STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

Unpublished Opinion No. 2026-UP-019
Heard November 6, 2025-Filed January 21, 2026

THE STATE,

RESPONDENT,

V.

PHILLIP RYAN LAWSON,

APPELLANT

APPELLATE CASE NO. 2023-001190

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Phillip R. Lawson requests that this Court grant rehearing. The Court's conclusion that the "simple mistakes" charge was not an improper charge on the facts is incorrect. The "simple mistakes" charge does not state or explain any point of law. It has no legal utility. The only point of the "simple mistakes" charge is improperly telling the jury what inferences to draw when evaluating witness credibility and, in this case, telling the jury to disregard the inconsistencies in the brothers' accounts of the alleged abuse.

Our Supreme Court has been clear that superfluous instructions telling jurors what inferences to draw from the evidence should be eliminated, not invented. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. Art. V, § 21. In State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), the Supreme Court eliminated the charge that a victim's testimony in a sexual assault case need not be corroborated. Id. at 498-500, 787 S.E.2d at 482-83. The Court found that charge violated Article 21's prohibition on courts commenting on the facts to the jury. Id. "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." Id. "The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." Id.

This Court erred in too narrowly interpreting Stukes. This Court misinterpreted Stukes as requiring the charge to expressly name the party benefiting from the erroneous charge. The charge here did not directly tell the jurors to ignore the victims' "simple mistakes," but it did not need to do so to be erroneous or only benefit the State. The Opinion states the judge's charge "did not reference a particular fact," but determination of credibility is entirely factual and wholly within the province of the jury. Whether the brothers were telling the truth—their credibility—was the central factual determination before this jury.

Our Supreme Court has recently emphasized the importance of not "elevating facts" in jury charges. See State v. Brown, 438 S.C. 146, 151, 881 S.E.2d 771, 774 (Ct. App. 2022) (noting trend in cases). "Recent precedent has directed circuit courts to refrain from giving instructions that guide juries on the inferences they can draw from evidence or that tells the jury to consider particular evidence and how to construe it." Id.

Brown cites the recent cases paring down jury charges and leaving comments and inferences to lawyers in argument. Id. In State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), the Court eliminated the charge that malice can be inferred from a deadly weapon. The Burdette Court frowned on giving juries "examples of conduct the jury may consider when determining whether the State has proven an element of a crime or when determining whether certain other facts have been proven or disproven." Burdette at 502, 832 S.E.2d at 582. Burdette cited with approval cases eliminating the charge that a defendant's flight is evidence of guilt, the refusal to charge specific examples of legal provocation, and eliminating a charge on inferences a jury can draw from a defendant's actual knowledge of the presence of a drug. Id. citing State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980) (flight); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000) (legal provocation); State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013) (drug knowledge). See also Pantovich v. State, 427 S.C. 555, 832 S.E.2d 596 (2019) (restricting use of good character charge). The "simple mistakes" charge here is an example of conduct that has no business in a court's charge and should be left to the lawyers during their closing arguments.

This Court also erred in applying the wrong harmless error standard. The Opinion attempts to parse the jury's verdict acquitting appellant of the charges against Older Brother and convicting on Younger Brother. The correct analysis is simply whether there was an error and whether it was harmless beyond a reasonable doubt. Burdette at 501, 832 S.E.2d at 581-82 (2019) ("Therefore, we cannot conclude the trial court's erroneous instruction was harmless beyond a reasonable doubt."). This Court's decision inexplicably uses the fact that the case was close, was all about credibility, and included an acquittal against one out of two victims to find the error was harmless. The correct analysis would be that in a case this close, an error that strikes at the heart of a child sex case with no physical evidence—credibility—cannot be harmless.

The line of cases dealing with improper comments on victim credibility in child sex cases further shows the prejudice of the trial judge's "simple mistakes" charge. See State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013); State v. Jennings 394 S.C. 473, 716 S.E.2d 91 (2011). Kromah and Jennings both dealt with forensic interviewers opining—directly or indirectly—on the credibility of a child witness. These cases, together with Stukes, show the importance of leaving the credibility of the complainant within the province of the jury. The charge in this case served no legal purpose, gave an improper example, told the jurors how to make inferences regarding credibility, favored the complainants, and cannot be harmless in this close case. This Court should grant rehearing and reverse.

David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

This 5th day of February, 2026.

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Feb 05 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

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Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

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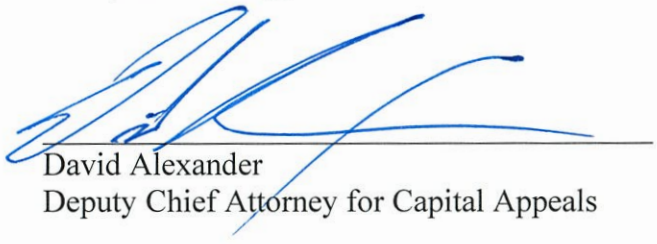
APPELLATE CASE NO. 2023-001190

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Phillip Ryan Lawson, #391521, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 5th day of February, 2026.



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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, February 5, 2026 3:52 PM
To: jedwards@scag.gov
Cc: Alexander, David; susanspencer@scag.gov
Subject: 2023-001190 - The State v. Phillip Ryan Lawson
Attachments: 2023-001190 - The State v. Phillip Ryan Lawson - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the Petition for Rehearing in the above referenced case which will be filed today, February 5, 2026, with the Court of Appeals.

All the best,

Daniel Bast
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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