

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2012-212745

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

FREDERICK R. CHAPPELL,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General
SC Bar No. 73562

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville, South Carolina 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

RECEIVED

FEB 19 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2012-212745

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

FREDERICK R. CHAPPELL,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General
SC Bar No. 73562

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville, South Carolina 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE	2
ARGUMENT	3
CONCLUSION	17

AUTHORITIES CITED

South Carolina Cases:

<u>I'On, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000)	5
<u>SCDSS v. Lisa C.</u> , 380 S.C. 406, 669 S.E.2d 647 (Ct. App. 2008)	5
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006)	5
<u>State v. Bixby</u> , 388 S.C. 528, 698 S.E.2d 572 (2010)	6
<u>State v. Dempsey</u> , 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000)	5
<u>State v. Douglas</u> , 380 S.C. 499, 671 S.E.2d 606 (2009)	5, 11
<u>State v. Foster</u> , 354 S.C. 614, 582 S.E.2d 426 (2003)	5
<u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002)	6
<u>State v. Henry</u> , 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1998)	6
<u>State v. Hill</u> , 287 S.C. 398, 339 S.E.2d 121 (1986)	12
<u>State v. Irick</u> , 344 S.C. 460, 545 S.E.2d 282 (2001)	7
<u>State v. Johnson</u> , 324 S.C. 38, 476 S.E.2d 681 (1996)	5
<u>State v. Kelley</u> , 319 S.C. 173, 460 S.E.2d 368 (1995)	6
<u>State v. Morgan</u> , 326 S.C. 503, 485 S.E.2d 112 (Ct. App. 1997)	12
<u>State v. Patterson</u> , 324 S.C. 5, 482 S.E.2d 760 (1997)	4, 8
<u>State v. Price</u> , 368 S.C. 494, 629 S.E.2d 363 (2006)	6
<u>State v. Schumpert</u> , 312 S.C. 502, 435 S.E.2d 859 (1993)	8-9, 12
<u>State v. Torres</u> , 390 S.C. 618, 703 S.E.2d 226 (2010)	6
<u>State v. Tucker</u> , 319 S.C. 425, 462 S.E.2d 263 (1995)	5
<u>State v. Weaverling</u> , 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999)	7, 9, 11

<u>State v. White</u> , 361 S.C. 407, 605 S.E.2d 540 (2004)	10, 11
<u>State v. White</u> , 382 S.C. 265, 676 S.E.2d 684 (2009)	6
<u>Watson v. Ford Motor Co.</u> , 389 S.C. 434, 699 S.E.2d 169 (2010)	4, 6
<u>Cases from other jurisdictions:</u>	
<u>Brodit v. Cambra</u> , 350 F.3d 985 (9 th Cir. 2003)	15
<u>Com. v. Bougas</u> , 59 Mass.App.Ct. 368, 795 N.E.2d 1230 (2003)	15
<u>Harris v. State</u> , 283 Ga. App. 374, 641 S.E.2d 619 (Ct. App. 2007)	13
<u>People v. Baenziger</u> , 97 P.3d 271 (Colo. Ct. App. 2004)	13
<u>People v. Beckley</u> , 434 Mich. 691, 456 N.W.2d 391 (Mich. 1990)	15
<u>People v. Koon</u> , 724 P.2d 1367 (Colo.App.1986)	11
<u>People v. Spicola</u> , 16 N.Y.3d 441, 947 N.E.2d 620 (N.Y. 2011)	12
<u>Sanderson v. State</u> , 165 P.3d 83 (Wy. 2007)	14-15
<u>State v. Batangan</u> , 71 Haw. 552, P.2d 48 (1990)	14
<u>State v. Cardany</u> , 35 Conn.App. 728, 646 A.2d 291 (Conn. App. Ct. 1994)	13
<u>State v. Carpenter</u> , 147 N.C. App. 386, 556 S.E.2d 316 (N.C. Ct. App. 2001)	11
<u>State v. Crespo</u> , 114 Conn. App. 346, 969 A.2d 231 (Conn. App. Ct. 2009)	13
<u>State v. Gonzalez</u> , 150 N.H. 74, 834 A.2d 354 (N.H. 2003)	13
<u>State v. Kaufman</u> , 187 Ohio App. 3d 50, 931 N.E.2d 143 (Ohio Ct. App. 2010) ...	7
<u>State v. Kennedy</u> , 320 N.C. 20, 357 S.E.2d 359 (1987)	11
<u>State v. Middleton</u> , 294 Or. 427, 657 P.2d 1215 (1982)	11, 15
<u>State v. Myers</u> , 359 N.W.2d 604 (Minn. 1984)	14

<u>State v. Reser</u> , 244 Kan. 306, 767 P.2d 1277 (Kan. 1989)	12
<u>State v. Reyna</u> , 290 Kan. 666, 234 P.3d 761 (Kan. 2010)	12-13
<u>State v. Roenfeldt</u> , 241 Neb. 30, 486 N.W.2d 197 (Neb. 1992)	7
<u>State v. Schnabel</u> , 196 N.J. 116, 952 A.2d 452 (2008)	14
<u>State v. White</u> , 123 N.M. 510, 943 P.2d 544 (N.M.App. 1997)	7, 11
<u>Westbrooks v. State</u> , 309 Ga.App. 398, 710 S.E.2d 594 (Ga.App. 2011)	11
<u>W.R.C. v. State</u> , 69 So.3d 933 (Ala.Crim.App. 2010)	14
 <u>Statutes and Rules</u>	
Rule 702, SCRE	6
 <u>Other Authorities</u>	
John E. B. Meyers, <u>Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion</u> , 14 U.C. Davis J. Juv. L. & Pol'y 1 (2010).....	15
Elizabeth Trainor, <u>Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case</u> , 85 A.L.R. 5th 595	16

STATEMENT OF ISSUE ON APPEAL

Appellant's argument on appeal regarding improper vouching is not preserved for appellate review because there was no objection on this basis below and no objection to any particular testimony of the expert below. Further, the trial judge properly allowed the child sexual abuse expert to testify in regard to the common behavioral characteristics exhibited by child sexual abuse victims because her testimony was relevant regardless of the fact that she never personally interviewed the victim in this case.

STATEMENT OF THE CASE

Appellant was indicted in Greenville County in December 2010 for criminal sexual conduct with a minor in the first degree and lewd act upon a minor. On August 6, 2012, Appellant proceeded to trial before the Honorable D. Garrison Hill and a jury. The jury found Appellant guilty as indicted, and Judge Hill sentenced Appellant to life without parole, pursuant to S.C. Code § 17-25-45, for criminal sexual conduct with a minor and fifteen years for lewd act upon a minor. A timely notice of appeal was served and filed.

ARGUMENT

Appellant's argument on appeal regarding improper vouching is not preserved for appellate review because there was no objection on this basis below and no objection to any particular testimony of the expert below. Further, the trial judge properly allowed the child sexual abuse expert to testify in regard to the common behavioral characteristics exhibited by child sexual abuse victims because her testimony was relevant regardless of the fact that she never personally interviewed the victim in this case.

Issue Preservation

Appellant's issue statement on appeal asserts that "[t]he trial judge erred in allowing an expert in child sexual abuse and treatment to testify generally about 'child abuse dynamics' when the witness had no knowledge of the specific child in question and the expert testimony was irrelevant." (See Brief of Appellant, p. 5). However, the bulk of Appellant's brief focuses on his assertion that the expert's testimony improperly vouched for the credibility of the victim. (See Brief of Appellant, p. 6-11). The argument regarding improper vouching is not preserved for appellate review.

During trial, the State called Shauna Galloway-Williams to testify. (R. p. 178). Ms. Galloway-Williams testified she was employed as the executive director of the Julie Valentine Center, a child abuse and sexual assault recovery center that provides a "full range of services," including education, prevention, investigation, and treatment services related to child abuse and sexual assaults. (R. p. 178-79). Although the Center also provided forensic interviews for potential victims, Ms. Galloway-Williams did not conduct a forensic interview of the victim in this case. (R. p. 179, lines 20-24). Ms. Galloway-Williams then testified regarding her background, education, and training, and stated that it was her understanding that the purpose of her testimony was to share information related to dynamics of child sexual abuse. (R. p. 180-82).

When the State moved to qualify Ms. Galloway-Williams as an expert in “child sexual abuse and treatment,” defense counsel was permitted voir dire. (R. p. 184, lines 1-12). Defense counsel asked one question as follows: “So you have not seen the video of [the victim], you’ve not met with her, talked to her, or any of her family members related, specifically, to this case?” (R. p. 184, lines 8-11). Ms. Galloway-Williams stated she had not. (R. p. 184, line 12). Defense counsel then told the trial judge, “I’d simply object on grounds of relevancy since she hasn’t, actually, had any experience with the – with this case.” (R. p. 184, lines 13-15). The trial judge acknowledged the objection but found Ms. Galloway-Williams qualified as an expert in the stated field under the Watson case¹ and Rules 702, 401, and 403. (R. p. 184, lines 16-19). The judge then gave a charge regarding expert and opinion testimony and advised that the credibility of the expert testimony was to be determined by the jury. (R. p. 184, line 20 – p. 185, line 2). Ms. Galloway-Williams continued with her direct testimony and Appellant raised no objections to any of the testimony elicited. (See R. p. 185-96).

Appellant now asserts on appeal that the general testimony of Ms. Galloway-Williams regarding issues such as delayed disclosure and accidental disclosure improperly vouched for the testimony of the victim. (See Brief of Appellant, p. 5-7). Appellant also contends that particular testimony of Ms. Galloway-Williams improperly vouched for the credibility of the victim. (See Brief of Appellant, p. 6; p. 9-10). Neither of these issues is preserved for appellate review because there was no objection on the ground of improper vouching at any point below. See, e.g., State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”);

¹ Presumably, the trial judge was referring to Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), a case dealing with the qualification of expert witnesses and the reliability of expert testimony.

State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (a party cannot argue one ground for an objection at trial and an alternative ground on appeal); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Appellant's objection prior to qualification of the expert on "relevance" grounds does not preserve any issue regarding improper vouching since relevance and improper vouching are wholly unrelated concepts. See South Carolina Dept. of Social Services v. Lisa C., 380 S.C. 406, 414-15, 669 S.E.2d 647, 651-52 (Ct. App. 2008) (appellant's argument on appeal that psychologist/forensic interviewer improperly vouched for the victim's credibility was not preserved as to the comments not objected to below, even though appellant made objections on other grounds regarding the psychologist's testimony); State v. Johnson, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court); cf. State v. Foster, 354 S.C. 614, 621, 582 S.E.2d 426, 429 (2003) (issue was sufficiently preserved for review where counsel objected and added that he was objecting because the statement would "add to" the witness's credibility); see also State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 n2 (Ct. App. 2000). Accordingly, no issues relating to improper vouching are preserved for this Court's review.²

Applicable Law

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

² In any event, inasmuch as Ms. Galloway-Williams never met with the particular victim in this case, she did not testify that she believed the victim, that the victim had been sexually abused, that the victim was telling the truth, or that the victim's behavior suggested she was telling the truth. (See R. p. 178-99). See State v. Douglas, 380 S.C. 499, 503-504, 671 S.E.2d 606, 609 (2009) (rejecting claim that expert vouched for the victim's credibility where the expert gave no indication about the victim's veracity).

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) State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010). Likewise, the 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); State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

"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).

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. 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).

An expert's testimony is admissible where "it is relevant and based on some factual predicate in the record." State v. Irick, 344 S.C. 460, 465, 545 S.E.2d 282, 285 (2001).

Discussion

To the extent that Appellant argues that Ms. Galloway-Williams' testimony was irrelevant because she "had no knowledge of the specific child in question," this argument is without merit. There is no requirement that an expert personally interview a victim or know the specific facts of a case before the expert can offer testimony at trial. See State v. Weaverling, 337 S.C. 460, 475, 523 S.E.2d 787, 787 (Ct. App. 1999) ("There is no requirement the sexual assault victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony. The fact that the expert does not personally interview the victim bears on the weight of the behavioral evidence not on its admissibility."); see also State v. Roenfeldt, 241 Neb. 30, 39, 486 N.W.2d 197, 204 (Neb. 1992) ("The reasoning for a rule allowing an expert to testify about sexual abuse in generalities, without being familiar with the alleged victim, is that '[f]ew jurors have sufficient familiarity with child sexual abuse to understand the dynamics of a sexually abusive relationship,' and 'the behavior exhibited by sexually abused children is often contrary to what most adults would expect.'" (brackets in original, citation omitted)); State v. Kaufman, 187 Ohio App. 3d 50, 85, 931 N.E.2d 143, 170 (Ohio Ct. App. 2010) (holding an expert witness was properly permitted to testify on general background information regarding delayed disclosure by juvenile victims of sexual abuse even though the expert did not know any of the specific facts related to Kaufman's victims); State v. White, 123 N.M. 510, 512, 943 P.2d 544, 546 (N.M.App. 1997) ("The court also expressed concern that Dr. Cave had not personally examined the Child. But

expert opinion may be helpful, and admissible, by conveying general knowledge without any reference by the expert to the alleged specific facts of the case. . . There is no reason to require an expert witness to have examined the alleged victim. The foundation for the relevance of the expert testimony may be supplied by other witnesses.”) (citations omitted). Accordingly, the trial judge did not err in allowing Ms. Galloway-Williams to testify as an expert even though she had not met with the victim and was not familiar with the specific facts of the case. .

Appellant appears to also argue on appeal that Ms. Galloway-Williams’ testimony as a whole was irrelevant for an additional reason: because it “does not make any fact of consequence more or less probable.” (See Brief of Appellant, p. 7). This issue is not preserved because the only issue Appellant raised below was whether or not Ms. Galloway-Williams’ testimony as a whole was irrelevant due to the fact that she did not have any personal experience with the victim’s case.³ (See R. p. 184, lines 13-15). See, e.g., Patterson, 324 S.C. at 19; 482 S.E.2d at 767 (“Appellant is limited to the grounds raised at trial.”). Indeed, it appears from Appellant’s objection below that Appellant would have agreed that Ms. Galloway-Williams’ testimony was relevant if only she had personally interviewed the victim and been familiar with the case. (See R. p. 184, lines 8-15).

In any event, the additional relevance argument advanced on appeal is also without merit. In State v. Schumpert, a 1993 child sex abuse case, the South Carolina Supreme Court held that expert testimony regarding common behavioral characteristics exhibited by child victims of sexual abuse is admissible as rape trauma evidence to prove

³ As discussed previously, Appellant made no objections below to any particular testimony of Ms. Galloway-Williams. (See R. p. 185-96).

a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect. 312 S.C. 502, 506, 435 S.E.2d 859, 861-62 (1993). In State v. Weaverling, a 1999 child sex abuse case, a social worker testified, among other things, that it was “not uncommon” for past victims of sexual abuse to become offenders themselves. 337 S.C. 460, 473-74, 523 S.E.2d 787, 794 (Ct. App. 1999). The defendant objected to this testimony, arguing that the behavioral evidence was irrelevant because the social worker never interviewed or met with the victim.⁴ Id. This Court ruled as follows:

Here, the challenged testimony is behavioral evidence concerning rape trauma. “[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect.” State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993). Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. See Frenzel v. State, 849 P.2d 741 (Wyo.1993). See also State v. Lujan, 192 Ariz. 448, 967 P.2d 123 (1998) (opinion testimony describing behavioral characteristics outside jurors’ common experience is permitted as long as it meets other admissibility requirements). Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. Frenzel, supra. 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. Id. See also Lujan, supra (when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors—like reactions of child victims of sexual abuse—expert testimony on general behavioral characteristics of such victims should be admitted).

...

In the instant case, the evidence simply explained the effect of prior molestation on a person’s subsequent conduct—that it is “very common” for a victim of sexual abuse to become a sexual offender. The fact that [the victim] molested another boy in the same manner he alleged [the defendant] molested him enhances the probative value of [the social worker’s] testimony such that it outweighs the prejudicial effect. The testimony was relevant and was properly admitted.

⁴ Weaverling also argued that the probative value of the evidence was clearly outweighed by its prejudicial effect. Id. at 473, 523 S.E.2d at 794. Appellant has not raised a Rule 403, SCRE, argument in this case.

Weaverling, 337 S.C. at 474-75, 523 S.E.2d at 794-95.

In State v. White, a 2004 adult sex abuse case, a psychotherapist who counseled the victim was qualified as an expert in post-traumatic stress disorder and assessment and treatment of sexual abuse. 361 S.C. 407, 414, 605 S.E.2d 540, 544 (2004). The defendant argued that the psychotherapist's testimony was outside the scope of the rape trauma evidence permitted in Schumpert since the defendant's case involved an adult victim rather than a child victim. Id. The South Carolina Supreme Court disagreed and stated:

Expert testimony on rape trauma may be more crucial in situations where children are victims. The inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior. Nevertheless, the importance of rape trauma testimony in the case of a child victim does not negate the relevance of rape trauma evidence where the victim is an adult. 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. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). This is true whether the victim is an adult or child. See State v. Marks, 231 Kan. 645, 647 P.2d 1292 (1982) (concluding in prosecution for rape in which defendant raised defense of consent, psychiatrist's testimony that twenty-one year old victim had been suffering from rape trauma was relevant).

Schumpert, Weaverling, and White all clearly support that the expert testimony regarding the ways in which children disclose sexual abuse is relevant because the subject matter is beyond the common sense, experience, and education of the average juror, and because the testimony could help jurors understand the typical behavior patterns of child sexual assault victims and provide insight into what might otherwise be viewed as unusual or counterintuitive behavior. In fact, Ms. Galloway-Williams' expert testimony was extremely important because it could help jurors understand the evidence related to the victim's behavior following the abuse, which could potentially have been

misunderstood by jurors absent that testimony. 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.”); cf. State v. Carpenter, 147 N.C. App. 386, 393, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (holding that expert testimony indicating that delayed and incomplete disclosures are not unusual in cases of child abuse was “clearly instructive and helpful to the jury in understanding the evidence” because the nature of the juvenile sexual abuse places lay jurors at a disadvantage). The expert testimony could help the jury determine it was more or less probable the offense occurred; therefore, the testimony was relevant under Rule 401, SCRE.⁵ See Weaverling at 475, 523 S.E.2d at 794 (“Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault.”); State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) (“The

⁵ Appellant’s contention that Ms. Galloway-Williams’ general testimony regarding child abuse dynamics was a “thinly veiled disguise to improperly vouch for the credibility of the victim,” in addition to not being preserved as discussed previously, is without merit. (See Brief of Appellant, p. 7). The fact that some of an expert’s testimony may indirectly support another witness’s version of events does not mean that the expert improperly bolsters the credibility of the witness. See State v. Douglas, 380 S.C. 499, 503-504, 671 S.E.2d 606, 609 (2009) (rejecting claim that expert vouched for the victim’s credibility where the expert gave no indication about the victim’s veracity); see also State v. Middleton, 294 Or. 427, 435-36, 657 P.2d 1215, 1219-20 (1982) (“Defendant contends that the evidence given by the experts here was a direct effort to support the credibility of the complaining witness. It is true that if the jurors believed the experts’ testimony, they would be more likely to believe the victim’s account. Neither of the experts directly expressed an opinion on the truth of the victim’s testimony. Much expert testimony will tend to show that another witness either is or is not telling the truth. This, by itself, will not render evidence inadmissible.”) (citations omitted); People v. Koon, 724 P.2d 1367, 1370 (Colo.App.1986) (finding that, although child incest pattern testimony may incidentally give rise to an inference that a victim is or is not telling the truth about the specific incident in question, “this fact alone is insufficient to deny admission of the evidence, because expert testimony generally tends to bolster or attack the credibility of another witness”); State v. Kennedy, 320 N.C. 20, 32, 357 S.E.2d 359, 367 (1987) (“The fact that this evidence may support the credibility of the victim does not alone render it inadmissible. Most testimony, expert or otherwise, tends to support the credibility of some witness.”); State v. White, 123 N.M. 510, 512, 943 P.2d 544, 546 (N.M.App. 1997) (“The fact that expert testimony contradicts or supports the testimony of another witness does not mean that the expert testimony constitutes comment on the other witness’s veracity. Otherwise, virtually all expert testimony would be inadmissible. One must distinguish between expert opinion that contradicts or supports a witness and expert opinion regarding a witness’s veracity. It is only the latter type of testimony that is prohibited.”); Westbrooks v. State, 309 Ga.App. 398, 402, 710 S.E.2d 594, 598 (Ga.App. 2011) (“Moreover, “the fact that such testimony may also indirectly, though necessarily, involve the child’s credibility does not render it inadmissible.”) (citation omitted).

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.”); State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) (“both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect”); cf. State v. Hill, 287 S.C. 398, 400, 339 S.E.2d 121, 122 (1986) (holding that expert testimony on battered woman’s syndrome, which involves testimony on the common characteristics that are exhibited by women abused over an extended period of time, was not only relevant but “critical”); see also State v. Morgan, 326 S.C. 503, 508, 485 S.E.2d 112, 115 (Ct. App. 1997), *overruled on other grounds by State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009) (in cases where there are allegations of child sexual abuse, “[e]xpert testimony concerning child abuse typically comes from two sources: medical evidence provided by physicians and behavioral science evidence provided by psychiatrists, psychologists, and social workers.”).

Significantly, a majority of other jurisdictions have specifically approved this type of testimony. See People v. Spicola, 16 N.Y.3d 441, 465, 947 N.E.2d 620 (N.Y. 2011) (recognizing that the majority of states allow the introduction of expert testimony to explain delayed disclosure and other behavioral characteristics exhibited by juvenile victims of sexual abuse); State v. Reser, 244 Kan. 306, 313, 767 P.2d 1277, 1282 (Kan. 1989) (“There are numerous cases from other jurisdictions where expert testimony regarding characteristics of sexually abused children has been held properly admitted as providing helpful background information to the jury.”); State v. Reyna, 290 Kan. 666, 685, 234 P.3d 761, 775 (Kan. 2010) (“[C]ase law supports the conclusion that the

testimony of general behavioral traits of sexual abuse victims is helpful to the jury and, therefore, admissible.”); 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)); State v. Cardany, 35 Conn.App. 728, 732, 646 A.2d 291, 294 (Conn. App. Ct. 1994) (holding that the state may, in its case-in-chief, introduce expert testimony that explains in general terms the tendency of minors to delay in reporting incidents of abuse since “the consequences of the unique trauma experienced by minor victims of sexual abuse are matters beyond the understanding of the average person,” because “[i]t is natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents of abuse whether or not the defense emphasizes the delay in cross-examination.”); State v. Crespo, 114 Conn. App. 346, 373, 969 A.2d 231, 248 (Conn. App. Ct. 2009) (“Such expert testimony, related to the issue of delayed reporting of sexual abuse, falls within the type of social framework testimony that has been deemed relevant in assessing a victim’s conduct in cases of sexual abuse.”); Harris v. State, 283 Ga. App. 374, 381, 641 S.E.2d 619, 625 (Ct. App. 2007) (recognizing that experts are properly permitted to testify in regard to the typical patterns of behavior exhibited by rape victims); State v. Gonzalez, 150 N.H. 74, 78, 834 A.2d 354, 358 (N.H. 2003) (“We have recognized that a 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 ant to ‘provid[e] useful information that is beyond the common experience of an average juror.’ ” (brackets in original and citations omitted)); State v. Myers, 359 N.W.2d 604, 610 (Minn. 1984) (“Background data providing a relevant insight into the puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children.”); State v. Batangan, 71 Haw. 552, 557-58, 799 P.2d 48, 51-52 (1990) (child victims of sexual abuse exhibit patterns of behavior which are seemingly inconsistent with behavioral norms of other victims of assault, including delayed reporting of abuse and recantation of allegations of abuse; and “normally, such behavior would be attributed to inaccuracy or prevarication,” so it is helpful for the jury to know that many child victims of sexual abuse behave in the same manner and may play a particularly useful role by disabusing the jury of widely held misconceptions. . . .”) (citations omitted); W.R.C. v. State, 69 So.3d 933, 938-40 (Ala.Crim.App. 2010) (the testimony of an expert, who was qualified in the areas of child development and child and adolescent sexual abuse, regarding delayed disclosure and the possible reasons for delayed disclosure was relevant and properly admitted); State v. Schnabel, 196 N.J. 116, 133, 952 A.2d 452, 462 (2008) (general rule in New Jersey is that CSAAS testimony is admissible to explain traits sometimes found in abused children that could undermine the victim's credibility and to dispel preconceived conceptions regarding victims of abuse); Sanderson v. State, 165 P.3d 83, 90 (Wy. 2007) (general rule in Wyoming is that CSAAS testimony is

admissible to dispel misconceptions regarding victims of abuse if a victim's post-abuse behavior is an issue in the case, such as when a victim recants allegations of sexual abuse; then testimony regarding that particular aspect of CSAAS is admissible); Brodit v. Cambra, 350 F.3d 985, 991 (9th Cir. 2003) (noting that “CSAAS testimony is admissible in federal child-sexual-abuse trials, when the testimony concerns general characteristics of victims and is not used to opine that a specific child is telling the truth”); Com. v. Bougas, 59 Mass.App.Ct. 368, 375-76, 795 N.E.2d 1230, 1236 (2003) (expert testimony that abused children often delay in reporting abuse, a familiar and permitted proposition, informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant); People v. Beckley, 434 Mich. 691, 733, 456 N.W.2d 391, 409 (Mich. 1990) (experts in dealing with sexually abused children should be permitted to rely on their own experience and their knowledge of the experience of others to rebut an inference that specific behavioral patterns attributed to the victim are not characteristic of the class of child sexual abuse victims); State v. Middleton, 294 Or. 427, 436-37, 657 P.2d 1215, 1220 (1982) (expert testimony explaining child sex abuse victims’ superficially bizarre behavior by identifying its emotional antecedents could help the jury make a more informed decision in evaluating the credibility of a testifying child); see also 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) (“Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. . . Thus, from 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)); Elizabeth Trainor, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case, 85 A.L.R. 5th 595 (discussing cases dealing with the admissibility of testimony regarding the common behavioral characteristics of victims of sexual abuse).

In conclusion, Appellant’s contentions regarding improper vouching are not preserved for appellate review because these contentions were never raised below. Further, Appellant’s argument that the expert’s testimony was irrelevant is without merit and is in contravention of case law in South Carolina and case law in the majority of jurisdictions across the nation. Appellant’s appeal should be dismissed.

CONCLUSION

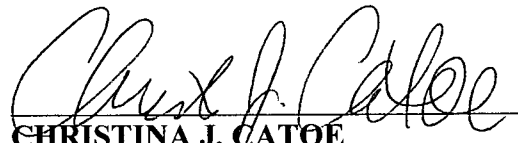
For the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit


CHRISTINA J. CATOE
S.C. Bar No. 73562

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

February 19, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2012-212745

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

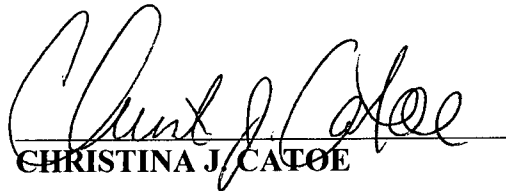
v.

FREDERICK R. CHAPPELL,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

February 19, 2014

RECEIVED

FEB 19 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2012-212745

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

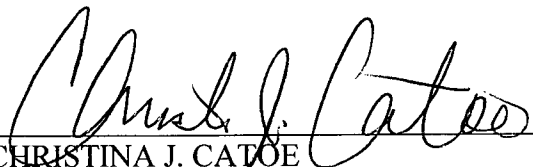
v.

FREDERICK R. CHAPPELL,

APPELLANT.

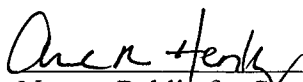
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **Kathrine H. Hudgins**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **19th** day of **February, 2014**.


CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 19th day of February, 2014.


Notary Public for South Carolina
My Commission Expires: 7/18/2017

RECEIVED

FEB 19 2014

SC Court of Appeals