(5)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 17 2016
SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

Court of Appeals Case No. 2015-001436

The State of South Carolina,............................ Respondent

v.

NAKIA KARREIM JOHNSON,.......................... Appellant.

Final Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Questions Presented 1

Statement of Case 2

Facts Presented at Trial 3

Arguments 10

Question I

Should the trial court judge have granted a mistrial when the State's expert witness, Dr. Allison Foster, testified that the "most painful dynamics in child sexual abuse cases involving family members is that mothers [and other adults] . . . [questioning] how could I not have seen something was going on" when the State presented testimony of the child's mother and other family members not being aware of the alleged child abuse and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson? 10

Question II

Should the trial judge have granted a mistrial when David Kellin, a child advocacy interviewer, testified he instructed the child to "tell the truth during the interview process," when that testimony is prohibited by *State v. Kromah* and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson? 14

Question III

Should this Court grant a new trial based on the cumulative error doctrine? 16

Conclusion 17

TABLE OF AUTHORITIES

Cases

State v. Anderson,

413 S.C. 212, 776 S.E.2d 76 (2015) 11, 12, 15, 16

State v. Blurton,

342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000) 16

State v. Brown,

411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) 10

State v. Johnson,

334 S.C. 78, 512 S.E.2d 795 (1999) 16

State v. Kromah,

401 S.C. 340, 737 S.E.2d 490 (2013) 12, 14

State v. Schumpert,

312 S.C. 502, 435 S.E.2d 859 (1993) 12

State v. Weaverling,

337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) 12

State v. White,

361 S.C. 407, 605 S.E.2d 540 (2004) 12

Statutes

S.C. Code Ann. § 17–23–175 .... 14, 15

S.C. Code Ann. § 63-11-310 7

QUESTIONS PRESENTED

Question I

Should the trial court judge have granted a mistrial when the State's expert witness, Dr. Allison Foster, testified that the "most painful dynamics in child sexual abuse cases involving family members is that mothers [and other adults] . . . [questioning] how could I not have seen something was going on" when the State presented testimony of the child's mother and other family members not being aware of the alleged child abuse and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson?

Question II

Should the trial judge have granted a mistrial when David Kellin, a child advocacy interviewer, testified he instructed the child to "tell the truth during the interview process," when that testimony is prohibited by *State v. Kromah* and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson?

Question III

Should this Court grant a new trial based on the cumulative error doctrine?

STATEMENT OF CASE

On October 14, 2011, the alleged victim in this case and her mother alleged the appellant, Nakia Johnson, committed child sexual abuse. The State arrested and indicted Mr. Johnson for first-degree criminal sexual conduct with a minor, second-degree criminal sexual conduct with a minor, and committing a lewd act on a minor child. R. 526-29.

From June 22 – 26, 2015, the State tried Mr. Johnson before the Honorable Dayet A. Early, III and a jury in Kershaw County. Nicole Simpson and Kathryn Cavanaugh represented the State. Virgin Johnson, Jr. (no relation) and Corey Williams represented Mr. Johnson. The jurors found Mr. Johnson not guilty of first-degree criminal sexual conduct with a minor but returned guilty verdicts for second-degree criminal sexual conduct with minor and lewd act. R. 513-14. Judge Early sentenced Mr. Johnson to twenty years imprisonment for second-degree criminal sexual conduct with a minor and fifteen years imprisonment for lewd act. The sentences are concurrent. R. 521; R. 524-25. Judge Early subsequently denied Mr. Johnson's new trial motions.

This appeal follows.

FACTS PRESENTED AT TRIAL

Mr. Johnson, a Lee County Deputy Sheriff at the time, and Pamela Hall[1] met in September 2010. At the time, both where married to other people, and Ms. Hall had a daughter from her prior relationship. The two married, but divorced in 2007. They had a son and two daughters together. After the divorce, Mr. Johnson provided financial support to Ms. Hall and the children. Mr. Johnson and Ms. Hall continued to have a friendly and sometimes intimate relationship. Prior to and after the divorce, they argued about Mr. Johnson "cheating" with other women. Sometimes these arguments turned physical.[2] R. 103-17.

At 6:36 p.m. on Tuesday, October 11, 2011, Pamela Hall reported to the Kershaw County Sheriff's Office that her eleven-year-old daughter from her previous relationship (hereinafter "the child") had been sexually assaulted. At 7:23 p.m., Deputy Sheriff Jerry Barnwell arrived at Ms. Hall's residence and interviewed to her, learning that she had pointed a gun at Mr. Johnson. He did not interview the child but notified the "on-call investigator" and victim's advocate to meet Ms. Hall and the child at the hospital. R. 23-27.

According to Ms. Hall, Mr. Johnson came to pick up their youngest child. Before the children came home, they had sex. While Ms. Hall was helping their son with his homework, Mr. Johnson and the child left to go to the store. Ms. Hall called Mr. Johnson

[1] Ms. Hall has a 2002 conviction for fraudulent check and a 2009 conviction for financial identity fraud. For the 2009 charge, she served 18 months following a probation revocation. In 2010, Ms. Hall received inpatient treatment for alcohol and drug abuse. R. 130-33.

[2] The child testified she was aware of Mr. Johnson's "cheating" with other women. R. 33, lines 12-15; 35, lines 4-8.

and asked him to pick up skins and beer from the store. Ms. Hall testified she got a call form Mr. Johnson's phone and could hear him talking. At first, she couldn't make out the conversation but claims she heard him say, "[Y]ou know I want to nut in you, but I can't." Ms. Hall claimed Mr. Johnson asked, "[Y]ou know why?," and the child responded, "[B]ecause I will get pregnant." Ms. Hall also claims she heard Mr. Johnson asking the child "does she want to do it; does she want to be on top or does she want him to get on top." After the child allegedly said she wanted Mr. Johnson to be "on top," Ms. Hall hung up the phone. Ms. Hall called back. Mr. Johnson answered. Ms. Hall told Mr. Johnson, "[Y]ou got ten seconds to have my baby back in the yard." Ms. Hall doesn't remember everything else she said. She went into the yard and waited. Mr. Johnson drove back fast. Ms. Hall told the child to get out of the car. Ms. Hall jumped into the car, grabbed Mr. Johnson's gun, and argued with him. R. 117-20.

Still holding Mr. Johnson's gun, Ms. Hall went to her mother's house[3] and talked to the child. When Ms. Hall asked her what happened, the child "kept saying nothing, nothing." Ms. Hall pressed, and the child eventually claimed Mr. Johnson "was touching her breasts." R. 120.

Ms. Hall took the child back outside and confronted Mr. Johnson, pointing his gun at him. Mr. Johnson denied he would "do something like that." R. 121-22. Ms. Hall told the child "to go in the house." She returned Mr. Johnson's gun and "told him to get out of my yard because I was calling the police." Ms. Hall called 911. After speaking with Deputy Barnwell, Ms. Hall took the child to the hospital. R. 125.

---

[3] Ms. Hall lived in a single mobile home trailer, three bedrooms" this is next to her mother's house. R. 113.

At trial, the child testified about the allegations of sexual abuse.[4] When they lived in Fairfax, South Carolina, the child claimed Ms. Johnson "discovered that I had hair on my privates." She claimed Mr. Johnson would ask her to pull down her pants, and he would pull down his pants. She claimed Mr. Johnson would "rub" her arms and breasts, kiss her, and "put his private in my private." She also claimed Mr. Johnson would ask her if she would tell, and the child said she would not. R. 36-38.

The child testified about abuse allegedly occurring when she lived on her grandmother's property. She claimed she and Mr. Johnson would "go in the room" and Mr. Johnson "pull[ed] down his pants down" and told her "to suck it," meaning his penis. While she did this, she claimed Mr. Johnson would "rub [her] hair or move [her] head back and forth." She claimed "white stuff" would come out of his penis. Also at this location, the child claimed Mr. Johnson would "tell me to lay down and he'd kiss me. And he'd kiss my thighs and the he'll put his penis in my private." She further claimed Mr. Johnson would rub her bottom but would not put his penis inside. R. 38-40.

During the period of time when the child moved back to Fairfax, she claimed the abuse "just speeded up, just got worse than what it was. She claimed Mr. Johnson would "would mess with me" and the abuse lasted "hour after hours." Other than claiming it happened in the "back room, laundry room, and his room," the child did not testify to any details of the abuse. R. 44-46.

The child claimed abuse occurred at her Aunt Missy's house in Cassatt, South Carolina while her aunt was at work and Ms. Hall was outside the house. She claimed

---

[4] At the time she testified at trial, the child was a 15-year-old, high school sophomore. She lived with her father and stepmother following Ms. Hall's probation revocation. R. 28-30.

Mr. Jonson would take her into the computer room, "pull down his clothes," and tell the child to pull down her clothes. The child claimed Mr. Johnson would have her sit on his lap. She claimed Mr. Johnson would talk for a while, start "kissing and rubbing" her, lick and kiss her breasts and stomach, and rub her butt. The child testified Mr. Jonson would sit in the computer chair, ask her to sit in his lap, and "put is penis in my vajayjay, and he'll just move up and down constantly." R. 46-51.

The child claimed the abuse occurred during a trip to Disney World in Orlando, Florida. On the first night there, she "slept on one side of the bed and they slept on the other side." She "got closer to where he was." She claimed "he would take the cover up and down so I could see his penis that night." On the last day of the trip, the child claimed Mr. Johnson sent Ms. Hall and the other children to get the car. While they were gone, she claimed Mr. Johnson kept touching and rubbing her and tried to "[p]ut his penis in me," but she told him to stop because it hurt. R. 51-53.

The child testified about a trip to Myrtle Beach, South Carolina. She claimed Mr. Johnson touched her underwater and made her grab him underwater. When they returned from Myrtle Beach to a hotel in Bishopville, South Carolina, the child claimed Mr. Johnson sent Ms. Hall "to the store to get some soap and something else" and told her "brothers and sisters to go in the bathroom." She claimed Mr. Johnson told her "to lay back on the bed and take [her] pants off" and "put his penis in my vajayjay." R. 53-55.

The child testified about incidents allegedly occurring on various dirt roads near her aunt Missy's house. She claimed Mr. Johnson would pull down her pants, take her pants off, have her "get on top of him," and have her "ride" him by "mov[ing] up and

down." She claimed this happened "multiple times" on multiple dirt roads but she could only identify one dirt road for law enforcement. R. 55-58.

The child testified about the day Ms. Hall called the police. She and Mr. Johnson left to go to the store. Instead of going to the store, the child claimed Mr. Johnson took her to a graveyard, pulled down his pants, and told her to pull down her pants. She claimed, Mr. Johnson started touching me and he started feeling, but we never could have done nothing because of the fact that my mama was still on the line and he was just talking." She further claimed, after Mr. Johnson got off the phone with Ms. Hall, the two went to the store and rushed home. R. 61-64.

Later that night, the child was examined at the hospital and interviewed by the police. R. 67; 361. Temple Hart, a registered nurse, performed the examination. After getting general medical history from Ms. Hall, the child described the sexual assault from earlier in the day as involving touching and rubbing "on top of my clothes." Other than some redness, which could have multiple causes, the examination was normal. R. 165-80; 183; 188.

Ms. Hart collected evidence in a sexual assault kit for further analysis. *E.g.* R. 173, lines 21-24; 177, lines 10-18. The trial court Paul Meah of the South Carolina Law Enforcement Division as an expert in DNA analysis. Mr. Meah examined the sexual assault kit, which contained a request from Ms. Hart to look for semen. Mr. Meah did not find any evidence of semen. R. 268-83.

On October 12, 2011, David Kellin, a social worker, interviewed the child at the Family Resource Center—a child advocacy center mandated by statute[5]—at the request

[5] S.C. Code Ann. § 63-11-310.

of Investigator Rick Bailey. Because of sickness, the interview was terminated early. The videotape of this interview was introduced at trial. R. 229-43; 251-52. On November 9, 2011, Laurie Caldwell of the Dickerson Center—also a child advocacy center—interviewed the child a second time. The videotape of this interview was not introduced into evidence because the child had turned twelve prior to the interview. R. 292-306.

Dr. Susan Luberoff, a medical doctor, testified as an expert "in the filed of child sexual assault examinations." She examined the child on October 14, 2011 at the Assessment & Resource Center ("ARC")—also a child advocacy canter. The examination was normal, and Dr. Luberoff couldn't offer an opinion whether sexual abuse "happened or whether it didn't" happen. R. 340-54.

A records custodian from AT&T testified that, on the afternoon of October 11, 2011, (1) Ms. Hall's phone called Mr. Johnson's phone for fifty seconds beginning at 5:41 p.m., (2) Mr. Johnson's phone called Ms. Hall's phone for two minutes, three seconds beginning at 5:54 p.m., and (3) Ms. Hall's phone called Mr. Johnson's phone for one minute, and twenty-three seconds to one minute, twenty-five seconds, beginning at 5:56 p.m. R. 191-205.

Investigator Dave Capps, of the Lee County Sheriff's Office, who is also responsible for "in house IT," retrieved the security video from Fountain Grocery Store showing that Mr. Johnson and the child were inside the store at 5:58 p.m. or 5:59 p.m. R. 253-61; 263-67. Investigator Rick Bailey of the Kershaw County Sheriff's Office acknowledged it would be impossible for Mr. Johnson to have been at the graveyard and the store at the same time. R. 395-97.

Investigator Rick Bailey of the Kershaw County Sheriff's Office contacted Mr. Johnson and requested he provide an interview. Mr. Johnson cooperated with the investigation. The interview, occurring on October 14-15, 2011, was videotaped and played to the jurors. R. 362-70; 373-74. During the interview, Mr. Johnson denied abusing the child. At the conclusion of the interview, Investigator Bailey arrested Mr. Johnson by serving arrest warrants that had already been obtained based solely on the statements of Ms. Hall and the child. R. 385-87.

ARGUMENTS

Question I

Should the trial court judge have granted a mistrial when the State's expert witness, Dr. Allison Foster, testified that the "most painful dynamics in child sexual abuse cases involving family members is that mothers [and other adults] . . . [questioning] how could I not have seen something was going on" when the State presented testimony of the child's mother and other family members not being aware of the alleged child abuse and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson?

The prosecution called Dr. Allison Foster, who is employed at the ARC and offered her as an expert in "child abuse assessment." The trial court judge convened a hearing outside the presence of the jurors. The trial court judge decided to qualify Dr. Foster as an expert witness based on this Court's holding in *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) (distinguishing improper bolstering cases because in *Brown* the behavioral expert did not examine the victim). The trial court judge clarified that Dr. Foster would "not be offering any opinion regarding the credibility or believability of the victim and/or other witnesses," "commenting on whether or not she was actually assaulted," or offering testimony beyond giving an opinion about the effects sexual assault has or responses to sexual assault on children." R. 308-13.

After the jurors returned to the courtroom, the trial court judge qualified Dr. Foster as an expert "in the field of child abuse assessment." R. 313-17. Consistent with Brown, Dr. Foster's initially testified about the dynamics of child sexual abuse and the process of a child disclosing the abuse. R. 317-31.

The prosecution asked, Dr. Foster, "[D]o family members always know what's happening to a child?" Dr. Foster responded:

> No, they do not. And one of the more painful dynamics in child sexual abuse cases involving family members is that

> mothers—and I'll say mothers because most often it is the mother who is saying, how could I not have seen something was going on? So every week, and at my job at the ARC, that's a question that –

Trial counsel requested a sidebar and moved for a mistrial. R. 331-33. At the conclusion of Dr. Foster's testimony, trial counsel placed Mr. Johnson's mistrial motion on the record. Counsel argued:

> I think that goes directly in this case to bolstering the credibility of the – of what was said by the mom and the daughter. And that testimony elicited is prejudicial and would impact the jury that I think . . . the proper remedy is a mistrial.

R. 337, line 13 – 338, line 4.

Trial counsel pointed out the lack of "physical evidence" in the case, and the trial judge acknowledged, "Everything is credibility." Trial counsel agreed and pointed out, "[T]he fact that she testified as an expert bolsters it. But when her testimony becomes more specific to this particular case, it bolsters it more." Counsel pointed out, "[Y]ou can't un-ring the bell," and renewed the request for a mistrial "in the interest of justice and fairness." The trial court judge once again denied the motion. R. 338, line 5 – 339, line 4.

The prosecutor emphasized the testimony of Dr. Foster during closing arguments. R. 350, line 25 – 351, line 4; 354, lines 4-5; 364, line 12 – 367, line 23.

In *State v. Anderson*, 413 S.C. 212, 218-19, 776 S.E.2d 76, 79 (2015), decided about six weeks after Mr. Johnson's trial, our Supreme Court approved the procedure recognized by this Court in *Brown*, noting:

> 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.

By explaining the reactions of caregivers, Dr. Foster's testimony exceeded the procedure approved of in *Brown* and *Anderson*. *Anderson* cited to cases where our appellate court have approved expert testimony about the behavioral characteristics of victims of child sexual abuse. *E.g., State v. White,* 361 S.C. 407, 605 S.E.2d 540 (2004); *State v. Schumpert,* 312 S.C. 502, 435 S.E.2d 859 (1993); and *State v. Weaverling,* 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). None of these cases approved an expert testimony vouching for caregivers and other adult family members.

Dr. Foster's testimony prejudiced Mr. Johnson because of the lack of physical evidence corroborating the allegations and the fact that the case turned solely on the credibility of the witnesses. *Compare State v. Kromah*, 401 S.C. 340, 362, 737 S.E.2d 490, 501 (2013) ("Based on the entire record, including the physical evidence documented in this case, the challenged testimony could not reasonably have affected the result of the trial, so any error in its admission was harmless beyond a reasonable doubt.") *with Anderson*, 413 S.C. at 219, 776 S.E.2d at 79 (finding "overwhelming" prejudice when the "case turned solely on the credibility of the minor and of Appellant. The minor testified to abuse by Appellant over a course of three to four years, while Appellant denied any improper conduct. There was no physical evidence of sexual abuse.").

The prejudice to Mr. Johnson is similar to what happened in *Anderson*. The prosecution sought to prove the abuse occurred "time and time again," R. 441, line 12; 575 lines 20-21, but there was no physical evidence of abuse. Both medical exams were normal. The prosecution argued, "[B]ottom line, is if you believe [the child], that is

enough to find the defendant guilty." R. 443, lines 7-10. And see, R. 446, lines 13-14 ("Well, the real question here is, why would [the child] lie."). And, R. 471, lines 6-10 ("Bottom line is this: Why should you believe [the child]: Because if you accept that the victim's testimony need not be corroborated, then the only question left is, why should you believe her?").

The prosecution, in fact, used Dr. Foster's inadmissible testimony to explain why none of the child's relatives recognized any evidence of sexual abuse. Prior to what she allegedly overheard on the phone call on October 11, 2011, Pamela Hall had not observed any evidence of it. Pamela Hall's sisters Stacey Hall and Melissa ("Aunt Missy") Hall testified at trial. Stacey Hall testified that the child "acted normal" around Mr. Johnson, and she did to have any indication that sexual abuse was occurring. R. 159, lines 14-22. During the period of time that Pamela Hall and the child lived at her house, Melissa Hall also did not have any indication that sexual abuse was occurring. R. 211, lines 13-24.

The trial court judge erred by not granting a mistrial, and this Court should order a new trial.

Question II

Should the trial judge have granted a mistrial when David Kellin, a child advocacy interviewer, testified he instructed the child to "tell the truth during the interview process," when that testimony is prohibited by *State v. Kromah* and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson?

On October 12, 2011, David Kellin, a social worker, interviewed the child at the Family Resource Center at the request of Investigator Rick Bailey. At the time of the interview, the child was eleven years old. After explaining the interview process, Mr. Kellin testified, "We also ask in the beginning of the interview if will they tell the truth during the interview process." Outside the presence of the jurors, trial counsel moved for a mistrial based on *Kromah* and moved to strike the testimony pursuant to *Kromah* and because the testimony was "more prejudicial than probative." The trial court judge denied the motion for a mistrial, did not strike the testimony from the record, and did not issue a curative instruction. R. 229-37. Trial counsel renewed the motion. R. 245-46.

Trial Counsel correctly argued that *Kromah* prohibits the child interviewer from telling the jurors "that the child was told to be truthful" during the interview. 401 S.C. at 360, 737 S.E.2d at 500. After noting *Kromah*, our Supreme Court in *Anderson* set forth the proper procedures for admitting the videotaped child advocacy interviews:

> First, the statute requires that the interviewer be called to testify *in camera. See* § 17–23–175(A)(4). At that *in camera* hearing, the interviewer must testify to establish the types of factors set forth in § 17–23–175(B), such as her training and background, whether she utilized the RATAC procedure or the ChildFirst protocol, as well as any other testimony that will assist the trial court in determining whether the child's statement possesses the "particularized guarantees of trustworthiness" and thus the admissibility of the video. § 17–23–175(B). Assuming the court determines that the interview is admissible under the statute, the forensic interviewer will be called to testify before the jury.

> The sole purpose of her jury testimony is to lay the foundation for the introduction of the videotape, and the questioning must be limited to that subject. There is to be no testimony to such things as techniques, of the instruction to the interview subject of the importance of telling the truth, or that the purpose of the interview is to allow law enforcement to determine whether a criminal investigation is warranted. This type of testimony, which establishes the " particularized guarantees of trustworthiness," necessarily conveys to the jury that the interviewer and law enforcement believe the victim and that their beliefs led to the defendant's arrest, these charges, and this trial, thus impermissibly bolstering the minor's credibility. We hold none of the evidence necessary for the trial court's determination of "whether a statement possesses particularized guarantees of trustworthiness" and thus admissible under § 17–23-175(A)(4) and (B) is to be presented to the jury, as such evidence necessarily vouches for the credibility of the alleged victim.

413 S.C. at 220-21, 776 S.E.2d at 80.

Although Mr. Johnson's trial judge did not have the benefit of *Anderson*, trial counsel correctly pointed to the current and controlling law at the time – *Kromah.* Because the testimony was inadmissible under *Kromah*, the trial judge should have granted the mistrial motion. As seen in Section I above, Mr. Johnson was prejudiced because of the absence of physical evidence and the importance of the jurors determining the credibility of the witnesses. *See Anderson, supra.*

The trial court judge erred by not granting a mistrial, and this Court should order a new trial.

Question III

Should this Court grant a new trial based on the cumulative error doctrine?

The "cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial." *State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297-98 (Ct. App. 2000), *reversed on other grounds by State v. Blurton,* 352 S.C. 203, 573 S.E.2d 802 (2002) (citing *State v. Johnson,* 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). Here, the error discussed in Sections I and II involved improper bolstering of the child, her mother, and the other family members that testified at trial. In both instances, Mr. Johnson moved for a mistrial. If this court disagrees Mr. Johnson is entitled to a new trial on each of these (or either one of these) issues, then this Court should apply the cumulative error analysis.

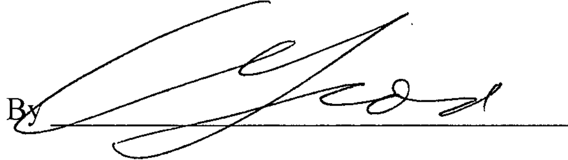
As seen in Sections I and II above, Mr. Johnson was prejudiced because of the absence of physical evidence and the importance of the jurors determining the credibility of the witnesses. *See Anderson, Supra.*

This Court should order a new trial.

CONCLUSION

For the foregoing reasons, this Court should order a new trial.

Respectfully Submitted,

By 

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

October 9, 2016
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 17 2016
SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

Court of Appeals Case No. 2015-001436

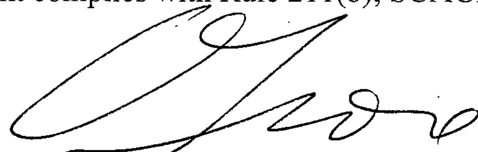
The State of South Carolina,............................ Respondent

v.

Nakia Johnson,... Appellant.

Rule 211, SCACR Certification

I certify that this Final Brief of Appellant complies with Rule 211(b), SCACR.



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

October 9, 2016
Greenwood, South Carolina