STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable James R. Barber, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD DEWAYNE POWELL,

APPELLANT

APPELLATE CASE NO 2016-001574

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting the testimony a blind expert in "child abuse and sexual abuse dynamics" where there was not sufficient evidence to show that the substance of her testimony was reliable?

STATEMENT OF THE CASE

On April 19, 2016, the Greenville County Grand Jury returned indictments against Appellant Gerald Powell for one count of criminal sexual conduct with a minor, first degree, and one count of lewd act upon a child. R. 252.

On July 18-19, 2016, Powell appeared for trial before the Honorable James R. Barber and a jury. R. 1. Powell was represented by John Erwin and Stuart Sarratt, and the state was represented by assistant solicitor Elizabeth Major. R. 1.

The jury returned a verdict of guilty on both charges. R. 245 – 246. Judge Barber sentenced Powell to concurrent terms of twenty-five years and fifteen years. R. 249 – 250.

This appeal follows.

ARGUMENT

The trial court erred in admitting the testimony a blind expert in "child abuse and sexual abuse dynamics" where there was not sufficient evidence to show that the substance of her testimony was reliable.

Introduction

The state attempted to bolster its feeble case against Powell, which was based solely upon the testimony of his disgruntled, former step-daughter (hereinafter "Minor"), with testimony from a "blind expert" in "child abuse and sexual abuse dynamics." The expert called was Shauna Galloway-Williams, executive director of the Julie Valentine Center, which provides services related to child abuse and sexual assault in Pickens and Greenville counties. Following an *in camera* hearing, defense counsel objected to the admission of Galloway-Williams' testimony based on a lack of reliability. He noted that the studies relied upon by Galloway-Williams accepted the participants' reports "at face value" and lacked any ability to verify that any of them were really the victims of abuse. R. 165, l. 15 – 166, l. 8. The trial judge overruled the objection, finding that there was "sufficient data that will allow her to offer opinions" and noting that she had been qualified as an expert in the proffered field "on a number of occasions in South Carolina." R. 166, ll. 9-18. Counsel renewed his objection before the jury, but the judge qualified Galloway-Williams as an expert in "child abuse and sexual abuse dynamics." R. 179, l. 5 – 180, l. 10.

Relevant Facts

Minor had a compelling motive to lie about her allegations of sexual abuse against Powell – she believed that Powell was responsible for the death of her half-sister, Jessica Farina, but the jury before which he was tried for that offense found Powell not guilty. Neither Minor nor her mother/Powell's ex-wife, Cindy Mullinax (hereinafter "Cindy"), hid their animosity

toward Powell. R. 84, ll. 1-3; R. 87, ll. 16-21; R. 90, l. 21 – 91, l. 5-11; R. 119, ll. 2-18; R. 131, l. 12 – 132, l. 2. Yet, defense counsel did not theorize that Cindy and Minor concocted this story together, and laid in wait for almost two years to unleash it. Rather, counsel more reasonably asserted that Minor lied about the alleged abuse to her step-brother and did not know how to take it back. Minor justified her refusal to admit that it was a lie by telling herself that Powell deserved to be punished for Jessica's death. Further, to ensure that Powell would receive what was tantamount to a life sentence, she made an additional allegation that Powell not only touched her vagina, but also performed cunnilingus on her. Defense counsel argued that Cindy was unwilling to defend Powell, who she knew never abused Minor, because she believed that Powell was responsible for Jessica's death and deserved to be in prison. R. 218, l. 11 – 220, l. 17. Powell testified in his own defense and denied committing any sexual act upon Minor. R. 197 – 202.

To fully understand this case, one has to look back to 1987 when Cindy and her first husband, John Farina, had a daughter, Jessica. At fifteen months old, Jessica contracted viral encephalitis, resulting in severe developmental delays. She became wheel chair bound and required total care for showering, diaper-changing, feeding and administering medicine. Jessica attended a special needs school, the Washington Center, during the day until she was twenty-one years old. R. 64, l. 16 – 66, l. 6; R. 67, ll. 2-11; R. 70, ll. 8-18. Following her divorce from Farina, Cindy had a three to four year marriage to John Digatora, and then married Minor's father, Alan Mullinax (hereinafter "Alan"), in 1998. R. 66, ll. 7-18. Minor was born in 2000. R. 66, ll. 19-23. Cindy and Alan separated in 2005 and eventually divorced in 2007 or 2008. R. 67, l. 12 – 68, l. 17. At the end of 2007, Cindy met Powell at a bar where she waitressed part-time. They married on September 12, 2008, and once Jessica aged-out of the Washington Center,

Powell began caring for her at home. R. 64, ll. 9-12; R. 68, l. 18 – 70, l. 21; R. 72, l. 4 -25; R. 78, l. 14 – 79, l. 2.

On January 27, 2012, Jessica died after receiving a lethal dose of methadone, which was prescribed to Powell. Powell was arrested and charged with abuse of a vulnerable adult, but found not guilty after a trial in March 2013. R. 79, l. 22 – 84, l. 7. Cindy admitted that she remained very angry at Powell because he "killed [her] daughter." R. 84, ll. 1-3. Minor was eleven years old when Jessica died. Minor also expressed her belief that Powell killed Jessica and deserved to be punished. R. 112, l. 11 – 115, l. 1; 119, ll. 2-18; R. 120, ll. 1-3; R. 131, l. 17 – 132, l. 2.

Though Cindy never suspected Powell of abusing Minor, when Powell was arrested for Jessica's death, Cindy asked Minor if Powell had ever "touched her." Minor said "no." R. 79, ll. 3-21; R. 84, l. 11 – 85, l. 3; R. 90, ll. 14-18. It was not until January 27, 2015, that Minor's step-mother, Michelle Mullinax, told Cindy about Minor's allegations of sexual abuse. R. 84, ll. 8-10; R. 85, l. 4 – 87, l. 7; R. 118, ll. 1-21; R. 154, ll. 10-25. Cindy said that her first thought upon hearing Minor's allegations of sexual abuse was to "buy a shotgun." R. 87, ll. 16-21. A few days prior, Minor had gone to stay with Alan and Michelle because of an argument she had with Cindy. Minor was in the driveway talking to her older step-brother about regaining your parent's trust when she said to him: "What if I told you my step-dad touched me inappropriately?" R. 85, l. 19 – 86, l. 13; R. 115, l. 11 – 116, l. 3. Minor's step-brother then went into the house and told Michelle, who told Alan. R. 116, l. 4 – 117, l. 25; R. 144, l. 24 – 146, l. 7; R. 151, l. 16 – 154, l. 9. They eventually involved law enforcement, first going to Lexington County where Powell resided and then to Greenville County where the abuse was alleged to have occurred. R. 146, l. 8 – 147, l. 21; R. 155, ll. 6-18.

Minor told the officer that Powell began touching her vaginal area when she was seven or eight years old. She alleged that the first time it occurred was before Cindy and Powell were married, in the master bedroom of the home they lived in on Lakeland Drive. According to Minor, she and Powell were on the bed watching a movie when he put his hand down her pants and rubbed her vagina for five to ten minutes. Minor said that Cindy was in the same room but did not see what was happening because Powell's back was to her. R. 96, l. 11 – 98, l. 11; R. 112, ll. 2-10. That was the only time that Minor recalled being touched at the Lakeland Drive house. R. 100, ll. 2-4. Minor alleged that when they moved into the West Chase Apartments and in their subsequent homes at Pheasant Ridge and Hunting Downs, Powell would touch her several times a week during the time between when she came home from school and Cindy returned from work. Minor said that Powell never penetrated her and she never saw him naked or touched him. R. 100, l. 5 – 102, l. 4; R. 104, l. 4 – 106, l. 2; R. 107, l. 3 – 110, l. 20 ; R. 126, ll. 5-24. Minor reviewed and signed a written statement prepared by the officer, initialing by each individual paragraph. R. 52, l. 22 – 55, l. 3; R. 123, l. 17 – 125, l. 20.

It was not until she was preparing for trial in February 2016 that Minor made an additional allegation that Powell once performed cunnilingus on her. R. 102, ll. 5-24; R. 127, l. 5 – 129, l. 22. Powell's trial was postponed and in preparing for the reset trial, Minor again changed her statement, retracting that anything occurred when they lived in a house at Pheasant Ridge. Notably, another child rode home from school with Minor while she lived at that location, making it one of the weakest allegations. R. 106, l. 3 – 107, l. 2; R. 120, l. 16 – 121, l. 13; R. 129, l. 23 – 130, l. 20. Thus, at trial, Minor alleged that Powell touched her once at the Lakeland Drive house, then multiple times per week at the West Chase Apartments, stopped

when they moved briefly to a hotel and into a house at Pheasant Ridge, and resumed when they moved to an apartment at Hunting Downs. R. 96, l. 7 – 110, l. 20; R. 122, l. 4 – 126, l. 24.

In light of Minor's changing story and strong motive to lie, the prosecutor wanted to present testimony from Shauna Galloway-Williams, as a "blind expert" in "child abuse and sexual abuse dynamics" to bolster Minor's testimony. Galloway-Williams is a licensed professional counselor and served on various boards related to child advocacy in addition to her position as executive director of the Julie Valentine Center. R. 158, l. 15 – 159, l. 25. Her testimony focused on three areas – the factors contributing to delayed disclosure of child sexual abuse, the role of the "non-offending caregiver," and symptoms of trauma. R. 180, l. 18 – 185, l. 25. During the *in camera* hearing, Galloway-Williams said that she had over 180 hours of "skills based training related to assessment and intervention with children," primarily focused upon child abuse and child sexual assault. R. 160, ll. 1-10. Through that training, she said that she was "familiar" with current, peer-reviewed research in that area. R. 160, ll. 11-21. Galloway-Williams said that she also participates "in peer-review" and "a multi-disciplinary team" and teaches in the child advocacy studies program at the University of South Carolina Upstate. R. 160, l. 24 – 161, l. 2. Galloway-Williams had been qualified as "an expert in child abuse dynamics" over thirty times. R. 161, ll. 15-19.

Defense counsel questioned Galloway-Williams about the facts and data she was relying upon on cross-examination. See Rule 705, SCRE. Galloway-Williams admitted that there is no way to determine whether someone was truly abused. However, she averred that in "many of the studies, many of the participants have been identified as those who have been abused" by either indicated findings of sexual abuse in a social services case or because the case has "gone through the legal process." R. 162, l. 2 – 163, l. 2. Presumably, she meant that there was a guilty plea or

guilty verdict related to abuse. Galloway-Williams admitted that other studies rely on "self-report." R. 163, ll. 3-5. Regarding the sample sizes of the studies, she responded: "It depends on the study. I mean, they're different studies. Some have larger sample sizes than other[s], it really depends on which studies we're looking at." R. 163, ll. 19-24. Galloway-Williams said that there are many different journals, but that two peer-reviewed journals she relies upon are "Child Maltreatment" and "The Journal of Child Abuse and Neglect." R. 163, l. 25 – 164, l. 24. When asked if her testimony was relying upon any specific study or just the general body of research, she responded: "Yeah, just in general. I mean, there are a number of articles and there's a lot of information. My testimony is based not only on my experience and – but also my education which includes my formal education as well as my continuing education." R. 164, l. 25 – 165, l. 7.

The prosecutor moved to qualify Galloway-Williams as an expert, which defense counsel opposed. R. 165, l. 12 – 166, l. 8. Counsel argued:

> I don't question her training and experience as to the subject matter that she's testifying to **but I would object to reliability** which is the final prong of the [Council] factors under Rule 702. I mean, this isn't scientific evidence, as she said. There's no control that we can test this against. And certainly the case law doesn't say if it's not scientific it's not admissible. **But this Court is required to serve its gatekeeping function and determine what evidence is true and reliable. Without any kind of quality control measure. And again, just taking the participants at face value that they say they have been abused. There's no real way to ensure that we're dealing with a – with proper sample size of people who have been abused. And there's no way to test for reliability. And so therefore, I just feels that this fails to meet that standard of what 702 requires of [Council] factor of reliable testimony.**

R. 165, l. 15 – 166, l. 8 (emphasis added). The trial judge qualified Galloway-Williams as an expert over objection, ruling: "I'm going to find that she's qualified in a definitive scientific method or [has] other specialized knowledge to assist the triers of the fact to understanding any issues." R. 166, ll. 9-12. "I've heard her experience, training, skills and I find that she's an

expert. She's clearly had the educational and experience background and I think the -- there is sufficient data that will allow her to offer opinions." R. 166, ll. 12-17. The judge further noted: "She's been qualified as an expert in this filed on a number of occasions in South Carolina." R. 166, ll. 17-18. Defense counsel renewed his objection when Galloway-Williams was offered as an expert before the jury. R. 179, l. 5 – 180, l. 10.

Galloway-Williams told the jury that "delayed disclosure" is "what occurs when a child or adult does not disclose abuse directly after it has happened. Doesn't make an outcry immediately." R. 181, ll. 9-12. Regarding the factors that contribute to delayed disclosure, she said that "[o]ne of the most common factors is fear." R. 181, ll. 14-16. That fear can be of what may happen to them or to the person who they accuse. R. 181, ll. 17-18. She opined that other factors include the child's relationship with "the offender;" the accused's relationship with other family members; an inability to describe the conduct because of a lack of sexual knowledge or vocabulary; the child's feelings that they are responsible for what happened; and shame, guilt or embarrassment. R. 181, l. 18 – 182, l. 23. Regarding what may prompt disclosure, Galloway-Williams opined that "there may be a number of things," including accidental disclosure, being directly asked by an adult who notices some "concerning behavior," a progression in the child's understanding of what happened, a desire to protect another child, a change in the family situation, or an increase in the child's feelings of confidence or safety. R. 182, l. 24 – 183, l. 19. She said that being away from the abuser can make the child feel safer or more empowered to tell what happened, and that the longer they have been away, the safer they feel. Additionally, if they fear resuming contact with the person, that may compel a child to tell. R. 183, l. 20 – 184, l. 8. Galloway-Williams did not mention any research conducted on the rates of false accusations or the motives for making false accusations, such as attention-seeking and revenge.

Her testimony next turned to the role of the "non-offending caregiver." Galloway-Williams said that "[t]hey can be the most important person in this child's life and healing process." R. 184, ll. 9-16. She opined that, typically, the initial response is denial. Following the denial "phase," she said "we hope that caregivers move beyond that and do the right thing and protect their child by making reports and keeping them safe and keeping them away from the person who has committed this act." R. 184, l. 17 – 185, l. 4.

Finally, Galloway-Williams discussed the definition of and possible symptoms of "trauma." She defined "trauma" as "our response to traumatic events, life threatening events[, s]uch as car accidents or abusive incidents such as physical abuse or sexual abuse or witnessing another traumatic event that someone has gone through, sudden death, a sudden loss." R. 185, ll. 5-11. Regarding the symptoms that one may display after trauma, she said:

> There are lot[s] of symptoms. Oftentimes someone who has experienced a trauma may relive the event over and over. They may do that by having recurring nightmares, recurring thoughts, they may be hypervigilant, they can't calm down, they may be anxious about it, in fear. Certain things may trigger them or may remind them of the incident that occurred. With children we tend to see a lot of regressed behavior. So, if we have a child that was already potty trained, they may regress and no longer be potty trained. We may see bed wetting, children's grades may drop. We may see them display play anger, fear and anxiety.

R. 185, ll. 12-25.

On cross-examination, Galloway-Williams agreed that the timing of disclosure would not determine whether or not someone was actually abused. R. 186, ll. 20-25. However, she maintained that while some children will report abuse immediately, "the vast majority delay reporting." R. 186, ll. 10-12. She qualified that the delay could be days, weeks, or years, but asserted "we know that many adults led into their adult life without ever reporting to anyone." R. 186, ll. 13-19.

In her closing argument, the prosecutor argued:

> Ladies and gentlemen, [Minor] did not tell while this was going on. You heard from Ms. Galloway-Williams. And the purpose of her testimony was to explain to you [things] that may seem counterintuitive, somebody backs up and tells them stop. And if they don't stop would go and get somebody and tell them to stop, an adult. And she didn't do that. The purpose of Ms. Galloway-Williams' testimony was to explain to you things that seemed counterintuitive. **She explained to you why children may not tell. They feel it's their fault, [they're] scared, [they're] embarrassed. They know that telling may ruin the family dynamics.**
>
> **And you heard [Minor] basically say those same things.** The Defendant threatened her. He threatened to hurt her mother. **She was scared of him.** She had seen his temper. **She didn't think that people would believe her.** And, ladies and gentlemen, **she probably felt the pressure**. She probably knew how much her mother relied on him to be that warm body at the house that could be there with Jessica. And [Minor], 7, 8, 9, 10 year old is going to ruin that?

R. 225, l. 9 – 226, l. 6 (emphasis added). Thus, the solicitor ultimately revealed the actual intended purpose of Galloway-Williams' testimony – to mirror the testimony of Minor and bolster Minor's otherwise incredible testimony.

Discussion

Rule 702, SCRE, provides: "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." In Watson v. Ford Motor Co, 389 S.C. 434, 699 S.E.2d 169 (2010), our Supreme Court specified the three-prong test that must be considered by the trial judge before allowing the jury to hear expert testimony:

> First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. **Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.**

Id. at 446, 699 S.E.2d at 175 (emphasis added).

In State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999), our Supreme Court held that "[w]hen admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." Subsequently, in State v. White, 382 S.C. 265, 273, 676 S.E.2d 684, 688 (2009), our Supreme Court made clear that "[t]he familiar tenet of evidence law that a continuing challenge to evidence goes to 'weight, not admissibility' has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability." Thus, the Court ruled that both scientific and nonscientific expert testimony must satisfy Rule 702, SCRE, both in terms of expert qualifications and reliability of the subject matter. White, 382 S.C. at 273, 676 S.E.2d at 688; see also State v. Tapp, 398 S.C. 376, 388, 728 S.E.2d 468, 474 (2012) ("[T]he expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined *prior* to determining the reliability of the testimony." (emphasis in original)).

In State v. Kromah, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013), our Supreme Court warned that the qualification of "expert" should be "jealously guarded" because of the reality that many jurors place significant weight on the testimony of someone so qualified. Even experts who are properly qualified are not permitted to offer an opinion regarding the credibility of others. Id. at 358, 737 S.E.2d at 499. The Kromah Court wrote: "It is undeniable that the primary purpose for calling a 'forensic interviewer' as a witness is to lend credibility to the victim's allegations. When this witness is qualified as an expert the impermissible harm is

compounded." Id. Because the pervasiveness of prosecutors' attempts to use forensic interviews to bolster their cases, the Court provided examples of "the kinds of statements that a forensic interviewer should avoid at trial":

> [T]hat the child was told to be truthful; a direct opinion as to a child's veracity or tendency to tell the truth; **any statement that indirectly vouches for the child's believability**, such as stating the interviewer has made a 'compelling finding" of abuse;' any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or **an opinion that the child's behavior indicated the child was telling the truth.**

Id. at 360, 737 S.E.2d at 500 (emphasis added).

Our Supreme Court addressed the qualification of an expert in child abuse dynamics in State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), which focused on the reliability element of White. Appellate counsel in Chavis argued that the "child abuse assessment" label and other similar titles were simply ways of getting around the holdings of State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2009), State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), and State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011). The Chavis Court found that one of the witnesses should not have been qualified as an expert because there was no evidence that her conclusions or impressions taken from the forensic interviews she conducted were accurate and her only peer review was another interviewer reviewing her work to ensure she was using the RATAC protocol.[1] 412 S.C. at 107-08, 771 S.E.2d at 339. The Court wrote: "While we agree Mrs. Elliot has extensive experience and training, we find that there is insufficient evidence demonstrating Mrs. Elliott's *individual reliability*." Id. at 107, 771 S.E.2d at 339 (emphasis added). The Court explained that "evidence of mere procedural consistency does not ensure reliability without some evidence

[1] The Court also found the testimony of the other so called "expert" that the child should not be allowed around Chavis anymore, for any reason, could only be interpreted as the "expert" believing the victim's claim that Chavis sexually abused her. Chavis, 412 at 109, 771 S.E.2d at 340. Thus, it was likewise inadmissible.

demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies." Id. at 108, 771 S.E.2d at 339.

Appellant recognizes that this Court found that expert testimony on "child abuse dynamics" and delayed disclosures was not improper in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), *cert. denied* Aug. 6, 2015. However, the reliability of the testimony was not raised in Brown. See also State v. Barrett, 416 S.C. 124, 785 S.E.2d 387 (Ct. App. 2016), *cert. granted* Mar. 24, 2017 (holding that under the specific facts of the case, there was no error in qualification of a "child sexual abuse characteristics" expert, but with no discussion of reliability). Further, Appellant avers that the Brown Court interpreted Kromah too narrowly. The intent of Kromah and the line of cases that preceded it was to limit opinions vouching for the credibility of witnesses. The state has simply renamed forensic interviewers as experts in spurious fields like "dynamics of child sexual abuse" in order to admit testimony that invades the province of the jury.

In State v. Anderson, 413 S.C. 212, 221 n. 6, 776 S.E.2d 76, 80 n. 6 (2015), our Supreme Court noted: "Since the [forensic] interviewer is not an expert . . . she cannot testify to 'issues of delayed reporting.' This improper expression of expert opinion by a lay witness is prohibited by Rules 602 and 701, SCRE." While Anderson may authorize the calling of an "independent expert" who did not examine the child to testify as to behavioral characteristics of child abuse victims, even such an expert must meet the threshold requirements, including qualification "by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE.

This Court did recently uphold the admission of similar testimony by Galloway-Williams' testimony in State v. Jones, 417 S.C. 319, 790 S.E.2d 17 (Ct. App. 2016), *cert.*

pending, despite challenges to both the subject matter and reliability of her testimony. Even if further appellate review does not result in reversal in Jones, it is notable that Galloway-Williams provided much more testimony regarding the underlying research relied upon to support her testimony in Jones than she did here. Compare Jones, 417 S.C. at 332-33, 790 S.E.2d at 24, with R. 162, l. 2 – 165, l. 7. Here, there was no specificity regarding the research relied upon other than a general reference to "Child Maltreatment" and "The Journal of Child Abuse and Neglect." Even studies published in those journals had admittedly varied sample sizes and no means of verifying that its participants were actually victims of child sexual abuse beyond possible social services or court findings. Thus, like the "expert" in Chavis, there was no evidence that Galloway-Williams' statements and conclusions were reliable. Further, in the present case the solicitor direct linked Galloway-Williams' testimony to the credibility of Minor during her closing argument. R. 225, l. 9 – 226, l. 6.

In analyzing prejudice, it is notable that, as is often the case, Minor's testimony was the sole evidence against Powell. The credibility of the witnesses was essential in this case, as there was no physical evidence or other corroboration of Minor's claims. See State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016), reh'g denied (July 15, 2016) (holding that the jury charge that the victim's testimony need not be corroborated was not amenable to harmless error analysis where case "hinged on credibility"). The mirroring of Galloway-Williams' testimony to match that of Minor, as was argued in the solicitor's closing, served no purpose other than to show that Minor's behavior was consistent with that of a victim of child abuse, such that she should be believed. See Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) ("Improper corroboration testimony that is ***merely cumulative to the victim's testimony***, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper

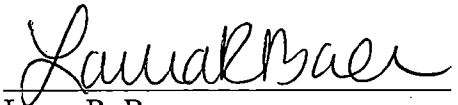
corroboration.") (emphasis in original). Thus, the improper admission of Galloway-William's testimony, which served to bolster Minor's testimony prejudiced Powell.

Because there was no evidence of the reliability of Galloway-Williams' testimony, the court failed to properly execute its gatekeeping function by qualifying her as an expert in "child abuse and sexual abuse dynamics." Powell is accordingly entitled to a new trial.

CONCLUSION

Based on the foregoing, Appellant Gerald Dewayne Powell respectfully requests that this Court reverse his convictions and sentences and grant him a new trial.

Respectfully submitted,



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This 21st day of September, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 20014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 21, 2017

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