THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

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

Volume 2 of 2

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUSTIN BRADLEY CAMERON,

PETITIONER.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS

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ATTORNEY FOR PETITIONER

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FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant was indicted by the Grand Jury of the Clarendon County Court of General Sessions during their June, 2017 term, for the offense of Criminal Sexual Conduct with a Minor in the First Degree. Indictment No. 2016-GS-14-0161 He proceeded to trial by jury before the Honorable Craig Brown on August 7-9, 2018. He was represented in the Court of General Sessions by Timothy L. Griffith, Esquire, and the State was represented by Assistant Solicitors, Katarzyna K. Durant, and Christopher R. Durant. Appellant was found guilty as charged at the conclusion of said trial and was sentenced to Twenty-Five (25) years in the custody of the South Carolina Department of Corrections. A timely Notice of Appeal was filed on Appellant's behalf and this appeal follows.

ARGUMENT

Issue I.

The lower court erred in overruling Appellant's Object to a question posed by the prosecution where the question itself, in effect listed the identity of Appellant as the perpetrator of the crime charged as one of the facts the witness had been supplied by the Victim and therefore, called for testimony concerning a prior consistent statement by the Victim in excess of that allowed by Rule 801(d)(1)(D), SCRE, and *State v. Munn*, and it's progeny, which improperly bolstered the credibility of the minor Victim in this case and violated Appellant's right to due process of law.

SUMMARY OF RELEVANT TRIAL TESTIMONY

At Appellant's trial, during the opening argument for the State, Assistant Solicitor Timmons specifically states that this case involved the anal penetration of the Victim by the Appellant. **R. p. 6, lines 6 – 19.** That assertion is consistent with the narrow charging language found in the Indictment against Appellant for First Degree Criminal Sexual Conduct with a Minor, wherein it states that the Appellant, ***"did commit a sexual battery upon a minor who was less than eleven years of age, to wit: he anally penetrated [Victim], date of birth [Redacted], in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended."*** *See*, **Indictment No. 2016-GS-14-0161.** The Prosecutor then described the Victim as having been born into family who did not care about him. She described how this child would often came to school dirty and hungry and informed them that he was taken ultimately taken away by DSS the end of September, 2015. **R. p. 6, lines 24 – p. 7, line 2.** The argument went on to inform the jury that the Victim's Foster family reported that the child smelled of feces the first day they got him, and that he ***"couldn't hold his bowel movement."*** **R. p. 7, lines 3-5.** He stated that this little boy had several accidents and that he could not determine when he was going [to the bathroom]. The prosecutor advised the jury that the police did not get involved in this case until October, 2015, several months after the incident for which Appellant was on trial. At the time of the alleged

incident, the child was seven years old. **R. p. 6, line 21, p. 7, lines 20 - 22.** In her opening arguments to the jury, this prosecutor defines Sexual Battery as any intrusion, however slight, *upon the body of a child.* She then goes on to clearly assert that in this case, the sexual battery was "**anal penetration**". Ass't Solicitor Timmons never clarified that not just any intrusion, "upon the body of a child" would constitute a sexual battery sufficient to support a finding of guilt of First Degree Criminal Sexual Conduct with a minor pursuant to **S.C. Code §16-3-655** and **§16-3-651(h).** She acknowledged that there ***"There are no physical evidence [sic]because by, the time there will not be any, and well crimes like that, crimes like that, it's inherent in their nature that usually there are no witnesses to the crime other than the perpetrator."*** Her argument advises the jury that the Victim is 10 at the time of this trial. **R. p. 8, lines 4 – 9. R. p. 8, line 15.**

The State's first witness was, Lt. Fred Moore. He identified himself as "Lt. Moore., Sex Crimes Unit York South Carolina, without specifically identifying what law enforcement agency he was affiliated with. He described his career as involving twenty-three (23) years in law enforcement and indicated that he had been a detective for ten years. **R. p. 13-14, lines 19 – 4.** According to his testimony, he became involved in this case when, ***"we received a DSS referral and the DSS caseworker set up a forensic interview and asked him to attend".*** He verified that he never spoke with the Victim, which he stated, is their standard procedure, with children between ages 4-12. ***"We go through the child advocacy center. It's called Safe Passage in our county in Rockhill."*** **R. p. 14, lines 11-22.** He ***"was with DSS for the interview observing through a monitor,"*** but was not in the same room. **R. p. 14, lines 23 – p. 15, lines 3.** Lt. Moore testified that based upon the video of the forensic interview, **State's Exhibit No. 1, for ID Only,** he put together a case packet and sent it to the Turbeville Police Department because it was apparent the case was outside his jurisdiction as it involved an incident in Turbeville, South

Carolina in *Clarendon County*. He had no further involvement in the case. **R. p. 15, lines 4 – 24.** On cross-examination he confirmed that he did no investigation of the case himself and that he did not talk to the child **R. p. 16, lines 11 – 13. R. p. 16, lines 14 – p. 17, lines 3**. There was no re-direct examination of this witness. **R. p. 17, lines 4-7.**

The following day, before the jury was returned to the Courtroom, the State brought up an issue with the forensic interview, to which the Trial Judge responded that he was not going to decide that issue yet. The Prosecutor then states that the problem is they do not have the Forensic Interviewer available as a witness and that they wished to introduce the video of that interview through the child Victim. It was noted that Defense Counsel had indicated an objection to this request *in chambers.* Defense Counsel then put his objection on the record. **R. p. 27, line 9 - p. 28, line 9.** The Trial Judge cited to *State v. Anderson*[1] as authority for the fact that the forensic interviewer must be called as a witness in order for the State to comply with S.C. Code §17-23-175(b) and took the issue under advisement **R. p. 29 line 14 – p. 30, line 15.**

The State's second witness was David Flowers. **R. p. 63, line 16.** He testified that he was not working at the time of trial and was on disability. He stated that during ***"the summer time"*** he was working for Progressive Home Builders and that he lives in Turbeville, in Clarendon County **R. p. 64, lines 1 – 12.** His street address has been redacted pursuant to Rule, SCRCP. He identified State's Ex. No. 3 as his house. That exhibit, a photograph of the house in question was introduced as State's Ex. No. 3, without objection. **R. p. 34, lines 13 – 21.** This witness indicated he had lived at that address maybe 4-5 years and notes that the house is yellow. His testimony confirms that State's Ex. No.3 presented an accurate picture of how the house looked in 2015. He testified that he still lives there with his two sons, Minor Witness No. 1 (age 15) and Minor Witness No. 2 (age 14). **R. p. 35, lines 8 - 21.** Flowers described his house as a

[1] *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (S.Ct. 2015).

two bedroom, 1 bathroom house that also had a living room and a kitchen **R. p. 35, lines 22-25.** He testified that in the summer of 2016 he let a woman and her child move in because they had nowhere to go. He recalled that the woman, named Kelly, was brought there by a friend that wanted him to help her out by letting her stay at his home. The identity of that individual is not disclosed at trial and neither is his connection to Kelly Cameron and her son Minor Victim, explained. Flowers stated that he agreed to take Kelly and her son, whom he estimated to be 6, maybe 7 years old. Flowers testified that they stayed approximately a month ***"in and around July of 2015."*** When explaining how he knew this woman and her child came in his home in July, 2015, he gave a rather confusing answer **R. p. 36, line 5-p. 37, line 22.** He testified that when she packed up and left in August she took some of his boys stuff. He said he had looked up when he texted her to tell her she had done that and ***"I think, I want to say 15th or so".*** He added, ***"That was like three or four days after she left and so that would have definitely put her around the last part of July staying with us."*** If you start with August 15, 2015 and count backwards four (4) days, you get August 11th as her departure date. Then, counting backward thirty (30) days from there, consistent with Flowers' testimony, you get an arrival date of July 12th. If the text was sent three (3) after she left, as opposed to four (4), then you reach an arrival date of July 13th and a departure date of August 12th. As previously noted, this witness testified that a friend of his brought her by his house. He recalled that she had no driver's license and nowhere to go. She had a small child so he decided to help her out. He gave her a place to stay for a month so that he could help her get a license and get back on her feet. **R. p. 37, lines 10-22.** He expressly testified that this stranger and her young son stayed ***"around a month, 30 days."*** **R. p. 38, lines 5-7.** Using the timeline provided by the Victim for the length of their stay at the Flowers' residence, they were there for two weeks and Appellant was there "half as long", one week. Using Mr. Flowers' sworn testimony which established a departure date for Kelly and her

son of either August 11th or August 12th, and a two week stay asserted by the Victim, you get a start date for the Victim's presence in the Flowers house of either July 28th or 29th; Arrival dates that are eleven (11) or twelve (12) days after it has been established that Appellant was under lock and key at the Moss Justice Center Detention Facility. As previously noted, if you use Mr. Flowers' testimony which puts Kelly and the Victim there for 30 days, you still get an arrival date of either July 12th or July 13th. Neither of these arrival dates would allow for the Appellant to have been in the home for a week prior to his incarceration on July 17th – September 26th.[fn2]

Flowers testified that he did not think Kelly had any family in Turbeville and said he said ***"all her family is from Rock Hill."*** **R. p. 37, lines 1 - 4.** His testimony indicated that his younger son had gone to stay with the boy's aunt while on summer break. His older son, Minor Witness No. 1, agreed to give up his room so the woman and the boy could have his room while they were there. Flowers testified that he stayed in his own room. **R. p. 39, line 15 – p. 40, line 2.**

Flowers testified that after about a week and a half, Kelly, the mother, got a job working at a gentlemen's club in Florence called the Trophy Club. He recalled that at some point ***"we went and picked her brother up form Rock Hill, and he stayed approximately seven days."*** Other than him, Flowers stated that no one else, other than Kelly and her son, stayed at his home during that time period. **R. p. 40, lines 3 -15.** He identified defendant in the Courtroom as Kelly's brother. **R. p. 40, lines 16-20.** Flowers identified Appellant as Kelly's brother during his trial testimony. R. **p. 40, lines 21-24.** He said he thought he picked the brother up on a Sunday and he stayed until a week later when he left on Monday or Tuesday. He said Kelly and Minor Victim moved out about two weeks later. **R. p. 41, lines 1-9.** When he went to Rock Hill to get

[2] Def. Ex. No. 1, introduced later in this trial, was a letter from the York County Sheriff's Department, Establishing that Appellant was in the Moss Justice Center Detention Facility from July 17 – September 26, 2015. This exhibit was introduced without objection by the State.

Defendant, Kelly and Minor Victim were with him. He first testifies that he, his son, Kelly and Minor Victim spent the weekend at Lake Wateree **R. p. 41, lines 10-25.** Even though Flowers clearly said ***"me and my son, Kelly and Minor Victim went to the lake for the weekend"***,[3] the prosecution next asked if one or both of his sons went to the lake and this witness answered, "***both of them***". Then the prosecution asked, ***"Okay. That's Minor Witness No. 1 and others?"*** Flowers responded ***"Minor Witness No. 1 and them."*** **R. p. 42, lines 4-5.** He then testified that they arrived at Lake Wateree on Friday. When asked who all spent that Friday night at the lake, he then stated, ***" [w]hen we got there it was me and both my boys and Kelly and Minor Victim."*** **R. p. 42, lines 11-19.** He said that on Sunday, he, Kelly and Minor Victim rode to Rock Hill and picked up her brother at a house Kelly directed him to. His son's were left back at Wateree. **R. p. 43, lines 6-25.** According to Flowers, after allegedly picking up Kelly's brother, they went back to Wateree, retrieved his sons and then headed back to his house in Turbeville. The prosecutor asked who then stayed at his house. Flowers said his "***oldest boy Minor Witness No. 1, Kelly, Minor Victim, and Justin."*** When the prosecutor asked where Minor Witness No. 2 was, he simply repeated that, ***"Minor Witness No. 2 was spending most of his summer with my aunt, I mean my sister, which is his aunt."*** It was the prosecutor who stated, ***"[s]o he just went with you to, I guess to Lake Wateree for the weekend and then he went to your sister?"*** Flowers agreed with her version of the facts. **R. p. 44, line 1 – p. 46, line 2.** According to Flowers, from that point, Minor Witness No. 1 slept on the loveseat and Justin slept on the couch. His testimony indicated Minor Witness No.1 was there somewhere between two and four days while Justin was there, but then left and went to his grandmother's house for a couple of days. Justin had already left by the time Minor Witness No. 1 came back home. **R. p. 46, lines 3-23.** He testified that Kelly and a friend form work drove Justin back to Rock Hill. Minor Victim went with them. **R.**

[3] R. p. 41, lines 24-25

p. 46, line 24 – p. 47, line 6. Once again, the prosecutor provided, ***" [A]nd then Kelly and Minor Victim stayed for about two more weeks and then they....."*** Again, Flowers confirmed the prosecutor's statement of these facts. **R. p. 47, lines 10 – 13.**

On cross-examination, Flowers denied having a romantic relationship with Kelly. [4]He acknowledged that he was not always at the house when Kelly was there. **R. p. 47, line 21 – p. 48, line 1.**

On redirect, Flowers said Kelly's job hours were from 5:00 in the afternoon until 2:00 or 3:00 in the morning. He recalled one night when she did not come home and he had to miss work the next day because he had been watching her child. **R. p. 48, line 20 – p. 49, line 16.** Next the prosecutor asked if that one night had been when Justin was at the house. Flowers stated that it was. He was not asked why he would have had to watch Kelly's child all night if the boy's uncle was there. **R. p. 49, lines 17-20.**

After the testimony of Flowers, Judge Brown ruled that pursuant to S.C. Code §17-23-175, as well as *State v Anderson*, **413 S.C. 212, 776 S.E. 2d 76 (S.Ct. 2015),** the video of the forensic interview was not admissible since the interviewer was not available to testify to the requirements set forth in 17-23-175(a). **R. p. 50, line 14 – p. 51, line 21.** The record indicates that Judge Brown viewed the entire video. The record of the trial does not indicate that a copy of the video was introduced as a Court's Exhibit. **R. p. 52, line 1 – p. 53 line 3; Index to Trial Exhibits, R. p. 3.**

Judge notes other potential problems with the video of this child's interview pursuant to *State v. Cromer, Anderson and White.*[5]

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[4] The testimony of the Victim, however, suggested that "Mr. David" may have gone to Myrtle Beach with him and his Mom after they left the Flowers' house in Turbeville.

[5] Citations omitted.

After the Court's ruling on matters regarding the video of the Victim's interview, an *in camera* Competency Hearing was held to determine the child's competency to present testimony. The victim testified that he had just turned 10 years old, on; this trial was held August 7-9, 2018. **R. p. 55, lines 4-9.** He was born in 2008 and was getting ready to start the fifth grade.

He was, at the time of trial, in the process of moving to Sarasota Florida with his family. Clearly the Victim was referencing his new family. Court stops inquiry that goes beyond the purpose of the hearing and is not relevant to competency. **R. p. 55, line 17 – p. 56, line 22.** Child gave an explanation of the truth v. a lie and stated that it is wrong to tell a lie. **R. p. 56, line 24 – R. 57, line 13.** States argues he is competent. The Court questions him further. **R. p. 57, line 14 - p. 58, line 24.**

After the victim was questioned by the Court, Defense Counsel did ask victim if someone might lie to keep from hurting someone's feelings. Then he asked, [i]s it ever okay to lie? The Victim responded ***"no, it's not okay to lie."*** **R. p. 59 lines 1 - 9.** The Court ruled that the Victim was competent to testify based upon the testimony he gave during the in camera hearing. **R. p. 59, lines 10 – 20.** State asks Court if they can ask the victim, in front of the jury, if he knows the difference between the truth and a lie. The Court grants the State leave to do so. **R. p. 60, lines 11-19.**

Following the competency hearing, the Victim[6] was the State's next witness. When he was asked about the truth versus a lie, he gave, almost verbatim, the same answer he had given during the hearing **R. p. 61, line 17 – R. p. 62, lines 5-15.** ***Compare*, R. p. 57, lines 2 – 10.**

Has been living with the Minor Victim's, his new family for four or three years. Almost four. Leaving for Florida night after lunch **R. p. 63, line 24 – p. 64, line 23.** He lived with his

[6] Throughout this brief, the minor complaining witness is referenced as "*the child*" or "*the Victim*" in compliance with Rule 41.2, SCRCivP.

grandmother, Sherry, until she passed away, then he lived with his mom, Kelly. **R. p. 65, line 12-22.** He testified that when he lived with his grandma, they lived in a house in a neighborhood. He states that he had lived a few with his mom. He initially described living in a shack type place with two floors and then stated that they had stayed in another house for two weeks. The Victim indentified the house where they stayed with Mr. David as being the house in **State's Ex. No. 3.** Then the child identified Flowers in Court. **R. p. 65, line 23 – p. 67, line 25.**

In his trial testimony, the Victim said he stayed in that house with Mr. David, Minor Witness No. 1, his mom and his uncle Justin, 2 weeks. He identified Appellant in Court as his Uncle Justin. He described Mr. David's house as not being very big. He said he did not remember what time of year it was, but then curiously said ***"it was on summer vacation."*** He thinks he was about to start first grade. He recalled that he only stayed at that house one time. While he was there, he slept in Minor Witness No. 1's room. **R. p. 67, line 1-18 – p. 68, line 25.**

The Victim went on to testify that Appellant stayed in Minor Witness No. 1's room with him when his mom was at work. This boy testified that his Uncle Justin ***"stuck his thing up my butt."*** He said "***his thing***" was his private part. He additionally claimed Appellant ***"also put it in my mouth."*** He said his uncle told he would buy him a Ninja Turtle. **R. p. 69, line 4 – p. 70, line 17.** The State initially asked the Victim a leading question by asking him if "***his uncle***" had ***"touched him in a way that..."*** Trial Counsel objected to this question as leading and the objection was sustained. There was no follow up Motion to Strike nor was there a request for a curative charge. When asked if he knew whether his uncle left the room right after it happened this young boy said, ***"no, I don't remember."*** **R. p. 70, lines 18-20.**

When asked what he was wearing when this incident took place, the child testified, ***"clothes and like, kind of, it was my normal."*** The Victim did not say anything about his uncle

removing any of his clothes or the uncle taking any of his own clothing off. **R. p. 70, line 21 – R. p. 71, lines 1-3** (emphasis added). Next the prosecutor asked ***"when you said he stuck his thing in your butt, did he put it inside you?*** This question was a misstatement of the child's earlier testimony wherein the child's words were "***up his butt***" *not* **in** as the prosecutor stated. **R. p. 70, lines 5-6.** Defense Counsel objected to the prosecutor continuing to lead this witness, but the judge overruled the objection and expressly stated, ***"I'll allow that question."*** **R. p. 71, lines 4-7.** Despite this favorable ruling, the prosecution *did not* repeat the question, but rather asked, ***"do you remember how it felt?"*** The child responded, ***"it felt weird."*** Appellant submits that the fact that the prosecution initially asked the question concerning whether the perpetrator put ***"his thing" "inside"*** him, reflected the State's recognition that the Victim's testimony was not sufficient to prove any degree of intrusion into the Victim's anus. He did not say it hurt. He did not report any physical discomfort. Nor did the State ask any further questions designed to clarify whether there was in fact any degree of intrusion into his anus. **R. p. 71, lines 10-11.**

He testified that he subsequently told Minor Witness No. 1, the old son of the man he and his mom were staying with, what had happened. At that point, according to the Victim's testimony, either Minor Witness No. 1 told his father, David Flowers who in turn told the Victim's mother, or, Minor Witness No. 1 told the Victim's mother and she told Mr. Flowers. **R. p. 72, lines 2-9.** Either way, it was clear that the Victim was aware that his conversation with Minor Witness No. 1 was repeated to an adult in the household. Early in his testimony he had already stated that he had stayed at the Flower's house "***about two weeks***." **R. p. 67, lines 2-4.** He expressly testified that the Appellant was only there ***"half of the time... he was there like a week."*** **R. p. 73, lines 14-19.** When asked where he went after he left David's house, he initially said that he did not remember. Then he said he thought he went to Myrtle Beach with his Mom and later added, he couldn't remember "***if Mr. David came or not,***" but did not think he did. **R. p. 74, lines 2-7.**

This child testified that his mother was ***"mean to [him] a lot"***, that she "***beat him with a belt, and put soap in his mouth"*** and that when he started school he had to wear the same clothes every day. **R. p. 74, lines 13-23.** He recalled his mother leaving him for a while at the shack thing, ***"we were living in."*** He testified that the kids at school kept making fun of him because he smelled bad and kept wearing the same clothes. He said the nurses and staff talked to him and then ***"after that the cops took [him] to the shack place and then my – and then the DSS people came and then I went in the car and then we went, and then my mom now, she drove and then she took me."*** **R. p. 74, line 24 – p. 75, line 16.** No one questioned this child as to who else was at the shack place with him and his mother. No one questioned him as to exactly how long he had been left alone in the ***"shack place."***

The victim said he couldn't remember how old he was when he went to live at the Dante's, but he thought he was seven (7). **R. p. 75, lines 17 - 20.** He testified that they took him to a doctor because he, "***had problems in my stomach like, I never went poop for a long time so it got hard in there and then I had to go and then it all came out cause it was, was like a big ball of just ---"*** **R. p. 75, line 23 – p. 76, line 5.** He testified that he told his [new] mom what had happened to him "***whenever we went to the hospital because it was like the second day we came here.***" He very clearly testified that he did not tell his [new] Dad, but he thought his new Mom told him after the trip to the hospital. **R. p. 76, lines 8-23.** Later he talked to lots of DSS people and then corrected that they were, ***"the people that, like the DSS places."*** **R. p. 77, lines 1-3.** He was asked if he told these people ***"what happened"*** and he said "***yeah***". **R. p. 77, lines 4-8**

His testimony reflects that he was "***staying for good***" with the Dantes, that they were his new Mom and Dad and he was getting ready to move to Florida with his new family. **R. p. 77, lines 12-23** When asked if the events that he told about in court, as having happened in the

yellow house, took place the summer before he went to live with the Dantes, he stated, ***"I can't remember."*** **R. p. 77, line 24 – p. 78, line 3.** On cross-examination, the victim acknowledged that his life before he was taken in by the Dantes was bad and that he was very happy to be living with the Dantes at the time of trial. Near the end of his testimony he reiterated that he had stayed at Mr. David's house for two weeks. **R. p. 79, line 6 – p. 80, line 2.**

State's Witness Phil Dante, the Victim's "new father", testified at the Appellant's trial. His testimony reflects that he currently ran Sabbath Fellowship for Christian Athletes, but that he was transitioning to a job in Florida where he would be working with Young Life **R. p. 83, line 17 – p. 84, line 3.** In 2015 he was working for Fellowship of Christian Athletes and was ***"small groups pastor"*** at Steele Creek Church of Charlotte. His testimony indicated that he had worked in the Ministry for 25 years, and for Fellowship of Christian Athletes for 3 years. He testified that he and his wife had been foster parents for the last 8-9 years. They were ***"taking a break"*** from fostering when DSS called and asked if they could take Victim just for the weekend. He testified that he thought Victim had just turned 7 years old when they took him as a foster child. They had been told the child had been severely neglected. They were not told about allegations of child abuse at the time they agreed to take the child on a temporary basis. They did know that he had been left alone by his mother for several days. His teachers noticed he had been wearing the same clothes every day. The school nurse checked him because other children were making fun of him because he "***smelled bad***". When checked by the nurse, he was found to not be wearing underwear. Mr. Dante testified that they had cleaned him up at DSS, but when the Victim arrived at their home, ***"he literally went to the bathroom in his pants probably every 30 minutes; but other than that, you could tell he was just a sweet boy."*** **R. p. 84, line 4 – p. 86, line 2.**

Described the victim as "***basically leaking***" so they took him to the hospital. Without objection, this witness was allowed to testify that the child said he ***"couldn't remember the last time"*** he had gone to the bathroom. **R. p. 86, lines 3-12.** The child ended up in hospital two nights. Mr. Dante testified his wife ended up staying at the hospital with the child. Mr. Dante testified that, ***"he had a condition where – we didn't know what kind of abuse had happened to him but you know, he just was not going to go number two and so they had to all kinds of different enemas and things. It took him two days to get it all out it was so backed up."*** **R. p. 86, lines 17 – 22.** He stated, ***"[t]hey said, that it's probably from some sort of trauma caused him to get that backed up."*** **R. p. 88, line 15 – p. 89, line 1.** Mr. Dante's wife, who he said was the one who stayed with this child for a couple of days at the hospital, was not in court for this trial. According to Mr. Dante's testimony, she had already gone on to Florida to get his daughters enrolled for school. **R. p. 92, lines 5 – 14.**

Next the prosecutor asked this witness, ***"[d]id [Victim] told you [sic] about the incident."*** **R. p. 86, line 24.** Trial Counsel objected to this question on grounds of hearsay. **R. p. 86, lines 25 – p. 87, line 1.** Then the Court asked the prosecutor to, ***"[s]tate your question please."*** **R. p. 87, line 5.** The Prosecutor then directly asked this witness, ***"[d]id Victim told [sic] you about the incident that happened <u>between him and his uncle</u>."*** **R. p. 87, lines 7 – 8 (Emphasis added).** Defense counsel again objected to this question on grounds of hearsay and noted, ***"[n]ow he is testifying as to what Minor Victim said."*** **R. p. 87, lines 24 – 25.** This objection was overruled and the trial judge stated, ***"[n]o, he's not. He's testifying as to time and place which I believe are allowed under the statute, are allowed under the rules."*** Then, obviously addressing he witness, the judge states, ***"you are not allowed to testify as to what he told you, other than time and place---."*** **R. p. 88, lines 1-3.** In response to this, the witness said, **"Okay." R. p. 88, line 6.** The Court subsequently allowed testimony from this witness concerning where and when ***"it***

happened". This witness then said the Victim told him it happened when he was staying with his mother at David's house. As for when "*it*" happened, he said, ***"I believe he mentioned it was in the summer. He was out of school".*** **R. p. 88, lines 19 - 20.** Next the Prosecutor asked, ***"[a]fter Minor Victim mentioned the incident between him and his uncle, what did you and your wife do with that knowledge?"*** **R. p. 99, lines 5-7.**

He testified that he and his wife talked to DSS and that a DSS investigator had a lengthy conversation with the victim. He expressly testified that the Victim came to live with them in the month of October. **R. p. 89, lines 11-21.** When asked if the police got involved during the same month, his response was, ***"[y]eah, that's that week."*** **R. p. 89, lines 5-25.** There were no follow up questions clarifying when in October the police got involved, or, when in October the Dantes took the Victim into their home. Mr. Dante testified that the victim was placed with them in 2015 and reiterated it was originally just for the weekend. He stated that, ***"after two years we were able to adopt him."*** **R. p. 90, lines 2-25.** He said they were able to adopt the victim because his mother never came to see him. He testified ***"[t]he adoption was finalized six months ago..."*** **R. p. 91, lines 1-19.** Then the prosecution asked this witness if the child's mother had ***"tried to make contact."*** He indicated she had not and added that, ***"[s]he's been in prison so we've had to get her information, but just to let her know where [Victim] is and that he's in a good place."*** **R. p. 91, line 23 - p. 92, line 1.**

When discussing whether the victim attended counseling, the witness testified that he did, ***"for the things that happened with his mom he was going to counseling, as well as the things that he shared about what was going on with him and his uncle."*** **R. p. 92, lines 20-25.** When he was asked if the victim had completed counseling, this witness next testified, ***"He did, but they said until the type of trauma he went through, that as a child he dealt with it best he could; but it will be lifelong, that he to keep [sic] and, you know, depending on where he was***

as far as his willingness to ---" **R. p. 93, lines 2-6.** The defense objected to this testimony on grounds of hearsay. That objection was sustained. **R. p. 93, lines 7-8.** There was no request for this testimony to be stricken or for a curative charge.

The State's next witness was [the older son of David Flowers]. He was asked his address and supplied it. That address has been redacted to comply with Rule 41.2, SCRCP. **R. p. 95, lines 7-10.** He testified that he had lived there four and a half, almost five (5) years. He stated that he lives there with his Dad and brother. He acknowledged that sometimes his mom would stay a weekend. When asked if anyone else came to visit they have lived there he said, ***"no"*** **R. p. 95, line 16 – p. 96, line 4.** At first he testified that he met Victim at the lake, but then corrected himself and said one day in July when his father told him he was helping this woman and her son out, ***"but it was like a week before I met [Victim] and I got along good with him."*** **R. p. 96, lines 5 – 15.** He went on to say the Victim was five or six at the time they met in 2015. The Prosecution asked this witness how long Minor Victim had lived with him and he said, ***"[i]t could have been three weeks to a month."*** When asked, ***"who else",*** he testified, ***"her—Kelly, Minor Victim, and Justin."*** He gave his room to Kelly, and Appellant slept on the couch, while he slept on the loveseat. When asked if Appellant stayed the whole time Kelly, and her son were there, he gave a confusing answer. ***"Only about a week, maybe eight days maybe cause I think he stayed one or two days."*** **R. p. 96, line 16 – p. 97, line 15.** He recalled the trip to Lake Wateree and said, he and his ***"Dad and [his] brother, Minor Witness No. 2, and Kelly and Minor Victim"*** went on the trip to Lake Wateree for, ***"about three days, just the weekend."*** **R. p. 97, lines 16-25.** He testified that he thought they went and picked up Justin the day after they got to the lake. He believed it was Saturday. **R. p. 98, lines 1-5.** He stated that they did not go with his father to pick Appellant up. He and his brother stayed at the apartment they were at.

He clearly testified that Appellant spent that night with them at Lake Wateree. **R. p. 98, lines 1-13.**

They all went home the next day. Minor Witness No. 1 testified that he was there the entire Appellant was there, except for two days when he went to his grandmother's home in Cades, South Carolina. By the time he returned home, Appellant had left. **R. p. 98, line 1 – p. 99, line 11.**

The jury left Courtroom for an *in camera* proceeding held during Minor Witness No. 1's testimony **R. p. 99, lines 14-21.** During that hearing, the State asks if they will be allowed to ask Minor Witness No. 1 about what the Victim told him "about the incident that happened between him and ---" Trial Counsel interjected a hearsay objection at that point which lead the State to respond, ***"[l]imited time and place."*** The Court goes on to rule the prosecution will be limited to testimony regarding time and place. Court expressly notes that the identity of the perpetrator is excluded. The Court specifically asked this witness if *he* understood the Court's ruling and the witness said that he did. **R. p. 101, line 24 – p. 104, line 8.**

Appellant was gone. He affirmed that Appellant was gone when he got back **R. p. 106, lines 16-23.** This witness, as previously noted, had however testified that he was gone to his grandmother's for two days. **R. p. 98, lines 21-25.** His father had likewise testified that he was gone to his grandmother's house for ***"a couple of days."*** **R. p. 46, lines 12-16.** He confirmed that the Victim told him about the incident when he came back from his grandmother's house and that he subsequently told the Victim's mother, Kelly what the Victim had told him. **R. p. 104, lines 15 – 24.** Kelly, testimony from the Victim's mother was noticeably missing from this trial. Not only that, but there was no mention of who the Victim's father was and whether he had any ongoing contact with this child.

The prosecution directly asked Minor Witness No. 1, ***"did [the victim] told you [sic] about the incident?"*** To which the witness responded, "***yes, ma'am.***" **R. p. 104, lines 15-18.** He then testified that the victim did not tell him when or where "it" happened. **R. p. 104, lines 19-22.** He confirmed that he told the Victim's mother about what he was told. **R. p. 104, lines 23-24.** On cross-examination this witness stated that the Appellant stayed at his family's house for a week. **R. p. 106, lines 6-9.**

The State next presented testimony from Minor Witness No. 2, the younger son of David Flowers. Like his brother, he testified that the Victim, his mother Kelly and Appellant stayed at their house during the summer of 2015. He recalled their trip to Lake Wateree and testified that Appellant was not with them when they first arrived, but came on Saturday. He clearly testified, like his brother Minor Witness No. 1, that Appellant spent the night at Lake Wateree before they all headed home. **R. p. 108, line 17- p. 109, line 14.** This witness testified that when the others went to Turbeville at the end of their weekend at the lake, he went back to his Aunt's house; he thought for the rest of the summer. **R. p. 109, lines 15-20.**

David Jones, the Police Chief for the town of Turbeville testified that he initiated his investigation in this case after he received a packet from Investigator Moore of the York County Sheriff's Office on October 26, 2015. **R. p. 110, line 22 – p. 111, line 6.** Based upon that information, ***"we were able to identify the Defendant, a Justin Cameron, as being a suspect in the incident and obtained a warrant for his arrest.***" He testified that he thought Appellant was arrested in April of 2016. **R. p. 111, lines 8-16. State's Exhibit No. 2**, a Department of motor vehicles driver's license record photograph, and driver information for Justin Cameron, was introduced into evidence without objection. **R. p. 111, line 19 – p. 112, line 17.** That exhibit reflected a date of birth for Appellant. **R. p. 112, lines 19-21.** From there he obtained a warrant after Judge Coleman found probably cause for the arrest. **R. p. 112, line 22 - p. 113, line 5.** Next

this witness explained how and when Appellant became arrested on that warrant. He identified Appellant in Court as Justin Cameron. **R. p. 113, line 1 – p. 114, line 18.**

This law enforcement officer testified that due to the passage of time when they received this case, ***"it was outside the realm of being able to collect"*** any physical evidence. **R. p. 115, lines 1-5.** On cross-examination Lt. Jones indicated that they knew Miss Cameron, Appellant's sister, was incarcerated in SCDC and upon her release went to Hope Home in Florence. They discovered she was "***evicted or ejected***" from there. He indicated, ***"that was the date that we had in our investigation."*** Although he testified that they used that date in their investigation, he did not testify to what that date was. In questioning this witness, the State once again somewhat overstated previous testimony when she asked, **"[s]o Mr. Flowers indicated they stayed with him from mid-July to mid-August, would you say that's in that range?"** He said he believed the range they used was, ***"the end of June until some point in August."*** The arrest warrant in this case in fact alleged a time range of between ***"June 26, 2015 and August 5, 2016"*** Arrest Warrant No. 2015A1420300028, issued by Judge Luci M. Coleman on November 19, 2015. Therefore, as the testimony of this witness verifies, the start date of that range had nothing to do with any evidence concerning when Appellant was alleged to have been with the Victim, but rather was tied to when the mother got thrown out of the Hope Home program and facility. As previously noted, Lt. Jones testified they were ***"unable to find any physical evidence due to the time frame that we had there."*** **R. p. 117, lines 10-13.** Earlier in his testimony we actually admitted that they never tried to collect any physical evidence. **R. p. 115, lines 1-5.**

After breaking for lunch, the trial judge agreed that the Stated needed to proffer the testimony of their next witness; Megan Munson. **R. p. 118, line 8 – p. 119, line 20.** Ms. Munson's education and training were explained by her in detail and included her assertion that she had ***"her graduate degree in clinical psychology"***. **R. p. 120, line 3 – p. 123, line 15.** She

testified that she had in state court in South Carolina four or five times. **R. p. 124, lines 1 - 3.** Megan Munson was offered as an expert in ***"the field of child abuse disclose"*. R. p. 123, lines 16 – 18.** After questioning this witness briefly, Defense Counsel did not object to her being so qualified. **R. p. 124, line 1 – p. 125, line 7.** She was also questioned by the Court concerning her qualifications. **R. p. 125, line 8 - p. 126, line 13.** During that questioning, it was disclosed that she did not have a doctorate degree and, although she had testified four or five times in state court in South Carolina, she had never been qualified as an expert witness. **R. p. 126, lines 2 – 10.** During her proffered testimony, she revealed that she had never interviewed the minor victim in this case. She had not received any police incident reports or statements associated with this case. All her knowledge about this case camé from the Solicitors Office. **R. p. 126, lines 14-24.** She proffered testimony relating to delayed disclosure, and/or partial disclosure. **R. p. 126, line 25 – p. 130, line 15.** She also proffered testimony concerning whether it was unusual for a child not to physically resist or cry out when being sexually abused. **R. p. 129, line 21 – p. 130, line 15.** Next she proffered brief, general testimony on grooming behavior by a predator. **R. p. 130, line 16 - p. 131, line 3.** Despite asserting that predators will commonly Minor Witness No. 1 in different grooming tactics because they want a "***compliant victim***" and "***they don't want the child to tell***", she offered no testimony concerning what behaviors are considered grooming behavior or whether such behavior typical occurred over a period of time.

On cross-examination, this witness admitted that she knew absolutely nothing about this child and verified that she had not seen the video of the forensic interview. **R. p. 131, line 7 – 15.** Defense Counsel argued that this witness's testimony was not relevant and would be more prejudicial than probative. Interestingly, it was during this discussion that the State acknowledged that the first disclosure to an adult was to his foster mom; who was not a witness at trial. The state argued that there was delayed reporting to an adult. Defense Counsel, however,

noted correctly that the child almost immediately told Minor Witness No. 1 and, as the victim's trial testimony reflected, he knew that information had been passed on to both Minor Witness No. 1's father and his mother. **R. 133, line 7 – p. 136, line 24.** After lengthy discussion, the court ultimately allows this witness's testimony on the theory that the defense opened the door to it by implying the Victim only told his story once he was placed with his foster family, that he wanted to get to stay with his new family and did not want to go back to his old situation. It making that ruling, it is clear from the record that in reaching this holding, the Court took into account feelings about the case expressed at side bar or in chambers.[7] **R. p. 136, line 25 – p. 140, line 13.**

Ultimately, Defense Counsel did not object to Munson being qualified as an expert "in child abuse." **R. p. 141, line 20.** Defense Counsel did preserve, however, Appellant's objection to her testimony being irrelevant and more prejudicial than probative and the Court once again overruled, "***at this stage***." **R. p. 148, lines 19-23.** Munson's testimony in the presence of the jury was consistent with her *in camera* testimony with the exception of her adding the references to gift giving and other activities as examples of grooming behavior. *See*, **R. p. 152, lines 1-12. R. p. 148, line 24 – p. 154, line 25.**

Following the testimony of Ms. Munson, the state had rested its case, and the jury was excuse for the balance of the day. **R. p. 155, line 7 – p. 156, line 14.** Appellant made a motion for a directed verdict on the ground that the State had not proven the elements of the crime. That was motion was denied. **R. p. 156, line 19 – p. 157, line 21.**

Prior to the testimony of the first witness for the defense, Mrs. Shirley Milsaps, the parties agreed that the defense would be permitted to introduce, without objection, a letter she obtained from the York County Sheriff's Department documenting Appellant's detention the

[7] **R. p. 137, line 20 – p. 138, line 1.**

York County Detention Center. **R. p. 161, line 7 – p. 162, line 18.** Before her testimony, the Court once again advised the Appellant of the potential sentencing consequences of moving forward with his jury trial versus accepting a plea offer to plead to a lesser charge for a sentence of ten years; Assault and Battery in the First Degree. He was addressed that, unlike the crime for which he was on trial, the lesser-included charge was not a most-serious strike on even a serious one. He was advised the charge he was on trial for carried a mandatory minimum of twenty-five years in prison, carried mandatory sex offender registration and was a no-parole offense. He was advised that, with credit for his jail time served, he, ***"would probably be home in a year-and-a-half."*** He was advised that if he was convicted of First Degree Criminal Sexual Conduct he would be sentenced to twenty-five (25) years to life in prison and that whatever sentence was imposed would be a no-parole sentence. Further, he was advised that if he took the negotiated plea that was being offered to him, he would be eligible for parole after serving one-third of her sentence. Notwithstanding each of these factors, Appellant elected to go through with his jury trial. **R. p. 168, line 13 – p. 172, line 5.** He also advised the Court of his intent to testify. **R. p. 172, lines 7-10; R. p. 168, lines 1-12.**

In her trial testimony, Shirley Milsaps, the Administrative Assistant at her church in Rock Hill, explained how Appellant had come to their food bank and been turned away because he did not have a current picture ID. He later came back and broke in and took the food he needed. The church decided not to press charges that time, but he broke in a second time and was charged. He served time for that break in, but when he was released he was allowed to do community-service at their church. She also testified that as a result of these events, the director of the church food pantry had changed their policy regarding turning anyone away. **R. p. 173, line 7 – p. 174 line 23.** She testified that Appellant began his community service sometime between March and April, 2015 and from then on she saw him basically every day because she picked him up in the

morning and gave him a ride at night. She said he continued doing community service at the church after his thirty (30) required hours were completed. He only quit when he was incarcerated July 17, 2015 – September 28, 2015. **R. p. 175, line 1 – p. 180, line 2.** This witness admitted the church had been paying Appellant cash ***"under the table"*** while he worked at the church and that it was actually her own money that was being used to pay him. **R. p. 181, line 22 – p. 182, line 12.** Mrs. Milsaps testified that when Appellant was incarcerated it was for breaking into his grandmother's house that had been abandoned and foreclosed on. **R. p. 178, lines 15-22.** She testified that the letter from the York County Sheriff's Department proved that Appellant could not possibly have been in Turbeville for a week as was testified to by the State's witnesses because he was in jail in York. **R. p. 181, lines 2-11.** Her previous testimony established that he could not have been there for a week before the middle of July because he was working at the Church during that time period and was seen by her almost daily. [8] The balance of her testimony addressed the fact that she and her husband had taken the Appellant in as basically a family member and had been trying to give him a chance to turn his life around. **R. p. 186, line 15- p. 187, line 20.** The state introduced five (5) posts from this witness's Facebook account in an effort to show bias due to the fact that her family had treated Appellant so well. **R. p. 187, line 21 – p. 188, line 4.** Appellant objected to these exhibits being introduced on grounds of relevancy. **R. p. 189, line 24-4.** States Exhibits 6-11 were introduced over the objection of the defense. **R. p. 190, lines 5-12.** State's Exhibit No. 12 was marked for identification only. It was the written statement by Mrs. Milsaps. **R. p. 189, lines 6-21.**

The prosecution questioned Milsaps at length concerning five Facebook posts which showed a close relationship between Mr. and Mrs. Milsaps and Appellant. **R. p. 192, line 17 – p. 197, line 7.** She was then questioned extensively concerning her written statement, titled,

[8] She admitted there was *one day* when Appellant was given a ride to the church by a friend.

"*Recollection of Justin whereabouts for June 26th through July 17*", which had previously been marked State's Exhibit No. 12, for ID only. She testified that she used the end date of July 17th because that was the date Appellant had been arrested for an unrelated crime; breaking in his deceased grandmother's home which was in foreclosure. **R. p. 177, line 13 - p. 178, line 22; R. p. 198, line 25 - p. 199, line 9.** As has previously been noted, the arrest warrant alleged a window from June 26, 2015 to August 5, 2015. **Warrant No. 2015A1420300028.** The indictment expanded that time frame to June 1, 2015 to August 30, 2015. **Indictment No. 2016-GS-14-0161.** Milsaps testified that she wrote this statement/timeline herself, without assistance, and used a calendar to assist her in compiling it. She said that calendar documented the days she gave Appellant a ride to and from her church. Previous testimony established that the church is located in Rock Hill and gave him daily rides to and from church. **R. p. 175, line 17 – p. 177, line 16; R. 198, lines 21-24; R. p. 199, lines 16-25; R. p. 200, lines 1-17.** She testified that she had not picked Appellant up on July 17th because he had a friend coming to take him. She said he did come [to the church] that day and she gave him ten dollars. **R. p. 201, lines 1-15.** When the prosecutor tried to characterize that testimony as asserting that, ***"[s]o then it was that one day, one day, in two years that you know him, [sic] that he, that you didn't pick him."*** Milsaps then clarified that her statement didn't cover, ***"two years, it was like two weeks."*** **R. p. 201, lines 16-24 (Emphasis added).** On re-direct examination Milsaps clarified that she had her calendar with her and referenced it when she prepared her statement. **R. p. 193, lines 11-24.** During cross-examination, the prosecution questioned this witness in a manner that implied there was something untoward about her relationship with Appellant. She testified that Appellant was 23 at the time of this trial and she was 67. **R. p. 200, lines 15-25.** That established that in the summer of 2015 they were 20 and 64 years old respectively. [9] On re-direct, Milsaps emphasized that her

[9] Cross-examination of Milsaps begins at **R. p. 183, line 22** and ends at **R. p. 203, line 5.**

church was trying to help him turn his life around. She testified that there was nothing between her and Appellant. She said her husband had been with them constantly. She acknowledged having taken Appellant into their home and treating him like family. She acknowledged that helping Appellant was the Christian thing for her family, and her church, to do. **R. p. 204, line 11 - p. 205, line 18.** On re-direct the State got Milsaps to acknowledge that she had not shown the calendar she used creating the statement she gave Appellants trial lawyer on April 6, 2017 to anyone. **R. p. 205, line 22 – p. 206, line 9; R. p. 200, lines 3-9.**

At the conclusion of Milsaps testimony, the trial judge noted that none of the State's Exhibits previously marked **State's Ex. No. 6-12 for ID** had been introduced into evidence and they would not be going back with the jury during their deliberations. **R. p. 206, line 15 – p. 207, line 6.**

Two pastors from the church where Appellant did community service, Calvary Baptist Church in Rock Hill, testified for the defense at Appellant's trial. Tony Larson, was an associate pastor there for 13 years until "***almost two years***" before Appellants trial. **R. p. 207, line 13 – p. 208, line 8.** He said he normally was at the church, ***"Monday mornings through Thursday afternoons."*** He said he was sometimes in and out on Friday. He said he was actually in and out, "***most every day of the week. And of course I was there on Sundays, you know, pastors always work.***" **R. p. 208, line 22 - p. 209, line 2.** His testimony was that from June until the middle of July, he saw Justin at the church doing, ***" [l]ittle odd jobs, picking up moving stuff that we needed to move and little clean up jobs, stuff like that."*** **R. p. 209, lines 16-23.** Although he could not say he saw Appellant everyday, this witness testified that on the days this pastor was there, he "***knew***" Appellant was there. **R. p. 209, line 24. - p. 210, line 11.** During the time in question, this witness testified that he saw Appellant a lot. After Appellant broke in the church in

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Headers for **R. p. 193-192** are erroneously captioned as direct or redirect.

the summer of 2014, Pastor Larson, only vaguely remembered seeing Appellant. **R. p. 210, line 13 – p. 211, line 22.** Previous testimony established Appellant went to jail after his second break-in at this church. *After being released from jail,* he didn't start doing community service at the church in approximately April of 2015. It is therefore logical that this pastor would not have clear memories of seeing Appellant the summer of the break-in.

The next defense witness was Michael Polson. He too was on staff as a pastor at Calvary Baptist. **R. p. 212, line 16** – This pastor said he took a Saturday to Saturday the week of the 4th and returned to Calvary Baptist the Sunday after the 4th which was the 5th. He testified that the following week he went on a mission trip, but from the 5th to the 9th he was in and out of the church daily. During that time period he recalled seeing Justin at the church. He testified the church was trying to help Appellant, not just Mrs. Milsaps. He asserted he would not lie for Appellant. **R. p. 214, line 9 - p. 215, line 7.**

The Appellant testified at his trial. He acknowledged that he had broken into Calvary Baptist Church. Earlier testimony established he had twice broken into their food pantry. He said he was put on probation for that and did his community service at that same church. He testified that he met Mr. and Mrs. Milsaps at that church. **R. p. 218, line 1 – p. 219, line 10.** Appellant acknowledged that from July 17, 2015, to the end of September, 2017, he was locked up for breaking into the church. R. p. 249, l. 13-18. Mrs. Milsaps's earlier testimony reflected that Appellant went to jail for the *second* time he broke in the food pantry at Calvary Baptist Church. The letter she obtained from the Moss Justice Center, in York County, which was introduced as Defendant's Ex. No. 1 during her testimony, **R. p. 177, line 17- p. 178, line 13.** She testified that she was motivated to obtain this letter because she had read Appellant's warrant and knew he had been locked up during the time period it referenced. That letter,

introduced without objection by the state, proves that Appellant was in custody from July 17, 2015 to September 28, 2015. *See*, **Defendant's Ex. No. 1.**

Appellant's testimony reflects that he had not had a close relationship with his sister Kelly's son, the alleged victim in this case. He said that there had not been much communication between them due to him being homeless and his nephew staying with different relatives. **R. p. 221, lines 15-24.** His testimony reveals that he had recently gotten his driver's license but, that he didn't have a driver's license or a car back then. He expressly denied going to Turbeville during this time period.[10] **R. p. 220 line 9 – 221, line 6.**

DISCUSSION

As noted in the summary of the trial testimony, *supra*, during the testimony of the Victim's former foster father, now adoptive father, the prosecutor asked this witness, ***"[d]id [Victim] told you [sic] about the incident."*** **R. p. 86, line 24.** Trial Counsel objected to this question on grounds of hearsay. **R. p. 86, line 25 – p. 87, 1ine 1.** Then the Court asked the prosecutor to, ***"[s]tate your question please."*** **R. p. 87, line 5.** The Prosecutor then directly asked this witness, ***"[d]id Victim told [sic] you about the incident that happened between him and his uncle."*** **R. p. 87, lines 7 – 8 (Emphasis added).** Defense counsel again objected to this question on grounds of hearsay. **R. p. 87, lines 9-10.** The lower court then responded by ruling, ***"I'll allow you to answer whether or not he said anything, but I will not allow you to go into***

[10] Earlier testimony presented in the State's case reflected that law enforcement had obtained an old picture of Appellant from when he was much younger and either got a learners permit or his first license from the DMV. **R. 111, line 19 - p. 112, line 4.** It is difficult to imagine how law enforcement could have gotten his DMV records and not have been able to tell whether the picture of Appellant when he was younger was from when he obtained a learner's permit or an actual unrestricted driver's license. Appellant, even after hearing this testimony, firmly testified that he had not had a driver's license before the one he had recently obtained. **R. p. 221, lines 7 – 12.**

what he said. It's a yes or no answer." This witness, answered, **"yes"[11]. R. p . 87, lines 7 – 15.** Later after the prosecutor asked this witness whether the Victim told him ***"where it happened"***, this witness said ***"yes"***. When he was asked where it happened, this witness responded, ***"He said he was staying with his mother - - -".*** Defense Counsel immediately objected to this testimony on grounds of hearsay and noted, ***"[n]ow he is testifying as to what [Victim] said."*** **R. p. 87, lines 24 – 25.** This objection was overruled and the trial judge stated, ***"[n]o, he's not. He's testifying as to time and place which I believe are allowed under the statute, are allowed under the rules."*** Then, obviously addressing he witness, the judge states, ***"you are not allowed to testify as to what he told you, other than time and place---."*** **R. p. 88, lines 1-3.** In response to this, the witness said, **"Okay." R. p. 88, line 6.** The Court subsequently allowed testimony from this witness concerning where and when ***"it happened"***. This witness then said the Victim told him it happened when he was staying with his mother at David's house. As for when ***"it"*** happened, he said, ***"I believe he mentioned it was in the summer. He was out of school"***. **R. p. 88, lines 19 -20.**

By this stage of Appellant's trial the jury had already heard the Victim's testimony and knew that, ***"the incident"*** was when this child claimed his Uncle Justin had sexually assaulted him in the home of Mr. Flowers. Appellant respectfully submits that allowing the State to expressly ask, ***"[d]id Victim told [sic] you about <u>the incident</u> that happened <u>between him and his uncle</u>."*** **R. p. 87, lines 7 – 8 (Emphasis added)**, was no different than allowing the State to ask this witness whether the Victim had identified Appellant as the person who sexually assaulted him. As such, it elicited a response that exceeded the boundaries of the rules in South Carolina concerning such testimony.

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[11] The Victim in fact testified that he told his new Mom what had happened, ***"whenever we went to the hospital"*** and he thought she told his dad. **R. p. 76, lines 8-23.**

In *State v. Munn*, 292 S.C. 497, 499-500, 357 S.E.2d 461, 463 (1987), our Supreme Court stated that it wished, "to note for the benefit of the bench and bar that there is no rule allowing any and all statements made by the alleged victim to be admissible through hearsay testimony as long as the victim testifies during the case. It is true that when the victim takes the stand and testifies, evidence that she complained of an assault may be introduced to corroborate her testimony. *State v. Cox*, 274 S.C. 624, 266 S.E.2d 784 (1980). This right is limited in nature, however." The High Court went on to cite the decades older opinion in *State v. Sharpe*, 239 S.C. 258, 122 S.E. 2d 622 (1961), for the principle that, "[t]he particulars or details are not admissible but so much of the complaint as identifies 'the time and place with that of the one charged' may be shown." *Sharpe*, 239 S.C. at 272, 122 S.E. 2d at 629 (1961). *Munn, supra*, remains good law and has often been cited in South Carolina in cases addressing the introduction of hearsay testimony which is not admissible because it exceeds the limits put on such testimony by **Rule 801(d)(1)(D), SCRE.** *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260, (2001); *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994); *Simpkins v. State*, 303 S.C. 364, 367, 401 S.E.2d 142, 143 (1991).

A major change in the application of the principle emphasized in *Munn*, as well as Rule 801(d)(1)(D), SCRE, took place in 2011 when our Supreme Court overruled *Jolly*, and its progeny, to the extent those cases imposed a categorical, or *per se* rule, precluding a finding of harmless error based upon the wrongful admission of such testimony. *See*, *State v. Jennings*, 394 S.C. 473, 482, 716 S.E.2d 91, 95-96 (2011). Since that time, violations of this rule have been subject to harmless error analysis. *See*, *Thompson v. State*, 423 S.C. 235, 245-46, 814 S.E.2d 487, 492 (2018).

Appellant submits that evidence in his case was far from so strong that this blatant error should be found to constitute harmless error. Toward that analysis, Appellant has provided above

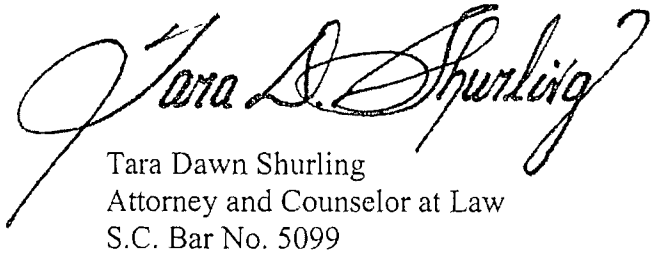
a detailed summary of all the evidence admitted at Applicant's trial. He most respectfully submits that the testimony introduced against him was riddled with inconsistencies, missing witnesses and faulty memories. Appellant admits that there were many lost opportunities in his trial to challenge much of the State's case. He asserts however, that the State's case was not so overwhelming that his fundamental right not to be convicted based upon inadmissible hearsay should be written off as harmless error. When closely examined, the timeline put forth by the State in this matter simply does not pass scrutiny. Appellant's alibi, backed up by evidence generated by a York County law enforcement agency, is incompatible with his guilt. The testimony of the state's own witnesses establishes this fact. It is impossible to know to what extent the improper bolstering of this child Victim's testimony resulted in this jury not finding reasonable doubt. Appellant most respectfully submits that what the Court can, and should, do is look closely at the aspects of this case that were likely to raise reasonable doubt. The fact that the mother of this child was not produced as a witness, the fact that this young boy, a mere seven years old when he was allegedly anally sodomized by an adult male, described the actions of his Uncle as, "*sticking his thing up my butt*", without more specifically testifying what he meant by that description, the fact that children historically refer to their bottoms as their "butt" and yet the State chose to abandon the opportunity to ask whether this child meant he experienced an intrusion which included some degree of actual anal penetration, the fact that the child referenced whatever he did experience as feeling "***weird***" as opposed to it being painful and, last but not least, the total absence of any physical evidence of sexual assault and the fact that the doctors who treated this child for intestinal problems months later were not brought to court as witnesses. Furthermore, a fair review of the testimony in this case demonstrates the fact that the time line provided by all the state's witnesses, including the Victim and the man in whose home the child was supposedly staying at the time of the assault, Mr. Flowers, is not compatible with

the alibi provided not only by people who knew Appellant, but also by the records of a law enforcement agency. Taking all these factors into account, Appellantt respectfully submits that this error should not be found to be harmless. It is his position that the failure of the trial court to enforce the limitations put on the introduction of this type evidence pursuant to Rule 801(d)(1)(D), SCRE , as well as the South Carolina case law discussed, *supra*, resulted in a violation of his right to due process of law. U.S. Const. Am. V and U.S. Const. Am. XIV.

CONCLUSION

Based upon the foregoing arguments and authorities, Appellant asks that his judgment and sentence be reversed and that his charge be remanded to the Clarendon County Court of General Sessions for a New Trial.

Respectfully Submitted,



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ATTORNEY FOR APPELLANT

This 10th day of February

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.

CERTIFICATION THAT
FINAL BRIEF COMPLIES WITH THE
REQUIREMENTS OF RULE 211 (b), SCACR

The undersigned Counsel for Appellant hereby certifies that the Final Brief served and filed in this matter complies with Rule 211 (b), SCACR.

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February 10, 2020

ORIGINAL 36

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of General Sessions
Honorable D. Craig Brown, Circuit Court Judge

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THE STATE,

Respondent,

v.

JUSTIN BRADLEY CAMERON,

Appellant.

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In The Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

I.

In a CSC case, a witness may give corroboration testimony concerning a victim's out-of-court disclosure of abuse if the substance of the disclosure is limited to the "time and place" of the abuse. In this case, the trial judge instructed a corroboration witness to testify only "whether or not [the victim] said anything," but not to repeat "what was said." Did the court err?

STATEMENT OF THE CASE

A Clarendon County grand jury indicted Appellant, Justin Cameron, for one count of First Degree Criminal Sexual Conduct with a Minor. Cameron proceeded to jury trial before the Honorable D. Craig Brown on August 7, 2018. The State presented testimony that for approximately one month in the summer of 2015, Victim and his mother lived with an acquaintance, David Flowers, in Turbeville. (R.p.35–40). Victim's mother had recently been evicted from the Hope Home in Florence and did not adequately care for Victim. (R.p.74–75; 85; 116). Flowers allowed the mother and Victim to stay at his home with him and his two sons. Victim was just shy of seven years old at the time. (R.p.55; 249, line 18).

In early July, the mother's brother, Justin Cameron, came to stay with Flowers for approximately a week. (R.p.43–47). Victim, ten years old at the time of trial, testified that one night "Uncle Justin" came into the bedroom where he was sleeping and penetrated him orally and anally with his penis. (R.p.67–71). Cameron promised to reward him with a ninja turtle toy if he kept the rape a secret. (R.p.70, lines 16–17). Victim testified he told one of Flowers' sons about the rape at that time. (R.p.72). Flowers' son corroborated that Victim told him what happened. (R.p.104). He further testified he told Victim's mother about Victim's disclosure at that time. (R.p.104). Flowers and his son confirmed that Cameron came to stay with them for about a week that July.

Shortly after the rape, DSS took custody of Victim and placed him with a temporary foster family. (R.p.84–85). The foster family observed right away that Victim was experiencing digestive blockage and incontinence, and they took him to the hospital. (R.p.85–86). Victim testified without objection that he told his adopted mother at that time "what happened." (R.p.76). The State presented corroborating "time and place" testimony from the adopted father.

(R.p.86–88). This exchange forms the entire basis for this appeal, and will be discussed at length in the argument section of this brief.

Cameron presented an alibi defense centered on the contention that he could not have raped Victim because he was in Rock Hill during the time period covered by the indictment, including a period he was in jail from July 17 through September 28 of that year. (R.p.177–80). The defense presented testimony that Cameron had been ordered to perform community service at a church he burglarized in Rock Hill, and that a church member, Shirley Milsaps, took him under her wing and treated him like a member of the family. Milsaps testified the church paid for Cameron to stay in a motel and that she gave him a ride to the church "basically every day" so he could perform his community service. (R.p.175). Milsaps claimed to have recollection, two years after the time in question, of picking Cameron up from the motel every single day during the time in question. (R.p.200–02). Cameron testified in his own defense and denied going to Turbeville that summer. (R.p.220–21).

The jury convicted Cameron as charged. He was sentenced to 25 years' incarceration. This direct appeal follows.

STANDARD OF REVIEW

The admission of evidence rests in the sound discretion of the trial court, whose ruling will not be reversed absent a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

ARGUMENT

I.

The trial court correctly limited a corroborating witness's time and place testimony in a CSC case to "whether or not [the victim] said anything" and precluded the witness from recounting "what was said." Even if the court erred, the testimony did not affect the outcome of trial.

Cameron claims the trial court erroneously "allow[ed] the State to ask" the victim's adopted father "whether the Victim had identified Appellant as the person who sexually assaulted him." Brief of Appellant at 31. The trial court did no such thing. To the extent the solicitor's question called for improper testimony, the court *sustained the objection.* The trial court reframed the question and specifically instructed the witness that he could only say "whether or not he said anything, but I will not allow you to go into what was said." (R.p.87). The record is clear that the trial court understood the correct rule of law and directed the witness to stay within those bounds. Furthermore, Cameron's bolstering argument is not preserved for review because he did not specifically object on that basis at trial, raise an objection to the relief that was granted, request a curative instruction, or move to strike the solicitor's question. Finally, even if the court erred, the testimony did not affect the result of the case. The testimony in question related solely to the identity of the assailant, and everyone in the courtroom was aware Cameron was the alleged perpetrator. This Court should affirm.

a. <u>Applicable law.</u>

Hearsay is not admissible except as provided by the rules of evidence or by other rules prescribed by the Supreme Court or by statute. Rule 802 SCRE. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c) SCRE. However, in a criminal sexual conduct case, a statement is not hearsay if: (1) the declarant testifies at the trial or hearing and is

subject to cross-examination concerning the statement; (2) the statement is consistent with the declarant's testimony, and; (3) the statement is limited to the time and place of the incident. Rule 801(d)(1)(D) SCRE. Under the common law, when the victim in a CSC case takes the stand and testifies, "evidence that she complained of an assault may be introduced to corroborate her testimony . . . . [but] the particulars or details are not admissible but so much of the complaint as identifies 'the time and place with that of the one charged' may be shown." State v. Munn, 292 S.C. 497, 500, 357 S.E.2d 461, 463 (1987), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Cox, 274 S.C. 624, 627, 266 S.E.2d 784, 786 (1980). Additionally, a declarant's prior consistent statement is admissible as substantive evidence when offered to rebut an express or implied charge of fabrication. Rule 801(d)(1)(B).

b. The trial court correctly directed the witness to give only "time and place" corroboration testimony.

Cameron claims the trial court erroneously "allow[ed] the State to ask" the victim's adopted father "whether the Victim had identified Appellant as the person who sexually assaulted him." Brief of Appellant at 31. This claim is meritless. Even if the solicitor's question arguably called for testimony beyond what the rules allow, the trial correctly instructed the juror to say only whether Victim "said anything" about the assault, and instructed him not to repeat "what was said." (R.p.87). This was a correct ruling and Cameron has not shown an abuse of discretion.

The court's ruling should be viewed in context. The State called Phil Dante, Victim's adopted father, to give background and corroborating testimony about Victim's disclosure. Dante explained he and his wife agreed to foster Victim for a weekend while DSS found a permanent home. The Dantes took Victim to the hospital because he was experiencing digestive

problems and "basically hadn't gone to the bathroom" in a long time. (R.p.86). The solicitor then carefully elicited "time and place" testimony as follows:

> Solicitor: Did [Victim], I guess, this is a yes or no question. Did [the victim] [tell] you about the incident?
> Defense attorney: Objection, Your Honor, to hearsay.

(R.p.86–87). This objection was baseless. The question whether Victim told Mr. Dante "about the incident" was plainly allowable corroboration evidence pursuant to Rule 801(d)(1)(D). Defense counsel objected generally on the basis of "hearsay" even though the rule expressly permits "time and place" hearsay testimony in CSC cases where the declarant has already testified. In this case, the victim's testimony directly preceded Mr. Dante's.

In response to defense counsel's objection, the trial court asked the solicitor to repeat the question. The solicitor did so, but added an extra phrase.[1] She asked: "Did [the victim] [tell] you about the incident that happened between him and his uncle." (R.p.87, lines 7–8). While the State understands Cameron's argument that the question called for testimony beyond what is allowed under Rule 801(d)(1)(D), it was still a yes or no question and was not intended to elicit an open-ended response about the contents of the victim's statement. Defense counsel did not appear to even notice the distinction. Instead of honing his objection based on the difference in the two questions, defense counsel made the same exact objection: "Objection to hearsay, Your Honor." (R.p.87).

The trial court did not overrule the objection. Instead, he reframed the question in the language of the rule: "I'll allow you to answer whether or not he said anything, but I will not

[1] Respondent submits that the inclusion of the phrase "between him and his uncle" was not intended to elicit improper testimony. The solicitor's original question was carefully crafted to avoid eliciting inadmissible hearsay, and only after being asked to repeat the question following defense counsel's spurious objection did the solicitor add the five words Cameron alleges necessitate reversal of his conviction. The solicitor had no wrongful intent.

allow you to go into what was said. It's a yes or no answer." (R.p.87, lines 11–14). The witness answered simply: "Yes." Defense counsel raised no objection to the court's ruling.

The solicitor then elicited the remainder of the allowable 801(d)(1)(D) evidence:

> Solicitor: And did he [tell] you about, did he [tell] you where it happened?
> Witness: Yes.
> Solicitor: Okay. Where did it happen?
> Witness: He said he was staying with his mother—
> Defense counsel: Objection. . . . He's now testifying as to what [the victim] said.

(R.p.87). Again, the solicitor's question was proper under Rule 801(d)(1)(D), and again defense counsel made a meritless hearsay objection. Again, the trial court made a correct legal ruling: "He's testifying as to time and place which I believe are allowed under the statute, are allowed under the rules. You're not allowed to testify as to what he told you other than time or place as provided under our rules." (R.p.88). The witness went on to testify that the victim said "it was in the summer." (R.p.88, line 19). Defense counsel raised no further objection.

The trial court committed no error. Everything he said and did was consistent with the law. Cameron's entire argument is based on an unartful question that would never have been asked if his lawyer had not made a spurious objection to the solicitor's original, proper question. The trial court effectively sustained the objection by reframing the question and directing the witness to answer, yes or no, whether the victim made a disclosure without giving details of what was said. The only actual evidence offered was the witness's one-word response: "Yes." The trial court committed no error of law. This Court should affirm.

c. <u>The issue raised on appeal is not preserved for review because defense counsel did not raise the exact alleged error with specificity to the trial court, move to strike the solicitor's question, or request a curative instruction or any other relief following the court's ruling.</u>

Cameron should not be allowed to raise this issue on appeal because he acquiesced in the trial court's ruling. Furthermore, it is not clear that defense counsel objected at trial on the same basis he now raises on appeal. He asks this court to infer that his objection to the solicitor's second question was different than his objection to her first question, even though his stated objection was exactly the same. If that was his intent, his objection was not sufficiently specific to bring the distinction to the attention of the trial court, and it is not clear that the trial court ever ruled on the issue as raised in this appeal.

On appeal, Cameron claims the solicitor's question elicited improper bolstering testimony beyond what is allowed by Rule 801(d)(1)(D). But defense counsel never uttered the word "bolstering" at trial, nor did he cite to a specific provision of the hearsay rule. Instead, he made a vague one-word objection to "hearsay." While normally such an objection would be sufficient to preserve an issue for appeal, that is not so where the evidence is being offered pursuant to a narrow exception to the rule. If not for the exception created by Rule 801(d)(1)(D), Mr. Dante's corroboration testimony would indeed be hearsay because it concerned an out-of-court statement offered for its truth: that the victim told Mr. Dante he had been raped. This was how the trial court understood the objection, and ruled accordingly. This understanding is reasonable considering defense counsel objected to the solicitor's first question, which did not include the complained-of language of the second question.

If defense counsel truly meant to raise a bolstering objection because he believed the solicitor's question called for testimony beyond what is allowed under the rule, he would have not have objected to the solicitor's first question. A more reasonable explanation is that defense counsel never meant to raise a bolstering objection to the solicitor's second question based on its

additional content, but was instead raising a generic, meritless hearsay objection based on the fact that the witness was relaying an out-of-court statement.

If he intended to make a separate objection to the second question, or was unsatisfied with the court's ruling, he should have supplemented and clarified his objection. He did not do so. Stone v. State, 419 S.C. 370, 386, 798 S.E.2d 561, 570 (2017) ("Without an objection . . . the trial court has no opportunity to exercise its discretion."); State v. Parris, 387 S.C. 460, 466, 692 S.E.2d 207, 210 (Ct.App.2010) (explaining where a defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide); State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 615 (Ct. App. 2012) ("Where an objection is sustained, the trial court has rendered a favorable ruling to the party, and it therefore 'becomes necessary that the sustained party move to cure, or move for a mistrial if such a cure is insufficient, in order to create an appealable issue.'"). Accordingly, defense counsel's objection to the solicitor's second question was at best too vague to bring to the court's attention the issue he now raises on appeal. This Court should not entertain such an appellate argument. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("In order to preserve for review an alleged error in admitting evidence, an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."). Cameron acquiesced in the trial court's ruling and has failed to preserve the issue for appellate review. State v. Wright, 416 S.C. 353, 371, 785 S.E.2d 479, 488 (Ct. App. 2016) (explaining a party may not acquiesce in a ruling and then complain on appeal).

d. Even if the trial court erred, Cameron was not prejudiced.

Even if the trial court erred, the error was harmless. Appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Byers, 392 S.C. 438, 447,

710 S.E.2d 55, 60 (2011). Phil Dante's testimony was limited to a simple one-word response to the court's reframed "time and place" question. The witness never said, "[the victim] told me his Uncle Justin raped him." It is not even clear from the exchange that the victim actually identified Cameron as the perpetrator to Mr. Dante at that time. Of course, at the time of trial Mr. Dante knew that Cameron was the alleged perpetrator, but he never said the victim told him so at the time of the disclosure. Cameron's whole argument is based around a somewhat ambiguous one-word answer to a question that never would have been asked if defense counsel had not made a spurious objection to the solicitor's original question. This is not reversible error.

Even assuming the solicitor's question whether the victim told Mr. Dante "about the incident that happened between him and his uncle" raised the danger that a juror could have perceived the testimony as bolstering, the alleged bolstering only concerned the identity of the perpetrator. Everyone in the courtroom knew Cameron was the alleged perpetrator. The indictment alleging the same was the whole reason the jurors were there in the first place. The victim had just given damning testimony explaining in detail how his uncle raped him, and that nothing like that had ever happened to him before or since. (R.p.71).

This case stands in stark contrast to Thompson v. State, 423 S.C. 235, 240, 814 S.E.2d 487, 489 (2018), reh'g denied (June 12, 2018), cited in Cameron's brief. There, the Supreme Court found Thompson was prejudiced by his lawyer's failure to object to bolstering testimony where: (1) a DSS caseworker testified the victim "revealed to me that she was being sexually abused by [Petitioner]"; (2) an expert witness who conducted a forensic interview of the victim testified "Victim disclosed chronic sexual abuse by Petitioner in the form of vaginal penetration, anal penetration, and oral sex" and that the victim's disclosure was credible; and (3) a police

officer testified that victim's disclosures were "consistent with her training and experience." Id., 423 S.C. 240–42, 814 S.E.2d 489–90. Thus, multiple witnesses, including an expert, gave explicit corroborating testimony not only to the victim's disclosure of identity, but to all the particulars of the disclosure, and an opinion that the disclosure was "compelling." That is bolstering.

Another example of prejudicial bolstering is State v. Simmons, 423 S.C. 552, 565, 816 S.E.2d 566, 573 (2018), reh'g denied (Aug. 2, 2018). There, the trial court admitted hearsay testimony of identity and other details by a medical professional. The evidence was admitted over defense counsel's *specific* objection that the testimony exceeded the "time and place" corroboration allowed by Rule 801(d)(1)(D). To make matters worse, the solicitor highlighted the bolstering nature of the testimony in her closing argument. Finally, the judge's ruling (that the testimony was admissible under the medical diagnosis exception to the hearsay rule) was legally erroneous. Again, that is a far cry from this case.

Cameron has not cited a single case where an appellate court overturned a conviction due to a single witness's corroborative testimony consisting only of the perpetrator's identity, much less one where the alleged bolstering was limited to a one-word response to a judge's reframing of a solicitor's question. Further, Jolly[2] and Dawkins[3] rely on the now-defunct rule that hearsay that is "merely corroborative" cannot be harmless. The Supreme Court has since clarified that corroborative hearsay is always subject to a harmless error analysis, even in a CSC case. See State v. Jennings, 394 S.C. 473, 482, 716 S.E.2d 91, 95 (2011) (Kittredge, J., concurring). Because the exchange in question did not have an appreciable bolstering effect and could not have affected the outcome of trial, Cameron has not shown prejudice. Combined with the fact

[2] Jolly v. State, 314 S.C. 17, 443 S.E.2d 556 (1994).
[3] Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001).

that the trial judge improperly excluded rebuttal testimony offered in response to Cameron's charge that Victim was fabricating his story, Cameron's trial was more than fair.[4] (R.p.99–101). This Court should affirm.

[4] The trial court erroneously excluded the particulars of Victim's disclosure to Gage Flowers from Flowers' testimony apparently out of a mistaken belief that only the victim could offer rebuttal testimony. Although the State elected to press forward with the trial, Judge Brown's erroneous ruling excluding this highly probative evidence shows that if either party was prejudiced by Judge Brown's evidentiary rulings, it was the State. See Rule 801(d)(1)(B).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Justin Bradley Cameron, Appellant.

Appellate Case No. 2018-001493

Appeal From Clarendon County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2022-UP-021
Submitted November 1, 2021 – Filed January 12, 2022

AFFIRMED

Tara Dawn Shurling, of Law Office of Tara Dawn Shurling, PA, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Joshua Abraham Edwards, both of Columbia; and Solicitor Ernest A. Finney, III, of Sumter, all for Respondent.

PER CURIAM: Justin Bradley Cameron appeals his conviction for criminal sexual conduct with a minor (CSCM) in the first degree. On appeal, Cameron argues the trial court erred in overruling his objection to a question from the State

that identified him as the perpetrator of the crime because the question (1) went beyond the "time and place" hearsay exception for a victim's prior consistent statement in sexual misconduct cases as permitted by Rule 801(d)(1)(D), SCRE; (2) improperly bolstered the victim's testimony; and (3) violated Cameron's due process rights. We affirm.

I.

Cameron was indicted for one count of CSCM in the first degree in relation to the alleged sexual battery of his nephew (Victim) between June and August of 2015. At trial, the State presented evidence that sometime during the summer of 2015, Victim, who was six years old at the time, and his mother lived with David Flowers and one of Flowers' two sons at Flowers' home in Turbeville, South Carolina. The State presented further evidence that in July 2015, Flowers, Victim, and Victim's mother drove and picked up Cameron from Rock Hill, and Cameron stayed with them at Flowers' home for about a week. Cameron slept on the living room couch during his stay while Victim and his mother slept in Flowers' son's room. Victim testified one night while the others were asleep and his mother was at work, Cameron entered Victim's room and anally and orally penetrated him. Victim testified he told Flowers' son about the incident shortly after it occurred. Flowers' son confirmed that Victim told him about the incident, and he stated he told Victim's mother about Victim's disclosure. Meanwhile, Victim was placed in foster care. Victim testified that shortly after he turned seven, he told his foster mother about the incident with Cameron because his foster mother had to take him to the hospital for stomach and bowel problems. Victim stated he did not think he told his foster father about the incident, but he believed his foster mother did.

Victim's foster father testified when he and his wife began fostering Victim, Victim had bowel issues. Victim's foster father testified they took Victim to the emergency room for the issues, Victim was admitted to the hospital for the weekend, and his wife stayed with Victim. The State then asked foster father, "Did . . . Victim, I guess, this is a yes or no question. Did . . . Victim t[ell] you about the incident?" Cameron objected to this question on hearsay grounds, and the trial court asked the State to restate its question. The State asked Father, "Did Victim t[ell] you about the incident that happened between him and his uncle?" Cameron objected again on hearsay grounds, and the trial court ruled it would allow Victim's foster father to answer the question as to whether or not Victim told him anything but not what Victim said, stating, "It's a yes or no answer." Victim's foster father testified, "Yes." The State then asked, "And did he t[ell] you about where it happened?" He stated, "Yes," and Cameron objected, arguing Victim's foster

father was testifying about what Victim said. The trial court stated, "No, he's not. He's testifying as to the time and place which I believe [is] allowed . . . under the rules. You're not allowed to testify as to what he told you, other than time and place . . . as provided under our rules." Victim's foster father then testified Victim told him the incident happened at Flowers' home when he stayed there one summer.

Cameron presented an alibi defense, contending he could not have sexually assaulted Victim because he was in Rock Hill from June to August 2015. Specifically, he presented evidence he was in prison there from July 17, 2015, to September 28, 2015. He also presented the testimony of Shirley Milsaps, a member of a church he burglarized in Rock Hill, who testified Cameron performed community service at her church, her church paid for him to stay in a motel in Rock Hill, and she picked him up from the motel every day from March or April 2015 until he was incarcerated on July 17, 2015. Tony Lawson, an associate pastor at the church, stated from June to mid-July 2015, he saw Cameron at the church sporadically, but he could not say he saw Cameron every day. Michael Polson, the pastor of the church, testified he was at the church from July 5 to 9, 2015, and Cameron was also there. However, Polson admitted he took the week of the Fourth of July off from work and he also left on a mission trip for six days shortly thereafter. Cameron testified he never went to Turbeville that summer.

The jury found Cameron guilty. The trial court sentenced him to twenty-five years' imprisonment. This appeal follows.

II.

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "The admission or exclusion of evidence rests in the sound discretion of the trial judge, and will not be reversed on appeal absent an abuse of discretion." *Id.* "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* (quoting *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011)).

III.

Cameron argues the trial court violated his due process rights and committed prejudicial error when it allowed the State to ask Victim's foster father if Victim told him "about the incident that happened between [Victim] and his uncle" because it "was no different than allowing the State to ask [Vicitm's foster father]

whether the Victim had identified [Cameron] as the person who sexually assaulted him," overstepping the law in South Carolina regarding such testimony. We disagree.

We find the trial court did not abuse its discretion in overruling Cameron's objection to the State's question. *See Johnson*, 413 S.C. at 466, 776 S.E.2d at 371 (defining abuse of discretion standard). Initially, we find Cameron failed to preserve the issue of whether this question bolstered Victim's testimony as Cameron only objected to the question on hearsay grounds. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). Nonetheless, we find the question of whether Victim told his foster father about the alleged incident with Cameron and the "Yes" answer do not constitute bolstering as Victim's foster father gave no opinion as to Victim's credibility and he did not state whether he believed Victim's disclosure. *See Briggs v. State*, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017) ("[T]he central point of the prohibition against improper bolstering [is that] a witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes the victim.").

Next, we find the trial court did not abuse its discretion in overruling Cameron's hearsay objection to the question because the trial court properly limited Victim's foster father's answer to whether Victim disclosed the alleged incident's time and place and such testimony is not hearsay. *See* Rule 801(d)(1), SCRE ("A statement is not hearsay if . . . [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident[.]"). We acknowledge that following Cameron's initial hearsay objection, the State should not have added the phrase "that happened between him and his uncle." *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (providing Rule 801(d)(1), SCRE, "obviously limits corroborating testimony in [a CSC] case to the time and place of the assault(s); any other details or particulars, *including the perpetrator's identity*, must be excluded" (emphasis added)). However, the trial court adequately handled the situation by instructing Victim's foster father to only give a yes or no answer as to whether Victim told him anything and to not discuss anything Victim said.[1]

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[1] We note the trial court appears to have in effect sustained Cameron's objection to the State's rephrased question as it limited the answer Victim's foster father could provide. We also note Cameron did not make a motion to strike the State's

Moreover, the trial court continued to properly limit Father's testimony regarding Victim's disclosure to the time and place of the incident under Rule 801(d)(1), SCRE. Thus, we find the trial court did not err in overruling Cameron's objection.

Nonetheless, even if the trial court erred in overruling Cameron's objection to the State's question, the error was harmless. *See Thompson*, 423 S.C. at 245–46, 814 S.E.2d at 492 ("[T]he bright-line rule [of presuming prejudice when trial counsel did not object to inadmissible hearsay testimony identifying the defendant as the perpetrator] should no longer control and . . . in a direct appeal, a harmless error analysis should be employed when reviewing the admission of hearsay testimony that improperly corroborates the victim's testimony in a sexual assault case."). The State's question to Victim's foster father regarding whether Victim disclosed the incident "between him and his uncle," did not prejudice Cameron or affect the outcome of his trial. Victim's foster father's testimony regarding the disclosure did not contain any details about the incident beyond where and when Victim told him it occurred; he did not say what Cameron allegedly did to Victim or opine that Victim's disclosure was genuine or credible. *Cf. Id.* at 240, 246–50, 814 S.E.2d at 489, 493–95 (finding petitioner was prejudiced by his trial counsel's failure to object to (1) a DSS case worker's testimony that the victim revealed the petitioner sexually abused her; (2) the expert forensic interviewer's testimony that the victim disclosed chronic abuse by the petitioner and the specific types of sexual abuse committed, and that the victim's disclosure was "the most compelling she had encountered in almost one thousand child interviews"; and (3) a detective's, who was also a trained forensic interviewer's, testimony that the victim's disclosures were consistent with her training and experience). Additionally, the other evidence in this case—specifically Victim's testimony that Cameron sexually abused him; evidence of Victim's consistent disclosures to both Flowers' son and his foster

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question or request that the court give the jury a limiting instruction. Thus, we find Cameron has waived and failed to preserve any argument the question should have been struck or that the jury should have been given a limiting instruction. *See State v. Martucci*, 380 S.C. 232, 259, 669 S.E.2d 598, 612–13 (Ct. App. 2008) ("Where a defendant objects and the objection is sustained but he does not move to strike the evidence, the issue is not preserved for appellate review."); *see also State v. Evans*, 316 S.C. 303, 307 n.1, 450 S.E.2d 47, 50 n.1 (1994) (finding that when the defendant "did not request [a limiting instruction] nor make the argument . . . that the failure to give a limiting instruction was error," the issue of whether a limiting instruction should have been given is waived).

mother about the sexual abuse; and testimony from Flowers, Victim, and Flowers' son that Cameron was present at the Flowers' home at the time of the alleged sexual abuse, despite Cameron's assertion that he was in Rock Hill—make the State's question identifying Cameron as the alleged perpetrator in this case harmless. Thus, we find any error by the trial court in not overruling the question was harmless beyond a reasonable doubt. Accordingly, we affirm.

AFFIRMED.[2]

KONDUROS, HILL, and HEWITT, JJ., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

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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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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*

Tara Dawn Shurling
S.C. Bar No. 5099

ATTORNEY FOR APPELLANT

This 19th day of February, 2022

IN 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

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THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUSTIN BRADLEY CAMERON,

APPELLANT.

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.

William M. Blitch, Jr.
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Tara D. Shurling

Tara Dawn Shurling
S.C. Bar No. 5099

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

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Justin Bradley Cameron, Appellant.

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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Tara Dawn Shurling, Esquire
Joshua Abraham Edwards, Esquire
Ernest Adolphus Finney, III, Esquire
The Honorable D. Craig Brown

FILED
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