THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Dec 02 2024
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.

BRIEF OF PETITIONER

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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 of 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.

STATEMENT OF CASE

On July 15, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Charles Dent with two counts of third-degree criminal sexual conduct with a

minor and two counts of disseminating obscene material to a minor twelve years of age or younger involving his granddaughter J.M. A. 216-17. The State never indicted Dent for third-degree criminal sexual conduct with a minor.

On July 30, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging 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 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.

The Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01674 alleging Dent committed first-degree criminal sexual conduct with a minor, "between April 2013 and August 2013," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." A. 232-33.

The Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01673 alleging 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.

The Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01671 charging 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. The Beaufort County Grand Jury amended this indictment to allege, between

"April of 2013 through April of 2014," Dent showed J.M. "multiple photographs of his own genitalia on a digital camera." A. 222-23.

The Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01672 charging 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. The Beaufort County Grand Jury amended this indictment, to allege "between April of 2013 and April of 2014," Dent showed J.M. "pornography." A. 226-27.

From May 21-24, 2018, the State tried Dent before the Honorable Alex Kinlaw, Jr. and a jury. The jurors found 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 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 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, Dent moved for a new trial (A. 272-78), and the State responded (A. 281-87). On June 17, 2018, Judge Kinlaw denied the motion for a new trial. A. 215.

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 Dent's appeal. *Id*., 434 S.C. at 363, n. 3, 863 S.E.2d at 481, n. 3. A. 1-7. Both parties fully briefed Cross-petitions for rehearing, which the Court of Appeals denied. A. 8-56.

The parties filed and fully briefed cross-petitions for writs of certiorari. A. 998-1135. On September 9, 2021, this Court granted the State's petition and held Dent's petition "in abeyance pending resolution of the State's petition." A. 1136. The parties briefed the question. A. 1137-90. 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, 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 Dent replied on February 9, 2024 (A. 1247-53). On February 12, 2024, the Court of Appeals denied Dent's petition for rehearing. A. 1254.

On April 4, 2024, Dent filed his petition for a writ of certiorari, presenting nine questions for this Court's consideration. The State responded on April 30, 2024, and Dent replied on May 20, 2024. On October 30, 2024, this Court granted the petition regarding seven of the nine issues. This brief follows.

STATEMENT OF FACTS

A. Motions hearing and status conference on February 28, 2018.

On February 28, 2018, the Honorable Carmen Mullen convened a hearing on Dent's motion to compel disclosure of records of the children's advocacy center, pursuant to *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713, 726 (2017), because J.M.'s "state of mind" might be an issue at trial. R. 35-41. The State agreed these records should be provided to the Court for an *in camera* review. R. 92-99. Judge Mullen ultimately released records from Hopeful Horizons, formally known as Hope Haven of the Lowcountry, and Cape Fear Behavioral Health Center, LLC in Fayetteville, North Carolina. R. 1-8.

The parties also discussed the execution of a search warrant at Dent's home in Alabama. Dent informed the Court that neither he nor Dent's attorney in Alabama had seen any of those images and Dent wants an independent digital forensics expert to review to the evidence, which was still located in Alabama. R. 102-04.

B. Pre-trial Motions.

1. State's Motion to admit child advocacy center interview and expert testimony.

On May 18, 2018, the prosecution filed a motion for the admission of out-of-court statement of the child pursuant to S.C. Code § 17-23-175. R. 49-56. Dent's pre-trial brief opposed this motion. R. 59-65. He argued the statue requires "the trial judge make certain findings of fact after reviewing the videotape," pursuant to the procedures established by *State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) and *State v. Brown,* 411 S.C. 332, 768 S.E.2d 246 (Ct.App.2015), and the prohibition against "testimony that improperly bolsters the credibility of the [complaining] witness or vouches for her credibility," citing *Anderson, 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 prosecution proffered the testimony of Shauw Chin Capps, who is the chief executive officer of "Hopeful Horizons, formally Hope Haven of the Lowcountry," which "is the children advocacy, domestic violence, and rape crisis center serving the Fourteenth Judicial Circuit." Capps interviewed J.M. on July 15 and 28, 2014. J.M. "was nine years old when she was interviewed." Both of these interviews were recorded. The trial judge reviewed the videotapes. R. 152-60, 168.

Dent argued portions of the interviews should be redacted because of "improper vouching and bolstering," prohibited by "the *Kromah, Anderson* line of cases." The prosecution agreed to the redactions. R. 162-63, 168-69. The prosecution argued for the admissibility of the videotaped statements, and Dent argued against admissibility. The trial judge ruled the videotapes admissible, subject to redaction and the limitations of *Anderson* and *Brown*. R. 169-76.

The prosecution next proffered the testimony of Tessa Trask, who is employed by Hopeful Horizons and "working towards" becoming a licensed professional counselor. At the time of her testimony, she had "a provisional license as a licensed professional counselor intern." She received a "certification as a forensic interviewer in July of 2017." Trask watched the two interviews conducted by Capps, her supervisor at Hopeful Horizons. Trask also had access to the Hopeful Horizons files on J.M. but claimed she did not review those files. Trask also claimed not to have discussed this case with Capps. The prosecution offered Trask "as an expert in behavioral characteristics of child victims of sexual abuse." Trask planned to testify that sexual abuse can present as a trauma, ADHD and trauma can

have similar symptoms, the disclosure process in sexual abuse cases, "coaching, lying, and confusion in a sexual assault case," grooming, and risk factors for sexual abuse. R. 176-85.

Dent argued testimony by Trask about trauma and ADHD "is something that's particularly tailored towards [J.M.] in this case, based on what we know about her records." He argued that the testimony about coaching and lying is "a veiled way of saying this child was not coached," which would violate the *Kromah-Anderson* line of cases. R. 185-89.

In his pretrial brief and during the hearing, Dent specifically requested the trial judge require the prosecution to proffer Trask's complete testimony for the trial judge to determine the reliability pursuant to *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010) (summarizing three-part procedure for qualifying expert witnesses) and *Chavis*, 412 S.C. at 108, 771 S.E.2d at 340 (state failed to show individual reliability of witness sufficient to allow her to testify as child abuse assessment expert). The trial judge declined that request and ruled Trask could be qualified as an expert in behavioral characteristic of child victims of sexual abuse." R. 47-58, 183-91.

2. State's motion to admit other bad acts.

On May 18, 2018, the prosecution filed a written motion "to allow the evidence of a prior bad act of the Defendant, Charles Dent," pursuant to Rule 404(b), SCRE, which involved "the discovery of child pornography on the Defendant's computer in Calhoun County, Alabama." R. 49-56. The State abandoned this motion later in the trial. This motion hearing included discussion about images of J.M. found during the execution of the search warrant in Calhoun County, Alabama, conducted at the request Beaufort County Sheriff Office Investigator Cornelius LaVan. R. 197-98. The Solicitor planned to present testimony of a Calhoun County Alabama Sheriff's Deputy to testify about the search of

Dent's home and a witness from the computer task force to testify about images found on the electronic devices, including "borderline sexual" images of J.M. and child pornography. R. 198-99. After considering additional arguments of counsel, the trial judge decided to "hold off ruling on [this] issue until after a proffer" of the digital forensic expert's testimony to give Dent "the opportunity to cross-examine." R. 208-20.

C. The Trial.

1. Opening statements.

During opening statements, the Solicitor stated John Camelo "started noticing some red flags from J.M.'s behavior. Based on his own personal experience and knowledge of child sexual –" Dent interjected, "Objection. Improper bolstering. Move to strike." The trial judge overruled the objection. The Solicitor continued:

> Based on his own personal knowledge of child sexual abuse, he noticed that [J.M.'s] behavior was outside the realm of a typical nine-year-old girl. He is going to tell you today about some of that behavior, about her being over friendly with him, wanting to sit on his lap, kiss him on the cheek, constantly wanting to touch him, someone she had known for about a month or two.

R. 243-44. J.M. subsequently told Camelo that Dent had been sexually abusing her and making her feel uncomfortable for the past year." The Solicitor also acknowledged that J.M.'s memory "might not be what we all want it to be." R. 244-45.

During his opening statement, Dent informed the jurors it "is important to know exactly what's in the indictments" that the State has to prove beyond a reasonable doubt. The two criminal sexual conduct indictments are divided by time from when J.M. "lived in one apartment and moved into another apartment." The indictments allege Dent made J.M. "perform oral sex" at "those two different locations." Also, counsel noted the State would not present any photographs of Dent's penis that he allegedly showed J.M. R. 250-

51. Dent also asked the jurors "to look for evidence of a motive to make false allegations." He also asked the jurors to view the videotaped interviews with a critical eye. R. 251-57.

2. John Camelo.

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

> Q. And at any point when you and Lori started dating, did you notice anything in particular about [J.M.'s] behavior?
>
> A. Yes. I observed red flags – what I considered red flags in terms of her actions, gestures, mannerisms, things that a nine-year-old child at the time wouldn't normally be – you don't –
>
> Q. Okay. Now, you say "red flags." Let me back up a little bit. Have you ever worked in a law enforcement capacity?
>
> A. I did. I spent four years as a police cadet and police cadet supervisor with Beaufort City. I was, also, a volunteer fire fighter for several years. I was a private investigator for 10 years. Also, a Sunday school teacher, Boy Scout leader.
>
> And so I've had a lot of training –

R. 258-60.

Dent objected, and the trial judge considered the objection outside the presence of the jurors. Counsel reminded the trial judge, "[W]hen we had a sidebar about scheduling matters, I, also, brought up my concerns about them trying to portray Camelo as somebody who had special training in order to be able to detect child abuse or sexual abuse." Counsel reminded the trial judge about the objection during the State's opening. Counsel argued, [I]nitially, their first question sounded like it was going to be limited to just the behavior that he witnessed that he thought was odd," but the Solicitor questioned Camelo about "not just his employment history," but also about training which seems intended to show that

Camelo "has some sort of training to be able to detect child abuse," which would be "improper vouching or bolstering" under the *Kromah-Jennings-Anderson* line of cases. Counsel reminded that witnesses, including expert witnesses, are not allowed to testify "that somebody is telling the truth" or offer "an opinion that this child was sexually abused." Counsel moved to limit the testimony and argued:

> I think it's done in kind of a clever way. Because they're trying to present him and tell you a little bit about the background, but doing it in a way that you would normally qualify somebody as an expert without offering him as an expert so that it has that same, you know, appeal to a jury. And – and that's my concern.

R. 260-62.

The State claimed it was "laying the foundation for him to give a lay opinion based on personal experiences. He was a private investigator for 10 years." The prosecution proffered Camelo's testimony. Camelo testified, "I was personally sexually abused by a male for a – during my youth between the ages of 12 and 13." He also raised a stepdaughter "[f]rom the age of five till she was 17." Camelo identified the "red flags" he claimed to have observed:

> Being overly clingy with men, particularly, wanting to kiss my cheek, wanting to touch me in areas that a – you know, where a child – a minor should not be touching a male, particularly, the genital area.

R. 262-64. Based on these concerns, Camelo testified he asked J.M. "if anyone had touched her, or if anyone had done anything inappropriate to her." J.M. answered, "My grandfather." R. 264-66.

Dent further noted Camelo's testimony risked violating the time and place limitations or Rule 801(d), SCRE and the Solicitor instructed Camelo not to name the

alleged perpetrator. The trial judge limited the Solicitor for asking any "questions regarding whether or not he has an opinion regarding abuse." R. 266-67, 269.

The Solicitor then proffered Camelo's testimony about "a second time [J.M.] disclosed to this witness" after the first interview at Hopeful Horizons. J.M. wrote a statement on a piece of paper that she had not made during the interview because she, purportedly, "was afraid." R. 267-69.

The jury returned to the courtroom. Camelo testified about the "red flags" he observed: "Gestures of a sexual nature that a nine-year-old – that a minor wouldn't normally know without having been shown or taught by someone." When J.M. told him "something had been going on," Camelo was so concerned that he immediately informed Mayo, who contacted law enforcement. R. 270-72.

Camelo testified about "a second disclosure" after J.M.'s first interview at Hopeful Horizons." J.M. wrote it on a piece of paper, handed it to Camelo, and "ran off." Camelo testified this statement "was even more concerning than the first disclosure." This disclosure by J.M. was made to Camelo after Camelo did not allow an older male neighbor to speak to J.M. Camelo gave the paper to Mayo who contacted law enforcement. R. 272-73.

Camelo testified he moved in with Mayo "primarily because they had a fear of [Dent] coming around." Camelo also testified J.M. "would tell people I was her father, her new dad" and called him "Dad."[1] Camelo also helped Mayo and her children move into a motel before they left South Carolina. Camelo testified that he ended the romantic relationship with Mayo because, "[v]ery shortly after – after all of this initiated, which,

[1] Mayo testified that J.M. referred to Camelo as "Dad" R. 344-46.

unfortunately, became very stressful, a very stressful, strange situation. And I just felt it was best to end the relationship. R. 271, 275-77.

On cross-examination, Camelo acknowledged that when he moved in with Mayo and her children, he took the downstairs room that Dent used when he visited. Camelo acknowledged he was the one that brought up the subject of sexual abuse when J.M. made the first disclosure. Camelo acknowledge that A.M. (J.M.'s older brother) never referred to him as "Dad." Camelo denied telling the prosecutors that Mayo told her children that Camelo could "be their new dad." Dent reminded Camelo that he had attributed the breakup with Mayo to the stress of the sexual abuse allegations. Counsel asked, "You had, also, learned some information about Lori's background?" When Camelo asked for clarification of the question, counsel explained, "That she had been a stripper in Florida and has smoked marijuana." The prosecution objected based on relevance. The trial judge excused the jurors from the courtroom, and Dent explained:

> Your Honor, the question that was asked on direct was the reason for the breakup of the relationship. And they were allowed to paint a particular picture to the jury.
>
> I was provided by e-mail a summary of an interview that the prosecution's office did with Mr. Camelo preparing for trial. And in at that interview, it says, After he started dating Lori, he learned that she used to be a stripper in Florida and she smoked marijuana. He decided this was not a relationship he wanted to continue. And then it goes into, he, eventually, you know, moved into the house.
>
> And so I don't think that – the suggestion that was made on direct was that Mr. Dent and the allegations were responsible for the breakup. But that's contrary to what he told the Prosecutors.
>
> Also, he had told them – according to their summary, he had told them that Lori had told the kids that Camelo could be their new dad.

R. 277-83. Counsel Argued the Sixth Amendment's confrontation right allows Dent to question Camelo about facts "relevant to the issue of the breakup," the questions are relevant to "rebut the suggestion that [the prosecution] made that the allegations by [J.M] against Charles Dent was the reason that the relationship broke up." R. 283-84.

The Solicitor argued the reasons for the breakup is not relevant and pointed to her notes about Camelo starting to distancing himself from Mayo after J.M.'s disclosure of sexual abuse. Dent proffered the cross-examination of Camelo. Camelo acknowledged he did not want to continue the relationship after learning Mayo had been a stripper in Florida and smoked marijuana. The trial judge "sustain[ed] the objection as to relevancy" and struck that last question. R. 284-90, 297-99; Courts Exhibit 6, R. 790-91.

When the jurors returned to the courtroom, Dent continued his cross-examination of Camelo. Camelo did not know whether his moving out of Mayo's townhouse coincided with the end of the lease agreement. Camelo claimed he was not aware of the fact that Dent paid the rent until after the fact. R. 290-92.

Dent cross-examined Camelo about the conversation he had with J.M. between her two interviews at Hopeful Horizons. Camelo testified about the older male, named Maurice, coming to the townhouse "three times that day." On one of those occasions, Maurice "opened the door and walked in" without permission. Camelo told him to leave, but he came back again and sat down on the back porch in a lawn chair. Maurice wanted to see J.M. Camelo was concerned about this man's intensions because "he was much older than" J.M. Camelo called law enforcement. He also confronted J.M. about Maurice. J.M. did not make the second disclose of sexual abuse until after Camelo confronted her about Maurice. R. 292-97.

3. Lori Michelle Mayo.

The State called Lori Mayo, who is the mother of J.M. and her older brother A.M. They lived in Beaufort County from 2012 to 2014 in two different townhouses, "about seven or eight houses" apart, on the same street. The first townhouse had two bedrooms. The second townhouse had four bedrooms. When they moved from the smaller townhouse into the larger townhouse, the extra bedroom was for her father, Charles Dent. R. 301-03.

Mayo's brother, Matthew, committed suicide in 2012. Matthew was "really close" with Dent. Prior to Matthew's suicide, Mayo and Dent "didn't speak very much at all, occasionally, on holidays and birthdays over the phone." After Matthew's death, Mayo "felt an obligation to [Matthew] to befriend [their father] and to give him a chance in our lives." Prior to moving to Beaufort County, Mayo and her children lived in Jacksonville, Florida in a neighborhood that "wasn't a very nice neighborhood." According to Mayo, Dent paid part of the rent for both townhouses in Beaufort County. Mayo was not able to afford either townhouse on her own, and Dent's name was on both leases. Dent helped with Mayo's cell phone bill in 2014. R. 303- 07.

Mayo identified John Camelo as her "ex-boyfriend." Mayo understood J.M. made a disclosure to Camelo. After Camelo told her about the disclosure, Mayo talked to J.M. Mayo contacted A.M.'s therapist. After taking to A.M.'s therapist, Mayo called law enforcement. R. 307-09.

After J.M.'s initial disclosure, Mayo exchanged text messages with Dent. The conversation began with Dent stating Mayo needed to "pay half the rent" and contribute towards the cable bill and phone bill. Mayo texted "she didn't know that [Dent] touched her daughter." Dent responded "that he would never touch the children and she knew that."

They discussed removing Dent from the lease agreement. In subsequent texts, Mayo accused Dent of showing "pictures of his penis to" J.M. and threatened Dent "had way more than his credit to worry about if the rent didn't get paid" or if she did not get "the allotment that he owed her." R. 289-15.

Mayo testified that she dated both men and women. Mayo opined that Dent "loved it when Dee lived there and brought her friends over." Over objection, Mayo opined Dent had an issue with John Camelo living in the townhouse because she told her father Camelo "used to be in law enforcement. And he had a background with helping young girls who had been sexually abused." Over another objection, Mayo testified Dent "was very upset" with Camelo living in the townhouse after he learned that information. R. 318- 20.

Over objection, Mayo explained why J.M. did not tell her everything about the sexual abuse at first: "She told me that she thought that I would be mad at her. And she, also, was embarrassed." R. 320-21.

After the lease agreement terminated, Mayo and the children "stayed in a hotel for a couple of months while [she] tried to find a home." R. 317.

On cross-examination, Mayo repeated that J.M. went to Camelo both times she disclosed sexual abuse. Her written statement to law enforcement, however, stated she "questioned [her] daughter because of [her] own suspicions about [her] dad ever doing anything that she didn't want him doing." She agreed "John Camelo's name is never mentioned anywhere in that statement." Mayo further acknowledged that she did not call law enforcement on the same day she questioned J.M. R. 322-24.

Dent cross-examined Mayo about living in Jacksonville, Florida before she moved to Beaufort County. Dent and her mother, married, divorced, remarried, and divorced

again. Mayo lived with her mother in Jacksonville. Matthew lived with Dent in Alabama. Mayo had a close relationship with Matthew, who visited often in Jacksonville. The Solicitor then objected to Dent questioning Mayo about these family relationships as not relevant, citing Ruled 401 and 402, SCRE. The judge considered the objection outside the presence of the jurors. Dent argued:

> [T]hey already brought up Matthew's suicide. The reality of this is that mental illness runs in this family, particularly on the mother's side. And [J.M.] was close to both Matthew and to her grandmother.
>
> Her grandmother, also, committed suicide, and may have even made one suicide attempt while living in the same household. And this is entirely relevant. Because you heard yesterday that the – they plan to ask the counselor – well, not the counselor, but the so-called independent expert about trauma.
>
> And we have counseling records where when they were going through the potential different types of trauma that [J.M.] had experienced – and it has information in there about, you know, the history of suicide and the fact that she knew – either was told or knew enough about suicide of a family member or of a person that she would have, you know, images about that in her mind.
>
> And so if – if trauma is going to be an issue in this case like they're making it, then I'm entitled to show the other sources of trauma. And so it is very relevant to why we're here if that's, you know, the State's theory.
>
> I mean, they're going – they're going to argue, you know, that some of [J.M.'s] behaviors were related to trauma. And I think I'm entitled to go into the traumas that she's experienced in her life.

R. 324-27. Counsel proffered two sets of mental health records. R. 328; Court's Exhibits 7 and 8. Counsel continued:

> And the State has said – and they're calling witnesses to talk about characteristics of child abuse. And they've said they're going to have testimony about trauma. And this goes to our Sixth Amendment right to confront and cross-examine it.

R. 328-29.

The prosecution argued its expert, Tessa Trask, "has not met with" J.M., plans to "define trauma," will opine "that sex abuse can cause trauma," and testify "in the biggest generalities possible." The Solicitor suggested Dent would be free to argue the "trauma was caused from other things." Dent pointed out the prosecution could object if he made an argument "that's outside the record." Dent reminded the trial judge the court limited the scope of the proffer of Trask. Counsel argued Dent has a right to cross-examine the prosecution's witnesses about "the theories and themes" of the defense. Counsel anticipated the prosecution will argue J.M.'s "symptoms of trauma confirm she was sexually abused," noting appellate court holdings in *Anderson*, *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016), and *State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). Counsel reminded the trial judge that Judge Mullen, following the *Blackwell* procedure, had ordered disclosure of J.M.'s mental health records because her state of mind was at issue in this case. R. 329-33.

The Solicitor argued:

> It's the concerns in *Blackwell* that the State is concerned about here. Once again, there is a higher threshold to release mental health records because they are mental health records.
>
> There's a reason that I am so deeply concerned with [J.M.'s] mental health becoming a focal point of the Defense. And I think what's important to note, Your Honor, is that frequently when we have legal arguments, we get very bogged down in the minutia.
>
> And if we zone out right now, Mr. Grose is arguing that whether or not [J.M.] experienced other trauma is a pillar of his defense. That just simply can't be the case. Because she is – they're going to watch the videos. Basically, her – the red flags that John Camelo talked about are one small aspect of this case. Her disclosure is, clearly, the focal point of this case.

> And so I think that he's trying to argue that the fact that she experienced other traumas is this pivotal thing in this case. And it just simply can't be, Your Honor. And I think he's allowed to ask maybe one or two questions about, you know, was she close with Matt? Did Matthew kill himself? Was she close with your mom? Did your mom kill herself?
>
> I apologize. I'm being real glib.
>
> But I think he has to move on. He can't just rake over the coals with this information. And that's what he's been doing. I mean, we're on question four. I mean, at this point, we're sort of at the zip code of where they lived in Jacksonville. I mean, he's really going deep.

R. 333-34.

The trial judge limited Dent's cross-examination to the four questions suggested by the prosecutor.[2] Dent protested, "I don' think that allows us to go into it deeply enough." Counsel then offered, "I don't even have to ask those four questions if they're not going to call their expert this afternoon. I mean, that's why this is relevant." R. 334-16.

The following exchange occurred when the jurors returned to the courtroom:

> Q. When we left off, I think I was asking you about your brother, Matthew. [J.M.] was close the Matthew, wasn't she?
>
> A. I don't know if I would say that, but they loved each other.
>
> Q. Okay. And I think you already testified that Matthew committed suicide?
>
> A. Yes.
>
> Q. And [J.M.] was close to your mother, wasn't she?
>
> A. Yes.
>
> Q. And your mother, also, committed suicide, didn't she?
>
> A. Yes.

[2] After reviewing the mental health records proffered by Dent, the trial judge *sua sponte* reversed this ruling, allowing the defense "a little bit more latitude in that area." R. 369.

R. 336-37.

Mayo acknowledged, after Matthew's suicide, she and Dent "began to re-establish a relationship." Dent's brother owned a timeshare in Hilton Head, and that was one of the reasons Mayo decided to move to Beaufort County. Mayo testified about the two townhouses, working multiple jobs, and being unemployed for part of the time she lived in Beaufort County. Mayo denied she and Dent agreed he would help pay the rent for one year and the Mayo was "supposed to take it over." R. 337-39.

Dent cross-examined Mayo about the text messages. Mayo acknowledged she and Dent argued about the rent money and money for J.M.'s dance lessons. She acknowledged the disagreements over money began in 2013. R. 340- 42.

Mayo could not recall when she met John Camelo. Mayo admitted they had a romantic relationship but denied Camelo ever moved into the townhouse, acknowledging only that "he stayed over every once in a while [] for maybe the night."

Finally, Mayo acknowledged on cross-examination that J.M. was a good student in Beaufort County. J.M. struggled more with school after they moved to North Carolina. R. 257-59.

4. J.M.

J.M.'s direct examination is less than eight pages of the 769-page trial transcript. She testified she used to live in Beaufort County, with her mother and brother, in two different houses in the same neighborhood. Her grandfather, Charles Dent, would sometimes visit. The visits lasted about a week. R. 371-73.

J.M. identified John Camelo as, "My mom's ex-boyfriend," who lived with them for a while. When asked, "[D]o you remember what you told John?," J.M. replied, "Not really." J.M. could not remember what she told her mother. R. 373-74.

The Solicitor asked J.M. if she "remember anything about what was done to you while you lived in those houses?" J.M. testified:

> I remember he started kissing me, like, on my face, my mouth. He started licking my belly, like, my belly button and started, like, touching me in weird places. And he took pictures of his private parts and told me to take pictures of mine.

R. 374-76.

J.M. also claimed Dent showed her pictures of "[p]eople having sex" on one occasion. Regarding allegations of a "sexual battery," the following exchange occurred:

> Q. Okay. Did he ever make you touch his penis?
>
> A. He didn't make me touch. He made me lick his private parts.
>
> Q. Can you tell me about that?
>
> A. It's hard to explain. I'm sorry.
>
> Q. That's okay. When you say he made you, what does the that mean?
>
> A. It means he told me to.
>
> Q. Okay. Once or more than once?
>
> A. Once.

R. 377. J.M. denied Dent had ever threatened her. R. 377-78.

On cross-examination, J.M. confirmed Dent never threatened her, stated the fellatio occurred only one time, and acknowledged Dent never touched her private parts under her clothing. J.M. denied she ever called John Camelo—or any other person— "Dad." J.M. never met her biological father, which was hard on her growing up. J.M. acknowledged

her mother is important to her, and she wants to please her mother. J.M. was close to her Uncle Matthew. Matthew's suicide was hard on J.M. She couldn't recall how many houses she lived in after moving away from South Carolina. J.M. made A's and B's in in South Carolina but "struggled with grades after she moved to North Carolina. J.M. had difficulty making friends in North Carolina. J.M. did not recall who started the conversations with Camelo and her mother about the sexual abuse allegations. She could not remember if her mother wanted her to make sure she "said certain things" during the Hopeful Horizons interviews. J.M. recalled talking to people about her testimony, but she could not recall whether she practiced the questions and answers. R. 379-89.

5. Tessa Trask.

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. Trask never met J.M. or read the case file; however, she did watch some of pre-trial proceedings. R.391-94.

Trask defined the "traumagenic model." Child sexual abuse is "considered traumatic for the child because it's introducing sexuality" in a "traumatic" and "in a way that's developmentally inappropriate." The child "may experience trauma symptoms or any other reactions that a child or an adult may experience when a traumatic event occurs." When the Solicitor asked Trask to provide a "working definition of trauma," Dent objected, pursuant to *Chavis*, because the trial court has to determine the reliability of the testimony, noting that if the working definition is something the expert developed herself, then "it's not subject to peer review." The Solicitor argued, "This goes to weight, not admissibility." The trial judge agreed and overruled the objection. R. 394-95. Trask testified, "So what I consider to be trauma has about six parts." She testified:

> So the first part is something that is extremely stressful or scary. It's something that occurs outside of the realm of someone's typical experience. It's not something they would expect to happen. It's something that makes them feel temporarily overwhelmed. Their ability to cope – they're not able to cope in the moment, rather.
>
> Another piece is it makes them change the way that they think about themselves, about others, and the world. It makes them feel helpless, ashamed, or horrified.

R. 394-96.

Trask testified "there are three main categories of symptoms" of trauma "called avoidance, hypervigilance, and reexperiencing symptoms." Regarding sexual abuse trauma, "some children may exhibit no signs and symptoms," and "some children may exhibit like a complete 180 in their behavior or in their personality." However, Trask expects "to see the trauma symptoms" of avoidance, hypervigilance, and reexperiencing. She also "expect[s] to see a change in behavior, like a change in sleep patterns, eating patterns, or energy." Trask testified she "may expect" to see "developmentally inappropriate sexual behavior." R. 396-98.

Trask testified, "Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead." She acknowledged she is "not an expert in ADD or ADHD. R. 399.

Trask testified about the disclosure process. "It happens incrementally or gradually over time" in different stages, ranging "from tentative to active." Disclosure could be accidental (by chance) or purposeful. R. 399-400.

Trask testified about "grooming," which involves three "pieces." The first involves "the giving of privileges, things of value, money, treats, prizes." The second involved "creating, developing, maintaining a trusting relationship with the child and the family so that the perpetration can gain access to the child." The third involves the perpetrator

"gradually exposing the child to sexual contents, and so normalizing sexual content through gradual exposure." R. 400. Trask testified there are risk factors of sexual abuse for the child and the caregiver. R. 400-01.

On cross-examination, when asked about using her "own framework" for the working definition of trauma, Trask would only say, "My testimony is based on a combination of my education, my training, and my experience in the field." R. 402-03.

Trask reconfirmed she never met J.M., interviewed J.M., or read J.M.'s file at Hopeful Horizons. Trask does not know J.M.'s social history. She does not know whether J.M. has ADHD. She did not interview Mayo. Trask acknowledged the loss of a close relative can be a source of trauma for a child. Children can have adjustment disorders unrelated to trauma. R. 403-06.

6. Shauw Chin Capps.

Shauw Chin Capps, the chief executive officer of Hopeful Horizons, interviewed J.M. on July 10 and 25, 2014. She identified the videotapes of the two interviews, which were played to the jurors, subject to pre-trial objections and redactions. R. 422-30.

D. Motion to Suppress Search Warrant.

The trial judge convened an *in camera* hearing regarding the admissibility of the evidence collected during the execution of the search warrant in Alabama. The prosecution withdrew its motion to admit the child pornography under Rule 404(b), SCRE. The prosecution, however, intended to proceed with its motion to introduce images of J.M. R. 446-48.

The prosecution proffered the testimony of Lori Michelle Mayo. Mayo identified screen shots of the text messages between her and Dent. R. 449-53; State's Exhibit 21. At

the request of the Solicitor, Mayo identified State's Exhibits 1-5 as pictures of J.M. "in our old house." Mayo said she did not take those photographs. The Solicitor represented the State would not contend Dent took these photographs. Rather, the State offered these photographs "to show the location where the crime occurred." The Solicitor acknowledged the State could not establish the chain of custody of these photographs. Dent pointed out, "If they wanted to introduce photographs to show where the incident [] happened, that could have been done without using photographs, that [] came off the device that was in question." Counsel also noted cases have been reversed because the prosecution introduced sympathetic photographs of a crime victim. *E.g*. *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999) (held that: (1) neither victim's sister's testimony nor photograph of victim was relevant to defendant's guilt, and (2) admission of such testimony and photograph was reversible error). Dent then explained:

> And what they're going to do is in this second set, they're going to argue that – some of the pictures where [J.M.'s] wearing the same top as she is in State's Exhibit No. 5 are prejudicial to us because they're going to argue that they're sexual in nature.
>
> And so I feel like that since we've had this confrontation clause, chain of custody issue come up that have to object to every single photograph that came from those devices. The fact that we've been able to look at them, the fact that we've been able to get duplicates of it is not relevant to the inquiry.
>
> The inquiry is, can they establish a chain of custody? And do we get to cross-examine Investigator Cole, who did the examination? And I would want to cross-examine him about State's Exhibit Nos. 1 through 5, in addition to the others as well.

R. 453-70 (citing *Melendez-Diaz, supra*). [3]

[3] The trial judge and counsel discussed Dent's objections extending to State's Exhibits 1-15. R. 470, 472.

At the Solicitor's request, Mayo identified State's Exhibits 6-14 as photographs of J.M. Mayo testified some of the photographs appeared to have been taken in the townhouses in Beaufort County. In State's Exhibit 15, Mayo recognized "a pair of green shorts exactly like" what J.M. had for dance classes. Mayo could not identify where this photograph was taken. R. 470-80.

The prosecution proffered the testimony of Joey Stone, an investigator with the Calhoun County Alabama Sheriff's Office. Investigator LaVan of the Beaufort County Sheriff's Office contacted Investigator Stone in July 2014 about serving the arrest warrants on Dent. Stone also obtained an Alabama search warrant after officers serving the arrest warrant "saw electronic devices, cameras, [and] cell phones in plain view." After collecting the devices, Stone obtained a second search warrant to examine the devices. The Calhoun County Alabama Sheriff's Office transferred the electronic devices to the Alabama Electronic Crimes Task Force. On cross-examination, Stone acknowledged he was not present the entire time the search warrant was executed. He did not have personal knowledge of which officer actually collected the evidence. R. 480-99; State's Exhibits 18 and 22.

The State proffered the testimony of Arthur Agee, a digital forensic examiner with "the electronic crimes task force as part of the Secret Service" in Hoover Alabama. He identified State's Exhibit 19 as a photograph of "a Fuji film camera with a 32 gigabyte SD card memory that was inside the camera." He identified State's Exhibit 20 as a photograph of "a JVC camcorder with a separate 32 gigabyte SD case that was inside." Agee did not examine these two devices because the devices were no longer present at his lab in

Alabama. He reviewed a forensic image of the devices that was made by Detective Cole, as well as Detective Cole's written report. R. 500-02.

Agee reviewed State's Exhibits 6-15. He testified these exhibits were recovered from the devices depicted in State's Exhibits 19 and 20. On cross-examination, Agee testified a "carved image" means the image had been deleted. Agee testified State's Exhibits 6, 12, 13, and 14 were carved images. Agee could not recall whether State's Exhibits 7, 8, 9, 10, 11, and 15 were carved or deleted images. Agee did not have the forensic images of these devices with him in South Carolina to be able to provide more information. Agee did not know whether State's Exhibits 1, 2, and 3 are "photograph[s] that came off the forensic image Detective Cole made." Agee testified State's Exhibits 4 and 5 "came off Detective Cole's forensic image, but he did not know whether these images were deleted or undeleted images. Agee could not even state which device contained State's Exhibits 1, 2, 3, and 4. R. 507-16, 527-33.

Regarding the two cameras, the prosecution established "virtually no chain of custody on those items." Stone obtained the search warrant, but he was at Dent's home only "for about 10 minutes," and "[h]e did not collect any of those items. Although Stone prepared the request for the electronic crimes task force to examine the evidence, he did not transport the items for the Sheriff's Office to the task force. Dent argued:

> [W]e don't have anything with regards to what Detective Cole did after he received them until when the image was made, or any testimony about whether that image had been altered in the period of time when Detective Cole made it up through when Mr. – Detective Agee looked at it.

R. 517-19.

Dent argued a Sixth Amendment confrontation clause violation. The prosecution is required "to have the person who conducted the examination in court so that person can be

cross-examined about running the analysis." Cole is "just not here to be questioned." Dent reminded the trial judge that Agee knew some of the images had been deleted, was not sure whether some of the images had been deleted or not, and was unaware whether two of the items were even recovered from the devices depicted in State's Exhibits 19 and 20. Dent also argued the prosecution was

> conflating the chain of custody with the confrontation clause argument. The chain of custody wasn't the real issue in *Melendez-Diaz*. The real issue in that was the Sixth Amendment confrontation right of the person who, actually, did the examination.

R. 519-26.

After hearing the proffered testimony and arguments of counsel, the trial judge made a finding of fact that Agee did not conduct "an independent examination" and agreed Cole is a "critical witness" that Dent was entitled to confront under the Sixth Amendment. The trial judge excluded the testimony of Stone and Agee. The trial judge ruled State's Exhibits 1-15 would be excluded. R. 535-39 (citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)).

After a recess, the prosecution announced it would try to admit the photographs through J.M. Dent argued J.M. could not "testify to the authenticity of those photographs." Dent reminded the trial judge that the images "that can be identified whether they were deleted or undeleted. They were all deleted. The rest is unknown." R. 539-43.

The State proffered the testimony of J.M. J.M. testified State's Exhibit 1 appeared to be a photograph of her birthday party, taken in the second townhouse by her mother. J.M. identified State's Exhibit 3 as a photograph of her and her grandfather taken in the first townhouse. She did not know who took this photograph but agreed it was not her grandfather because he is in the photograph. J.M. testified State's Exhibit 4 is a picture of

her taken in the guest bedroom of the second townhouse. She believed her grandfather took this photograph, but she was not sure. J.M. testified State's Exhibit 6, 11, and 13 are photographs of her, but she could not identify where it was taken. J.M. testified State's Exhibit 15 is "[s]omeone in shorts, but I think it's me." R. 547-61.

Without asking J.M. who took the photographs, the prosecution argued to introduce State's Exhibits 1, 3, and 4 to show "where the alleged incident happened." Regarding State's Exhibits 6, 11, 13, and 15, the prosecution argued J.M. will testify those are pictures of her "[a]nd then she's going to testify, I think my grandfather took it – those photos." R. 561-63.

Dent argued the trial judge should exclude the photographs. State's Exhibit 4 should be excluded pursuant to *Langley*, *supra.* Regarding State's Exhibits 6, 11, 13, and 15, J.M. was not sure who took those photographs. She was equivocal on whether State's Exhibit 15 was her or not. All of these images were "carved" (meaning deleted) or could not be excluded as being "carved." Dent argued:

> I don't think that she could even testify that those were fair and accurate pictures from what was taken of her, assuming they all are her, because she's not sure about one. I don't think she would be able to testify to that because of what we know about those photographs from the rest of the hearing that we've already had.

R. 563-64, 566.

Dent also argued the photographs should be excluded under Rule 403, SCRE because "the danger of unfair prejudice outweighing any probative value for her to be able to testify, oh, I think my grandfather took those pictures." R. 563-64.

The trial judge ruled these exhibits would "be admitted and let the jury attach whatever weight they deem necessary. So it will got to the weight." R. 564-68.

E. The State's Case-in-Chief Resumes.

The prosecution recalled Lori Mayo to identify screen shots of the text messages she discussed in her earlier testimony. R. 567-69; State's Exhibit 21.

The prosecution recalled J.M. and introduced State's Exhibits 1, 3, 4, 6, 11, 13, and 15, subject to the previous objections. R. 570-80. On cross-examination, J.M. acknowledged she thought her mother took State's Exhibit 1. J.M. didn't know who took State's Exhibit 3, but agreed it was not her grandfather. Regarding State's Exhibit 4, J.M. did not know who took that picture but thought it was Dent "because it was the guest bedroom that he stayed in." Regarding State's Exhibits 6, 11, 13, and 15, the following exchange occurred:

> Q. . . . . And, in fact, with these others, State's Exhibit Nos. 6, 11, 13, and 15, you really don't know who took those pictures, do you?
>
> A. I don't remember being in those photos.
>
> Q. I'm sorry?
>
> A. I don't remember being in most of those photos. I don't remember who took them, but I'm guessing.
>
> Q. So you don't remember when these were taken?
>
> A. I don't. But I do know they were in one of the houses.
>
> Q. Okay. And you don't – you're just guessing who might have taken them?
>
> A. Yes.

R. 580-83.

F. Directed Verdict Motion.

After the State rested, Dent moved for a directed verdict. He noted the State relied on the two Hopeful Horizon videotaped interviews. The July 15, 2014 interview did not

contain any evidence of fellatio. In the July 28, 2014 interview, the only evidence of fellatio was that it occurred in the first townhouse. Counsel argued, "So with regards to the indictment that ends in 01673, our position is that there's not been any testimony of criminal sexual conduct with a minor in the first degree happening in the second location. And so we move to dismiss that indictment for that reasons." R. 589-90.

The State responded with three arguments. First, it argued "indictments are notice documents"[4] that merely put an accused on notice of the charges, meaning the State merely has to prove a sexual battery as defined by the statute. The State argued it could rely on a statement in the second interview alleging cunnilingus. Second, the State argued J.M.'s second videotaped interview established fellatio at the first house, and J.M.'s trial testimony established fellatio at the second house.[5] Third, the State argued it should be allowed to argue there was some "confusion" about where the sexual abuse occurred because of J.M.'s age, the close proximity of the two townhouses, and the allegations of a common offender. R. 590-91.

Dent reminded, "I don't recall the testimony in the trial about both houses" being the location of fellatio. Counsel reminded the trial judge he read the indictments in opening statements and "thought it was very important for the jurors to have the indictments [during deliberations] in this case so that they would know exactly what the charges were." In the indictments, the State identified "fellatio on the Defendant by J.M." as the sexual battery

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

[5] This argument misstated the evidence as J.M. testified the fellatio occurred only once, and she did not identify a location.

it intended to prove at trial. "That's the element they picked." Counsel argued, even though some "prosecutors treat the Grand Jury like a rubber stamp," there is "the State Constitutional right to have a presentment to the Grand Jury." Any argument by the State "about another sexual battery [] would be a variance from the indictment." *See Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011) (supplemental jury instructions impermissibly enlarged indictment by instructing jury that it could convict defendant of a crime not alleged in indictment). Counsel argued, as a notice document, the indictment "puts us on notice that they were going to prove fellatio." Counsel concluded, "with regards to the second house," there is not "any proof that's been presented for that to go to the jury." R. 591-93. The trial judge denied the motion. R. 613. Dent renewed his directed verdict motions at the close of all evidence. R. 683-85.

G. Charles Dent's Case-In-Chief.

Charles Dent testified. He denied forcing J.M. to commit fellatio, denied taking pictures of his own penis and showing them to J.M., and denied showing J.M. any pornography. R. 614-15, 636-37.

Dent grew up in Florida and Tennessee. He joined the United States Navy in 1985. During his twenty-year career, Dent was stationed in Great Lakes, Illinois, Atlanta, Georgia, Jacksonville, Florida, Point Loma, California, and New Orleans, Louisiana. He had a security clearance and responsibilities involving homeland security. Dent was married to Lori Michelle Mayo's mother on two occasions. He had three children—Michael (a stepson), Lori, and Matthew. Dent retired to a farm in Alabama where he lived with Matthew. Lori Mayo was living with her mother in Jacksonville. R. 615-20.

Matthew committed suicide in June 2012. The memorial service was in Jacksonville, which is when Dent began having contact again with Mayo and her children. They were living in "very poor" conditions in "a crappy neighborhood." There were discussions about Mayo and the children moving to the Beaufort area of South Carolina, which is near where Dent's brother, David Dent, has a vacation home in Hilton Head. The first townhouse was "two-bedroom, two and a half bath" about "900 square feet." Dent "paid for everything, the lease, the cable, the water, the electricity." Mayo was unemployed and had poor credit. The plan was to "improve her credit" and for Mayo to eventually take over paying the bills. At the end of the first lease, Dent continued paying the rent for the larger, four bedroom, three and a half bath townhouse. Dent regularly made trips where he would visit Mayo and the children in Beaufort, his friends Mitch and Terri Fife in Charleston, and his mother in Charlotte. He would bring presents for his two grandchildren, tailored to the individual interests of each child. R. 620-28.

During the time Mayo and the children lived in the first townhouse, Mayo had financial difficulties because she was unemployed for most of that year. Dent paid for J.M.'s dance classes and acrobatics and for A.M.'s Boy Scouts and fishing supplies. He helped Mayo with her car payment. R. 628-30.

Dent identified and testified about messages between him and Mayo regarding her requests for money. By March or April 2014, Dent "was considering ending the lease and trying to find them a much cheaper place where [Mayo] could possibly live independently with her children." R. 630-34.

Dent met John Comelo, who was introduced to him as a "maintenance man" for a "pool company." Dent learned, from J.M., after the fact, that Comelo had moved into the

townhouse. Dent was concerned and "thought it was really strange that [Mayo] and him had only been dating, perhaps, less than a month and he moved in." Dent expressed those concerns to Mayo, which added to the tension between them. R. 634-36.

Dent called his mother Audrey Sue Leffler (R. 650-63), his brother David Dent (R. 673-82), and his good friends Mitch Fife (R. 644-70) and Terri Fife (R. 670-72), who corroborated various aspects of Dent's testimony. They also testified about his interactions with his grandchildren.

H. Charge Conference.

The trial judge convened a charge conference. Dent requested, when "defining sexual battery," the trial court "limit it to fellatio." The State objected to that request. The trial judge ruled the Court would instruct the entire definition contained in S.C. Code Ann. § 16-3-651(h).[6] R. 693-706.

I. Closing Arguments.

During closing argument, the Solicitor asked the jurors to recall J.M.'s videotaped interviews for her allegations of the sexual assaults and viewing pornography. R. 707- 11. When the Solicitor began to argue the jurors could convict Dent for performing cunnilingus on J.M., Dent's counsel interjected, "Objection. Variance to the indictment." The trial judge overruled the objection. The Solicitor then argued the jurors could convict Dent for "penetrating her vagina." Counsel interjected, "Objection. Variance to the indictment." The trial judge overruled the objection. When the Solicitor agued the jurors could convict Dent

[6] S.C. Code Ann. § 16-3-651(h) provides, "'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes."

for any "sexual battery," counsel interjected, "Objection to the variance to the indictment." The trial judge overruled the objection. The Solicitor then read the full definition of "sexual battery" found in S.C. Code Ann. § 16-3-651(h). R. 713, 750-51.

During closing argument, Dent asked the jurors to pay attention to the allegations in the indictments, and noted "an indictment is what that the State tells a person what they're charged with and what they have to come to court to defend." Counsel reviewed the precise allegations of the indictments. R. 725, 732-34.

J. Jury Charge.

The trial judge's charge of the law to the jurors included the complete definition of "sexual battery" found in S.C. Code Ann. § 16-3-651(h):

> In order to convict the Defendant of this offense, the State must prove several things beyond a reasonable doubt. First, the State must prove that the Defendant engaged in a sexual battery with the victim. Sexual battery is – is defined as 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 genitalia or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnosis – diagnostic purposes.

R. 761.

After the trial court's instruction on the law, Dent renewed his "objection to the manner in which the Court charged sexual battery," noting he had "asked [the definition] be limited to fellatio. And, of course, [the trial judge] gave them the other options." R. 768. Dent renewed this objection in his new trial motion. R. 73-79.

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 should hold the Court of Appeals lacked a quorum but 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 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.[7]

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

[7] "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).

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 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 Dent's mouth touched her mouth, which would not meet the definition of a "sexual battery."
- She claimed Dent made her use her hand to touch his private, which would not meet the definition of a "sexual battery."
- She claimed Dent's hand touched her butt and back, which would not meet the definition of a "sexual battery."
- She claimed 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 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 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 Dent made her touch his private underneath his clothing with her hand. The child provided some description of 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 Dent's private. She claimed this happened more than once. Initially, she claimed that it happened the first time 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 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 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 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 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 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. 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" (A. 966), it was error to do so in this case when the indictment alleged fellatio as the only "sexual battery." Dent was prejudiced because the trial judge's jury instruction allowed the 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 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'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. Trask never met J.M. or read the case file; however, she did watch some of pre-trial proceedings. 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 Trask to provide her "own working definition of trauma," Dent objected, pursuant to *Chavis*, because the trial court has to determine the reliability of the testimony, noting that if the working definition is something the expert developed herself, then "it's not subject to peer review." The Solicitor argued, "This goes to weight, not admissibility." The trial judge agreed and overruled the objection. A. 593-94. On cross-examination, when asked about using her "own framework" for the working definition of trauma, 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. Trask further

testified, “Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead,” although 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*, 389 S.C. at 452, 699 S.E.2d at 178 (“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, Trask’s testimony was based on her “own framework” for the working definition of trauma, and, when asked, 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 Trask’s “own framework” and methods. *Chavis*, 412 S.C. at 108, 771 S.E.2d at 339 (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 Trask’s testimony—such as the process of disclosure and

concept of "grooming"—have been addressed by our appellate courts.[8] *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, 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, Trask testified, "Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead," although 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. 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 should 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 about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness. The State linked Camelo's education, training, and experience to his observations of "red flags" about J.M.s' behavior, thereby suggesting Camelo believed J.M. had been sexually abused.

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

This line of questioning was a back door introduction of opinion evidence prohibited by *Anderson*, *Chavis*, *Kromah, Jennings,* and *McKerley.*

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 Camelo and the manner in Camelo testified conveyed that 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 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, Dent sought to impeach Camelo with his prior inconsistent statement to the Solicitor, stating the real reason for the breakup was learning that Mayo had been a stripper and smoked marijuana. A. 476-82. After and in camera hearing, the trial court limited Dent's cross-examination of 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 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 Dent asking these questions was to impeach 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., Blackwell*, *supra* (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 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 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 Dent took the Group Two Photographs, the jurors were allowed to consider these photographs as evidence of Dent's guilt. This Court should reverse the Court of Appeals, suppress the evidence, and remand for a new trial.

CONCLUSION

For the forgoing reasons, this Court should reverse the Court of Appeals. Alternatively, this Court should order a new trial.

Respectfully Submitted,

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December 2, 2024
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