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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

Respondent,

vs.

PHILLIP RYAN LAWSON,

Appellant.

APPELLATE CASE NO 2023-001190

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion by instructing the jury about factors to consider in assessing the believability of witnesses.

STATEMENT OF THE CASE

A York County grand jury indicted Appellant Phillip Lawson for criminal sexual conduct with a minor in the first degree, two counts of criminal sexual conduct with a minor in the second degree, two counts of criminal sexual conduct with a minor in the third degree, and one count of distributing obscene materials to a minor. The State alleged Lawson sexually assaulted two brothers over a number of years. The brothers, hereinafter referred to as “Older Brother” and “Younger Brother,” were friends of Lawson’s son and Lawson and his family were friends with the brothers’ family. The case was originally called for trial in October 2022. Lawson did not show up for his first trial. (Oct. 2022 Tr.p.192). However, a mistrial was declared due to a witness’s testimony which included inadmissible hearsay. (Oct. 2022 Tr.p.191).

The case was called for trial a second time on July 17–21, 2023, before the Honorable William McKinnon, circuit court judge. Lawson was convicted of the charges related to Younger Brother and acquitted of the charges related to Older Brother. For first-degree CSC with a minor, Lawson was sentenced to life imprisonment. For second-degree and third-degree CSC with a minor, Lawson was sentenced to 20 and 15 years’ incarceration, respectively, with the sentences to be served concurrently.

STATEMENT OF FACTS

Older Brother testified he became friends with Lawson's son around the time he was in sixth grade. He and Younger Brother would stay over at Lawson's house and would sleep on a mattress on the floor of Lawson's bedroom. (Tr.p.152–54). Older Brother testified his family and Lawson's family became close and went on camping trips together. On these trips, Lawson would volunteer to take the brothers to the shower. Lawson would "help" Younger Brother shower and would clean Younger Brother's genitals. (Tr.p.157). Lawson would peek into Older Brother's shower. (Tr.p.156).

Lawson began sexually abusing the brothers at his home. On the first occasion, he showed them his penis and showed them how to touch their own penises. (Tr.p.161). Later, Lawson taught them to touch his penis. (Tr.p.166–68). This progressed to oral sex. (Tr.p.168–69). Older Brother witnessed Younger Brother perform oral sex on Lawson. (Tr.p.171). Lawson encouraged the brothers to perform sex acts on each other but they refused. (Tr.p.172). Lawson showed Older Brother pornography on his phone. (Tr.p.174). Older Brother testified he refused to participate in anal sex with Lawson, and afterwards the abuse stopped. (Tr.p.169–70).

Older Brother testified there were occasions when Younger Brother would be alone with Lawson in his bedroom for long periods of time. (Tr.p.162). However, Lawson typically abused Older Brother at nighttime. Older Brother told Lawson's son about the abuse, but he did not believe him. (Tr.p.187). When Older Brother was in tenth grade, his parents confronted him about whether Lawson had sexually abused him. (Tr.p.176).

At trial, Older Brother was asked whether Lawson had any unique tattoos or "marks." Older Brother responded that Lawson had a scar on his chest, and maybe on his leg. (Tr.p.178). He testified it was hard to remember because so much time had passed. (Tr.p.179). He was also

asked whether it was easy “to pull details and specifics from dates and times” He responded that it was not. (Tr.p.181).

Younger Brother was around six years old when Lawson began abusing him, initially by touching him over his clothes. (Tr.p.241, 247). He testified Lawson made him and his brother touch his penis. (Tr.p.245). He testified he slept in Lawson’s room when he stayed over, sometimes in the bed with Lawson. (Tr.p.251). Lawson’s wife was seriously ill and slept in the living room. She was deceased at the time of trial. Younger Brother testified Lawson made him put his mouth on his penis “a lot.” (Tr.p.252). He testified anal sex happened one time. (Tr.p.252). Younger Brother became depressed, and testified he disclosed the abuse to his parents when his stepfather asked why his attitude had changed. (Tr.p.262). When asked whether he saw Lawson abuse Older Brother, Younger Brother testified “I remember seeing something but I don’t know exactly what happened.” (Tr.p.266). He corroborated Older Brother’s testimony that Lawson encouraged the brothers to perform sexual acts on each other but they refused. (Tr.p.266).

Lawson’s daughter corroborated the brothers’ testimony. She testified the brothers slept in Lawson’s room when they stayed over. (Tr.p.391). On one occasion, she observed Younger Brother in Lawson’s room with the door locked. (Tr.p.391). Younger Brother would leave Lawsons’s room “sweaty” and “flushed,” but Lawson’s daughter was told they were “wrestling.” (Tr.p.392). She was uncomfortable with Younger Brother sleeping in Lawson’s room. (Tr.p.393). Lawson’s brother-in-law testified he observed Younger Brother run out of Lawson’s room late at night upset and wearing only underwear. (Tr.p.413–14).

Lawson testified and denied the allegations. He testified he has a mole in his “groin area” the size of a button. (Tr.p.437). He further testified he suffers from Peyronie’s disease,

which causes his penis to bend at a 30- to 40-degree angle when erect, like a “bent carrot.”

(Tr.p.438). He testified there is no scar tissue or any outward indication of an injury. (Tr.p.441).

He did not offer any other proof that he suffers from Peyronie’s disease.

STANDARD OF REVIEW

An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion. State v. Custer, 443 S.C. 172, 179, 903 S.E.2d 237, 240 (Ct. App. 2024).

ARGUMENT

Lawson was not prejudiced by the trial court's proper instruction about factors jurors should consider in assessing the believability of witnesses.

The trial court properly instructed the jury on factors to consider when assessing the believability of witnesses. The instruction did not elevate any particular facts and did not apply exclusively to witnesses associated with either party. Lawson was not prejudiced. This Court should affirm.

Regarding the credibility of witnesses, the trial court instructed the jury as follows:

Credibility and believability of the witnesses. When I say that you must consider all the evidence, I do not mean you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, how important that testimony was. In making those decisions, you may believe or disbelieve any witness in whole or in part. The number of witnesses testifying about a particular point doesn't necessarily matter.

In deciding whether to believe a witness, I suggest you ask yourself a few questions. Did the[y] impress you as one who is telling the truth? Did they have any particular reason to not tell the truth, or have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Do they have the opportunity and ability to accurately observe things they testified to? Did the witness appear to understand the questions clearly and answer them directly? If their testimony differs from other witnesses or other evidence.

However, please keep in mind that a simple mistake does not mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

(Tr.p.474–75). Lawson objected only to the last paragraph of this portion of the charge.

The purpose of jury charges is “to enlighten the jury and to aid it in arriving at a correct verdict.” State v. Blurton, 352 S.C. 203, 207–08, 573 S.E.2d 802, 804 (2002). The complained-of language is not materially different from the language in the previous two paragraphs, of

which Lawson does not complain. Both portions of the charge concern factors which may influence whether a juror should believe a witness's testimony. In the preceding paragraph, the trial court instructed the jury to consider whether the witness has any bias and whether the person "seem[s] to have a good memory." (Tr.p.474). Similarly, the complained-of language instructs jurors to consider whether the testimony in question concerns an important fact, and thus may inform their assessment whether any misstatements are intentional or unintentional. This innocuous instruction merely conveys to the jury their responsibility to use their common sense to assess the credibility of each witness. See State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) (explaining "jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error"); State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) ("A jury charge which is substantially correct and covers the law does not require reversal.").

The charge is distinguishable from the instructions given in the cases cited in the Brief of Appellant. Unlike the Stukes charge, the instruction was not directed towards a specific witness associated with only one party. Cf. State v. Stukes, 416 S.C. 493, 499–500, 787 S.E.2d 480, 483 (2016) (holding instruction that a victim's testimony "need not be corroborated" was a comment on the facts because by "addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. . . . Specifying this qualification applies to one witness creates the inference the same is not true for the others"); see also State v. Rayfield, 369 S.C. 106, 120, 631 S.E.2d 244, 251–52 (2006) (Pleicones, J., dissenting) ("By specifically charging that the alleged victim's testimony need not be corroborated, the trial court singles out the alleged victim and 'appears to express an opinion on her credibility.'").

The charge in this case applied equally to witnesses on both sides, including Lawson himself. Lawson argues the jury would have construed the charge as targeted towards to the victims, but the jury could have just as easily applied it to Lawson, who could not remember certain details—such as whether Younger Brother stayed over at his house in 2019—and didn't know where his brother-in-law lived. (Tr.p.443, 450). Because the believability charge applied equally to every witness, not a specific witness associated with one party, the charge did not elevate the testimony of any single witness. Further, there is no indication the jury misapprehended the meaning of the charge, as in Stukes, where the jury asked whether the “victim’s testimony must be accepted as being true” and the trial court gave no curative instruction. Id. at 497, 787 S.E. 2d at 482.

Likewise, the charge did not single out or emphasize any specific fact, such as a defendant’s flight. Cf. State v. Grant, 275 S.C. 404, 406, 272 S.E.2d 169, 170 (1980) (disapproving charge which instructed that flight can show consciousness of guilt). Nor did the charge establish an inference regarding a contested fact or element. Cf. State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019) (holding “a trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon”). Instead, it applied equally to all the testimony offered at trial.

Thus, contrary to Lawson’s claim, the charge did not inure “only to the benefit of the children” Brief of Appellant at 9. The charge was not directed at the lack of testimony describing Lawson’s unusually-shaped penis, and would not reasonably have been interpreted that way. The absence of such testimony was not a “misstatement.” Such a fact (if true) would be “an important fact,” and thus the court’s instruction would have led jurors, if they related the charge to the penis testimony at all, to give greater scrutiny to the absence of such testimony.

Further, the State disagrees that the brothers' descriptions of Lawson's anatomy "changed over time." Brief of Appellant at 9. Importantly, neither victim was specifically asked whether Lawson had an irregularly-shaped penis. Older Brother was asked whether Lawson had any unique tattoos or "marks." (Tr.p.178). The only testimony about Lawson's bent penis came during Lawson's testimony, after the State had rested. Lawson did not offer any evidence, other than his own testimony, to show that he in fact suffers from Peyronie's disease.

Lawson's attempt to portray the charge as targeted towards the victims' testimony—or lack thereof—about the shape of his penis is not supported by the record. The charge was proper and Lawson was not prejudiced. This Court should affirm.

CONCLUSION

For all of the foregoing reasons, Lawson's convictions and sentences should be affirmed.

Respectfully submitted,

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