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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2021-001246

THE STATE,

Petitioner-Respondent,

v.

CHARLES DENT,

Respondent-Petitioner.

RETURN TO CROSS PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

Did the trial judge err in refusing to direct a verdict of acquittal on indictment number 2014-GS-07-1673 when the State produced evidence that Dent forced Victim to perform fellatio on him?

II.

Did the trial judge err in instructing the jury on the complete statutory definition of sexual battery when it was the correct definition of sexual battery and it adequately conveyed the law?

III.

Was the issue of the reliability of Tessa Trask's testimony preserved for appeal when Dent only objected to her definition of trauma? And even if preserved, did the trial judge err in admitting Trask's testimony when Trask was qualified to testify as a blind expert in the field of behavioral characteristics of child victims of sexual abuse? And finally, even if Trask's testimony was admitted in error, did her testimony prejudice Dent when she did not offer an opinion on the credibility of Victim's disclosure of abuse?

IV.

Did the trial judge properly admit pictures of Victim into evidence when they were properly authenticated by Victim, they were relevant, and their probative value was not substantially outweighed by the danger of unfair prejudice to Dent? And even if admitted in error, was any error harmless?

V.

Did the trial judge properly allow John Camelo to testify about his personal observations of Victim's behavior when he did not discuss the substance of Victim's disclosure or offer an opinion on her credibility?

VI.

Did the trial judge properly sustain the State's objection to the irrelevant question posed to John Camelo about he broke up with Mother because she was a stripper who smoke marijuana when Dent was not prejudiced by the ruling and when Dent was free to elicit the same information from Mother on cross examination?

VII.

Did the trial judge properly refuse to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 when a defect in an arrest warrant is not a proper ground for quashing an indictment and even if it were, was the warrant defective when S.C. Code Ann. § 16-15-435(A) doesn't apply to the statute Dent was charged with violating?

XIII.

Was the issue of whether the trial judge erroneously admitted pictures of Victim because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A) preserved for appeal when Dent did not object to the admission of the photos on that ground at trial? And even if preserved, were the requirements of § 16-15-435(A) irrelevant to the trial judge's decision to admit the photos when the State did not enter the photos to prove Dent disseminated obscene material to a minor?

IX.

Did the trial judge err in refusing to direct verdicts of acquittal on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 when the State produced evidence that Dent forced Victim to view pictures of his penis and pornography?

X.

Did Dent preserve any issue regarding the cumulative error doctrine for appellate review when the issue was not raised to and ruled upon by the trial judge but rather was raised for the first time via a post-trial motion? And even if preserved, did Dent abandon the issue by raising it in a conclusory and unsupported manner? Additionally was Dent's trial rendered unfair when there were no errors, cumulative or otherwise?

STATEMENT OF THE CASE

Procedural History

In October 2014, the Beaufort County Grand Jury indicted Dent for two counts of first degree criminal sexual conduct with a minor. (App. 37-40). In March 2018, the Beaufort County Grand Jury indicted Dent for two amended counts of disseminating obscene material to a minor. (App. 29-30, 33-34). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Dent was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office.

At the conclusion of trial, the jury convicted Dent of one count of first degree criminal sexual conduct with a minor and both counts of disseminating obscene material to a minor. (App. 15-17, 788-89). The jury acquitted Dent of the remaining count of first degree criminal sexual conduct with a minor. (App. 18, 788). Following the verdict, the trial judge sentenced Dent to concurrent terms 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. Dent filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Dent's motion. Dent timely filed a notice of appeal and an initial brief.

On appeal, Dent raised eleven issues to the Court of Appeals. (App.810-11). On August 18, 2021, in a divided published opinion, a majority of the Court of Appeals reversed Dent's convictions and found the trial judge erred in failing to give the Logan instruction and further found the trial judge's error was not harmless. State v. Dent, Opinion No. 5850 (S.C. Ct. App.

filed August 18, 2021) (Howard Adv. Sh. No. 28) (App. 936-42). Because the Court of Appeals found the Logan charge issue to be dispositive, the Court declined to address the remaining issues raised on appeal by Dent. (App. 940). On August 26, 2021, the State filed a petition for rehearing. (App. 943-52). On September 2, 2021, Dent filed a cross-petition for rehearing. (App. 961-67). The Court of Appeals denied both petitions for rehearing on October 18, 2021. (App. 980-83). On October 29, 2021, the State filed a petition for writ of certiorari which asked this Court to review the Court of Appeals decision regarding whether the trial judge erred in refusing to read the Logan charge. On November 22, 2021, Dent contemporaneously filed a return to the State's petition for writ of certiorari and a cross petition for writ of certiorari alleging the Court of Appeals erred in declining to address the remaining ten issues Dent originally raised on appeal. The State's return to Dent's cross petition for writ of certiorari now follows.

Factual History

The victim (Victim) in this case was born in 2005. (App. 38, 40). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (App. 306). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (App. 581). Mother is Dent's daughter, and Victim is Dent's granddaughter. (App. 307, 379). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Dent's suggestion. (App. 632-33). Initially, Mother, Victim, and Brother lived in a two bedroom townhome that was paid for by Dent. (App. 633). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (App.

635). The family moved after Dent decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (App. 263). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (App. 275). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (App. 275). Camelo asked Victim if anyone had ever done anything inappropriate with her. (App. 275). Victim made an initial disclosure of abuse by Dent to Camelo. Camelo then told Mother, who reported the abuse to law enforcement on June 10, 2014. (App. 312, 367). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (App. 428, State's Exhibit #16¹). After her first interview, Victim made a second disclosure to Camello. (App. 276). In light of the second disclosure, Victim participated in another forensic interview on July 25, 2014. (App. 428, State's Exhibit #17).

At trial, Victim testified that Dent "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." (App. 378, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Dent. (App. 381). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Dent touched her vagina, breasts, and buttocks. Sometimes, the touching was underneath her clothes; other times it was over her clothes. Victim also disclosed that Dent showed her pictures of his penis

¹ Both State's Exhibit #16 and State's Exhibit #17 are part of the appellate record.

and a pornographic video. (App. 380-81, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Dent's penis went inside her mouth. She also disclosed that Dent touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Dent's penis on certain occasions that almost got in her mouth. She stated Dent's "urine" was white, looked like "flour", and stained the carpet. (State's Exhibit #17).

Dent testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Dent was convicted of all charges except a single count of first degree criminal sexual conduct with a minor.

STANDARD OF REVIEW

I., IX.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Morgan, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). “On an appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling.” State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court “views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

II.

“Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error.” State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). “A jury charge that is substantially correct and covers the law does not require reversal.” State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011).

III.

“The qualification of an expert witness and the admissibility of the expert’s testimony are matters within the trial court’s sound discretion.” State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). “A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion.” Id.

IV., V., VI., XIII.

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

VII.

“The trial court’s factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion.” State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007).

X.

“An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.” State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013).

ARGUMENT

I.

The trial judge properly denied Dent's request for a directed verdict of acquittal on indictment number 2014-GS-07-1673 because the State produced evidence that Dent forced Victim to perform fellatio on him.

Dent begins his cross-petition by complaining that the Court of Appeals did not address the remaining ten issues he raised on appeal despite the Court's opinion reversing and remanding his convictions because of the trial judge's failure to read the Logan charge. Dent argues the Court of Appeals' failure to specifically address whether the trial judge erred in failing to grant Dent a directed verdict of acquittal on indictment number 2014-GS-07-1673 gives the State a free pass to seek an amended indictment at a future trial. Dent's argument on this issue and each of his subsequent issues fails because the Court of Appeals is not required to address a point which is manifestly without merit. Rule 220(b)(2) SCACR. This issue, like each of Dent's remaining issues on appeal, is manifestly without merit.

Dent argues the Court of Appeals erred by failing to direct a verdict of acquittal in his favor on indictment number 2014-GS-07-1673 which alleged Dent committed first degree criminal sexual conduct with a minor by forcing Victim to perform fellatio on him. Dent likens his case to this Court's opinion in State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013). In Hepburn this Court directed a verdict of acquittal in favor of Hepburn because the State failed to present direct or substantial circumstantial evidence to support a conviction for homicide by child abuse. Here, unlike in Hepburn, the State produced direct evidence that Dent forced Victim to perform fellatio on him. Victim testified she was forced to perform fellatio on Dent and she repeated that accusation in her second forensic interview that was played before the jury. (App. 381, 431, State's Exhibit #17).

In his cross-petition, Dent complains that there was a discrepancy between Victim's testimony at trial and the statements she made during her forensic interview. Indeed, Victim testified at trial that she was only forced to perform fellatio on Dent one time, whereas she stated she was forced to perform fellatio more than once in her forensic interview. (App. 381, State's Exhibit #17). Furthermore, Dent notes that Victim stated in her forensic interview that the first of more than one instance of fellatio occurred at the first townhouse rather than the second townhouse². Therefore, Dent argues there was no evidence presented that Victim was forced to perform fellatio during the relevant time frame alleged in Indictment number 2014-GS-07-1673. However, Dent fails to recognize that Victim's trial testimony is nonetheless direct evidence that Dent forced Victim to perform fellatio. Whether there was a discrepancy in Victim's accounts regarding the number of times fellatio occurred, or a discrepancy regarding where and when it occurred is a question of the weight of the evidence to be assigned by the jury. At the directed verdict stage, the trial judge "shall consider only the existence or non-existence of the evidence and not its weight." Rule 19, SCRCrimP. Here, evidence existed that Victim was forced to perform fellatio on Dent during the time frame³ listed in indictment number 2014-GS-07-1673. Notably, Dent had the opportunity to resolve any discrepancies regarding time and date during

² Indictment #2014-GS-07-1673 references a timeframe from August 2013 to April 2014 in which Victim and her family lived in the second of two townhouses that the family lived in during their time in Beaufort County. (App. 37-38, 306-07, 635).

³ While indictment number 2014-GS-07-1673 contains a range of dates in which Dent's abuse of Victim occurred, contrary to Dent's argument, the date of the offense is not an element of first degree criminal sexual conduct with a minor as defined in S.C. Code § 16-3-655 (A)(1). While the State must prove Victim was under the age of eleven at the time of the offense, the State is not required to prove a specific date of the offense. As this Court recently noted in State v. Lewis: "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 judgement to pronounce following a conviction." State v. Lewis, 434 S.C. 158, 172, 863 S.E.2d 1, 8 (2021). Here, indictment 2014-GS-07-1673 satisfied each of the aforementioned three requirements.

his cross-examination of Victim and he never attempted to do so. (App. 383-93). Because evidence existed that Dent forced Victim to perform fellatio, the trial judge did not err in refusing to direct a verdict of acquittal for Dent.

II.

The trial judge properly instructed the jury on the complete statutory definition of sexual battery because it was the correct definition of sexual battery and it adequately covered the law.

Dent again complains the Court of Appeals should have addressed whether the trial judge erred in reading the entire definition of sexual battery rather than merely instructing the jury on fellatio. Dent asserts the Court of Appeals failure will allow the State a “free pass” to seek an amended indictment at a future trial. Contrary to Dent’s argument, indictment number 2014-GS-07-1673 did not contain a defect or variance and thus there is no reason for the State to seek an amended indictment at a future trial. The State maintained from opening statements through closing argument that it intended to prove Dent forced Victim to perform fellatio. The trial judge read both indictment numbers 2014-GS-07-1673 and 2014-GS-07-1674 during jury qualifications. (App. 152-53). Each indictment specifically listed fellatio as the sexual battery the State intended to prove. In its opening statement, the State identified fellatio as the only sexual battery they intended to prove. (App. 251). In the State’s direct examination of Victim, Victim was only asked about fellatio. (App. 375-82). In closing argument, the State argued that fellatio was the sexual battery that Dent was guilty of committing.⁴ (App. 725, 732). Therefore, the jury was clearly told which form of sexual battery the State intended to prove.

⁴ The State made a passing reference to the other forms of sexual battery Victim disclosed in her second interview which Dent objected to. However, this was the only reference to another form of sexual battery made by the State at trial. The State later emphasized in their closing argument that Dent was guilty of fellatio. (App. 723, 725, 732).

Here, the trial judge charged the jury on the definition of sexual battery exactly as it is written S.C. Code Ann. § 16-3-651(h). (App. 771). Therefore, the trial judge charged the complete, current, and correct law of South Carolina. The definition was not misleading or confusing to the jury because the jury was told by the trial judge and the State that fellatio was the specific sexual battery the State was seeking to prove.

III.

Because Dent only objected to Tessa Trask's definition of trauma, any issue regarding the remainder of her testimony is not preserved for appeal. Even, if preserved the trial judge did not err in admitting Trask's testimony because Trask was qualified to testify as a blind expert in the field of behavioral characteristics of child victims of sexual abuse. Even if Trask's testimony was admitted in error, her testimony did not prejudice Dent because she did not offer an opinion on the credibility of Victim's disclosure of abuse.

The third issue Dent raised on appeal to the Court of Appeals is whether the trial judge erred in admitting the testimony of Tessa Trask. Dent alleges the Court of Appeals erred in not addressing this issue and argues the trial judge erred by not holding a hearing to determine the reliability of Trask's testimony. As an initial matter, this issue is not preserved for appeal, because Dent only objected to Trask's definition of trauma. (App. 190-91, 399). To the extent that Dent objected to the remainder of Trask's testimony, Trask properly testified as a blind expert on general topics related to child sexual abuse. Contrary to Dent's argument, the trial judge did hold an *in camera* hearing to determine Trask's qualifications and the reliability of her testimony. (App. 180-95). Furthermore, Dent's argument that Trask's testimony is not reliable ignores this Court's holding in State v. Jones, 423 S.C. 631, 817 S.E.2d 268 (2018). In Jones, this Court reiterated "the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized." Jones 423 S.C. at 636, 817 S.E.2d at 271. Here, the State tendered Trask as an expert in the field of behavioral characteristics of child victims of sexual abuse. (App. 397). As an expert in

behavioral characteristics of child victims of sexual abuse, Trask testified about trauma, developmentally inappropriate sexual behavior by minors, the relationship between trauma and ADHD, delayed disclosure, grooming, and risk factors of sexual abuse. (App. 398-405). 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). In fact, Trask readily admitted she had not met Victim, she did not know anything about Victim's case, and she wasn't offering any kind of opinion about Victim. (App. 407-08). Therefore, even if Trask's testimony was admitted in error, any error was harmless because it did not prejudice Dent.

IV.

The trial judge properly admitted pictures of Victim into evidence because they were properly authenticated by Victim, they were relevant, and their probative value was not substantially outweighed by the danger of unfair prejudice. If the photos were admitted in error, any error was harmless.

The fourth issue raised by Dent is whether the trial judge erred in admitting State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15. As with the other issues presented to this Court, Dent asserts the Court of Appeals erred in not addressing this issue. Contrary to Dent'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. (App. 600-09). Furthermore, the State did not seek to prove the photos were taken from Dent'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 Dent 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. (App. 760-62). Therefore, the probative value of the photos was not substantially outweighed by the danger of unfair prejudice.

Even if the photographs were admitted in error, any error was harmless. The primary evidence offered by the State against Dent was the testimony of Victim. The photos of Victim were offered to give context to Victim's testimony, but they did not prove or disprove whether Dent committed a sexual battery against Victim or disseminated obscene material to her. The photos were not overtly sexual and Dent could have plausibly argued they were innocent photographs. Instead Dent argued the State had not proven where the photos came from. (App. 742). Dent thereby disputed that he took the photos or was ever in possession of them. Ultimately, the jury reached their verdict on Dent's guilt or innocence based on the credibility of Victim's testimony. The photos of Victim did not affect the outcome of the trial. Any error in their admission was harmless.

V.

The trial judge properly allowed John Camelo to testify regarding his personal observations of Victim's behavior because he did not discuss the substance of Victim's disclosure or offer an opinion on her credibility.

The fifth issue raised by Dent asks this Court to consider whether the Court of Appeals erred in declining to address whether the trial judge erred in overruling Dent's objections to the testimony of John Camelo. Dent argues Camelo's testimony was "a back door introduction of opinion evidence prohibited by Anderson, Kromah, Jennings, and similar cases." (Cross-Petition 18). Respectfully, Dent does not understand the restrictions placed upon the State by the Kromah, Jennings, and Anderson line of cases. For example, in Anderson, this Court expressed concern that "the common practice is to present the forensic interviewer to jurors as a 'human lie-detector'" State v. Anderson, 413 S.C. 212, 220, 776 S.E.2d 76, 80 (2015). 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. (App. 274).

Similarly, in Kromah this Court stated that a forensic interviewer testifying at trial should avoid "a direct opinion as to a child's veracity or tendency to tell the truth" or "any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a 'compelling finding' of abuse." State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013). However a forensic interviewer may properly testify regarding "any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer." Id. Even if Camelo had been testifying as a forensic interviewer or as an expert witness, he would nonetheless be allowed to testify about his personal observations of Victim's demeanor. Thus, Camelo's testimony complied with the restrictions of Kromah and the trial judge did not abuse his discretion in admitting the testimony.

VI.

The trial judge properly sustained the State's objection to the question posed to John Camelo about whether he broke up with Mother because she was a stripper who smoked marijuana when the question was irrelevant and Dent was not prejudiced by the ruling because the statement was not a prior inconsistent statement and Dent was free to elicit the same information from Mother on cross-examination but he chose not to.

Dent next claims the Court of Appeals erred in declining to address whether the trial judge erred by not allowing Dent to ask John Camelo if he broke up with Mother because she was a stripper who used marijuana. Dent baselessly speculates that the jury must have assumed Camelo broke up with Mother because of Victim's allegations of sexual abuse. However, as

Dent's subsequent *in camera* questions of Camelo revealed, Dent merely wished to impeach Mother by asking Camelo whether Mother was a stripper who used marijuana. (App. 310). Dent's line of questioning was completely irrelevant to the ultimate issue at trial and the State's objection to Dent's questions was properly sustained. To the extent Dent wished to impeach Camelo with a prior inconsistent statement, he would be unable to do so even if the trial judge allowed the question because Camelo never said he broke up with Mother because she was a stripper who smoked marijuana. To the extent that Dent wished to inform the jury that Mother was a stripper who smoked marijuana, he was capable of asking Mother that question on cross-examination but he chose not to. Therefore, the trial judge properly sustained the State's objection to Dent's question and even if the trial judge's ruling was incorrect, Dent was not prejudiced by the ruling.

VII.

The trial judge properly refused to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because a defect in an arrest warrant is not a proper ground for quashing an indictment. Even if the trial judge could have quashed the indictment based on a defect in the underlying arrest warrant, the arrest warrant was not defective because S.C. Code Ann. § 16-15-435 does not apply to the statute Dent was charged with violating.

Next, Dent asks this Court to consider whether the Court of Appeals erred in declining to address 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. The manner in which Dent'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. As this Court recently noted, the purpose of an indictment is 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 judgement to pronounce following a conviction.” Lewis, 434 S.C. at 172, 863 S.E.2d at 8. Here, the indictments put Dent on notice of the elements of the offense, they allowed him to decide whether to plead guilty or stand trial, and they enabled the trial court to know what judgement to pronounce following Dent’s convictions. (App. 29-30, 33-34). However, even if the trial judge could have quashed the indictment based on a defect in the arrest warrant, there were no defects in Dent’s arrest warrants for dissemination of obscene material to a minor. Dent 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 Dent was charged with violating, S.C. Code § 16-15-355.

Here, Dent was arrested and charged with disseminating obscene material to a minor 12 years of age or younger pursuant to S.C. Code Ann. § 16-15-355. Section 16-15-355 provides:

An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

S.C. Code Ann. § 16-15-355. The statute that Dent claims the State did not comply with is S.C. Code Ann. § 16-15-435(A). Section 16-15-435(A) provides:

(A) A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.

S.C. Code Ann. § 16-15-435(A). Dent was arrested for two violations of § 16-15-355. Section 16-15-355 is not listed within § 16-15-435(A) as one of the statutes which requires an arrest warrant to be requested by a circuit solicitor. Therefore, § 16-15-435(A) is inapplicable to the arrest warrants Dent was served with. Thus, there were no defects in the warrants.

VIII.

The issue of whether the trial judge erred in admitting pictures of Victim because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A) is not preserved for appeal, because Dent did not object on that ground at trial. However, even if this issue is properly preserved, the State did not use the photos to prove Dent had disseminated obscene material to a minor. Therefore, the requirements of § 16-15-435(A) were irrelevant to the trial judge's decision to admit the photos.

Next, Dent asks this Court to consider whether the Court of Appeals erred in declining to address 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 is not preserved for appeal because Dent did not object to the admission of the aforementioned exhibits on this basis. (App. 573-74). Even if preserved, this issue is manifestly without merit. The State proved Dent disseminated obscene material to a minor through the testimony of Victim at trial and the statements she made during her forensic interview. (App. 380-81, State's Exhibit #16). Victim testified that Dent forced her to view pictures of his penis and pornography. (App. 380-81). However, Dent told the jury in opening statements and closing arguments that they would not see photos of his penis or pornography because the State hadn't recovered that evidence. (App. 255, 742). Furthermore, Dent conceded in closing that the photos of Victim were not relevant to the dissemination of obscene material charge. (App. 742-43). Even if the photos were relevant to proving Dent disseminated obscene material to a minor, S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355. Therefore, the trial judge did not err in admitting State's Exhibits #1, #3, #4, #6, #11, #13, and #15.

IX.

The trial judge properly denied Dent's request for a directed verdict of acquittal on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the State produced evidence that Dent forced Victim to view pictures of his penis and pornography.

Dent recycles his argument regarding the State's failure to comply with the warrant requirement of S.C. Code Ann. § 16-15-435(A). However, Dent additionally alleges the State's failure to comply with S.C. Code Ann. § 16-15-435(A) also required the trial judge to direct a verdict of acquittal on indictment numbers 2014-GS-07-1671 and 1672 because the State did not enter the actual obscene material disseminated to Victim into evidence. As with his other issues, Dent argues the Court of Appeals erred in declining to address this issue in their opinion. Dent's argument 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, and even if it did, a statute addressing the requirements of an arrest warrant has no bearing on a trial judge's decision at the directed verdict stage of a trial. The relevant consideration for a trial judge at the directed verdict stage of a trial is whether the State has produced evidence of a particular offense; not its weight. Here, the State conceded from the beginning of trial that the photo of Dent's penis and the pornographic videos would not be entered into evidence. These items were never recovered by law enforcement. Instead, the State relied on the testimony of Victim as well as the disclosures made in Victim's first forensic interview. Victim's testimony was direct evidence that Dent disseminated obscene material to a minor. Therefore, because evidence existed that Dent forced Victim to view pictures of his penis and watch pornography, the trial judge correctly denied Dent's motion for a directed verdict and allowed the jury to consider what weight to be assigned to the State's evidence.

X.

Dent did not preserve any issue regarding the cumulative error doctrine for appellate review because the issue was not raised to and ruled upon by the trial judge but rather it was raised for the first time via a post-trial motion. Even if preserved, Dent abandoned the issue by raising it in a conclusory and unsupported manner. Additionally, Dent's trial was not rendered unfair as a result of any errors, cumulative or otherwise.

The final issue Dent argues should have been addressed by the Court of Appeals is whether he should have been granted a new trial based on the cumulative error doctrine. As an initial matter, Dent failed to preserve this issue for appeal. Dent 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. (App. 83). Even if Dent properly preserved this issue for appeal, he abandoned the issue by raising it in a conclusory and unsupported manner in his final brief. (App. 861). Dent cites appellate authority to establish that there is, in fact, a doctrine in South Carolina known as the cumulative error doctrine; however, Dent does not explain how the cumulative error doctrine applies to his case other than to say "Many of Mr. Dent's questions on appeal are intertwined, thereby compounding the prejudice." (App. 861). Dent's single sentence, conclusory argument and analysis are insufficient to preserve this issue for appeal. However, even if this issue is preserved, Dent has failed to identify any errors, cumulative or otherwise among the ten issues the Court of Appeals declined to address in their published opinion. Because each of Dent's ten issues are manifestly without merit, the Court of Appeals properly declined to address the cumulative error doctrine and the trial judge did not err in refusing to grant Dent a new trial on this basis.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Dent's cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

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