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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County
Alex Kinlaw, Jr., Post-Conviction Relief Judge
William P. Keesley, Trial Judge
Appellate Case No. 2019-000437

JUSTIN RYAN CONE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT PURUSANT TO WHITE V. STATE

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
S.C. Bar No. 103282

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

ATTORNEYS FOR RESPONDENT

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Petitioner's Statement of Issues

The trial judge erred in allowing the solicitor to argue that the complaint's testimony need not be corroborated pursuant to S.C. Code Ann § 16-3-657 where the judge found that instructing the jury on that statute was improper.

The trial judge erred in barring defense counsel from cross examining the minor about specific punishments she received for lying, ruling the matter not relevant and, if relevant, barred under Rule 403, SCRE and in failing to perform the requisite Rule 403 analysis on the record.

Respondent's Statement of Issues

Did the trial court properly allow the State to argue that the victim's testimony did not need to be corroborated during its closing argument to the jury when the argument was a proper statement of law?

Did the trial court err in not conducting a Rule 403, SCRE, prejudice analysis on the record in ruling Petitioner could not question the minor victim about a specific punishment her father administered for lying when the probative value of the testimony was substantially outweighed by the danger of unfair prejudice to the State.

STATEMENT OF THE CASE

During its May of 2012 term of court, the Pickens County Grand Jury indicted Justin Ryan Cone (Petitioner) for first-degree criminal sexual conduct with a minor, and it then amended the indictment in August of 2014. Steve Wayne Sumner, Esquire, (trial counsel) represented Petitioner, and Assistant Solicitor Samuel Barton Tooker of the Thirteenth Circuit Solicitor's Office prosecuted the case. On November 17, 2014, through November 19, 2014, Petitioner proceeded to a jury trial with the Honorable William P. Keesley (trial court), presiding. At the conclusion of trial, the jury found Petitioner guilty as indicted, and the trial court sentenced Petitioner to imprisonment for thirty years. Petitioner did not appeal his conviction or sentence at that time.

Petitioner then filed an application for post-conviction relief on August 1, 2017, alleging therein that what. Respondent made its return on January 16, 2018, requesting that an evidentiary hearing be held regarding Petitioner's allegations. Petitioner made an amended return and a motion to dismiss on February 14, 2019, requesting that an evidentiary be held solely on Petitioner's claim that he did not knowingly and voluntarily waive his right to direct appellate review. An evidentiary hearing was held on February 21, 2019, before the Honorable Alex Kinlaw, Jr. (PCR court) at the Greenville County Courthouse. Applicant was present and was represented by R. Mills Ariail, Jr., Esquire, and Respondent was represented by Assistant Attorney General Kelly Oppenheimer. At the conclusion of the hearing, the PCR court found Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence and that he was entitled to belated appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Petitioner has since filed a petition for a writ of certiorari with this Court, arguing the PCR court properly found he did not knowingly and

voluntarily waive his right to direct appellate review of his conviction, and his brief pursuant to White. Id.[1]

[1] Respondent is submitting a letter to this Court stating Respondent is not contesting the relief requested by Petitioner in his petition for a writ of certiorari.

STATEMENT OF FACTS

Petitioner became friends with the Millers, the mother and father of the victim, through a mutual appreciation for automobile racing. App. 176-79, 220-222. The victim's father and mother eventually developed a sexual relationship with Petitioner that included sex acts known as threesomes and oral sex in a position known as the "sixty-nine". App. 179-80. The acts occurred over a period of years in the bedroom of the victim's parents or the living room of their home. App. 180, 201-02. The bedrooms in the Millers' home did not have doors, but the doorways of the children's rooms had sheets hung across the frames. App. 180-83. The victim's mother discovered the victim's younger sister inappropriately rubbing a doll and discovered that the victim and the younger sister had been engaging in sex acts. App. 183. When questioned about the matter by her mother, the victim disclosed that she had been sexually abused. App. 184-85. The mother shared the information with the victim's father, the victim repeated the same information to him, and he confronted Petitioner about the matter, who denied any abuse. App. 224-226. After the incident was reported to police, a medical exam was conducted on the victim, which did not reveal the presence of any sexually transmitted diseases or changes to the victim's genitalia. App. 209-11, 226. The victim was forensically interviewed at the Julie Valentine Center, and a video recording of the interview was admitted into evidence and played for the jury at Petitioner's trial. App. 98-104. The victim testified at trial that Petitioner made her perform oral sex on him and that she disclosed the abuse to her mother. App. 84-85.

While cross-examining the minor victim at trial, Petitioner asked the victim if she had ever told anyone that her father would put her in the shower, at which point the State interjected with an objection. App. 89. Outside the jury's presence, the State argued that Petitioner should not be allowed to question the victim about corporal punishment she received from her father,

which resulted in an investigation being conducted by the South Carolina Department of Social Services (DSS); the State called for a relevance and Rule 403, SCRE, analysis. App. 89-90. Petitioner did not intend to mention the DSS investigation, but instead wanted to ask if the victim had ever told anyone that her father would make her shower in cold water while wearing clothing when she lied about something, believing the issue to be relevant because the victim may have been too afraid of her father's method of punishment to admit that she had invented the allegations against Petitioner. App. 90-91. The State agreed that Petitioner should be allowed to ask if the child was afraid she would be punished if she were to be caught lying, but objected to Petitioner's asking the victim about the specific punishment she would receive because that testimony could cause unfair prejudice to the State. App. 91. Petitioner admitted that there was no evidence of any interaction between the victim and her father regarding the criminal allegations against Petitioner, but argued that he should be allowed to ask the question since the punishment was unusual and the State's case against Petitioner depended upon the victim's credibility. App. 91-92. Petitioner then questioned the victim in camera, during which time she admitted her father had put her in a cold shower when he believed she was not telling the truth and that he had told her to shut her eyes and closer her ears when she was nearby and there was something on the television that he did not want her to see. App. 93. The trial court ruled the question regarding the cold shower was not admissible because it was irrelevant and excluded under Rule 403, SCRE, but that the question about television was relevant and admissible. App. 95. Accordingly, Petitioner asked the television of the victim once the in camera hearing concluded. App. 96.

While the parties and trial court were discussing jury charges, the State requested that the court charge the jury that, according to S.C. Code Ann. § 16-3-675, the victim's testimony did

not have to be corroborated, and noted that it anticipated arguing the charge in closing argument. App. 309. The trial court was concerned that the appellate courts would take issue with the charge at a later time. App. 309. Petitioner objected to the charge on the ground that it would constitute an improper comment on the facts from the bench. App. 309. The court took the matter under advisement and promised to give a ruling at the top of the following morning, but stated that it would not prevent the State from arguing the statute to the jury in closing argument, even should the court decline to charge the jury regarding the statute. App. 310.

Before the start of closing arguments on the following day, the trial court denied the State's request to charge the jury on the statute, explaining that it believed it improper to single out a single witness's credibility in jury charges and would instead charge the jury that "[it] may believe one witness against many or many against one. Which is the same thing. It's just a lot shorter and it's not specifically tailored to one particular witness." App. 326-27. The State asked for explicit permission to reference the statute and use its language in opening on the law, and the trial court gave its explicit permission for the State do so, despite Petitioner's objection to the State's opening on that particular point of law. App. 328-29. Petitioner then affirmed it would not object during the State's closing argument if the State did so during its closing argument, but noted he was not waiving his right to appellate review. App. 328-30.

The State then decided not to open on the law. App. 331. After giving the elements for first-degree criminal sexual conduct with a minor, and stating that the elements were satisfied if the jury determined that the victim's allegations regarding Petitioner's sexual battery of her were true, the State said this:

> Now, there's another section in our law, Section 16-3-657, criminal sexual conduct, testimony of a victim need not be corroborated. The testimony of the victim need not be corroborated in prosecutions under Section 16-3-652 to 658, which are the sections governing criminal sexual conduct. And I've said this

> before and I'll say it again, if anything I've misstated, His Honor will correct me. If I've said something wrong about the law, His Honor will correct me. But if I'm not mistaken, he will make plain to you that you can believe one person over many. You can put whatever weight on any piece of testimony you want to put. That's your prerogative. That's what you're permitted to do as jurors. And that's what we expect you to do.

App. 350-51.

During its jury charge, the trial court informed the jury that it was time for it to instruct the jury on the law that applied to the case. App. 370. The court charged the jury that it was the sole judge of the facts and the credibility of the witnesses, and that it could believe one witness against many or many against one. App. 370. It informed the jury that it must accept the law as given to it by the court and apply it as given. App. 371. Afterwards, the State renewed its objection to the trial court's refusal to charge the statute and Petitioner renewed his objection to the State's referencing the statute during its closing argument. App. 379.

ARGUMENT

I. The trial court did not abuse its broad discretion by allowing the State to argue that the victim's testimony need not be corroborated to the jury during its closing argument because the argument was a proper statement of law.

Petitioner contends the trial court committed reversible error when it permitted the State to explicitly reference S.C. Code Ann. § 16-3-675 during its closing argument because the statute was enacted solely for judicial guidance and lessened the State's burden of proof by indicating that the victim's testimony was to be treated differently by the jury than the testimony of other witnesses. Contrary to Petitioner's contention, the trial court did not abuse its broad discretion in allowing the State to argue that the victim's testimony did not need to be corroborated because the argument was proper. Petitioner's conviction should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "The trial court has broad discretion when dealing with the propriety of the solicitor's argument . . . ." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) (citing State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981)). An appellate court will not overturn the discretion of the trial court absent a showing it abused its discretion amount to an error of law that prejudices a defendant. Copeland at 324, 468 S.E.2d at 624 (citations omitted). "[T]he appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record. The Petitioner has the burden of proving she did not receive a fair trial because of the alleged improper argument." Id. at 324, S.E.2d at 624-25 (citing State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989)).

It was proper for the State to argue the victim's testimony did not need to be corroborated because the Supreme Court of South Carolina held that S.C. Code Ann. § 16-3-675 should not be used as **a jury charge**, and did not prohibit the State from arguing according to the substance of

the statute. State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016). The Court explained that **a jury charge** incorporating the statute is confusing and violates the constitutional prohibition against trial courts' commenting to the jury upon the facts of a case. Id. at 499, 787 S.E.2d at 483. Recognizing the propriety of the charge at the time, the trial court in this case allowed the State to read the statute in its closing argument, although it declined to instruct the jury regarding the statute in its jury charges. Accordingly, the State argued the victim's testimony did not need to be corroborated. The State argued that the jury could make its own credibility determinations, even if that meant believing one witness over many or weighing different pieces of evidence different. App. 351. The State said that the trial court would supply the applicable law and instructed the jury to defer to the trial court's statements of law rather than its own. App. 351, 367. The State correctly informed the jury that the State had the burden of proving Petitioner's guilt beyond a reasonable doubt and that proof beyond a reasonable doubt constitutes proof that leaves the jury firmly convinced of Petitioner's guilt. App. 351-52. Rather than charging the jury on the law, the State's closing was an argument that Petitioner was guilty based upon the facts presented to the jury during trial.

Petitioner contends the State cannot refer to material "outside of the evidence of the judge's charge", citing Vaughn v. State, 362 S.C. 163, 607 S.E.2d 72 (2004); however, Vaughn restated the principle only that the State's closings "must be confined to the evidence in the record and the reasonable inferences that may be drawn" therefrom. Id. at 169, 607 S.E.2d at 75 (citing Copeland). Vaughn did not provide any precedent regarding the State's citation to law in its closings, and it would particularly not support Petitioner's position here when the State cited valid, applicable law. Likewise, other authorities cited by Petitioner concern instances in which a party made or attempted to make arguments to a jury in closing argument that misstated the law

or encouraged the jury to disregard the law. See United States v. Williams, 526 F.3d 1312 (11th Cir. 2008) (finding the trial court did not abuse its discretion when it instructed the jury that Williams' defense attorney had provided an inaccurate explanation of reasonable doubt during her closing argument because the explanation was inaccurate and confusing) (citing United States v. Trujillo, 714 F.2d 102 (11th Cir. 1983) (finding no error when trial court refused to allow the defendant to making a jury nullification argument in closing that would have encouraged the jury to ignore the trial court's instructions and apply the law as it saw fit).

Not only was it proper for the State to argue the victim's testimony did not need to be corroborated, it would have been proper for the trial court to charge the jury on that statement of law as well. The South Carolina Supreme Court held in State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), that the trial court did not err in charging the jury that the victim's testimony did not need to be corroborated by quoting S.C. Code Ann. § 16-3-675. Id. at 115-16, 631 S.E.2d at 249, overruled by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). The statute provides that "[t]he testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658 . . . ," which includes the offense for which Petitioner was tried and convicted. S.C. Code Ann. § 16-3-675. The Court in Rayfield held that a trial court did not have to charge the statute to the jury, but that a court that does so should not unduly emphasize the single charge and should ensure that the jury instructions as a whole comport with the law. Id. at 117-18, 631 S.E.2d at 250. The trial court in Rayfield instructed the jury that the jury was the sole judge of the facts of the case, that the court was prohibited from commenting upon the facts of the case, and that the jury could "believe one witness as against several witnesses or several witnesses as against one witness . . . ." Id. at 116-17, 631 S.E.2d at 249-50. The Supreme Court found the trial court had not erred in charging the jury on the statute because the court

thoroughly and fully instructed the jury on the State's burden of proof, the jury's obligation to be the fact-finder and judge the credibility of the witnesses at trial. Id. at 118, 631 S.E.2d at 250. At the time of Petitioner's trial in 2014, though, Rayfield was in effect and had not yet been overruled by Stukes. Although it declined to do so, it would have been proper for the trial court to include a reference to the statute in its jury charges, provided it followed the guidance of Rayfield. This Court should affirm Petitioner's conviction and sentence.

II. Any error in the trial court's not conducting a Rule 403, SCRE, prejudice analysis on the record in ruling Petitioner could not question the minor victim about a specific punishment her father administered for lying is harmless because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice to the State.

Petitioner contends the trial court erred in ruling that Petitioner could not question the minor victim about her father's punishing her for lying by making her take a cold shower because the court did not perform an analysis on the record under Rule 403, SCRE. Contrary to Petitioner's contention, the trial court did not err in its ruling because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice to the State. Petitioner's conviction should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). An appellate court will not overturn the discretion of the trial court absent a showing it abused its discretion amount to an error of law that prejudices a defendant. Copeland at 324, 468 S.E.2d at 624 (citations omitted). 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."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Likewise, decisions regarding the conduct of a criminal trial are left largely to the sound discretion of the trial judge, and a trial judge's ruling on the conduct of a trial will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Even if relevant, evidence must be excluded from trial if its probative value is substantially outweighed by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each particular case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case.

State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000).

Trial judges have "particularly wide discretion" in ruling on the comparative probative value and potential prejudicial effect of evidence. Collins, 398 S.C. at 209, 727 S.E.2d at 757. A trial judge's ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Id. at 358, 543 S.E.2d at 594.

In this case, the probative value of the victim's testimony that her father had made her take a cold shower if she lied was not significant when compared to the substantial danger of unfair prejudice to the State. Petitioner argued at trial he should be allowed to ask the victim about the shower incident, of which he learned through the victim's recounting the practice to a DSS agent, because the victim's credibility was central to the case and the specific punishment was unusual. App. 92. The implication of Petitioner's argument was he intended to produce evidence that the victim was afraid to admit that she had falsely accused Petitioner because she feared being punished by her father for advancing the lie in the first place. While being

questioned on direct examination, Petitioner admitted that the victim's father "seemed very upset" when he confronted Petitioner about Petitioner's molesting the victim. App. 294-95. In light of the close and sexual nature of Petitioner's relationship with the victim's parents, the victim's allegations that Petitioner sexually abused her are particularly disturbing, and likely were more disturbing to her parents than anyone else. Petitioner's affirmation as to the disposition of the victim's father following the child's disclosure indicates the father was highly distressed at the allegations, a fact that would lend support to Petitioner's argument that the father would have been disturbed if the victim admitted to making up the whole story.

However, Petitioner then advanced a second and contradictory theory for the victim's making and maintain allegations that Petitioner argued were false. The victim's mother testified at trial that her husband and Petitioner were close friends, akin to brothers. App. 178. She testified she, the victim's father, and Petitioner engaged in sexual activity in threesomes on a frequent basis. App. 179. The mother admitted she had had an extensive number of sexual encounters with Petitioner, the total of which was likely between 72 and 130. App. 196, 201. Petitioner testified he had had sexual encounters with the victim's father and mother collectively and with the mother in the father's absence. App. 286, 293. The victim's father testified under questioning from Petitioner that he had discovered that his wife and Petitioner were engaged in sexual acts outside of his presence. App. 229. Confirming the implication of the question was that the father had a grudge against Petitioner due to his wife's sexual encounters with Petitioner on the side, the State asked the father if he told the victim to falsely accuse Petitioner out of a desire to seek revenge, and the father answered, "Absolutely not." App. 229. Petitioner questioned the State's blind expert in child sexual abuse dynamics about the potential for children to experience false memories, and the witness confirmed that forensic interviewers are

concerned about children repeating false accusations another has told them to make. App. 271-73. In his closing argument, Petitioner argued the forensic interviewer and others who interviewed the victim over the course of the investigation did not adequately screen for the possibility that victim's memories of abuse were false memories, implanted by another. App. 345-46.

And lastly, in another explanation for the victim's false allegations, Petitioner simply argued that the victim was a liar. When being cross-examined by Petitioner, the victim's mother admitted that she had experienced a problem with victim telling the truth. App. 198. The following exchange then occurred when the State questioned the mother on redirect:

> Q: Now, you said that [the victim] had been known to lie before?
> A: Yes.
> Q: Did she ever lie about anything like this?
> A: No.
> Q: Did she ever lie about anybody committing crimes?
> A: No.
> Q: Okay. What kind of stuff would she lie about?
> A: Just little things, you know. She wasn't the one that went and broke something or anything like that. But it would not be anything this significant, at all.

App. 199-200.

In his closing argument Petitioner argued that the recording of the forensic interview of the victim indicated that her allegations therein were not credible. App. 344-45. Petitioner reminded the jury that the victim had a history of lying. App. 346.

Of the three contradictory explanations for the victim's making and maintain allegations that Petitioner claimed were false, Petitioner emphasized the theories that the victim was a liar and that her father had convinced her lie to make up the accusations or implanted them in her head out of his desire for revenge against Petitioner for having sexual intercourse with the victim's mother behind the father's back. As these two theories were those advanced by Petitioner, and due to the fact that they contradicted the theory that the victim was afraid to admit

to her father that her allegations against Petitioner were false, the probative value of evidence that the father had made the victim take a cold shower for lying would have been quite limited.

On the other hand, the danger of unfair prejudice to the State if the jury had heard the testimony from the victim would have substantially outweighed the probative value of the testimony. Petitioner admitted in its argument for the admission of the evidence was that the specific punishment was unusual. Petitioner's counsel stated that he personally would not employ the same punishment when dealing with his own children. When considered in the context of the other evidence at trial of the father's unusual behavior, the evidence about the father's employing cold showers as a punishment could have encouraged the jury to determine Petitioner's guilt or innocence based on a dislike of the victim's father.

Finally, the other evidence of Petitioner's guilt admitted at trial supports the finding that any error in the exclusion of a single question and answer about a cold shower was harmless. The jury watched the video recording of the forensic examination of the victim, heard the victim's own testimony, heard testimony from the victim's mother regarding the victim's engaging in sexual activity with her sister and the victim's disclosure of sexual abuse, heard testimony from the forensic interviewer regarding the technique employed in the interview, heard testimony from the blind expert in child sex abuse dynamics about the behavior of children who have been sexually abused, heard testimony from the victim's father about the victim's disclosure of sexual abuse, and heard testimony from the victim's grandmother that Petitioner had made statements that he intended to marry the victim and that he would wait for her.

Any error in the trial court's restricting Petitioner from asking a single question of the victim about her father's making her take a cold shower when she lied was harmless in light of its lack of support of Petitioner's explanations for the victim's supposedly making false

allegations against him, its likelihood of causing the jury to make its decision of Petitioner's guilt on an improper basis, and of the other evidence of Petitioner's guilt admitted at trial. This Court should affirm Petitioner's conviction and sentence.

CONCLUSION

For all the foregoing reasons, this Court should affirm Petitioner's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
S.C. Bar No. 103282

BY: _____
Taylor Zane Smith

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

February 3, 2020

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Alex Kinlaw, Jr., Post-Conviction Relief Judge
William P. Keesley, Trial Judge

Appellate Case No. 2019-000437

JUSTIN RYAN CONE, 362238, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Brief of Respondent Pursuant to *White v. State*** has been served upon the petitioner by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Jessica M. Saxon, Esquire
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served. This 3rd day of February, 2020.

Taylor Z. Smith
Assistant Attorney General
S.C. Bar # 103282
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT