

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO THE COURT OF APPEALS

S.C. SUPREME COURT

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

Opinion No. 6034 (S.C. Ct. App. filed November 8, 2023)

Appellate Case No. 2024-000355

THE STATE, .....RESPONDENT,

v.

CHARLES DENT, ..... PETITIONER.

**BRIEF OF RESPONDENT**

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## **RESPONDENT'S STATEMENT OF ISSUES ON CERTIORARI**

1. Whether the Court of Appeals, by way of a statutorily authorized three-judge quorum, acted in full compliance with this Court's remand order and our appellate court rules when it decided Dent's appeal without oral argument?
2. Whether the Court of Appeals properly affirmed the trial court's refusal to direct a verdict of acquittal on indictment 2014-GS-07-01673 where the State produced evidence from which a reasonable juror could conclude that Victim performed fellatio on Dent at House Two?
3. Whether the Court of Appeals properly affirmed the trial court's decision to charge the jury with the complete statutory definition of sexual battery when it was the correct definition of sexual battery and it adequately conveyed the law?
4. Whether the Court of Appeals properly concluded that, even if the trial court erred in admitting the expert testimony of Tessa Trask because it failed to determine the reliability of her testimony, that error did not prejudice Dent's defense because Trask testified solely as to her general observations in behavior of children who suffered abuse but was not involved in Victim's case and had not reviewed Victim's files?
5. Whether the Court of Appeals properly affirmed the trial court's decision to allow John Camelo to testify about his personal observations of Victim's behavior when he did not discuss the substance of Victim's disclosure and did not bolster Victim's testimony or vouch for her credibility?
6. Whether the Court of Appeals properly affirmed the trial court's decision to sustain the State's objection as to relevance and to thereby limit Dent's improper attempt to question Camelo regarding his reasons for breaking-up with Victim's mother?
7. Whether the Court of Appeals properly affirmed the trial court's decision to admit the Group Two Photographs of Victim under Rule 403, SCRE, where they were relevant and probative, and their probative value was not substantially outweighed by the danger of unfair prejudice?

## STATEMENT OF THE CASE

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

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

and submitted a brief raising eleven issues on appeal. (App.p.61-p.120). The State filed a brief in response (App.p.122-p.172), and Dent filed a brief in reply (App.p.173-p.193).

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

On October 29, 2021, the State timely filed a petition for a writ of certiorari to the court of appeals which asked this Court to review the court of appeals' decision regarding whether the trial judge erred in refusing to read the *Logan* charge. (App.p.1017-p.1035). On November 22, 2021, Dent filed a return to the petition for a writ of certiorari and a cross-petition for a writ of certiorari alleging the court of appeals erred in declining to address the remaining ten issues Dent originally raised on appeal. (App.p.1036-p.1098). On December 14, 2021, the State filed a return to Dent's cross-petition (App.p.1100-p.1123) and on December 29, 2021, Dent filed a

reply to the State's return. (App.p.1124-p.1135). On September 7, 2022, this Court issued an order granting the State's petition for a writ of certiorari and holding Dent's cross-petition in abeyance pending resolution of the State's petition.

On October 6, 2022, the State filed a Brief of Petitioner for Petitioner-Respondent. (App.p.1137-p.1158). On November 14, 2022, Dent filed a Brief of Respondent. (App.p.1159-p.1190). Oral arguments were heard on April 20, 2023, and in an opinion filed August 16, 2023, this Court reversed and remanded to the court of appeals. *State v. Dent*, 440 S.C. 449, 892 S.E.2d 294 (2023). The Court held that although the trial court's failure to give the requested *Logan* charge was error, the error was harmless and it reversed and remanded to the court of appeals for consideration of Dent's remaining issues on appeal. (App.p.1191-p.1197).

Following remand, the case was submitted on September 6, 2023, and on November 8, 2023, the Court of Appeals affirmed Dent's convictions and sentences after addressing his remaining issues on appeal. *State v. Dent*, 442 S.C. 38, 897 S.E.2d 46 (Ct. App. 2023). (App.p.1198-p.1214). On January 3, 2024, Dent filed a petition for rehearing (App.p.1215-p.1234) and on February 9, 2024, the State filed a return. (App.p.1235-p.1253). In an order filed February 12, 2024, the court of appeals denied Dent's petition for rehearing. On April 1, 2024, Dent filed a petition for a writ of certiorari to the court of appeals and on April 30, 2024, the State filed a return. In an Order dated October 30, 2024, this Court granted the petition as to Petitioner's Questions I-VII but denied it as to Questions VIII and IX. On December 2, 2024, Dent filed a Brief of Petitioner. This Brief of Respondent, submitted on behalf of the State, now follows.

## STATEMENT OF FACTS

Dent's minor granddaughter, the victim (Victim) in this case, was born in 2005. (App.p.231-p.233; p.502; p.574). She accused Dent of sexually abusing her when she was eight and nine years old. (App.p.776-p.777). At the time of the alleged abuse, Victim lived in South Carolina with her mother (Mother) and her brother (Brother). They moved to Beaufort County from Jacksonville, Florida, in August of 2012 at Dent's suggestion. (App.p.827-p.828). Victim and her family lived in South Carolina from 2012 through 2014, and Dent would periodically stay with them. During this period, they lived in two different townhouses on the same street (House One and House Two). (App.p.501-p.504). Initially, Mother, Victim, and Brother lived in a two-bedroom townhome that was paid for by Dent. (App.p.503-p.504; p.828). In August of 2013, Mother, Victim, and Brother moved to a four-bedroom townhouse in the same complex as their previous townhouse. (App.p.502; p.830). The family moved from the two-bedroom townhouse to the four-bedroom townhouse after Dent decided they needed a bigger home so he could have a place to sleep when he came to visit. (App.p.501-p.503; p.829-p.831).

Mother began dating John Camelo in May of 2014. (App.p.454). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. (App.p.457-p.459; p.468-p.474). According to Camelo, Victim would kiss him on his cheek and grope his groin area. (App.p.470). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App.p.470). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App.p.470). Victim made an initial disclosure of abuse by Dent to Camelo. Camelo then told Mother, who reported the abuse to law enforcement on June 10, 2014. (App.p.507 & p.562).

Following her disclosure, Victim underwent two forensic interviews. During the first forensic interview, which occurred on July 10, 2014, Victim revealed that one of the initial incidents of abuse occurred when Dent went to the bathroom, took lewd pictures of himself, and showed them to Victim. Victim told the forensic interviewer, “After he showed me all of his pictures—he took like ten of them— ... he told me, ‘Here, go take pictures of yours,’ and I said, ‘No!’ ” Victim also detailed occasions when Dent would touch her vagina, breasts, and buttocks: “He was just touching me everywhere. He was kissing me on the mouth.” Victim stated Dent made her watch a pornographic video. Dent also took pictures of Victim's vagina while she was asleep and later showed the pictures to Victim. (App.p.623-p.626; State’s Exhibit #16).

After her first interview, Victim made a second disclosure to Camelo. (App.p.471). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. In Victim's second forensic interview, she wrote on a piece of paper: “He made me touch it more than once,” indicating that her hand had touched Dent's penis. Victim also wrote, “He made me lick it,” and stated Dent's penis had gone inside her mouth on multiple occasions. Victim disclosed that Dent touched her vagina with his mouth and that his hands went inside her vagina. Victim described seeing Dent's “urine,” which she recalled was “whiteish” in color, looked “like a flour mix,” and stained the carpet. (App.p.623-p.626; State’s Exhibit #17).

In both forensic interviews, Victim stated Dent bribed her with money and toys. Dent was paying rent for the house Victim lived in, and he threatened that if Victim reported the abuse, he would kick the family out of their home. Victim’s two forensic interviews were entered into evidence at trial pursuant to S.C. Code Ann. § 17-23-175. (App.p.623-p.628; State’s Exhibits #16 & #17).

At trial, the State presented mostly direct evidence against Dent. Victim 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.” (App.p.573, lines 19-23; p.575). Victim stated Dent touched her “private parts” and “made [her] lick his private parts,” thus describing how she was forced to perform fellatio on Dent. (App.p.574, line 25-p.574, line 22). Victim also testified that Dent showed her videos of “[p]eople having sex.” (App.p.576). Contrary to the statements made in her forensic interviews, Victim testified Dent only made her perform fellatio once. (App.p.576, lines 21-22).

As noted above, in addition to Victim's direct, in-court testimony, the trial court admitted videos of both forensic interviews into evidence, and the videos were published to the jury. The State also presented circumstantial evidence at trial, including testimony from Mother and Camelo concerning changes in Victim's behavior around the time of the abuse. (App.p.459; p.469-p.470; p.517).

Dent testified in his own defense and denied all of Victim's allegations. (App.p.818-p.855). At the conclusion of trial, Dent was convicted of one count of first degree criminal sexual conduct with a minor and both counts of disseminating obscene material to a minor. He was sentenced to thirty (30) years' imprisonment for first degree criminal sexual conduct with a minor, and fifteen (15) years' concurrent imprisonment for each count of disseminating obscene material to a minor. (App.p.208-p.214; p.983-p.993).

## STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012), *cert. denied*, 569 U.S. 1023 (2013); *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). “On appeal, the trial court’s ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Elders*, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

## ARGUMENT

### I.

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

In his brief, Dent contends the court of appeals violated section 14-8-80(d) of the South Carolina Code of Laws because it did not reconstitute the “original panel” after the matter was remanded, and instead employed a new panel that contained one judge who had not been involved in the court of appeals’ earlier decision—a decision which did *not* address the merits of the issues that were resolved through the court of appeals’ most-recent decision. *See State v. Dent*, 434 S.C. 357, 363 n.3, 863 S.E.2d 478, 481 n.3 (Ct. App. 2021) (“Because this finding is dispositive, we decline to address Dent’s remaining issues on appeal.”), *rev’d and remanded*, 440 S.C. 449, 892 S.E.2d 294 (2023). In Dent’s view, “the same quorum should be present for

both the argument and issuing the opinion.” As a result, Dent maintains this Court should “hold the court of appeals lacked a quorum but address [sic] the merits of the questions on appeal as it did in *McMillian*<sup>1</sup> and *Preston*.<sup>2</sup>” He argues “[t]he existence of 2021 oral argument cannot be ignored.” (Brief of Petitioner, p.35-p.36). The State disagrees and contends the court of appeals acted in full compliance with this Court’s remand order and our appellate court rules when it decided the issues considered in Dent’s appeal without oral argument.

### **Standard of Review**

Appellate courts review questions of law de novo, with no deference to trial courts. *Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 840 (2018). Questions of statutory interpretation are questions of law, which are subject to *de novo* review and which the appellate court is free to decide without any deference to the court below. *State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012).

### **Discussion / Analysis**

Pursuant to South Carolina law, the Court of Appeals consists of a Chief Judge and eight associate judges. S.C. Code Ann. § 14-8-10 (Supp. 2014). It sits in three panels of three judges each, although nothing prevents the Court from sitting as a whole. S.C. Code Ann. § 14-8-80(a) (Supp. 2014). The members of the three judge panels are assigned by the Chief Judge and must be systematically rotated and interchanged in accordance with rules promulgated by this Court. S.C. Code Ann. § 14-8-80(b) (Supp. 2014). Thus, contrary to Petitioner’s assertion, not only *can* the existence of the 2021 oral argument be ignored, it *must* be ignored because Judge Hewitt—the “new” judge—did not hear that 2021 oral argument. The panel of the court of appeals that decided Dent’s case *following remand* was comprised of three judges, which—pursuant to

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<sup>1</sup> *State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002).

<sup>2</sup> *Anderson County v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019).

unambiguous South Carolina law—constituted a quorum. *See* S.C. Code Ann. § 14-8-80(d) (“On a panel, three judges shall constitute a quorum[.]”). The composition of that panel was in no way inconsistent with this Court’s remand directive, which merely indicated the case was being remanded “for the court of appeals”—as opposed to any particular panel of the court, comprised of any specific judges—to decide Dent’s remaining issues. *State v. Dent*, 440 S.C. 449, 892 S.E.2d 294 (2023). (App.p.1,192). Moreover, following the remand, the case was *submitted* (App.p.1198), and the court of appeals elected to decide the previously undecided issues raised by Dent *without* oral argument, which was entirely proper and permissible pursuant to the plain mandates of our appellate court rules. *See* Rule 215, SCACR (“The appellate court may decide any case without oral argument if it determines that oral argument would not aid the court in resolving the issues.”); *see also Stasi v. Sweigart*, 434 S.C. 239, 258, 863 S.E.2d 669, 679 (2021) (“Technically, neither due process nor any other provision of law requires oral argument in a given case. Each judge or appellate panel is entitled to make the decision in each case whether oral argument would be helpful.”). Under such circumstances, no act was done following the remand in Dent’s case without the existence of a valid quorum. *See State v. McMillan*, 349 S.C. 17, 20, 561 S.E.2d 602, 603 (2002) (“This Court has recognized that no valid act can be done in the absence of a quorum.”).<sup>3</sup> Accordingly, the court of appeals committed no violation of any kind—statutory or otherwise—in deciding Dent’s case on remand in the manner it did and with the panel of judges who reviewed the issues and rendered a decision. *Whitner*, 399 S.C. at 552,

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

732 S.E.2d at 863. The Court of Appeals, by way of a legally constituted three-judge quorum, properly decided Dent's appeal without oral argument, and its decision should be affirmed.

## II.

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

In his brief, Dent argues the court of appeals erred by affirming the trial judge's refusal to grant his motion for a directed verdict on one of the indictments for first-degree criminal sexual conduct with a minor (2014-GS-07-01673) because the State failed to present evidence that Victim performed fellatio on Dent at House Two. He contends the decision "sanctions a conviction for criminal sexual conduct with a minor based on evidence of sexual batteries never submitted to the grand jurors." As support for those claims, Dent argues the court of appeals "overstates the evidence of fellatio, conflates the evidence of fellatio with the evidence of other sexual batteries, and expressly relies on the evidence of other sexual batteries allegedly occurring at the other residence." (Brief of Petitioner, p.36-p.41). The State disagrees and submits the court of appeals properly affirmed the trial court's denial of a directed verdict based on the appropriate standard of review.

### Standard of Review

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016); *State v. Condrey*, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion. *Phillips*, 416 S.C. at 192, 785 S.E.2d at 452; *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, the trial court

must submit the case to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.”

*Phillips*, 416 S.C. at 192-93, 785 S.E.2d at 452 (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

Thus, when reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. *State v. Brown*, 402 S.C. 119, 124, 740 S.E.2d 493, 495 (2013); *State v. Holcomb*, 426 S.E.2d 557, 562, 827 S.E.2d 367, 370 (Ct. App. 2019). The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *Brown* at 124, 740 S.E.2d at 495. However, if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. *Id.* The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, “the evidence could induce a reasonable juror to find [the defendant] guilty.” *State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); see also *State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”).

### **Discussion / Analysis**

During trial, the State admitted both of Victim's forensic interviews into evidence, and the interviews were played for the jury. (App.p.623-p.628). Victim did not make a disclosure regarding fellatio until the Second Interview. (App.p.794-p.799; p.937-p.939; State's Exhibit #17). During that 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. (State's Exhibit #17). At trial, Victim provided more limited testimony, stating she was only forced to perform fellatio on Dent once. However, she did not testify as to where that incident occurred. (App.p.574-p.576).

Here, just as the court of appeals recognized, the trial judge properly denied Dent's directed verdict motion because: (1) Victim's trial testimony and out-of-court statements were sufficient for a factfinder to rationally find Dent guilty of the indicted offense currently at issue; and (2) the existence of any inconsistencies and discrepancies with the evidence presented was a matter solely for the jury to resolve.<sup>4</sup> See *State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the jury."); cf. *State v. Butler*, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) (concluding one individual's "various, inconsistent accounts" of what transpired can create credibility issues and factual questions that need to be resolved by the jury). In Dent's case, the verdict itself

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<sup>4</sup> Significantly, the frequent inability of young children who have been subjected to repeated instances of sexual abuse to be able to provide consistent accounts concerning the date, place, and time of the abuse is something that has long been recognized as being *inherent* in prosecutions for juvenile sexual abuse. See, e.g., *State v. Wilcox*, 808 P.2d 1028, 1033 (Utah 1991) ("[W]e have recognized that there are notice problems, especially as to the date, place, and time inherent in prosecutions based on the testimony of very young victims. . . . If we were to hold that in all such circumstances, no offense could be charged because the alleged victim is too young to testify with certainty concerning the times, dates, or places where the abuse occurred, we would leave the youngest most vulnerable children with no legal protection. An abuser could escape prosecution merely by claiming that the child's inability to remember the exact dates and places of the abuse impaired the abuser's ability to prepare an alibi defense. In frank recognition of this fact, we have been less vigorous in requiring specificity as to time and place when young children are involved than would usually be the case where an adult is involved. . . . We have suggested that so long as the elements of the crimes are covered by the factual allegations and the defendant is fully apprised of the State's information regarding the time, place, and date of the crimes, any lack of factual specificity goes not to the constitutional adequacy of notice, but to the credibility of the State's case.").

demonstrates the jury resolved inconsistencies or discrepancies in the evidence precisely as it was bound to do, only convicting Dent on one first-degree CSC with a minor charge while acquitting him on the second. Indeed, this very acquittal on one of the two CSC charges is precisely what Dent asked the jury to do during his closing argument. (App.p.938, line 12-p.939, line 20). As noted by Dent, each indictment alleged a single incidence of fellatio and as noted by the court of appeals, Victim testified she only was forced to perform fellatio on Dent once but did not testify as to where that incident occurred. (App.p.574-p.576). Thus, rather than sanctioning a conviction for a crime based on evidence of sexual batteries never submitted to the grand jurors, the trial judge properly concluded the evidence was sufficient to send the charge to the jury to determine if this evidence of fellatio at House 2 proved the elements of the crime beyond a reasonable doubt. For these reasons, the court of appeals properly affirmed the denial of a directed verdict, and that decision should be affirmed.

### III.

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

In his brief, Dent argues the court of appeals erred by affirming the trial court's decision to present the full statutory definition of sexual battery to the jurors when instructing them on the required elements of the indicted offense when the indictment listed fellatio as the only sexual battery at issue. He contends the trial judge's jury instruction on sexual battery was confusing and improper under the circumstances involved and "allowed the jurors to convict him based on a sexual battery other than fellatio." (Brief of Petitioner, p.41-p.44). The State disagrees.

### **Standard of Review**

In criminal cases, the appellate court only reviews errors of law. *State v. Perry*, 440 S.C. 396, 403, 892 S.E.2d 273, 276 (2023); *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *Perry*, 440 S.C. at 403, 892 S.E.2d at 276; *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). In reviewing jury charges for error, the appellate court must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. *Perry*, 440 S.C. at 403, 892 S.E.2d at 276-77; *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003).

### **Discussion / Analysis**

During the charge conference, Dent requested the trial court limit its definition of sexual battery to only fellatio as that was the only battery listed on the CSC Indictments. Relying in part on this Court's opinion in *State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002), Dent asserted charging the full definition created a variance in the indictment and allowed the State to seek a guilty verdict based on multiple sexual batteries not listed in the indictments. (App.p.900-p.907). The trial court denied Dent's request and charged the full definition of sexual battery as described in subsection 16-3-651(h) of the Code. (App.p.900-p.906; p.966-p.967). Following the jury charge, Dent renewed his objection, and the court declined to recharge the jury. (App.p.973, lines 17-24).

Here, just as the court of appeals recognized, the trial judge committed no error by providing the statutory definition of sexual battery to the jury because Dent was indicted for a violation of Section 16-3-655, and sexual battery was a necessary element of that offense. S.C. Code Ann. § 16-3-655(A)(1); see *Keller v. State*, 265 S.E.2d 813, 814 (Ga. 1980) (“It is not

usually cause for new trial that an entire Code section is given. This is so even though a part of the charge may be inapplicable under the facts in evidence.” (citations omitted)); *cf. State v. Hardee*, 279 S.C. 409, 413, 308 S.E.2d 521, 524 (1983) (rejecting as meritless the contention “the trial judge erred in charging § 16-15-140 in its entirety since the indictment only charged him with committing an act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the minor”).

In his brief, Dent relies on *State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002) and *State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001) to support his argument, claiming they provide examples of cases where the trial court improperly confused the jurors by providing a correct statement of law that was not appropriate in that particular trial (Brief of Petitioner, p.41-p.44); however, each case is easily distinguished. In *Blurton*, the trial court charged two different points of non-statutory law, both of which were correct statements of law but one of which was wholly inapplicable because it did not fit the facts of the case. *Blurton* at 208, 573 S.E.2d at 804. Here, the trial court simply provided the correct and entire statutory definition of sexual battery, an element of the offense. Dent was fully able to challenge whether the State met its burden of proof for the particular crimes alleged in the indictments. The trial court’s decision to charge the full statutory definition of an element of the indicted offense sufficiently “fit the facts” of this case and certainly did not constitute an abuse of discretion.

In *Jones*, the trial court substituted a correct definition of reasonable doubt for another correct definition of reasonable doubt *after* Jones made a closing argument that relied on the definition the trial court chose not to use. *Jones* at 576-77, 541 S.E.2d at 820-21. This Court found the effect of the trial court’s after-the-fact decision was to diminish defendant’s attorney’s credibility in the eyes of the jury. *Id.* at 578, 541 S.E.2d at 821. Here, Dent alleges he relied on

the indictment in his opening statement and his closing argument; however, his comments in both appear to be limited to challenging the evidence and burden of proof. (App.p.448-p.456; p.929-p.949). Nothing Dent argued relied on a belief that the trial judge would charge the jury with only a portion of the statutory definition of sexual battery in section 16-3-655. Indeed, Dent's closing argument came *after* the charge conference, where the judge ruled, over his objection, that the entire statute would be charged. (App.p.900-p.907). Thus, *Jones* has no import. Accordingly, the court of appeals properly affirmed the jury charge given by the trial court, and its decision should be affirmed by this Court.

#### IV.

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

In his brief, Dent claims the court of appeals erred by failing to find the admission of the testimony of Tessa Trask, who testified during trial as an expert in the field of behavioral characteristics of child victims of sexual abuse, was prejudicial and warranted reversal. As support for that claim, Dent maintains simply that because "there is no support for the reliability" of [Trask's] testimony in the record," he has automatically established prejudice due to "the admission of unreliable, untested theories." He contends it is "impossible for the court below to conclude 'the error was harmless beyond a reasonable doubt.'" (Brief of Petitioner, p.44-p.46. Thus, Dent's only argument as to why reversal is needed in connection to Trask's testimony is the contention it is *always* sufficiently prejudicial to warrant reversal when a trial judge admits expert testimony without first properly determining its reliability. This is simply not the law in South Carolina.

### **Standard of Review**

The trial court's ruling on the admissibility of evidence will not be reversed on appeal absent abuse of discretion or the commission of legal error which results in prejudice to the defendant. *State v. Edwards*, 373 S.C. 230, 234, 644 S.E.2d 66, 68 (Ct. App. 2007); *State v. Adams*, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003). An abuse of discretion occurs when the ruling lacks evidentiary support or is controlled by an error of law. *Brown*, 401 S.C. at 87, 736 S.E.2d at 265; *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008); *State v. McDonald*, 343 S.C. 319, 540 S.E.2d 464 (2000).

### **Discussion / Analysis**

During a pretrial hearing, the State sought to qualify Trask as an expert witness. (App.p.375). Trask testified as to her qualifications, stating she worked as a counselor and forensic interviewer at Hopeful Horizons. (App.p.375-p.376). Trask clarified she presently only had a provisional counseling license but would receive her full license the following August after completing the remainder of her required clinical hours. (App.p.378-p.379). When asked what qualified her as an expert in the field, Trask responded, "I would say my training and my clinical experience would make me an expert ... I'm referring to my training in general, all of my training, ... including my forensic training." (App.p.379, lines 12-23). When Dent sought further information as to her training, the trial court sustained an objection by the State. (App.p.378-p.380). Dent subsequently objected to the admission of Trask's testimony, asserting the State had failed to show that the substance of Trask's proposed testimony was reliable and requested the trial court assess the reliability through a proffer of her testimony. (App.p.382). The trial court declined Dent's request, instead electing to have the State proffer "bullet points"

of her intended testimony. Dent thereafter renewed his objection, arguing the substance of Trask's testimony was still indiscernible. (App.p.382-p.386). The following exchange occurred:

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

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

(App.p.386, lines 9-17). The trial court took the matter under advisement, deferring its ruling until the following morning. The trial court subsequently qualified Trask as an expert in behavioral characteristics of child abuse, noting Dent's objection. (App.p.390-p.391). Dent renewed the objection at trial. (App.p.592-p.593).

In *State v. Tapp*, 398 S.C. 376, 387, 728 S.E.2d 468, 474 (2012), this Court was confronted with an issue concerning the admission of expert testimony and concluded the trial judge erred by admitting that expert testimony without making *any* determination as to the reliability of it. Significantly, this Court then proceeded to analyze the question of whether the admission of the expert testimony was nevertheless harmless and concluded it indeed was because the challenged testimony could not have contributed to the verdict obtained under the circumstances involved. *Id.* at 390-391, 728 S.E.2d at 476. Since a trial judge's failure to properly conduct a reliability analysis clearly does *not* automatically require reversal as Dent seems to suggest, the court of appeals did exactly what it was supposed to do—consistent with *Tapp*—by looking to the circumstances involved to determine whether the error it determined occurred, resulted in prejudice warranting reversal. The court of appeals' harmless error finding

in Dent's case was completely correct for all the reasons it identified.<sup>5</sup> *See State v. Heyward*, 441 S.C. 484, 505, 895 S.E.2d 658, 669 (2023) ("We have repeatedly observed we will not reverse a criminal conviction for the erroneous admission of evidence unless the defendant shows on appeal the error was prejudicial."). As a result, the court of appeals properly affirmed due to a lack of prejudice, and this Court it should likewise affirm the court of appeals.

## V.

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

In his brief, Dent claims the court of appeals incorrectly declined to reverse his convictions on grounds that the testimony of John Camelo improperly bolstered or vouched for the victim's credibility. He contends the State "cleverly questioned" Camelo about his education, training, and experience as a police officer to suggest he believed Victim and to engage in a "back door introduction" of prohibited opinion evidence. (Brief of Petitioner, p.46-p.47). To the contrary and just as the court of appeals correctly recognized, Camelo's testimony did *not* constitute improper bolstering or vouching testimony because Camelo did not bolster or vouch for the victim's credibility through the actual testimony he gave.

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<sup>5</sup> Notably, looking to the substance of the expert testimony presented, Trask briefly testified in a broad and general manner about behavioral characteristics associated with juvenile sexual abuse victims, which was not and is not a controversial or improper subject matter for expert testimony in South Carolina. *See State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018) ("[T]he law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized."). And, in doing so, Trask emphasized the presence of signs and symptoms of trauma was something that was *not* necessarily proof abuse occurred. (App.p.596). Furthermore, to ensure the limited nature of her testimony could not be misunderstood by the jury, she confirmed she did not interview Dent's minor victim, had never met her, and did not even review her case file prior to testifying. (App.p.591-p.592; p.602-p.603).

### **Standard of Review**

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *Pagan*, 369 S.C. at 208, 631 S.E.2d at 265; *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011); *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005). Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict. *Byers*, 392 S.C. at 444, 710 S.E.2d at 58; *Vaught*, 366 S.C. at 480, 623 S.E.2d at 375.

### **Discussion / Analysis**

During trial, the State called Camelo as its first witness. Camelo testified he dated Mother in 2014 for four or five months and spent time with Victim during their relationship. On direct examination, the State questioned Camelo about his prior law enforcement experience but did not seek to qualify him as an expert. Dent objected to the questioning, asserting the State was attempting to “portray Mr. Camelo as somebody who had special training in order to be able to detect child abuse or sexual abuse.” (App.p.457-p.461). The trial court held an in camera hearing during which the State proffered the remainder of Camelo's testimony regarding his interactions with Victim. Following the proffer, the trial court limited Camelo's testimony, stating “there will be no questions regarding whether or not he had an opinion regarding abuse.” (App.p.461-p.465).

Thereafter, Camelo testified he had personal experience with sexual abuse, stating he was sexually abused by a family friend between the ages of twelve and thirteen. Camelo further testified he had personal experience with raising young girls because he raised his stepdaughter. When asked about his time spent with Victim, Camelo testified he noticed “red flags” in her behavior. Specifically, Camelo stated he noticed “[g]estures of a sexual nature that a nine-year-old ... wouldn't normally know without having been shown or taught by someone.” (App.p.468-p.469). According to Camelo, Victim liked to kiss him on the cheek, grope his groin area, and hug him “more than you would expect [for] someone [who] isn't her guardian or parent raising her.” (App.p.469, line 5-p.470, line 4). Based on these behaviors, Camelo asked Victim “if anyone had done anything inappropriate to her.” (App.p.470, lines 15-16). In response, Victim made a disclosure to Camelo (Initial Disclosure). (App.p.470-p.471). Camelo neither testified as to what Victim said nor made any assertions as to whether he believed the Initial Disclosure to be true. Rather, he testified the information was “very concerning” and he immediately informed Mother, who notified law enforcement. (App.p.471).

Camelo further testified Victim made an additional disclosure (Second Disclosure) to him some time after her initial forensic interview. According to Camelo, Victim handed him a piece of paper with a handwritten note on it and then ran off. After reading the note, Camelo gave it to Mother. Camelo did not testify as to what the note said but stated he found it more concerning than the Initial Disclosure. (App.p.471-p.473).

As recognized by the court of appeals, Camelo did not bolster or vouch for the victim’s credibility through the testimony given. Instead, he simply testified to his own personal observations of the then-nine-year-old minor victim’s *obviously* age-inappropriate behavior,<sup>6</sup>

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<sup>6</sup> Notably, that behavior included attempts to kiss Camelo, to engage in frequent hugging, and to *grope Camelo's groin*. (App.p.469-p.470).

explained those troubling observations led him to ask her if anyone had done anything inappropriate to her, and then indicated she made a concerning disclosure in response to that query. Since that testimony merely conveyed Camelo's personal observations leading up to the victim's disclosure and included no opinions on the victim's credibility, it in no way constituted improper bolstering or vouching, could not have logically or reasonably been construed as such by the jury, and was not in any manner inadmissible. *See State v. Kromah*, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013) (recognizing it does *not* constitute improper bolstering or vouching for a witness—including a forensic interviewer—to testify about “any personal observations regarding the child’s behavior or demeanor”). The court of appeals correctly found the trial court did not abuse its discretion in allowing Camelo to offer personal observation testimony; therefore, that finding should be affirmed. *Pagan, supra; Byers, supra.*

## VI.

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

In his brief, Dent claims the court of appeals erred in declining to reverse his convictions on grounds that the trial court violated his rights under the Sixth Amendment Confrontation Clause by prohibiting him from questioning Camelo about his reason for breaking-up with Mother—that reason purportedly being because Mother had used marijuana and been a stripper in the past. Dent claims he was appropriately attempting to impeach Camelo with a supposed prior inconsistent statement and thus the limitation of that line of questioning constituted a Confrontation Clause violation. (Brief of Petitioner, p.47-p.48). The State disagrees.

### **Standard of Review**

The admission *or* exclusion of evidence is subject to an abuse of discretion standard of review. *State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) (emphasis added). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007); *Howard*, 384 S.C. at 217, 682 S.E.2d at 45. To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. *Howard*, 384 S.C. at 217, 682 S.E.2d at 45.

### **Discussion / Analysis**

On direct examination, the following exchange occurred:

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

Camelo: Yes.

The State: When was that?

Camelo: Very shortly after—after all of this initiated, which, unfortunately, became very stressful, a very stressful, strange situation. And I just felt it was best to end the relationship.

(App.p.474, line 24-p.475, line 5). On cross-examination, the following exchange occurred:

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

Camelo: Correct.

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

Camelo: On my part.

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

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

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

(App.p.480, line 25-p.481, line 11). At this point, the State objected as to relevance, and the trial court sustained the objection. (App.p.481, lines 12-13). Dent then sought an in camera hearing, asserting his Sixth Amendment rights under the Confrontation Clause entitled him to question Camelo regarding the breakup because the State initiated the line of questioning on direct. Specifically, Dent argued he was entitled to rebut the suggestion made on direct examination that Victim's disclosures were the reason for the end of the relationship between Camelo and Mother. In response, the State asserted the testimony was irrelevant and that Dent was improperly attempting to tarnish Mother's credibility as a witness. (App.p.481-p.485). The trial court then had Dent proffer Camelo's proposed testimony. Ultimately, the trial court sustained the State's objection and said it would strike the prior question from the record, finding the testimony was irrelevant to Dent's guilt. (App.p.485-p.488).

The State submits the trial court—just as the court of appeals correctly recognized—did not abuse its broad evidentiary discretion by declining to allow defense counsel to question Camelo about Mother's alleged past because the fact that she may have been a stripper or used marijuana at some point in her life had no relevance whatsoever to the question of whether Dent was guilty of any of the indicted offenses involving the minor victim, which was the actual focus of the trial. *See Gause v. Livingston*, 251 S.C. 8, 13, 159 S.E.2d 604, 607 (1968) (“If there is no such logical or rational connection between the fact sought to be presented and a matter of fact in issue in the case the evidence is immaterial and inadmissible.”); *see also State v. D'Alessio*, 848 A.2d 1118, 1124 (R.I. 2004) (“The right to cross-examination does not include an unfettered

license to ask any question that the defendant may desire.”).<sup>7</sup> The court of appeals correctly found the trial court appropriately sustained the State’s objection as to relevance and limited Dent’s improper attempt to question Camelo regarding his reasons for breaking-up with Mother. Consequently, the court of appeals should be affirmed.

## VII.

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

In his brief, Dent claims the court of appeals should have reversed the trial court’s admission of a group of photos of Victim (Group Two Photos) under Rule 403, SCRE, because their probative value was substantially outweighed by the danger of unfair prejudice. Specifically, he contends that because there was a lack of evidence as to who took the Group Two Photos, the jurors were improperly “allowed to consider these photographs as evidence of Mr. Dent’s guilt.” (Brief of Petitioner, p.48-p.50). The State disagrees.

### Standard of Review

The admission *or* exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. *State v. Collins*, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014); *Byers*, 392 S.C. at 444, 710 S.E.2d at 57-58; *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010); *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Collins*, 409 S.C. at 530, 763 S.E.2d at 25; *Byers*, 392 S.C. at 444, 710 S.E.2d at 58.

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<sup>7</sup> Although Dent now argues such testimony was admissible as evidence of a purported prior inconsistent statement on Camelo’s part, defense counsel tellingly argued to the jury Mother had been a stripper *even after* the trial judge sustained the State’s objection to defense counsel’s attempt to question Camelo about that matter on relevancy grounds. (App.p.481-p.482; p.488; p.947, lines 8-9).

### Discussion / Analysis

At trial, the State sought to admit two sets of photos through Victim's testimony and after hearing her in camera testimony and arguments from the parties, the trial court admitted the photos. (App.p.751-p.771). During her testimony, Victim identified herself in each of the photos and verified the photos were taken at Houses One and Two when she lived in South Carolina from 2012 to 2014. (App.p.775-p.784). The Group Two Photos were sexual in nature, but Victim was clothed in all of the photos. They included three photos in which Victim was lying on a bean bag with her legs spread and pulled up towards her shoulders (State's Exhibit #11) and standing facing the camera with her torso bent forwards with a view down her shirt (State's Exhibits #6 & #13). This group of photos also contained an image of a young girl's legs (State's Exhibit #15). Victim identified herself in the photo, stating she recognized the neon shorts she wore to her dance classes that she took while living in South Carolina. (App.p.793, lines 8-17). Victim further testified that although she was not positive who took the Group Two Photos, she believed it was Dent. (App.p.775-p.784).

As a general rule, all relevant evidence is admissible. Rule 402, SCRE. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice....” Rule 403, SCRE. The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *Collins*, 409 S.C. at 534, 763 S.E.2d at 27; *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). If the offered photograph serves to

corroborate testimony, it is not an abuse of discretion to admit it.” *Collins*, 409 S.C. at 534, 763 S.E.2d at 27; *Nance*, 320 S.C. at 508; 466 S.E.2d at 353. When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case. *Collins*, 409 S.C. at 534, 763 S.E.2d at 27-28; *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App.2008). “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *Collins*, 409 S.C. at 534, 763 S.E.2d at 28. The appellate court reviews a trial court’s decision regarding Rule 403 pursuant to the abuse of discretion standard and is obligated to give great deference to the trial court’s judgment. *Collins*, 409 S.C. at 534, 763 S.E.2d at 28.

As properly recognized by the court of appeals, the relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *See Collins*, 409 S.C. at 534, 763 S.E.2d at 27. As detailed by this Court in *Collins*, a trial court’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *Id.* at 534, 763 S.E.2d at 28. As also recognized by the court of appeals, the Group Two photos were relevant and probative because they corroborated Victim’s testimony and helped establish the elements of the offenses charged. Regardless of who took them, Victim identified herself in the photos and verified they were taken at the houses when she lived in South Carolina during the relevant time frame. (App.p.775-p.784). Thus, the trial court’s decision to admit the Group Two Photos after acting as the authentication gatekeeper, determining relevancy, and determining their probative value was not substantially outweighed by the danger of undue prejudice, was well within its sound discretion

and was properly affirmed by the court of appeals. Accordingly, the decision of the court of appeals should be affirmed.

### CONCLUSION


Based on all of the foregoing reasons, the State respectfully requests that this Court affirm the decision of the Court of Appeals affirming Petitioner's convictions and sentence.

Respectfully submitted,

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