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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Charles Dent petitions this Court to rehear this matter, withdraw the opinion dated November 8, 2023, and issue an opinion reversing the trial court.[1] This Court overlooked or misapprehended the matters set forth below.

I. PROCEDURAL HISTORY.

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. The State never indicted Mr. Dent for third-degree criminal sexual conduct with a minor.

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[1] By written orders dated November 29, 2023, and December 14, 2023, this Court granted Mr. Dent's motions to extend time to file the petition for rehearing, making this petition due on January 3, 2024.

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 this Court, 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, this Court convened an oral argument. On August 18, 2021, relying on *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020), this Court 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, 360, 863 S.E.2d 478, 480 (Ct. App. 2021). This Court did not address any of the other questions presented by Mr. Dent's appeal. *Id*., 434 S.C. at 363, n. 3, 863 S.E.2d at 481, n. 3.

On August 26, 2021, the State petitioned for rehearing. A. 12-22. On August 27, 2021, this Court 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, this Court 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, this Court 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?

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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, the Supreme 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. On November 14, 2022, Mr. Dent responded. On April 20, 2023, the Supreme Court convened an oral argument. On August 16, 2023, the Supreme Court agreed "the trial court erred in refusing to give the *Logan* circumstantial evidence charge," but held the "failure to give the requested *Logan* charge was harmless error." *State v. Dent*, 440 S.C. 449, 454-55, 892 S.E.2d 294, 296-97 (2023).

On remand, this Court neither reconstituted the original panel nor convened an oral argument. On November 8, 2023, this Court affirmed the conviction and sentences. *State v. Dent*, No. 2018-001257, 2023 WL 7374131 (S.C. Ct. App. Nov. 8, 2023). This petition follows.

II. LEGAL ARGUMENTS.

A. Lack of Quorum.

When this Court convened an oral argument on February 11, 2021, the three-judge quorum of this Court included the Honorable H. Bruce Williams, the Honorable Paula H. Thomas, and the Honorable D. Garrison Hill. Since then, the General Assembly elected Judge Hill to the Supreme Court of South Carolina. Rather than re-constituting the original panel, with Justice Hill sitting with the Court, the Honorable Blake A. Hewitt became a member of the panel. As a result, a quorum of the Court did not hear the oral argument that led to the decision in this case in violation of S.C. Code Ann. § 14-8-80(d).[2]

[2] S.C. Code Ann. § 14-8-80(d) provides, "On a panel, three judges shall constitute a quorum, and the concurrence of a majority of the judges is necessary for the reversal of the judgment below."

In *State v. McMillian*, on the afternoon of the oral argument, "counsel was advised that only two of the three panel judges would be present for oral argument and that the third member would listen to the tapes of oral argument." 349 S.C. 17, 20, 561 S.E.2d 602, 603 (2002). The oral argument "proceeded over the objection of counsel for McMillian[, n]o questions were asked during the argument, and the Court of Appeals affirmed in an unpublished opinion signed by three judges." *Id*. The Supreme Court reversed because a quorum of this Court was not present.

In *Anderson Cnty. v. Preston*, the Supreme Court held "section 14-8-80(d), read in conjunction with *McMillian*, provides that, in the absence of a quorum, the Court of Appeals cannot issue a valid opinion." 427 S.C. 529, 539, 831 S.E.2d 911, 916 (2019). In *Preston*, three judges were present during the oral argument but only two judges issued the opinion. *Id*., 427 S.C. at 538, 831 S.E.2d at 915.

Reading section 14-8-80(d), *McMillian*, and *Preston* together, the same quorum should be present for both the argument and issuing the opinion. This Court, accordingly, should withdraw the opinion dated November 8, 2023, and convene an oral argument.

B. Issues on Appeal.

1. Directed Verdict Motion & Jury Instruction on Definition of Sexual Battery (Questions I and II).

The State chose to prosecute Mr. Dent for two counts of first-degree criminal sexual conduct with a minor, alleging a single battery, to wit: fellatio. This Court recognized the self-inflicted problem these indictments created for the State:

> During trial, the State admitted both of Victim's forensic interviews into evidence, and the interviews were played for the jury. Victim did not make a disclosure regarding fellatio until the Second Interview. During the interview, Victim stated the first time she performed fellatio on Dent was at House One; however, she indicated multiple times that Dent had her

> perform fellatio on him more than once, and she did not state the abuse occurred only at House One. In fact, Victim provided detailed accounts of the suffered abuse, which included other types of sexual battery, and stated the abuse occurred at both houses. At trial, Victim provided conflicting testimony, stating she only performed fellatio on Dent once. However, she did not testify as to where that incident occurred.

Dent, at *9. The focus on the disclosure of fellatio implicitly acknowledges the prosecution was required to prove fellatio—the only allegation in the indictment—in order to obtain a conviction. This Court's treatment of the directed verdict issue and the jury instruction of the definition of sexual battery, however, sanctions a conviction for criminal sexual conduct with a minor based on evidence of sexual batteries never submitted to the grand jurors. The statement quoted above overstates the evidence of fellatio, conflates the evidence of fellatio with the evidence of other sexual batteries, and expressly relies on the evidence of the other sexual batteries allegedly occurring at the other residence. The jury instruction, furthermore, expressly sanctions a conviction based on a sexual battery not presented to the grand jurors.

In order to understand this Court's overstatement of the evidence of fellatio and conflation of the evidence other sexual batteries, it is necessary to review the specifics of the second children's advocacy center video. This interview is about 32 minutes long. The first 2 minutes of this interview consist of the child claiming she did not tell the interviewer everything during the first interview and the interviewer reviewing the "rules of the room." The next 2 minutes, 9 seconds show the child writing on a large pad—that the viewer never sees—and explaining Grandpa made me touch it more than once. The interviewer then uses to the anatomical diagrams from the first interview for clarification. The ensuing discussion of sexual abuse, lasting less than 2 minutes, is summarized below:

- She claimed Mr. Dent's mouth touched her mouth, which would not meet the definition of a "sexual battery."[3]

- She claimed Mr. Dent made her use her hand to touch his private, which would not meet the definition of a "sexual battery."

- She claimed Mr. Dent's hand touched her butt and back, which would not meet the definition of a "sexual battery."

- She claimed Mr. Dent's hand touch her thigh area, which would not meet the definition of a "sexual battery."

- After initially stating, "That's all," the child claimed Mr. Dent licked her boobs, stomach, and private.

For the next 14 minutes, the interviewer reviewed the allegations to seek clarification of the allegations. This discussion is summarized below:

- Regarding the allegation that Mr. Dent made her hand touch his private, the child stated the allegations occurred more than once at both houses.

- The interviewer next elicits more details about the first time this touching occurred. The child claimed Mr. Dent made her touch his private underneath his clothing with her hand. The child provided some description of Mr. Dent's penis and claimed a liquid came out of it.

- The child asks for permission to write something new on the large pad, that the viewer still cannot see. She claimed, "He made me lick it." In response to questioning, the child alleged her mouth touched Mr. Dent's private. She claimed this happened more than once. Initially, she claimed that it happened the first time Mr. Dent made her touch his private with her hand, but, on her own, she clarified that the mouth-private contact happened on a different day than the hand-private contact. The interviewer asked, "In the first house, or both houses, or something else." The child responds, "In the old house." The interviewer next asks about the first time the mouth-private contact

[3] "'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code Ann. § 16-3-651(h). Some of these statements might support charges of third-degree criminal sexual conduct with a minor, but the State never indicted Mr. Dent for third-degree criminal sexual conduct with a minor.

occurred and for more details about the alleged fellatio. The child never claimed it happened at the new house.

- Next, the child volunteers that Mr. Dent placed his hand inside her private. The interviewer never clarifies where these allegations occurred.

- In response to a question from the interviewer, the child claimed Mr. Dent used his mouth and tongue to touch her private, but his tongue never went insider her. She claimed this happened more than once but only at the new house.

The interviewer next asks the child why she did not tell her about these allegations during the first interview. The child states she forgot about these allegations during the first interview but that that she remembered these allegations after the first interview with John Camelo asked her about first interview. Towards the end of the interview, the child alleged Mr. Dent's private touch her private, under her clothes, but never went inside her private.

"'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code Ann. § 16-3-651. "Sexual battery' does not mean any battery of a sexual nature. Rather, it is statutorily defined to include only certain specific acts, which can be loosely described as involving penetration of some sort." *State v. Elliott*, 346 S.C. 603, 606, 552 S.E.2d 727, 729 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

In the second children's advocacy center interview, the child alleges three types of sexual batteries: (1) fellatio occurring at the first house, (2) digital penetration occurring more than once at an unspecified location, and (3) cunnilingus occurring at the new house.

As seen, the jurors acquitted Mr. Dent of committing fellatio at the first house. Under the trial judge's instructions, the jurors acquitted Mr. Dent of committing any sexual battery at the first house. As this Court acknowledges, the State did not present any testimony at trial of any sexual battery other than fellatio. The evidence of digital penetration and cunnilingus came from the second children's advocacy center interview. Cunnilingus is the only sexual battery alleged to have occurred at the new house, but this sexual battery is not alleged in the indictment.

Here, the trial court erred by not directing the verdict because there is no evidence that fellatio occurred at the second home. *E.g. State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013); *State v. Cherry,* 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Gaster,* 349 S.C. 545, 564 S.E.2d 87 (2002); *State v. Mitchell,* 341 S.C. 406, 535 S.E.2d 126 (2000); *State v. Burdette,* 335 S.C. 34, 515 S.E.2d 525 (1999); *see also* Rule 19(a), SCRCrimP. Additionally, the Supreme Court recognized the child's testimony and two children's advocacy center interviews as direct evidence. *Dent*, 440 S.C. at 454–55, 892 S.E.2d at 296–97. As seen, there is no direct evidence of fellatio occurring at the second house. The Supreme Court also said, "The State recognized the importance of the direct evidence, highlighting Granddaughter's trial testimony and two forensic interviews in its initial closing argument." *Id.*, 440 S.C. at 455, 892 S.E.2d at 297. This Court must attribute meaning to these holdings. Theorizing the jurors inferred that fellatio occurred at the second residence is speculation rather than drawing inferences from circumstantial evidence. "The lower court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty." *State v. Mitchell*, 341 S.C. 406, 409,

535 S.E.2d 126, 127 (2000). The absence of a statement that fellatio occurred at the second house is not evidence that fellatio occurred at the second house.

Here, the trail judge's jury instruction allowed the jurors to convict based on a sexual battery other than fellatio, even though that indictment did not allege any sexual battery other than fellatio. As our Supreme Court has stated:

> The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury. If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury. Only law applicable to the case should be charged to the jury. Instructions that do not fit the facts of the case may serve only to confuse the jury.

State v. Blurton, 352 S.C. 203, 207-08, 573 S.E.2d 802, 804 (2002). *Blurton* is a good example of a case where the trial court confused the jurors by providing a correct statement of that law that was not appropriate in the particular trial. Here, based on the indictment, fellatio was the only sexual battery "applicable to the case," a legal argument the State concedes on appeal. *Cf. Jones*, 343 S.C. at 578, 541 S.E.2d at 821 (improper for trial judge to substitute a correct definition of "reasonable doubt" for another correct definition of "reasonable doubt" after defense counsel relied on charge conference when making closing argument).

This Court should rehear this matter, hold there is no evidence fellatio occurred at the second house, hold the trial judge erred by instructing the jurors the full definition of "sexual battery," and enter an order directing a verdict of acquittal on first-degree criminal sexual conduct with a minor.

2. Testimony of Tessa Trask (Question III).

This Court held, "the trial court failed to appropriately dispense of its gatekeeping duties as required by our [state's] precedent," but "this error did not prejudice Dent's

defense" because "Trask testified solely as to general observations in behavior of children who suffered abuse" and "further averred she was not involved in Victim's case and had not reviewed Victim's files." *Dent*, No. 2018-001257, at *6. Here, Ms. Trask's testimony was based on her "own framework" for the working definition of trauma, and, when asked, 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. Accordingly, there is no evidence in the record for this Court to determine the reliability of Ms. Trask's "own framework" and methods. *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015) (internal citation omitted); *and see State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009) (trial court's gatekeeping function in assuring reliability of expert testimony applies to nonscientific evidence). The lack of reliability supplies the prejudice. This Court should rehear this matter, find prejudice, and order a new trial.

3. Testimony of John Camelo (Questions V and VI).

As argued in the Brief of Appellant, at 47-48, the Solicitor cleverly questioned John Camelo about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness. The State linked Mr. Camelo's education, training, and experience to his observations of "red flags" about J.M.s' behavior, thereby suggesting Mr. Camelo believed J.M. had been sexually abused. This line of questionng was a back door introduction of opinion evidence prohibited by *Anderson, Kromah, Jennings,* and similar cases. This Court held Mr. Camelo's testimony was not bolstering or vouching because Mr. Camelo neither testified as to what Victim said nor made any assertions as to whether he believed the Initial Disclosure to be true. " *Dent*, No. 2018-001257, at *7. However, the manner in which the State questioned Mr. Camelo

and the manner in Mr. Camelo testified conveyed that Mr. Camelo believed the child was sexually abused and, therefore, bolstered the child's testimony and vouched for her credibility. *State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015); *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015)*; State v. Kromah,* 401 S.C. 340, 37 S.E.2d 490, (2013), *State v. Jennings,* 394 S.C. 473, 716 S.E.2d 91 (2011); and *State v. McKerley,* 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

The opinion dispensed with the Confrontation Clause question because this Court "fail[ed] to see how Mother's former occupation and possible recreational habits bear relevance to the charges of first degree CSC and dissemination of obscene material to a minor brought against Dent." *Dent*, No. 2018-001257, at *8. This Court overlooked or misapprehended the purpose of Mr. Dent asking these questions was to impeach Mr. Camelo's credibility with his prior inconsistent statement. Rules 613 and 801(d)(1), SCRE; *State v. Caulder*, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986) (inconsistent statement of witness who testified at trial was admissible as substantive evidence).

"The Sixth Amendment's Confrontation Clause provides that, [i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (internal quotations omitted). The Supreme Court has "held that this bedrock procedural guarantee applies to both federal and state prosecutions." *Id*. citing *Pointer v. Texas,* 380 U.S. 400 (1965); *see, e.g., State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017) (court's error, in deciding not to review witness's privileged mental health records in camera to determine whether disclosure of records was necessary under Confrontation Clause); *State v. Henson*, 407 S.C. 154, 754 S.E.2d 508 (2014) (admission of codefendant's redacted confession during

a joint trial violated defendant's rights under the Confrontation Clause); *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002) (defendants' right of confrontation was violated by limitation of cross-examination into co-conspirator witness's potential sentence if convicted of same crimes as defendants). Due process also requires the prosecution to correct false testimony. *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) (State was obligated to correct co-defendant's false testimony at trial). This Court, accordingly, should rehear this matter, reverse the trial court, and order a new trial.

4. Admission of Photographs (Question IV).

For purposes of deciding this appeal, this Court referred to the photographs as "Group One Photos" and "Group Two Photos." *Dent*, No. 2018-001257, at *3. This Court held the trial judge did not err in admitting the Group One Photos, but this Court failed to consider *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999) (held that: (1) neither victim's sister's testimony nor photograph of victim was relevant to defendant's guilt, and (2) admission of such testimony and photograph was reversible error).

Regarding the Group Two Photographs, this Court held the photographs were prejudicial because these "were more sexual in nature" but concluded "their probative value in corroborating Victim's testimony and forensic interviews and in establishing the elements of the offenses charged outweighed any prejudicial effect." *Dent*, No. 2018-001257, at *5.

This Court should rehear this matter, hold the Group One Photos irrelevant, hold the prejudicial effect of the Group Two Photos substantially outweighs any probative value, reverse the trial court, and order a new trial.

5. Dissemination Indictments (Questions VIII, IV, and X)

This Court held:

> The trial court properly refused to quash the Dissemination Indictments. Although subsection 16-15-435(A) does require a circuit solicitor to obtain the search or arrest warrants for a statutory violation, it clearly states such a requirement *only applies* to violations of sections 16-15-305, 16-15-315, and 16-15-325. The Dissemination Indictments indicate Dent violated section 16-15-355. Therefore, subsection 16-15-435(A) does not apply, and Dent's argument is without merit.

Dent, No. 2018-001257, at *3 (emphasis original). Section 16-15-355, however, incorporates section 16-15-305 as part of the offense. Once this Court recognizes this the inclusion of section 16-15-305 in section 16-15-355, the need to reverse becomes apparent.

6. Cumulative Error (Question XI).

This Court held, "Although the record reveals errors, we find these errors did not impact the fairness of Dent's trial when considered in the context of the foregoing analysis." *Dent*, No. 2018-001257, at *11. Once this Court recognizes the other errors identified in this petition for rehearing, the need to reverse based on the cumulative error doctrine becomes apparent. *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999); *State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000), *reversed on other grounds by State v. Blurton,* 352 S.C. 203, 573 S.E.2d 802 (2002) (cumulative error of solicitor's improper argument and improperly excluded evidence warranted reversal).

III. CONCLUSION.

For the foregoing reason rehear this matter, withdraw the opinion dated November 8, 2023, and issue an opinion reversing the trial court.

IT IS SO MOVED.

(signature on next page)

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

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January 3, 2023
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2018-001257

The State, ...Respondent,

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Certificate of Service

I certify that I have served this pleading on the State of South Carolina by emailing a copy to Counsel's AIS email address, on the date reflected below:

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January 3, 2024