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Sep 13 2021

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.

REPLY TO STATE’S RETURN TO CROSS-PETITION FOR REHEARING

On September 2, 2021, this Court requested the State file a return to Charles Dent’s cross-petition for rehearing (herein after “Cross-Petition” and “State’s Return”). On September 9, 2021, the State filed its return. This reply follows.

The State asks this Court not to decide the remaining issues raised by Mr. Dent’s appeal to this Court. *E.g.* Return, at 1-2 (“if this Court wishes to address [Mr. Dent’s] remaining issues, notwithstanding this Court’s decision reversing [his] convictions bases on the failure of the trial judge’s failure [sic] to give the instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013), [then his] convictions should be affirmed”).¹ Ironically, if this Court grants the State’s petition for rehearing, then this Court necessarily

¹ The State’s argues Mr. Dent’s remaining issues “are each manifestly without merit” and then argues why this Court should reject Mr. Dent’s remaining arguments. Mr. Dent respectfully disagrees that his remaining issue are without merit. Because this Court has not called for additional briefing, Mr. Dent relies on his arguments set forth in his Brief of Appellant and Reply Brief of Appellant.

would have to rehear the remaining issues raised by Mr. Dent’s appeal. This Court could resolve the State’s inconsistent positions by viewing the State’s opposition to it addressing Mr. Dent’s other issues and abandonment of its petition for rehearing.

The State’s Return militates in favor of denying its petition for rehearing on the merits. The State once again acknowledges “there was a discrepancy in the number of times Victim alleged she was forced to perform fellatio on Appellant in her forensic interview verses what she testified to at trial.”² Return, at 2. This acknowledgment must be viewed in context of the absence of any testimony—*i.e.* direct evidence—alleging fellatio occurred when the child lived at the residence during the timeframe of indictment number 2014-GS-07-01673. Without using the term “circumstantial evidence,” the State continues to argue it presented circumstantial evidence “from which a reasonable juror could find Appellant guilty under Indictment number 2014-GS-07-1673.” *Id.*

The State continues to argue its trial exhibits 1, 3, 4, 6, 11, 13, and 15 were not “relevant to the two charges of disseminating obscene material to a minor.”³ State’s Return, at 3 (citing R. 730-32). The State’s return never explains why these photographs were relevant. As this Court is aware, the State contends these photographs are evidence of the sexualized relationship between the child and her grandfather, thereby relying on these photographs as circumstantial evidence of first-degree criminal sexual conduct with a minor without using the term “circumstantial evidence.”

² The State further acknowledges the Solicitor never asked the child “to clarify this discrepancy while she was on the witness stand.” State’s Return, at 2, fn. 2.

³ In the same sentence, the State acknowledges it “could not dispositively prove who took” the photographs. State’s Return, at 3. This admission—combined with the admission these charges are not relevant to the other two charges—militates in favor of granting Mr. Dent a new trial on this additional issue.

Finally, Mr. Dent's cross-petition for rehearing argues two of the undecided issues are "dispositive in the same manner as the dispositive issue in *Hepburn*⁴ and the remaining eight issues require this Court's guidance because those issues are capable of repetition at trial." Cross Petition, at 1 (footnote added). The State's Return never addresses this ground for deciding the two issues that would bar retrial. Nor could it because Mr. Dent correctly explains why these issues could be dispositive of the entire case.

CONCLUSION

For the reasons set forth in Mr. Dent's cross-petition for rehearing and this reply, 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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Attorney for Charles Dent

September 13, 2021
Greenwood, South Carolina

⁴ *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013).

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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),⁵ as reflected below, on the date reflected below:

Jonathan Scott Matthews, Esquire
S.C. Attorney General's Office
PO Box 11549
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By s/E. Charles Grose, Jr.
E. Charles Grose, Jr.
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September 13, 2021
Greenwood, South Carolina

⁵ A copy of the email will be attached to the certificate of service filed with this Court.

Subject: State v. Charles Dent, Appellate Case No. 2018-001257
Date: Monday, September 13, 2021 at 9:01:31 AM Eastern Daylight Time
From: Charles Grose
To: Scott Matthews
CC: Laura Wingard
Attachments: 2021 09 13 Grose to CoA.pdf, Dent - Reply to State's Return to Cross Rehearing Petition.pdf

Scott,

Hope you had a good weekend.

Attached please find Mr. Dent's reply to state's return to his cross-petition for rehearing, along with a certificate of service and cover letter, which will be filed electronically with the Court of Appeals, along with a copy of this email.

Please let me know if you have any questions.

Best,
Charles

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *State of South Carolina v. Charles Dent*
Appellate Case No. 2018-001257

Dear Ms. Kitchings:

Enclosed please find Mr. Dent's reply to state's return to his cross-petition for rehearing, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.

cc: Mr. Charles Dent
Scott Matthews, Esquire