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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Jessica Ann Salvini, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

PHILIP SCOTT STEELE,

APPELLANT

APPELLATE CASE NO. 2025-001064

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INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by giving a coercive *Allen*<sup>1</sup> charge when the charge lacked the advisement that jurors were not required to surrender their closely held beliefs during deliberations, particularly where they remained in the jury room for over six (6) hours and returned what appeared to have been a compromise verdict, indicating the likelihood of pressure to convict?

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<sup>1</sup> *Allen v. United States*, 164 U.S. 492 (1896).

## **STATEMENT OF THE CASE**

On December 3, 2024, the Greenville County grand jury indicted Appellant for two counts of criminal sexual conduct with a minor, first degree (CSCM First) and three counts of criminal sexual conduct with a minor, third degree (CSCM Third). R\* (Indictments). The case proceeded to trial on May 13, 2025, before the Honorable Jessica Ann Salvini and a jury. Tr. 1. Meghan A. Gasser represented the state; Kim R. Varner represented Appellant. Tr. 1. Appellant was acquitted of one count of CSCM First and one count of CSCM Third. Appellant was convicted of one count of CSCM First and two counts of CSCM Third. Tr. 441-42. Judge Salvini sentenced Appellant to twenty-five (25) years' imprisonment for CSCM First and time served for the two counts of CSCM Third, to run concurrently. Tr. 451-52.

This appeal follows.

## STANDARD OF REVIEW

Generally, when reviewing jury charges, this Court would consider the charge as a whole and in light of the evidence and issues at trial. *State v. Rampey*, 438 S.C. 519, 524, 885 S.E.2d 366, 368-69 (2022). “However, an *Allen* charge, due to its potential for coercion, must be viewed with a more heightened scrutiny than a general jury charge.” *Id.* (citing *State v. Taylor*, 427 S.C. 208, 214, 829 S.E.2d 723, 727 (Ct. App. 2019)). A coercive *Allen* charge appears to be *per se* reversible and not subject to any sort of harmless error review. *See Rampey*, 438 S.C. at 531, 885 S.E.2d at 372 (holding that polling the jury after the verdict to confirm none of the jurors were coerced by an *Allen* charge does not “cure” a defective charge).

## ARGUMENT

The trial court erred by giving a coercive *Allen* charge because the charge lacked the advisement that jurors were not required to surrender their closely held beliefs during deliberations, particularly where they remained in the jury room for over six (6) hours and returned what appeared to have been a compromise verdict, indicating the likelihood of pressure to convict.

### **Relevant Facts**

At trial, the state alleged that Appellant committed several criminal sexual acts against two of his step-granddaughters (referred to as “Minor 1” and “Minor 2” herein), between 2014 and 2017. R\*(Indictments). Minor 1 testified that Appellant assaulted her when she was between three-and-five years old. Tr. 142. She had not seen Appellant since 2015. Tr. 100. However, in 2021, she told her friend about the alleged abuse. Tr. 139. That friend then told her mother, and the allegation eventually got back to the Minors’ mother. Tr. 140. When her mother asked her directly about the allegations, Minor 1 made a disclosure to her mother. Tr. 140.

Minor 2 first disclosed the alleged abuse at her forensic interview. Tr. 183. She testified that she neither remembered how old she was when it occurred, nor did she remember where it happened or where Appellant’s house was. Tr. 185. However, she spoke with the forensic interviewer making allegations of sexual abuse against Appellant in an effort to “help out [her] sister.” Tr. 196, 1. 8. Appellant’s defense focused on various inconsistencies in Minors’ allegations, the fact of the delayed disclosures, lapses in the police investigation, and the fact that

the allegations were not made until Appellant and his ex-wife, Minors' grandmother, were going through divorce litigation<sup>2</sup>. *See, e.g.*, Tr. 410, ll. 1-5.

During deliberations, the jury sent two questions to the trial court. The first question requested a copy of a demonstrative that the solicitor had used during closing argument, which the trial court refused to provide. Tr. 430, ll. 14-22. After approximately two-and-a-half hours of deliberations, the jury sent its second question to the trial court. Tr. 431; R\*(Court's Exhibit 8). This question read, "If there is not a unanimous vote, what is the plan? NG-4 G-8." Tr. 431, ll. 21-23; R\*(Court's Exhibit 8). The trial court stated its intention to charge the jury "to go back to the jury room and try to do your very best to reach a unanimous verdict." Tr. 432, ll. 23-25. The trial court then clarified that the charge it was planning on giving was "not an *Allen* charge. This [is] just a go back and deliberate, try your best. This would not be an *Allen* charge." Tr. 433, ll. 4-6. The trial court went on to clarify that another trial court judge generally takes the position that an *Allen* charge should never be given when, as here, the jury has provided the vote split, and that she would need to research the issue. Tr. 433, ll. 7-14.

At this point, defense counsel stated that he agreed it was too early for an *Allen* charge but asked the trial court to include more language than it was originally going to. Defense

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<sup>2</sup> It should be noted that during direct examination of the grandmother, the state elicited testimony from this witness that her divorce attorney who initially instructed her to report the allegations to the police was Kim Varner, the same attorney who represented Appellant at this trial. Tr. 111, ll. 1-9. It was later confirmed during both a proffer examination and a review of Mr. Varner's files that the witness had indeed consulted with him about the divorce but had not retained him. Tr. 116. This likely created at least some conflict of interest, but Varner did not move to be relieved or for a mistrial. *Cf., e.g.*, Rules 1.7-1.9, RPC, Rule 407, SCACR. This testimony was elicited intentionally by the state, as after the solicitor asked the witness who her divorce attorney was, the witness asked, "Are you sure you want me to say that," at which time the solicitor confirmed she was seeking that information. Tr. 111, ll. 1-7. The only reason that this information would have been elicited from the witness is because it is harmful to Appellant, because it strikes at the credibility of defense counsel's arguments. Varner should have moved to be relieved and for a mistrial, but this was not done and is therefore not preserved for this Court's review.

counsel requested that the jury be charged, “If you have a heartfelt conviction nobody is going to force you to change your position, and you don’t have to give up what you believe.” Tr. 434, ll. 6-8. The solicitor stated that this language was “entirely inappropriate.” Tr. 434, l. 10. The trial court responded, “I can’t do that. I can’t do that. I think that’s inappropriate. I can’t tell them that. I can tell them that I know you all have been deliberating—but they’ve only been deliberating since 1:00 p.m.” Tr. 434, ll. 11-14. The trial court went on to instruct the jury as follows:

So, as I told you before, verdicts in South Carolina have to be unanimous, and so at this point in time I’m going to ask you all to continue your deliberations to see if you can reach a unanimous verdict.

Tr. 436, ll. 17-20. The trial court continued to tell the jury that they may take a smoke break if they wished, so long as deliberations stopped during those breaks. Tr. 436-37. The jury was then sent out of the courtroom for this break. Tr. 437, l. 13. Approximately thirty (30) minutes later, the trial court had the jury return to the courtroom and delivered the following instruction:

All right, you all, welcome back into the courtroom. I’m glad you were able to step outside with a bailiff, smoke if you like to smoke. I understand at least four of you definitely needed to have a little bit of a break outside, so I’m glad you were able to do that and contact your significant others to let them know you are still here.

Before I have you go back and continue further deliberations, I do want to instruct you all that any further communications with the court do not include the breakdown in terms of how you all stand with respect to your positions in this case.

Tr. 438, ll. 21-25, 439, ll. 1-6. After the jury exited the courtroom, the trial court remarked that she did not want to give an *Allen* charge yet, because the jury had only been deliberating for three-and-a-half hours. Tr. 439, ll. 12-13. However, based on “looking at their faces,” the trial

court believed an *Allen* charge would be required at a later time. Tr. 440, ll. 1-2. The trial court then again stated, “I don’t consider what I said to be an *Allen* charge; it’s just that you all needed a break and now keep going.” Tr. 440, ll. 18-20.

After approximately three additional hours of deliberations, the jury returned its verdicts. Tr. 440, l. 24, 441. Of note, the jury returned guilty verdicts on all charges related to Minor 1 and acquitted on all charges related to Minor 2. R\*(Verdict Form). Appellant moved for a new trial based on his belief that, *inter alia*, the jury reached a “compromise” verdict. Tr. 443, ll. 5-10. The trial court denied the motion. Tr. 443, ll. 11-15.

### **Discussion**

Despite the trial court’s assertions to the contrary, the instruction given to the jury was an *Allen* charge. By omitting Appellant’s requested language, the trial court’s *Allen* charge was coercive. This Court should reverse.

“A trial judge has the duty to urge, but not coerce, a jury to reach a verdict. An *Allen* charge cannot be directed to the minority voters on the jury panel, but must instead be even-handed, directing both the majority and the minority to consider the other’s views.” *Dawson v. State*, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002); *see also, State v. Taylor*, 427 S.C. 208, 214, 829 S.E.2d 723, 727 (Ct. App. 2019) (trial judge may “urge jurors to reach a verdict but must do so in a way that does not coerce them, eroding their independence and impartiality”); *Showers v. State*, 407 So.2d 169, 171 (Ala. 1981) (“It is quite clear that...a trial judge may urge a jury to resume deliberations and cultivate a spirit of harmony so as to reach a verdict, as long as the court does not suggest which way the verdict should be returned and no duress or coercion is used.”).

In determining whether an *Allen* charge was coercive, this Court reviews the charge in light of four factors: (1) whether the charge is aimed at the jurors in the voting minority; (2) whether the charge “includes ‘you must return a verdict’ type language;” (3) whether there is “an inquiry into the jury’s numerical division,” which is generally coercive; and (4) whether the amount of time between the charge and the verdict is indicative of coercion. *Taylor*, 427 S.C. at 214-15, 829 S.E.2d at 727 (citing *Tucker v. Catoe*, 346 S.C. 483, 492-95, 552 S.E.2d 712, 717-18 (2001) (per curiam)). These *Tucker* factors are non-exclusive, and the case law does not assign any particular weight to any of the four factors. *Id.* at 215, 829 S.E.2d at 727.

The first factor is difficult to analyze “in the abstract.” *Id.* If the trial court has knowledge of the numerical split, and the jury is aware that the trial court has that knowledge, then *Allen* charges that are ostensibly neutral to the majority and minority can become coercive. *See id.* at 216, 829 S.E.2d at 728 (a trial court knowing the numerical split bears on the coercion analysis, “for a jury laboring under such knowledge might interpret the trial court’s comments as aimed at the minority”); *Brewster v. Hetzel*, 913 F.3d 1042, 1054-55 (11th Cir. 2019). In other words, the charge must be considered “in the context and setting it was given,” rather than “in the abstract.” *Id.* When, as here, the trial court did know the numerical split of the jury, the first and third factors should be considered together. *See id.*

The second *Tucker* factor is whether the trial court instructed the jury in language suggesting they “must” reach a verdict. Instructions to the jury that it must render a verdict can be coercive in their own right. *See Jenkins v. United States*, 380 U.S. 445, 446 (1965) (finding an *Allen* charge which instructed the jury “[y]ou have got to reach a decision in this case” was unduly coercive and reversible error). For this reason, the South Carolina Supreme Court has cautioned trial courts against using language such as “with the *hope* that you can arrive at a

verdict,” since jurors are “not required to reach a verdict,” thus, “the language could potentially be construed as being coercive.” *State v. Williams*, 386 S.C. 503, 515 n.7, 690 S.E.2d 62, 68 n.7 (2010). To be sure, 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.’” *Taylor*, 427 S.C. at 215, 829 S.E.2d at 727 (emphasis in original). The power gradient between the trial judge and jurors is quite steep; jurors, who look to the trial judge for guidance, could interpret even seemingly benign remarks as meaning “the trial judge believes the result is obvious, or at least capable of unanimous agreement.” *Id.* at 216, 829 S.E.2d at 728 (citing *Quercia v. United States*, 289 U.S. 466, 470 (1933)). Even when the trial court ends its *Allen* charge with a phrase such as “I ask you to return to your jury room and *attempt* to come to a verdict,” this fact will not “save” a charge also containing language that could be coercive. *See, e.g., State v. Rampey*, 438 S.C. 519, 526-27, 885 S.E.2d 366, 369-70 (2022) (emphasis added) (holding *Allen* charge that ended in “attempt to come to a verdict” was still coercive because, *inter alia*, the trial court overemphasized “the considerable resources involved” in a trial).

The third *Tucker* factor is whether there is an inquiry into the jury’s numerical division. *Taylor*, 427 S.C. at 216, 829 S.E.2d at 728. The trial court must never *ask* the jury about the numerical split, as doing so is itself reversible error. *See Brasfield v. United States*, 272 U.S. 448, 450 (1926) (“We deem it essential to the fair and impartial conduct of the trial that the inquiry itself should be regarded as ground for reversal.... Such a practice, which is never useful and is generally harmful, is not to be sanctioned.”). Even when the trial court did not ask for the split, however, the trial court’s knowledge of the split is relevant to the analysis. *Taylor*, 427 S.C. at 217, 829 S.E.2d at 728; *see also, United States v. Brokmond*, 959 F.2d 206, 209-10 (11th Cir. 1992). “Pressure on jurors, especially on holdout jurors, is increased when the instructions to

keep trying to reach unanimity come from a judge who knows how split the jury is and in which direction.... The problem exists whether the judge asked for the information or the jury disclosed it without any prompting. If the jury is aware that the court knows it is divided in favor of convicting the defendant, and the court repeatedly instructs the jury to continue deliberating, the jurors in the minority may feel pressured to join in the majority in order to placate the judge.” *Brewster*, 913 F.3d at 1055 (citing *Brasfield*, 272 U.S. at 450). When a jury reveals its split to the trial court, the trial court must “craft any *Allen* charge mindful of how it may be interpreted given the division. This makes an already subtle task even more delicate.” *Taylor*, 427 S.C. at 217, 829 S.E.2d at 728 (citing *United States v. Vanvliet*, 542 F.3d 259, 268 (1st Cir. 2008)).

“The fourth *Tucker* factor in determining whether an *Allen* charge is unconstitutionally coercive is whether the time between the charge and the verdict demonstrates coercion. This factor is notoriously difficult to apply without indulging in speculation given the secrecy of jury deliberations.” *Id.* In *Taylor*, the Court of Appeals found that a jury going from 10-2, 8-4, and 11-1 splits to unanimous conviction two-and-a-half hours after an *Allen* charge weighed in favor of finding the charge was coercive, holding that amount of time “does not dispel the likelihood of coercion.” *Id.* at 217-18, 829 S.E.2d at 728-29.

The *Tucker* factors are not exclusive. And, as this Court held in *Taylor*, one consideration that is not a *Tucker* factor, but is of great importance, is whether the trial court instructed the jury “they should not surrender their conscientiously held beliefs.” *Id.* at 218, 829 S.E.2d at 729. To that end, the *Taylor* Court held:

The *Tucker* criteria have never been deemed comprehensive. The most troubling thing about the charge here is what it did not say: it did not tell the jurors they should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict, an essential message that sometimes saves borderline charges from crossing the line into coercion. See *Buff v. S.C. Dep't*

*of Transp.*, 342 S.C. 416, 423, 537 S.E.2d 279, 283 (2000) (finding trial court properly instructed a deadlocked jury by “inform[ing] the jury of the desirability of reaching a verdict ... yet remind[ing] the jury no juror should surrender his or her conscientious conviction simply to reach a unanimous verdict”); *Blake by Adams v. Spartanburg Gen. Hosp.*, 307 S.C. 14, 18, 413 S.E.2d 816, 818 (1992) (“[A] trial judge has the duty to ensure that no juror feels compelled to sacrifice his conscientious convictions in order to concur in the verdict.”). Nor did the trial judge's initial charge at the end of the trial remind the jurors not to surrender their conscientious beliefs during deliberations. The original *Allen* charge included such a statement, and courts have routinely held its absence reversible error. *See Note, Due Process, Judicial Economy & the Hung Jury: A Reexamination of the Allen Charge*, 53 Va. L. Rev. 123, 128 (1967) (“Almost without exception the courts have required that the charge contain the statement that ‘no juror should yield his conscientious conviction’ or words to that effect.”).

*Id.* Therefore, the language that “no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict,” is an essential component of an *Allen* charge. To that end, some courts have held the omission of the same it is reversible error in itself. *See, e.g., United States v. Strothers*, 77 F.3d 1389, 1391 (D.C. Cir. 1996).

Here, when analyzed through the *Tucker* factors, the trial court’s *Allen* charge in this case was unduly coercive.<sup>3</sup>

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<sup>3</sup> The trial judge repeatedly stated that she did not believe the charge she gave was an *Allen* charge. However, there is no reason for this Court to analyze the charge under any other standard. The basic purpose of an *Allen* charge is to encourage the jury to reach a verdict. *See, e.g., State v. Pauling*, 322 S.C. 95, 99, 470 S.E.2d 106, 108-09 (1996). The trial court’s charge in this case was made for that express purpose. *See, e.g., Tr.* 440, l. 5: “I really want them to continue to try.” In any event, the undersigned is aware of no authority drawing distinctions between charges that are and are not *Allen* charges, especially when the purpose of the charge is to encourage a jury to reach a verdict.

*First*, the trial court's charge could have reasonably understood by the minority jurors as being directed at them. The trial judge in this case was made aware of the jury's numerical split, which must be considered in the coercion analysis. *See Taylor*, 427 S.C. at 216, 829 S.E.2d at 728. In every case where the trial court is aware of the numerical breakdown, and the jury is aware that the trial court has this knowledge, there will be at least a tinge of doubt that the minority jurors feel as though the trial judge is telling them to continue deliberating because their position is wrong; or at least that they must reach a verdict. *Brewster*, 913 F.3d at 1055. More importantly, however, was the trial court's language during its second charge to the jury. The trial court was informed that the jury was split 8-4, with the four jurors voting not guilty. Tr. 436, l. 16; Court's Exhibit 8 (Jury Note (vote)) ("NG-4 G-8"). The fact that four jurors were in the not guilty camp is significant because of the trial court's second instruction. After the jury returned from its smoke break, the trial court instructed them, "I'm glad you were able to step outside with a bailiff, smoke if you like to smoke. I understand that *at least four of you definitely needed to have a little bit of a break outside*, so I'm glad you were able to do that and contact your significant others to let them know you are still here." Tr. 438, ll. 22-25, 439, l. 1 (emphasis added).

Therefore, the facts known to the four jurors in the minority were these: (1) the trial court, fully aware of their numerical split, told them to continue deliberating, since verdicts "must be unanimous<sup>4</sup>;" (2) the trial court told them to take a break; (3) the trial court brought them into the courtroom a second time to express joy that the jury was able to take a break, since

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<sup>4</sup> This language alone could have been interpreted as coercive by the minority jurors. The trial judge, reading their note, was aware that four of the jurors wanted to vote not guilty but that twice as many, eight, wanted to vote guilty. The trial judge stating first that "verdicts must be unanimous," could reasonably be interpreted as telling the eight members in the majority that they were on track to reach the "correct" verdict but that they needed to keep going since the trial court could not accept a non-unanimous verdict.

“four of you” definitely needed one. To one of the four jurors in the minority, who look to the trial judge for direction, *see Taylor*, 427 S.C. at 216, 829 S.E.2d at 728, the trial court’s actions could easily be interpreted as endorsement of the majority’s viewpoints, or at least subtle pressure to reach a verdict, even at the expense of their beliefs. *See infra*. Accordingly, the first *Tucker* factor weighs in favor of reversal.

*Second*, the trial court did not effectively walk the fine line between permissible language, and “you must return a verdict” type language. The trial court told the jury “verdicts in South Carolina *have to be* unanimous, and so at this point in time I’m going to ask you all to continue your deliberations to see if you can reach a unanimous verdict.” Tr. 436, ll. 17-20 (emphasis added). It is true that the end of this instruction says, “*to see if* you can reach a unanimous verdict.” However, this fact alone will not save an otherwise improper charge. *See Rampey*, 438 S.C. at 526-27, 885 S.E.2d at 369-70. The first part of the instruction is “verdicts...*have to be* unanimous.” Significantly, this instruction came in response to the jury’s specific statement “There is not a unanimous vote.” This language, when stated in direct response to the jury’s question, would read as if the trial court was telling them something that they already know, which it was. This doubling-down on the unanimity requirement, which it already instructed the jury on at length, and which the jury was obviously aware, could give the impression that the trial court was telling the jury that they must return a *verdict*, not just that they must return a *unanimous* verdict. Accordingly, the second factor weighs in favor of reversal.

*Third*, the trial court was aware of the jury’s numerical split. The analysis for this factor is closely related to the analysis for the first factor, discussed *supra*. Although the trial court did not instruct the jury to reveal its numerical breakdown, the fact that it volunteered the breakdown still makes it substantially more likely that the trial court’s charge was coercive. As has been

noted by several courts, including this Court, the jury revealing its split to the trial court makes its task in crafting a proper *Allen* charge substantially more difficult. *Taylor*, 427 S.C. at 217, 829 S.E.2d at 728 (when the trial court knows the vote breakdown, it must “craft any *Allen* charge mindful of how it may be interpreted given the division. This makes an already subtle task even more delicate.” (citing *Vanvliet*, 542 F.3d at 268). Any time the trial court knows the jury’s split, “the jurors in the minority may feel pressured to join in the majority in order to placate the judge.” *Brewster*, 913 F.3d at 1055. This, combined with the unfortunate language of the trial court’s second charge, create a significant probability that the four jurors who wished to vote not guilty were improperly coerced by the trial court’s *Allen* charge. Accordingly, the third *Tucker* factor weighs in favor of reversal.

*Fourth*, the time between the *Allen* charge and the jury returning its verdict was not so great as to show that the jury was not coerced by the charge. It is difficult to engage in analysis under this factor “without indulging in speculation given the secrecy of jury deliberations.” *Taylor*, 427 S.C. at 217, 829 S.E.2d at 728. Here, the jury deliberated for approximately three hours after the trial court told them to continue deliberating for the second time. A period of two-and-a-half hours was found insufficient to “dispel the likelihood of coercion” in one case, while a period of three hours and forty-five minutes was found to be sufficient in another. *Compare id.* (two-and-a-half hours), *with Williams*, 386 S.C. at 515, 690 S.E.2d at 68 (three hours and forty-five minutes). Therefore, there is no clear formula or bright-line rule to determine after what length of time the jury is no longer “coerced.” All that is known in this case is that, in three hours, the jury went from a deeply divided eight-to-four split to a unanimous verdict. Further, despite the jury only indicating to the trial court that it was split eight-to-four—with no indication that the split was greater or lesser on any individual charge—the jury’s verdict

consisted of convictions for all charges related to Minor 1 but acquittals for all charges related to Minor 2. This would have likely required four jurors to change their votes on three of the counts and eight jurors to change their votes on the other two. Taken in context, there is an unacceptably high likelihood that the jury reached a “compromise” verdict, since it felt compelled to return any verdict. In any event, a mere three hours is not a significant amount of time for so much vote-changing to have occurred. Accordingly, the fourth factor is either neutral, or weighs in favor of reversal.

*Fifth*, it is also significant that the trial court did not instruct the jury that it was entitled not to surrender its closely held beliefs, even when Appellant requested that precise charge. Courts have “routinely held [the] absence [of such language] reversible error.” *Taylor*, 427 S.C. at 218, 829 S.E.2d at 729 (citing Note, *supra*, 53 VA. L. REV. at 128). “The due process ‘principle that jurors may not be coerced into surrendering views conscientiously held is so clear as to require no elaboration.’” *Lyell v. Renico*, 470 F.3d 1177, 1182 (6th Cir. 2006) (quoting *Jenkins*, 380 U.S. at 446), *abrogated on other grounds by Johnson v. Williams*, 568 U.S. 289 (2013). When defense counsel requested this language, both the solicitor and trial court believed it to be “inappropriate.” Tr. 434, ll. 9-12. But neither the solicitor nor the trial court expressed why they believed the language to be “inappropriate.” Therefore, it is not clear why the trial court believed she was not permitted to issue such an instruction. Far from being prohibited, however, the language requested by defense counsel is *required*. See, e.g., *Taylor*, 427 S.C. at 218, 829 S.E.2d at 729; *Blake by Adams*, 307 S.C. at 18, 413 S.E.2d at 818; *Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) (“an *Allen* charge should be even-handed, directing both the majority and the minority to consider the other’s views” (citing *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999))). The trial court’s failure to include defense counsel’s requested

language in its *Allen* charge is “most troubling” and reversible error. *Taylor*, 427 S.C. at 218, 829 S.E.2d at 729. Accordingly, this factor also weighs in favor of reversal.

The *Allen* charge has been referred to as the “dynamite” charge, due to its ability to “blast a verdict out of a jury otherwise unable to agree.” *Id.* at 214, 829 S.E.2d at 727 (citing *United States v. Bailey*, 468 F.2d 652, 666 (5th Cir. 1972)). “Like dynamite, the charge must be handled with extreme care.” *Id.* In this case, the trial court did not handle its charge with extreme, or any care at all. Rather, it gave short, quippy instructions to the jury while rejecting proposed language from defense counsel that was not only prudent but was required by applicable law. That was error. Because the trial court gave a coercive *Allen* charge, Appellant is entitled to a new trial. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, this Court should reverse Appellant's convictions and sentences and remand for a new trial.



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W. Chandler Norville  
Appellate Defender

ATTORNEY FOR APPELLANT

This 1<sup>st</sup> day of December, 2025.