

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

RECEIVED
OCT 07 2019
SC Court of Appeals

THE STATE,

Respondent,

vs.

ONTARIO STEFON PATRICK MAKINS,

Appellant.

Appellate Case No. 2016-002495

**REPLY TO RETURN TO
STATE'S PETITION FOR REHEARING
AND PETITION FOR REHEARING EN BANC**

In response to Appellant Makins' return to the State's petition for rehearing, the State would respectfully point out a glaring inaccuracy in the return. Makins claims "At trial, Rich listed various symptoms of trauma, including the exact same ones Minor's mother mentioned: avoidance, hypervigilance, sleep difficulties, emotional and behavioral disturbances, somatic symptoms, and intrusive thoughts. . . . A Venn diagram of the symptoms of trauma described by Rich and the symptoms noted by Minor and her family members would simply be a single circle." Ret. to Pet for Rhg. p. 2. This is simply misleading because Rich offered examples of symptoms that other witnesses testified Victim suffered, **and** she offered examples of symptoms

of trauma which no witnesses testified to. The supposed Venn diagram would not be a single circle. The first sentence of that paragraph in the return is interesting because it states Rich testified to “various” symptoms, “**including** the exact ones.” The sentence seems specifically designed to obfuscate that the symptoms Rich testified to did not match exactly with the symptoms testified to by lay witnesses in a desperate attempt by Makins to implicate State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015).

Rich testified to several examples of symptoms to which no testimony was provided no testimony was elicited that Victim pulled her hair out, suffered nightmares, suffered intrusive thoughts, was frightened, or avoided men generally. See R. pp. 251-53. Makins’ implication that the testimony was tailored to Victim’s symptoms is simply false and misleading.

A further distinction from Anderson is that Rich did not testify to any symptoms to which Victim suffered. Makins also overlooks that evidence of trauma is admissible 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). Finally, Makins incorrectly claims Rich provided an opinion. Rich did not provide any opinion or make any findings. No bolstering occurred.

Makins also claims Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) overruled this aspect of Schumpert. However, Schumpert and its progeny were reaffirmed in Anderson, specifically approving of expert testimony on the behaviors of sexually abused children. Anderson, at 218-19, 776 S.E.2d at 79 (citing Schumpert). Kromah did not prevent this kind of testimony, the Kromah opinion does not even cite Schumpert. See also State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) (finding 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.”).

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

October 7, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

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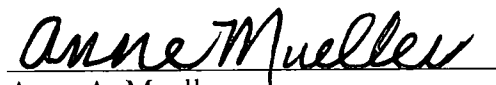
ONTARIO STEFON PATRICK MAKINS,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Reply to Return to State's Petition for Rehearing and Petition for Rehearing En Banc on Appellant by delivering two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Taylor D. Gilliam, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.
This 7th day of October, 2019.


Anne A. Mueller
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

October 7, 2019

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Taylor D. Gilliam, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29201

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

Dear Mr. Gilliam:

Enclosed please find two copies of the Reply to Return to State's Petition for Rehearing and Rehearing En Banc in the above-referenced case.

Sincerely,

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

DS/aam
Enclosures

cc: The Honorable Jenny A. Kitchings (with original and 6 copies)
Victim Advocacy Division