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**Sep 09 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Beaufort County  
The Honorable Alex Kinlaw, Jr., Circuit Court Judge  
Appellate Case No. 2018-001257

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THE STATE,

Respondent,

vs.

CHARLES DENT,

Appellant.

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RETURN TO CROSS-PETITION FOR REHEARING

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On September 2, 2021, Appellant filed a cross-petition for rehearing in the above referenced case. By letter dated September 3, 2021, this Court requested the State provided a return to Appellant's petition. The State's return to Appellant's cross-petition for rehearing follows.

Appellant begins his cross-petition by astutely noting that Rule 220(b) SCACR does not require the Court of Appeals to "address a point which is manifestly without merit." Rule 220(b) SCACR. Accordingly, this Court did not err in refusing to address the remaining ten issues raised on appeal by Appellant because they are each manifestly without merit. However, if this Court wishes to address Appellant's remaining issues, notwithstanding this Court's decision reversing Appellant's convictions based on the trial judge's failure to give the instruction

required by State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), Appellant's convictions should be affirmed for the following reasons<sup>1</sup>:

The first issue raised on appeal by Appellant is whether the trial court erred in refusing to direct a verdict of acquittal for Indictment number 2014-GS-07-1673. This issue was and remains manifestly without merit. At trial, Victim testified she was forced to perform fellatio on Appellant. (R. 377, State's Exhibit #17). The jury heard additional details regarding the fellatio from Victim's second forensic interview, including Victim's description of Appellant's semen. (State's Exhibit #17). While there was a discrepancy in the number of times Victim alleged she was forced to perform fellatio on Appellant in her forensic interview versus what she testified to at trial<sup>2</sup>, evidence was nonetheless presented from which a reasonable juror could find Appellant guilty under Indictment number 2014-GS-07-1673. The trial judge properly recognized the existence of the evidence presented and allowed the jury to determine the weight of that evidence.

The second issue Appellant raised on appeal is whether the trial judge properly charged the complete statutory definition of sexual battery during his charge to the jury. Like Appellant's other issues, this issue is manifestly without merit. The trial judge properly charged the complete definition of sexual battery as found in S.C. Code § 16-3-651(h). Therefore, the trial judge charged the complete and correct law of South Carolina. This complete definition was not misleading, because the State clearly argued in opening statement and closing argument that it was seeking to prove Appellant forced Victim to perform fellatio. (R. 247, 715, 722).

Furthermore, the trial judge read the specific language of the indictments which specified fellatio

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<sup>1</sup> For a more detailed discussion of the reasons this Court should affirm Appellant's remaining issues, please see the Final Brief of Respondent p. 8-31 and p. 34-43.

<sup>2</sup> Notably, neither the State nor Appellant asked Victim to clarify this discrepancy while she was on the witness stand. (R. 378-90).

as the sexual battery the State was seeking to prove in jury qualifications. (R. 146-47). Therefore, the trial judge did not err in reading the complete definition of sexual battery.

The third issue Appellant raised on appeal is whether the trial judge erred in admitting the testimony of Tessa Trask. This issue is likewise manifestly without merit. As previously argued in the State's Final Brief, Appellant did not preserve this issue for appeal because Appellant only objected to Trask's definition of trauma. To the extent, Appellant objected to the remainder of Trask's testimony, Trask properly testified as a blind expert on general topics related to child sexual abuse. Even if the trial judge erred in admitting Trask's testimony, the error was entirely harmless because Trask never offered an opinion on Victim's credibility or the truth of her disclosure. (R. 404).

The fourth issue raised by Appellant is whether the trial judge erred in admitting State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15. Contrary to Appellant's multiple assertions of error regarding the photographs, the photos were relevant, did not require a chain of custody, they were properly authenticated by Victim, and their probative value was not substantially outweighed by the danger of unfair prejudice. Victim properly authenticated each photo as a depiction of her during her time living in Beaufort County, South Carolina. (R. 570-79). Furthermore, the State did not seek to prove the photos were taken from Appellant's camera or computer and therefore the State was not required to prove a chain of custody. Indeed, the photos were not explicitly sexual and as Appellant noted in his closing argument, the State could not definitively prove who took them nor were they relevant to the two charges of disseminating obscene material to a minor. (R. 730-32). Therefore, the probative value of the photos was not substantially outweighed by the danger of unfair prejudice.

The fifth issue raised by Appellant asked this court to consider whether the trial judge erred in overruling Appellant's objections to the testimony of John Camelo. This issue is also manifestly without merit. Here, Camelo did not testify as a forensic interviewer nor did he offer an opinion on the credibility of Victim's disclosure. Camelo testified as an outcry witness under Rule 801(d)(1)(D) SCRE and he described his personal observations of sexual behavior by Victim. Camelo's observations were based on his personal experience as a victim of sexual abuse and his experience raising a stepdaughter who was the same age as Victim. (R. 270).

Appellant also alleged the trial judge erred in not allowing Appellant to ask John Camelo about why he broke up with Victim's mother. Appellant baselessly speculates that the jury must have assumed Camelo broke up with Mother because of Victim's allegations of sexual abuse. However, as Appellant's subsequent questions *in camera* questions of Camelo revealed, Appellant merely wished to impeach Mother by asking Camelo whether Mother was a stripper who used Marijuana. (R. 286). Appellant's line of questioning was completely irrelevant to the ultimate issue at trial and the State's objection to Appellant's questions was properly sustained.

Appellant's eighth issue on appeal asked this Court to consider whether the trial judge erred in refusing to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the Solicitor's office did not apply for the underlying arrest warrants associated with each indictment. This issue is also manifestly without merit. The manner in which Appellant's arrest warrant was obtained is irrelevant to a determination of the sufficiency of the indictment. A defect in an arrest warrant is not a proper ground for quashing an indictment. However, even if the trial judge could have quashed the indictment based on a defect in the arrest warrant, there were no defects in Appellant's arrest warrants for dissemination of obscene material to a minor. Appellant claims S.C. Code § 16-15-435(A) requires a circuit solicitor to apply for an arrest

warrant rather than a police officer. However, S.C. Code § 16-15-435(A) explicitly does not apply to the statute Appellant was charged with violating, S.C. Code § 16-15-355. Therefore, the requirement that a circuit solicitor apply for an arrest warrant is inapplicable to the charge of disseminating obscene material to a minor.

Appellant's ninth issue on appeal asked this Court to consider whether the trial judge erred in admitting State's Exhibits #1, #3, #4, #6, #11, #13, and #15 because the Solicitor's office did not apply for the underlying arrest warrants for indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672. As an initial matter this issue was not preserved for appeal because Appellant did not object to the admission of the aforementioned exhibits on this basis. Even if preserved, this issue is manifestly without merit. As previously argued, the photographs that Appellant complains of were not admitted to prove Appellant disseminated obscene material to a minor. Appellant admitted this much in his closing argument. (R. 730-32). However, even if the photos were relevant to proving Appellant disseminated obscene material to a minor, S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355.

Appellant also asked this Court to determine whether the trial judge erred in failing to direct a verdict for Appellant on for indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 in his tenth issue presented to this Court. This issue is manifestly without merit. As previously argued S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355, therefore it is irrelevant which agency sought arrest warrants for Appellant. Also, the State proved Appellant disseminated obscene material through Victim's testimony at trial and her first forensic interview. (Tr. 356-57, State's Exhibit #16). Therefore, the trial judge did not err in denying Appellant's motion for a directed verdict.

Appellant's final remaining issue is whether Appellant should have been granted a new trial based on the cumulative error doctrine. As an initial matter, Appellant failed to preserve this issue for appeal. Appellant did not argue the cumulative error doctrine to the trial judge during the trial, but rather raised it for the first time in a post-trial motion. Even if Appellant properly preserved this issue for appeal, Appellant abandoned the issue by raising it in a conclusory and unsupported manner in his final brief. Finally, Appellant's trial was not rendered unfair by any errors, cumulative or otherwise and Appellant has failed to identify any errors entitling him to a new trial.

**CONCLUSION**

For all of the foregoing reasons, the State requests the panel deny Appellant's cross petition for rehearing. However, if the panel grants the cross petition, the State requests this Court affirm Appellant's convictions on each remaining issue.

Respectfully submitted,

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PROOF OF SERVICE

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I, Leigh Ann Stone, certify that I have served the within Return to Cross Petition for Rehearing on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

E. Charles Grose, Jr., Esquire  
404 Main Street  
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.  
This 9<sup>th</sup> day of September, 2021.

  
LEIGH ANN STONE  
Legal Assistant

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## Leigh Ann Stone

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**From:** Leigh Ann Stone  
**Sent:** Thursday, September 9, 2021 9:01 AM  
**To:** charles@groselawfirm.com  
**Cc:** Scott Matthews; William Blich  
**Subject:** The State v. Charles Dent (2018-001257)  
**Attachments:** DENT Charles - Cover Letter (Return to Cross-Petition for Rehearing) (02703569xD2C78).PDF; DENT Charles - Return to Cross-Petition for Rehearing (02703562xD2C78).PDF

Good Morning Mr. Grose,

Attached please find a copy of the Return to Cross-Petition for Rehearing in The State v. Charles Dent (2018-001257), along with its cover letter. This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. In addition to this email, a hard copy will be placed in the mail.

If you will, please reply to confirm receipt of this email.

**LEIGH ANN STONE**, Legal Assistant  
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