allowed the State's expert to testify regarding behaviors she observed in the victim, as well as offering general testimony on the dynamics of child sexual abuse. The expert did not impermissibly bolster or vouch for the child at any time in her testimony.

Relevant Facts

At trial, the State called Erica Van Wagner as a witness. Tr. p. 399. Prior to Wagner's testimony before the jury, the trial judge held an *in camera* hearing. Tr. pp. 341-78. Van Wagner is a mental health therapist and is employed with the Greenville Mental Health Center. Tr. p. 341. Van Wagner supervises the Greenville Mental Health DSS program where she works primarily with clients that are involved with DSS due to abuse or neglect. Tr. p. 342. Van Wagner testified Victim was a client of hers beginning in April of 2012. Tr. p. 366. Van Wagner stated, "She initially came to me for assessment because she was placed in foster care due to allegations of physical abuse by mom, and I provided treatment to her while she was placed at a group home in Greenville. Tr. p. 366. Van Wagner had approximately twenty sessions with victim. Tr. p. 366. Victim told her during a later appointment that she had disclosed sexual abuse to the police and was now in foster care once again. Tr. p. 367. The Solicitor asked Van Wagner whether, prior to the disclosure of sexual abuse, there was any discussion between she, Appellant, and Grandmother about Victim needing to continue treatment. Van Wagner replied:

> There was. At the first appointment that they came to after she had been returned home, it seemed to be the family's decision that she didn't need treatment, and they had been meeting with the psychiatrist. And the psychiatrist asked me to come in, and we kind of talked about all that had been going on, her having been the victim of physical abuse and not really having much treatment um until that point. And it was the recommendation of myself and the psychiatrist to continue ongoing therapy to aid in the transition and to address the history of physical abuse.

Tr. pp. 367-68. Van Wagner also provided a great deal of background testimony regarding the dynamics of child sexual abuse. See Tr. pp. 348-66.

At the conclusion of Van Wagner's *in camera* testimony, Defense Counsel made a motion to exclude her testimony, arguing:

> Your Honor, the second objection and basis of my motion to exclude her testimony would be based on the fact that she actually treated this child beginning in April of 2012 which was five or six months - - five months prior to the allegations being made. I don't think there's any way, and I don't - - it's my understanding that the State is not intending to keep that away from the jury. So the jury is going to have that information, and even if the State agreed that they wouldn't bring that up, I would still have the opportunity to bring that up. Either way, it serves to improperly bolster the credibility of the witness. I understand that the State is going to argue that Ms. Van Wagner is not going to directly vouch for the credibility of this witness, and I have no problem with that. However, Judge, the fact that she's established a relationship with this witness and then that relationship extended five months up until these allegations and the fact that she is then going to say that these types - - this type of behavior is commonly seen in victims of child sexual abuse, Judge, it indirectly bolsters the victims' credibility. It's improper.

Tr. pp. 380-81. The trial judge found:

> Expert witnesses testifying concerning common behavioral characteristics of sexual assault victims and the range of responses to the assault by the experts is admissible and relevant because it is helpful in explaining to the jury typical behavior patterns of adolescent victims of sexual assault. Here, her testimony is based on her personal observations. The defense also argues because the witness was treating the complaining witness prior to the disclosure, her testimony is bolstering in violation of Cromer (sic). Improper bolstering occurs when the expert witness is allowed to give her opinion as to the truthfulness of the complaining witness. Here, the expert witness is testifying to her personal observations and interactions with the complaining witness, not her truthfulness.

Tr. pp. 396-97. Van Wagner's subsequent testimony in front of the jury was consistent with her *in camera* testimony. Tr. pp. 399-450. On direct examination, Van Wagner testified about general information regarding child sexual abuse dynamics. Tr. pp. 407-21. Van Wagner also testified about her personal observations and experiences in treating Appellant. Tr. pp. 421-28. Van Wagner again noted Appellant and Grandmother did not wish for Victim to continue

treatment, prompting Victim's psychiatrist to bring Van Wagner in to discuss it and, "We determined that we would continue treatment to address the physical abuse as well as to aid in the transition out of foster care and back into relative placement." Tr. p. 423. The Solicitor later asked, "When she finally stopped coming to you the last time you saw her, was it your opinion that she needed to continue on treatment after that?" Van Wagner responded, "It was. She was moved to a placement that was outside of the Greenville area. I had requested to continue providing the treatment. But it was my understanding that there was a provider at her new placement that would continue." Tr. p. 428.

Discussion

Appellant asserts the trial judge erred in allowing Van Wagner to offer general testimony on the dynamics of sexual abuse as well as recounting her treatment of Victim because the testimony improperly bolstered Victim's credibility. Appellant offers two arguments as to why Van Wagner's testimony constitutes improper bolstering. First, Appellant contends the admission of Van Wagner's testimony was error under State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2016), because allowing her to testify to the characteristics of victims where she was also a care-provider for Victim vouched for Victim's credibility. Second, Appellant contends the Solicitor's question to Van Wagner where she noted it was her opinion that Victim needed to continue receiving treatment improperly bolstered Victim's testimony in violation of State v. Chavis, 412 S.C. 101. 771 S.E. 2d 336 (2015). Both of Appellant's arguments lack merit. Van Wagner's testimony did not improperly bolster Victim's credibility, as she did not indicate at any time that she believed Victim's testimony. Instead, Van Wagner's testimony was segregated into two categories: 1) her personal interactions with Appellant, and 2) background testimony regarding the dynamics of child sexual abuse. Similarly, the complained of question by the

Solicitor and answer by Van Wagner did not improperly bolster Victim's credibility, as the current situation is easily distinguishable from that in Chavis.

As to Appellant's first argument, the trial judge's decision to allow Van Wagner's testimony was not error under Anderson. As Appellant correctly notes, the Court in Anderson found that in cases involving experts in child abuse assessment, "The **better** practice, however, is not to have the individual who examined the alleged victim testify, but rather to call an independent expert. To allow the person who examined the child to testify to the characteristics of victims **runs the risk** that the expert will vouch for the alleged victim's credibility." 413 S.C. at 218-19, 776 S.E.2d at 79 (emphasis added). It is important to noted that while Anderson notes that it is a "better practice" to use an independent expert because it "runs the risk" of improper bolstering, the practice of having an expert who treated the victim offer general testimony on the dynamics of child sexual abuse is not going to yield improper bolstering in all cases. In the present case, Van Wagner offered: 1) testimony regarding her history as a care-provider with Victim and what those interactions entailed and 2) background testimony concerning the dynamics of child sexual abuse. Van Wagner did not improperly vouch for Victim's credibility at any time. Both categories of testimony offered by Van Wagner have been held to be admissible by South Carolina Courts. See State v. Kromah, 401 S.C. 340, 360, 737 S.E. 2d 490, 500 (2013) (allowing witness to testify to "any personal observations regarding the child's behavior or demeanor"); see also Anderson, 413 S.C. at 218, 776 S.E.2d at 79 ("Certainly we recognize that there is such an expertise: this is the type of expert who can, for example, testify to the behavioral characteristics of sex abuse victims.") see e.g., State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999); see also State v. White, 361 S.C. 407, 605 S.E.2d 540 (2004) (such witness may be more crucial

where alleged victim is a child))." 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. State v. Douglas 367 S.C. 498, 521, 626 S.E.2d 59, 71 (Ct. App. 2006), *rev'd in part on other grounds*, 380 S.C. 499, 671 S.E.2d 606 (2009). Van Wagner's testimony did not invade the province of the jury or serve as a comment on the credibility or veracity of the victim. Van Wagner did not give testimony at any time indicating she believed Victim. Finally, the present situation is distinguishable from that in Anderson because Van Wagner was not a forensic interviewer and did not specifically tailor her testimony to the types of behavior she observed in Appellant. Not only was Van Wagner not a forensic interviewer, she was originally not even treating Appellant for sexual abuse. The fact that Van Wagner was treating Appellant for physical abuse further distinguishes the current situation from Anderson.

As to Appellant's second argument, Van Wagner's comment that she recommended that Victim continue receiving treatment did not constitute improper bolstering under State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015). As a threshold matter, this argument is not preserved for appellate review. Appellant failed to contemporaneously object when Van Wagner made the complained of comments. Appellant's arguments below concerning improper bolstering were made on entirely different grounds. Appellant's argument concerning Chavis, thus, is not preserved for appellate review. "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). A party may not argue one ground at trial and an alternate ground on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

Turning to the merits of Appellant's argument raised for the first time on appeal, in Chavis, a forensic interviewer testified regarding her recommendation that the victim in the case "not be around [Appellant] for any reason." Id. at 108. The South Carolina Supreme Court concluded that the forensic interviewer's comment constituted improper bolstering, as the recommendation that Chavis not be around the victim for any reason could only be interpreted as the interviewer believing the victim's claim that Chavis sexually abused her. Id. at 109. The current case is immediately distinguishable from Chavis. Van Wagner testified *in camera* as well as earlier on direct examination that despite protestations from Victim's family, she recommended continuing treatment from the outset because of Victim's history of physical abuse. Allegations of sexual abuse notwithstanding, Victim had as trying a life as one can imagine, having been taken out of her mother's custody on several occasions for a multitude of reasons, including physical abuse. Victim fluctuated between foster homes, DSS, and the homes of family members, and had a number of reported behavioral problems including fights at school, necessitating contact with DJJ. Having heard all this testimony, the jury did not take Van Wagner's comment regarding continuing treatment to mean that Van Wagner believed Victim was telling the truth with respect to the allegation of sexual abuse by Appellant. Rather, Van Wagner was simply pointing out that it was her professional opinion that Victim needed continued psychological care because of a history of physical abuse and behavioral problems that necessitated the use of Van Wagner as a DSS mental health therapist in the first place, as she consistently advocated for prior to the allegations against Appellant even coming to light.[4] Van

[4] See Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974) "[A] court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations." While Donnelly dealt with a closing argument issue, its logic is applicable to Appellant's case. This Court should not infer that the Solicitor's question and Van Wagner's subsequent answer had a meaning that constituted improper bolstering where alternative meanings exist that do not convey an improper or damaging meaning to the jury

Wagner's comment is very different than the comment in Chavis where the Supreme Court concluded the **only** logical conclusion was that the forensic interviewer believed the child. Van Wagner's comment, thus, does not rise to the level of improper bolstering. Appellant's conviction and sentence 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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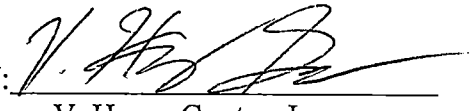
BY: 

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