STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Robin B. Stillwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

ONTARIO STEFON PATRICK MAKINS,

Appellant.

Appellate Case No. 2016-002495

STATE'S PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Pursuant to Rules 221 and 240, SCACR, the State now requests a rehearing on the following points that this Court may have overlooked or misapprehended. In so doing, the State maintains all its prior arguments as set out in its brief of respondent. Additionally, the State respectfully suggests that the rehearing be heard en banc pursuant to Rule 219, SCACR, as the State respectfully suggests that this Court's decision is in contravention of State v. Barrett, 416 S.C. 124, 130, 785 S.E.2d 387, 390 (Ct. App. 2016) and effects the ability of the State to present testimony from therapists, other mental health professionals, and other medical professionals who provided treatment for the victims of sexual abuse. The opinion further prevents the State

from presenting evidence of trauma that the Supreme Court indicated is admissible evidence **to prove** a sexual assault occurred. State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) *overruled on other grounds by* State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

I.

This Court found that the therapist, Rich, who treated Victim for trauma, and was qualified as an expert in the treatment of trauma and in child abuse dynamics, "bolstered" the Victim's testimony by testifying she treated Victim because, this Court surmised, she would not have treated the child if she did not believe the child was sexually abused. Rich never testified before the jury that she was treating Victim for trauma or that Victim suffered any symptoms of trauma. She certainly did not testify she would not have treated Victim unless she believed Victim.

Further, this Court's opinion conflates the distinct investigative role of a forensic interviewer with a therapist treating a child for trauma related to sexual abuse. Additionally, this Court's opinion contradicts the holding in State v. Barrett, 416 S.C. 124, 130, 785 S.E.2d 387, 390 (Ct. App. 2016), which held a forensic interviewer who interviewed the victim may be qualified as an expert and provide behavioral testimony so long as the expert does not comment directly or indirectly on the credibility of victim's account of the sexual assault. Finally, this Court misapprehends the evidentiary role of presenting evidence of trauma resulting from sexual abuse in contravention of State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) *overruled on other grounds by* State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

In the instant opinion, this Court opined:

> We find Rich's opinion testimony addressing the various manifestations of child sexual abuse, followed immediately by her

> affirmative response that she treated Victim, implied she believed Victim was telling the truth with respect to her allegations of sexual abuse. **If Rich believed Victim had not been telling the truth, Rich would not have needed to treat her.** As the circuit court warned, Rich's testimony implied she was treating Victim for sexual trauma because Victim had suffered such trauma.

State v. Ontario Makins, Op. No. 5683 (S.C. Ct. App. filed September 4, 2019) (emphasis added).

Therefore, this Court found that testimony by the expert that she treated Victim is bolstering because she would not treat Victim if she did not believe her. The problem with this assertion is that any therapist treating a child as a result of sexual abuse would be considered to "bolster" the victim's testimony regardless of whether the therapist provided expert testimony. The logic of this holding, taken to its natural conclusion, is that a therapist could never testify that the therapist treated a victim of child abuse for trauma. This contravenes our Supreme Court's longstanding approbation of this sort of testimony.

A therapist may provide both expert testimony on trauma and fact testimony about the therapist's treatment of a patient suffering from trauma.

This Court erred in finding Rich's testimony was improper because it "implied she was treating Victim for sexual trauma because Victim suffered such trauma" because it is proper for a person qualified as a mental health counselor to testify a victim suffered symptoms of trauma. If Rich's testimony "implied she was treating Victim for sexual trauma," such testimony is not impermissible. This Court misapprehends that rape trauma evidence is admissible "to prove the elements of criminal sexual conduct since such evidence may make it more or less probable the offense occurred." State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004). "[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a

sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect." Schumpert, 312 S.C. at 506, 435 S.E.2d at 862. "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." White, 361 S.C. at 414-15, 605 S.E.2d at 544 (finding testimony is admissible in prosecutions where the victim of sexual abuse is an adult).

In White, Coles Badger, a psychotherapist treating the adult victim of a sexual assault, was qualified as an expert in post-traumatic stress disorder and the assessment and treatment of sexual abuse. The Supreme Court rejected the appellant's argument that Badger should not have been allowed to testify that the symptoms Victim suffered were consistent with a person suffering trauma, finding the testimony was "consistent with the probative purpose of admitting rape trauma evidence, i.e., to refute the defendant's contention that the sex was consensual **and to prove that a sexual offense occurred.**" Id. (emphasis added).

In Schumpert, the victim was interviewed by Heather Odell, from the Department of Social Services, and Ruth Strait, described in the opinion as a "mental health counselor." Odell's qualification as an expert was not challenged at trial. However, the appellant did object to Strait's qualification as an expert "in the field of sexual abuse" and she testified as to the symptoms victim disclosed to her and opined the behavioral symptoms were typical for sexual abuse. Appellant contended Strait was not qualified to give expert testimony on rape trauma syndrome and Strait's testimony on rape trauma evidence "to prove a rape actually occurred." Schumpert, 312 S.C. at 505-06, 435 S.E.2d at 861.

The Supreme Court found no error, noting that it already determined in State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) that "trauma testimony of a rape victim is relevant to prove the elements of criminal sexual conduct since such evidence makes it more or less probable that the offense occurred." Id. at 506, 435 S.E.2d at 861-62.

Note that due to the trial court's [erroneous] ruling, Rich never testified she treated Victim for trauma, Victim suffered trauma, or Victim suffered symptoms of trauma. She was unduly prevented from testifying she diagnosed Victim with PTSD. Instead the jury was required to infer Victim suffered trauma from factual testimony from other witnesses, not Rich.[1] See State v. Johnson, 637 S.W.2d 157, 161 (Mo.App. 1982) ("[I]t was inferable from the testimony that these major voluntary changes in the victims' lives were made because of the sexual activities testified to and that such changes would not have been made if the activities had been consented to.") (cited with approval in Alexander, 303 S.C. at 381, 401 S.E.2d at 148).

Alexander held, "Evidence of behavioral and personality changes tends to establish or make more or less probable that the offense occurred." Alexander, 303 S.C. at 381, 401 S.E.2d at 149; see also State v. Henry, 329 S.C. 276, 277-78, 495 S.E.2d 463, 469 (Ct. App. 1997) (noting the State's expert was allowed to opine that the victim suffered from PTSD based on history provided from the victim, her mother, and the symptoms exhibited by the victim's behavior).

[1] Indeed, trial counsel attacked the prosecution's case by arguing to the jury that Rich never testified Victim suffered from the symptoms "children perhaps suffer" and that "nobody has said [Victim] suffered this symptom or had this symptom because of this." R. p. 328, lines 8-10; p. 329, lines 1-10.

Rich did not link her testimony about the behaviors of sexually abused children to the Victim's behavior.

In addition to generalized testimony about trauma and trauma resulting from sexual abuse, Rich testified generally about delayed disclosure and piecemeal disclosure. However, Rich did not relate this general behavioral testimony to Victim. Rich did not testify as to whether Victim delayed disclosure or why Victim delayed disclosure. Further, Rich did not discuss whether Victim's disclosure was consistent with piecemeal disclosure or suggest piecemeal disclosure occurred in the instant case. She did not testify that any symptoms of trauma were present or that the phenomena or circumstances of delayed and piecemeal disclosure occurred in the instant case, separating the instant case from State v. Anderson, 413 S.C. 212, 218 776 S.E.2d 76, 79 (2015), discussed further below. See State v. Jones, 417 S.C. 319, 790 S.E.2d 17 (Ct. App. 2016) (finding expert witness never commented on the credibility of victim or her mother but merely offered reasons why children might delay disclosing instances of sexual abuse and why a non-offending caregiver may have an unusual reaction when learning about the abuse. The testimony assisted the jury's understanding of the complex dynamics of sexual abuse cases).

Bolstering defined

At the heart of the problem in this Court's opinion is this Court's misapprehension of what constitutes improper bolstering. Improper bolstering simply does not include Rich's alleged subliminal messaging to the jury as suggested in this opinion. All relevant evidence in some way "bolsters" the strength of the offering party's case, and a trial court may not exclude evidence that bolsters other evidence absent a constitutional, statutory or rule-based principle of

law providing for exclusion. State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 611 (Ct. App. 2014) (Few, C.J., concurring in part and dissenting in part). "'Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror.'" State v. Taylor, 404 S.C. 506, 745 S.E.2d 124, 128 (Ct. App. 2013) (*quoting* State v. Douglas, 367 S.C. 498, 626 S.E.2d 59 (Ct.App.2006), *rev'd in part on other grounds*, 380 S.C. 499, 671 S.E.2d 606 (2009)). "Generally, the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain 'the assessment of witness credibility . . . within the exclusive province of the jury.'" Taylor, at 514-515, 745 S.E.2d at 128 (quoting State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)). The idea that Rich recounting that she treated Victim is bolstering – especially without Rich actually testifying why she was treating Victim – extends far beyond Kromah's concerns of obvious indirect comments on credibility extant in an expert's opinion finding abuse occurred or finding that a disclosures of abuse is "compelling." Rich's testimony is clearly more akin to Coles Badger's testimony approved by the Supreme Court in White.

Anderson does not prohibit the testimony in this case

Further, this Court misapprehends the Supreme Court's ruling in State v. Anderson, 413 S.C. 212, 218 776 S.E.2d 76, 79 (2015). In Anderson, the person who conducted a forensic interview of the child victim was qualified "as a forensic interviewer in child abuse assessment" without the trial court holding a hearing to determine if the forensic interviewer possessed the requisite experience in child abuse assessment. The Court recognized the validity of the

expertise, referencing Schumpert and Weaverling, but found it was error for the trial court to not hold an in camera hearing to determine if the forensic interviewer possessed the requisite expertise. The Supreme Court also noted the forensic interviewer's behavioral expert testimony vouched for the Victim's credibility because she testified "only to those characteristics which she observed in the minor." Id. at 219, 776 S.E.2d at 79. Rich did not testify that Victim possessed any characteristics she referenced during her testimony.

The Anderson Court further found that witnesses should not be qualified as experts in forensic interviewing or testify as to techniques in forensic interviewing before the jury. The Supreme Court set out a procedure for admitting forensic interviews where the interviewer would testify in camera to determine if the recording met the "particularized guarantees of trustworthiness" under S.C. Code 17-23-175, but if the recording was admitted, the forensic interviewer would not be able to provide this same in camera testimony and the forensic interviewer's testimony would be limited to only authenticating the interview and describing the behaviors and demeanor the child exhibited during the interview: "There is to be no testimony to such things as techniques, of the instruction to the interview subject of the importance of telling the truth, or that that purpose of the interview is to allow law enforcement to determine whether a criminal investigation is warranted." Id. at 220-21, 776 S.E.2d at 80.

The Supreme Court also made a suggestion on presenting generalized behavioral testimony from an expert:

> **The better practice**, however, is not to have the individual who examined the alleged victim testify, but rather to call an independent expert. To allow the person who examined the child to testify to the characteristics of victims runs the risk that he expert will vouch for the alleged victim's credibility.

Id. at 218-19, 776 S.E.2d at 79 (emphasis added). Even though suggesting the better practice of an independent expert, rather than a forensic interviewer, to provide behavioral testimony, the Supreme Court did not outright ban the practice, as it noted in Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017). The Supreme Court explained:

> Since Anderson, the Court of Appeals has on at least two occasions affirmed a trial court's qualification of a forensic interviewer as an expert to testify as to the behavior of child sex abuse victims. See State v. Barrett, 416 S.C. 124, 130, 785 S.E.2d 387, 390 (Ct. App. 2016) *cert granted* (Mar. 24, 2017)[2] (finding "no error" in qualifying a forensic interviewer as an expert to testify "regarding general behavioral characteristics" of child sex abuse victims); State v. White, 416 S.C. 135, 138, 784 S.E.2d 695, 696 (Ct. App. 2016) (finding "the trial court acted within its discretion" when it qualified "the forensic interviewer as an expert in the dynamics of child abuse").

Id. at 332-33, 806 S.E.2d at 722.

Barrett controls the result

This Court in the instant case did not address the applicability of Barrett, even though the State argued in its brief that Barrett was the controlling law. In Barrett, this Court rejected arguments that the trial court should not have qualified the forensic interviewer as an expert in child abuse characteristics and allowed the forensic interviewer to provide testimony on the behaviors of sexually abused children. This Court found it was not an error to admit the interviewer as an expert, the testimony she offered regarding general behavioral characteristics was admissible, and she did not improperly vouch for the victim's credibility. Id. at 130, 785 S.E.2d at 389.

[2] Subsequently, the Supreme Court found the writ was improvidently granted.

This Court compared the case before it to Anderson and noted an important distinction from Anderson was that in Anderson, the witness was qualified as an expert in both forensic interviewing and child abuse assessment, while in Barrett, the witness was only qualified as an expert mental health professional. Id. at 130, 785 S.E.2d at 390. Barrett further noted a hearing was held to determine if the expert was qualified, unlike in Anderson. Id. Barrett also noted that the expert's testimony fell within the parameters of Kromah. Id. (examining State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013)).

The testimony did not violate Kromah – Kromah specifically allows Rich's testimony.

In the instant case, this Court cited Kromah, noting a forensic interviewer should avoid statements: (1) explaining that the child was told to be truthful; (2) expressing a direct opinion as to a child's veracity or tendency to tell the truth; (3) indirectly vouching for the child's believability, such as a statement that the interviewer has made a "compelling finding" of abuse; (4) making any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or (5) providing an opinion that the child's behavior indicated the child was telling the truth. Makins (citing Kromah, 401 S.C. at 360, 737 S.E.2d at 500).

However Rich did not: (1) testify she told the Victim to be truthful; (2) express an opinion about the Victim's veracity or tendency to tell the truth; (3) make any findings or offer any opinions that indirectly vouched for the Victim such as a "compelling finding" of abuse (Rich did not make any findings or conclusions at all); (4) make a statement indicating she believed the child's allegations; or (5) provide an opinion that Victim's behavior indicated she was telling the truth (Rich did not testify about Victim's behavior at all). Kromah, supra.

The Supreme Court in Kromah specifically allowed for forensic interviewers to testify as to (1) "**the time, date, and circumstances of the interview**;" (2) "any personal observations regarding the child's behavior or demeanor;" or (3) "a statement as to events that occurred within the personal knowledge of the interviewer." Id. (emphasis added). Therefore, the prosecutor complied with Kromah, as well as Anderson and Barrett, and the trial court's preemptive concerns about bolstering never materialized, as evidenced by trial counsel's lack of objection. The reality is the trial court unduly limited the State's testimony in contravention of Schumpert and what this Court called bolstering – testimony that Rich treated Victim – is specifically allowed in Kromah.

This Court discussed State's Exhibit 4, a drawing Victim drew during a therapy session with Rich. It is important to note that trial counsel indicated he did not object to the drawing and made no objection to any of the testimony surrounding it. R. pp. 275-79. When Rich provided further foundational testimony and explained her discussion with Victim as she drew the drawing, counsel never interposed an objection. Therefore, any complaint about the drawing or testimony surrounding it is not preserved for review. Additionally, Rich's testimony explaining why she suggested Victim draw rather than explain the incident of abuse is hardly the sort of technique prohibited by Kromah such as swearing the Victim to tell the truth. It is not testimony that impacts the jury's exclusive role in determining credibility and it is not bolstering.

Any time an expert testifies or provides evidence which supports the underlying charge levied by the victim, it does not result in improper or impermissible bolstering or vouching. It is only when the testimony invades the province of the jury and makes a comment on the

credibility or veracity of the victim. Case law from the Supreme Court and this Court does not support that such testimony was bolstering as suggested in the opinion.

II.

Further this Court misconstrued Anderson and Kromah when it complained that Rich's testimony was the functional equivalent of a forensic interviewer. In Kromah, the Supreme Court recognized that a forensic interviewer is tasked with collecting facts, not providing therapy. Kromah, 401 S.C. at 357, 737 S.E.2d at 499. The Supreme Court, in a footnote, observed, "Forensic interviewers might be useful as a tool to aid law enforcement officers in their initial investigative process, but this does not make their work appropriate for use in the courtroom." Id. at 401 S.C. at 499 n. 5, 737 S.E.2d at 358, n. 5. Likewise, the Supreme Court in Anderson recognized one "purpose of [a forensic] interview is to allow law enforcement to determine whether a criminal investigation is warranted." Anderson, 413 S.C. at 221, 776 S.E.2d at 80. Briggs cited both Kromah and Anderson in noting the dual purpose of forensic interviews was to collect facts for court and serve an investigatory purpose for law enforcement.

However, Rich's role in this case was to provide therapy, she was not part of the investigative team and her role was not to collect facts for court but to help Victim. She did not testify why she was treating the victim. She never testified, as trial counsel claimed, that she only treated children suffering from trauma. Her testimony showed that only roughly a quarter of her patients were children being treated for trauma related to sexual abuse.

This Case also, in Footnote 4 of the opinion, mistakenly cited S.C. Code § 17-23-175 as the basis for Rich being allowed to testify as to the abuse reported by Victim. The disclosure of abuse is admissible under the outcry exception to the hearsay rule. Section 17-23-175 provides:

> (A) In a general sessions court proceeding or a delinquency proceeding in family court, an out of court statement of a child is admissible if:
> (1) the statement was given in response to questioning conducted **during an investigative interview** of the child;
> (2) **an audio and visual recording of the statement is preserved on film, videotape, or other electronic means**, except as provided in subsection (F);
> (3) the child testifies at the proceeding and is subject to cross examination on the elements of the offense and the making of the out of court statement; and
> (4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.
>
> ***
>
> (D) For purposes of this section **an investigative interview** is the questioning of a child by a law enforcement officer, a Department of Social Services case worker, or other professional interviewing the child on behalf of one of these agencies, or in response to a suspected case of child abuse.

S.C. Code Ann. § 17-23-175 (Supp. 2010) (emphasis added). In the instant case, because Rich was providing Victim therapy and not conducting an investigative interview, and because the sessions were not recorded, the testimony was not elicited pursuant to section 17-23-175. Instead, the basis for allowing Rich to testify that Victim disclosed abuse to her is the outcry exception to hearsay which allows limited corroborative testimony in criminal sexual conduct cases when the victim testifies. See Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006). This exception allows hearsay testimony that a victim complained of a sexual assault but is limited to the victim's report of the time and place of the sexual assault, and should not include the identity of the perpetrator or particulars of the assault; however, counsel made no objection that the testimony exceeded this exception, certainly for strategic reasons. See Watson (finding

counsel was not ineffective for failing to object to testimony exceeding the outcry exception where counsel did not object for strategic reasons). Makins did not argue on appeal that the testimony exceeded the outcry exception.

This misapprehension of the applicability of section 17-23-175 represents this Court's further conflation of the role of a forensic interview as an investigative tool with the mental health treatment provided by therapists for symptoms of a victim's trauma.

III.

This issue should not be reviewed because counsel failed to object to the sufficiency of the curative instruction. At trial, Makins made a motion for mistrial, alleging Rich's testimony bolstered Victim's testimony. The trial court declined to grant a mistrial, finding the prosecution did not elicit any improper testimony. Makins renewed the motion after the State rested its case. The trial court offered a curative instruction. Tr. pp. 288-89; p. 376. During the trial court's instructions to the jury, the trial court advised the jury, "[U]nderstand that no witness, even an expert witness, can vouch for the credibility of another witness' testimony." R. p. 344, lines 11-13. Following instructions, not only did Makins not make any exceptions to the instructions to the jury, Makins did not challenge or object to the sufficiency of the "curative" instruction. R. p. 354, lines 18-23. Only **after** the jury began deliberating did Makins object to the sufficiency of the curative instruction. R. p. 360, lines 5-9.

"Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). "A **contemporaneous** objection to the sufficiency of a curative charge must be made to preserve the issue for appellate review." State v. Greene, 330

S.C. 551, 557, 499 S.E.2d 817, 820 (Ct. App. 1997) (emphasis added). Because counsel failed to object to the sufficiency of the curative instruction, the issue was not preserved for review.

IV.

Additionally, the trial court provided a remedy to the substance of trial counsel's complaint by not allowing testimony about Rich's specific treatment for, and diagnosis of, trauma. Because Makins did not renew his mistrial motion following this ruling, the issue is not preserved for review. See State v Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999) (where appellant objects, but fails to request further relief or object to the court's failure to give a curative instruction, no issue is preserved for review).

When the prosecution began to ask about the therapy Rich provided to Victim, defense counsel interposed the first objection to the testimony, pretrial or before the jury. Once the jury was out, defense counsel moved for a mistrial. R. pp. 257-59. Defense counsel claimed Rich's testimony conveyed she believes the child because she is saying to the jury she would not have treated the child if the child was not suffering trauma. R. pp. 260-61 (Rich never said that and counsel's recollection of that testimony was inaccurate). The prosecution noted at that point in Rich's testimony, the testimony was the equivalent of "blind expert" testimony and Rich did not testify she believed the victim. R. p. 261. The trial court denied the mistrial motion. R. p. 270. The trial court then returned from a brief recess and announced it would limit the State's inquiry into Rich's specific treatment and diagnosis. R. pp. 271-72. Defense counsel made no objection at that time to the trial court's ruling or the sufficiency of its limitation on Rich's testimony in lieu of mistrial. R. p. 273-74.

V.

Finally, any error is 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). To the extent it was even likely a jury could infer that Rich admitting she treated Victim is an indication that Rich believed her report of sexual abuse, this jury did not let it interfere with their role in determining credibility as the jury acquitted Makins of Criminal Sexual Conduct in the First Degree, which was based on the conduct Victim reported to Rich, but not the forensic interviewer. This alleged bolstering, as oblique as it is, simply was not reasonably likely to have changed the outcome of trial.

WHEREFORE, the State requests this Court to grant the petition for rehearing and affirm the convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BY: _____
David Spencer
Office of the Attorney General
S.C. Bar No 68571

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

ATTORNEYS FOR RESPONDENT

September 19, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 19 2019
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Robin B. Stillwell, Circuit Court Judge

Appellate Case No. 2016-002495

THE STATE, ...RESPONDENT.

v.

ONTARIO STEFON PATRICK MAKINS, ...APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, Legal Assistant, hereby certify that I have served the State's Petition for Rehearing and Petition for Rehearing EN BANC, dated September 19, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Taylor D. Gillam, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 19th day of September, 2019.

Shana Montgomery

Shana Montgomery
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

September 19, 2019

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box
Columbia, South Carolina 29201

Re: The State v. Ontario Stefon Patrick Makins
Appellate Case No. 2016-002495

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of State's Petition for Rehearing and Petition for Rehearing EN BANC in the above case. By copy of this letter, I am serving counsel for the Appellant with a copy the motion.

Sincerely,

David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/ssm
Enclosures

cc: Taylor D. Gillam
Victim Advocacy Division