

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2017-001090

THE STATE,RESPONDENT,

v.

CARY GLENN RYALS,APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0368

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
OT Wallace Building
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly admitted testimony from the State's expert on intimate partner violence dynamics where that expert testimony assisted the jury to understand why communication between Victim and Appellant continued after their breakup, the subject matter was an area outside the ordinary knowledge of the jury, and the evidence did not improperly bolster or vouch for Victim's testimony. Regardless, any alleged error is harmless because Appellant admitted to violating a restraining order and harassing Victim with unwanted communication.

STATEMENT OF THE CASE

On August 9, 2016, the Berkeley County Grand Jury indicted Appellant for the intimidation of court officials, jurors, or witnesses. On March 22, 2017, the grand jury indicted Appellant for first-degree harassment. On April 17–20, 2017 Appellant proceeded to a jury trial before the Honorable Kristi Harrington. Veronica Small, Esquire, and Myesha Brown, Esquire, represented Appellant; Assistant Solicitors Kamila Szymczynska-Sas, Esquire, and Price S. Sigal, Esquire, represented the State. The jury found Appellant guilty of second-degree harassment and the trial judge sentenced him to one year of incarceration and issued a permanent restraining order from contacting Victim.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Pretrial Hearing

Prior to trial, the State informed the trial judge it planned on calling Dr. Alyssa Rheingold as an expert in domestic violence dynamics. However, the State recognized that to minimize prejudice to Appellant, Dr. Rheingold could also be called as an expert in harassment and stalking behaviors, subcategories of domestic violence dynamics.¹ The trial judge questioned the necessity of having an expert explain harassment and stalking dynamics to jurors, but the State explained that the complicated nature of Appellant and Victim's relationship, which involved various communications after the latter evicted the former from her home and during a period when Appellant was under court order to refrain from contact with Victim, would be difficult for jurors to understand unless they understood that such behavior was a common occurrence in a stalking/harassment situation. The State emphasized Dr. Rheingold never met with Victim and would only frame testimony in terms of her clinical and educational experience with these behaviors. (Tr.p.83, line 18–Tr.p.86, line 5).

Trial counsel conceded Dr. Rheingold was an expert in domestic violence dynamics, but complained her testimony was not relevant to the case because the State did not allege any incidents of domestic violence occurred during the indictment period. Trial counsel further complained that Dr. Rheingold's testimony improperly bolstered Victim's testimony. (Tr.p.86, line 6–Tr.p.88, line 22; Tr.p.91, line 9–Tr.p.92, line 6).

The State reiterated that harassment and stalking fall under the umbrella of domestic violence behavior. It sought to introduce Dr. Rheingold's testimony only to explain the kinds of

¹ In his brief, Appellant claims the State tried to qualify Dr. Rheingold as an expert in domestic violence, but was unable to because of the lack of domestic violence in the case. However, as explained infra, this is a mischaracterization of the events of trial; the State volunteered to qualify Dr. Rheingold as an expert in "intimate partner violence dynamics" as a good-faith effort to assuage trial counsel's concerns that the term "domestic violence dynamics" might unfairly imply Appellant engaged in physical abuse, despite her eminent qualifications in the field. (Tr.p.83, line 18–Tr.p.91, line 8).

behaviors associated with stalking and harassment and how victims generally act in response to these actions and educate jurors whom, based on their own inexperience with harassment and stalking, would make inaccurate assumptions about what is “normal” in harassment situations. The State noted the jurors would likely not understand why a victim of stalking or harassment would initially try to continue a relationship with her harasser and why victims might answer his or her phone calls even though they are being harassed. (Tr.p.88, line 23–Tr.p.91, line 8).

The trial judge, finding trial counsel was not objecting to Dr. Rheingold’s expertise but the relevance of her testimony, ruled she would allow Dr. Rheingold to testify in camera before making a final ruling on the admissibility of her testimony. (Tr.p.92, line 7–Tr.p.94, line 9).

Opening Statements

During his opening statement to the jury, trial counsel argued Appellant was not guilty of harassment because Appellant’s contact with Victim served a “legitimate purpose” and was often instigated by the “mixed messages” she gave him. Trial counsel claimed the conflict between Appellant and Victim were “highs and lows [occurring during] cycles of starts and restarts” of their romantic relationship. (Tr.p.152, line 9–Tr.p.156, line 16).

Trial Testimony

Victim testified she started dating Appellant around May 2013. Prior to that, she knew Appellant as the landscaper who had done work on the exterior of her home. Sometime around July or August of that year, she invited Appellant to live with her temporarily after his mother evicted him from her home. Victim invited Appellant to live with her for only a couple of weeks until he found a new place to stay, but he refused to move out and instead moved many of his possessions into the house. After numerous discussions, Appellant claimed he would only move out of the home if evicted, so Victim began researching the eviction process in December 2013.

She gave Appellant notice of the eviction in late January 2014 and he moved out by the beginning of February. (Tr.p.156, line 24–Tr.p.162, line 6).

Victim and Appellant continued their relationship after the eviction until March of 2014, after Victim became frustrated with Appellant’s drinking and “erratic behavior.” After the breakup, Victim attempted to remain friendly with Appellant and retained him as her landscaper. She allowed him to use her garage to store his landscaping tools and several containers worth of items. She also tried to help him gain full-time employment. (Tr.p.162, line 7–Tr.p.165, line 18).

Unhappy with Victim’s decision to end their relationship, Appellant would call and visit her requesting they reconcile. Victim became frustrated with Appellant’s relentless advances and requested he remove his items from the house and cease contact. Appellant continued to show up to Victim’s home uninvited and she repeatedly requested he end all interaction with her. (Tr.p.164, lines 1–10; Tr.p.165, line 19–Tr.p.167, line 4).

On May 13, 2014, Victim exited her home at approximately 7:30 a.m. and found Appellant sleeping in his vehicle in her driveway. She texted him and asked him to leave and told him he was not supposed to be at the home. In response, he requested she allow him to shower and “sleep it off.” Victim contacted the local police and officers forced Appellant to leave the property. Appellant continued to call her at home and work, despite Victim’s warnings. On May 27, 2014, Victim, tired of Appellant’s harassment, contacted the local police about obtaining a trespass notice against Appellant. Appellant continued to call and send Victim messages, requesting they resume their relationship. (Tr.p.167, line 5–Tr.p.179, line 1; State’s Exhibit 4; State’s Exhibits 13–14).

On June 3, 2014, Appellant approached Victim as she exited her car and walked into her place of employment. He asked for a hug and when Victim refused, he grabbed her arm. He handed her several cards and asked her to read them. When Victim managed to get into her office, she contacted the police and requested a no trespass notice for her workplace. In the days following the incident, she received additional cards in the mail and additional phone calls, text messages, and a Facebook request from Appellant. Appellant called from different telephone numbers, but when Victim identified Appellant, she hung up. A few days later, Victim ran into Appellant at LGs Bar and Grill. Appellant approached her and Victim gave him "five minutes" to talk. Again, Appellant suggested they renew their relationship. Victim ended the conversation and went with a friend to the women's restroom. Appellant tried to force his way into the restroom, but Victim's friend locked the door. After several minutes of yelling, Appellant left. (Tr.p.179, line 2–Tr.p.187, line 20; State's Exhibits 5–9).

On June 16, 2014, Victim was driving home from work when she noticed Appellant was following her. When he pulled up beside her at a red traffic light, Victim rolled down her window and yelled at him to quit stalking her and leave her alone. Appellant approached her vehicle, asked for a hug, and threw several cards at her. The following day, she returned home from work and was outside pulling weeds when Appellant pulled into the driveway and exited his vehicle. She told Appellant he was not allowed to be there and instructed him to leave. He claimed he knew he was not permitted on the premises, but asked for money and went into the garage to grab a drink. He also tried to enter the home. Victim's neighbor witnessed the situation and called the police. When the officers arrived they arrested Appellant. (Tr.p.187, line 21–Tr.p.193, line 9; State's Exhibits 1–3).

On June 24, 2014, Victim initiated contact with Appellant when she discovered Appellant was attempting to take her boat from a repair shop. She called him to try and stop him, but hung up when she realized she should avoid contact with Appellant. She went to the repair shop to attempt to stop Appellant from removing her boat and asked law enforcement to meet her there. The officer allowed Appellant to leave with the boat and informed Victim ownership was a “civil matter.” She and Appellant spoke about the boat the following day. On June 29, 2014, Appellant called from a restricted number. Victim answered, unaware he was the caller. Appellant requested to meet with Victim before their scheduled hearing on July 2, 2014 regarding unlawful communications with her and violating the trespass notice. Appellant threatened Victim, claiming that if he “went down for any of the charges” she should “watch [her] back because he was [going] after [her],” and further threatened to interfere in a separate, independent lawsuit she was litigating at the time. However, the hearing was delayed until September 2014. (Tr.p.193, line 10–Tr.p.199, line 24; Tr.p.204, lines 6–14).

On July 15, 2014, Victim was granted a restraining order against Appellant. Undeterred, Appellant continued contacting Victim, calling her and sending Instagram requests. In September 2014, Appellant called Victim thirteen times while he was staying at the Medical University of South Carolina (MUSC). When Victim realized Appellant was the individual calling from the new number, she instructed him to stop contacting her. Victim contacted MUSC, informed staff of the restraining order, and asked them to prevent further contact. (Tr.p.199, line 25–Tr.p.204, line 5).

On September 25, 2014, Appellant appeared in municipal court for his pending charges. He admitted to calling Victim from MUSC and that he made a “mistake” in doing so; Appellant was aware he was prohibited from contacting Victim pursuant to the restraining order. He also

pled guilty to the May 27, 2014 unlawful communication and the June 17, 2014 trespass violation. (Tr.p.204, line 6–Tr.p.206, line 4; State’s Exhibit 20).

Victim testified she lived in fear during the indictment period. Initially, she was scared that if she cut off all contact with Appellant, he may overreact and harm her in some way, a belief rooted in the threats he had made to her in the past. As the weeks turned into months, she and her daughter had to change numerous aspects of their lives in order to avoid contact with Appellant. She cut herself and her daughter off from friends to avoid putting others in harm’s way. Finally, Victim and her daughter both took self-defense classes in case Appellant initiated a violent confrontation. (Tr.p.206, line 5–Tr.p.210, line 20).

Various witnesses, including police officers, corroborated Victim’s testimony. Officer Steve Hall testified that on June 3, 2014, he placed Appellant on trespass notice for Victim’s workplace and personally informed him of such. Officer Jonathan Ellwood responded to the June 17, 2014 incident at Victim’s home and arrested him for trespassing after notice. Officer Cassandra Brooks investigated the September 2014 phone calls he made while at MUSC and was also in the courtroom on September 25, 2014, when he admitted he made those calls. Officer Travis Dodd investigated several of the June 2014 incidents, and reviewed her phone records and the letters she received from Appellant. Former police officer Matthew Altman met with Victim on August 24, 2014, and showed him photographs of the Instagram request from “Cary Ryals.” Officer Ronald Sheetz testified he responded to both the May 13 and May 27, 2014 incidents at Victim’s home. On May 13, 2014, he looked around the home and observed the only items of Appellant’s were in containers in Victim’s garage and advised him to contact the magistrate court about any issues with obtaining his property from the residence. On May 27, 2014, Officer Sheetz advised Appellant over the telephone that he was placed on trespass notice for Victim’s

residence and recorded the telephone call. Karen Milbrodt, a senior analyst and records custodian employed by Verizon Wireless, testified regarding Victim's phone records. Milbrodt testified Victim received a large amount of phone calls from multiple numbers around the dates noted by Victim. Courtney Sanchez, an employee of the Berkeley County Magistrate Office located in Goose Creek, South Carolina, confirmed Victim obtained a notice of eviction against Appellant on January 24, 2014 and a restraining order against him on July 15, 2014. (Tr.p.307, line 8–Tr.p.372, line 4; Tr.p.389, line 2–Tr.p.417, line 19; Tr.p.485, line 14–Tr.p.513, line 25; State's Exhibits 11–12; State's Exhibits 15–20).

The State then proffered Dr. Rheingold's testimony. Dr. Rheingold, a clinical psychologist with MUSC's Department of Psychiatry and Behavioral Sciences, had been in that position for approximately fourteen years at the time of trial and was also a member of the Association for Behavioral and Cognitive Therapy and the International Society for Traumatic Stress Studies. Dr. Rheingold taught cognitive behavioral therapy and trauma-focused treatment and was director of the MUSC College of Medicine's year one fundamentals of patient care curriculum. Through these programs, she taught medical students interviewing techniques, behavioral science principles, and how to recognize various factors which could affect a patient's health, such as violence, depression, and anxiety. (Tr.p.422, line 17–Tr.p.426, line 8).

Dr. Rheingold noted domestic violence was a large part of her curriculum, as she taught large seminars to medical students and also worked with small, interactive groups to teach students how to screen and work with domestic violence victims. Further, she teaches seminars on the subject matter through the National Crime Victims Center. She had also published numerous research articles on the topics of domestic violence and victimization: at the time of trial, she had published over thirty-five peer reviewed articles and fifteen other published works

in these areas. She estimated that as a clinician, she worked with and/or supervised roughly five-hundred patients, and that approximately a third of the patients she and her colleagues have worked with have been victims of stalking and harassment behaviors. (Tr.p.426, line 9–Tr.p.429, line 4).

When the State ended its proffer, trial counsel again noted he did not object to her qualifications as a domestic violence dynamics expert, but that his concern was the testimony was not relevant to the case. The trial judge requested the State further explore the specifics of Dr. Rheingold's expertise and knowledge. (Tr.p.429, line 5–Tr.p.430, line 1)

She explained domestic violence involves victimization between intimate partners through various behaviors, including: physical violence, sexual violence, psychological aggression, stalking, and harassment behaviors. In the clinical setting, stalking and harassment are considered as one in the same and defined as repeated, unwanted attention or actions towards a victim through phone calls, text messages, and other types of contact which cause fear and distress. Notably, the CDC classified stalking as an aspect of intimate partner violence. (Tr.p.430, line 5–Tr.p.431, line 14; Tr.p.433, line 21–Tr.p.434, line 4; Tr.p.465, lines 3–18).

Further, she noted there is not a "typical demeanor" for a victim of harassment or stalking; victims of harassment and stalking may react in different ways. Some victims may immediately cut off all contact with the perpetrator, but most victims, if they are being harassed by someone he or she had previously dated, usually will not immediately end all contact due to their conflicting feelings and hope that these negative behaviors will end. Some victims continue contact with stalkers as a way to monitor the stalker. (Tr.p.431, line 15–Tr.p.433, line 20).

Dr. Rheingold noted she knew nothing about Victim or the merits of the State's case and that she was basing her testimony solely upon her education and experience. (Tr.p.434, line 15–Tr.p.435, line 11).

Again, trial counsel argued against the inclusion of Dr. Rheingold's testimony. This time, she claimed her testimony was not relevant because she did not have knowledge of the case and her area of expertise was domestic violence. Further, she claimed Dr. Rheingold failed to provide definitions of harassment and stalking during her proffer, so she did not understand the basis of her testimony. In response, the State argued Rule 702, SCRE allows for expert testimony provided such testimony elicits specialized knowledge which can assist the jury in understanding and determining the case. The State assured the trial judge Dr. Rheingold's testimony would not comment on Victim's experience or improperly bolster her testimony but would instead provide context to the jury as to what behaviors could be classified as stalking and harassment and what actions constituted unwanted contact. (Tr.p.435, line 15–Tr.p.439, line 25).

Noting trial counsel's exception, the trial judge found Dr. Rheingold's expertise would assist the jurors in a field outside their ordinary knowledge and all indications signaled her testimony was reliable. The trial judge also agreed to admit Dr. Rheingold as an expert in "intimate partner dynamics" because it is a term used in other jurisdictions and avoided the implication of physical violence by Appellant. (Tr.p.440, line 1–Tr.p.446, line 24).

After voir dire by the State and additional questions by trial counsel, both parties agreed Dr. Rheingold was an expert in intimate partner violence dynamics. Dr. Rheingold's direct examination responses largely mirrored her proffered testimony and included an explanation that there is no typical demeanor or behavior for victims of harassment and that many victims do not immediately cease all contact with their harassers. She explained many victims continue some

degree of communication with their harassers due to their prior relationships and conflicting feelings about them and their behaviors. Dr. Rheingold also confirmed several large scale research studies on intimate partner violence including stalking and harassment behaviors in their studies. Finally, Dr. Rheingold told the jury she had no interaction with Victim or the evidence in the case and she was basing her testimony on her research, clinical work, and education. (Tr.p.447, line 13–Tr.p.464, line 6).

Appellant testified he was not served with a notice of eviction in January 2014 and first found out about the eviction on May 13, 2014, the day he awoke in his car in Victim’s driveway. He claimed police arrived and would not allow him to take his items from the house. Appellant admitted he was put on trespass notice for Victim’s home on May 27, 2014, and that he returned to the home between May 27, 2014 and June 17, 2014. He claimed he ran into her on June 16 while driving on the interstate, but did so on Victim’s prompting and pulled into a parking lot where he spoke with her and gave her several of the cards he wrote. On June 17, he went to Victim’s home to obtain money she purportedly owed him as well as some of his possession, but was arrested by police for his violation of the trespass notice. He also admitted to sending Victim several cards in the mail after being put on trespass notice. Appellant described several attempts at trying to obtain his possessions from Victim, but never sought judicial help in his endeavors. He recalled receiving the restraining order and his repeated violations of it, but claimed his actions were justified by his attempt to obtain his possessions and obtain answers about the ending of their relationship. Finally, Appellant did admit he was confused about the dates of some of the events because he was “arrested . . . so many times” it was difficult for him to remember when particular events occurred. (Tr.p.573, line 24–Tr.p.629, line 1).

On cross-examination, Appellant admitted he did not live in Victim's home on May 13, 2014 and recalled pleading to the unlawful communication and violation of the trespass notice on September 25, 2014. Further, he admitted he wrote all of the cards in evidence and gave them to Victim, including cards in which he apologized to Victim for his actions and for hurting her. Finally, he admitted to communicating with her on June 29, 2014, contacting her after receiving the restraining order, and calling her while he was at MUSC. (Tr.p.632, line 1–Tr.p.641, line 10).

Closing Arguments

In its closing, the State argued the trial evidence showed Appellant, ignoring trespass notices and restraining orders, repeatedly harassed Victim throughout the period of the indictments. Admitting that Victim did initiate some of the phone calls in May and June of 2014, the State explained Victim tried to be patient and kind with Appellant before it became clear she needed to cease all contact with him to discourage his constant harassment. She also referenced Dr. Rheingold's testimony that it is not uncommon for victims of harassment to have some interactions with their harassers and slowly end that contact over a period of time. (Tr.p.670, line 7–Tr.p.687, line 19; Tr.p.701, line 25–Tr.p.705, line 18).

During trial counsel's closing argument, she highlighted that Victim initiated some phone calls and participated in other communications with him during the indictment period, indicating she was a willing participant in their conversations and thus Appellant's actions did not constitute harassment. (Tr.p.687, line 23–Tr.p.701, line 21).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of 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. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see 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."); 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."). Likewise, a decision as to whether to admit or exclude expert testimony rests within the trial judge's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); see State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."). "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); see Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) ("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.").

ARGUMENT

The trial judge properly admitted testimony from the State's expert on intimate partner violence dynamics where that expert testimony assisted the jury to understand why communication between Victim and Appellant continued after their breakup, the subject matter was an area outside the ordinary knowledge of the jury, and the evidence and did not improperly bolster or vouch for Victim's testimony. Regardless, any alleged error is harmless because Appellant admitted to violating a restraining order and harassing Victim with unwanted communication.

Appellant argues the trial judge erred in allowing Dr. Rheingold to testify as an expert in "intimate partner violence dynamics" because the testimony was irrelevant to the crimes with which Appellant was charged, the subject matter was not outside the ordinary knowledge of the jury, and the testimony improperly bolstered Victim's testimony. The State disagrees with these allegations of error. As demonstrated by Dr. Rheingold's testimony, she was personally qualified as an expert witness based upon her education, knowledge, training, and experience in the field of domestic abuse dynamics/intimate partner violence dynamics and accordingly 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 why Victim initiated some contact with Appellant during the period of the indictments. Further, Dr. Rheingold's testimony did not improperly vouch for or bolster Victim's testimony. Finally, any purported error in admitting her testimony was harmless given the overwhelming evidence of Appellant's guilt, including his own admissions of violating the various judicial order requiring him to cease contact with Victim.

Harassment in the Second Degree

Pursuant to S.C Code Ann. section 16-3-1700 (B) (2015), second-degree harassment is defined as:

a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

Relevance and Ordinary Knowledge of Jurors

Standard of Review

Generally, all relevant evidence is admissible at trial and all evidence which is not relevant is not admissible. Rule 402, SCRE. Pursuant to Rule 401, SCRE, “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

“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. Myer, 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 White, 382 S.C. at 274, 676 S.E.2d at 688 (“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.

A common use of expert testimony is in cases involving allegations of juvenile sexual abuse. Critically, in such cases, 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 State v. Anderson, 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015)

(“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 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)).

Analysis

As an initial matter, the State notes trial counsel failed to object to Dr. Rheingold's expertise. Notably, trial counsel repeatedly conceded she was an expert in her field, but questioned whether Dr. Rheingold's expertise was relevant because domestic violence is separate and distinct from stalking and harassment, an argument now posited by Appellant. Ironically, their misunderstanding of domestic violence and its dynamics demonstrate that intimate partner violence dynamics are outside the ordinary knowledge of the average juror and the necessity for Dr. Rheingold's expert testimony. Dr. Rheingold explained harassment and stalking behaviors are included under the umbrella of domestic violence, a fact confirmed by the inclusion of harassment and stalking data in several large-scale research studies on domestic violence.

The relevance of Dr. Rheingold's testimony was further enforced by trial counsel's questions and arguments. Predictably, trial counsel's theory of the case rested on the allegation that these Victim-initiated communications proved Appellant's actions were not harassment, but desired communication because most victims avoid all contact with their harassers and stalkers from the very get-go. The purpose of Dr. Rheingold's testimony was to refute this ill-informed assumption on the typical behavior of harassment victims. As noted by Dr. Rheingold, there is no typical behavior for such victims and they often continue contact with aggressors for a variety of reasons. Thus, expert testimony was needed in Appellant's case to educate the jury in regard to stalking and harassment dynamics so the jurors would be able to appropriately consider and evaluate this evidence. See State v. Brown, 411 S.C. 332, 341, 768 S.E.2d 246, 251 (Ct. App. 2015) (finding expert testimony in a child sexual abuse case, 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 also 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)).

Appellant also argues Dr. Rheingold’s testimony was unnecessary because the average juror would understand that relationships become strained and the “conduct of the participants of the relationship rises to the level of illegality.” Again, Appellant misunderstands the purpose of the testimony. The expert’s testimony was not offered to explain that relationships sometimes end on less than favorable terms; its purpose was to explain the diverse behaviors a victim of harassment may exhibit. Moreover, Dr. Rheingold’s testimony was based on education, her academic research, and her clinical experience with over five-hundred patients; resources unavailable to the common juror.

For these reasons, the State was required to – and did – present an expert in the field of intimate partner dynamics. Cf. 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). Dr. Rheingold’s was not submitted to create the assumption that Victim was definitely harassed, but rather to prevent jurors from assuming Victim was not harassed because she initiated some limited contact with Appellant.

Bolstering

Standard of Review

“Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact

and the inference to be drawn is not beyond the ken of the average juror.” State v. Taylor, 404 S.C. 506, 745 S.E.2d 124, 128 (Ct. App. 2013) (quoting State v. Douglas, 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2006), *rev’d in part on other grounds*, 380 S.C. 499, 671 S.E.2d 606 (2009)). Generally, bolstering is prohibited to prevent a witness from testifying whether another witness is credible, which is exclusively within the province of the jury. Id.

In Brown, this Court found that an expert witness’s testimony regarding the behavioral characteristics of child sex abuse victims was not only “relevant and crucial in assisting the jury’s understanding of why children might delay disclosing sexual abuse,” but that such testimony did not constitute improper bolstering because the expert: (1) did not testify as a forensic interviewer; (2) never interviewed the victims; (3) did not prepare a report for her testimony; (4) did not express an opinion regarding the general credibility of child sex abuse victims’ allegations; and (5) did not express an opinion regarding the credibility of the specific minor victims in the case. Brown, 411 S.C. at 343–45, 768 S.E.2d at 251–53. Further, the Court specifically noted “the fact that [the expert witness’s] testimony corroborated some of the minor victims’ reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts [of the abuse],” because the expert’s testimony “merely offered reasons why children might delay disclosing instances of sexual abuse to assist the trier of fact’s understanding of the complex dynamics of child victims in sexual abuse cases.” Id. at 345, 768 S.E.2d at 253.

Analysis

Beyond satisfying all the necessary requirements to be admitted as expert testimony, Dr. Rheingold’s testimony did **not** improperly bolster or vouch for Victim’s credibility or result in any undue or unfair prejudice to Appellant. Specifically, Dr. Rheingold, who had no personal

experience with Victim or the facts of her case, did not testify she believed Victim, Victim was harassed, Victim was telling the truth, or Victim's behavior suggested she was telling the truth. 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); State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013) (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); 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).

Instead, Dr. Rheingold simply explained it was not uncommon for victims of harassment and stalking to continue contact with aggressors even after experiencing troubling behaviors, and her testimony on that subject matter was exceedingly brief and limited. Cf. Brown, 411 S.C. at 344-345, 768 S.E.2d at 252-253 (holding expert testimony regarding the high frequency of delayed disclosures in child sexual abuse cases 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"). Notably, Dr. Rheingold even admitted that some victims may misrepresent stalking and harassment, but the ultimate determination of a reported victim's honesty would require a process which, as explained by the trial judge, was in the sole province of the jury; a determination of the facts.

As a result, Dr. Rheingold did not improperly bolster or vouch for the credibility or believability of Victim, and the probative value of her testimony, which was very high in light of the fact that trial counsel based her defense on the allegation that Victim contacting Appellant was indicative of her willingness to communicate with him, outweighed any potential for undue or unfair prejudice.² See Douglas, 367 S.C. at 521, 626 S.E.2d at 71 ("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

² Significantly, any prejudice that could have resulted to Appellant from the jury was from the legitimate probative force of that evidence in relation to the issues raised by the evidence presented in his case. 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)).

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 properly admitted Dr. Rheingold’s expert testimony.

Harmless Error

Standard of Review

An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. Kromah, 401 S.C. at 360, 737 S.E.2d at 501; State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (explaining even if evidence was wrongly admitted, its admission may constitute harmless error if the evidence did not affect the outcome of the trial).

Analysis

In the instant case, even if this Court finds the trial judge improperly allowed Dr. Rheingold’s testimony, any error in its admission is harmless due to the overwhelming evidence of Appellant’s guilt. Appellant admitted he was put on trespass notice for Victim’s home and workplace and knew of the restraining order from July, 2014, yet continued to bombard Victim with texts, phone calls, and visits and was arrested on several occasions for these actions. During his September 25, 2014 hearing, Appellant admitted to calling Victim several times at MUSC and those actions were wrong and in violation of the restraining order. Further, several police officers testified and corroborated Victim’s testimony that Appellant continuously

contacted her throughout the summer and was repeatedly arrested and/or removed from her home for these actions. Combined with the remainder of the evidence presented at trial, the record irrefutably shows Appellant's guilty of second-degree harassment.

For these reasons, any purported error in the admission of Dr. Rheingold's testimony is harmless.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368

ATTORNEYS FOR RESPONDENT

June 5, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

RECEIVED
JUN 05 2018
SC Court of Appeals

Appellate Case No. 2017-001090

THE STATE,RESPONDENT,

v.

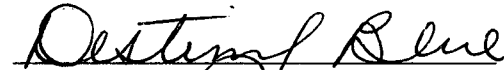
CARY GLENN RYALS,APPELLANT.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Victor R. Seeger, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served this 5th day of June, 2018.


Destiny Blue
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368



ALAN WILSON
ATTORNEY GENERAL

June 5, 2018

RECEIVED

JUN 05 2018

SC Court of Appeals

Victor R. Seeger, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Cary Glenn Ryals – Appellate Case No. 2017-001090

Dear Mr. Seeger:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William F. Schumacher
Assistant Attorney General
Bar Number 100231

WFS/
Enclosures

cc: Honorable Jenny A. Kitchings
(original and one enclosed)
Victim Advocacy Division