STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROY L. JONES,

APPELLANT

APPELLATE CASE NO. 2014-001639

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

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STATEMENT OF ISSUES ON APPEAL

1.

Did the court abuse its discretion by qualifying Shauna Galloway-Williams as an expert in child sex abuse dynamics where there was insufficient evidence of the reliability of the subject matter of her testimony and whether those matters had ever been subjected to peer review?

2.

Did the court abuse its discretion by qualifying Shauna Galloway-Williams as an expert in child sex abuse dynamics where the subject matter of her testimony was well within the realm of lay knowledge, was highly prejudicial to Appellant, and improperly bolstered the complainants' credibility?

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Appellant at the June 24, 2014 term of General Sessions for two counts of first degree criminal sexual conduct (CSC) with a minor, four counts of second degree criminal sexual conduct with a minor, two counts of lewd act upon a child, and one count of second degree criminal sexual conduct. R. 264-271. His case was called to trial on July 16, 2014 before the Honorable Robin B. Stilwell, and a jury. R. 1. Assistant Solicitor Kristie B. Hodge represented the state, and Alex R. Stalvey represented Appellant. R. 1.

At the conclusion of the trial on July 17, 2014, the jury found Appellant guilty of one count of first degree CSC with a minor, one count of second degree CSC with a minor, and two counts of lewd act . The jury acquitted Appellant of the remaining five indictments. R. 247, l. 18 – 248, l.19. Judge Stilwell sentenced Appellant to life without parole for first degree CSC with a minor and for second degree CSC with a minor, and fifteen years concurrent for each count of lewd act.[1] R. 251, ll. 5-23.

This appeal follows.

[1] Before trial, the state served Appellant and his counsel with notice of its intent to seek life without parole (LWOP) due to Appellant's 1985 conviction for second degree criminal sexual conduct. R. 250, ll. 2-5.

STATEMENT OF FACTS

Evidence at Trial

Appellant lived with his longtime girlfriend, Tammy Foster, and her two daughters, Older Sister and Younger Sister, from approximately 2004 until 2009. During this period, the family lived in three different houses in Greenville County. Tammy worked for the school district as a custodian and later for a nursing home. Appellant received disability benefits because he suffers from sickle cell anemia, arthritis, and carpel tunnel syndrome. R. 201, ll. 17-23. However, Appellant still worked odd jobs whenever he could and was paid "under the table." R. 203, l. 22 – 204, l. 3. Between his disability benefits and the money he earned doing odd jobs, Appellant was a large financial contributor to the family.

Older Sister, who was twenty-six years old at the time of trial, testified that shortly after Appellant moved in with her family in 2003 when she was fifteen years old, he began making sexual comments to her.[2] For example, she claimed Appellant told her she "was getting thick," which was a compliment and meant that her breasts and butt were getting bigger. Older Sister said this was not a comment you would normally hear from a stepfather. R. 21, ll. 8-24. In addition to the uncomfortable comments, Older Sister claimed Appellant began "groping" her. She maintained that he would touch her breasts, the front of her thighs, and her "bottom." R. 20, l. 8 – 21, l. 2. According to Older Sister, eventually the sexual abuse progressed to oral sex and vaginal intercourse. R. 22, ll. 4-22; R. 25, ll. 8-10. She claimed the abuse continued until Appellant moved out of the family home in 2009

[2] The year Appellant began dating Tammy Foster and moved in with the family is disputed. Tammy and Older Sister claimed Appellant moved in sometime during 2003. R. 19, ll. 3-6; R. 81, ll. 16-17. Appellant, on the other hand, maintained he was not released from federal prison until June 23, 2004 and did not begin dating Tammy until that time. R. 200, l. 18 – 201, l. 4.

when she was twenty-one years old.[3] R. 27, l. 24 – 28, l. 1. She also maintained that over one hundred sexual batteries occurred during this five to six year time period. R. 27, ll. 21-23.

Older Sister admitted Appellant paid for her cell phone, her car payments, and often gave her spending money on a weekly basis. Appellant helped financially support Older Sister until 2012 even though he ended his relationship with her mother, Tammy, and moved out in 2009. These allegations surfaced in June 2012 when Appellant caught Older Sister stealing four thousand dollars from him and called Tammy to complain. R. 42, l. 21 – 46, l. 9.

Younger Sister, who was nineteen years told at the time of trial, testified that when she was going into the sixth grade, which was a couple of years after her mother and Appellant began dating, Appellant began "fondling" her by touching her breasts.[4] She claimed this sexual abuse quickly progressed to vaginal intercourse. R. 54, l. 21 – 57, l. 18.

Younger Sister also claimed that when she "wouldn't let him [Appellant] take advantage of [her]," Appellant would "whup" her with a belt as punishment. R. 58, ll. 2-10. She testified that on one occasion when she was still in the fifth grade her mother came home and found Appellant "whupping" her.[5] When her mother asked her why Appellant

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[3] Appellant was arrested in 2009 for assault and battery of a high and aggravated nature (ABHAN) after he and Older Sister allegedly got into a physical altercation. Appellant spent over a year in jail. This is essentially when his relationship with Tammy Foster ended. R. 27, l. 24 – 30, l. 5.

[4] Younger Sister also testified that she thought she was ten years old when this abuse started. R. 57, ll. 11-12.

[5] Younger Sister first testified that the sexual abuse started when she was going into the sixth grade. As seen, she later testified that she first disclosed the alleged abuse to her mother when she was still in the fifth grade. See R. 55, ll. 5-6 and R. 60, ll. 3-4.

was "whupping" her, Younger Sister told her mother that Appellant "had been molesting" her. R. 58, ll. 11-20; R. 60, ll. 3-4. However, her mother "just let it go" and continued to allow Appellant to live with them. R. 59, ll. 13-23. Younger Sister claimed that she never told anyone else about the alleged abuse because she thought "if my mom doesn't believe me," no one else will either. R. 60, ll. 21-24.

Younger Sister also testified that in September 2008 she had to have a physical to play basketball at school. When she went to the doctor for her physical, she tested positive for Trichomoniasis, a sexually transmitted disease (STD). She maintained that she was thirteen or fourteen years old at this time and had to take medication to treat the STD. The doctor asked Younger Sister in the presence of her mother, whether she was sexually active or whether "anyone [had] ever forced sex on [her]." She allegedly told the doctor "no." R. 61, l. 17 – 63, l. 7. Younger Sister claimed that when she and her mother got home, her mother confronted Appellant about the diagnosis and the two got into an argument. However, Appellant continued to live in the home and date her mother. R. 64, l. 23 – 65, l. 5.

Like Older Sister, Younger Sister testified that Appellant would buy her "anything [she] needed," including clothes. R. 66, ll. 6-7. Appellant eventually moved out of their house, but he and her mother continued dating. Younger Sister did not indicate when Appellant moved out. R. 65, ll. 11-21. She explained that it was not her idea to go to the police and report the allegations, but that they eventually did so after Older Sister was caught stealing money from Appellant. R. 67, l. 22 – 68, l. 11.

Tammy Foster, Older Sister and Younger Sister 's mother, testified that she began dating Appellant in 2003 and that he moved in with her and the girls shortly thereafter. R.

81, l. 14 – 82, l. 11. She said Appellant was home alone with the girls often when she was at work. R. 83, l. 22 – 84, l. 14. Tammy maintained that she and Appellant had a healthy and regular sexual relationship. R. 85, l. 1-10.

One day, Tammy remembered Older Sister called her at work and told her she needed to come home. When she got home, Younger Sister told her Appellant "had been touching us." Younger Sister allegedly said Appellant "has been touching me, fondling me, sometimes he was having sexual relations with me." R. 85, l. 22 – 86, l. 17. Tammy confronted Appellant about the allegations and he strongly denied it. R. 86, l. 23 – 87, l. 1. She admitted she was "afraid to believe it" and she continued to allow Appellant to live in the house. Tammy said "it was hard for [her] to believe that he [Appellant] would do something like this because we really loved each other." R. 88, ll. 1-9.

Tammy also testified about Younger Sister's physical for basketball and her Trichomoniasis diagnosis. She admitted she was in the room when the doctor asked Younger Sister about whether she was sexually active and Younger Sister denied it. R. 89, l. 12 – 90, l. 12. Tammy claimed when they got home from the doctor she confronted Appellant about the diagnosis and Appellant again denied sexually abusing Younger Sister. Appellant asked Tammy how he could have given Younger Sister an STD, but not given it to Tammy as well since he was obviously having sex with Tammy. Appellant supposedly said Younger Sister likely got the STD from a boyfriend. R. 90, l. 13 – 91, l. 15. Tammy testified that she believed Appellant and again continued to allow him to live with the family. R. 92, ll. 8-13.

Appellant eventually moved out in 2009 after he and Older Sister got into a physical altercation and Appellant went to jail. R. 94, ll. 6-9; R. 95, ll. 5-21. Tammy continued to see

Appellant even after he moved out. R. 96, ll. 1-3. She also knew that Older Sister continued to see him and was caught stealing money from him. They went to the police with these allegations shortly after Older Sister was caught stealing money from Appellant. R. 97, l. 3 – 99, l. 23.

Appellant later took the stand in his own defense. He denied having ever improperly touched Older Sister or Younger Sister or having sexual intercourse with either. R. 201, ll. 9-16. He testified that he was a large financial provider for the family and would give them all of his money. He signed over his entire disability check to Tammy every month and she often would not have her half of the money to help pay the bills. Appellant testified that he eventually "got tired of it" and moved out. R. 203, ll. 1-21. After he broke up with Tammy, he moved from Greenville to Spartanburg. However, Tammy, Older Sister, and Younger Sister would still drive up to visit him often. They would go out to eat when they visited and he continued to give them money. He cosigned a loan with Older Sister so that she could purchase a car and he helped her make the car payments.

Appellant and the family eventually had a falling out when Appellant caught Older Sister stealing four thousand dollars from his dresser drawer. R. 205, l. 1 – 206, l. 8; R. 212, ll. 4-7.

There was absolutely no physical evidence of sexual abuse presented by the state.

Jury Deliberations

The jury began its deliberations on July 17, 2014 at 3:55 pm. At 8:55 pm, the court gave the jury an Allen charge. See Allen v. United States, 164 U.S. 492 (1896). Despite the late hour, the judge told the jury during this instruction that it would not be permitted to go home until a verdict was reached. R. 246, ll. 1-18. Specifically, the court stated:

> I recognized that it is late. I didn't want to stay here this late and I know y'all didn't either. The problem is **I can't send you home** once you begin your deliberations except in very exceptional circumstances. Because if y'all were to go home while you were in your deliberations, there is the possibility that you might begin talking to your spouse or your significant other about it and that would be deliberating.
>
> Also understand that if one of you, just one of you, failed to show up for court tomorrow then I would have to call a mistrial because we must have all twelve jurors. So, **we must stay, we must reach a verdict**. So, I ask you respectfully, please return to your jury room and continue trying to reach a verdict. Thank you.

R. 246, l. 19 – 247, l. 4 (emphasis added).

At 12:54 am, the jury finally reached a verdict after nearly nine hours of deliberating. The jury acquitted Appellant of five of the nine counts against him, but found him guilty of the remaining four counts. During deliberations, the jury sent out **eight** notes to the court. While these notes were included in the record as court's exhibits, there was no mention of them on the record nor did the court reporter indicate at what time these notes were sent out by the jury.

The first note asked, "Can we have the text testimony of witnesses: (1) Older Sister [and] (2) Younger Sister?" The court responded by writing on the note, "I do not have the ability, the technology, to produce a written transcript in this short time." R. 254. (Court's Exhibit No. 1). The second note asked, "What were the birthdays of both victims?" The court responded by writing on the note, "You must use your recollection of the testimony evidence." R. 255. (Court's Exhibit No. 2). The third note asked, "Can we use the whiteboard poster/easel with a marker to write with on paper?" The court responded by writing on the paper, "Yes." R. 256. (Court's Exhibit No. 3). **The fourth note asked, "If we cannot reach a unanimous decision on either counts what are our options?" The court responded by writing on the note, "You must reach a unanimous decision as to**

each charge. Please clarify your question if this is not responsive." R. 257. (Court's Exhibit No. 4).

The fifth note asked, "Can we take a smoke break or make a call?" There was no response from the court on this note. R. 258. (Court's Exhibit No. 5). **The sixth note indicated, "We are at a road block and do not see any way around it. At this point we do not for see coming to an unanimous decision on all charges. Can we return a 'hung jury' on any one of the charges or all of the charges?" The court responded by asking, "Have you reached a unanimous verdict on any of the charges? If so, how many?" The jury wrote back, "0."** R. 259-260. (Court Exhibit No. 6). It was presumably after this sixth note that the judge issued an Allen charge, but it is unclear from the record.

The seventh note read, "What were the reasons for the separation of dates for Younger Sister (2 counts)? (1) August 1, 2006 & January 3, 2009 [and] (2) January 4, 2009 & January 3, 2011." The court responded by writing on the note, "The dates correspond to the allegations in the indictments. If you need further clarification, please specify." R. 261-262. (Court's Exhibit No. 7). The eighth and final note stated, "We have decided on 2 accounts [sic] & are trying very hard to move forward on the other 7." The court did not have a written response to this note. R. 263. (Court's Exhibit No. 8).

Galloway-Williams' Proffered Testimony and the Objection

At defense counsel's request, the court required the state to proffer Shauna Galloway-Williams' testimony regarding her qualifications.

Galloway-Williams is the executive director of the Julie Valentine Center in Greenville, South Carolina. The center works with children and adults who have been impacted by sexual or physical abuse and neglect. R. 155, l. 13 – 156, l. 2. Galloway-

Williams is a licensed "professional mental health worker" in South Carolina and has a Bachelor's Degree in psychology and a Master's Degree in counseling. She testified that she has conducted more than seven hundred and fifty forensic interviews throughout her career and has counseled over eight hundred other children and adults. R. 156, ll. 3-18.

Throughout her career, Galloway-Williams has obtained more than one hundred and sixty hours of skill-based training and earned more than one hundred and twenty-five hours of continuing education credits. R. 157, ll. 3-9. She is also a member of several professional organizations, including the South Carolina Children's Advocacy Centers, the Silent Tears Foundation, and the South Carolina Professional Society on the Needs of Children. R. 156, l. 19 – 157, l. 2.

Lastly, Galloway-Williams is a professor in the Child Advocacy Program at the University of South Carolina (USC) Upstate. She normally teaches a course called Child Maltreatment. R. 157, ll. 10-13. She also speaks or provides training at conferences. R. 157, ll. 13-17. She recently presented at a conference for the National Association of Attorneys General. R. 158, ll. 9-13.

Without being specific, Galloway-Williams maintained that her organization "participate[s] in a statewide peer review as well as a national peer review." R. 157, ll. 21-22. She also claimed that she stays current with research, publications, and articles in the field. R. 158, ll. 16-18.

Moreover, Galloway-Williams testified that the topic of her testimony, including delayed disclosure and the response of non-offending caregivers, has been the subject of many articles published in professional journals and trade publications. She claimed these articles have been subjected to peer review and uniformly accepted and recognized by child

sex abuse experts and professionals. Counselors also rely on these principles when treating children who have been sexually abused. R. 160, ll. 11-23; R. 165, ll. 10-19.

On cross-examination, defense counsel asked Galloway-Williams whether she could provide any specific examples of peer reviewed articles or other publications on delayed disclosure or the response of non-offending caregivers. She could not name **any** specific publications. She also could not name **any** studies that have looked into whether this subject or evidence is reliable. R. 167, ll. 10-17. However, she maintained that the textbook she uses for the Child Maltreatment course she teaches discusses both delayed disclosure and the response of non-offending caregivers. This textbook is called Child Maltreatment and was written by Stefanie Keen, one of the professors at USC Upstate. R. 167, ll. 17-22.

Galloway-Williams also testified that most of the research in the field is conducted by "asking survivors questions or asking those who have now disclosed." R. 168, ll. 9-11. However, she admitted that the Julie Valentine Center does not track the number of the children or adults they see who have delayed a disclosure nor do they track the number of false allegations. R. 168, ll. 12-20; R. 170, l. 18-21.

At the conclusion of Galloway-Williams' in-camera testimony, defense counsel argued she should not be qualified as an expert in child sexual abuse dynamics because her testimony (1) is not outside the realm of lay knowledge as required by Rule 702, SCRE and Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010); (2) its probative value is substantially outweighed by its prejudicial effect to Appellant under Rule 403, SCRE; (3) its sole purpose is to bolster the complainants' credibility, which is prohibited under State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), and (4) the subject matter of her testimony is unreliable. R. 174, l. 3 – 176, l. 5.

As to reliability, defense counsel argued that Galloway-Williams could not name or provide any studies or peer reviewed publications on the subject or did she discuss any methods that have been used to show this evidence is reliable. R. 174, l. 5 – 175, l. 2.

The Court's Ruling

The court held that the testimony was admissible. Judge Stilwell stated "that generally speaking the state of South Carolina has accepted that expert testimony and behavioral evidence are admissible in cases of this nature." R. 177, ll. 12-14. Noting our Supreme Court's holding in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the court concluded that Galloway-Williams' testimony was not being offered "as a fact expert commenting on the credibility of the victims, but rather" her testimony was being offered to explain "delayed reporting and caregiver reporting." The court found both of these topics to be "outside of the common knowledge generally in the public and the jury pool." R. 177, ll. 17-22. Judge Stilwell also found the probative value of Galloway-Williams' testimony outweighed the prejudicial effect to Appellant and thus there was no violation of Rule 403, SCRE. R. 177, ll. 14-16.

Moreover, the court stated:

> I will also tell you that the proposition that this isn't scientific testimony is well-received. But even if of course you consider this scientific within the ambit of an academic discipline and you review it in accordance with the holding in Jones,[6] I think that there is sufficient publications and peer reviews which is evidenced by the fact [that it is] a part of an academic curriculum which teaches this field of study.
>
> And also that the methods have been applied at this time, that's evidence that the method is consistent with the recognized scientific laws or academic disciplinary laws or proceedings that are routinely applied to this field of study.

[6] State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979).

> I think the questions that were posed suggest that perhaps the methodology should be perfect. That's not the analysis because in any field of science or academic knowledge there must be a certain tolerance for imperfection, and we all acknowledge that.
>
> The threshold is reliability. And I find in this instance there is a threshold reliability that would give this court reason to believe that she's qualified to testify in the particulars of which her testimony has been offered. The questions that were posed to her I think are appropriate to determine whether in fact she as a witness is credible and goes to the value of her testimony to the jury.

R. 177, l. 23 – 178, l. 14.

Galloway-Williams' Testimony Before the Jury

Galloway-Williams repeated her qualifications before the jury and was qualified by the court as an expert in "child sex abuse dynamics." R. 180, l. 6 – 186, l. 5. Galloway-Williams explained delayed disclosure and maintained that it was common for children to delay disclosing sexual abuse. She testified that the main reason a child would delay disclosure is fear of the perpetrator or fear of the consequences of disclosing. The perpetrator may also be someone who the child loves and trusts and that may make it harder for the child to disclose. R. 186, l. 8 – 190, l. 10.

Galloway-Williams also discussed how disclosure is a gradual process and partial disclosures are typical. R. 194, l. 16 – 195, l. 2. Moreover, she explained purposeful and unintentional disclosures and their causes. R. 192, l. 21 – 193, l. 11.

Lastly, Galloway-Williams explained the response of the non-offending caregiver and the reasons for their behavior. For example, she maintained that many parents are initially in denial and respond improperly. She said, "[S]ometimes parents get stuck in that denial and disbelief and they don't believe their children and they don't make a report and don't do anything. Sometimes parents do believe their children, but they don't have the

resources or knowledge or skills or ability to do anything about it." R. 193, l. 12 – 194, l. 15.

On cross-examination, Galloway-Williams admitted that she had never met with Older Sister, Younger Sister, or Tammy Foster or talked to law enforcement about this case. She claimed her only knowledge was from discussions with the solicitor's office. R. 196, ll. 5-17.

State's Closing Argument

During her closing argument, the assistant solicitor used Galloway-Williams' testimony to bolster her case. She argued:

> You heard Shauna Galloway-Williams talk about that this is unfortunately a common theme or thread that you see. They have classes at the Center. People come and attend those classes and it helps them. And they have come voluntarily to say yes, I acted this way and I need help. It is true it is an unfortunate response by a non-offending caregiver, not knowing what to do. And the entire reason that we called Shauna Galloway-Williams is because I needed to understand how could this mom not say anything, how could she not do anything, how could these girls not talk about it. So, she was called to help educate me and you so you can understand this situation when you get back to the jury room to start deliberating.

R. 233, ll. 3-11.

ARGUMENT

1.

The court abused its discretion by qualifying Shauna Galloway-Williams as an expert in child sex abuse dynamics where there was insufficient evidence of the reliability of the subject matter of her testimony and whether those matters had ever been subjected to peer review.

"All expert testimony must satisfy the Rule 702, SCRE, criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009); See Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) (holding "the trial court must evaluate the substance of the testimony and determine whether it is reliable."). 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."

Our Supreme Court last addressed an expert in child abuse dynamics or "child abuse assessment" in State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), which focused on the reliability element of White, 382 S.C. 265, 676 S.E.2d 684, wherein it was held that the trial court had to perform a gatekeeping function for non-scientific, as well as scientific evidence. 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 Court in Chavis found that one of the "expert" 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. 412 S.C. at 108, 771 S.E.2d at 339. The Supreme 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. 412 S.C. at 109, 771 S.E.2d at 340.

Like the "experts" in Chavis, there was no evidence that Galloway-Williams' conclusions and claims were accurate or reliable. As defense counsel pointed out, Galloway-Williams could not identify or name a single publication or study that supported her statements nor whether any of the articles, publications, or studies she relied on had been peer reviewed.

Because there was no evidence of the reliability of Galloway-Williams' conclusions and statements, the court failed to properly execute its gatekeeping function by qualifying her as an expert in child sex abuse dynamics. This Court should thus find the trial judge abused his discretion and remand for a new trial.

2.

The court abused its discretion by qualifying Shauna Galloway-Williams as an expert in child sex abuse dynamics where the subject matter of her testimony was well within the realm of lay knowledge, was highly prejudicial to Appellant, and improperly bolstered the minor complainants' credibility.

"The label of expert should be jealously guarded by the court and never loosely bandied about." Kromah, 401 S.C. at 357, 737 S.E.2d at 499. As our Supreme Court noted in Kromah, "although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts." Id.

In Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169, our Supreme Court specified the following three-prong test for expert testimony:

> [E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider 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 (internal citations omitted) (emphasis added).

The first prong of the three prong test outlined in Watson was not met in this case because the subject matter of Galloway-Williams' testimony was not beyond the ordinary knowledge of the jury. Her testimony focused on delayed disclosure and the response of

a non-offending caregiver. However, Older Sister and Younger Sister both testified why they delayed in disclosing and what eventually lead each to disclose. For example, Older Sister and Younger Sister testified that Appellant made repeated threats and told them no one would believe them if they told. Younger Sister also testified she was afraid she would be taken away from her mother. Furthermore, Tammy testified why she reacted the way she did when her daughters disclosed to her. Specifically, Tammy stressed her disbelief in the truth of the allegations, her love for Appellant, and her fear of losing custody of her children to the Department of Social Services (DSS). Because Older Sister, Younger Sister, and Tammy had already explained their thoughts and actions to the jury, expert testimony was not required for the jury to understand why the complainants delayed in disclosing and why Tammy responded the way she did. Moreover, the jury did not need expert knowledge to explain this subject matter as it did not involve scientific, technical, or other specialized knowledge. See Rule 702, SCRE.

The **only** purpose of Galloway-Williams' testimony was to improperly bolster the complainants' testimony. This Court held in State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012), that it is improper for a witness to bolster the testimony of other witnesses. See Smith v. State, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (finding a "forensic interviewer's . . . opinion testimony improperly bolstered the Victim's credibility").

In McKerley, the trial court allowed a witness to testify as an expert in "forensic interviewing and child abuse assessment." 397 S.C at 463, 725 S.E.2d at 141. The expert had interviewed the alleged victim twice and concluded that both interviews were compelling for sexual abuse. She also determined that the victim's statements were

consistent with other information she had on the case. Id. at 466, 725 S.E.2d at 142. This Court determined there was no other way to interpret the language used in the expert's testimony other than to mean she believed the victim was being truthful. It further held, "In light of [the expert's] extensive inadmissible testimony bolstering the credibility of the victim . . . we cannot say the erroneous admission of [the expert's] testimony did not contribute to the jury's decision," therefore finding harmful error. Id. at 467, 725 S.E.2d at 143.

Our Supreme Court has also held that it is improper "for an expert to comment on the veracity of a child's accusations of sexual abuse." State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); see State v. Dawkins, 297 S.C. 386, 393-394, 377 S.E.2d 298, 302 (1989) (finding therapist indicating he believed victim's allegations were genuine was improper); see also State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000) (finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was improper vouching for child).

In Jennings, Shauna Galloway-Williams, the **same** witness at issue in this case, interviewed the three alleged victims of sexual abuse and issued a separate report for each child that was admitted into evidence. She concluded in her reports that each child provided a compelling disclosure of abuse by the defendant and that the children provided details that were consistent with the background information received from their mother, the police report, and the other children. 394 S.C. at 476-481, 716 S.E.2d at 92-95. Our Supreme Court held that the conclusions in the reports improperly vouched for the children's veracity and, thus, the trial court abused its discretion by admitting the reports into evidence. It further held the error was **not** harmless because there was no

physical evidence presented at trial and, therefore, the children's credibility was the sole issue in the case. Id. at 94-95, 716 S.E.2d at 480.

It is clear from the record that the state in this case attempted to circumvent recent case law by presenting a witness who had **not met** with the complainants, but who was familiar with the case, and presumably the complainants' testimony and specific allegations, as a result of discussions with the solicitor's office. While Galloway-Williams did not meet with the complainants, the state still used her to **indirectly comment on the complainants' credibility** and provide greater weight to their testimony.

Galloway-Williams' testimony was very likely interpreted by the jury to express that they should believe the complainants because their behavior is typical, expected, and complies with the behavior of the majority of other victims of sexual abuse. Her testimony strongly implied that because the complainants acted in the same manner as other victims of sexual abuse they must be telling the truth. Therefore, qualifying her as an expert and allowing her to testify was error for "[t]he assessment of witness credibility is within the exclusive province of the jury." McKerley, 397 S.C. at 464, 725 S.E.2d at 141 (citing State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)).

Not only was Galloway-Williams' testimony used to bolster the complainants' testimony, it was also highly prejudicial to Appellant and cumulative. Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence." Because the complainants had already testified as to why they disclosed when they did and what caused them to disclose, among other details, Galloway-Williams'

testimony was merely cumulative. It was used solely by the state to reinforce and reiterate the reasoning for the complainants' actions and behavior. 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).

Galloway-Williams' testimony was also prejudicial to Appellant because there was no physical evidence presented in the case and the sole issue was the credibility of Older Sister, Younger Sister, and their mother. Because the witnesses credibility was the most critical determination of this case and Galloway-Williams' testimony was used solely to bolster their credibility, Appellant was clearly prejudiced and should be granted a new trial. See Jennings, 394 S.C. at 480, 716 S.E.2d at 94-95 ("Because the children's credibility was the most critical determination of this case, we find the admissibility of the [forensic interviewer's] written reports was not harmless.").

Appellant is constrained to point this Court to its recent decision in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015). Appellant acknowledges that this Court in Brown held that testimony like Galloway-Williams' in this case is admissible (indeed, Gallway-Williams was the expert in Brown). However, a petition for writ certiorari is currently pending before our Supreme Court in Brown. Respectfully, Appellant urges this Court to reconsider its decision in Brown as it applies to this case. Brown reads 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

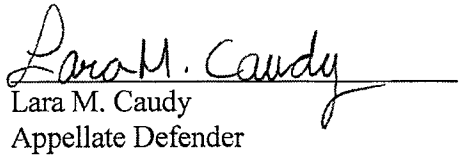
interviewers as experts in spurious fields like "dynamics of child sexual abuse." This testimony does not aid the trier of fact, but instead it invades the province of the jury.

For these reasons, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing arguments, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of September, 2015.

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, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 30, 2015

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROY L. JONES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of September, 2015.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable Robin B. Stilwell, Circuit Court Judge
Appellate Case No. 2014-001639

THE STATE,

Respondent,

v.

ROY LEE JONES,

Appellant.

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STATE OF SOUTH CAROLINA

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly qualified the State's witness as an expert in child sex abuse dynamics, and the subject matter of her testimony was outside the realm of a lay juror, was more probative than prejudicial, and was not offered to bolster the victims' credibility. (Appellant's Issues I and II).

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In June 2014, the Greenville County Grand Jury indicted Appellant Roy Lee Jones on two counts of first degree criminal sexual conduct with a minor, four counts of second degree criminal sexual conduct with a minor, two counts of lewd act, and one count of second degree criminal sexual conduct, arising from the molestation of two minor females over a significant period of time. The case was called for a jury trial on July 15, 2014, before the Honorable Robin B. Stilwell, Circuit Court Judge.

Prior to trial, Appellant informed the court he intended to object to the State's proposed expert on the grounds her testimony would improperly bolster the victims' credibility. The State advised the court the witness was not a forensic interviewer, she never met or talked with the victims, and she would testify about "disclosure, delayed disclosure and generalities regarding those issues." The court indicated it would hear the objection prior to the expert's testimony during trial. (Trial Transcript [TT], pp. 9-10; Record on Appeal [R.], pp. 6-7).

During jury qualification, the court asked if any jurors had either been a victim, or had a close relative who had been a victim, of a sex crime, and no jurors responded. The court then asked if any jurors had either been personally accused, or had a close relative who had been accused, of a sex crime, and again, no jurors responded. (TT, p. 17; Supplemental Record on Appeal [Supp. R., p. 1).

The victims, who were sisters, testified Appellant started dating their mother in 2003, and eventually moved into their home. The older victim ("SF") testified Appellant molested her from 2003 through 2009. The molestation began with fondling, and progressed to oral and vaginal intercourse. SF stated when she tried to stop him,

Appellant physically forced her to comply, threatened to harm her and her family using witchcraft, and frequently gave her gifts and money to keep her from reporting the abuse. SF testified she did not report the molestation until 2012, when her aunt confronted her after her younger sister ("TF") disclosed Appellant molested her. (TT, pp. 40-65; R., pp. 16-41).

TF testified Appellant sexually molested her from the age of nine or ten to fifteen. The molestation began with fondling and progressed to vaginal intercourse, and TF contracted a sexually transmitted disease from him. She stated the intercourse happened "[a]ny chance he got . . ., probably every day." TF finally told her mother about the molestation when Appellant beat her for refusing to have sex with him, but her mother let Appellant remain in the house and the molestation continued. She testified Appellant gave her money, and then took it back after he molested her. To keep her from telling about the molestation, Appellant threatened to harm her family using witchcraft, physically abused her, and took things like her phone away from her. (TT, pp. 74-104; R., pp. 49-79).

The victims' mother ("Mother") testified about her relationship with Appellant, and the victims' reports to her regarding Appellant's molestation. She stated Appellant denied the reports when she confronted him, and she wanted to believe him because she loved him. She further testified she did not report the allegations to authorities because she was afraid of losing her children.

In September 2008, Mother took TF to the doctor to get a physical required for school sports. The doctor informed them TF had a sexually transmitted disease, and asked if TF was sexually active. Rather than respond, TF just looked at Mother "like,

asking if she should say." When Mother later confronted Appellant at home, they got into an argument and she left the house. She finally kicked Appellant out of the house in 2010. (TT, pp. 105-132; R., pp. 80-107).

The State then proffered Shauna Galloway-Williams as an expert in child sex abuse dynamics to testify about delayed disclosure, the disclosure process, and behavioral characteristics of non-offending caregivers. During an in-camera hearing, Galloway-Williams testified she is the clinical director of the Julie Valentine Center, which works with children and adults impacted by abuse and other types of trauma. She has a Bachelor's Degree in psychology and a Master's Degree in counseling, and is a licensed professional mental health worker. During her extensive clinical career, she conducted 750 or more forensic interviews, and assessed and worked with an additional 800 or more clients. (TT, pp. 178-182; R., pp. 152-156).

Galloway-Williams further testified she is a professor in the University of South Carolina Upstate Child Advocacy Program, where she teaches a Child Maltreatment course. She is a past president of the South Carolina Children's Advocacy Centers, a member of the Silent Tears Foundation, and she served on the Silent Tears South Carolina Task Force She was also a board member for the South Carolina Professional Society on the Needs of Children. (TT, pp. 182-183; R., pp. 156-157).

Throughout her career, Galloway-Williams participated in more than 160 hours of skill-based training, which included lectures and actual practice of related skills, and received more than 125 hours of continuing education credit for attendance at conferences and workshops. She testified all Center employees are required to stay current with research, publications, and articles related to child sexual abuse. She also

provided training in the area of recognizing and responding to child sexual abuse and reporting, interviews and dynamics of sexual abuse, and was qualified as an expert in judicial proceedings nineteen times. (TT, pp. 183-185; R., pp. 157-159).

Galloway-Williams also testified the vast majority of people will not experience child sexual abuse, and there are some very unique issues related to such abuse, including the type of abuse, identity of the offenders, how abuse happens, how children disclose, and why they do not disclose right away, which are not common knowledge. In addition, there are issues and dynamics involved with non-offending caregivers and why they do not report the abuse. She stated these issues have been researched and discussed in published articles in professional journals, which are subject to peer review prior to publication, and are uniformly accepted and used by child sex abuse experts and professionals for counseling and treating child sex abuse victims. (TT, pp. 185-192; R., pp. 159-166).

On cross-examination, Galloway-Williams was unable to recall specific citations to studies or articles addressing the reliability of delayed disclosure issues, but stated she could provide them, and all her hours of training included the studies and articles as the basis of fact. In addition, the textbook she uses to teach the Child Maltreatment class at USC-Upstate includes references to articles about delayed disclosure and non-offending caregivers. She then detailed the methodology used in most studies on delayed disclosure, and stated she was not aware of any research indicating the well published data is unreliable. (TT, pp. 192-199; R., pp. 166-173).

Appellant objected to Galloway-Williams testifying as an expert in child sex abuse dynamics on the grounds there was no evidence the underlying studies were

reliable, and the substance of her testimony regarding delayed disclosure was not beyond the ordinary knowledge of the jury. In response, the State argued South Carolina courts allow behavioral characteristic testimony in child sex abuse cases, and it was clear from the jury qualification no one in the jury had any personal knowledge of child sex abuse. The circuit court overruled Appellant's objection, finding the proffered expert testimony is admissible in child sex abuse cases, and delayed reporting by victims and caregivers is outside the common knowledge of the public in general and the jury pool specifically. (TT, pp. 199-205; R., pp. 173-179).

Galloway-Williams testified before the jury about her credentials. and was qualified as an expert in child sex abuse dynamics over Appellant's objection. During her direct testimony, she testified in general terms about delayed disclosure, the disclosure process, and disclosure by non-offending caregivers, and did not make any specific references to the victims or Mother in this case. On cross-examination, she stated she never met with any of the witnesses in the case, including law enforcement, and she was contacted by the Solicitor's Office about testifying approximately one month prior to trial. (TT, pp. 206-221; R., pp. 180-198).

After the circuit court denied his directed verdict motion, Appellant testified and denied molesting either SF or TF, claiming the allegations were retaliation for him threatening to press charges against SF for stealing money from him. During a very contentious cross-examination, however, Appellant admitted he never filed any charges against SF, and acknowledged (albeit reluctantly) he had a prior conviction for second degree criminal sexual conduct. (TT, pp. 229-250, State's Exhibit 1; R., pp. 200-221, 252-253).

The jury found Appellant guilty of second degree criminal sexual conduct with a minor (TF), first degree criminal sexual conduct with a minor (TF), lewd act upon a child (TF), and lewd act upon a child (SF), but acquitted him of all other charges. The circuit court sentenced him to life in prison on the two criminal sexual conduct convictions, and fifteen years incarceration on the lewd act convictions, all to run concurrent. (TT, pp. 277-281; R., p. 247-251). This appeal followed.

ARGUMENT

The circuit court properly qualified the State's witness as an expert in child sex abuse dynamics, and the subject matter of her testimony was outside the realm of a lay juror, was more probative than prejudicial, and was not offered to bolster the victims' credibility (Appellant's Issues I and II).

Appellant contends the circuit court erred in qualifying Galloway-Williams as an expert on child abuse dynamics because there was insufficient evidence of reliability, the subject matter of her testimony was within the realm of lay knowledge, and it was highly prejudicial because it improperly bolstered the victims' credibility. These issues were clearly resolved in recent cases, and are meritless.

A. Expert Qualification

Relying exclusively on State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), Appellant asserts the circuit court erred in admitting Galloway-Williams' testimony because she was unable to identify or name a "single publication or study that supported her statements nor whether any of the articles, publications or studies she relied on had been peer reviewed," and thus, there was no evidence her conclusions and claims were accurate and reliable.[1] In making this assertion, Appellant grossly overstates the applicability of Chavis, and blatantly ignores evidence in the record.

In Chavis, the trial court qualified two witnesses (Elliott and Griggs) as experts in child abuse assessment. Elliott, who had significant training and experience with the RATAC protocol for forensic interviews, and conducted a forensic interview of the victim, testified it was her expert opinion the victim's disclosures reflected in a report

[1] Appellant does not contend Galloway-Williams' qualifications, as reflected by her vast knowledge, experience and training, were insufficient.

issued by another forensic interviewer, who was unavailable to testify at trial, constituted disclosures of sexual abuse. 771 S.E.2d at 338-339.

The Supreme Court affirmed, with two justices finding Elliott was sufficiently trained in RATAC protocol, which she used during her forensic interviews, but there was no evidence her conclusions or impressions from those interviews were accurate, and therefore, the trial court erred in qualifying her as an expert. As to Griggs, who also conducted a forensic interview of the victim, the two justices assumed there was sufficient evidence of reliability as to her expert qualification, but held her testimony about recommending the victim not be around the defendant for any reason improperly bolstered the victim's credibility. *Id.* at 339-340. Ultimately, however, the two justices concluded both errors were harmless beyond a reasonable doubt. *Id.* at 340-341.[2]

Unlike the expert testimony at issue in Chavis, Galloway-Williams never interviewed the victims, Mother or law enforcement, and did not render any opinions or recommendations that could even remotely be regarded as specific to the victims, Mother, or the allegations against Appellant in this case. In fact, she never expressed any conclusions specific to the case at all. Therefore, the discussion of individual reliability referenced in Chavis simply does not apply to this case.

Even if evidence of individual reliability was required, however, there is ample evidence in the record regarding the basis for, and reliability of, Galloway-Williams' expert testimony. In addition to her indisputably extensive knowledge, education, training and experience in the area of assessing and treating child sex abuse victims,

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[2]Two justices concurred in the result, but disagreed with the conclusions of error as to both Elliott and Griggs. *Id.* at 342-343 (Toal, CJ, concurring in part and dissenting in part). The fifth justice dissented, finding the errors were not harmless and the conviction should be reversed. *Id.* at 343-345 (Hearn, AJ, dissenting).

Galloway-Williams is a professor at USC-Upstate and teaches a college level course entitled Child Maltreatment. She testified the textbook she uses to teach the course includes citation to studies and articles on the issue of delayed disclosure by child victims, as well as issues related to non-offending caregivers. She also testified the Center conducts groups for non-offending caregivers who did not initially act to protect the child, and she recently participated in a conference on that issue. (TT, pp. 181-196; R., pp. 155-170)

The primary focus of Appellant's argument regarding reliability is Galloway-Williams' inability to recall from memory the citations to specific studies and articles regarding delayed disclosure and non-offending caregivers. This argument completely ignores her testimony regarding the textbook (discussed above), which is obviously a published authority. It also ignores her testimony about the specific methodology used in studies on the subjects, as well as the lack of any studies indicating all the studies supporting her testimony were unreliable. (TT, pp. 193-196; R., pp. 167-170). Considering her testimony in its entirety, it is clear Galloway-Williams' expert testimony was based on accepted principles in the field of child sex abuse assessment and treatment, and inherently reliable.[3]

[3]This type of expert testimony is recognized and admissible in numerous jurisdictions, and discussed in legal publications. *See* John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y 1, 45-46 (2010) ("[F]rom a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome." [footnotes omitted]); *see also* Elizabeth Trainor, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case, 85 A.L.R. 5th 595 §3 (Originally published in 2001) (discussion of testimony regarding general behavioral characteristics of sex abuse victims and list of cases addressing the issue).

B. Necessity of Expert Testimony

Expert testimony concerning common behavioral characteristics of sexual assault victims, and the range of responses to sexual assault encountered by experts, is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787, 794 (Ct.App.1999). It assists the jury in understanding some of the aspects of victims' behavior, and provides insight into a sexually abused child's often strange demeanor. *Id. See also* State v. Anderson, 413 S.C. 212, 776 S.E.2d 76, 79 (2015) ("Certainly we recognize that there is such an expertise [child abuse assessment]: this is the type of expert who can, for example testify to the behavioral characteristics of sex abuse victims.") (*citing* State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859, 862 [1993]; Weaverling, and State v. White, 361 S.E. 407, 605 S.E.2d 540 [2004]); State v. Smith, 411 S.C. 161, 767 S.E.2d 212, 217-18 (Ct. App. 2015) *(cert. denied* June 17, 2015) ("When sexual abuse occurs, particularly if the victim is a child, the victim may not be able to immediately disclose the abuse for numerous reasons, including the victim's feelings of shame over what happened and the victim's fear of or intimidation by the perpetrator. We find this was an appropriately general explanation [by an expert witness] of the medical or scientific reasons a child might not immediately disclose sexual trauma.")

Contrary to Appellant's assertions, as expressly recognized by the Supreme Court in Anderson, the behavioral characteristics of child sex abuse victims is **not** a subject familiar to the common juror. Specifically in this case, based on responses to the court's questions during jury qualification, the seated jurors had no personal experience or

knowledge from family members or otherwise as to child sex abuse, directly or indirectly. (TT, pp. 17, 202; Supp. R., p. 1, R., p. 176).

In the absence of experience dealing with child sex abuse, it is unreasonable to think a lay person has sufficient knowledge regarding the impact of sex abuse on children and their behavior for even a basic understanding of how abused children may respond to the abuse and/or the perpetrator. It is equally unreasonable to think a lay person has sufficient knowledge of non-offender caregiver behavior to understand how they may respond in such situations. Indeed, much of victims' and caregivers' actions seem counter-intuitive to people who have never experienced the horror of sexual abuse. Therefore, an expert with specialized training and experience dealing with child sex abuse victims and non-offending caregivers, such as Galloway-Williams, can assist the jury in understanding their behavior, particularly a delay in disclosing the abuse, partial disclosures, and reasons why a non-offending caregiver may not act to protect a child victim.[4] *See* White, 605 S.E.2d at 544 (expert testimony and behavioral evidence may be **more** crucial when the victims are children, whose inexperience and impressionability often render them unable to effectively articulate events giving rise to criminal sexual behavior); State v. Brown, 411 S.C. 332, 768 S.E.2d 246, 250-251 (Ct. App. 2015) (*cert. denied* August 6, 2015) (expert testimony regarding common behavioral characteristic of sexual assault victims is helpful in explaining typical behavior patterns of adolescent sex abuse victims).

[4]A Texas court aptly described this type of testimony as "educator expert" evidence. Coble v. State, 330 S.W.3d 253 (Tx. Crim. App. 2010) (testimony about Texas prison classification system and prison violence was admissible as "educator-expert" evidence even though it did not relate to the defendant personally).

Galloway-Williams' testimony in this case is the type of expert behavioral testimony expressly approved in Schumpert, Weaverling, and White, cases Appellant does not even cite in his Brief. Despite Appellant's continued insistence the substance of her testimony was not outside the realm of ordinary lay jurors, a contention already soundly rejected by South Carolina courts, Galloway-Williams' testimony was relevant, and assisted the jury in understanding the evidence and determining a fact in issue. *See* Rule 702, SCRE (expert with specialized knowledge may testify if it will assist the trier of fact to understand the evidence or determine a fact in issue). Therefore, the circuit court properly exercised its discretion in allowing her testimony.

C. Bolstering

Appellant also contends "the **only** purpose of Galloway-Williams' testimony was to improperly bolster the [victims'] testimony. (Brief of Appellant, p. 20) (emphasis in original). As discussed above, however, the **only** purpose of Galloway-Williams' testimony was to educate and assist the jury on issues unique to child sex abuse victims and their non-offending caregivers. Her testimony was couched in general terms, and never mentioned or alluded to the victims, Mother, or any allegations in the case.

All relevant evidence in some way bolsters the strength of the offering party's case, and a trial court may not exclude evidence that bolsters other evidence absent a constitutional, statutory or rule-based principle of law providing for exclusion. State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 611 (Ct. App. 2014) (Few, C.J., concurring in part and dissenting in part), (*cert denied*, February 4, 2015). "'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]) (emphasis added). 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.*

Petitioner relies on Kromah, Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), and State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), as support for his contention Galloway-Williams' testimony improperly bolstered the victims' testimony.

Those cases involved forensic interviewers who actually interviewed the victims, and their testimony in some way indicated they believed the victims' allegations of sex abuse. Therefore, those cases are factually and legally inapplicable to the instant case. *See* Brown, 768 S.E.2d at 252-253 (finding these same cases were factually and legally distinguishable because the expert at issue was not a forensic interviewer, she did not interview the victims, prepare a report, express an opinion regarding the credibility of child sex abuse victims' allegations, or express an opinion regarding the victims in that case).

Similarly, Appellant's reliance on State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989), and State v. Dempsey, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), is misplaced. In Jennings, a report prepared by a forensic interviewer (Ms. Galloway-Williams) regarding her interviews of the victims was inadmissible hearsay, and impermissibly vouched for the victims' credibility by concluding the victims "provided a 'compelling disclosure of abuse.'" 716 S.E.2d at 94. Both Dawkins and Dempsey involved testimony from therapists who were actually treating the victims, and their testimony clearly indicated they believed the victims were telling the truth. Dawkins, 377 S.E.2d at 302 (therapist testified his impression was that victim's symptoms were genuine); Dempsey, 532 S.E.2d at 308-310 (therapist testified children alleging sexual abuse were truthful 95% to 99% of the time, and he concluded victim was reliable). .

In this case, Galloway-Williams did not testify as a forensic interviewer, she never interviewed the victims or any other witness, did not prepare a report, and did not express any opinion or belief regarding the credibility of victims' allegations in general,

or these victims in particular. Therefore, the analysis and holdings in Jennings, Dawkins and Dempsey clearly do not apply to this case.

Appellant accuses the State of trying to circumvent recent case law (presumably Kromah and Jennings) "by presenting a witness who had **not met** with the [victims], but who was familiar with the case, and presumably the [victims'] testimony and specific allegations, as a result of discussions with the Solicitor's Office." (Brief of Appellant, p. 22) (emphasis in original). Ironically, in the face of this accusation, Appellant neither cites nor distinguishes Shumpert and Weaverling, which clearly apply to this case, and were not even cited in the Kromah and Jennings opinions, much less overruled. Indeed, the viability of Schumpert and Weaverling was recently reaffirmed in Anderson and Brown.

Brown, and Weaverling are factually and legally on point with this case. In Brown, the State presented Galloway-Williams as an expert in child sex abuse dynamics, and her testimony in that case was substantially the same as her testimony in this case. This Court affirmed, finding she was properly qualified as an expert, she never commented on the credibility of the victims, but only testified about general behavioral characteristics of child sex abuse victims and non-offending caregivers, and her testimony did not improperly bolster the victims' or Mother's testimony. 768 S.E.2d at 252-253.[5]

[5]Appellant was "constrained" to acknowledge Brown, but noted a petition for writ of certiorari was pending in the Supreme Court, and asked this Court to reconsider Brown as it applied to this case. (Brief of Appellant, p. 23). This Court denied the petition for rehearing in Brown, and the Supreme Court denied the petition for writ of certiorari on August 6, 2015, thereby affirming this Court's holding. Thus, Brown is good law directly on point with this case.

In Weaverling, again as in this case, the testifying expert on sexual abuse victims did not meet or interview the victim, her knowledge of the case was limited to discussions with the solicitor, and she did not testify specifically regarding the victim or the facts of the case. This Court held the expert testimony was properly admitted, finding it was relevant and simply explained the effect of molestation on a person's subsequent conduct, provided insight into a sexually abused child's often strange demeanor, and the fact the expert did not personally interview the victim goes to the weight of the evidence, not its admissibility. 523 S.E.2d at 794.[6]

Appellant contends the jury "very likely interpreted" Ms. Galloway-Williams' testimony as expressing her belief the jury should believe the victims, which is nothing more than rank speculation with no support in the record. Again, Galloway-Williams never related her testimony to the victims' allegations or testimony. Rather, as in Brown, she testified in very general terms regarding various reasons child sex abuse victims delay disclosing the abuse, how the disclosure process generally progresses, and the reasons a non-offending caregiver may not report abuse disclosed by a child.

Finally, Appellant's claims Galloway-Williams' testimony was "cumulative" and "highly prejudicial" are specious. It is undisputed Galloway-Williams did not talk to the victims, Mother or law enforcement prior to trial, and there is no evidence she even knew the substance of the victims' and Mother's trial testimony. Thus, her testimony could not be "cumulative" to their testimony, and she did not, and could not, bolster the substance

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[6]The Supreme Court re-affirmed the admissibility of expert testimony and behavioral evidence in White. The victim in White was an adult, and the Court held behavioral evidence is relevant regardless of the victim's age. Significantly, the Court then noted expert testimony "may be **more** crucial" when children are victims, because their inexperience and impressionability often render them unable to effectively relay incidents of criminal sexual behavior. 605 S.E.2d at 544 (emphasis added).

of their testimony, or express any opinion regarding their credibility. The jury heard the victims' and Mother's testimony, including intense cross-examination, and saw their demeanor on the witness stand and in the courtroom, which are significant factors in judging credibility.

Further, Galloway-Williams' testimony was probative to cure laypeople's misconceptions about sexually abused children and their non-offending caregivers, and explain the phenomenon of their behaviors. The primary prejudice to Appellant was the limitation on his ability to mislead the jury, or rely on a juror's misconceptions about child abuse, but it was not **unfairly** prejudicial.

The mere fact Galloway-Williams' testimony may have provided insight and context for the jury regarding the behavior of sex abuse victims and non-offending caregivers, and delayed and partial disclosure in general, does not make it improper bolstering or unfairly prejudicial, even if some of her testimony ultimately corroborated parts of the victims' testimony. Such is the nature of all evidence - parts of it tend to corroborate other evidence submitted by the party, including the party's own testimony, and in that regard, all evidence could always be considered cumulative and bolstering to a certain extent.[7] Indeed, the party offering an expert asks questions designed to elicit testimony the party can then argue supports his case. If corroboration becomes the equivalent of improper bolstering, however, expert testimony, and arguably any other evidence tending to corroborate a party's case, will virtually never be admissible in any case.

[7]If the evidence does not tend to corroborate the party's case, it is arguably irrelevant and inadmissible.

In essence, Appellant and other defendants continue to seek judicial approval of the proposition that the victim's testimony in a child sex abuse case must stand alone, with defendants able to attack any delay in disclosure, however slight, and inconsistencies in statements and testimony, however minor, while the jury has no context for such delays and inconsistencies, leaving defendants free to perpetuate myths surrounding child sex abuse. As recently confirmed in Anderson and Brown, that is not, and never has been, the law in South Carolina. To adopt such a proposition would judicially sanction continued harm to victims, who have already suffered untold horror, shame and degradation, but had the courage to speak up.

The circuit court properly qualified Galloway-Williams as an expert on child sex abuse dynamics, and allowed her testimony regarding general behavioral characteristics of child sex abuse victims and non-offending caregivers, including the reasons for delayed disclosure, and the disclosure process. The court's rulings were based on the law of South Carolina regarding such testimony, and should be affirmed.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

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September 29, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable Robin B. Stilwell, Circuit Court Judge
Appellate Case No. 2014-001639

THE STATE,

Respondent,

v.

ROY LEE JONES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent coomplies with Rule 211(b), SCACR, and the August 13, 2007, order of the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Rulings."

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PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

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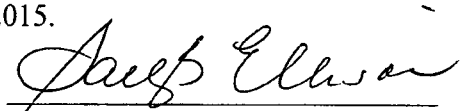
I further certify all parties required by Rule to be served have been served.

This 29th day of September, 2015.



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