

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**SC Court of Appeals**

APPEAL FROM CLARENDON COUNTY  
Court of General Sessions

The Honorable D. Craig Brown, Circuit Court Judge

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Appellate Case No. 2018-001493  
Lower Court Case No. 16-GS-14-0161

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THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUSTIN BRADLEY CAMERON,

APPELLANT.

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**INITIAL BRIEF OF APPELLANT  
and  
DESIGNATION OF MATTER**

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**TARA DAWN SHURLING**  
Attorney and Counselor at Law  
S. C. Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, SC 29204  
(803) 738-8622  
(803) 738-1600 FAX  
tdslaw@shurlinglaw.com

**ATTORNEY FOR APPELLANT**

**TABLE OF CONTENTS**

**Table of Contents.....2**

**Table of Authorities.....3**

**Statement of Issue on Appeal.....4**

**Statement of the Case.....4**

**Argument.....5**

**Summary of Relevant Trial Testimony.....5**

**Discussion.....30**

**Conclusion.....34**

**Designation of the Matter.....35**

**Certificate of Service on Opposing Counsel.....36**

## TABLE OF AUTHORITIES

### CASES

Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (S.Ct. 2001) .....	31
Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (S.Ct. 1994) .....	31, 32
Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (S.Ct. 1991) .....	32
State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (S.Ct. 2015).....	7,10,11
State v. Cox, 274 S.C. 624, 266 S.E.2d 784 (1980) .....	31
State v. Munn, 292 S.C. 497, 499-500, 357 S.E.2d 461, 463 (1987) .....	4,31,32
State v. Sharpe, 239 S.C. 258, 122 S.E. 2d 622 (1961) .....	31

### RULES

Rule 41.2, SCRCP .....	11, 18
Rule 801(d)(1)(D), SCRE .....	4,31,32,33

### STATUTORY PROVISIONS

S.C. Code §17-23-175(b).....	7,10
S.C. Code § 16-3-651 .....	6
S.C. Code §16-3-655 .....	5,6

### CONSTITUTIONAL PROVISIONS

U.S. Const. Am. V.....	33
U.S. Const. Am. XIV.....	33

## STATEMENT OF ISSUE ON APPEAL

### I.

**The lower court erred in overruling Appellant's Object to a question posed by the prosecution where the question itself, in effect listed the identity of Appellant as the perpetrator of the crime charged as one of the facts the witness had been supplied by the Victim and therefore, called for testimony concerning a prior consistent statement by the Victim in excess of that allowed by Rule 801(d)(1)(D), SCRE, and *State v. Munn*, and its progeny, which improperly bolstered the credibility of the minor Victim in this case and violated Appellant's right to due process of law.**

## STATEMENT OF THE CASE

Appellant was indicted by the Grand Jury of the Clarendon County Court of General Sessions during their June, 2017 term, for the offense of Criminal Sexual Conduct with a Minor in the First Degree. Indictment No. 2016-GS-14-0161 He proceeded to trial by jury before the Honorable Craig Brown on August 7-9, 2018. He was represented in the Court of General Sessions by Timothy L. Griffith, Esquire, and the State was represented by Assistant Solicitors, Katarzyna K. Durant, and Christopher R. Durant. Appellant was found guilty as charged at the conclusion of said trial and was sentenced to Twenty-Five (25) years in the custody of the South Carolina Department of Corrections. A timely Notice of Appeal was filed on Appellant's behalf and this appeal follows.

## ARGUMENT

### Issue I.

**The lower court erred in overruling Appellant's Object to a question posed by the prosecution where the question itself, in effect listed the identity of Appellant as the perpetrator of the crime charged as one of the facts the witness had been supplied by the Victim and therefore, called for testimony concerning a prior consistent statement by the Victim in excess of that allowed by Rule 801(d)(1)(D), SCRE, and *State v. Munn*, and its progeny, which improperly bolstered the credibility of the minor Victim in this case and violated Appellant's right to due process of law.**

### SUMMARY OF RELEVANT TRIAL TESTIMONY

At Appellant's trial, during the opening argument for the State, Assistant Solicitor Timmons specifically states that this case involved the anal penetration of the Victim by the Appellant. Tr. p. 36, ll. 6 – 19. That assertion is consistent with the narrow charging language found in the Indictment against Appellant for First Degree Criminal Sexual Conduct with a Minor, wherein it states that the Appellant, *"did commit a sexual battery upon a minor who was less than eleven years of age, to wit: he anally penetrated [Victim], date of birth [Redacted], in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended."* See, **Indictment No. 2016-GS-14-0161**. The Prosecutor then described the Victim as having been born into family who did not care about him. She described how this child would often come to school dirty and hungry and informed them that he was taken ultimately taken away by DSS the end of September, 2015. **Tr. p. 36, ll. 5 – p. 37 l. 2**. The argument went on to inform the jury that the Victim's Foster family reported that the child smelled of feces the first day they got him, and that he *"couldn't hold his bowel movement."* **Tr. p. 37, ll. 3-5**. He stated that this little boy had several accidents and that he could not determine when he was going [to the bathroom]. The prosecutor advised the jury that the police did not get involved in this case until October, 2015, several months after the incident for which Appellant was on trial. At the time of the alleged

incident, the child was seven years old. **Tr. p. 36, l. 5-37, l. 13.** In her opening arguments to the jury, this prosecutor defines Sexual Battery as any intrusion, however slight, *upon the body of a child*. She then goes on to clearly assert that in this case, the sexual battery was “**anal penetration**”. Ass’t Solicitor Timmons never clarified that not just any intrusion, “upon the body of a child” would constitute a sexual battery sufficient to support a finding of guilt of First Degree Criminal Sexual Conduct with a minor pursuant to **S.C. Code §16-3-655 and §16-3-651(h)**. She acknowledged that there “*There are no physical evidence [sic]because by, the time there will not be any, and well crimes like that, crimes like that, it’s inherent in their nature that usually there are no witnesses to the crime other than the perpetrator.*” Her argument advises the jury that the Victim is 10 at the time of this trial. **Tr. p. 38, ll. 4-9. Tr. p. 39, ll. 19.**

The State’s first witness was, Lt. Fred Moore. He identified himself as “Lt. Moore., Sex Crimes Unit York South Carolina, without specifically identifying what law enforcement agency he was affiliated with. He described his career as involving twenty-three (23) years in law enforcement and indicated that he had been a detective for ten years. **Tr. p. 43, l. 9 – Tr. p. 44, l. 4.** According to his testimony, he became involved in this case when, “*we received a DSS referral and the DSS caseworker set up a forensic interview and asked him to attend*”. He verified that he never spoke with the Victim, which he stated, is their standard procedure, with children between ages 4-12. “*We go through the child advocacy center. It’s called Safe Passage in our county in Rockhill.*” **Tr. p. 44, ll. 7-22.** He “*was with DSS for the interview observing through a monitor,*” but was not in the same room. **Tr. p. 44, l. 23 – 45, l. 3.** Lt. Moore testified that based upon the video of the forensic interview, **State’s Exhibit No. 1, for ID Only**, he put together a case packet and sent it to the Turbeville Police Department because it was apparent the case was outside his jurisdiction as it involved an incident in Turbeville, South

Carolina in *Clarendon County*. He had no further involvement in the case. **Tr. p. 45, ll. 4-25.** On cross-examination he confirmed that he did no investigation of the case himself and that he did not talk to the child **Tr. p. 46, ll. 8. Tr. p. 47, l. 3.** There was no re-direct examination of this witness. **Tr. p. 47, ll. 3-7.**

The following day, before the jury was returned to the Courtroom, the State brought up an issue with the forensic interview, to which the Trial Judge responded that he was not going to decide that issue yet. The Prosecutor then states that the problem is they do not have the Forensic Interviewer available as a witness and that they wished to introduce the video of that interview through the child Victim. It was noted that Defense Counsel had indicated an objection to this request *in chambers*. Defense Counsel then put his objection on the record. **Tr. p. 57, l. 9 - 58, ll. 5-9.** The Trial Judge cited to *State v. Anderson*<sup>1</sup> as authority for the fact that the forensic interviewer must be called as a witness in order for the State to comply with S.C. Code §17-23-175(b) and took the issue under advisement **Tr. p. 60, l. 24.**

The State's second witness was David Flowers. **Tr. p. 63, l. 16.** He testified that he was not working at the time of trial and was on disability. He stated that during "*the summer time*" he was working for Progressive Home Builders and that he lives in Turbeville, in Clarendon County **Tr. p. 64, ll. 1 – 12.** His street address has been redacted pursuant to Rule, SCRPC. He identified State's Ex. No. 3 as his house. That exhibit, a photograph of the house in question was introduced as State's Ex. No. 3, without objection. **Tr. p. 64, all. 13 – 21.** This witness indicated he had lived at that address maybe 4-5 years and notes that the house is yellow. His testimony confirms that State's Ex. No.3 presented an accurate picture of how the house looked in 2015. He testified that he still lives there with his two sons, Kenneth "Gage" Flowers (age 15) and Noah Flowers (age 14). **Tr. p. 65, l. 8 - 21.** Flowers described his house as a

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<sup>1</sup> *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (S.Ct. 2015).

two bedroom, 1 bathroom house that also had a living room and a kitchen **Tr. p. 65, ll. 22-25**

He testified that in the summer of 2016 he let a woman and her child move in because they had nowhere to go. He recalled that the woman, named Kelly, was brought there by a friend that wanted him to help her out by letting her stay at his home. The identity of that individual is not disclosed at trial and neither is his connection to Kelly Cameron and her son Marcus, explained. Flowers stated that he agreed to take Kelly and her son, whom he estimated to be 6, maybe 7 years old. Flowers testified that they stayed approximately a month *“in and around July of 2015.”* When explaining how he knew this woman and her child came in his home in July, 2015, he gave a rather confusing answer **Tr. p. 6, l. 5-p. 67, l. 22.** He testified that when she packed up and left in August she took some of his boys stuff. He said he had looked up when he texted her to tell her she had done that and *“I think, I want to say 15<sup>th</sup> or so”*. He added, *“That was like three or four days after she left and so that would have definitely put her around the last part of July staying with us.”* If you start with August 15, 2015 and count backwards four (4) days, you get August 11<sup>th</sup> as her departure date. Then, counting backward thirty (30) days from there, consistent with Flowers’ testimony, you get an arrival date of July 12<sup>th</sup>. If the text was sent three (3) after she left, as opposed to four (4), then you reach an arrival date of July 13<sup>th</sup> and a departure date of August 12<sup>th</sup>. As previously noted, this witness testified that a friend of his brought her by his house. He recalled that she had no driver’s license and nowhere to go. She had a small child so he decided to help her out. He gave her a place to stay for a month so that he could help her get a license and get back on her feet. **Tr. p. 67, l. 10-22.** He expressly testified that this stranger and her young son stayed *“around a month, 30 days.”* **Tr. p. 68, ll. 5-7.** Using the timeline provided by the Victim for the length of their stay at the Flowers’ residence, they were there for two weeks and Appellant was there “half as long”, one week. Using Mr. Flowers’ sworn testimony which established a departure date for Kelly and her son of

either August 11<sup>th</sup> or August 12<sup>th</sup>, and a two week stay asserted by the Victim, you get a start date for the Victim's presence in the Flowers house of either July 28<sup>th</sup> or 29<sup>th</sup>; Arrival dates that are eleven (11) or twelve (12) days after it has been established that Appellant was under lock and key at the Moss Justice Center Detention Facility. As previously noted, if you use Mr. Flowers' testimony which puts Kelly and the Victim there for 30 days, you still get an arrival date of either July 12<sup>th</sup> or July 13<sup>th</sup>. Neither of these arrival dates would allow for the Appellant to have been in the home for a week prior to his incarceration on July 17<sup>th</sup> – September 26<sup>th</sup>.<sup>fn2</sup>

Flowers testified that he did not think Kelly had any family in Turbeville and said he said *"all her family is from Rock Hill."* Tr. p. 67, l. 23 - 68, l.4. His testimony indicated that his younger son had gone to stay with the boy's aunt while on Summer break. His older son, Gage, agreed to give up his room so the woman and the boy could have his room while they were there. Flowers testified that he stayed in his own room. Tr. p. 69, l. 15-70, l. 2.

Flowers testified that after about a week and a half, Kelly, the mother, got a job working at a gentlemen's club in Florence called the Trophy Club. He recalled that at some point *"we went and picked her brother up form Rock Hill, and he stayed approximately seven days."* Other than him, Flowers stated that no one else, other than Kelly and her son, stayed at his home during that time period. Tr. p. 70, l. 3 -15. He identified defendant in the Courtroom as Kelly's brother. Tr. p. 70, ll. 16-20. Flowers identified Appellant as Kelly's brother during his trial testimony. Tr. p. 70, ll. 21-24. He said he thought he picked the brother up on a Sunday and he stayed until a week later when he left on Monday or Tuesday. He said Kelly and Marcus moved out about two weeks later. Tr. p. 71, ll. 1-9. When he went to Rockhill to get Defendant, Kelly and Marcus were with him. He first testifies that he, his son, Kelly and Marcus spent the

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<sup>2</sup> Def. Ex. No. 1, introduced later in this trial, was a letter from the York County Sheriff's Department, Establishing that Appellant was in the Moss Justice Center Detention Facility from July 17 – September 26, 2015. This exhibit was introduced without objection by the State.

weekend at Lake Wateree Tr. p. 71, ll. 10-25. Even though Flowers clearly said “*me and my son, Kelly and Marcus went to the lake for the weekend*”,<sup>3</sup> the prosecution next asked if one or both of his sons went to the lake and this witness answered, “*both of them*”. Then the prosecution asked, “*Okay. That’s Gage and others?*” Flowers responded “*Gage and them.*” Tr. p. 72, ll. 4-5. He then testified that they arrived at Lake Wateree on Friday. When asked who all spent that Friday night at the lake, he then stated, “*[w]hen we got there it was me and both my boys and Kelly and Marcus.*” Tr. p. 72, ll. 11-19. He said that on Sunday, he, Kelly and Marcus rode to Rock Hill and picked up her brother at a house Kelly directed him to. His son’s were left back at Wateree. Tr. p. 73, ll. 6-25. According to Flowers, after allegedly picking up Kelly’s brother, they went back to Wateree, retrieved his sons and then headed back to his house in Turbeville. The prosecutor asked who then stayed at his house. Flowers said his “*oldest boy Gage, Kelly, Marcus and Justin.*” When the prosecutor asked where Noah was, he simply repeated that, “*Noah was spending most of his summer with my aunt, I mean my sister, which is his aunt.*” It was the prosecutor who stated, “*[s]o he just went with you to, I guess to Lake Wateree for the weekend and then he went to your sister?*” Flowers agreed with her version of the facts. Tr. p. 74, l. 1 – 76, l. 2. According to Flowers, from that point, Gage slept on the loveseat and Justin slept on the couch. His testimony indicated Gage was there somewhere between two and four days while Justin was there, but then left and went to his grandmother’s house for a couple of days. Justin had already left by the time Gage came back home. Tr. p. 76, ll. 3-23. He testified that Kelly and a friend from work drove Justin back to Rock Hill: Marcus went with them. Tr. p. 76, l. 24 – 77, l. 6. Once again, the prosecutor provided, “*[A]nd then Kelly and Marcus stayed for about two more weeks and then they.....*” Again, Flowers confirmed the prosecutor’s statement of these facts. Tr. p. 77, l. 19 – 78, l. 3.

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<sup>3</sup> Tr. p. 71, ll. 24-25

On cross-examination, Flowers denied having a romantic relationship with Kelly. <sup>4</sup>He acknowledged that he was not always at the house when Kelly was there. **Tr. p. 77, ll. 7-13**

On redirect, Flowers said Kelly's job hours were from 5:00 in the afternoon until 2:00 or 3:00 in the morning. He recalled one night when she did not come home and he had to miss work the next day because he had been watching her child. **Tr. p. 78, l. 20 – 79, l. 16.** Next the prosecutor asked if that one night had been when Justin was at the house. Flowers stated that it was. He was not asked why he would have had to watch Kelly's child all night if the boy's uncle was there. **Tr. p. 79, ll. 17-20**

After the testimony of Flowers, Judge Brown ruled that pursuant to S.C. Code §17-23-175, as well as *State v Anderson*, **413 S.C. 212, 776 S.E. 2d 76 (S.Ct. 2015)**, the video of the forensic interview was not admissible since the interviewer was not available to testify to the requirements set forth in 17-23-175(a). **Tr. p. 80, l. 14-81, l. 21.** The record indicates that Judge Brown viewed the entire video. The record of the trial does not indicate that a copy of the video was introduced as a Court's Exhibit. **Tr. p. 82, l.1 – 83 l. 3; Index to Trial Exhibits, Tr. p. 3.** Judge notes other potential problems with the video of this child's interview pursuant to *State v. Cromer, Anderson and White*.<sup>5</sup>

After the Court's ruling on matters regarding the video of the Victim's interview, an *in camera* Competency Hearing was held to determine the child's competency to present testimony. The victim testified that he had just turned 10 years old, on July 25<sup>th</sup>; this trial was held August 7-9, 2018. **Tr. p. 85, ll. 4-9.** He was born in 2008 and was getting ready to start the fifth grade. He was, at the time of trial, in the process of moving to Sarasota Florida with his family. Clearly the Victim was referencing his new family. Court stops inquiry that goes beyond the purpose of

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<sup>4</sup> The testimony of the Victim, however, suggested that "Mr. David" may have gone to Myrtle Beach with him and his Mom after they left the Flowers' house. In Turbeville.

<sup>5</sup> Citations omitted.

the hearing and is not relevant to competency. **Tr. p. 85, l. 17 - 86, l. 22.** Child gave an explanation of the truth v. a lie and stated that it is wrong to tell a lie. **Tr. p. 86, l. 24 – Tr. 87, l. 13.** States argues he is competent. The Court questions him further. **Tr. p. 87, l. 14- p. 88, l. 24** After the victim was questioned by the Court, Defense Counsel did ask victim if someone might lie to keep from hurting someone’s feelings. Then he asked, [i]s it ever ok to lie? The Victim responded *“no, it’s not okay to lie.”* **Tr. p. 89, ll. 1-9.** The Court ruled that the Victim was competent to testify based upon the testimony he gave during the in camera hearing. **Tr. p. 89, ll. 10 – 20.** State asks Court if they can ask the victim, in front of the jury, if he knows the difference between the truth and a lie. The Court grants the State leave to do so. **Tr. p. 90, ll. 11-19.**

Following the competency hearing, the Victim<sup>6</sup> was the State’s next witness. When he was asked about the truth versus a lie, he gave, almost verbatim, the same answer he had given during the hearing **Tr. 91, l. 17 – Tr. p. 92, ll. 5-15. Compare, Tr. p. 87, ll. 2 – 10.**

Has been living with the Dante’s, his new family for four or three years. Almost four. Leaving for Florida night after lunch **Tr. p. 93, l. 24 – 94, l. 23.** He lived with his grandmother, Sherry, until she passed away, then he lived with his mom, Kelly. **Tr. p. 95, l. 12-22.** He testified that when he lived with his grandma, they lived in a house in a neighborhood. He states that he had lived a few with his mom. He initially described living in a shack type place with two floors and then stated that they had stayed in another house for two weeks. The Victim indentified the house where they stayed with Mr. David as being the house in **State’s Ex. No. 3.** Then the child identified Flowers in Court. **Tr. p. 95, l. 23 – 97, l. 4.**

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<sup>6</sup> Throughout this brief, the minor complaining witness is referenced as *“the child”* or *“the Victim”* in compliance with Rule 41.2, SCRCivP.

In his trial testimony, the Victim said he stayed in that house with Mr. David, Gage, his mom and his uncle Justin, 2 weeks. He identified Appellant in Court as his Uncle Justin. He described Mr. David's house as not being very big. He said he did not remember what time of year it was, but then curiously said "*it was on summer vacation.*" He thinks he was about to start first grade. He recalled that he only stayed at that house one time. While he was there, he slept in Gage's room. **Tr. p. 97, l. 1-18 – 98, l. 25.**

The Victim went on to testify that Appellant stayed in Gage's room with him when his mom was at work. This boy testified that his Uncle Justin "*stuck his thing up my butt.*" He said "*his thing*" was his private part. He additionally claimed Appellant "*also put it in my mouth.*" He said his uncle told he would buy him a Ninja Turtle. **Tr. p. 99, l. 4-100, l. 17.** The State initially asked the Victim a leading question by asking him if "*his uncle*" had "*touched him in a way that...*" Trial Counsel objected to this question as leading and the objection was sustained. There was no follow up Motion to Strike nor was there a request for a curative charge. When asked if he knew whether his uncle left the room right after it happened this young boy said, "*no, I don't remember.*" **Tr. p. 100, ll. 18-20.**

When asked what he was wearing when this incident took place, the child testified, "*clothes and like, kind of, it was my normal.*" The Victim did not say anything about his uncle removing any of his clothes or the uncle taking any of his own clothing off. **Tr. p. 100, ll. 21 – Tr. p. 101, ll. 1-3** (emphasis added). Next the prosecutor asked "*when you said he stuck his thing in your butt, did he put it inside you?*" This question was a misstatement of the child's earlier testimony wherein the child's words were "*up his butt*" not **in** as the prosecutor stated. **Tr. p. 100, ll. 5-6.** Defense Counsel objected to the prosecutor continuing to lead this witness, but the judge overruled the objection and expressly stated, "*I'll allow that question.*" **Tr. p. 101, ll. 4-7.** Despite this favorable ruling, the prosecution *did not* repeat the question, but rather

asked, *“do you remember how it felt?”* The child responded, *“it felt weird.”* Appellant submits that the fact that the prosecution initially asked the question concerning whether the perpetrator put *“his thing” “inside”* him, reflected the State’s recognition that the Victim’s testimony was not sufficient to prove any degree of intrusion into the Victim’s anus. He did not say it hurt. He did not report any physical discomfort. Nor did the State ask any further questions designed to clarify whether there was in fact any degree of intrusion into his anus. **Tr. p. 101, ll. 10-11**

He testified that he subsequently told Gage, the old son of the man he and his mom were staying with, what had happened. At that point, according to the Victim’s testimony, either Gage told his father, David Flowers who in turn told the Victim’s mother, or, Gage told the Victim’s mother and she told Mr. Flowers. **Tr. p. 102, ll. 2-9.** Either way, it was clear that the Victim was aware that his conversation with Gage was repeated to an adult in the household. Early in his testimony he had already stated that he had stayed at the Flower’s house *“about two weeks.”* **Tr. p. 97, ll. 2-4.** He expressly testified that the Appellant was only there *“half of the time... he was there like a week.”* **Tr. p. 103, ll. 14-19.** When asked where he went after he left David’s house, he initially said that he did not remember. Then he said he thought he went to Myrtle Beach with his Mom and later added, he couldn’t remember *“if Mr. David came or not,”* but did not think he did. **Tr. p. 104, ll. 2-7.**

This child testified that his mother was *“mean to [him] a lot”*, that she *“beat him with a belt, and put soap in his mouth”* and that when he started school he had to wear the same clothes every day. **Tr. p. 104, ll. 13-23.** He recalled his mother leaving him for a while at the shack thing, *“we were living in.”* He testified that the kids at school kept making fun of him because he smelled bad and kept wearing the same clothes. He said the nurses and staff talked to him and then *“after that the cops took [him] to the shack place and then my – and then the DSS people came and then I went in the car and then we went, and then my mom now, she*

*drove and then she took me.” Tr. p. 104, l. 24 – p. 105, l. 16.* No one questioned this child as to who else was at the shack place with him and his mother. No one questioned him as to exactly how long he had been left alone in the *“shack place.”*

The victim said he couldn't remember how old he was when he went to live at the Dante's, but he thought he was seven (7). **Tr. p. 105, ll. 17.** He testified that they took him to a doctor because he, *“had problems in my stomach like, I never went poop for a long time so it got hard in there and then I had to go and then it all came out cause it was, was like a big ball of just ---”* **Tr. p. 105, l. 23 – p. 106, l.5.** He testified that he told his [new] mom what had happened to him *“whenever we went to the hospital because it was like the second day we came here.”* He very clearly testified that he did not tell his [new] Dad, but he thought his new Mom told him after the trip to the hospital. **Tr. p. 106, ll. 8-23.** Later he talked to lots of DSS people and then corrected that they were, *“the people that, like the DSS places.”* **Tr. p. 107, ll. 1-3.** He was asked if he told these people *“what happened”* and he said *“yeah”*. **Tr. p. 107, ll. 4-8**

His testimony reflects that he was *“staying for good”* with the Dantes, that they were his new Mom and Dad and he was getting ready to move to Florida with his new family. **Tr. p. 107, ll. 12-23** When asked if the events that he told about in court, as having happened in the yellow house, took place the summer before he went to live with the Dantes, he stated, *“I can't remember.”* **Tr. p. 107, l. 24 – p. 108, l. 3.** On cross-examination, the victim acknowledged that his life before he was taken in by the Dantes was bad and that he was very happy to be living with the Dantes at the time of trial. Near the end of his testimony he reiterated that he had stayed at Mr. David's house for two weeks. **Tr. p. 109, l. 6 – 110, l. 2**

State's Witness Phil Dante, the Victim's "new father", testified at the Appellant's trial. His testimony reflects that he currently ran Sabbath Fellowship for Christian Athletes, but that he was transitioning to a job in Florida where he would be working with Young Life **Tr. p. 113, l.**

17 – 114, l. 3. In 2015 he was working for Fellowship of Christian Athletes and was “*small groups pastor*” at Steele Creek Church of Charlotte. His testimony indicated that he had worked in the Ministry for 25 years, and for Fellowship of Christian Athletes for 3 years. He testified that he and his wife had been foster parents for the last 8-9 years. They were “*taking a break*” from fostering when DSS called and asked if they could take Victim just for the weekend. He testified that he thought Victim had just turned 7 years old when they took him as a foster child. They had been told the child had been severely neglected. They were not told about allegations of child abuse at the time they agreed to take the child on a temporary basis. They did know that he had been left alone by his mother for several days. His teachers noticed he had been wearing the same clothes every day. The school nurse checked him because other children were making fun of him because he “*smelled bad*”. When checked by the nurse, he was found to not be wearing underwear. Mr. Dante testified that they had cleaned him up at DSS, but when the Victim arrived at their home, “*he literally went to the bathroom in his pants probably every 30 minutes; but other than that, you could tell he was just a sweet boy.*” Tr. p. 114, l. 4 – p. 116, l. 2.

Described the victim as “*basically leaking*” so they took him to the hospital. Without objection, this witness was allowed to testify that the child said he “*couldn’t remember the last time*” he had gone to the bathroom. Tr. p. 116, ll. 3-12. The child ended up in hospital two nights. Mr. Dante testified his wife ended up staying at the hospital with the child. Mr. Dante testified that, “*he had a condition where – we didn’t know what kind of abuse had happened to him but you know, he just was not going to go number two and so they had to all kinds of different enemas and things. It took him two days to get it all out it was so backed up.*” Tr. p. 116, ll. 17 – 22. He stated, “[t]hey said, that it’s probably from some sort of trauma caused him to get that backed up.” Tr. p. 118, l. 15 – p. 119, l. 1. Mr. Dante’s wife, who he said was

the one who stayed with this child for a couple of days at the hospital, was not in court for this trial. According to Mr. Dante's testimony, she had already gone on to Florida to get his daughters enrolled for school. **Tr. p. 122, ll. 5 – 14.**

Next the prosecutor asked this witness, *"[d]id [Victim] told you [sic] about the incident."* **Tr. p. 116, ll.24.** Trial Counsel objected to this question on grounds of hearsay. **Tr. p. 116, l. 25 – p. 117, 1.** Then the Court asked the prosecutor to, *"[s]tate your question please."* **Tr. p. 117, ll. 5.** The Prosecutor then directly asked this witness, *"[d]id Victim told [sic] you about the incident that happened between him and his uncle."* **Tr. p. 117, ll. 7 – 8 (Emphasis added).** Defense counsel again objected to this question on grounds of hearsay and noted, *"[n]ow he is testifying as to what Marcus said."* **Tr. p. 117, ll. 24 – 25.** This objection was overruled and the trial judge stated, *"[n]o, he's not. He's testifying as to time and place which I believe are allowed under the statute, are allowed under the rules."* Then, obviously addressing he witness, the judge states, *"you are not allowed to testify as to what he told you, other than time and place---."* **Tr. p. 118, ll. 1-3.** In response to this, the witness said, *"Okay."* **Tr. p. 118, l.6.** The Court subsequently allowed testimony from this witness concerning where and when *"it happened"*. This witness then said the Victim told him it happened when he was staying with his mother at David's house. As for when *"it"* happened, he said, *"I believe he mentioned it was in the summer. He was out of school"*. **Tr. p. 118, ll. 19 -20.** Next the Prosecutor asked, *"[a]fter Marcus mentioned the incident between him and his uncle, what did you and your wife do with that knowledge?"* **Tr. p. 119, ll. 5-7.**

He testified that he and his wife talked to DSS and that a DSS investigator had a lengthy conversation with the victim. He expressly testified that the Victim came to live with them in the month of October. **Tr. p. 119, l. 11-21.** When asked if the police got involved during the same month, his response was, *"[y]eah, that's that week."* **Tr. p. 119, l. 5-25.** There were no follow

up questions clarifying when in October the police got involved, or, when in October the Dantes took the Victim into their home. Mr. Dante testified that the victim was placed with them in 2015 and reiterated it was originally just for the weekend. He stated that, *“after two years we were able to adopt him.”* Tr. p. 120, ll. 2-25. He said they were able to adopt the victim because his mother never came to see him. He testified *“[t]he adoption was finalized six months ago...”* Tr. p. 121, ll. 1-19. Then the prosecution asked this witness if the child’s mother had *“tried to make contact.”* He indicated she had not and added that, *“[s]he’s been in prison so we’ve had to get her information, but just to let her know where [Victim] is and that he’s in a good place.”* Tr. p. 121, l. 23 - p. 122, l.1.

When discussing whether the victim attended counseling, the witness testified that he did, *“for the things that happened with his mom he was going to counseling, as well as the things that he shared about what was going on with him and his uncle.”* Tr. p. 122, l. 20-25. When he was asked if the victim had completed counseling, this witness next testified, *“He did, but they said until the type of trauma he went through, that as a child he dealt with it best he could; but it will be lifelong, that he to keep [sic] and, you know, depending on where he was as far as his willingness to ---”* Tr. p. 123, ll. 2-6. The defense objected to this testimony on grounds of hearsay. That objection was sustained. Tr. p. 123, ll. 7-8. There was no request for this testimony to be stricken or for a curative charge.

The State’s next witness was [the older son of David Flowers]. He was asked his address and supplied it. That address has been redacted to comply with Rule 41.2, SCRCP.

Tr. p. 125, l. 7-10. He testified that he had lived there four and a half, almost five (5) years. He stated that he lives there with his Dad and brother. He acknowledged that sometimes his mom would stay a weekend. When asked if anyone else came to visit they have lived there he said, *“no”* Tr. p. 124, l. – 126, l. 4. At first he testified that he met Victim at the lake, but then

corrected himself and said one day in July when his father told him he was helping this woman and her son out, *“but it was like a week before I met [Victim] and I got along good with him.”* Tr. p. 126, l. 5–15 He went on to say the Victim was five or six at the time they met in 2015. The Prosecution asked this witness how long Marcus had lived with him and he said, *“[i]t could have been three weeks to a month.”* When asked, *“who else”*, he testified, *“her—Kelly, Marcus, and Justin.”* He gave his room to Kelly, and Appellant slept on the couch, while he slept on the loveseat. When asked if Appellant stayed the whole time Kelly, and her son were there, he gave a confusing answer. *“Only about a week, maybe eight days maybe cause I think he stayed one or two days.”* Tr. p. 126, l. 16 – Tr. p. 127, l. 15. He recalled the trip to Lake Wateree and said, he and his *“Dad and [his] brother, Noah, and Kelly and Marcus”* went on the trip to Lake Wateree for, *“about three days, just the weekend.”* Tr. p. 127, ll. 16-25. He testified that he thought they went and picked up Justin the day after they got to the lake. He believed it was Saturday. Tr. p. 128, ll. 1-5. He stated that they did not go with his father to pick Appellant up. He and his brother stayed at the apartment they were at. He clearly testified that Appellant spent that night with them at Lake Wateree. Tr. p. 128, ll. 1-13

They all went home the next day. Gage testified that he was there the entire Appellant was there, except for two days when he went to his grandmother’s home in Cades, South Carolina. By the time he returned home, Appellant had left. Tr. p. 128, L. 1 – p. 129, l.11.

The jury left Courtroom for an *in camera* proceeding held during Gage’s testimony Tr. p. 129, ll. 14-21. During that hearing, the State asks if they will be allowed to ask Gage about what the Victim told him “about the incident that happened between him and ---” Trial Counsel interjected a hearsay objection at that point which lead the State to respond, *“[l]imited time and place.”* The Court goes on to rule the prosecution will be limited to testimony regarding time and place. Court expressly notes that the identity of the perpetrator is excluded. The Court

specifically asked this witness if *he* understood the Court's ruling and the witness said that he did. **Tr. p. 131, l. 24 – p. 134, l.8**

Appellant was gone. He affirmed that Appellant was gone when he got back **Tr. p. 136, ll. 16-23**. This witness, as previously noted, had however testified that he was gone to his grandmother's for two days. **Tr. p. 128, ll. 21-25**. His father had likewise testified that he was gone to his grandmother's house for "*a couple of days*." **Tr. p. 76, ll. 12-16**. He confirmed that the Victim told him about the incident when he came back from his grandmother's house and that he subsequently told the Victim's mother, Kelly what the Victim had told him. **Tr. p. 134, ll. 15 – 24**. Kelly, testimony from the Victim's mother was noticeably missing from this trial. Not only that, but there was no mention of who the Victim's father was and whether he had any ongoing contact with this child.

The prosecution directly asked Gage, "*did [the victim] told you [sic] about the incident?*" To which the witness responded, "*yes, ma'am*." **Tr. p. 134, ll. 15-18**. He then testified that the victim did not tell him when or where "it" happened. **Tr. p. 134, l. 19-22**. He confirmed that he told the Victim's mother about what he was told. **Tr. p. 134, l. 23-24**. On cross-examination this witness stated that the Appellant stayed at his family's house for a week. **Tr. p. 136, ll. 6-9**.

The State next presented testimony from Noah, the younger son of David Flowers. Like his brother, he testified that the Victim, his mother Kelly and Appellant stayed at their house during the summer of 2015. He recalled their trip to Lake Wateree and testified that Appellant was not with them when they first arrived, but came on Saturday. He clearly testified, like his brother Gage, that Appellant spent the night at Lake Wateree before they all headed home. **Tr. p. 138, l. 17-p.139, l. 14**. This witness testified that when the other's went to Turbeville at

the end of their weekend at the lake, he went back to his Aunt's house; he thought for the rest of the summer. **Tr. p. 139, ll. 15-20.**

David Jones, the Police Chief for the town of Turbeville testified that he initiated his investigation in this case after he received a packet from Investigator Moore of the York County Sheriff's Office on October 26, 2015. **Tr. p. 140, l. 22 – p. 141, l. 6.** Based upon that information, *“we were able to identify the Defendant, a Justin Cameron, as being a suspect in the incident and obtained a warrant for his arrest.”* He testified that he thought Appellant was arrested in April of 2016. **Tr. p. 141, ll. 8-16. State's Exhibit No. 2,** a Department of motor vehicles driver's license record photograph, and driver information for Justin Cameron, was introduced into evidence without objection. **Tr. p. 141, l. 19 – p. 142, l. 17.** That exhibit reflected a date of birth for Appellant. **Tr. p. 142, ll. 19-21.** From there he obtained a warrant after Judge Coleman found probable cause for the arrest. **Tr. p. 142, l. 22-p. 143, l. 5.** Next this witness explained how and when Appellant became arrested on that warrant. He identified Appellant in Court as Justin Cameron. **Tr. p. 143, l. 1 – p. 144, l. 18.**

This law enforcement officer testified that due to the passage of time when they received this case, *“it was outside the realm of being able to collect”* any physical evidence. **Tr. p. 145, l.-5.** On cross-examination Lt. Jones indicated that they knew Miss Cameron, Appellant's sister, was incarcerated in SCDC and upon her release went to Hope Home in Florence. They discovered she was *“evicted or ejected”* from there. He indicated, *“that was the date that we had in our investigation.”* Although he testified that they used that date in their investigation, he did not testify to what that date was. In questioning this witness, the State once again somewhat overstated previous testimony when she asked, **“[s]o Mr. Flowers indicated they stayed with him from mid-July to mid-August, would you say that's in that range?”** He said he believed the range they used was, *“the end of June until some point in August.”* The arrest warrant in

this case in fact alleged a time range of between “*June 26, 2015 and August 5, 2016*” Arrest Warrant No. 2015A1420300028, issued by Judge Luci M. Coleman on November 19, 2015. Therefore, as the testimony of this witness verifies, the start date of that range had nothing to do with any evidence concerning when Appellant was alleged to have been with the Victim, but rather was tied to when the mother got thrown out of the Hope Home program and facility. As previously noted, Lt. Jones testified they were “*unable to find any physical evidence due to the time frame that we had there.*” Tr. p. 147, ll. 10-13. Earlier in his testimony we actually admitted that they never tried to collect any physical evidence. Tr. p. 145, ll. 1-5.

After breaking for lunch, the trial judge agreed that the Stated needed to proffer the testimony of their next witness; Megan Munson. Tr. p. 148, l. 8 – p. 149, l. 20. Ms. Munson’s education and training were explained by her in detail and included her assertion that she had “*her graduate degree in clinical psychology*”. She testified that she had in state court in South Carolina four or five times. Tr. p. 150, l. 3 – p. 153, l. 15. Megan Munson was offered as an expert in “*the field of child abuse disclose*”. Tr. p. 150, l. 1 – p. 153, l. 18. After questioning this witness briefly, Defense Counsel did not object to her being so qualified. Tr. p. 154, ll. 1 – p. 155, l. 7 She was also questioned by the Court concerning her qualifications. Tr. p. 155, l. 3- p. 156, l. 13. During that questioning, it was disclosed that she did not have a doctorate degree and, although she had testified four or five times in state court in South Carolina, she had never been qualified as an expert witness. Tr. p. 155, l. 8 – p. 156, l. 10. During her proffered testimony, she revealed that she had never interviewed the minor victim in this case. She had not received any police incident reports or statements associated with this case. All her knowledge about this case came from the Solicitors Office. Tr. p. 156, ll. 14-24. She proffered testimony relating to delayed disclosure, and/or partial disclosure. Tr. p. 156, l. 25 – p. 159, l. 18. She also proffered testimony concerning whether it was unusual for a child not to physically resist or cry

out when being sexually abused. **Tr. p. 159, l. 21 – p. 160, l. 15.** Next she proffered brief, general testimony on grooming behavior by a predator. **Tr. p. 160, l. 16-p. 16, l. 3.** Despite asserting that predators will commonly engage in different grooming tactics because they want a “*compliant victim*” and “*they don’t want the child to tell*”, she offered no testimony concerning what behaviors are considered grooming behavior or whether such behavior typical occurred over a period of time.

On cross-examination, this witness admitted that she knew absolutely nothing about this child and verified that she had not seen the video of the forensic interview. **Tr. p. 161, l. 7-p. 162, l. 23.** Defense Counsel argued that this witness’s testimony was not relevant and would be more prejudicial than probative. Interestingly, it was during this discussion that the State acknowledged that the first disclosure to an adult was to his foster mom; who was not a witness at trial. The state argued that there was delayed reporting to an adult. Defense Counsel, however, noted correctly that the child almost immediately told Gage and, as the victim’s trial testimony reflected, he knew that information had been passed on to both Gage’s father and his mother. **Tr. 163, l. 7 – p. 166, l. 24.** After lengthy discussion, the court ultimately allows this witness’s testimony on the theory that the defense opened the door to it by implying the Victim only told his story once he was placed with his foster family, that he wanted to get to stay with his new family and did not want to go back to his old situation. It making that ruling, it is clear from the record that in reaching this holding, the Court took into account feelings about the case expressed at side bar or in chambers.<sup>7</sup> **Tr. p. 166, l. 25 – p. 170, l. 13.**

Ultimately, Defense Counsel did not object to Munson being qualified as an expert “in child abuse.” **Tr. p. 171, l. 20.** Defense Counsel did preserve, however, Appellant’s objection to her testimony being irrelevant and more prejudicial than probative and the Court once again

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<sup>7</sup> **Tr. p. 167, l. 20 – p. 168, l. 1.**

overruled, “*at this stage.*” Tr. p. 178, ll. 19-23. Munson’s testimony in the presence of the jury was consistent with her *in camera* testimony with the exception of her adding the references to gift giving and other activities as examples of grooming behavior. See, Tr. p. 182, ll. 1-12. Tr. p. 178, l. 24 – p. 184, l. 25.

Following the testimony of Ms. Munson, the state had rested its case, and the jury was excuse for the balance of the day. Tr. p. 185, ll. 7 – p. 186, ll. 14. Appellant made a motion for a directed verdict on the ground that the State had not proven the elements of the crime. That was motion was denied. Tr. p. 186, l. 19 – p. 187, l. 21.

Prior to the testimony of the first witness for the defense, Mrs. Shirley Milsaps, the parties agreed that the defense would be permitted to introduce, without objection, a letter she obtained from the York County Sheriff’s Department documenting Appellant’s detention the York County Detention Center. Tr. p. 191, l. 7 – p. 192, l. 18. Before her testimony, the Court once again advised the Appellant of the potential sentencing consequences of moving forward with his jury trial versus accepting a plea offer to plead to a lesser charge for a sentence of ten years; Assault and Battery in the First Degree. He was addressed that, unlike the crime for which he was on trial, the lesser-included charge was not a most-serious strike on even a serious one. He was advised the charge he was on trial for carried a mandatory minimum of twenty-five years in prison, carried mandatory sex offender registration and was a no-parole offense. He was advised that, with credit for his jail time served, he, “*would probably be home in a year-and-a-half.*” He was advised that if he was convicted of First Degree Criminal Sexual Conduct he would be sentenced to twenty-five (25) years to life in prison and that whatever sentence was imposed would be a no-parole sentence. Further, he was advised that if he took the negotiated plea that was being offered to him, he would be eligible for parole after serving one-third of her sentence. Notwithstanding each of these factors, Appellant elected to go through with his jury

trial. **Tr. p. 198, l. 13 – p. 202, l. 5.** He also advised the Court of his intent to testify. **Tr. p. 202, ll. 7-10; Tr. p. 198, ll. 1-12.**

In her trial testimony, Shirley Milsaps, the Administrative Assistant at her church in Rock Hill, explained how Appellant had come to their food bank and been turned away because he did not have a current picture ID. He later came back and broke in and took the food he needed. The church decided not to press charges that time, but he broke in a second time and was charged. He served time for that break in, but when he was released he was allowed to do community-service at their church. She also testified that as a result of these events, the director of the church food pantry had changed their policy regarding turning anyone away. **Tr. p. 203, l. 7 – p. 204 l. 23.** She testified that Appellant began his community service sometime between March and April, 2015 and from then on she saw him basically every day because she picked him up in the morning and gave him a ride at night. She said he continued doing community service at the church after his thirty (30) required hours were completed. He only quit when he was incarcerated July 17, 2015 – September 28, 2015. **Tr. p. 205, l. 1 – p. 210, l. 2.** This witness admitted the church had been paying Appellant cash “*under the table*” while he worked at the church and that it was actually her own money that was being used to pay him. **Tr. p. 211, l. 22 – p. 212, l. 12.** Mrs. Milsaps testified that when Appellant was incarcerated it was for breaking into his grandmother’s house that had been abandoned and foreclosed on. **Tr. p. 208, ll. 15-22.** She testified that the letter from the York County Sheriff’s Department proved that Appellant could not possibly have been in Turbeville for a week as was testified to by the State’s witnesses because he was in jail in York. **Tr. p. 211, ll. 2-11.** Her previous testimony established that he could not have been there for a week before the middle of July because he was working at the

Church during that time period and was seen by her almost daily.<sup>8</sup> The balance of her testimony addressed the fact that she and her husband had taken the Appellant in as basically a family member and had been trying to give him a chance to turn his life around. **Tr. p. 216, l. 15- p. 217, l. 20.** The state introduced five (5) posts from this witness's Facebook account in an effort to show bias due to the fact that her family had treated Appellant so well. **Tr. p. 217, l. 21 – p. 218, l. 4.** Appellant objected to these exhibits being introduced on grounds of relevancy. **Tr. p. 219, l. 24-4.** States Exhibits 6-11 were introduced over the objection of the defense. **Tr. .p. 220, ll. 5-12.** State's Exhibit No. 12 was marked for identification only. It was the written statement by Mrs. Milsaps. **Tr. p. 219, ll. 6-21.**

The prosecution questioned Milsaps at length concerning five Facebook posts which showed a close relationship between Mr. and Mrs. Milsaps and Appellant. **Tr. p. 222, l. 17 – p. 227, l. 7.** She was then questioned extensively concerning her written statement, titled, *“Recollection of Justin whereabouts for June 26<sup>th</sup> through July 17”*, which had previously been marked State's Exhibit No. 12, for ID only. She testified that she used the end date of July 17<sup>th</sup> because that was the date Appellant had been arrested for an unrelated crime; breaking in his deceased grandmother's home which was in foreclosure. **Tr. p. 207, l. 13-p. 208, l. 22; Tr. p. 228, l. 25-p. 229, l. 9.** As has previously been noted, the arrest warrant alleged a window from June 26, 2015 to August 5, 2015. **Warrant No. 2015A1420300028.** The indictment expanded that time frame to June 1, 2015 to August 30, 2015. **Indictment No. 2016-GS-14-0161.** Milsaps testified that she wrote this statement/timeline herself, without assistance, and used a calendar to assist her in compiling it. She said that calendar documented the days she gave Appellant a ride to and from her church. Previous testimony established that the church is located in Rock Hill and gave him daily rides to and from church. **Tr. p. 205, l. 17 – p. 207, l. 16; Tr. 228, ll. 21-24;**

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<sup>8</sup> She admitted there was *one day* when Appellant was given a ride to the church by a friend.

Tr. p. 229, ll. 16-25; Tr. p. 230, ll. 1-17. She testified that she had not picked Appellant up on July 17<sup>th</sup> because he had a friend coming to take him. She said he did come [to the church] that day and she gave him ten dollars. Tr. p. 231, ll. 1-15. When the prosecutor tried to characterize that testimony as asserting that, “[s]o then it was that one day, one day, in two years that you know him, [sic] that he, that you didn’t pick him.” Milsaps then clarified that her statement didn’t cover, “two years, it was like two weeks.” Tr. p. 231, l. 16-24 (Emphasis added). On re-direct examination Milsaps clarified that she had her calendar with her and referenced it when she prepared her statement. Tr. p. 223, ll. 11-24. During cross-examination, the prosecution questioned this witness in a manner that implied there was something untoward about her relationship with Appellant. She testified that Appellant was 23 at the time of this trial and she was 67. Tr. p. 230, ll. 15-25. That established that in the summer of 2015 they were 20 and 64 years old respectively.<sup>9</sup> On re-direct, Milsaps emphasized that her church was trying to help him turn his life around. She testified that there was nothing between her and Appellant. She said her husband had been with them constantly. She acknowledged having taken Appellant into their home and treating him like family. She acknowledged that helping Appellant was the Christian thing for her family, and her church, to do. Tr. p. 234, l. 11-p. 235, l. 18. On re-direct the State got Milsaps to acknowledge that she had not shown the calendar she used creating the statement she gave Appellants trial lawyer on April 6, 2017 to anyone. Tr. p. 235, l. 22 – p. 236, l. 9; Tr. p. 230, ll. 3-9.

At the conclusion of Milsaps testimony, the trial judge noted that none of the State’s Exhibits previously marked **State’s Ex. No. 6-12 for ID** had been introduced into evidence and

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<sup>9</sup> Cross-examination of Milsaps begins at Tr. p. 213, l. 22 and ends at Tr. p. 233, l. 5. Headers for Tr. p. 222-232 are erroneously captioned as direct or redirect.

they would not be going back with the jury during their deliberations. **Tr. p. 236, l. 15 – p. 237, l. 6.**

Two pastors from the church where Appellant did community service, Calvary Baptist Church in Rock Hill, testified for the defense at Appellant's trial. Tony Larson, was an associate pastor there for 13 years until "*almost two years*" before Appellants trial. **Tr. p. 237, l. 13 – p. 238, l. 8.** He said he normally was at the church, "*Monday mornings through Thursday afternoons.*" He said he was sometimes in and out on Friday. He said he was actually in and out, "*most every day of the week. And of course I was there on Sundays, you know, pastors always work.*" **Tr. p. 238, l. 22-p. 239, l. 2.** His testimony was that from June until the middle of July, he saw Justin at the church doing, "*[l]ittle odd jobs, picking up moving stuff that we needed to move and little clean up jobs, stuff like that.*" **Tr. p. 239, ll. 16-23.** Although he could not say he saw Appellant everyday, this witness testified that on the days this pastor was there, he "*knew*" Appellant was there. **Tr. p. 239, l. 24. P. 240, l. 11** During the time in question, this witness testified that he saw Appellant a lot. After Appellant broke in the church in the summer of 2014, Pastor Larson, only vaguely remembered seeing Appellant. **Tr. p. 240, l. 13 – p. 241, l. 22.** Previous testimony established Appellant went to jail after his second break-in at this church. *After being released from jail*, he didn't start doing community service at the church in approximately April of 2015. It is therefore logical that this pastor would not have clear memories of seeing Appellant the summer of the break-in.

The next defense witness was Michael Polson. He too was on staff as a pastor at Calvary Baptist. **Tr. p. 242, l. 16 –** This pastor said he took a Saturday to Saturday the week of the 4<sup>th</sup> and returned to Calvary Baptist the Sunday after the 4<sup>th</sup> which was the 5<sup>th</sup>. He testified that the following week he went on a mission trip, but from the 5<sup>th</sup> to the 9<sup>th</sup> he was in and out of the church daily. During that time period he recalled seeing Justin at the church. He testified the

church was trying to help Appellant, not just Mrs. Milsaps. He asserted he would not lie for Appellant. **Tr. p. 244, l. 9-p. 245, l. 7.**

The Appellant testified at his trial. He acknowledged that he had broken into Calvary Baptist Church. Earlier testimony established he had twice broken into their food pantry. He said he was put on probation for that and did his community service at that same church. He testified that he met Mr. and Mrs. Milsaps at that church. **Tr. p. 248, l. 1 – p. 249, l. 10.** Appellant acknowledged that from July 17, 2015, to the end of September, 2017, he was locked up for breaking into the church. **Tr. p. 249, l. 13-18.** Mrs. Milsaps's earlier testimony reflected that Appellant went to jail for the *second* time he broke in the food pantry at Calvary Baptist Church. The letter she obtained from the Moss Justice Center, in York County, which was introduced as Defendant's Ex. No. 1 during her testimony, **Tr. p. 207, l. 17- p. 208, l. 13.** She testified that she was motivated to obtain this letter because she had read Appellant's warrant and knew he had been locked up during the time period it referenced. That letter, introduced without objection by the state, proves that Appellant was in custody from July 17, 2015 to September 28, 2015. **See, Defendant's Ex. No. 1.**

Appellant's testimony reflects that he had not had a close relationship with his sister Kelly's son, the alleged victim in this case. He said that there had not been much communication between them due to him being homeless and his nephew staying with different relatives. **Tr. p. 251, l. 15-24.** His testimony reveals that he had recently gotten his driver's license but, that he didn't have a driver's license or a car back then. He expressly denied going to Turbeville during this time period.<sup>10</sup> **Tr. p. 250 l. 9 – 251, l. 6.**

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<sup>10</sup> Earlier testimony presented in the State's case reflected that law enforcement had obtained an old picture of Appellant from when he was much younger and either got a learners permit or his first license from the DMV. **Tr. 141, l. 19 - p. 142, l. 4.** It is difficult to imagine how law enforcement could have gotten his DMV records and not have been able to tell whether the

## DISCUSSION

As noted in the summary of the trial testimony, *supra*, during the testimony of the Victim's former foster father, now adoptive father, the prosecutor asked this witness, “[*djid* [*Victim*] told you [*sic*] about the incident.” Tr. p. 116, ll.24. Trial Counsel objected to this question on grounds of hearsay. Tr. p. 116, l. 25 – p. 117, 1. Then the Court asked the prosecutor to, “[*s*]tate your question please.” Tr. p. 117, ll. 5. The Prosecutor then directly asked this witness, “[*djid* Victim told [*sic*] you about the incident that happened between him and his uncle.” Tr. p. 117, ll. 7 – 8 (Emphasis added). Defense counsel again objected to this question on grounds of hearsay. Tr. p. 117, ll. 9-10. The lower court then responded by ruling, “I’ll allow you to answer whether or not he said anything, but I will not allow you to go into what he said. It’s a yes or no answer.” This witness, answered, “yes”<sup>11</sup>. Tr. p. 117, ll. 7 – 15. Later after the prosecutor asked this witness whether the Victim told him “where it happened”, this witness said “yes”. When he was asked where it happened, this witness responded, “He said he was staying with his mother - - -”. Defense Counsel immediately objected to this testimony on grounds of hearsay and noted, “[*n*]ow he is testifying as to what [*Victim*] said.” Tr. p. 117, ll. 24 – 25. This objection was overruled and the trial judge stated, “[*n*]o, he’s not. He’s testifying as to time and place which I believe are allowed under the statute, are allowed under the rules.” Then, obviously addressing the witness, the judge states, “you are not allowed to testify as to what he told you, other than time and place---.” Tr. p. 118, ll. 1-3. In response to this, the witness said, “Okay.” Tr. p. 118, l.6. The Court subsequently allowed testimony from

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picture of Appellant when he was younger was from when he obtained a learner’s permit or an actual unrestricted driver’s license. Appellant, even after hearing this testimony, firmly testified that he had not had a driver’s license before the one he had recently obtained. Tr. p. 251, ll. 7 – 12.

<sup>11</sup> The Victim in fact testified that he told his new Mom what had happened, “whenever we went to the hospital” and he thought she told his dad. Tr. p. 106, ll. 8-23.

this witness concerning where and when “*it happened*”. This witness then said the Victim told him it happened when he was staying with his mother at David’s house. As for when “*it*” happened, he said, “*I believe he mentioned it was in the summer. He was out of school*”. Tr. p. 118, ll. 19 -20.

By this stage of Appellant’s trial the jury had already heard the Victim’s testimony and knew that, “*the incident*” was when this child claimed his Uncle Justin had sexually assaulted him in the home of Mr. Flowers. Appellant respectfully submits that allowing the State to expressly ask, “[*d*]id Victim told [*sic*] you about the incident that happened between him and his uncle.” Tr. p. 117, ll. 7 – 8 (Emphasis added), was no different than allowing the State to ask this witness whether the Victim had identified Appellant as the person who sexually assaulted him. As such, it elicited a response that exceeded the boundaries of the rules in South Carolina concerning such testimony.

In *State v. Munn*, 292 S.C. 497, 499-500, 357 S.E.2d 461, 463 (1987), our Supreme Court stated that it wished, “to note for the benefit of the bench and bar that there is no rule allowing any and all statements made by the alleged victim to be admissible through hearsay testimony as long as the victim testifies during the case. It is true that when the victim takes the stand and testifies, evidence that she complained of an assault may be introduced to corroborate her testimony. *State v. Cox*, 274 S.C. 624, 266 S.E.2d 784 (1980). This right is limited in nature, however.” The High Court went on to cite the decades older opinion in *State v. Sharpe*, 239 S.C. 258, 122 S.E. 2d 622 (1961), for the principle that, “[t]he particulars or details are not admissible but so much of the complaint as identifies 'the time and place with that of the one charged' may be shown.” *Sharpe*, 239 S.C. at 272, 122 S.E. 2d at 629 (1961). *Munn, supra*, remains good law and has often been cited in South Carolina in cases addressing the introduction of hearsay testimony which is not admissible because it exceeds the limits put on such testimony by **Rule**

**801(d)(1)(D), SCRE.** *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260, (2001); *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994); *Simpkins v. State*, 303 S.C. 364, 367, 401 S.E.2d 142, 143 (1991).

A major change in the application of the principle emphasized in *Munn*, as well as Rule 801(d)(1)(D), SCRE, took place in 2011 when our Supreme Court overruled *Jolly*, and its progeny, to the extent those cases imposed a categorical, or *per se* rule, precluding a finding of harmless error based upon the wrongful admission of such testimony. See, *State v. Jennings*, 394 S.C. 473, 482, 716 S.E.2d 91, 95-96 (2011). Since that time, violations of this rule have been subject to harmless error analysis. See, *Thompson v. State*, 423 S.C. 235, 245-46, 814 S.E.2d 487, 492 (2018).

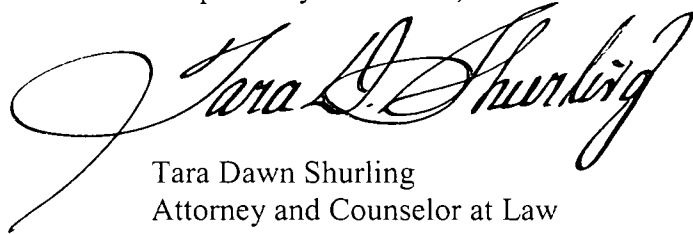
Appellant submits that evidence in his case was far from so strong that this blatant error should be found to constitute harmless error. Toward that analysis, Appellant has provided above a detailed summary of all the evidence admitted at Applicant's trial. He most respectfully submits that the testimony introduced against him was riddled with inconsistencies, missing witnesses and faulty memories. Appellant admits that there were many lost opportunities in his trial to challenge much of the State's case. He asserts however, that the State's case was not so overwhelming that his fundamental right not to be convicted based upon inadmissible hearsay should be written off as harmless error. When closely examined, the timeline put forth by the State in this matter simply does not pass scrutiny. Appellant's alibi, backed up by evidence generated by a York County law enforcement agency, is incompatible with his guilt. The testimony of the state's own witnesses establishes this fact. It is impossible to know to what extent the improper bolstering of this child Victim's testimony resulted in this jury not finding reasonable doubt. Appellant most respectfully submits that what the Court can, and should, do is look closely at the aspects of this case that were likely to raise reasonable doubt. The fact that the

mother of this child was not produced as a witness, the fact that this young boy, a mere seven years old when he was allegedly anally sodomized by an adult male, described the actions of his Uncle as, “*sticking his thing up my butt*”, without more specifically testifying what he meant by that description, the fact that children historically refer to their bottoms as their “butt” and yet the State chose to abandon the opportunity to ask whether this child meant he experienced an intrusion which included some degree of actual anal penetration, the fact that the child referenced whatever he did experience as feeling “*weird*” as opposed to it being painful and, last but not least, the total absence of any physical evidence of sexual assault and the fact that the doctors who treated this child for intestinal problems months later were not brought to court as witnesses. Furthermore, a fair review of the testimony in this case demonstrates the fact that the time line provided by all the state’s witnesses, including the Victim and the man in whose home the child was supposedly staying at the time of the assault, Mr. Flowers, is not compatible with the alibi provided not only by people who knew Appellant, but also by the records of a law enforcement agency. Taking all these factors into account, Appellant respectfully submits that this error should not be found to be harmless. It is his position that the failure of the trial court to enforce the limitations put on the introduction of this type evidence pursuant to Rule 801(d)(1)(D), SCRE , as well as the South Carolina case law discussed, *supra*, resulted in a violation of his right to due process of law. U.S. Const. Am. V and U.S. Const. Am. XIV.

## CONCLUSION

Based upon the foregoing arguments and authorities, Appellant asks that his judgment and sentence be reversed and that his charges be remanded to the Clarendon County Court of General Sessions for a New Trial.

Respectfully Submitted,



Tara Dawn Shurling  
Attorney and Counselor at Law  
S.C. Bar No. 5099

Law Office of Tara Dawn Shurling, P.A.  
3614 Landmark Drive  
Suite A  
Columbia, SC 29204

(803)738-8622 Office  
(803)738-1600 FAX  
[tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

ATTORNEY FOR APPELLANT

This 8<sup>th</sup> day of October, 2019