THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of General Sessions

The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2018-001493
Lower Court Case No. 16-GS-14-0161

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUSTIN BRADLEY CAMERON,

APPELLANT.

PETITION FOR REHEARING

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ATTORNEY FOR APPELLANT

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I.

Issues Presented

1) This Honorable Court has either overlooked or misapprehended important facts in finding that the issue presented by Appellant was not properly preserved for appellate review.

2) The opinion issued in this matter overlooked important facts in holding that any error in this case was harmless.

3) The holdings in this case overlooks the fact that the question as rephrased by the prosecution combined with the affirmative answer provided by the adoptive father resulted in the very type of hearsay testimony prohibited by *State v. Sharpe*, 239 S.C. 258, 122 S.E.2d 622 (1961) and *State v. Munn*, 292 S.C. 497 (1987).

4) Appellant respectfully asserts that the decision entered in this matter overlooks the importance of the fact that when asked to restate the question, she added a phrase which made the original query put this witness even more prejudicial when answered in the affirmative.

II.

Points believed to have been "*overlooked or misapprehended by the court*" in finding Appellants issue was not adequately preserved for Appellate Review and that even if the lower court erred in allowing the question posed by the State to be answered, the error was harmless. Points 1, 2 ,3 and 4.

This Honorable Court has either overlooked or misapprehended important facts in finding that the issue presented by Appellant was not properly preserved for appellate review. If the lower court had allowed this witness to answer the question originally posed, the issue before this Honorable Court may have been different. The fact remains that trial counsel made a proper objection to that question and when, rather than ruling on the objection, the lower court asked the prosecution to restate the question, defense counsel very clearly renewed the objection. While it would have been preferable for defense counsel to have stated that the prosecution *had not*

simply restated the original question, she had in fact added language which compounded the error. The fact remains that the Court had not ruled on the original objection, but rather, asked to hear the question again before ruling. Appellant respectfully asserts that the decision entered in this matter overlooks the importance of the fact that when asked to restate the question, she added a phrase which made the original query put this witness even more prejudicial when answered in the affirmative.

When the lower court issued a ruling that the witness could answer the yes or no question about what the child told him about "the incident" the witnesses affirmation answer was no less hearsay and no less damaging than if the prosecution had asked the witness if the child told him his uncle sexually assaulted him, The jury clearly knew by this point in the trial what the defendant was accused of doing. The question was objected to as hearsay and correctly so. By allowing the witness to give a "*yes*" answer to that question, the witness was clearly allowed to tell this jury that the child told this witness the defendant was the perpetrator of the sexual assault he suffered regardless of whether it was euphemistically referenced as "*the incident*." The combination of the improper question, in combination with the affirmative answer resulted in classic *Munn* err.

Appellant also asserts that the holding in this case overlooks important facts in this case, as very carefully outlined in the Final Brief of Appellant, which show that the evidence in this case far from conclusively proved Appellant's guilt by overwhelming evidence. Appellant respectfully submits that the evidence presented at Appellant's trial was full of inconsistencies which could very well have generated reasonable doubt at this trial had the state not been allowed to invite *Munn* error. Through the use of a simple yes or no question, the State was allowed to inform the jury that this child told his adopted father that what happened to him, "the incident," took place between him *and his uncle*. Appellant therefore respectfully submits that

this Honorable Court overlooked important evidence which could have resulted in a different outcome at this trial, but for this damning piece of hearsay testimony. For that reason he asks this Honorable to rehear the question of whether this error is fairly characterized as harmless.

The holdings in this case overlook the fact that the question, as rephrased by the prosecution, combined with the affirmative answer provided by the adoptive father resulted in the very type of hearsay testimony prohibited by *State v. Sharpe*, 239 S.C. 258, 122 S.E.2d 622 (1961) and *State v. Munn*, 292 S.C. 497 (1987). Appellant submits that the case law on this issue demonstrates that the very reason the type of testimony at issue in this case in prohibited is because of its dangerous tendency to improperly bolster the victim's accusations. Therefore, Appellant would argue that an objection to the State offering hearsay testimony which exceeds the time and place of a sexual assault by definition encompasses a claim of bolstering.

CONCLUSION

For all the reasons set forth above, Appellant now asks that this Honorable Court Rehear it's decision in this case and reconsider it's findings that the important issues addressed in this case were not sufficiently preserved for appellate review and that any error in the lower court was harmless.

S/ *Tara D Shurling*

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S.C. Bar No. 5099

ATTORNEY FOR APPELLANT

This 19th day of February, 2022

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Certificate Of Service
Initial Brief of Appellant and Designation of Matter

Undersigned Counsel hereby certifies that a copy of her Petition for Rehearing, in the above captioned direct appeal, has been served upon opposing counsel, William M. Blitch, Jr., Senior Assistant Deputy Attorney General, this __10th__ day October, 2022, by email delivery to the Office of the South Carolina Attorney General, at the address below.

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