STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMON T. BROWN,

APPELLANT

APPELLATE CASE NO. 2012-213548

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by allowing a witness to testify as an expert regarding information that was well within the realm of lay knowledge when such testimony was highly prejudicial to Appellant and improperly bolstered the minor complainants' credibility in a sexual abuse case against Appellant where the minor complainants' credibility was the critical determination in the case?

STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Appellant at the November 20, 2012 term of General Sessions for criminal sexual conduct with a minor in the first degree, three counts of lewd act upon a child, and three counts of sexual exploitation of a minor in the first degree. R. 389 – R. 402. His case was called to trial on November 26, 2012 before the Honorable G. Edward Welmaker, and a jury. Steven Alexander represented Appellant. Brandi Hinton and Jenny Barwick were the Assistant Solicitors. R. 1.

At the conclusion of the trial on November 28, 2012, the jury found Appellant guilty of all seven counts. R. 383, l. 25 – 384, l. 18. Judge Welmaker sentenced Appellant to one hundred seventy-six months for criminal sexual conduct with a minor in the first degree, one hundred twenty-eight months consecutive for one count of lewd act upon a child, fifty-five months consecutive for one count of sexual exploitation of a minor in the first degree, fifty-five months concurrent for each of the two remaining counts of sexual exploitation of a minor in the first degree, and one hundred twenty-eight months concurrent for each of the remaining two counts of lewd act upon a child. R. 386, , l. 13 – 387, l. 13.

This appeal follows.

ARGUMENT

The trial court abused its discretion by allowing a witness to testify as an expert regarding information that was well within the realm of lay knowledge when such testimony was highly prejudicial to Appellant and improperly bolstered the minor complainants' credibility in a sexual abuse case against Appellant where the minor complainants' credibility was the critical determination in the case.

Relevant Facts

Older Brother, age ten to twelve, and Younger Brother, age eight to ten, alleged Appellant, age nineteen to twenty-one, who was their sister's boyfriend, sexually abused them. Appellant, Older Brother, Younger Brother, their sister, and the children's mother and step-father were living in a two bedroom mobile home in Central, South Carolina. R. 129, ll. 5-13; R. 249, l. 17-19. Their sister was sixteen and pregnant with Appellant's child when the alleged abuse began. R. 251, ll. 4-12.

The testimony revealed that their mother was neglectful and uninvolved in her children's lives, usually using methamphetamines in her bedroom and disappearing for significant periods of time. R. 48, ll. 3-7; R. 129, ll. 14-24; R. 249, ll. 6-14. Their step-father was both verbally and physically abusive and also used methamphetamines. R. 86, ll. 12-13; R. 130, l. 20 – 131, l. 21; R. 249, l. 20 – 250, l. 13. It was clear from the record that there was little to no adult supervision in the home.

Older Brother testified that the alleged abuse started just after his tenth birthday, which was September 6, 2003. R. 87, ll. 3-11. He and Appellant "became really cool friends." R. 51, ll. 4-7. They had inside jokes, made up pretend games, and wrestled. When they wrestled, Appellant "would get kind of handsy" and touch or graze areas

where it was improper. R. 51, l. 10 – 52, l. 2. Younger Brother would also wrestle with them. R. 52, ll. 3-4.

Appellant, Older Brother, and Younger Brother would also play truth or dare. The only rule to the game was that they could not tell anyone or the person who told would be blamed. R. 56, l. 22 – 57, l. 6. The first time they played Older Brother was ten and Younger Brother was eight. Older Brother claimed Appellant dared the boys to compare the size of their penises. R. 59, ll. 3-6; R. 57, ll. 7-25. After their penises became erect, Appellant used his finger to measure the length.

Older Brother testified that this improper behavior progressed to sexual intercourse. R. 59, ll. 19-20. Appellant and Older Brother began to take "military showers," which allegedly Appellant explained to him were "very common in the Army" and involved soldiers showering very quickly and helping each other wash. R. 61, l. 11 – 62, l. 3. The first time Appellant and Older Brother took a "military shower" Older Brother was ten. R. 62, ll. 9-13. Appellant "got me to perform oral sex on him. And then proceeded to do oral sex on me." R. 64, ll. 1-11. Older Brother alleged Appellant also anally penetrated him with Appellant's finger and penis causing him to bleed. R. 64, l. 12 – 65, l. 25. Older Brother claimed that Appellant also took "military showers" with Younger Brother. R. 66, ll. 9-13.

The other main allegation involving sex occurred in the bedroom. Older Brother testified that Appellant would come into his bedroom at night, fondle him under the covers, and perform oral sex on him and he would perform oral sex on Appellant. R. 69, l. 24 – 70, l. 5.

Older Brother also alleged that he witnessed Appellant encourage Minor Friend, who was the ten year old daughter of his mother's friend, engage in sexual acts. Minor Friend would come over to their mobile home so that his mother could babysit her. However, his mother did not actually babysit Minor Friend. R. 75, l. 18 – 76, l. 14. Instead, Older Brother, Younger Brother, Minor Friend, and Appellant would play games including truth or dare. R. 77, ll. 10-14. Older Brother claimed that on one occasion, Appellant dared Younger Brother to anally penetrate Minor Friend in the bathroom. R. 77, l. 15 – 78, l. 10. Older Brother watched the incident through the bathroom doorway and testified that Appellant assisted Younger Brother by positioning him correctly. R. 78, l. 14 – 79, l. 11. Older Brother also claimed that Appellant dared him and Minor Friend to "dry hump each other on the couch." Older Brother and Minor Friend laid on top of each other in their underwear and pelvic thrusted while Appellant grabbed Minor Friend's breasts and ran his hands all over the rest of her. R. 79, l. 12 – 80, l. 6.

Older Brother testified that the last time Appellant molested him was on Christmas Day when he was twelve. On this occasion, Appellant allegedly attempted to put his hand down Older Brother's pants while Older Brother was playing outside, but Older Brother refused and ran away. This day was the last time that Appellant was around Older Brother's family. R. 81, l. 9 – 82, l. 25; R. 83, ll. 10-14. Older Brother did not tell anyone what was happening to him because he was scared and embarrassed and thought he would get in trouble. R. 83, ll. 1-9.

Older Brother eventually disclosed the alleged abuse in May 2009 when he was fifteen years old, several years after he stated the alleged abuse had stopped. He testified that he realized he needed to disclose after having a conversation with a girl on the school

bus. R. 83, ll. 18-21. The contents of that conversation were excluded by the trial court. R. 32, ll. 6-18. He told the School Resource Officer (SRO) at his high school who then notified the Pickens County Sheriff's Office. R. 83, l. 15 – 84, l. 8; R. 85, l. 24 – 86, l. 7. Older Brother gave a single written statement to law enforcement. It was not as detailed as his testimony at trial. See R. 122, l. 13 – 124, l. 8.

Younger Brother corroborated most of Older Brother's testimony. He was eight when the sexual abuse started. R. 135, ll. 12-13. He testified that Appellant was his sister's boyfriend at the time and that "I was trying to make friends with him because I didn't have many friends." R. 132, l. 15 – 133, l. 4. Younger Brother stated he would wrestle with Appellant and play truth or dare. Like Older Brother, he also testified that truth or dare eventually progressed into sexual abuse and that Appellant told them not to tell anyone or whoever told would be blamed. R. 134, l. 7 – 136, l. 7. Younger Brother also allegedly took "military showers," in which Appellant would shower with him and touch his penis. R. 136, ll. 8-14; R. 137, l. 16 – 138, l. 11. Younger Brother witnessed Appellant come into the boys' bedroom at night and crawl into bed with Older Brother. R. 141, l. 2-25.

Younger Brother testified he specifically remembered a game of truth or dare when Minor Friend played with him, Appellant, and Older Brother. R. 143, l. 21 – 144, l. 1. Appellant allegedly dared him to anally penetrate Minor Friend in the bathroom and, with Appellant's assistance and guidance, he did so. R. 144, l. 7 – 145, l. 23.

Younger Brother explained he was contacted by law enforcement in May 2009 when he was in the seventh grade to give a statement after Older Brother disclosed what allegedly happened to him, but Younger Brother refused. In July 2009, Younger Brother

eventually gave a statement describing the alleged sexual abuse committed by Appellant after Older Brother convinced him it was the right thing to do. R. 146, l. 5 – 147, l. 1; R. 280, l. 1 – 281, l. 7.

Younger Brother's statement was seven sentences long and did not include a lot of detail. R. 161, ll. 4-16. He alleged in his statement that Appellant made him, Older Brother, and Minor Friend "do stuff," specifically Appellant made Younger Brother anally penetrate Minor Friend and made Older Brother and Younger Brother compare penis sizes. R. 161, ll. 9-13. His statement also stated that Appellant made him take showers with him and smoke marijuana with him. R. 161, ll. 13-15. Younger Brother's testimony at trial, on the other hand, was very detailed and specific. Younger Brother testified that he did not disclose earlier because he was embarrassed. R. 146, ll. 16-19.

Minor Friend was the last complainant to testify. She testified that Older Brother and Younger Brother were her "childhood best friends" and that she often went over to their house so that their mother could babysit her. R. 163, l. 21 – 164, l. 20. Minor Friend claimed she was sexually abused by Appellant in the living room and bathroom of the family's mobile home on two occasions. R. 167, l. 20 – 168, l. 6.

On the first occasion, Minor Friend testified Appellant told Older Brother to go into a different room. She thought Older Brother was in trouble, but she could hear him crying and telling Appellant "No." When Older Brother came out of the room, his face was red and he would not talk. R. 168, ll. 12-25. On that same occasion, Minor Friend testified that Appellant made Older Brother and Younger Brother touch each other's penis over their clothing during a game of truth or dare. R. 169, l. 1 – 170, l. 12.

On the second occasion of alleged abuse, Minor Friend claimed Appellant dared Older Brother to "dry hump me." While Older Brother was dry humping her, Appellant kissed her, touched her hair, and grabbed her "boob." Appellant also attempted to probe his penis into her mouth. R. 170, l. 13 – 172, l. 10. During that same game of truth or dare, Minor Friend alleged Appellant made Younger Brother anally penetrate Minor Friend with his penis in the bathroom. Younger Brother did so with Appellant's assistance. R. 172, l. 9 – 173, l. 2.

Minor Friend testified that after this second occasion of abuse she told her mother that she never wanted to go back. She never saw Older Brother, Younger Brother, or Appellant again. R. 174, ll. 7-16; R. 175, l. 25 – 176, l. 7. Minor Friend was eventually contacted by the police about the alleged abuse after Older Brother disclosed. R. 174, l. 24 – 175, l. 5. She gave the police two written statements taken more than a year apart. R. 188, ll. 15-16; R. 198, l. 22 - 199, l. 20. Minor Friend testified that she never told anyone about the alleged abuse before the police contacted her because she felt that it was her fault that it happened, that people would get mad at her, and because it made her feel "gross." R. 175, ll. 6-18.

Defense counsel cross-examined Minor Friend about the significant discrepancies between her two statements and her testimony at trial. R. 199, l. 24 – 202, l. 2. Minor Friend testified that the more she talked about it the more she could remember. R. 200, ll. 11. It also came to light during Minor Friend's testimony that she had talked to law enforcement in December 2004, several months after the alleged sexual abuse in this case took place, about an unrelated complaint of sexual abuse. Minor Friend failed to disclose the alleged abuse regarding Appellant at that time. She explained that she did not disclose

the alleged abuse involving Appellant in December 2004 because the officer "didn't ask me." R. 203, l. 18 – 204, l. 21; R. 245, l. 18 – 246, l. 24.

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

Expert Shauna Galloway-Williams

During the beginning of trial, the state informed the court it would seek to enter Shauna Galloway-Williams as an expert in counseling sexually abused children and their families for the purpose of explaining delayed disclosures, partial disclosures, and physical symptoms victims experience, along with how knowing someone and being close with someone could affect the disclosure process. R. 11, ll. 7-22. Defense counsel strongly objected to her testimony throughout the course of the trial. He argued pretrial:

> And she may not directly comment on these witnesses' specific testimony, but her testifying as to every single one of those things that Ms. Barwick just listed, all it's going to do is ***go directly to commenting on their credibility, to bolster their testimony that there's a late disclosure for these reasons.*** And in this case, we have a late disclosure. Five years, or four or five years late disclosure. Partial disclosures, they've apparently got – the testimony is going to be greatly more detailed than their written statements, which were given three years ago . . .
>
> ***All of that does nothing but tell the jury, you should believe these witnesses because of these reasons.*** And I would further say that her testimony is not necessary. I mean, you need expert – expert testimony can be used, I believe, in the case law or I think it's under Rule 702, to help the jury determine a fact at issue based on their specialized knowledge, experience, skill, and it's necessary in cases where it falls outside the realm of ordinary lay knowledge. I mean, ***these are not outside any lay knowledge***. It's certainly, you know, things that is not openly discussed in public or anything or even in privacy, ***but we don't need***

> ***an expert to help the jury determine, you know, any particular reason why there would be a delay in disclosure.*** They can hear the witnesses themselves and make that determination. ***That's for the jury to determine on their credibility.***

R. 12, l. 3 – 13, l. 4 (emphasis added)

Due to defense counsel's objection, the court required the state proffer Galloway-Williams' testimony. R. 210, ll. 8-15. After she testified in camera, defense counsel again objected to her being permitted to testify. His arguments were similar to his arguments made pretrial. He had four main points: (1) Galloway-Williams had no direct knowledge of the case and did not interview the children; (2) the main purpose of her testimony is to bolster the complainants' credibility; (3) under Rule 702, SCRE, and Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), the subject matter did not fall outside the realm of ordinary lay knowledge requiring an expert to testify; and (4) the probative value of her testimony is substantially outweighed by the prejudicial effect. R. 239, l. 5 – 241, l. 24.

The trial court determined Galloway-Williams' testimony was relevant and would assist the trier of fact, consequently ruling that she would be permitted to testify as an expert in "child abuse dynamics and disclosure." R. 243, ll. 2-16.

In the Presence of the Jury

Shauna Galloway-Williams is the executive director of the Julie Valentine Center, "a child abuse and recovery center." She testified that she is responsible for the overall administration of the agency and the clinical oversight of all their programs. She also conducts clinical services including forensic interviews and group counseling. She is a licensed professional counselor in the state of South Carolina and has a Master's Degree

in counseling and a Bachelor's Degree in psychology. R. 301, l. 9 – 302, l. 8. The vast majority of her training was specifically related to child abuse and sexual assault. She completed over one hundred and forty hours of skills-based training in the area of forensic interviewing and has been working in the field for over eleven years. R. 302, ll. 9-21.

The court qualified Galloway-Williams as an expert in "child abuse dynamics and disclosure" subject to defense counsel's objection. R. 303, ll. 6-10.

Galloway-Williams testified that she had ***never*** met with Older Brother, Younger Brother, or Minor Friend and that she had ***not*** been provided with any of the incident reports. Her ***only*** knowledge about the case came from discussions with the Solicitor's Office. R. 304, ll. 11-20.

Galloway-Williams explained to the jury that a delayed disclosure is a disclosure that does not happen directly after the abuse has occurred, but rather after some delay. R. 304, l. 21 – 305, l. 3. She testified that most child sexual abuse cases involve delayed disclosures, with research indicating somewhere ***between seventy and eighty percent of children*** are delayed in disclosing abuse, often not until adulthood. R. 305, ll. 4-8. Galloway-Williams explained further that the number one reason given by children or adults for delaying disclosure is fear: fear of the perpetrator, including direct and indirect threats, and fear of the consequences of disclosing. The perpetrator may be someone who the child loves and trusts and that may make it harder for the child to disclose. R. 305, ll. 11-25. Another reason for delayed disclosure is the fact that younger children may not know what is happening to them is wrong or they may not have the language to express what has happened to them. R. 306, ll. 2-14.

Galloway-Williams explained to the jury "grooming" and "test touching." "Grooming" is preparing a child to be abused by giving a child gifts or special attention. It essentially helps build trust and a relationship with the child. R. 306, l. 15 – 307, l. 1. "Test touching" is when a perpetrator moves from ambiguous touching to more specific touching. An abuser may start out by "touching a child's butt or pinching" the child to see how the child will react. R. 307, ll. 2-9.

Galloway-Williams claimed research showed that most children do not purposefully or intentionally disclose. Children do not usually make a conscious decision to tell someone what happened. Instead, most disclosures are accidental and the result of an adult noticing the child display unusual behavior or the child responding to an adult asking them questions. R. 307, l. 23 – 308, l. 11. Also, "An event could trigger a child to say something." R. 308, ll. 8-9.

Galloway-Williams next discussed partial disclosures. She explained that disclosure is a process and that one cannot expect a child to tell every single detail from the beginning because the child may not know what details interviewers, family members, or law enforcement need to know. She testified that over time, one would expect to get additional details or more information about the abuse and that it's rare to get a full disclosure the first time a child discloses. R. 312, ll. 8-11.

The expert went on further to explain that having a close and trusting relationship with the perpetrator can have a "very strong impact on whether that child feels like they can tell or not." The child usually does not want to end the relationship or friendship with the perpetrator if it is someone they love and trust. Children will sometimes "tolerate the abuse to maintain that relationship." R. 314, l. 1 – 315, l. 5.

Galloway-Williams' in-camera testimony was essentially the same as her testimony in front of the jury. See R. 210, l. 14 – 238, l. 25.

State's Closing Statement

The Assistant Solicitor thoroughly discussed Ms. Galloway-Williams' testimony throughout her closing statement ***constantly*** using it to explain all three complainant's behavior and bolster their testimony. For example, Older Brother purposefully disclosed after having a conversation on the bus with another girl, which was a "triggering event." Younger Brother and Minor Friend only disclosed after being questioned by law enforcement, which was an "accidental disclosure."

The solicitor explained, "There's certainly delayed disclosure. These events took place between 2004 and 2006, and they didn't tell until 2009." She reviewed the reasons stated by Galloway-Williams for delayed disclosure and indicated that many of these reasons were present among the complainants, specifically that Appellant was their friend. They loved and trusted Appellant who gave them special attention when no other adults in the home would and they likely felt fear in losing that relationship. R. 349, l. 19 – 350, l. 5.

The solicitor went on further to discuss "test touching" and how the complainants testified they would wrestle with Appellant who would touch them inappropriately. R. 350, ll. 6-14. She talked about partial disclosures and how children do not give all the details during the first disclosure which is what happened in this case as all three complainants' testimony was more detailed than their initial written statements. R. 350, ll. 15-22. "And that's exactly what Shauna said. With kids, if you don't ask the right questions, they don't know what to tell you." R. 351, ll. 1-3.

The Assistant Solicitor concluded that Appellant should be found guilty beyond a reasonable doubt on all counts. R. 352, ll. 12-19.

Discussion

Our Supreme Court recently reviewed the "distinct roles and separate responsibilities" of the jury and trial judges. The trial judge "serves as the gatekeeper" and decides what evidence is admissible under the Rules of Evidence. After the trial judge rules, the jurors "decide how much weight the evidence deserves." Watson, 389 S.C. at 445, 699 S.E.2d at 174-175. The 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 169, 175 (internal citations omitted).

The first prong of the three-prong test in Watson was clearly not met in this case. As defense counsel argued at trial, "[T]his is not outside the realm of ordinary lay knowledge . . . the jury can make their own determination based on the witnesses' own testimony. They've testified already as to why they delayed in disclosure, why they didn't report it, why they reported it when they did. And so the jury can already make that decision based on what they've heard. They don't need an expert to come on the

stand and help them resolve why they would do that." R. 241, ll. 2-10; see also R. 240, l. 14 – 241, l. 2.

Defense counsel's assertions at trial were correct. The complainants had thoroughly explained their actions and thoughts to the jury. No expert knowledge or opinions were required for the jury to understand or make its own determination as to why the complainant's were delayed in disclosing and what caused them to eventually disclose. The complainants testified they were embarrassed, afraid to disclose, or blamed themselves. A juror can understand that a victim of sexual abuse may not disclose immediately because of fear, embarrassment, or an irrational desire to blame themselves. A juror can also understand that it is possible the more one discusses a past experience the more details one may provide, especially when being asked specific questions. The jury did not need expert testimony to explain this subject matter as it did not involve scientific, technical, or other specialized knowledge. See Rule 702, SCRE. Therefore, the trial judge abused his discretion by allowing Galloway-Williams to testify as an expert.

"The label of expert should be jealously guarded by the court and never loosely bandied about." State v. Kromah, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013). 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. This likely occurred in this case for there is a reasonable probability that the jury treated Galloway-Williams' testimony with more significance because the court qualified her as an expert in "child abuse dynamics and disclosure."

The ***only*** purpose of Galloway-Williams' testimony was to improperly bolster the complainants' testimony. The South Carolina Court of Appeals has recently held that it is improper for a witness to bolster the testimony of other witnesses. State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); see also 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. Our Court of Appeals determined that 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, 393–94, 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 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. For example, Galloway-Williams testified that between ***seventy and eighty percent*** of

children are delayed in disclosing abuse just like the complainants in this case. 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, admitting 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." State v. 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).

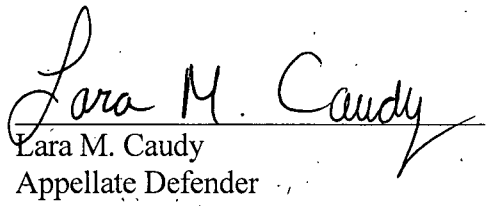
Galloway-Williams' testimony was also prejudicial to Appellant because there was no physical evidence presented in the case and the sole issue was the credibility of the complainants. Because the complainant's credibility was the most critical determination of this case and Galloway-Williams' testimony 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.").

CONCLUSION

By reason of the foregoing argument, Appellant's convictions should be reversed and this case remanded to the Pickens County Court of General Sessions for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of February, 2014.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 20, 2014

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DAMON T. BROWN,

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 20th day of February, 2014.

Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of February, 2014.

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