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.

STACY MICHELLE RABON,

Appellant.

APPELLATE CASE NO 2023-001374

FINAL 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, and whether Rabon was prejudiced.

STATEMENT OF THE CASE

A York County grand jury indicted Appellant Stacy Michelle Rabon for murder and homicide by child abuse. Rabon proceeded to jury trial on August 7–10, 2023, before the Honorable William McKinnon, circuit court judge. The jury did not reach a verdict on the murder charge but convicted Rabon of homicide by child abuse. Judge McKinnon sentenced her to life imprisonment. This direct appeal follows.

STATEMENT OF FACTS

On August 12, 1992, 18-year-old John Pierce was fishing on the Catawba River in York County. He was wading in the river when he noticed a Sears shopping bag on a large rock. R.p.30. He looked inside the bag and discovered wet, bloody sheets. R.p.31. Wrapped in the sheets was a dead baby. R.p.31.

Pierce called the police. They collected and examined the contents of the Sears bag. Along with the bloody sheets were a towel, a lady's sweater, some tissue, and a pair of scissors. R.p.60. The bags and scissors were examined for fingerprints, but there were none suitable for identification. R.p.124.

A forensic pathologist performed an autopsy of the baby. R.p.293–94. He determined the infant was newborn because the placenta was still attached. R.p.296. The baby's length and weight were normal, and there were no signs of birth defects that could have contributed to its death. R.p.296, 307. The baby was born alive and had not been fed. R.p.307, 314. There was no discoloration or decomposition, indicating there was a short interval between birth and death. R.p.296. She testified the baby was anatomically "perfect." R.p.314, line 15. The baby had red hair. R.p.24.

The baby had multiple penetrative wounds on its body. They were located on the front and back of the abdomen, near the groin, and the head, including at the base of the skull. R.p.297. There were other cuts and abrasions, including one in front of an ear which was deep enough to be classified as penetrative and would have caused significant bleeding. R.p.301–03. The wounds did not appear to have been caused by a knife, but rather a more blunt instrument, such as scissors. R.p.297–301. One of the abdominal wounds penetrated the intestinal track and could have caused a loss of approximately 20% of the baby's blood. R.p.302.

The pathologist determined the baby was found 6–12 hours after delivery. R.p.314. She did not believe the baby was alive when it was put into the river. R.p.315. She testified the blood loss from the stab wounds would have been sufficient to cause death. R.p.316. Her official cause of death was "multiple stab wounds and blood loss, and a contributory factor of suffocation" from being in the sealed bag. R.p.322.

A forensic toxicologist tested the baby's blood sample and found the presence of a cocaine metabolite. R.p.220. She testified the metabolite could have been transferred from mother to child in utero. R.p.221. DNA testing was in its very early stages at the time, so SLED sent blood samples to an outside lab for analysis. R.p.181–192. The outside lab developed a DNA profile for the baby. R.p.268–69.

Police received some phone calls from would-be tipsters, but these leads did not lead to any arrests. They did not identify the baby. The case went cold. R.p.44.

York County opened an accredited DNA lab in 2014. R.p.227. In 2016, police decided to re-examine the evidence from the 1992 infant homicide. R.p.227. An analyst examined the evidence and developed DNA profiles from the bloody bedsheets and scissors. R.p.257–67. The scissors had a mixture profile with a major contributor suitable for comparison. R.p.268. The major profile matched the profile developed for the baby's DNA years before. R.p.269. A sample from the bloody bedsheets also contained DNA that did not match the baby's DNA profile. R.p.269. The analyst found the two DNA profiles were indicative of a possible mother-child relationship. R.p.270, 275–76. She also developed a partial profile of the potential father. R.p.271–72. The analyst uploaded the profiles to a DNA database in August 2016. R.p.271–72.

The unknown profile matched Rabon's DNA profile.[1]

Police investigated Rabon's personal history, including her friends and family in 1992. R.p.346–47. On March 31, 2021, police went to Rabon's residence to interview her. R.p.337–38, State's Exhibit #43. They conducted interviews with her friends and family on that same day. R.p.346. Rabon agreed to provide a DNA buccal swab. R.p.338.

Police also collected a DNA swab from Rabon's former boyfriend from the early 90s, Robert Outen. R.p.440, 467, 498. The DNA was tested by Emily Smith, a DNA analyst employed by York County. She testified that the biological material she used from baby Jane Doe had become degraded over time, and she could only develop a partial profile. R.p.450. She analyzed the samples and opined that Rabon could not be excluded as the baby's mother, and that it was 10,000 more likely that Rabon was the mother rather than an unrelated, unknown individual. R.p.461. She testified this was "very strong" support that Rabon was the mother. R.p.461. She determined Outen was not the father. R.p.461. She further testified that Rabon's DNA was present on the bedsheets recovered with the baby. R.p.465–66, 475–76. The baby's DNA was present on the bedsheets and terry cloth. R.p.477–82. She testified that another stain on the bedsheet contained the DNA of a person other than Rabon, Outen, or the baby, but that the person was female. R.p.467–68. Swabs from the sweater and tissue were not sufficient for comparison. R.p.470–71. The scissors contained a DNA mixture. The major contributor was the baby, and no conclusions could be drawn about the minor contributor. R.p.471–72.

Investigator Lanelle Day interviewed Rabon. Rabon stated she already had a son in 1992 and was helping to care for her nephew. R.p.349, 363. When she became pregnant for the

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1 At the pretrial hearing, the solicitor explained Rabon's DNA had been entered into CODIS after a criminal conviction stemming from a 2019 arrest.

second time, she did not think she could take care of the baby. State's Exhibit #43. Her ex-husband was not helping take care of their first child. Rabon had recently begun dating William Outen when the baby was born, but stated they had an "on and off" relationship. R.p.364. She stated she assumed Outen was the father. Rabon and Outen were still together when police interviewed Rabon in 2021, and had two children together.

Rabon stated a friend of hers named Jasmine knew of a couple named Steve and Natalie who wanted to adopt a baby, and she agreed. State's Exhibit #43. She stated she was young and "didn't question a whole lot." State's Exhibit #43. Rabon stated she did not know the couple's last name. She did not know Jasmine's last name either.

Rabon stated she went into labor at Jasmine's trailer and Steve and another man picked her up and she gave birth in the back of a work van. State's Exhibit #43. Rabon claimed Steve told her "there would be too many questions" if they took the baby to the hospital and he "convinced [her] that was the best thing." State's Exhibit #43. She claimed Steve took the baby and she never saw the baby again. R.p.349–50. Rabon claimed they cut the umbilical cord after she delivered the baby, but the baby was found with the umbilical cord and placenta attached. State's Exhibit #43.

Investigator Day interviewed Rabon again the following day to speak with Rabon further. Rabon told Day she had "something important to tell her" and informed her that Jasmine was not a biological female and Rabon did not know Jasmine's real name. R.p.354. Rabon further claimed "someone had heard something in my family or something, they didn't give names, but it was in the media" that a "cold case file had been solved, then they went into the story about finding the baby and that the baby didn't die from . . . drowning, but injuries from a weapon that was found in whatever they found the baby in." State's Exhibit #43, R.p.354. However, the

sheriff's office had not publicly revealed that a weapon had been found. R.p.355. Investigator Day reviewed media reports from 1992 and confirmed that information about the weapon had never been made public. R.p.355. On cross-examination, defense counsel elicited information that police conducted a press conference to announce they were again investigating the case. R.p.418. Defense counsel argued this could explain how Rabon's boyfriend heard about the weapon being used. However, Investigator Day testified there was no mention of the scissors in the press release. R.p.430.

Rabon had agreed to take officers to where she claimed she gave birth to the baby, but when officers returned the next day she refused to go. R.p.356–57. Officers tried to accommodate Rabon's stated concern that she could not leave her autistic grandson alone, but she still refused. R.p.357. Police were unable to find any person matching her description of Jasmine, despite canvassing the area where Rabon claimed Jasmine lived and speaking with Rabon's sister and a person who was familiar with Rock Hill's gay clubs and "clubbing scene back in the day." R.p.357–59. They also tried to locate anyone named Steve and Natalie who lived in Tega Cay at the time, but could not. R.p.360. Police also searched high school yearbooks and public records in an attempt to find these witnesses.

Officers interviewed Rabon a third and final time on July 21, 2021. R.p.350. Rabon claimed she had "run into" an old acquaintance, a homeless man from Charlotte named George. George told her Jasmine was dead, so police shouldn't bother looking for her. She assured Investigator Day that the house where Jasmine lived had been torn down. Rabon emotionally and emphatically told Investigator Day, regarding her decision not to keep the baby, that she "couldn't do it." (State's Exhibit #43). Regarding the baby's parentage, Rabon and Investigator Day discussed the fact that Outen did not have red hair. R.p.363.

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

Rabon 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. Rabon claims the charge "excused mistakes in the investigation," but the charge had nothing to do with that. The charge concerned "simple mistakes" in witnesses' memory or recollection on the witness stand, not supposed mistakes in the police investigation. No reasonable juror would have interpreted the charge as Rabon argues. Further, the instruction was proper because it helped jurors understand their role as factfinder. The instruction did not elevate any particular facts and did not establish any inferences which could be construed as a comment on the facts. The charge was proper, and Rabon 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.

R.p.532–33. Rabon objected only to the last paragraph of this portion of the charge. R.p.516–19.

This charge had nothing to do with "mistakes made in the investigation." Brief of Appellant at 10. It was obviously directed at mistakes in witness recollection. No reasonable juror would interpret the charge as Rabon suggests.

The charge provided appropriate guidance to the jurors in their assessment of witness credibility. The complained-of language was no more a charge on the facts than the language immediately preceding it. Both portions of the charge concern factors jurors should consider in deciding whether they 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." R.p.532. 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. Blurton, 352 S.C. 203, 207–08, 573 S.E.2d 802, 804 (2002) ("The purpose of jury charges is "to enlighten the jury and to aid it in arriving at a correct verdict."); 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 which were held to constitute a charge on the facts. 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.'"). 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"); State v. Brown, 443 S.C. 196, 904 S.E.2d 448 (2024) (holding inferred malice jury instruction was improper but harmless).

The Oregon Supreme Court rejected a challenge to a similar instruction in Cox v. Gustafson, 493 P.2d 52 (Or. 1972). There, the trial court instructed the jury as follows:

> Discrepancies in a witness' testimony or between his testimony and that of others, if there was in fact any, do not necessarily mean that the witness should be totally discredited. Failure of recollection is a common experience. An innocent misrecollection is not unknown. It is a fact also that two persons witnessing an incident or transaction often will see or hear it differently. Whether the discrepancy

> pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

Id. at 53–54. The court affirmed, explaining the instruction was not a comment on the facts. Rather, it was "an attempt to aid the jury in weighing the evidence . . . ." Id. The court explained that while the instruction was not harmful, it was likely unnecessary because the principle is "obvious to most jurors . . . ." Id. California courts give a similar instruction, which has been held proper. People v. Anderson, 61 Cal. Rptr. 3d 903, 916 (Cal. Ct. App. 2007); see also Dodds v. Stellar, 175 P.2d 607, 616 (Cal. Dist. Ct. App. 1946) (holding instruction that "failure of recollection is a common experience and innocent misrecollection is not uncommon" was not improper, explaining the statement is "a truism and is harmless").

Rabon was not prejudiced by the instruction. While defense counsel attempted to portray the investigation as flawed, the State's investigation was a good one. The foundation for the State's case was DNA evidence establishing Rabon was the mother of baby Jane Doe. The State went to great lengths to show law enforcement carefully processed the evidence using the forensic tools available at the time. Defense counsel had little substantive cross-examination for the SLED forensic scientists who testified. His closing argument focused on insignificant supposed flaws in the chain of custody and inconsequential scraps of evidence, none of which cast any doubt on the probity of the DNA evidence conclusively demonstrating Rabon was the mother of baby Jane Doe, a fact which defense counsel conceded. R.p.571–72. The DNA evidence which ultimately led to Rabon's arrest and conviction was unimpeachable and, along with her incriminating statements to police, was conclusive of her guilt.

Rabon argues the "DNA evidence was far from conclusive that Rabon murdered her baby," citing the fact that some DNA samples were inconclusive or unsuitable for comparison.

Brief of Appellant at 13. But Rabon was not convicted of murder; she was convicted of homicide by child abuse, which does not require proof that Rabon actually stabbed the baby or directed another person to do so. Rather, it only requires that a person "causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." R.p.537–538. Rabon's conduct meets this standard even if the jury was not sure she actually stabbed the baby.

Defense counsel's most aggressive cross-examination was of Investigator Lanelle Day. But his cross-examination was not focused on substantive lapses in memory or other "mistakes" in Day's recollection, but rather on supposed oversights in her investigation. When defense counsel did argue Investigator Day had trouble recalling aspects of her investigation, he could only nitpick her note-taking decisions, point out insignificant mistakes in her notation, and complain that she did not reduce to writing certain statements which were captured on video. R.p.407–410, 562, 575. Because the State's case did not rely on eyewitness testimony, defense counsel was left to grasp at straws to attempt to show flaws in the investigation.

By contrast, defense counsel did argue the jury should forgive significant omissions in statements Rabon made to police. **Immediately after** quoting the court's instruction on witness credibility, he argued: "And they want to hold it against Michelle because she got interviewed out of the blue and told a story about what happened in her life in a traumatic event some thirty years ago. **She didn't get every detail right**. They said you need to hold it against her." R.p.561. Thus defense counsel argued the jury should excuse Rabon's faulty recollections and vague testimony as simple mistakes not affecting her credibility—for example, her false statement that Steve cut the umbilical cord after she gave birth and her inability to provide

accurate names or places of residence for Jasmine, George, Steve, and Natalie, the fictitious characters in her unbelievable story.

In closing argument, the State laid out its theory of why Rabon would kill the baby. As Rabon explained, she already had one child which was not being supported by the father. She did not believe she could take care of another child, and she was not in a stable relationship. She had recently begun a relationship with William Outen, and claimed she believed he was the father while she was pregnant. But she knew this wasn't true when the baby was born with red hair, and she was afraid Outen would conclude this too. Rabon went on to have a 30-year relationship and two children with Outen. R.p.549. Finally, Rabon had been using cocaine and was afraid what would happen to her and her other child if the baby tested positive for cocaine at the hospital. Defense counsel was left with an absurd theory: that the adoptive mother "didn't like the baby," so they decided to stab it with scissors and put it in the river to "set [Rabon] up." R.p.578.

The charge was proper and Rabon was not prejudiced. This Court should affirm.

CONCLUSION

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

Respectfully submitted,

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May 1, 2025

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Appeal from York County
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STACY MICHELLE RABON, Appellant.

APPELLATE CASE NO 2023-001374

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Final Brief of Respondent by emailing a copy to Appellant's counsel of record, David Alexander, Esquire, at the email addresses provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 1st day of May, 2025.

By: Susan Spencer
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May 1, 2025

Susan Spencer

From: Susan Spencer
Sent: Thursday, May 1, 2025 9:01 AM
To: Alexander, David
Cc: Josh Edwards; Stock, Chris
Subject: The State v. Stacy Michelle Rabon (2023-001374)
Attachments: RABON Stacy - Final Brief of Respondent.pdf

Good Morning Mr. Alexander,

Attached please find the Final Brief of Respondent in The State v. Stacy Michelle Rabon (2023-001374). This brief will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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