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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals

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.

REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ARGUMENTS IN REPLY

Charles Dent replies to the State's Return to his Petition for a Writ of Certiorari (herein after "Petition" and "Return").

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?

The procedural and factual background are not in dispute: (1) the original quorum of the Court of Appeals included the Honorable H. Bruce Williams, the Honorable Paula H. Thomas, and the Honorable D. Garrison Hill, (2) the original quorum convened an oral argument on February 11, 2021, which is evidence this quorum believed an oral argument was beneficial, (3) after remand, the quorum of the Court of Appeals included Judge Williams, Judge Thomas, and the Honorable Blake A. Hewitt, and (4) the Court of Appeals did not convene an oral argument after remand from this Court. Both Mr. Dent and the State cite S.C. Code Ann. § 14-8-80(d), *State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002), and Rule 215, SCACR. *Compare* Petition, pp. 6-8, *with* Return, pp. 8-10. Mr. Dent and the State, however, disagree about the application of the law. *Id*. To justify its interpretation of the law, the State asks this Court to ignore the February 11, 2021 oral argument, overlooks *Anderson Cnty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019), and misrepresents Mr. Dent's argument to this Court. Each of these concerns are addressed below.

First, the State acknowledges Mr. Dent argues "[t]he existence of the 2021 oral argument cannot be ignored," but then contends, "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 the 2021 oral argument." Return, p. 8 (emphasis original). This statement is

an astonishing argument that reinforces, rather than detracts, from Mr. Dent's position. The only conceivable reason the State wants this Court to ignore the 2021 oral argument is because Judge Hewitt did not participate in that argument. The State never explains how Judge Williams and Judge Thomas—who participated in the 2021 oral argument—could ever ignore the oral argument. Pursuant to Rule 215, SCACR, Judge Williams and Judge Thomas believed an oral argument would assist the Court in 2021, but they are supposed to ignore it now? This Court did not ignore the oral argument in *McMillian*; nor should it ignore the oral argument in Mr. Dent's case. The significance of the 2021 oral argument becomes more apparent when this Court considers *Preston* and the State's mischaracterization of Mr. Dent's arguments to this Court.

Second, as seen, the State never addressed *Preston.* Mr. Dent asks this Court to read *Preston* together with section 14-8-80(d) and *McMillian*. These authorities, read together, require the quorum issuing the opinion to be the same quorum that heard the oral argument.

Third, the State mischaracterizes Mr. Dent's arguments to this Court by stating Mr. Dent "contends" the Court of Appeals "violated § 14-8-80(d)" when "it did not reconstitute the 'original panel' after the matter was remanded." Return, p. 8. While it is true the Court of Appeals could have reconstituted the original panel with Justice Hill siting with the court below, the Court of Appeals also could have convened a new oral argument with Judge Hewitt participating. In fact, Mr. Dent's petition for rehearing expressly requested the Court of Appeals "withdraw the opinion dated November 8, 2023, and convene an oral argument." A. 1222. In *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018), this Court followed this very procedure when it granted rehearing following the retirement of the Honorable Costa Pleicones. *See State v. Beaty,* Appellate Case No. 2015-00718 (oral

argument convened on October 19, 2016, opinion issued on December 29, 2016, rehearing granted on March 24, 2017, oral argument convened on June 15, 2017, and opinion reissued on April 25, 2018). Despite the procedural differences between remand and rehearing, the procedure followed by this Court in *Beaty* highlights the importance of all of the decision makers participating in the oral argument.

Finally, although implicitly addressed above, Mr. Dent will address the State's argument that 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." Return, pp. 9-10 (citing Rule 215, SCACR, and *Stasi v. Sweigart*, 434 S.C. 239, 863 S.E.2d 669 (2021). Mr. Dent already noted above that Judge Williams and Judge Thomas believed, pursuant to Rule 215,[1] in 2021, that oral argument would benefit the court below. The State misstated the significance of *Stasi* by cherry picking from the opinion. The complete paragraph states:

> We pause here to comment on oral argument. 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. *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."). In this case, counsel for the Stasis filed a written request for oral argument at the court of appeals. The court denied the request. On certiorari in this case, this Court—individually and collectively—found oral argument to be very helpful. The question whether Mallory's repeated failures to visit the Child were understandable, even unavoidable, or whether they were willful, has

[1] The State argues the lack of a footnote in the opinion below referencing Rule 215, SCACR is not dispositive regarding whether the court below determined oral argument would not assist the Court. Return, p. 10, n. 1. The State's position is merely speculative. That Judge Williams and Judge Thomas convened an oral argument in 2021 is evidence contrary to the State's argument.

> not been an easy judgment call. From our perspective, oral argument was warranted in this complicated and difficult case.

Stasi, 434 S.C. at 258, 863 S.E.2d at 679. *Stasi*, accordingly, supports Mr. Dent's position. Mr. Dent does not argue that due process or a specific provision of law "required" and oral argument. Rather, once the Court of appeals determined an oral argument was necessary, then section 14-8-80(d), *McMillian,* and *Preston* requires the entire quorum that issued the opinion to have participated in the oral argument.

Because the Court of Appeals opinion departed from the requirements of section 14-8-80(d), *McMillian,* and *Preston*, this Court should grant the writ and consider the question.

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 once again acknowledges—as it must based on the plain language of the criminal-sexual-conduct-with-a-minor indictments—that the prosecution was required to prove fellatio. Return, p. 12-13. This acknowledgment is fatal to the State's position regarding Question III. Before turning the Question III, Mr. Dent will address three matters raised by, or avoided by, the State's return.

First, the issue presented by Question II is whether the trial judge—and ultimately the Court of Appeals—erred by not directing a verdict of acquittal. The State's return never addressed the standard of review the appellate court applies when reviewing the denial of a directed verdict motion. For the standard of review, Mr. Dent's petition cited to *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), *State v. Cherry,* 361 S.C. 588, 606 S.E.2d 475 (2004), *State v. Gaster,* 349 S.C. 545, 564 S.E.2d 87 (2002), *State v. Mitchell,* 341 S.C.

406, 535 S.E.2d 126 (2000), *State v. Burdette,* 335 S.C. 34, 515 S.E.2d 525 (1999), and Rule 19(a), SCRCrimP. Petition, pp. 9 (n. 3), 12-13. Rather than discuss the standard or review, the State makes vague references to cases discussing "inconsistencies and discrepancies," "various, inconsistent accounts," and "credibility and factual issues that need to be resolved by the jury." Return, p. 11. Mr. Dent denied the allegations, and the State's return never points to any testimony or out-of-court statement of the child that alleges fellatio occurred at the location and during the timeframe of the indictment in question.

Second, Mr. Dent's petition reviews, in detail, the contents of the children's advocacy center interviews. Petition, pp. 9-11. The State failed to address these interviews in any specificity. Mr. Dent invites this Court to review the recordings.

Third, the State asks this Court to approve a reduced burden of proof in cases where a child alleges sexual abuse. Return, p. 11, n. 2. The only case the State cites for this proposition is a case from Utah. This Court has repeatedly declined to reduce the burden of proof in child sexual abuse cases, and it should do so now. More importantly, footnote 2 is misleading. Mr. Dent does not claim "the child's inability to remember the exact dates and places of the abuse impaired [his] ability to prepare a defense." *Id*. Here, the State linked the separate indictments to specific timeframes and locations. Mr. Dent relied on these indictments when he prepared a defense. Because the State failed to present any evidence of fellatio occurring at the location and during the timeframe alleged in the indictment at questions, the trial court was required to direct a verdict.

Through the indictments, the State chose its theory of the case. This Court should grant the writ and consider the question not only to correct the error below, but also to remind the bench and bar about the significant role of indictments in a criminal prosecution.

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 referenced above, the State's acknowledgment that the prosecution was required to prove fellatio is fatal to the State's position regarding Question III. As pointed out in Mr. Dent's petition, 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. The trial judge charged the full definition of "sexual battery." A. 966. Mr. Dent was prejudiced because the Solicitor argued for—and the trial judge allowed—the jurors to convict based on testimony of a sexual battery other than fellatio.

The State minimizes Mr. Dent's reliance on the indictment during his opening statement, suggesting the "comments" were "limited to challenging the evidence and the burden of proof." Return, p. 13. During opening statements, Mr. Dent specifically referred to the indictments, noting it "is important to know exactly what is in the indictments, what is in the charging documents that the State has to come [into court] and prove to you beyond a reasonable doubt." Counsel then stated:

> The criminal sexual conduct indictments are divided by time … from where they lived on one apartment and moved into another apartment. So what the State is saying that they are going to proves is that Mr. Dent, Charles Dent made [the child] perform oral sex on [him] on more than one occasion and in those two different locations.

A. 449-50.

Mr. Dent stands by his reliance 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). Petition, pp. 14-15. Mr. Dent, however, notes the State's return did not address his reliance on 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). Nor could it, without conceding error.

Through the indictments, the State chose its theory of the case. This Court should grant the writ and consider the question not only to correct the error below, but also to remind the bench and bar about the significant role of indictments in a criminal prosecution.

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 State argues Mr. Dent seeks automatic reversal "when a trial judge admits expert testimony without first properly determining its reliability." E.g., Return, p. 14. The State is incorrect.

Mr. Dent acknowledged "some of Ms. Trask's testimony—such as the process of disclosure and concept of "grooming"—have been addressed by our appellate courts" Petition, pp. 17-18 (citing *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)). Rather, Mr. Dent takes issue with

Ms. Trask's testimony, based on her "own framework" for the working definition of trauma without providing any support for the reliability of her "own framework," and her testimony about potentially misdiagnosing trauma as ADHD or ADD. Ms. Trask's "traumagenic model" has never been recognized by the appellate courts of South Carolina. 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?

The State fails to explain why it was necessary for the prosecution to ask John Camelo about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness, and then to link Mr. Camelo's education, training, and experience to his observations of "red flags" about J.M.s' behavior. 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). This Court should grant the writ and

consider the issue, not only to correct the error below, but also to provide guidance to the bench an bar to prevent similar injustices in the future.

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?

The State argues the trial court properly limited Mr. Dent's cross-examination of John Camelo. Return, pp. 16-17. By limiting the cross-examination, the prosecutor was able to attribute the breakup to Mr. Dent's alleged abuse of the child rather than to issues arising between the couple. Allowing the jurors to have this misconception prejudiced Mr. Dent. 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 State acknowledges "a lack of evidence about who took the Group II Photos," and argues "the Group Two photos were relevant and probative because they corroborated [the child's] testimony and helped establish the elements of the offenses charged." Return, pp. 17-18. The State has never before in this case argued these photographs are relevant to the charges of discriminating obscene materials to a minor. E.g., A. 164. It should not be allowed to make that argument now.

The Court of Appeals recognized "the Group Two Photos were more sexual in nature." *State v. Dent*, 442 S.C. 38, 51-52, 897 S.E.2d 46, 52-53 (Ct. App. 2023). Given the acknowledged lack of evidence about who took the Group Two Photos, the prejudicial

effect of admitting the photographs substantially outweighed any probative value. 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 State argues the Group One Photos corroborated the child's "testimony that: (1) she lived in the House One and Two …, (2) that Dent stayed in both house when he visited, and (3) her age at the time of the abuse." Return, p. 19. The child's age, that she lived in these houses, and that Mr. Dent stayed there when he visited were facts beyond dispute. The State and Mr. Dent disagree about the applicability of *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999). *Compare* Petition, p. 23 *with* Return, pp. 18-20. 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. Mr. Dent and the State present contrary statutorily interpretations. Compare Petition, pp. 24-25, with Return, pp. 20-22. The Bench and bar would benefit from this Court's guidance regarding the interpretation of sections 16-15-305 and 16-15-355.

(conclusion and signature on next page)

CONCLUSION

For the reasons stated in the petition for writ of certiorari and this reply, this Court should grant the writ and consider the questions presented.

Respectfully Submitted,

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