

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

RECEIVED
FEB 20 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAMON T. BROWN,

APPELLANT

APPELLATE CASE NO. 2012-213548

FINAL REPLY BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
ARGUMENT IN REPLY	3
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

<u>State v. Jennings</u> , 394 S.C. 473, 716 S.E.2d 91 (2011).....	3, 4
<u>State v. Kromah</u> , 401 S.C. 340, 737 S.E.2d 490 (2013).....	3, 4
<u>State v. McKerley</u> , 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).....	4
<u>State v. Weaverling</u> , 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999)	3, 4

Rules

Rule 403, SCRE	4
----------------------	---

ARGUMENT IN REPLY

The state's reliance on State v. Weaverling is misplaced following our Supreme Court's rulings in Kromah and Jennings and such testimony that bolsters that of the child witness is not admissible in *this state*.

Our Supreme Court made clear in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) that testimony from a forensic interviewer that bolsters the child's testimony is not admissible. The Court strongly held that *almost always the only purpose* of a forensic interviewer's testimony was to *bolster* the testimony of the child which is impermissible. Merely changing the name of the expert from a "forensic interviewer" to an expert in "child abuse dynamics and disclosure" does not change the Supreme Court's underlying holding about the inadmissibility of such testimony.

In fact, it is insulting to the Court to make such a thinly veiled attempt to circumvent the Supreme Court's unambiguous holding in Kromah. Galloway-Williams testified that *most* child sexual abuse cases involve delayed disclosures, specifically *between seventy and eighty percent of children* are delayed in disclosing abuse. R. 305, ll. 4-8. (emphasis added). *All* of her testimony from grooming to test touching to partial disclosures, in context, was *specifically meant for the facts of this case* and strongly implied that because the complainants acted in the same manner as other victims of sexual abuse they must be telling the truth. Evidence that bolsters a child's testimony with the use of such "statistics" and generalizations goes against long standing precedent *in this state* which holds such bolstering testimony is not admissible.

Additionally, the state relies heavily on State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999), which, as noted by the state, was relied on by the trial court in

admitting Galloway-Williams' testimony. See Brief of Respondent at 13-14. Weaverling is no longer good law after our Supreme Court's holding in Kromah and State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) and this Court's holding in State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), to the extent that it permits the state to apprise the expert of the details of the complainants' allegations and testimony, which would be the same information the expert would have received if she had interviewed the actual complainants, and use that information to vouch for the complainant's credibility.

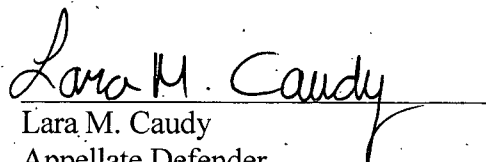
Again, not only was Galloway-Williams' testimony used to bolster the complainants' testimony, it was also highly prejudicial to Appellant. Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Galloway-Williams' testimony was 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 complainants' 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.").

Therefore, the court erred in permitting Galloway-Williams to testify.

CONCLUSION

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

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT.

This 20th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

RECEIVED
FEB 20 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

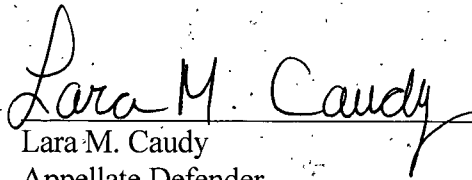
V.

DAMON T. BROWN,

APPELLANT

CERTIFICATE OF SERVICE

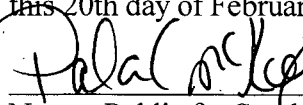
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2014.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT.

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

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