The Supreme Court of South Carolina

RE: Interest Rate on Money Decrees and Judgments

ORDER

S.C. Code Ann. § 34-31-20 (B) (Supp. 2014) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points."

The Wall Street Journal for January 2, 2015, the first edition after January 1, 2015, listed the prime rate as 3.25%. Therefore, for the period January 15, 2015, through January 14, 2016, the legal rate of interest for judgments and money decrees is 7.25% compounded annually.

s/ Jean H. Toal C. J.
FOR THE COURT

Columbia, South Carolina
January 2, 2015

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS – UNITED STATES SUPREME COURT

27396 - Town of Hilton Head Island v. Kigre, Inc. Pending

27407 - The State v. Donta Kevin Reed Pending

2010-173586 - Bayan Aleksey v. State Pending

2014-001612 - The State v. William T. Watts, II Pending

US SUPREME COURT - EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

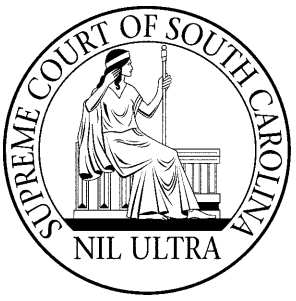
27408 - The State v. Anthony Nation Granted until 1/3/2015

PETITIONS FOR REHEARING

27466 - Abbeville County School District v. The State Pending

27467 - In the Matter of Cynthia E. Collie Pending

2014-MO-049 - Tiffany Sanders v. State Pending



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 1
January 7, 2015
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

5253-Sierra Club v. SCDHEC and Chem-Nuclear Systems, Inc.	Pending
5270-56 Leinbach Investors, LLC v. Magnolia Paradigm	Pending
5272-Cindy Ella Dozier v. American Red Cross	Pending
5279-Stephen Brock v. Town of Mt. Pleasant	Pending
5280-State v. Donna Lynn Phillips	Pending
5281-The Greens of Rock Hill v. Rizon Commercial Contracting	Pending
5282-Joseph D. McMaster v. John H. Dewitt, M.D.	Pending
5283-State v. Arthur Smith	Pending
5284-Fayrell Furr v. Horry County Zoning Board of Appeals	Pending
2014-UP-270-Progressive Northern Ins. v. Stanley Medlock	Pending
2014-UP-387-Alan Sheppard v. William O. Higgins	Pending
2014-UP-402-State v. Jody Lynn Ward	Pending
2014-UP-409-State v. Antonio Miller	Pending
2014-UP-411-State v. Theodore Manning	Denied 12/31/14
2014-UP-422-Johnson Koola v. Cambridge Two	Pending
2014-UP-435-SCBT, N.A. v. Sand Dollar 31	Pending
2014-UP-438-CACH v. Toby Hoffman	Pending
2014-UP-444-State v. Eric VanCleave	Pending
2014-UP-446-State v. Ubaldo Garcia, Jr.	Pending

2014-UP-458-SCDSS v. Lakisha Dennis and Shonetone Hines	Pending
2014-UP-463-State v. Victor Weldon	Pending
2014-UP-464-Phillip T. Young v. Joy A. Young	Pending
2014-UP-470-State v. Jon Wynn Jarrard, Sr.	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5077-Kirby L. Bishop et al. v. City of Columbia	Pending
5099-Roosevelt Simmons v. Berkeley Electric	Pending
5140-Bank of America v. Todd Draper	Pending
5152-Effie Turpin v. E. Lowther	Pending
5175-State v. Karl Ryan Lane	Pending
5176-Richard A. Hartzell v. Palmetto Collision, LLC	Pending
5201-Phillip Grimsley v. SLED	Pending
5209-State v. Tyrone Whatley	Pending
5214-State v. Alton W. Gore, Jr.	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Pending
5230-State v. Christopher L. Johnson	Pending
5231-Centennial Casualty v. Western Surety	Pending
5232-State v. Clarence W. Jenkins	Pending
5237-Lee C. Palms v. The School District of Greenville Cty.	Pending
5241-Richard A. Fisher v. Shipyard Village Council	Pending

5242-Patricia Fore v. Griffco of Wampee, Inc	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Pending
5244-Clifford Thompson v. State	Pending
5245-Allegro, Inc. v. Emmett Scully	Pending
5247-State v. Henry Haygood	Pending
5248-Demetrius Mack v. Leon Lott	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending
5251-State v. Michael Wilson Pearson	Pending
5257-State v. Jefferson Perry	Pending
5258-State v. Wayne S. Curry	Pending
5259-State v. Victor A. White	Pending
5261-State v. Roderick Pope	Pending
5263-Milton P. Demetre Family Ltd. Partnership v. Beckmann	Pending
5264-Prakash Solanki v. Wal-Mart	Pending
5265-State v. Wayne McCombs	Pending
5266-State v. Anthony K. Blakney	Pending
5267-Steve Bagwell v. State	Pending
5271-Richard Stogsdill v. SCDHHS	Pending
5273-Jane Roe v. Daniel Bibby, Sr.	Pending

5274-Duke Energy v. SCDOR	Pending
5275-Mitul Enterprises v. Beaufort Cty. Assessor	Pending
2012-UP-081-Hueble v. Vaughn	Pending
2012-UP-312-State v. Edward Twyman	Pending
2012-UP-351-State v. Kevin J. Gilliard	Pending
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2012-UP-502-Hurst v. Board of Dentistry	Pending
2012-UP-552-Virginia A. Miles v. Waffle House	Pending
2012-UP-577-State v. Marcus Addison	Pending
2013-UP-066-Dudley Carpenter v. Charles Measter	Pending
2013-UP-071-Maria McGaha v. Honeywell International	Pending
2013-UP-147-State v. Anthony Hackshaw	Pending
2013-UP-251-Betty Jo Floyd v. Ken Baker Used Cars	Pending
2013-UP-297-Place on the Greene v. Eva Berry	Pending
2013-UP-322-A.M. Kelly Grove v. SCDHEC	Pending
2014-UP-013-Roderick Bradley v. The State	Pending
2014-UP-087-Moshtaba Vedad v. SCDOT	Pending
2014-UP-094-Thaddeus Segars v. Fidelity National	Pending
2014-UP-114-Carolyn Powell v. Ashlin Potterfield	Pending

2014-UP-128-3 Chisolm Street v. Chisolm Street	Pending
2014-UP-132-State v. Ricky S. Bowman	Pending
2014-UP-143-State v. Jeffrey Dodd Thomas	Pending
2014-UP-167-State v. David G. Johnson	Pending
2014-UP-187-State v. Mark Peters	Pending
2014-UP-203-Helena P. Tirone v. Thomas Dailey	Pending
2014-UP-210-State v. Steven Kranendonk	Pending
2014-UP-215-Yossi Haina v. Beach Market, LLC	Pending
2014-UP-222-State v. James Curtis Tyner	Pending
2014-UP-224-State v. James E. Wise	Pending
2014-UP-228-State v. Taurus L. Thompson	Pending
2014-UP-235-Rest Assured v. SCDEW	Pending
2014-UP-241-First Citizens Bank v. Charles T. Brooks, III	Pending
2014-UP-266-Mark R. Bolte v. State	Pending
2014-UP-273-Gregory Feldman v. William Casey	Pending
2014-UP-279-Jacqueline Smith v. Horry County Schools	Pending
2014-UP-284-John Musick v. Thomas Dicks	Pending
2014-UP-304-State v. Tawanda Allen	Pending
2014-UP-305-Tobacco Merchant v. City of Columbia Zoning	Pending

2014-UP-306-Yadkin Valley v. Oaktree Homes	Pending
2014-UP-307-Desiree Brown v. Wendell Brown (1)	Pending
2014-UP-317-Cherry Scott v. Heritage Healthcare	Pending
2014-UP-318-Linda Johnson v. Heritage Healthcare	Pending
2014-UP-332-State v. Michael Rogers	Pending
2014-UP-337-State v. Elizabeth M. Dinkins	Pending
2014-UP-343-State v. Derrick A. McIlwain	Pending
2014-UP-361-Russell W. Rice, Jr. v. State	Pending
2014-UP-362-State v. James Harris	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

North American Rescue Products, Inc.,
Respondent/Petitioner,

v.

P. J. Richardson, Petitioner/Respondent.

Appellate Case No. 2012-208586

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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

Opinion No. 27475
Heard November 19, 2014 – Filed January 7, 2015

REVERSED

Robert L. Widener, of McNair Law Firm, P.A., of Columbia, and Bernie W. Ellis, of McNair Law Firm, P.A., of Greenville, for Respondent/Petitioner.

C. Mitchell Brown and A. Mattison Bogan, both of Nelson Mullins Riley & Scarborough, LLP, of Columbia, and Rivers S. Stilwell, of Nelson Mullins Riley & Scarborough, LLP, of Greenville, for Petitioner/Respondent.

JUSTICE HEARN: This declaratory judgment action was commenced by North American Rescue Products, Inc. (NARP) to determine whether P. J. Richardson had the right to purchase 7.5 % of NARP's stock at a discounted price despite the existence of a termination agreement which purported to end the parties' relationship. Following a jury verdict allowing Richardson to purchase the stock for $2,936,000.00, both parties appealed. We granted certiorari to review the court of appeals' decision affirming the jury verdict. Because we find the termination agreement unambiguously ended any right Richardson had to purchase the stock, we reverse and remand for entry of judgment in favor of NARP.[1]

FACTUAL/PROCEDURAL HISTORY

NARP, owned by Bob Castellani, manufactures emergency medical and rescue products for the U.S. Armed Forces. P.J. Richardson owned Reeves Manufacturing, Inc. (Reeves), which manufactured emergency medical and rescue products for civilian first responders. Because the companies produced similar products but sold to different markets, Castellani and Richardson formed a close business and personal relationship whereby they promoted and cross-sold each other's products. In January 2000, Castellani and Richardson formalized their relationship by entering into an Outline of Business Relationship (2000 Outline). As part of the 2000 Outline, Castellani and Richardson agreed to issue 25% of their companies' stock to each other.[2]

In July 2004, Castellani and Richardson orally agreed to reduce the percentages of stock to 7.5% at a meeting in Charleston (The Charleston Agreement). In October 2004, with the sale of Reeves pending, Castellani and Richardson met in Atlanta to discuss the agreement. The parties subsequently

[1] We withdraw our previous opinion in *North American Rescue Products, Inc. v. Richardson*, Op. No. 2014–MO–009 (S.C. Sup. Ct. filed March 26, 2014), substituting this one in its place.

[2] At trial, Castellani described the stock swap as a means of hedging their bets in starting a small business: "It was kind of like an insurance policy. We both had pretty good companies. We had a lot of hurdles in front of us. The odds of both of us making it were probably not great, but the odds of one of us surviving was probably pretty good."

executed an "Agreement of Termination, Settlement, and Release" (Termination Agreement). The Termination Agreement, which was signed by Richardson and Castellani in November, 2004, reads in pertinent part:

> 1. Termination of the 2000 Outline. The parties agree that the 2000 Outline and any and all agreements, understandings, undertakings or arrangements that in any way arose or may have arisen out of or relate in any manner to the 2000 Outline, are *terminated*.
>
> 2. Settlement. *All claims and potential claims* of any nature whatsoever that have been, could have been, or in the future could be asserted by the parties *arising out of or relating in any manner to the 2000 Outline are hereby settled, compromised and released* for and in consideration of the payment by [Reeves/Richardson] of the sum of $100.00 in lawful money of the United States of America to NARP and [Castellani].
>
> . . .
>
> 4. NARP and [Castellani] Release. [Reeves] and [Richardson] hereby remise, release and forever discharge each of NARP and [Castellani], along with their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors, and assigns, and agents, of and from all, and all manner of, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether in law or equity, which [Reeves] and/or [Richardson] had, now have or which any personal representative, heir, predecessor, successor or assign of [Reeves] and/or [Richardson] can, shall or may have against NARP and [Castellani] or their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, arising out of or relating to the 2000 Outline from the beginning of time to the date of this Settlement Agreement. *It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not release, any of the parties*

> *from that certain, separate Option Agreement dated 15 Dec, 2004 pursuant to which NARP and [Castellani] have granted [Richardson] an option to purchase 7.5% of the capital stock of NARP.*[3]
>
> . . .
>
> 6. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties.

(emphasis added). Although the Termination Agreement twice references a later agreement of "15 Dec," both parties agree that no option agreement existed at the time and no option agreement dated December 15, 2004 was ever entered into.

Two years after the execution of the Termination Agreement, Richardson filed a demand letter seeking to exercise his purported option to purchase 7.5% of NARP's stock.[4] NARP then filed this declaratory judgment action to determine whether Richardson had any such right. Richardson answered and counterclaimed for specific performance for breach of contract and promissory estoppel.

At trial, NARP argued the Termination Agreement ended all obligations between the parties arising from the 2000 Outline. Conversely, Richardson argued the Termination Agreement was part of a three-part agreement whereby the 2000 Outline was to be terminated, an option agreement was to be executed granting

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[3] The "15 Dec" date was handwritten in an underlined blank space. An identical provision titled "[Reeves] and [Richardson] Release" contained the same handwritten date.

[4] We note that Richardson has on numerous occasions changed his argument as to the source of his right to purchase NARP stock. Initially, Richardson claimed he had a right to purchase 7.5% of NARP's stock for a penny per share based on an October 4, 2014 option agreement which he admitted at trial was never executed. He then amended his pleadings twice to argue he had a right to purchase NARP stock for a penny per share arising from an oral agreement entered into during the Atlanta meeting. It was only at trial when Richardson asserted the theory on which his appeal rests—that he has the right to purchase 7.5% of NARP's stock in exchange for 7.5% of the proceeds from the sale of Reeves, or $415,988.

Richardson an option to purchase NARP stock, and Richardson was to donate 7.5% of the proceeds from the sale of Reeves to a charity of Castellani's choosing. At the close of its case, NARP moved for directed verdict on Richardson's breach of contract counterclaim, arguing the Termination Agreement unambiguously terminated Richardson's right to purchase NARP stock. The trial court denied NARP's motion, holding "the terms of that contract are absolutely ambiguous. Read as a whole, it borders on being completely un-understandable."

At the close of all evidence, NARP renewed its motion for directed verdict on Richardson's breach of contract counterclaim, and moved for directed verdict on Richardson's promissory estoppel counterclaim. Both motions were denied. The case went to the jury on a special verdict form, and the jury returned a verdict finding Richardson was entitled to receive 7.5% of NARP's stock for the price of $2,936,300.00.

Both parties appealed, and the court of appeals affirmed. *N. Am. Rescue Prod., Inc. v. Richardson*, 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011). This Court granted certiorari and affirmed the court of appeals' opinion in part and vacated in part. *N. Am. Rescue Prod., Inc. v. Richardson*, Op. No. 2014–MO–009 (S.C. Sup. Ct. filed March 26, 2014). The parties filed cross petitions for rehearing, both of which we granted.

ISSUES PRESENTED

I. Did the court of appeals err in affirming the trial court's denial of NARP's motion for directed verdict on Richardson's contract claim?

II. Did the court of appeals err in affirming the trial court's denial of NARP's motion for directed verdict on Richardson's promissory estoppel claim?

LAW/ANALYSIS

I. DIRECTED VERDICT ON BREACH OF CONTRACT COUNTERCLAIM

NARP argues the court of appeals erred by affirming the trial court's denial of its directed verdict motion on Richardson's breach of contract claim. We agree.

When considering a directed verdict motion, the trial court is required to view the evidence in the light most favorable to the nonmoving party. *Jones v. Lott*, 387 S.C. 339, 345, 692 S.E.2d 900, 903 (2010). This Court will reverse the trial court's ruling only where there is no evidence to support the ruling or it is controlled by an error of law. *Id.*

The primary concern of the court interpreting a contract is to give effect to the intent of the parties. *Lee v. Univ. of S.C.*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014). The best evidence of the parties' intent is the contract's plain language. *Id.*

The question of whether a contract is ambiguous is a question of law. *Id*. A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). If a contract's language is unambiguous, the plain language will determine the contract's force and effect. *Lee*, 407 S.C. at 517–18, 757 S.E.2d at 397.

A contract must be read as a whole document so that one party may not create ambiguity by pointing out a single sentence or clause. *S. Atl. Fin. Servs., Inc. v. Middleton*, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003). "Interpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it." *Laser Supply & Servs., Inc. v. Orchard Park Assoc.*, 382 S.C. 326, 334, 676 S.E.2d 139, 143–144 (Ct. App. 2009).

We fail to discern any ambiguity in the Termination Agreement and find it clearly terminated the obligations between the parties. In pertinent part, the Termination Agreement states: "The parties agree that the 2000 Outline and any and all agreements, understandings, undertakings or arrangements that in any way arose or may have arisen out of or relate in any manner to the 2000 Outline are terminated." Additionally, both parties are released from "[a]ll claims and potential claims of any nature whatsoever . . . arising out of or relating in any manner to the 2000 Outline." The only provisions of the Termination Agreement which stand in contradiction are those which purport to reserve Richardson's rights under a separate option contract dated "Dec 15." However, both parties agree that

no option contract dated December 15, 2004 was ever created or executed. We decline to hold that a provision mentioning a nonexistent document can defeat the plain language of an agreement.

Testimony from Richardson's wife and his former attorney support his claim that the Termination Agreement was one part of a three-part agreement which was meant to be executed contemporaneously with the others. However, only if the document itself creates an ambiguity should a court look to outside evidence to aid in interpretation. *See Laser Supply & Servs.*, 382 S.C. at 334, 676 S.E.2d at 144 ("Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties.") Further, even if the parties intended a tripartite agreement, the Termination Agreement was the only part executed. Provisions which are essentially agreements to agree in the future have no legal effect. *See Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994) ("A contract provision leaving material terms open for future agreement is void for indefiniteness."). Thus the mere mention of a future option agreement that was never executed does not create an ambiguity in an otherwise unambiguous document. Accordingly, the court of appeals erred in affirming the trial court's denial of NARP's motion for directed verdict.

II. DIRECTED VERDICT ON PROMISSORY ESTOPPEL CLAIM

NARP also argues the court of appeals erred in affirming the trial court's denial of its directed verdict motion as to Richardson's promissory estoppel claim. We agree.

Promissory estoppel is a quasi-contract remedy. *See Higgins Constr. Co. v. S. Bell Tel. & Tel. Co.*, 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981). Courts have used the doctrine where the refusal to apply it "'would be virtually to sanction the perpetration of a fraud or would result in other injustice.'" *Satcher v. Satcher*, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct. App. 2002) (quoting *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). The elements of promissory estoppel are (1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance. *Davis v. Greenwood Sch. Dist. 50*, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005).

Because the Termination Agreement severed "any and all agreements, understandings, undertakings or arrangements that in any way arose or may have arisen out of or relate in any manner to the 2000 Outline," it precludes any promissory estoppel claim that could have arisen between the parties prior to the Termination Agreement. Further, there is no evidence in the record to support a promissory estoppel claim arising after the Termination Agreement was executed. While there is evidence Castellani made subsequent assurances to Richardson—for instance, Castellani wrote in an e-mail that "nothing has changed in my mind about getting this done for you and [your family]"—none of these statements rise to the level of an unambiguous promise. Finally, there is no evidence Richardson relied on any alleged promises by Castellani to his detriment; he argues to this Court only that he held 7.5% of the proceeds from the sale of Reeves for the potential exchange for NARP stock, but does not explain how that prejudiced him.

Accordingly, the court of appeals erred in affirming the trial court's denial of NARP's directed verdict motion as to Richardson's promissory estoppel claim.[5]

CONCLUSION

We hold the court of appeals erred in affirming the trial court's denial of NARP's motions for directed verdict on Richardson's breach of contract and promissory estoppel counterclaims. Accordingly, we reverse and remand to the trial court for entry of judgment in favor of NARP.

TOAL, C.J., PLEICONES, BEATTY, JJ., and Acting Justice James E. Moore, concur.

[5] Because our ruling on the issues raised by NARP are dispositive, we need not address Richardson's appeal. *See Earthscapes, Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010) (holding an appellate court need not address remaining issues on appeal when disposition of a prior issue is dispositive).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Alonzo Hawes, Respondent.

Appellate Case No. 2012-212978

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 27476
Heard June 11, 2014 – Filed January 7, 2015

VACATED AND REMANDED

Attorney General Alan M. Wilson and Assistant Attorney General William M. Blitch, Jr., of Columbia, for Petitioner.

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood, and Donna Katherine Anderson, of Laurens, for Respondent.

JUSTICE KITTREDGE: With no provocation, Respondent Alonzo Hawes shot and killed his estranged wife in the presence of their children. Following a guilty plea to voluntary manslaughter, the trial court granted Hawes's section 16-25-90 motion for eligibility for early parole, which the court of appeals affirmed. *State v. Hawes*, 399 S.C. 211, 730 S.E.2d 904 (Ct. App. 2012). We issued a writ of certiorari to review the court of appeals' decision. Because the trial court failed to exercise discretion, which was likely the result of its reliance on a prior version of section 16-25-90, we vacate the court of appeals' opinion and remand for reconsideration in light of the correct version of the statute.

I.

In 2007, Hawes visited his estranged wife's home because he wished to take his children to visit a relative. When his wife refused, Hawes shot and killed her, without provocation, in front of the children and fled the scene of the crime. Hawes was indicted for murder but pled guilty to voluntary manslaughter and was sentenced to twenty-two years in prison.[1]

At the sentencing hearing, Hawes moved for early parole eligibility pursuant to South Carolina Code section 16-25-90 (Supp. 2013), which provides that an inmate who commits an offense against a household member "is eligible for parole after serving one-fourth of his prison term when the inmate . . . present[s] credible evidence of a history of criminal domestic violence . . . suffered at the hands of the household member."[2]

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[1] Hawes also pled guilty to possession of a firearm during the commission of a violent crime and was sentenced to five years in prison, with the sentences to run concurrently.

[2] The legislative history of section 16-25-90 indicates that the statute was intended to confer early parole eligibility only to long-term victims of repeated abuse at the hands of a household member. *See* Act No. 7, 1995 S.C. Acts 58–59 (indicating that section 16-25-90 was first enacted alongside the defense of battered spouse syndrome).

The State presented evidence that Hawes and his estranged wife had a decade-long tumultuous relationship, which included instances of mutual combat. The State also presented evidence that Hawes was the primary aggressor in the relationship. Nevertheless, the trial court determined that Hawes was eligible for early parole eligibility, erroneously applying a prior version of section 16-25-90, which provided that a defendant "*shall be* eligible for parole" if he presents "credible evidence of a history of criminal domestic violence . . . suffered at the hands of the household member." S.C. Code Ann. § 16-25-90 (2003) (emphasis added). The trial court concluded that it was "compelled" to grant Hawes early parole eligibility in view of the "shall be" language. The court of appeals affirmed. *Hawes*, 399 S.C. at 215, 730 S.E.2d at 906.

II.

"In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." *State v. Blackwell-Selim*, 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011) (per curiam) (citing *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (quoting *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011)). "A failure to exercise discretion amounts to an abuse of that discretion." *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (citations omitted).

The State contends the court of appeals erred in affirming the trial court because the trial court failed to exercise discretion. We agree, although we see no meaningful difference in the legislature's use of the "shall be eligible" language in the prior version of the statute and the "is eligible" language in the statute in effect when Hawes killed his wife. Under either iteration of the statute, the trial court must exercise discretion based on the evidence presented, consistent with the legislature's intended reach of section 16-25-90. Here, it is apparent the trial court believed its discretion was constrained by the "shall be" language. That perceived limitation of discretion is reflected in the trial court's belief that it was "compelled" to find in favor of Hawes. The trial court further stated that the "use of the word 'shall' in the statute notes mandatory, not precatory, language so that, if the court were to find a credible history of domestic violence suffered at the hands of the victim, the court is required to authorize application of the statute." The trial court

considered the history of violence between the parties and found Hawes "has proven himself to be the recipient of a history of domestic violence by [the victim]." That finding alone, according to the trial court, mandated early parole eligibility for Hawes.

Under these circumstances, we find legal error in the trial court's reliance on the incorrect version of section 16-25-90. The prejudice to the State is manifest in the trial court's acknowledgement that "this is a close case." As a result, we vacate the opinion of the court of appeals and remand to the trial court for reconsideration under the proper version of section 16-25-90.[3]

VACATED AND REMANDED.

TOAL, C.J., and Acting Justice Dorothy Mobley Jones, concur. PLEICONES, J., dissenting in a separate opinion in which BEATTY, J., concurs.

[3] In light of the remand, we do not reach the other challenges raised by the State.

JUSTICE PLEICONES: I respectfully dissent. I agree with the majority that there is no meaningful difference between the two versions of S.C. Code Ann. § 16-25-90.[4] I nonetheless disagree with the majority's interpretation of the trial judge's use of the word "compelled." In my view, the trial judge's use of the word reflects his determination that the evidence presented by Hawes, which included reported instances of criminal domestic violence and a history of mutual physical abuse, was credible. Thus, it is my view, the trial judge determined based upon the weight of the *credible* evidence that he was *compelled* to find § 16-25-90 *applied*, and that Hawes was *eligible* for early parole.[5] To the extent the majority finds legal error based on the trial judge's failure to exercise discretion, I disagree. The trial judge, in granting Hawes early parole eligibility, noted "this is a close case" and that "reasonable minds could certainly disagree with the court's finding." Such language makes clear to me that the trial judge exercised his discretion in determining that Hawes was entitled to early parole eligibility. Accordingly, I would dismiss certiorari as improvidently granted.

BEATTY, J., concurs.

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[4] *Compare* S.C. Code Ann. § 16-25-90 (2003) ("[A]n inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member *shall be eligible for parole* after serving one-fourth of his prison term when the inmate . . . present[s] credible evidence of a history of criminal domestic violence . . . suffered at the hands of the household member."), *with* S.C. Code Ann. § 16-25-90 (Supp. 2013) ("[A]n inmate . . . *is eligible for parole* . . . .").

[5] The trial judge's order states that he was "compelled to find that the Defendant [Hawes] has met his burden."

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Damon T. Brown, Appellant.

Appellate Case No. 2012-213548

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 5288
Heard October 7, 2014 – Filed January 7, 2015

AFFIRMED

Appellate Defender Lara M. Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Deborah R.J. Shupe, both of Columbia; and Solicitor W. Walter Wilkins, III, of Greenville, for Respondent.

WILLIAMS, J.: Damon Tyler Brown (Appellant) appeals his convictions for one count of first-degree criminal sexual conduct (CSC) with a minor, three counts of lewd act upon a child, and three counts of first-degree sexual exploitation of a minor. Appellant argues the circuit court erred in allowing the State's child abuse dynamics and delayed disclosures expert to testify regarding general behavioral

characteristics because her testimony (1) concerned information within the realm of lay knowledge, (2) improperly bolstered the minor victims' credibility, and (3) prejudiced Appellant's case. We affirm.

FACTS/PROCEDURAL HISTORY

On November 20, 2012, the Pickens County Grand Jury indicted Appellant on one count of first-degree CSC with a minor, three counts of lewd act upon a child, and three counts of first-degree sexual exploitation of a minor. The case was called for a jury trial on November 26, 2012.

During the period of sexual abuse, between 2003 and 2006, Appellant lived with his sixteen-year-old girlfriend and her family, including her two brothers (Older Brother and Younger Brother), as well as her mother and stepfather, in a two-bedroom mobile home in Central, South Carolina. Older Brother was ten years old and Younger Brother was eight years old when Appellant first began touching them inappropriately around their private areas.

At trial, Older Brother described countless graphic incidents in which Appellant sexually abused him in the family's mobile home, testifying the abuse occurred almost daily until he was twelve years old. According to Older Brother, Appellant also abused Younger Brother during this time. Younger Brother corroborated Older Brother's recollections of Appellant repeatedly abusing them, testifying the abuse lasted until he was ten years old. Further, Younger Brother recalled one occasion when Appellant forced him to anally penetrate the boys' best friend (Minor Friend) in the bathroom of the mobile home. Minor Friend corroborated Younger Brother's testimony regarding the bathroom incident and testified Appellant sexually abused her and the boys in the mobile home on two occasions. According to the three minor victims, Appellant's only rule was they could never tell anyone what happened when he played with them. If the minor victims broke the rule, Appellant indicated they would get blamed for everything and stated he would "get really mad and something bad would happen."

Older Brother did not disclose the abuse to authorities until May 2009. Although Younger Brother initially refused to speak with law enforcement at that time, he later gave police a written statement describing the abuse in July 2009. Law enforcement then contacted Minor Friend, who described the abuse in a written statement in July 2009 and provided a more detailed account in an August 2010 statement. Older Brother testified he did not provide details about the other minor

victims when he first reported the abuse because he thought everybody would hate him or be mad at him. Younger Brother testified he did not initially tell law enforcement what happened to him because he was embarrassed. Likewise, Minor Friend testified she thought people would blame her for not stopping the abuse and view her as "this disgusting little girl." Appellant extensively cross-examined Older Brother, Younger Brother, and Minor Friend regarding their delayed disclosure of the abuse, as well as discrepancies between the statements they gave to police and the testimony they offered at trial.

The circuit court then held an in-camera hearing to determine the admissibility of testimony from the State's expert witness, Ms. Shauna Galloway-Williams. After the hearing, the circuit court qualified Galloway-Williams as an expert in child abuse dynamics and disclosure, concluding her testimony was relevant and would assist the jury because the seated jurors "would not have any prior knowledge from family members or otherwise as to sex abuse directly."

Subsequently, Galloway-Williams testified she did not review any incident reports or statements associated with this case, never met with or interviewed the minor victims prior to trial, and was not present for their testimony during trial. In fact, her only knowledge about the case came from discussions with the Solicitor's Office. According to Galloway-Williams, research indicates that between seventy and eighty percent of abused children delay disclosing the abuse into adulthood. Further, she stated children delay disclosing abuse for a number of reasons, including: (1) fear of consequences to themselves, the perpetrator, or someone the child loves; (2) the child's age; (3) the child's relationship to the perpetrator; (4) a lack of vocabulary or language to describe what has happened to them; (5) threats by the perpetrator; (6) grooming by the perpetrator; and (7) the perpetrator's normalization of the abusive conduct. Galloway-Williams further explained that most disclosures happen accidentally, and children generally reveal more details over time throughout the disclosure process. When children suffer chronic abuse, she stated it is more difficult for them to sort out the timing of individual incidents and the order in which they occurred. Galloway-Williams also explained that having a close and trusting relationship with the perpetrator can have a very strong impact on whether a child feels like he or she can disclose the abuse. Finally, she testified that child abuse victims will sometimes tolerate sexual abuse to maintain a relationship, particularly if the perpetrator is someone they love and trust.

During its closing argument, the State stressed that Galloway-Williams never met or interviewed the victims; rather, she only testified about symptoms of child abuse

in general. The State then related the symptoms she discussed, including delayed disclosure, to those exhibited by the individual victims in this case. At the conclusion of trial, the jury found Appellant guilty of all seven counts. The circuit court sentenced Appellant to a total of 359 months incarceration: 176 months for first-degree CSC, 128 months for one count of lewd act upon a child, 55 months consecutive for one count of first-degree sexual exploitation of a minor, 55 months concurrent for each of the two remaining counts of first-degree sexual exploitation of a minor, and 128 months concurrent for each of the remaining two counts of lewd act upon a child. This appeal followed.

ISSUE ON APPEAL

Did the circuit court abuse its discretion by admitting testimony from the State's expert on child abuse dynamics and delayed disclosures regarding general behavioral characteristics of child sex abuse victims?

STANDARD OF REVIEW

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (quoting *Douglas*, 369 S.C. at 429-30, 632 S.E.2d at 848) (internal quotation marks omitted). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Grubbs*, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct. App. 2001)). To show prejudice, the appellant must prove "that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citing *Means*, 348 S.C. at 166, 558 S.E.2d at 924).

LAW/ANALYSIS

Appellant argues the circuit court abused its discretion by allowing the State's expert witness on child abuse dynamics and delayed disclosures to testify regarding general behavioral characteristics of sex abuse victims because her testimony (1) was not outside the realm of lay testimony, (2) improperly bolstered the minor victims' testimony, and (3) prejudiced Appellant's case.

I. Lay Testimony

Appellant first argues the circuit court abused its discretion by allowing Galloway-Williams to testify as an expert because the subject matter of her testimony was not beyond the ordinary knowledge of the jury. Appellant contends the jury did not require expert knowledge or opinions to understand why the minor victims delayed disclosing the abuse, as well as what caused them to eventually disclose, because the jury could make its own determination based on the minor victims' testimony. We disagree.

A party is allowed to present expert testimony to the factfinder if "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." *Grubbs*, 353 S.C. at 379, 577 S.E.2d at 496 (quoting Rule 702, SCRE) (internal quotation marks omitted). "Expert testimony may be used to help the jury determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). In *Watson*, our supreme court reviewed the differences between expert testimony and lay testimony:

> Expert testimony differs from lay testimony in that an expert is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions. On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.

Id. at 445-46, 699 S.E.2d at 175. Further, the court provided a three-prong test that a circuit court must consider before allowing the jury to hear expert testimony:

> First, the [circuit] court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the [circuit] court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the [circuit] court must evaluate the substance of the testimony and determine whether it is reliable.[1]

Id. at 446, 699 S.E.2d at 175.

In *State v. Weaverling*, this court confirmed that "both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect." 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) (quoting *State v. Schumpert*, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993)) (internal quotation marks omitted). Further, this court made the following observations:

> Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of

[1] Because Appellant did not challenge Galloway-Williams' qualifications as an expert in child abuse dynamics and delayed disclosures, we decline to address the second prong of the *Watson* test. *See State v. Tyndall*, 336 S.C. 8, 16-17, 518 S.E.2d 278, 282-83 (Ct. App. 1999) (noting an issue not argued in the appellate brief is deemed abandoned on appeal); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

> victims and provides insight into the abused child's often strange demeanor.

Id. at 474-75, 523 S.E.2d at 794. Therefore, this court held the expert testimony was properly admitted because it was relevant and simply explained the effect of sexual abuse on a victim's subsequent conduct. *Id.* at 475, 523 S.E.2d at 794-95. Likewise, in *State v. White*, our supreme court confirmed the admissibility of expert testimony and behavioral evidence in sexual abuse cases, holding such testimony was relevant regardless of the victim's age. 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004). The supreme court stated expert testimony "may be more crucial" when the victims are children because their "inexperience and impressionability often render them unable to effectively articulate" incidents of criminal sexual abuse. *Id.* at 414-15, 605 S.E.2d at 544.

In the instant case, the circuit court overruled Appellant's objection to Galloway-Williams testifying as an expert and found that, based on the jurors' qualifications and their responses to questions during voir dire, the empaneled jury "would not have any prior knowledge from family members or otherwise as to sex abuse directly." At trial, Appellant cross-examined the minor victims extensively regarding their delays in disclosure as well as the varying accounts of the abuse they gave authorities. Indeed, the minor victims delayed disclosing the abuse for almost three years, were unable to recall specific days or dates on which they were abused, gave varying accounts of certain instances of abuse, and divulged more facts each time they spoke about the abuse. Such behavior undoubtedly became a fact at issue in this case, raising questions of credibility or accuracy that might not be explained by experiences common to jurors. *See Weaverling*, 337 S.C. at 474-75, 523 S.E.2d at 794. Accordingly, we find Galloway-Williams' specialized knowledge of the behavioral characteristics of child sex abuse victims was relevant and crucial in assisting the jury's understanding of why children might delay disclosing sexual abuse, as well as why their recollections may become clearer each time they discuss the instances of abuse. *See White*, 361 S.C. at 414-15, 605 S.E.2d at 544; *Weaverling*, 337 S.C. at 474-75, 523 S.E.2d at 794.

Numerous jurisdictions considering this issue have similarly concluded it is more appropriate for an expert to explain the behavioral traits of child sex abuse victims to a jury. *See, e.g., Keri v. State*, 347 S.E.2d 236, 238 (Ga. Ct. App. 1986) (finding expert testimony assisted the jury in understanding why sexually abused victims are secretive and frightened, why they may act out and become disciplinary problems, and why they could not give specific dates for the acts the defendant

allegedly committed); *State v. Carpenter*, 556 S.E.2d 316, 321-22 (N.C. Ct. App. 2001) (stating that the nature of child sexual abuse places lay jurors at a disadvantage and expert witness testimony regarding the fact that delayed and incomplete disclosure is not unusual in cases of child abuse was appropriate); *see also* John E.B. Meyers, *Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion*, 14 U.C. DAVIS J. JUV. L. & POL'Y 1, 45-46 (2010) ("Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. . . . Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome."). We believe the unique and often perplexing behavior exhibited by child sex abuse victims does not fall within the ordinary knowledge of a juror with no prior experience—either directly or indirectly—with sexual abuse. The general behavioral characteristics of child sex abuse victims are, therefore, more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victims' testimony.

Accordingly, we hold the circuit court properly admitted Galloway-Williams' expert testimony because child abuse dynamics and delayed disclosures were subjects beyond the ordinary knowledge of the jury.

II. Bolstering

Next, Appellant argues the circuit court erred in admitting Galloway-Williams' expert testimony because it improperly bolstered the minor victims' testimony. We disagree.

"[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." *State v. Portillo*, 408 S.C. 66, 71, 757 S.E.2d 721, 724 (Ct. App. 2014) (quoting *Kromah*, 401 S.C. at 358, 737 S.E.2d at 499) (alteration in original) (internal quotation marks omitted). "The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). Consequently, "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." *Kromah*, 401 S.C. at 358-59, 737 S.E.2d at 500 (citations omitted).

In *Kromah*, our supreme court held forensic interviewers should avoid (1) stating the child was instructed to be truthful; (2) offering a direct opinion on the "child's veracity or tendency to tell the truth"; (3) indirectly vouching for the child, "such as stating the interviewer has made a 'compelling finding' of abuse"; (4) indicating "the interviewer believes the child's allegations in the current matter"; or (5) opining "the child's behavior indicated the child was telling the truth." 401 S.C. at 360, 737 S.E.2d at 500.

In addition to *Kromah*, Appellant cites several cases in support of his argument that testimony from the State's expert witness was unnecessary and only offered to improperly bolster the minor victims' testimony. *See id.* at 356, 358, 737 S.E.2d at 498-99 (finding the forensic interviewer's testimony regarding a "'compelling finding' of physical child abuse" was problematic and noting experts "may not offer an opinion regarding the credibility of others"); *Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (finding "[t]he forensic interviewer's hearsay testimony impermissibly corroborated the [v]ictim's identification of [the defendant] as the assailant, and the forensic interviewer's subsequent opinion testimony improperly bolstered the [v]ictim's credibility"); *McKerley*, 397 S.C. at 465, 725 S.E.2d at 142 (finding the circuit court erred in admitting the forensic interviewer's testimony, which included "comments on the credibility of the victim's account of the alleged sexual assault"). In contrast to the instant case, these cases involved expert testimony from forensic interviewers who interviewed the victims. Moreover, the experts in *Kromah*, *Smith*, and *McKerley* each indicated, in some manner, that they believed the victims' allegations of abuse. In this case, however, Galloway-Williams never interviewed the victims and had no knowledge of the facts of the case beyond her discussions with the solicitor's office prior to trial. This case is further distinguishable because Galloway-Williams never commented—directly or indirectly—about the credibility of the victims' allegations or testimony, nor did she make any of the statements prohibited by our supreme court in *Kromah*. *See Kromah*, 401 S.C. at 360, 737 S.E.2d at 500.

Appellant also relies on several cases in which our appellate courts have held a forensic interviewer's testimony was improperly admitted at trial. *See State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) ("For an expert to comment on the veracity of a child's accusations of sexual abuse is improper."); *State v. Dawkins*, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989) (finding testimony of psychiatrist who treated child victim of sexual assault was improper because psychiatrist answered "yes" to solicitor's question regarding whether, based on his

examination and observations of the victim, he was "of the impression that [the victim's] symptoms [were] genuine"); *State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 309-10 (Ct. App. 2000) (finding the "professional treating therapist in [this] child sex abuse case improperly vouched for the victim's credibility by answering affirmatively when asked his opinion as to whether the child's symptoms of sexual abuse were 'genuine'"). In *Jennings*, our supreme court held the written report prepared by a forensic interviewer regarding her interviews with the victims was inadmissible hearsay and impermissibly vouched for the victims' credibility because the expert concluded the victims "provided a compelling disclosure of abuse." 394 S.C. at 480, 716 S.E.2d at 94. Both *Dawkins* and *Dempsey* involved therapists who actually treated the victims and offered testimony clearly indicating they believed the victims were telling the truth about the allegations of sexual abuse. *Dawkins*, 297 S.C. at 393-94, 377 S.E.2d at 302; *Dempsey*, 340 S.C. at 571, 532 S.E.2d at 309-10. Contrary to the experts in those cases, Galloway-Williams (1) was not testifying as a forensic interviewer, (2) never interviewed the victims, (3) did not prepare a report for her testimony, (4) did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations, and (5) did not express an opinion regarding the credibility of the minor victims in this case. Thus, we agree with the State's argument that the cases cited by Appellant are factually and legally distinguishable from this case.

Further, because Galloway-Williams never commented on the credibility of the minor victims, but rather offered admissible expert testimony regarding the general behavioral characteristics of child sex abuse victims, we find such testimony did not improperly bolster the minor victims' testimony. Although Galloway-Williams testified that between seventy and eighty percent of children delay disclosing abuse, she never commented on the applicability of that statistic to the victims in this case. Instead, Galloway-Williams testified in broad terms regarding various reasons sex abuse victims may delay disclosure and how the disclosure process progresses more generally. The fact that her testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts. *See Weaverling*, 337 S.C. at 474, 523 S.E.2d at 794 ("An expert may give an opinion based upon personal observations or in answer to a properly framed hypothetical question that is based on facts supported by the record." (quoting *State v. Evans*, 316 S.C. 303, 311, 450 S.E.2d 47, 52 (1994) (internal quotation marks omitted))). Galloway-Williams merely offered reasons why children might delay disclosing instances of sexual

abuse to assist the trier of fact's understanding of the complex dynamics of child victims in sexual abuse cases.

Accordingly, we hold the circuit court properly admitted Galloway-Williams' expert testimony over Appellant's objection at trial because she did not inappropriately vouch for the victims' allegations and, therefore, did not improperly bolster their testimony.

III. Prejudice

Finally, Appellant argues the circuit court erred in admitting Galloway-Williams' testimony because it was cumulative and highly prejudicial to Appellant. We disagree.

Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence." "Improper corroboration testimony that is merely cumulative to the victim's testimony, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration." *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) (emphasis omitted) (citation omitted). Nevertheless, "both expert testimony and behavioral evidence are admissible . . . where the probative value of such evidence outweighs its prejudicial effect." *Weaverling*, 337 S.C. at 474, 523 S.E.2d at 794 (citing *Schumpert*, 312 S.C. at 506, 435 S.E.2d at 862).

> [E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others. It is undeniable that the primary purpose for calling a "forensic interviewer" as a witness is to lend credibility to the victim's allegations. When this witness is qualified as an expert[,] the impermissible harm is compounded.

Portillo, 408 S.C. at 71, 757 S.E.2d at 724 (quoting *Kromah*, 401 S.C. at 358, 737 S.E.2d at 499) (alteration in original). In *Kromah*, our supreme court expressed its concerns about forensic interviewers testifying as experts at trial:

> [W]e can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate. Forensic interviewers might be useful as a

> tool to aid law enforcement officers in their investigative process, but this does not make their work appropriate for use in the courtroom. The rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others, and the work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of abuse. . . . [A]n interviewer's statement that there is a "compelling finding" of physical abuse relies not just on objective evidence such as the presence of injuries, but on the statements of the victim and the interviewer's subjective belief as to the victim's believability. However, an interviewer's expectations 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. Such subjects, while undoubtedly important in the investigative process, are not appropriate in a court of law when they run afoul of evidentiary rules and a defendant's constitutional rights.

401 S.C. at 357 n.5, 737 S.E.2d at 499 n.5.

We find Galloway-Williams' testimony did not merely restate or improperly corroborate the minor victims' testimony. Similar to the expert in *Weaverling*, Galloway-Williams did not interview the victims prior to testifying at trial and her knowledge of this case was limited to discussions with the solicitor. *See Weaverling*, 337 S.C. at 473, 523 S.E.2d at 794. Further, she did not express an opinion on the credibility of the minor victims in this case. *Cf. Dawkins v. State*, 346 S.C. 151, 156-57, 551 S.E.2d 260, 263 (2001) (finding the testimony of four witnesses corroborating what the victim "told them regarding her alleged sexual abuse served only to bolster [the victim's] credibility" and concluding such improper corroboration had a "'devastating impact' on petitioner's trial"). Based on the foregoing, we find her testimony did not improperly corroborate—and, therefore, was not cumulative to—the minor victims' testimony.

Moreover, we find the high probative value of Galloway-Williams' testimony outweighed any prejudicial effect on Appellant's case. *See* Rule 403, SCRE.

Galloway-Williams' testimony was relevant to help the jury understand various aspects of victims' behavior and provided insight into the often strange demeanors of sexually abused children. *See Weaverling*, 337 S.C. at 474, 523 S.E.2d at 794. Additionally, her testimony assisted in explaining the psychological effects of sexual abuse on child victims' behavior—a topic about which neither the children nor a lay witness did or could have properly testified. Galloway-Williams' testimony was also crucial in explaining to the jury why child sex abuse victims are often unable to effectively relay incidents of criminal sexual abuse. *See White*, 361 S.C. at 414-15, 605 S.E.2d at 544 (noting "[t]he inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior"). As noted above, Galloway-Williams did not repeat any of the minor victims' allegations, vouch for their credibility, or otherwise make any statements that improperly corroborated their testimony at trial. In addition, she was not qualified as an expert in forensic interviewing. Thus, the concerns our supreme court expressed in *Kromah* regarding forensic interviewers testifying as experts in child sexual abuse cases are inapplicable to the instant case because the danger of prejudice—which could result from the jury giving undue weight to the expert testimony of a forensic interviewer who interviews the victim and expresses an opinion as to the child's credibility—is simply not present here. *See Kromah*, 401 S.C. at 357 n.5, 358, 737 S.E.2d at 499 & n.5.

Accordingly, we hold the circuit court properly admitted Galloway-Williams' testimony because her testimony did not improperly corroborate the minor victims' testimony, was not cumulative, and its probative value substantially outweighed any prejudice Appellant experienced from its submission to the jury.

CONCLUSION

Based on the foregoing, we hold the circuit court properly admitted Galloway-Williams' expert testimony regarding general behavioral characteristics of child sex abuse victims and delayed disclosures because the subject matter fell outside the realm of lay testimony. Moreover, we hold Galloway-Williams' expert testimony did not improperly bolster the minor victims' testimony because (1) she never met with the minor victims, (2) her knowledge of this case was limited to her discussions with the solicitor, (3) she did not comment on the credibility of the minor victims in the instant case, and (4) she did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations more generally. We further find her testimony did not improperly corroborate—and, therefore, was

not cumulative to—the minor victims' testimony. Finally, we hold the high probative value of Galloway-Williams' testimony outweighed any prejudicial effect on Appellant's case. Accordingly, the circuit court's decision is

AFFIRMED.

GEATHERS and McDONALD, JJ., concur.