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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Alex Kinlaw, Jr., Circuit Court Judge
Appellate Case No. 2018-001257

THE STATE,

Respondent,

vs.

CHARLES DENT,

Appellant.

RETURN TO APPELLANT'S PETITION FOR REHEARING

Through a published decision issued on November 8, 2023, this Court—following a remand from the Supreme Court—affirmed Appellant Charles Dent's convictions for first-degree criminal sexual conduct with a minor and disseminating obscene material to a minor that stemmed from acts Dent perpetrated upon his minor granddaughter. State v. Dent, Op. No. 6034 (S.C. Ct. App. filed Nov. 8, 2023). In affirming, this Court analyzed Dent's many, many appellate issues that had not previously been addressed on the merits and concluded no reversible errors occurred in Dent's case. Now, Dent has petitioned for rehearing on numerous grounds, including on a new one related to this Court's supposed "lack of quorum" following the remand.

Turning to the first of Dent's rehearing issues, Dent complains this Court supposedly violated Section 14-8-80(d) of the South Carolina Code of Laws because it did not reconstitute the "original panel" after the matter was remanded to it and, instead, employed a new panel that contained one judge who had not been involved in this Court's earlier decision, which did *not*

address the merits of the issues that were resolved through this Court's most-recent decision. See State v. Dent, 434 S.C. 357, 363 n.3, 863 S.E.2d 478, 481 (Ct. App. 2021) ("Because this finding is dispositive, we decline to address Dent's remaining issues on appeal."), rev'd and remanded, 440 S.C. 449, 892 S.E.2d 294 (2023). In Dent's view, "the same quorum should be present for both the argument and issuing the opinion." As a result, Dent maintains this Court must grant rehearing in his case and "convene an oral argument."

Importantly though, the panel of this Court that decided Dent's case *following remand* was comprised of three judges, which—pursuant to unambiguous South Carolina law—constituted a quorum. See S.C. Code Ann. § 14-8-80(d) ("On a panel, three judges shall constitute a quorum[.]"). And, significantly, the composition of that panel was in no way inconsistent with the Supreme Court's remand directive, which merely indicated the case was being remanded "for the court of appeals"—as opposed to any particular Court of Appeals panel comprised of any specific judges—to decide Dent's remaining issues. State v. Dent, 440 S.C. 449, 892 S.E.2d 294 (2023). Moreover, following the remand, this Court elected to decide the previously-undecided issues raised by Dent *without* oral argument and to render its decision following submission of the case, which was entirely proper and permissible pursuant to the plain mandates of our appellate court rules. See Rule 215, SCACR ("The appellate court may decide any case without oral argument if it determines that oral argument would not aid the court in resolving the issues."); see also Stasi v. Sweigart, 434 S.C. 239, 258, 863 S.E.2d 669, 679 (2021) ("Technically, neither due process nor any other provision of law requires oral argument in a given case. Each judge or appellate panel is entitled to make the decision in each case whether oral argument would be helpful."). Under such circumstances, no act was done following the remand in Dent's case without the existence of a valid quorum. See State v.

McMillan, 349 S.C. 17, 20, 561 S.E.2d 602, 603 (2002) ("This Court has recognized that no valid act can be done in the absence of a quorum."). Accordingly, this Court committed no violation of any kind—statutory or otherwise—in deciding Dent's case on remand in the manner it did and with the panel of judges it did, and Dent's contention to the contrary is incorrect.

Next, through his second rehearing issue, Dent—while combining two of the issues from his appellate brief into a single section of his petition—argues this Court erred by failing to recognize: (1) the trial judge purportedly erred by denying his motion for a directed verdict on one of the first-degree criminal sexual conduct with a minor indictments; and (2) the trial judge supposedly erred by presenting the full statutory definition of sexual battery to the jurors when instructing them on the required elements of the indicted offense. As support for those claims, Dent accuses this Court of "overstat[ing]" the evidence of fellatio presented during trial and failing to recognize the trial judge's jury instruction on sexual battery was confusing and improper under the circumstances involved.

To the contrary and just as this Court recognized, the trial judge properly denied Dent's directed verdict motion because: (1) Victim's trial testimony and out-of-court statements were sufficient for a factfinder to rationally find Dent guilty of the indicted offense currently at issue; and (2) the existence of any inconsistencies and discrepancies with the evidence presented was a matter solely for the jury to resolve.[1] See State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769,

[1] Significantly, the frequent inability of young children who have been subjected to repeated instances of sexual abuse to be able to provide consistent accounts concerning the date, place, and time of the abuse is something that has long been recognized as being *inherent* in prosecutions for juvenile sexual abuse. See, e.g., State v. Wilcox, 808 P.2d 1028, 1033 (Utah 1991) ("[W]e have recognized that there are notice problems, especially as to the date, place, and time inherent in prosecutions based on the testimony of very young victims. . . . If we were to hold that in all such circumstances, no offense could be charged because the alleged victim is too young to testify with certainty concerning the times, dates, or places where the abuse occurred, we would leave the youngest most vulnerable children with no legal protection. An abuser could

772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the jury."); cf. State v. Butler, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) (concluding one individual's "various, inconsistent accounts" of what transpired can create credibility issues and factual questions that need to be resolved by the jury). Furthermore, just as this Court also recognized, the trial judge committed no error by providing the statutory definition of sexual battery to the jury because Dent was indicted for a violation of Section 16-3-655 and sexual battery was a necessary element of that offense. S.C. Code Ann. § 16-3-655(A)(1); see Keller v. State, 265 S.E.2d 813, 814 (Ga. 1980) ("It is not usually cause for new trial that an entire Code section is given. This is so even though a part of the charge may be inapplicable under the facts in evidence." (citations omitted)); cf. State v. Hardee, 279 S.C. 409, 413, 308 S.E.2d 521, 524 (1983) (rejecting as meritless the contention "the trial judge erred in charging § 16-15-140 in its entirety since the indictment only charged him with committing an act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the minor"). Accordingly, rehearing is neither needed nor warranted in Dent's case.

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escape prosecution merely by claiming that the child's inability to remember the exact dates and places of the abuse impaired the abuser's ability to prepare an alibi defense. In frank recognition of this fact, we have been less vigorous in requiring specificity as to time and place when young children are involved than would usually be the case where an adult is involved. . . . We have suggested that so long as the elements of the crimes are covered by the factual allegations and the defendant is fully apprised of the State's information regarding the time, place, and date of the crimes, any lack of factual specificity goes not to the constitutional adequacy of notice, but to the credibility of the State's case.").

Turning to Dent's third rehearing issue, Dent claims this Court erred by failing to find the admission of the testimony of Tessa Trask, who testified during trial as an expert in the field of behavioral characteristics of child victims of sexual abuse, was prejudicial and warranted reversal. As support for that particular claim, Dent—without pointing to any particular portion of Trask's testimony that was supposedly improperly prejudicial or damaging—maintains simply "[t]he lack of reliability supplies the prejudice." Thus, in essence, Dent's only argument as to why rehearing is needed in connection to Trask's testimony is the contention it is *always* sufficiently prejudicial to warrant reversal when a trial judge admits expert testimony without first properly determining its reliability.

However, in State v. Tapp, 398 S.C. 376, 387, 728 S.E.2d 468, 474 (2012), our Supreme Court was confronted with an issue concerning the admission of expert testimony and concluded the trial judge erred by admitting that expert testimony without making *any* determination as to the reliability of it. Significantly, the Supreme Court then proceeded to analyze the question of whether the admission of the expert testimony was nevertheless harmless and concluded it indeed was because the challenged testimony could not have contributed to the verdict obtained under the circumstances involved. Id. at 390-391, 728 S.E.2d at 476. Therefore, since a trial judge's failure to properly conduct a reliability analysis clearly does *not* automatically require reversal as Dent seems to suggest, this Court did exactly what it was supposed to do by—consistent with Tapp—looking to the circumstances involved to determine whether the error it concluded occurred resulted in prejudice warranting reversal, and this Court's harmless error finding in Dent's case was completely correct for all the reasons it identified.[2] See State v.

[2] Notably, looking to the substance of the expert testimony actually presented, Trask briefly testified in a broad and general manner about behavioral characteristics associated with juvenile sexual abuse victims, which was and is not a controversial or improper subject matter for expert

Heyward, 441 S.C. 484, 505, 895 S.E.2d 658, 669 (2023) ("We have repeatedly observed we will not reverse a criminal conviction for the erroneous admission of evidence unless the defendant shows on appeal the error was prejudicial."). As a result, Dent's request for rehearing should be rejected.

Through his fourth rehearing issue, Dent claims this Court incorrectly declined to reverse his convictions based on issues with the testimony of John Camelo, one of the State's witnesses. More specifically, Dent suggests this Court failed to recognize: (1) Camelo's testimony supposedly improperly bolstered or vouched for the victim's credibility; and (2) defense counsel was truly only attempting to impeach Camelo with a supposed prior inconsistent statement when he unsuccessfully sought to question him about the fact the victim's mother had purportedly used marijuana and been a stripper in the past, and, thus, the exclusion of that testimony somehow constituted a Confrontation Clause violation.[3]

To the contrary and just as this Court correctly recognized, Camelo's testimony did *not* truly constitute improper bolstering or vouching testimony because Camelo did not bolster or vouch for the victim's credibility through the actual testimony he gave. Instead, he simply testified to his own personal observations of the then-nine-year-old minor victim's *obviously*

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testimony in South Carolina. See State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018) ("[T]he law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized."). And, in doing so, Trask emphasized the presence of signs and symptoms of trauma was something that was *not* necessarily proof abuse occurred. (R. p. 397). Furthermore, to ensure the limited nature of her testimony could not be misunderstood by the jury, she confirmed she did not interview Dent's minor victim, had never met her, and did not even review her case file prior to testifying. (R. pp. 392-393).

[3] Although Dent now suggests such testimony was admissible as and sought to be used as evidence of a purported prior inconsistent statement on Camelo's part, defense counsel tellingly argued to the jury the victim's mother had been a stripper *even after* the trial judge sustained the objection to defense counsel's attempt to question Camelo about that particular matter on relevancy grounds. (R. pp. 282-283; p. 289; p. 742).

age-inappropriate behavior,[4] explained those troubling observations led him to ask her if anyone had done anything inappropriate to her, and then indicated she made a concerning disclosure in response to that query. Significantly, since that testimony merely conveyed Camelo's personal observations leading up to the victim's disclosure and included no opinions on the victim's credibility, it in no way constituted improper bolstering or vouching, could not have logically or reasonably been construed as such by the jury, and was not in any manner inadmissible. See State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013) (recognizing it does *not* constitute improper bolstering or vouching for a witness—including a forensic interviewer—to testify about "any personal observations regarding the child's behavior or demeanor"). Relatedly, the trial judge—just as this Court once again correctly recognized—did not abuse his broad evidentiary discretion by declining to allow defense counsel to question Camelo about the victim's mother's alleged past because the fact that she may have been a stripper or used marijuana at some point in her life had no relevance whatsoever to the question of whether Dent was guilty of any of the indicted offenses involving the minor victim, which was the true focus of the trial. See Gause v. Livingston, 251 S.C. 8, 13, 159 S.E.2d 604, 607 (1968) ("If there is no such logical or rational connection between the fact sought to be presented and a matter of fact in issue in the case the evidence is immaterial and inadmissible."); see also State v. D'Alessio, 848 A.2d 1118, 1124 (R.I. 2004) ("The right to cross-examination does not include an unfettered license to ask any question that the defendant may desire."). Therefore, since this Court correctly found no abuse of discretion concerning how the trial judge addressed the issues related to Camelo's testimony, rehearing is not necessary in Dent's case.

[4] Notably, that behavior included attempts to kiss Camelo, to engage in frequent hugging, and to *grope Camelo's groin*. (R. p. 271).

Turning to Dent's fifth rehearing issue, Dent claims this Court should have granted a new trial based on the admission of various photographs of the minor victim. However, as support for that particular claim, Dent simply quotes a portion of this Court's opinion addressing the matter before stating in total: "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."

Because Dent did not actually identify any specific issues with this Court's analysis concerning the trial judge's ruling admitting the challenged photographs, Dent has effectively abandoned the matter by raising a wholly conclusory claim unaccompanied by any explanation, analysis, or citation to authority. See Mulherin-Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 594 (Ct. App. 2005) (instructing an appellate court need not address arguments made in a conclusory fashion and without any supporting authority). Accordingly, this Court should decline to grant rehearing.

Through his sixth rehearing issue, Dent complains this Court failed to recognize his allegation of a violation of Section 16-15-435(A) truly was a meritorious one in apparent connection to three of the issues he raised on appeal. As support for that complaint, Dent maintains Section 16-15-355—the specific statutory provision he was accused and convicted of violating—"incorporates" Section 16-15-305 as a part of the offense it created. Based on that, Dent contends the need for reversal in his case will become "apparent" to this Court once it recognizes the correctness of his position.

But, just as this Court has already recognized, the legislature expressly limited the applicability of Section 16-15-435(A) through the plain and unambiguous language it used in that provision. Specifically, that particular provision reads: "A search warrant or arrest warrant

for a violation of Sections 16-15-305, 16-15-315,[5] or 16-15-325 may be issued only upon request of a circuit solicitor." S.C. Code Ann. § 16-15-435(A). And, significantly, that particular language contains no reference to Section 16-15-355, which was the specific provision Dent was indicted for and convicted of violating, *despite the fact* Section 16-15-355 was originally enacted through the *exact same* legislation that created Section 16-15-435. See Act. No. 168, § 3, 1987 S.C. Acts 1130 (enacting numerous provisions, including Section 16-15-355 and Section 16-15-435). Therefore, applying South Carolina's longstanding and well-established statutory construction principles to the statutory provisions involved, no violation of Section 16-15-435(A) occurred in Dent's case because Section 16-15-435 did not—by its express terms—apply to the offense for which Dent was charged. See Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) ("The canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' "); see also Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C., 409 S.C. 331, 343-344, 762 S.E.2d 561, 567 (2014) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature. We are not at liberty, under the

[5] Interestingly, if Dent's statutory interpretation was somehow a correct one, the legislature's inclusion of Section 16-15-315 in the list of offenses identified in Section 16-15-435 was completely meaningless and unnecessary since that particular provision *also* contains a direct reference to Section 16-15-305. See S.C. Code Ann. § 16-15-315 ("No person shall, as a condition to any sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication, digital electronic file require that the purchaser or consignee receive for resale any other article, book, publication, or digital electronic file which is obscene *within the meaning of Section 16-15-305* nor shall any person deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept the articles, books, publications, or digital electronic files, or by reason of the return thereof." (emphasis added)); see also State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (stating a reviewing court must presume the legislature did not intend a futile act).

guise of construction, to alter the plain language of a statute by adding words which the Legislature saw fit not to include. Our duty is to apply the statute according to its own terms." (citations, internal quotations, and brackets omitted)); cf. Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (finding the legislature's inclusion of language allowing for early release in one statute but omitting it in another evidenced the legislature's intent for a defendant convicted of the offense delineated in the statute not containing the early release language to be ineligible for early release). Accordingly, this Court correctly rejected all the appellate issues Dent predicated upon his claim of a non-existent violation of Section 16-13-435, and his misguided suggestion to the contrary continues to be wholly lacking in merit.

Finally, through his seventh rehearing issue, Dent repeats—in a largely conclusory fashion—his claim his case should be reversed based on the cumulative error doctrine. More specifically, Dent quotes this Court's ruling on the issue before simply stating: "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." He then includes the exact same citations he previously included in his appellate brief.

Significantly, since Dent has not actually addressed this Court's conclusion on the cumulative error doctrine in any meaningful manner or even attempted to explain how the cumulative effect of anything prevented him from receiving a fair trial, Dent has effectively abandoned his claim predicated upon the cumulative error doctrine. See State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal); see also United States v. Fernandez Sanchez, 46 F.4th 211, 219 (4th Cir. 2022) (explaining "a party . . . waives an issue by failing to develop its argument—even if its brief takes a passing shot at the issue" (citations, internal quotations, and brackets omitted)).

And, for the same reasons, he certainly did not meet his appellate burden of establishing he was entitled to reversal pursuant to the cumulative error doctrine. See State v. Attardo, 263 S.C. 546, 551 n.1, 211 S.E.2d 868, 869 n.1 (1975) (instructing the appellant shoulders the burden of proving entitlement to relief on appeal); see also State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) ("[A party raising an issue pursuant to the cumulative error doctrine] must demonstrate *more than error* in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial." (emphasis added)). As a result, there is no need for this Court to grant rehearing on Dent's conclusory, undeveloped, and unestablished cumulative error doctrine claim.

For all those reasons coupled with the arguments previously raised in the State's Final Brief of Respondent, this Court correctly affirmed Dent's convictions through its most-recent decision in his case. Accordingly, Dent's petition for rehearing should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Return to Appellant's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

E. Charles Grose, Jr., Esquire
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I further certify all parties required by Rule to be served have been served.
This 7th day of February, 2024.

CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General