

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

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

S.C. Court of Appeals Opinion No. 6034 (Appellate Case No. 2018-001257)

State v. Dent, 442 S.C. 38, 897 S.E.2d 46 (Ct. App. 2023)

The State, ... Petitioner,

v.

Charles Dent, ... Respondent.

APPENDIX VOLUME III OF III

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STATEMENT OF ISSUE ON CERTIORARI

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 the presumption of innocence?

STATEMENT OF THE CASE**Procedural History**

In October 2014, the Beaufort County Grand Jury indicted Dent for two counts of criminal sexual conduct with a minor, first degree (App. 37-40). In March 2018, the Beaufort County Grand Jury indicted Dent for two amended counts of disseminating obscene material to a minor twelve years of age or younger (App. 29-30, 33-34). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Dent was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office.

At the conclusion of trial, the jury convicted Dent of one count of first degree criminal sexual conduct with a minor and both counts of disseminating obscene material to a minor twelve years of age or younger. (App. 15-17, 788-89). The jury acquitted Dent of the remaining count of first degree criminal sexual conduct with a minor. (App. 18, 788). Following the verdict, the trial judge sentenced Dent to concurrent terms 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 of age or younger. Dent filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Dent's motion. Dent timely filed a notice of appeal and an initial brief.

On appeal, Dent raised eleven issues to the Court of Appeals. (App.810-11). Of relevance to this petition, Dent alleged the trial judge erred by failing to read the circumstantial evidence charge established by this Court's opinion in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

On August 18, 2021, in a divided published opinion, a majority of the Court of Appeals reversed Dent's convictions and found the trial judge erred in failing to give the Logan instruction and further found the trial judge's error was not harmless. State v. Dent, Opinion No. 5850 (S.C. Ct. App. filed August 18, 2021) (Howard Adv. Sh. No. 28) (App. 936-42). Because the Court of Appeals found the Logan charge issue to be dispositive, the Court declined to address the remaining issues raised on appeal by Dent. (App. 940). On August 26, 2021, the State filed a petition for rehearing. (App. 943-52). On September 2, 2021, Dent filed a cross-petition for rehearing. (App. 961-67). The Court of Appeals denied both petitions for rehearing on October 18, 2021. (App. 980-83).

Factual Background

The victim (Victim) in this case was born in 2005. (App. 38, 40). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (App. 306). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (App. 581). Mother is Dent's daughter, and Victim is Dent's granddaughter. (App. 307, 379). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Dent's suggestion. (App. 632-33). Initially, Mother, Victim, and Brother lived in a two bedroom townhome that was paid for by Dent. (App. 633). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (App. 635). The family moved after Dent decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (App. 263). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (App. 275). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App. 275). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App. 275). Victim made an initial disclosure of abuse by Dent to Camelo. Camelo then told Mother, who reported the abuse to law enforcement on June 10, 2014. (App. 312, 367). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (App. 428, State's Exhibit #16¹). After her first interview, Victim made a second disclosure to Camello. (App. 276). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. (App. 428, State's Exhibit #17).

Victim disclosed that Dent "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." (App. 378, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Dent. (App. 381). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Dent touched her vagina, breasts, and buttocks. Sometimes, the touching was underneath her clothes; other times it was over her clothes. Victim also disclosed that Dent showed her pictures of his penis and a pornographic video. (App. 380-81, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Dent's penis went inside her mouth. She also disclosed that Dent

¹ Both State's Exhibit #16 and State's Exhibit #17 are part of the appellate record.

touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Dent's penis on certain occasions that almost got in her mouth. She stated Dent's "urine" was white, looked like "flour", and stained the carpet. (State's Exhibit #17).

Dent testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Dent was convicted of all charges except a single count of first degree criminal sexual conduct with a minor.

ARGUMENT

The Court of Appeals majority opinion erred in holding the trial judge’s failure to give the circumstantial evidence charge required by State v. Logan was prejudicial to Dent because: (1) the evidence presented against Dent was mostly direct and not circumstantial; and (2) the trial judge’s instruction, as a whole, correctly conveyed the applicable law and properly instructed the jury on reasonable doubt and the presumption of innocence.

On August 18, 2021, a majority of the Court of Appeals reversed Dent’s convictions for first degree criminal sexual conduct with a minor and disseminating obscene material to a minor because the majority found the trial judge erred in failing to charge the jury with the requested circumstantial evidence instruction established by this Court’s opinion in State v. Logan (App. 936-42). The majority further ruled the trial judge’s error was prejudicial to Dent in light of what the majority considered to be the circumstantial nature of the evidence. The Court of Appeals majority opinion was wrong for two key reasons. First, while the trial judge erred in failing to give the Logan instruction, the error was harmless because the evidence presented against Dent was almost exclusively direct evidence and not circumstantial. Second, the trial judge’s instructions to the jury, as a whole, properly conveyed the applicable law and correctly instructed the jury on reasonable doubt and the presumption of innocence. For these reasons, the trial judge’s failure to give the Logan charge was harmless error. Accordingly, pursuant to Rule 242, SCACR, the State asks this Court to issue a writ of certiorari to review the Court of Appeals’ decision and hold the trial judge’s failure to give the Logan charge was harmless.

Failure to Give Logan Charge Not Per Se Reversible Error

In Logan, this Court endeavored to “articulate for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the State’s burden and the jury’s responsibility.” Logan, 405 S.C. at 94-95, 747 S.E.2d at 450. This Court noted that direct evidence and circumstantial evidence each require a different mental approach by a jury. “Unlike

direct evidence, 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.” Logan, 405 S.C. at 97, 747 S.E.2d at 451. “Analysis of circumstantial evidence is plainly a more intellectual process. Logan 405 S.C. at 97-98, 747 S.E.2d at 451. Accordingly, a criminal defendant is entitled to “a jury charge that reflects the requisite connection of collateral facts necessary for a conviction.” Logan 405 S.C. at 99, 747 S.E.2d at 452. However, this Court ultimately held the trial judge’s error in that case was harmless because the trial judge properly instructed the jury on reasonable doubt and the instruction, as a whole, properly conveyed the applicable law. Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

Recently, this Court addressed the failure to give a Logan instruction in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). This Court found the trial judge’s failure to give the Logan instruction was reversible error because the evidence against Herndon “was almost exclusively circumstantial” and because “the competing inferences involved in *this* circumstantial evidence case illustrate[d] well the need for the Logan charge.” Herndon 430 S.C. at 373, 845 S.E.2d at 502-503 (emphasis added). In reaching its conclusion, this Court took particular note of the State’s reliance on the pathologist’s testimony which indicated it was equally plausible that Herndon shot the victim as he was walking away from Herndon as the State contended, or that the victim was shot as he charged toward Herndon as Herndon contended. Herndon 430 S.C. at 373, 845 S.E.2d at 502. Thus, because of the circumstantial nature of the evidence and the competing inferences to be drawn from the pathologist’s testimony, the trial judge’s failure to give the Logan charge in Herndon’s specific case was not harmless. However, this Court

“acknowledge[d] there may be a case in which a trial court’s failure to give the Logan charge might be harmless error.” Id.

Here, unlike in this Court’s opinion in Herndon, the Court of Appeals majority opinion made little effort to explain how the evidence against Dent was circumstantial or how Dent was prejudiced from the trial judge’s failure to read the Logan charge. The majority opinion noted the trial judge’s failure to “include reference to the requisite connection of circumstantial facts necessary for a conviction” but did not explain how this failure prejudiced Dent. (App. 940). Rather, the majority asserted: “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.’” (App. 940). The majority correctly identified that there was no physical evidence against Dent; however, the majority confuses the absence of physical evidence with an absence of direct evidence. On the contrary, the State’s case against Dent was predominantly based on direct evidence in the form of eyewitness testimony. Furthermore, the majority’s holding seems to imply that a trial judge’s failure to read the Logan instruction is per se reversible error. In actuality, as this Court’s opinion in Herndon plainly demonstrated, a fact-intensive analysis is required to determine whether the trial judge’s failure to read the Logan instruction was harmless in each individual case. Because this Court closely examined the evidence presented in reaching its conclusion in Herndon, it is instructive to do so here as well.

In Logan, this Court defined direct evidence as evidence that “directly proves the existence of a fact and does not require deduction.” Logan 405 S.C. at 99, 747 S.E.2d at 452. Here, Dent was charged with, and convicted of, first degree criminal sexual conduct with a minor

and disseminating obscene material to a minor. The State proved that Dent committed each of these crimes through direct evidence. The State proved that Dent committed first degree criminal sexual conduct with a minor through Victim's eyewitness testimony at trial and Victim's second recorded forensic interview. Victim testified that she was forced to perform fellatio on Dent. (App. 381). Victim repeated this accusation in her second forensic interview which was played for the jury. (App. 431-33, State's Exhibit #17). Victim's eyewitness testimony directly proves the existence of the fact that Dent forced Victim to perform fellatio and does not require a deduction, nor are there any competing inferences the jury needs to resolve. Therefore, Victim's testimony was direct evidence of Dent's guilt. Dent acknowledged Victim's testimony was direct evidence when he told the jury in closing argument: "Certainly, things like testimony, eyewitness accounts are what we call direct evidence." (App. 737, lines 3-5).

The State proved that Dent disseminated obscene materials to Victim through Victim's testimony at trial and Victim's first forensic interview which was also played for the jury. (App. 380-81, 431-33, State's Exhibit #16). This too was direct evidence of Dent's guilt. Victim's testimony directly proved that Dent forced Victim to view photos of his penis and pornographic videos and did not require deduction, nor were there competing inferences that needed to be resolved. Indeed, Dent emphasized that the State's only evidence proving dissemination of obscene material came from the testimony of Victim, when he told the jury in his opening statement and closing argument that the State could not produce pictures of Dent's penis or pornographic videos. (App. 255, 742-43). In regard to the pornography, Dent specifically told the jury in closing "And once again, we've had some testimony, but we haven't had anything that has confirmed or corroborated showing of pornography." (App. 743, lines 9-11). Thus, Dent

seemed to acknowledge at trial that the evidence against him was entirely direct, particularly in regard to the crime of disseminating obscene material to a minor².

On appeal, Dent asserted in a conclusory fashion in his Final Brief: “In this case, the State relied on a combination of direct and circumstantial evidence.” (App. 858-59). The Court of Appeals majority opinion adopted Dent’s conclusory reasoning but, in doing so, did not specify how the evidence against Dent was circumstantial other than to criticize the State’s brief mention of circumstantial evidence in its rebuttal closing argument and the State’s attempt to quote the trial judge’s jury instruction. However, a closer examination of the record reveals the State spent very little time in closing addressing circumstantial evidence.

Far from “spending substantial time in summation” explaining that Dent’s case was about circumstantial evidence, the State merely responded in their rebuttal argument to Dent’s specious assertion during his closing argument that the State “rel[ied] on a lot of circumstantial evidence.” (App. 737, lines 2-3). In fact, the State spent the entirety of their primary closing argument telling the jury about the direct evidence against Dent and never once used the words “circumstantial evidence” in an argument that spanned 17 pages of the record. (App. 716-33). When the State did address Dent’s circumstantial evidence argument, the solicitor merely

² As with all eyewitness testimony, the jury was asked to make a credibility finding regarding the weight to be given to Victim’s testimony. Here, the trial judge provided the following instruction regarding credibility: “I also told you at the beginning of the case that evidence consists of several things. The first is sworn testimony, and the second is exhibits. You judge the credibility of the evidence. And you, as jurors, would have to necessarily gauge the credibility or believeability of the evidence presented. That’s within your purview....But I will tell you that you may also consider in deciding credibility of the witnesses testimony in such a way that you believe everything that they say, or you would believe nothing a witness says. You may believe parts of a witnesses testimony, and disbelieve the other part of a witnesses testimony.” (App. 765 lines 16-21 and 25—App. 766 lines 1-5). The fact that the jury was asked to make a credibility finding does not diminish the status of Victim’s eyewitness testimony as direct evidence. The jury necessarily had to determine whether they believed Victim’s testimony, but Victim’s testimony was direct evidence of Dent’s guilt nonetheless because it directly proved Dent forced Victim to perform fellatio and view pornographic materials and it did not require a deduction.

explained that the State didn't have direct evidence of Dent's crimes in the form of "photos of [Victim] licking [Dent's] penis" or "[Victim's] clothes covered in [Dent's] semen" because sexual assaults occur in secret. (App. 758). The State's lack of physical or photographic evidence of Dent's crimes does not mean the State lacked direct evidence. The solicitor correctly noted that Dent told the jury he would not quote what the trial judge's circumstantial evidence charge would be³, but to the extent that the State "read part of the trial court's planned charge on circumstantial evidence to the jury", as the majority alleges, the solicitor merely told the jury: "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." (App. 758, lines 8-11). The solicitor's anodyne statement was not a quote from the trial judge's eventual instruction to the jury, but is a correct statement of law that does not conflict with the instruction recommended in Logan. (App. 766, lines 10-25 – App. 767 line 1).

The Court of Appeals' dissenting opinion correctly noted the evidence against Dent "was not 'almost exclusively circumstantial' like in Herndon." (App. 941). By contrast, the evidence against Dent was *almost exclusively direct*. While the State presented some circumstantial evidence⁴ against Dent, neither Herndon nor Logan established a per se rule that the failure of a trial judge to give the Logan instruction in a case with any circumstantial evidence was automatically reversible error. In fact, the error in Logan was deemed to be harmless and in Herndon this Court envisioned a scenario where such an error would be harmless. Because so

³ Dent told the jury: "I'm not going to try to quote the exact words as to what [the trial judge is] going to say." (App. 736, lines 22-23).

⁴ The State presented Tessa Trask as an expert in the field of behavioral characteristics of child victims of sexual abuse. (App. 397). Trask testified as a "blind" expert about general topics related to child sexual abuse, including grooming. (App. 404). Victim stated in her first forensic interview that Dent gave her gifts as "a bribe." (State's Exhibit #16). Because this evidence would allow the jury to make the deduction that Dent groomed Victim by giving her gifts, this evidence was circumstantial.

much of the evidence against Dent was direct, Dent's case is precisely the kind of case this Court envisioned in Herndon where the failure to give the Logan instruction would be deemed harmless error. This Court should grant the State's petition for a writ of certiorari and determine the trial judge's failure to give the Logan instruction in Dent's case was harmless error.

Jury Instructions Correctly Conveyed the Law

The Court of Appeals dissenting opinion also correctly found the trial judge's "instruction, as a whole, properly conveyed the applicable law." (App. 941). Here the trial judge provided a thorough and correct instruction to the jury on the definition of reasonable doubt and Dent's presumption of innocence. The trial judge provided the jury the following instruction on reasonable doubt and the presumption of innocence:

Mr. Dent, in these four indictment, has plead not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against Mr. Dent beyond a reasonable doubt.

You're, also, required to weigh each of these charges separately and consider the evidence as to each one separately. There are four indictments, four charges, four evaluations by you of each one to determine—and that has to be done to determine whether or not the State has met its burden of proof as to each element of the offense.

Mr. Dent is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you – every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of a crime.

Now, what is a reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

The law does not require proof that overcomes every possible doubt. There are few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

(App. 768, lines 5-25—App. 769, lines 1-15). The trial judge’s instruction on reasonable doubt substantially mirrored the language given by the trial judge in Logan⁵. Notably, after citing the trial judge’s reasonable doubt instruction in Logan, this Court held the “trial court’s jury instruction, as a whole, properly conveyed the applicable law.” Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

In addition to this Court finding that the failure to give a Logan charge was harmless error in Logan itself, the Court of Appeals has found such a failure harmless on multiple occasions. As the dissenting opinion correctly identified, the Court of Appeals previously held a trial judge’s failure to include language from the Logan charge was harmless in State v. Jenkins, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014); State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015), aff’d in result and vacated in part on other grounds by State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015); and State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015). Notably, in both Jenkins and Drayton the Court of Appeals found the failure of the trial court to include language from Logan in its jury instruction was harmless in light of the trial judge’s reasonable doubt instruction and because the jury instruction, as a whole, properly

⁵ The trial judge in Logan provided the following instruction on reasonable doubt: “Proof beyond a reasonable doubt is proof that leaves you firmly convinced if the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty... You should weigh all the evidence in this case, and, after weighing the testimony, you are not convinced of the defendant’s guilt beyond a reasonable doubt, you must find the defendant not guilty... The burden of proof remains on the state to prove guilt beyond a reasonable doubt.” Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

conveyed the applicable law. See Jenkins 408 S.C. at 573-74, 759 S.E.2d at 766 (“As our supreme court ultimately concluded in Logan, we conclude the trial court’s instructions in the present case, as a whole, properly conveyed the applicable law.”); see also Drayton, 411 S.C. at 546, 769 S.E.2d at 261 (“As this court concluded in Jenkins, we conclude the trial court’s instructions in the present case, as a whole, properly conveyed the applicable law.”). In fact, other than in this Court’s case-specific opinion in Herndon and the Court of Appeals majority opinion in this case, no appellate court in South Carolina has ever found a trial judge’s failure to give the Logan charge to be prejudicial to a defendant. Rather, in the eight years since Logan was decided, each decision addressing the failure to give a Logan charge has determined the error was harmless.

To the extent that Dent suffered any prejudice from the trial judge’s failure to read the Logan instruction, any prejudice was outweighed by the benefit Dent received from the trial judge’s juvenile credibility instruction⁶. (App. 770-71). Recently, in State v. Reyes, this Court recognized “it is not proper for a trial court to include such language in its charge to the jury.” State v. Reyes, 432 S.C. 394, 408 n. 4, 853 S.E.2d 334, 342 n. 4 (2020). The giving of the improper jury instruction cured any potential bolstering of a child witnesses’ testimony from the solicitor’s first-person questions in Reyes’ case. Like in Reyes, the jury was told in Dent’s case

⁶ The trial judge provided the following instruction to the jury: “The testimony of children. During this trial, you have heard the testimony from a child. Where a witness is a child, you must determine, as with any other witness, whether the testimony is believable. In deciding believability, you may consider not only matters that I have already discussed with you, but you may, also, consider the age of the child, the child’s ability to understand and answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth. In addition, young children may be influenced by the way questions are asked. It is up to you to decide whether the child understood the questions asked. (App. 770, lines 10-25—App. 771, lines 1-3).

they could view Victim's testimony through a more suspect lens than an adult witness merely because she was a child. As previously argued, the majority of the State's evidence against Dent was Victim's eyewitness testimony describing Dent's sexual abuse against her. Dent received the benefit of the trial judge giving the jury permission to view the testimony of the State's most important witness in a skeptical manner. The benefit received by Dent from this instruction, which has now been recognized as improper and could not be appropriately given in a retrial, outweighed any possible prejudice Dent may have suffered from the trial judge's failure to read the Logan charge.

Because the trial judge in Dent's case properly instructed the jury on the reasonable doubt burden of proof and Dent's presumption of innocence, the trial judge's instruction, as a whole, properly conveyed the applicable law. This Court should find, like this Court did in Logan and the Court of Appeals in Jenkins and Drayton, that the trial judge's failure to give the Logan instruction was harmless error.

CONCLUSION

For all the foregoing reasons, the State respectfully requests this Court issue a writ of certiorari to review the decision of the Court of Appeals.

Respectfully submitted,

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October 29, 2021

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Oct 29 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
Honorable Alex Kinlaw, Jr., Circuit Court Judge
S.C. Ct. App. Appellate Case No. 2018-001257

THE STATE,

Petitioner,

vs.

CHARLES DENT,

Respondent.

Opinion No. 5850 (S.C. Ct. App. filed August 18, 2021)

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on August 26, 2021. The Petition for Rehearing was denied by an Order filed October 18, 2021.

STATEMENT OF ISSUE ON CERTIORARI

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 the presumption of innocence?

STATEMENT OF THE CASE**Procedural History**

In October 2014, the Beaufort County Grand Jury indicted Dent for two counts of criminal sexual conduct with a minor, first degree (App. 37-40). In March 2018, the Beaufort County Grand Jury indicted Dent for two amended counts of disseminating obscene material to a minor twelve years of age or younger (App. 29-30, 33-34). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Dent was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office.

At the conclusion of trial, the jury convicted Dent of one count of first degree criminal sexual conduct with a minor and both counts of disseminating obscene material to a minor twelve years of age or younger. (App. 15-17, 788-89). The jury acquitted Dent of the remaining count of first degree criminal sexual conduct with a minor. (App. 18, 788). Following the verdict, the trial judge sentenced Dent to concurrent terms 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 of age or younger. Dent filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Dent's motion. Dent timely filed a notice of appeal and an initial brief.

On appeal, Dent raised eleven issues to the Court of Appeals. (App.810-11). Of relevance to this petition, Dent alleged the trial judge erred by failing to read the circumstantial evidence charge established by this Court's opinion in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

On August 18, 2021, in a divided published opinion, a majority of the Court of Appeals reversed Dent's convictions and found the trial judge erred in failing to give the Logan instruction and further found the trial judge's error was not harmless. State v. Dent, Opinion No. 5850 (S.C. Ct. App. filed August 18, 2021) (Howard Adv. Sh. No. 28) (App. 936-42). Because the Court of Appeals found the Logan charge issue to be dispositive, the Court declined to address the remaining issues raised on appeal by Dent. (App. 940). On August 26, 2021, the State filed a petition for rehearing. (App. 943-52). On September 2, 2021, Dent filed a cross-petition for rehearing. (App. 961-67). The Court of Appeals denied both petitions for rehearing on October 18, 2021. (App. 980-83).

Factual Background

The victim (Victim) in this case was born in 2005. (App. 38, 40). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (App. 306). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (App. 581). Mother is Dent's daughter, and Victim is Dent's granddaughter. (App. 307, 379). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Dent's suggestion. (App. 632-33). Initially, Mother, Victim, and Brother lived in a two bedroom townhome that was paid for by Dent. (App. 633). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (App. 635). The family moved after Dent decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (App. 263). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (App. 275). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App. 275). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App. 275). Victim made an initial disclosure of abuse by Dent to Camelo. Camelo then told Mother, who reported the abuse to law enforcement on June 10, 2014. (App. 312, 367). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (App. 428, State's Exhibit #16¹). After her first interview, Victim made a second disclosure to Camello. (App. 276). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. (App. 428, State's Exhibit #17).

Victim disclosed that Dent "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." (App. 378, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Dent. (App. 381). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Dent touched her vagina, breasts, and buttocks. Sometimes, the touching was underneath her clothes; other times it was over her clothes. Victim also disclosed that Dent showed her pictures of his penis and a pornographic video. (App. 380-81, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Dent's penis went inside her mouth. She also disclosed that Dent

¹ Both State's Exhibit #16 and State's Exhibit #17 are part of the appellate record.

touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Dent's penis on certain occasions that almost got in her mouth. She stated Dent's "urine" was white, looked like "flour", and stained the carpet. (State's Exhibit #17).

Dent testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Dent was convicted of all charges except a single count of first degree criminal sexual conduct with a minor.

ARGUMENT

The Court of Appeals majority opinion erred in holding the trial judge’s failure to give the circumstantial evidence charge required by State v. Logan was prejudicial to Dent because: (1) the evidence presented against Dent was mostly direct and not circumstantial; and (2) the trial judge’s instruction, as a whole, correctly conveyed the applicable law and properly instructed the jury on reasonable doubt and the presumption of innocence.

On August 18, 2021, a majority of the Court of Appeals reversed Dent’s convictions for first degree criminal sexual conduct with a minor and disseminating obscene material to a minor because the majority found the trial judge erred in failing to charge the jury with the requested circumstantial evidence instruction established by this Court’s opinion in State v. Logan (App. 936-42). The majority further ruled the trial judge’s error was prejudicial to Dent in light of what the majority considered to be the circumstantial nature of the evidence. The Court of Appeals majority opinion was wrong for two key reasons. First, while the trial judge erred in failing to give the Logan instruction, the error was harmless because the evidence presented against Dent was almost exclusively direct evidence and not circumstantial. Second, the trial judge’s instructions to the jury, as a whole, properly conveyed the applicable law and correctly instructed the jury on reasonable doubt and the presumption of innocence. For these reasons, the trial judge’s failure to give the Logan charge was harmless error. Accordingly, pursuant to Rule 242, SCACR, the State asks this Court to issue a writ of certiorari to review the Court of Appeals’ decision and hold the trial judge’s failure to give the Logan charge was harmless.

Failure to Give Logan Charge Not Per Se Reversible Error

In Logan, this Court endeavored to “articulate for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the State’s burden and the jury’s responsibility.” Logan, 405 S.C. at 94-95, 747 S.E.2d at 450. This Court noted that direct evidence and circumstantial evidence each require a different mental approach by a jury. “Unlike

direct evidence, 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.” Logan, 405 S.C. at 97, 747 S.E.2d at 451. “Analysis of circumstantial evidence is plainly a more intellectual process. Logan 405 S.C. at 97-98, 747 S.E.2d at 451. Accordingly, a criminal defendant is entitled to “a jury charge that reflects the requisite connection of collateral facts necessary for a conviction.” Logan 405 S.C. at 99, 747 S.E.2d at 452. However, this Court ultimately held the trial judge’s error in that case was harmless because the trial judge properly instructed the jury on reasonable doubt and the instruction, as a whole, properly conveyed the applicable law. Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

Recently, this Court addressed the failure to give a Logan instruction in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). This Court found the trial judge’s failure to give the Logan instruction was reversible error because the evidence against Herndon “was almost exclusively circumstantial” and because “the competing inferences involved in *this* circumstantial evidence case illustrate[d] well the need for the Logan charge.” Herndon 430 S.C. at 373, 845 S.E.2d at 502-503 (emphasis added). In reaching its conclusion, this Court took particular note of the State’s reliance on the pathologist’s testimony which indicated it was equally plausible that Herndon shot the victim as he was walking away from Herndon as the State contended, or that the victim was shot as he charged toward Herndon as Herndon contended. Herndon 430 S.C. at 373, 845 S.E.2d at 502. Thus, because of the circumstantial nature of the evidence and the competing inferences to be drawn from the pathologist’s testimony, the trial judge’s failure to give the Logan charge in Herndon’s specific case was not harmless. However, this Court

“acknowledge[d] there may be a case in which a trial court’s failure to give the Logan charge might be harmless error.” Id.

Here, unlike in this Court’s opinion in Herndon, the Court of Appeals majority opinion made little effort to explain how the evidence against Dent was circumstantial or how Dent was prejudiced from the trial judge’s failure to read the Logan charge. The majority opinion noted the trial judge’s failure to “include reference to the requisite connection of circumstantial facts necessary for a conviction” but did not explain how this failure prejudiced Dent. (App. 940). Rather, the majority asserted: “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.’” (App. 940). The majority correctly identified that there was no physical evidence against Dent; however, the majority confuses the absence of physical evidence with an absence of direct evidence. On the contrary, the State’s case against Dent was predominantly based on direct evidence in the form of eyewitness testimony. Furthermore, the majority’s holding seems to imply that a trial judge’s failure to read the Logan instruction is per se reversible error. In actuality, as this Court’s opinion in Herndon plainly demonstrated, a fact-intensive analysis is required to determine whether the trial judge’s failure to read the Logan instruction was harmless in each individual case. Because this Court closely examined the evidence presented in reaching its conclusion in Herndon, it is instructive to do so here as well.

In Logan, this Court defined direct evidence as evidence that “directly proves the existence of a fact and does not require deduction.” Logan 405 S.C. at 99, 747 S.E.2d at 452. Here, Dent was charged with, and convicted of, first degree criminal sexual conduct with a minor

and disseminating obscene material to a minor. The State proved that Dent committed each of these crimes through direct evidence. The State proved that Dent committed first degree criminal sexual conduct with a minor through Victim's eyewitness testimony at trial and Victim's second recorded forensic interview. Victim testified that she was forced to perform fellatio on Dent. (App. 381). Victim repeated this accusation in her second forensic interview which was played for the jury. (App. 431-33, State's Exhibit #17). Victim's eyewitness testimony directly proves the existence of the fact that Dent forced Victim to perform fellatio and does not require a deduction, nor are there any competing inferences the jury needs to resolve. Therefore, Victim's testimony was direct evidence of Dent's guilt. Dent acknowledged Victim's testimony was direct evidence when he told the jury in closing argument: "Certainly, things like testimony, eyewitness accounts are what we call direct evidence." (App. 737, lines 3-5).

The State proved that Dent disseminated obscene materials to Victim through Victim's testimony at trial and Victim's first forensic interview which was also played for the jury. (App. 380-81, 431-33, State's Exhibit #16). This too was direct evidence of Dent's guilt. Victim's testimony directly proved that Dent forced Victim to view photos of his penis and pornographic videos and did not require deduction, nor were there competing inferences that needed to be resolved. Indeed, Dent emphasized that the State's only evidence proving dissemination of obscene material came from the testimony of Victim, when he told the jury in his opening statement and closing argument that the State could not produce pictures of Dent's penis or pornographic videos. (App. 255, 742-43). In regard to the pornography, Dent specifically told the jury in closing "And once again, we've had some testimony, but we haven't had anything that has confirmed or corroborated showing of pornography." (App. 743, lines 9-11). Thus, Dent

seemed to acknowledge at trial that the evidence against him was entirely direct, particularly in regard to the crime of disseminating obscene material to a minor².

On appeal, Dent asserted in a conclusory fashion in his Final Brief: “In this case, the State relied on a combination of direct and circumstantial evidence.” (App. 858-59). The Court of Appeals majority opinion adopted Dent’s conclusory reasoning but, in doing so, did not specify how the evidence against Dent was circumstantial other than to criticize the State’s brief mention of circumstantial evidence in its rebuttal closing argument and the State’s attempt to quote the trial judge’s jury instruction. However, a closer examination of the record reveals the State spent very little time in closing addressing circumstantial evidence.

Far from “spending substantial time in summation” explaining that Dent’s case was about circumstantial evidence, the State merely responded in their rebuttal argument to Dent’s specious assertion during his closing argument that the State “rel[ied] on a lot of circumstantial evidence.” (App. 737, lines 2-3). In fact, the State spent the entirety of their primary closing argument telling the jury about the direct evidence against Dent and never once used the words “circumstantial evidence” in an argument that spanned 17 pages of the record. (App. 716-33). When the State did address Dent’s circumstantial evidence argument, the solicitor merely

² As with all eyewitness testimony, the jury was asked to make a credibility finding regarding the weight to be given to Victim’s testimony. Here, the trial judge provided the following instruction regarding credibility: “I also told you at the beginning of the case that evidence consists of several things. The first is sworn testimony, and the second is exhibits. You judge the credibility of the evidence. And you, as jurors, would have to necessarily gauge the credibility or believeability of the evidence presented. That’s within your purview....But I will tell you that you may also consider in deciding credibility of the witnesses testimony in such a way that you believe everything that they say, or you would believe nothing a witness says. You may believe parts of a witnesses testimony, and disbelieve the other part of a witnesses testimony.” (App. 765 lines 16-21 and 25—App. 766 lines 1-5). The fact that the jury was asked to make a credibility finding does not diminish the status of Victim’s eyewitness testimony as direct evidence. The jury necessarily had to determine whether they believed Victim’s testimony, but Victim’s testimony was direct evidence of Dent’s guilt nonetheless because it directly proved Dent forced Victim to perform fellatio and view pornographic materials and it did not require a deduction.

explained that the State didn't have direct evidence of Dent's crimes in the form of "photos of [Victim] licking [Dent's] penis" or "[Victim's] clothes covered in [Dent's] semen" because sexual assaults occur in secret. (App. 758). The State's lack of physical or photographic evidence of Dent's crimes does not mean the State lacked direct evidence. The solicitor correctly noted that Dent told the jury he would not quote what the trial judge's circumstantial evidence charge would be³, but to the extent that the State "read part of the trial court's planned charge on circumstantial evidence to the jury", as the majority alleges, the solicitor merely told the jury: "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." (App. 758, lines 8-11). The solicitor's anodyne statement was not a quote from the trial judge's eventual instruction to the jury, but is a correct statement of law that does not conflict with the instruction recommended in Logan. (App. 766, lines 10-25 – App. 767 line 1).

The Court of Appeals' dissenting opinion correctly noted the evidence against Dent "was not 'almost exclusively circumstantial' like in Herndon." (App. 941). By contrast, the evidence against Dent was *almost exclusively direct*. While the State presented some circumstantial evidence⁴ against Dent, neither Herndon nor Logan established a per se rule that the failure of a trial judge to give the Logan instruction in a case with any circumstantial evidence was automatically reversible error. In fact, the error in Logan was deemed to be harmless and in Herndon this Court envisioned a scenario where such an error would be harmless. Because so

³ Dent told the jury: "I'm not going to try to quote the exact words as to what [the trial judge is] going to say." (App. 736, lines 22-23).

⁴ The State presented Tessa Trask as an expert in the field of behavioral characteristics of child victims of sexual abuse. (App. 397). Trask testified as a "blind" expert about general topics related to child sexual abuse, including grooming. (App. 404). Victim stated in her first forensic interview that Dent gave her gifts as "a bribe." (State's Exhibit #16). Because this evidence would allow the jury to make the deduction that Dent groomed Victim by giving her gifts, this evidence was circumstantial.

much of the evidence against Dent was direct, Dent's case is precisely the kind of case this Court envisioned in Herndon where the failure to give the Logan instruction would be deemed harmless error. This Court should grant the State's petition for a writ of certiorari and determine the trial judge's failure to give the Logan instruction in Dent's case was harmless error.

Jury Instructions Correctly Conveyed the Law

The Court of Appeals dissenting opinion also correctly found the trial judge's "instruction, as a whole, properly conveyed the applicable law." (App. 941). Here the trial judge provided a thorough and correct instruction to the jury on the definition of reasonable doubt and Dent's presumption of innocence. The trial judge provided the jury the following instruction on reasonable doubt and the presumption of innocence:

Mr. Dent, in these four indictment, has plead not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against Mr. Dent beyond a reasonable doubt.

You're, also, required to weigh each of these charges separately and consider the evidence as to each one separately. There are four indictments, four charges, four evaluations by you of each one to determine—and that has to be done to determine whether or not the State has met its burden of proof as to each element of the offense.

Mr. Dent is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you – every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of a crime.

Now, what is a reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

The law does not require proof that overcomes every possible doubt. There are few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

(App. 768, lines 5-25—App. 769, lines 1-15). The trial judge’s instruction on reasonable doubt substantially mirrored the language given by the trial judge in Logan⁵. Notably, after citing the trial judge’s reasonable doubt instruction in Logan, this Court held the “trial court’s jury instruction, as a whole, properly conveyed the applicable law.” Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

In addition to this Court finding that the failure to give a Logan charge was harmless error in Logan itself, the Court of Appeals has found such a failure harmless on multiple occasions. As the dissenting opinion correctly identified, the Court of Appeals previously held a trial judge’s failure to include language from the Logan charge was harmless in State v. Jenkins, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014); State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015), aff’d in result and vacated in part on other grounds by State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015); and State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015). Notably, in both Jenkins and Drayton the Court of Appeals found the failure of the trial court to include language from Logan in its jury instruction was harmless in light of the trial judge’s reasonable doubt instruction and because the jury instruction, as a whole, properly

⁵ The trial judge in Logan provided the following instruction on reasonable doubt: “Proof beyond a reasonable doubt is proof that leaves you firmly convinced if the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty... You should weigh all the evidence in this case, and, after weighing the testimony, you are not convinced of the defendant’s guilt beyond a reasonable doubt, you must find the defendant not guilty... The burden of proof remains on the state to prove guilt beyond a reasonable doubt.” Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

conveyed the applicable law. See Jenkins 408 S.C. at 573-74, 759 S.E.2d at 766 (“As our supreme court ultimately concluded in Logan, we conclude the trial court’s instructions in the present case, as a whole, properly conveyed the applicable law.”); see also Drayton, 411 S.C. at 546, 769 S.E.2d at 261 (“As this court concluded in Jenkins, we conclude the trial court’s instructions in the present case, as a whole, properly conveyed the applicable law.”). In fact, other than in this Court’s case-specific opinion in Herndon and the Court of Appeals majority opinion in this case, no appellate court in South Carolina has ever found a trial judge’s failure to give the Logan charge to be prejudicial to a defendant. Rather, in the eight years since Logan was decided, each decision addressing the failure to give a Logan charge has determined the error was harmless.

To the extent that Dent suffered any prejudice from the trial judge’s failure to read the Logan instruction, any prejudice was outweighed by the benefit Dent received from the trial judge’s juvenile credibility instruction⁶. (App. 770-71). Recently, in State v. Reyes, this Court recognized “it is not proper for a trial court to include such language in its charge to the jury.” State v. Reyes, 432 S.C. 394, 408 n. 4, 853 S.E.2d 334, 342 n. 4 (2020). The giving of the improper jury instruction cured any potential bolstering of a child witnesses’ testimony from the solicitor’s first-person questions in Reyes’ case. Like in Reyes, the jury was told in Dent’s case

⁶ The trial judge provided the following instruction to the jury: “The testimony of children. During this trial, you have heard the testimony from a child. Where a witness is a child, you must determine, as with any other witness, whether the testimony is believable. In deciding believability, you may consider not only matters that I have already discussed with you, but you may, also, consider the age of the child, the child’s ability to understand and answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth. In addition, young children may be influenced by the way questions are asked. It is up to you to decide whether the child understood the questions asked. (App. 770, lines 10-25—App. 771, lines 1-3).

they could view Victim's testimony through a more suspect lens than an adult witness merely because she was a child. As previously argued, the majority of the State's evidence against Dent was Victim's eyewitness testimony describing Dent's sexual abuse against her. Dent received the benefit of the trial judge giving the jury permission to view the testimony of the State's most important witness in a skeptical manner. The benefit received by Dent from this instruction, which has now been recognized as improper and could not be appropriately given in a retrial, outweighed any possible prejudice Dent may have suffered from the trial judge's failure to read the Logan charge.

Because the trial judge in Dent's case properly instructed the jury on the reasonable doubt burden of proof and Dent's presumption of innocence, the trial judge's instruction, as a whole, properly conveyed the applicable law. This Court should find, like this Court did in Logan and the Court of Appeals in Jenkins and Drayton, that the trial judge's failure to give the Logan instruction was harmless error.

CONCLUSION

For all the foregoing reasons, the State respectfully requests this Court issue a writ of certiorari to review the decision of the Court of Appeals.

Respectfully submitted,

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October 29, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Nov 22 2021

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

S.C. SUPREME COURT

Appellate Case No. 2021-001246

The State, ...Petitioner-Respondent,

v.

Charles Dent,.....Respondent-Petitioner.

RETURN TO STATE'S PETITION FOR WRIT OF CERTIORARI

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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 Calhoun County Alabama Sheriff’s Office 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 trial 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. 803-62.

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. 943-52. On August 27, 2021, the Court of Appeals requested Mr. Dent file a return. On September 2, 2021, Mr. Dent filed his return (A. 953-60) and a cross-petition for rehearing (A. 961-67). On September 3, 2021, the Court of Appeals requested the state file a return to Mr. Dent’s cross-petition. On September 9, 2021, the State filed its return. A. 968-75. On September 20, 2021, Mr. Dent replied. A. 976-79. On October 18, 2021, the Court of Appeals denied the cross-petitions for rehearing. A. 980-83. On October 29, 2021, the State filed a petition for writ of *certiorari*. This return follows.

STATEMENT OF FACTS¹

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, 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.

¹ A detailed Statement of Facts is included in the Final Brief of Appellant. A. 813-50.

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 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.

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).

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 or Rule 801(d), SCRE and the Solicitor instructed Mr. Camelo not to name the alleged perpetrator. The trial judge limited the Solicitor for 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 nine-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 Ms. 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 objected based on relevance. The trial judge excused the jurors from the courtroom, and counsel explained:

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.

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 intentions 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 disclosure 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 talking 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 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-

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.

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 *Chavis*, 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 jury 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 give 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

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.”).

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 [J.M.] licking the Defendant’s penis? Why do we not have [J.M.’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 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.

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, and Reply Brief of Appellant, at 8-10, 14. 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 also 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 give 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.

(conclusion on next page)

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*.

CONCLUSION

For the forgoing reasons, this Court should deny the State's petition for a writ of *certiorari*.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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November 22, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Nov 22 2021

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

S.C. SUPREME COURT

Appellate Case No. 2021-001246

The State, ...Petitioner-Respondent,

v.

Charles Dent,.....Respondent-Petitioner.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS),¹⁰ as reflected below, on the date reflected below:

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November 22, 2021
Greenwood, South Carolina

¹⁰ A copy of the email will be attached to the certificate of service filed with this Court.

Subject: State v. Dent, Appellate Case No. 2021-001246
Date: Monday, November 22, 2021 at 4:51:42 PM Eastern Standard Time
From: Charles Grose
To: Scott Matthews
Attachments: 2021 11 22 Grose to SCSCt.pdf, Dent - Cert Petition - Final.pdf, Dent - Return to State's Cert Petition - Final.pdf

Hope you are well and had a good weekend.

Attached please find Mr. Dent's return to the State's petition for a writ of certiorari and cross-petition for a writ of certiorari, along with certificates of service and a cover letter. I will file these electronically with the SC Supreme Court today. I will also file the cross-petition and cover letter with the SC Court of Appeals today.

Thanks, and please let me know if you have any questions.

Best,
Charles

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CERTIFICATION OF COUNSEL

By written order dated October 18, 2021 (A. 980-81), the Court of Appeals denied Charles Dent’s cross-petition for rehearing (A. 961-67).

QUESTIONS PRESENTED**Question 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?

Question 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?

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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?

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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?

Question 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?

Question 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?

Question 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?

Question IX

Did the trial 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?

Question X

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

STATEMENT OF CASE

A detailed Statement of the Case appears in Charles Dent's Return to the State's Petition for a writ of *Certiorari*, at 1-4, filed contemporaneously with the Cross-Petition for a Writ of *Certiorari*. Mr. Dent's Return, at 5-18, also contains a detailed Statement of Fact.

ARGUMENT**Question 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?

In the Court of Appeals, Mr. Dent argued the trial court erred when it failed to direct 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. Brief of Appellant, at 41-43; Reply Brief of Appellant, at 1-3. The Court of Appeals summarily disposed of this issue:

Because this finding is dispositive, we decline to address Dent's remaining issues on appeal. *See State v. Hepburn*, 406 S.C. 416, 428 n. 14, 753 S.E.2d 402, 408 n. 14 (2013) (declining to review remaining issues when its determination of a prior issue was dispositive of the appeal).

State v. Dent, 434 S.C. 357, ___, fn. 3, 863 S.E.2d 478, 481, fn. 3 (Ct. App. 2021).

In his Petition for Rehearing (A. at 961-67), Mr. Dent argued it was error for the court below to decline to decide this issue. In *Hepburn*, this Court reversed a conviction for homicide by child abuse and “direct[ed] a verdict of acquittal.” 406 S.C. at 442, 753 S.E.2d at 416. Because of the directed verdict, the remaining issues alleging error during the trial became moot. Stated another way, the directed verdict was dispositive of the entire case. If this Court agrees with Mr. Dent “and enters a directed verdict, then double jeopardy will bar the State from prosecuting Mr. Dent a second time for first-degree criminal sexual conduct with a minor. U.S. Const. Am. V; S.C. Const. Art. I, § 12. Given the variance between the indictment and the evidence presented at trial, not deciding this issue would give the State a “free pass” by allowing them to seek an amended indictment from the grand jury. Petition for Rehearing, A. 961-67.

The Merits

After the State rested, Mr. Dent moved for a directed verdict. He noted the State relied on the two Hopeful Horizon videotaped interviews. The July 15, 2014 interview did not contain any evidence of fellatio. In the July 28, 2014 interview, the only evidence of fellatio was that it occurred in the first townhouse. Counsel argued, “So with regards to the indictment that ends in 01673, our position is that there’s not been any testimony of

criminal sexual conduct with a minor in the first degree happening in the second location. And so we move to dismiss that indictment for that reasons.” R. 589-90.

The State responded with three arguments. First, it argued “indictments are notice documents”¹ that merely put an accused on notice of the charges, meaning the State merely has to prove a sexual battery as defined by the statute. The State argued it could rely on a statement in the second interview alleging cunnilingus. Second, the State argued J.M.’s second videotaped interview established fellatio at the first house, and J.M.’s trial testimony established fellatio at the second house. Third, the State argued it should be allowed to argue there was some “confusion” about where the sexual abuse occurred because of J.M.’s age, the close proximity of the two townhouses, and the allegations of a common offender. R. 590-91.

Counsel for Mr. Dent reminded, “I don’t recall the testimony in the trial about both houses” being the location of fellatio. Counsel reminded the trial judge he read the indictments in opening statements and “thought it was very important for the jurors to have the indictments [during deliberations] in this case so that they would know exactly what the charges were.” In the indictments, the State identified “fellatio on the Defendant by J.M.” as the sexual battery it intended to prove at trial. “That’s the element they picked.” Counsel argued, even though some “prosecutors treat the Grand Jury like a rubber stamp,” there is “the State Constitutional right to have a presentment to the Grand Jury.” Any argument by the State “about another sexual battery [] would be a variance from the

¹ *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Counsel for Mr. Dent argued, [T]here’s that *Gentry* case out there that talks about indictments being a notice document. But they could write that down on a cocktail napkin and give it to us and it would give us notice.” And, “But there is still something to the State Constitutional right to have a presentment to the Grand Jury.” R. 592.

indictment.” *See Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011) (supplemental jury instructions impermissibly enlarged indictment by instructing jury that it could convict defendant of a crime not alleged in indictment). Counsel argued, as a notice document, the indictment “puts us on notice that they were going to prove fellatio.” Counsel concluded, “with regards to the second house,” there is not “any proof that’s been presented for that to go to the jury.” R. 591-93. The trial judge denied the motion. R. 613. Mr. Dent renewed his directed verdict motions at the close of all evidence. R. 683-85.

This Court held in *Hepburn*:

In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. During trial, [w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as [s]uspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

On appeal, [w]hen reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state. If the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court’s decision to submit the case to the jury.

406 S.C. at 429, 753 S.E.2d at 408-09 (internal citations and quotations omitted); *and see 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.

When arguing the directed verdict motion, both parties agreed J.M.’s July 15, 2014 interview did not contain any evidence of a sexual battery, let alone fellatio. The parties also agreed J.M.’s July 28, 2014 interview alleged fellatio occurring only at the first

townhouse. The jurors acquitted Mr. Dent on the indictment that corresponded to the timeframe J.M. lived in the first townhouse.

When denying the directed verdict motion, the trial judge might have been influenced by the prosecution's argument that J.M. testified in during the trial that Mr. Dent made her perform fellatio at the second townhouse. A review of the trial record, however, reveals this argument to be a misstatement of the evidence. The following is the only trial testimony by J.M. about fellatio:

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.

Thus, the only allegation of fellatio is that it occurred at the first townhouse, and the jurors acquitted of this charge.² This Court, therefore, should grant the writ, consider the issue.

² As argued in more detail in Question II below, allowing the State to rely on a sexual battery other than fellatio would be an impermissible variance from the indictment. *See Sate v. Bailey*, 392 S.C. 422, 709 S.E.2d 671 (2011).

Question 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.

Mr. Dent asked the Court of Appeals to hold the trial court “err[ed] 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.” Brief of Appellant, at 43-44; Reply Brief of Appellant, at 3-5. Although the State defends the trial judge’s ruling on appeal, the State tacitly admits the error by acknowledging it was required to prove fellatio in order to survive Mr. Dent’s directed verdict motion. *See, e.g.*, Brief of Respondent, at 8-11. As this Court recently reminded:

The primary purpose of an indictment is threefold: to put the defendant on notice of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgment to pronounce following a conviction.

State v. Lewis, 434 S.C. 158, ___, 863 S.E.2d 1, 8 (2021) (citing *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)). As will be discussed below, Mr. Dent relied on the indictment when he proceeded to trial and outlined his defense to the jurors in his opening statement.

In footnote 3 of its opinion, the court below declined to decide this issue. Here, Mr. Dent relied on the indictment’s limitation to a single sexual battery. As seen above, Mr. Dent is concerned the failure to decide this issue will give the State a “free pass” to seek an amended indictment. If the State does not seek an amended indictment, then this issue likely will be repeated during a new trial.

The Merits

During his opening statement, Mr. Dent informed the jurors it “is important to know exactly what’s in the indictments” that the State has to prove beyond a reasonable doubt. The two criminal sexual conduct indictments are divided by time from when J.M. “lived in one apartment and moved into another apartment.” The indictments allege Mr. Dent made J.M. “perform oral sex” at “those two different locations.”³ R. 250-51.

During the charge conference, Mr. Dent requested, when “defining sexual battery,” the trial court “limit it to fellatio.” The State objected to that request. The trial judge ruled the Court would instruct the entire definition contained in S.C. Code Ann. § 16-3-651(h).⁴ R. 693-706.

In *Bailey*, this Court held:

In South Carolina, [i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense.

[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged. A conviction under the latter circumstance violates principles of due process . . . because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged.

³ Later on, during opening statements, Mr. Dent repeated the indictments alleged Mr. Dent Made J.M. perform oral sex on him at the two locations, which is what the State represents it will prove. R. 255.

⁴ S.C. Code Ann. § 16-3-651(h) provides, “‘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.”

392 S.C. at 433-34, 709 S.E.2d at 677 (internal citations and quotations omitted); *and see State v. Gunn*, 313 S.C. 124, 437 S.E.2d 75 (1993) and *State v. Cody*, 180 S.C. 417, 186 S.E. 165 (1936); *see also Thomason v. State*, 892 S.W.2d 8, 11 (Tex.Crim.App.1994).

As seen, Indictment No. 2014-GS-07-01673 alleged 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. The trial judge allowed the prosecution to argue for the jurors to convict Mr. Dent for first-degree criminal sexual conduct with a minor for a sexual battery other than fellatio. The trial judge also instructed the jurors they could convict Mr. Dent of first-degree criminal sexual conduct with a minor for a sexual battery other than fellatio. This argument and jury instruction resulted in a variance in the indictment. This Court should grant the writ and consider the question.

Question 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?

Mr. Dent asked the Court of Appeals to “exclude[e] 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.” Brief of Appellant, at 44-46; Reply Brief of Appellant, at 5-8. In footnote 3 of its opinion, the court below declined to decide this issue. Mr. Dent’s petition for rehearing asked the Court of Appeals to address this issue because it is capable of repetition at a re-trial.

The Merits

In his pretrial brief and during the hearing, Mr. Dent specifically requested the trial judge require the prosecution to proffer Ms. Trask's complete testimony for the trial judge to determine the reliability pursuant to *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010) (summarizing three-part procedure for qualifying expert witnesses) and *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). The trial judge declined that request and ruled Ms. Trask could be qualified as an expert in behavioral characteristic of child victims of sexual abuse." R. 47-58, 183-91.

Before the jurors, the trial judge qualified Ms. 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. Ms. Trask testified, "I developed my own working definition of trauma." Mr. Dent objected, citing *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015), which requires "the subject matter of the testimony has to be deemed reliable by the trial court." He also objected because Ms. Trask's working definition had not been peer reviewed. R.391-96. 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. 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.

As this Court holds:

The jury and the trial court each have distinct roles and separate responsibilities that they must execute during a trial. The jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial and reaching a verdict. The trial court, on the other hand, is charged with the duty of determining issues of law. As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law. Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves.

Watson, 389 S.C. at 445, 699 S.E.2d at 174-75. *Watson* recognized a three-prong test to determine the admissibility of expert testimony. “First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.” *Id.* 389 S.C. at 446-47, 699 S.E.2d at 175 (citing *State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009)). Second, “while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” *Id.* (citing *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997)). Finally, “the trial court must evaluate the substance of the testimony and determine whether it is reliable.” *Id.* (citing *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (evaluating whether expert testimony on DNA analysis met the reliability requirements). “Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. *Id.*

“There is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence. However, evidence of mere procedural consistency does not ensure reliability without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he

or she consistently applies.” *Chavis*, 412 S.C. at 108, 771 S.E.2d at 339 (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).

As seen, the trial judge declined Mr. Dent’s request to convene the full hearing required by *Chavis* and *White* by limiting the scope of that hearing to determining the background and qualifications of Ms. Trask. The trial judge erred by not determining the reliability of Ms. Trask’s testimony. The record is devoid of evidence establishing the reliability Ms. Trask’s methods and theories. This Court should grant the writ and consider the question.

Question 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.

Mr. Dent asked the Court of Appeals to hold “the trial judge erred 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.” Brief of Appellant, at 46-47; Reply Brief of Appellant, at 8-10. In footnote 3 of its opinion, the court below declined to decide this issue. Mr. Dent’s petition for rehearing asked the Court of Appeals to address this issue because it is capable of repetition at a re-trial.

The Merits

After Mr. Dent successfully suppressed the fruits of a search warrant (R. 299-568), the State recalled J.M. and introduced State’s Exhibits 1, 3, 4, 6, 11, 13, and 15, subject to the previous objections. R. 570-80. On cross-examination, J.M. acknowledged she thought her mother took State’s Exhibit 1. J.M. didn’t know who took State’s Exhibit 3, but agreed it was not her grandfather. Regarding State’s Exhibit 4, J.M. did not know who took that picture but thought it was Mr. Dent “because it was the guest bedroom that he stayed in.” Regarding State’s Exhibits 6, 11, 13, and 15, the following exchange occurred:

Q. . . . And, in fact, with these others, State’s Exhibit Nos. 6, 11, 13, and 15, you really don’t know who took those pictures, do you?

A. I don’t remember being in those photos.

Q. I’m sorry?

A. I don’t remember being in most of those photos. I don’t remember who took them, but I’m guessing.

Q. So you don’t remember when these were taken?

A. I don’t. But I do know they were in one of the houses.

Q. Okay. And you don’t – you’re just guessing who might have taken them?

A. Yes.

R. 580-83.

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901, SCRE. “Establishing a strict chain of custody is not an ironclad requirement, and the fact of a missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it

purports to be and has not been altered in any material respect. The [trial] court’s role is merely to act as a gatekeeper for the jury, and the proponent of the evidence need only make a prima facie showing of its authenticity.” *State v. Brockmeyer*, 406 S.C. 324, 343, 751 S.E.2d 645, 655 (2013) (internal citations and quotations omitted).

In *State v. Langley*, this Court found the witness’s testimony and the victim’s photograph were not relevant to proving the guilt of appellant,” and “[b]ecause the evidence of appellant's guilt was not overwhelming, [this Court] find this irrelevant evidence did not affect the outcome of the trial under a harmless error analysis.” 334 S.C. 643, 648, 515 S.E.2d 98, 100 (1999). Additionally, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Rule 403, SCRE.

As seen in the Final Brief of Appellant, at 31 (citing R. 527-33), many of the images were “carved,” meaning they had been deleted and recovered. The prosecution could not establish that any of the were not “carved,” meaning the prosecution could not establish that any of the image has not been altered. The prosecution failed to produce the witness with personal knowledge of the examination of the electronic devices that purportedly contained those images. During the *in camera* hearing, the Solicitor acknowledged J.M. did not have the personal knowledge to know whether those images had been altered. Thus, the prosecution was not able to authenticate any of the images—either by establishing the chain of custody or presenting testimony that the images had not been altered.

State’s Exhibits 1, 3, and 4 did not have any arguable relevance to establishing guilt and should have been excluded, as not relevant, under *Langley*. State’s Exhibits 6, 11, 13, and 15 are extremely prejudicial, and the prosecution did not establish any probative value

of these images. It could not establish who took these photographs or whether these photographs had been altered. For example, State's Exhibit 15 could be a photograph of J.M. lying on the floor with her pet rabbit, taken by someone other than Mr. Dent, subsequently cropped to appear to be a closeup image of J.M.'s legs and the bottom portion of her dance outfit. Rule 403 excludes State's Exhibits 6, 11, 13, and 15. This Court should grant the writ and consider the question.

Question 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?

Mr. Dent asked the Court of Appeals to hold "the trial judge err[ed] by overruling his objections during the State's opening statement 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." Brief of Appellant, at 57-48; Reply Brief of Appellant, at 10. In footnote 3 of its opinion, the court below declined to decide this issue. Mr. Dent's petition for rehearing asked the Court of Appeals to address this issue because it is capable of repetition at a re-trial.

The Merits

The prosecutor called John Camelo, who met J.M. through her mother Lori Michelle Mayo, in May of 2014. Mr. Camelo and Ms. Mayo began dating. The following exchange occurred between the Solicitor and Mr. Camelo:

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*⁵-*Jennings*⁶-*Anderson*⁷ line of cases. Counsel reminded that witnesses are not allowed to testify “that

⁵ *State v. Kromah*, 401 S.C. 340, 37 S.E.2d, (2013).

⁶ *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011).

⁷ *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015).

somebody is telling the truth” or offer “an opinion that this child was sexually abused.”

Counsel argued:

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 claimed 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 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 or Rule 801(d), SCRE and the Solicitor instructed Mr. Camelo not to name the alleged perpetrator. The trial judge limited the Solicitor for 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.

As seen, 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 *Anderson*, *Kromah*, *Jennings*, and similar cases. This Court should grant the writ and consider the question.

Question 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?

Mr. Dent asked the Court of Appeals to hold “the trial judge err[ed] 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.” Brief of Appellant, at 48-49; Reply Brief of Appellant, at 11. In footnote 3 of its opinion, the court

below declined to decide this issue. Mr. Dent’s petition for rehearing asked the Court of Appeals to address this issue because it is capable of repetition at a re-trial. Because it is difficult to imagine the prosecution not calling Mr. Camelo during a new trial, this Court should provide guidance about the appropriate limits of Mr. Comelo’s direct testimony and permissible areas of his cross-examination.

The Merits

“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).

As seen in the Final Brief of Appellant, at 15-16 (citing R. 277-84), the prosecution solicited testimony from John Camelo about the reason for his ending the romantic

relationship with Lori Michelle Mayo, which allowed the jurors to believe the relationship ended because of J.M.’s allegations of sexual abuse. This testimony was contradicted by information provided by Mr. Camelo during an interview with the prosecution team. R. 790-91. The trial judge erred by denying Mr. Dent’s Sixth Amendment right to confront and cross-examine Mr. Camelo about his prior inconsistent statements. 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). This Court should grant the writ and consider the question.

Question 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?

Mr. Dent asked the Court of Appeals to hold “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.” Brief of Appellant, at 50-51; Reply Brief of Appellant, at 13-14. In footnote 3 of its opinion, the court below declined to decide this issue. Mr. Dent’s petition for rehearing asked the Court of Appeals to address this issue because it is capable of repetition at a re-trial.

The Merits

Mr. Dent moved to quash the indictments for of disseminating obscene material to a minor twelve years or younger. He argued the two “indictments allege a violation of [S.C. Code Ann. §] 16-15-355 with regard to obscenity, which falls under the meaning of [section] 16-15-305. He argued, “[U]nder Section 16-15-355, the only party that’s allowed

to seek arrest warrants or search warrants for violation of those sections is the solicitors office.” The arrest warrants “were obtained by the sheriff’s department,” meaning the State “failed to comply with the correct procedures” and “those indictments should be quashed.” R. 65, 114.

The prosecution argued (a) “this motion is not in the Defense’s best interest” because, if successful, “the State will simply reindict and move forward and have another bite at the apple,” (2) section 16-15-435(a) “does not apply to [section] 16-15-355,” and (3) the language requiring the solicitor to seek the arrest warrant is “a recommendation only.” R. 114-16.

Mr. Dent reminded the Court that obscenity law is “subject to its own unique set of interpretations by the United States Supreme Court.” He also argued the statute is “intended to provide specific procedures in order to protect people who might be accused of violations” and, as a penal statute, must “be construed against the State and in a light most favorable to the accused.” Finally, Mr. Dent argued the statute’s use of the term “may” refers to “prosecutorial discretion” and did not create a loophole for law enforcement to “circumvent the solicitor’s office.” R. 116-17.

The trial judge reasoned:

My interpretation of the statute stating the case that an arrest warrant for violation of Section 16-15-305 may be issued only upon the request of a circuit solicitor. I, certainly, would agree with Counsel, Ms. Joseph, that my interpretation of the statute is the operative word is “may.” And the way I interpret that language is “may” is not required that it be issued by the circuit solicitor, but it could be issued by law enforcement.

R. 117. Mr. Dent asked the trial judge, “[H]ow do you interpret the word ‘only’? Because that seems to suggest that only the Solicitor can do it.” Counsel also pointed out “the legislature was aware of other procedures for getting arrest warrants. And they chose to

say that these type of arrest warrants can only be gotten by the Solicitor.” R. 117-18. The trial judge denied the motion to quash these indictments. R. 118-19. Mr. Dent renewed this motion prior to the trial court swearing the jurors. R. 230.

It is well settled:

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. However, all rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (internal quotations and citations omitted). An “arrest warrant for a violation of Sections 16-15-305 . . . may be issued **only** upon request of a circuit solicitor.” S.C. Code Ann. § 16-15-435(A) (emphasis added). The State did not follow this procedure, as law enforcement—not the Solicitor—sought the arrest warrants. The trial judge erred by accepting the Solicitor’s argument that these code sections provide an alternate—rather than the only—method of obtaining the search warrants. This Court should strictly construe the requirements set forth in S.C. Code §§ 16-15-305 and 435. “When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)). This Court should grant the writ and consider the questions.

Question 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?

Mr. Dent asked the Court of Appeals to hold “the trial judge erred 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.” Brief of Appellant, at 52; Reply Brief of Appellant, at 14. In footnote 3 of its opinion, the court below declined to decide this issue. Mr. Dent’s petition for rehearing asked the Court of Appeals to address this issue because it is capable of repetition at a re-trial. If this Court agrees with Mr. Dent, then the State will not be allowed to use these exhibits during a new trial.

The Merits

A search warrant . . . for a violation of Sections 16-15-305 . . . may be issued only upon request of a circuit solicitor.” S.C. Code Ann. § 16-15-435. This statute must be strictly construed. *See Roberts, Nelson, and Blackmon, supra*. As seen, the search warrant was sought based on information provided by Investigator LaVan—not the Solicitor. The trial judge erred by not suppressing this evidence. This Court should reverse the trial court and suppress the evidence.

Question IX

Did the trial 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.

Mr. Dent asked the Court of Appeals to hold “the trial judge err[ed] 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.” Brief of Appellant, at 51-52; Reply Brief of Appellant, at 14-15. In footnote 3 of its opinion, the court below declined to decide this issue. In his Petition for Rehearing (A. at 961-67),

Mr. Dent argued it was error for the court below to decline to decide this issue because it is potentially dispositive. *Hepburn, supra*. If this Court agrees with Mr. Dent and enters a directed verdict, then double jeopardy will bar the State from prosecuting Mr. Dent a second time for disseminating obscene material to a minor. U.S. Const. Am. V; S.C. Const. Art. I, § 12.

The Merits

As seen, the State did not follow the statutory requirements of S.C. Code §§ 16-15-305 and 435 for obtaining the search warrant and arrest warrants for the two indictments for disseminating obscene material to a minor twelve years of age or younger. These statutes must be strictly construed. *See Roberts, Nelson, and Blackmon, supra*. Section 16-15-305, additionally, sets forth specific requirements before the allegedly obscene material can support a conviction. Not only did the prosecution not present any obscene material in during the trial, J.M.'s testimony did not satisfy the prerequisites of section 16-15-305 to support a conviction for disseminating obscene material. This Court should grant the writ and consider the question.

Question X

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

Each of the foregoing arguments independently entitles Charles Dent to a new trial. This Court, however, should not overlook the cumulative error doctrine, which “provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial.” *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). *And see 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). Many of Mr. Dent's questions on appeal are intertwined, thereby compounding the prejudice. This Court should grant the writ and consider the question.

CONCLUSION

For the forgoing reasons, this Court should grant the writ and consider the questions.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Charles Dent

November 22, 2021.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Nov 22 2021

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

S.C. SUPREME COURT

Appellate Case 2018-001246

The State, ...Petitioner-Respondent,

v.

Charles Dent,.....Respondent-Petitioner.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS),⁸ as reflected below, on the date reflected below:

Jonathan Scott Matthews, Esquire
S.C. Attorney General's Office
PO Box 11549
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smatthews2@scag.gov

By s/E. Charles Grose, Jr.
E. Charles Grose, Jr.
The Grose Law Firm, LLC
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November 22, 2021
Greenwood, South Carolina

⁸ A copy of the email will be attached to the certificate of service filed with this Court.

Subject: State v. Dent, Appellate Case No. 2021-001246
Date: Monday, November 22, 2021 at 4:51:42 PM Eastern Standard Time
From: Charles Grose
To: Scott Matthews
Attachments: 2021 11 22 Grose to SCSCt.pdf, Dent - Cert Petition - Final.pdf, Dent - Return to State's Cert Petition - Final.pdf

Hope you are well and had a good weekend.

Attached please find Mr. Dent's return to the State's petition for a writ of certiorari and cross-petition for a writ of certiorari, along with certificates of service and a cover letter. I will file these electronically with the SC Supreme Court today. I will also file the cross-petition and cover letter with the SC Court of Appeals today.

Thanks, and please let me know if you have any questions.

Best,
Charles

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December 9, 2021

RECEIVED

Dec 09 2021

S.C. SUPREME COURT

The Honorable Patricia A. Howard
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: *State of South Carolina v. Charles Dent*
Appellate Case Number: 2021-001246

Dear Ms. Howard:

Pursuant to Rule 208(b)(7), SCACR, this letter is to call this Court's attention to *State v. Sanchez*, S.C.Ct.App. Op. No. 5875 (filed December 8, 2021) (ordering a new trial when trial court failed to provide circumstantial evidence instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013)). This case is relevant to the sole issue raised in the State's petition for a writ of *certiorari* and Mr. Dent's return to the State's petition.

Thank you for your attention to this matter. Please let me know if the Court has any questions or requires additional information.

With kindest regards, I am

Yours very truly,

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

cc: Mr. Charles Dent (via US Mail)
Jonathan Scott Matthews, Esquire (via email)

A. 1100
RECEIVED

Dec 14 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2021-001246

THE STATE,

Petitioner-Respondent,

v.

CHARLES DENT,

Respondent-Petitioner.

RETURN TO CROSS PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI**I.**

Did the trial judge err in refusing to direct a verdict of acquittal on indictment number 2014-GS-07-1673 when the State produced evidence that Dent forced Victim to perform fellatio on him?

II.

Did the trial judge err in instructing the jury on the complete statutory definition of sexual battery when it was the correct definition of sexual battery and it adequately conveyed the law?

III.

Was the issue of the reliability of Tessa Trask's testimony preserved for appeal when Dent only objected to her definition of trauma? And even if preserved, did the trial judge err in admitting Trask's testimony when Trask was qualified to testify as a blind expert in the field of behavioral characteristics of child victims of sexual abuse? And finally, even if Trask's testimony was admitted in error, did her testimony prejudice Dent when she did not offer an opinion on the credibility of Victim's disclosure of abuse?

IV.

Did the trial judge properly admit pictures of Victim into evidence when they were properly authenticated by Victim, they were relevant, and their probative value was not substantially outweighed by the danger of unfair prejudice to Dent? And even if admitted in error, was any error harmless?

V.

Did the trial judge properly allow John Camelo to testify about his personal observations of Victim's behavior when he did not discuss the substance of Victim's disclosure or offer an opinion on her credibility?

VI.

Did the trial judge properly sustain the State's objection to the irrelevant question posed to John Camelo about he broke up with Mother because she was a stripper who smoke marijuana when Dent was not prejudiced by the ruling and when Dent was free to elicit the same information from Mother on cross examination?

VII.

Did the trial judge properly refuse to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 when a defect in an arrest warrant is not a proper ground for quashing an indictment and even if it were, was the warrant defective when S.C. Code Ann. § 16-15-435(A) doesn't apply to the statute Dent was charged with violating?

XIII.

Was the issue of whether the trial judge erroneously admitted pictures of Victim because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A) preserved for appeal when Dent did not object to the admission of the photos on that ground at trial? And even if preserved, were the requirements of § 16-15-435(A) irrelevant to the trial judge's decision to admit the photos when the State did not enter the photos to prove Dent disseminated obscene material to a minor?

IX.

Did the trial judge err in refusing to direct verdicts of acquittal on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 when the State produced evidence that Dent forced Victim to view pictures of his penis and pornography?

X.

Did Dent preserve any issue regarding the cumulative error doctrine for appellate review when the issue was not raised to and ruled upon by the trial judge but rather was raised for the first time via a post-trial motion? And even if preserved, did Dent abandon the issue by raising it in a conclusory and unsupported manner? Additionally was Dent's trial rendered unfair when there were no errors, cumulative or otherwise?

STATEMENT OF THE CASE**Procedural History**

In October 2014, the Beaufort County Grand Jury indicted Dent for two counts of first degree criminal sexual conduct with a minor. (App. 37-40). In March 2018, the Beaufort County Grand Jury indicted Dent for two amended counts of disseminating obscene material to a minor. (App. 29-30, 33-34). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Dent was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office.

At the conclusion of trial, the jury convicted Dent of one count of first degree criminal sexual conduct with a minor and both counts of disseminating obscene material to a minor. (App. 15-17, 788-89). The jury acquitted Dent of the remaining count of first degree criminal sexual conduct with a minor. (App. 18, 788). Following the verdict, the trial judge sentenced Dent to concurrent terms 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. Dent filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Dent's motion. Dent timely filed a notice of appeal and an initial brief.

On appeal, Dent raised eleven issues to the Court of Appeals. (App. 810-11). On August 18, 2021, in a divided published opinion, a majority of the Court of Appeals reversed Dent's convictions and found the trial judge erred in failing to give the Logan instruction and further found the trial judge's error was not harmless. State v. Dent, Opinion No. 5850 (S.C. Ct. App.

filed August 18, 2021) (Howard Adv. Sh. No. 28) (App. 936-42). Because the Court of Appeals found the Logan charge issue to be dispositive, the Court declined to address the remaining issues raised on appeal by Dent. (App. 940). On August 26, 2021, the State filed a petition for rehearing. (App. 943-52). On September 2, 2021, Dent filed a cross-petition for rehearing. (App. 961-67). The Court of Appeals denied both petitions for rehearing on October 18, 2021. (App. 980-83). On October 29, 2021, the State filed a petition for writ of certiorari which asked this Court to review the Court of Appeals decision regarding whether the trial judge erred in refusing to read the Logan charge. On November 22, 2021, Dent contemporaneously filed a return to the State's petition for writ of certiorari and a cross petition for writ of certiorari alleging the Court of Appeals erred in declining to address the remaining ten issues Dent originally raised on appeal. The State's return to Dent's cross petition for writ of certiorari now follows.

Factual History

The victim (Victim) in this case was born in 2005. (App. 38, 40). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (App. 306). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (App. 581). Mother is Dent's daughter, and Victim is Dent's granddaughter. (App. 307, 379). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Dent's suggestion. (App. 632-33). Initially, Mother, Victim, and Brother lived in a two bedroom townhome that was paid for by Dent. (App. 633). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (App.

635). The family moved after Dent decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (App. 263). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (App. 275). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App. 275). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App. 275). Victim made an initial disclosure of abuse by Dent to Camelo. Camelo then told Mother, who reported the abuse to law enforcement on June 10, 2014. (App. 312, 367). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (App. 428, State's Exhibit #16¹). After her first interview, Victim made a second disclosure to Camello. (App. 276). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. (App. 428, State's Exhibit #17).

At trial, Victim testified that Dent "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." (App. 378, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Dent. (App. 381). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Dent touched her vagina, breasts, and buttocks. Sometimes, the touching was underneath her clothes; other times it was over her clothes. Victim also disclosed that Dent showed her pictures of his penis

¹ Both State's Exhibit #16 and State's Exhibit #17 are part of the appellate record.

and a pornographic video. (App. 380-81, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Dent's penis went inside her mouth. She also disclosed that Dent touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Dent's penis on certain occasions that almost got in her mouth. She stated Dent's "urine" was white, looked like "flour", and stained the carpet. (State's Exhibit #17).

Dent testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Dent was convicted of all charges except a single count of first degree criminal sexual conduct with a minor.

STANDARD OF REVIEW

I., IX.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Morgan, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). “On an appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling.” State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court “views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

II.

“Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error.” State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). “A jury charge that is substantially correct and covers the law does not require reversal.” State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011).

III.

“The qualification of an expert witness and the admissibility of the expert’s testimony are matters within the trial court’s sound discretion.” State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). “A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion.” Id.

IV., V., VI., XIII.

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

VII.

“The trial court’s factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion.” State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007).

X.

“An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.” State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013).

ARGUMENT

I.

The trial judge properly denied Dent's request for a directed verdict of acquittal on indictment number 2014-GS-07-1673 because the State produced evidence that Dent forced Victim to perform fellatio on him.

Dent begins his cross-petition by complaining that the Court of Appeals did not address the remaining ten issues he raised on appeal despite the Court's opinion reversing and remanding his convictions because of the trial judge's failure to read the Logan charge. Dent argues the Court of Appeals' failure to specifically address whether the trial judge erred in failing to grant Dent a directed verdict of acquittal on indictment number 2014-GS-07-1673 gives the State a free pass to seek an amended indictment at a future trial. Dent's argument on this issue and each of his subsequent issues fails because the Court of Appeals is not required to address a point which is manifestly without merit. Rule 220(b)(2) SCACR. This issue, like each of Dent's remaining issues on appeal, is manifestly without merit.

Dent argues the Court of Appeals erred by failing to direct a verdict of acquittal in his favor on indictment number 2014-GS-07-1673 which alleged Dent committed first degree criminal sexual conduct with a minor by forcing Victim to perform fellatio on him. Dent likens his case to this Court's opinion in State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013). In Hepburn this Court directed a verdict of acquittal in favor of Hepburn because the State failed to present direct or substantial circumstantial evidence to support a conviction for homicide by child abuse. Here, unlike in Hepburn, the State produced direct evidence that Dent forced Victim to perform fellatio on him. Victim testified she was forced to perform fellatio on Dent and she repeated that accusation in her second forensic interview that was played before the jury. (App. 381, 431, State's Exhibit #17).

In his cross-petition, Dent complains that there was a discrepancy between Victim's testimony at trial and the statements she made during her forensic interview. Indeed, Victim testified at trial that she was only forced to perform fellatio on Dent one time, whereas she stated she was forced to perform fellatio more than once in her forensic interview. (App. 381, State's Exhibit #17). Furthermore, Dent notes that Victim stated in her forensic interview that the first of more than one instance of fellatio occurred at the first townhouse rather than the second townhouse². Therefore, Dent argues there was no evidence presented that Victim was forced to perform fellatio during the relevant time frame alleged in Indictment number 2014-GS-07-1673. However, Dent fails to recognize that Victim's trial testimony is nonetheless direct evidence that Dent forced Victim to perform fellatio. Whether there was a discrepancy in Victim's accounts regarding the number of times fellatio occurred, or a discrepancy regarding where and when it occurred is a question of the weight of the evidence to be assigned by the jury. At the directed verdict stage, the trial judge "shall consider only the existence or non-existence of the evidence and not its weight." Rule 19, SCRCrimP. Here, evidence existed that Victim was forced to perform fellatio on Dent during the time frame³ listed in indictment number 2014-GS-07-1673. Notably, Dent had the opportunity to resolve any discrepancies regarding time and date during

² Indictment #2014-GS-07-1673 references a timeframe from August 2013 to April 2014 in which Victim and her family lived in the second of two townhouses that the family lived in during their time in Beaufort County. (App. 37-38, 306-07, 635).

³ While indictment number 2014-GS-07-1673 contains a range of dates in which Dent's abuse of Victim occurred, contrary to Dent's argument, the date of the offense is not an element of first degree criminal sexual conduct with a minor as defined in S.C. Code § 16-3-655 (A)(1). While the State must prove Victim was under the age of eleven at the time of the offense, the State is not required to prove a specific date of the offense. As this Court recently noted in State v. Lewis: "The primary purpose of an indictment is threefold: to put the defendant on notice of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgement to pronounce following a conviction." State v. Lewis, 434 S.C. 158, 172, 863 S.E.2d 1, 8 (2021). Here, indictment 2014-GS-07-1673 satisfied each of the aforementioned three requirements.

his cross-examination of Victim and he never attempted to do so. (App. 383-93). Because evidence existed that Dent forced Victim to perform fellatio, the trial judge did not err in refusing to direct a verdict of acquittal for Dent.

II.

The trial judge properly instructed the jury on the complete statutory definition of sexual battery because it was the correct definition of sexual battery and it adequately covered the law.

Dent again complains the Court of Appeals should have addressed whether the trial judge erred in reading the entire definition of sexual battery rather than merely instructing the jury on fellatio. Dent asserts the Court of Appeals failure will allow the State a “free pass” to seek an amended indictment at a future trial. Contrary to Dent’s argument, indictment number 2014-GS-07-1673 did not contain a defect or variance and thus there is no reason for the State to seek an amended indictment at a future trial. The State maintained from opening statements through closing argument that it intended to prove Dent forced Victim to perform fellatio. The trial judge read both indictment numbers 2014-GS-07-1673 and 2014-GS-07-1674 during jury qualifications. (App. 152-53). Each indictment specifically listed fellatio as the sexual battery the State intended to prove. In its opening statement, the State identified fellatio as the only sexual battery they intended to prove. (App. 251). In the State’s direct examination of Victim, Victim was only asked about fellatio. (App. 375-82). In closing argument, the State argued that fellatio was the sexual battery that Dent was guilty of committing.⁴ (App. 725, 732). Therefore, the jury was clearly told which form of sexual battery the State intended to prove.

⁴ The State made a passing reference to the other forms of sexual battery Victim disclosed in her second interview which Dent objected to. However, this was the only reference to another form of sexual battery made by the State at trial. The State later emphasized in their closing argument that Dent was guilty of fellatio. (App. 723, 725, 732).

Here, the trial judge charged the jury on the definition of sexual battery exactly as it is written S.C. Code Ann. § 16-3-651(h). (App. 771). Therefore, the trial judge charged the complete, current, and correct law of South Carolina. The definition was not misleading or confusing to the jury because the jury was told by the trial judge and the State that fellatio was the specific sexual battery the State was seeking to prove.

III.

Because Dent only objected to Tessa Trask's definition of trauma, any issue regarding the remainder of her testimony is not preserved for appeal. Even, if preserved the trial judge did not err in admitting Trask's testimony because Trask was qualified to testify as a blind expert in the field of behavioral characteristics of child victims of sexual abuse. Even if Trask's testimony was admitted in error, her testimony did not prejudice Dent because she did not offer an opinion on the credibility of Victim's disclosure of abuse.

The third issue Dent raised on appeal to the Court of Appeals is whether the trial judge erred in admitting the testimony of Tessa Trask. Dent alleges the Court of Appeals erred in not addressing this issue and argues the trial judge erred by not holding a hearing to determine the reliability of Trask's testimony. As an initial matter, this issue is not preserved for appeal, because Dent only objected to Trask's definition of trauma. (App. 190-91, 399). To the extent that Dent objected to the remainder of Trask's testimony, Trask properly testified as a blind expert on general topics related to child sexual abuse. Contrary to Dent's argument, the trial judge did hold an *in camera* hearing to determine Trask's qualifications and the reliability of her testimony. (App. 180-95). Furthermore, Dent's argument that Trask's testimony is not reliable ignores this Court's holding in State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018). In Jones, this Court reiterated "the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized." Jones 423 S.C. at 636, 817 S.E.2d at 271. Here, the State tendered Trask as an expert in the field of behavioral characteristics of child victims of sexual abuse. (App. 397). As an expert in

behavioral characteristics of child victims of sexual abuse, Trask testified about trauma, developmentally inappropriate sexual behavior by minors, the relationship between trauma and ADHD, delayed disclosure, grooming, and risk factors of sexual abuse. (App. 398-405). Even if the trial judge erred in admitting Trask's testimony, the error was entirely harmless because Trask never offered an opinion on Victim's credibility or the truth of her disclosure. (R. 404). In fact, Trask readily admitted she had not met Victim, she did not know anything about Victim's case, and she wasn't offering any kind of opinion about Victim. (App. 407-08). Therefore, even if Trask's testimony was admitted in error, any error was harmless because it did not prejudice Dent.

IV.

The trial judge properly admitted pictures of Victim into evidence because they were properly authenticated by Victim, they were relevant, and their probative value was not substantially outweighed by the danger of unfair prejudice. If the photos were admitted in error, any error was harmless.

The fourth issue raised by Dent is whether the trial judge erred in admitting State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15. As with the other issues presented to this Court, Dent asserts the Court of Appeals erred in not addressing this issue. Contrary to Dent's multiple assertions of error regarding the photographs, the photos were relevant, did not require a chain of custody, they were properly authenticated by Victim, and their probative value was not substantially outweighed by the danger of unfair prejudice. Victim properly authenticated each photo as a depiction of her during her time living in Beaufort County, South Carolina. (App. 600-09). Furthermore, the State did not seek to prove the photos were taken from Dent's camera or computer and therefore the State was not required to prove a chain of custody. Indeed, the photos were not explicitly sexual and as Dent noted in his closing argument, the State could not definitively prove who took them nor were they relevant to the two charges of disseminating

obscene material to a minor. (App. 760-62). Therefore, the probative value of the photos was not substantially outweighed by the danger of unfair prejudice.

Even if the photographs were admitted in error, any error was harmless. The primary evidence offered by the State against Dent was the testimony of Victim. The photos of Victim were offered to give context to Victim's testimony, but they did not prove or disprove whether Dent committed a sexual battery against Victim or disseminated obscene material to her. The photos were not overtly sexual and Dent could have plausibly argued they were innocent photographs. Instead Dent argued the State had not proven where the photos came from. (App. 742). Dent thereby disputed that he took the photos or was ever in possession of them. Ultimately, the jury reached their verdict on Dent's guilt or innocence based on the credibility of Victim's testimony. The photos of Victim did not affect the outcome of the trial. Any error in their admission was harmless.

V.

The trial judge properly allowed John Camelo to testify regarding his personal observations of Victim's behavior because he did not discuss the substance of Victim's disclosure or offer an opinion on her credibility.

The fifth issue raised by Dent asks this Court to consider whether the Court of Appeals erred in declining to address whether the trial judge erred in overruling Dent's objections to the testimony of John Camelo. Dent argues Camelo's testimony was "a back door introduction of opinion evidence prohibited by Anderson, Kromah, Jennings, and similar cases." (Cross-Petition 18). Respectfully, Dent does not understand the restrictions placed upon the State by the Kromah, Jennings, and Anderson line of cases. For example, in Anderson, this Court expressed concern that "the common practice is to present the forensic interviewer to jurors as a 'human lie-detector'" State v. Anderson, 413 S.C. 212, 220, 776 S.E.2d 76, 80 (2015). Here, Camelo did

not testify as a forensic interviewer nor did he offer an opinion on the credibility of Victim's disclosure. Camelo testified as an outcry witness under Rule 801(d)(1)(D) SCRE and he described his personal observations of sexual behavior by Victim. Camelo's observations were based on his personal experience as a victim of sexual abuse and his experience raising a stepdaughter who was the same age as Victim. (App. 274).

Similarly, in Kromah this Court stated that a forensic interviewer testifying at trial should avoid "a direct opinion as to a child's veracity or tendency to tell the truth" or "any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a 'compelling finding' of abuse." State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013). However a forensic interviewer may properly testify regarding "any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer." Id. Even if Camelo had been testifying as a forensic interviewer or as an expert witness, he would nonetheless be allowed to testify about his personal observations of Victim's demeanor. Thus, Camelo's testimony complied with the restrictions of Kromah and the trial judge did not abuse his discretion in admitting the testimony.

VI.

The trial judge properly sustained the State's objection to the question posed to John Camelo about whether he broke up with Mother because she was a stripper who smoked marijuana when the question was irrelevant and Dent was not prejudiced by the ruling because the statement was not a prior inconsistent statement and Dent was free to elicit the same information from Mother on cross-examination but he chose not to.

Dent next claims the Court of Appeals erred in declining to address whether the trial judge erred by not allowing Dent to ask John Camelo if he broke up with Mother because she was a stripper who used marijuana. Dent baselessly speculates that the jury must have assumed Camelo broke up with Mother because of Victim's allegations of sexual abuse. However, as

Dent's subsequent *in camera* questions of Camelo revealed, Dent merely wished to impeach Mother by asking Camelo whether Mother was a stripper who used marijuana. (App. 310). Dent's line of questioning was completely irrelevant to the ultimate issue at trial and the State's objection to Dent's questions was properly sustained. To the extent Dent wished to impeach Camelo with a prior inconsistent statement, he would be unable to do so even if the trial judge allowed the question because Camelo never said he broke up with Mother because she was a stripper who smoked marijuana. To the extent that Dent wished to inform the jury that Mother was a stripper who smoked marijuana, he was capable of asking Mother that question on cross-examination but he chose not to. Therefore, the trial judge properly sustained the State's objection to Dent's question and even if the trial judge's ruling was incorrect, Dent was not prejudiced by the ruling.

VII.

The trial judge properly refused to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because a defect in an arrest warrant is not a proper ground for quashing an indictment. Even if the trial judge could have quashed the indictment based on a defect in the underlying arrest warrant, the arrest warrant was not defective because S.C. Code Ann. § 16-15-435 does not apply to the statute Dent was charged with violating.

Next, Dent asks this Court to consider whether the Court of Appeals erred in declining to address whether the trial judge erred in refusing to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the Solicitor's office did not apply for the underlying arrest warrants associated with each indictment. The manner in which Dent's arrest warrant was obtained is irrelevant to a determination of the sufficiency of the indictment. A defect in an arrest warrant is not a proper ground for quashing an indictment. As this Court recently noted, the purpose of an indictment is to: "put the defendant on notice of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know

what judgement to pronounce following a conviction.” Lewis, 434 S.C. at 172, 863 S.E.2d at 8. Here, the indictments put Dent on notice of the elements of the offense, they allowed him to decide whether to plead guilty or stand trial, and they enabled the trial court to know what judgement to pronounce following Dent’s convictions. (App. 29-30, 33-34). However, even if the trial judge could have quashed the indictment based on a defect in the arrest warrant, there were no defects in Dent’s arrest warrants for dissemination of obscene material to a minor. Dent claims S.C. Code § 16-15-435(A) requires a circuit solicitor to apply for an arrest warrant rather than a police officer. However, S.C. Code § 16-15-435(A) explicitly does not apply to the statute Dent was charged with violating, S.C. Code § 16-15-355.

Here, Dent was arrested and charged with disseminating obscene material to a minor 12 years of age or younger pursuant to S.C. Code Ann. § 16-15-355. Section 16-15-355 provides:

An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

S.C. Code Ann. § 16-15-355. The statute that Dent claims the State did not comply with is S.C. Code Ann. § 16-15-435(A). Section 16-15-435(A) provides:

(A) A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.

S.C. Code Ann. § 16-15-435(A). Dent was arrested for two violations of § 16-15-355. Section 16-15-355 is not listed within § 16-15-435(A) as one of the statutes which requires an arrest warrant to be requested by a circuit solicitor. Therefore, § 16-15-435(A) is inapplicable to the arrest warrants Dent was served with. Thus, there were no defects in the warrants.

VIII.

The issue of whether the trial judge erred in admitting pictures of Victim because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A) is not preserved for appeal, because Dent did not object on that ground at trial. However, even if this issue is properly preserved, the State did not use the photos to prove Dent had disseminated obscene material to a minor. Therefore, the requirements of § 16-15-435(A) were irrelevant to the trial judge's decision to admit the photos.

Next, Dent asks this Court to consider whether the Court of Appeals erred in declining to address whether the trial judge erred in admitting State's Exhibits #1, #3, #4, #6, #11, #13, and #15 because the Solicitor's office did not apply for the underlying arrest warrants for indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672. As an initial matter this issue is not preserved for appeal because Dent did not object to the admission of the aforementioned exhibits on this basis. (App. 573-74). Even if preserved, this issue is manifestly without merit. The State proved Dent disseminated obscene material to a minor through the testimony of Victim at trial and the statements she made during her forensic interview. (App. 380-81, State's Exhibit #16). Victim testified that Dent forced her to view pictures of his penis and pornography. (App. 380-81). However, Dent told the jury in opening statements and closing arguments that they would not see photos of his penis or pornography because the State hadn't recovered that evidence. (App. 255, 742). Furthermore, Dent conceded in closing that the photos of Victim were not relevant to the dissemination of obscene material charge. (App. 742-43). Even if the photos were relevant to proving Dent disseminated obscene material to a minor, S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355. Therefore, the trial judge did not err in admitting State's Exhibits #1, #3, #4, #6, #11, #13, and #15.

IX.

The trial judge properly denied Dent's request for a directed verdict of acquittal on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the State produced evidence that Dent forced Victim to view pictures of his penis and pornography.

Dent recycles his argument regarding the State's failure to comply with the warrant requirement of S.C. Code Ann. § 16-15-435(A). However, Dent additionally alleges the State's failure to comply with S.C. Code Ann. § 16-15-435(A) also required the trial judge to direct a verdict of acquittal on indictment numbers 2014-GS-07-1671 and 1672 because the State did not enter the actual obscene material disseminated to Victim into evidence. As with his other issues, Dent argues the Court of Appeals erred in declining to address this issue in their opinion. Dent's argument is manifestly without merit. As previously argued, S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355, and even if it did, a statute addressing the requirements of an arrest warrant has no bearing on a trial judge's decision at the directed verdict stage of a trial. The relevant consideration for a trial judge at the directed verdict stage of a trial is whether the State has produced evidence of a particular offense; not its weight. Here, the State conceded from the beginning of trial that the photo of Dent's penis and the pornographic videos would not be entered into evidence. These items were never recovered by law enforcement. Instead, the State relied on the testimony of Victim as well as the disclosures made in Victim's first forensic interview. Victim's testimony was direct evidence that Dent disseminated obscene material to a minor. Therefore, because evidence existed that Dent forced Victim to view pictures of his penis and watch pornography, the trial judge correctly denied Dent's motion for a directed verdict and allowed the jury to consider what weight to be assigned to the State's evidence.

X.

Dent did not preserve any issue regarding the cumulative error doctrine for appellate review because the issue was not raised to and ruled upon by the trial judge but rather it was raised for the first time via a post-trial motion. Even if preserved, Dent abandoned the issue by raising it in a conclusory and unsupported manner. Additionally, Dent's trial was not rendered unfair as a result of any errors, cumulative or otherwise.

The final issue Dent argues should have been addressed by the Court of Appeals is whether he should have been granted a new trial based on the cumulative error doctrine. As an initial matter, Dent failed to preserve this issue for appeal. Dent did not argue the cumulative error doctrine to the trial judge during the trial, but rather raised it for the first time in a post-trial motion. (App. 83). Even if Dent properly preserved this issue for appeal, he abandoned the issue by raising it in a conclusory and unsupported manner in his final brief. (App. 861). Dent cites appellate authority to establish that there is, in fact, a doctrine in South Carolina known as the cumulative error doctrine; however, Dent does not explain how the cumulative error doctrine applies to his case other than to say "Many of Mr. Dent's questions on appeal are intertwined, thereby compounding the prejudice." (App. 861). Dent's single sentence, conclusory argument and analysis are insufficient to preserve this issue for appeal. However, even if this issue is preserved, Dent has failed to identify any errors, cumulative or otherwise among the ten issues the Court of Appeals declined to address in their published opinion. Because each of Dent's ten issues are manifestly without merit, the Court of Appeals properly declined to address the cumulative error doctrine and the trial judge did not err in refusing to grant Dent a new trial on this basis.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Dent's cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 14, 2021

Dec 14 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2021-001246

THE STATE,

Petitioner-Respondent,

v.

CHARLES DENT,

Respondent-Petitioner.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Return to Cross-Petition for Writ of Certiorari on Respondent-Petitioner by electronic mail to the address listed in AIS for:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This fourteenth day of December, 2021.


LEIGH ANN STONE
Legal Assistant

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Dec 29 2021

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

S.C. SUPREME COURT

Appellate Case 2018-001246

The State, ...Petitioner-Respondent,

v.

Charles Dent,.....Respondent-Petitioner.

**REPLY TO STATE'S RETURN TO CHARLES DENT'S
CORSS-PETITION FOR WRIT OF CERTIORARI**

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IN REPLY

Charles Dent replies to the State’s return to his cross-petition for a writ of *certiorari* (“State’s Return”).

Question 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?

As further evidence the State’s petition for a writ of *certiorari*—appealing the Court of Appeals holding regarding the *Logan* circumstantial evidence jury instruction—must fail, the State relies on a combination of direct and circumstantial evidence to support its allegations that fellatio occurred during the timeframe alleged in the indictment ending in 01673. Although pointing to direct evidence contained in J.M. trial testimony and pre-trial unsworn video statement, the State concedes it did not present any direct evidence—from J.M. or anyone else—that fellatio occurred during the timeframe alleged in the indictment ending in 01673.¹ Rather, the State asks this Court to engage in mental gymnastics to conclude it presented “substantial circumstantial evidence” that fellatio occurred during the timeframe alleged in the indictment ending in 01673. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (“[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” (emphasis supplied by the Court)).

¹ Remarkably, the State faults Mr. Dent for not “resolv[ing] any discrepancies regarding time and date during his cross-examination.” State’s Return, at 10-11. As discussed *infra*, in addition to shifting the burden, this argument attempts to re-cast failure of proof as “discrepancies.”

The State attempts to re-cast its failure of proof a “a discrepancy between [J.M.’s] testimony at trial and the statements made during her forensic interview.” State’s Return, at 10-11. Without a doubt, J.M.’s statements were inconsistent throughout this case—the second child advocacy center interview was inconsistent with the first interview and the trial testimony was inconsistent with both interviews. However, the State raising “discrepancies” involving whether fellatio occurred at all and, if it occurred, “discrepancies” in the number of times it occurred is a red herring intended to distract this Court from the real question at bar—the State’s failure to present any evidence that fellatio occurred during the timeframe alleged in the indictment ending in 01673.

The State argues “the date of the offense is not an element of first degree criminal sexual conduct with a minor.” State’s Return, at 10, fn. 3. Although technically correct, the State provided only part of the information this Court needs to consider this issue. *Compare State v. Wingo*, 304 S.C. 173, 175, 403 S.E.2d 322, 323 (Ct. App. 1991) (“Where time is not an essential element of the offense, the indictment need not specifically charge the precise time the offense allegedly occurred.”) *with State v. Rallo*, 304 S.C. 258, 403 S.E.2d 653 (1991) (In criminal sexual conduct with a minor case, held that instructing jury that it could find that crime occurred on or about certain date was reversible error where indictment had been orally amended to charge specific date and defendant presented alibi defense with respect to that date.); *and see State v. Schumpert*, 312 S.C. 502, 508, 435 S.E.2d 859, 863 (1993) (Observing, “In *Rallo* the indictment was amended to allege the offense occurred on February 14. We held the trial judge erred in charging the jury the offense occurred “on or about” February 14 because the indictment alleged February 14 and the defendant had focused on that date in presenting evidence of alibi. Essentially, the

defendant in *Rallo* did not have notice of any date other than that alleged in the indictment and it was error to charge the jury with a larger time period. Here, however, the trial judge charged the time period alleged in the indictment.”) *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016).

Both parties cite this Court’s recent decision in *State v. Lewis*, 434 S.C. 158, ___, 863 S.E.2d 1, 8 (2021). Cross-petition for writ of certiorari, at 7; State’s Return, at 10, fn. 3. In this case, the indictments put Mr. Dent on notice the state intended to prove fellatio occurred at both townhouses. The parties agree that the two indictments for criminal sexual conduct with a minor corresponded to the two distinct timeframes where the child lived with her family in Beaufort County. Mr. Dent relied on those indictments when he proceeded to trial, as well as throughout the trial. Without any direct or circumstantial evidence that fellatio occurred during the timeframe alleged in the indictment ending in 01673, Mr. Dent is entitled to a directed verdict of acquittal. *Odems, supra*.

Question 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?

In its response to Question I, the state concedes—as it has to based on the indictment—that it had to prove fellatio in order to obtain a conviction for criminal sexual conduct with a minor. State’s Return, at 9-11; *see also* State’s Return, at 11 (arguing in response to Question II, “In closing argument, the State argued that fellatio was the sexual battery that Dent was guilty of committing.”). Yet, the State’s Return never explains why it wants this Court to sanction a “purposeful ambiguity” in the jury instruction. *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 Solicitor, however, argued at trial that the jurors should be able to consider evidence of other sexual batteries not contained in the indictment. *E.g.* R. 590 (“[A]ll that we must prove is that as sexual battery, as defined by the statute, was committed. So she, in her second interview, testified that the Defendant put his mouth on her privates.”) and 699 (“They were put on notice that he committed criminal sexual conduct in the first degree with a minor. . . . And that’s what we are going to argue to the jury. . . . We are asking for the full definition of sexual battery to be read to the jury. We’re asking to argue that a sexual battery was committed. The Defense can point to the indictment.”).

In addition to arguing fellatio to the jurors, the prosecution argued “other sexual acts.” *E.g.* R. 709 (putting his tongue in her mouth), 712 (put his own mouth on [her] private parts” and “penetrating her vagina.”). The State’s Return wants this Court to overlook these portions of the state’s closing argument.

Question 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?

The State relies on *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018) for the proposition that “the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized.” State’s Return, at 12. Mr. Dent does not dispute this principle of law; rather, he contests the trial court’s failure to exercise its gatekeeping function to determine whether this purported expert’s testimony was reliable. *State v. Chavis*, 412 S.C. 101, 771 S.E.2d

336 (2015); *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010); *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009).

Question 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?

The State argues these photographs were “properly authenticated” by J.M., it “did not seek to prove the photographs were taken from Dent’s camera,” and the photographs “did not affect the outcome of the trial.” State’s Return, at 13-14. The State apparently forgets the arguments in made at trail and in the Court of Appeals. At trial, the Solicitor argued J.M. “thought the Defendant took” the photographs. R. 719-20. In the Court of Appeals, the State argued 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.

Question 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?

The State argues counsel for Mr. “Dent does not understand the restrictions placed on the State by the *Kromah*,^[2] *Jennings*,^[3] and *Anderson*^[4] line of cases.” State’s Return, at 14. The State, however, is mistaken when it argues this line of cases is limited to the testimony of a child advocacy center interviewer. *Id.*, at 14-15. Under our state’s precedent, not a witness is allowed to vouch for the credibility of another witness. To the extent the State misunderstands this rule of law, this Court should consider the issue and provide guidance to the bench and bar.

Question VI

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

The State argues Mr. “Dent merely wished to impeach Mother by asking Camello whether Mother was a stripper who used marijuana.” State’s Return, at 16. Mr. Dent, in fact, wanted to impeach Mr. Camello about his prior inconsistent statements. *See, e.g.*, Rule 613 and 801, SCRE.

Question 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?

This Court’s guidance is needed regarding the interpretation of S.C. Code §§ 16-15-305 and 435. This Court, accordingly, should grant the writ and consider the issue.

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).

Question 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?

This Court's guidance is needed regarding the interpretation of S.C. Code §§ 16-15-305 and 435. This Court, accordingly, should grant the writ and consider the issue.

Question IX

Did the trial 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?

This Court's guidance is needed regarding the interpretation of S.C. Code §§ 16-15-305 and 435. This Court, accordingly, should grant the writ and consider the issue.

Question X

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

The issues raised by Mr. Dent in this Appeal independently entitle him to relief. If this Court disagrees, then it should consider the cumulative error doctrine.

(conclusion on next page)

CONCLUSION

For the reasons set forth in Charles Dent's petition for a writ of certiorari and this return, this Court should grant the writ and consider the questions.

Respectfully Submitted,

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Attorney for Charles Dent

December 29, 2021.

The Supreme Court of South Carolina

The State, Petitioner-Respondent,

v.

Charles Dent, Respondent-Petitioner.

Appellate Case No. 2021-001246

ORDER

Based on the vote of the Court, the State's petition for a writ of certiorari is granted. The parties shall proceed to serve and file ten copies of the appendix and ten copies of their briefs in the manner provided by Rule 242(i), SCACR. Charles Dent's cross-petition for a writ of certiorari is held in abeyance pending resolution of the State's petition.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
September 7, 2022

cc:

E. Charles Grose Jr., Esquire
Alan McCrory Wilson, Esquire
Isaac McDuffie Stone III, Esquire
William M. Blich Jr., Esquire
The Honorable Jenny Abbott Kitchings

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Oct 06 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

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v.

CHARLES DENT,

Respondent-Petitioner.

BRIEF OF PETITIONER FOR PETITIONER-RESPONDENT

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ATTORNEYS FOR PETITIONER-RESPONDENT

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals 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 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 the presumption of innocence?

STATEMENT OF THE CASE

In October 2014, a Beaufort County Grand Jury indicted Charles Dent for two counts of criminal sexual conduct with a minor, first degree (App. 37-40). In March 2018, a Beaufort County Grand Jury indicted Dent for two amended counts of disseminating obscene material to a minor twelve years of age or younger (App. 29-30, 33-34). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Dent was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office.

At the conclusion of trial, the jury convicted Dent of one count of first degree criminal sexual conduct with a minor and two counts of disseminating obscene material to a minor twelve years of age or younger. (App. 15-17, 788-89). The jury acquitted Dent of the remaining count of first degree criminal sexual conduct with a minor. (App. 18, 788). Following the verdict, the trial judge sentenced Dent to concurrent terms 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 of age or younger. Dent filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Dent's motion. Dent then appealed his convictions to the Court of Appeals.

On appeal, Dent raised eleven issues. (App.810-11). After briefs were submitted by Dent and the State, the Court of Appeals heard oral argument on February 11, 2021. On August 18, 2021, in a divided, published opinion, a majority of the Court of Appeals reversed Dent's convictions and found the trial judge erred in failing to give the circumstantial evidence

instruction required by State v. Logan¹ and further found the trial judge's error was not harmless. State v. Dent, 434 S.C. 357, 863 S.E.2d 478 (Ct. App. 2021). (App. 936-42). Because the Court of Appeals found the Logan charge issue to be dispositive, the Court declined to address the remaining issues raised on appeal by Dent. (App. 940). On August 26, 2021, the State filed a petition for rehearing. (App. 943-52). On September 2, 2021, Dent filed a cross-petition for rehearing. (App. 961-67). The Court of Appeals denied both petitions for rehearing on October 18, 2021. (App. 980-83). The State petitioned this Court for a writ of certiorari on October 29, 2021. Shortly thereafter, Dent submitted a return to the State's petition and filed a cross-petition for certiorari to this Court on November 22, 2021. The State submitted a return to Dent's cross-petition on December 14, 2021 and Dent submitted a reply to the State's return on December 29, 2021. This Court granted the State's petition for a writ of certiorari on September 7, 2022. Simultaneously, this Court held Dent's cross-petition for a writ of certiorari in abeyance pending the resolution of the State's petition.

¹ State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

STATEMENT OF FACTS

The victim (Victim) in this case was born in 2005. (App. 38, 40). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (App. 306). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (App. 581). Mother is Dent's daughter, and Victim is Dent's granddaughter. (App. 307, 379). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim, Mother, and Brother moved to Beaufort County from Jacksonville, Florida at Dent's suggestion. (App. 632-33). Initially, Mother, Victim, and Brother lived in a two bedroom townhome that was paid for by Dent. (App. 633). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (App. 635). The family moved after Dent decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (App. 263). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (App. 275). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App. 275). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App. 275). Victim made an initial disclosure of abuse by Dent to Camelo. Camelo then told Mother, who reported the abuse to law enforcement on June 10, 2014. (App. 312, 367). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview

took place on July 10, 2014. (App. 428, State's Exhibit #16²). After her first interview, Victim made a second disclosure to Camelo. (App. 276). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. (App. 428, State's Exhibit #17).

Victim disclosed that Dent "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." (App. 378, lines 19-23).

Victim also disclosed that she was forced to perform fellatio on Dent. (App. 381). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Dent touched her vagina, breasts, and buttocks. Sometimes, the touching was underneath her clothes; other times it was over her clothes. Victim also disclosed that Dent showed her pictures of his penis and a pornographic video. (App. 380-81, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Dent's penis went inside her mouth. She also disclosed that Dent touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Dent's penis on certain occasions that almost got in her mouth. She stated Dent's "urine" was white, looked like "flour", and stained the carpet. (State's Exhibit #17).

Dent testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Dent was convicted of all charges except a single count of first degree criminal sexual conduct with a minor.

² Both State's Exhibit #16 and State's Exhibit #17 are part of the appellate record.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “In reviewing jury charges for error, this Court considers the trial court’s jury charge as a whole and in light of the evidence and issues presented at trial. A jury charge is correct if, when read as a whole, the charge adequately covers the law.” State v. Logan, 405 S.C. 83, 90-91, 747 S.E.2d 444, 448 (2013). “A jury charge that is substantially correct and covers the law does not require reversal.” State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011).

ARGUMENT

The Court of Appeals erred in holding the trial judge's failure to give the circumstantial evidence charge required by State v. Logan was prejudicial to Dent because: (1) the evidence presented against Dent was mostly direct and not circumstantial; and (2) the trial judge's instruction, as a whole, correctly conveyed the applicable law and properly instructed the jury on reasonable doubt and the presumption of innocence.

On August 18, 2021, a majority of the Court of Appeals reversed Charles Dent's convictions for first degree criminal sexual conduct with a minor and disseminating obscene material to a minor because the majority found the trial judge erred in failing to charge the jury with the requested circumstantial evidence instruction established by this Court's opinion in State v. Logan (App. 936-42). The Court of Appeals further ruled the trial judge's error was prejudicial to Dent in light of what the Court considered to be the circumstantial nature of the evidence. The Court of Appeals majority opinion was wrong for two key reasons. First, while the trial judge erred in failing to give the Logan instruction, the error was harmless because the evidence presented against Dent was almost exclusively direct evidence and not circumstantial. Second, the trial judge's instructions to the jury, as a whole, properly conveyed the applicable law and correctly instructed the jury on reasonable doubt and the presumption of innocence. For these reasons, the trial judge's failure to give the Logan charge was harmless error. Accordingly, the State asks this Court to reverse the decision of the Court of Appeals and affirm Dent's convictions and sentences.

Failure to Give Logan Charge Not Per Se Reversible Error

In Logan, this Court endeavored to “articulate for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the State's burden and the jury's responsibility.” Logan, 405 S.C. at 94-95, 747 S.E.2d at 450. This Court noted that direct evidence and circumstantial evidence each require a different mental approach by a jury. “Unlike direct evidence, 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.” Logan, 405 S.C. at 97, 747 S.E.2d at 451. “Analysis of circumstantial evidence is plainly a more intellectual process.” Logan 405 S.C. at 97-98, 747 S.E.2d at 451. Accordingly, a criminal defendant is entitled to “a jury charge that reflects the requisite connection of collateral facts necessary for a conviction.” Logan 405 S.C. at 99, 747 S.E.2d at 452. However, this Court ultimately held the trial judge’s error in Logan was harmless because the trial judge properly instructed the jury on reasonable doubt and the instruction, as a whole, properly conveyed the applicable law. Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

Recently, this Court addressed the failure to give a Logan instruction in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). This Court found the trial judge’s failure to give the Logan instruction was reversible error because the evidence against Herndon “was almost exclusively circumstantial” and because “the competing inferences involved in *this* circumstantial evidence case illustrate well the need for the Logan charge.” Herndon 430 S.C. at 373, 845 S.E.2d at 502-503 (emphasis added). In reaching its conclusion, this Court took particular note of the State’s reliance on a pathologist’s testimony which indicated it was equally plausible that Herndon shot the victim as he was walking away from Herndon as the State contended, or that the victim was shot as he charged toward Herndon as Herndon contended. Herndon 430 S.C. at 373, 845 S.E.2d at 502. Thus, because of the circumstantial nature of the evidence and the competing inferences to be drawn from the pathologist’s testimony, the trial judge’s failure to give the Logan charge in Herndon’s specific case was not harmless. However, this Court “acknowledge[d] there may be a case in which a trial court’s failure to give the Logan charge might be harmless error.” Id.

Similarly, the Court of Appeals also recently addressed a trial judge's failure to give the Logan instruction in State v. Sanchez, 435 S.C. 468, 867 S.E.2d 595 (Ct. App. 2021). In Sanchez, the defendant was convicted of trafficking heroin following a traffic stop in which heroin was found in a compartment underneath a vehicle that had been recently sold to Sanchez. Sanchez 435 S.C. at 471, 867 S.E.2d at 596. The State did not investigate who sold the vehicle to Sanchez or perform any tests on the hidden compartment. Because there was no direct evidence that Sanchez had knowledge of the hidden compartment full of drugs, the Court of Appeals recognized that the State's case against Sanchez was "largely circumstantial." Sanchez 435 S.C. at 475, 867 S.E.2d at 598-599. Similar to this Court's fact-specific determination in Herndon, the Court of Appeals held the trial judge's failure to read the Logan charge was not harmless because of the circumstantial nature of the evidence against Sanchez.

Here, unlike in this Court's opinion in Herndon or the Court of Appeals opinion in Sanchez, the Court of Appeals majority opinion made little effort to explain how the evidence against Dent was circumstantial or how Dent was prejudiced from the trial judge's failure to read the Logan charge. The majority opinion noted the trial judge's failure to "include reference to the requisite connection of circumstantial facts necessary for a conviction" but did not explain how this failure prejudiced Dent. (App. 940). Rather, the majority asserted: "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.'" (App. 940). The majority correctly identified that there was no physical evidence against Dent; however, the majority confuses the absence of physical evidence with an absence of direct evidence. On the contrary, the State's case against

Dent was predominantly based on direct evidence in the form of eyewitness testimony.

Furthermore, the majority's holding seems to imply that a trial judge's failure to read the Logan instruction is per se reversible error. In actuality, as this Court's opinion in Herndon plainly demonstrated, a fact-intensive analysis is required to determine whether the trial judge's failure to read the Logan instruction was harmless in each individual case. Because this Court closely examined the evidence presented in reaching its conclusion in Herndon, it is instructive to do so here as well.

In Logan, this Court defined direct evidence as evidence that "directly proves the existence of a fact and does not require deduction." Logan 405 S.C. at 99, 747 S.E.2d at 452. Here, Dent was charged with, and convicted of, first degree criminal sexual conduct with a minor and disseminating obscene material to a minor. The State proved that Dent committed each of these crimes through direct evidence. The State proved that Dent committed first degree criminal sexual conduct with a minor through Victim's eyewitness testimony at trial and Victim's second recorded forensic interview. Victim testified that she was forced to perform fellatio on Dent. (App. 381). Victim repeated this accusation in her second forensic interview which was played for the jury. (App. 431-33, State's Exhibit #17). Victim's eyewitness testimony directly proves the existence of the fact that Dent forced Victim to perform fellatio and does not require a deduction, nor are there any competing inferences the jury needs to resolve. Therefore, Victim's testimony was direct evidence of Dent's guilt. Dent acknowledged Victim's testimony was direct evidence when he told the jury in closing argument: "Certainly, things like testimony, eyewitness accounts are what we call direct evidence." (App. 737, lines 3-5).

The State proved that Dent disseminated obscene materials to Victim through Victim's testimony at trial and Victim's first forensic interview which was also played for the jury. (App.

380-81, 431-33, State's Exhibit #16). This too was direct evidence of Dent's guilt. Victim's testimony directly proved that Dent forced Victim to view photos of his penis and pornographic videos and did not require deduction, nor were there competing inferences that needed to be resolved. Indeed, Dent emphasized that the State's only evidence proving dissemination of obscene material came from the testimony of Victim, when he told the jury in his opening statement and closing argument that the State could not produce pictures of Dent's penis or pornographic videos. (App. 255, 742-43). In regard to the pornography, Dent specifically told the jury in closing "And once again, we've had some testimony, but we haven't had anything that has confirmed or corroborated showing of pornography." (App. 743, lines 9-11). Thus, Dent seemed to acknowledge at trial that the evidence against him was entirely direct, particularly in regard to the crime of disseminating obscene material to a minor³.

On appeal, Dent asserted in a conclusory fashion in his Final Brief: "In this case, the State relied on a combination of direct and circumstantial evidence." (App. 858-59). The Court of Appeals majority opinion adopted Dent's conclusory reasoning but, in doing so, did not specify how the evidence against Dent was circumstantial other than to criticize the State's brief mention of circumstantial evidence in its rebuttal closing argument and the State's attempt to

³ As with all eyewitness testimony, the jury was asked to make a credibility finding regarding the weight to be given to Victim's testimony. Here, the trial judge provided the following instruction regarding credibility: "I also told you at the beginning of the case that evidence consists of several things. The first is sworn testimony, and the second is exhibits. You judge the credibility of the evidence. And you, as jurors, would have to necessarily gauge the credibility or believability of the evidence presented. That's within your purview....But I will tell you that you may also consider in deciding credibility of the witnesses testimony in such a way that you believe everything that they say, or you would believe nothing a witness says. You may believe parts of a witnesses testimony, and disbelieve the other part of a witnesses testimony." (App. 765 lines 16-21 and 25—App. 766 lines 1-5). The fact that the jury was asked to make a credibility finding does not diminish the status of Victim's eyewitness testimony as direct evidence. The jury necessarily had to determine whether they believed Victim's testimony, but Victim's testimony was direct evidence of Dent's guilt nonetheless because it directly proved Dent forced Victim to perform fellatio and view pornographic materials and it did not require a deduction.

quote the trial judge's jury instruction. However, a closer examination of the record reveals the State spent very little time in closing addressing circumstantial evidence.

Far from "spending substantial time in summation" explaining that Dent's case was about circumstantial evidence, the State merely responded in their rebuttal argument to Dent's specious assertion during his closing argument that the State "rel[ied] on a lot of circumstantial evidence." (App. 737, lines 2-3). In fact, the State spent the entirety of their primary closing argument telling the jury about the direct evidence against Dent and never once used the words "circumstantial evidence" in an argument that spanned 17 pages of the record. (App. 716-33). When the State did address Dent's circumstantial evidence argument, the solicitor merely explained that the State didn't have direct evidence of Dent's crimes in the form of "photos of [Victim] licking [Dent's] penis" or "[Victim's] clothes covered in [Dent's] semen" because sexual assaults occur in secret. (App. 758). The State's lack of physical or photographic evidence of Dent's crimes does not mean the State lacked direct evidence. The solicitor correctly noted that Dent told the jury she would not quote what the trial judge's circumstantial evidence charge would be⁴, but to the extent that the State "read part of the trial court's planned charge on circumstantial evidence to the jury", as the majority alleges, the solicitor merely told the jury: "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." (App. 758, lines 8-11). The solicitor's anodyne statement was not a quote from the trial judge's eventual instruction to the jury, but is a correct statement of law that does not conflict with the instruction recommended in Logan. (App. 766, lines 10-25 – App. 767 line 1).

⁴ Dent told the jury: "I'm not going to try to quote the exact words as to what [the trial judge is] going to say." (App. 736, lines 22-23).

The Court of Appeals’ dissenting opinion correctly noted the evidence against Dent “was not ‘almost exclusively circumstantial’ like in Herndon.” (App. 941). By contrast, the evidence against Dent was *almost exclusively direct*. While the State presented some circumstantial evidence⁵ against Dent, neither Herndon nor Logan established a per se rule that the failure of a trial judge to give the Logan instruction in a case with any circumstantial evidence was automatically reversible error. In fact, the error in Logan was deemed to be harmless and in Herndon this Court envisioned a scenario where such an error would be harmless. Because so much of the evidence against Dent was direct, Dent’s case is precisely the kind of case this Court envisioned in Herndon where the failure to give the Logan instruction would be deemed harmless error.

Jury Instructions Correctly Conveyed the Law

The Court of Appeals dissenting opinion also correctly found the trial judge’s “instruction, as a whole, properly conveyed the applicable law.” (App. 941). Here the trial judge provided a thorough and correct instruction to the jury on the definition of reasonable doubt and Dent’s presumption of innocence. The trial judge provided the jury the following instruction on reasonable doubt and the presumption of innocence:

Mr. Dent, in these four indictment, has plead not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against Mr. Dent beyond a reasonable doubt.

You’re, also, required to weigh each of these charges separately and consider the evidence as to each one separately. There are four indictments, four charges, four

⁵ The State presented Tessa Trask as an expert in the field of behavioral characteristics of child victims of sexual abuse. (App. 397). Trask testified as a “blind” expert about general topics related to child sexual abuse, including grooming. (App. 404). Victim stated in her first forensic interview that Dent gave her gifts as “a bribe.” (State’s Exhibit #16). Because this evidence would allow the jury to make the deduction that Dent groomed Victim by giving her gifts, this evidence was circumstantial.

evaluations by you of each one to determine—and that has to be done to determine whether or not the State has met its burden of proof as to each element of the offense.

Mr. Dent is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you – every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of a crime.

Now, what is a reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

The law does not require proof that overcomes every possible doubt. There are few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

(App. 768, lines 5-25—App. 769, lines 1-15). The trial judge's instruction on reasonable doubt substantially mirrored the language given by the trial judge in Logan⁶. Notably, after citing the trial judge's reasonable doubt instruction in Logan, this Court held the "trial court's jury instruction, as a whole, properly conveyed the applicable law." Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

⁶ The trial judge in Logan provided the following instruction on reasonable doubt: "Proof beyond a reasonable doubt is proof that leaves you firmly convinced if the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty... You should weigh all the evidence in this case, and, after weighing the testimony, you are not convinced of the defendant's guilt beyond a reasonable doubt, you must find the defendant not guilty... The burden of proof remains on the state to prove guilt beyond a reasonable doubt." Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

In addition to this Court finding that the failure to give a Logan charge was harmless error in Logan itself, the Court of Appeals has found such a failure harmless on multiple occasions. As the dissenting opinion correctly identified, the Court of Appeals previously held a trial judge's failure to include language from the Logan charge was harmless in State v. Jenkins, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014); State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015), aff'd in result and vacated in part on other grounds by State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015); and State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015). Notably, in both Jenkins and Drayton the Court of Appeals found the failure of the trial court to include language from Logan in its jury instruction was harmless in light of the trial judge's reasonable doubt instruction and because the jury instruction, as a whole, properly conveyed the applicable law. See Jenkins 408 S.C. at 573-74, 759 S.E.2d at 766 ("As our supreme court ultimately concluded in Logan, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law."); see also Drayton, 411 S.C. at 546, 769 S.E.2d at 261 ("As this court concluded in Jenkins, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law.").

To the extent that Dent suffered any prejudice from the trial judge's failure to read the Logan instruction, any prejudice was outweighed by the benefit Dent received from the trial judge's juvenile credibility instruction⁷. (App. 770-71). Recently, in State v. Reyes, this Court

⁷ The trial judge provided the following instruction to the jury: "The testimony of children. During this trial, you have heard the testimony from a child. Where a witness is a child, you must determine, as with any other witness, whether the testimony is believable. In deciding believability, you may consider not only matters that I have already discussed with you, but you may, also, consider the age of the child, the child's ability to understand and answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth. In addition,

recognized “it is not proper for a trial court to include such language in its charge to the jury.”

State v. Reyes, 432 S.C. 394, 408 n. 4, 853 S.E.2d 334, 342 n. 4 (2020). The giving of the improper jury instruction cured any potential bolstering of a child witnesses’ testimony from the solicitor’s first-person questions in Reyes’ case. Like in Reyes, the jury was told in Dent’s case they could view Victim’s testimony through a more suspect lens than an adult witness merely because she was a child. As previously argued, the majority of the State’s evidence against Dent was Victim’s eyewitness testimony describing Dent’s sexual abuse against her. Dent received the benefit of the trial judge giving the jury permission to view the testimony of the State’s most important witness in a skeptical manner. The benefit received by Dent from this instruction, which has now been recognized as improper and could not be appropriately given in a retrial, outweighed any possible prejudice Dent may have suffered from the trial judge’s failure to read the Logan charge.

Because the trial judge in Dent’s case properly instructed the jury on the reasonable doubt burden of proof and Dent’s presumption of innocence, the trial judge’s instruction, as a whole, properly conveyed the applicable law. This Court should find the trial judge’s failure to give the Logan instruction was harmless error and reverse the judgement of the Court of Appeals.

young children may be influenced by the way questions are asked. It is up to you to decide whether the child understood the questions asked. (App. 770, lines 10-25—App. 771, lines 1-3).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgement of the Court of Appeals be reversed and Dent's convictions and sentences be affirmed.

Respectfully submitted,

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October 6, 2022

A. 1157

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

THE STATE,

Petitioner-Respondent

vs.

CHARLES DENT,

Respondent-Petitioner

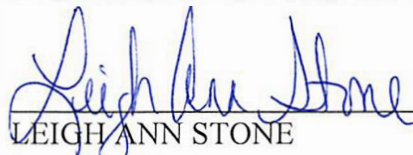
Appellate Case No. 2021-001246

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Brief of Petitioner for Petitioner-Respondent and Appendix on Respondent-Petitioner by email to the address listed in AIS:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This 6th day of October, 2022.


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State v. Charles Dent (2021-001246)

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Good Afternoon Mr. Grose,

Attached please find a copy of the Brief of Petitioner for Petitioner-Respondent and the Appendix in The State v. Charles Dent (2021-001246). This brief will be submitted to the South Carolina Court Supreme Court today via the AIS One Drive System.

Please let me know if you would like a hardcopies of the above brief and appendix.

If you will, please reply to confirm receipt of this email.

Thank you!

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Nov 14 2022

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. 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 trial 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 trial 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 FACTS¹

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,

¹ A detailed Statement of Facts is 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

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

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 intentions 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 disclosure 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 talking 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

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 perpetrator 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 give 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

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 give 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.

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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November 14, 2022
Greenwood, South Carolina

Nov 14 2022

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. 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.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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November 14, 2022
Greenwood, South Carolina

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Petitioner-Respondent,

v.

Charles Dent, Respondent-Petitioner.

Appellate Case No. 2021-001246

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Beaufort County
Alex Kinlaw Jr., Circuit Court Judge

Opinion No. 28172
Heard April 20, 2023 – Filed August 16, 2023

REVERSED AND REMANDED

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich
Jr., both of Columbia; and Isaac McDuffie Stone III, of
Bluffton, all for Petitioner-Respondent.

E. Charles Grose Jr., of The Grose Law Firm, LLC, of
Greenwood, for Respondent-Petitioner.

JUSTICE KITTREDGE: Charles Dent was convicted and sentenced on one count of first-degree criminal sexual conduct (CSC) with a minor and two counts of disseminating obscene material to a minor. Dent appealed, and a divided court of appeals' panel reversed and remanded for a new trial, finding the trial court erred in failing to give the requested circumstantial evidence charge this Court articulated in *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 (Ct. App. 2021). Because this ruling was dispositive, the court of appeals did not reach Dent's other assignments of error. We granted the State's petition for a writ of certiorari and now reverse. While we agree with the court of appeals' finding of error in the trial court's failure to charge circumstantial evidence pursuant to *Logan*, the error was harmless. We reverse and remand to the court of appeals for consideration of Dent's remaining issues on appeal.

I.

Dent's minor granddaughter (Granddaughter) accused Dent of sexually abusing her when she was eight and nine years old. Following her disclosure, Granddaughter underwent two forensic interviews. During the first forensic interview, Granddaughter revealed that one of the initial incidents of abuse occurred when Dent went to the bathroom, took lewd pictures of himself, and showed them to Granddaughter. Granddaughter told the forensic interviewer, "After he showed me all of his pictures—he took like ten of them— . . . he told me, 'Here, go take pictures of yours,' and I said, 'No!'" Granddaughter also detailed occasions when Dent would touch her vagina, breasts, and buttocks: "He was just touching me everywhere. He was kissing me on the mouth." Granddaughter stated Dent made her watch a pornographic video. Dent also took pictures of Granddaughter's vagina while she was asleep and later showed the pictures to Granddaughter.

In Granddaughter's second forensic interview, she wrote on a piece of paper: "He made me touch it more than once," indicating that her hand had touched Dent's penis. Granddaughter also wrote, "He made me lick it," and stated Dent's penis had gone inside her mouth on multiple occasions. Granddaughter disclosed that Dent touched her vagina with his mouth and that his hands went inside her vagina. Granddaughter described seeing Dent's "urine," which she recalled was "whiteish" in color, looked "like a flour mix," and stained the carpet. In both forensic interviews, Granddaughter stated Dent bribed her with money and toys. Dent was paying rent for the house

Granddaughter lived in, and he threatened that if Granddaughter reported the abuse, he would kick the family out of their home.

Dent was indicted for two counts of first-degree CSC with a minor and two counts of disseminating obscene material to a minor. At trial, the State presented mostly direct evidence against Dent. Granddaughter 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." Granddaughter stated Dent touched her "private parts" and "made [her] lick his private parts." Granddaughter also testified that Dent showed her videos of "[p]eople having sex." In addition to Granddaughter's direct, in-court testimony, the trial court admitted videos of both forensic interviews into evidence, and the videos were published to the jury.

The State also presented circumstantial evidence at trial, including testimony from Granddaughter's mother and her mother's boyfriend concerning changes in Granddaughter's behavior around the time of the abuse.

At the end of trial, defense counsel requested a circumstantial evidence charge in accordance with *Logan*. See *Logan*, 405 S.C. at 99, 747 S.E.2d at 452 (providing language that trial courts should include in a circumstantial evidence charge when the charge is requested by a defendant). The State, to its credit, did not oppose the circumstantial evidence charge. The trial court, nevertheless, refused to provide the jury with the mandated *Logan* instruction. Dent noted his objection and, following the verdict, unsuccessfully moved for a new trial based in part on the *Logan* issue.

Dent subsequently appealed, raising eleven issues to the court of appeals. Finding the *Logan* issue dispositive, the court of appeals' majority declined to address Dent's remaining ten issues on appeal. The court of appeals held the trial court erred in not giving the full *Logan* charge and reversed and remanded for a new trial. Judge Thomas dissented. While Judge Thomas concurred with the finding of error in the trial court's failure to give the *Logan* charge, she pointed to the wealth of direct evidence and concluded "the error committed by the trial court was ultimately harmless." *Dent*, 434 S.C. at 364, 863 S.E.2d at 481 (Thomas, J., dissenting).

We granted the State's petition for a writ of certiorari to review the court of appeals' decision. The State argues the trial court's failure to give the entire *Logan* charge

was harmless error. Dent filed a cross-petition for a writ of certiorari, raising as additional sustaining grounds the ten issues the court of appeals declined to address. We held Dent's cross-petition in abeyance pending resolution of the State's petition.

II.

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence." *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 501 (2020). Nevertheless, "[i]n reviewing jury charges for error, this Court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial." *Logan*, 405 S.C. at 90, 747 S.E.2d at 448. "To warrant reversal, a trial [court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Brandt*, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011) (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010)).

III.

The parties concede the trial court erred in refusing to give the *Logan* circumstantial evidence charge following Dent's request. Therefore, the only issue before us is whether the trial court's failure to give the *Logan* charge was harmless. *See Herndon*, 430 S.C. at 373, 845 S.E.2d at 502 (acknowledging the failure to give a requested *Logan* charge is subject to a harmless error analysis); *State v. Burdette*, 427 S.C. 490, 496, 832 S.E.2d 575, 578 (2019) ("An erroneous instruction alone is insufficient to warrant this Court's reversal.").

"Harmless error analyses are fact-intensive inquiries and are not governed by a definite set of rules. Rather, appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case." *State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 909–10 (2015) (citations omitted). Our appellate courts have found a trial court's failure to give a requested *Logan* charge is prejudicial when the evidence against the defendant is almost entirely circumstantial. For example, in *Herndon*, this Court stated, "We acknowledge there may be a case in which a trial court's failure to give the *Logan* charge might be harmless error, but this is not such a case. The State's case against Petitioner was *almost exclusively circumstantial*." 430 S.C. at 373, 845 S.E.2d at 502 (emphasis added); *see also State*

v. Sanchez, 435 S.C. 468, 475–76, 867 S.E.2d 595, 598–99 (Ct. App. 2021) (finding the error prejudicial where, "[s]imilar to *Herndon*, the evidence of [the defendant's guilt] was largely circumstantial").

Here, the evidence was largely direct, especially Granddaughter's extensive testimony. *See* 30 S.C. Jur. *Evidence* § 154 (Supp. 2021–2022) ("Direct evidence' is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness." (citation omitted)); *Logan*, 405 S.C. at 99, 747 S.E.2d at 452 ("Direct evidence directly proves the existence of a fact and does not require deduction."). Before the jury, Granddaughter directly named Dent as her abuser and detailed the sexual acts he perpetrated on her. The jury watched almost two hours of videotaped forensic interviews, during which Granddaughter recounted Dent's abuse over a two-year period. This was direct evidence.

It cannot be said that the evidence presented was almost entirely circumstantial. In discussing the nature of the evidence, the court of appeals' majority decision noted the absence of physical evidence of sexual abuse. We construe this finding as a comment on the issue of credibility, especially Granddaughter's credibility. *See Herndon*, 430 S.C. at 373 n.6, 845 S.E.2d at 502 n.6 ("Fundamental to a jury's role as fact-finder is making credibility determinations, which lie in the sole province of the jury."). Whether Granddaughter's testimony was credible is an entirely distinct issue from whether direct evidence existed. The fact that the State also utilized circumstantial evidence does not detract from the existence of direct evidence. The State recognized the importance of the direct evidence, highlighting Granddaughter's trial testimony and two forensic interviews in its initial closing argument.

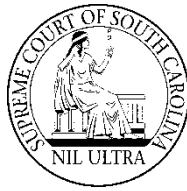
Moreover, we agree with the State that the trial court's instruction, as a whole, accurately charged the law to be applied. Our appellate courts have previously held the failure to give the *Logan* charge was harmless error where "[t]he trial court's jury instruction, as a whole, properly conveyed the applicable law." *Logan*, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8; *see also State v. Jenkins*, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Ct. App. 2014) (holding "any error in the omission of other language from the *Logan* instruction was harmless beyond a reasonable doubt because the trial court's instruction, as a whole, properly conveyed the applicable law"); *State v. Drayton*, 411 S.C. 533, 546, 769 S.E.2d 254, 261 (Ct. App. 2015) (same), *aff'd in result and vacated in part on other grounds*, 415 S.C. 43, 780 S.E.2d

902 (2015); *State v. Lynch*, 412 S.C. 156, 178, 771 S.E.2d 346, 357–58 (Ct. App. 2015) (same).

Other than the error in failing to give the *Logan* circumstantial evidence charge, the trial court thoroughly and properly charged the jury on the law, including the presumption of innocence, burden of proof, and reasonable doubt. As a result, in light of the trial court's charge as a whole and in light of the direct evidence, we hold the trial court's failure to give the requested *Logan* charge was harmless error. We reverse the court of appeals' opinion and remand this matter for the court of appeals to address Dent's remaining issues on appeal.

REVERSED AND REMANDED.

BEATTY, C.J., FEW, JAMES, JJ., and Acting Justice Jan B. Bromell Holmes, concur.



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

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September 6, 2023

The Honorable Jenny A. Kitchings
PO Box 11629
Columbia, SC 29211

Re: The State v. Charles Dent
Appellate Case No. 2021-001246

Dear Counsel:

Attached is a copy of the Supreme Court opinion. You will note this matter is being remanded to the Court of Appeals.

Very truly yours,

Patricia A. Howard

CLERK

cc: E. Charles Grose, Jr., Esquire
Isaac McDuffie Stone, III, Esquire
Mark Reynolds Farthing, Esquire

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Charles Dent, Appellant.

Appellate Case No. 2018-001257

Appeal From Beaufort County
Alex Kinlaw, Jr., Circuit Court Judge,

Opinion No. 6034
Submitted September 6, 2023 – Filed November 8, 2023

AFFIRMED

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, all for Respondent.

WILLIAMS, C.J.: In this criminal matter on remand from the South Carolina Supreme Court,¹ Charles Dent appeals his convictions for first degree criminal

¹ In *State v. Dent*, 440 S.C. 449, 892 S.E.2d 294 (2023), the supreme court reversed this court, finding that although the trial court did err in failing to grant Dent's request to charge the jury with a *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013), instruction on circumstantial evidence, the error was harmless. *See State v.*

sexual conduct (CSC) with a minor and disseminating obscene material to a minor. We affirm.

FACTS/PROCEDURAL HISTORY

In August 2014, following the procurement of warrants by the Beaufort County Sheriff's Department, Dent was arrested at his home in Alabama for various charges stemming from alleged sexual abuse of his granddaughter (Victim).² At the time of the alleged abuse, Victim lived in South Carolina with her mother (Mother) and her brother. Victim and her family lived in South Carolina from 2012 through 2014, and Dent would periodically stay with them.³ During this period, Victim and her family lived in two different townhouses on the same street (House One and House Two).

In May 2014, Mother began dating John Camelo. Thereafter, Victim made an initial disclosure of abuse by Dent to Camelo. Camelo notified Mother, and Mother reported the abuse to law enforcement. Thereafter, Victim underwent a forensic interview at Hopeful Horizons regarding her initial disclosure (First Interview). Following the interview, Victim made a second disclosure of abuse by Dent to Camelo. Victim subsequently went to Hopeful Horizons for a second forensic interview (Second Interview).

In October 2014, a Beaufort County grand jury indicted Dent with two charges of first degree CSC with a minor (2014-GS-07-01673; 2014-GS-07-01674) (the CSC Indictments) and two charges of disseminating obscene material to a minor (2014-GS-07-01671; 2014-GS-07-01672) (the Dissemination Indictments).

Prior to trial, Dent moved to quash the Dissemination Indictments, and the trial court denied his motion. In May 2018, the case proceeded to trial during which Victim and Dent both testified.⁴ The jury found Dent guilty of both dissemination

Dent, 434 S.C. 357, 863 S.E.2d 478 (Ct. App. 2021) (holding the trial court erred in failing to charge the jury with a *Logan* instruction when the defendant requested the charge and remanding the matter for a new trial). The supreme court subsequently remanded the case back to this court to address Dent's remaining issues on appeal, which we now do in turn.

² Dent also faced charges in Alabama for child pornography.

³ Victim was seven to nine years old during this time.

⁴ Victim was thirteen years old at the time of trial.

charges and one charge of first degree CSC, and the trial court sentenced him to an aggregate term of thirty years' imprisonment.⁵ Dent subsequently moved for a new trial, and the court denied his motion. This appeal followed.

ISSUES ON APPEAL

- I. Did the trial court err in failing to quash the Dissemination Indictments?
- II. Did the trial court err in admitting photographs of Victim?
- III. Did the trial court err in admitting Tessa Trask's expert testimony?
- IV. Did the trial court err in admitting Camelo's testimony?
- V. Did the trial court violate Dent's Sixth Amendment rights in sustaining the State's objection to Dent's cross-examination of Camelo?
- VI. Did the trial court err in denying Dent's motion for a directed verdict on one of the CSC Indictments?
- VII. Did the trial court err in instructing the jury on the definition of sexual battery?
- VIII. Is Dent entitled to a new trial pursuant to the cumulative error doctrine?

STANDARD OF REVIEW

In criminal cases, the appellate court reviews the underlying matter for an abuse of discretion, which occurs when the findings of the trial court lack evidentiary support or are controlled by an error of law. *State v. Hopkins*, 431 S.C. 560, 568–69, 848 S.E.2d 368, 372 (Ct. App. 2020).

LAW/ANALYSIS

I. Failure to Quash Indictments

⁵ The jury found Dent not guilty of first degree CSC on Indictment No. 2014-GS-07-01674.

Dent argues the trial court erred in failing to quash the Dissemination Indictments because the State failed to follow the procedural requirements established in sections 16-15-305 and 16-15-435 of the South Carolina Code (2015), which require the solicitor's office to apply for any relevant arrest and search warrants. Dent therefore contends the trial court erred in failing to suppress the photographs collected from electronic devices obtained from the search of Dent's home. Additionally, Dent asserts the trial court erred in denying his motion for a directed verdict on the Dissemination Indictments because the State failed to comply with the aforementioned statutory prerequisites. We disagree.

"The indictment is a notice document." *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). "A challenge to the sufficiency of an indictment must be made before the jury is sworn." *State v. Tumbleston*, 376 S.C. 90, 96, 654 S.E.2d 849, 852 (Ct. App. 2007). "A ruling on a timely objection . . . that an indictment is not sufficient will result in the quashing of the indictment unless the defendant waives presentment to the grand jury and pleads guilty." *Id.* at 97, 654 S.E.2d at 853. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." *Id.* at 98, 654 S.E.2d at 853.

After the Beaufort County Sheriff's Department obtained search and arrest warrants, a grand jury indicted Dent for multiple counts of first degree CSC with a minor and dissemination of obscene material to a minor. As to the Dissemination Indictments, Dent was specifically indicted for violating section 16-15-355 of the South Carolina Code (2015). Section 16-15-355 provides:

An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

Prior to trial, Dent moved to quash the Dissemination Indictments, asserting they were defective because the solicitor did not obtain the search and arrest warrants as required by subsection 16-15-435(A), which states "[a] search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor." The trial court denied Dent's motion.

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. Further, the indictments provided sufficient notice of the crimes charged as required by our precedent. *See Gentry*, 363 S.C. at 102, 610 S.E.2d at 500 ("The indictment is a notice document."); *Tumbleston*, 376 S.C. at 98, 654 S.E.2d at 853 ("[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood."). Accordingly, we affirm the trial court on this issue.⁶

II. Admission of Photographs

Dent argues the trial court erred in admitting photographs of Victim when the photographs were not relevant and the State failed to authenticate them or establish a chain of custody. Specifically, Dent argues the trial court erred in admitting State's Exhibits 1, 3, and 4 (Group One Photos) because they were not relevant to establishing his guilt. Dent also asserts the trial court erred in admitting State's Exhibits 6, 11, 13, and 15 (Group Two Photos) because the prejudicial effect substantially outweighed any probative value. We disagree.

During the search of Dent's home in Alabama, law enforcement seized multiple electronic devices that were in plain view, including a camera and a camcorder. Law enforcement subsequently obtained a search warrant for the seized electronic devices and recovered various photographs of Victim. The State originally sought to introduce evidence of child pornography found on Dent's seized computer but ultimately decided not to present it. The State additionally sought to admit the photos of Victim found on Dent's camera and camcorder and proffered testimony

⁶ Because the trial court did not err in declining to quash the Dissemination Indictments, this court need not address Dent's remaining arguments as to whether the trial court erred in failing to suppress the photographs obtained from the search of Dent's home and in denying his motion for a directed verdict on the Dissemination Indictments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

from two Alabama law enforcement officials. However, the trial court found the State failed to properly authenticate the photos because the former law enforcement official who extracted the photos was unavailable to testify at trial. The State then sought to admit the photos through Victim's testimony and recalled her as a witness, and the trial court admitted the photos.⁷

During her testimony, Victim identified herself in each of the photos and verified the photos were taken at Houses One and Two when she lived in South Carolina from 2012 to 2014. The Group One Photos included three photos of Victim: (1) Victim at House 2 on her birthday (State's Ex. 1), (2) Victim cooking with Dent in the kitchen of House One (State's Ex. 3), and (3) Victim with Dent's pet rabbit in the guest bedroom where Dent stayed in House Two (State's Ex. 4). The Group Two Photos were more sexual in nature, but Victim was clothed in all of the photos. The Group Two Photos included three photos in which Victim was lying on a bean bag with her legs spread and pulled up towards her shoulders (State's Ex. 11) and standing facing the camera with her torso bent forwards with a view down her shirt (State's Ex. 6, 13). This group of photos also contained an image of a young girl's legs (State's Ex. 15). Victim identified herself in the photo, stating she recognized the green shorts she wore to her dance classes that she took while living in South Carolina. Victim further testified that although she was not positive who took the Group Two Photos, she believed it was Dent.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Hawes*, 423 S.C. 118, 129, 813 S.E.2d 513, 519 (Ct. App. 2018) (quoting *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000)). "As a general rule, all relevant evidence is admissible." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014). However, "[a]ll evidence must be authenticated." *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 714 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) ("For the reasons set forth by the court of appeals, we affirm the trial court's authentication determination and admission of the social media posts without further comment."). "The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims." *Id.* at 230, 830 S.E.2d at 714; *see also* Rule 901(a), SCRE ("The requirement of authentication or

⁷ Following the trial court's finding that the State failed to sufficiently establish a chain of custody for the photographs through the Alabama witnesses, the State did not make any assertions or suggestions to the jury that the photos came from Dent's camera or camcorder.

identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."). "[T]he burden to authenticate . . . is not high." *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (alterations in original) (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)).

As to authentication, the trial court did not abuse its discretion in finding the State authenticated the Group One and Group Two Photos. Victim identified herself in each of the photos and confirmed the photos were taken at Houses One and Two. Although Victim's face was not in State's Ex. 15, Victim testified she believed herself to be the subject of the photo because she recognized her green shorts that she wore to dance lessons that she attended while living there. Accordingly, we find Victim's personal knowledge of the scene and subject of the photos was sufficient to authenticate them. *See State v. Hurell*, 424 S.C. 341, 353–54, 818 S.E.2d 21, 27 (Ct. App. 2018) ("Normally, it is sufficient for the admission of photographs that a person familiar with the subject, such as a scene, testify that the photographs truly represent what they purport to depict." (quoting Alex Sanders & John S. Nichols, *Trial Handbook for South Carolina Lawyers* § 19:12 (Sept. 2017))). Further, because Victim authenticated the photos through her testimony, the State was not required to establish a chain of custody for the photos. *See State v. Aragon*, 354 S.C. 334, 337, 579 S.E.2d 626, 627 (Ct. App. 2003) (holding establishing a chain of custody was not necessary when the evidence was "otherwise authenticated"); *see also United States v. Howard-Arias*, 679 F.2d 363, 366 (4th Cir. 1982) ("The 'chain of custody' rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.").

Regarding the relevance of the Group One Photos, we find the trial court did not err in admitting them because they corroborated Victim's and other witnesses' testimony that Victim lived in Houses One and Two during the time of the alleged abuse and that Dent stayed in both houses when he visited. The photos also corroborated Victim's age at the time of the abuse. *See State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) ("If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it."); *see also Collins*, 409 S.C. at 534, 763 S.E.2d at 27 ("As a general rule, all relevant evidence is admissible."); Rule 401, SCRE (providing that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence").

Finally, we hold the trial court properly found the Group Two Photos were admissible under Rule 403, SCRE. *See* Rule 403 (providing that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice"); *Collins*, 409 S.C. at 534, 763 S.E.2d at 28 ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003))). Although the Group Two Photos were more sexual in nature, we find their probative value in corroborating Victim's testimony and forensic interviews and in establishing the elements of the offenses charged outweighed any prejudicial effect.

Based on the foregoing, we hold the trial court did not abuse its discretion in admitting the photographs of Victim. *See Hawes*, 423 S.C. at 129, 813 S.E.2d at 519 ("The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." (quoting *Johnson*, 338 S.C. at 122, 525 S.E.2d at 523)). Accordingly, we affirm the trial court as to this issue.

III. Admission of Testimony

A. Trask's Testimony

Dent contends the trial court erred in admitting the expert testimony of Tessa Trask. Specifically, Dent argues the trial court erred in failing to determine the reliability of Trask's testimony. We agree.

"A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020) (quoting *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015)). "A trial court's ruling on the admissibility of expert testimony constitutes an abuse of discretion whe[n] the ruling is unsupported by the evidence or controlled by an error of law." *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018).

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "Before admitting expert testimony, a trial court must qualify the expert and determine whether the subject matter of the expert's proposed testimony is reliable, as required by Rule 702, SCRE." *Prather*, 429 S.C. at 599, 840 S.E.2d at 559. "While both scientific

and nonscientific expert testimony require the trial court make a finding of reliability, there is no formulaic approach for determining the reliability of nonscientific testimony." *Jones*, 423 S.C. at 638–39, 817 S.E.2d at 272.

During a pretrial hearing, the State sought to qualify Trask as an expert witness. Trask testified as to her qualifications, stating she worked as a counselor and forensic interviewer at Hopeful Horizons. Trask clarified she presently only had a provisional counseling license but would receive her full license the following August after completing the remainder of her required clinical hours. When asked what qualified her as an expert in the field, Trask responded, "I would say my training and my clinical experience would make me an expert . . . I'm referring to my training in general, all of my training, . . . including my forensic training." When Dent sought further information as to her training, the trial court sustained an objection by the State. Dent subsequently objected to the admission of Trask's testimony, asserting the State had failed to show that the substance of Trask's proposed testimony was reliable and requested the trial court assess the reliability through a proffer of her testimony. The trial court declined Dent's request, instead electing to have the State proffer "bullet points" of her intended testimony. Dent thereafter renewed his objection, arguing the substance of Trask's testimony was still indiscernible. The following exchange occurred:

Court: Well, you can object at the appropriate time. But I don't think that—I mean, Counsel gave you the bullet point of what she was going to testify to. You want the nuts and bolts. I can't give you the nuts and bolts tonight.

Dent: I want you to review the nuts and bolts as you're required to do under *Watson v. Ford Motor Company* and *Chavis* as the gatekeeping function. That's what I'm asking for.

The trial court took the matter under advisement, deferring its ruling until the following morning. The trial court subsequently qualified Trask as an expert in behavioral characteristics of child abuse, noting Dent's objection. Dent renewed the objection at trial.

We find the trial court failed to appropriately dispense of its gatekeeping duties as required by our precedent. *See Prather*, 429 S.C. at 599, 840 S.E.2d at 559 ("Before admitting expert testimony, a trial court must qualify the expert and determine whether the subject matter of the expert's proposed testimony is reliable,

as required by Rule 702, SCRE."); *see also State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009) ("All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration."). Although Trask testified as to her education and professional qualifications, the State failed to establish that the substance of her testimony was reliable. When asked what specifically informed her assessments and opinions, Trask provided vague responses, and the trial court prevented Dent's attempt at further clarification. Although we recognize there is no formulaic approach in determining the reliability of non-scientific expert testimony, the record contains no indicia of reliability as to Trask's proposed testimony. Thus, the trial court failed to fulfill its gatekeeping function by declining to analyze the reliability of the testimony. *See, e.g., Watson v. Ford Motor Co.*, 389 S.C. 434, 452, 699 S.E.2d 169, 178 (2010) ("In our view, the trial court's error in admitting Dr. Anderson's testimony is largely based on solely focusing on whether he was qualified as an expert in the field of electrical engineering and failing to analyze the reliability of the proposed testimony.").

However, we find this error did not prejudice Dent's defense. *See id.* at 448, 699 S.E.2d at 176 ("Prejudice is a reasonable probability that the jury's verdict was influenced by the challenged evidence."). At trial, Trask testified solely as to general observations in behavior of children who suffered abuse. Trask further averred she was not involved in Victim's case and had not reviewed Victim's files. Accordingly, we affirm the trial court as to this issue.

B. Camelo's Testimony

i. Bolstering Testimony

Dent argues the trial court erred in allowing Camelo, Mother's ex-boyfriend, to provide lay opinion testimony as to whether Victim had been sexually abused. Dent contends this testimony contained improper bolstering in violation of the holdings of *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015), *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013), and *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011). We disagree.

During trial, the State called Camelo as its first witness. Camelo testified he dated Mother in 2014 for four or five months and spent time with Victim during their relationship. On direct examination, the State questioned Camelo about his prior law enforcement experience but did not seek to qualify him as an expert. Dent

objected to the questioning, asserting the State was attempting to "portray Mr. Camelo as somebody who had special training in order to be able to detect child abuse or sexual abuse." The trial court held an in camera hearing during which the State proffered the remainder of Camelo's testimony regarding his interactions with Victim. Following the proffer, the trial court limited Camelo's testimony, stating "there will be no questions regarding whether or not he had an opinion regarding abuse."

Thereafter, Camelo testified he had personal experience with sexual abuse, stating he was sexually abused by a family friend between the ages of twelve and thirteen. Camelo further testified he had personal experience with raising young girls because he raised his stepdaughter. When asked about his time spent with Victim, Camelo testified he noticed "red flags" in her behavior. Specifically, Camelo stated he noticed "[g]estures of a sexual nature that a nine-year-old . . . wouldn't normally know without having been shown or taught by someone." According to Camelo, Victim liked to kiss him on the cheek, grope his groin area, and hug him "more than you would expect [for] someone [who] isn't her guardian or parent raising her." Based on these behaviors, Camelo asked Victim "if anyone had done anything inappropriate to her." In response, Victim made a disclosure to Camelo (Initial Disclosure).

Camelo neither testified as to what Victim said nor made any assertions as to whether he believed the Initial Disclosure to be true. Rather, he testified the information was "very concerning" and he immediately informed Mother, who notified law enforcement. Camelo further testified Victim made an additional disclosure (Second Disclosure) to him some time after her initial forensic interview. According to Camelo, Victim handed him a piece of paper with a handwritten note on it and then ran off. After reading the note, Camelo gave it to Mother. Camelo did not testify as to what the note said but stated he found it more concerning than the Initial Disclosure.

Based on the foregoing, we find the trial court did not err in allowing Camelo's testimony. *See Kromah*, 401 S.C. at 349, 737 S.E.2d at 494–95 ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006))). Under *Jennings* and its progeny, it is improper for a witness to provide opinion testimony regarding the credibility of a child victim in a sexual abuse case. *See Anderson*, 413 S.C. at 218–19, 776 S.E.2d at 79 (cautioning against calling the forensic interviewer who examined the child victim

as a witness because of "the risk that the expert will vouch for the alleged victim's credibility"); *Kromah*, 401 S.C. at 358–59, 737 S.E.2d at 500 ("[I]t is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter."); *Jennings*, 394 S.C. at 480, 716 S.E.2d at 94 ("For an expert to comment on the veracity of a child's accusations of sexual abuse is improper."). However, Camelo made no assertions relating to Victim's credibility but merely recounted his personal experiences regarding Victim's disclosures. *See Watson*, 389 S.C. at 446, 699 S.E.2d at 175 ("[A] lay witness may only testify as to matters *within his personal knowledge* and may not offer opinion testimony which requires special knowledge, skill, experience, or training." (emphasis added)). Therefore, we affirm the trial court on this issue.

ii. Confrontation Clause

Dent additionally asserts the trial court violated the Sixth Amendment Confrontation Clause when it prevented him from questioning Camelo regarding the reasons for Camelo's breakup with Mother. We disagree.

"The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that '[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him.'" *State v. Henson*, 407 S.C. 154, 161, 754 S.E.2d 508, 512 (2014) (alterations in original) (quoting U.S. Const. amend. VI). "This constitutional right, which applies to the states through the Fourteenth Amendment, guarantees a defendant in a criminal trial the right to cross-examine the witnesses against him." *Id.*

On direct examination, the following exchange occurred:

The State: At some point, did your relationship with [Mother] end?

Camelo: Yes.

The State: When was that?

Camelo: Very 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.

On cross-examination, the following exchange occurred:

Dent: Right. And you said that—earlier, you talked about you and [Mother] breaking up; isn't that right?

Camelo: Correct.

Dent: And you attributed it to the stress of this; is that right?

Camelo: On my part.

Dent: Okay. You had, also, learned some information about [Mother's] background, hadn't you?

Camelo: What information are you, specifically, asking me about?

Dent: That she had been a stripper in Florida and had smoked marijuana—

At this point, the State objected as to relevance, and the trial court sustained the objection. Dent then sought an in camera hearing, asserting his Sixth Amendment rights under the Confrontation Clause entitled him to question Camelo regarding the breakup because the State initiated the line of questioning on direct. Specifically, Dent argued he was entitled to rebut the suggestion made on direct examination that Victim's disclosures were the reason for the end of the relationship between Camelo and Mother. In response, the State asserted the testimony was irrelevant and that Dent was improperly attempting to tarnish Mother's credibility as a witness. The trial court then had Dent proffer Camelo's proposed testimony. Ultimately, the trial court sustained the State's objection and struck the prior question from the record, finding the testimony was irrelevant to Dent's guilt.

The trial court did not abuse its discretion in sustaining the State's objection. *See State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012) ("This [c]ourt will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion."). "Evidence which is not relevant is not admissible." Rule 402, SCRE. Evidence is relevant if it has "any

tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence." Rule 401, SCRE (emphasis added). We fail 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. Thus, we affirm the trial court on this issue.

IV. Directed Verdict

Dent argues the trial court erred in denying his motion for a directed verdict on the 2014-GS-07-01673 indictment. We disagree.

Following the close of the State's case, Dent moved for a directed verdict on the CSC indictment alleging the State failed to present evidence that Victim performed fellatio on Dent at House Two. Specifically, Dent argued the evidence was insufficient to withstand a directed verdict motion because Victim testified she only performed fellatio one time, and in the Second Interview, she stated the first time she performed fellatio on Dent was at House One. The trial court denied Dent's motion, finding sufficient evidence existed to support a finding that Victim performed fellatio on Dent at House Two. Dent later renewed his motion, which the trial court denied.

When ruling on a directed verdict motion, the trial court "must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). "In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013). "On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State." *State v. Davis*, 422 S.C. 472, 482, 812 S.E.2d 423, 429 (Ct. App. 2018) (quoting *State v. Stanley*, 365 S.C. 24, 41, 615 S.E.2d 455, 464 (Ct. App. 2005)). "[T]he appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." *State v. Lindsey*, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003).

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.

Based on the foregoing, we find the trial court did not abuse its discretion in denying Dent's motion for a directed verdict as the State presented evidence from which a reasonable juror could conclude that Victim performed fellatio on Dent at House Two. *See Bennett*, 415 S.C. at 237, 781 S.E.2d at 354 ("[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt."). Accordingly, we affirm the trial court on this issue. *See Lindsey*, 355 S.C. at 20, 583 S.E.2d at 742 ("[T]he appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling.").

V. Jury Instruction

Dent asserts the trial court erred in charging the jury with the full definition of sexual battery when fellatio was the only sexual battery listed in the CSC Indictments.⁸ Specifically, Dent contends this was an improper variance of the indictment. We disagree.

"A person is guilty of criminal sexual conduct with a minor in the first degree if . . . the actor *engages in sexual battery* with a victim who is less than eleven years of age." S.C. Code Ann. § 16-3-655(A)(1) (2015) (emphasis added).

"'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) (2015).

During the charge conference, Dent requested the trial court limit its definition of sexual battery to only fellatio as that was the only battery listed on the CSC Indictments. Dent asserted charging the full definition created a variance in the indictment and allowed the State to seek a guilty verdict based on multiple sexual

⁸ The jury found Dent not guilty of first degree CSC alleged in Indictment No. 2014-GS-07-01674; therefore, Dent's contention on appeal only applies to Indictment No. 2014-GS-07-01673.

batteries not listed in the indictments. *See Bailey v. State*, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011) (alteration in original) ("In South Carolina, '[i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.'" (quoting *State v. Gunn*, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993))); *id.* ("A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense." (quoting *Gunn*, 313 S.C. at 136, 437 S.E.2d at 82)); *id.* (alteration in original) ("[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged." (quoting *Thomason v. State*, 892 S.W.2d 8, 11 (Tex. Crim. App. 1994))). The trial court denied Dent's request and charged the full definition of sexual battery as listed in subsection 16-3-651(h). Following the jury charge, Dent renewed his objection, and the court declined to recharge the jury.

We hold the trial court did not err in charging the full definition of sexual battery. Engaging in a sexual battery is the element of the crime charged—first degree CSC. *See* § 16-3-655(A)(1). Fellatio is a type of battery that can satisfy this element. Thus, it was not improper for the court to charge the full definition even though the indictment specifically listed fellatio as the sexual battery at issue. Accordingly, we affirm the trial court on this issue. *See Hopkins*, 431 S.C. at 568–69, 848 S.E.2d at 372 (providing appellate courts review criminal matters for an abuse of discretion).

VI. Cumulative Error Doctrine

Based on the foregoing allegations, Dent contends he is entitled to a new trial based on the cumulative error doctrine. We disagree. The defendant must "demonstrate more than error" to obtain reversal on the ground of the cumulative error doctrine. *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). The combined "errors must adversely affect his right to a fair trial." *Id.* 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. Accordingly, we hold Dent is not entitled to a new trial based upon the cumulative error doctrine.

CONCLUSION

Based on the foregoing, Dent's convictions are

AFFIRMED.

THOMAS and HEWITT, JJ., concur.

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.

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 trial 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?
- 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 trial 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 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 inside 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 trial 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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Attorney for Charles Dent

January 3, 2023
Greenwood, South Carolina

Jan 03 2024

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.

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



The South Carolina Court of Appeals

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January 04, 2024

Mr. E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood SC 29646

Re: The State v. Charles Dent
Appellate Case No. 2018-001257

Dear Counsel:

This will acknowledge receipt of the Petition for Rehearing.

By copy of this letter, opposing counsel is requested to file a return no later than ten (10) days from the date of this letter.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy". The signature is fluid and cursive.

CLERK

cc: Alan McCrory Wilson, Esquire
Jonathan Scott Matthews, Esquire
Isaac McDuffie Stone, III, Esquire
Mark Reynolds Farthing, Esquire

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.

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*

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,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General



By: _____
Mark R. Farthing
S.C. Bar Number 76901

February 7, 2024

Feb 07 2024

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,

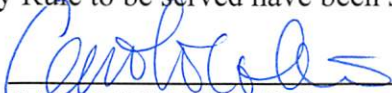
Appellant.

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
Grose Law Firm
305 Main Street
Greenwood, SC 29646

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

Feb 09 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of AppealsAPPEAL 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 its 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 should rehear this matter, withdraw the opinion dated November 8, 2023, and issue an opinion reversing the trial court.

(signature on next page)

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Charles Dent

February 9, 2024
Greenwood, South Carolina

Feb 09 2024

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.

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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February 9, 2024

The South Carolina Court of Appeals

The State, Respondent,

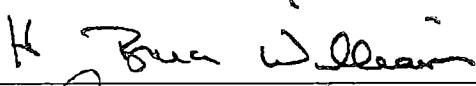
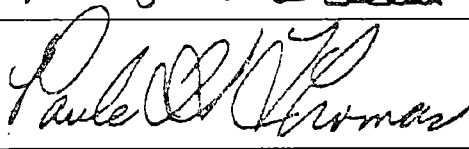
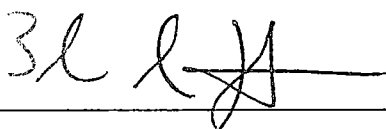
v.

Charles Dent, Appellant.

Appellate Case No. 2018-001257

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.

Columbia, South Carolina

cc:

E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Isaac McDuffie Stone, III, Esquire
Mark Reynolds Farthing, Esquire

FILED
Feb 12 2024