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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Alex Kinlaw, Jr., Circuit Court Judge

Opinion No. 6034 (S.C. Ct. App. filed November 8, 2023)
Appellate Case No. 2024-000355

State of South Carolina, ...Respondent,

v.

Charles Dent,.....Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals, by way of a statutorily authorized three-judge quorum, acted in full compliance with this Court's remand order and our appellate court rules when it decided Dent's appeal without oral argument?

2. Whether the Court of Appeals properly affirmed the trial court's refusal to direct a verdict of acquittal on indictment 2014-GS-07-01673 where the State produced evidence from which a reasonable juror could conclude that Victim performed fellatio on Dent at House Two?

3. Whether the Court of Appeals properly affirmed the trial court's decision to charge the jury with the complete statutory definition of sexual battery when it was the correct definition of sexual battery and it adequately conveyed the law?

4. Whether the Court of Appeals properly concluded that, even if the trial court erred in admitting the expert testimony of Tessa Trask because it failed to determine the reliability of her testimony, that error did not prejudice Dent's defense because Trask testified solely as to her general observations in behavior of children who suffered abuse but was not involved in Victim's case and had not reviewed Victim's files?

5. Whether the Court of Appeals properly affirmed the trial court's decision to allow John Camelo to testify about his personal observations of Victim's behavior when he did not discuss the substance of Victim's disclosure and did not bolster Victim's testimony or vouch for her credibility?

6. Whether the Court of Appeals properly affirmed the trial court's decision to sustain the State's objection as to relevance and to thereby limit Dent's improper attempt to question Camelo regarding his reasons for breaking-up with Victim's mother?

7. Whether the Court of Appeals properly affirmed the trial court's decision to admit the Group Two Photographs of Victim under Rule 403, SCRE, where they were relevant and probative, and their probative value was not substantially outweighed by the danger of unfair prejudice?

8. Whether the Court of Appeals properly affirmed the trial court's decision to admit the Group One Photographs of Victim under Rule 402, SCRE, where they were relevant to corroborate facts at issue in Dent's case.

9. Whether the Court of Appeals properly affirmed the trial court's refusal to quash the dissemination indictments where subsection 16-15-435(A) does not apply to violations of section 16-15-355 of the Code and where the indictments provided sufficient notice of the crimes charged?

STATEMENT OF THE CASE

Charles Dent (Dent) was indicted at the October 2014 term of the grand jury for Beaufort County for two counts of first degree criminal sexual conduct with a minor (2014-GS-07-1673 & -1674) and two counts of disseminating obscene material to a minor 12 years of age or younger. (2014-GS-07-1671 & -1672). (App.p.222-p.233). He was represented by E. Charles Grose, Jr., Esquire, and Respondent (the State) was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office. On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. (App.p.288-p.308). Soon after the pretrial hearing, at the March 2018 term, the Beaufort County grand jury amended the two indictments for disseminating obscene materials. (App.p.222-p.229). On May 21-24, 2018, the case was tried in the Beaufort County Court of General Sessions before the Honorable Alex Kinlaw, Jr. (App.p.309-p.994).

At the conclusion of trial, Dent was convicted of one count of first degree criminal sexual conduct with a minor (2014-GS-07-1673) and both counts of disseminating obscene material to a minor. The jury acquitted Dent of the remaining count of first degree criminal sexual conduct with a minor (2014-GS-07-1674). Following the verdict, the trial judge sentenced Dent to thirty (30) years' imprisonment for first degree criminal sexual conduct with a minor, and fifteen (15) years' concurrent imprisonment for each count of disseminating obscene material to a minor. (App.p.208-p.214; p.983-p.993). Dent filed a motion for a new trial on June 1, 2018, and the State filed a Response. (App.p.272-p.287). On June 17, 2018, the trial judge denied Dent's motion. (App.p.215). Dent timely filed a notice of intent to appeal his convictions and sentences and submitted a brief raising eleven issues on appeal. (App.p.61-p.120). The State filed a brief in response (App.p.122-p.172) and Dent filed a brief in reply (App.p.173-p.193).

Oral arguments were heard on February 11, 2021, and on August 18, 2021, in a divided published opinion, the South Carolina Court of Appeals reversed Dent's convictions after finding the trial judge erred in failing to charge the jury with the circumstantial evidence charge established by *State v. Logan* and further finding the trial judge's error was not harmless. *State v. Dent*, 434 S.C. 357, 863 S.E.2d 478 (Ct. App. 2021), *rev'd and remanded*, 440 S.C. 449, 892 S.E.2d 294 (2023). Because the court of appeals found the *Logan* charge issue to be dispositive, it declined to address the remaining issues raised on appeal by Dent. *Id.* at 363 n.3, 863 S.E.2d at 481 n.3 (Ct. App. 2021) ("Because this finding is dispositive, we decline to address Dent's remaining issues on appeal."). (App.p.1-p.7). On August 26, 2021, the State filed a petition for rehearing. (App.p.12-p.23). On September 2, 2021, Dent filed a return to the State's petition for rehearing as well as a cross-petition for rehearing. (App.p.24-p.41). On September 9, 2021, the State filed a return to the cross-petition for rehearing (App.p.42-p.50) and on September 13, 2021, Dent filed a reply to that return. (App.p.51-p.56). By way of two orders filed October 18, 2021, the court of appeals denied both petitions for rehearing. (App.p.8-p.11).

On October 29, 2021, the State timely filed a petition for a writ of certiorari to the court of appeals which asked this Court to review the court of appeals' decision regarding whether the trial judge erred in refusing to read the *Logan* charge. (App.p.1017-p.1035). On November 22, 2021, Dent filed a return to the petition for a writ of certiorari and a cross-petition for a writ of certiorari alleging the court of appeals erred in declining to address the remaining ten issues Dent originally raised on appeal. (App.p.1,036-p.1,098). On December 14, 2021, the State filed a return to Dent's cross-petition (App.p.1,100-p.1,123) and on December 29, 2021, Dent filed a reply to the State's return. (App.p.1,124-p.1,135). On September 7, 2022, this Court issued an

order granting the State's petition for a writ of certiorari and holding Dent's cross-petition in abeyance pending resolution of the State's petition.

On October 6, 2022, the State filed a Brief of Petitioner for Petitioner-Respondent. (App.p.1,137-p.1,158). On November 14, 2022, Dent filed a Brief of Respondent. (App.p.1,159-p.1,190). Oral arguments were heard on April 20, 2023, and in an opinion filed August 16, 2023, this Court reversed and remanded to the court of appeals. *State v. Dent*, 440 S.C. 449, 892 S.E.2d 294 (2023). The Court held that although the trial court's failure to give the requested *Logan* charge was error, the error was harmless and it reversed and remanded to the court of appeals for consideration of Dent's remaining issues on appeal. (App.p.1,191-p.1,197).

Following remand, the case was submitted on September 6, 2023, and on November 8, 2023, the Court of Appeals affirmed Dent's convictions and sentences after addressing his remaining issues on appeal. *State v. Dent*, 442 S.C. 38, 897 S.E.2d 46 (Ct. App. 2023). (App.p.1,198-p.1,214). On January 3, 2024, Dent filed a petition for rehearing (App.p.1,215-p.1,234) and on February 9, 2024, the State filed a return. (App.p.1,235-p.1,253). In an order filed February 12, 2024, the court of appeals denied Dent's petition for rehearing. On April 1, 2024, Dent filed a petition for a writ of certiorari to the court of appeals. This Return to Petition for a Writ of Certiorari, submitted on behalf of the State, now follows.

STATEMENT OF FACTS

The victim (Victim) in this case was born in 2005. (App.p.231& p.233). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (App.p.501). Victim was seven years old when she and Mother moved to Beaufort County in 2012 and nine years old when they moved away in 2014. (App.p.776).

Mother is Dent's daughter, and Victim is Dent's granddaughter. (App.p.502 & p.574). Mother also had a son (Brother) who was nine years old when they moved to Beaufort County and eleven years old when they left. In August of 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Dent's suggestion. (App.p.827-p.828). Initially, Mother, Victim, and Brother lived in a two-bedroom townhome that was paid for by Dent. (App.p.828). In August of 2013, Mother, Victim, and Brother moved to a four-bedroom townhouse in the same complex as their previous townhouse. (App.p.830). 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 of 2014. (App.p.454). 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.p.470). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App.p.470). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App.p.470). 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.p.507 & p.562). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (App.p.623-p.626; State's Exhibit #16). After her first interview, Victim made a second disclosure to Camello. (App.p.471). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. (App.p.623-p.626; 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.p.573, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Dent. (App.p.576). 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.p.575-p.576, 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. (App.p.818-p.855). At the conclusion of trial, Dent was convicted of one count of first degree criminal sexual conduct with a minor and both counts of disseminating obscene material to a minor. He was sentenced to thirty (30) years' imprisonment for first degree criminal sexual conduct with a minor, and fifteen (15) years' concurrent imprisonment for each count of disseminating obscene material to a minor. (App.p.208-p.214; p.983-p.993).

CERTIORARI

Dent raises nine specific arguments in his petition for a writ of certiorari, eight of which were specifically addressed by the court of appeals on the merits and one new one that has not previously been addressed because it relates to what Dent alleges is an error by the court of appeals for deciding his appeal with a "quorum that . . . was different than quorum that heard the oral argument in 2021." Except for this new argument, which itself can be easily disposed of

under our statutes, rules, and the order of remand and therefore does not merit consideration by this Court; Dent essentially rehashes the same arguments that were raised to and ruled upon by the court of appeals – arguments that were thoroughly addressed in a well-reasoned, published opinion. *State v. Dent*, 442 S.C. 38, 897 S.E.2d 46 (Ct. App. 2023). He fails to articulate any special or important reasons for this Court to exercise its discretion and issue a writ. Indeed, the State submits the court of appeals employed the proper standard of review for each of the issues raised on remand and properly addressed those issues in its opinion. The decision on each issue is consistent with precedent in South Carolina, there was no dissent in the court of appeals, no conflict with prior decisions of this Court, and no substantial constitutional issues directly involved. Thus, pursuant to Rule 242(b), SCACR, the State submits there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the court of appeals in this matter. Dent's petition for a writ of certiorari should be denied and dismissed.

I.

The Court of Appeals, by way of a statutorily authorized three-judge quorum, acted in full compliance with this Court's remand order and our appellate court rules when it decided Dent's appeal without oral argument.

In his petition, Dent contends this Court 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, and instead employed a new panel that contained one judge who had not been involved in this court of appeals' earlier decision—a decision which did *not* address the merits of the issues that were resolved through the court of appeals' most-recent decision. *See State v. Dent*, 434 S.C. 357, 363 n.3, 863 S.E.2d 478, 481 n.3 (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 should either reverse the court of appeals and remand "for proper consideration by a quorum," or "address the merits of the questions on appeal." He argues "[t]he existence of 2021 oral argument cannot be ignored.

The State wholeheartedly disagrees and contends the court of appeals acted in full compliance with this Court's remand order and our appellate court rules when it decided the issues considered in Dent's appeal without oral argument. Not only *can* the existence of the 2021 oral argument be ignored, it *must* be ignored because Judge Hewitt—the "new" judge—did not hear that 2021 oral argument. The panel of the court of appeals 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[.]"). The composition of that panel was in no way inconsistent with this Court's remand directive, which merely indicated the case was being remanded "for the court of appeals"—as opposed to any particular panel of the court, comprised of any specific judges—to decide Dent's remaining issues. *State v. Dent*, 440 S.C. 449, 892 S.E.2d 294 (2023). (App.p.1,192). Moreover, following the remand, the case was *submitted* (App.p.1,198) and the court of appeals elected to decide the previously undecided issues raised by Dent *without* oral argument, 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.").[1] Accordingly, the court of appeals 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 who reviewed the issues and rendered a decision. The Court of Appeals properly affirmed, and certiorari should be denied.

II.

The Court of Appeals properly affirmed the trial court's refusal to direct a verdict of acquittal on indictment 2014-GS-07-01673 where the State produced evidence from which a reasonable juror could conclude that Victim performed fellatio on Dent at House Two.

In his petition for a writ of certiorari, Dent argues the court of appeals erred by affirming the trial judge's refusal to grant his motion for a directed verdict on one of the indictments for first-degree criminal sexual conduct with a minor because the State failed to present evidence that Victim performed fellatio on Dent at House Two. He contends the decision "sanctions a conviction for criminal sexual conduct with a minor based on evidence of sexual batteries never submitted to the grand jurors." As support for those claims, Dent argues the court of appeals "overstates the evidence of fellatio, conflates the evidence of fellatio with the evidence of other sexual batteries, and expressly relies on the evidence of other sexual batteries allegedly occurring at the other residence."

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[1] Dent challenges the idea that the three-judge panel on remand could have decided his remaining issues "without oral argument" despite the fact that the opinion from the court of appeals indicates it was "submitted." He argues "this contention is not supported by the record" because the court of appeals did not include a footnote referencing Rule 215, SCACR, and saying the case was being decided without oral argument. However, such a footnote, while routine, is not a legal requirement. Indeed, the court of appeals has issued both published and unpublished opinions in the past that were submitted, without oral arguments, but without including the footnote Dent believes is required. *See, e.g., State v. Miller*, 393 S.C. 59, 709 S.E.2d 135 (Ct. App. 2021), *rev'd, State v. Miller*, 404 S.C. 29, 744 S.E.2d 532 (2013); *State v. Evans*, Op. No. 2022-UP-319 (S.C. Ct. App. filed August 3, 2022).

To the contrary and just as the court of appeals 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.[2] *See State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 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). Here, the verdict itself demonstrates the jury resolved inconsistencies or discrepancies in the evidence precisely as it was bound to do, only convicting Dent on one first-degree CSC with a minor charge while acquitting him on the second. As noted by Dent, each indictment alleged a single incidence of fellatio and as noted by the court of appeals, Victim testified she only performed fellatio on Dent

[2] 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 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.").

once but did not testify as to where that incident occurred. Thus, rather than sanctioning a conviction for a crime based on evidence of sexual batteries never submitted to the grand jurors, the trial judge properly concluded the evidence was sufficient to send the charge to the jury. For these reasons, the court of appeals properly affirmed, and certiorari should be denied.

III.

The Court of Appeals properly affirmed the trial court's decision to charge the jury with the complete statutory definition of sexual battery when it was the correct definition of sexual battery and it adequately conveyed the law.

In his petition for certiorari, Dent argues the court of appeals erred by affirming the trial court's decision to present the full statutory definition of sexual battery to the jurors when instructing them on the required elements of the indicted offense when the indictment listed fellatio as the only sexual battery at issue. He contends the trial judge's jury instruction on sexual battery was confusing and improper under the circumstances involved and "allowed the jurors to convict him based on a sexual battery other than fellatio." The State disagrees.

Just as the court of appeals 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").

Dent relies on *State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002) and *State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001) to support his argument, claiming they provide examples of cases where the trial court improperly confused the jurors by providing a correct statement of law that was not appropriate in that particular trial; however, each case is easily distinguished. In *Blurton*, the trial court charged two different points of non-statutory law, both of which were correct statements of law but one of which was wholly inapplicable because it did not fit the facts of the case. *Blurton* at 208, 573 S.E.2d at 804. Here, the trial court simply provided the correct and entire statutory definition of sexual battery, an element of the offense. Dent was fully able to challenge whether the State met its burden of proof for the particular crimes alleged in the indictments. The trial court's decision to charge the full statutory definition of an element of the indicted offense sufficiently "fit the facts" of this case and certainly did not constitute an abuse of discretion.

In *Jones*, the trial court substituted a correct definition of reasonable doubt for another correct definition of reasonable doubt *after* Jones made a closing argument that relied on the definition the trial court chose not to use. *Jones* at 576-77, 541 S.E.2d at 820-21. This Court found the effect of the trial court's after-the-fact decision was to diminish defendant's attorney's credibility in the eyes of the jury. *Id.* at 578, 541 S.E.2d at 821. Here, Dent alleges he relied on the indictment in his opening statement and his closing argument; however, his comments in both appear to be limited to challenging the evidence and burden of proof. Nothing Dent argued relied on a belief that the trial judge would charge the jury with only a portion of the statutory definition of sexual battery in section 16-3-655. Indeed, Dent's closing argument came *after* the charge conference, where the judge ruled, over his objection, that the entire statute would be

charged. (App.p.900-p.907). *Jones* has no import. Accordingly, the court of appeals properly affirmed, and certiorari should be denied.

IV.

The Court of Appeals properly concluded that, even if the trial court erred in admitting the expert testimony of Tessa Trask because it failed to determine the reliability of her testimony, that error did not prejudice Dent's defense because Trask testified solely as to her general observations in behavior of children who suffered abuse but was not involved in Victim's case and had not reviewed Victim's files.

In his petition for a writ of certiorari, Dent claims the court of appeals 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 claim, Dent maintains simply that because "there is no support for the reliability" of [Trask's] testimony in the record," he has automatically established prejudice due to "the admission of unreliable, untested theories." He contends it is "impossible for the court below to conclude 'the error was harmless beyond a reasonable doubt.'" Thus, Dent's only argument as to why certiorari 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. This is simply not the law in South Carolina.

In *State v. Tapp*, 398 S.C. 376, 387, 728 S.E.2d 468, 474 (2012), this 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, this 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. Since a trial judge's failure to

properly conduct a reliability analysis clearly does *not* automatically require reversal as Dent seems to suggest, the court of appeals did exactly what it was supposed to do—consistent with *Tapp*—by looking to the circumstances involved to determine whether the error it determined occurred, resulted in prejudice warranting reversal. The court of appeals' harmless error finding in Dent's case was completely correct for all the reasons it identified.[3] *See State v. 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, the court of appeals properly affirmed, and certiorari should be denied.

V.

The Court of Appeals properly affirmed the trial court's decision to allow John Camelo to testify about his personal observations of Victim's behavior when he did not discuss the substance of Victim's disclosure and did not bolster Victim's testimony or vouch for her credibility.

In his petition for a writ of certiorari, Dent claims the court of appeals incorrectly declined to reverse his convictions on grounds that the testimony of John Camelo improperly bolstered or vouched for the victim's credibility. He contends the State "cleverly questioned" Camelo about his education, training, and experience as a police officer to suggest he believed Victim and to engage in a "back door introduction" of prohibited opinion evidence.

[3] Notably, looking to the substance of the expert testimony 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 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. (App.p.596). 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. (App.p.591-p.592).

To the contrary and just as the court of appeals correctly recognized, Camelo's testimony did *not* 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,[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. 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"). The court of appeals correctly found the trial court did not abuse its discretion in allowing Camelo to offer personal observation testimony; therefore, certiorari should be denied.

VI.

The Court of Appeals properly affirmed the trial court's decision to sustain the State's objection as to relevance and to thereby limit Dent's improper attempt to question Camelo regarding his reasons for breaking-up with Victim's mother.

In his petition for a writ of certiorari, Dent claims the court of appeals erred in declining to reverse his convictions on grounds that the trial court violated his rights under the Sixth Amendment Confrontation Clause by prohibiting him from questioning Camelo about his reason for breaking-up with Victim's mother—that reason purportedly being because Victim's mother

[4] Notably, that behavior included attempts to kiss Camelo, to engage in frequent hugging, and to *grope Camelo's groin*. (App.p.469-p.470).

had used marijuana and been a stripper in the past. Dent claims he was appropriately attempting to impeach Camelo with a supposed prior inconsistent statement and thus the limitation of that line of questioning constituted a Confrontation Clause violation.[5] The State disagrees.

The trial court—just as the court of appeals correctly recognized—did not abuse its 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 actual 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."). The court of appeals correctly found the trial court appropriately sustained the State's objection as to relevance and limited Dent's improper attempt to question Camelo regarding his reasons for breaking-up with Victim's mother. Consequently, certiorari should be denied.

VII.

The Court of Appeals properly affirmed the trial court's decision to admit the Group Two Photographs of Victim under Rule 403, SCRE, where they were relevant and probative, and their probative value was not substantially outweighed by the danger of unfair prejudice.

In his petition for a writ of certiorari, Dent claims the court of appeals should have reversed the trial court's admission of a group of photos of Victim (Group Two Photos) under

[5] Although Dent now argues such testimony was admissible as evidence of a purported prior inconsistent statement on Camelo's part, defense counsel tellingly argued to the jury Victim's mother had been a stripper *even after* the trial judge sustained the State's objection to defense counsel's attempt to question Camelo about that matter on relevancy grounds. (App.p.481-p.482; p.488; p.947).

Rule 403, SCRE, because their probative value was substantially outweighed by the danger of unfair prejudice. Specifically, he contends that because there was a lack of evidence about who took the Group Two Photos, the jurors were improperly "allowed to consider these photographs as evidence of Mr. Dent's guilt." The State disagrees.

As properly recognized by the court of appeals, the relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014). A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *Id.* at 534, 763 S.E.2d at 28. As also recognized by the court of appeals, the Group Two photos were relevant and probative because they corroborated Victim's testimony and helped establish the elements of the offenses charged. Regardless of who took them, Victim identified herself in the photos and verified they were taken at the houses when she lived in South Carolina during the relevant time frame. Thus, the trial court's decision to admit the Group Two Photos after acting as the authentication gatekeeper, determining relevancy, and determining their probative value was not substantially outweighed by the danger of undue prejudice, was well within its sound discretion and was properly affirmed by the court of appeals. Accordingly, certiorari should be denied.

VIII.

The Court of Appeals properly affirmed the trial court's decision to admit the Group One Photographs of Victim under Rule 402, SCRE, where they were relevant to corroborate facts at issue in Dent's case.

In his petition for a writ of certiorari, Dent claims the court of appeals erred in affirming the trial court's admission of a group of photos of Victim (Group One Photos) under Rule 402, SCRE, because they were not relevant. Specifically, he contends 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)," which reversed a murder conviction on grounds that admission of photographs that were not relevant to the defendant's guilt was reversible error under the circumstances of the case. The State disagrees and submits *Langley* simply does not apply to the circumstances of Dent's case.

All relevant evidence is admissible, unless subject to an exception in the federal or state constitutions, statutes, the rules of evidence, or some other rule promulgated by this Court. Rule 402, SCRE. "Relevant evidence" means evidence having 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. As properly recognized by the court of appeals, the Group One Photos of Victim corroborated Victim's testimony that: (1) she lived in Houses One and Two during the alleged sexual abuse, (2) that Dent stayed in both houses when he visited, and (3) her age at the time of the abuse. Each of these "facts" was of consequence to the determination of the action by the jury, which was tasked with deciding whether the State proved beyond a reasonable doubt that the alleged sexual abuse occurred as testified to by Victim.

In *Langley*, the State elicited testimony from the victim's sister about the victim's family, how the victim acquired his nickname "Bunny," and that the victim had attended Burke High School where he played drums in the band. *Langley* at 647, 515 S.E.2d at 100. She then identified a photo of the victim and it was admitted into evidence. *Id.* On appeal, this Court held the testimony and the victim's photograph were not relevant to proving the guilt of appellant even though the State claimed they were relevant to establish the identity of the victim because the victim's identity was *not* an issue in the case. *Id.* at 648 & n.3, 515 S.E.2d at 100 & n.3. Here, as noted above, the photographs in Group One corroborated facts at issue in Dent's case. They

are easily distinguished from cases where photographs have been deemed "victim impact" evidence. *See, e.g., State v. Bennett*, 369 S.C. 219, 229, 632 S.E.2d 281, 286 (affirming the trial court's admission of hospital photographs introduced to describe the extent of the injuries suffered by the ABHAN victims). Thus, *Langley* does not apply and the trial court's decision to admit the Group One Photos as relevant was well within its sound discretion. The admission of the Group One Photos of Victim by the trial court was properly affirmed by the court of appeals and certiorari should be denied.

IX.

The Court of Appeals properly affirmed the trial court's refusal to quash the dissemination indictments where subsection 16-15-435(A) does not apply to violations of section 16-15-355 of the Code and where the indictments provided sufficient notice of the crimes charged.

In his petition for a writ of certiorari, Dent first notes that he raised three issues to the court of appeals (Questions VIII, IX, and X), all of which stemmed from his underlying allegation that the trial court erred in failing to quash his two indictments for disseminating obscene materials to a minor, because the State failed to follow the procedural requirements in Sections 16-15-305 & 16-15-435(A) of the South Carolina Code. Dent argues the court of appeals erred by failing to recognize the merits of his underlying argument. Specifically, he maintains Section 16-15-355—the statutory provision for which he was convicted of violating—"incorporates" Section 16-15-305 as a part of the offense it created. Dent argues this Court should grant a writ of certiorari to consider whether his theory of incorporation requires reversal on one or more of his three issues, and he contends the bench and bar would benefit from this Court's guidance on this issue. The State disagrees.

Just as the court of appeals 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, the provision reads: "A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315,[6] or 16-15-325 may be issued only upon request of a circuit solicitor." S.C. Code Ann. § 16-15-435(A). 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 guise of construction, to alter the plain language of a statute by adding words which the Legislature saw fit not to

[6] 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).

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, the court of appeals correctly rejected all the appellate issues Dent predicated upon his claim of a non-existent violation of Section 16-13-435, and his suggestion to the contrary continues to be lacking in merit. Certiorari should be denied.

CONCLUSION

Based on the foregoing reasons, the State submits this Court should deny the petition for a writ of certiorari in its entirety and let stand the decision of the Court of Appeals. If the Court grants the petition for a writ of certiorari, the State would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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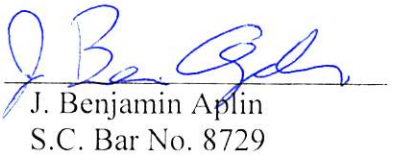
BY: 
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