

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Dec 29 2021

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

S.C. SUPREME COURT

Appellate Case 2018-001246

The State,Petitioner-Respondent,

v.

Charles Dent,.....Respondent-Petitioner.

**REPLY TO STATE'S RETURN TO CHARLES DENT'S
CORSS-PETITION FOR WRIT OF CERTIORARI**

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IN REPLY

Charles Dent replies to the State’s return to his cross-petition for a writ of *certiorari* (“State’s Return”).

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?

As further evidence the State’s petition for a writ of *certiorari*—appealing the Court of Appeals holding regarding the *Logan* circumstantial evidence jury instruction—must fail, the State relies on a combination of direct and circumstantial evidence to support its allegations that fellatio occurred during the timeframe alleged in the indictment ending in 01673. Although pointing to direct evidence contained in J.M. trial testimony and pre-trial unsworn video statement, the State concedes it did not present any direct evidence—from J.M. or anyone else—that fellatio occurred during the timeframe alleged in the indictment ending in 01673.¹ Rather, the State asks this Court to engage in mental gymnastics to conclude it presented “substantial circumstantial evidence” that fellatio occurred during the timeframe alleged in the indictment ending in 01673. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (“[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” (emphasis supplied by the Court)).

¹ Remarkably, the State faults Mr. Dent for not “resolv[ing] any discrepancies regarding time and date during his cross-examination.” State’s Return, at 10-11. As discussed *infra*, in addition to shifting the burden, this argument attempts to re-cast failure of proof as “discrepancies.”

The State attempts to re-cast its failure of proof a “a discrepancy between [J.M.’s] testimony at trial and the statements made during her forensic interview.” State’s Return, at 10-11. Without a doubt, J.M.’s statements were inconsistent throughout this case—the second child advocacy center interview was inconsistent with the first interview and the trial testimony was inconsistent with both interviews. However, the State raising “discrepancies” involving whether fellatio occurred at all and, if it occurred, “discrepancies” in the number of times it occurred is a red herring intended to distract this Court from the real question at bar—the State’s failure to present any evidence that fellatio occurred during the timeframe alleged in the indictment ending in 01673.

The State argues “the date of the offense is not an element of first degree criminal sexual conduct with a minor.” State’s Return, at 10, fn. 3. Although technically correct, the State provided only part of the information this Court needs to consider this issue. *Compare State v. Wingo*, 304 S.C. 173, 175, 403 S.E.2d 322, 323 (Ct. App. 1991) (“Where time is not an essential element of the offense, the indictment need not specifically charge the precise time the offense allegedly occurred.”) *with State v. Rallo*, 304 S.C. 258, 403 S.E.2d 653 (1991) (In criminal sexual conduct with a minor case, held that instructing jury that it could find that crime occurred on or about certain date was reversible error where indictment had been orally amended to charge specific date and defendant presented alibi defense with respect to that date.); *and see State v. Schumpert*, 312 S.C. 502, 508, 435 S.E.2d 859, 863 (1993) (Observing, “In *Rallo* the indictment was amended to allege the offense occurred on February 14. We held the trial judge erred in charging the jury the offense occurred “on or about” February 14 because the indictment alleged February 14 and the defendant had focused on that date in presenting evidence of alibi. Essentially, the

defendant in *Rallo* did not have notice of any date other than that alleged in the indictment and it was error to charge the jury with a larger time period. Here, however, the trial judge charged the time period alleged in the indictment.”) *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016).

Both parties cite this Court’s recent decision in *State v. Lewis*, 434 S.C. 158, ___, 863 S.E.2d 1, 8 (2021). Cross-petition for writ of certiorari, at 7; State’s Return, at 10, fn. 3. In this case, the indictments put Mr. Dent on notice the state intended to prove fellatio occurred at both townhouses. The parties agree that the two indictments for criminal sexual conduct with a minor corresponded to the two distinct timeframes where the child lived with her family in Beaufort County. Mr. Dent relied on those indictments when he proceeded to trial, as well as throughout the trial. Without any direct or circumstantial evidence that fellatio occurred during the timeframe alleged in the indictment ending in 01673, Mr. Dent is entitled to a directed verdict of acquittal. *Odems, supra*.

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 its response to Question I, the state concedes—as it has to based on the indictment—that it had to prove fellatio in order to obtain a conviction for criminal sexual conduct with a minor. State’s Return, at 9-11; *see also* State’s Return, at 11 (arguing in response to Question II, “In closing argument, the State argued that fellatio was the sexual battery that Dent was guilty of committing.”). Yet, the State’s Return never explains why it wants this Court to sanction a “purposeful ambiguity” in the jury instruction. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) (“A jury charge is no place for

purposeful ambiguity.”) *holding extended by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). The Solicitor, however, argued at trial that the jurors should be able to consider evidence of other sexual batteries not contained in the indictment. *E.g.* R. 590 (“[A]ll that we must prove is that as sexual battery, as defined by the statute, was committed. So she, in her second interview, testified that the Defendant put his mouth on her privates.”) and 699 (“They were put on notice that he committed criminal sexual conduct in the first degree with a minor. . . . And that’s what we are going to argue to the jury. . . . We are asking for the full definition of sexual battery to be read to the jury. We’re asking to argue that a sexual battery was committed. The Defense can point to the indictment.”).

In addition to arguing fellatio to the jurors, the prosecution argued “other sexual acts.” *E.g.* R. 709 (putting his tongue in her mouth), 712 (put his own mouth on [her] private parts” and “penetrating her vagina.”). The State’s Return wants this Court to overlook these portions of the state’s closing argument.

Question III

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

The State relies on *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018) for the proposition that “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.” State’s Return, at 12. Mr. Dent does not dispute this principle of law; rather, he contests the trial court’s failure to exercise its gatekeeping function to determine whether this purported expert’s testimony was reliable. *State v. Chavis*, 412 S.C. 101, 771 S.E.2d

336 (2015); *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010); *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009).

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 State argues these photographs were "properly authenticated" by J.M., it "did not seek to prove the photographs were taken from Dent's camera," and the photographs "did not affect the outcome of the trial." State's Return, at 13-14. The State apparently forgets the arguments in made at trail and in the Court of Appeals. At trial, the Solicitor argued J.M. "thought the Defendant took" the photographs. R. 719-20. In the Court of Appeals, the State argued these photographs "were not offered to prove [Mr. Dent] was guilty of disseminating obscene material to a minor," but rather, "The aforementioned exhibits are photos of Victim, at least some of which, the State argued were sexualized and thus demonstrated the inappropriate relationship [Mr. Dent] had with Victim." Brief of Respondent, at 38.

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?

The State argues counsel for Mr. “Dent does not understand the restrictions placed on the State by the *Kromah*,^[2] *Jennings*,^[3] and *Anderson*^[4] line of cases.” State’s Return, at 14. The State, however, is mistaken when it argues this line of cases is limited to the testimony of a child advocacy center interviewer. *Id.*, at 14-15. Under out state’s precedent, not witness is allowed to vouch for the credibility of another witness. To the extent the State misunderstands this rule of law, this Court should consider the issue and provide guidance to the bench and bar.

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 State argues Mr. “Dent merely wished to impeach Mother by asking Camello whether Mother was a stripper who used marijuana.” State’s Return, at 16. Mr. Dent, in fact, wanted to impeach Mr. Camello about his prior inconsistent statements. *See, e.g.*, Rule 613 and 801, SCRE.

Question VII

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?

This Court’s guidance is needed regarding the interpretation of S.C. Code §§ 16-15-305 and 435. This Court, accordingly, should grant the writ and consider the issue.

² *State v. Kromah*, 401 S.C. 340, 37 S.E.2d, (2013).

³ *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011).

⁴ *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015).

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Question X

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

The issues raised by Mr. Dent in this Appeal independently entitle him to relief. If this Court disagrees, then it should consider the cumulative error doctrine.

(conclusion on next page)

CONCLUSION

For the reasons set forth in Charles Dent's petition for a writ of certiorari and this return, this Court should grant the writ and consider the questions.

Respectfully Submitted,

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