THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

Court of Appeals Case No. 2015-001436

The State of South Carolina, ... Respondent

v.

NAKIA KARREIM JOHNSON, ... Appellant.

Final Reply Brief of Appellant

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Question I

Should the trial court judge have granted a mistrial when the State's expert witness, Dr. Allison Foster, testified that the "most painful dynamics in child sexual abuse cases involving family members is that mothers [and other adults] . . . [questioning] how could I not have seen something was going on" when the State presented testimony of the child's mother and other family members not being aware of the alleged child abuse and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson?

The State argues that Dr. Foster's testimony was not impermissible bolstering because the State "followed the 'better practice' outlined in *Anderson*[1] in this case and called a separate 'independent' expert to testify regarding behavioral characteristics and family dynamics." Respondent's Brief, p 5. *Anderson* approved of the procedure followed in *State v. Brown*:

> [W]e hold the circuit court properly admitted Galloway–Williams' expert testimony regarding general behavioral characteristics of child sex abuse victims and delayed disclosures because the subject matter fell outside the realm of lay testimony. Moreover, we hold Galloway–Williams' expert testimony did not improperly bolster the minor victims' testimony because (1) she never met with the minor victims, (2) her knowledge of this case was limited to her discussions with the solicitor, (3) she did not comment on the credibility of the minor victims in the instant case, and (4) she did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations more generally. We further find her testimony did not improperly corroborate—and, therefore, was not cumulative to—the minor victims' testimony. Finally, we hold the high probative value of Galloway–Williams' testimony outweighed any prejudicial effect on Appellant's case.

411 S.C. 332, 348, 768 S.E.2d 246, 254-55 (Ct. App. 2015).

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[1] *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015).

Nothing in *Brown* authorized Dr. Foster's testimony about mothers not recognizing the abuse or her counseling if these mothers at the ARC. This testimony directly bolstered the testimony of the child's mother, the credibility of which was a central issue in this case. It also implied that all children, and this child in particular, are honest when making allegations of sexual abuse.

The trial court judge erred by not granting a mistrial, and this Court should order a new trial.

Question II

Should the trial judge have granted a mistrial when David Kellin, a child advocacy interviewer, testified he instructed the child to "tell the truth during the interview process," when that testimony is prohibited by *State v. Kromah* and the case lacked physical evidence of sexual abuse and turned solely on the credibility of the child and Nakia Johnson?

The State acknowledges error but argues, "The trial court did not err in denying Appellant's motion for a mistrial because the comment by the forensic interview did not warrant the extreme consequences of a mistrial." Rather, the State contends the prejudice was minimal because this case did not turn solely on credibility. Respondent Brief, p. 7-10.

Although the child's mother did provide corroborating testimony about the supposed content of the phone call, the joint motive and credibility of the child and her mother were central issues in the case. Mr. Johnson was prejudiced because of the absence of physical evidence and the importance of the jurors determining the credibility of the witnesses. *See Anderson, supra.*

The trial court judge erred by not granting a mistrial, and this Court should order a new trial.

Question III

Should this Court grant a new trial based on the cumulative error doctrine?

As discussed in Mr. Johnson's opening brief, this Court should order a new trial based on the cumulative error doctrine based on the matters he preserved for appellate review during his trial. Respondent's brief, at p. 11-12, however, conflates the "cumulative error doctrine" with the "plain error rule" by misapplying this Court's analysis in *State v. Beekman*, 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 203). Beekman asked this Court to apply the "cumulative error doctrine" based on his unspecified objections sustained during trial and other alleged errors that he did not object to during trial. Under those circumstances, this Court properly concluded Beekman was attempting to invoke the "plain error rule" that is not recognized in our State. *Id.* 405 S.C. at 236-38, 746 S.E.2d at 489-90. As seen, Mr. Johnson raised both issues and trial that he asserted in his opening brief, and the State does not contend those issues are not preserved for appellate review. Specific objections to both issues are all that is required to invoke the cumulative error doctrine on appeal.

Here, both issues involve improper bolstering. If this Court concludes that neither issue, standing alone, is sufficient to grant a new trial, then this Court should order a new trial based on the cumulative error doctrine.

CONCLUSION

For the reasons set forth in the opening brief and this brief, this Court should order a new trial.

Respectfully Submitted,

By _____

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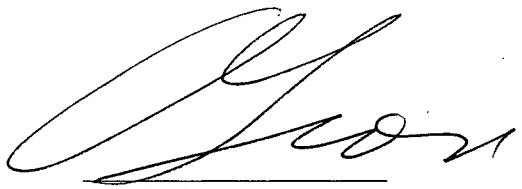
Rule 211, SCACR Certification

I certify that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.



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