THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2017-002605

The State,

Respondent,

v.

Bryant Christopher Gurley,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

Jack B. Swerling
1720 Main Street, Suite 301
Columbia, South Carolina 29201
Telephone: 803-765-2626
South Carolina Bar number 5457

Katherine Carruth Goode
229 South Congress Street
Post Office Box 1175
Winnsboro, South Carolina 29180
Telephone: 803-799-4440
South Carolina Bar number 8951

Attorneys for Petitioner

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CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, counsel for Petitioner certifies that a petition for rehearing was made by Petitioner and finally ruled on by the Court of Appeals.

QUESTIONS PRESENTED

1. Did the trial court err in qualifying the complaining witness's counselor as an expert and in admitting the counselor's testimony?

2. Did the trial court err in allowing rebuttal testimony, which was not responsive to any evidence introduced by the defense and which was improper character evidence?

3. Did the trial court err in allowing testimony of the mother of the complaining witness that exceeded the limitation on admission of out-of-court statements of alleged victims of sexual assault, except as to time and place?

4. Should Petitioner be granted a new trial based on the cumulative prejudice from the multiple errors of the trial court and the resulting denial of a fair trial?

STATEMENT OF THE CASE

Petitioner, Bryant Christopher Gurley, was indicted in Florence County in 2013 on a charge of committing a lewd act upon a child under the age of 16, pursuant to former S.C. Code Ann. § 16-15-140. App. pp. 5-6. He was tried by a jury in Florence County General Sessions Court January 26-29, 2015, Judge William Seals, Jr., presiding. App. p. 8. He was found guilty, and Judge Seals sentenced him to eight years' imprisonment. App. pp. 7, 301-02, 304.

Petitioner appealed, raising four claims of error and an additional claim of cumulative prejudice. Final Brief of Appellant, p. 1. The Court of Appeals reversed his

conviction, finding reversible error as to one issue (Issue I) and one aspect of another issue (Issue 2) raised by Petitioner on appeal. App. pp. 311-19, 398-405. The Court of Appeals did not address the remaining issues and arguments asserted by Petitioner in Issues 2, 3, 4, and 5. App. pp. 319-330.

The state filed a petition for rehearing in the Court of Appeals. Petitioner also sought rehearing, asking the Court of Appeals to decide the issues raised by Petitioner but not ruled upon by the Court of Appeals. App. pp. 428-29. By order dated November 22, 2017, the Court of Appeals denied both petitions for rehearing. App. pp. 431-32.

ARGUMENT AND AUTHORITIES

This case arose from allegations first made by a child in 2013, when she was eight years of age, that several years earlier Petitioner had touched her "privates" with his hand on several occasions. The incidents were alleged to have occurred during a period of time when the child, her mother, and her older sister were living in the home of Petitioner's father, stepmother, and stepbrother, on occasions when Petitioner, who was then a teenager and living with his mother, was visiting.

The child's trial testimony about the alleged incidents was inconsistent with her earlier statements made in a forensic interview. Although she claimed there were four incidents and stated in the forensic interview that one was in the bedroom, at trial she denied having said an incident occurred in the bedroom and she could not say where the alleged fourth incident occurred. App. p. 92; State's Exhibit 1. The child's trial testimony was also inconsistent with her counselor's testimony that the child described only three incidents. App. pp. 114, 117. The child's testimony was also starkly inconsistent with the testimony of her mother, sister, and grandmother concerning the

circumstances surrounding one of the alleged incidents, which the child claimed occurred in a car. The car incident was alleged to have occurred on an occasion when the child's mother drove herself, her daughters, and Petitioner to her mother's house in Lake City. App. pp. 20, 24-28, 30-31, 83-86. The child testified only the mother got out of the car and went inside, and the incident occurred while she, her sister, and Petitioner stayed in the car. App. pp. 85-86. The mother, sister, and grandmother contradicted this account, stating that everyone went inside and that, when they returned to the car to leave, the child refused to get in, became upset, and cried. App. pp. 20, 24-28, 30-31. The officer who took the initial report of the allegations and interviewed the mother did not include in his written report that the child was crying and had to be forced into the car, as these witnesses testified at trial. App. pp. 39, 41.

The child's testimony was also contradicted by defense witnesses who testified that Petitioner could not have been present for one incident alleged to have occurred during holidays because of where the family spent their holidays. App. pp. 203-07, 237-38, 259, 268-70, 281-82, 285. The defense also presented evidence to demonstrate that the other incidents could not have occurred in the manner described by the child. App. pp. 201-03, 235-36, 262-63, 271-72, 276, 278-79, 286-87.

Over defense objections, the trial court admitted into evidence a video recording of a forensic interview of the complaining witness. The Court of Appeals found reversible error as to the admission of this evidence. App. pp. 402-03. The trial court also allowed testimony from the child's counselor, as to which the defense raised numerous objections. The Court of Appeals found reversible error as to one aspect of the counselor's testimony – her response to questioning about coaching. App. pp. 404-05.

Because the state is seeking certiorari review of these rulings, Petitioner respectfully asks this Court, if it grants the state's petition for a writ of certiorari, to also grant this petition and address the remaining issues not decided by the Court of Appeals.

I. THE TRIAL COURT ERRED IN QUALIFYING THE CHILD'S COUNSELOR AS AN EXPERT AND IN ADMITTING THE COUNSELOR'S TESTIMONY.

The state introduced the testimony of a counselor who had been seeing the child since May 2013 and was still seeing the child as of the trial in January 2015. App. pp. 112, 121. The defense objected to her testimony on multiple grounds, including that it was improper bolstering. App. p. 101. Over defense objections, the counselor was qualified as an expert in "child sexual trauma" and allowed to testify generally concerning child victims of sexual assault, delayed disclosure, and indicators a child can give to show sexual abuse has occurred. App. pp. 101, 106-11. Over a hearsay objection, she was allowed to testify concerning information contained in unspecified "studies" of behavior of children who are victims of child sexual abuse. App. p. 107.

However, this witness did not testify exclusively about child victims of sexual abuse in general. Rather, she testified concerning her sessions with ***this particular child***, her methodology in eliciting information from the child, the child's account of the alleged incidents, and her opinions about the information provided by the child, in particular that the child had not been coached. App. pp. 112-17. The defense asserted numerous objections to this testimony. It objected that the testimony was improper bolstering. App. p. 101. It objected because the witness would be testifying to her own interaction with the child, would be explaining the child's testimony piece by piece, and would be getting into the statements the child had made. App. p. 101. It objected to testimony about the child's statements in the counseling sessions because the statements had not

been recorded in accordance with S.C. Code Ann. § 17-23-175. App. p. 101. It objected to testimony that this child's experience is typical of child victims, which would be highly prejudicial. App. p. 105.

The defense also objected to any testimony from this witness about post-traumatic stress disorder. App. pp. 54-58, 101. Over the defense's objections, the witness, who was a "licensed professional counselor" but not a medical doctor, psychiatrist, or licensed psychologist, was allowed to testify that she had diagnosed the child with "adjustment disorder with anxiety and depression with traits of PTSD, post-traumatic stress disorder," a diagnosis she testified was something normally seen in victims of sexual assault. App. pp. 57, 101, 103, 119-20. The defense also objected to this aspect of the witness's testimony because the state did not provide the defense with information concerning its expected use of an expert in this area until the week before trial, and the defense was thereby deprived of an opportunity to procure a rebuttal expert. App. pp. 104-05.

On appeal, Petitioner raised a multifaceted claim of error with respect to the qualification and testimony of this witness. The Court of Appeals addressed one facet of the issue, the improper testimony elicited in response to questioning about coaching, but the Court of Appeals did not address Petitioner's challenge to the qualification of the counselor as an expert and the admission of her testimony in its entirety. Petitioner seeks review of the additional facets of this claim of error, in the event this Court grants a writ of certiorari to the state.

A. Improper bolstering with opinion as to child's truthfulness.

The first facet of Petitioner's argument of this issue pertained to the witness's testimony on the subject of coaching that improperly bolstered the child's credibility.

The Court of Appeals correctly decided this aspect of Petitioner's claim of error with respect to the counselor's testimony. App. pp. 404-05.

B. Improper qualification as expert and additional improper bolstering.

In addition to the improper testimony in answer to questioning about whether the child had been coached, the remainder of the witness's testimony was inappropriate and inadmissible for a number of reasons. First, the witness should not have been qualified as an expert. Under certain circumstances, testimony concerning the characteristics of child victims of sexual abuse and delayed disclosure is not a proper subject of expert testimony and improperly bolsters the child's credibility. *See* Rule 702, SCRE; *State v. Anderson*, 413 S.C. 212, 218-19, 776 S.E.2d 76, 79 (2015). In this case, the admission of the counselor's testimony was erroneous and should be reversed, because the circumstances of the case and of the counselor are outside the parameters for proper expert testimony, as articulated by the Court of Appeals in *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), and endorsed by this Court in *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015). Although the counselor was qualified as an expert on sexual abuse trauma and allowed to testify generally about child victims of sexual abuse, her involvement in the case and her testimony concerning ***this particular child*** went far beyond what *Brown* found to be admissible testimony from such an expert.

In *Brown*, the Court of Appeals upheld the admission of testimony by an expert on "child abuse dynamics and delayed disclosures." The Court of Appeals rejected an argument that the witness's testimony improperly bolstered the victims' testimony, based on the fact that the witness "never interviewed the victims and had no knowledge of the facts of the case beyond her discussions with the solicitor's office prior to trial." *Brown*,

411 S.C. at 344, 768 S.E.2d at 252. In this case, however, the person offered by the state as an expert had ***extensive*** involvement with the case and the child. She had been the child's counselor for a year and eight months and was still the child's counselor at the time of trial. App. pp. 112, 121. She had met the child the Friday before trial and testified the child was afraid to come to trial and talk. App. p. 122. She had reviewed the police report. App. p. 118. In the counseling sessions, she had questioned the child about what had occurred and had elicited the child's statement through drawings and verbal descriptions of the alleged incidents. App. pp. 113-14, 117. After testifying about what the child told her, the counselor opined that the child might not remember the specific details, drawing a comparison to people who have suffered severe trauma, but then stated the child "did not seem to block things out" and reiterated "[s]he was very consistent." App. p. 122. Unlike the expert who testified in *Brown*, this counselor was intricately and intimately involved with this child, had interviewed her repeatedly over a year-and-eight-month course of counseling sessions, and had extensive knowledge of the case and the details of the allegations.

In *Anderson*, this Court also recognized the potential for improper vouching where the person offered as an expert was involved with the child:

> The better practice, however, is not to have the individual who examined the alleged victim testify, but rather to call an independent expert. To allow the person who examined the child to testify to the characteristics of victims runs the risk that the expert will vouch for the alleged victim's credibility.

See Anderson, 413 S.C. at 218-19, 776 S.E.2d at 79. Here, that very problem occurred. This counselor testified concerning the characteristics of child victims of sexual abuse with reference to the behaviors that ***this child*** manifested and the "symptoms that she

presented with," as described by the child and her mother and as observed by the counselor. App. pp. 23, 110, 119-20. She referenced the account of the alleged incidents given by ***this child***, and she even described the specifics of the child's statements and testified concerning the "very detailed" and "very consistent" nature of the child's statements. App. 116-17, 122.

In *Brown*, the Court of Appeals also found that the expert testimony did not improperly bolster the victim's testimony because the witness "never commented – directly or indirectly – about the credibility of the victims' allegations or testimony, nor did she make any of the statements prohibited by our supreme court in *Kromah*." *See Brown*, 411 S.C. at 344, 768 S.E.2d at 252, *citing State v. Kromah*, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013). Here, the counselor ***did*** comment on the credibility of the child, stating the reasons she believed the child was not coached and further stating she did not seem to have difficulty remembering the alleged incidents and was very consistent. App. pp. 116-17, 122. She expressed her opinion as to a diagnosis, made outside her field of expertise, that the child suffered from "adjustment disorder with anxiety and depression with traits of PTSD" and her further opinion that this diagnosis was normally seen in victims of sexual assault, a further comment on the credibility of the complaining witness. App. p. 120. Under these circumstances, unlike the admissible testimony in *Brown*, the testimony of this counselor was wholly inappropriate bolstering of the child and highly prejudicial to Petitioner. The court erred in qualifying the child's counselor as an expert and in admitting her testimony in its entirety.

C. Non-compliance with S.C. Code Ann. § 17-23-175.

The witness's testimony about the pictorial statements of the child and the child's additional verbal statements to the counselor concerning the alleged incidents was also inadmissible under S.C. Code Ann. § 17-23-175. These out-of-court statements were not preserved with an audio and visual recording of the statements, as required by Section 17-23-175(A). Nor did the trial court conduct the required analysis, under Section 17-23-175(F), of an electronically unrecorded out-of-court statement made by a child to a professional in his professional capacity. After the defense objected on the basis that the statements were unrecorded, App. p. 101, the court failed to conduct the proper analysis under sub-part (F) of the statute and failed to make the requisite findings under each factor and, in particular, whether the statements possessed particularized guarantees of trustworthiness, in order to find the child's out-of-court statements to the counselor admissible under Section 17-23-175(F). Having failed to conduct the required analysis, the court erred in admitting the counselor's testimony concerning the statements.

D. Resulting prejudice.

The errors in admitting the counselor's testimony were highly prejudicial and not harmless. As noted above, *supra* pp. 2-3, the child's allegations were not contemporaneous with the alleged incidents. The state's evidence was not strong. The only inculpatory evidence against Petitioner was the testimony of the child. There was no corroborating physical evidence and no testimony from any eyewitness concerning the allegations. Indeed, according to the child, her college-aged sister was ***present in the car*** when one of the incidents was alleged to have occurred, but the sister did not testify in corroboration of the child's account. In fact, the sister, mother, and grandmother

contradicted the particulars of the child's account of the incident in the car, undermining the child's credibility. Moreover, defense witnesses testified to the circumstances that existed on the occasions of other alleged incidents, circumstances that prevented those incidents from having occurred as the child alleged. The case depended entirely on whether the jury believed the child, and her credibility was questionable on many levels – the internal inconsistency of her own statements and the contradiction of those statements by both prosecution and defense witnesses. The counselor's improper opinion testimony that bolstered the child's credibility and the comparison of the child's behavior to other child victims of sexual abuse told the jury, repeatedly, that the child was telling the truth. The impact of this improper bolstering was even greater because it was done under the imprimatur of an expert. Where the case against Petitioner was extremely weak, the effect of qualifying the counselor as an expert and admitting her testimony was not harmless but reversible error. If the Court grants the state's petition for writ of certiorari, it should also grant this petition, reverse as to both the counselor's qualification as an expert and the admission of her testimony, and remand for a new trial.

II. THE TRIAL COURT ERRED IN ALLOWING REBUTTAL TESTIMONY, WHICH WAS NOT RESPONSIVE TO ANY EVIDENCE INTRODUCED BY THE DEFENSE AND WHICH WAS IMPROPER CHARACTER EVIDENCE.

Petitioner's father testified as a defense witness. During his testimony, he described several occasions when the child's mother was using his truck after she and the child had moved from his residence to a hotel room. He indicated that sometimes she came to pick him up and the child was not with her, the mother having left the child in the hotel room, and he would tell the mother she should not do that. App. p. 211.

At the close of the defense's case, the state sought to call two rebuttal witnesses, one of whom had been the child's teacher the previous year. App. p. 290. The state sought to have the teacher testify about the child and the child's mother, ostensibly in rebuttal to the comment of Petitioner's father, above, but clearly also in order to dispel the implication from other testimony during the trial that the child's mother may have stolen things from the family and lied about certain matters. App. p. 291. The state claimed the testimony was relevant to the fact that she is a good mother and took excellent care of her child. App. p. 291. The state said the witness would testify that the child was an excellent student, never got in trouble, was well cared for, was always clean, and was always prepared and that her mother was attentive and participated in the child's activities. App. p. 290. The defense argued this testimony was not proper rebuttal because there was no testimony concerning anything related to the school or the child being clean and the other testimony the state said it would elicit, and the only proper rebuttal of Petitioner's father's testimony would be to elicit evidence that the mother did not leave the child alone. App. p. 292. The defense contended testimony the state proposed to introduce was improper character evidence. App. p. 292. The court allowed the testimony. App. p. 292.

The teacher took the stand and proceeded to bestow accolades on both the child and the mother, painting a picture of a sweet, hard-working student who always did what she was supposed to do and who never got in trouble and further painting a picture of the perfect parent who was involved in the class, came to birthdays and brought treats, helped with parties, and did whatever the teacher needed; who signed everything that needed to be signed; and who was attentive to how the child was doing in school. App. pp. 294-95.

She described the good parent/teacher relationship she had with the mother and provided details concerning the mother's participation in the child's schooling. App. pp. 295-96. She testified she never thought the mother neglected the child. App. p. 296.

This testimony was inadmissible character evidence – both with respect to the child and with respect to the mother. No evidence was presented by the defense to attack the character of the child, but the teacher was allowed to describe the child in the most complimentary of terms. Generally, character evidence is not admissible, except as provided in Rule 404 of the South Carolina Rules of Evidence. The only exceptions applicable to an alleged victim are contained in Rule 404(a)(2). The relevant part of Rule 404(a)(2) allows "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same." Here, where the accused did not offer ***any*** evidence of a character trait of the child, the teacher's testimony about the child could not be evidence "by the prosecution to rebut the same." *See* Rule 404(a)(2), SCRE.

Nor did the defense introduce any character evidence about the mother. The only character evidence about the mother was elicited by the state, which presented evidence of the mother's extensive criminal history, including two convictions for breach of trust with fraudulent intent, three forgery convictions, a conviction for failure to return rented objects, and convictions for bank fraud and fraudulent checks. App. pp. 10-11. The evidence the state introduced through the teacher did not rebut any fact about which Petitioner's father testified. Rather, the teacher's testimony was pure character evidence, inadmissible under the rules of evidence pertaining to character evidence.

Rule 404(a)(3) of the South Carolina Evidence Rules allows evidence of the character of a witness, as provided in Rules 607, 608, and 609. Only Rule 608, which pertains to evidence of a witness's character for truthfulness or untruthfulness, is relevant to the issue presented here. The state asserted and the court found that the defense put the mother's character for truthfulness in issue. If this finding were correct, this rebuttal testimony offered by the state is not within the requirements of Rule 608(a), which provides "evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." The rebuttal testimony of the child's teacher was not "evidence of truthful character" allowed by Rule 608(a). Rather, it was evidence designed to convey to the jury that the child's mother was a good person and a good mother, a purpose not allowed by the rules pertaining to character evidence. As the defense correctly argued, this evidence was not proper rebuttal of the testimony of Petitioner's father, and it should not have been admitted.

The evidence was prejudicial. The state's evidence was not strong, resting exclusively on the testimony of the child. The child's credibility was very much an issue for the jury, and the defense had pointed out the many inconsistencies in the child's account of what she claimed had occurred and the contradictions of her account by her mother, sister, and grandmother and by defense witnesses. There was no corroboration of her account, except for improper corroborating and bolstering evidence on the video recording in the statement of the forensic interviewer that Petitioner "broke the rules" (the admission of which was reversed by the Court of Appeals) and the additional improper corroborating, bolstering evidence elicited from the child's counselor. The last

evidence the jury heard before beginning its deliberations was the teacher's improper testimony with respect to the character of both the child and the mother. This improper rebuttal evidence was offered by the state to enhance its case and its chances of obtaining a guilty verdict. The evidence played to the jury's prejudices, invoking sympathy for the child and mother. The evidence likely influenced the jury to reach a guilty verdict on the basis of that sympathy, rather than upon the evidence that was relevant and probative of Petitioner's guilt or innocence. The court's ruling allowing this improper character evidence cannot be deemed harmless.

III. THE TRIAL COURT ERRED IN ALLOWING TESTIMONY OF THE CHILD'S MOTHER THAT EXCEEDED THE LIMITATION ON ADMISSION OF OUT-OF-COURT STATEMENTS OF ALLEGED VICTIMS OF SEXUAL ASSAULT, EXCEPT AS TO TIME AND PLACE.

During the examination of the child's mother, the defense objected to testimony concerning statements the child had made to her. App. p. 19. The court overruled the objection, under the place and time exception to the hearsay rule. App. p. 20. The witness then testified concerning what the child had described. Exceeding the scope of the exception for such testimony as to time and place only, the witness testified Petitioner went into the room to the child. App. p. 21. The defense again objected on hearsay grounds, because the witness had gone beyond time and place. App. p. 21. The state contended the witness was testifying from her own personal knowledge, and the court allowed the testimony on this basis. App. p. 22. When the testimony resumed, the witness stated that her testimony was based on what she saw herself "as she [the child] explained them to me" and remembering "everything she was explaining to me." App. pp. 22-23. This testimony, based on ***what the child had explained to her***, was improper bolstering hearsay testimony.

The rule against hearsay prohibits admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies. *See* Rules 801(c), 802, SCRE; *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 263 (2001); *Jolly v. State*, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994). Where the alleged victim of a sexual assault testifies and is subject to cross-examination, evidence that she reported the alleged assault may be introduced to corroborate her testimony, but such evidence is strictly limited to time and place. *See* Rule 801(d)(1)(D), SCRE; *Smith v. State*, 386 S.C. 562, 566, 689 S.E.2d 629, 631-32 (2010); *Dawkins*, 346 S.C. at 156, 551 S.E.2d at 263; *Jolly*, 314 S.C. at 20, 443 S.E.2d at 568; *State v. Barrett*, 299 S.C. 485, 486-87, 386 S.E.2d 242, 243 (1989). The details and particulars of the assault set forth in the prior statement are inadmissible. *Smith*, 386 S.C. at 566, 689 S.E.2d at 632; *Dawkins*, 346 S.C. at 156, 551 S.E.2d at 263; *Jolly*, 314 S.C. at 20, 443 S.E.2d at 568; *Barrett*, 299 S.C. at 486-87, 386 S.E.2d at 242; *Vail v. State*, 402 S.C. 77, 85, 738 S.E.2d 503, 507 (Ct. App. 2013). The details other than time or place are not allowed because such evidence impermissibly corroborates the victim and bolsters her credibility. *Smith*, 386 S.C. at 567, 689 S.E.2d at 632; *Jolly*, 314 S.C. at 21, 443 S.E.2d at 569; *Barrett*, 299 S.C. at 487, 386 S.E.2d at 242.

This witness's testimony that Petitioner went into the bedroom to the child was clearly based on what the child told the mother and clearly exceeded the limitation as to time and place. The mother's own testimony established that it was premised on ***what the child explained to her.*** Her claim that she then remembered the occasion after hearing what the child said does not negate the fact that her testimony also informed the jury the child had stated Petitioner came into the bedroom where she was. This is the very kind of corroboration testimony prohibited under the limitation as to time and place.

It was highly prejudicial because no other testimony or corroborative evidence tended to establish an incident in the bedroom, and the child herself gave inconsistent accounts with respect to an incident in the bedroom. Admission of this bolstering testimony was error, and the error was not harmless. As is more fully discussed above, *supra* pp. 2-3, 9-10, the state's case was weak and turned entirely on the credibility of the child, whose account was contradicted by her own statements, the testimony of other prosecution witnesses, and the evidence offered by the defense. The improper evidence that bolstered the child's credibility was prejudicial, not harmless.

IV. PETITIONER IS ENTITLED TO A NEW TRIAL BASED ON CUMULATIVE PREJUDICE FROM THE MULTIPLE ERRORS COMMITTED BY THE TRIAL COURT AND THE RESULTING DENIAL OF A FAIR TRIAL.

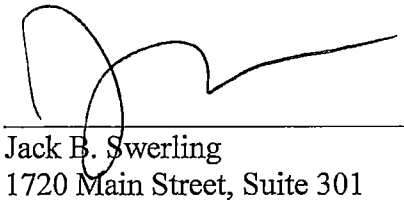
As argued above, each of Petitioner's claims of error was prejudicial and cannot be deemed harmless in light of the weakness of the state's case. However, if this Court finds error with respect to all or some of the issues argued above but finds that no single error sufficiently prejudiced Petitioner that it undermined his right to a fair trial, it should nonetheless find that the cumulative effect of the errors was so prejudicial as to deprive Petitioner of the fairness required by due process. *See* U.S. Const. amends. V, XIV; S.C. Const. art. I, § 3; *State v. Blurton*, 342 S.C. 500, 512-13, 537 S.E.2d 291, 297-98 (Ct. App. 2000) (finding cumulative effect of improper comments in closing argument and erroneous exclusion of certain evidence warranted reversal), *rev'd on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002) (finding additional error with respect to a jury charge); *State v. Freeman*, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct. App. 1995) (reversing conviction based on combined effect of court's limitation of cross-examination and court's improper comments interjected during the trial).

The cumulative error doctrine requires reversal when multiple errors, deemed insignificant or harmless in isolation, in combination prevent the defendant from receiving a fair trial and affect the outcome of his trial. In this case, where there was no physical evidence and no proper corroborative evidence, the outcome depended entirely on the credibility of the complaining witness. The trial court admitted improper evidence to corroborate the child's testimony and to bolster her credibility, rulings challenged in this appeal. The court also allowed improper character evidence with respect to both the child and her mother and allowed improper bolstering testimony through the child's out-of-court statements to her mother. If this Court finds no single error was sufficiently prejudicial to warrant reversal, it should review the prejudicial effect of the errors in combination. The multiple trial errors viewed together so tainted these proceedings that they deprived Petitioner of a fair trial. If this Court grants the state's petition for a writ of certiorari, it should also grant this petition and address all the claims of error raised by Petitioner in this appeal, reverse based on those errors and the resulting prejudice from those errors, alone or in combination, and grant Petitioner a new trial.

CONCLUSION

For the reasons set out above, if this Court grants the state's petition for writ of certiorari, it should also grant Petitioner's petition, reverse the rulings of the circuit court that were not decided by the Court of Appeals, and grant Petitioner a new trial.

Respectfully submitted,



Jack B. Swerling
1720 Main Street, Suite 301
Columbia, South Carolina 29201
Telephone: 803-765-2626
South Carolina Bar number 5457

Katherine Carruth Goode
229 South Congress Street
Post Office Box 1175
Winnsboro, South Carolina 29180
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South Carolina Bar number 8951

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PROOF OF SERVICE

I hereby certify that I have served the Petition for Writ of Certiorari upon respondent, by mail to its counsel of record, Assistant Attorney General William M. Blitch, Jr., Post Office Box 11549, Columbia, South Carolina 29211, on January 8, 2018.

Jack B. Swerling
1720 Main Street, Suite 301
Columbia, South Carolina 29201
Telephone: 803-765-2626
South Carolina Bar number 5457
Attorney for Petitioner

Law Offices of
Jack B. Swerling

1720 Main Street, Suite 301
Columbia, South Carolina 29201

Telephone 803-765-2626
Fax 803-799-4059

January 8, 2018

VIA HAND-DELIVERY
The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RE: The State v. Bryant Christopher Gurley
Appellate Case No.: 2017-002605

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the Petition for Writ of Certiorari, along with the Proof of Service, in the above referenced matter.

By copy of this letter, I am serving William M. Blitch, Jr., Assistant Attorney General, with a copy of same.

If you have any questions, do not hesitate to contact me.

Very truly yours,

Jack B. Swerling

JBS/kas
Enclosures

cc: Clerk of Court, South Carolina Court of Appeals *(via hand-delivery)*
William M. Blitch, Jr., Assistant Attorney General
Katherine Carruth Goode, Esquire
Bryant C. Gurley #00362856
Kenrick K. Gurley