

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

FEB 26 2020

S.C. SUPREME COURT

THE STATE,

Petitioner,

vs.

ONTARIO STEFON PATRICK MAKINS,

Respondent.

Appellate Case No. 2020-000024

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**THE STATE'S REPLY TO PETITION  
FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

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## ARGUMENT

**The Court of Appeals erred by finding the therapist indirectly bolstered Victim's testimony merely by stating she treated Victim. The therapist was allowed to testify to the circumstances of treatment and also provide expert testimony on trauma resulting from sexual abuse pursuant to Schumpert; and the therapist never indicated directly or indirectly that she believed Victim.**

Expert testimony concerning trauma resulting from sexual abuse, such as the testimony provided by Rich in the instant case, is admissible to prove the sexual abuse occurred. “[B]oth 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) *overruled on other grounds by* State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

Makins argues the State's reliance on Schumpert is “disingenuous” in light of State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). However, Kromah does not even cite Schumpert and Makins fails to cite any authority that even suggests Schumpert was overruled by subsequent authority or even cast into doubt. The State's argument is supported by the fact that this Court gave its continuing approbation to its prior holdings in Schumpert and State v. White, 361 S.C. 407, 414-15, 605 S.E.2d 540, 544 (2004) in State v. Anderson, 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015) by citing favorably Schumpert and White and observing an expert in “child abuse assessment” may testify to the behavioral characteristics of sex abuse victims. That is precisely what was done in the present case. Rich provided testimony on common symptoms of trauma, and she did not even testify she observed those symptoms in Victim.

Additionally, this Court in Kromah specifically allowed for forensic interviewers to testify as to (1) “the time, date, and circumstances of the interview;” (2) “any personal observations regarding the child’s behavior or demeanor;” or (3) “a statement as to events that occurred within the personal knowledge of the interviewer.” Kromah, 401 S.C. at 360, 737 S.E.2d at 500. Therefore, the prosecutor complied with Kromah to the extent it applies to a therapist as well as a forensic interviewer. Missing from the present case is any statement implying Rich believed Victim such as the testimony in Kromah by the forensic evaluator that she made a “compelling finding” of abuse. Makins is simply conflating two cases that cover two completely separate issues: Schumpert allows factual and expert testimony of trauma to prove a rape occurred while Kromah simply does not allow testimony from an expert expressly stating an opinion on the credibility of a child.

Further, Makins is mistaken in claiming, “Almost every single fact Rich enumerated” matched Victim’s behavior. See Retrun p. 6. Contrary to Makins’ return, Rich discussed several examples of symptoms of trauma a person might suffer that did not apply to Victim. The prosecutor asked Rich about whether any symptoms the child may experience are particular to sexual abuse trauma. Rich explained:

So sexual abuse trauma is strongly correlated with that. It’s sometimes, you know, bedwetting, pulling out hair, wanting to avoid particular situations, being frightened or being in certain situations.

Sometimes children who have been abused by a particular type of perpetrator, they want to avoid that. So avoid – some children want to avoid men. Some children want to avoid certain situations.

R. p. 252, line 17 – p. 253, line 1. Note in the instant case, no testimony was elicited that Victim pulled her hair out, suffered nightmares, suffered intrusive thoughts, was frightened, or sought to avoid men. Rich simply offered generalized background information which included common

symptoms of trauma that in some instances was supported by testimony elicited from other witnesses. That is not bolstering.

This is where Makins' analysis errs: it conflates the legitimate probative value of Rich's expert testimony with a claim of unfair prejudice. If a jury applies Rich's generalized testimony about delayed disclosure or possible symptoms of trauma to testimony received from other witnesses, then the jury is making a proper probative consideration of Rich's testimony. See State v. Brown, 411 S.C. 332, 345, 768 S.E.2d 246, 253 (Ct. App. 2015) (finding the expert's testimony, which merely provided broad testimony about the behaviors of sexually abused children, did not bolster the victims' testimony even though the expert's testimony did corroborate some of the reasons for the victims' delayed disclosure).

It is certainly ironic that Makins claims on appeal that Rich's testimony "bolstered" Victim's testimony, because during closing argument, Makins' defense counsel argued to the jury Rich never testified Victim suffered from the symptoms "children perhaps suffer" and "nobody has said [Victim] suffered this symptom or had this symptom because of this." R. p. 328, lines 8-10; p. 329, lines 1-10. Rich should have been allowed to provide such testimony under Schumpert. Of course, Rich was improperly prevented from providing this testimony. Schumpert remains, and should remain, good law on this point; therefore, the Court of Appeals erred in finding that the trial court abused its discretion.

**CONCLUSION**

For all of the foregoing reasons, this petition for writ of certiorari should be granted. Should this Court see fit to grant the State's petition, the State respectfully requests permission to more fully brief the issues herein.

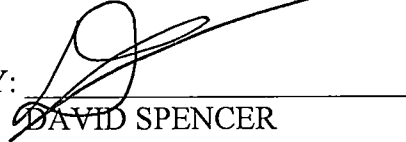
Respectfully submitted,

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February 26, 2020

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Appeal From Greenville County  
The Honorable Robin Stilwell, Circuit Court Judge

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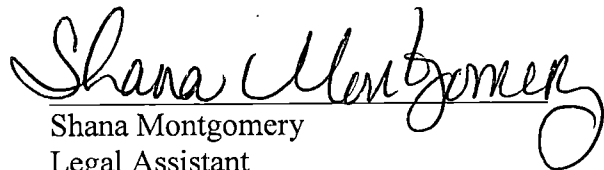
ONTARIO STEFON PATRICK MAKINS,

Appellant.

**PROOF OF SERVICE**

I, Shana Montgomery, certify that I have served The State's Reply to Petition for Writ of Certiorari on Appellant by delivering two copies of the same addressed to his attorney of record, Mr. Taylor D. Gilliam, Esquire, Post Office Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.  
This 26th day of February, 2020.



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