STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2018-001345

THE STATE, Respondent,

v.

BOBBY JONES, SR., Appellant

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Rules:

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge properly granted the State's motion to quash the initial jury selected in Appellant's trial when Appellant's peremptory strikes were used in a racially and gender discriminatory manner?

II.

Whether the trial judge properly qualified Sitha Patel as an expert in the field of child sexual abuse dynamics when she had the requisite knowledge, skill, experience, training, and education to assist the jury in understanding general concepts in child sexual abuse cases and where Patel did not impermissibly bolster the testimony of Victim because Patel did not offer an opinion on the credibility of Victim's disclosure?

STATEMENT OF THE CASE

In August 2013, the Allendale County Grand Jury indicted Appellant for one count of second degree criminal sexual conduct with a minor. On July 9-12, 2018, a jury trial was held in the Allendale County Court of General Sessions with the Honorable Brooks P. Goldsmith, presiding. Appellant was represented by Glenn Walters, Esq. and Michael R. Culler, Esq. The State was represented by Assistant Solicitors Leigh Staggs and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of second degree criminal sexual conduct with a minor. Following the verdict, the trial judge sentenced Appellant to a term of twelve years' imprisonment. Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

The victim (Victim) in this case was born in 1998. Victim was 14 years old when she was abused by Appellant and 20 years old when the case was called to trial. (Tr. 178-79). In late 2012 and early 2013, Victim lived with her mother (Mother) and Appellant in Allendale. Appellant is Victim's stepfather. (Tr. 180). Appellant was the pastor of the New Life House of Love church in Allendale. (Tr. 496). Victim and Mother attended Appellant's church before he married Mother and became Victim's stepfather. (Tr. 496-97). At some point in 2013 Victim disclosed to Nicole Smith that Appellant had touched her. (Tr. 226). Victim communicated this to Smith by typing out a message on a computer screen while they were in Appellant's church. (Tr. 226). In February 2013, Carolyn Chess, a substitute teacher, overheard Victim discussing her sexual activity with Appellant with a friend in class. (Tr. 246). After initially hesitating[1], Chess decided to report Victim's accusations to the guidance office. Subsequently, Victim wrote on a piece of paper that she and Appellant engaged in sexual intercourse and handed the paper to Chess. (Tr. 249).

On March 4, 2013, after Chess reported what Victim told her, Victim was called to meet with school counselor Pamela Kinard, school nurse Kimberly Solomon, and school resource officer, Samuel Holmes. (Tr. 149, 237, 261). Victim provided two written statements to law enforcement on March 4. (State's Exhibit #1, #2). In her first statement, Victim disclosed that she and Appellant, "did it", and when Victim told Mother about it, Mother confronted Appellant. (State's Exhibit #1). In response to the confrontation, Appellant "almost killed himself." (State's Exhibit #1). Victim gave a second more detailed statement to Sheriff Tom Carter. (Tr. 365,

[1] Chess is related to Appellant and didn't want to believe the accusations against Appellant. Chess threw away the piece of paper that Victim handed her that contained a written accusation of abuse by Appellant. (Tr. 249, 251).

State's Exhibit #2). Victim disclosed that the abuse took place one night after Christmas. (State's Exhibit #2). Victim also specified that Appellant "put his penis inside me then it started feeling good to me that's why I didn't say anything." (State's Exhibit #2). Victim did not describe the abuse any further and stated that she could not write anymore because she did not want Appellant to get into trouble. (Tr. 367). Victim insisted that everything was fine at home and begged law enforcement not to say anything about the allegation she made. (State's Exhibit #2).

Later in the day on March 4, Appellant arrived at school to pick up Victim and take her home. Sheriff Carter informed Appellant that Victim and her brother could not go home with him that day because of the accusations made by Victim. (Tr. 368-70). After being informed of the accusations, Appellant told Sheriff Carter that he and his wife had concerns about Victim masturbating with a magic marker. Because of their concerns, Appellant told Carter that he bought Victim a vibrator and showed her how to use it. (Tr. 112, 370-71).

Appellant also spoke with DSS employee Mary Carter on March 4. Appellant told Mary Carter that he showed Victim how to use the vibrator. (Tr. 387). Appellant also disclosed that Victim's pants and underwear were pulled down when this occurred. The following day, Mary Carter spoke with Mother and Appellant at the DSS office. On this occasion, Appellant again disclosed that he assisted Victim with the vibrator but specified that he used his hand to control the vibrator rather than Victim using the vibrator herself. (Tr. 392). On a subsequent date, Mary Carter visited Appellant's home. Appellant showed her where he and Victim were sitting in Victim's room when he used the vibrator on her. (Tr. 394). Appellant also admitted that Mother and Victim's brother were home during this time, but they were asleep in another room and did not know about what occurred between Appellant and Victim. (Tr. 395).

Victim was referred to Hopeful Horizons for a physical exam on March 21, 2013 where she was examined by Pediatric Nurse Practitioner Kristen Dalton. (Tr. 427). During the exam, Victim told Dalton that she had never had sex before, but admitted that both she and Appellant had inserted a vibrator into her vagina. (Tr. 428, 431, 445). On March 26, 2013 Victim met with SLED agent Richard Johnson. Victim gave a statement to Johnson in which she recanted her accusations. (Tr. 275, State's Exhibit #3). Victim told Johnson that she used the vibrator on herself and the only time Appellant touched her was when he touched "the top of my chest." (State's Exhibit #3).

Appellant testified in his own defense at trial. Appellant admitted to buying Victim a vibrator, but denied showing her how to use it. (Tr. 490-91, 496). Appellant also denied having sex with Victim. (Tr. 492). Victim testified on behalf of the State and Appellant. When Victim was called as a witness by the State, she claimed to remember very little from the relevant time period and answered most questions by saying "No, I don't recall". (Tr. 178-204). However, when Victim testified on behalf of Appellant, she admitted she received a vibrator from Mother and Appellant. Victim testified that she eventually told Nicole Smith about the vibrator and a rumor about her and Appellant having sex then began. (Tr. 455-69). At the conclusion of trial, the jury found Appellant guilty of second degree criminal sexual conduct with a minor. (Tr. 579).

STANDARD OF REVIEW

I.

When reviewing a Batson challenge, an appellate court is "limited to determining whether the trial court abused its discretion." State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "This court will give the trial court's finding great deference on appeal and review the trial court's ruling with a clearly erroneous standard." State v. Taylor, 399 S.C. 51, 57, 731 S.E.2d 596, 600 (Ct. App. 2012).

II.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." Id.

ARGUMENT

I.

The trial judge properly granted the State's motion to quash the initial jury selected in Appellant's trial because Appellant's peremptory strikes were used in a racially and gender discriminatory manner.

Appellant argues the trial court erred by granting the State's motion to quash the initial jury selected pursuant to Batson v. Kentucky[2] because Appellant offered a race neutral reason for striking Juror No. 158. Additionally, Appellant contends the trial judge erred by not requiring the State to show Appellant's explanation for the strike was mere pretext by demonstrating that a similarly situated juror was also seated. Appellant's argument is without merit. The trial judge did not abuse his discretion in quashing the initial jury selected in Appellant's trial because Appellant did not give a coherent race or gender neutral reason for striking Juror No. 158. Even if Appellant had articulated a race and gender neutral reason for striking Juror No. 158, Appellant's explanation for the strike was so implausible that it was mere pretext. Therefore, the trial judge did not abuse his discretion in granting the State's Batson motion.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender." State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). In criminal cases, both the State and the defendant are prohibited from striking jurors on the basis of race. Georgia v. McCollum, 505 U.S. 42 (1992); Batson v. Kentucky, 476 U.S. 79 (1986). "[G]ender, like race, is an unconstitutional proxy for juror competence and impartiality." J.E.B. v. Alabama ex rel. T.B., 511 U.S. 217, 129 (1994).

A trial judge should employ a three step analysis to determine whether a Batson violation has occurred. "First, the opponent of a peremptory challenge must make a prima facie showing

[2] Batson v. Kentucky, 476 U.S. 79 (1986).

that the challenge was based on race." State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014). If a prima facie showing is made, the trial court must then require "the proponent of the challenge to provide a race neutral explanation for the challenge." Id. "Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment." State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007).

"Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible that the judge may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment." Payton v. Kearse, 329 S.C. 51, 55, 495 S.E.2d 205, 208 (1998). "In the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed." Hernandez v. New York, 500 U.S. 352, 365 (1991). The best evidence of whether an explanation for a strike is believable "often will be the demeanor of the attorney who exercises the challenge." Id. The evaluation of an attorney's "state of mind based on demeanor and credibility lies 'peculiarly within a trial judge's province.'" Hernandez 500 U.S. at 365 (quoting Wainwright v. Witt, 469 U.S. 412, 428 (1985). "Once a discriminatory reason has been uncovered -- either inherent or pretextual -- this reason taints the entire jury selection procedure." Kearse 329 S.C. at 59.

Here the trial judge correctly quashed the initial jury selected because of racial discrimination and gender discrimination by Appellant in the selection of the jury. Because the

trial judge correctly quashed the jury based on two forms of discrimination by Appellant, it is instructive to address each form of discrimination individually.

Racial Discrimination

The first jury selected in Appellant's trial consisted of six black males and six black females. (Tr. 63-73). Appellant used a total of five strikes during the primary jury selection and an additional strike during selection of the alternates. Appellant used peremptory challenges on three white females and two black females. (Tr. 68-70). Appellant struck one black female during the selection of alternates. (Tr. 70). The State struck four black females and one black male during the primary jury selection and struck an additional black female during the alternate selection. (Tr. 65-67, 70). The only three white jurors called during the first jury selection were all stricken by Appellant. Accordingly, the initial jury selected consisted of jurors of only one race. Appellant's strike of Juror No. 158, a white female, is the subject of this appeal. (Tr. 70).

After the initial jury was selected, the State made a motion to quash the initial jury pursuant to Batson. The State's motion was made on the grounds of both racial and gender discrimination. (Tr. 73-74). The State noted that five of Appellant's six strikes were used on prospective female jurors and that Appellant struck all three prospective white jurors that were called. Appellant attempted to provide race neutral reasons for striking each white juror. Appellant explained that he struck Juror No. 39 because she was a teacher and her sister was a victim of sexual abuse. (Tr. 74). Appellant struck the second white juror, Juror No. 113, because she was a nurse and one of the State's witnesses was also a nurse. (Tr. 75). Appellant claimed he struck the final white juror, Juror No. 158, because she was a housewife. (Tr. 76). The trial judge accepted Appellant's explanations for each strike as being race neutral except for Appellant's

explanation for Juror No. 158. (Tr. 77). When the trial judge asked Appellant to clarify his reason for striking Juror No. 158, he offered the following explanation:

> Yes, our position was that, we would strike all housewives. And the only housewife that's on the jury – that could potentially be on the jury was the lady that stood up and, of course, the double alternates, there was one housewife that stood up there. The selection was with regard to the selection of jurors, and she was 158. There was no other housewife that served in the capacity. And, of course we look at the professions of what people hold. We struck the nurse, we struck the housewives, we struck the teacher. We struck the teacher that was associated with an individual that reported sexual abuse and we struck the individual that was associated with someone who served on the grand jury. There was a dispute whether they served on this grand jury, and that was a black individual.

(Tr. 77-78, lines 12-4). Appellant merely stated in a conclusory manner that he struck Juror No. 158 because she was a housewife but did not offer a reason why he chose to strike housewives. In fact, Appellant's explanation focused mainly on his reasons for striking other jurors, rather than his reason for striking Juror No. 158.

The Solicitor responded to Appellant's supposed race neutral reason by arguing Appellant's explanation was insufficient. (Tr. 78). The trial judge agreed with the State and asked for a further explanation by Appellant. (Tr. 78). Rather than give a specific reason for why he choose to strike housewives, trial counsel for Appellant gave a rambling response in which he: defended the profession of being a housewife, differentiated the role of a housewife from a caretaker, and finally noted that his wife had been a housewife for 29 years. (Tr. 78-80). Trial counsel also seemed to take offense at having to defend his strike when told the trial judge that "It is insulting to stand before this Court and say I don't really know what a housewife is, I don't know what she does." (Tr. 79, lines 15-18). However, even at the conclusion of trial counsel's soliloquy about housewives, he still did not offer a specific reason why he chose to strike housewives. After further questioning by the trial judge, Appellant finally offered a reason for his strike. Trial counsel explained "In this particular case, the skill set requirement of being a

housewife, we do not believe would be in the best interest of our case. This is someone who makes decisive decisions, manages money, manages a household. Maybe that's someone we don't want in our jury." (Tr. 81, lines 14-20). Thus, on his third try, Appellant finally articulated that he struck Juror No 158 because he thought a housewife makes "decisive decisions." Ultimately, the trial judge agreed with the State's argument and granted the State's motion. (Tr. 87).

The trial judge did not abuse his discretion when he granted the State's Batson motion. Appellant struck the only three white jurors that were presented in jury selection. (Tr. 68-70). The State argued this point to the trial judge and thus made a prima facie case of racial discrimination. (Tr. 73-74). The burden then shifted to Appellant to offer a race neutral reason for his strike. Appellant was unable to offer a race neutral reason and was asked three times by the trial judge to explain why he chose to strike housewives. (Tr. 77, 78, 80). On his third try, Appellant finally said he struck housewives because they were decisive. (Tr. 81). At this point, the trial judge concluded that Appellant's explanation was mere pretext.

Although the trial judge did not expressly state the basis for his ruling, the record plainly shows he found Appellant's argument implausible. (Tr. 87). The trial judge not only asked Appellant to explain his race neutral reason three separate times, but after Appellant articulated his race neutral reason to strike Juror No. 158, he could not explain why it was not pre-textual. (Tr. 77, 78, 80, 82). After one of Appellant's attempted explanations, the trial judge remarked "I'm still not sure exactly what it is you're arguing." (Tr. 82, lines 17-18). Thus, despite not making specific findings on the record in his ruling, the trial judge did not abuse his discretion in granting the State's motion because Appellant's explanation for striking Juror No. 158 was so implausible and incoherent that the court properly concluded it was mere pretext.

Gender Discrimination

In addition to Appellant's strike of Juror No. 158 being racially motivated, the strike was also impermissible on the basis of gender discrimination[3]. Although the argument presented by the State at the Batson hearing focused primarily on racial discrimination by Appellant, gender discrimination by Appellant is also a factor for this Court to consider in evaluating the trial judge's ruling.

Five of the six peremptory strikes used by Appellant were used on female jurors. Appellant's stated reason for striking Juror No. 158 is not a gender neutral reason on its face. The term housewife is a sex-specific noun that refers to only one gender. Appellant argued at trial that the term could apply to women or men. (Tr. 84). However, Appellant only made this argument after the solicitor argued: "They're applying it, first of all, housewives – they're applying it specifically to women, but there's no mention made of potentially men that might have the same occupation." (Tr. 83, lines 11-15). Indeed, Appellant could have used any gender neutral term to describe the profession he was seeking to exclude such as homemaker or stay at home parent. Instead, Appellant chose the gender specific term housewife. Even after Appellant asserted that a man could also be a housewife, he continued to use the term housewife for the remainder of his argument. (Tr. 84-87). Furthermore, when making his argument to the trial judge, Appellant used more gender specific terminology to describe the role of a housewife. In describing this role, Appellant noted: "not to be discouraging, but your needs are taken care of.

[3] Appellant argues the State's argument changed during the course of the Batson hearing from racial discrimination to gender discrimination and the State's argument for gender discrimination was framed as Appellant making an "improper generalization about females." (Initial Brief of Appellant 14). In actuality, the State explicitly argued that Appellant used five out of his six strikes on females when the Batson motion was initially made. (Tr. 73-74). Regardless of how the argument was framed by the Solicitor, Appellant is nonetheless prohibited from discriminating against a juror on the basis of gender. See J.E.B. v. Alabama ex rel. T.B., 511 U.S. 217, 129 (1994).

You manage the household. As far as your exposure, it might be the children and the management of the household and **your husband.**" (Tr. 79, lines 6-10)(emphasis added).

In addition to improperly striking Juror No. 158 because of her race, Appellant also improperly struck her because of her gender. The State made a prima facie case that Appellant discriminated based on gender by arguing Appellant used five of his six strikes on women. Appellant's proffered reason for striking Juror No. 158 was not gender neutral. In fact, the reason offered by Appellant was gender specific. Therefore, Appellant's explanation did not require the trial judge to advance past the second step of the Batson analysis. Because Appellant did not even offer a gender neutral reason for striking Juror No. 158, the State was not required to show Appellant's reason was mere pretext. Accordingly, the trial judge did not abuse his discretion in granting the State's motion to quash the jury. Appellant's conviction and sentence should be affirmed.

II.

The trial judge properly qualified Sitha Patel as an expert in the field of child sexual abuse dynamics when she had the requisite knowledge, skill, experience, training, and education to assist the jury in understanding general concepts in child sexual abuse cases. Furthermore, Patel did not impermissibly bolster the testimony of Victim because Patel did not offer an opinion on the credibility of Victim's disclosure.

Appellant next argues the trial court erred by allowing Sitha Patel to testify as an expert in the field of child sexual abuse dynamics. Appellant makes a two-fold argument. First, Appellant claims the trial judge erred because Patel lacked the necessary expertise to testify as an expert on child sexual abuse dynamics. Specifically, Appellant complains the State did not prove the methods and procedures used by Patel were reliable. Secondly, Appellant claims Patel's testimony prejudiced Appellant by bolstering the testimony of Victim. Each of Appellant's arguments is without merit. Patel had the requisite training and experience to testify as an expert

in child sexual abuse dynamics and was properly qualified by the trial judge. Appellant's argument that Patel improperly bolstered Victim's testimony is not properly preserved for appeal because Appellant argued a different position at trial than he has on appeal. At trial, Appellant objected to Patel's testimony on the basis that she could not offer an opinion on Victim's testimony because Patel did not interview Victim and could not testify about the credibility of Victim's disclosure. On appeal, Appellant argues Patel should not have been allowed to testify because she impermissibly bolstered Victim's testimony. These are contradictory arguments and therefore Appellant's argument is not preserved for appeal. Assuming that Appellant's argument is preserved for appeal, Patel was a blind expert who did not interview Victim or review her file. Patel did not offer any opinion on Victim's testimony or testify about Victim's credibility. Therefore, Patel did not bolster Victim's testimony. Because Appellant makes a two-pronged argument, each contention of error must be addressed individually.

Patel's Qualifications

"Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702 SCRE. "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).

In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony's probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). To determine if the underlying science is reliable, the trial judge should apply the factors set out in State v. Jones. Id. See State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); State v. Jones, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001).

In order to admit non-scientific evidence under rule 702 SCRE, the trial court must still make a determination as to the proposed testimony's reliability. State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). However, while the trial court still serves an important gatekeeping function in such cases, "the foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony." White, 382 S.C. at 274, 676 S.E.2d at 688. Accordingly, there is no formulaic approach that a trial court can or must apply to determine reliability in cases involving nonscientific expert testimony. Id. The trial judge is merely required to "assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact." White, 382 S.C. at 274, 676 S.E.2d at 689. "State v. White should apply in qualifying child abuse assessment experts because their testimony is non-scientific." Chavis 412 S.C. at 106, 771 S.E.2d at 338. "There is always a possibility that an expert witness' opinions are incorrect. However, whether to accept the expert's opinions or not is a matter for the jury to decide." State v. Jones, 423 S.C. 631, 639-40, 817 S.E.2d 268, 272 (2018).

Here, Appellant contests Patel's qualifications as an expert in the field of child sexual abuse dynamics. Appellant takes issue with Patel's undergraduate degree as well as the training Patel received from MUSC and the Child First Law Center[4]. At trial, the State proffered Patel's testimony and qualifications *in camera.*

At the time of trial, Patel had worked as a therapist and forensic interviewer for Hopeful Horizons for five years. (Tr. 300, 342). Patel earned an undergraduate degree in marketing and international business and a master's degree in social work. (Tr. 302, 343).As part of her graduate program, Patel worked in residential hospital program where she worked with children who self-injure and suffer from addictions. (Tr. 302). In her role with Hopeful Horizons, Patel interviewed over 450 children and counseled over 150 people, 90 percent of whom were children. (Tr. 304, 344). In addition to her education and work experience, Patel completed a course in trauma focused therapy at MUSC that consisted of a three day course followed by fifteen weeks of follow-up conference calls with other agencies. (Tr. 309). Patel also completed a week-long training course to become certified as a forensic interviewer. (Tr. 310). As part of her job, Patel is required to receive 40 hours of continuing education every two years. (Tr. 344). Patel also taught seven continuing education trainings. (Tr. 304-05, 345). Patel was also admitted as an expert on a prior occasion in Family Court (Tr. 306).

On appeal, Appellant takes issue with the quality of Patel's education and the trial judge's implicit finding that Patel's testimony was reliable. Appellant specifically contests whether Patel could be an expert in child sexual abuse dynamics because her undergraduate degree was in marketing, because of the length of Patel's post graduate training and the fact that

[4] Patel may be referring to the Child First forensic interview training at the Children's Law Center at the University of South Carolina School of Law. See https://www.sc.edu/study/colleges_schools/law/centers/childrens_law/docs_training_announcements/train_childfirst.pdf

Patel had given presentations at "only seven continuing education courses." (Initial Brief of Appellant 24-25). To address Appellant's argument, it is instructive to review what Patel actually testified about. Patel did not testify about forensic interviewing or an interview that she conducted with Victim because Patel never spoke with Victim nor did she review any information about Victim's case. (Tr. 347-48). Patel was a "blind witness" who testified about general topics in a sexual abuse case. In her testimony, Patel discussed behavioral characteristics of child sex victims, the grooming process, the disclosure process, recantation, and the behavior of non-offending care givers. (Tr. 346-55). These broad topics are the subject matter of Patel's expertise.

In light of the substance of her testimony, Patel was appropriately qualified as an expert witness. Although, Patel did not receive an undergraduate or graduate degree in the field of child sexual abuse dynamics, an expert witness is not required to have a higher education degree in their field of study. See State v. Peer, 320 S.C. 546, 554-55, 466 S.E.2d 375, 380 (Ct. App. 1996)("The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.") In fact, education is just one of the factors enumerated for a trial judge's consideration in Rule 702 SCRE. A trial judge should consider a witness' knowledge, skill, experience, and training as well. In addition to Patel's education, she also worked for five years as a therapist and interviewer of children. During that time, she interviewed over 450 children and administered therapy to over 150 people, many of whom where children. Patel not only completed 40 continuing education hours every two years but also taught seven courses herself. Patel's work experience combined with her training in forensic

interviewing and trauma focused therapy certainly provided Patel with the necessary specialized knowledge to assist the jury in this case.

Appellant complains that Patel's testimony was not reliable because she could not provide the trial court with an error rate for her testimony. Appellant misunderstands the purpose of Patel's testimony. Patel did not testify about a quantifiable measurement that could have an error rate. Patel was testifying about general principles of behavior in child sexual abuse cases and not whether abuse had actually occurred. Patel explained to Appellant on cross examination that "it's not in my job, you know, to actually determine the accuracy of a disclosure." (Tr. 308, lines 19-21). Indeed, as the trial judge reminded Appellant at trial, Patel was prohibited from testifying regarding whether she found Victim's disclosure credible. (Tr. 315). Therefore, Appellant's complaints about Patel not providing the trial judge with an error rate for her testimony ring hollow.

Appellant asserts this case is "nearly identical" to State v. Chavis. This case is not similar to Chavis. Unlike the expert in Chavis, Patel did not testify about forensic interviewing or the use of the RATAC method. The expert in Chavis relied on her expertise in the aforementioned subjects to offer an opinion that a disclosure of abuse had occurred to a different forensic interviewer. Chavis 412 S.C. at 107, 771 S.E.2d at 339. Thus the Chavis expert was testifying about a quantifiable result and offered an affirmative opinion on whether a disclosure of abuse had occurred. No such situation is present here. Patel did not offer an opinion on whether Victim's disclosure had occurred or whether it was accurate or credible.

No Improper Bolstering

As an initial matter, Appellant did not preserve any issue of improper bolstering for appeal because Appellant presented a different argument to the trial judge than the argument he

presents on appeal. On appeal, Appellant curiously claims that Patel's testimony improperly bolstered Victim's testimony. However, at trial Appellant made the opposite argument when he objected to the admissibility of Patel's testimony. When the State tendered Patel as an expert in child sexual abuse dynamics, Appellant objected and argued "How does this help this jury? You know, she's not going to be someone that examined [Victim]. And it's not going to be somebody that says I know she was lying or I know she's telling the truth." (Tr. 314, lines 1-5). In response, the trial judge reminded Appellant that an expert witness was not allowed to testify about whether a Victim should be believed. (Tr. 315). This was not a slip of the tongue or a mistake by Appellant. Appellant continued to ask Patel whether she could offer an opinion on Victim's credibility. On cross-examination, Appellant asked Patel whether she was testifying as a human lie detector and whether she could tell if Victim was lying or telling the truth. (Tr. 357-59). Patel responded to Appellant's questions by explaining "as an interviewer, it's not my job to gauge whether a child is telling the truth or lying." (Tr. 359, lines 20-21). Finally, in closing argument, Appellant criticized Patel and the State for calling Patel as a witness when she had not interviewed Victim or reviewed the case. (Tr. 538-39). Appellant argued "Ms. Patel never talked to anyone involved in this case. But she appeared before you and they tried to present her as some expert that could say there was some type of sexual abuse that went on." (Tr. 539, lines 2-6).

On appeal, Appellant is trying to have his cake and eat it too. Appellant's trial counsel objected to Patel's testimony because she could not offer an opinion on Victim's credibility. Yet on appeal, Appellant is making the opposite argument. "[A] party may not argue one ground at trial and an alternate ground on appeal." State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). Appellant's trial strategy focused on detracting from Patel's credibility by noting in

cross examination that Patel could not determine if Victim was telling the truth because she did not interview Victim or know anything about Victim's case. Appellant continued this theme in closing argument by telling the jury that Patel lacked credibility because she didn't know anything about the case. Appellant cannot have it both ways. Either Patel impermissibly bolstered Victim's testimony because "she testified extensively in a way that mirrored [Victim's] behavior", or Patel shouldn't have been tendered as an expert at all because she didn't know anything about the case and couldn't even tell the jury whether Victim was telling the truth or lying. (Initial Brief of Appellant 27). Both propositions cannot be true. Appellant's conviction and sentence should be affirmed.

CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 12, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2018-001257

THE STATE, Respondent,

v.

BOBBY JONES, SR., Appellant

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Adam Sinclair Ruffin, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

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

Sally Ellison

SALLY ELLISON
Legal Assistant

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Post Office Box 11549
Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

September 12, 2019

Adam Sinclair Ruffin, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Bobby Jones, Sr.
Appellate Case No. 2018-001345

Dear Mr. Ruffin:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Scott Matthews
Assistant Attorney General
Bar # 101464

JSM/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services