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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.

REPLY TO STATE'S RETURN TO MR. DENT'S PETITION FOR REHEARING

On January 3, 2024, Charles Dent petitioned this Court to rehear this matter ("Petition"). On February 8, 2024, the State filed is Return in Opposition to the Petition for Rehearing ("Return"). This reply follows.

A. Lack of Quorum.

In his Petition, pp.7-8, Mr. Dent points out the quorum that heard the oral argument on February 11, 2021, was not the same quorum that issued the opinion on November 8, 2023. The State contends, "following the remand, this Court elected to decide the previously-undecided issues raised by Dent *without* oral argument." Return, p. 2 (emphasis original) (citing Rule 215, SCACR). This contention is not supported by the record. When this Court determines an oral argument is not necessary, it typically notes that determination. *See, e.g., State v. Brown*, 426 S.C. 63, 69, n. 1, 824 S.E.2d 476, 480, n.1 (Ct. App. 2019). Here, the opinion does not contain such a notation. Nor could it because

of the oral argument convened on February 11, 2021, where the quorum did not make that determination. The existence of that oral argument cannot be ignored. *State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002) and *Anderson Cnty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019)—when read together—illustrate the error under these circumstances.

B. Issues on Appeal.

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

Regarding the denial of the directed verdict motion, the State argues, in a conclusory manner:

> [T]he 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.

Return, p. 3. In his Petition, pp. 9-11, Mr. Dent engaged the substance of the out of court statements—the Children's Advocacy Center interviews. The Return does not contradict the Petition's analysis of this evidence. This Court, accordingly, must reject the State's conclusory argument.

Regarding the jury instruction on "sexual battery," the State argues, "[T]he 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." Return, p. 4. Yet, the State concedes that the jurors were required to find, beyond a reasonable doubt, that Mr. Dent forced the child to commit fellatio. Instructing the jurors on the definition of fellatio was all that was required. Anything more was purposeful ambiguity. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("A jury charge is no place for purposeful ambiguity"), *holding extended*

by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). The Return ignored Mr. Dent's reliance on *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. State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (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).

2. Testimony of Tessa Trask (Question III).

The Return, p. 5, argues Mr. "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.'" The State further argues the error this Court found is harmless. *Id*. No doubt, some of Ms. Trask's testimony—such as the process of disclosure and concept of "grooming"—have been addressed by our appellate courts. *See, e.g., State v. Morales*, 439 S.C. 600, 889 S.E.2d 551 (2023) and *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), *abrogated on other grounds by State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018). However, Ms. Trask's testimony about the "traumagenic model" is different. R. 394-95**.** A Westlaw search fails to locate that term in any South Carolina appellate court cases. Additionally, 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. There is no support for the reliability of this testimony in the record. Mr. Dent, accordingly, established prejudice from

the admission of unreliable, untested theories. Under these circumstances, it is impossible for this Court to conclude "the error was harmless beyond a reasonable doubt." *State v. Reyes*, 432 S.C. 394, 405, 853 S.E.2d 334, 340 (2020).

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

The State argues:

> 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* age-inappropriate behavior, 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.

Return, p; 6-7 (emphasis original).

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 questioning was a back door introduction of opinion evidence prohibited by caselaw. *See, e.g., 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). Mr. Dent, accordingly, established

prejudice because the prosecution cleverly portrayed Mr. Comelo as someone with special knowledge.

4. Admission of Photographs (Question IV).

Regarding Group One Photos, as argued in the Petition, p. 16, this Court should address the applicability of *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999).

Regarding Group Two Photos, this Court acknowledged these photographs "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. Mr. Dent maintains this Court erred in applying the Rule 403, SCRE analysis.

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

Mr. Dent maintains section 16-15-355, however, incorporates section 16-15-305 as part of the offense. This Court should address the inclusion of section 16-15-305 in section 16-15-355.

6. Cumulative Error (Question XI).

Finally, this Court found error in the qualification of Ms. Trask as an expert witness and held the Group Two photographs are sexual in nature. At a minimum, this Court should address the cumulative nature of these errors.

CONCLUSION

For the reasons set forth in the petition for rehearing and this reply, this Court shuld rehear this matter, withdraw the opinion dated November 8, 2023, and issue an opinion reversing the trial court.

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Respectfully Submitted,

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