STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER BLAKE HALLBROOK,

APPELLANT.

APPELLATE CASE NO. 2021-000735

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by admitting testimony from a state witness who was qualified as an expert in child sexual abuse dynamics since her testimony about delayed disclosures, partial disclosures, symptoms of trauma experienced by children who have been sexually abused, and coaching improperly bolstered the minor complainant's credibility and was unfairly prejudicial to Appellant?

STATEMENT OF THE CASE

A Cherokee County Grand Jury indicted Appellant on February 20, 2020 for first degree criminal sexual conduct with a minor. R. 216-217. His case was called to trial on June 29, 2021 before the Honorable R. Keith Kelly, and a jury. R. 1. Assistant Solicitors Adrienne Barry and Kimberly Leskanic represented the state. R. 1. Robin File represented Appellant. R. 1.

On July 1, 2021, the jury found Appellant guilty as indicted. R. 211, ll. 9-11. He was sentenced to thirty years imprisonment. R. 214, ll. 17-19.

This appeal follows.

STANDARD OF REVIEW

"The decision to admit or exclude testimony from an expert witness rests within the trial court's sound discretion." State v. Makins, 433 S.C. 494, 500, 860 S.E.2d 666, 670 (2021) (quoting State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006)) (internal quotation marks omitted). "The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion." Id. (quoting Price, 368 S.C. at 498, 629 S.E.2d at 365) (internal quotation marks omitted). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id. at 500-501, 860 S.E.2d at 670 (quoting State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007)) (internal quotation marks omitted).

ARGUMENT

The trial judge abused his discretion by admitting testimony from a state witness who was qualified as an expert in child sexual abuse dynamics since her testimony about delayed disclosures, partial disclosures, symptoms of trauma experienced by children who have been sexually abused, and coaching improperly bolstered the minor complainant's credibility and was unfairly prejudicial to Appellant.

Relevant Facts

Appellant was married to Minor's Aunt Shelby, the sister of Minor's father. R. 79, ll. 11-25; R. 101, ll. 3-6. Appellant and Shelby often visited Minor's family at their house in Gaffney. The couple did not have a working stove so they frequently ate dinner at Minor's house. R. 101, ll. 12-18. They also occasionally spent the night. R. 88, ll. 9-12; R. 102, ll. 2-4. When they spent the night, Appellant and Shelby would sleep in the living room. R. 88, ll. 13-17; R. 102, ll. 5-6. The home had an open floor plan. The kitchen, living room, and dining room were one open space. R. 88, ll. 18-24; R. 102, ll. 15-20.

Minor, who was thirteen years old at the time of trial, claimed Appellant sexually assaulted her when she was nine or ten years old and in the fourth or fifth grade. R. 82, ll. 9-10. The first time allegedly occurred in her living room. R. 80, l. 24 – 81, l. 5. Minor was sitting on the couch playing Super Mario Smash Brothers on her Wii. She had a blanket on her lap. R. 81, ll. 5-8. Appellant sat down next to her and pulled the blanket over his lap so that it was covering both of them. Minor claimed Appellant then slowly stuck his hand down the back of her pants and "fingered me in my butt hole." R. 81, ll. 9-23. She elaborated, "He put his fingers up my butt hole and started moving them." R. 81, l. 25 – 82, l. 5.

Minor's mother, father, and Aunt Shelby were all outside when this allegedly occurred. R. 82, ll. 13-14. There was a glass door in the living room which led outside. Minor admitted that she could see the adults outside while the alleged assault took place. R. 82, ll. 13-16. Minor's brother was in his bedroom. R. 82, ll. 17-18. According to Minor, Appellant stopped when the adults began walking inside. R. 82, ll. 22-23. Minor testified that she did not tell anyone about this alleged encounter because she was scared and did not want to hurt her family. R. 83, ll. 18-22.

Minor claimed Appellant touched her a second time. R. 84, ll. 1-3. This time allegedly occurred at night. R. 84, ll. 8-12. Minor was sleeping in her bedroom when she was awakened by the sound of her door opening. The door was "very squeaky." R. 84, ll. 13-20. Minor heard someone walk across her room to her bed. R. 84, l. 24 – 85, l. 1. Because her back was to the door, she did not see the person. R. 84, ll. 13-16; R. 85, ll. 7-10. The person pulled down her pants and "licked [her] butt hole." Minor claimed the person's tongue went "inside [her] butt hole." R. 85, ll. 1-24. She could not recall how long this went on. R. 85, l. 25 – 86, l. 1. Eventually the person stopped and walked out of her room. R. 86, ll. 4-7. Minor never moved during the encounter. R. 84, ll. 19-20.

A few minutes after the person left her room, Minor got up and walked into the hallway. R. 86, l. 17 – 87, l. 4. She saw her mother and Appellant in the kitchen. R. 87, ll. 4-5. Her mother told her to go back to sleep because it was "a school night." R. 87, ll. 17-20. Minor claimed Appellant then asked her what woke her up. When she said "nothing," Appellant responded, "Uh-huh." R. 87, ll. 17-24. Minor then returned to her room. R. 87, l. 25 – 88, l. 1. While she never saw the person who entered her room that night, Minor maintained it was Appellant. R. 85, ll. 3-8. She said she never told anyone about this second touching because she

was "scared" of Appellant and was worried that Appellant would "hurt [her] or somebody [she] cared about." R. 88, ll. 5-7.

Minor eventually told two of her friends, Madison and Aurora, and her cousin, Chole, about the alleged touching. R. 88, l. 25 – 90, l. 25. On February 13, 2019, Minor disclosed to her mother. R. 91, ll. 1-5; R. 102, l. 24 – 103, l. 7. Minor claimed she "felt safe" to tell because Appellant and Shelby had since divorced. R. 92, ll. 7-10. Her mother took her to the Cherokee County Sheriff's Office the next day to report the allegations. R. 70, l. 12 – 71, l. 23; R. 92, ll. 4-18; R. 103, ll. 13-16. Minor subsequently attended a forensic interview at the Children's Advocacy Center in Spartanburg on February 26, 2019. R. 109, ll. 14-20; R. 112, ll. 19-20. A recording of her interview was admitted into evidence and published to the jury. R. 114, l. 4 – 115, l. 7.

Appellant vehemently denied the allegations. R. 172, ll. 19-24. He testified that he was never alone with Minor. R. 172, l. 25 – 173, l. 3.

How the Issue was Presented Below

The state presented the testimony of Shauna Galloway-Williams, a licensed professional counselor, over Appellant's objection. She was qualified as an expert in child sexual abuse dynamics. R. 147, l. 16 – 148, l. 4. Before the state called Williams to testify, defense counsel moved to exclude her testimony. He argued Williams's testimony, even though she was a "blind" expert, would improperly bolster Minor's credibility. R. 117, l. 20 – 118, l. 1. Counsel further argued that her testimony was not relevant and any probative value would be outweighed by the "overall prejudicial effect." R. 118, ll. 16-20.

The state proffered Williams's testimony in response to Appellant's motion. R. 119, l. 1 – 139, l. 14. Williams's testimony *in camera* was the same in all pertinent aspects as her

subsequent testimony before the jury. See R. 143, l. 11 – 165, l. 6. At the conclusion of the proffer, the state argued Williams's testimony was admissible pursuant to State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015). R. 139, l. 16 – 141, l. 7. The trial judge agreed. He found her testimony would "enable[] the jury to understand the common behavioral characteristics of sexual assault [victims] and the range of responses." R. 142, ll. 4-6. He emphasized that there was no objection to Williams's qualifications or the reliability of her testimony. R. 142, ll. 7-12. Consequently, the judge allowed her to testify before the jury. R. 142, ll. 17-18.

Williams told the jury about her qualifications. She is the chief executive officer of the Julie Valentine Center, a "child abuse and sexual assault recovery center" located in Greenville. R. 143, ll. 21-25. She is responsible for the "administrative and executive functions of the organization." R. 144, ll. 1-4. She also supervisors the organization's therapists and interviewers and provides clinical services. R. 144, ll. 5-10. Williams maintained that she has counseled "well over a thousand" children during her career. R. 145, l. 22 – 146, l. 3. She has a bachelor's degree in psychology from Winthrop University and a master's degree in counseling from Clemson University. R. 144, ll. 11-15.

Williams had never met Minor and claimed she did not know anything about the allegations in this case. R. 148, ll. 10-22. She maintained her role was "to provide education and information about child sexual abuse dynamics for the jury." R. 148, l. 23 – 149, l. 1. Williams testified about the various types of disclosures, including delayed disclosures, purposeful disclosures, accidental disclosures, and partial disclosures. R. 149, l. 2 – 155, l. 3; R. 157, l. 19 – 159, l. 22. Williams also discussed the role of the nonoffending caregiver and coaching. R. 156, l. 7 – 157, l. 18; R. 162, l. 10 – 163, l. 6. Lastly, she explained some of the

common symptoms of trauma experienced by children who have been sexually abused. R. 161, l. 13 – 162, l. 9.

Discussion

The trial judge abused his discretion by allowing Shauna Galloway-Williams to testify as an expert in child sexual abuse dynamics because her testimony improperly bolstered Minor's credibility and was unfairly prejudicial to Appellant.[1]

"The assessment of witness credibility is within the exclusive province of the jury." State v. Makins, 433 S.C. 494, 501, 860 S.E.2d 666, 670 (2021) (quoting State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)) (internal quotation marks omitted). "While experts can testify to their opinion, they are precluded from offering an opinion about the credibility of other witnesses." Id. (citing State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013)). "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. (quoting Kromah, 401 S.C. at 358-359, 737 S.E.2d at 500) (internal quotation marks omitted). "A witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes the victim." Id. (quoting Briggs v. State, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017)) (internal quotation marks omitted).

In this case, although Williams had not interviewed Minor, her testimony indirectly bolstered Minor's credibility. *Cf.* State v. Anderson, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015)

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[1] *Contra* State v. Brown, 411 S.C. 332, 344, 768 S.E.2d 246, 252 (Ct. App. 2015), *abrogated on other grounds by* State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018) (expert's testimony on child abuse dynamics and disclosures did not improperly bolster the minor complainants' testimony where expert had no knowledge of case and did not comment on the credibility of the allegations); State v. Jones, 423 S.C. at 636, 817 S.E.2d at 270-271 (holding "behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized.")

(witness qualified as expert in child abuse assessment improperly vouched for the minor complainant's credibility when she testified only to those characteristics which she observed in the minor).

In State v. McKerley, 397 S.C. 461, 463, 725 S.E.2d 139, 141 (Ct. App. 2012), the trial court allowed a witness to testify as an expert in "forensic interviewing and child abuse assessment." The expert had interviewed the complainant twice and concluded that both interviews were compelling for sexual abuse. She also determined that the complainant's statements were consistent with other information she knew about the case. Id. at 466, 725 S.E.2d at 142. This Court held there was no other way to interpret the language used in the expert's testimony other than to mean she believed the complainant was being truthful. The Court further determined, "In light of [the expert's] extensive inadmissible testimony bolstering the credibility of the victim . . . we cannot say the erroneous admission of [the expert's] testimony did not contribute to the jury's decision," therefore concluding the error was not harmless. Id. at 467, 725 S.E.2d at 143.

Our Supreme Court has also held that it is improper "for an expert to comment on the veracity of a child's accusations of sexual abuse." State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); See State v. Dawkins, 297 S.C. 386, 393-394, 377 S.E.2d 298, 302 (1989) (holding therapist indicating he believed complainant's allegations were genuine was improper); State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000) (holding therapist's testimony children were being truthful in ninety five percent of instances in which sexual abuse was alleged was improper vouching for child).

In Jennings, the "expert" forensic interviewer interviewed the three minor complainants and wrote a separate report for each child, which were admitted into evidence. She concluded in

her reports that each child provided a compelling disclosure of abuse by the defendant and that the children provided details that were consistent with the background information received from their mother, the police report, and the other children. Jennings, 394 S.C. at 476-481, 716 S.E.2d at 92-95. Our Supreme Court held the conclusions in the reports improperly vouched for the children's veracity and thus the trial court had abused its discretion by admitting the reports into evidence. It further held the error was not harmless because there was no physical evidence presented at trial and, therefore, the children's credibility was the sole issue in the case. Id. at 480, 716 S.E.2d at 94-95.

In this case, while Williams did not interview Minor, the state still used her testimony to indirectly comment on Minor's credibility and provide greater weight to her testimony. See R. 188, l. 15 – 189, l. 18; R. 196, ll. 6-10. Williams' testimony was very likely interpreted by the jury to express that they should believe Minor because her behavior is typical, expected, and complies with the behavior of the majority of other victims of sexual abuse. Her testimony strongly implied that because Minor acted in a similar manner as other victims of sexual abuse she must be telling the truth. Therefore, allowing Williams to testify was error for "[t]he assessment of witness credibility is within the exclusive province of the jury." McKerley, 397 S.C. at 464, 725 S.E.2d at 141 (citing State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)).

The admission of Williams's testimony also violated Rule 403, SCRE, which provides in relevant part: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001).

While the probative value of Williams's testimony was low, the danger of unfair prejudice was tremendous. The state used Williams's testimony to explain away why Minor failed to report the alleged improper touching for nearly two years. See R. 196, ll. 6-10 ("Minor told her friends, and Shauna Galloway-Williams stated children will test the waters. She [Minor] wanted to see how her friends were going to react. And then she told her mom. She felt safe. Shelby and Chris [Appellant] were divorced. She felt safe. She could finally get her story out."). The state also used Williams's testimony to suggest to the jury that it should believe Minor because her behavior is typical, expected, and complies with the behavior of the majority of other victims of sexual abuse. See R. 188, l. 15 – 189, l. 18 ("How and when Minor told her story is not uncommon.").

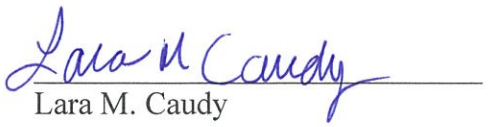
Moreover, there was no physical or forensic evidence of sexual abuse presented. Consequently, the sole issue was the credibility of Minor. The assistant solicitor admitted so at trial: "It boils down to Minor and her word against the defendant's." R. 196, ll. 11-12. Because Minor's credibility was the "most critical determination of this case" and Williams's testimony improperly bolstered her credibility, Appellant was prejudiced and should be granted a new trial. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94-95 ("Because the children's credibility was the most critical determination of this case, we find the admissibility of the [forensic interviewer's] written reports was not harmless."); State v. Ellis, 345 S.C. 175, 178, 547 S.E.2d 490, 492 (2001) ("An officer's improper opinion which goes to the heart of the case is not harmless.").

Respectfully, this Court should reverse Appellant's conviction and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of May, 2022.

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STATE OF SOUTH CAROLINA

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APPELLATE CASE NO. 2021-000735

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Blake Hallbrook states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial, which was held June 29 through July 1, 2021 before the Honorable R. Keith Kelly, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Christopher Blake Hallbrook.

Respectfully Submitted,

Lara M Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of May, 2022.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Complete Trial Transcript Dated June 29 through July 1, 2021;
(2) Indictment;
(3) Sentence Sheet.

I certify that this designation contains no matter which is irrelevant to this appeal.

Lara M Caudy

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 20th day of May, 2022.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 20th day of May, 2022.