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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2018-001257

The State,Respondent,

v.

Charles Dent,.....Appellant.

CROSS-PETITION FOR REHEARING

On August 18, 2021, this Court reversed the trial court from not providing the jury instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) and *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020). This Court summarily disposed of Mr. Dent's remaining issues on appeal by holding:

Because this finding is dispositive, we decline to address Dent's remaining issues on appeal. *See State v. Hepburn*, 406 S.C. 416, 428 n. 14, 753 S.E.2d 402, 408 n. 14 (2013) (declining to review remaining issues when its determination of a prior issue was dispositive of the appeal).

State v. Dent, No. 2018-001257, 2021 WL 3641728, at *3, fn. 1 (S.C. Ct. App. Aug. 18, 2021). On August 26, the State petitioned for rehearing. Pursuant to Rule 221(a), SCACR, Charles Dent also petitions for rehearing because this Court did not decide the remaining issues raised by Mr. Dent on appeal. In doing so, this Court overlooked or misapprehended that two of these issues are dispositive in the same manner as the dispositive issue in

Hepburn and the remaining eight issues require this Court's guidance because those issues are capable of repetition at trial.

STANDARD OF REVIEW

In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(2) The Court of Appeals need not address a point which is manifestly without merit.

Rule 220(b), SCACR.

DISCUSSION

A. Dispositive Issues.

In *Hepburn*, our supreme court reversed a conviction for homicide by child abuse and "direct[ed] a verdict of acquittal." *Hepburn*, 406 S.C. at 442, 753 S.E.2d at 416. Because of the directed verdict, the remaining issues alleging error during the trial became moot. Stated another way, the directed verdict was dispositive of the entire case. Here, Mr. Dent raises two issues regarding the trial court's denial of his directed verdict motions,

which would be dispositive of the State's charges against Mr. Dent, thereby rendering a new trial on these charges unnecessary.

Question I asked this Court to hold "trial judge err[ed] 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." Brief of Appellant, at 41-43; Reply Brief of Appellant, at 1-3. If this Court agrees with Mr. Dent and enters a directed verdict, then double jeopardy will bar the State from prosecuting Mr. Dent a second time for first-degree criminal sexual conduct with a minor. U.S. Const. Am. V; S.C. Const. Art. I, § 12. Given the variance between the indictment and the evidence presented at trial, not deciding this issue would give the State a "free pass" by allowing them to seek an amended indictment from the grand jury.

Question X asked this Court to hold "the trial judge err[ed] 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." Brief of Appellant, at 51-52; Reply Brief of Appellant, at 14-15. If this Court agrees with Mr. Dent and enters a directed verdict, then double jeopardy will bar the State from prosecuting Mr. Dent a second time for disseminating obscene material to a minor. U.S. Const. Am. V; S.C. Const. Art. I, § 12.

This Court, accordingly, should issue a written opinion regarding Questions I and X because these issues are dispositive and would

B. Issue Capable of Repetition at Trial.

This Court's guidance is needed because the remaining eight issues are capable of repetition during a new trial.

First, Question II asked this Court to hold the trial court “err[ed] 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.” Brief of Appellant, at 43-44; Reply Brief of Appellant, at 3-5. Although the State defends the trial judge’s ruling on appeal, the State tacitly admits the error by acknowledging it was required to prove fellatio in order to survive Mr. Dent’s directed verdict motion. *See, e.g.*, Brief of Respondent, at 8-11. As our supreme court recently reminded:

The primary purpose of an indictment is threefold: to put the defendant on notice of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgment to pronounce following a conviction.

State v. Lewis, No. 2019-001815, 2021 WL 3520852, at *7 (S.C. Aug. 11, 2021) (citing *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)). Here, Mr. Dent relied on the indictment’s limitation to a single sexual battery. As seen above, Mr. Dent is concerned the failure to decide this issue will give the State a “free pass” to seek an amended indictment. If the State does not seek an amended indictment, then this issue likely will be repeated during a new trial.

Question III asked this Court to “exclude[e] 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.” Brief of Appellant, at 44-46; Reply Brief of Appellant, at 5-8. Without this Court’s guidance, the State will call Ms. Trask during a new trial, and this issue will repeat itself.

Question IV asked this Court to hold “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." Brief of Appellant, at 46-47; Reply Brief of Appellant, at 8-10. Question IX asked this Court to hold "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." Brief of Appellant, at 52; Reply Brief of Appellant, at 14. If this Court agrees with Mr. Dent, then the State will not be allowed to use these exhibits during a new trial.

Question V asked this Court to hold "the trial judge err[ed] 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." Brief of Appellant, at 57-48; Reply Brief of Appellant, at 10. Question VI asked this Court to hold "the trial judge err[ed] 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." Brief of Appellant, at 48-49; Reply Brief of Appellant, at 11. Because it is difficult to imagine the prosecution not calling Mr. Camelo during a new trial, this Court should provide guidance about the appropriate limits of Mr. Comelo's direct testimony and permissible areas of his cross-examination.

Question VIII asked this Court to hold "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." Brief of

Appellant, at 50-51; Reply Brief of Appellant, at 13-14. As seen at trial and during this appeal, the State has a different interpretation of this statute. Thus, if the State seeks to retry Mr. Dent, then this issue will be repeated in a new trial. This Court therefore, should provide a statutory interpretation.

Mr. Dent also asked this Court to consider the cumulative error doctrine. Brief of Appellant, at 52; Reply Brief of Appellant, at 15.

This Court should issue a written opinion addressing these issues because these issues are capable of repetition at a new trial.

CONCLUSION

For the foregoing reasons, this Court should issue a written opinion addressing the remaining issues raised by Mr. Dent on appeal.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Greenwood, South Carolina

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Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel’s primary email address listed in the Attorney Information System (AIS),¹ as reflected below, on the date reflected below:

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¹ A copy of the email is attached to the certificate of service filed with this Court.

Subject: State v. Charles Dent, Appellate Case No. 2018-001257
Date: Thursday, September 2, 2021 at 6:26:46 PM Eastern Daylight Time
From: Charles Grose
To: Scott Matthews
CC: Laura Wingard
Attachments: 2021 09 02 Grose to CoA.pdf, Dent - Cross-Petition for Rehearing.pdf, Dent - Return to State's Rehearing Petition.pdf

Attached please find Mr. Dent's cross-petition for rehearing, return to the State's petition for rehearing, certificates of service, and cover letter, which I about to file electronically with the SC Court of Appeals, along with a copy of this email.

I hope you are well. Please let me know if you have any questions.

Best,
Charles

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