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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County
Honorable Steven H. John, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

DAVID MATTHEW CARTER,

Petitioner.

Appellate Case No. 2021-000632

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner Carter was indicted for three counts of criminal conduct with a minor in the first degree. He was convicted by a jury of all three counts following trial on May 21-24, 2018, before the Honorable Steven H. John. Judge John sentenced Carter to forty years' imprisonment.

The Court of Appeals affirmed the conviction and sentence. State v. Carter, ___ S.C. ___, 557 S.E.2d 910 (2021). Carter's petition for rehearing was denied on May 18, 2021. Carter petitioned this Court for writ of certiorari. This return follows.

STATEMENT OF FACTS

Petitioner Carter sexually assaulted his step-daughter from the time she was five years old. She just turned twelve years old at the time of trial, and as a result of the abuse, she suffered from PTSD. R. pp. 68-69; pp. 77-78.

Victim lived with Carter, her biological mother, and her siblings. The abuse occurred in three different residences. Carter and her mother raised Victim together – only while in first grade did Victim learn Carter was not her biological father. In fourth grade, she learned about child abuse when a teacher read aloud a book entitled "Not in Room 204." R. pp. 78-79.

A few months later, she told her mother about the sexual abuse she suffered. Victim testified she did not report the sexual abuse sooner because she was scared. R. p. 79. She testified Carter assaulted her by penile penetration of the genitals and "butt" (she referred to her genitals as her "lucy" and a man's penis as a "weenie"). She explained this happened a lot in the different places her family lived during these years, but the abuse occurred mostly in the bedroom of these homes. The bedroom door would be locked, and the other siblings would be in their rooms. Carter also made Victim perform fellatio and put her hand on his penis. He would ejaculate when she used her hand: she described "white stuff" coming out of his penis. R. pp. 81-82. Victim described one time Carter used a gel that came out of blue and pink bottles that Carter mixed together using a black metal band. R. p. 82, lines 15-24.

Victim described a particular episode from when the family was moving. She and Carter went back to the old house to retrieve boxes while Mother was unpacking at the new house. Carter sexually assaulted her in her bedroom, on her mattress. R. p. 83.

Carter had a number of tattoos. Victim described one of Carter's tattoos as a smiley skull with her mother's name, and testified it was located on his thigh near his penis. She testified the tattoo was covered even if Carter was only wearing his underwear. R. pp. 83-86; p. 88. While Carter admitted having the tattoo, the exact location of his tattoo would be a point of contention at trial.

After each sexual assault, Carter made Victim promise not to tell and threatened to "whip" her if she did not make that promise. R. p. 86. On cross-examination, Victim testified she had no reason to be mad at Carter aside from the sexual abuse. R. p. 88. Victim testified on redirect the abuse made her feel mad, and she explained, "[H]e made me feel like it was my fault that he was doing all this to me." R. p. 90, lines 2-3.

Amanda Budd, a school counselor, confirmed that when Victim was in fourth grade, the teacher read Not in Room 204 to the class. The book is the story about a student voicing an issue to the counselor, and discusses the concepts of good touch, bad touch, and bringing any concerns to a teacher's attention. R. p. 99; p. 103.

Pediatric nurse Stephanie Schaller examined the Victim. It was not an acute exam because it was more than 72 hours since the last reported instance of abuse. She testified the exam was normal. R. pp. 129-31. On redirect examination, Nurse Schaller explained only eight to ten percent of her patients examined for sexual abuse had an abnormal exam. She explained normally the victims who report later than ten days since the time of abuse will not have an abnormal exam due to scar tissue not remaining because the mucosa of the anogenital area is elastic and quick healing. R. p. 134, lines 16-24. Victim reported the abuse on September 24, 2016. R. p. 137. She examined Victim on

October 19, 2016. R. p. 129. Contrary to Carter's petition, Nurse Schaller did not testify that a normal exam was meaningless.

David Kellin, a child therapist who provides trauma-focused cognitive behavioral therapy and treated Victim, testified Victim suffered from post-traumatic stress disorder (PTSD). R. pp. 66-68. Kellin explained indicators of PTSD:

> There are three main clusters of symptoms, re-experiencing, avoidance, and arousal. Those tend to relate to a particular group of symptoms, such as not wanting to talk about things that remind us of something that happened or inability to appropriately have emotions related to events. Fight or flight symptoms, rapid heartbeat, butterflies in the stomach, those typical fight or flight responses.

R. p. 68, line 25 – p. 69, line 7. Kellin explained Victim exhibited a range of those behaviors. R. p. 69. On cross-examination, counsel asked about the test Kellin uses, the UCLA PTSD test. Kellin explained Victim scored a 34 on the test and the cutoff is 35. He explained, "The scoring software still scores related to that cutoff score, although somebody may still have a score less [than] that would still qualify for PTSD." R. p. 70, lines 6-24. Carter misstates this testimony in his brief (see Pet. p. 6): Kellin did not testify a 35 was "necessary" for a person to be diagnosed with PTSD, but in fact explained a person may qualify for the diagnosis of PTSD with a score underneath 35.

Victim's mother (Mother) testified on September 24, 2016, she was home with Victim. Carter was not home. Victim was upset and crying during a conversation that convinced Mother to call the police. Mother and the children packed up and left the house that night. R. pp. 137-38. Later, during a police-escorted return to the house, Mother noticed the house was more or less the same, but that Victim's bed was moved away from the wall and her dresser drawers were pulled out. R. pp. 139-40.

Prior to the reporting, Victim's behavior was already deteriorating. Mother explained:

> She had started to become more withdrawn, didn't interact with her brother and sisters as much anymore. She stayed in her room the majority of the time. She loves school. She started talking about how she didn't like school. She wasn't really sleeping well. She'd wake up in the morning and she'd have dark circles around her eyes.

R. p. 140, line 23 –p. 141, line 3. She observed Victim improve a few months after they moved out of the house and left Carter. R. p. 142, lines 15-19.

Alison Foster was qualified as an expert in child abuse dynamics. She testified about delayed disclosure and behaviors often seen in sexually abused children. She noted a range of behaviors that an abused child may exhibit, including acting out or becoming depressed and feeling isolated. R. pp. 160-61.

Carter called his stepmother and stepsister as witnesses to testify they never saw any signs that Victim was sexually abused. R. pp. 186-90; pp. 196-98. He also called Detective Jonathon Reed from the York County Sheriff's Department to testify he investigated an allegation of sexual abuse at Carrowinds and never made an arrest. R. pp. 211-12; p. 216.

Carter then testified in his own defense and testified about marital difficulties between him and Mother, including numerous affairs he had with other women. R. pp. 220-26. He also confirmed the tattoo Victim described, but claimed it was visible if he was wearing swim trunks with no shirt. R. p. 232. Carter claimed **on direct examination** Mother was mad at him about his extramarital affairs. He explained she admitted she told the children about his extramarital affairs when he moved back into the residence a few weeks before Victim reported sexual abuse. R. p. 221, pp. 224-26. Since Carter opened the door to his adulterous conduct and **made his adultery a**

defense to the charges, the prosecution examined him on the extent and details of his conduct, including that he hid from Mother his children from the extramarital affairs and he had an extramarital affair while Mother suffered post-partum depression. R. pp. 235-36.

Grasping at straws

Carter was desperate for a defense to the charges. He made his own adultery a defense, making sure to cast blame on Mother for the multiple affairs. He relied on his family members, who were the most likely to have the hardest time accepting he sexually abused a child, and who were most likely to take his side, testify they never saw any signs of sexual abuse – as if he would commit these heinous crimes in front of them. He also claimed Mother and daughter had a journal with explicit and inappropriate pictures. R. pp. 228-29. Mother testified in reply that she started the journal with Victim to educate Victim on puberty and her menstrual cycle. Victim, the jury learned, asked questions about pads and tampons. With three other kids in constant attendance, Mother felt she did not have the requisite privacy to discuss the delicate subject and thus started the journal with Victim. The journal also consisted of Victim's question posed to Mother about how a woman becomes pregnant and Mother's response discussing how male sperm mates with a female egg. R. pp. 262-63. Contradicting Carter's testimony, Mother testified there were no pictures in the journal. R. p. 263.

ARGUMENT

The trial court did not err in making a case-specific determination to allow Victim to testify outside Petitioner's presence because Victim's therapist testified Victim suffered from PTSD, and Victim, Mother, and the therapist testified Victim would not be able to testify effectively in Petitioner's presence.

Carter's statement of the issue advances two complaints: (1) Victim's in camera testimony about her ability to testify at trial in Carter's presence was not sufficiently unequivocal, and (2) the therapist's testimony was inconsistent. Carter's quibbles with the trial court's factual findings underscores the purpose of the abuse of discretion standard. See Gavin v. State, 473 So.2d 952, 955 (Miss. 1985) ("even if we wanted to be fact finders, our capacity for such is limited in that we have only a cold, printed record to review. The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire") (cited with approval, Clemmons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., dissenting). The reality is Carter is asking this Court to do what the Court of Appeals refused, which is to conduct a de novo review.

Carter also argues Victim was not "very young." Victim only turned twelve years old in May, the same month the case was tried. Note Carter abandoned his citation to S.C. Code §17-23-175(C) after relying on the statute for his brief to the Court of Appeals (allowing for the admission of a forensic interview of a child under age 12 to be admitted at trial under requisite conditions). The legislature chose to enact S.C. Code § 16-3-1550 without defining "very young."

Petitioner does not challenge the Court of Appeals' holding that Victim had a special need under section 16-3-1550.

However, the biggest weakness in Carter's argument is his failure to address that section 16-3-1550 requires the trial court to "treat sensitively" both "very young" witnesses and witnesses **"who have special needs."** S.C. Code § 16-3-1550 ("The circuit or family court must treat sensitively witnesses who are **very young**, elderly, handicapped, **or who have special needs** by using closed or taped sessions when appropriate.") (Emphasis added). Kellin testified Victim suffered from PTSD and Victim suffered from anxiety to the extent medication was required. Therefore, regardless of age, the special needs created by Victim's mental condition, caused by the trauma inflicted by Carter himself, required the trial court to apply the provisions of section 16-3-1550 in this case. In addition, certainly the trial court could consider both Victim's youth and mental condition – the totality of conditions – in determining on a case-specific basis that the remedial purpose of section 16-3-1550 should take effect. See South Carolina Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978) (a remedial statute should be liberally construed to effect its purpose).

The Court of Appeals found, "Regardless of how one defines 'very young,' we think it is indisputable that the circumstance of protecting a child witness from trauma qualifies as a special need." State v. Carter, ___ S.C. ___, 557 S.E.2d 910 (2021). In his petition, Carter's singular focus is on whether the just-turned twelve year-old Victim is "very young," without any challenge to the Court of Appeals' observation that the circumstances qualified Victim as a witness with a "special need." The failure to challenge only the "very young" provision and not the "special need" provision should preclude review of the Court of Appeals' opinion. An unchallenged ruling, right or wrong,

becomes the law of the case and will not be considered by the appellate court. State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012).

The standard of review requires affirmance if trial court's ruling is supported by evidence.

"In criminal cases, the appellate court sits to review errors of law only." State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). Therefore, the reviewing court is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "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. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (citation omitted).

"A trial court's decision to allow videotaped or closed-circuit testimony is reversible "only if it is shown that the trial judge abused his discretion in making such a decision." State v. Bray, 342 S.C. 23, 27, 535 S.E.2d 636, 639 (2000) (citation and internal quotation marks omitted). "Where there is evidence to support a trial court's ruling, it will not be overturned for an abuse of discretion." Id. (citation omitted).

In the instant case, Carter is asking this Court to reweigh the evidence and revisit the trial court's factual findings rather than argue an error of law. The Court of Appeals observed, "The circuit court's decision was detailed, well-reasoned, and plainly not an abuse of discretion." State v. Carter, ___ S.C. ___, 557 S.E.2d 910 (2021). The Court of Appeals correctly concluded, "We are not permitted to re-weigh the testimony. There is evidence supporting the judge's decision, and thus no abuse of discretion." Id.

In camera hearing in which the State shows Victim has "special needs"

David Kellin testified he has been a licensed social worker since 1999 and specializes in clinical practice. He has been a therapist for twenty-six years. He testified he has seen about 4,600 clients in that time. R. pp. 7-9. His current practice is working with children traumatized by sexual, physical, or emotional abuse, and who suffer symptoms as a result. R. p. 8, lines 13-15. Kellin explained his therapy is "trauma-focused cognitive behavioral therapy. It, also, can be . . . a cluster of treatments that are used. One is trauma-focused cognitive behavioral therapy and one is cognitive processing theory, and then there [are] trauma-informed therapies." R. p. 8, lines 17-21.

Kellin administered the "UCLA PTSD RI" test to Victim and she scored a 34, "which is just a point below indicative of PTSD. Because of the way the test is run, there's some leeway in that. I diagnosed her with PTSD for the treatment that we provided." R. p. 10, lines 13-18. Therefore, Carter's claim that a 35 is necessary for a diagnosis of PTSD is incorrect.

Kellin explained Victim was fearful of Carter. Kellin testified, "She has reacted very heavily to the mention of David Carter's name, to the presence of David Carter or discussion of David Carter. Anything that seems to be related and connected to that, she's had reaction to those." R. p. 10, line 23 – p. 11, line 1.

Kellin explained, "She's somewhat avoidant when the issues come up. Doesn't like to talk about it." R. p. 11, lines 3-6. Kellin described her reaction as crawling into a shell. He noted she would hide behind her mother. She exhibited avoidance behavior in preparation for court. "The mention of the name, the idea of coming and testifying caused her to react to that." R. p. 11, lines 9-14. Kellin opined that if Victim were to testify with Carter present, "I think that she will freeze and

not be able to be open and upfront with what she needs to say." R. p. 12, lines 4-6. Kellin noted he has rarely recommended that a victim not testify in the presence of a defendant, he estimated it has happened only three or four times. R. p. 15, lines 4-9.

On cross-examination, Kellin explained,

> [Victim] is worried that [Carter] is going to come get her and take her away. And that's that concrete reality. Now, over time, that's lessened as she's seen that he hasn't come around her or hasn't come near her or hasn't tried to contact her. So that lessens for her – that comes down – the PTSD symptoms come down as she starts to reenter life without those fears or reactions, but it all comes from that thought.

R. p. 13, line 25 –p. 14, line 7.

The trial court requested Kellin reevaluate Victim since he last saw her nine months ago. After Kellin met with Victim, Kellin was recalled to the witness stand and he explained he re-administered the UCLA test and the score was a 25. Kellin explained the symptoms were lessened but still present. Carter's trial counsel asked, "So with a score of 25, does she have PTSD?" Kellin answered, "She has PTSD. It would be more classically looked at as either moderate or beginning of remission. But it's still at that level where there are significant symptoms." R. p. 23, lines 22-25. He noted that scores are rated between 0 and 4, and several of her scores were a 4, meaning "she thinks about those things all the time." R. p. 24, lines 1-3. He further explained four would be thinking about those things every moment of the day. R. p. 24, lines 4-9.

Mother explained to the trial court that in her opinion, Victim would not react well if she needed to testify in the presence of Carter, Victim would seek to get out of Carter's proximity, and Victim would "shut down" if she was called to testify in Carter's presence. When questioned by

Carter's trial counsel, Mother explained that Victim sometimes shut down with her. Mother explained that Victim's performance in school fluctuated with events in the prosecution of the case. She testified Victim takes medication for anxiety. R. pp. 26-28.

The trial court decided he wanted to speak with Victim and Victim was called to the stand at the trial court's request. After the prosecution and defense counsel asked Victim questions on topics such as her pets and school, the trial court examined Victim on her ability to understand the difference between the truth and a lie. He then went over some procedure for the trial starting the next day. R. pp. 30-37. Finally, the trial court engaged with Victim in the following colloquy:

> Q: All right. Now, I know it may be a tough question, but if David Carter were sitting at that table over there, could you answer any of the questions?
>
> A: One or two.
>
> Q: Okay. And what do you think would happen after that?
>
> A: I'd probably freeze up and have a meltdown.

R. p. 37, lines 13-18.

Section 16-3-1550 protects witnesses who are "very young" or "have special needs."

Under S.C. Code § 16-3-1550, entitled "protection of rights of victims and witnesses," paragraph (E) provides: "The circuit or family court must treat sensitively witnesses who are **very young**, elderly, handicapped, **or who have special needs** by using closed or taped sessions when appropriate." (Emphasis added).

In Maryland v. Craig, 497 U.S. 836 (1990), the United States Supreme Court found a Maryland statute did not violate the confrontation clause. The statute allowed a child victim to

testify on closed circuit television, instead of the courtroom, if the government made the proper demonstration of need. The Craig court advised, "[T]hough we reaffirm the importance of face-to-face confrontation with witnesses appearing at trial, we cannot say that such confrontation is an indispensable element of the Sixth Amendment's guarantee of the right to confront one's accusers." Id. at 849-50.

The Supreme Court noted, "We have of course recognized that a State's interest in the protection of minor victims of sex crimes from further trauma and embarrassment is a compelling one." Id. at 852 (citations and internal quotation marks omitted). The Supreme Court reiterated, "[A] State's interest in safeguarding the physical and psychological well-being of a minor is compelling." Id. at 852-53 (citations and internal quotation marks omitted). The Supreme Court further elaborated, "Indeed, where face-to-face confrontation causes significant emotional distress in a child witness, there is evidence that such confrontation would in fact *disserve* the Confrontation Clause's truth-seeking goal." Id. at 857 (emphasis in the original).

In affirming the constitutionality of the Maryland statute, the Supreme Court noted the child was still required to be competent to testify and required to testify under oath, the defendant retained the opportunity for a contemporaneous cross-examination, and the judge, jury, and defendant were able to view the demeanor of the witness, albeit by video monitor. Id. at 851. Therefore, the Supreme Court concluded all the other elements of confrontation adequately ensured the testimony was reliable and subject to rigorous adversarial testing. Id.

The Craig Court came to the following holding:

> In sum, we conclude that where necessary to protect a child witness from trauma that would be caused by testifying in the physical

> presence of the defendant, at least where such trauma would impair the child's ability to communicate, the Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective confrontation.

Id. at 857. This Court noted the trial court's decision must be based on a case-specific finding that the presence of the particular defendant will traumatize the child witness. State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000).

In the instant case, the State moved to not require Victim to testify in Carter's presence because the child **has a special need.** R. p. 16, lines 5-7. The State proposed that Victim would testify in the Courtroom in front of the jury. Carter would be in the next courtroom and be able to watch Victim testify on closed circuit television. One of his attorneys would be present in the courtroom to cross-examine Victim while his other attorney would sit with Carter in the next room. They would be able to communicate by e-mail through their laptops with the trial attorney remaining in the courtroom. R. pp. 16-18.

After Kellin, Mother, and Victim testified, Carter's counsel argued the State's motion to allow Victim to testify out of the presence of Carter should be denied because the necessity requirement requires her to be unable to testify and she said she would be able "to testify some" and Kellin testified, as paraphrased by Counsel, that "she would only not be able to testify accurately and truthfully." R. p. 39, lines 11-23. Carter's counsel also argued Victim, at twelve years old, was not "very young." R. p. 19.

The trial court noted it examined section 16-3-550(E) and also both Bray, and State v. Murrell, 302 S.C. 77, 393 S.E.2d 919 (1990) (finding trial judge did not err in allowing admission of

minor child's videotaped testimony after the trial judge made a case-specific finding based on testimony from expert, mother, and aunt, but not minor child). The trial court then ruled:

> In this particular matter, I do find that the child witness in this matter, [Victim], would be traumatized by having to testify and face the Defendant in this matter, David Matthew Carter. I find that not only would her testimony be hindered, but based upon the testimony of the expert in this matter, Mr. Kellin, from her mother, Tiffany Carter, and from the minor witness herself that she would, basically, freeze up and not be able to answer any questions whatsoever if she had to testify, give her story in front of the Defendant, David Matthew Carter.

R. p. 41, lines 5-14. The trial court noted counsel would be present in the courtroom and be able to examine Victim directly, counsel would also be able to communicate with co-counsel and Carter, both located in the other courtroom. R. p. 41, lines 15-23. The trial court noted that because the Victim would remain in the courtroom, the jury would be able to hear and make their own observations and determinations about the Victim's credibility and demeanor. R. p. 42, line 19 – p. 43, line 7.

This Court should affirm because evidence supports the trial court's ruling.

Carter indirectly, by footnote, criticizes Killen's qualifications. See Pet. P. 14, n. 14. However, Killen's experience is similar, just more extensive, than the counselor presented in Bray. In Bray, the victim was treated by Kim Charpia, who was qualified as an expert in the field of counseling services for victims of child sexual abuse. She held a masters degree in social work and handled a minimum of twenty-five cases over eight years at Naval Family Services. At the time of trial, Charpia did not specialize in child sexual abuse but attested to her qualifications based on her training. Bray, 342 S.C. at 27-28, 535 S.E.2d at 639.

In the instant case, Kellin, employed by the Palmetto Citizens Against Sexual Assault, likewise earned a master's degree in social work, was a licensed independent social worker for nineteen years, and has twenty-six years' experience as a therapist. His specialty is working with children who are traumatized by physical, emotional, or sexual abuse. He has seen about 4,600 clients, mostly children. Currently, almost all his clients are child abuse victims. His training includes trauma-focused cognitive behavioral therapy. R. pp. 7-9.

Carter misapprehends this Court's holding in Bray. In Bray, this Court affirmed as modified the opinion of this Court in State v. Bray, 335 S.C. 514, 517 S.E.2 714 (Ct. App. 1999). The Court of Appeals found evidence did not support the finding of the need to allow the child to testify by closed circuit television. This Court disagreed, finding evidence in the record to support allowing the child to testify out of the presence of the defendant, but nonetheless, this Court remanded for a new trial because the trial court failed to make the case-specific findings mandated by Murrell and Craig, which prevented the Supreme Court from understanding the basis of the trial court's ruling. Bray, 342 S.C. at 29, 535 S.E.2d at 639-40. Therefore, the Supreme Court reversed not based on the "generalized" evidence presented but because the lack of the required findings by the trial judge in Bray. In contrast, the trial court in the instant case made the requisite case-specific findings.

In Bray, this Court noted the victim suffered both symptoms of depression and nightmares, and she attended school wearing pants underneath her school uniform. Charpia testified if the child faced the accused, there "may not" be any testimony, and it would do further negative emotional harm to the child if the child testified in front of the accused. Charpia testified the victim would be unable to communicate. Id. Unlike the present case, the victim was not interviewed by the trial

judge before he made his ruling. The victim's mother testified in Bray, which is only documented in the Court of Appeals' opinion, not this Court's opinion. The mother said the child would be intimidated by Bray and when asked the basis of this belief, only replied that she was the mother and knew best. Bray, 335 at 520, 817 S.E.2d at 717-18. In contrast, in the instant case, Mother explained the child would not react well if required to testify with Carter present and she would shut down if required to testify. Mother's testimony on cross-examination revealed Mother had the frame of reference to make this assertion because Victim had shut down with her. R. pp. 26-28.

This Court in Bray held, "Given the above testimony demonstrating the victim would be traumatized by testifying in Bray's presence, we disagree with the Court of Appeals' conclusion that there was insufficient evidence to support the use of CCTV. See State v. Corn, 224 S.C. 74, 77 S.E.2d 354 (1953) (it is for the trial court, not appellate court to weigh evidence, subject to abuse of discretion standard of review)." Bray, 342 S.C. at 28-29, 535 S.E.2d at 639. Therefore, this Court's holding in Bray defeats Carter's invitation to weigh the evidence before the trial court. The deficiency in Bray lay with the trial judge's lack of a case-specific ruling – a problem not present in the instant case.

In the instant case, the trial court's ruling is supported by evidence, and therefore, the trial court did not abuse its discretion: (1) Victim testified she could maybe answer one or two questions before shutting down (R. p. 37, lines 13-18) – the trial court could reasonably interpret that to mean she would be unable to field anything more than preliminary questions like the names of her pets; (2) Mother testified Victim would probably shut down if she was required to testify in front of Carter and would seek to avoid Carter (R. p. 26, lines 4-14; p. 27, lines 20-24); (3) Mother testified

Victim's schoolwork is affected by the events in the case (R. p. 27, lines 9-13) and Victim has shut down during interactions with Mother (R. p. 28, lines 4-5); (4) Mother testified Victim is taking medication for anxiety (R. p. 26, lines 15-20); (5) Kellin testified, based on his previous assessment, Victim was suffering from PTSD (R. p. 10, lines 17-18); (6) after evaluating Victim during a break in pretrial hearings, Kellin advised the trial court that Victim still suffered effects of PTSD and that the score would reflect moderate PTSD or early remission – Kellin maintained his previous recommendation for Victim to testify out of Carter's presence (R. p. 23, lines 12-17); (7) Kellin explained based on his interview with Victim that day, Victim scored a 4 on a scale of 0 to 4 on some of the test, which meant Victim was still thinking about some of the things almost all the time, every moment of the day (R. p. 24, lines 1-9); (8) Kellin testified Victim reacts "very heavily" at the mention of Carter, his presence, or discussion about Carter: "Anything that seems to be related and connected to that, she's had reaction to those" (R. p. 10, line 23 – p. 11, line 1); (9) Kellin explained Victim exhibited avoidance behavior in preparation for court, including hiding behind her mother (R. p. 11, lines 9-14); (10) Kellin advised that Victim has worried Carter would come and take her away (R. p. 13, line 25 –p. 14, line 7); (11) Kellin opined that if Victim was called to testify in Carter's presence, he believed she would freeze and "not be able to be open and upfront with what she needed to say" (R. p. 12, lines 4-6); (12) Kellin noted he rarely recommended a victim testify outside the offender's presence, three or four times out of the thousands of clients he has had over the years (R. p. 15, lines 4-9).

In the instant case, Victim's PTSD and fear of Carter made her a witness with special needs, regardless of whether she was very young. Further, she only turned twelve within weeks of the trial

and the trial court could consider her youth in conjunction with her mental health. See In re Robert D., 340 S.C. 12, 530 S.E.2d 137 (Ct. App. 2000) (finding evidence supported a showing of special need for victim to testify by closed circuit television; the victim was a high school student who had disabilities in mental functioning and suffered severe symptoms from an immune system disorder, and therapist testified the victim would not be able to testify fully because she would become easily upset, scared, and confused) *overruled on other grounds by* State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012). Because the trial judge's ruling is supported by evidence, this Court should find the trial court did not abuse its discretion and affirm Carter's conviction and sentence.

CONCLUSION

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

Respectfully submitted,

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