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S.C. SUPREME COURT

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

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APPEAL FROM CLARENDON COUNTY
Court of General Sessions

The Honorable D. Craig Brown, Circuit Court Judge

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

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THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

**JUSTIN BRADLEY CAMERON**,

PETITIONER.

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

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## STATEMENT OF ISSUES ON APPEAL

**I.**

**The lower court erred in overruling Petitioner's Object to a question posed by the prosecution where the question itself, in effect listed the identity of Petitioner 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 Petitioner's right to due process of law.**

**II.**

**The South Carolina Court of Appeals erred in holding that the trial court had *sustained* Petitioner's objection to the amended question put to Witness Dante, thereby inference, where the record below does not support that finding and where it lead to the finding that Petitioner had gotten all he asked for and by not requesting further action by the Court, specifically for the testimony in question to be stricken and/or for a curative charge, had waived his objection to this error.**

## STATEMENT OF THE CASE

Petitioner 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 by Timothy L. Griffith, Esquire, and the State was represented by Assistant Solicitors, Katarzyna K. Durant, and Christopher R. Durant. Petitioner was found guilty as charged and was sentenced to Twenty-Five (25) years in Prison.

Petitioner's direct appeal in the South Carolina Court of Appeals followed. Petitioner's conviction and sentence were affirmed on January 12, 2022. App.p. 56-61. Petitioner's Petition for Rehearing was filed on February 11, 2022. App.p. 62-67. It was denied by Order filed February 24, 2022. App.p.69.

## SUMMARY OF RELEVANT TRIAL TESTIMONY

**What follows is a summary of as much of the relevant testimony adduced at trial as may be presented within the page restrictions imposed by Rule 242(d)(4), SCACR. A more detailed summary of the trial testimony is found in the Final Brief of Appellant filed with the Court of Appeals on February 12, 2020 and found in the Appendix to this petition in Volume 2 of 2, pages 6-37.**

At Petitioner'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 Petitioner. **App. p. 6, lines 6 – 19**. That assertion is consistent with the narrow charging language found in the Indictment against Petitioner for First Degree Criminal Sexual Conduct with a Minor, wherein it states that the Petitioner***, "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. **App. 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."*** **App. 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 Petitioner was on trial. At the time of the alleged incident, the child was seven years old. **APP. 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**". Assistant 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. **App. p. 8, lines 4 – 9. App. 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. 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."*** **App. p. 14, lines 11-22.** He ***"was with DSS for the interview observing through a monitor,"*** but was not in the same room. **App. 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. **App. 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 **APP. p. 16, lines 11 – 13. App. p. 16, lines 14 – p. 17, lines 3**. There was no re-direct examination of this witness. **App. p. 17, lines 4-7.**

The State's second witness was ***David Flowers***. **App. 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 **App. 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. **App. p. 34, lines 13 – 21.** This witness indicated he had lived at that address maybe 4-5 years and noted 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). **App. p. 35, lines 8 - 21.** Flowers described his house as a two bedroom, 1 bathroom, house that also had a living room and a kitchen **App. 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 **App. 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) days after she left, as opposed to four (4), then you reach an arrival date of July 13th and a departure date of August 12th. 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. **App. p. 37, lines 10-22.** He expressly testified that this stranger and her young son stayed ***"around a month, 30 days."*** **App. 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 Petitioner 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 Petitioner 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 Petitioner to have been in the home for a week prior to his incarceration on July 17th –

September 26th .fn1 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. **App. 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 from 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. **App. p. 40, lines 3 -15.** Flowers identified Petitioner as Kelly's brother during his trial testimony. App. **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. **App. p. 41, lines 1-9**. When he went to Rock Hill to get 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 **App. 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"***,[2] 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."*** **App. 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."*** **App. p. 42, lines 11-19.** He said that on Sunday, he, Kelly and Minor

[1] Def. Ex. No. 1, introduced later in this trial, was a letter from the York County Sheriff's Department, establishing that Petitioner was in the Moss Justice Center Detention Facility from July 17 – September 26, 2015. This exhibit was introduced without objection by the State.
[2] App. p. 41, lines 24-25

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. **App. 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. **App. 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. **App. 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. **App. 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. **App. p. 47, lines 10 – 13.** On cross-examination, Flowers denied having a romantic relationship with Kelly. [3] He acknowledged that he was not always at the house when Kelly was there. **App. 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. **App. p. 48, line 20 – p. 49, line**

[3] 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.

**16.** Next the prosecutor asked if that one night had been when Justin was at the house. Flowers stated that it was. **App. 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). **App. 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. **App. p. 52, line 1 – p. 53 line 3; Index to Trial Exhibits, App. p. 3.**

**App. 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. **App. p. 60, lines 11-19.**

Following the competency hearing, the Victim[4] 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 **App. p. 61, line 17 – App. p. 62, lines 5-15.** ***Compare*, App. p. 57, lines 2 – 10.** In his testimony the child indicated that he had lived with his grandmother, Sherry, until she passed away, then he lived with his mom, Kelly. **App. p. 65, line 12-22**. He testified that when he lived with his grandma, they lived in a house in a neighborhood. He stated that he had lived a few places 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 the photograph introduced as **State's Ex. No. 3.** The child identified Flowers in Court. **App. p. 65, line 23 – p. 67, line 25.**

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

The Victim testified that he stayed in the house with Mr. David, Minor Witness No. 1, his mom and his uncle Justin, for 2 weeks. He identified Petitioner 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."*** While he was there, he slept in Minor Witness No. 1's room. **App. p. 67, line 1-18 – p. 68, line 25.**

The Victim testified that Petitioner 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 Petitioner ***"also put it in my mouth."*** He said his uncle told he would buy him a Ninja Turtle. **App. 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 for a Mistrial or a 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."*** **App. 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. **App. p. 70, line 21 – App. p. 71, lines 1-3** (emphasis added). Next the prosecutor asked ***"when you said he stuck his thing <u>in</u> 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 "***<u>up</u> his butt***" *not* **<u>in</u>** as the prosecutor stated. **App. 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."***

**App. 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."*** Petitioner 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. **App. p. 71, lines 10-11.**

The child testified that he subsequently told Minor Witness No. 1, the older son of the man he and his mom were staying with, what had happened. 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***." **App. p. 67, lines 2-4.** He testified Petitioner was only there ***"half of the time… he was there like a week."*** **App. 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. **App. 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. **App. 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."*** **App. 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). **App. 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 ---"*** **App. 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. **App. 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."*** **App. p. 77, lines 1-3.** He was asked if he told these people ***"what happened"*** and he said "***yeah***". **App. p. 77, lines 4-8.** Near the end of his testimony he reiterated that he had stayed at Mr. David's house for ***two weeks***. **App. p. 79, line 6 – p. 80, line 2.**

State's Witness Phil Dante, the Victim's "*new father*", testified at the Petitioner'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 **App. p. 83, line 17 – p. 84, line 3.** He stated 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

did know that he had been left alone by his mother for several days. 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."*** **App. p. 84, line 4 – p. 86, line 2.**

Mr. Dante described the victim as "***basically leaking***" so they took him to the hospital. **App. p. 86, lines 3-12.** The child ended up in the hospital for two nights. 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. **App. p. 92, lines 5 – 14.**

Next the prosecutor asked this witness, ***"[d]id [Victim] told you [sic] about the incident."*** **App. p. 86, line 24.** Trial Counsel objected to this question on grounds of hearsay. **App. p. 86, lines 25 – p. 87, line 1.** Then the Court asked the prosecutor to, ***"[s]tate your question please."*** **App. 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."*** **App.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."*** **App. 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---."*** **App. p. 88, lines 1-3.** 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"***. **App. 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?"*** **App. p. 99, lines 5-7. Thus, the prosecution compounded the prejudice to Petitioner in response to the court overruling Petitioner's objection to the earlier question by the prosecution by repeating the assertion that the child had reported an incident between him and his Uncle.**

Mr. Dante next 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. **App. 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."*** **App. 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."*** **App. p. 90, lines 2-25.** 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…"*** **App. p. 91, lines 1-19.** When the prosecution asked this witness if the child's mother had ***"tried to make contact"*** Mr. Dante 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."*** **App. 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***." **App. p. 92, lines 20-25.** 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. Rule 41.2, SCRCP. **App. p. 95, lines 7-10.** He testified that he had lived there four and a half, almost five (5) years. 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."*** **App. p. 96, lines 5 – 15.** He stated 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 Petitioner slept on the couch, while he slept on the loveseat. When asked if Petitioner 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."*** **App. 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."*** **App. 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. **App. p. 98, lines 1-5.** He stated that they did not go with his father to pick Petitioner up. He and his brother stayed at the apartment they were at. He clearly testified that Petitioner spent that night with them at Lake Wateree. **App. p. 98, lines 1-13.** Minor Witness No. 1 testified that he was there the entire time Petitioner was there, except for two days when he went to his grandmother's home in Cades, South Carolina. By the time he returned home, Petitioner had left. **App. p. 98, line 1 – p. 99, line 11.**

The jury left the courtroom during Petitioner's trial for an *in camera* proceeding held during Minor Witness No. 1's testimony **App. 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***. This witness, as previously noted, had however testified that he was gone to his grandmother's for two days. **App. p. 98, lines 21-25.** His father had likewise testified that he was gone to his grandmother's house for ***"a couple of days.*** **App.p. 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. **App. p. 104, lines 15 – 24. T**he Victim's biological mother, Kelly, was noticeably missing from this trial. There was no mention of who the Victim's father was or 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***." **App. p. 104, lines 15-18.** He then testified that the victim did not tell him when or where "it" happened. **App. p. 104, lines 19-22.** He confirmed that he told the Victim's mother about what he was told. **App. p. 104, lines 23-24.** On cross-examination this witness stated that the Petitioner stayed at his family's house for a week. **App. 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 Petitioner stayed at their house during the summer of 2015. He recalled their trip to Lake Wateree and testified that Petitioner was not with them when they first arrived, but came on Saturday. He clearly testified, like his brother Minor Witness No. 1, that Petitioner spent the night at Lake Wateree before they

all headed home. **App. p. 108, line 17- p. 109, line 14.** When the others went to Turbeville at the end of their weekend at the lake, he went back to his Aunt's house. **App. 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. **App. 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 Petitioner was arrested in April of 2016. **App. 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. **App. p. 111, line 19 – p. 112, line 17.** That exhibit reflected a date of birth for Petitioner. **App. p. 112, lines 19-21.** From there he obtained a warrant after Judge Coleman found probably cause for the arrest. **App. p. 112, line 22 - p. 113, line 5.** Lt. Jones 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. **App. p. 115, lines 1-5.** On cross-examination he indicated that they knew Miss Cameron, Petitioner'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." See,***

***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 Petitioner 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."*** **App. p. 117, lines 10-13.** Earlier in his testimony he actually admitted that they never tried to collect any physical evidence. **App. 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**. **App. 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".*** **App. p. 120, line 3 – p. 123, line 15.** She submitted that she had testified in state court in South Carolina four or five times. **App. p. 124, lines 1 - 3. Munson** was offered as an expert in ***"the field of child abuse disclose".*** **App. p. 123, lines 16 – 18.** After questioning this witness briefly, Defense Counsel did not object to her being so qualified. **App. p. 124, line 1 – p. 125, line 7.** She was also questioned by the Court concerning her qualifications. **App. 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. **App. 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 came from the Solicitors Office. **App. p. 126, lines 14-24.** She proffered testimony relating to delayed disclosure, and/or partial disclosure. **App. 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. **App. p. 129, line 21 – p. 130, line 15.** Next she proffered brief, general testimony on grooming behavior by a predator. **App. p. 130, line 16 - p. 131, line 3.** Ultimately, Defense Counsel *did not* object to **Munson** being qualified as an expert ***"in child abuse."*** **App. p. 141, line 20.** Defense Counsel did preserve, however, Petitioner's objection to her testimony being irrelevant and more prejudicial than probative and the Court once again overruled, "***at this stage***." **App. p. 148, lines 19-23.** Following the testimony of **Munson,** the State had rested its case, and the jury was excused for the balance of the day. **App. p. 155, line 7 – p. 156, line 14.** Petitioner 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. **App. 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 Petitioner's detention at the York County Detention Center. **App. p. 161, line 7 – p. 162, line 18. Petitioner** only quit when he was incarcerated July 17, 2015 – September 28, 2015. **App. p. 175, line 1 – p. 180, line 2.** Mrs. Milsaps testified that when Petitioner was incarcerated it was for breaking into his grandmother's house that had been abandoned and foreclosed on. **App. p. 178, lines 15-22.** She testified that the letter from the York County Sheriff's Department proved that Petitioner 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. **App. 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. [5]

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

Two pastors from the church where Petitioner did community service, Calvary Baptist Church in Rock Hill, testified for the defense at his trial. Tony Larson, was an associate pastor there for 13 years until "***almost two years***" before Petitioners trial. **App. p. 207, line 13 – p. 208, line 8.** He stated that he normally was at the church, ***"Monday mornings through Thursday afternoons."*** He acknowledged that 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***." **App. 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."*** **App. p. 209, lines 16-23.** Although he could not say he saw Petitioner everyday, this witness testified that on the days this pastor was there, he "***knew***" Petitioner was there. **App. p. 209, line 24. - p. 210, line 11.** During the time in question, this witness testified that he saw Petitioner a lot. After Petitioner broke in the church in the summer of 2014, Pastor Larson, only vaguely remembered seeing Petitioner. **App. p. 210, line 13 – p. 211, line 22.** Previous testimony established Petitioner 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 Petitioner the summer of the break-in.

The next defense witness was **Michael Polson**. He too was on staff as a pastor at Calvary Baptist. **App. p. 212, line 16** – This pastor said he took off 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 Petitioner, not just Mrs. Milsaps. He asserted he would not lie for

Petitioner. **App. p. 214, line 9 - p. 215, line 7.** The State offered no evidence of any reason why any of these church employees would lie under oat for Petitioner.

The Petitioner 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. **App. p. 218, line 1 – p. 219, line 10.** Petitioner acknowledged that from July 17, 2015, to the end of September, 2017, he was locked up for breaking into the church. APP. p. 249, l. 13-18. Mrs. Milsaps's testimony reflected that Petitioner 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, was introduced as **Defendant's Ex. No. 1** during her testimony, **App. p. 177, line 17- p. 178, line 13**. She testified that she was motivated to obtain this letter because she had read Petitioner'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 Petitioner was in custody from July 17, 2015 to September 28, 2015. ***See*, Defendant's Ex. No. 1.**

**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."*** **App. p. 86, line 24.** Trial Counsel objected to this question on grounds of hearsay. **App. p. 86, line 25 – p. 87, 1ine 1.** Then the Court asked the prosecutor to, ***"[s]tate your question please."*** **App. 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."*** **App. p. 87, lines 7 – 8 (Emphasis added).** Defense counsel again objected to

this question on grounds of hearsay. **App. 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 what he said. It's a yes or no answer."*** This witness, answered, **"yes"[6]. App. 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."*** **App. p. 87, lines 24 – 25.** It is fair to infer that the trial judge's intent was to overrule this objection when he 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---."*** **App. p. 88, lines 1-3.** In response to this, the witness said**, "Okay." App. 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"***. **App. p. 88, lines 19 -20**. While it ay be fair to argue that the Court overruled the objection concerning the content, Petitioner asserts that the trial court clearly erred in making this decision without considering that the question as reframed by the prosecutor had supplied the very hearsay information which is prohibited by ***State v. Munn***, **292 S.C. 497, 499-500, 357 S.E.2d 461, 463 (1987),** namely, the claim that the Victim told his then Foster Father that it was the child's uncle, Petitioner, who had assaulted him. Petitioner asserts that the Trial Judge erred in focusing only on Dante's answers to

[6] 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. **App. p. 76, lines 8-23.**

the questions put to him by the prosecutor. If allowed, the tactic employed by the State in this case could be used to totally circumvent the intent of the ***Munn*** decision and all the cases that have followed since that decision. What good does it do for a witness not to be permitted to give hearsay testimony about what a complaining witness has said to a third party concerning details beyond time and place, if a prosecutor can ask a question which announces that very information? Here, the prosecutor would not be allowed under the ***Munn*** decision, to ask a third part what a victim told them about the identity of their assailant, but if the trial court's ruling on this objection is affirmed, that is exactly what will have happened. Petitioner's objection very specifically drew to the Court's attention the fact that the Solicitor's question provided the very hearsay statement that would have been disallowed under ***Munn*** and it's progeny. By this stage of Petitioner'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. Petitioner 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>."*** **App. p. 87, lines 7 – 8 (Emphasis added**), was no different than allowing the State to ask this witness whether the Victim had identified Petitioner as the person who sexually assaulted him. The question itself violated ***Munn***. As such, it did not have to elicit a response that exceed time and place, the very question did it.

In ***State v. Munn*****, 292 S.C. 497, 499-500, 357 S.E.2d 461, 463 (1987),** this Honorable 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." This 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). Petitioner submits that evidence in his case was far from so strong that this blatant error should be found to constitute harmless error beyond a reasonable doubt. Toward that analysis, Petitioner 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. Petitioner 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. Petitioner'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. Petitioner most respectfully submits that what this Honorable Court can, and should, do is look closely at the aspects of this case that were likely to raise reasonable doubt. Petitioner would specifically note the following.

- The fact that the biological 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 to 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. The fact that the State explained away the lack of physical evidence of an anal assault without even addressing how it was possible for a child of such tender years to be sodomized by a gown man without casing pain much less without casing bleeding, tearing and scare tissue;

- The fact that the doctors who treated this child for intestinal problems months later were not brought to court as witnesses;

- 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 Petitioner, but also by the records of a law enforcement agency.

Taking all these factors into account, Petitioner most respectfully asserts that the decision of the Court of Appeals erred in finding the error in question to be harmless beyond a reasonable doubt. The evidence that was adduced in this case, and the absence of other evidence, presented may reasons why this error should not have been found to be harmless. It is Petitioner's 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.***

The problems with this decision appear to stem from two distinct errors in the manner in which the facts were either interpreted or applied in this case. The opinion in this matter focuses on the fact that the trial court limited Witness Dante's testimony to whether the child had reported the incident to him. **App.p.87, lines 9-15.** Based on the limited nature of the testimony permitted from Dante, the Court of Appeals found the error in question was harmless. As noted in the testimony summary above, it was not the scope of the foster father's testimony that was damning to Petitioner's ability to receive a fair trial. The error that tainted Petitioner's ability to receive a fair trial occurred when the Solicitor, "asked", " ***[d]id the Victim told [sic] you about the incident that happened between him and his uncle?"*** That questioned clearly was intended to bolster the credibility of the Victim concerning his allegations. The impact of the question posed by the Solicitor was ignored in the lower court's ruling and ultimately in the decision of the Court of Appeals. The decision of the Court of Appeals, states that the trial court appears to have "in effect sustained" Petitioner's objection to the prosecution's rephrased question, "***as it limited the answer Victim's foster father could provide***." **App.p. 59, fn.1.** Once again, Petitioner asserts that this finding overlooks the real damage to Petitioner's ability to receive a

fair trial which flowed not from Dante's testimony, but rather from the prosecution's questions. The ruling of the trial judge emboldened the prosecutor who next asked, ***"[a]fter Victim mentioned the incident between him and his uncle, what did you and your wife do with that knowledge?"*** The decision of the Court of Appeals finds that Dante's testimony was harmless because he did not testify that he believed the child. As is quoted above, however, the record below demonstrates that this prosecutor reiterated this improper line of questioning to elicit testimony that implied just that. The "question" clearly asserts that the child "mentioned" the incident between "him and his uncle" and then asks Dante to reveal what he and his wife did with the knowledge. ***App.p. 89, lines 5 – 7.*** Dante responded that he and his wife first talked to DSS, then they talked with a DSS investigator who made contact with the police. This testimony, found at **App.p. 89, lines 8-10**, implies that not only did he and his wife believe the child, but DSS and their investigator obviously did too since they got the police involved. Thus, the State was allowed to create classic ***Munn*** error which improperly bolstered the testimony of this young child. The prosecution's attempt to violate the rule set forth in ***Munn,*** could not be clearer. The prosecutor next asked whether the child had to talk with anyone as a result of what the foster parents and DSS did. Step by step, the prosecutor went through a back door to accomplish what could not be done directly; he had Dante inform the jury that after the DSS Investigator talked with the child "*about it at length*" the police became involved for the first time. **App.p. 89, 11-17.** Based upon the evidence summarized herein and that found in more detail in the Final Brief of Petitioner which is part of the Appendix filed with this Court, Petitioner submits that it ***"cannot be concluded that this error was harmless beyond a reasonable doubt, because there is a reasonable possibility that the error complained of might***

***have contributed to the conviction"*** before this Honorable Court for review. ***Arnold v. State*****, 309 S.C. 157, 420 S.E.2d 834 (1992).**

## CONCLUSION

Based upon the foregoing arguments and authorities, Petitioner asks that the writ be granted and that he be permitted to submit a full briefing on the issues summarized herein.

Respectfully Submitted,

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This 28th day of April, 2022