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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2022-001116

THE STATE,

Respondent,

vs.

RANDALL WADE MEDLIN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

"Whether the trial court erred in denying the motion for severance."

II.

"Whether the trial court erred in giving an unconstitutionally coercive Allen charge."

III.

"Whether the trial court erred in denying the motion for directed verdict."

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge abuse his broad discretion by consolidating Appellant's two charges—which stemmed from his molestation of two separate teenaged girls below the surface of visibility-obscuring dark water on the very same trip to the river on the very same date—for a single trial when: (1) the charges were of the same general nature and involved connected transactions closely related in kind, place, and character; (2) the charges were proved by same or similar evidence; and (3) the consolidation of the charges did not result in any undue prejudice to Appellant's substantive rights?

II.

Were the trial judge's supplemental instructions improper or unconstitutionally coercive when those instructions correctly encouraged the jury to make every reasonable effort to reach a verdict while even-handedly instructing the jurors in both the minority and majority to consider one another's opinions in addition to their own without surrendering their own firmly-held beliefs simply to reach an agreement?

III.

Did the trial judge err by declining to grant the directed verdict motion when the evidence and testimony presented during trial—including the minor victim's direct testimony indicating Appellant covertly slid his hand underneath her swimsuit and rubbed her vagina for what felt like an extended period of time—supported a rational and logical conclusion Appellant was guilty of all the required elements of third-degree criminal sexual conduct with a minor?

STATEMENT OF THE CASE

In September of 2019, Appellant Randall Wade Medlin was arrested following an investigation into an incident involving two young girls that occurred a few weeks earlier at a park. In January of 2020, the Laurens County Grand Jury indicted Appellant for second-degree criminal sexual conduct with a minor and second-degree assault and battery. In July of 2022, the Laurens County Grand Jury additionally indicted Appellant for third-degree criminal sexual conduct with a minor. On August 1, 2022, a jury trial was commenced on the third-degree criminal sexual conduct with a minor and second-degree assault and battery charges in the Laurens County Court of General Sessions with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant of third-degree criminal sexual conduct with a minor and acquitted him of second-degree assault and battery. Following the verdict, the trial judge sentenced Appellant to a fifteen-year term of imprisonment that was suspended to a six-year term of imprisonment along with four years of probation. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Irvin Pitts Memorial Park is a park located in Ware Shoals, South Carolina. (R. p. 63; p. 109; p. 196). The Saluda River flows directly next to the park, and its swift-moving water is very dark, which obscures visibility below the surface. (R. p. 66; p. 74; pp. 83-84; p. 90; p. 109; p. 119; pp. 126-127; p. 141; p. 143; pp. 165-166; p. 185; p. 201; p. 203; p. 208). Based on the park's river access, families routinely gather there to play, swim, and float on the river with inner tubes. (R. p. 64; pp. 66-67; p. 122).

On the afternoon of August 11, 2019, a fourteen-year-old girl ("Victim 1") went to Pitts Park along with her fifteen-year-old older brother ("Brother"), her two younger brothers, a fifteen-year-old female friend ("Victim 2"), and her friend's mother, Rhonda Snider.[1] (R. pp. 70-73; p. 90; pp. 107-109; p. 123; p. 136). The group planned on swimming in the river together that day before the new school year began. (R. p. 73; p. 109; p. 136). Meanwhile, at the same time, Appellant, who was related to Snider and was the brother of Victim 1's father's best friend, was also at the park with his family. (R. p. 74; p. 123; p. 137).

Over the course of the next few hours, the children played together in the river and floated around on inner tubes with Appellant nearby. (R. p. 111; p. 124; pp. 137-138; p. 143; pp. 185-186). At one point, Snider observed Victim 2 swim underwater to get out on an inner tube that Appellant had just slid into himself. (R. p. 124). At some point after that, Snider and some of the others at the park observed Appellant near Victim 1 with one of his arms inside the inner tube she was using and his other arm inside the inner tube his daughter was using. (R. pp. 111-112; p. 124; p. 144). Subsequent to that, Victim 1 got out of the water, went over to some rocks, and began crying. (R. pp. 112-113; p. 144).

[1] At the time, Snider was also Victim 1's father's girlfriend. (R. pp. 72-73).

Upon seeing Victim 1 upset, Brother went over to find out what was wrong, but Victim 1 would not tell him. (R. pp. 112-113). Victim 2 then went to check on Victim 1, and Victim 1 privately revealed Appellant had inappropriately touched her while she was in the river. (R. pp. 72-78; p. 113; p. 144). In response, Victim 2 revealed Appellant had groped her buttocks when she was in the river, and the two decided to tell to Snider. (R. pp. 138-142; pp. 144-145).

When they disclosed the sexual abuse to Snider, Snider rapidly gathered all the children, and they all promptly left the scene. (R. pp. 78-79; p. 113; pp. 144-145). After doing so, Snider advised Victim 1's mother of what happened, and they quickly reported the incident to law enforcement, which led to an investigation into the matter that culminated in Appellant's arrest for sexually abusing the girls. (R. pp. 59-60; p. 79; pp. 91-92; p. 145; pp. 254-257).

Subsequent to that, Appellant was indicted for third-degree criminal sexual conduct with a minor and second-degree assault and battery, and he elected to proceed forward to trial on those charges. (R. p. 10; pp. 260-261; pp. 263-266). During the course of trial, Victim 1 and Victim 2 recounted the details of their similar experiences at the river on the date of the incident, and Snider and Rhonda testified about their own observations and experiences on that date. (R. pp. 70-84; pp. 107-120; pp. 122-131; pp. 135-148). Likewise, testimony was presented detailing a number of adverse behavioral changes the girls experienced subsequent to the incident. (R. pp. 70-71; pp. 92-94; p. 114; pp. 127-128; pp. 145-146). Conversely, Appellant testified on his own behalf and denied all the allegations against him. (R. pp. 174-177; pp. 187-190).

Ultimately, at the conclusion of trial, the jury convicted Appellant of the third-degree criminal sexual conduct with a minor charge related to Victim 1. (R. p. 238). Meanwhile, the jury acquitted Appellant of the second-degree assault and battery charge related to Victim 2. (R. p. 238).

ARGUMENT

I.

The trial judge did not abuse his broad discretion by consolidating Appellant's two charges—which stemmed from his molestation of two separate teenaged girls below the surface of visibility-obscuring dark water on the very same trip to the river on the very same date—for a single trial because: (1) the charges were of the same general nature and involved connected transactions closely related in kind, place, and character; (2) the charges were proved by same or similar evidence; and (3) the consolidation of the charges did not result in any undue prejudice to Appellant's substantive rights.

Appellant contends the trial judge abused his discretion by allowing the third-degree criminal sexual conduct with a minor charge stemming from Appellant's sexual abuse of one minor victim to be tried together in a single trial with his charge of second-degree assault and battery stemming from his similar abuse of another minor victim. As support for that contention, Appellant maintains the charges should not have been consolidated for trial because the offenses were not "closely related," there was nothing to interconnect the charges due to a lack of common denominators or similarities beyond date and location, and his substantive rights were prejudiced as a result of the consolidation of the charges. To the contrary, the charges—which both stemmed from strikingly-similar sexual abuse perpetrated by Appellant upon two separate teenaged girls during the same trip to the river on the same date around the very same time—were properly consolidated for trial because: (1) they were of the same general nature involving connected transactions closely related in kind, place, and character; (2) they were proved by the same or similar evidence; and (3) the consolidation of the charges did not result in any undue prejudice to any of Appellant's substantive rights under the circumstances involved. Therefore, the trial judge did not abuse his broad discretion over such matters by prudently choosing to allow both charges to be tried together in a single consolidated trial. Appellant's conviction should be affirmed.

Relevant Facts

Toward the outset of Appellant's trial, defense counsel moved for severance and requested Appellant be tried separately on each of his two charges stemming from his inappropriate touching of Victim 1 and Victim 2. (R. pp. 4-5). As support for that motion, defense counsel argued more testimony would be admitted in a joint trial than would be admitted in separate trials while a joint trial would create a risk the jurors would consider the allegations collectively since the "same criminal conduct" was involved in both charges. (R. pp. 5-6). Likewise, defense counsel alleged prejudice to Appellant could result "from the evidence from one bleeding into the mind of the jurors when evaluating the evidence from the other." (R. p. 8). In rebuttal, the solicitor—while citing to the Supreme Court's decision in State v. Beekman, 415 S.C. 632, 785 S.E.2d 202 (2016)—argued Appellant's charges could properly and should be tried together because the offenses were of the same general nature, the charges stemmed from closely-related and connected transactions, the witnesses for both charges would be the same, both victims were assaulted on the same date at the same place, the charges arose from a single chain of circumstances, and the interests of judicial economy would best be served by a single trial under the circumstances involved. (R. pp. 6-8).

Upon considering the arguments of counsel, the trial judge ruled he was going to exercise his discretion and permit the charges to be tried collectively in a single trial. (R. pp. 8-9). In reaching that conclusion, the trial judge explained he believed the interests of judicial economy would be served by joinder and found joinder to be warranted since the incidents took place at the same "swimming hole" on the same date during the same few-hours-long period of time. (R. pp. 8-9). The trial judge further explained he intended to prevent any undue prejudice by making

"crystal clear" to the jurors they were required to decide the cases separately and uninfluenced by their decision as to the other. (R. p. 9).

Following that ruling, the trial proceeded forward, and each of Appellant's teenaged victims testified about the events that occurred on the date of the incident. (R. pp. 70-84; pp. 135-148). In doing so, each of the girls offered straightforward testimony about the distinct acts of inappropriate touching they were individually subjected to by Appellant during the river trip on that date. (R. p. 72; pp. 74-78; pp. 80-81; p. 83; pp. 138-142; pp. 146-148). Along with the victims' testimony, the other witnesses present on the date of the incident testified about their own observations and experiences from the river trip, including Appellant himself. (R. pp. 107-120; pp. 122-131; pp. 154-190). Through his testimony, Appellant flatly denied sexually abusing either of the two girls on that date. (R. pp. 174-177; pp. 187-188).

After all the testimony and evidence was presented, defense counsel renewed his motion for severance, asserting it was "more apparent than ever" to him the charges should have been severed because—in his view—what was presented "kind of revealed a carrying over impression." (R. p. 193). Again, the trial judge denied the motion. (R. p. 193).

As the trial continued forward, the parties presented their closing arguments to the jury, and the trial judge charged the jury on the applicable law. (R. pp. 195-228). In doing so, the trial judge instructed the jury on the presumption of innocence, explained the State had the burden of proving Appellant's guilt beyond a reasonable doubt, discussed the differences between direct and circumstantial evidence, went over principles related to evaluating witness credibility, and affirmed the verdict reached had to be unanimous.[2] (R. pp. 219-228).

[2] Prior to that point, the trial judge had earlier twice emphasized to the jurors the State had the burden of proving each and every element of the charged offenses beyond a reasonable doubt in order for Appellant to be convicted. (R. p. 10; p. 42).

Furthermore and importantly, the trial judge also expressly instructed the jurors they must decide each of Appellant's charges separately and uninfluenced by their decision on the other.[3] (R. p. 220-221).

After receiving those instructions, the jurors began their deliberations. (R. p. 229). Ultimately, following a temporary deadlock and the presentation of some supplemental instructions, the jury unanimously convicted Appellant of the third-degree criminal sexual conduct with a minor charge related to one of the girls and acquitted Appellant of the second-degree assault and battery charge related to the other girl. (R. pp. 233-235; pp. 238-239). Defense counsel then again renewed the severance motion. (R. p. 241). However, once again, the trial judge denied that motion, and, in doing so, he noted the jurors demonstrated they were capable of discerning between the two charges by returning a split verdict. (R. pp. 241-242).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When confronted with a motion for severance or joinder of charges, a trial judge is afforded broad discretion over the matter. State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996); see State v. Grace, 350 S.C. 19, 23, 564 S.E.2d 331, 333 (Ct. App. 2002) ("The circuit court has wide discretion when deciding whether to consolidate charges for trial and its decision will only be overturned when an abuse of discretion has occurred."). On appeal, the trial judge's ruling on such a motion is reviewed deferentially and will not be disturbed absent a clear abuse of discretion. State v. Simmons, 352 S.C. 342, 350,

[3] Specifically, the trial judge instructed: "Each indictment charges a separate and distinct offense, so you must decide each indictment separately on the evidence and law applicable to it uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the charged offenses, and you'll be asked to write a separate verdict of guilty or not guilty for each of the charges." (R. pp. 220-221).

573 S.E.2d 856, 860 (Ct. App. 2002); see United States v. Acker, 52 F.3d 509, 514 (4th Cir. 1995) ("The trial court has a wide range of discretion in matters of severance which should be left undisturbed, absent a showing of clear prejudice or abuse of discretion."); State v. Tallent, 430 S.C. 438, 445, 845 S.E.2d 508, 512 (Ct. App. 2020) ("Decisions on severance and joinder are reviewed under a deferential standard."); see also State v. Rivera, 798 A.2d 958, 962 (Conn. 2002) ("It is the defendant's burden on appeal to show that the denial of severance resulted in substantial injustice, and that any resulting prejudice was beyond the curative power of the court's instructions." (citation and internal quotations omitted)). An abuse of discretion occurs when the trial judge's decision is unsupported by the evidence or controlled by an error of law. State v. Rice, 368 S.C. 610, 613, 629 S.E.2d 393, 395 (Ct. App. 2006); see United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

Argument

In South Carolina and elsewhere throughout the nation, a criminal defendant generally has "no inalienable right" to be tried separately for each indicted offense when charged with multiple crimes due to the important interests served by consolidated trials. McCrary v. State, 249 S.C. 14, 38, 152 S.E.2d 235, 247 (1967); see United States v. Lane, 474 U.S. 438, 449 (1986) ("[J]oint trials conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial." (citation and internal quotations)); United States v. Mir, 525 F.3d 351, 357 (4th Cir. 2008) ("[J]oinder is the rule rather than the exception . . . because the prospect of duplicating witness testimony, impaneling additional jurors, and wasting limited judicial resources suggests that related offenses should be tried in a single proceeding." (citations, brackets, and internal quotations omitted)). Resultantly,

a trial judge has broad discretion to order separately-indicted offenses to be tried together when: (1) the charges arise out of a single chain of circumstances or involve connected transactions closely related in kind, place, and character; (2) the charges are of the same general nature; (3) the charges are proved by the same evidence; and (4) no real right of the defendant would be prejudiced by the joinder. State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005); see Tucker, 324 S.C. at 164, 478 S.E.2d at 265 ("Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced."); State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996) ("Joinder is proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof.").

With those considerations in mind, our Supreme Court just a few years ago addressed a challenge to a trial judge's joinder ruling in a case involving charges stemming from the abuse of two separate minor victims through its decision in State v. Beekman, 415 S.C. 632, 634, 785 S.E.2d 202, 203 (2016). In that case, Beekman was charged with lewd act upon a child after his twelve-year-old stepdaughter revealed he touched her "private area" beneath her clothing in the living room of the family home. Id. at 634-635, 785 S.E.2d at 203. Likewise, Beekman was charged with first-degree criminal sexual conduct with a minor after his eight-year-old stepson—subsequent to the stepdaughter's disclosure—revealed Beekman sexually abused him twice within an eight-month period by touching his penis and anally raping him. Id. at 635, 785 S.E.2d at 204. Over objection, Beekman was jointly tried for both charges in a single trial, and the jury convicted him as indicted. Id. at 636, 785 S.E.2d at 204. Beekman then unsuccessfully appealed

his convictions to the Court of Appeals before seeking further review from the Supreme Court. Id. A writ of certiorari was granted, and, on certiorari, a majority of the Supreme Court affirmed after rejecting Beekman's contention the trial judge erred by declining to sever the charges. Id. In reaching that conclusion, the majority first found Beekman's charges arose from a single chain of circumstances and were of the same general nature because they involved connected transactions closely related in kind, place, and character since they involved siblings molested at the same place over the same *eight-month* period of time in a similar manner that involved taking advantage of their television-watching habits. Id. at 637-638, 785 S.E.2d at 205. Next, the majority found the charges were proved by the same evidence because—even though the charged crimes were distinct—there were "glaring similarities" between them and many of the same witnesses would be used to prove both. Id. at 638, 785 S.E.2d at 205. And, in making such a finding, the majority explicitly rejected the suggestion joinder could only be appropriate when "completely identical evidence" would be used to prove both charges. Id. Furthermore, in light of those circumstances, the majority found "joinder did not prejudice any of Beekman's substantial rights." Id. at 639, 785 S.E.2d at 206. Accordingly, for those reasons, the Supreme Court determined the trial judge did not abuse his discretion by joining Beekman's charges for a single trial. Id.; see also State v. Jones, 325 S.C. 310, 315-316, 479 S.E.2d 517, 519-520 (Ct. App. 1996) (concluding numerous charges stemming from the sexual abuse of two minor victims over a roughly ten-month period of time were properly joined together for a single trial).

In the case sub judice, Appellant's charges stemmed from his strikingly-similar sexual abuse of his two minor victims—who, unlike the victims in Beekman, were the same gender and very close in age—on the exact same day during precisely the same collective trip to the river. As a result, the trial judge—just like the trial judge in Beekman—did not abuse his broad

discretion by rejecting defense counsel's severance motion and allowing the charges to be tried together during a single trial since an analysis of the pertinent factors overwhelmingly supported joinder of those charges under the circumstances involved.

Turning to the first and second relevant factors, both of Appellant's charges arose out of a single interconnected chain of circumstances and were of the same general nature. More specifically, both indictments involved offenses stemming from Appellant's unwanted touching of two teenaged girls, and the acts leading to those two charges occurred: (1) at the same location—the river at Pitts Park; (2) over the same period of time during the same event—the several-hour length of time Appellant and the girls were on the river trip together on the date of the incident; and (3) with the same modus operandi—Appellant using the trip to gain close access to teenaged girls and then exploiting the darkness of the river's water to conceal his inappropriate touching of the girls below the water's surface. Cf. Beekman, 415 S.C. at 637-638, 785 S.E.2d at 205 ("There can be no dispute that Beekman's molestation of his two stepchildren involved connected transactions closely related in kind, place, and character. Specifically, Beekman's victims were siblings and the molestation occurred (1) at the same place—the victim's home; (2) over the same period of time—the eight-month period between November 2007 and July 2008; and (3) with the same modus operandi—Beekman taking advantage of the children's habit of watching television with him."); State v. McGaha, 404 S.C. 289, 295, 744 S.E.2d 602, 605 (Ct. App. 2013) ("The molestation of each child during the same time period and in the same location, accomplished through the same access to them, established a sufficiently connected chain of circumstances to satisfy this element."); State v. Caldwell, 378 S.C. 268, 278, 662 S.E.2d 474, 479 (Ct. App. 2008) (finding charges involving three separate juvenile victims were properly joined where "[a]ll three charges . . . ar[o]se out of a single chain

of circumstances, occurring on the same afternoon, during the same event, and at the same place"). Under those circumstances, Appellant's charges were sufficiently interconnected and of a sufficiently similar nature to permit proper joinder for a single trial. See Grace, 350 S.C. at 23, 564 S.E.2d at 333 ("When offenses are interconnected they are considered to be of the same general nature."); see also Commonwealth v. Delaney, 682 N.E.2d 611, 616 (Mass. 1997) ("Time and space play an important role in determining whether offenses are related offenses for the purposes of joinder."); State v. Love, 293 S.W.3d 471, 476 (Mo. Ct. App. 2009) ("The use of similar or comparable tactics is sufficient to establish that offenses are of the same or similar character. The tactics need only resemble or correspond with each other; the tactics need not be identical. The manner in which the crimes were committed should be so similar that it is likely the same person committed all of the charged offenses. Nonexclusive factors that demonstrate similar tactics include commission of the same type of offenses, victims of the same sex and age group, offenses occurring at the same location, and offenses closely related in time." (citations and internal quotations omitted)).

Similarly, turning to the third factor, the charges in Appellant's case were proved by the same or similar evidence. Demonstrating that fact, the highly-similar abuse—inappropriate touching below the water's surface—occurred during the same river trip on the same date around the same time, the testimony established both of Appellant's minor victims—after discussing it with one another—jointly disclosed that abuse to Victim 2's mother, and Victim 2's testimony about her observations at the river corroborated Victim 1's testimony about what occurred to her. Based on that, both charges were proved by same or similar evidence and, thus, could properly be consolidated for a single trial just as occurred in Beekman. See United States v. Jamar, 561 F.2d 1103, 1108 (4th Cir. 1977) ("Complete, mutual admissibility . . . is not a requirement for a

valid joinder of offenses."); Beekman, 415 S.C. at 638, 785 S.E.2d at 205 ("For joinder of related offenses, our appellate courts have recognized that there may be evidence that is relevant to one or more, but not all, of the charges."); cf. McGaha, 404 S.C. at 297, 744 S.E.2d at 606 (concluding charges would be proved by the same evidence when "a substantial portion of the testimony the State presented at trial to prove the crimes against one child was the same evidence it would have used to prove the crimes against the other"); Caldwell, 378 S.C. at 278, 662 S.E.2d at 479-480 ("While the alleged crimes involved pertained to three separate children necessitating some individual evidence as to each of the charges, much of the evidence produced at trial pertained to each of the separate charges. Thus, the separate offenses are proved by the same evidence. We find the fact that some additional evidence from the individual victims may be necessary to prove the individual crimes is not fatal to the joinder of the charges.").

Finally, turning to the fourth factor, Appellant did not suffer any substantive prejudice as a result of the joinder of his two charges stemming from his actions on a single river trip. Most importantly, the trial judge took protective steps to prevent any undue prejudice resulting from consolidation by thoroughly instructing the jurors on the State's burden of proof as to the charges while *also* specifically advising the jurors they had to decide each of the charges separately and uninfluenced by their decision on the other. See Zafiro v. United States, 506 U.S. 534, 539 (1993) (instructing "less drastic measures, such as limiting instructions, often will suffice to cure any risk of prejudice" from joinder); see also State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) ("[J]urors are presumed to follow the law as instructed to them."); cf. Jamar, 561 F.2d at 1107-1108 ("Entering into the balancing process as well is the mitigating fact that the district court instructed the jury that each count was to be treated separately. The charges were few in number, and the evidence straightforward. We have no reason to surmise that the jury

was confused or failed to obey the court's instruction." (citations omitted)); State v. Harry, 321 S.C. 273, 279, 468 S.E.2d 76, 80 (Ct. App. 1996) (finding no abuse of discretion in the trial judge's determination the charges should have been jointly tried where "[t]he trial judge went to great lengths to fully instruct the jury that the state had the burden of proving each element of each crime"). Beyond that, the specific evidence related to the two charges in Appellant's case was exceedingly straightforward and uncomplicated as it primarily consisted of direct testimony from Appellant's minor victims about what Appellant did to each of them. Cf. State v. Shine, 113 N.E.3d 160, 174 (Ohio Ct. App. 2018) (concluding the trial court did not abuse its discretion by granting the prosecution's motion for joinder on charges stemming from four different shootings committed over the course of a few months because the evidence related to each of the charged crimes was "simple and direct," which made it unlikely the jury would be confused by the charges, and the jury acquitted Shine of the charges related to one of the shootings, which demonstrated "the jury was able to consider each charge separately"); Grace, 350 S.C. at 24, 564 S.E.2d at 333 (concluding Grace was not prejudiced by the joinder of multiple sexual abuse charges because "there was ample evidence in the record for the jury to convict Grace on the lewd act charge without considering any evidence from the events which led to the criminal sexual conduct charge"). And, based on the split verdict returned, the jury's differing decisions on the two charges demonstrated the jurors were capable of considering the charges separately and distinctly. Cf. Delaney, 682 N.E.2d at 617 ("In the instant case, the jury acquitted the defendant of the stalking charge and the charge that he intimidated a witness. The defendant was also acquitted of one of the counts charging him with violating a protective order. Thus, it is clear that the jury carefully considered the evidence with regard to each crime charged."); State v. Friend, 596 S.E.2d 275, 280 (N.C. Ct. App. 2004) (concluding Friend did not appear to be

prejudiced by the joinder of several thefts committed at different residences located on the same street since the jury acquitted Friend of six of fourteen charges); Grace, 350 S.C. at 24, 564 S.E.2d at 333 (concluding Grace was not prejudiced by the joinder of multiple charges stemming from different acts of sexual abuse because "[t]he jury had no trouble sorting out the evidence regarding the criminal sexual conduct charges by convicting Grace on simple assault charges only"). Under those circumstances, Appellant did not suffer any substantive prejudice as a result of the joinder of the charges in his case. Cf. Jamar, 561 F.2d at 1107-1108 ("Entering into the balancing process as well is the mitigating fact that the district court instructed the jury that each count was to be treated separately. The charges were few in number, and the evidence straightforward. We have no reason to surmise that the jury was confused or failed to obey the court's instruction." (citations omitted)).

Moreover, even assuming for argument's sake something more—like complete cross-admissibility of all evidence—was somehow necessary to establish the absence of any undue prejudice to Appellant from the consolidation of the charges, joinder was appropriate in Appellant's case because the evidence related to both of Appellant's minor victims would, in fact, have been admissible in separate trials had the charges not been tried jointly for two distinct reasons. See Beekman, 415 S.C. at 638, 785 S.E.2d at 205 (flatly rejecting any suggestion evidence on joined charges must be "completely identical" in order for joinder to be proper); see also People v. Poggi, 753 P.2d 1082, 1091 (Cal. 1988) ("Even if evidence on the joined charges would not have been cross-admissible in separate trials, a court does not necessarily abuse its discretion by joining the cases for trial, for the court's discretion in refusing to sever a case is broader than its discretion in admitting evidence of uncharged offenses. A defendant must prove a 'substantial' or 'clear' prejudice in order to establish an abuse of discretion arising from a

failure to sever; mere lack of cross-admissibility . . . is not enough." (citations omitted)). First, in light of the fact Appellant's strikingly-similar sexual abuse of both girls occurred on the same river trip on the same date around the same time coupled with the fact the minor victims discussed the abuse with one another before jointly disclosing it to one's mother, the evidence concerning both incidents was necessary for a full and unfragmented presentation of what occurred on the date of the incident and, thus, was admissible as part of the res gestae of the charged crimes. See State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996) ("One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context or the res gestae or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . . and is thus part of the res gestae of the crime charged. And where evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." (citations, brackets, and internal quotations omitted)), overruled on other grounds by State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014); cf. Grace, 350 S.C. at 24 n. 1, 564 S.E.2d at 333 n. 1 ("[T]he lewd act charge is integrally connected to the prior charges because it was the vehicle through which the other charges were discovered."). Second, the evidence of Appellant's molestation of both girls would have been admissible to establish the existence of a common scheme or plan if the charges had been severed because the crimes had a clear logical connection to one another based on the unique nature of Appellant's scheme, which involved

using the *exact same* river trip to gain close access to his female teenaged victims and then exploiting the river's visibility-obscuring dark water to inappropriately touch the girls below the water's surface where his actions could not be seen. See State v. Durant, 430 S.C. 98, 106, 844 S.E.2d 49, 53 (2020) (concluding other bad act evidence was properly admitted during Durant's trial pursuant to the common scheme or plan exception of Rule 404(b) of the South Carolina Rules of Evidence because Durant employed "a particularly unique method of committing his attacks common to all the girls" when carrying out the sexual abuse); State v. McClellan, 283 S.C. 389, 391, 323 S.E.2d 772, 773 (1984) (finding other bad act evidence was properly admitted when "[t]he method of attack was common to all three daughters"). As a result, Appellant could not and did not demonstrate he was substantively prejudiced by the joinder of both his charges stemming from the same river trip.[4] See United States v. Saadey, 393 F.3d 669, 678 (6th Cir. 2005) ("In order to prevail on a motion for severance, a defendant must show compelling, specific, and actual prejudice from a court's refusal to grant the motion to sever."); cf. Caldwell, 378 S.C. at 279, 662 S.E.2d at 480 (concluding Caldwell was not prejudiced by the joinder of charges stemming from three separate minor victims because he "*might* still be faced with the children's 'collective' testimony were he to be tried separately on each charge" (emphasis added)).

Accordingly, since the charges were of the same general nature and character, sprang from the same series of events occurring on the same date at the same location, were committed by the same offender and involved the same victims, required the same or similar proof for each

[4] Supporting an absence of prejudice to the defense from joinder under the circumstances involved, defense counsel also used the existence of allegations from more than one girl to the defense's advantage by suggesting it undermined both victims' credibility since it was purportedly implausible—or the "oddest coincidence"—for two close friends to be molested by the same man on the same day. (R. p. 214; p. 216).

of the charges, and did not result in any undue prejudice to any of Appellant's substantive rights by virtue of their joinder, the trial judge—just like the trial judge in Beekman—did not abuse his broad discretion by consolidating the charges in Appellant's case, and his decision to do so under the circumstances involved was fully consistent with principles of judicial economy while also ensuring Appellant's minor victims would not be unnecessarily subjected to repeated appearances in court for multiple trials to testify multiple times about the inappropriate touching they were subjected to by Appellant during the very same river trip. See Caldwell, 378 S.C. at 277-278, 662 S.E.2d at 479 ("Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant[']s substantive rights would not be prejudiced."); see also Grace, 350 S.C. at 24, 564 S.E.2d at 333 ("Under the facts of this case the circuit court did not abuse its discretion by consolidating the charges for trial. Moreover, judicial economy was fostered by the consolidation."); cf. Beekman, 415 S.C. 639, 785 S.E.2d at 206 ("We affirm the court of appeals in finding no abuse of discretion in the joinder of the charges, for the charges arose out of a single course of conduct, were of the same general nature, and were proved by the same evidence. Further, joinder did not prejudice any of Beekman's substantial rights."); Jones, 325 S.C. at 315-316, 479 S.E.2d at 520 (finding the trial judge did not abuse his discretion by granting the State's motion to have a consolidated trial on charges of first-degree criminal sexual conduct, second-degree criminal sexual conduct, criminal conspiracy, and contributing to the delinquency of a minor where "the offenses charged were of the same general nature involving allegations of a pattern of sexual abuse involving the two minor victims"). Appellant's conviction should be affirmed.

II.

The trial judge's supplemental instructions were not improper or unconstitutionally coercive because those instructions correctly encouraged the jury to make every reasonable effort to reach a verdict while even-handedly instructing the jurors in both the minority and majority to consider one another's opinions in addition to their own without surrendering their own firmly-held beliefs simply to reach an agreement.

Appellant contends the trial judge reversibly erred by virtue of his presentation of supplemental instructions to the jury after being alerted the jurors had been unable to reach a unanimous verdict as to one of the charges. In support of that contention, Appellant maintains the trial judge's supplemental instructions were unconstitutionally coercive because they purportedly communicated to the jurors they had to reach a verdict, overemphasized the cost and futility of a mistrial, and intimated to the jurors the trial judge believed the State's evidence was sufficient for a unanimous verdict to be reached. To the contrary, the trial judge's supplemental instructions, which conveyed to the jurors the importance of reaching a unanimous decision *if possible* and which asked both the minority and majority jurors to thoughtfully consider one another's opinions *without* surrendering their own firmly-held beliefs simply to reach an agreement, were not unconstitutionally coercive under the circumstances involved, and, therefore, the trial judge did not abuse his discretion or otherwise err by presenting them in response to the jury deadlock. Appellant's conviction should be affirmed.

Relevant Facts

After the evidentiary phase of trial concluded, the trial judge—without objection—instructed the jurors on the applicable law. (R. pp. 219-228). As part of his jury instructions, the trial judge made clear the jury's verdict had to be a unanimous one. (R. p. 227). Furthermore, the trial judge communicated to the jurors he would attempt to aid them if they were "struggling" with anything during their deliberations and, in doing so, expressly instructed the jurors to never

reveal any numerical division they may have. (R. p. 227). Likewise, the trial judge advised the jurors there was no set time for how long they had to deliberate in the case and, instead, the length of the deliberations was entirely in their discretion. (R. p. 228).

Following that, the jurors began their deliberations at approximately 3:12 p.m. (R. p. 229). However, a little less than three hours after that, the trial judge—without objection—decided to stop the jury's deliberations for the day due to the lateness of the hour and sent the jurors home at approximately 6:05 p.m. (R. pp. 229-230).

On the following morning, the trial resumed at approximately 9:30 a.m., and the jurors recommenced with their deliberations.[5] (R. p. 230). Thereafter, at approximately 11:04 a.m., the trial judge advised the parties he had received a note indicating the jurors had been able to reach a verdict on one of the charges but were at an impasse on the other. (R. pp. 230-231). Due to that note, the trial judge indicated he planned to present an Allen charge to the jury. (R. pp. 230-231). In response, defense counsel indicated he "strongly" objected to *any* Allen charge being given because he believed such charges always seemed to work in favor of the State and typically contained misinformation by suggesting another jury would hear exactly the same evidence and testimony if the case had to be retried. (R. pp. 231-232). Conversely, citing to pertinent South Carolina case law, the solicitor asked the trial judge to give an Allen charge as planned. (R. p. 232). After considering counsels' positions, the trial judge elected to give an Allen charge over defense counsel's objection but indicated he believed his specific charge would address the concerns that had been identified. (R. pp. 232-233).

Following that, the jurors returned to the courtroom at approximately 11:09 a.m., and the jury foreman confirmed they were struggling to reach a verdict only on the third-degree criminal

[5] Because no notations were made, it is not clear precisely what time the jury's deliberations restarted on the morning of the third day of trial. (R. p. 230).

sexual conduct with a minor charge. (R. p. 233). The trial judge then presented the following supplemental instructions:

> Well, ladies and gentlemen, I'm going to go ahead and give you some further instructions that might provide some measure of assistance, and please understand that you're to take these instructions in concert with the instructions that I gave you yesterday that you have a copy of back there in the jury room. Now, ladies and gentlemen, you've stated that you've been unable to reach a verdict, or you've struggled to reach a verdict on one of the charges in this case, and as I instructed you earlier, the verdict of the jury has to be unanimous. I do understand that when a matter is in dispute it's not always easy for even two people to agree, so when 12 people have to agree it becomes even more difficult. In most of those cases absolute certainty cannot be reached or expected, however you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Of course, tell each other how you feel and why you feel that way, discuss your differences with open minds. Although the verdicts of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the result of your own convictions, and you should not give up your firmly held beliefs merely to be in agreement with your fellow jurors. The majority should listen to the minority's position, and the majority should consider the -- the minority should consider the majority's position. You should carefully consider and respect the opinions of each other, and revaluate your positions for reasonableness, correctness, and impartiality. You must lay aside all outside matters and reexamine the questions before you based upon the law and the evidence in this case. Now, if you do not agree on a verdict in this case I'll have to declare a mistrial with respect to that charge. In that case it does not mean that anybody wins, it just means that at some future time me or somebody else, some other judge will try the case with some other jury sitting where you now sit. The same participants will come forward, the same lawyers will ask basically the same questions, and in all likelihood they'll basically get the same answers and we'll go through the whole process again. Now, you were selected in the same manner and from the same source as any future jury will be, and there's no reason for me to suppose that the case will ever be submitted to 12 people who are more intelligent, impartial, more conscientious, or more competent jurors than you are, or that more or clearer evidence will be produced on one side or the other.

> Therefore, I'm going to ask that you return to the jury room and try again to see if you can reach a verdict on that one count that you're struggling with. If you remain at an impasse just let the bailiff know and I'll bring you back in here, but at the same time please take to heart what I've instructed you here, and, of course, the instructions that I gave you yesterday in concert with, of course, what I just read to you. Okay? So please continue your efforts, and we will be at ease out here until we hear from you. Okay? Thank you very much.

(R. pp. 233-236).

Once the trial judge presented those supplemental instructions, the jurors again retired from the courtroom and resumed their deliberations at approximately 11:14 a.m. (R. p. 235). A little over two hours later, the jurors returned with a unanimous verdict at approximately 1:23 p.m., and they convicted Appellant of third-degree criminal sexual conduct with a minor while acquitting him of his other charge.[6] (R. pp. 237-238).

Standard of Review

When reviewing a trial judge's jury charge on appeal, an appellate court must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). Significantly, an appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). Importantly though, due to an Allen charge's potential for coercion, an appellate court reviewing such a charge for an abuse of discretion must view it with "a more heightened scrutiny" and "increased care and concern." State v. Rampey,

[6] Subsequent individual polling confirmed the unanimity of the jury's verdict. (R. pp. 238-239).

Op. No. 28118 (S.C. Sup. Ct. filed Oct. 5, 2022) (Howard Adv. Sh. No. 36 at 11, 15); cf. United States v. Wills, 88 F.3d 704, 717 (9th Cir. 1996) ("We review a trial court's decision to give an Allen instruction for abuse of discretion. The district court's deliverance of an Allen charge must be upheld unless it is clear from the record that the charge had an impermissibly coercive effect on the jury." (citations and internal quotations omitted)).

Argument

For the judicial process to properly function as is essential to the interests of all South Carolina's citizens, it is critically important for cases to reach a final resolution at some point. Nickles v. Seaboard Air Line Ry., 74 S.C. 102, __, 54 S.E. 255, 268 (1910). Resultantly, a trial judge by necessity has a long-recognized *duty* to urge the jury to agree upon a verdict if at all possible. State v. Kelly, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007).

Typically, that important duty of encouraging the jury to reach a verdict is accomplished by the trial judge presenting supplemental instructions advising the jurors in the majority and minority to consider each other's views, asking the jurors to give deference to one another's opinions, instructing the jurors to try to reach a decision if they are capable of doing so, and explaining the societal costs associated with the retrial of a case. See Allen v. United States, 164 U.S. 492, 501 (1896) (finding no constitutional error in a supplemental charge to a deadlocked jury instructing absolute certainty cannot be expected, the verdict must be the verdict of each juror and not mere acquiescence in the views of the others, they should examine the case with candor and give proper deference and regard to one another's opinions, they had a duty to decide the case if they could conscientiously do so, they should listen to each other with a disposition to be convinced, and they should consider the position of jurors holding a differing opinion); Nickles, 74 S.C. at __, 54 S.E. at 268 (finding a supplemental jury charge to a deadlocked jury in

which the trial judge instructed the jury the expenses associated with trying the case were a "very strong reason" the jury ought to get together and agree upon a verdict was not coercive or erroneous). Significantly, the presentation of such a supplemental charge "has long been sanctioned[,]" and, by giving such a charge, the trial judge is merely discharging the judge's duty. Lowenfield v. Phelps, 484 U.S. 231, 237 (1988); see Nickles, 74 S.C. at __, 54 S.E. at 268 ("A circuit judge is but discharging his duty to the public, and especially to the litigants, when he urges the jury to reach a verdict, provided nothing like coercion takes place.").

Nevertheless, despite having an important duty to urge the jury to reach a verdict, the trial judge must not improperly *coerce* the jurors into doing so. See State v. Darr, 262 S.C. 585, 587, 206 S.E.2d 870, 870 (1974) ("It is the duty of the trial judge to urge the jury to agree upon a verdict provided he does not coerce them."); State v. Ayers, 284 S.C. 266, 269, 325 S.E.2d 579, 581 (Ct. App. 1985) ("The trial judge has a duty to urge the jury to agree on a verdict, so long as he is not coercive."). The matter of whether the supplemental instructions were unconstitutionally coercive must be judged in context and with consideration given to all the circumstances involved. Dawson v. State, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002). When analyzing supplemental instructions to determine whether they were unconstitutionally coercive, pertinent factors that may be considered include: (1) whether the charge was specifically directed at minority jurors; (2) whether the charge included any mandatory language about the necessity to return a verdict; (3) whether the trial judge made any inquiries into the jury's numerical division; and (4) how long the jury's deliberations lasted. Tucker v. Catoe, 346 S.C. 483, 493-494, 552 S.E.2d 712, 717-718 (2001). Ultimately, "[t]he propriety of an Allen-type charge depends on whether it tends to coerce undecided jurors into reaching a verdict by abandoning

without reason conscientiously held doubts." United States v. Ruggiero, 928 F.2d 1289, 1299 (2d Cir. 1991) (citation and internal quotations omitted).

In the case at bar, the trial judge—after learning the jury was deadlocked on one of Appellant's two charges—presented supplemental instructions in an effort to break that deadlock that communicated the following uncontroversial points: (1) it is generally not easy for even two people to agree on something; (2) the jurors had a duty to make every reasonable effort to reach a unanimous verdict; (3) each of the jurors had a right to their own opinion; (4) the jurors should not give up their firmly-held beliefs merely to be in agreement with one another; (5) the majority should consider the minority's position and the minority should consider the majority's position; (6) a mistrial would be declared if they could not ultimately agree; (7) the declaration of a mistrial would mean the case would be retried before a different jury with "basically" the same evidence likely presented; (8) there was no reason to think any other jurors would be more qualified or capable than them to decide to the case; (9) they were being asked to *try* again to reach a verdict; and (10) they should notify the bailiff if they *remained* at an impasse. Considering those supplemental instructions in context and in light of the particular circumstances involved, those instructions were not unconstitutionally coercive, and the trial judge did not reversibly err by presenting them in Appellant's case.

Demonstrating the lack of any improper coerciveness, the trial judge's supplemental instructions were neutral, evenhanded, and directed at both the minority and majority jurors, which helped ensure none of the jurors could have reasonably believed the instructions were being aimed solely at any one position. Cf. Green v. State, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002) ("The entire charge shows the trial judge adequately and correctly told the jurors they should listen to what the other side had to say; to be open to change one's mind; and to not

change one's mind if it would do violence to one's conscience. The charge was neutral in its direction, not impermissibly aimed at the minority, instead suggesting members of each side examine their own position in light of the other view's position."); State v. Hughes, 336 S.C. 585, 598, 521 S.E.2d 500, 507 (1999) ("[T]he charge specifically instructs the majority to give 'equal consideration to the views of the minority.' Taken as a whole, this charge is an even-handed admonition to both the minority and majority jurors."). Likewise, by including language making clear the jurors were only being asked to try to reach a verdict after making a reasonable "effort" to do so along with language regarding what the jurors should do if they *still* remained at an impasse following further deliberations, the supplemental instructions—which did not include language suggesting the jurors "should" come to a verdict—ensured the jurors correctly understood a unanimous verdict was neither mandatory nor unyieldingly necessary. See New Oxford American Dictionary 554 (3rd ed. 2010) (defining "effort" as "a vigorous or determined attempt"); cf. State v. Taylor, 427 S.C. 208, 215, 829 S.E.2d 723, 727 (Ct. App. 2019) ("There is a glaring difference between the trial court's obligation to tell jurors they have a duty to *attempt* to reach a unanimous verdict and telling them they 'should come to a decision.' "). Similarly, the trial judge did not inquire into the numerical division of the jurors and, instead, took active steps to prevent himself from learning that information by expressly instructing the jurors not to reveal the nature of any division to him, which further helped to ensure the jurors understood what he was conveying was equally applicable regardless of what position they might hold. See State v. Williams, 344 S.C. 260, 264, 543 S.E.2d 260, 263 (Ct. App. 2001) (recognizing supplemental instructions are *not* necessarily unconstitutionally coercive even when the trial judge does, in fact, actually know the jurors' numerical division). Furthermore, the length of the jurors' deliberations both before and after the trial judge's supplemental instructions did not

suggest undue coercion because: (1) the jurors engaged in more than two additional hours of deliberations on the lone charge they were struggling with after the supplemental instructions were provided, and that period of deliberations occurred during the middle of the day as opposed to late at night; (2) the jurors only engaged in a little over four hours of deliberations prior to that point, and that earlier period of deliberations concerned both Appellant's charges instead of just one; and (3) the trial judge's initial instructions to the jurors made clear the total length of time they deliberated was entirely up to them. See Tucker, 346 S.C. at 491, 552 S.E.2d at 716 (recognizing context matters when conducting a case-specific coerciveness analysis); see also Smith v. State, 808 S.E.2d 661, 666 (Ga. 2017) (noting "the conditions under which a jury is forced to deliberate" has often been recognized to be "the key factor" to a finding of coercion and indicating problematic examples of coercive conditions include "sleep deprivation" and "a threat to keep the jurors together for an unreasonable or indefinite period of time until they agree on a verdict"); cf. Lowenfield, 484 U.S. at 240-241 (concluding the trial judge's supplemental instructions were not unconstitutionally coercive under the specific circumstances involved even though the jury returned with its verdict only thirty minutes after those instructions were presented). Finally and perhaps most importantly, the trial judge expressly cautioned the jurors *not* to surrender their firmly-held beliefs merely to be in agreement with one another as part of his supplemental instructions, and, although he briefly referenced the prospect of retrial if a unanimous verdict could not be reached, he did not mention—let alone overemphasize—any of the resources or costs associated with bringing the case to trial. See State v. Hale, 284 S.C. 348, 355, 326 S.E.2d 418, 423 (Ct. App. 1985) ("In the course of the charge, the judge specifically stated that every juror has a right to his own opinion and need not give it up merely for the purpose of reaching agreement. Taken as a whole, the supplemental charge was not coercive.");

see also State v. Singleton, 319 S.C. 312, 316, 460 S.E.2d 573, 575-576 (1995) ("It is not coercion when a trial judge instructs the jury that failure to reach a verdict will require a new trial at additional expense, or states that every juror has a right to his own opinion and need not give it up merely for the purpose of reaching agreement." (footnotes omitted)); Ayers, 284 S.C. at 269, 325 S.E.2d at 581 ("It is not coercive to charge that failure to reach a verdict will require a new trial at additional expense."); State v. Scott, 514 P.3d 590, 600 (Utah Ct. App. 2022) (instructing "reminding the jury of the expended time and effort and the risk of retrial is not enough on its own to make the instruction coercive"); cf. United States v. Meyers, 410 F.2d 693, 697 (2d Cir. 1969) ("The judge's warning that 'under no circumstances must any juror yield his conscientious judgment' makes the use of the Allen charge proper and not coercive." (citations omitted)); People v. Colon, 103 N.Y.S.3d 215, 218 (N.Y. App. Div. 2019) ("The fact that the court referred to the possibility of another jury selection and a retrial in the event the jury could not reach a verdict did not render the Allen charge coercive."); Rampey (Howard Adv. Sh. No. 36 at 21) (concluding a supplemental charge was unconstitutionally coercive because it "overemphasized the resources expended in bringing the matter to trial *and* did not instruct the jury that no juror should surrender his or her conscientiously held beliefs simply for the sake of reaching a verdict" (emphasis added)).

Viewing those circumstances together and in context, the trial judge's supplemental instructions were not unconstitutionally coercive as they could not have coerced any "undecided jurors into reaching a verdict by abandoning without reason conscientiously held doubts." Ruggiero, 928 F.2d at 1299 (citation and internal quotations omitted); cf. State v. Jones, 320 S.C. 555, 559, 466 S.E.2d 733, 735 (Ct. App. 1996) ("We have carefully reviewed the entire charge and, taken as a whole, do not find it coercive."). As a result, the trial judge neither abused his

discretion nor committed any other error by carrying out his important duty to encourage the jury to reach a verdict in Appellant's case. See State v. Middleton, 218 S.C. 452, 457, 63 S.E.2d 163, 165 (1951) (instructing a trial judge has a duty "to admonish the jury as to the desirability and importance of trying to reconcile their differences and agreeing upon a verdict" when a jury is unable to agree); see also Clark, 339 S.C. at 389, 529 S.E.2d at 539 ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); Taylor, 427 S.C. at 214, 829 S.E.2d at 726 (recognizing all federal circuits allow some version of an Allen charge to address jury deadlocks); cf. State v. Brand, 544 S.W.3d 284, 292 (Mo. Ct. App. 2018) ("To demonstrate an abuse of discretion, the appellant must show from the record that the jury's verdict was coerced. The verdict is considered coerced only when under the totality of the circumstances it appears that the trial court was virtually directing that a verdict be reached and by implication indicated that it would hold the jury until a verdict was reached." (citations and internal quotations omitted)). Appellant's conviction should be affirmed.

III.

The trial judge correctly declined to grant the directed verdict motion because the evidence and testimony presented during trial—including the minor victim's direct testimony indicating Appellant covertly slid his hand underneath her swimsuit and rubbed her vagina for what felt like an extended period of time—supported a rational and logical conclusion Appellant was guilty of all the required elements of third-degree criminal sexual conduct with a minor.

Appellant contends the trial judge erred by failing to direct a verdict of acquittal on the third-degree criminal sexual conduct with a minor charge. In support of that contention, Appellant—while characterizing the minor victim's testimony as "[s]purious" and "approach[ing] the bizarre"—maintains the directed verdict motion should have been granted because the State purportedly failed to present *any* evidence from which the jury could reasonably find him guilty of the required elements of that offense. To the contrary, the evidence and testimony presented during trial was sufficient for the jury to logically and rationally find Appellant, who was a middle-aged adult man at the time of the offense, guilty of each and every element of third-degree criminal sexual conduct with a minor because it supported a conclusion he committed a lewd or lascivious act upon his fourteen-year-old victim's body with the intent of arousing, appealing to, or gratifying either his or her lust, passions, or sexual desires when he surreptitiously slid his hand underneath her swimsuit and proceeded to rub her vagina for some period of time. Accordingly, the trial judge correctly denied the directed verdict motion and submitted the case to the jury to allow it to carry out its—and only its—fact-finding role. Appellant's conviction should be affirmed.

Relevant Facts

During the course of Appellant's trial, Victim 1—the minor victim related to Appellant's third-degree criminal sexual conduct with a minor charge—testified Appellant inappropriately touched her "in [her] private areas" during a trip to the river when she was fourteen years old.

(R. p. 70; p. 72; p. 74). More specifically, Victim 1 recounted she was floating in an inner tube at the river next to Appellant's daughter, Appellant had one of his arms in each of their tubes, Appellant began tickling her, and Appellant them moved his hand underneath her swimsuit and began rubbing "[i]n between the lips" of her vagina. (R. p. 75; p. 77; p. 246). Victim 1 further explained the rubbing felt like it lasted for "[p]robably" around twenty minutes. (R. p. 77; p. 83). However, Victim 1 acknowledged she was not sure of exactly how long the abuse actually occurred because she was not timing it with a watch or clock. (R. p. 83). Beyond that, Victim 1 noted there were many people in the area at the time of the abuse, but she indicated it occurred below the water, which was dark. (R. pp. 82-84).

In addition to Victim 1's testimony, multiple witnesses testified about Victim 1's subsequent disclosure of the abuse, which occurred shortly after the incident. (R. pp. 63-64; p. 66; p. 125; pp. 144-145). Likewise, multiple witnesses corroborated Victim 1's testimony about Appellant hanging off her inner tube with his arm—and hand—inside it, and several witnesses also testified about observing Victim 1 appearing to be visibly upset afterwards. (R. pp. 111-112; p. 120; p. 124; p. 144; p. 146). Furthermore, multiple witnesses—including Victim 1 herself—testified about negative changes to Victim 1's behavior that occurred as a result of and subsequent to the incident. (R. p. 71; pp. 92-94; p. 114; p. 145).

After that testimony and evidence had been presented, defense counsel moved for a directed verdict on the third-degree criminal sexual conduct with a minor charge. (R. p. 150). As support for his motion, defense counsel argued there was insufficient "credible" evidence to establish Appellant's guilt for that offense while pointing to the fact Victim 1 reported Appellant touched her for twenty minutes. (R. p. 150). Unpersuaded, the trial judge denied the motion and declined to grant a directed verdict. (R. p. 150).

Subsequent to that, Appellant testified on his own behalf and acknowledged he was at the river on the date of the incident along with Victim 1 and others. (R. pp. 169-173). However, he denied touching or sexually abusing her that day, claimed he was not a "child toucher," and insisted he typically tried to stay away from young girls due to the fact accusations "can be made for no reason whatsoever." (R. pp. 174-177). However, Appellant did acknowledge his arm may have been inside Victim 1's inner tube that day, and he admitted he was in close proximity to her that day. (R. p. 186; p. 188). Additionally, Appellant offered shifting accounts of how long he was at the river on the date of the incident and how long he was engaged in various activities while there. (R. p. 174; pp. 178-180). And, in doing so, he explained his time estimations were only "guesstimated" since he did not have a clock or watch with him then. (R. p. 179; p. 181). Furthermore, Appellant acknowledged the river's water was very dark, and he conceded a person could not see below the water's surface as a result.[7] (R. p. 185).

Ultimately, after all that testimony and evidence was presented, the case was submitted to the jury.[8] (R. p. 229). Upon deliberating on the matter for several hours, the jury convicted Appellant of third-degree criminal sexual conduct with a minor as indicted. (R. p. 229; p. 237).

Standard of Review

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial

[7] The testimony regarding the lack of visibility below the surface of the water at the river was corroborated by several photographs introduced into evidence by defense counsel. (R. p. 117; pp. 248-253).

[8] Prior to the case being submitted to the jury, defense counsel—following prompting from the trial judge—renewed his directed verdict motion in a general fashion, and that motion was again denied. (R. p. 193).

circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)).

Argument

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is not permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908)

("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, *evaluate witness credibility*, determine what inferences should be drawn from the facts, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

In the present case, Appellant was charged with—amongst other things—third-degree criminal sexual conduct with a minor. That offense has been committed in South Carolina when

a person over the age of fourteen "wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child." S.C. Code Ann. § 16-3-655(C). Thus, at its core, the offense of third-degree criminal sexual conduct with a minor is synonymous with the "offensive act" of "child molesting." State v. Hardee, 279 S.C. 409, 412, 308 S.E.2d 521, 524 (1983).

Viewing the evidence and testimony presented in a light most favorable to the State as required, Victim 1's testimony indicating Appellant slipped his hand underneath her swimsuit and rubbed her vaginal area constituted *direct* evidence Appellant committed an act upon a fourteen-year-old child's body that could fairly and logically be deemed lewd or lascivious. See State v. Johnson, 334 S.C. 78, 86 n. 1, 512 S.E.2d 795, 799 n. 1 (1999) (concluding testimony indicating a witness saw the defendant touching a minor victim on the "bottom" while she was seated in his lap was sufficient to create a jury question on the issue of whether the defendant committed a lewd act); see also S.C. Code Ann. § 16-3-657 ("The testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 and 16-3-658."). And, even assuming Victim 1's testimony standing alone was *somehow* not enough to establish that vile act occurred, the rape trauma evidence concerning the changes to Victim 1's behavior after the incident constituted corroborative proof a sexual offense did, in fact, occur. See State v. Alexander, 303 S.C. 377, 381, 401 S.E.2d 146, 149 (1991) (holding evidence of trauma to a victim is relevant to prove the elements of criminal sexual conduct and explaining "[e]vidence of behavioral and personality changes tends to establish or make more or less probable that the offense occurred"). Meanwhile, due to the obvious and apparent purpose behind such an act, a reasonable fact-finder could logically and rationally conclude Appellant rubbed his minor

victim's vagina with the intent to gratify his troubling sexual desires merely by looking to the nature of his actions. See State v. Nelson, 331 S.C. 1, 11, 501 S.E.2d 716, 721 (1998) (explaining the intent and motive of an individual who commits or attempts to commit a sexual offense is *obvious* and *apparent* such that motive and intent generally are not truly material issues in such cases); cf. Hardee, 279 S.C. at 414, 308 S.E.2d at 524-525 (rejecting Hardee's claim the evidence was insufficient "to show any act was done with the intent of arousing the sexual desires of the minor" when the minor victim testified Hardee put his hand in the minor victim's pants and felt the minor victim's "private parts"); State v. Whisonant, 335 S.C. 148, 153, 515 S.E.2d 768, 771 (Ct. App. 1999) (rejecting Whisonant's contention "there was an insufficient showing that the alleged touching was done with the intent of gratifying the passion or lust of either himself or the victim" based on the testimony and evidence presented, which included testimony from the minor victim indicating Whisonant groped her chest and attempted to touch her "below the waist"). As a result, sufficient evidence and testimony was presented tending to prove Appellant's guilt for each and every element of third-degree criminal sexual conduct with a minor regardless of how spurious or bizarre Appellant may have self-servingly perceived that evidence and testimony to be. See State v. Bell, 263 S.C. 239, 246, 209 S.E.2d 890, 893 (1974) ("It is not the function of the court to pass upon the weight of the evidence, but to determine its sufficiency to support the verdict, and where there is any evidence however slight on which the jury may justifiably find existence or nonexistence of material facts in issue, or if evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues will be submitted to the jury."); cf. State v. Ladner, 373 S.C. 103, 121, 644 S.E.2d 684, 693 (2007) ("To the extent appellant is arguing that the State's case was

based on unreliable evidence, the trial court is only concerned with the existence of the evidence, not its weight, when deciding a directed verdict motion.").

Because the evidence and testimony presented supported a fair and reasonable conclusion Appellant was guilty of the indicted offense, the trial judge was required to submit Appellant's case to the jury so it could carry out its fact-finding role. See State v. Shaw, 258 S.C. 236, 239, 188 S.E.2d 186, 187 (1972) ("The weight to be accorded the testimony was for the jury to determine *and not this Court*." (emphasis added)); State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Accordingly, the trial judge correctly declined to grant the directed verdict motion, and there is no legitimate basis—including the credibility-based grounds that have been advanced by Appellant—upon which that ruling can be disturbed on appeal. See Bennett, 415 S.C. at 236-237, 781 S.E.2d at 354 ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and *must* submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (emphasis added and citation and internal quotations omitted)); see also State v. Fleming, 254 S.C. 415, 420, 175 S.E.2d 624, 626 (1970) ("A motion for a directed verdict of not guilty is properly refused where the determination of guilt is dependent upon the credibility of the witnesses."); cf. Nelson, 331 S.C. at 10-11, 501 S.E.2d at 721 ("Here, Petitioner was on trial for sexual offenses; there is little doubt the motivation for such offenses is, at least in part, sexual gratification."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2022-001116

THE STATE,

Respondent,

vs.

RANDALL WADE MEDLIN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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