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

Appellate Case No. 2024-000355

The State, ...Respondent,

v.

Charles Dent,.....Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Following remand by this Court (A. 1191-97), the Court of Appeals issued an opinion, on November 8, 2023, affirming Charles Dent's convictions and sentences (A. 1198-1214). By written order dated February 12, 2024 (A. 1254), the Court of Appeals denied Mr. Dent's petition for rehearing (A. 1215-33).

QUESTIONS PRESENTED

I. Did the Court of Appeals err by deciding this appeal, on remand, when the quorum that issued an opinion in 2023 was different than quorum that heard the oral argument in 2021?

II. Did the Court of Appeals err when by holding "the trial court did not abuse its discretion in denying [Charles] 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" when the State did not present any direct or circumstantial evidence that fellatio occurred at House Two?

III. Did the Court of Appeals err by holding "it was not improper for the court to charge the full definition [of sexual battery] even though the indictment specifically listed fellatio as the [only] sexual battery at issue?"

IV. The Court of Appeals held "the trial court failed to appropriately dispense of its gatekeeping duties" when qualifying Tessa Trask as an expert witness. Did the Court of Appeals err by holding "this error did not prejudice" Charles Dent because "Trask testified solely as to general observations in behavior of children who suffered abuse," even though Trask's opinions were based on her "own framework," including the previously unrecognized "traumagenic model," and she testified, "Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead," while acknowledging she is "not an expert in ADD or ADHD."

V. Did the Court of Appeals err by holding John "Camelo made no assertions relating to Victim's credibility but merely recounted his personal experiences regarding Victim's disclosures," when the trial court allowed Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

VI. Did the Court of Appeals err by holding the trial court did not abuse its discretion when it denied 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 Court of Appeals err when it held the Group Two Photos (State's Exhibits 6, 11, 13, and 15) were relevant and the prejudicial effect of those photographs did not

substantially outweigh the probative value even though "the Group Two Photos were more sexual in nature" and the witness "was not positive who took the Group Two Photos" when the prosecution emphasized these photographs in the State's closing argument.

VIII. Did the Court of Appeals err when it held Group One Photos (State's Exhibits 1, 3, and 4) were relevant when that holding is contrary to this Court's opinion in *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999)?

IX. Did the Court of Appeals err by failing to recognize that S.C. Code. Ann. §16-15-355 incorporates § 16-15-305 as part of the offense?

STATEMENT OF CASE[1]

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. A. 216-17. The State never indicted Mr. Dent for third-degree criminal sexual conduct with a minor.

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. A. 218-19.

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. A. 630-743.

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

[1] Mr. Dent's Final Brief of Appellant in the Court of Appeals contains a detailed statement of the facts. A. 71-108.

conduct with a minor, "between April 2013 and August 2013," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." A. 232-33.

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." A. 230-31.

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 August 2013," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." A. 224-25. 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." A. 222-23.

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." A. 228-29. 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." A. 226-27.

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, both of the Fourteenth Circuit

Solicitor's Office, represented the State. Undersigned counsel 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). A. 211. 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. A. 208-10. 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. A. 212-14.

On June 1, 2018, Mr. Dent moved for a new trial. A. 272-78. On June 4, 2018, the State responded. A. 281-87. By written order dated June 17, 2018, filed on June 22, 2018, Judge Kinlaw denied the motion for a new trial. A. 215.

Mr. Dent appealed to the Court of Appeals, raising eleven questions on appeal. A. 60-110. On February 11, 2021, the Court of Appeals convened an oral argument. On August 18, 2021, relying on *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, 360, 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 363, n. 3, 863 S.E.2d at 481, n. 3. A. 1-7.

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. A.998-1035. On November 22, 2021, Mr. Dent filed his Return to the State's petition. A. 1036-65. The State did not reply. Also on November 22, 2022, Mr. Dent filed his cross-petition for a writ of certiorari raising all of the questions the Court of Appeals declined to decide. A. 1066-98. On December 14, 2021, the State filed its Return. A. 1100-23. On December 29, 2021, Mr. Dent replied. A. 1124-35.

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." A. 1136. On October 6, 2022, the State filed its Brief of Petitioner. A. 1137-58 On November 14, 2022, Mr. Dent responded. A. 1159-90. On April 20, 2023, this Court convened an oral argument. On August 16, 2023, this 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," and remanded the case to the Court of Appeals. *State v. Dent*, 440 S.C. 449, 454-55, 892 S.E.2d 294, 296-97 (2023). A. 1191-97.

On remand, the Court of Appeals neither reconstituted the original panel nor convened an oral argument. On November 8, 2023, the Court of Appeals affirmed the conviction and sentences. *State v. Dent*, 442 S.C. 38, 897 S.E.2d 46 (Ct. App. 2023). A. 1198-1214. On January 3, 2024, Mr. Dent petitioned for rehearing. A. 1215-33. The Court

of Appeals requests the State file a return. A. 1234. The State filed a return on February 7, 2024 (A. 1135-46), and Mr. Dent replied on February 9, 2024 (A. 1247-53). On February 12, 2024, the Court of Appeals denied Mr. Dent's petition for rehearing. A. 1254. This petition follows.

STANDARD OF REVIEW

"In criminal cases, this Court only reviews errors of law." *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013) (citing *State v. Jacobs,* 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). "[T]he admission of evidence is within the discretion of the trial court and will not be reversed by this Court absent an abuse of discretion." *Id*., 405 S.C. t 415-16, 747 S.E.2d at 787 (citing *State v. McDonald,* 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)) "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *Id.*

"[T]his Court reviews questions of law de novo." *State v. Lawrence*, 439 S.C. 611, 616, 889 S.E.2d 557, 560 (2023) (citing *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014)).

ARGUMENTS

I. Did the Court of Appeals err by deciding this appeal, on remand, when the quorum that issued an opinion in 2023 was different than quorum that heard the oral argument in 2021?

S.C. Code Ann. § 14-8-80(d) provides, "On a panel, three judges [of the Court of Appeals] shall constitute a quorum, and the concurrence of a majority of the judges is necessary for the reversal of the judgment below." When the Court of Appeals convened an oral argument on February 11, 2021, the three-judge quorum of the Court included the Honorable H. Bruce Williams, the Honorable Paula H. Thomas, and the Honorable D.

Garrison Hill. A. 1-7. Since then, the General Assembly elevated Judge Hill to this Court. 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. A. 1198-1215. As a result, a quorum of the Court of Appeals 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).

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*. This Court reversed because a quorum of this Court was not present. *Id.,* 349 S.C. at 20-21, 561 S.E.2d at 604.

In *Anderson Cnty. v. Preston*, this 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.

The State might argue—as it did in the court below—that "following the remand" by this Court, the Court of appeals "elected to decide the previously-undecided issues raised by Dent *without* oral argument." A. 1236. (emphasis original) (citing Rule 215, SCACR). This contention is not supported by the record. When the Court of Appeals 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 below does not contain such a notation. Nor could it because of the oral argument convened on February 11, 2021, where the quorum existing at that time did not make that determination. The existence of 2021 oral argument cannot be ignored. Reading section 14-8-80(d), *McMillian*, and *Preston* together, the same quorum should be present for both oral argument and issuing the opinion. This Court, accordingly, should reverse the Court of Appeals and remand for proper consideration by a quorum. Alternatively, this Court could address the merits of the questions on appeal as it did in *McMillian*, and *Preston.*

II. Did the Court of Appeals err when by holding "the trial court did not abuse its discretion in denying [Charles] 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" when the State did not present any direct or circumstantial evidence that fellatio occurred at House Two?

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. A. 230-33. The Court of Appeals summarized the State's evidence:

> 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, 442 S.C. at 59, 897 S.E.2d at 56. The Court of Appeals held, "[T]he 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." *Id.,* 442 S.C. at 59, 897 S.E.2d at 57.[2]

The Court of Appeal's focus on the disclosure of fellatio acknowledges the prosecution was required to prove fellatio—the only allegation in the indictment—in order to obtain a conviction. The Court of Appeals treatment of the directed verdict issue and the jury instruction regarding the definition of sexual battery (Question III, *infra*), 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. In order to understand the Court of Appeals' 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. State's Exhibit 17. This interview is about 32 minutes long. The first two 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 two minutes, nine seconds show the child writing on a large pad—that the viewer never sees—and explaining Grandpa made me touch it more than

[2] "The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (cleaned up). "On appeal, when 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." *Id*. (cleaned up). "If the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [the appellate court] must affirm the trial court's decision to submit the case to the jury." *Id*. (internal quotations omitted).

once. The interviewer then uses to the anatomical diagrams from the first interview for clarification. The ensuing discussion of sexual abuse—lasting less than two 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 fourteen minutes, the interviewer reviewed the allegations to seek more clarification. 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

[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.

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

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

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

The interviewer next asks the child why she did not tell her about these allegations during the first interview. The child states she forgot about these allegations during the first interview but that that she remembered these allegations when John Camelo asked her about the first interview. Towards the end of the interview, the child alleged Mr. Dent's private touched 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. A. 211. The State did not present any testimony at trial from the child of any sexual battery other than fellatio. A. 570-89. 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. "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) (citing *State v. Cherry,* 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004)). *See also 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, in a prior opinion in this case, this 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. This 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. At this stage, 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." *Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127. The absence of a statement that fellatio occurred at the second house is not evidence that fellatio occurred at the second house. This Court should grant the writ, consider the questions, reverse the Court of Appeals, and enter a directed verdict of acquittal on the charge of first-degree criminal sexual conduct with a minor.

III. Did the Court of Appeals err by holding "it was not improper for the court to charge the full definition [of "sexual battery"] even though the indictment specifically listed fellatio as the [only] sexual battery at issue?"

As seen, the indictments alleged a single sexual battery (fellatio). A. 230-33. Mr. Dent objected to the trial judge instructing any of the other sexual batteries listed in S.C. Code Ann. § 16-3-651(h). The Court of Appeals held, "[I]t was not improper for the court to charge the full definition even though the indictment specifically listed fellatio as the sexual battery at issue." *Dent*, 442 S.C. at 61, 897 S.E.2d at 57. The Court of Appeals reasoned:

> 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.

Id., 442 S.C. at 60-61, 897 S.E.2d at 57.

Even though the trial judge charged the correct definition of "sexual battery,"[4] it was error to do so in this case when the indictment alleged fellatio as the only "sexual battery." Mr. Dent was prejudiced because the trial judge's jury instruction allowed the

[4] The trial court's instruction on the definition of "sexual battery" is found at A. 966.

jurors to convict him based on a sexual battery other than fellatio, even though that indictment did not allege any sexual battery other than fellatio. As this Court 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 that particular trial. Blurton "argued at trial that he lacked the *mens rea* necessary to complete the crime . . . . [and] because [he] thought the entire event was a staged CIA operation, it was not a criminal act as he lacked the 'evil meaning mind.'" *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002). "The trial judge instructed the jury on the requisite *mens rea,* and then added, 'if one committed a criminal act it is no defense to show that it was done under the instructions or orders from another' [and] 'it is no defense to a criminal act if it be shown that it was done in partnership or cooperation with another person.'" *Id*. This Court held, "Because the jury instruction given was not implicated by the facts in this case, we hold it was error to charge the jury the 'orders of another' instruction," even though this instruction was a correct statement of the law. *Id.*

In *State v. Jones* 343 S.C. 562, 576, 541 S.E.2d 813, 820 (2001), this Court found error when the trial judge substituted a correct definition of "reasonable doubt" for another correct definition of "reasonable doubt." In *Jones*, the trial judge "planned to give the reasonable doubt charge outlined in *State v. Manning,* 305 S.C. 413, 409 S.E.2d 372 (1991)." 343 S.C. at 576, 541 S.E.2d at 820. Jones' closing argument relied on this

definition of reasonable doubt. After Jones' closing argument, the Solicitor asked the trial judge to remove this language from the jury instruction. This Court held, "The *Manning* charge, although not required, is a correct statement of South Carolina law," Jones "reasonably relied upon the judge's representation that he intended to give that charge to the jury," and "[t]he decision to alter the charge, after the argument, was fundamentally unfair." Id., 343 S.C. at 578, 541 S.E.2d at 821. This Court reasoned, "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." *Id*.

Here, based on the indictment, fellatio was the only "sexual battery" applicable to the case. Dent relied on the indictment in his opening statement (A. 4450) and closing argument (A. 930, 937). During closing argument, the Solicitor recalled the videotaped interviews and argued the jurors could convict Mr. Dent for performing cunnilingus, for "penetrating her vagina," and for any "sexual battery." The Solicitor read the full definition of "sexual battery" found in S.C. Code Ann. § 16-3-651(h). A. 912-18,955-51. This Court should grant the writ and consider the issue. This Court's guidance is needed regarding the relationship between the indictment and the proper law to be charged to the jurors. Additionally, the Court of Appeals' opinion in this case is contrary to this Court's decision in *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).

IV. The Court of Appeals held "the trial court failed to appropriately dispense of its gatekeeping duties" when qualifying Tessa Trask as an expert witness. Did the Court of Appeals err by holding "this error did not prejudice" Charles Dent because "Trask testified solely as to general observations in behavior of children who suffered abuse," even though Trask's opinions were based on her "own framework," including the previously unrecognized "traumagenic model," and she testified, "Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead," while acknowledging she is "not an expert in ADD or ADHD."

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. A. 256-57, 375-88, 590-93. Ms. Trask never met J.M. or read the case file; however, she did watch some of pre-trial proceedings. Ms. Trask defined the "traumagenic model." She stated 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 her "own working definition of trauma," Mr. Dent objected, pursuant to *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015), 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. A. 593-94. 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." A. 601-02. Ms. Trask further 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. A. 598.

The Court of Appeals held, "[T]he 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*, 442 S.C. at 53-54, 897 S.E.2d at 54 (citing *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.") and *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.")).

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." A. 601-20. 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 White*, (trial court's gatekeeping function in assuring reliability of expert testimony applies to nonscientific evidence).

The State might argue—as it did in the court below—that the error is harmless. A. 1239-40. 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.[5] *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. A. 593-94. 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. A. 598. 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 was impossible for the court below 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). This Court, accordingly, should grant the writ, reverse the Court of Appeals, hold the error prejudicial, and remand for a new trial.

V. Did the Court of Appeals err by holding John "Camelo made no assertions relating to Victim's credibility but merely recounted his personal experiences regarding Victim's disclosures," when the trial court allowed Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

As set forth in the Brief of Appellant (A. 79-84, 114-15), the Solicitor cleverly questioned John Camelo[6] 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

[5] Ms. Trask testified about the disclosure process, "grooming," and the risk factors of sexual abuse for the child and the caregiver. A. 598-600.

[6] Mr. Camelo's testimony is found at A. 457-95.

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 *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 Court of Appeals held, "Camelo made no assertions relating to Victim's credibility but merely recounted his personal experiences regarding Victim's disclosures." *Dent*, 442 S.C. at56, 897 S.E.2d at 55. 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, in violation of *Anderson, Kromah, Jennings,* and similar cases.

VI. Did the Court of Appeals err by holding the trial court did not abuse its discretion when it denied 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?

On direct examination, John 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." A. 470, 474-76. On cross-examination, Mr. Dent sought to impeach Mr. Camella with his prior inconsistent statement to the Solicitor, stating the real reason for the breakup was learning that Ms. Mayo had been a stripper and smoked marijuana. A. 476-82. After and in camera hearing, the trial court limited Mr. Dent's cross-examination of Mr. Camelo. A.483-89, 496-98; Court's Exhibit 6, A. 995-96. By limiting

the cross-examination, the prosecutor was able to attribute the breakup to Mr. Dent's alleged abuse of the child rather and issues arising between the couple.

The Court of Appeals dispensed with the Confrontation Clause question because it "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*, 442 S.C. at 58, 897 S.E.2d at 56. The court below did not recognize 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); see also *State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010) (discussing procedure for laying foundation for admitting prior inconsistent statement).

"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 should grant the writ, consider the issue, reverse the Court of Appeals, and order a new trial.

VII. Did the Court of Appeals err when it held the Group Two Photos (State's Exhibits 6, 11, 13, and 15) were relevant and the prejudicial effect of those photographs did not substantially outweigh the probative value, even though "the Group Two Photos were more sexual in nature" and the witness "was not positive who took the Group Two Photos" when the prosecution emphasized these photographs in the State's closing argument.

The trial judge convened a lengthy suppression hearing and suppressed the testimony of the State's computer forensic expert. A. 630-743. The prosecution recalled J.M. and introduced State's Exhibits 1, 3, 4, 6, 11, 13, and 15, subject to the previous objections. A. 775-85. 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.

A. 785-88. The State emphasized these photographs during its closing argument. A. 912, 920, 923-24, 927.

The Court of Appeals held, "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." *Dent*, 442 S.C. at 51-52, 897 S.E.2d at 52-53. The Court of Appeals reasoned the witness "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." *Id.*, 442 S.C. at 50, 897 S.E.2d at 51.

Given the lack of evidence about who took the Group Two Photos, the prejudicial effect of admitting the photographs substantially outweighed any probative value. According to the court below, the Group Two Photos had "probative value in corroborating Victim's testimony and forensic interviews and in establishing the elements of the offenses charged outweighed any prejudicial effect." *Dent*, 442 S.C. at 51-52, 897 S.E.2d at 52-53. Without establishing that Mr. Dent took the Group Two Photographs, the jurors were allowed to consider these photographs as evidence of Mr. Dent's guilt. This Court should grant the writ, reverse the Court of Appeals, suppress the evidence, and remand for a new trial.

VIII. Did the Court of Appeals err when it held Group One Photos (State's Exhibits 1, 3, and 4) were relevant when that holding is contrary to this Court's opinion in *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999)?

"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)." *Dent*, 442 S.C. at 49, 897 S.E.2d at 51. The Court of Appeals held Group One Photos relevant "because they corroborated Victim's and other witnesses' testimony that Victim lived in Houses One and Two during the time of the alleged abuse," "that Dent stayed in both houses when he visited," and "Victim's age at the time of the abuse." *Id*., 442 S.C. at 51, 897 S.E.2d at 52.

The Court of Appeals holding is contrary to this Court's opinion in *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999). In *Langley,* a prosecution witnesses testified about how the decedent "acquired his nickname, 'Bunny,'" that the decedent "had attended Burke High School where he played the drums in the band," and "identified a photograph of the" decedent that "was admitted into evidence." 334 S.C. at 647, 515 S.E.2d at 100. This Court held this "testimony and the victim's photograph were not relevant to proving the guilt of" Langley. *Id*., 334 S.C. at 648, 515 S.E.2d at 100. Mr. Dent requested Court of Appeals consider the admissibility of these photographs under *Langley* (A. 96, 101, 113-14, 1230, 1251), but the Court of Appeals did not. Because the Court of Appeals opinion in this question is contrary to *Langley*, this Court should grant the writ, consider the issue, reverse the Court of Appeals, and order a new trial.

IX. Did the Court of Appeals err by failing to recognize that S.C. Code. Ann. §16-15-355 incorporates § 16-15-305 as part of the offense?

On appeal, Mr. Dent raised three issues regarding the interoperation of the S.C. Code §§ 16-15-305 and 435:

> Question 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?
>
> Question 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?
>
> Question 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?

A. 69, 117-18,

This Court of Appeals 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, 442 S.C. at 48, 897 S.E.2d at 50-51 (emphasis original). The court below further held, "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." *Id*., 442 S.C. at 48, n. 6, 897 S.E.2d at 51, n. 6.

Section 16-15-355, however, incorporates section 16-15-305 as part of the offense. This Court should grant the writ to consider whether the inclusion of section 16-15-305 in section 16-15-355, requires reversal on or more of these three issues. The Bench and bar would benefit from this Court's guidance regarding the interpretation of sections 16-15-305 and 16-15-355.

CONCLUSION

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

Respectfully Submitted,

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