STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2016-000243

THE STATE,

Respondent,

vs.

STACY CAROL RIDEN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not abuse his broad discretion by declining to redact portions of the children's forensic interview recordings depicting questions and responses in which the children indicated the things they had disclosed really happened and they had not been told what to say by anyone else because the recordings met the statutory requirements for admission and the portions the trial judge declined to redact did not improperly vouch for or bolster the children's testimony.

II.

The trial judge committed no error in qualifying a witness as an expert and permitting her to testify on child abuse dynamics, including in regard to delayed disclosure, grooming, and coaching, because the witness was 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, and met a threshold level of reliability. Furthermore, to the extent Appellant is arguing on appeal the witness's expert testimony should not have been admitted for a reason other than the witness was not personally qualified to testify as an expert witness based on the fact she was not licensed as a professional counselor in South Carolina, Appellant's arguments were not properly preserved for appellate review because they were never raised to the trial judge.

III.

The trial judge did not abuse his broad discretion by denying Appellant's motion for severance because the allegations raised against Appellant and her co-defendant involved related and connected criminal conduct committed jointly by the pair, which made a joint trial a far more practical and justifiable way of trying their cases under the circumstances, and because no unfair or undue prejudice resulted to Appellant as a result of the joint nature of the trial.

STATEMENT OF THE CASE

In May of 2014, Appellant Stacy Carol Riden was arrested following an investigation into allegations she and an accomplice sexually abused her three minor children. In April of 2015, the Pickens County Grand Jury indicted Appellant for two counts of first-degree criminal sexual conduct with a minor, one count of third-degree criminal sexual conduct with a minor, and one count of unlawful conduct towards a child. On January 25, 2016, a jury trial was commenced in the Pickens County Court of General Sessions with the Honorable Perry H. Gravely, circuit court judge, presiding. Appellant did not appear for the beginning of trial, and the trial proceeded forward in her absence. However, during the course of the trial, Appellant was apprehended and was present in the courtroom beginning on the trial's third day. At the conclusion of the four-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor and fifteen years for third-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of ten years for unlawful conduct towards a minor. Appellant then filed a timely notice of appeal.[1]

[1] Appellant's accomplice, Aaron Van Hendrix, was also indicted for two counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor, and Hendrix was tried together with Appellant. Like Appellant, Hendrix was convicted as indicted, and the trial judge sentenced Hendrix to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of twelve years for third-degree criminal sexual conduct with a minor.

STATEMENT OF FACTS

On December 29, 2013, Deputy Adam McJunkin of the Pickens County Sheriff's Office travelled to the residence of Mark and Lisa Riden ("Grandfather" and "Grandmother") in response to allegations the couple's three minor grandchildren had been sexually abused by Appellant Stacy Carol Riden, who was the children's biological mother, and Aaron Van Hendrix, who was Riden's former live-in boyfriend.[2] (R. pp. 152-154; pp. 178-179; p. 183; p. 206; p. 211; pp. 216-217; p. 249; p. 393). At that time, the children – a seven-year-old boy ("Victim 1"), the boy's seven-year-old twin sister ("Victim 2"), and the twins' three-year-old younger sister ("Victim 3") – were living at their grandparents' residence and had been residing there for approximately eight or nine months, but they had previously resided with Appellant and Hendrix at a mobile home located in Easley, South Carolina. (R. pp. 151-153; pp. 163-164; p. 178; p. 184; p. 186; pp. 204-205; pp. 210-212; p. 220; p. 270; p. 392; p. 401; p. 405; p. 469).

After the allegations arose, Investigator Marvin Nix of the Pickens County Sheriff's Office began an investigation into the reported sexual abuse and referred the children to the Julie Valentine Center, a child abuse and sexual assault recovery center, for forensic interviews. (R. pp. 246-247; pp. 249-250; p. 264; p. 269; p. 307). Following the referral, Shauna Galloway-Williams, the executive director of the Julie Valentine Center, interviewed Victim 2 in February of 2014. (R. p. 50; p. 310). During the interview, Victim 2 indicated she previously lived with Appellant and Hendrix and asserted Appellant put dish soap into her mouth, slapped her, pulled her hair, and did other "bad stuff" during that time. (State's Ex. # 1 (Victim 2's First Interview Recording)). Specifically, Victim 2 recounted Appellant held her down by her hair while Hendrix rubbed and digitally penetrated her vagina over her clothing in front of Victim 1 and

[2] Grandmother was the children's step-grandmother while Grandfather was the children's maternal grandfather. (R. p. 248; p. 468).

Victim 3. (State's Ex. # 1). Additionally, Victim 2 recounted Appellant slapped her, told her not to reveal the abuse, frequently locked her and her siblings in a bedroom for the entire day, and made her go to school without changing one day after she accidently urinated on her clothing. (State's Ex. # 1). She also indicated Appellant and Hendrix regularly talked about sex in front of them, watched pornographic movies, engaged in sex acts in front of her, took a lot of pills and "medicine," and pulled her into the shower on one occasion while they were using it together, and she indicated Hendrix sometimes wore Appellant's clothing and used Appellant's nail polish. (State's Ex. # 1). Furthermore, she noted she and her siblings had to sneak around in order to get food, and she recounted one incident in which Victim 3 almost ingested Riden and Hendrix's "medicine." (State's Ex. # 1).

Thereafter, in March of 2014, Galloway-Williams interviewed Victim 1 and Victim 3. (R. p. 50; p. 210). During Victim 1's interview, Victim 1 stated Appellant and Hendrix did bad things to him and his siblings. (State's Ex. # 3 (Victim 1's First Interview Recording)). Specifically, Victim 1 recounted Hendrix rubbed and poked his "privates," touched him underneath his clothing, and tried to make him touch his "privates" on multiple occasions, and he indicated Appellant rubbed and poked his privates as well. (State's Ex. # 3). He also stated Appellant held both him and Victim 2 down while Hendrix sexually abused them, and he indicated his biological father observed the abuse on one occasion. (State's Ex. # 3). He further recounted Appellant made them ingest pills, cut him with a knife on one occasion, hit him with a helmet, struck him in the face, and kicked him in the groin along with Hendrix. (State's Ex. # 3). Additionally, Victim 1 indicated Appellant and Hendrix threatened to kill them if they revealed the sexual abuse. (State's Ex. # 3). Furthermore, Victim 1 stated they did not always have food to eat, he observed pills and "bad medicine" in their home, and Appellant forced them to watch a

pornographic movie on multiple occasions. (State's Ex. # 3). Similarly, during Victim 3's interview, Victim 3 recounted Hendrix touched her "down there" and made her touch him "down there" in Appellant's presence. (State's Ex. # 5 (Victim 3's Interview Recording)). Additionally, she vacillated somewhat on whether Appellant inappropriately touched her but indicated she thought she did. (State's Ex. # 5). Victim 3 also stated she observed Appellant hold Victim 1 down so Hendrix could touch Victim 1's groin area. (State's Ex. # 5). Furthermore, she characterized Appellant as her "bad mom" and indicated Appellant did not feed her or her siblings. (State's Ex. # 5).

Following the interviews, Dr. Mary Croswell, a medical doctor and an expert in child abuse pediatrics, conducted a physical examination of each of the children. (R. pp. 278-280; pp. 288-289). In examining Victim 1 and Victim 2, Dr. Croswell found nothing abnormal. (R. pp. 283-287; p. 290; p. 302). However, in examining Victim 3, Dr. Croswell found labial adhesions in Victim 3's vaginal area, which potentially could have resulted from non-accidental trauma but also could have resulted from accidental trauma or other causes. (R. pp. 293-294). Beyond that, Dr. Croswell found evidence of cavities and more dental breakdown than expected for someone Victim 3's age. (R. pp. 291-293; p. 300).

Thereafter, Galloway-Williams again conducted a forensic interview of Victim 1. (R. p. 316). During the second interview, Victim 1 stated Appellant and Hendrix touched his and his siblings' "privates," sucked on them, licked them, and made them do reciprocal acts, and he recounted he witnessed the sexual abuse being committed upon Victim 2 and Victim 3. (State's Ex. # 4 (Victim 1's Second Interview Recording)). He further indicated Appellant and Hendrix put their fingers into his buttocks. (State's Ex. # 4). Additionally, he recounted he observed Appellant and Hendrix injecting themselves with needles, indicated he and his sibling played

"doctor" with a needle they found, stated he observed bleeding from his siblings' "privates" after they were digitally penetrated, and again confirmed Appellant and Hendrix threatened to kill them if they revealed the abuse. (State's Ex. # 4). He also stated his father observed the abuse occur on some occasions but did nothing to stop it. (State's Ex. # 4). Furthermore, as to why he did not reveal all the details of the abuse during the first interview, Victim 1 indicated he failed to do so because he was scared. (State's Ex. # 4).

Likewise, Galloway-Williams also conducted a second interview of Victim 2. (R. p. 316). During that interview, Victim 2 recounted Appellant and Hendrix performed oral sex on her and her sibling and forced her and her siblings to perform oral sex on them. (State's Ex. # 2 (Victim 2's Second Interview Recording)). Additionally, Victim 2 indicated they found needles and drugs in Appellant's car, she and her younger sister bled from their vaginas after they were digitally penetrated, and Appellant and Hendrix showed them pornographic movies. (State's Ex. # 2). Victim 2 further revealed her biological father witnessed the sexual abuse without intervening, and she indicated her father and one of Appellant's sisters inappropriately touched her on one occasion. (State's Ex. # 2). Furthermore, Victim 2 stated she did not fully reveal the abuse during the first interview because she was scared and nervous. (State's Ex. # 2).

Meanwhile, Investigator Nix met with both Appellant and Hendrix, and he interviewed each of them in regard to the allegations of sexual abuse. (R. p. 251; p. 253; pp. 255-256). During the interview with Appellant, Appellant denied the allegations and indicated she was surprised by them. (R. pp. 253-254). However, she confirmed Hendrix had lived with her and her children for a period of time and also noted the children's biological father had stayed with them sometimes. (R. pp. 254-255). Similarly, during the interview with Hendrix, Hendrix did not make any admissions regarding the sexual abuse. (R. pp. 256-259). However, Hendrix

acknowledged he wore Appellant's clothing on one occasion while he was residing with Appellant and her children for a period of time. (R. pp. 256-257; p. 259; p. 269). He further indicated the children's biological father stayed with them sometimes, and he stated one of Appellant's sisters took her clothes off at the residence on one occasion. (R. pp. 257-258).

At the conclusion of the investigation into the sexual abuse allegations, Investigator Nix arrested Appellant and Hendrix. (R. pp. 259-260; p. 268). Appellant and Hendrix were subsequently indicted for numerous charges, including multiple counts of criminal sexual conduct with a minor, and their cases were jointly called to trial. (R. p. 10; pp. 85-86; pp. 576-583).

At the outset of trial, defense counsel for both defendants objected to the admission of the recordings of the five forensic interviews conducted of the minor victims, and Galloway-Williams testified about the interviews in order to establish the admissibility of the recordings. (R. pp. 25-26). During her testimony, she explained she did not use leading questions, the victims' statements were detailed and internally coherent, and she did not comment on the victims' credibility or on whether she believed them during the interviews. (R. pp. 32-33). However, she acknowledged she asked Victim 1 and Victim 2 during their second interviews whether they only talked about things that really happened and asked the children whether they had been told what to say. (R. p. 36; p. 40). The trial judge then indicated he would personally review the recordings. (R. p. 41).

At that point, Appellant's defense counsel objected to the recordings as unconstitutional, violative of Appellant's Sixth Amendment rights, unduly prejudicial in light of the "playful interactions" involving the children, inadmissible as impermissible hearsay, and improperly corroborative and bolstering. (R. pp. 45-47). Appellant's defense counsel further argued Victim

3's recording should be excluded as insufficiently trustworthy in light of the fact Victim 3 stated she only thought the things involving Appellant happened. (R. pp. 46-47).

Beyond objecting to the forensic interview recordings, defense counsel for Appellant made a motion for severance and requested Appellant and Hendrix be tried separately.[3] (R. p. 57). In making that request, Appellant's defense counsel readily acknowledged there were "some similarities" in the defenses Appellant and Hendrix intended to present. (R. p. 58). Nonetheless, Appellant's defense counsel contended her motion for severance should be granted because she had a different style of presenting a case from Hendrix's defense counsel and believed he would open the door to objectionable hearsay evidence, which she contended would "trample all over" Appellant's right to a fair trial. (R. pp. 57-58). After hearing those contentions, the trial judge initially denied the motion for severance in a conditional manner and ultimately rejected it after considering the matter overnight. (R. p. 58; p. 94).

Thereafter, the trial judge indicated he had reviewed the forensic interview recordings, found the recordings of Victim 1's and Victim 2's interviews satisfied the requirements for admission, and ruled the recording of Victim 3's interview was inadmissible because it allegedly lacked sufficient coherence. (R. pp. 97-98; p. 101). The trial judge then discussed redactions that had been proposed by Appellant's defense counsel with the parties. (R. p. 100). During the discussion, the trial judge agreed for portions of the recordings to be redacted that included statements about "the soap and all of that," statements about what social service employees and police officers said, statements about what Grandmother said, references to a dog being run over, statements related to the children's father's actions, and depictions of the children drawing. (R. pp. 105-107; pp. 111-117; pp. 119-120). However, the trial judge rejected Appellant's defense counsel's request for portions to be redacted that included allegedly irrelevant introductory

[3] Appellant's defense counsel also unsuccessfully moved for the charges to be severed. (R. pp. 52-55; p. 94).

information, references to the children being slapped, statements about what the children personally witnessed happening to their siblings, references to pill usage and a trip to Disneyworld, and questions and responses about whether the things the children stated were real and whether anyone told them what to say. (R. pp. 102-103; pp. 106-110; pp. 113-119).

Subsequently, the trial proceeded forward, and the children testified about the sexual abuse they suffered at the hands of Appellant and Hendrix. (R. pp. 151-215). During his testimony, Victim 1 recounted Appellant and Hendrix inappropriately touched his and his sisters' "privates" and forced him to perform oral sex on them, and he indicated they threatened to kill him if he revealed the abuse. (R. pp. 153-156; p. 159). Additionally, Victim 1 confirmed the home he was living in at the time of trial was much nicer than Appellant's home, he had more toys and electronics, and he had been taken on a trip to Disneyworld.[4] (R. pp. 169-171). Furthermore, Victim 1 testified – without objection – no one told him what to say and he was testifying about Appellant and Hendrix "[b]ecause it happened." (R. p. 176). Similarly, Victim 2 recounted Appellant and Hendrix touched her "privates," made her touch their "privates," and made her perform oral sex on them. (R. pp. 178-179). She further indicated she saw Appellant and Hendrix touch her siblings' "privates," and she testified about incidents where she was forced to shower with the defendants and observed the defendants naked together in a bed. (R. pp. 179-182). Additionally, Victim 2 stated she did not reveal the abuse because Appellant and Hendrix threatened her and because she did not know what would happen to them if the abuse was revealed. (R. p. 182). Furthermore, she indicated – without objection – her grandparents had not told her what to say. (R. pp. 182-183). Likewise, Victim 3 recounted she was inappropriately touched on a "bad place" by Appellant and Hendrix. (R. pp. 206-207). Victim 3

[4] Hendrix's defense counsel elicited the testimony from Victim 1 regarding the ways his life had improved after he moved into his grandparents' home. (R. pp. 169-171).

further indicated Appellant did not help her when she lived with her, and she stated no one looked after her at that time. (R. pp. 213-215).

Following the children's testimony, the law enforcement officers who responded when the sexual abuse was disclosed testified about the details of their investigation and about the statements made by both Appellant and Hendrix. (R. pp. 216-220; pp. 246-275). Additionally, Dr. Croswell testified about her findings during her physical examinations of the children, and she noted it was "[q]uite rare" for physical findings to be made in child sexual abuse cases. (R. pp. 278-295; pp. 300-302). Furthermore, Galloway-Williams informed the jury she conducted forensic interviews of the children, and the recordings of the four interviews of Victim 1 and Victim 2 were played for the jury with redactions. (R. pp. 307-313; pp. 315-316; p. 319). However, consistent with the trial judge's earlier ruling, portions of the recordings in which Victim 1 and Victim 2 indicated what they disclosed during the interviews was real and no one told them what to say were played for the jury.[5] (R. pp. 108-110; p. 115; pp. 118-119; pp. 588-593; State's Ex. # 1; State's Ex. # 2; State's Ex. # 3; State's Ex. # 4).

Thereafter, the solicitor continued forward with the State's case and called Christine Carlberg to the witness stand. (R. p. 327). At the outset of her testimony, Carlberg indicated she was employed by the Greenville Department of Mental Health and was contracted to work at the Julie Valentine Center as a forensic interviewer. (R. pp. 327-328). Regarding her background,

[5] After the redacted recordings were played for the jury, defense counsel for Appellant noted a portion of Victim 1's second interview where the child mentioned statements made by Grandmother was supposed to have been redacted but was not. (R. p. 319). As a result, defense counsel moved for a mistrial, for the testimony to be stricken, or for a curative instruction to be given to the jury. (R. p. 319). In response, the trial judge agreed to give a curative instruction as requested but indicated he did not believe a mistrial was necessary under the circumstances. (R. p. 319). Defense counsel for Appellant then noted a portion of the recording where Victim 1 discussed "horror movies" he had seen was inadvertently not played for the jury, and the trial judge indicated he would have that portion played. (R. pp. 320-321). Thereafter, the trial judge advised the jurors a portion of one of the recordings that was supposed to have been redacted was mistakenly played for them and asked them to disregard anything mentioned in the recordings in regard to what someone else said. (R. p. 325). Following those remarks, counsel for all parties, including Appellant, specifically indicated they had no objections. (R. p. 326). The portion of the recording of Victim 1's interview that was inadvertently not played was then played for the jury. (R. pp. 326-327).

Carlberg indicated she had a bachelor's degree in rehabilitation services education, had a master's degree in marriage and family therapy, had attended two nationally-accepted programs for forensic interviewing, had attended various conferences for approximately fifteen years, had been working with children since 1998, had worked in her current position for approximately nine years, had conducted 2,826 forensic interviews of children over a fifteen-year span, had been qualified as an expert on approximately twenty-five prior occasions, and helped train others in forensic interviewing. (R. pp. 328-330). Defense counsel for both Riden and Hendrix then questioned Carlberg about her qualifications, and Carlberg revealed she was a licensed professional counselor in Mississippi but was not licensed in South Carolina. (R. p. 332). She further conceded she had not written any published or peer-reviewed articles and did not personally conduct experiments or collect data. (R. pp. 334-336). However, based on her experience and training, she indicated she considered herself to be an expert in child abuse dynamics. (R. pp. 334-335).

At that point, the solicitor moved for Carlberg to be qualified as an expert in child abuse dynamics, and defense counsel for both Appellant and Hendrix objected. (R. p. 337). In support of her objection, defense counsel for Appellant asserted Carlberg was "not qualified" while noting Carlberg did not appear to be licensed in South Carolina. (R. p. 337). Meanwhile, in support of his objection, defense counsel for Hendrix asserted he had "serious questions" about whether the field of expertise in which Carlberg was being offered was a proper field for expert testimony, but defense counsel for Appellant did not join in that particular objection.[6] (R. p.

[6] Early on during the trial, defense counsel for Hendrix asked the trial judge to consider him to have joined in all Appellant's defense counsel's objections unless specified otherwise, and the trial judge indicated he did not have a problem with that course of action. (R. p. 56). At that time, defense counsel for Appellant did not make a similar request. (R. pp. 56-57). Instead, when defense counsel for Hendrix indicated Appellant's defense counsel might want to join in some of his motions during the course of trial, she responded: "Well, I don't know." (R. p. 57). Thereafter, as the trial continued forward, defense counsel for Appellant expressly alerted the trial judge when she wished to join in one of Hendrix's defense counsel's motions or objections. (R. p. 96; p. 263).

337). After considering the arguments of counsel, the trial judge denied the objections and qualified Carlberg as an expert in child abuse dynamics. (R. pp. 337-338). In doing so, he ruled it was unnecessary for Carlberg to be licensed in order to testify as an expert and found the field of expertise had previously been found to be an appropriate area of expertise in a prior appellate court decision. (R. pp. 337-338).

Following the trial judge's ruling, Carlberg continued with her testimony and explained she had completed roughly 2,000 hours of supervised work in order to become licensed. (R. p. 339). She further noted she no contact with the minor victims, had not seen any recordings of their statements, and had not read any statements from them. (R. pp. 340-341). Carlberg then explained a delayed disclosure was a temporal delay in a child's disclosure of abuse and noted such delays are "very common." (R. p. 341). As to why the delays occur, Carlberg explained every child is different and may have different reasons for delaying disclosure of abuse, and she noted common reasons could include: (1) the abuser is someone related to or close to the child, which she indicated was very common as most abused children were abused by someone they knew or trusted; (2) the child might be concerned with loyalty; (3) the child might believe he or she did something wrong and does not want to get in trouble; (4) the child might be ashamed or embarrassed; (5) the child might not think he or she will be believed or protected if a disclosure is made; and (6) the child might not know what occurred was wrong. (R. pp. 343-345). Additionally, Carlberg explained disclosure is frequently a process that can potentially involve an initial denial, a tentative incomplete disclosure, an "active" and more complete disclosure, recantation, and recantation of the recantation. (R. pp. 346-348). However, she explained the process was not the same for every child. (R. pp. 348-349). Carlberg also explained grooming was a process by which an offender or "alleged" perpetrator takes steps to gain the trust and

loyalty of a child before beginning to abuse that child, and she noted grooming could occur by the giving of gifts or special privileges or by normalizing sexual activity by exposing the child to sex or pornography. (R. pp. 350-351). Likewise, Carlberg indicated other forms of maltreatment, such as neglect, domestic violence, drug use, educational neglect, and animal abuse, could increase the risk of physical or sexual abuse for a child as could a single parent allowing a partner to live in the same home.[7] (R. pp. 351-352). Furthermore, Carlberg discussed coaching, indicated she personally had experience with children admitting to being coached, and explained subject matter knowledge, consistency in regard to core details, and corroborative medical findings are all factors to look at when determining whether coaching occurred. (R. pp. 354-356). Carlberg further explained core details, such as who did it, what happened, where it happened, and when it happened usually stay the same while other details may not be revealed until later in the disclosure process.[8] (R. p. 357). As her testimony continued, Carlberg explained a child's age could impact a disclosure and asserted a younger child, such as a three-year-old child, may not be able to give many details while an older child may be able to give a more detailed disclosure. (R. pp. 358-359). She also explained – over Appellant's defense counsel's objection – a six-year-old or seven-year-old child may have a hard time in regard to when something occurred.[9] (R. pp. 359-360). Thereafter, again over Appellant's defense counsel's objection, Carlberg explained forensic interviewers can look for coaching by asking the child about what they were told before coming to the interview and about the source of the

[7] During Carlberg's testimony, the solicitor asked her if there were any statistics related to the likelihood for a child to be abused if they have a single parent with a live-in partner, defense counsel for Appellant objected to the question as calling for pure speculation, and the trial judge sustained the objection. (R. pp. 353-354).

[8] As part of his questioning of Carlberg, the solicitor asked the witness if the severity of the abuse could change during the disclosure process but still be "core and consistent," Appellant's defense counsel objected to the question, and the trial judge sustained the objection. (R. pp. 357-358).

[9] In objecting to that testimony, Appellant's defense counsel simply argued it was "speculative." (R. p. 359).

information.[10] (R. pp. 360-361). Subsequently, on cross-examination, Carlberg acknowledged delays in disclosure are not a diagnostic tool. (R. p. 362; p. 364). She further conceded different studies had reached different conclusions on the prevalence of delayed disclosed, and she indicated she did not know whether adults who disclosed abuse had actually been abused. (R. pp. 364-366). Similarly, she readily acknowledged she did not know if coaching, delayed disclosure, or grooming happened in regard to the minor victims. (R. p. 371).

At the conclusion of Carlberg's testimony, the solicitor rested the State's case, and Appellant elected to testify in her own defense.[11] (R. pp. 374-375; p. 389). During her testimony, Appellant denied the allegations in total, stated she never touched or rubbed her children's genitals in an inappropriate manner, claimed she would never perform digital penetration or oral sex on her children, and indicated she did not know why the allegations were being made or if the children were coached. (R. pp. 389-392; p. 400; pp. 404-405). Additionally, she indicated she never observed anyone else, including Hendrix, engage in inappropriate interactions with the children, stated she would have killed Hendrix if she discovered he was abusing her children, and denied Hendrix ever sexually abused the children. (R. p. 392; pp. 394-395; p. 405; p. 428). She also denied she and Hendrix were using illegal drugs.[12] (R. pp. 411-412; p. 426). Furthermore, she acknowledged she struggled with her finances but claimed the children always had food. (R. pp. 401-403).

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[10] Once again, in objecting to that testimony, Appellant's defense counsel argued it was "speculative" and further contended she did not know how the witness could answer the question without being the person who interviewed the minor victims. (R. p. 360).

[11] Before Appellant testified, both Appellant and Hendrix moved for directed verdicts, and the trial judge denied their motions. (R. pp. 374-376).

[12] Earlier during trial, Victim 1 and Victim 2 indicated they observed a bloody needle while living with Appellant, and Victim 1 indicated he witnessed the defendants inject themselves with needles. (R. pp. 157-158; p. 181).

Following Appellant's testimony, Appellant rested her case, and Hendrix also elected to testify in his own defense. (R. p. 430; p. 451). During his testimony, Hendrix – like Appellant – completely denied the allegations and claimed the children were not sexually assaulted. (R. pp. 454-455; p. 457). He further asserted Appellant spent most of her time with her children, he never observed anything inappropriate occur in his presence, the children always had food, and the home always had electricity and water. (R. pp. 455-456). Additionally, he denied using illegal drugs while living with Appellant and the children. (R. pp. 458-459). However, he conceded he had no idea what happened in the home after he moved out in December of 2012. (R. p. 453; pp. 456-457).

In addition to Hendrix's testimony, Mark Lusk, who was the children's biological father, and Luanne Queen, who was Hendrix's mother, testified for the defense. (R. p. 433; p. 461). During Lusk's testimony, Lusk indicated he never saw anything inappropriate occurring at Appellant's residence when Hendrix and the children were living there. (R. p. 435; p. 438). He further denied he ever sexually abused the children or witnessed anyone sexually abusing the children.[13] (R. pp. 445-446; p. 450). However, he acknowledged the condition of Appellant's home deteriorated after Hendrix moved out, and he asserted he asked Grandmother to take care of the children because there was not much food in the home, the home was messy, and the power and water to the home had just been cut off. (R. pp. 436-437; pp. 448-449). Furthermore, he stated he found a needle while working on a car at Appellant's residence one day approximately a month or two after Hendrix moved out, but he clarified he did not know whose it was and he indicated the car was used and had previous owners. (R. pp. 435-436; pp. 447-448). Similarly, during Queen's testimony, Queen indicated she interacted several times with

[13] During their trial testimony, Victim 1 and Victim 2 indicated Lusk did not witness any sexual abuse. (R. p. 174; p. 194).

Appellant, Hendrix, and the children, and she noted Appellant seemed attentive to the children and the children always seemed happy, appropriately nourished, and free of signs of physical abuse or injury. (R. pp. 462-465). Queen further indicated Appellant's house always appeared to be organized, clean, and appropriate for children. (R. p. 463).

Thereafter, Hendrix rested his case, and the State called Grandfather in reply. (R. p. 466; p. 468). During his testimony, Grandfather confirmed Lusk asked him to come and get the children because there was no food in Appellant's house, people were coming and going from that location, and Lusk was afraid the children would starve or be hurt if they were not removed from the home. (R. p. 470). He further stated he spoke with his daughter after she was arrested, and Appellant denied the charges. (R. pp. 470-471). However, Grandfather indicated Appellant further stated she was influenced by drugs if she had anything to do with the allegations and expressed remorse about missing warning signs regarding Hendrix. (R. p. 471; p. 473).

Subsequently, at the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury. (R. pp. 481-528). During Appellant's closing argument, defense counsel for Appellant asserted Appellant was not guilty of the charges and contended Appellant's family was attempting to use the criminal justice system to keep her away from the children. (R. p. 482; p. 497). Additionally, defense counsel focused the jurors' attention on the testimony of Lusk and Queen, and she noted Lusk classified Appellant as a fantastic mother while Queen testified she saw no evidence of abuse when she interacted with Appellant and the children. (R. pp. 486-487). Furthermore, relying upon Carlberg's testimony, defense counsel argued the expert testimony presented during trial supported a conclusion the children's testimony was coached in light of the fact their stories supposedly lacked consistency and never grew more detailed. (R. p. 489; p. 491; p. 496). Meanwhile, during Hendrix's closing argument,

defense counsel for Hendrix contended the alleged abuse either did not occur at all or occurred when Hendrix was not living with the children, and he asserted the correct determination was the abuse did not happen at all in light of the children's allegedly "unbelievable" stories. (R. pp. 498-499).

Following the closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 528-553). In doing so, the trial judge thoroughly instructed the jury on the State's burden of proving the defendants' guilt beyond a reasonable doubt and also charged the jury on joint trials. (R. pp. 530-535). Specifically, in regard to joint trials, the trial judge instructed:

> [T]here are two separate defendants in this case and multiple indictments. You're to consider each of these separately. The case of each defendant and the evidence and law concerning the defendant should be, you know, considered separately and individually, each indictment, as to each defendant.
>
> . . .
>
> You can find one defendant guilty and one not guilty. Your decision on one should not control your verdict on any other indictment or as to the other defendant. You are to consider each defendant and each indictment totally independently. They're not connected and should not sway you on one or the other.
>
> When more than one person is charged with a crime and the evidence warrants it, you may convict one and acquit the other. You can acquit on one indictment for one Defendant and acquit on the other. Again, it depends on what your view of the testimony and the evidence is.

(R. pp. 531-532).

Subsequently, at the conclusion of trial, the jury convicted both Appellant and Hendrix of all the indicted charges. (R. pp. 564-566). Following the verdict, the trial judge imposed aggregate terms of imprisonment of thirty-five years on Appellant and thirty-seven years on Hendrix. (R. pp. 572-573).

ARGUMENT

I.

The trial judge did not abuse his broad discretion by declining to redact portions of the children's forensic interview recordings depicting questions and responses in which the children indicated the things they had disclosed really happened and they had not been told what to say by anyone else because the recordings met the statutory requirements for admission and the portions the trial judge declined to redact did not improperly vouch for or bolster the children's testimony.

Appellant contends the trial judge committed reversible error by refusing to redact portions of the forensic interview recordings where the children were allegedly instructed to only talk about things that were real and where the children indicated the things they had disclosed really happened and they were not told what to say by someone else. In support of that contention, Appellant maintains those portions of the recordings were inadmissible because they improperly vouched for or bolstered the children's credibility. To the contrary, the trial judge did not abuse his discretion by declining to redact the portions of the forensic interview recordings depicting the questions and responses regarding whether the children were telling the truth and had been coached because those portions of the interviews in no way improperly vouched for or bolstered the credibility of the children. Instead, those portions of the recordings depicted appropriate questions and responses from the children as to whether they themselves believed the things they disclosed really happened and whether they were told what to say by another person. As those particular things were unquestionably within the children's own personal knowledge, it was entirely appropriate for them to discuss them during trial – as they did without objection – and during the forensic interviews. Similarly, the portions of the recording the trial judge declined to redact did not depict the forensic interviewer instructing one of the children to tell the truth before any disclosures were made and, instead, simply depicted the interviewer prefacing a question to one of the children with a comment about how the things

they talked about in the interview room were real at a point in the interview long after the child had disclosed the sexual abuse. Under those circumstances, none of the portions of the forensic interview Appellant contends should have been redacted suggested the forensic interviewer believed the children or had an opinion as to the children's credibility, and the unredacted portions did not vouch for or bolster the children's testimony in any way. Therefore, the trial judge did not abuse his discretion by declining to redact the challenged portions of the forensic interview recordings. Appellant's convictions should be affirmed.

Pursuant to South Carolina law, a recording of an out-of-court statement of a child under twelve years old is admissible during a criminal trial if the statement was made in response to questioning during a forensic interview, the child testifies during trial and is subject to cross-examination, and the trial judge preliminarily finds the circumstances surrounding the making of the statement provide particularized guarantees of trustworthiness. S.C. Code Ann. § 17-23-175. Thus, even though a minor victim's consistent out-of-court statement would ordinarily not be admissible during trial, our legislature has specifically authorized the admission of such a statement when certain conditions are met. State v. Russell, 383 S.C. 447, 451, 679 S.E.2d 542, 544 (Ct. App. 2009); see generally Rule 101, SCRE (stating South Carolina's evidentiary rules govern trial court proceedings in the state "[e]xcept as otherwise provided by rule or by statute").

When faced with a decision as to whether to admit or exclude evidence, a trial judge in South Carolina is vested with considerable discretion, and an appellate court will not reverse a trial judge's ruling on evidentiary matters, including matters involving the admission of forensic interview recordings, 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 Russell, 383 S.C. at 450, 679 S.E.2d at 543 ("The admission or exclusion of evidence is within the sound discretion

of the trial court and will not be disturbed on appeal absent a manifest abuse of discretion accompanied by probable prejudice."); see also 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."). "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).

In the case sub judice, the forensic interviews of children were recorded, and the children were all present to testify during trial and be available for cross-examination. Likewise, testimony was presented during an in limine hearing about the circumstances surrounding the minor victims' forensic interviews, and the trial judge reviewed each of the interview recordings. After hearing the testimony and reviewing the recordings, the trial judge concluded Victim 1's and Victim 2's out-of-court statements were admissible after finding they contained sufficient particularized guarantees of trustworthiness while Victim 3's out-of-court statement was not admissible because it did not contain the same trustworthiness guarantees. Under those circumstances, the trial judge conducted the appropriate statutory analysis to determine whether the interview recordings were admissible, and, based on his findings, the recordings of Victim 1's and Victim 2's interviews could properly be admitted during trial and played for the jury. See S.C. Code Ann. § 17-23-175 (mandating a forensic interview recording of a child under twelve years old is admissible if certain statutory conditions are met); see also State v. Whitner,

399 S.C. 547, 559, 732 S.E.2d 861, 867 (2012) ("Section 17-23-175 is a valid legislative enactment.").

Beyond making the appropriate statutory findings, the trial judge reviewed a number of proposed redactions presented by Appellant's defense counsel. Upon doing so, he agreed to redact certain portions of the recordings, including portions containing statements of the children regarding things other people had said to them. However, he rejected Appellant's defense counsel's requests to redact other matter, such as statements by the children about sexual abuse they personally observed. Furthermore, the trial judge declined to redact statements from the children indicating they had not been told what to say and the things they stated were real, and he further declined to redact a brief portion of one of the recordings in which Galloway-Williams prefaced a question to Victim 2 regarding whether what the child had already disclosed really happened by stating they only talked about things that were real in the interview room. (State's Ex. # 2; State's Ex. # 3; State's Ex. # 4). Notably, Galloway-Williams's remarks that prefaced the question were **not** made at the beginning of the interview but came long after Victim 2 had disclosed the sexual abuse. (State's Ex. # 2).

On appeal, Appellant contends the trial judge abused his discretion by declining to redact the portions of the recordings reflecting Galloway-Williams's questions and the children's responses regarding whether they were telling the truth during the interviews and whether they had been told what to say by others, which Appellant contends improperly bolstered the children's testimony. Importantly though, those statements were in no way inadmissible or improper. That is true because, while Galloway-Williams was unquestionably prohibited from vouching for the children's credibility or expressing an opinion in regard to whether she believed the children, the portions of the recordings Appellant sought to have redacted did **not** vouch for

or bolster the children's statements. Cf. State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) ("Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony. Vouching occurs when a prosecutor implies he has facts that are not before the jury for their consideration." (citation omitted)). Critically, Galloway-Williams's questions to the children did not indicate she believed the children in any way and, instead, suggested she thought it was necessary under the circumstances to attempt to have them personally affirm whether the things they had disclosed to her had actually happened, which certainly would not imply to the jury she believed the children's statements. Cf. 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). Similarly, Galloway-Williams did not offer any testimony or statements about the method she used to interview the children, about any conversations she had with the children about the importance of telling the truth prior to them making their statements, or about her personal beliefs regarding the children's credibility. See State v. Anderson, 413 S.C. 212, 221, 776 S.E.2d 76, 80 (2015) ("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. . . . 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."). Likewise, the children were not precluded in any way from personally commenting on whether they themselves were telling the truth or had been coached by another person as those matters fell within their own personal knowledge, and, thus, their responses to the questions regarding whether they were coached or had disclosed real events were not improper. See Rule 602, SCRE ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. **Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony**." (emphasis added)); see also State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 500 (2013) (explaining a witness is generally not allowed to testify about whether **another** witness is telling the truth); Shuler, 344 S.C. at 631, 545 S.E.2d at 819 (rejecting the contention the solicitor's questioning of a witness was improper and explaining the solicitor's act of asking the witness if he was telling the truth "did nothing more than reference what Jones agreed to do when he was sworn by the clerk before testifying"). In fact, both Victim 1 and Victim 2 testified during trial **without objection** they had not been coached and were telling the truth, which meant the portions of the recordings reflecting the same thing were entirely cumulative to the children's own trial testimony and could not have been prejudicial to Appellant and her co-defendant even assuming they somehow should have been redacted. See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence.").

Under those circumstances, none of the portion of the forensic interview recordings played for the jury bolstered the children's testimony or suggested Galloway-Williams believed the victims, vouched for the children's credibility, affirmed the children had been instructed to be truthful, or held an opinion on the children's believability or truthfulness. See Kromah, 401 S.C.

at 358, 737 S.E.2d at 500 (instructing testimony indicating a child was told to be truthful, offering an opinion on a child's veracity, indirectly vouching for the child's believability, indicating a compelling finding of abuse was made, suggesting the interviewer believed the child, or offering an opinion the child's behavior indicated the child was telling the truth should be avoided); see also Whitner, 399 S.C. at 565, 732 S.E.2d at 870 (Pleicones, J., concurring) ("[T]here is no basis for an improper bolstering argument when [a child victim's] prior testimony is admitted pursuant to § 17-23-175."). As a result, the trial judge did not abuse his discretion in allowing the forensic interview recordings to be admitted and played for the jury, and the admission of those recordings resulted in no improper prejudice to Appellant. See Russell, 383 S.C. at 450, 679 S.E.2d at 543 (instructing a decision regarding whether to admit or exclude evidence of a forensic interview recording will not be disturbed on appeal unless the decision constitutes a manifest prejudicial abuse of discretion). Appellant's convictions should be affirmed.

II.

The trial judge committed no error in qualifying a witness as an expert and permitting her to testify on child abuse dynamics, including in regard to delayed disclosure, grooming, and coaching, because the witness was 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, and met a threshold level of reliability. Furthermore, to the extent Appellant is arguing on appeal the witness's expert testimony should not have been admitted for a reason other than the witness was not personally qualified to testify as an expert witness based on the fact she was not licensed as a professional counselor in South Carolina, Appellant's arguments were not properly preserved for appellate review because they were never raised to the trial judge.

Appellant contends the trial judge erred in qualifying Carlberg as an expert and permitting her to testify in regard to child abuse dynamics, including in regard to delayed disclosure, grooming, and coaching. In support of that contention, Appellant maintains Carlberg's expert testimony was inadmissible because she was not personally qualified as an expert and the subject matter of her testimony was not outside of the common knowledge of the jurors, was unreliable, and bolstered or vouched for the testimony of the minor victims. Initially, to the extent Appellant is arguing Carlberg's testimony was inadmissible for a reason other than Carlberg was not licensed as a professional counselor in South Carolina, Appellant's arguments are not properly preserved for appellate review because she never presented them to the trial judge.[14] As a result, those arguments should not and cannot be considered for the first time on appeal. However, regardless of any issue preservation concerns, Carlberg's testimony regarding child abuse dynamics was properly admitted during trial because Caldwell was personally qualified as an expert witness based upon her education, knowledge, training, and experience,

[14] Notably, while Hendrix's defense counsel generally contended he had "serious questions" about whether child abuse dynamics was a proper field of expertise in objecting to Carlberg's testimony, Appellant's defense counsel did **not** join in that objection and, thus, cannot properly rely upon it on appeal in challenging the trial judge's ruling on the expert testimony. See State v. Carriker, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) ("While [Carriker]'s co-defendant did object, [Carriker] may not utilize the objection of another defendant to gain review."); see also State v. Nichols, 325 S.C. 111, 123, 481 S.E.2d 118, 124 (1997) ("[T]he remaining issues raised by [Nichols] are not preserved for review since [Nichols] failed to object during trial or join in his co-defendant's objection.").

she 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 the evidence presented during trial, her testimony met a threshold level of reliability, and her testimony did not improperly vouch for or bolster the minor victims' testimony. As a result, Carlberg's testimony satisfied all the requirements for it to be admitted as proper expert testimony. For those reasons, the trial judge did not abuse his broad discretion in qualifying Carlberg as an expert and in admitting her testimony during trial. Appellant's convictions should be affirmed.

"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. Myers, 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 State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009) ("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.

Significantly, trial judges have considerable discretion in determining whether to admit or exclude expert testimony and other 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. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); see White, 382 S.C. at 269, 676 S.E.2d at 686 ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."); 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."). "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." Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

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 Anderson, 413 S.C. at 218, 776 S.E.2d at 79 ("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)); 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 the minor victims did not immediately disclose the sexual abuse inflicted upon them by Appellant and her co-defendant but, instead, delayed disclosing that abuse until roughly eight or nine months after they moved in

with their grandparents. Similarly, based on the testimony elicited by defense counsel, an issue was raised during trial in regard to whether the minor victims had been coached into making the allegations against Appellant and her co-defendant.[15] Furthermore, the children's testimony about the abuse revealed actions consistent with grooming. Based on the presentation of that testimony, expert testimony was needed in Appellant's case to educate the jury in regard to different dynamics related to child sexual abuse, such as disclosure, coaching, and grooming, in order for the jury to be able to appropriately consider and evaluate the evidence presented during trial, and those different dynamics involved 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 regarding child abuse dynamics, 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 generally 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 child abuse dynamics 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).

[15] Specifically, during their cross-examination of the children, Appellant's defense counsel elicited testimony regarding whether Grandmother had positioned dolls when discussing the sexual abuse with Victim 2 and Hendrix's defense counsel elicited testimony regarding the improvements to Victim 1's life that had taken place after he and his siblings moved in with their grandparents. (R. pp. 169-171; p. 191). Furthermore, defense counsel for both of the defendants elicited testimony regarding the minor victims' trial preparations. (R. pp. 172-173; p. 185; p. 210).

Beyond the necessity of the expert testimony in Appellant's case, Carlberg, the expert offered by the State, was personally qualified to testify as an expert in the field of child abuse dynamics as she possessed specialized knowledge regarding the behavior of juvenile victims of sexual abuse, including in regard to the disclosure process, coaching, and grooming, based on her education, knowledge, training, and experience. Specifically, Carlberg had an educational background related to counseling through her master's degree in marriage and family therapy, had participated in and conducted training on forensic interviewing over the course of the last fifteen years, had been working directly with children for approximately eighteen years, had been conducting forensic interviews for roughly fifteen years, had personally conducted **2,826 forensic interviews** of children, was a licensed professional counselor in Mississippi, had completed approximately 2,000 hours of supervised work, had previously been qualified as an expert witness on twenty-five prior occasions, and had personally observed and encountered delays in disclosures and evidence of coaching during her many years of conducting forensic interviews in child sexual abuse 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."). As a result, Carlberg 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 child abuse dynamics 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, Carlberg'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 the minor victims' failure to immediately disclose what had been done to them following the sexual abuse, to the disclosure process exhibited by the minor victims, and to the possible grooming and coaching that may have occurred. 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 Carlberg was personally qualified to testify as an expert in regard to child abuse dynamics.

Likewise, in addition to Carlberg being personally qualified to testify as an expert, Carlberg's testimony on the subject matter of the disclosure process, grooming, and coaching 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 education and training related to sexual 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)); see also Brown, 411 S.C. at 345, 768 S.E.2d at 253 (finding the trial judge committed no error in admitting expert testimony regarding child abuse dynamics). Moreover, behavioral science evidence, including behavioral science evidence related to 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); Sampson v. State, 38 N.E.3d 985, 992 (Ind. 2015) (finding testimony related to the signs of coaching to be admissible in cases where the defendant opens the door to such testimony); 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); State v. Henley, 281 Or. App. 825, 831, 386 P.3d 126, 130 (Or. Ct. App. 2016) (holding the trial judge properly admitted expert testimony on sexual grooming in general and

noting the subject matter of grooming is not within the average person's common knowledge); Morris v. State, 361 S.W.3d 649, 668 (Tex. Crim. App. 2011) (concluding grooming is something that does occur and holding a properly-qualified witness can testify about grooming); 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 Carlberg'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, Carlberg's testimony did **not** improperly bolster or vouch for the minor victims' credibility or result in any undue or unfair prejudice to Appellant. Specifically, Carlberg, who had no personal experience with the victims, did not testify she believed the victims, the victims had actually been sexually abused, the victims were telling the truth, the victims' behavior suggested they were telling the truth, or the victims' disclosures were 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); Kromah, 401 S.C. at 360, 737 S.E.2d at 500 (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). Instead, Carlberg simply provided educational testimony to the jury regarding different dynamics of sexual abuse while specifically affirming she had no idea whether Appellant and her co-defendant's minor victims had delayed disclosure, had been coached, or had been groomed. Cf. State v. Jones, 417 S.C. 319, 335, 790 S.E.2d 17, 26 (Ct. App. 2016) (holding expert testimony regarding the general behavioral characteristics of child sexual abuse victims 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"). Thus, Carlberg did not improperly bolster or vouch for the credibility or believability of the minor victims, and the probative value of her testimony, which was very high in light of the evidence presented regarding the circumstances surrounding the sexual abuse and the children's delayed disclosures, outweighed any potential for undue or unfair prejudice. 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 and 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 Carlberg's expert testimony.

In challenging the trial judge's decision to qualify Carlberg as an expert and admit her testimony, Appellant contends on appeal the trial judge should not have admitted the expert testimony because the subject matter of Carlberg's testimony was not beyond the common knowledge of the jury, Carlberg was not personally qualified to testify as an expert witness, the subject matter of her testimony was not reliable, and her testimony improperly bolstered or vouched for the testimony of the minor victims. Importantly though, notwithstanding the fact Appellant's appellate contentions are meritless for all the previously-stated reasons, Appellant did **not** raise such contentions to the trial judge. Instead, in objecting to Carlberg's testimony during trial, Appellant's defense counsel merely argued Carlberg was not qualified as an expert due to the fact she was not licensed as a professional counselor in South Carolina, which in no way precluded Carlberg from being qualified to testify as an expert, while raising several

objections to specific portions of her testimony.[16] See 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."). Significantly, because Appellant did not raise her appellate challenges to Carlberg's testimony during trial, Appellant is precluded from doing so for the first time on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (holding a party cannot argue one ground in support of a motion during trial and then another ground in support of the motion on appeal); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."). Therefore, Appellant's appellate arguments regarding the expert testimony were not preserved for appellate review, and they cannot appropriately be raised or addressed for the first time on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) ("It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal."); State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**." (emphasis added)); cf. State v.

[16] Specifically, defense counsel for Appellant asserted: "I would say she's not qualified. But I'd also -- I'm also concerned. She doesn't seem to be licensed in South Carolina. And I think there's a minimum of two thousand hours of supervised clinical experience in the practice of professional counseling that have to be picked up, performed over a minimum two-year period in South Carolina. So I don't think that she qualifies." (R. p. 337).

Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) (declining to address one of the grounds raised on appeal in support of Adams' mistrial motion when it was never presented to the trial judge).

In conclusion, the trial judge properly qualified Carlberg 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 Carlberg's expert testimony on the subject of child abuse dynamics. 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.

III.

The trial judge did not abuse his broad discretion by denying Appellant's motion for severance because the allegations raised against Appellant and her co-defendant involved related and connected criminal conduct committed jointly by the pair, which made a joint trial a far more practical and justifiable way of trying their cases under the circumstances, and because no unfair or undue prejudice resulted to Appellant as a result of the joint nature of the trial.

Appellant contends the trial judge abused his discretion by denying her severance motion and refusing to try her separately from her co-defendant. In support of that contention, Appellant maintains the severance motion should have been granted because her defense allegedly conflicted with the defense of her co-defendant and because her co-defendant elicited harmful testimony that was not otherwise elicited by the solicitor, which she contends somehow shifted the burden of proof away from the State. To the contrary, a joint trial was warranted under the circumstances because Appellant and her co-defendant were alleged to have sexually abused the minor victims together, which made trying them together the most efficient and practical course of action. Additionally, Appellant did not suffer any actual unfair prejudice as a result of the joint trial because her defense was consistent with the defense raised by her co-defendant and because no inadmissible or improper evidence was introduced as a result of the joint trial. Furthermore, the trial judge's instructions to the jury in regard to the State's burden of proof and joint trials insured none of Appellant's rights were compromised by the joint trial.. Accordingly, the trial judge did not abuse his broad discretion by denying the severance motion. Appellant's convictions should be affirmed.

In South Carolina, criminal defendants indicted for connected crimes are not entitled to separate trials as a matter of right and ordinarily may be jointly tried together. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); see also United States v. Chorman, 910 F.2d 102, 114 (4th Cir. 1990) ("Barring 'special circumstances,' the general rule is that defendants

indicted together should be tried together." (citation omitted)). In fact, joint trials are preferred due to the vital role they play in the criminal justice system. Zafiro v. United States, 506 U.S. 534, 537 (1993); see also State v. Dennis, 337 S.C. 275, 282, 523 S.E.2d 173, 176 (1999) (recognizing the principles espoused by the United States Supreme Court in regard to joint trials are fully consistent with South Carolina law); see generally Kansas v. Carr, __ U.S. __, 136 S. Ct. 633, 645 (2016) ("Joint proceedings are not only permissible but are often preferable when the joined defendants' criminal conduct arises out of a single chain of events."). Specifically, joint trials are vital because they promote efficiency in the administration of justice. Zafiro, 506 U.S. at 537. Likewise, joint trials serve the interests of justice by avoiding inconsistent verdicts, preventing inequity, and enabling more accurate assessments of relative culpability in cases involving multiple defendants, which may operate to the advantage of some defendants. Richardson v. Marsh, 481 U.S. 200, 210 (1987).

However, even though joint trials are generally preferred, severance is warranted when there is a serious risk a joint trial would compromise a specific trial right of one of the defendants or prevent the jury from making a reliable judgment about guilt or innocence. Zafiro, 506 U.S. at 539; see United States v. Smith, 44 F.3d 1259, 1266 (4th Cir. 1995) ("[P]rejudice [warranting severance] may be shown **only** where there is a 'serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.' " (citation omitted and emphasis added)). Situations in which a joint trial might potentially be improper include: (1) when prejudicial evidence that would not be admissible against one defendant is admitted against a co-defendant; (2) when there is a marked difference in the degrees of culpability between different defendants; and (3) when essential exculpatory evidence would be available to a defendant only if he or she was tried

alone. Zafiro, 506 U.S. at 539. Importantly though, "less drastic measures, such as limiting instructions, often will suffice to cure any risk of prejudice" that might result from a joint trial. Id.; see Hughes, 346 S.C. at 559, 552 S.E.2d at 317 ("A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial."). Moreover, "defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials." Zafiro, 506 U.S. at 539; see State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005) ("The rule allowing joint trials is not impugned simply because the codefendants may present evidence accusing each other of the crime.").

In ruling on a motion for severance, a trial judge is vested with broad discretion. Nichols, 325 S.C. at 122, 481 S.E.2d at 124. When seeking severance, a criminal defendant bears an "exacting" burden and must make a strong showing to the trial judge prejudice would result from a joint trial. United States v. Martinez, 922 F.2d 914, 922 (1st Cir. 1991). Significantly, a trial judge should **only** grant severance when there is a serious risk a joint trial would compromise a specific trial right of one of the defendants or prevent the jury from reliably determining the guilt or innocence of one of the defendants. Hughes, 346 S.C. at 559, 552 S.E.2d at 317.

On appeal, a trial judge's decision regarding a motion for severance will not be reversed without a showing of a prejudicial abuse of discretion. Dennis, 337 S.C. at 282, 523 S.E.2d at 176. Such an abuse of discretion will only be found when the trial judge's denial of a motion for severance deprives the defendant of a fair trial and results in miscarriage of justice. Chorman, 910 F.2d at 114. Furthermore, an appellate court will not reverse a conviction achieved at a joint trial absent the presence of a reasonable probability the defendant would have obtained a more favorable result at a separate trial. Hughes, 346 S.C. at 559, 552 S.E.2d at 317; see also

Martinez, 922 F.2d at 922 ("We add that 'prejudice means more than just a better chance of acquittal at a separate trial.' " (citation omitted)).

In Appellant's case, the minor victims alleged Appellant and her co-defendant jointly sexually abused them while both Appellant and her co-defendant denied the sexual abuse ever occurred. In denying the sexual abuse, Appellant and her co-defendant both claimed they never sexually abused the children or witnessed the other sexually abusing the children, and, thus, Appellant's and her co-defendant's defenses were consistent, supportive of one another, and in no way mutually antagonistic. Beyond that, no improperly or unfairly prejudicial evidence was admitted during the course of the joint trial that would have been inadmissible against either one of them during a separate trial. Likewise, in light of the fact the children accused both defendants of perpetrating the sexual abuse against them together, there was not a marked difference in the degrees of culpability between Appellant and her co-defendant, and neither defendant was prevented from introducing essential exculpatory evidence that would have only been available if they had been tried individually. Under those circumstances, a joint trial was the most efficient and practical way to try Appellant and her co-defendant for their jointly-committed crimes, was fully warranted, and was necessary to avoid the needless repetition of the same evidence, including the testimony of minor victims, in multiple trials. See Dennis, 337 S.C. at 282-283, 523 S.E.2d at 176 (finding the trial judge properly denied a severance motion despite the fact Dennis's defense involved accusing his co-defendant of the charged crime where the State was alleging Dennis and his co-defendant jointly participated in the crime, the trial judge gave a cautionary instruction, and neither defendant was able to identify a specific trial right prejudiced by the joint trial); see also Zafiro, 506 U.S. at 539 (instructing joint trials are preferred and recognizing situations in which one might be improper typically occur when

prejudicial evidence that would not be admissible against one defendant is admitted against a co-defendant, when there is a marked difference in the degrees of culpability between different defendants, or when essential exculpatory evidence would be available to a defendant only if he or she was tried alone); cf. State v. Stuckey, 347 S.C. 484, 497, 556 S.E.2d 403, 410 (Ct. App. 2001) ("[H]ad the court granted the motions, the resulted would been multiple presentations of the State's entire case, including the lengthy testimony of the two primary witnesses[.]").

In arguing to the contrary, Appellant contends she should have been tried separately because her defense supposedly conflicted with her co-defendant's defense and because her co-defendant elicited testimony harmful to her that was not introduced by the solicitor. Initially, despite Appellant's contention to the contrary, her defense did **not** conflict with her co-defendant's defense as both claimed they did not sexually abuse the children and did not see the other sexually abuse the children. Therefore, their defenses were simply not in conflict or mutually antagonistic and, instead, were unified, which was beneficial to each of the defendants as the jury was presented with consistent denials from both of the accused parties. See Dennis, 337 S.C. at 282-283, 523 S.E.2d at 176 (recognizing mutually antagonistic defenses generally involve each defendant accusing the other of the charged crime); see also Zafiro, 506 U.S. at 538 ("Mutually antagonistic defenses are not prejudicial per se."). Likewise, Appellant suffered no unfair or improper evidentiary prejudice as a result of the trial. Critically, that is true because much of the testimony presented by Appellant's co-defendant as part of his defense was highly beneficial to Appellant's defense, including Lusk's characterization of Appellant as an excellent mother, Lusk's denial of witnessing any abuse, and Queen's claims regarding the appropriate condition of the children, Appellant, and Appellant's home, while the testimony Appellant contends was prejudicial, such as the testimony from Lusk regarding the condition of Appellant's

home, was not inadmissible in any way, shape, or form. As a result, to the extent Appellant suffered any evidentiary prejudice as a result of the joint trial, the prejudice suffered was the appropriate prejudice that results from the admission of admissible and probative evidence of guilt, which would not serve as a proper basis upon which to grant a motion for severance. 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)); see also State v. Kelsey, 331 S.C. 50, 74, 502 S.E.2d 63, 75 (1998) ("At most, any prejudice was incidental and therefore insufficient to demonstrate an abuse of discretion on the part of the trial court in denying severance."); cf. Zafiro, 506 U.S. at 540 ("[A] fair trial does not include the right to exclude relevant and competent evidence. A defendant normally would not be entitled to exclude the testimony of a former codefendant if the district court did sever their trials, and we see no reason why relevant and competent testimony would be prejudicial merely because the witness is also a codefendant.").

Because a joint trial was warranted based on the connected and related nature of the allegations raised in the case and because Appellant suffered no actual unfair prejudice as a result of the joint trial, the trial judge did not abuse his broad discretion in denying Appellant's severance motion after considering the circumstances before him. See State v. Page, 406 S.C. 272, 284, 750 S.E.2d 623, 630 (Ct. App. 2013) (finding no abuse of discretion occurs when a trial judge bases a determination on whether to permit a joint trial upon just and proper consideration of the particular circumstances presented); see also United States v. Becker, 585

F.2d 703, 707 (4th Cir. 1978) ("Speculative allegations as to possible prejudice do not meet the burden of showing an abuse of discretion in denying a motion for severance."). Likewise, as the trial judge presented an appropriate cautionary instruction to the jury regarding the joint nature of the trial while also thoroughly instructing the jury on the State's burden of proof, the joint nature of the trial did not result in the burden of proof shifting to Appellant or in the trial becoming fundamentally unfair. See State v. Halcomb, 382 S.C. 432, 442, 676 S.E.2d 149, 154 (Ct. App. 2009) ("The trial court's cautionary instruction . . . helped protect Halcomb's rights and ensured that no prejudice resulted from the joint trial with Cottrell."); see also Foye v. State, 335 S.C. 586, 590, n.1, 518 S.E.2d 265, 267 (1999) ("A jury is presumed to follow instructions."); State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975) ("It is the duty of jurors to take the law from the court in the particular case on trial. It must be presumed that they do so."). Accordingly, 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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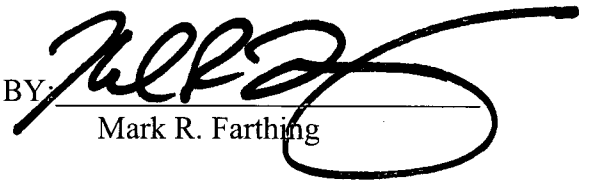
BY: 
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August 25, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2016-000243

THE STATE,

Respondent,

vs.

STACY CAROL RIDEN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies 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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