

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 07 2019

S.C. SUPREME COURT

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

Supreme Court Appellate Case No. 2018-001355
Court of Appeals Opinion No. 2018-UP-109

The State of South Carolina, Respondent,

v.

Nakia Johnson,Petitioner.

REPLY BRIEF OF PETITIONER

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Petitioner Nakia Johnson

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Argument in Reply	1
Conclusion	2

TABLE OF AUTHORITIES

Cases

<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018).....	2
<i>State v. Anderson</i> , 413 S.C. 212, 776 S.E.2d 76 (2015).....	1, 2
<i>State v. Jennings</i> , 394 S.C. 473, 716 S.E.2d 91 (2011).....	2
<i>State v. Johnson</i> , 2018 WL 1315136 (S.C. Ct. App. Mar. 14, 2018)	2
<i>State v. Kromah</i> , 401 S.C. 340, 737 S.E.2d 490 (2013).....	1, 2

ARGUMENT IN REPLY

Although conceding the trial judge admitted improper “improper bolstering testimony” in violation of *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013) and *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015), see Brief of Respondent at 8 (fn. 2), the State continues to advance three arguments previously rejected not only by the Court of Appeals in its written opinion, A. 585-92, and order denying the State’s petition for rehearing, A. 609, but also by this Court when it denied the State’s petition for a writ of *certiorari*.

First, the State argues the “improper admission of evidence . . . [was] not properly raised before the Court of Appeals and should not have formed the basis of the Court’s opinion.” Brief of Respondent at 13. At every stage, Mr. Johnson has challenged the trial judge admitting “improper bolstering testimony” in violation of *Kromah* and *Anderson*, an error that State concedes. Because this Court denied the State’s petition for a writ of *certiorari*, the only issue before this Court is whether the Court of Appeals erred by finding the trial judge’s admission of “improper bolstering testimony” in violation of *Kromah* and *Anderson* to be harmless error.

Second, the State argues, “This case is not a mere battle of credibility” because “the child victim’s testimony was significantly corroborated” by her mother and the medical examination. Brief of Respondent at 8-10. In reality, other than some redness, which the nurse testified could have multiple causes, the medical examination was normal. R. 165-80; 183; 188. The Court of Appeals did not consider the “redness” to be evidence corroborating the allegations of sexual abuse and correctly recognized Mr. “Johnson’s conviction for second-degree CSC with a minor . . . depended solely on the

credibility of Victim.” *State v. Johnson*, No. 2015-001436, 2018 WL 1315136, at *3 (S.C. Ct. App. Mar. 14, 2018). Rather, the court below exclusively relied on the mother’s testimony purportedly corroborating the graveyard incident. As set forth in Mr. Johnson’s Brief of Petitioner, at 11-14, the Court of Appeals committed two errors when it relied on the mother’s testimony and additionally erred in its application of the harmless error analysis.

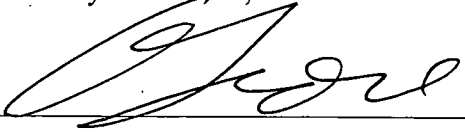
Third, the State asks this Court to “vacate the Court of Appeals’ opinion and remand to the Court of Appeals for a determination of the issue.” Brief of Respondent at 14. This request for relief misunderstands the procedural posture of this case. The only issue before this Court is whether the Court of Appeals erred by finding the trial judge’s admission of “improper bolstering testimony” in violation of *Kromah* and *Anderson* to be harmless error.

CONCLUSION

For the reasons set forth in Mr. Johnson’s Brief of Petitioner and this Reply Brief, this Court should reverse the Court of Appeals and remand this case for a new trial on all charges. This Court’s guidance is needed to clarify the proper application of the harmless error rule. Although this Court’s recent precedent in appeals of convictions for criminal sexual conduct with a minor focused on the presence or absence of physical evidence of sexual abuse, *e.g. Anderson, Kromah*, and *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011), a proper harmless error analysis is much more in depth. *See e.g. Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

(signature on next page)

Respectfully Submitted,

By 

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Petitioner Nikia Johnson

December 31, 2018
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

RECEIVED
RECEIVED
JAN 07 2019
JAN 07 2019
S.C. SUPREME COURT
S.C. SUPREME COURT

Supreme Court Appellate Case No. 2018-001355
Court of Appeals Opinion No. 2018-UP-109

The State of South Carolina,.....Petitioner-Respondent,

v.

Nakia Johnson,.....Respondent-Petitioner.

Certificate of Service

I certify that I have served the Reply Brief of Petitioner on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

William M. Blich, Jr., Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


Laura Wingard
Paralegal
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

January 3rd, 2019
Greenwood, South Carolina