STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

WILLIAM POU,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in admitting the decidedly qualified child psychologist as an expert in child abuse dynamics because the expert provided helpful background information designed to address common misconceptions about child abuse and did not vouch for the victims' credibility.

STATEMENT OF THE CASE

Appellant Pou was indicted for three counts of criminal sexual conduct with a minor in the first degree, four counts of lewd act upon a minor, and two counts of criminal solicitation with a minor. Pou was tried by jury before the Honorable Doyet A. Early, III, on December 4-7, 2012. Pou was convicted of every count except one count of solicitation. Judge Early sentenced Pou to an aggregate sentence of thirty years' imprisonment.

STATEMENT OF FACTS

Victim A and Victim B were both victimized by Mr. Pou. Pou's counsel warned the jury that they would not like Pou very much. ROA. pp. 28-29. The essence of Pou's desperate defense was that he was the evil stepfather they did not like. The prosecution conceded in closing argument that he was horrible and bad.

Victim A was eleven years old at trial. Law enforcement came to Victim A's school and asked her if Pou ever touched her inappropriately. Victim A indicated that he did not. But she disclosed that while she and her sister, Victim B, were home alone in the living room with Pou, Pou asked Victim A to "suck his thing." Victims' mother (Mother) was at work at the time. Victim A spelled out the actual word he used because she was uncomfortable saying it in court ("D-I-C-K"). Victim A explained on cross-examination that it was

punishment and that Pou told her to stay on the couch in the living room or she would have to perform oral sex on him. Pou then told Victim A to go to his room. In Pou's bedroom, Pou requested Victim A perform oral sex a second time and when Victim A refused, Pou sent her to her room. Victim A told her mother about the incident the next day. Victim A testified that Pou got in trouble after she told and he stopped living with them for a week, but he came back. Victim A testified she was nine or ten years' old at the time of the incident. ROA. pp. 32-40; pp. 44-45.

Victim B was twelve years old at the time of trial. She testified Pou was her stepdad. Police interviewed Victim B while she was at school at Aiken Middle School. Victim B testified the inappropriate touching began when she was eight years old. The touching occurred in Pou's room when her mother was at work. Pou would use his hands or his private. Pou would take off both his pants and her pants. Pou would touch Victim on both the outside and inside of her "cookie." Pou told her not to tell anyone. Victim B testified Victim A was never in the same room when Victim B was sexually abused. ROA. p. 53; pp. 56-65; p. 71. Victim B testified the abuse occurred in every grade from fourth through sixth. ROA. pp. 70-71.

Victim B confirmed the incident about which Victim A testified. Victim B testified they were all in the living room when Pou told both sisters that if they got up off the couch, they would have to "suck his private." Victim B also spelled out "D-I-C-K" when asked about the actual word Pou used. Victim B testified they stayed on the couch all night until their mother came home. ROA. pp. 67-68.

Victim B also testified about a letter she wrote to her grandmother. Her mother found

it and never gave it back to Victim B. ROA. p. 68-69. Mother confirmed on cross-examination that she found a letter a few days before Victim A reported the couch incident, which was the first time Mother heard allegations about sexual abuse. ROA. p. 95. The victims told Mother about a day or two before the police went to each of their respective schools. ROA. pp. 95-98.

On cross-examination, as a matter of trial strategy, defense counsel elicited testimony from Victim B that she was aware that when Pou was nineteen years' old, he got in trouble for having sex with a fourteen-year-old. ROA. p. 80.

Kimberly Sawyer and Anne Laver from the Child Advocacy Center both testified. Both utilized the Child First protocol; the acronym for the protocol is RATAC. Laver testified that this protocol is used in South Carolina and seventeen other states. ROA. p. 113. Each interviewed one of the sisters. The forensic interviews were put into evidence. ROA. p. 106, p. 115. There actually is no contention that either of these witnesses testified inappropriately.

Investigator David Bevins from the Aiken County Sheriff's Office testified he was dispatched to Victim A's school about a possible incident of child sexual abuse. ROA. p. 124. Bevins interviewed Victim A. Immediately, without making any other stops, he went to Victim B's school and interviewed Victim B. Victim B became upset and withdrawn; she cried during the interview. She disclosed abuse starting when she was eight years old until sometime shortly before the interview. ROA. p. 123-127. Notably, in contradiction to the defense presented, Mother never called law enforcement to investigate the abuse. ROA. p. 129.

Nurse Katherine Chapell examined Victim B but was unable to complete the examination. In relevant part, Chapell testified as follows:

> Q: Were you able to complete the exam?
>
> A: I was not able to complete all portions of the exam.
>
> Q: What part of the exam were you not able to complete?
>
> A: I couldn't complete the anogenital portion because she was not answering my questions at that point and just not able to move forward to taking off her pants and I tried to talk to her a little bit about it and how, you know, what was she concerned about and what did we need to talk about before we did that part to make sure she was comfortable and she basically wasn't responding to me at all at that point. She was just looking straight down into her lap and was crying a little bit – not sobbing, but just kind of tears falling.
>
> Q: So did you get any type of results from that part of the exam?
>
> A: No. With a child in that emotional state I am not going to force them to do anything. That's not fair to them, and so I told her we're not going to do that part of the exam today because you just don't seem ready . . . .

ROA. p. 143, lines 6-24.

Dr. Alicia Benedetto is the witness who is the subject of Appellant's remonstrations. Dr. Benedetto never spoke with or met the victims or observed their interviews. ROA. p. 156, lines 18-23. Pou often takes disrespectful tones in his brief, but Dr. Benedetto is an accomplished professional. She is employed by the Department of Mental Health in Columbia at the Assessment and Resource Center, commonly known as ARC. She is the chief psychologist at the Children's Advocacy Center. She has been employed with ARC for the last thirteen years. She has an undergraduate degree in psychology from New York

University and master's and doctoral degrees from St. John's University. She completed a one-year internship at the William S. Hall Psychiatric Institute. Dr. Benedetto has conducted in the neighborhood of 1,500 to 2,000 forensic interviews of children over concerns of child abuse. She also completes continuing education to maintain her license and to maintain accreditation for ARC. ROA. pp. 150-151.

Dr. Benedetto testified as follows:

> In addition to forensic interviews and evaluations, I also conduct therapeutic interventions with children when abuse has been identified and a child has been referred for therapy services to address the problem. I also provide training state-wide to child abuse professionals to help train on best practices in interviewing, to train on the dynamics of child sexual abuse, and to help interviewers understand everything that goes into conducting a legally-defensible developmentally-appropriate child-friendly interview.[1]

ROA. p. 151, line 21 – p. 152, line 5. Dr. Benedetto estimated she has testified as an expert sixty or seventy times. ROA. p. 155, lines 5-9.

Dr. Benedetto was qualified as an expert in child abuse dynamics over the following objection from defense counsel: "Judge, I would object. The testimony has been towards the advanced training in Child First." ROA. p. 155, lines 14-15. Rephrased for the trial court's benefit, defense counsel remonstrated: "The testimony that she has given today as to her qualifications has all been towards the advanced Child First training; nothing towards the

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[1] For context, see State v. Michaels, 642 A.2d 1372, 1379 (N.J. 1994) ("[A] sufficient consensus exists within the academic, professional, and law enforcement communities, confirmed in varying degrees by courts, to warrant the conclusion that the use of coercive or highly suggestive interrogation techniques can create a significant risk that the interrogation itself will distort the child's recollection of events, thereby undermining the reliability of the statements and subsequent testimony concerning such events.").

child abuse dynamics." ROA. p. 155, lines 17-19.

Dr. Benedetto defined child sexual abuse dynamics as follows:

> Well, when you think about child sexual abuse it is important to understand it is coming from the standpoint of the child and I think often as adults some of the behaviors that we sometimes see in children when they've been abused seem kind of counter-intuitive. In other words, they don't quite make sense to us as adults because we think, well, if somebody did that to me I would tell right away, I would run, I would scream – whatever you think you might do if you were in that situation, but you're thinking of it as an adult and what we know is that children don't respond that way.
>
> Children don't necessarily feel empowered in the same way and so there are a lot of different dynamics that go into a situation and it's different for every child and every family. It's not the same across the board, but the idea of child sexual abuse dynamics is that it's important to consider these factors and understand how those factor[s] might have an impact on a child.

ROA. p. 157, lines 1-18.

Dr. Benedetto testified about delayed disclosure as follows:

> Well, again, every child is different. Every family is different, but I would say that the most sort of comprehensive way of understanding it is fear – fear of something – and it can be fear of negative consequences to the family, even fear of negative consequences to the alleged perpetrator whom the child might care about or feel that the family needs in some way, fear because of the threats that have been made. Those can be explicit threats not to tell or just implicit threats that you understand that it would be a problem if you did tell. Bad things might happen if you did tell.
>
> Children can want to protect a parent, want to protect their own place in the family. So, in other words, children may fear they'll be taken out of the family or that someone might face consequences such as prison. It depends a lot on the age of the child, the relationship they have to the alleged perpetrator, and their understanding of what might happen if they tell.

ROA. p. 158, line 9 – p. 159, line 1. Dr. Benedetto explained "the relationship to the perpetrator is a very important factor in whether a child feels comfortable [and/or] safe making a disclosure." ROA. p. 159, lines 9-13.

Dr. Benedetto further explained: "If a child has seen domestic violence in the home . . . they may be fearful that there might be danger if they told because in fact, they have seen dangerous things happen; so they may be fearful for their own safety or the other parent's safety." ROA. p. 159, lines 19-24.[2]

Dr. Benedetto was asked about the impact of the reaction by a non-offending parent on disclosure by a child. She noted the response of the non-offending parent was "very important in whether the child feels supported, whether they feel that they are believed, whether they feel they're going to be protected or not." ROA. p. 160. Explaining the dynamics between a child and a non-offending parent, Dr. Benedetto commented: "You know, children depend on their caregivers for everything, for emotional support and protection and if the response of a caregiver is less than supportive and protective that child

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[2] Note that as a matter of trial strategy, defense counsel elicited testimony from Mother that Pou, during an argument with Mother, removed the bathroom shower door while Mother was helping the sisters take a shower. Pou yelled at Mother about the title to the house. ROA. p. 94, lines 19-22. In his brief, Pou complains that the prosecution elicited testimony about Pou's domestic abuse of Mother that the victims observed. Br. of Appellant, p. 11. This is a disingenuous assertion, because most of the testimony was elicited by defense counsel in pursuit of his strategy of arguing the allegations were made so Pou would be removed from the home. See ROA. pp. 45-48 (asking if parents fight a lot, reference to an incident with a screwdriver, and an incident where he pushed Mother); ROA. pp. 73-74 (Pou and mother used to fight, discussed screwdriver incident); ROA. p. 94 (Mother agreed with defense counsel that Pou cut her with a screwdriver and they argued in front of victims a lot). Notably, the prosecution objected to testimony by defense counsel that Pou threw

may feel, well, you know, if my parent doesn't believe me, who will? And if I don't feel that my parent will protect me, you know, then nobody will." ROA. p. 160, lines 10-16.

Dr. Benedetto discussed the nature of disclosure by sexually abused children as a process, rather than a "discrete event," noting children will make a small disclosure to "test the waters" and gage the response from the non-offending adult. ROA. p. 161, lines 6-17.

Dr. Benedetto also discussed the range of responses from children and the body of language a children might exhibit in the interviewing process. Dr. Benedetto noted that in her interviews, "children are not always as emotional as we might expect them to be in an interview." ROA. p. 164, lines 13-25.

Children may become "very comfortable talking about things and they [won't] necessarily show emotions that we as adults might think that you would show" when discussing child abuse, especially if the children feel safe in the interviewing environment. That feeling of safety and comfort is something an interviewer will seek to build. ROA. p. 165, lines 3-9 (direct quote, p. 165, lines 6-7). Other children might respond with a dissociative response. ROA. p. 165, lines 10-18.

Although already referenced by defense counsel in his cross-examination, the parties stipulated that Pou was convicted of criminal sexual conduct in the second degree, which was to prove the prior offense element for criminal sexual conduct in the first degree. ROA. p. 172, line 23 – p. 173, line 6.

Mother on the floor and hurt Mother, based on relevance. ROA. p. 47, lines 17-24.

ARGUMENT

The trial court did not err in admitting the decidedly qualified child psychologist as an expert in child abuse dynamics because the expert provided helpful background information designed to address common misconceptions about child abuse and did not vouch for the victims' credibility.

Pou claims the trial court erred in admitting Dr. Benedetto as an expert in child abuse dynamics. Pou cites cases in which a forensic interviewer testifies about the credibility of a child they interviewed. This is not the situation presented in this case – Dr. Benedetto never interviewed the records and never commented on their credibility. In fear of an onslaught of out-of-state authority, Pou declares: "Further, this is South Carolina and **our** Supreme Court has spoken clearly on this issue regardless of what some other jurisdictions allow." Appellant's initial brief, p. 12 (emphasis in the original). As discussed below, our Supreme Court spoke clearly on the issue raised and found the challenged expert testimony is admissible. Pou fails to cite those cases in his brief, although they are dispositive.

The South Carolina Supreme Court spoke clearly when it 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 case resolves the issue, but Pou does not cite the case in his brief.

This Court relied on Schumpert when it 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). This case is also missing from Pou's analysis, but neatly resolves the issue.

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).

These cases all stand for the proposition that an expert may testify about the resulting trauma and actions of a victim of child sexual abuse. These are the cases that are relevant for analysis of the issue raised. The cases cited by Pou all stand for the proposition that an interviewer, like any other witness, may not testify about whether or not they believed the victim. Dr. Benedetto testified she did not interview the victim and she never testified about the victim's veracity. Other than the most superficial references to the four cases cited in Pou's brief, Pou does not explain how those cases are remotely applicable to the instant case. Pou instead relies on a conclusory assertion that: "[T]he State will undoubtedly argue the evidence here is sufficiently different, but it is not." Br. of Appellant, p. 12 (emphasis removed).

Side references to immaterial facts or hyperbolic declarations cannot change the fact that Pou is barking up the wrong tree. These cases have little, if any, applicability to the instant case. For instance, in State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), there was no challenge to the forensic interviewer being admitted as an expert. The Supreme Court found error because of improper hearsay and because the forensic interviewer's notes were admitted in which the forensic interviewer found a "compelling disclosure of abuse." The forensic interviewer provided similar testimony in State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), which this Court noted was opinion testimony on the veracity of the victim. Such testimony invaded the province of the jury. Id. In State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), the Supreme Court found admission of an interviewer as an expert in forensic interviewing was not warranted. However, Douglas never purported to overrule Weaverling or Schumpert, where individuals are admitted as experts in child sexual abuse to provide educational background information on victims traumatized by child sexual abuse.

The Supreme Court, in dicta, indicated that forensic interviewers should not be admitted as expert witnesses. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). In so finding, the Supreme Court noted the forensic interviewer's specialized role in collecting data from children as an investigative tool. Id. at 357, 737 S.E.2d at 499. Kromah did not suggest that the expert testimony approved in Weaverling or Shumpert was improper. In contrast to the facts in the cases cited by Pou, Dr. Benedetto did not comment on the victims'

veracity, but merely provided background information as an educator-expert. [3]

Of course, expert testimony on common behavior by victims of sexual abuse is allowed in South Carolina, as this Court has observed. "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[.]").

As Pou predicted, the State will reference case law from other jurisdictions. Such reference shows how out of touch Pou's anachronistic argument is from the great weight of authority, not just in South Carolina, but most other states. The Supreme Court of Hawaii observed in 1990 that "sexual abuse of children 'is a particularly mysterious phenomenon.'"

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[3] 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 relate to appellant personally; testimony was relevant as rebuttal "educator-expert" evidence). Dr. Benedetto agreed with the prosecutor that she had not spoken with or met the victims or observed their interviews. ROA. p. 156, lines 18-23. That was not her purpose at trial; it was not a matter of being unprepared as Pou speciously alleges in his brief.

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 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 Minnesota Supreme Court found: "Background data providing a relevant insight into the

puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children." State v. Myers, 359 N.W.2d 604, 610 (Minn. 1984).

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).

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 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 State v. Cardany, 646 A.2d 291 (Conn. App. Ct. 1994), Connecticut's Appellate Court found expert testimony on delayed disclosure admissible in the state's case-in-chief, noting: "It is natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents of abuse whether or not the defense emphasizes the delay in cross-examination. Thus, testimony that explains to the jury why a minor victim of sexual abuse might delay in reporting the incidents of abuse should be allowed as part of the state's case-in-chief." Id., 646 A.2d at 294.

In State v. Perry, 218 P.3d 95 (Or. 2009), the Oregon Supreme Court found expert testimony on the phenomenon of delayed disclosure by victims of child sexual abuse admissible. The expert testified that examiners and interviewers in her organization received extensive specialized training, and there were specialized journals and other peer-reviewed literature devoted to the area of child sexual abuse. The expert also testified that the phenomenon was common and well understood, with a body of literature concerning the issue. Id. at 97.

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).

The Iowa Court of Appeals found counsel was not ineffective for failing to object to an expert's testimony on characteristics of abused children, noting in part: "We determine the opinion evidence could help the jury in understanding the evidence because it explained the delayed reporting symptom that existed in children who were sexually abused." State v. Tonn, 441 N.W.2d 403, 405 (Iowa Ct. App. 1989).

"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 trial court did not abuse its discretion in admitting this testimony as it is clearly admissible under Schumpert and Weaverling and case law from the majority of jurisdictions that goes back decades.

Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives **great deference** to the trial court." (emphasis added)).

In South Carolina, "[t]he admission or exclusion of expert testimony is a matter within the sound discretion of the trial court." Burroughs v. Worsham, 352 S.C. 382, 390,

574 S.E.2d 215, 219 (Ct. App. 2002). "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).

In the instant case, the trial court did not err in allowing the expert testimony from Dr. Benedetto. She did not opine as to whether delayed disclosure occurred in the present case, did not comment on the victims' veracity, and did not bolster the victims' credibility.

Further, the issue is not remotely preserved. Defense counsel's objection was that Dr. Benedetto was not qualified. The argument concerning whether such testimony should be allowed despite the controlling authority of Schumpert and Weaverling was not made when Dr. Benedetto testified. "[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.

Accordingly, 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 should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE, Respondent,

v.

WILLIAM POU, Appellant.

CERTIFICATE OF COUNSEL

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

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Attorney General

DAVID SPENCER
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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 3RD day of October, 2014.

NORMA BIGBEE
Legal Assistant

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