ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

HAROLD BENNON CARTWRIGHT, III,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Testimony concerning Appellant's suicide attempt is admissible as consciousness of guilt, and the trial court did not err in admitting this testimony into evidence for the jury's consideration.

II.

The trial court did not err in qualifying the expert in the field of child abuse dynamics where the expert was well qualified under Rule 702, SCRE with the requisite education, experience and training, and the testimony was reliable under Rule 703, SCRE; further, any argument that the testimony constituted impermissible bolstering is not preserved for review and the testimony does not constitute impermissible bolstering.

STATEMENT OF THE CASE

Appellant Cartwright was indicted by the Aiken County Grand Jury for eight counts of criminal sexual conduct with a minor in the first degree, sixteen counts of lewd act on a minor, two counts of criminal sexual conduct with a minor in the second degree, one count of criminal sexual conduct in the first degree, and one count of criminal sexual conduct in the third degree. Cartwright was tried by jury on April 15-18, 2013, before the Honorable Doyet A. Early, III. At the conclusion of the trial, the jury found Cartwright guilty as charged. Judge Early sentenced Cartwright to an aggregate sentence of forty years imprisonment.

STATEMENT OF FACTS

Appellant Cartwright's biological daughter (Daughter) was the first witness at his trial. She was twenty-eight years old and now had a family of her own, but she came to court and told the jury about how Cartwright abused her starting at age four. The other two victims were Cartwright's stepdaughters.

Daughter was married with children at the time of trial, but she relived her abuse for the jury to hear. She testified that the abuse started when Cartwright made her perform oral sex on him when she was only four years old. Her recollection was disturbingly graphic: "He would place my hand on his penis until he ejaculated and then he would have me place my mouth on him and lick the cum off of him." ROA p. 33, lines 17-19. Daughter further explained: "He told me that it tasted like candy is why he told me to do it, that it was sweet." ROA P. 33, lines 21-22. Daughter testified that this occurred several times a year, from the time she was four until she was ten years old. ROA p. 34, lines 2-3. Daughter told her mother, Melinda, but when they confronted Cartwright, he threatened to kill them and kill

himself. The sexual abuse continued on after that – Cartwright subjected Daughter to oral sex, touched her, and made her touch him. Daughter recalled at six years old a particular incident when they went fishing; before Cartwright put the boat in the water, he unzipped his pants and ejaculated in her mouth. They did not fish very long because she was so upset and could not stop crying. ROA pp. 34-36. Daughter recalled another incident where Cartwright performed oral sex on Daughter. She testified this occurred only once. ROA pp. 37-38.

Cartwright utilized violence and bribery to keep the wraps on his perversions. Daughter testified he would hold a gun to her head and to his head; he threatened to kill her, her mom, and himself. Oftentimes, he gave Daughter money afterwards and took her places and bought her things. ROA pp. 38-39. Sometimes Cartwright apologized to her, but nonetheless, the abuse continued. ROA p. 39.

In first grade, Daughter disclosed abuse to someone at school and spoke with DSS. Cartwright took her on a drive after school and told her she dreamed it all and she needed to go back to school and tell them it was not true. She then recanted to DSS. ROA p. 36. The abuse occurred thereafter until Melinda and Daughter finally left Cartwright in 1995 when Daughter was ten years old. They moved to Georgia. ROA pp. 36-37; p. 39.

Sixteen years later, in 2011, the Aiken County Sheriff's Office contacted her and interviewed her at her mother's house in Georgia. She told them about the abuse occurring so many years ago. Daughter disagreed with the assertion that Cartwright pushed for the prosecution of her now-husband for the statutory rape of Daughter in 2000. Daughter testified she is only holding a grudge against Cartwright for what he did to her as a child ("I don't think that's a grudge"). ROA p. 52, lines 1-4. Daughter testified: "I would rather be at

home with my children, but it's something that needs to be done; and I'm glad I finally get to tell what happened." ROA p. 40, lines 19-21.

Cartwright's counsel asked the following questions on cross-examination:

> Q: About how far away is Rome from Aiken?
>
> A: About four hours depending on traffic.
>
> Q: You said one of the reasons that you didn't disclose is that you were afraid?
>
> A: Yes.
>
> Q: And Harold lives four hours away?
>
> A: Yes.
>
> Q: It's just you and your mom and your brother and your sister?
>
> A: Yes.
>
> Q: And from '95, '96, Harold is not there?
>
> A: Correct.
>
> Q: All the way up to one – 2002, 2003, Harold's not there; 2004; 2005, Harold's not there. You're in Rome, right?
>
> A: Yes.
>
> Q: And in 2006, up to 2011, Harold is not there, just you and your mom and your siblings?
>
> A: Correct.
>
> Q: And they have police departments?
>
> A: Correct.

* * *

Q: So you had a husband?

A: Yes.

Q: You don't have any doubt that he has the ability to protect you?

A: Yes.

Q: So all this period of time, you never said anything to anybody, but the reason that you didn't was because you were afraid of him?

A: Yes.

ROA p. 47, line 19 – p. 49, line 9.

Melinda, Daughter's mother, followed her as the next witness at trial. She confirmed Daughter told her she was sexually abused in 1989 or 1990. Melinda did not report this to law enforcement; she was scared for her life and her daughter's life because Cartwright threatened to shoot them. He also threatened to shoot himself. ROA pp. 54-55.

Cartwright's second victim was Cartwright's stepdaughter (Stepdaughter 1). She was twenty-one years old when she testified before the jury. She lived with her mother (Buffy), her sister (Stepdaughter 2), and Cartwright during 2000 and 2001. Stepdaughter 1 was only nine years old when Cartwright made her perform oral sex on him from underneath the desk in the computer room. ROA pp. 63-66. Stepdaughter 1 testified that this occurred a few times a month. Stepdaughter 1 testified that Cartwright would take Stepdaughter 1 shopping or out to eat. ROA p. 17. In July 2001, Stepdaughter 1 first told a neighbor, Sandra Parsons, and then DSS about the abuse. ROA p. 67. Cartwright was arrested and released on bond. Cartwright no longer lived at the house, but Buffy continued to see him. The case was

dismissed after Stepdaughter 1 told prosecutors that the abuse did not happen.[1] But Stepdaughter 1 told the jury that this was a lie. Cartwright moved back in with the family. Stepdaughter 1 was now eleven years old. ROA pp. 67-71.

The abuse took another form. Cartwright would "hump" Stepdaughter 1 and ejaculate on her leg. This happened three to seven times a week, mostly in her bed, but on weekends, this occurred in Cartwright and Buffy's bed. Cartwright would take Stepdaughter 1 shopping. He also would threaten to kill her and her family as well as himself. This continued while she was thirteen and fourteen years of age. ROA pp. 71-75. She discussed how he threatened her as follows:

> He would bump up at me like he was going to punch me in the face. He's pulled guns on me, put them to my head before, very angry. He's pulled guns on hisself, big shotguns saying he'd kill hisself after he kills all of us; knives, more than a couple of occasions.

ROA p. 81, lines 1-5.

Cartwright took Stepdaughter 1 to get her tongue pierced; he made her promise to perform oral sex in exchange for the piercing. Although she tried to avoid completing this agreement, she eventually relented and provided oral sex. ROA pp. 76-78.

Another time, she reluctantly fulfilled an exchange of sexual intercourse for money so she could visit an amusement park. Cartwright enforced this agreement by pulling a knife on her. She had intercourse with Cartwright at fifteen years old. ROA pp. 77-80.

Stepdaughter 1 left the house to live with a boyfriend, Timothy, when she was sixteen years old. She testified she did not want to put up with the abuse anymore. Later, she would

---

[1] On cross-examination, Stepdaughter 1 testified Buffy convinced her to recant her allegations. ROA p. 86.

move into the shed behind their house, where she lived with her current boyfriend, Chris. She and Chris later moved out of the shed to New Ellenton. In 2011, Stepdaughter 1 went to law enforcement to provide information about her ex-boyfriend, Timothy, who she testified was dealing drugs. It was during this interview that she disclosed the past sexual abuse. ROA pp. 81-84. Michelle Prince testified she was employed by DSS and interviewed Stepdaughter 1 in 2001. Stepdaughter 1 reported sexual abuse to her. ROA pp. 97-99.

Stepdaughter 2 was eighteen years old when she testified at trial. She is Buffy's daughter and Stepdaughter 1's younger sister. Cartwright was her stepfather. Their relationship changed when she was around thirteen years old. Cartwright began to hump her legs in the morning, every morning. She testified her mother and sister would be elsewhere in the house. Cartwright would ejaculate on her leg, her bed, or her clothes. She would try to get away when this occurred, but he would wrap his legs around her or hold her body down. She testified that this occurred four to seven times a week. ROA pp. 101-104.

Cartwright would buy her clothes, although she clarified he never said if she complied with a sexual assault, he would buy her something. ROA p. 105. The family moved when their house was foreclosed on in 2009, and they lived in a shed. At this point, Cartwright thought it would be a good idea for Stepdaughter 2 to be home-schooled. He would be the instructor. Buffy would be at work and it would be just Stepdaughter 2 and Cartwright. They started having intercourse every morning that Buffy was at work. Cartwright decided to put Stepdaughter 2 put on birth control. Cartwright would take her shopping, buy her things, and offer her money. Stepdaughter 2 confirmed Cartwright's violent methods of controlling his family. He threatened with a gun to kill himself,

Stepdaughter 2, and her mom. Stepdaughter 2 testified he would be violent and irate while handling knives as well. ROA pp. 106-111.

They moved out of the shed to a house when Stepdaughter 2 was fifteen years old. Her stepbrother, Hoss Cartwright (Hoss), moved in with the family, and Stepdaughter 2 went back to school the next year. Cartwright would tell her that her clothes were inappropriate and examine her at length. Cartwright reverted back to humping her legs after Hoss moved in. Once Hoss moved out, there was occasional intercourse again, but less often. ROA pp. 111-117.

Stepdaughter 2 recalled that when she was sixteen years old, Buffy was at work when Cartwright called Stepdaughter 2 from his room. Stepdaughter 2 refused to go in and Cartwright became enraged. When Buffy came home, she asked what was going on, and Stepdaughter 2 told her Cartwright was mad. At that point, Buffy and Cartwright went outside and talked. ROA pp. 118-120. After they both came back inside, Cartwright asked Buffy if she ever saw Stepdaughter 2's private parts and when Buffy replied she had not, Cartwright told Buffy that Stepdaughter 2 "has a pretty pussy." ROA p. 120, lines 15-20.

Stepdaughter 2 testified that Cartwright accused her of being in pornographic videos on the internet with her friends. Stepdaughter 2 told the jury she never was in any pornographic videos. When Stepdaughter 2 denied this to Cartwright, he became enraged and threatened to kill her and her mother. Cartwright had his knife and took Buffy alone into their bedroom. Stepdaughter 2 became so worried about Buffy that she told Cartwright she was in the videos just to appease him. ROA pp. 121-122.

On February 11, 2011, police met with Stepdaughter 2 and asked her if Cartwright

ever did anything to her. She told the police no because she was scared of Cartwright. ROA pp. 122-124. On cross-examination, Stepdaughter 2 was asked about Cartwright's appropriation of social security checks she received when her biological father died. She denied holding a grudge over that and said she was happy about how the money was used because it was going towards putting a roof over her head and helped the family move out from the shed. She also denied a romantic relationship between her and her stepbrother. ROA pp. 126-131.

Buffy's testimony was read to the jury at trial because she was medically unavailable at the time of trial. The testimony was from a prior trial. She testified that her divorce from Cartwright became final a few days before she testified. Buffy admitted she put "some pressure" on Stepdaughter 1 to recant when she originally reported the abuse. She testified that at the time, Cartwright convinced her that he had not done anything wrong. After the case was dismissed, Cartwright moved back in, but Cartwright and Buffy rarely had intercourse anymore. Shortly after Stepdaughter 1 moved out of the house, they lost the house and lived in a shed. ROA pp. 143-144.

Buffy testified that on February 19, 2011, she had a conversation outside the house with Cartwright. Cartwright started crying and said maybe he did molest both stepdaughters. Inside the house, Cartwright told Buffy that Stepdaughter 2 "has the prettiest pussy." ROA pp. 146-147.

Buffy testified Cartwright told her to gather Stepdaughter 2's bedroom sheets, linens, underwear, and clothes to wash because they had his DNA on them. ROA p. 149, lines 2-8. Buffy testified Cartwright told her "he had been laying in the bed with [Stepdaughter 2] and

his DNA was in the bed." ROA p. 149, lines 2-11. She did not wash the linens as asked and consented to police searching the house and seizing the linens the next day, on February 25, 2011. ROA p. 148-150.

On cross-examination, Buffy verified that Stepdaughter 1 would sneak out at night, cuss Buffy out, drink, and get in trouble at school. But when asked if she spoke with Cartwright about sending Stepdaughter 1 to boot camp, she testified that they had discussed it, but Cartwright was against Stepdaughter 1 going. ROA pp. 151-153. Buffy verified she never slept with Cartwright in Stepdaughter 2's bed and she would not know why his DNA would end up there. She admitted to being naïve. She denied she planted any evidence or concocted any stories. ROA pp. 155-156.

The DNA from the recovered fitted sheet from Stepdaughter 2's room was a 1 in 16 trillion match to Cartwright's DNA. ROA pp. 240-242.

Hoss Cartwright is Cartwright's biological son and stepbrother to the abused stepdaughters. Hoss wanted to get to know his father, so he moved into the house. Hoss and Stepdaughter 2 shared a bathroom and their bedrooms were right next to each other. Hoss testified that every morning he would hear Cartwright knock on Stepdaughter 2's door and enter her bedroom. Cartwright would stay in the room for a long time, until Stepdaughter 2 got up to get ready for school. ROA pp. 165-167. Hoss verified Cartwright's violent steak. He testified that Cartwright would threaten him and that one time Cartwright threated to blow the house up and kill the whole family. Cartwright once held a knife to Stepdaughter 2's boyfriend's neck. ROA pp. 168-169.

Hoss also observed Cartwright examining Stepdaughter 2's clothing when she was

getting ready for school. Hoss testified as follows:

> [H]e would tell her to sit in the floor, and just get in just in the weirdest positions to see if – well, I guess if he thought they were too exposed, exposing. He would – if he felt they were, he would not just be like hey, go change. He would be like I can see your pussy, your tits are hanging out. Just being too vulgar like a father shouldn't be.

ROA p. 169, lines 11-17.

Hoss testified that Cartwright started claiming Stepdaughter 2 was in pornographic videos on the internet. Cartwright called Hoss into the bedroom and made him look at a picture on the computer of "random females" Hoss had never seen. Hoss did not think the picture looked like her at all and told Cartwright it was not her until Cartwright became so enraged that he just agreed with Cartwright to appease him. ROA pp. 170-171.

Hoss moved out of the house during Christmas break in 2010. He testified: "I basically decided that the father I wanted to get to know wasn't the father I wanted to have." ROA p. 171, lines 23-24.

Hoss testified why he never told anyone about Cartwright:

> He's been to my mother's residence [in Georgia], my sister's residence, my grandmother's residence several times. He knows exactly where they're at and how to get there and he's told me several times that he's been up there without us knowing. So, I know exactly – I know that he knows how to get there and where we live, where our bedrooms are at. So, yeah, I was, you know, kind of scared to make him mad so he might come up there.

ROA p. 174, lines 14-21.

Hoss denied there was ever any romantic relationship between him and Stepdaughter 2. He admitted that they stole condoms from a store together, but explained it was for her,

but not him, because she was going to a party and wanted them just in case. ROA pp. 175-176.

Investigator Evensen testified that after the disclosure of abuse, on March 12, 2012, he met with Cartwright and his attorney, Bob Harte. Cartwright wanted to show the officer pornographic pictures on the internet that were supposed to be Stepdaughter 2. The meeting lasted an hour. No further investigation was necessary because she was not in any of the pictures, despite Cartwright's claims. ROA pp. 195-196.

James Hettich from the county jail testified that on April 13, 2011, Cartwright's cellmate reported that Cartwright was trying to kill himself. Hettich found Cartwright hanging from bedsheets wrapped around his neck. He was passed out and unconscious when they rescued him. ROA pp. 256-258. This was the same day that warrants for Daughter were served on him at the jail. ROA p. 183, lines 1-4.

Cartwright called his stepbrother, Vernon Carter, as a witness to inform the jury that Buffy and Stepdaughter 2 had moved out of the house while Stepdaughter 1 and her boyfriend had moved into the house. Carter admitted he would do anything in the world for his brother. ROA p. 262; pp. 264-266.

Cartwright testified on his own behalf. Cartwright denied ever being physical with the family except for one instance. Cartwright contended that Daughter was rebellious as a teenager and that he caught her with a much older man when she was only fourteen years old. This man is now Daughter's husband. Cartwright maintained the pictures on the internet were pictures of Stepdaughter 2. Cartwright testified that Parsons was friends with Buffy and his relationship with Parsons had soured. Cartwright claimed he confronted Hoss about

using pot and confronted Hoss and Stepdaughter 2 about shoplifting condoms from Wal-Mart. Cartwright claimed that a few days before the police searched the residence, Buffy pushed him down on the bed in Stepdaughter 2's bedroom and masturbated him with a pair of panties. He admitted having infrequent sexual encounters with his wife. He testified that the masturbation incident was not a welcome surprise. ROA pp. 269-288.

Cartwright explained why he attempted suicide:

> I turned myself in. I'd been there for 30 days. I couldn't get a bond. I was charged with some of the most heinous crimes that somebody could ever think about being charged with. I've never heard of anybody being charged with that many crimes even on TV, and I'm in my cell with all these things on my mind, and then the daughter that I loved, my biological daughter, hates me so much because I had her husband or her lover, whatever, locked up, the man that raped her when she was 14 years old, and she held a grudge against me, and they come and served me ten warrants. And, yes, sir, at that time I didn't feel I wanted to live any more.

ROA p. 291, lines 6-17.

ARGUMENT

I.

Testimony concerning Appellant's suicide attempt is admissible as consciousness of guilt, and the trial court did not err in admitting this testimony into evidence for the jury's consideration.

Cartwright complains the trial court erred in admitting evidence that he attempted suicide by hanging himself in his jail cell. This evidence was properly admissible to show consciousness of guilt.

As Cartwright acknowledges, this Court found such evidence may be admissible as consciousness of guilt. State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011). In that case, the defendant was on trial for sexually abusing two of his nieces. The younger child, five years old, disclosed the abuse, and the following day, the child's mother filed a report with the sheriff. The mother told her sister about the report of abuse, and in turn, she spoke with their other sister, defendant's wife, advising that a report of abuse by the defendant was reported to the sheriff. That same day, emergency personnel responded to defendant's home after he attempted to poison himself with rat poison. His wife was at the house when the emergency personnel responded. Id. at 215-16, 708 S.E.2d at 228-29.

This Court found evidence of the suicide attempt was admissible, although noting the issue was one of first impression in South Carolina. This Court analogized the issue to cases where evidence of flight is admitted, noting evidence must indicate that the defendant is aware he is being sought by authorities. Id. at 220, 708 S.E.2d at 231. This Court concluded that an inference could be made that the defendant was aware of the charges because prior to

the emergency, his wife was made aware of the charges and she was present when emergency personnel responded after the defendant had ingested the poison. Id. at 220-21, 708 S.E.2d at 231-32.

In finding evidence of a suicide attempt admissible, this Court noted, "the overwhelming majority of states considering this issue have determined that evidence of attempted suicide is generally admissible to establish consciousness of guilt." Id. at 219, 708 S.E.2d at 231 (citing 29 Am.Jur.2d Evidence § 547 (evidence of attempted suicide by the accused may be admissible as evidence of consciousness of guilt)).

Orozco is on point with the instant case; Cartwright was served with warrants for the crimes he had committed against his biological daughter, and he attempted suicide later that day. This is a sufficient nexus. Cartwright's own testimony establishes the nexus. He testified, in relevant part:

> and then the daughter that I loved, my biological daughter, hates me so much because I had her husband or her lover, whatever, locked up, the man that raped her when she was 14 years old, and she held a grudge against me, and they come and served me ten warrants. And, yes, sir, at that time I didn't feel I wanted to live any more.

ROA p. 291, lines 6-17.

Reliance on State v. Onorato, 762 A.2d 858 (Vt. 2000) is misplaced. That case was an appeal **by the state** alleging the trial court abused its discretion in not admitting evidence of a suicide attempt. The Vermont Supreme Court refused to find evidence of a suicide attempt per se admissible as argued by the state and noted that the "possible ambiguity of an accused's suicide attempt requires a careful consideration of the probative value such

evidence offers." Id. at 860. The Vermont Court declined to reverse the trial court, noting: "the issue before us is not whether we would have ruled differently if we had the evidentiary issue before us as a trial court, but rather, whether the trial judge abused his discretion." Id.

The State agrees the trial court should weigh the probative and prejudicial values of evidence of a suicide attempt the same as any other evidence, and review of the admission of evidence should be based on an abuse of discretion standard. The probative use and possible prejudice of such evidence will vary from case to case based on the circumstances. In the instant case, the trial court did not abuse its discretion in admitting the evidence. As Cartwright's testimony indicates, the suicide attempt was a direct reaction to the presentation of additional warrants making him aware a third victim was seeking justice for his atrocities.

State v. Mann, 625 A.2d 1102, 1107 (N.J. 1993) offers Cartwright little assistance. The New Jersey Supreme Court concluded it was error to not hold an *in camera* hearing prior to admitting evidence of a suicide attempt before the jury. However, the Mann court did not foreclose admission of a suicide attempt as evidence but merely advised trial judges that extreme caution should be used in admitting such evidence. The Court, in contradiction to Cartwright's arguments in the instant case, recognized its potential probative value, opining as follows:

> Daniel Webster once described suicide as a confession by conduct compelled by the overpowering force of a guilty conscience.
>
> > Meantime the guilty soul cannot keep its secret. . . . It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstances

> to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed! It will be confessed! There is no refuge from confession, but suicide-and suicide is confession.

Mann, 625 A.2d at 1107 (citing Commonwealth v. Knapp, 7 American State Trials 395 (1830) (quoted in 2 Wigmore on Evidence § 276, at 132 (Chadbourn rev. 1979))).

In Pettie v. State, 560 A.2d 577 (Md. 1989), the Court never reached the issue of whether evidence of an attempted suicide was admissible. In Pettie, the Court found the State failed to prove the inmate even attempted suicide and was not just feigning a suicide. Specifically, the Court stated: "the facts here simply do not support the conclusion that Pettie tried to kill himself at all, much less that he did so as a reaction to any [sexual assault on another inmate]." Id. at 582.

Next, State v. Coudotte, 72 N.W. 913 (N.D. 1897), involves a unique situation which has been distinguished by numerous cases. As described in State v. Plunkett, 149 P.2d 101 (Nev. 1944), the Coudotte case "stands in a class by itself." Id. at 108. As the Court fully explained:

> [Coudotte] is a lone case which is distinguishable from the generality of authority on the point of attempted suicide by an accused being a circumstance in a homicide case proper to be considered by the jury in connection with all the evidence.... There were no other facts or circumstances with which it could be considered by the jury as tending to show guilt, and to be given such weight, or no weight, as the jury might determine. It was sought to be proven as an isolated circumstance sufficient in itself to furnish the corroboration of the testimony of an accomplice, required by the statute, as to the guilt of an accused. The court held that it was not enough and reversed the case. As pointed out in State v. Painter [329 Mo. 314, 44 S.W.2d 82], in reviewing the Coudotte case:

> "The court was not called upon to and did not decide whether or not, had there been otherwise a submissible case made, the attempt to commit suicide might have been proved as a circumstance for the consideration of the jury."

Id.

In People v. Foster, 371 N.E.2d 961 (Ill. App. Ct. 1977) *rev'd on other grounds by* People v. Foster, 392 N.E.2d 6 (Ill. 1979), the Illinois Court of Appeals found an insufficient nexus existed between the suicide attempt and the crime charged. In the instant case, Cartwright acknowledged during trial that his suicide attempt was prompted by new charges being made against him by a third victim, a victim he thought had gone away a long time ago.

Numerous courts around the country have considered this issue and held evidence of an attempted suicide, similar to evidence of flight, is admissible to show consciousness of guilt and can be considered and given such weight as determined by the jury. See People v. Barrett, 136 P. 520 (Cal. Dist. Ct. App. 1913); McKinney v. State, 466 A.2d 356 (Del. 1983); Sloan v. State, 104 So.3d 1271 (Fla. Dist. Ct. App. 2013); Aldridge v. State, 494 S.E.2d 368, 370 (Ga. Ct. App. 1997) (noting "[e]vidence that the accused attempted to commit suicide is relevant as a circumstance tending . . . to show consciousness of guilt . . . or as showing an attempt to flee and escape forever from the temporal consequences of one's misdeeds" (citations and internal quotation marks omitted, ellipses in the original)); State v. Mitchell, 450 N.W.2d 828 (Iowa 1990); Commonwealth v. Sheriff, 680 N.E.2d 75, 83 (Mass. 1997) (finding evidence of a defendant's suicide attempt is admissible to show consciousness of guilt; "[w]e see no reason to depart from this rule despite the defendant's argument that

individuals suffering from paranoid schizophrenia are ten times as likely as an individual not suffering from the disorder to commit suicide") ; State v. Painter, 44 S.W.2d 79 (Mo. 1931); State v. Campbell, 405 P.2d 978 (Mont. 1965); State v. Brown, 517 A.2d 831 (N.H. 1986); State v. Jaggers, 58 A. 1014, 1014 (N.J. 1904) (finding evidence of a suicide attempt while defendant was in custody "was plainly admissible"); State v. Mann, 625 A.2d 1102 (N.J. 1993); State v. Blancett, 174 P. 207 (N.M. 1918); State v. Lawrence, 146 S.E. 395 (N.C. 1929); State v. Marsh, 66 S.E.2d 684 (N.C. 1951); State v. Hunt, 287 S.E.2d 818 (N.C. 1982); Commonwealth v. Sanchez, 610 A.2d 1020, 1027 (Pa. Super. 1992) (noting "evidence of actual attempts to commit suicide are uniformly admitted as evidence tending to show consciousness of guilt on the part of the defendant"); State v. White, 649 S.W.2d 598 (Tenn. Crim. App. 1982); State v. Onorato, 762 A.2d 858 (Vt. 2000).

The legal issue simply comes down to a question of balancing under Rule 403, SCRE. For evidence to be admissible, it must be relevant. Rule 402, SCRE. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved." State v. Sweat, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App. 2004). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006). A trial court's decision regarding the comparative probative value

and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Determination of relevance is largely within the discretion of the trial court and will not be reversed absent an abuse of that discretion. Sweat, 362 S.C. at 127, 606 S.E.2d at 513.

In the instant case, Cartwright never explains why the evidence is unfairly prejudicial. Juries are capable of understanding the various reasons a person may attempt suicide and no danger of unfair prejudice exists. No danger exists that the jury will utilize the evidence for any other purpose than the proper probative purpose, consideration of whether the suicide attempt is evidence of consciousness of guilt. However, as discussed in the case law of many jurisdictions, the evidence carries sufficient probative value as consciousness of guilt to be admissible.

Undaunted, Cartwright makes an argument premised on the fact he turned himself in and therefore, had shown he was willing to face the charges. Cartwright may have been willing to face the charges from the two stepdaughters. Like many predators, he may have believed he would be able to intimidate them and they would recant. Buffy convinced her oldest daughter to recant once before, and Cartwright may have counted on Buffy to come through for him again. However, his hopes of skirting ramification for his actions changed drastically when he learned Daughter disclosed his abuse to law enforcement. Cartwright could escape his past no more. Daughter recanted under pressure years ago. But Daughter was beyond his reach now and he was defenseless against the truth. At trial, Cartwright exhausted one desperate defense after another. But his scheme of using violence and threats to keep families in which his daughters, instead of his spouses, were his sexual partners, was

coming to light. The jury was free to believe that he tried to kill himself because he loved his children too much, just like they could have believed he never was violent or that three different victims and two mothers were vindictive and fabricated ornate tales of abuse, or that his biological daughter waited twelve years to get back at Cartwright for causing her current husband to be prosecuted, or that Stepdaughter 2 posted pictures of herself despite what every other person (including law enforcement) who saw the pornographic pictures testified to, or that Cartwright was victim to an elaborate scheme to get valuable items he allegedly kept in his double wide trailer. However, the jury used common sense and found him guilty. There was no error. Further, any error would be harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

II.

The trial court did not err in qualifying the expert in the field of child abuse dynamics where the expert was well qualified under Rule 702, SCRE, with the requisite education, experience and training, and the testimony was reliable under Rule 703, SCRE; further, any argument that the testimony constituted impermissible bolstering is not preserved for review and the testimony does not constitute impermissible bolstering.

Cartwright argues the trial court erred in admitting Dr. Benedetto as an expert because she has not performed research. Essentially, Cartwright is asking this Court to turn a blind eye to the plain language of Rule 702, SCRE, which allows a person to gain the requisite knowledge to be qualified as an expert in a variety of ways, not just clinical research. His second argument is that Dr. Benedetto's testimony constituted impermissible bolstering. This argument was not raised below and is not preserved for appeal. Further, Dr. Benedetto's testimony is not impermissible bolstering.

The well-qualified expert

Cartwright made the following objection when the prosecution sought to admit Dr. Benedetto as an expert:

> Judge, at this time I would object to her being qualified as an expert. Child abuse dynamics is an empirical study that is based on the study of children and observing and watching their behaviors. She's testified today that she's done interviews in forensic settings. She has trained forensic examiners, officers and solicitors. And when I questioned her, I asked her if she had done any of the actual studies herself. She has indicated she has not. As to – and that will go to the subject matter and expert qualification. And, again, Judge, she'd have to show that it is a reliable study, a reliable science.

ROA p. 96, lines 1-12. The trial court ruled as follows:

> All right. I will deny your motion. I find that, based on her training, education, clinical experience, her various memberships in organizations, that she will be qualified as an expert in the trial of this case. She'll be allowed to give opinion testimony dealing with sexual abuse dynamics.

ROA p. 96, lines 13-18. His ruling notes a variety of ways an expert may gain the requisite experience. Under Rule 702, SCRE:

> 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.

"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). "The qualification of a witness as an expert falls largely within the discretion of the trial judge." State v. Myers, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

"A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). A trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "There is no abuse of discretion as long as 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. Goode, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991).

Before admitting expert testimony, the trial judge must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 514, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

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). In determining whether a witness' knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467. Instead, an expert can become sufficiently qualified to be able to provide an opinion helpful to the trier of fact in many ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008).

In the instant case, Dr. Benedetto testified she is employed with the Assessment and

Resource Center (ARC), which is a child advocacy center that is part of the South Carolina Department of Mental Health, for twelve years. She is the director of ARC since December 2012. She was a chief psychologist the preceding eleven years. ROA p. 204, lines 3-16.

Dr. Benedetto testified that along with administrative duties, she provides forensic interviews, training, and consultation on matters related to child abuse. ROA pp. 204-205. Dr. Benedetto is a licensed clinical psychologist in the State of South Carolina. ROA p. 205, lines 10-11.

Dr. Benedetto earned an undergraduate degree from New York University in psychology. She earned her Master's degree and Ph.D. from St. Johns University. ROA p. 205, lines 4-7. She then completed a one year internship at William S. Hall Psychiatric Institute through the Department of Mental Health in South Carolina. She continues to maintain continuing education credits and participates in ongoing learning opportunities. ROA p. 205, lines 14-20. She explained the purpose of continuing education is "to make sure that, as a psychologist, I stay abreast of all the most current research in particular in the area of child abuse." ROA p. 205, lines 21-24. Dr. Benedetto belongs to the American Psychological Association and the Richland County Multidisciplinary Team for child sexual abuse. ROA p. 207, lines 9-14.

She provides training known as Finding Words and Child First for law enforcement professionals, DSS caseworkers, solicitors, and other professionals. Training includes "all aspects of how to best question children, child development principles, **dynamics of child sexual abuse**, issues about memory and suggestibility." ROA p. 206, lines 1-11 (emphasis added). She also teaches an advanced course on the subject. ROA p. 206, lines 17-21.

Dr. Benedetto conducts forensic interviews on a daily basis. She also provides "therapeutic interventions and [is] trained in various therapy modalities to work with children." ROA p. 207, line 23 – p. 208, line 2. Dr. Benedetto estimates she has interviewed somewhere between 1,500 and 2,000 children. She has been qualified as an expert in various courts roughly a hundred times. ROA pp. 208-209.

Dr. Benedetto explained "[c]hild abuse dynamics refers to how children experience abuse." ROA p. 209, lines 13-17. She further explained: "There are many empirical studies of it. Many – there's a large body of research on various aspects of how children respond to abuse." ROA p. 209, lines 19-21.

Dr. Benedetto explained during Cartwright's voir dire that "I'm not a researcher. I'm a clinician. So, I conduct interviews. I don't conduct the studies." ROA p. 201, lines 18-19. Cartwright hangs his hat on this statement in hopes that this Court will not read the entirety of Rule 702, SCRE. However, qualifying Dr. Benedetto as an expert witness was not error. By way of example, in Graves v. CAS Medical Systems, 401 S.C. 63, 735 S.E.2d 650 (2012), our Supreme Court found the circuit court erred by not allowing a doctor to be qualified as an expert on Sudden Infant Death Syndrome (SIDS) even though the doctor testified she did not consider herself an expert on SIDS. Id. at 78, 735 S.E.2d at 657. The Court noted "an expert need not be a specialist in the particular branch of the field." Id. The doctor had thirty years' experience as a neonatologist and stayed current on SIDS literature. The doctor routinely encountered SIDS in her practice. The Court found that the circuit court abused its discretion in excluding the testimony. Id. at 78, 735 S.E.2d at 657-58.

In Honea v. Prior, 295 S.C. 526, 389 S.E.2d 846 (Ct. App. 1988), this Court

considered whether the circuit court erred in qualifying two social workers as experts to testify on a victim's mental condition. This Court observed: "A witness may be competent to testify as an expert although the witness acquired his or her knowledge through practical experience **and not by scientific study, training, or research.**" Id. at 530, 369 S.E.2d at 849 (emphasis added). This Court concluded the trial court properly found each social worker was qualified based on her education, post-graduate training, and clinical experience with victims of sexual assault, as well as her opportunities to observe the victim. Id. at 531, 369 S.E.2d at 849.

In the instant case, Dr. Benedetto was well qualified to testify about child abuse dynamics. The trial court did not abuse its discretion in qualifying Dr. Benedetto as an expert in child abuse dynamics.

Testimony does not constitute impermissible bolstering

The second issue Cartwright raises is the claim that Dr. Benedetto's testimony bolstered the victims' credibility, despite the fact that Dr. Benedetto never testified about the victims or their credibility, and despite the fact that Dr. Benedetto never met or interviewed the victims. The issue is not preserved for review.

Error preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). If a party does not properly raise an issue during trial in accordance with those issue preservation requirements, that party

is procedurally barred from raising the issue on appeal. State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

"[A] specific objection to the admission of evidence must be made to preserve the issue for appeal." McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge." Id. "The same ground argued on appeal must have been argued to the trial judge." Id. The exact name of the legal doctrine employed does not need to be used to preserve an argument, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001).

In the instant case, Cartwright's trial counsel objected to the testimony on the grounds that Dr. Benedetto was not qualified and that the science was not reliable. However, Cartwright's trial counsel did not object on the grounds that the testimony was bolstering. A party cannot argue one ground below then argue another on appeal. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). This Court should not review the issue since it is not preserved for review.

Not bolstering – no comment by expert on victims' credibility

Further, the testimony is not impermissible bolstering. Chief Judge Few recently discussed the concept of bolstering in State v. Perry, 410 S.C. 191, 763 S.E.2d 603 (S.C. Ct. App. 2014) (CJ Few, concurring in part and dissenting in part). Judge Few defined bolstering as "the capacity of testimony or evidence to make other testimony more credible." Id. at 207, 763 S.E.2d at 611. Judge Few noted: "Evidence that bolsters other evidence is

generally relevant because it makes the existence of disputed facts more probable by enhancing the credibility of the evidence that proves those facts." Id. Judge Few continued the analysis as follows:

> Under Rule 402, SCRE, "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." As with any relevant evidence, therefore, a trial court may not exclude evidence that bolsters other evidence unless the exclusion is "provided" for by some constitutional statutory, or rule-based principle of law.

Id. at 207-08, 763 S.E.2d at 611.

The opinion further notes two circumstances where evidence that bolsters other evidence has been excluded because it is impermissible bolstering: (1) when a witness offers an opinion regarding the credibility of others; (2) when a party offers an out-of-court statement consistent with a witness's testimony before the witness is impeached. The opinion offered the possibility of exclusion under Rule 403 if the probative value of evidence is outweighed by other considerations in the rule. Id. 208-09, 763 S.E.2d at 611-12. Judge Few concluded: "Other than these rules, however, there is no provision under modern evidence law to exclude relevant evidence on the basis of improper bolstering." Id. at 209, 763 S.E.2d at 612. Judge Few concurred with the rest of the panel that the admission of videotaped interviews between the forensic interviewer and victim was not impermissible bolstering, but was permitted explicitly by S.C. Code §17-23-175. Id. at 210, 763 S.E.2d at 612.

The instant case demonstrates proper expert testimony that gave the jury helpful

background information about the dynamics of child abuse. Dr. Benedetto testified as follows about the area of expertise:

> The whole area of child sexual abuse dynamics really comes down to trying to understand how a child experiences abuse because, as adults, we think like adults and we think that if something happened to us we might respond in a certain way. And, so, understanding child abuse dynamics helps us understand, from the child's perspective, what the experience is like.

ROA p. 213, lines 9-15.

Dr. Benedetto noted "children are not little adults. They have a different understanding of the world. They have a different understanding of their power to make things happen in the world. And so, they do not respond the same way that adults do." ROA p. 213, line 24 – p. 214, line 3.

Dr. Benedetto discussed grooming, which Dr. Benedetto noted arises out of the need for the abuser to maintain secrecy. ROA p. 214. The child's secrecy may be maintained by promises and gifts or bribes. Manipulation, such as withholding affection may be another tactic. ROA p. 215. Fear also plays a role in maintaining secrecy, as Dr. Benedetto explained:

> Children are afraid of a range of things when they are being sexually abused. They are in a situation where they feel, where they may feel powerless and helpless to change the situation. They may be afraid for their own safety or the safety of siblings or the safety of the other parent in the home.
>
> They may be afraid that the abuser will get in trouble and they may have a relationship with that person and not want him to get in trouble. They may fear that they will not be believed or that they themselves will get in trouble and abusers will often manipulate that particular fear to make the child feel as though he or she has been complicit somehow in

> the abuse, like he or she may get in trouble if somebody finds out, which further entrenches the idea of keeping it a secret.

ROA p. 216, lines 6-21. The prosecution followed up with a question about the effects of violence in the home on a child's disclosure, and Dr. Benedetto explained how adverse experiences, including domestic violence, would potentially cause a child to believe that failure to maintain secrecy may cause harm to the child or the non-offending parent. ROA pp. 216-217. In Dr. Benedetto's experience, some children have been concerned that someone might hurt themselves if the child told. ROA p. 217, lines 17-20.

Dr. Benedetto testified about how children will feel isolated, explaining:

> Children . . . are in a situation where they are not very powerful and they don't really know the world and what they can do to change things. And, so, within the home, if they don't feel that they may be supported there, they may feel that they have no other way out. They may feel that, for some reason, this is happening to them, but all they can do is tolerate it, put up with it, make the best of it rather than try to seek a way out.

ROA p. 218, lines 4-11. This led to testimony discussing the term "delayed disclosure." Dr. Benedetto noted that "children routinely delay disclosure." ROA p. 218, lines 15-18.

Dr. Benedetto discussed aspects affecting disclosure. The child may not even know that she has been abused for a period of time. The child may weigh the consequences of disclosure, pondering whether she will be believed, whether she will get in trouble, whether it will make her situation with the abuser worse if nothing happens as a result of reporting. ROA pp. 218-219. Other reasons may be financial concerns, concerns for a parent that cares and loves the abuser, and the position of authority the abuser may have over the child. ROA pp. 219-220. Disclosure may be delayed into adulthood. ROA p. 221.

Dr. Benedetto also discussed the related concept of partial or tentative disclosure. The child will only disclose a small portion of what has occurred to test the waters and see what the reaction will be. The child often will go into "active disclosure" if they feel supported and believed, but may take back or deny abuse if they are not believed or negative consequences transpire. ROA pp. 221-222. Dr. Benedetto discussed recantation, noting that many times a child recants due to what occurs after their disclosure. Here, changes in a child's life after disclosure greatly affects the likelihood of disclosure, because from a child's perspective, anything changing a child's life may be a big deal. ROA p. 224, lines 14-22.

Dr. Benedetto also testified that children will not remember details of abuse; often children are trying hard to not remember abuse and they will not be as inclined as adults to remember details for when they speak to authorities. ROA pp. 222-223. Dr. Benedetto also explained to the jury about "script disclosure" which describes a pattern of abuse occurring over a length of time. The child will describe multiple events or "how things usually went" rather than a disclosure in terms of "episodic memory." ROA p.223, lines 10-20.

Dr. Benedetto further testified about the patterns of behavior in a child who has been sexually abused. Some ramifications might be drug use as a coping mechanism, emotional damage resulting in anxiety or depression, eating disorders, or sexual reactivity. ROA pp. 224-225. Disassociation might be another way a child reacts. ROA p. 226.

In the instant case, the expert testimony was permissible under Rules 702 and 703, SCRE, because it was information helpful to the jury concerning a fact in issue, and the information Dr. Benedetto provided was information normally relied upon by experts in the field of child abuse. The testimony did not impermissibly bolster the victims' testimony.

The South Carolina Supreme Court found "that 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." State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993).

This Court found no error in qualifying a social worker in the field of "victims of sexual abuse." State v. Weaverling, 337 S.C. 460, 473, 523 S.E.2d 787, 794 (Ct. App. 1999). This Court found, "Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible." Id. at 474, 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 . . . . 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. at 475, 523 S.E.2d at 794 (internal citation omitted).

Our Supreme Court later noted: "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." State v. White, 361 S.C. 407, 414-15, 605 S.E.2d 540, 544 (2004) (finding testimony is admissible in prosecutions where the victim of sexual abuse is an adult).

Cartwright claims that Weaverling cannot be reconciled with State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). Actually, the cases are not terribly similar. In Kromah, the forensic interviewer was allowed to opine on the credibility of the victim – impermissible bolstering to be sure under the first scenario presented by Judge Few in Perry. In contrast,

the victim in Weaverling was not interviewed by the expert witness, one of Mr. Weaverling's complaints. Unlike Kromah, the expert did not offer an opinion on the credibility of the victim in Weaverling. Cartwright ignores these differences and only makes a conclusory argument that the cases are similar. Further undermining Cartwright's argument for an unduly broad reading of Kromah is that neither Weaverling nor Schumpert (which Cartwright avoids) are cited, much less discussed, in Kromah.

In this case, Dr. Benedetto did not opine on the credibility of the victims. She did not even interview the victims or know the facts of the case. Perhaps her testimony may be considered bolstering, but it is not impermissible bolstering. Perry, supra.

Georgia's Court of Appeals rejected an argument that an expert's testimony "bolstered" the victim's testimony. Westbrooks v. State, 710 S.E.2d 594, 597-98 (Ga. Ct. App. 2011). The Georgia court found the forensic interviewer's testimony regarding partial disclosure and delayed disclosure was relevant and did not directly address the victim's credibility or express a direct opinion that the victim was sexually abused. Id. The Georgia court opined "the fact that such testimony may also indirectly involve the child's credibility" does not mean that it improperly bolsters the child's credibility. Id. at 598.

Similarly, South Dakota's Supreme Court also rejected the argument that an expert who testified as to the general characteristics of an abused child bolstered the victim's credibility, noting the expert did not interview the witness or testify that the victim had any of those characteristics. State v. Edelman, 593 N.W.2d 419, 423 (S.D. 1999).

Distinguishing Kromah from the instant case is easy, as shown by Westbrooks and Edelman. In Kromah, the interviewer was allowed to directly comment on the victim's

credibility and give an opinion as to whether the victim was abused. In this case, Dr. Benedetto did not give an opinion as to whether the victims were abused and did not comment on their credibility.

Indeed, South Carolina, like nearly every other jurisdiction, has found general background expert testimony about common behavioral characteristics of child abuse victims to be admissible.[2] "Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible." See State v. Weaverling, 337 S.C. 460, 474-475, 523 S.E.2d 787, 794 (Ct. App. 1999) (citing with approval State v. Lujan, 967 P.2d 123 (Ariz. 1998) (opinion testimony describing behavioral characteristics outside jurors' common experience is admissible)). "Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault." Id. at 475, 523 S.E.2d at 794; see also People v. Carroll, 740 N.E.2d 1084, 1090 (N.Y. 2000) ("We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]").

The Supreme Court of Hawaii observed in 1990 that "sexual abuse of children 'is a particularly mysterious phenomenon.'" State v. Batangan, 799 P.2d 48, 51 (Haw. 1990) (quoting State v. Castro, 756 P.2d 1033, 1044 (Haw. 1988)).

The Hawaii Supreme Court quoted with approval the observations of other courts as

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[2] The nature of Dr. Benedetto's expert testimony falls under what a Texas court has aptly described as "educator expert" evidence. Coble v. State, 330 S.W.3d 253 (Tx. Crim. App. 2010) (finding expert testimony about Texas prison classification system and prison violence admissible despite claim the testimony did not

follows:

> While jurors may be capable of personalizing the emotions of victims of physical assault generally, and of assessing witness credibility accordingly, tensions unique to trauma experienced by a child sexually abused by a family member have remained largely unknown to the public. . . . [T]he routine indicia of witness credibility – consistency, willingness to aid the prosecution, straight forward rendition of the facts – may, for good reason, be lacking. As a result jurors may impose standards of normalcy on child victim/witnesses who consistently respond in distinctly abnormal fashion.

Batangan, 799 P.2d at 51 (quoting State v. Moran, 728 P.2d 248, 251 (Ariz. 1986) and State v. Middleton, 657 P.2d 1215, 1222 (Or. 1983) (Roberts, J., concurring)).

The Batangan court further observed:

> Child victims of sexual abuse have exhibited some patterns of behavior which are seemingly inconsistent with behavioral norms of other victims of assault. Two such types of behavior are delayed reporting of the offenses and recantation of allegations of abuse. Normally, such behavior would be attributed to inaccuracy or prevarication. . . . In these situations it is helpful for the jury to know that many child victims of sexual abuse behave in the same manner. Expert testimony exposing jurors to the unique interpersonal dynamics involved in prosecutions for intrafamily child sexual abuse . . . may play a particularly useful role by disabusing the jury of some widely held misconceptions . . . so that it may evaluate the evidence free of the constraints of popular myths.

Batangan, 799 P.2d at 51-52 (citations and internal quotation marks omitted).

The Alabama Criminal Court of Appeals found an expert's testimony on delayed disclosure based on her specialized knowledge was admissible and "clearly assisted the jury to understand the evidence presented" regarding the victim's ten-year delay in disclosing

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relate to appellant personally; testimony was relevant as rebuttal "educator-expert" evidence).

abuse. W.R.C. v. State, 69 So.3d 933, 939 (Ala. Crim. App. 2010) (noting "other jurisdictions have held similar testimony to be admissible in child-sexual-abuse cases").

A law review article confirms the soundness of expert testimony on delayed disclosure:

> 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. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. 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.

John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y, 45-46 (2010) (footnotes omitted).

The New Jersey Supreme Court declared the following: "There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS [Child Sexual Abuse Accommodation Syndrome] identifies or describes behavioral traits commonly found in child abuse victims." State v. J.Q., 617 A.2d 1196, 1206 (N.J. 1993) (finding testimony about CSAAS is admissible to show victim displayed symptoms of child abuse or to explain delayed disclosure or recantation, but not to establish guilt or innocence).

Generally, "[e]xpert testimony that abused children often delay reporting the abuse . . . informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused." Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. App. Ct.

2003). "Further, disclosure in child abuse cases is generally delayed because of coercion, guilt, or some other reason, [and thus] there will be no physical evidence to corroborate the victim's allegations. Therefore . . . expert testimony will . . . assist the jury in understanding the evidence." People v. Beckley, 456 N.W.2d 391, 402 (Mich. 1990); see also State v. Carpenter, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (finding expert testimony on delayed disclosure is "clearly instructive and helpful to the jury in understanding the evidence since the nature of the sexual abuse of children places lay jurors at a disadvantage").

In responding to a claim of trial court error in allowing the state's expert to testify about sexual abuse of children and characteristics of perpetrators, the Louisiana Court of Appeals noted the following:

> [The expert] testified very broadly about the general characteristics of sexual abuse victims, namely how such victims delay disclosure and some of the reasons why disclosure may be delayed, such as fear or shame. As discussed, part of [the expert's] training and experience included counseling children who were victims of sexual abuse. It would not have been beyond her expertise to explain, based on her own practice and experience, the basics of delayed disclosure.

State v. Friday, 73 So.3d 913, 931-32 (La. Ct. App. 2011). "Indeed, the majority of states permit expert testimony to explain delayed reporting, recantation, and inconsistency . . . ." People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011).

The expert testimony was certainly probative in light of the tactics taken by Cartwright at trial. Cartwright's counsel asked Daughter how far away Rome, Georgia, was from Aiken, implying that she was out of Cartwright's reach. He proceeded to comment on how she testified she did not disclose because she was afraid, verified that Cartwright was no

longer living with her and her family, discussed how Cartwright no longer lived with her and her family from 1995 through 2011, verified there were police departments in Rome, suggested Daughter had a husband to protect her, and then asked: "So all this period of time, you never said anything to anybody, but the reason that you didn't was because you were afraid of him?" ROA p. 47, line 19 – p. 49, line 9. Cartwright is not prohibited from making this point to the jury, but the jury should know that delayed disclosure is common because such phenomena is beyond their ken, and because it is not atypical for victims of child sexual abuse.

Accordingly, the trial court did not err in overruling the grasping-at-straws objection of trial counsel. Dr. Benedetto was qualified to testify as an expert. Further, the testimony did not constitute impermissible bolstering and that argument was not raised to the trial court. Therefore, the convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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January 16, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE, Respondent,

v.

HAROLD BENNON CARTWRIGHT, III, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Robert M. Dudek, Esquire, Chief Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

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

This 16th day of January, 2015.

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January 16, 2015

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S. C. 29211

Re: **State v. Harold Bennon Cartwright, III**
Appellate Case No: 2013-000894

Dear Ms. Kitchings:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent** along with **proof of service**, in the above-referenced matter for filing in your office. By copy of this letter, we are serving opposing counsel with this brief today.

Sincerely,

David Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb
Enclosures

cc: Robert M. Dudek, Esquire (2 copies)
Victim Services (with enclosure)

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JAN 16 2015
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