ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Marlboro County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

vs.

GEORGE CHAVIS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant Chavis was indicted by the Marlboro County Grand Jury for criminal sexual conduct with a minor in the first degree, lewd act on a child, contributing to the delinquency of a minor, and two counts of criminal sexual conduct with a minor. Chavis' jury trial was called on March 14, 2011. The jury found him guilty on all counts and he was sentenced by the Honorable Howard P. King to concurrent sentences amounting to an aggregate sentence of twenty-five years imprisonment.

STATEMENT OF FACTS

Chavis sexually assaulted his stepdaughter (Victim) multiple times as Victim was growing up, starting when she was seven years old. At the time of trial she was seventeen years old.[1] Most of the time, the assaults occurred when she returned home from school. Victim was made to perform or receive oral sex, Chavis would masturbate in front of her, and Chavis would show her pornography. Assaults occurred in the house and in the shed on the property where at one point Chavis was living. Chavis penetrated her with his penis and digitally. He used KY jelly. In order to keep her from exposing the conduct, Chavis told her she would go to jail if she told about the assaults, that her life would be over, and her mother would not want anything to do with her. ROA. pp. 15-24; p. 44 (testifying that Chavis made Victim watch a video of two women and a man having sex); pp. 46-47.

Victim testified that Victim's stepsister (Stepsister) was present sometimes and Chavis would have each of them perform oral sex on him or help him masturbate. Stepsister reported the abuse and Victim was interviewed, but at that time Victim denied the abuse because her mother did not seem to believe Stepsister. ROA. pp. 27-29.

Chavis took pictures of Victim, which Victim identified at trial. One picture depicted Victim in a bra, panties, and high heels. Chavis wanted Victim to put them on to see how Victim looked in them. Another picture shows Victim and her mother both in a bra and panties.

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[1] Chavis notes in his brief that Victim was working on a "self-paced" program to complete high school. At the time of trial, Victim was taking courses online through Family Community College to get her diploma. Until last year, she attended high school and was on the AB Honor Roll. Although only seventeen, she expected to have her degree in about four months after trial – about two months prior to her eighteenth birthday. Therefore, it appears she was pacing herself at a good clip. She intended to then get her cosmetology license. ROA. pp. 15-16.

Chavis had them pose in that picture to see how both of them looked alike. Chavis took another picture of Victim and her mother after they were outside, got wet, and took their wet tee shirts off. ROA. pp. 40-41.

Victim disclosed the abuse in 2009 when she learned what Stepsister was going through and learned that Stepsister was not mad at her for not telling others about the abuse they received. When Victim told her mother, her mother was hysterical and crying. ROA. p. 49.

Dr. Kathy Saunders examined Victim in 2004 after Stepsister had disclosed abuse. The exam was normal, but as Dr. Saunders explained, "the absence of injury [does not] mean no abuse has occurred because we know the body can heal and repair itself to an absolutely normal state. . . . it doesn't mean the abuse has not occurred." ROA. p. 193, lines 10-16. Dr. Saunders testified that oral sex or digital penetration is unlikely to leave physical findings. She agreed with the prosecution that a normal exam may still be consistent with a history of sexual assault. ROA. pp. 193-194.

Dr. Saunders also examined Stepsister in 2004. The results of her examination were consistent with past penetration of objects entering the vaginal area. ROA. pp. 194-196.

Dr. Olga Rosa examined Victim in 2009. She testified that Victim had a tear in her hymen that was healing. She testified that Victim voluntarily informed her she was having voluntary intercourse with her boyfriend but also that she had involuntary intercourse with her stepfather. Victim also tested positive for chlamydia triconotis. ROA. pp. 217-219. Chavis's medical records indicated that he took medications common for treating chlamydia. ROA. pp. 265-266.

Mother testified that when Stepsister reported abuse, Mother at the time believed

Chavis's denial of abuse because Chavis was adept at manipulating her and controlling her. Chavis, who is of Tuscarora Nation heritage, was involved in cultural activities with Native-American groups. Chavis told her about a tribe where fathers were supposed to have sex with their daughters to prepare them for marriage. She confirmed Victim's testimony that she and Victim were unclothed, except Victim wore panties, when they helped Chavis bathe in the shower when he had health problems. She confirmed that Chavis took pictures of Victim and her in their underwear, to show that their rear ends looked alike. After Victim disclosed the abuse to Mother in May 2009, they devised a plan to escape. They fled to Charlotte with Chavis's pickup, his guns, and other items. Mother sold a generator and three of his thirteen guns for money, but ultimately returned everything else to police later. ROA. pp. 279-286; p. 292; p. 308; p. 318

Stepsister testified Chavis sexually assaulted her. Chavis started showing Stepsister pornography and touching Stepsister. Chavis took her virginity at age eleven at the Check-In Motel. Chavis used Vaseline and KY jelly. Chavis made Victim observe Stepsister perform oral sex on him and said someday Victim would do the same. Chavis also said it was his duty to take their virginity. Stepsister disclosed some of the abuse, but not all of it, because she was ashamed. The case went to Family Court but was eventually dropped. Until the charges came out, Stepsister had not been in contact with Victim. ROA. pp. 320-330; pp 333-352.

Chavis's sister, Teresa, testified that Chavis, who was six years older than her, was "messing" with her when she was a child as far back as she could remember. Chavis touched her with his hands and penis and made her touch his penis. Chavis would threaten her sister if she told. The last time, he threatened her with a .25 automatic. He raped her when she was

sixteen years old with a gun to her head. When she was seventeen years old, Chavis would show her pictures of himself naked. Teresa never had a relationship with Victim or Stepsister. Teresa reported the abuse, but her mother convinced her to drop charges after they went to the police in 1973. ROA. pp. 357-363.

Another of Chavis's sisters, Angela, testified. Chavis is ten years older than her. She was eleven when Chavis left the house. Chavis pulled down her pants and ejaculated on her vagina when she was about six or seven years old. She recalled abuse starting at this age because it was around the time that President Kennedy was assassinated. Chavis would touch her vagina and make her touch his penis. He threatened to kill her or their parents if she told. Chavis showed her naked pictures from magazines. She did not have a relationship with Victim, Stepsister, or Victim's mother. She told her father when she was eleven, and after quarreling with his father, Chavis left the house. ROA. pp. 382-386; p. 389.

Chavis called witnesses who were friends that testified they never saw anything happen and that they thought Chavis was a good father. He also called a nurse practitioner who testified that diabetes had left Chavis impotent and that he had problems achieving penile penetration. ROA. pp. 399-400; pp. 411-412; p. 498; pp. 510-511.

Chavis testified on his own behalf and claimed his sisters were lying and denied committing sexual conduct on Victim and Stepsister. He claimed he never had pornography on the computer. He also claimed he had trouble achieving erections. He testified that his sisters made the allegations up because they were mad that he has title to the house. ROA. pp. 426-453.

ARGUMENT

I.

The trial court did not err in qualifying Robin Griggs as an expert in child abuse assessment where she had extensive experience, the non-scientific testimony was reliable, and she testified about the phenomenon of delayed and partial disclosure which was helpful to the jury.

Chavis complains the trial court erred in qualifying Robin Griggs as an expert in child abuse assessment despite her extensive training and experience, arguing it was of no moment that she was qualified as an expert in child abuse assessment instead of an expert in forensic interviewing. Chavis ignores that the expert testimony Griggs provided was primarily on the phenomenon of delayed and partial disclosure by victims of child sex abuse.

Griggs has a bachelor's degree in psychology and sociology from Francis Marion. She has a master's degree in counseling from Webster University. She worked at the Darlington County DSS office from 1986 until 2004 "doing child abuse investigations and treatment". Since 2004, she has been employed by the Durant Children's Center. ROA. p. 143.

Griggs testified that the Durant Children's Center is a child advocacy center providing forensic interviews, medical evaluations, and therapy for children suspected of abuse or neglect or other types of crimes. ROA. pp. 143-144.

Griggs conducts forensic interviews of children. She receives training every year, attends seminars, and participates in on-line courses. ROA. p. 144. She attended training in 2004 in Huntsville, Alabama for the National Children's Advocacy Center program, which is a nationally recognized program. In 2006, she attended a South Carolina program entitled Child First that taught the RATAC protocol. She attended the advanced part of the Child First

program in 2010. ROA. pp. 144-145.

Griggs testified she uses a combination of the National Advocacy Center program and the RATAC methods, which are similar protocols that are each recognized nationally. She received literature from the seminars she attended, and also as a member of list serve, received new articles and information to keep current. Griggs testified she has conducted about 1,100 forensic interviews. ROA. pp. 145-146.

The field of forensic interviewing and RATAC protocol is peer reviewed. In camera, Griggs testified her interviews are peer reviewed within the advocacy center and the center conducts peer reviews every week. Griggs testified she has been qualified as an expert in child abuse assessment and testified in Family Court on numerous occasions and in General Sessions fifteen or more times. ROA. pp. 92-93; p. 96; 146-148.

Over Chavis' objection, Griggs was admitted as an expert in child abuse assessment. When asked what is child abuse assessment, Griggs testified as follows:

> Child abuse assessment is looking at the child and the family as a whole and trying to determine not only what they're there for, the allegations that are before you when you're looking at the interview, looking over concerns that may be within the family or with the child.

ROA. p. 144, lines 5-9.

Delayed and partial disclosure.

Chavis complains that the witnesses' qualification as experts in child abuse assessment were really qualifications as experts in forensic interviewing in disguise. However, their testimony focused primarily on the occurrence and reasons for delayed and partial disclosure by victims of child sex abuse. Their training in RATAC and Finding Words, along with their

lengthy experience, was relevant as to their qualifications in providing this testimony about the phenomenon of delayed and partial disclosure by victims of child sex abuse – information typically beyond the knowledge of a lay juror. Accordingly, there was no error in admitting the testimony.

Expert testimony on common behavior of victims of sexual abuse is allowed in South Carolina. State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible."). Expert testimony on partial and delayed disclosure falls within allowable testimony by an expert.

Other jurisdictions have recognized the value of such testimony. In State v. Carpenter, 556 S.E.2d 316 (N.C. Ct. App. 2001), the North Carolina Court of Appeals found no error in allowing expert testimony that delayed and incomplete disclosure is not unusual in cases of child abuse and that children often continue to associate with the alleged abuser. In responding to the appellant's argument that the state failed to show any scientific foundation for the opinion testimony, the North Carolina Court of Appeals noted the expert "was adequately qualified in the area of child sex abuse evaluations and interviews based on her extensive experience, training, and education, which included interviewing two thousand children in her career." Id., at 321. The court opined that her testimony "was clearly instructive and helpful to the jury in understanding the evidence since the nature of the sexual abuse of children places lay jurors at a disadvantage." Id. (internal quotations and citations omitted).

In State v. Cardany, 646 A.2d 291 (Conn. App. Ct. 1994), Connecticut's Appellate Court found expert testimony on delayed disclosure admissible in the state's case-in-chief, noting: "It is

natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents of abuse whether or not the defense emphasizes the delay in cross-examination. Thus, testimony that explains to the jury why a minor victim of sexual abuse might delay in reporting the incidents of abuse should be allowed as part of the state's case-in-chief."

In Kilby v. Commonwealth, 663 S.E.2d 540 (Va. Ct. App. 2008), the Virginia Court of Appeals found that the trial court did not err in admitting a commonwealth's witness to provide expert testimony on delayed disclosure. Id., at 546-547. She was admitted as an expert in "forensic interviewing, child sex abuse disclosure by children of sexual assault and recantation." Id., at 543. In finding the admission of her testimony proper, the Virginia Court of Appeals noted she attended numerous forensic training programs and was qualified as an expert in state court and the military courts. She was the lead forensic interviewer at the children's hospital. Id., at 547. In a footnote, the Virginia Court of Appeals noted the following:

> Specifically, she testified that she has attended training through the First Witness Program in Duluth, Minnesota, Finding Words in Windona, Minnesota, and the American Professional Society of Abused Children. She has also received "advanced training" through the National Advocacy Center in Huntsville, Alabama and has attended "many, many, many" national symposiums on forensic interviewing.

Id., at 544, n.3.

In State v. Perry, 218 P.3d 95 (Or. 2009), the Oregon Supreme Court found expert testimony on the phenomenon of delayed disclosure by victims of child sexual abuse admissible. The expert testified that examiners and interviewers in her organization received extensive specialized training, and there were specialized journals and other peer reviewed literature devoted to the area of child sexual abuse. The expert also testified that the phenomenon was

common and well understood, with a body of literature concerning the issue. Id. at 97.

In responding to a claim of trial court error in allowing the state's expert to testify about sexual abuse of children and characteristics of perpetrators, the Louisiana Court of Appeals noted the following:

> [The expert] testified very broadly about the general characteristics of sexual abuse victims, namely how such victims delay disclosure and some of the reasons why disclosure may be delayed, such as fear or shame. As discussed, part of [the expert's] training and experience included counseling children who were victims of sexual abuse. It would not have been beyond her expertise to explain, based on her own practice and experience, the basics of delayed disclosure.

State v. Friday, 73 So.3d 913, 931-32 (La. Ct. App. 2011).

In finding an expert's testimony on delayed disclosure admissible under its supreme court's authority, the Massachusetts Court of Appeals opined: "Expert testimony that abused children often delay reporting the abuse, a familiar and permitted proposition at least since Dockham[2], informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused." Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. Ct. App. 2003).

The Georgia Court of Appeals found testimony about child sexual abuse syndrome, including testimony about delayed disclosure, admissible, relying on its longstanding supreme court precedent. McCoy v. State, 629 S.E.2d 493, 494 (Ga. Ct. App. 2006) (citing Allison v. State, 535 S.E.2d 805 (Ga. 1987)).

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2 Commonwealth v. Dockham, 542 N.E.2d 591 (Mass. 1989) (finding testimony about the characteristics of abused children to be admissible).

The Iowa Court of Appeals found counsel was not ineffective for failing to object to an expert's testimony on characteristics of abused children, noting in part: "We determine the opinion evidence could help the jury in understanding the evidence because it explained the delayed reporting symptom that existed in children who were sexually abused." State v. Tonn, 441 N.W.2d 403, 405 (Iowa Ct. App. 1989).

The Supreme Court's recent decision in State v. Kromah.

After Appellant submitted his brief in the instant case, the South Carolina Supreme Court issued its opinion in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). The issue in that case was whether the trial court abused its discretion in permitting two State witnesses, an investigator and a forensic interviewer, to testify about actions they took after hearing conversations they had with a three year-old victim of physical abuse, who did not testify at trial. Id., 737 S.E.2d at 494. The Supreme Court found the investigator's testimony about what actions he took as a result of the information provided by the child to be admissible. Id., 737 S.E.2d at 498.

The Supreme Court concluded that the forensic interviewer's testimony that she made a compelling finding of child abuse was allowed in error. In finding this testimony was inadmissible, the Supreme Court noted: "Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter." Id., 737 S.E.2d at 498. The Supreme Court further discussed its prior opinion in State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), noting it found error in Jennings where: "In each report, the forensic interviewer stated that during the interviews, each child had 'provide[d] a compelling disclosure of abuse by [appellant].'" Kromah, 737 S.E.2d at 500 (quoting Jennings, 394 S.C. at

480, 716 S.E.2d at 94). The Supreme Court concluded that the forensic interviewer's testimony about a compelling finding of physical abuse amounted to the equivalent that the interviewer was testifying the victim was telling the truth. However, the Supreme Court concluded the error was harmless in light of other competent evidence of guilt. Kromah,737 S.E.2d at 501. The Supreme Court also concluded, in strongly worded dicta, that it did not envision a scenario where it would be appropriate to qualify a forensic interviewer as an expert in forensic interviewing; and provided examples of testimony that should not be elicited from a forensic interviewer. Id., 737 S.E.2d at 499 n.5, 500.

Forensic interviewing techniques are nationally-utilized, peer-reviewed interviewing techniques as recognized in several jurisdictions, and are geared towards preventing suggestive interviews in investigating allegations of child abuse.

Griggs was not qualified as an expert in forensic interviewing, thus not violating the warnings found in Kromah. However, her testimony on her training in Finding Words and the RATAC method was relevant to her overall qualifications in the area of child abuse assessment. While our Supreme Court, in Kromah, expressed disfavor in qualifying an expert in the field of forensic interviewing, it was based on the risk of qualification as an expert having the effect of bolstering the victim's credibility. Qualifying Griggs as an expert in child abuse assessment did not have this effect in the present case as the testimony chiefly concerned behavioral aspects of victims of child sex abuse.

In Lattimer v. State, 952 So.2d 206 (Miss. Ct. App. 2006), the Mississippi Court of Appeals found the trial court did not err in qualifying a witness, Stovall, as an expert in forensic interviewing. Stovall explained he relied primarily on the Cornerhouse method of interviewing and his training emphasized techniques geared towards eliciting genuine responses **as opposed**

to responses suggested by the interviewer.

In finding the trial court did not err in admitting Stovall as an expert, the Mississippi Court of Appeals concluded Stovall had specialized knowledge through his education, raining, and his professional experience in the field of forensic interviewing. Id., at 221. Stovall testified: "there's tons of research that we rely on that supports our practice. We are not engaging in this practice just because we think it's good. We have lots of research." Id., at 218.

In the month prior to the Mississippi Court of Appeals decision, the Mississippi Supreme Court issued an opinion that year finding alleged error in qualifying Stovall as an expert in forensic interviewing at another trial was not preserved. Smith v. State, 925 So.2d 825 (Miss. 2006). The director of the advocacy center was admitted as an expert in forensic interviewing as well. Stovall testified as an expert in forensic interviewing, noting: "he followed a protocol for creating a comfortable environment for children during the interview, 'RATAC'" Id., at 834-835.

An earlier opinion from the Mississippi Court of Appeals found an expert's testimony was reliable where the expert was trained under the Finding Words protocol. Mooneyham v. State, 915 So.2d 1102 (Miss. Ct. App. 2005). The expert testified that Mississippi was one of six states certified to teach the protocol. She testified that Finding Words was nationally recognized and generally accepted as being reliable. **She noted researchers investigating false allegations of child abuse reviewed and approved the Finding Words protocol.** Id., at 1108.

In State v. Gaona, 270 P.3d 1165 (Kan. 2012), the Kansas Supreme Court found that the

prosecution's expert was not qualified by statute to testify about the characteristics of victims of child abuse, but did find the expert qualified to testify as to the Finding Words protocol and its reliability. The Kansas Supreme Court noted: "to the extent her expert testimony remained focused on the Finding Words protocol and its reliability, she was clearly qualified." Id., at 948. The Court explained that the prosecution's expert, Robbins: "has experience and training with Finding Words and, more generally, with forensic interviews of children who have alleged sexual abuse. Jurors do not possess this information, and Robbins' testimony was helpful to their understanding of the case." Id. The Kansas Supreme Court noted that **the defense also presented an expert who testified about the Finding Words protocol.**

In an unpublished opinion, the United States District Court for the Northern District of Mississippi considered a habeas claim alleging counsel was ineffective for failing to object to the state's expert witness testimony. The witness, Mackey, testified she was trained and, in turn, acted as a trainer in forensic interviewing that used the RATAC protocol, described **as a protocol employing non-suggestive interviewing techniques** of victims of child sexual abuse. Elkins v. Mississippi, 2008 WL 5156622 (N.D. Miss. 2008). The District Court opined that it was unlikely a challenge to the testimony would have succeeded. Id.

A Connecticut Supreme Court opinion makes a passing reference to an investigator who interviewed both victims "pursuant to a method commonly used to interview children who may have been the victims of abuse", which the court noted was the RATAC method developed by the Corner House center. State v. Michael H., 970 A.2d 113, 116 (Conn. 2009).

The RATAC method obviously was developed in response to concerns about child victims' testimony being tainted by police suggestiveness, exemplified by the following language

from State v. Michaels, 642 A.2d 1372, 1379 (N.J. 1994):

> a sufficient consensus exists within the academic, professional, and law enforcement communities, confirmed in varying degrees by courts, to warrant the conclusion that the use of coercive or highly suggestive interrogation techniques can create a significant risk that the interrogation itself will distort the child's recollection of events, thereby undermining the reliability of the statements and subsequent testimony concerning such events.

The RATAC method and similar Cornerhouse or Finding Words training are aimed at attaining useful information from potential child abuse victims and avoiding tainting the interview with false information due to inadvertent suggestive interrogation.[3] Testimony about this training was proper. Further, Griggs was not qualified as an expert in forensic interviewing, so no error occurred.

In the instant case, consistent with the Supreme Court's concerns in Kromah, the State did not seek to admit either expert as experts in forensic interviewing, nor did the State suggest

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[3] Apparently, the prosecution in Kromah misunderstood the purpose and scope of the RATAC method in its presentation to the trial court and jury, leading the Supreme Court to complain: "Somehow RATAC is supposed to convert the interviewer into a human truth-detector whose opinions of the truth are valuable and suitable for the jury's consumption." Kromah, 737 S.E.2d at 498 n.4. That is not the proper purpose of RATAC. RATAC is designed merely to avoid suggestive interviewing techniques like those outlined in Michaels. Indeed, it would be troublesome if the lessons of Michaels and the valuable research leading to the development of the RATAC method were ignored by law enforcement and interviewers, and suggestive interviewing techniques became the norm.

While the Supreme Court, in strongly stated dicta, has indicated that they cannot envision a scenario where qualification of an expert in forensic interviewing is appropriate, the Supreme Court also acknowledged the following: "[A]n interviewer's expectation or bias, the suggestiveness of the interviewer's questions, and the interviewer's examination of possible alternative explanations for any concerns, are all factors that can influence the interviewer's conclusions in this regard." Kromah, 737 S.E.2d at 498 n.4. RATAC is intended to minimize the potential suggestiveness of an interview, for example, by using

that they were somehow supposed to be "human lie detectors" as the Supreme Court interpreted the expert's testimony in Kromah.

Testimony

Griggs made a brief description for the jury of how interviews are conducted. She advises the interviewees that they do not have to make up an answer to a question. She testified that the parents are not present in the interview room so that there is no pressure on the interviewee to say or not say something. Questions are asked in an open-ended fashion to elicit narrative answers. ROA. pp. 149-152.

She then gave opinion testimony about the frequency of delayed and partial disclosure by victims of child sexual abuse. She testified delayed disclosure is common, especially when the perpetrator is a family member. She testified that disclosure may be affected by whether a child expects the non-offending parent to believe them. ROA. pp. 152-153.

Griggs testified that in her experience, she did not always get complete disclosure during an interview. Griggs testified as follows about partial disclosure:

> Children tend to, on the most, for the most part, tend to give a little bit of information. They kind of test the waters to see what's gonna happen and see that this – the world's not gonna end, there's not gonna be a big explosion, and they're not gonna be in trouble. So, they're more likely to hold back some information. It does not mean they are lying or making it up. That's just the nature of the disclosure.

ROA. p. 153, lines 7-14.

Griggs testified she interviewed Victim on June 1, 2009. Griggs stayed within the outcry exception and testified Victim disclosed sexual abuse that started when Victim was

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open-ended questions rather than leading questions.

around seven to eight years old until about two weeks before the interview. Griggs stated Victim disclosed the abuse occurred at Victim's home in several places. ROA. pp. 154-155.

Griggs further testified that nothing in Victim's disclosure suggested the disclosure was the result of third party influence and opined it was not affected by suggestibility or coaching. ROA. pp. 155-156.

The prosecutor then asked, "And what, if any, recommendation did you follow or did you make following [Victim's] disclosure of abuse?". ROA. p. 156, lines 4-5. Chavis objected on the basis of relevance. This objection was overruled and Griggs answered as follows:

> My recommendation were that Ashlie should not be around Mr. Chavis for any reason, that there were, if there were any recommendations of law enforcement, that they should be followed, and Ashlie should be referred for counseling, and her mother should also be referred for counseling, and that the other children of Mr. Chavis be interviewed.

ROA. p. 156, lines 16-22.

On cross-examination, Griggs was asked how she knows what causes delayed reporting and Griggs answered that numerous studies have been conducted and that antidotally, she has asked victims' family members if they have ever been abused, and the family members disclose that they were abused, even though they never told anyone else before. ROA. p. 159, lines 13-18.

Qualification of expert testimony was proper

The admission of expert testimony is within the sound discretion of the trial court. State v. Whaley, 305 S.C. 138, 406 S.E.2d 369 (1991). Rule 702, SCRE addresses the admissibility of expert testimony as follows:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

All expert testimony, whether scientific, technical, or otherwise, must meet the requirements of Rule 702. State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009).

The admissibility of scientific evidence is dependent on whether the experts relied on scientifically and professionally established techniques. State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979). Under State v Council, 335 S.C. 1, 515 S.E.2d 508 (1999), the trial court must consider the following concerning expert testimony for scientific evidence: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality of control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." 335 S.C. at 19, 515 S.E.2d at 517.

However, the South Carolina Supreme Court has found these factors fail to serve a useful analytical purpose for non-scientific evidence. White, 382 S.C. at 274, 676 S.E.2d at 688. Instead, the Supreme Court has declined to offer specific factors for non-scientific expert evidence and simply requires that the trial court exercise its role as gatekeeper and determine if the proffered evidence is reliable. Id.

In finding that expert testimony on eyewitness reliability was found admissible, the South Carolina Supreme Court found the testimony distinguishable from "'scientific' evidence such as DNA test results, blood splatter interpretation, and bite mark comparisons. An eyewitness identification witness gives expert opinion evidence similar to the type given by doctors or

psychiatrists." Id., 305 S.C. at 142, 406 S.E.2d at 371-372.

In the instant case, the trial court properly exercised its gatekeeper role to determine that the expert testimony was reliable, finding the testimony would assist the finder of fact, that Griggs was qualified by her knowledge, skill, experience, and training, and finding the underlying science is reliable. Although application of Council was unnecessary[4], the trial court nonetheless applied the factors noting that the procedures were recognized, that her work is peer reviewed, and that the methodology is recognized and consistent with methods used throughout the country in forensic interviewing. ROA. pp. 104-105.

Testimony supports the trial court's ruling. Griggs testified to her abundant experience and training in interviewing victims of child abuse. Her work is peer reviewed and she indicated that she uses methods that are recognized nationally. She then provided expert testimony about the phenomenon of delayed and partial disclosure by child victims of sexual abuse and the reasons for this phenomenon, as well as interviewing techniques designed to avoid suggestive interviewing practices. Such testimony is beyond the knowledge of laymen and is informative to a jury in understanding the unique nature of child sexual abuse. The testimony as a whole was useful to the finder of fact and shown to be reliable.

Bolstering issue

Although intertwined with remonstrations of the "cottage industry" caused by the proliferation of child sexual abuse and the State's attempts to investigate and bring to justice such abusers, the issue that appears to be germane to Chavis' complaint is testimony that Griggs

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[4] In Kromah, the Supreme Court noted that the RATAC method of interviewing is not scientific, so clearly Council does not apply in that regard. Kromah, 737 S.E.2d at 498 n.4.

recommended that victim not be around Chavis and that she and her mother should receive counseling.

At trial, Chavis objected to this testimony based solely on relevance. The ground raised in support of a claim of error on appeal must be the same ground offered in support of the objection at trial. State v. Smith, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999). Accordingly, the issue is not preserved for review. Here, the claim is that the testimony was bolstering (although Griggs did not testify as to whether she believed Victim), which was not raised to the trial court. This complaint of error should not be reviewed.

Further, any error would be harmless in light of the overwhelming evidence of guilt. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). The "materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Thompson, 352 S.C. 552, 575 S.E.2d 77, 83 (Ct. App. 2003). Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990).

In the instant case, abundant evidence supports that the assaults on victim were part and parcel of Chavis's common scheme or plan of sexually assaulting his close relatives (his siblings and later his children). His sexual exploitation was corroborated by Victim's mother, who testified as to the photographs that Chavis took of Mother and Victim together in various stages of undress. Indeed, the recommendation for Chavis to not be around Victim could be based on that conduct alone. Accordingly, any error is harmless in light of the entire record.

Therefore, the trial court did not err in qualifying Griggs as an expert in child abuse assessment and the claim of bolstering based on testimony of her recommendation is not preserved for review. Additionally, any error is harmless beyond a reasonable doubt. Accordingly, the conviction and sentence should be affirmed.

II.

The trial court did not err in qualifying Debra Elliott as an expert in child abuse assessment where she provided expert testimony about the phenomenon of delayed and partial disclosure by victims of child sexual abuse that was helpful to the jury.

For the same reasons that it was proper to admit Griggs as an expert in child abuse assessment, it was proper to admit Debra Elliott as an expert in child abuse assessment. Like Griggs, the primary expert testimony was an explanation of the phenomenon of delayed and partial disclosure by victims of child sexual abuse. The lay juror is at a disadvantage in assessing the occurrence of delayed or partial disclosure, and therefore, the admission of such testimony is entirely proper as articulated fully in Issue I.

Like Griggs, Debra Elliott is clearly qualified in her field. She received a Bachelor of Arts Degree in Sociology from Clemson University in 1978 and thereafter worked at three separate DSS agencies. She worked in the treatment unit at the child protective services with sexual abuse cases and severe physical abuse cases. She co-facilitated the sex offenders treatment group for a year and a half. She was employed as a forensic interviewer at the Durant Children's Center for two and a half years and the I Care House, another child advocacy center, for five years. ROA. pp. 161-162.

Elliott testified she "attended Finding Words in 2002, and the R[A]TAC protocol. I completed that in 2002 and then completed advanced finding words and continued almost every year since then." ROA. p. 162, line 1 - p. 163, line 3. Elliott testified she uses "the national protocol called R[A]TAC protocol." ROA. p. 163, line 18. Elliott testified that the protocol is "very common" and has been peer reviewed. She has conducted in excess of five thousand

forensic interviews in seven and a half years. ROA. pp. 166-167. Elliott testified she had been qualified as an expert in child abuse assessment two times, but as a forensic interviewer more times. ROA. p. 169.

Elliott testified about how she conducted interviews, in which she advises the child of the rules of the interview – the child should tell the truth and should let her know if the child does not understand the question. She asks questions designed to determine the child's competency to be interviewed. She follows a questioning format with a narrative approach to attain narrative conversation from the child. Elliott explained: "But I'm not reading. I'm not suggesting." She also determines the child's knowledge of anatomy. ROA. pp. 170-174.

Elliott then discussed delayed disclosure, which she noted was very common. Elliott testified as follows:

> Delayed disclosure is just a term used in forensic interviewing. It's a common, common, common occurrence in children that have been sexually abused where they just don't immediately run, run to mom or daddy and say, you know, oh, so and so's done something to my body. Children just don't do that normally. It's very uncommon. It's been said, in, in many seminars, that the disclosure is a, is a process. It's not an event. It's not just something that they blurt out. It's over.
>
> Usually children start with something very small like Uncle Bobo messed with me. I mean they may something, say something as benign as that and you really don't know. That could mean anyone really. But a lot of children say that meaning, you know, someone's had sex with me and they think that's what they've said, but if – so, it's a process which, which is why forensic interviewing is so important. You're gonna run with a child and ask them these very narrative questions kind of leading down to the meat of what happened.

ROA. p. 174, line 15 - p. 175, line 8.

Elliott further discussed factors commonly playing a role in delayed disclosure:

> Well, it's usually a child's – it's the alleged perpetrator – if the alleged – if, if whoever victimized that child is somebody that's very close to that child, somebody that the child loves, respects, that child, that person is, is in an authoritative, authoritarian role to the child where they've been taught at a very young age you obey, you respect your elders, you'll behave, you obey, you do what those people tell you to do. And, so, it's it's very common and, and especially where there's a close bonds in family members. Close bonds.

ROA. p. 175, lines 15-24.

Additionally, Elliott discussed partial disclosure as follows:

> disclosure really is a – it's not just an event. It's a process and it takes time. [There are] times that I have children come back for a follow-up interview and most always I will recommend the children in a therapy after they leave our office. Even if you feel like you've gotten most everything from the child, they certainly need to be able to process what's happened to them to move on in a healthy way and there may be more information that was divulged in therapy.

ROA. p. 176, lines 4-13.

Elliott testified she interviewed Victim on April 12, 2004 and Victim did not disclose sexual abuse at that time. ROA. p. 176. On cross-examination, she agreed Victim maintained eye contact and told Elliott: "they would be lying because [Chavis] ain't never touched me like that." ROA. p. 181, lines 10-14.

Elliott testified she reviewed the forensic interview for Stepsister by another interviewer, who was now in New Mexico. She indicated that sexual abuse was disclosed in the interview, although she did not testify as to when or where it occurred, and also did not indicate who the perpetrator was or any particulars of the abuse. ROA. pp. 176-178.

Chavis argues that qualifying Elliott as an expert was error and that because she was

allowed to testify as to the existence of a disclosure by Stepsister, this is reversible error. Chavis erroneously claims in the brief that Elliott: "was able to get before the jury that the minor's step-sister had allegedly disclosed that appellant sexually abused her also" and complains, falsely, that "another forensic interviewer had been told by appellant's daughter, and the minor step-sister, that appellant had sexually abused her also." Br. of App. p. 13. Both statements are incorrect. Elliott testified that Victim did not disclose any abuse. Further, Elliott testified that Stepsister made a disclosure, but did not testify as to the identity of the perpetrator or the particulars of the abuse.

Instead, the main thrust of Elliott's testimony was to advise the jury that Victim did not disclose abuse to her and to offer expert testimony on the occurrence and causes of delayed and partial disclosure of child abuse. As discussed in issue one, expert testimony on delayed and partial disclosure is proper, and Elliott had sufficient training and education to provide this testimony and to be qualified as an expert in child abuse assessment. Like Griggs, Elliott had considerable experience and training in her field and followed a nationally recognized protocol for interviewing children who may have been sexually abused. Accordingly the trial court did not err in this regard. White, supra.

Further, it was not error to allow Elliott to testify that there was a disclosure of abuse. This falls within the outcry exception, as it was limited to only the fact that Stepsister was abused. Additionally, the testimony is allowable pursuant to Rule 703, SCRE, which provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject, the facts or data need not be

admissible in evidence.

In the instant case, Elliott verified that the forensic interview for Stepsister was done using the same protocol and that a disclosure was made during that interview. This testimony is allowable.

Further, any error in its admission is harmless, as the testimony was limited to the very bare existence of a disclosure without identifying the perpetrator. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). The "materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Thompson, 352 S.C. 552, 575 S.E.2d 77, 83 (Ct. App. 2003). Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). In the instant case, abundant evidence supports that the assaults on victim were part and parcel of Chavis' common scheme or plan of sexually assaulting his close relatives (his siblings and later his children).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 12, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Marlboro County
Howard P. King, Circuit Court Judge

THE STATE, Respondent,

vs.

GEORGE CHAVIS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
Chief Appellate Defender
Division of Appellate Defense
P.O. Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 12th day of April, 2013

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ALAN WILSON
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April 12, 2013

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: **The State v. George Chavis**
Appellate Case No: 2011-188568

Dear Ms. Kitchings:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent** in the above matter for filing in your office. By copy of this letter we are serving Robert M. Dudek, Esquire with this brief today.

Sincerely,

David Spencer
Assistant Deputy Attorney General
Bar No: 68571

DS/nb
Enclosures

cc: Robert M. Dudek, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)