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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2021-001246

The State, ...Petitioner-Respondent,

v.

Charles Dent,..Respondent-Petitioner.

BRIEF OF RESPONDENT

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STATE'S STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals majority opinion err in holding the trial judge's failure to give the circumstantial evidence charge required by *State v. Logan* was prejudicial to Dent when the evidence presented against Dent was almost entirely direct and not circumstantial? Furthermore, did the Court of Appeals majority opinion err in finding the trial judge's failure to give the *Logan* instruction was prejudicial to Dent when the trial judge's instruction, as a whole, correctly conveyed the applicable law and properly instructed the jury on reasonable doubt and presumption of innocence?

CHARLES DENT'S STATEMENT OF QUESTION PRESENTED

The Court of Appeals, based on this Court's precedent, unanimously agreed that trial judge erred by declining Charles Dent's request to give the circumstantial evidence charge required by *State v. Logan*. Did the majority of the Court of Appeals correctly hold the failure to give this instruction prejudiced Mr. Dent when the Solicitor relied on circumstantial evidence during the State's closing argument and the Attorney General relied on circumstantial evidence on appeal to argue against Mr. Dent's request for the Court of Appeals to reverse the trial court and enter an order directing the verdict on the charge of first-degree criminal sexual conduct with a minor?

STATEMENT OF CASE

On July 15, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Charles Dent with two counts of third-degree criminal sexual conduct with a minor and two counts of disseminating obscene material to a minor twelve years of age or younger involving his granddaughter J.M. R. 17-18.

On July 30, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Mr. Dent with two counts of first-degree criminal sexual conduct with a minor involving his granddaughter J.M. R. 19-20.

On August 22, 2014, the Sheriff's Office in Calhoun County Alabama served a fugitive from justice arrest warrant on Mr. Dent at his home in Rabittown, Alabama. At the same time, law enforcement executed a search warrant and seized electronic devices and electronic storage devices.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01674 alleging Mr. Dent committed first-degree criminal sexual conduct with a minor, "between April 2013 and August 2013," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 33-34.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01673 alleging Mr. Dent committed first-degree criminal sexual conduct with a minor, "between August 2013 and April 2014," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 31-32.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01671 charging Mr. Dent with disseminating obscene material to a minor twelve years or younger, "between the dates of April and April 2013," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." R. 25-26. On March 15, 2018, the Beaufort County Grand Jury amended this indictment to allege, between "April of 2013 through April of 2014," Mr. Dent showed J.M. "multiple photographs of his own genitalia on a digital camera." R. 23-24.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01672 charging Mr. Dent with disseminating obscene material to a minor twelve years or younger, "between the dates of August 2013 and April 2014," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." R. 29-30. On March 15, 2018, the Beaufort County Grand Jury amended this indictment to allege, "between April of 2013 and April of 2014," Mr. Dent showed J.M. "pornography." R. 27-28.

From May 21-24, 2018, the State tried Mr. Dent before the Honorable Alex Kinlaw, Jr. and a jury. Alexandra M. Joseph and S. Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office represented the State. Charles Grose represented Mr. Dent. The jurors found Mr. Dent not guilty of first-degree criminal sexual conduct with a minor "between the dated of April 2013 and August 2013" (Indictment No. 2024-GS-07-01674). R. 12. The jurors found Mr. Dent guilty of first-degree criminal sexual conduct with a minor "between the dates of August 2013 and April 2014" (Indictment No. 2014-GS-07-01673) and both counts of disseminating obscene material to a minor twelve years or younger. R. 9-11. Judge Kinlaw sentenced Mr. Dent to concurrent terms of imprisonment of thirty years for first-degree criminal sexual conduct with a minor and fifteen years for each count of disseminating obscene material to a minor twelve years or younger. R. 13-15.

On June 1, 2018, Mr. Dent moved for a new trial. R. 73-79. On June 4, 2018, the State responded. R. 82-86. By written order dated June 17, 2018, filed on June 22, 2018, Judge Kinlaw denied the motion for a new trial. R. 16.

Mr. Dent appealed to the Court of Appeals of South Carolina, raising the following questions on appeal:

I. Did the trial judge err by not directing a verdict of acquittal on Indictment No. 2014-GS-07-01673 when the State failed to present any evidence that "fellatio on the Defendant by J.M." occurred during the time frame of the indictment?

II. Did the trial Judge err by not limiting the definition of sexual battery to "fellatio" when "fellatio on the Defendant by J.M." was the only sexual battery alleged in the indictment?

III. Did the trial judge err by not excluding the testimony of Tessa Trask's when this testimony was based on her own theories and the record does not contain any evidence that her theories are reliable?

IV. Did the trial judge err by allowing the prosecution to introduce State's Exhibits 1, 3, 4, 6, 11, 13, and 15 when the prosecution could not establish the chain of custody, the witness could not authenticate those images, the images were not relevant to guilt, and the prejudicial effect of those images and J.M.'s testimony about those images substantially outweighed any probative value?

V. Did the trial judge err by overruling Charles Dent's objections during the State's opening and the direct examination of John Camelo, thereby allowing Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

VI. Did the trial judge err by denying Charles Dent his Sixth Amendment right to confront and cross-examine John Camelo about the real reasons why he ended the relationship with Lori Michelle Mayo?

VII. Did the trial judge err by deviating from the jury instruction mandated by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013)?

VIII. Did the trial judge err by not quashing the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the arrest warrants?

IX. Did the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants?

X. Did the trail judge err by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute?

XI. Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

A. 68-69.

On February 11, 2021, the Court of Appeals convened an oral argument. On August 18, 2021, relying on this Court's opinion in *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020), the Court of Appeals reversed the trial court for "failing to charge the jury with the requested circumstantial evidence instruction established by *State v. Logan*, 405 S.C.

83, 747 S.E.2d 444 (2013)." *State v. Dent*, 434 S.C. 357, ___, 863 S.E.2d 478, 480 (Ct. App. 2021). The Court of Appeals did not address any of the other questions presented by Mr. Dent's appeal. *Id*., 434 S.C. at ___, fn. 3, 863 S.E.2d at 481, fn. 3.

On August 26, 2021, the State petitioned for rehearing. A. 12-22. On August 27, 2021, the Court of Appeals requested Mr. Dent file a return. A. 23. On September 2, 2021, Mr. Dent filed his return (A. 24-32) and a cross-petition for rehearing (A. 33-40). On September 3, 2021, the Court of Appeals requested the State file a return to Mr. Dent's cross-petition. A. 41. On September 9, 2021, the State filed its return. A.42-50. On September 20, 2021, Mr. Dent replied. A. 51-55. On October 18, 2021, the Court of Appeals denied the cross-petitions for rehearing. A. 8-11.

On October 29, 2021, the State filed a petition for writ of certiorari. On November 22, 2021, Mr. Dent filed his Return to the State's petition. The State did not reply. Also on November 22, 2022, Mr. Dent filed his cross-petition for a writ of certiorari raising the following questions:

I. Did the trial judge err by not directing a verdict of acquittal on Indictment No. 2014-GS-07-01673 when the State failed to present any evidence that "fellatio on the Defendant by J.M." occurred during the time frame of the indictment?

II. Did the trial Judge err by not limiting the definition of sexual battery to "fellatio" when "fellatio on the Defendant by J.M." was the only sexual battery alleged in the indictment?

III. Did the trial judge err by not excluding the testimony of Tessa Trask when this testimony was based on her own theories and the record does not contain any evidence that her theories are reliable?

IV. Did the trial judge err by allowing the prosecution to introduce State's Exhibits 1, 3, 4, 6, 11, 13, and 15 when the prosecution could not establish the chain of custody, the witness could not authenticate those images, the images were not relevant to guilt, and the prejudicial effect of those images and J.M.'s testimony about those images substantially outweighed any probative value?

V. Did the trial judge err by overruling Charles Dent's objections during the State's opening and the direct examination of John Camelo, thereby allowing Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

VI. Did the trial judge err by denying Charles Dent his Sixth Amendment right to confront and cross-examine John Camelo about the real reasons why he ended the relationship with Lori Michelle Mayo?

VII. Did the trial judge err by not quashing the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the arrest warrants?

VIII. Did the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants?

IX. Did the trail judge err by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute?

X. Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

On December 14, 2021, the State filed its Return. On December 29, 2021, Mr. Dent replied.

On September 9, 2021, this Court granted the State's petition and held Mr. Dent's petition "in abeyance pending resolution of the State's petition." On October 6, 2022, the State filed its Brief of Petitioner. This Brief of Respondent follows.

STATEMENT OF FACTS[1]

Charles Dent grew up in Florida and Tennessee. He joined the United States Navy in 1985. During his twenty-year career, Mr. Dent was stationed in Great Lakes, Illinois, Atlanta, Georgia, Jacksonville, Florida, Point Loma, California, and New Orleans,

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[1] A detailed Statement of Facts in included in the Final Brief of Appellant. A. *.

Louisiana. He had a security clearance and responsibilities involving homeland security. He had three children—Michael (a stepson), Lori Michelle Mayo, and Matthew. Mr. Dent was married to Lori Mayo's mother on two occasions. Ms. Mayo lived with her mother in Jacksonville. Mr. Dent retired to a farm in Alabama where he lived with Matthew. R. 615-20.

Matthew committed suicide in June 2012. Following a memorial service in Jacksonville, Mr. Dent renewed contact with Ms. Mayo and her children. They were living in "very poor" conditions in "a crappy neighborhood." They discussed Ms. Mayo and the children moving to the Beaufort area of South Carolina, which is near where Mr. Dent's brother, David Dent, has a vacation home in Hilton Head. Ms. Mayo and the children moved into a "two-bedroom, two and a half bathroom," "900 square" foot townhouse. Mr. Dent "paid for everything, the lease, the cable, the water, the electricity." Ms. Mayo was unemployed and had poor credit. They planned for Ms. Mayo to "improve her credit" and eventually begin paying the bills. At the end of the one-year lease, Mr. Dent continued paying the rent for a larger, four bedroom, three-and-a-half-bath townhouse in the same complex. Mr. Dent regularly traveled to South Carolina where he visited Ms. Mayo and the children in Beaufort, his friends Mitch and Terri Fife in Charleston, and his mother in Charlotte, North Carolina. He brought presents for his two grandchildren, tailored to the individual interests of each child. R. 620-28.

During the time Ms. Mayo and the children lived in the first townhouse, Ms. Mayo had financial difficulties because she was unemployed for most of that year. Mr. Dent paid for J.M.'s dance classes and acrobatics and for A.M.'s Boy Scouts and fishing supplies. He helped Ms. Mayo with her car payment. R. 628-30. Mr. Dent identified and testified about

messages between him and Ms. Mayo regarding her requests for money. By March or April 2014, Mr. Dent "was considering ending the lease and trying to find them a much cheaper place where [Ms. Mayo] could possibly live independently with her children." R. 630-34.

During one of his visits, Mr. Dent met John Comelo, who was introduced to him as a "maintenance man" for a "pool company." Dr. Dent learned, from J.M., after the fact, that Mr. Comelo had moved into the second townhouse. Mr. Dent was concerned and "thought it was really strange that [Ms. Mayo] and him had only been dating, perhaps, less than a month and he moved in." Mr. Dent expressed those concerns to Ms. Mayo, which increased the tension between them. R. 634-36.

John Camelo met J.M. through her mother Lori Michelle Mayo, in May of 2014. Mr. Camelo and Ms. Mayo began dating. Mr. Camelo testified:

> Q. And at any point when you and Lori started dating, did you notice anything in particular about [J.M.'s] behavior?
>
> A. Yes. I observed red flags – what I considered red flags in terms of her actions, gestures, mannerisms, things that a nine-year-old child at the time wouldn't normally be – you don't –
>
> Q. Okay. Now, you say "red flags." Let me back up a little bit. Have you ever worked in a law enforcement capacity?
>
> A. I did. I spent four years as a police cadet and police cadet supervisor with Beaufort City. I was, also, a volunteer fire fighter for several years. I was a private investigator for 10 years. Also, a Sunday school teacher, Boy Scout leader.
>
> And so I've had a lot of training –

R. 258-60.

Mr. Dent objected, and the trial judge considered the objection outside the presence of the jurors. Counsel reminded the trial judge, "[W]hen we had a sidebar about scheduling matters, I, also, brought up my concerns about them trying to portray Mr. Camelo as

somebody who had special training in order to be able to detect child abuse or sexual abuse." Counsel reminded the trial judge about the objection during the State's opening. Counsel argued, "[I]nitially, their first question sounded like it was going to be limited to just the behavior that he witnessed that he thought was odd," but the Solicitor questioned Mr. Camelo about "not just his employment history," but also about training which seems intended to show that Mr. Camelo "has some sort of training to be able to detect child abuse," which would be "improper vouching or bolstering" under the *Kromah*[2]-*Jennings*[3]-*Anderson*[4] line of cases. Counsel argued witnesses are not allowed to testify "that somebody is telling the truth" or offer "an opinion that this child was sexually abused." Counsel explained:

> I think it's done in kind of a clever way. Because they're trying to present him and tell you a little bit about the background, but doing it in a way that you would normally qualify somebody as an expert without offering him as an expert so that it has that same, you know, appeal to a jury. And – and that's my concern.
>
> So I would move to limit his testimony.

R. 260-62.

The State admitted it was "laying the foundation for him to give a lay opinion based on personal experiences. He was a private investigator for 10 years." The prosecution proffered Mr. Camelo's testimony. Mr. Camelo testified, "I was personally sexually abused by a male for a – during my youth between the ages of 12 and 13." He also raised a

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[2] *State v. Kromah*, 401 S.C. 340, 37 S.E.2d, (2013).

[3] *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011).

[4] *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015).

stepdaughter "[f]rom the age of five till she was 17." Mr. Camelo identified the "red flags" he claimed to have observed:

> Being overly clingy with men, particularly, wanting to kiss my cheek, wanting to touch me in areas that a – you know, where a child – a minor should not be touching a male, particularly, the genital area.

R. 262-64. Based on these concerns, Mr. Camelo testified he asked J.M. "if anyone had touched her, or if anyone had done anything inappropriate to her." J.M. answered, "My grandfather." R. 264-66.

Mr. Dent further noted Mr. Camelo's testimony risked violating the time and place limitations of Rule 801(d), SCRE, and the Solicitor instructed Mr. Camelo not to name the alleged perpetrator. The trial judge limited the Solicitor from asking any "questions regarding whether or not he has an opinion regarding abuse." R. 266-67, 269.

The Solicitor then proffered Mr. Camelo's testimony about "a second time [J.M.] disclosed to this witness" after the first interview at Hopeful Horizons. J.M. wrote a statement on a piece of paper that she had not made during the interview because she, purportedly, "was afraid." R. 267-69.

The jury returned to the courtroom. Mr. Camelo testified about the "red flags" he observed: "Gestures of a sexual nature that a none-year-old – that a minor wouldn't normally know without having been shown or taught by someone." When J.M. told him "something had been going on," Mr. Camelo was so concerned that he immediately informed Ms. Mayo, who contacted law enforcement. R. 270-72.

Mr. Camelo testified about "a second disclosure" after J.M.'s first interview at Hopeful Horizons." J.M. wrote it on a piece of paper, handed it to Mr. Camelo, and "ran off." Mr. Camelo testified this statement "was even more concerning than the first

disclosure." This disclosure by J.M. was made to Mr. Camelo after Mr. Camelo did not allow an older male neighbor to speak to J.M. Mr. Camelo gave the paper to Ms. Mayo who contacted law enforcement. R. 272-73.

Mr. Camelo claimed he moved in with Ms. Mayo "primarily because they had a fear of [Mr. Dent] coming around."[5] Mr. Camelo also testified J.M. "would tell people I was her father, her new dad" and called him "Dad."[6] Mr. Camelo also helped Ms. Mayo and her children move into a motel before they left South Carolina. Mr. Camelo testified that he ended the romantic relationship with Ms. Mayo because, "[v]ery shortly after – after all of this initiated, which, unfortunately, became very stressful, a very stressful, strange situation. And I just felt it was best to end the relationship. R. 271, 275-77.

On cross-examination, Mr. Camelo acknowledged that when he moved in with Ms. Mayo and her children, he took the downstairs room that Mr. Dent used when he visited. Mr. Camelo acknowledged he was the one that brought up the subject of sexual abuse when J.M. made the first disclosure. Mr. Camelo acknowledge that A.M. (J.M.'s older brother) never referred to him as "Dad." Mr. Camelo denied telling the prosecutors that Mr. Mayo told her children that Mr. Camelo could "be their new dad." Counsel reminded Mr. Camelo that he had attributed the breakup with Ms. Mayo to the stress of the sexual abuse allegations. Counsel asked, "You had, also, learned some information about Lori's background?" When Mr. Camelo asked for clarification of the question, counsel explained, "That she had been a stripper in Florida and has smoked marijuana." The prosecution

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[5] Mr. Dent objected as speculation and hearsay and moved to strike. The trial judge sustained the objection but did not strike the testimony." R. 276.

[6] On cross-examination, Ms. Mayo testified that J.M. referred to as "Dad" "[p]retty much every man I've ever dated." Ms. Mayo could not recall how many men J.M. called "Dad." R. 344-46.

objected based on relevance. The trial judge excused the jurors from the courtroom, and counsel explained:

> Your Honor, the question that was asked on direct was the reason for the breakup of the relationship. And they were allowed to paint a particular picture to the jury.
>
> I was provided by e-mail a summary of an interview that the prosecution's office did with Mr. Camelo preparing for trial. And in at that interview, it says, After he started dating Lori, he learned that she used to be a stripper in Florida and she smoked marijuana. He decided this was not a relationship he wanted to continue. And then it goes into, he, eventually, you know, moved into the house.
>
> And so I don't think that – the suggestion that was made on direct was that Mr. Dent and the allegations were responsible for the breakup. But that's contrary to what he told the Prosecutors.
>
> Also, he had told them – according to their summary, he had told them that Lori had told the kids that [Mr.] Camelo could be their new dad.

R. 277-83. Counsel explained the Sixth Amendment's confrontation right allows Mr. Dent to question Mr. Camelo about facts "relevant to the issue of the breakup." Counsel argued the questions are relevant to "rebut the suggestion that [the prosecution] made that the allegations by [J.M] against Charles Dent was the reason that the relationship broke up." R. 283-84.

The Solicitor argued the reasons for the breakup are not relevant and pointed to her notes about Mr. Camelo starting to distance himself from Ms. Mayo after J.M.'s disclosure of sexual abuse. Counsel for Mr. Dent proffered the cross-examination of Mr. Camelo. Mr. Camelo acknowledged he did not want to continue the relationship after learning Ms. Mayo had been a stripper in Florida and smoked marijuana. The trial judge ruled, "I'm going to sustain the objection as to relevancy and strike that last question you asked regarding that." R. 284-90, 297-99; Courts Exhibit 6, R. 790-91.

When the jurors returned to the courtroom, Mr. Dent continued his cross-examination of Mr. Camelo. Mr. Camelo did not know whether his moving out of Ms. Mayo's townhouse coincided with the end of the lease agreement. Mr. Camelo claimed he was not aware of the fact that Mr. Dent paid the rent until after the fact. R. 290-92. Mr. Dent cross-examined Mr. Camelo about the conversation he had with J.M. between her two interviews at Hopeful Horizons. Mr. Camelo testified about the older male, named Maurice, coming to the townhouse "three times that day." On one of those occasions, Maurice "opened the door and walked in" without permission. Mr. Camelo told him to leave, but he came back again and sat down on the back porch in a lawn chair. Maurice wanted to see J.M. Mr. Camelo was concerned about this man's intensions because "he was much older than" J.M. Mr. Camelo called law enforcement. He also confronted J.M. about Maurice. J.M. did not make the second disclose of sexual abuse until after Mr. Camelo confronted her about Maurice. R. 292-97.

Lori Mayo testified. After Matthew's death, Ms. Mayo "felt an obligation to [Matthew] to befriend [their father] and to give him a chance in our lives." Prior to moving to Beaufort County, Ms. Mayo and her children lived in Jacksonville, Florida in a neighborhood that "wasn't a very nice neighborhood." According to Ms. Mayo, Mr. Dent paid part of the rent for both townhouses in Beaufort County. Ms. Mayo was not able to afford either townhouse on her own, and Mr. Dent's name was on both leases. Mr. Dent helped pay Ms. Mayo's cell phone bill in 2014. She acknowledged that when they moved from the smaller townhouse into the larger townhouse, the extra bedroom was for her father, Charles Dent. R. 301-07.

Ms. Mayo identified John Camelo as her "ex-boyfriend." Ms. Mayo understood J.M. made a disclosure to Mr. Camelo. After Mr. Camelo told her about the disclosure, Ms. Mayo talked to J.M. Ms. Mayo contacted A.M.'s therapist. After taking to A.M.'s therapist, Ms. Mayo called law enforcement. R. 307-09. After J.M.'s initial disclosure, Ms. Mayo exchanged text messages with Mr. Dent.[7] The conversation began with Mr. Dent stating Ms. Mayo needed to "pay half the rent" and contribute towards the cable bill and phone bill. Ms. Mayo texted "she didn't know that [Mr. Dent] touched her daughter." Mr. Dent responded "he would never touch the children and she knew that." They discussed removing Mr. Dent from the lease agreement. In subsequent texts, Ms. Mayo accused Mr. Dent of showing "pictures of his penis to" J.M. and threatened Mr. Dent "had way more than his credit to worry about if the rent didn't get paid" or if she did not get "the allotment that he owed her." R. 289-15.

On cross-examination, Ms. Mayo repeated that J.M. went to Mr. Camelo both times she disclosed sexual abuse. Her written statement to law enforcement, however, stated she "questioned [her] daughter because of [her] own suspicions about [her] dad ever doing anything that she didn't want him doing." She agreed "John Camelo's name is never mentioned anywhere in that statement." Ms. Mayo further acknowledged that she did not call law enforcement on the same day she questioned J.M. R. 322-24. Mr. Dent cross-examined Ms. Mayo about the text messages. Ms. Mayo acknowledged she and Mr. Dent argued about the rent money and money for J.M.'s dance lessons. She acknowledged the disagreements over money began in 2013. R. 340- 42. Ms. Mayo could not recall when

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[7] Over objection, the trial judge allowed Ms. Mayo to read a summary of the text messages from an incident report rather than referring to the actual text messages. R. 310-11; Court's Exhibit 9. The prosecution later introduced the actual text messages.

she met John Camelo. Ms. Mayo admitted they had a romantic relationship but denied Mr. Camelo ever moved into the townhouse, acknowledging only that "he stayed over every once in a while [] for maybe the night." Finally, Ms. Mayo acknowledged on cross-examination that J.M. was a good student in Beaufort County. J.M. struggled more with school after they moved to North Carolina. R. 257-59.

J.M.'s direct examination is less than eight pages of the 769-page trial transcript. She testified she used to live in Beaufort County, with her mother and brother, in two different houses in the same neighborhood. Her grandfather, Charles Dent, would sometimes visit. The visits lasted about a week. R. 371-73.

J.M. identified John Camelo as, "My mom's ex-boyfriend," who lived with them for a while. When asked, "[D]o you remember what you told John?," J.M. replied, "Not really." J.M. could not remember what she told her mother. R. 373-74. The Solicitor asked J.M. if she "remember anything about what was done to you while you lived in those houses?" J.M. testified:

> I remember he started kissing me, like, on my face, my mouth. He started licking my belly, like, my belly button and started, like, touching me in weird places. And he took pictures of his private parts and told me to take pictures of mine.

R. 374-76.

J.M. also claimed Mr. Dent showed her pictures of "[p]eople having sex" on one occasion. Regarding allegations of a "sexual battery," the following exchange occurred:

> Q. Okay. Did he ever make you touch his penis?
>
> A. He didn't make me touch. He made me lick his private parts.
>
> Q. Can you tell me about that?
>
> A. It's hard to explain. I'm sorry.

Q. That's okay. When you say he made you, what does the that mean?

A. It means he told me to.

Q. Okay. Once or more than once?

A. Once.

R. 377. J.M. denied Mr. Dent had ever threatened her. R. 377-78.

On cross-examination, J.M. confirmed Mr. Dent never threatened her, stated the fellatio occurred only one time, and acknowledged Mr. Dent never touched her private parts under her clothing. J.M. denied she ever called John Camelo—or any other person—"Dad." J.M. never met her biological father, which was hard on her growing up. J.M. acknowledged her mother is important to her, and she wants to please her mother. J.M. was close to her Uncle Matthew. Matthew's suicide was hard on J.M. She couldn't recall how many houses she lived in after moving away from South Carolina. J.M. made A's and B's in in South Carolina but "struggled" with grades after she moved to North Carolina. J.M. had difficulty making friends in North Carolina. J.M. did not recall who started the conversations with Mr. Camelo and her mother about the sexual abuse allegations. She could not remember if her mother wanted her to make sure she "said certain things" during the Hopeful Horizons interviews. J.M. recalled talking to people about her testimony, but she could not recall whether she practiced the questions and answers. R. 379-89.

The trial judge qualified Tessa Trask as an expert in the behavioral characteristics of child victims of sexual abuse, subject to the pre-trial objections. Ms. Trask never met J.M. or read the case file; however, she did watch some of pre-trial proceedings. R.391-94. Ms. Trask defined the "traumagenic model." Child sexual abuse is "considered traumatic for the child because it's introducing sexuality" in a "traumatic" and "in a way that's

developmentally inappropriate." The child "may experience trauma symptoms or any other reactions that a child or an adult may experience when a traumatic event occurs." When the Solicitor asked Ms. Trask to provide a "working definition of trauma," Mr. Dent objected, pursuant to *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015) (state failed to show individual reliability of witness sufficient to allow her to testify as child abuse assessment expert), because the trial court has to determine the reliability of the testimony, noting that if the working definition is something the expert developed herself, then "it's not subject to peer review." The Solicitor argued, "This goes to weight, not admissibility." The trial judge agreed and overruled the objection. R. 394-95. Ms. Trask testified, "So what I consider to be trauma has about six parts." She testified:

> So the first part is something that is extremely stressful or scary. It's something that occurs outside of the realm of someone's typical experience. It's not something they would expect to happen. It's something that makes them feel temporarily overwhelmed. Their ability to cope – they're not able to cope in the moment, rather.
>
> Another piece is it makes them change the way that they think about themselves, about others, and the world. It makes them feel helpless, ashamed, or horrified.

R. 394-96.

Ms. Trask testified "there are three main categories of symptoms" of trauma "called avoidance, hypervigilance, and reexperiencing symptoms." Regarding sexual abuse trauma, "some children may exhibit no signs and symptoms," and "some children may exhibit like a complete 180 in their behavior or in their personality." However, Ms. Trask expects "to see the trauma symptoms" of avoidance, hypervigilance, and reexperiencing. She also "expect[s] to see a change in behavior, like a change in sleep patterns, eating

patterns, or energy." Ms. Trask testified she "may expect" to see "developmentally inappropriate sexual behavior." R. 396-98.

Ms. Trask testified, "Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead," although Ms. Trask acknowledged she is "not an expert" in ADD or ADHD. R. 399.

Ms. Trask testified about the disclosure process. "It happens incrementally or gradually over time" in different stages, ranging "from tentative to active." Disclosure could be accidental (by chance) or purposeful. R. 399-400.

Ms. Trask testified about "grooming," which involves three "pieces." The first involves "the giving of privileges, things of value, money, treats, prizes." The second involved "creating, developing, maintaining a trusting relationship with the child and the family so that the perpetration can gain access to the child." The third involves the perpetrator "gradually exposing the child to sexual contents, and so normalizing sexual content through gradual exposure." R. 400.

Ms. Trask testified there are risk factors of sexual abuse for the child and the caregiver:

> So risk factors for the child would be age, emotional well being, prior history, and whether or not the child has any kind of delay or disability.
>
> Risk factors for the caregiver would include whether there's any substance used, or substance abuse on behalf of the caregiver, and then, also, whether the caregiver is a single parent.

R. 400-01.

On cross-examination, when asked about using her "own framework" for the working definition of trauma, Ms. Trask would only say, "My testimony is based on a combination of my education, my training, and my experience in the field." R. 402-03.

Ms. Trask reconfirmed she never met J.M., interviewed J.M., or read J.M.'s file at Hopeful Horizons. Ms. Trask does not know J.M.'s social history. She does not know whether J.M. has ADHD. She did not interview Ms. Mayo. Ms. Trask acknowledged the loss of a close relative can be a source of trauma for a child. Children can have adjustment disorders unrelated to trauma. R. 403-06.

Shauw Chin Capps, the chief executive officer of Hopeful Horizons, interviewed J.M. on July 10 and 25, 2014. She identified the videotapes of the two interviews, which were played to the jurors, subject to pre-trial objections and redactions. R. 422-30.

Charles Dent testified. He denied forcing J.M. to commit fellatio, denied taking pictures of his own penis and showing them to J.M., and denied showing J.M. any pornography. R. 614-15, 636-37. Mr. Dent called his mother Audrey Sue Leffler (R. 650-63), his brother David Dent (R. 673-82), and his good friends Mitch Fife (R. 644-70) and Terri Fife (R. 670-72), who corroborated various aspects of Mr. Dent's testimony. They also testified about his interactions with his grandchildren.

STANDARD OF REVIEW

"In criminal cases, this court reviews errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous." *State v. McBride*, 416 S.C. 379, 385, 786 S.E.2d 435, 438 (Ct. App. 2016). "Thus, on review, the court is limited to determining whether the trial court abused its discretion*."* *Id.* "An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." *Id*.

"The law to be charged to the jury is determined by the evidence presented at trial. . . . , [and] a trial court commits reversible error if it fails to give a requested charge on an

issue raised by the evidence." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The evidence presented at trial determines the charged jury instruction. The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict." *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (internal citations and quotations omitted). "A jury charge is no place for purposeful ambiguity." *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), *holding extended by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

"In reviewing jury charges for error, [an appellate court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting *State v. Adkins,* 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003)). "Errors, including erroneous jury instructions, are subject to harmless error analysis." *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 (citing *Belcher*, 385 S.C. at 611, 685 S.E.2d at 809). "When considering whether an error with respect to a jury instruction was harmless, [an appellate court] must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." *Id.* (internal quotations omitted).

ARGUMENT

The Court of Appeals, based on this Court's precedent, unanimously agreed that trial judge erred by declining Charles Dent's request to give the circumstantial evidence charge required by *State v. Logan*. The majority of the Court of Appeals correctly held the failure to give this instruction prejudiced Mr. Dent when the Solicitor relied on circumstantial evidence during the State's closing argument and the Attorney General relied on circumstantial evidence on appeal to argue against Mr. Dent's request for the Court of Appeals to reverse the trial court and enter an order directing the verdict on the charge of first-degree criminal sexual conduct with a minor.

The State acknowledged it was error when the trial court denied Mr. Dent's request to give the *Logan* circumstantial evidence instruction. *See, e.g.*, State's Petition, at 7; Brief of Respondent, at 31; State's Petition for Rearing, at 1-2. The State, however, argues the majority of Court of Appeals erred for two reasons: (1) "the error was harmless because the evidence presented against Dent was almost exclusively direct evidence and not circumstantial evidence" and (2) "the trial judge's instructions as a whole, properly conveyed the applicable law and correctly instructed the jurors on reasonable doubt and the presumption of innocence." State's Petition, at 7. For the reasons set forth below, this Court must reject these arguments.

A. This Court cannot say beyond a reasonable doubt that the trial court's failure to five the *Logan* circumstantial evidence instruction did not contribute to the verdict.

The State asks this Court to ignore its reliance on circumstantial evidence—both at trial and during the appeal to the Court of Appeals. Regarding the State's reliance on circumstantial evidence at trial, the Court of Appeals reasoned:

> There was no physical evidence, and the State spent substantial time in summation explaining to the jury that the case was "about circumstantial evidence." Further, the State read part of the trial court's planned charge on circumstantial evidence to the jury, noting that Dent "didn't want to read out the [planned] definition of circumstantial evidence." Considering the circumstantial nature of the evidence, we find these errors prejudiced Dent.

Dent, 434 S.C. at 863 S.E.2d at 481.

The Court of Appeals correctly held the Solicitor relied on circumstantial evidence during the State's closing argument, and this holding is supported by the record. Responding to Mr. Dent's closing argument, the Solicitor argued:

> And he started talking about circumstantial evidence. And he said the Judge would talk to you about circumstantial evidence. And he didn't want to read out the definition of circumstantial evidence that the Judge is going to

> read.[8] But I'm going to do that because circumstantial evidence is frequently viewed as a dirty word, I think. If you guys – you know – it's viewed as not being serious. But – and I'm going to read it.
>
> Crimes may be proven by circumstantial evidence. The State can rely on direct evidence, circumstantial evidence, or some combination of the two. The Judge is going to read that to you.
>
> Circumstantial evidence is evidence. And it's not a lesser type of evidence. And why – why is this case about circumstantial evidence? Why do we not have photos of Jaelynn licking the Defendant's penis? Why do we not have Jaelynn's clothes covered in the Defendant's semen? We don't have that because of the ***grooming*** process. Because sexual assault cases, these type of cases, they do not happen out in broad daylight with witnesses. They happen in private homes. They happen between two people who have a power difference. And that's what happened here. It happened when J.M. was alone with the offender.
>
> It happened in a private home. It happened after months of ***grooming***. And that is why we must rely on circumstantial evidence.

Tr. 727-29 (emphasis added).

The Solicitor thus equated "circumstantial evidence" and "grooming." In doing so, the State sought to prove a "chain of facts and circumstances indicating the existence of a fact," *Logan*, 405 S.C. at 96, 747 S.E.2d at 451—*i.e.* that grooming was evidence of criminal sexual conduct. The State, in fact, heavily relied on "grooming"—and, therefore, circumstantial evidence—during its initial closing argument. *See, e.g.,* Tr. 696 (discussing Tessa Trask's testimony about "grooming"); 697 ("grooming is his normalized sexual touch though exposure"); 698 (discussing the process of grooming); 698 (linking grooming

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[8] The Court of Appeals correctly considered the impact of the State's closing argument on the credibility of defense counsel. *Compare Dent*, 434 S.C. at ___, 863 S.E.2d at 481 (Ct. App. 2021) ("[T]he State read part of the trial court's planned charge on circumstantial evidence to the jury, noting that Dent 'didn't want to read out the [planned] definition of circumstantial evidence.'") *with State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) ("The effect of the judge's after the fact decision to excise the hesitate to act language from his charge was to diminish appellant's attorney's credibility in the eyes of the jury.").

to delayed disclosure). The Solicitor followed up her discussion of grooming by reminding the jurors about John Comelo's testimony about "red flags" he claimed he witnessed regarding the child complaining witness. Tr. 698. The Solicitor next discussed testimony of Lori Mayo and Mr. Comelo that the State claimed evidenced "outward signs of abuse" and "trauma" that the child exhibited in this case. Tr. 698-99. In fact, the prosecution's use of Mr. Comelo's testimony prompted Mr. Dent to address circumstantial evidence during his closing argument. Immediately after referencing circumstantial evidence, Mr. Dent addressed the allegations of "sexualized behavior" alleged in the child's relationship with Mr. Comelo. Tr. 707.

As seen, the State relied on the testimony of Tessa Trask, as an expert in the behavioral characteristics of child victims of sexual abuse, following the procedure approved of by this Court in *State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) (approving the procedure utilized in *State v. Brown,* 411 S.C. 332, 768 S.E.2d 246 (Ct.App.2015)). *Anderson,* of course, cited *State v. Schumpert,* 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016), with approval. *Anderson*, 413 S.C. at 218, 776 S.E.2d at 79. *Schumpert* "clarify[ied] that both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred." 312 S.C. at 506, 435 S.E.2d at 862 (1993). In *State v. White,* this Court reiterated, "The purpose of rape trauma evidence is to prove the elements of criminal sexual conduct since such evidence may make it more or less probable the offense occurred" and further noted, "Expert testimony on rape trauma may be more crucial in situations where children are victims." *State v. White*, 361 S.C. 407, 414-15, 605 S.E.2d 540, 544 (2004). After *Anderson*, the State presents this type of expert

witness in almost every criminal-sexual-conduct-with-a-minor trial. With the limitations this Court has placed on the scope of rape trauma evidence, *see, e.g., Andreson, Jennings, Kromah, supra.,* it could not be argued that rape trauma evidence is direct evidence of proof of the elements of criminal sexual conduct with a minor. If rape trauma evidence is evidence of this crime, then it follows that this evidence is circumstantial evidence.

The State's reliance on circumstantial evidence at trial was not limited to behavioral evidence. During her initial closing, the Solicitor also discussed the photographs that were entered onto evidence. Tr. 699-700. These photos are not direct evidence of any of the crimes for which Mr. Dent was convicted. Indeed, Mr. Dent challenges the admission of the photographs on appeal as not relevant and unduly prejudicial. Brief of Appellant, at 46-47, 52, Reply Brief of Appellant, at 8-10, 14; Cross-Petition for Writ of Certiorari, at 12-15. The State, in fact, acknowledged these photographs "were not offered to prove [Mr. Dent] was guilty of disseminating obscene material to a minor," but rather, "The aforementioned exhibits are photos of Victim, at least some of which, the State argued were sexualized and thus demonstrated the inappropriate relationship [Mr. Dent] had with Victim." Brief of Respondent, at 38. In relying on the photographs in this manner, the State once again sought to prove a "chain of facts and circumstances indicating the existence of a fact." *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. Thus, without using the words "circumstantial evidence," the State argued the photographs were circumstantial evidence supporting a conviction for first-degree criminal sexual conduct with a minor.

The State relied on circumstantial evidence during the appeal in the court below. As seen, the State acknowledged in its brief to the Court of Appeals that it introduced photographs of the child as circumstantial evidence to support the criminal sexual conduct

conviction. The State also relied on circumstantial evidence when urging the court below not to direct a verdict of acquittal regarding the charge of first-degree criminal sexual conduct with a minor. *See, e.g.,* Brief of Respondent, at 8-9 (arguing the jurors could infer fellatio occurred "during the relevant timeframe in indictment 2014-GS-07-1673" based on inferences drawn from the child's vague and inconsistent statements), 9 ("The logical implication of Victim's second forensic interview is that she performed fellatio on Appellant more than one time and at least one of those incidents happened at the first townhouse during the time frame limited in indictment 2014-GS-07-1674"), and 10 (arguing inferences from "a broad question by the assistant solicitor: 'But do you remember anything about what was done to you while you lived in *those houses?*'" (emphasis supplied by State's brief)). In arguing inferences in this manner, the State once again sought to prove a "chain of facts and circumstances indicating the existence of a fact." *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. Thus, without using the words "circumstantial evidence," the State argued these inferences as circumstantial evidence supporting a conviction for first-degree criminal sexual conduct with a minor.

Thus, this Court cannot say beyond a reasonable doubt that the trial court's failure to five the *Logan* circumstantial evidence instruction did not contribute to the verdict. *Burdette*, *supra.*

B. The "charge as a whole" approach cannot rescue this conviction.

In *Herndon*, this Court reaffirmed, "When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence." 430 S.C. at 371, 845 S.E.2d at 501 (2020). This Court additionally held, "the 'charge as a whole' approach"

could not "rescue" the conviction in *Herndon*. *Id*., 430 S.C. at 371, 845 S.E.2d at 502. After tracing the evolution of our state's circumstantial evidence instruction, this Court held:

> [I]n *Logan*, the Court posited that there are different approaches used to analyze direct and circumstantial evidence. *Logan*, 405 S.C. at 97, 747 S.E.2d at 451. The Court reasoned that "evaluation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence." *Id.* The Court found that "defendants should not be restricted from requesting a jury charge that reflects the requisite connection of collateral facts necessary for a conviction." *Id.* at 99, 747 S.E.2d at 452. Therefore, we held the trial court "should" give the specific charge provided in the *Logan* decision, quoted in the introduction of this opinion, when requested. *See id.* (explaining the Court's "holding does not prevent the trial court from issuing the [*Grippon* charge]. *However, trial courts may not exclusively rely on that charge over a defendant's objection.*"

Id., 430 S.C. at 372, 845 S.E.2d at 502 (emphasis supplied by this Court).

Here, the trial court gave the *Grippon* circumstantial evidence instruction. *Compare* R. 756-57 *with State v. Grippon*, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997).[9] After recognizing this Court's holding in Herndon that "trial courts *may not exclusively rely* on that charge over a defendant's objection," the Court of Appeals held, "[T]he trial court additionally erred in failing to supplement the charge, after Dent's renewed objection, to include reference to the requisite connection of circumstantial facts necessary for a conviction." *Dent*, 434 S.C. at ___, 863 S.E.2d at 481 (emphasis supplied by Court). Under the facts of this case, the Court of Appeals correctly held it was improper for the trial judge to exclusively rely on the *Grippon* charge.

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[9] In the Court of Appeals, the State argued "the trial judge instruction on circumstantial evidence was proper because it adequately covered the law and closely resembled the language approved by the South Carolina Court in" *Grippon*. Final Brief of Respondent, at 31. After the Court of Appeals unanimously agreed the trial judge improperly deviated from *Logan,* the State abandoned its reliance on *Grippon*.

The State argues the court below did not engage with the circumstantial evidence presented in Mr. Dent's trial in a manner similar to what this Court did in *Herndon* and the Court of Appeals did in *State v. Sanchez*, 435 S.C. 468, 867 S.E.2d 595 (Ct. App. 2021). Brief of Petitioner, at 8-10. As discussed in Subsection A above, the Court of Appeals did engage with the circumstantial evidence presented by the State at trial and argued during the State's closing. Although the court did not engage with that evidence to the extent Mr. Dent has done so in this brief, the Court of Appeals engagement with the evidence is sufficient to affirm the opinion below. Even if this Court agrees with the State that the Court of Appeals should have conducted a more in-depth analysis of the evidence, the remedy is not to reverse the court below, but rather the remedy is to affirm as modified.

CONCLUSION

For the forgoing reasons, this Court should affirm the Court of Appeals. Alternatively, this Court should affirm the Court of Appeals as modified.

Respectfully Submitted,

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