THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Appellate Case No. 2018-001257

The State,.. Respondent,

v.

Charles Dent, ... Appellant.

FINAL BREIF OF APPELLANT

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QUESTIONS PRESENTED

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Did the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants?

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Did the trail judge err by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute?

Question XI

Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

STATEMENT OF THE CASE

On July 15, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Charles Dent with two counts of third-degree criminal sexual conduct with a minor and two counts of disseminating obscene material to a minor twelve years of age or younger involving his granddaughter J.M. R. 17-18.

On July 30, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Mr. Dent with two counts of first-degree criminal sexual conduct with a minor involving his granddaughter J.M. R. 19-20.

On August 22, 2014, the Calhoun County Alabama Sheriff's Office served a fugitive from justice arrest warrant on Mr. Dent at his home in Rabittown, Alabama. At

the same time, law enforcement executed a search warrant and seized electronic devices and electronic storage devices.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01674 alleging Mr. Dent committed first-degree criminal sexual conduct with a minor, "between April 2013 and August 2013," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 33-34.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01673 alleging Mr. Dent committed first-degree criminal sexual conduct with a minor, "between August 2013 and April 2014," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 31-32.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01671 charging Mr. Dent with disseminating obscene material to a minor twelve years or younger, "between the dates of April and April 2013," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." R. 25-26. On March 15, 2018, the Beaufort County Grand Jury amended this indictment to allege, between "April of 2013 through April of 2014," Mr. Dent showed J.M. "multiple photographs of his own genitalia on a digital camera." R. 23-24.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01672 charging Mr. Dent with disseminating obscene material to a minor twelve years or younger, "between the dates of August 2013 and April 2014," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." R. 29-30. On March 15, 2018, the

Beaufort County Grand Jury amended this indictment to allege, "between April of 2013 and April of 2014," Mr. Dent showed J.M. "pornography." R. 27-28.

From May 21-24, 2018, the State tried Mr. Dent before the Honorable Alex Kinlaw, Jr. and a jury. Alexandra M. Joseph and S. Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office represented the State. E. Charles Grose, Jr. represented Mr. Dent. The jurors found Mr. Dent not guilty of first-degree criminal sexual conduct with a minor "between the dated of April 2013 and August 2013" (Indictment No. 2024-GS-07-01674). R. 12. The jurors found Mr. Dent guilty of first-degree criminal sexual conduct with a minor "between the dates of August 2013 and April 2014" (Indictment No. 2014-GS-07-01673) and both counts of disseminating obscene material to a minor twelve years or younger. R. 9-11. Judge Kinlaw sentenced Mr. Dent to concurrent terms of imprisonment of thirty years for first-degree criminal sexual conduct with a minor and fifteen years for each count of disseminating obscene material to a minor twelve years or younger. R. 13-15.

On June 1, 2018, Mr. Dent moved for a new trial. R. 73-79. On June 4, 2018, the State responded. R. 82-86. By written order dated June 17, 2018, filed on June 22, 2018, Judge Kinlaw denied the motion for a new trial. R. 16. This appeal follows.

STATEMENT OF FACTS

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

On February 28, 2018, the Honorable Carmen Mullen convened a hearing on Mr. Dent's written motion to compel disclosure of records of the children's advocacy center, pursuant to *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713, 726 (2017), because J.M.'s "state of mind" might be an issue at trial. R. 35-41. The State agreed these records

should be provided to the Court for an *in camera* review. R. 92-99. Judge Mullen ultimately released records from Hopeful Horizons, formally known as Hope Haven of the Lowcountry, and Cape Fear Behavioral Health Center, LLC in Fayetteville, North Carolina. R. 1-8.

The parties also discussed the execution of a search warrant at Mr. Dent's home in Alabama. The Solicitor stated:

> [D]uring her Hope Haven interview, [J.M.], the victim in this case, stated that the defendant took images of her and that he hid the card that these images were on, the phone card or – I'm sorry – the memory card in his property in Alabama.
>
> Because of that allegation, his property in Alabama was searched. They searched all his electronics. They found child pornography on his computer. They never found the memory card. So the memory card that was part of her allegation never recovered.
>
> And they found 151 images of possible child erotica and 60 images of possible child pornography and, in those images, 12 depict the subject's granddaughter bent over while facing the camera. Or – and I'm getting – what I'm reading you is from the Alabama incident report that I provided defense. And several of the images appear to be aimed down the female's shirt.
>
> And then eight images are of the subject's granddaughter, which is [J.M.], the victim in this case, posing in blue jeans and a t-shirt, and her legs are spread. And then in some of the images, her legs are pulled back down by her shoulders. And there are some images of – but you don't see the face in them, but they believe it's from the same series of just her groin area, but she's clothed.
>
> So that leaves us, Your Honor, with approximately 20 images that have potential to be [J.M.]. Now, their forensics say that it is the granddaughter. I mean they went into the computer and searched it because of our investigation. There's a possibility that some of the naked images or some of the remaining photos are also [J.M.].

R. 99-100.

Counsel for Mr. Dent informed the Court that neither he nor Mr. Dent's attorney in Alabama had seen any of those images and Mr. Dent wants an independent digital forensics expert to review to the evidence, which was still located in Alabama. R. 102-04.

Finally, the prosecution informed the court and counsel the State would be amending two of the four indictments to correct the dates.[1] R. 104-05.

B. Pre-trial Motions.

The trial judge convened hearings on pre-trial motions filed by both sides.

1. Mr. Dent's motions to quash indictments for of disseminating obscene material to a minor twelve years or younger.

Mr. Dent moved to quash the indictments for of disseminating obscene material to a minor twelve years or younger. He argued the two "indictments allege a violation of [S.C. Code Ann. §] 16-15-355 with regard to obscenity, which falls under the meaning of [section] 16-15-305. He argued, "[U]nder Section 16-15-355, the only party that's allowed to seek arrest warrants or search warrants for violation of those sections is the solicitor office." The arrest warrants "were obtained by the sheriff's department," meaning the State "failed to comply with the correct procedures" and "those indictments should be quashed." R. 65, 114.

The prosecution argued (a) "this motion is not in the Defense's best interest" because, if successful, "the State will simply reindict and move forward and have another bite at the apple," (2) section 16-15-435(a) "does not apply to [section] 16-15-355," and (3) the language requiring the solicitor to seek the arrest warrant is "a recommendation only." R. 114-16.

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[1] As seen in the Statement of the Case, the Solicitor substantially amended the substance of Indictment No. 2014-GS-07-01672.

Mr. Dent reminded the Court that obscenity law is "subject to its own unique set of interpretations by the United States Supreme Court." He also argued the statue is "intended to provide specific procedures in order to protect people who might be accused of violations" and, as a penal statute, must "be construed against the State and in a light most favorable to the accused." Finally, Mr. Dent argued the statute's use of the term "may" refers to "prosecutorial discretion" and did not create a loophole for law enforcement to "circumvent the solicitor's office." R. 116-17.

The trial judge reasoned:

> My interpretation of the statute stating the case that an arrest warrant for violation of Section 16-15-305 may be issued only upon the request of a circuit solicitor. I, certainly, would agree with Counsel, Ms. Joseph, that my interpretation of the statute is the operative word is "may." And the way I interpret that language is "may" is not required that it be issued by the circuit solicitor, but it could be issued by law enforcement.

R. 117. Mr. Dent asked the trial judge, "[H]ow do you interpret the word 'only'? Because that seems to suggest that only the Solicitor can do it." Counsel also pointed out "the legislature was aware of other procedures for getting arrest warrants. And they chose to say that these type of arrest warrants can only be gotten by the Solicitor." R. 117-18. The trial judge denied the motion to quash these indictments. R. 118-19. Mr. Dent renewed this motion prior to the trial court swearing the jurors. R. 230.

2. State's Motion to admit child advocacy center interview and expert testimony.[2]

On May 18, 2018, the prosecution filed a motion for the admission of out-of-court statement of the child pursuant to S.C. Code § 17-23-175. R. 49-56. Mr. Dent's pre-trial

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[2] The State agreed not to use the term "forensic interviewer." R. 224-25. The prosecution breached this agreement during the testimony of Investigator LaVan (R. 353) and Ms. Trask (R. 393).

brief opposed this motion. R. 59-65. He argued the statue requires "the trial judge make certain findings of fact after reviewing the videotape," the procedures established by *State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) and *State v. Brown,* 411 S.C. 332, 768 S.E.2d 246 (Ct.App.2015), and the prohibition against "testimony that improperly bolsters the credibility of the [complaining] witness or vouches for her credibility," citing *Anderson, State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015)*, State v. Kromah,* 401 S.C. 340, 37 S.E.2d 490, (2013), *State v. Jennings,* 394 S.C. 473, 716 S.E.2d 91 (2011), and *State v. McKerley,* 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

The prosecution proffered the testimony of Shauw Chin Capps, who is the chief executive officer of "Hopeful Horizons, formally Hope Haven of the Lowcountry," which "is the children advocacy, domestic violence, and rape crisis center serving the Fourteenth Judicial Circuit." Ms. Capps interviewed J.M. on July 15 and 28, 2014. J.M. "was nine years old when she was interviewed." Both of these interviews were recorded. The trial judge reviewed the videotapes. R. 152-60, 168.

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

The prosecution next proffered the testimony of Tessa Trask, who is employed by Hopeful Horizons and "working towards" becoming a licensed professional counselor. At the time of her testimony, she had "a provisional license as a licensed professional

counselor intern." She received a "certification as a forensic interviewer in July of 2017." Ms. Trask watched the two interviews conducted by Ms. Capps, her supervisor at Hopeful Horizons. Ms. Trask also had access to the Hopeful Horizons files on J.M. but claimed she did not review those files. Ms. Trask also claimed not to have discussed this case with Ms. Capps. The prosecution offered Ms. Trask "as an expert in behavioral characteristics of child victims of sexual abuse." Ms. Trask planned to testify that sexual abuse can present as a trauma, ADHD and trauma can have similar symptoms, the disclosure process in sexual abuse cases, "coaching, lying, and confusion in a sexual assault case," grooming, and risk factors for sexual abuse. R. 176-85.

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

In his pretrial brief and during the hearing, Mr. Dent specifically requested the trial judge require the prosecution to proffer Ms. Trask's complete testimony for the trial judge to determine the reliability pursuant to *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010) (summarizing three-part procedure for qualifying expert witnesses) and *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015) (state failed to show individual reliability of witness sufficient to allow her to testify as child abuse assessment expert). The trial judge declined that request and ruled Ms. Trask could be qualified as an expert in behavioral characteristic of child victims of sexual abuse." R. 47-58, 183-91.

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

On May 18, 2018, the prosecution filed a written motion "to allow the evidence of a prior bad act of the Defendant, Charles Dent," pursuant to Rule 404(b), SCRE, which involved "the discovery of child pornography on the Defendant's computer in Calhoun County, Alabama." R. 49-56. The State abandoned this motion later in the trial. This motion hearing, however, included discussion about images of J.M. found during the execution of the search warrant in Alabama. The prosecution argued:

> [A]s part of this investigation, as you, Your Honor, have heard in the first forensic interview of [J.M.], she states the Defendant took sort of gross photos of me and he took gross photos of himself. And he showed me porn. And he hid this camera card on my – on about the facts of the case, I'm going to tell you how the State is going to enter this evidence. his property in Alabama.
>
> And based on the totality of her statement, Investigator LaVan reached out to Calhoun County, Alabama.

R. 197-98. The Solicitor planned to present testimony of a Calhoun County Alabama Sheriff's Deputy to testify about the search of Mr. Dent's home and a witness from the computer task force to testify about images found on the electronic devices, including "borderline sexual" images of J.M. and child pornography. R. 198-99.

After considering additional arguments of counsel, the trial judge decided to "hold off ruling on [this] issue until after a proffer" of the digital forensic expert's testimony to give Mr. Dent "the opportunity to cross-examine." R. 208-20.

C. The Trial.

1. Opening statements.

During opening statements, the Solicitor stated John Camelo "started noticing some red flags from J.M.'s behavior. Based on his own personal experience and

knowledge of child sexual –" Mr. Dent interjected, "Objection. Improper bolstering. Move to strike." The trial judge overruled the objection. The Solicitor continued:

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

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

During his opening statement, Mr. Dent informed the jurors it "is important to know exactly what's in the indictments" that the State has to prove beyond a reasonable doubt. The two criminal sexual conduct indictments are divided by time from when J.M. "lived in one apartment and moved into another apartment." The indictments allege Mr. Dent made J.M. "perform oral sex" at "those two different locations."[3] Also,

> [w]ith regards to the dissemination charges, one is that the State has said that they're going to prove beyond a reasonable doubt that Charles took multiple pictures of his penis and showed them to [J.M.]. You're not going to see any pictures of Charles Dent's penis. None of that evidence was ever found. They're, also, alleging that he showed [J.M.] pornography.

R. 250-51. Mr. Dent also asked the jurors "to look for evidence of a motive to make false allegations." He also asked the jurors to view the videotaped interviews with a critical eye. R. 251-57.

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[3] Later on, during opening statements, Mr. Dent repeated the indictments alleged Mr. Dent Made J.M. perform oral sex on him at the two locations, which is what the State represents it will prove. R. 255.

2. John Camelo.

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

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

R. 258-60.

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

Kromah-Jennings-Anderson line of cases. Counsel reminded that witnesses, including expert witnesses, are not allowed to testify "that somebody is telling the truth" or offer "an opinion that this child was sexually abused." Counsel argued:

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

R. 260-62.

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

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

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

Mr. Dent further noted Mr. Camelo's testimony risked violating the time and place limitations or Rule 801(d), SCRE and the Solicitor instructed Mr. Camelo not to name the alleged perpetrator. The trial judge limited the Solicitor for asking any "questions regarding whether or not he has an opinion regarding abuse." R. 266-67, 269.

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

The jury returned to the courtroom. Mr. Camelo testified about the "red flags" he observed: "Gestures of a sexual nature that a none-year-old – that a minor wouldn't normally know without having been shown or taught by someone." When J.M. told him "something had been going on," Mr. Camelo was so concerned that he immediately informed Ms. Mayo, who contacted law enforcement. R. 270-72.

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

Mr. Camelo testified he moved in with Ms. Mayo "primarily because they had a fear of [Mr. Dent] coming around."[4] Mr. Camelo also testified J.M. "would tell people I was her father, her new dad" and called him "Dad."[5] Mr. Camelo also helped Ms. Mayo and her children move into a motel before they left South Carolina. Mr. Camelo testified that he ended the romantic relationship with Ms. Mayo because, "[v]ery shortly after –

[4] Mr. Dent objected as speculation and hearsay and moved to strike. The trial judge sustained the objection but did not strike the testimony." R. 276.

[5] On cross-examination, Ms. Mayo testified that J.M. referred to as "Dad" "[p]retty much every man I've ever dated." Ms. Mayo could not recall how many men J.M. called "Dad." R. 344-46.

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. R. 271, 275-77.

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

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

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

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

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

Mr. Dent cross-examined Mr. Camelo about the conversation he had with J.M. between her two interviews at Hopeful Horizons. Mr. Camelo testified about the older male, named Maurice, coming to the townhouse "three times that day." On one of those occasions, Maurice "opened the door and walked in" without permission. Mr. Camelo told him to leave, but he came back again and sat down on the back porch in a lawn chair. Maurice wanted to see J.M. Mr. Camelo was concerned about this man's intensions because "he was much older than" J.M. Mr. Camelo called law enforcement. He also

confronted J.M. about Maurice. J.M. did not make the second disclose of sexual abuse until after Mr. Camelo confronted her about Maurice. R. 292-97.

3. Lori Michelle Mayo.

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

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

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

After J.M.'s initial disclosure, Ms. Mayo exchanged text messages with Mr. Dent.[6] The conversation began with Mr. Dent stating Ms. Mayo needed to "pay half the rent" and contribute towards the cable bill and phone bill. Ms. Mayo texted "she didn't know that [Mr. Dent] touched her daughter." Mr. Dent responded "that he would never touch the children and she knew that." They discussed removing Mr. Dent from the lease agreement. In subsequent texts, Ms. Mayo accused Mr. Dent of showing "pictures of his penis to" J.M. and threatened Mr. Dent "had way more than his credit to worry about if the rent didn't get paid" or if she did not get "the allotment that he owed her." R. 289-15.

Ms. Mayo testified that she dated both men and women. Ms. Mayo opined that Mr. Dent "loved it when Dee lived there and brought her friends over."[7] Over objection, Ms. Mayo opined Mr. Dent had an issue with John Camelo living in the townhouse because she told her father Mr. Camelo "used to be in law enforcement. And he had a background with helping young girls who had been sexually abused." Over another objection, Ms. Mayo testified Mr. Dent "was very upset" with Mr. Camelo living in the townhouse after he learned that information. R. 318- 20.

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[6] Over objection, the trial judge allowed Ms. Mayo to read a summary of the text messages from an incident report rather than referring to the actual text messages. R. 310-11; Court's Exhibit 9. The prosecution later introduced the actual text messages.

[7] On cross-examination, Ms. Mayo admitted Dee was not a romantic relationship. She further acknowledged that during the time she lived in Beaufort County, "John Camelo was the only romantic interest that lived or stayed over for extended periods of time in [her] townhouse. R. 343-44.

Over objection,[8] Ms. Mayo explained why J.M. did not tell her everything about the sexual abuse at first: "She told me that she thought that I would be mad at her. And she, also, was embarrassed." R. 320-21.

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

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

Mr. Dent cross-examined Ms. Mayo about living in Jacksonville, Florida before she moved to Beaufort County. Mr. Dent and her mother, married, divorced, remarried, and divorced again. Ms. Mayo lived with her mother in Jacksonville. Matthew lived with Mr. Dent in Alabama. Ms. Mayo had a close relationship with Matthew, who visited often in Jacksonville. The Solicitor then objected to Mr. Dent questioning Mr. Mayo about these family relationships as not relevant, citing Ruled 401 and 402, SCRE. The judge considered the objection outside the presence of the jurors. Counsel for Mr. Dent argued:

> [T]hey already brought up Matthew's suicide. The reality of this is that mental illness runs in this family, particularly on the mother's side. And [J.M.] was close to both Matthew and to her grandmother.

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[8] The trial judge denied Mr. Dent's request to proffer the hearsay outside the presence of the jurors. R. 321.

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

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

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

R. 328-29.

The prosecution argued its expert, Tessa Trask, "has not met with" J.M., plans to "define trauma," will opine "that sex abuse can cause trauma," and testify "in the biggest generalities possible." The Solicitor suggested Mr. Dent would be free to argue the "trauma was caused from other things." Mr. Dent pointed out the prosecution could object if he made an argument "that's outside the record." Counsel for Mr. Dent reminded the trial judge the court limited the scope of the proffer of Ms. Trask. Counsel argued Mr. Dent has a right to cross-examine the prosecution's witnesses about "the

theories and themes" of the defense. Counsel anticipated the prosecution will argue J.M.'s "symptoms of trauma confirm she was sexually abused," noting appellate court holdings in *Anderson*, *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016), and *State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). Counsel reminded the trial judge that Judge Mullen, following the *Blackwell* procedure, had ordered disclosure of J.M.'s mental health records because her state of mind was at issue in this case. R. 329-33.

The Solicitor argued:

> It's the concerns in *Blackwell* that the State is concerned about here. Once again, there is a higher threshold to release mental health records because they are mental health records.
>
> There's a reason that I am so deeply concerned with [J.M.'s] mental health becoming a focal point of the Defense. And I think what's important to note, Your Honor, is that frequently when we have legal arguments, we get very bogged down in the minutia.
>
> And if we zone out right now, Mr. Grose is arguing that whether or not [J.M.] experienced other trauma is a pillar of his defense. That just simply can't be the case. Because she is – they're going to watch the videos. Basically, her – the red flags that John Camelo talked about are one small aspect of this case. Her disclosure is, clearly, the focal point of this case.
>
> And so I think that he's trying to argue that the fact that she experienced other traumas is this pivotal thing in this case. And it just simply can't be, Your Honor. And I think he's allowed to ask maybe one or two questions about, you know, was she close with Matt? Did Matthew kill himself? Was she close with your mom? Did your mom kill herself?
>
> I apologize. I'm being real glib.
>
> But I think he has to move on. He can't just rake over the coals with this information. And that's what he's been doing. I mean, we're on question four. I mean, at this point, we're sort of at the zip code of where they lived in Jacksonville. I mean, he's really going deep.

R. 333-34.

The trial judge limited Mr. Dent's cross-examination to the four questions suggested by the prosecutor.[9] Counsel for Mr. Dent protested, "I don' think that allows us to go into it deeply enough." Counsel then offered, "I don't even have to ask those four questions if they're not going to call their expert this afternoon. I mean, that's why this is relevant." R. 334-16.

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

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

R. 336-37.

Ms. Mayo acknowledged, after Matthew's suicide, she and Mr. Dent "began to re-establish a relationship." Mr. Dent's brother owned a timeshare in Hilton Head, and that was one of the reasons Ms. Mayo decided to move to Beaufort County. Ms. Mayo testified about the two townhouses, working multiple jobs, and being unemployed for

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

part of the time she lived in Beaufort County. Ms. Mayo denied she and Mr. Dent agreed he would help pay the rent for one year and the Ms. Mayo was "supposed to take it over." R. 337-39.

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

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

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

4. Investigator Cornelius LaVan.

Investigator Cornelius LaVan of the Beaufort County Sheriff's Office investigated the allegations made by J.M. Investigator LaVan never interviewed J.M., but he scheduled both interviews for J.M. at Hopeful Horizons. After the second disclosure, Investigator LaVan collected for evidence a pair of J.M.'s shorts, but he never requested a forensic scientist examine that evidence. R. 352-58.

Over objection, Investigator LaVan read the dates of the alleged sexual abuse from copies of the arrest warrants. R. 358-60.

Investigator LaVan also investigated the incident involving the older man named Maurice, who was ultimately referred for a mental health evaluation. R. 360-61, 364-65.

5. J.M.

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

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

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

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

R. 374-76.

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

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

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

On cross-examination, J.M. confirmed Mr. Dent never threatened her, stated the fellatio occurred only one time, and acknowledged Mr. Dent never touched her private parts under her clothing. J.M. denied she ever called John Camelo—or any other person—"Dad." J.M. never met her biological father, which was hard on her growing up. J.M. acknowledged her mother is important to her, and she wants to please her mother. J.M. was close to her Uncle Matthew. Matthew's suicide was hard on J.M. She couldn't recall how many houses she lived in after moving away from South Carolina. J.M. made A's and B's in in South Carolina but "struggled with grades after she moved to North Carolina. J.M. had difficulty making friends in North Carolina. J.M. did not recall who started the conversations with Mr. Camelo and her mother about the sexual abuse allegations. She could not remember if her mother wanted her to make sure she "said certain things" during the Hopeful Horizons interviews. J.M. recalled talking to people about her testimony, but she could not recall whether she practiced the questions and answers. R. 379-89.

6. Tessa Trask.

The trial judge qualified Tessa Trask as an expert in the behavioral characteristics of child victims of sexual abuse, subject to the pre-trial objections. Ms. Trask never met J.M. or read the case file; however, she did watch some of pre-trial proceedings. R.391-94.

Ms. Trask defined the "traumagenic model." Child sexual abuse is "considered traumatic for the child because it's introducing sexuality" in a "traumatic" and "in a way that's developmentally inappropriate." The child "may experience trauma symptoms or

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

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

R. 394-96.

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

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

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

Ms. Trask testified about "grooming," which involves three "pieces." The first involves "the giving of privileges, things of value, money, treats, prizes." The second involved "creating, developing, maintaining a trusting relationship with the child and the family so that the perpetration can gain access to the child." The third involves the perpetrator "gradually exposing the child to sexual contents, and so normalizing sexual content through gradual exposure." R. 400.

Ms. Trask testified there are risk factors of sexual abuse for the child and the caregiver:

> So risk factors for the child would be age, emotional well being, prior history, and whether or not the child has any kind of delay or disability.
>
> Risk factors for the caregiver would include whether there's any substance used, or substance abuse on behalf of the caregiver, and then, also, whether the caregiver is a single parent.

R. 400-01.

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

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

7. Shauw Chin Capps.

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

D. Motion to Suppress Search Warrant.[10]

Before the prosecution called Lori Mayo, Mr. Dent informed the trial judge, outside the presence of the jurors, that the Solicitor intended "to begin introducing photographs that were recovered from the devices in Alabama." Counsel reminded the trial judge the Court had not ruled on the motion to suppress these photographs "for failure to comply with the statute that requires the Solicitor to be the one to initiate the application for the search warrant." The trial judge denied this motion. R. 299-300.

The trial judge convened an *in camera* hearing regarding the admissibility of the evidence collected during the execution of the search warrant in Alabama. The Solicitor announced the two witnesses from Alabama would be Investigator Joey Stone of the Calhoun County Alabama Sheriff's Office and Detective Arthur Agee of the computer crimes task force. The Solicitor acknowledged Detective Agee did not examine the evidence or prepare the written report. Mr. Dent objected because the State "listed on

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[10] Mr. Dent renewed his objection to the Solicitor's office not applying for the search warrant. R. 459.

their witness list Justin Cole, who's the one who did the report, did the examination," and Mr. Dent has a Sixth Amendment right to cross-examine the person who conducted the examination. *See Melendez-Diaz,* 557 U.S. 305 (2009). R. 431-46.

The Solicitor acknowledged the child pornography discovered on the electronic devices had been deleted, meaning the pathway showing where the images were stored on the computer was also deleted. The prosecution withdrew its motion to admit the child pornography under Rule 404(b), SCRE. The prosecution, however, intended to proceed with its motion to introduce images of J.M. R. 446-48.

The prosecution proffered the testimony of Lori Michelle Mayo. Ms. Mayo identified screen shots of the text messages between her and Mr. Dent. R. 449-53; State's Exhibit 21. At the request of the Solicitor, Ms. Mayo identified State's Exhibits 1-5 as pictures of J.M. "in our old house." Ms. Mayo said she did not take those photographs. The Solicitor represented the State would not contend Mr. Dent took these photographs. Rather, the State offered these photographs "to show the location where the crime occurred." The Solicitor acknowledged the State could not establish the chain of custody of these photographs. Mr. Dent pointed out, "If they wanted to introduce photographs to show where the incident [] happened, that could have been done without using photographs, that [] came off the device that was in question." Counsel also noted cases have been reversed because the prosecution introduced sympathetic photographs of a crime victim. *E.g. State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999) (held that: (1) neither victim's sister's testimony nor photograph of victim was relevant to defendant's guilt, and (2) admission of such testimony and photograph was reversible error). Counsel for Mr. Dent then explained:

And what they're going to do is in this second set, they're going to argue that – some of the pictures where [J.M.'s] wearing the same top as she is in State's Exhibit No. 5 are prejudicial to us because they're going to argue that they're sexual in nature.

And so I feel like that since we've had this confrontation clause, chain of custody issue come up that have to object to every single photograph that came from those devices. The fact that we've been able to look at them, the fact that we've been able to get duplicates of it is not relevant to the inquiry.

The inquiry is, can they establish a chain of custody? And do we get to cross-examine Investigator Cole, who did the examination? And I would want to cross-examine him about State's Exhibit Nos. 1 through 5, in addition to the others as well.

R. 453-70 (citing *Melendez-Diaz, supra*). [11]

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

The prosecution proffered the testimony of Joey Stone, an investigator with the Calhoun County Alabama Sheriff's Office. Investigator LaVan of the Beaufort County Sheriff's Office contacted Investigator Stone in July 2014 about serving the arrest warrants on Mr. Dent. Investigator Stone also obtained an Alabama search warrant after officers serving the arrest warrant "saw electronic devices, cameras, [and] cell phones in plain view." After collecting the devices, Investigator Stone obtained a second search warrant to examine the devices. The Calhoun County Alabama Sheriff's Office transferred the electronic devices to the Alabama Electronic Crimes Task Force. On

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

cross-examination, Investigator Stone acknowledged he was not present the entire time the search warrant was executed. He did not have personal knowledge of which officer actually collected the evidence. R. 480-99; State's Exhibits 18 and 22.

The State proffered the testimony of Arthur Agee, a digital forensic examiner with "the electronic crimes task force as part of the Secret Service" in Hoover Alabama. He identified State's Exhibit 19 as a photograph of "a Fuji film camera with a 32 gigabyte SD card memory that was inside the camera." He identified State's Exhibit 20 as a photograph of "a JVC camcorder with a separate 32 gigabyte SD case that was inside." Detective Agee did not examine these two devices because the devices were no longer present at his lab in Alabama. He reviewed a forensic image of the devices that was made by Detective Cole, as well as Detective Cole's written report. R. 500-02.

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

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

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

R. 517-19.

Mr. Dent argued a Sixth Amendment confrontation clause violation. The prosecution is required "to have the person who conducted the examination in court so that person can be cross-examined about running the analysis." Detective Cole is "just not here to be questioned." Mr. Dent reminded the trail judge that Detective Agee knew some of the images had been deleted, wan not sure whether some of the images had been deleted or not, and was unaware whether two of the items were even recovered from the devices depicted in State's Exhibits 19 and 20. Mr. Dent also argued the prosecution was

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

R. 519-26.

After hearing the proffered testimony and arguments of counsel, the trial judge made a finding of fact that Detective Agee did not conduct "an independent examination" and agreed Detective Cole is a "critical witness" that Mr. Dent was entitled to confront

under the Sixth Amendment. The trial judge, accordingly, excluded the testimony of Investigator Stone and Detective Agee. At this stage of the trial, the trial judge ruled State's Exhibits 1-15 would be excluded. R. 535-39 (citing *Melendez-Diaz, supra*).

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

The State proffered the testimony of J.M. J.M. testified State's Exhibit 1 appeared to be a photograph of her birthday party, taken in the second townhouse by her mother. J.M. identified State's Exhibit 3 as a photograph of her and her grandfather taken in the first townhouse. She did not know who took this photograph but agreed it was not her grandfather because he is in the photograph. J.M. testified State's Exhibit 4 is a picture of her taken in the guest bedroom of the second townhouse. She believed her grandfather took this photograph, but she was not sure. J.M. testified State's Exhibit 6, 11, and 13 are photographs of her, but she could not identify where it was taken. J.M. testified State's Exhibit 15 is "[s]omeone in shorts, but I think it's me." R. 547-61.

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

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

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

R. 563-64, 566.

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

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

E. The Trial Resumes.

1. Lori Michelle Mayo.

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

2. J.M.

The prosecution recalled J.M. and introduced State's Exhibits 1, 3, 4, 6, 11, 13, and 15, subject to the previous objections. R. 570-80. On cross-examination, J.M. acknowledged she thought her mother took State's Exhibit 1. J.M. didn't know who took State's Exhibit 3, but agreed it was not her grandfather. Regarding State's Exhibit 4,

J.M. did not know who took that picture but thought it was Mr. Dent "because it was the guest bedroom that he stayed in." Regarding State's Exhibits 6, 11, 13, and 15, the following exchange occurred:

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

R. 580-83.

3. Directed verdict motion.

After the State rested, Mr. Dent moved for a directed verdict. He noted the State relied on the two Hopeful Horizon videotaped interviews. The July 15, 2014 interview did not contain any evidence of fellatio. In the July 28, 2014 interview, the only evidence of fellatio was that it occurred in the first townhouse. Counsel argued, "So with regards to the indictment that ends in 01673, our position is that there's not been any testimony of criminal sexual conduct with a minor in the first degree happening in the second location. And so we move to dismiss that indictment for that reasons." R. 589-90.

The State responded with three arguments. First, it argued "indictments are notice documents"[12] that merely put an accused on notice of the charges, meaning the State merely has to prove a sexual battery as defined by the statute. The State argued it could rely on a statement in the second interview alleging cunnilingus. Second, the State argued J.M.'s second videotaped interview established fellatio at the first house, and J.M.'s trial testimony established fellatio at the second house.[13] Third, the State argued it should be allowed to argue there was some "confusion" about where the sexual abuse occurred because of J.M.'s age, the close proximity of the two townhouses, and the allegations of a common offender. R. 590-91.

Counsel for Mr. Dent reminded, "I don't recall the testimony in the trial about both houses" being the location of fellatio. Counsel reminded the trial judge he read the indictments in opening statements and "thought it was very important for the jurors to have the indictments [during deliberations] in this case so that they would know exactly what the charges were." In the indictments, the State identified "fellatio on the Defendant by J.M." as the sexual battery it intended to prove at trial. "That's the element they picked." Counsel argued, even though some "prosecutors treat the Grand Jury like a rubber stamp," there is "the State Constitutional right to have a presentment to the Grand Jury." Any argument by the State "about another sexual battery [] would be a variance from the indictment." *See Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011)

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

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

(supplemental jury instructions impermissibly enlarged indictment by instructing jury that it could convict defendant of a crime not alleged in indictment). Counsel argued, as a notice document, the indictment "puts us on notice that they were going to prove fellatio." Counsel concluded, "with regards to the second house," there is not "any proof that's been presented for that to go to the jury." R. 591-93. The trial judge denied the motion. R. 613.

Mr. Dent also moved for a directed verdict on the two counts of disseminating obscene materials to a minor twelve years of age or younger. Counsel reminded the trial judge the State had not "proven compliance with the statute for getting those warrants." The State also failed to prove the materials violated section 16-15-305. The trial judge denied this motion. R. 594-95.

Mr. Dent renewed his directed verdict motions at the close of all evidence. R. 683-85.

4. Charles Dent.

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

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

Alabama where he lived with Matthew. Lori Mayo was living with her mother in Jacksonville. R. 615-20.

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

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

Mr. Dent identified and testified about messages between him and Ms. Mayo regarding her quests for money. By March or April 2014, Mr. Dent "was considering

ending the lease and trying to find them a much cheaper place where [Ms. Mayo] could possibly live independently with her children." R. 630-34.

Mr. Dent met John Comelo, who was introduced to him as a "maintenance man" for a "pool company." Dr. Dent learned, from J.M., after the fact, that Mr. Comelo had moved into the townhouse. Mr. Dent was concerned and "thought it was really strange that [Ms. Mayo] and him had only been dating, perhaps, less than a month and he moved in." Mr. Dent expressed those concerns to Ms. Mayo, which added to the tension between them. R. 634-36.

5. Other Defense Witnesses.

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

F. Charge Conference.

The trial judge convened a charge conference. Mr. Dent requested, when "defining sexual battery," the trial court "limit it to fellatio." The State objected to that request. The trial judge ruled the Court would instruct the entire definition contained in S.C. Code Ann. § 16-3-651(h).[14] R. 693-706.

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

Mr. Dent also requested the trial judge provide the circumstantial evidence instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). R. 708; Request to Charge No. 2, R. 81.

G. Closing Arguments.

During closing argument, the Solicitor asked the jurors to recall J.M.'s videotaped interviews for her allegations of the sexual assaults and viewing pornography. R. 707-11. When the Solicitor began to argue the jurors could convict Mr. Dent for performing cunnilingus on J.M., Mr. Dent's counsel interjected, "Objection. Variance to the indictment." The trial judge overruled the objection. The Solicitor then argued the jurors could convict Mr. Dent for "penetrating her vagina." Counsel interjected, "Objection. Variance to the indictment." The trial judge overruled the objection. When the Solicitor agued the jurors could convict Mr. Dent for any "sexual battery," counsel interjected, "Objection to the variance to the indictment." The trial judge overruled the objection. The Solicitor then read the full definition of "sexual battery" found in S.C. Code Ann. § 16-3-651(h). R. 713, 750-51.

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

H. Jury Charge.

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

> In order to convict the Defendant of this offense, the State must prove several things beyond a reasonable doubt. First, the State must prove that

> the Defendant engaged in a sexual battery with the victim. Sexual battery is – is defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genitalia or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnosis – diagnostic purposes.

R. 761.

After the trial court's instruction on the law, Mr. Dent renewed his "objection to the manner in which the Court charged sexual battery," noting he had "asked [the definition] be limited to fellatio. And, of course, [the trial judge] gave them the other options." R. 768. Mr. Dent renewed this objection in his new trial motion. R. 73-79. Mr. Dent also objected because the jury instruction on circumstantial evidence deviated from the charge deemed mandatory in *Logan.* R. 769.

ARGUMENTS

Question I

Did the trial judge err by not directing a verdict of acquittal on Indictment No. 2014-GS-07-01673 when the State failed to present any evidence that "fellatio on the Defendant by J.M." occurred during the time frame of the indictment?

> In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. During trial, [w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as [s]uspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.
>
> On appeal, [w]hen reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state. If the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court's decision to submit the case to the jury.

State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408-09 (2013) (internal citations and quotations omitted); *and see State v. Cherry,* 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Gaster,* 349 S.C. 545, 564 S.E.2d 87 (2002); *State v. Mitchell,* 341 S.C. 406, 535 S.E.2d 126 (2000); *State v. Burdette,* 335 S.C. 34, 515 S.E.2d 525 (1999); *see also* Rule 19(a), SCRCrimP.

When arguing the directed verdict motion, both parties agreed J.M.'s July 15, 2014 interview did not contain any evidence of a sexual battery, let alone fellatio. The parties also agreed J.M.'s July 28, 2014 interview alleged fellatio occurring only at the first townhouse. The jurors acquitted Mr. Dent on the indictment that corresponded to the timeframe J.M. lived in the first townhouse.

When denying the directed verdict motion, the trial judge might have been influenced by the prosecution's argument that J.M. testified in during the trial that Mr. Dent made her perform fellatio at the second townhouse. A review of the trial record, however, reveals this argument to be a misstatement of the evidence. The following is the only testimony by J.M. about fellatio:

Q. Okay. Did he ever make you touch his penis?

A. He didn't make me touch. He made me lick his private parts.

Q. Can you tell me about that?

A. It's hard to explain. I'm sorry.

Q. That's okay. When you say he made you, what does the that mean?

A. It means he told me to.

Q. Okay. Once or more than once?

A. Once.

R. 377.

Thus, the only allegation of fellatio is that it occurred at the first townhouse, and the jurors acquitted of this charge.[15] This Court, therefore, should reverse the trial judge and enter an order directing a verdict of acquittal on Indictment No. 2014-GS-07-01673.

Question II

Did the trial Judge err by not limiting the definition of sexual battery to "fellatio" when "fellatio on the Defendant by J.M." was the only sexual battery alleged in the indictment.

> In South Carolina, [i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense.
>
> [W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged. A conviction under the latter circumstance violates principles of due process . . . because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged.

Bailey v. State, 392 S.C. 422, 433–34, 709 S.E.2d 671, 677 (2011) (internal citations and quotations omitted); *and see State v. Gunn,* 313 S.C. 124, 437 S.E.2d 75 (1993) and *State v. Cody,* 180 S.C. 417, 186 S.E. 165 (1936); *see also Thomason v. State,* 892 S.W.2d 8, 11 (Tex.Crim.App.1994).

As seen, Indictment No. 2014-GS-07-01673 alleged Mr. Dent committed first-degree criminal sexual conduct with a minor, "between August 2013 and April 2014,"

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[15] As argued in more detail in Question II below, allowing the State to rely on a sexual battery other than fellatio would be an impermissible variance from the indictment. *See Bailey, supra.*

alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 31-32. The trial judge allowed the prosecution to argue for the jurors to convict Mr. Dent for first-degree criminal sexual conduct with a minor for a sexual battery other than fellatio. The trial judge also instructed the jurors they could convict Mr. Dent of first-degree criminal sexual conduct with a minor for a sexual battery other than fellatio. This argument and jury instruction resulted in a variance in the indictment. This Court should reverse the trial court and enter a directed verdict on Indictment No. 2014-GS-07-01673. In the alternative, this Court should order a new trial.

Question III

Did the trial judge err by not excluding the testimony of Tessa Trask's when this testimony was based on her own theories and the record does not contain any evidence that her theories are reliable?

> The jury and the trial court each have distinct roles and separate responsibilities that they must execute during a trial. The jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial and reaching a verdict. The trial court, on the other hand, is charged with the duty of determining issues of law. As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law. Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves.

Watson, 389 S.C. at 445, 699 S.E.2d at 174-75. *Watson* recognized a three-prong test to determine the admissibility of expert testimony. "First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Id.* 389 S.C. at 446-47, 699 S.E.2d at 175 (citing *State v. Douglas,* 380 S.C. 499, 671 S.E.2d 606 (2009)). Second, "while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the

particular subject matter." *Id.* (citing *Gooding v. St. Francis Xavier Hosp.,* 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997)). Finally, "the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Id.* (citing *State v. Council,* 335 S.C. 1, 20, 515 S.E.2d 508, 518 (evaluating whether expert testimony on DNA analysis met the reliability requirements). "Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. *Id.*

"There is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence. However, evidence of mere procedural consistency does not ensure reliability without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies." *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015) (internal citation omitted); *and see State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009) (trial court's gatekeeping function in assuring reliability of expert testimony applies to nonscientific evidence).

As seen, the trial judge declined Mr. Dent's request to convene the full hearing required by *Chavis* and *White* by limiting the scope of that hearing to determining the background and qualifications of Ms. Trask. The trial judge erred by not determining the reliability of Ms. Trask's testimony. The record is devoid of evidence establishing the reliability Ms. Trask's methods and theories. The trial court erred when it admitted Ms. Trask's testimony, and this Court should order a new trial.

Question IV

Did the trial judge err by allowing the prosecution to introduce State's Exhibits 1, 3, 4, 6, 11, 13, and 15 when the prosecution could not establish the chain of custody, the witness could not authenticate those images, the images were not relevant to guilt, and the prejudicial effect of those images and J.M.'s testimony about those images substantially outweighed any probative value.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901, SCRE. "Establishing a strict chain of custody is not an ironclad requirement, and the fact of a missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect. The [trial] court's role is merely to act as a gatekeeper for the jury, and the proponent of the evidence need only make a prima facie showing of its authenticity." *State v. Brockmeyer*, 406 S.C. 324, 343, 751 S.E.2d 645, 655 (2013) (internal citations and quotations omitted).

In *Langley,* this Court found the witness's testimony and the victim's photograph were not relevant to proving the guilt of appellant," and "[b]ecause the evidence of appellant's guilt was not overwhelming, [this Court] find this irrelevant evidence did not affect the outcome of the trial under a harmless error analysis." 334 S.C. 643, 648, 515 S.E.2d 98, 100 (1999). Additionally, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Rule 403, SCRE.

As seen, many of the images were "carved," meaning they had been deleted and recovered. The prosecution could not establish that any of the were not "carved," meaning the prosecution could not establish that any of the image has not been altered.

The prosecution failed to produce the witness with personal knowledge of the examination of the electronic devices that purportedly contained those images. During the *in camera* hearing, the Solicitor acknowledged J.M. did not have the personal knowledge to know whether those images had been altered. Thus, the prosecution was not able to authenticate any of the images—either by establishing the chain of custody or presenting testimony that the images had not been altered.

State's Exhibits 1, 3, and 4 did not have any arguable relevance to establishing guilt and should have been excluded, as not relevant, under *Langley.* State's Exhibits 6, 11, 13, and 15 are extremely prejudicial, and the prosecution did not establish any probative value of these images. It could not establish who took these photographs or whether these photographs had been altered. For example, State's Exhibit 15 could be a photograph of J.M. lying on the floor with her pet rabbit, taken by someone other than Mr. Dent, subsequently cropped to appear to be a close up image of J.M.'s legs and the bottom portion of her dance outfit. Rule 403 excludes State's Exhibits 6, 11, 13, and 15. This Court should order a new trial.

Question V

Did the trial judge err by overruling Charles Dent's objections during the State's opening and the direct examination of John Camelo, thereby allowing Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

As seen, the Solicitor cleverly questioned John Camelo about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness. The State linked Mr. Camelo's education, training, and experience to his observations of "red flags" about J.M.s' behavior, thereby suggesting Mr. Camelo believed J.M. had been sexually abused. This line of questionng

was a back door introduction of opinion evidence prohibited by *Anderson, Kromah, Jennings,* and similar cases. This Court should order a new trial.

Question VI

Did the trial judge err by denying Charles Dent his Sixth Amendment right to confront and cross-examine John Camelo about the real reasons why he ended the relationship with Lori Michelle Mayo?

"The Sixth Amendment's Confrontation Clause provides that, [i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (internal quotations omitted). The Supreme Court has "held that this bedrock procedural guarantee applies to both federal and state prosecutions." *Id.* citing *Pointer v. Texas,* 380 U.S. 400 (1965); *see, e.g., State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017) (court's error, in deciding not to review witness's privileged mental health records in camera to determine whether disclosure of records was necessary under Confrontation Clause); *State v. Henson*, 407 S.C. 154, 754 S.E.2d 508 (2014) (admission of codefendant's redacted confession during a joint trial violated defendant's rights under the Confrontation Clause); *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002) (defendants' right of confrontation was violated by limitation of cross-examination into co-conspirator witness's potential sentence if convicted of same crimes as defendants). Due process also requires the prosecution to correct false testimony. *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) (State was obligated to correct co-defendant's false testimony at trial).

As seen, the prosecution solicited testimony from John Camelo about the reason for his ending the romantic relationship with Lori Michelle Mayo, which allowed the jurors to believe the relationship ended because of J.M.'s allegations of sexual abuse.

This testimony was contradicted by information provided by Mr. Camelo during an interview with the prosecution team. R. 790-91. The trial judge erred by denying Mr. Dent's Sixth Amendment right to confront and cross-examine Mr. Camelo about his prior inconsistent statements. Rules 613 and 801(d)(1), SCRE; *State v. Caulder*, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986) (inconsistent statement of witness who testified at trial was admissible as substantive evidence). This Court should order a new trial.

Question VII

Did the trial judge err by deviating from the jury instruction mandated by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013)?

Our Supreme Court held: "[T]rial courts should provide the following language as a circumstantial evidence charge, in addition to a proper reasonable doubt instruction, when so requested by a defendant:"

> There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
>
> Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two."

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013).

Mr. Dent requested this instruction and objected when the trial judge deviated from the *Logan* instruction. R. 688, 756, 769; Request to Charge No. 2, R.81. In this

case, the State relied on a combination of direct and circumstantial evidence. Mr. Dent was prejudiced because the omitted language would have instructed the jurors that the state's proof must point conclusively to the guilt of the accused and mere suspicion is not enough. This Court should order a new trial.

Question VIII

Did the trial judge err by not quashing the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the arrest warrants?

> The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. However, all rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (internal quotations and citations omitted). An "arrest warrant for a violation of Sections 16-15-305 . . . may be issued ***only*** upon request of a circuit solicitor." S.C. Code Ann. § 16-15-435(A) (emphasis added). The State did not follow this procedure, as law enforcement—not the Solicitor—sought the arrest warrants. The trial judge erred by accepting the Solicitor's argument that these code sections provide an alternate—rather than the only—method of obtaining the search warrants. This Court should strictly construe the requirements set forth in S.C. Code §§ 16-15-305 and 435. "When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)). This Court should order a new trial.

Question IX

Did the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants?

A search warrant . . . for a violation of Sections 16-15-305 . . . may be issued only upon request of a circuit solicitor." S.C. Code Ann. § 16-15-435. This statute must be strictly construed. *See Roberts, Nelson,* and *Blackmon, supra.* As seen, the search warrant was sought based on information provided by Investigator LaVan—not the Solicitor. The trial judge erred by not suppressing this evidence. This Court should reverse the trial court and suppress the evidence.

Question X

Did the trail judge err by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute.

As seen, the State did not follow the statutory requirements of S.C. Code §§ 16-15-305 and 435 for obtaining the search warrant and arrest warrants for the two indictments for disseminating obscene material to a minor twelve years of age or younger. These statutes must be strictly construed. *See Roberts, Nelson,* and *Blackmon, supra.* Section 16-15-305, additionally, sets forth specific requirements before the allegedly obscene material can support a conviction. Not only did the prosecution not present any obscene material in during the trial, J.M.'s testimony did not satisfy the prerequisites of section 16-15-305 to support a conviction for disseminating obscene material. This Court should reverse the trial judge and issuing an order directing a verdict of acquittal on these charges.

Question XI

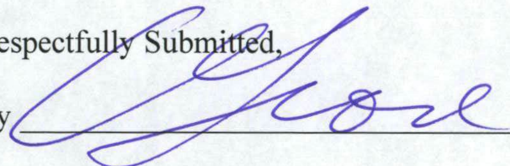
Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

Each of the foregoing arguments independently entitles Charles Dent to a new trial. This Court, however, should not overlook the cumulative error doctrine, which "provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial." *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). *And see State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000), *reversed on other grounds by State v. Blurton,* 352 S.C. 203, 573 S.E.2d 802 (2002) (cumulative error of solicitor's improper argument and improperly excluded evidence warranted reversal). Many of Mr. Dent's questions on appeal are intertwined, thereby compounding the prejudice.

CONCLUSION

This Court should reverse the trial judge and enter an order directing an verdict of acquittal on Indictment No. 2014-GS-07-01673. This Court should reverse the trial judge and enter an order directing a verdict of acquittal two indictments for disseminating obscene material to a minor twelve years or younger. In the alternative, this Court should enter an order quashing those indictment. In the alternative, this Court should order a new trial.

Respectfully Submitted,



By____________________________

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Attorney for Appellant Charles Dent

November 4, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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SC Court of Appeals

Appellate Case No. 2018-001257

The State,..Respondent,

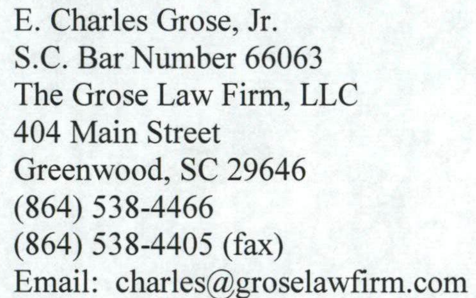
v.

Charles Dent, ...Appellant.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,



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