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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Appellate Case No. 2022-001116

The Honorable Frank Addy, Circuit Court Judge

State of South Carolina……………………………………………………………Respondent,

v.

Randall Medlin ………………………………..……………………………………Appellant.

FINAL BRIEF OF APPELLANT

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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.

STATEMENT OF THE CASE

Randall Medlin was indicted for one count of third degree criminal sexual conduct with a minor (CSC) and one count of second-degree assault and battery. (R. 4, 264, 266). He proceeded to a jury trial before the Honorable Frank Addy August 1–3, 2022. (R. 1). He was ultimately acquitted of the assault and battery charge and convicted of CSC. (R. 237). Judge Addy sentenced him to fifteen years' imprisonment, suspended on service of six years and four years' probation. (R. 244, 267–68). Mr. Medlin filed a timely notice of appeal.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). "[T]the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had." *State v. Heath*, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958). An abuse of that discretion occurs where the trial court's conclusions are based on unsupported factual conclusions or controlled by an error of law. *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020).

ARGUMENT

Factual Background

Jessica Davis of the Ware Shoals Police Department received a report on August 11, 2019 from Brandi Saunders alleging Mr. Medlin had inappropriately touched her daughter, M.J. (R. 59). The next day she met with the complaining witnesses, and another alleged assault by Mr. Medlin on a different victim, F.R., was also reported. (R. 60). Based on these accounts, Mr. Medlin was charged with CSC third for the alleged incident with M.J. and second-degree assault and battery for the alleged incident with F.R. (R. 4, 264, 266). The case proceeded to a jury trial.

During a pretrial hearing, defense counsel requested that the cases be tried separately. (R. 5). He argued that by trying them together prejudicial testimony would be admitted that would otherwise be excluded if they were tried separately, and the prejudice to Mr. Medlin outweighed any judicial expediency. (R. 6). The State opposed the motion, arguing the charges stemmed from a "single chain of circumstances" because there was a "single course of conduct." (R. 6–7). Noting judicial economy, the trial court denied the request and stated it would make it "crystal clear" to the jurors that their verdict in one case could not influence their verdict in the other. (R. 9).

At trial, M.J. testified that at the time of the alleged incident she was fourteen and had gone swimming at the river with her dad's girlfriend, Rhonda Snider, her three brothers, and Ms. Snider's daughter, F.R. (R. 73). They had met up there with Mr. Medlin, his wife Dolores, and their family. She stated that while she was at the river, she and Mr. Medlin's daughter were both in inner tubes and Mr. Medlin was sitting on the rocks between the two girls with an arm in each tube. (R. 75, 79). He was holding on to them because they could not touch the ground. (R. 80).

M.J. testified that he "started tickling [her] . . . and then he slowly put his hands into [her] pants and started rubbing . . . in between the lips." (R. 75). She stated his hand was inside her bathing suit and that this went on "[p]robably about 20 minutes." (R. 75, 80). She further testified Mr. Medlin held on to his daughter's float the entire time. (R. 81). She stated that everyone they were with that day were only about five feet away and admitted it would not have been "any trouble" for someone to witness it. (R. 82, 83). On redirect, the solicitor suggested that when she said it went on for twenty minutes, did she mean it felt like twenty minutes, and she agreed. (R. 83). She further testified that Mr. Medlin eventually left and she got out of the water and shortly thereafter she and F.R. went and spoke with Ms. Snider and their family left; Ms. Snider then called the police. (R. 78-79). M.J. testified that after the incident she had stopped cheering because the "thought the cheer outfits would be too revealing." (R. 71).

M.J.'s brother, Tarren Patrick, also testified about being at the river that day. He stated he saw Mr. Medlin "hanging off the float" with M.J. and F.R. (R. 112). He said that after she got out of the water, he went to talk to M.J. and she seemed upset but would not tell him why. (R. 112-13). Instead, M.J. and F.R. went off together and their family left shortly after. (R. 113). He stated that since the alleged incident, M.J. "keeps to herself" and "wear[s] baggy clothes." (R. 114). When defense counsel showed him a recent picture M.J. had taken of herself in a fitted cropped T-shirt and then posted on social media, he admitted that the picture depicted her in her bedroom. (R. 116, 247).

Ms. Snider testified she had gone to the river that day with three of her stepchildren and her daughter F.R. (R. 123). She stated Mr. Medlin "is family to [her]" but her children had never met him before. (R. 123). She also testified that she had never met Mr. Medlin's children before

that, but then qualified her statement say it was one of the "first few" times she had met them. (R. 129). She then stated F.R. had in fact met Mr. Medlin before, but M.J. had not met him before that day. (R. 131). Ms. Snider testified that when during that day, she at one point she looked over and saw Mr. Medlin in an inner tube and her daughter F.R. going under water to get out of the inner tube. (R. 124). She was talking to Ms. Medlin when F.R. and M.J. came to talk to her and she saw M.J. had been crying. (R. 125). The girls disclosed the alleged assaults and they left. (R. 125).

F.R. testified she was fifteen at the time of the alleged incident and about to start tenth grade. (R. 136). She stated she had met Mr. Medlin "a couple of times" and on that day he had been "more selective towards [her]" and "wanting to be around [her] more." (R. 137). She testified that at one point he came up through the tube she was in and picked her up onto his lap, at which point she got out and started walking to shore. (R. 140). F.R. stated that as she was coming out of the riverbank, Mr. Medlin "grabbed" her with both hands on her buttocks and "pushed [her] up." (R. 142, 146). She said she froze for about three seconds, or at least longer than a second, and then walked out of the water. (R. 147, 148). She testified the nearest adult was about twenty-five to thirty feet away. (R. 141).

The State rested and Mr. Medlin moved for directed verdict. As to the CSC charge, he argued the only evidence was that he was sitting with his arms draped in both M.J. and his daughter's inner tube and M.J.'s dubious testimony that he had touched her for twenty minutes. (R. 150). Noting it was "[o]bviously not the strongest case [it had] seen" the court nevertheless denied the motion. (R. 150).

Mr. Medlin and his wife, both testified in his defense. Ms. Medlin testified she and Mr. Medlin arrived at the river with their youngest son, Dylan, and explained their two other children rode with Ms. Snider because they had spent the previous night at her house. (R. 156). She stated she stayed near the shallow water with her youngest son and her husband was down by the water with their daughter in one float and F.R. lying over M.J. in the other and then he came out about ten minutes after. (R. 158, 161). She testified a little while later, the girls—M.J., F.R., and her daughter—got out of the water and came to the table where the adults were and put leaves and flowers on her husband's head. (R. 163). Her husband and brother-in-law went and floated down the river together and the girls left the picnic table. (R. 164). Ms. Medlin stated that before her husband got back, M.J. and F.R. came to speak privately with Ms. Snider and then they all got their stuff and left. (R. 164).

Mr. Medlin testified he had gone to the river that day with his youngest son, his wife, and his brother. (R. 169). His two other children had spent the night with Ms. Snider the night before. (R. 169). He stated the same group went to the river the day before, but it was raining, so they ended up at Ms. Snider's house for a bonfire and pizza. (R. 170). His older children wanted to spend the night, so his daughter and oldest son stayed with Ms. Snider and her boyfriend that evening. (R. 170). He testified they arrived at the river after Ms. Snider and the children, and he smoked a cigarette before getting in the water. (R. 172). After he got in the water, he swam down to where everyone else was and one he got there he hung on to the floats. (R. 172–73). He noted the tubes were designed to be pulled by power boats, so they have ropes on them, and that is how he holds on to them. (R. 175). He testified he never did anything inappropriate with either alleged victim and could not think of anything that happened that could even be misconstrued that way.

(R. 177). He testified anyone who said he was in a float with F.R. was lying. 188. The defense rested and renewed its motions. (R. 191, 193).

The jury began deliberations at 3:12 p.m. on August 2 and continued through 6:05 p.m. that evening. (R. 228–29). The court excused them for the evening and brought them back at 9:30 a.m. the following day. (R. 230). The jury returned the following day and deliberations renewed. (R. 230). At 11:04 a.m. the court came back on the record and stated it had received notice from the jury that it was "at an impasse." (R. 231). The court informed counsel it intended to give an *Allen*[1] charge. (R. 231). Defense counsel objected, specifically noting the inaccuracy of informing a jury that if it does not come to unanimous verdict, the case will have to be retried before a similar jury with the same evidence presented in the same way with the same witnesses. (R. 231). He further argued that the use of the charge generally served to persuade the analytical thinkers, allowing idealogues to prevail, overarchingly in favor of the State. (R. 231–32).

The trial court overruled the objection and called the jury back to the courtroom. (R. 232–33). The forelady informed the trial court it was deadlocked on the CSC charge. (R. 233). The trial court gave its *Allen* charge and the jury left to resume deliberations at 11:14 a.m. (R. 233–35). The court broke for lunch at 11:58 a.m. (R. 136). During the lunch break, the jury returned a verdict. The court reconvened at 1:23 p.m. and the forewoman delivered the verdict finding him not guilty of the assault and battery charge and guilty of CSC. (R. 237). He was sentenced him to fifteen years' imprisonment, suspended on service of six years and four years' probation. (R. 244).

ANALYSIS

I. The Trial Court Erred in Refusing to Sever the Charges.

[1] *Allen v. United States*, 164 U.S. 492 (1896).

The trial court erred in allowing the State to try the two charges against Mr. Medlin together. The charges are not closely related, and the joinder allowed the State to slip in propensity evidence that otherwise would have been excluded. This error prejudiced Mr. Medlin and requires reversal.

"The trial court has discretion in deciding whether to try charges together, and its decision will be reversed only if there is no evidence to support it or it is controlled by an error of law." *State v. McGaha*, 404 S.C. 289, 294, 744 S.E.2d 602, 604 (Ct. App. 2013). "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 power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." *State v. Smith*, 322 S.C. 107, 109, 470 S.E.2d 364, 365 (1996). However, "offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." *State v. Jones*, 325 S.C. 310, 315, 479 S.E.2d 517, 519 (Ct. App. 1996).

In the cases involving sexual abuse of minors, the courts have allowed charges to be tried together where there was abuse amongst siblings, multiple instances of abuse against a victim, or both. *See, e.g.*, *State v. Beekman*, 415 S.C. 632, 637–38, 785 S.E.2d 202, 205 (2016) (affirming joinder of charges of CSC on stepson and lewd act on stepdaughter where evidence showed a series of actions to sexually abuse his prepubescent stepchildren and the molestation occurred in the same place, during the same stretch of time, and "with the same modus operandi—Beekman taking advantage of the children's habit of watching television with him"); *State v. Tallent*, 430 S.C. 438, 446, 845 S.E.2d 508, 512 (Ct. App. 2020) (affirming joinder of contributing to delinquency of a

minor and CSC and lewd act charges where evidence suggested a pattern of improper conduct involving years of sexual abuse of stepdaughter and supplying stepdaughter and stepson with illegal drugs and alcohol); *State v. Grace*, 350 S.C. 19, 24, 564 S.E.2d 331, 333 (Ct. App. 2002) (affirming joinder of CSC charges and lewd act with a minor charge where incidents involved a pattern of sexual abuse of the same victim in the same bedroom over a short timeframe); *Jones*, 325 S.C. at 315, 479 S.E.2d at 520 (affirming joinder of multiple charges of sexual abuse of two minor victims where "offenses charged were of the same general nature involving allegations of a pattern of sexual abuse" and both victims had been taken to the same location and were present in the same motel room on an occasion of abuse).

Here, there is no similar interconnectedness, no evidence of a single course of conduct to justify joinder. The date and location are the only common denominators; there are no witnesses to the alleged assaults and there is no evidence of some pattern or series of actions to interconnect the two charges. The alleged abuses are distinct. The assault and battery charge was based on allegations that Mr. Medlin grabbed F.R.'s buttocks over her swimsuit with both hands for a few seconds as she was exiting the water. The CSC charge was based on allegations Mr. Medlin fondled M.J.'s vagina under her swimsuit as she lay next to him in a float. The first alleged incident was described as brief—F.R. stated she froze when he touched her and then she moved about three seconds later. (R. 147). The length of the latter is indeterminate, with M.J. testifying that the abuse occurred for about twenty minutes, (R. 77, 80), and the solicitor undermining that testimony by arguing M.J. did not have a watch and it was just time enough to feel uncomfortable, (R. 201). The girls were not together when these events allegedly occurred and neither witnessed the other

alleged crime, therefore the crimes would not be proved by the same evidence, which was limited to the alleged victims' testimonies.

Furthermore, Mr. Medlin was prejudiced in having the two charges tried together. Had they been tried separately, evidence of one would not be admitted in the other under Rule 404, SCRE. The sole purpose for attempting to do so would be to show propensity. *See State v. Perry*, 430 S.C. 24, 41, 842 S.E.2d 654, 663 (2020) ("With no fact in issue in the crimes charged that is made more or less likely by the [evidence of prior sexual assault]—other than "he did it"—the probative force lies only in the use of the testimony to prove character, and from that character to prove he acted in accordance. In other words, the [evidence of prior sexual assault] served only one purpose—propensity."). In neither instance is there an issue of fact that would be clarified for the jury by the introduction of evidence of the other alleged bad act. With no legitimate purpose beyond propensity, the evidence would be inadmissible. Therefore, refusing to sever the charges, the trial court allowed the State to backdoor propensity evidence to the prejudice of Mr. Medlin. *State v. Beekman*, 405 S.C. 225, 230, 746 S.E.2d 483, 486 (Ct. App. 2013), *affirmed by State v. Beekman*, 415 S.C. 632, 785 S.E.2d 202 (2016) (noting prejudice to a defendant may occur where the defendant is jointly tried on charges resulting in the admission of prior bad act evidence that would have otherwise been inadmissible).

Although the trial court suggested Mr. Medlin was not prejudiced because the jury found him not guilty on one of the charges, the fact the State failed to meet its burden of proving his guilt beyond a reasonable doubt on one of the charges does not mean the jury could not have impermissibly draw negative inferences against Mr. Medlin based on the evidence adduced as to that charge. It may be that the jury determined his alleged actions did not meet the elements of

second-degree assault and battery. The trial court charged the jury that assault and battery second occurs where a "person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and the act involves the non-consensual touching of the private parts of a person either above or below the clothing." (R. 226). It did not define injury. However, the State had moments before defined the crime identically in its closing[2] and then immediately defined "moderate bodily injury" to the jury as "physical injury requiring treatment to an organ system of the body other than the skin, muscles, or connective tissue of the body, except when there is penetration in the skin, muscles, and connective tissues that require surgical repair of a complex nature, or when treatment of the injuries requires the use of regional or general anesthesia." (R. 198–99). The jury would naturally have concluded it must find a *physical* injury, and that the act causing that injury involved the touching of private parts. The State did not make clear in its arguments what *injury* had occurred to satisfy the elements of the crime, and its own closing indicated physical injury was part of the crime.[3] No evidence of physical injury (and certainly no evidence of moderate bodily injury) to F.R. was presented.

So the jury may have believed that Mr. Medlin had groped F.R.'s buttocks (which caused no physical injury) and therefore the admission of evidence as to that allegation was prejudicial

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[2] In its opening statement, the State defined assault and battery in the second degree as "when a defendant touches the private parts of someone over the age of 16 without that person's consent." (R. 50). F.R. was fifteen at the time of the alleged incident. (R. 136).

[3] This Court recently held that an "injury" for the purpose of proving assault and battery need not be a *physical* injury but injury in the legal sense. *See State v. Robinson*, 437 S.C. 226, 233–34, 878 S.E.2d 8, 12 (Ct. App. 2022), *petition for cert. filed*, App. No. 2022-001481 (S.C. Sup. Ct. Oct. 20, 2022). However, a question of statutory interpretation is not the concern of the jury; it is expected to do no more than what it is told. As discussed above, the point here is that no one ever informed the jury that the element of injury could be nonphysical. To the contrary, the State explained moderate bodily injury.

propensity evidence. Such prejudice is magnified in a case where the evidence was so weak. Weak to the point that the jury was deadlocked and only came to a verdict after an *Allen* charge. Mr. Medlin is therefore entitled to a new trial on his CSC charge.

II. The *Allen* Charge was Unconstitutionally Coercive.

The trial court's coercive jury charge denied Mr. Medlin his right to a fair trial before an impartial jury. The trial court overstepped in its authority by misleading the jury about the ramifications of a deadlock and suggesting the evidence was sufficient to reach a result. Mr. Medlin was therefore denied a fair trial and should be granted a new one.

"Any criminal defendant . . . being tried by a jury is entitled to the uncoerced verdict of that body." *Lowenfield v. Phelps*, 484 U.S. 231, 241 (1988); *see* U.S. Const. amends. VI & XIV; S.C. Const. art. I, § 14. "Whether an *Allen* charge is unconstitutionally coercive must be judged 'in its context and under all the circumstances.'" *Tucker v. Catoe*, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001) (per curiam) (quoting *Lowenfield*, 484 U.S. at 237). Generally, a reviewing court considers a jury charge as a whole and in light of the evidence and issues presented at trial when reviewing the charge for error. *State v. Rampey*, No. 2020-001595, 2022 WL 5080480, at *3 (S.C. Sup. Ct. Oct. 5, 2022). However, because of the potential for coercion inherent in an *Allen* charge, review must be undertaken with "a more heightened scrutiny than a general jury charge." *Id.* "Like dynamite, the charge must be handled with extreme care." *State v. Taylor*, 427 S.C. 208, 214, 829 S.E.2d 723, 727 (Ct. App. 2019).

"The test for determining whether a given charge is unconstitutionally coercive is very fact intensive." *Tucker*, 346 S.C. at 491, 552 S.E.2d at 716. Derived from *Tucker,* the Court employs a multi-factor inquiry to determine whether an *Allen* charge is unconstitutionally coercive:

(1) Does the charge speak specifically to the minority juror(s)?

(2) Does the charge include any language such as "You have got to reach a decision in this case"?

(3) Is there an inquiry into the jury's numerical division, which is generally coercive?

(4) Does the time between when the charge was given, and when the jury returned a verdict, demonstrate coercion?

Workman v. State, 412 S.C. 128, 130–31, 771 S.E.2d 636, 638 (2015) (per curiam). "Like most multi-factor constructs, the *Tucker* test does not tell us the relative weight each factor carries, nor is the list of factors exclusive." *Taylor*, 427 S.C. at 215, 829 S.E.2d at 727. "[I]n the end, the ultimate question is whether the *Allen* instruction was impermissibly coercive." *United States v. Cornell*, 780 F.3d 616, 626–27 (4th Cir. 2015).

The trial court then charged the following:

> Well, 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 reevaluate 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 his 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.

(R. 233–35).

Under the facts and circumstances of this case, this charge was unconstitutionally coercive. The first and third prongs of the analysis are generally neutral. The trial court speaks to both the minority and majority in asking them to consider each other's positions and does not ask about the numerical division. The second prong reveals the trouble with the charge. Reviewing the charge in its totality and considering the facts of this case, the trial court erroneously projected to jurors that they "had" to reach a verdict.[4] Our appellate courts have reflected a burgeoning concern

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[4] Prior to the *Allen* charge, the trial court suggested it *had* to come to a verdict:

> I sometimes have gotten a question from a jury of: Judge, how long must we deliberate, or how long do we have to deliberate? Understand, ladies and gentlemen, there is no set time. Whether you deliberate for five minutes, 15 minutes, 50 minutes, five hours, I'm hoping it's not five days, but however long you deliberate is entirely in your discretion. *And again, the key thing is that whatever the outcome is all 12 of you have to agree. So whether that takes five minutes or five hours or 15 hours, that's up to you guys.*

about the emphasis given the societal costs of retrial in an *Allen* charge and afforded it significant weight in the consideration of whether the charge is unconstitutionally coercive.[5] *See Rampey*, 2022 WL 5080480, at *4; *Taylor*, 427 S.C. at 219, 829 S.E.2d at 729. In *Rampey*, the Supreme Court found an *Allen* charge coercive that did not expressly state the jury must reach a verdict, but repeatedly highlighted the negative ramifications of a mistrial, specifically the "substantial resources spent in bringing the case to trial." *Rampey*, 2022 WL 5080480, at *4. It further noted the problematic nature of telling the jury the parties deserved a verdict and concluded that "the multiple references to the 'resources brought to bear' and the recurring refrain that the parties deserved finality is tantamount to 'you've got to reach a verdict.'" *Rampey*, 2022 WL 5080480, at *4.

Here, the trial court similarly erred in emphasizing the futility and costliness of a mistrial. Although courts have declined to reverse a conviction based on the casual mention of the costs of retrial, those cases do not encourage that language as appropriate for an *Allen* charge, or any jury charge. Alleged waste that results from a mistrial, be it time or money, has nothing to do with the guilt of the accused and therefore has no place in the minds of the jury during deliberations. *See United States v. West*, 877 F.2d 281, 291 (4th Cir. 1989) ("The length and expense of a trial may

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(R. 228) (emphasis added). Essentially, the trial court told the jury it would stay *indefinitely* until all twelve of jurors agreed. This statement in conjunction with the *Allen* charge magnifies the coercive effect.

[5] Although this factor was not expressly articulated in *Tucker*, that does not undermine its weight. The societal costs of retrial were necessarily not at issue in *Tucker* or in the case where this test was born, *Lowenfield v. Phelps*. Both cases reviewed an *Allen* charge in the context of the penalty phase of a capital murder case in states where it is statutorily provided that in the case of a hung jury, the judge must give a life sentence. *Tucker*, 346 S.C. at 491, 552 S.E.2d at 716; S.C. Code Ann. § 16-3-20(C); *Lowenfield v. Phelps*, 484 U.S. 231, 238 (discussing Louisiana law). The risk of retrial was simply not present.

justify use of the *Allen* charge if the jury is having difficulty reaching a verdict, but it does not follow that the jury should be instructed to overcome its difficulties by considering a factor which it could not appropriately consider in the first instance."). Furthermore, though the law has tended to forgive a trial court's brief reference to the expense of trial, it is not permitted to overwhelm the jury with that concern. *See Rampey*, 2022 WL 5080480, at *4 ("While it is permissible in an *Allen* charge to note the expense of a retrial, the trial court overemphasized this consideration here."). Not only is the suggestion that a new trial would have to occur not relevant to guilt, but also it is not entirely accurate. *Taylor*, 427 S.C. at 219, 829 S.E.2d at 729 ("[T]elling the jury the case will 'have' to be retried is misleading."). In reality, "[a] hung jury often acts as an alarm bell to all but the unthinking, awakening one side (sometimes both) to weaknesses in their case, which can lead to a plea deal rather than a retrial." *Id.* Here, the concerning nature of the inaccuracy is more pronounced in that any new trial would be limited to the CSC charge, so the evidence would inevitably be different and limited to evidence relevant to that charge only.

The trial court's charge did not merely mention cost and waste, but highlighted the human cost, noting "[t]he 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." The evidence in this trial consisted of emotional testimony on both sides, either involving allegations of traumatic sexual assault and the effect on the alleged victims or reflecting the excruciating ordeal of having to defend against those accusations. Reminding the jury that all those people would have to endure that again is deeply concerning. It is one thing to tell the jury about the hassle and expense of the court and the solicitor's office in retrying a case,

but wholly another to tell them the witnesses with have to suffer through a trial *again* before another set of strangers.

And all this must be viewed in the context of the rest of the charge. Exacerbating the coercive effect of the statements regarding a new trial, the trial court intimated that the limited evidence presented by the State was enough for the jury to reach a unanimous verdict[6] because the exact same facts would be presented to another jury. (R. 235) ("[T]here's no reason for me to suppose [that if the case was tried again]. . . that more or clearer evidence will be produced on one side or the other."). If the trial court is telling the jury that it would permit the exact same evidence to proceed to another jury, then it must believe the jury has sufficient evidence before it to come to verdict when in fact that may not be true. As noted above, a mistrial often reflects the weaknesses of the case on both sides, not the inattention of a certain jury to conclusive evidence. The charge ignored the fact that a mistrial is wholly valid way for a trial to end. *Rampey*, No. 2022 WL 5080480, at *4 ("[I]n addition to a verdict of not guilty and guilty, a hung jury, resulting in a mistrial, is a third viable conclusion to a criminal trial."). The trial court is the guide and caretaker of the jury during the proceedings, and the weight of that influence magnifies the impact of these mischaracterizations and undue focus on improper considerations in determining guilt. *See State v. Pruitt*, 187 S.C. 58, ____, 196 S.E. 371, 372 (1938) ("It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight

[6] A trial court is not permitted to comment on the sufficiency of the evidence. S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); *State v. Ates*, 297 S.C. 316, 317–18, 377 S.E.2d 98, 99 (1989) ("In the course of criminal trials in South Carolina, the judge must refrain from all comment which tends to indicate his opinion on the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, or the facts in controversy.").

in shaping the opinion of the jury. Vested as the trial judge is, with superior authority, disinterested, and possessing experience not available to the ordinary layman, jurors, as a rule, are anxious to catch his view, upon which to found their conclusions."). Here the court exceeded the bounds of what is constitutionally permissible in attempting to encourage a verdict.

Turning to the final prong, the brief lapse of time between the *Allen* charge and the verdict further indicates coercion. Admittedly, the state of the record creates some manner of difficulty in properly considering this issue.[7] The transcription was performed by a court reporter present to note the times of each event involving the jury; the case was simply recorded and subsequently transcribed. (R. 1, 247 (certificate)). The record is unclear on *when* the jury came to verdict because the trial court had recessed for lunch and the parties had to be gathered up again before the verdict could be read, so after the charge, the jury deliberated for somewhere between forty-five minutes and two hours. (R. 236). Returning with a verdict after roughly this amount of time has been viewed as evidence of a coercive effect. *See Rampey*, 2022 WL 5080480, at *4 (holding one hour and seventeen minute deliberation after *Allen* charge evidenced coercion); *Workman*, 412 S.C. at 132, 771 S.E.2d at 639 (concluding *Allen* charge was unconstitutionally coercive where jury had deliberated for roughly four hours prior to *Allen* charge and returned a verdict two hours after that); *see also Taylor*, 427 S.C. at 217, 829 S.E.2d at 728 (holding that the jury's further deliberation for two-and-a-half did not dispel the likelihood of coercion); *United States v. Burgos*, 55 F.3d 933, 940 n. 7 (4th Cir. 1995) ("In light of our concerns with the district court's *Allen* charge, we are not

[7] The difficulty further confounds an already awkward inquiry. *See Taylor*, 427 S.C. at 217, 829 S.E.2d at 728 ("This factor is notoriously difficult to apply without indulging in speculation given the secrecy of jury deliberations.").

prepared to find that the additional two hours of deliberation were enough to offset the coercive nature of the charge.").

The jury deliberated for about three hours the day before. After that time, the trial court inquired if it was close to a verdict and receiving no assurance, the court released the jury for the night to "go home for the evening and sleep on this." (R. 229). Returning the following morning at 9:30, the jury deliberated another hour-and-a-half to two hours before finally indicating to the court it was deadlocked. (R. 230–31). So it had already been deliberating for almost five hours prior to the *Allen* charge, and had had an evening to sleep on the evidence. Under the circumstances of this case, this timing suggests coercion or at least fails to negate the inference of coercion. The case was a swearing contest and the jury had already determined it would acquit Mr. Medlin of assault and battery. It can easily be imagined that the not-guilty holdouts could have acquiesced to a guilty verdict as a compromise in light of the troubling testimony at trial and the desire to not have that process unnecessarily repeated. There is simply no assurance that the charge did not coerce the jury into a verdict and thereby deny Mr. Medlin of his constitutional right to a fair trial by an impartial jury. For this reason, the Court should reverse and remand for a new trial.

III. The Trial Court Erred in Refusing to Direct a Verdict in Favor of Mr. Medlin.

Finally, the trial court erred in failing to direct a verdict in favor of Mr. Medlin on the charge of CSC[8] because no evidence was presented from which a jury could reasonably find Mr. Medlin

[8] Of course, the trial court should have granted directed verdict on both charges. The State presented no evidence of injury to the victim to prove the assault and battery charge.

committed a "lewd or lascivious act" or that he acted with any "intent of arousing, appealing to or gratifying the lusts, passions or sexual desires" of himself or M.J.

"On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State." *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 172 (2003). "The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 353 (2016). However, the case should be submitted 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." *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955).

Even allowing that M.J.'s statements are evidence of the actus reus because the touching allegedly occurred on her vagina, they do not provide substantial circumstantial evidence of the required mens rea. "The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances." *State v. Tuckness*, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). "Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." *Id.*

In *State v. Dinkins*, this Court addressed the issue of whether the State had presented sufficient evidence if intent to survive directed verdict. 435 S.C. 541, 550, 868 S.E.2d 181, 185 (Ct. App. 2021). There, the alleged conduct involved the defendant Dinkins kissing the victim while

she was pretending to sleep. In affirming the trial court's denial of directed verdict, this court found that the victim's "testimony that Dinkins put his tongue in her mouth while she pretended to be asleep was evidence of conduct from which a jury could reasonably determine Dinkins' intent to arouse, appeal to, or gratify his own lust, passions, or sexual desires." *Id.* 551, 868 S.E.2d at 186.

Here, the given facts and circumstances in the light most favorable to the State are that Mr. Medlin was sitting on some rocks holding onto the floats of his daughter and M.J., who could not touch the ground and therefore would have otherwise floated down the river. (R. 79–80). The three of them were five feet away from Mr. Medlin's wife, brother, and other two children as well as M.J.'s siblings and her stepmother. (R. 82). At any given moment, someone could have seen the alleged abuse, including Mr. Medlin's brother, wife, and children. (R. 83). The touching occurred in complete silence for what *seemed to her* to be twenty minutes. (R. 81, 83). And although M.J. testifies to her own discomfort, she speaks to nothing indicating Mr. Medlin's demeanor, other than the nonreaction of "dead silence." That is not substantial circumstantial evidence to prove the "intent of arousing, appealing to or gratifying the lusts, passions or sexual desires." The State argued at trial that "[t]he only reason a man rubbed a girl in her vaginal area for that length of time is to satisfy his sexual interest." (R. 211). However, there is no indication what "that length of time" might be. All it alludes to is time sufficient to make M.J. feel uncomfortable, which is not the same as Mr. Medlin's alleged intent. Accidental touching can make a person feel uncomfortable. Since time is what the State leans into, there should at least be some credible testimony from which the jury can elicit the facts to draw the inference the State suggests.

So unlike *Dinkins*, the evidence presented does not create a necessary inference of sexual gratification. The State elicited no testimony from any of the other witnesses as to how long Mr. Medlin was holding on to M.J.'s tube and instead told the jury that M.J.'s own testimony could not really be trusted. Mr. Medlin's entire family was within easy view, including his own daughter who was but an armlength away. True, the court may not *weigh* the evidence, but there is *some* threshold. The evidence must at least be sufficient to allow a jury to fairly and logically deduce the elements of the crime. Spurious testimony that approaches the bizarre does not "reasonably tend" to prove Mr. Medlin's guilt and the trial court erred in submitting the case to the jury.

CONCLUSION

Based on the foregoing, the trial court committed reversible error in refusing to sever the charges and in its issuance of an unconstitutionally coercive *Allen* charge. Moreover, the trial court erred in denying Mr. Medlin's motion for directed verdict and on that basis, he asks that this Court reverse his conviction.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Appellate Case No. 2022-001116

The Honorable Frank Addy, Circuit Court Judge

The State of South Carolina……………………………………………………………Respondent,

v.

Randall Medlin……………………………………………………………………………Appellant.

CERTIFICATE OF COUNSEL

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

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