THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-001064

THE STATE,

Respondent,

v.

PHILIP SCOTT STEELE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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Appellant's Issue Statement

Whether the trial court erred by giving a coercive *Allen* 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 hours and returned what appeared to have been a compromise verdict, indicating the likelihood of pressure to convict.

Respondent's Counterstatement

Whether the trial court erred, after the jury asked what the plan would be if there was no unanimous vote, when the trial court reminded the jury that verdicts in South Carolina have to be unanimous and asked the jury to continue deliberations.

STATEMENT OF THE CASE

In December 2024, a Greenville County grand jury indicted Appellant for one count of first-degree criminal sexual conduct (CSC) with a minor and two counts of third-degree CSC with a minor, all as to Minor 1. (Indictment Nos. 2024-GS-23-07207 to -07209). Additionally, at the same time, a Greenville County grand jury indicted Appellant for one count of first-degree CSC with a minor and one count of third-degree CSC with a minor, both as to Minor 2. (Indictment Nos. 2024-GS-23-07200 & -07206). On May 13-15, 2025, Appellant proceeded to a jury trial before the Honorable Jessica A. Salvini. (Tr. 1).

At trial, Sherry Alicia Aiken, mother of Minor 1 and Minor 2, testified that Appellant was her former stepfather and that her mother and Appellant were separated during the times listed in the indictments. (Tr. 41-43). She still spoke to Appellant during this time period and allowed him to watch Minor 1 and Minor 2 until around 2014. (Tr. 44). Aiken stated that in 2014, Minor 1 was five years old and Minor 2 was four years old. (Tr. 44-45). She would occasionally ask Appellant to watch Minor 1 and Minor 2 while she went to work when her mother was busy. (Tr. 45). Aiken stated that Minor 1 and Minor 2 occasionally spent the night with Appellant. (Tr. 45). She testified that at some point, she became aware of something that caused her to cut contact with Appellant and not contact him again. (Tr. 46-47). After doing so, she did not allow Minor 1 and Minor 2 to have contact with Appellant because she felt like Minor 1 and Minor 2 "were harmed." (Tr. 47-48).

Minor 1, who was fifteen years old at the time of trial, testified that she went to the Julie Valentine Center in July 2021 after disclosing to her mother that Appellant had previously sexually abused her. (Tr. 137-39). Minor 1 stated that the sexual abuse occurred when she was three to five years old. (Tr. 142). She confirmed that the sexual abuse occurred at Appellant's house when Appellant babysat Minor 1 and her sister, Minor 2. (Tr. 144). Minor 1 stated that the sexual abuse

consisted of Appellant placing his hand on her "private part" and forcing her to perform oral sex on him. (Tr. 145). She stated that Appellant played pornography on a TV while this occurred. (Tr. 145).

Minor 2, who was fourteen years old at the time of trial, testified that Appellant forced her to perform oral sex on him at a young age. (Tr. 181-85). She also recalled watching pornography at Appellant's house. (Tr. 187). Minor 2 stated that Appellant told her and Minor 1 that something bad would happen to them if they told anyone about the sexual abuse. (Tr. 188-89).

After presenting testimony from law enforcement, a forensic interviewer, and a blind expert in child sexual abuse dynamics, the State rested. (Tr. 317). During its charge to the jury, the trial court included a charge that the jury's verdict "must be unanimous." (Tr. 428). The jury retired to begin deliberations at 12:49 pm. (Tr. 430). At 3:45 pm, the trial court stated that it received a note from the jury, which it marked at Court's Exhibit 8. (Tr. 431; Court's Ex. 8). The trial court read the note into the record, which read: "If there is not an unanimous vote, what is the plan? NG-4 G-8." (Tr. 431, Court's Ex. 8). The trial court also noted that the jury asked a non-written question concerning whether the jury could have a smoke break. (Tr. 432). In discussing the questions with counsel, the trial court stated it was inclined to let the jury have a smoke break with the caveat that deliberations ceased during the break and a bailiff accompanied any jury members who wanted to go outside and another bailiff stayed with the ones who did not. (Tr. 432).

Regarding the written question, the trial court stated that its initial inclination was to say that any verdict had to be unanimous, with a direction to "try to do your very best to reach a unanimous verdict." (Tr. 432). The State inquired whether this proposed statement constituted an *Allen*[1] charge, and the trial court responded that it did not. (Tr. 433). Rather, according to the trial

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

court, its proposed response to the written question would be "just a go back and deliberate, try your best." (Tr. 433). The trial court stated that another circuit judge, Judge Sprouse, took the position that if a jury provides a breakdown, then an *Allen* charge would be "wholly inappropriate" and a mistrial should be declared if one was given. (Tr. 433). The trial court stated it was unsure if it took the same position as Judge Sprouse and had never considered the issue before. (Tr. 433). The trial court also noted that it usually did not give an *Allen* charge until much later in the jury's deliberations. (Tr. 433-34).

Appellant agreed that it was too early in the jury's deliberations for an *Allen* charge but did ask for the trial court to advise the jury, in a kind "of modified *Allen*" charge, that if a jury member had a heartfelt conviction, then no one would force them to change that position as a jury member did not have to give up what they believe. (Tr. 434). The State asserted that Appellant's request was "entirely inappropriate." (Tr. 434). The trial court also felt Appellant's request was inappropriate, especially given that the jury had only been deliberating for three hours. (Tr. 434). The trial court decided that the most appropriate thing would be to tell the jury that any verdict had to be unanimous, ask the jury to do their best to try to reach a unanimous verdict, and allow the jury to continue deliberations after a smoke break. (Tr. 435).

When the jury entered the courtroom, the trial court acknowledged receiving the written question and again read it into the record. (Tr. 436). The trial court then instructed 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. However, I also understand from our bailiff that some of you smoke. And I am happy to give you all a smoke break, but while that break is happening[,] you cannot continue deliberations, you have to wait. And so I'm going to say let's take maybe five or ten minutes, let you all go back to your jury room, take a little breather,

> those of you that would like to step outside and smoke, or if you even want to jury walk down with the smokers and stand outside, you've got to stay with the bailiff. But there will also be a bailiff with you all in there. You cannot talk about the case while you're separated, but at least you all get a little bit of a breather to have a smoke break. And then[,] I'm going to ask you to continue your deliberations.

(Tr. 436-37).

While the jury was on its smoke break, the trial court put on the record that it reviewed *State v. Taylor*,[2] which stated that the trial court needed to instruct the jury not to give a numerical breakdown of where the jury stood in any future communications with the court. (Tr. 438). When the jury returned from its smoke break, the trial court stated:

> 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 [in] 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. Okay.
>
> All right. Now I'll ask you to retire to the jury room now that you've had a good break.

(Tr. 438-39). After the jury retired, the trial court stated that it did not give *Allen* charges this early in deliberations, given that only three and a half hours had elapsed since the jury began its deliberations. (Tr. 439). The trial court also stated that after this amount of time, the jury was at the point where it might need to be pushed along a little bit. (Tr. 440). However, it did not consider its statements to the jury to be an *Allen* charge; rather, it considered its statements to be an acknowledgment that the jury needed a break and a statement to keep going. (Tr. 440).

[2] 427 S.C. 208, 829 S.E.2d 723 (Ct. App. 2019).

At 7:33 pm, around three hours after the jury resumed its deliberations, the jury returned its verdicts. (Tr. 440). The jury found Appellant guilty of the charges concerning Minor 1 but not guilty of the charges concerning Minor 2. (Tr. 441-42). Appellant moved to set aside the jury's verdicts because he believed the verdicts were reached as the result of a compromise. (Tr. 443). The trial court denied this motion. (Tr. 443). For first-degree CSC with a minor, the trial court sentenced Appellant to twenty-five years' imprisonment with credit for time served, placement on the sex offender registry, and mandatory GPS monitoring. (Tr. 451-52). The trial court sentenced Appellant to time served[3] for both third-degree CSC with a minor convictions. (Tr. 451). The trial court also granted a permanent restraining order against Appellant for both Minor 1 and Minor 2. (Tr. 452).

This appeal followed.

[3] Appellant had served 1,342 days at the time of sentencing. (Tr. 451-52).

STANDARD OF REVIEW

Appellate courts consider a trial court's charge "as a whole and in light of the evidence and issues presented at trial." *State v. Rampey*, 438 S.C. 519, 524, 885 S.E.2d 366, 368-69 (2022); *see also State v. Logan*, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013).

ARGUMENT

I. In answering the jury's question about what would happen if the jury was unable to reach unanimity, the trial court properly did not give an *Allen* charge but rather reminded the jury that any verdict needed to be unanimous and asked the jury to continue deliberating.

By answering the jury's question—"If there is not an unanimous vote, what is the plan?"—with the simple response of "verdicts in South Carolina have to be unanimous" before asking the jury to continue deliberations, the trial court's instruction did not constitute an *Allen* charge. The trial court's answer was a proper use of its discretion. Therefore, this Court should affirm.

A. *Allen* charge, generally.

Trial courts have long struggled with what to tell a deadlocked jury because a criminal defendant's right to due process can be violated by a charge that coerces a jury to reach a verdict. *State v. Taylor*, 427 S.C. 208, 213, 829 S.E.2d 723, 726 (Ct. App. 2019). However, the Supreme Court of the United States and courts in this State have upheld and approved supplemental instructions for a **deadlocked** jury that urge them to continue deliberating, reconsider their opinions, and reach a unanimous decision. *See generally id*. at 213-15, 829 S.E.2d at 726-27; *Allen v. United States*, 164 U.S. 492, 501 (1896). This Court has held that an *Allen* charge must be "neutral and even-handed, instruct both the majority and the minority to reconsider their views, and cannot be directed at the jurors in the minority." *Taylor*, 427 S.C. at 214, 829 S.E.2d at 727. "A trial judge has a duty to urge jurors to reach a verdict, but must do so in a way that does not coerce them, eroding their independence and impartiality." *Id*.

Our courts have not set a definition for coercion, rather preferring to "view the charge in context" and considering four non-exclusive factors. *Id*. The first factor concerns whether the charge spoke "specifically to minority jurors." *Tucker v. Catoe*, 346 S.C. 483, 492-95, 552 S.E.2d 712, 717-18 (2001). The second factor concerns whether the charge included "you must return a

verdict" or similar language. *Id*. The third factor asks if the trial court inquired into the jury's numerical division, which is generally coercive. *Id*. And the fourth factor concerns the time between when the charge was given and when the jury returned a verdict. *Id*.

In *Tucker v. Catoe*, the jury deliberated into the night and resumed deliberations the following day. 346 S.C. at 489, 552 S.E.2d at 715. That afternoon, the jury sent a note to the trial court stating that the jury was unable to reach a verdict at that time and asking for a recharge on jurors' responsibilities. *Id*. at 491, 552 S.E.2d at 716. The trial court then provided an *Allen* charge, which our supreme court determined was unconstitutionally coercive under the totality of the circumstances, in part due to the charge impermissibly singling out the lone juror in the minority. *Id*. at 493, 552 S.E.2d at 717. Our supreme court was also critical of the trial court's treatment of jury notes. *Id*. at 495, 552 S.E.2d at 718. The trial court did not reveal the divided nature of the jury from either note nor did the trial court tell the parties that the second note contained the phrase "hopelessly deadlocked" and an indication that the jury was not likely to ever reach a unanimous decision. *Id*. Our supreme court granted the defendant a new sentencing proceeding,[4] specifying that it relied on "a combination of withholding pertinent information from the parties, thereby depriving them of the facts necessary to make informed decisions; failing to instruct the jury to omit from its future communication any reference to the nature of its division; and giving an unconstitutionally coercive *Allen* charge, with its emphasis on a collective result." *Id*.

In *State v. Cottrell*, our supreme court addressed an issue more similar to the issue in this case. 421 S.C. 622, 809 S.E.2d 423 (2017). There, the defendant argued that the trial court's failure to inform the parties of the contents of a jury note indicating the numerical division during

[4] *Tucker* dealt with a death penalty case; therefore, a new sentencing hearing was the available relief. 346 S.C. at 489, 552, S.E.2d at 715.

sentencing deliberations violated his right to assistance of counsel, a fair jury trial, and a non-arbitrary verdict. *Id*. at 644, 809 S.E.2d at 435. Our supreme court noted that, unlike in *Tucker*, the jury note did not state the jury was "hopelessly deadlocked" but instead indicated the jurors' vote and inquired as to the next step. *Id*. at 645, 809 S.E.2d at 436. Our supreme court noted that the trial court acted within its discretion in determining that the jury had not yet reached a deadlock due to the relatively short amount of time—two hours—that it had deliberated at that point. *Id*. Without a deadlock, the trial court determined it was not appropriate to give an *Allen* charge and instead "simply told the jury to continue with its deliberations." *Id*. Our supreme court also noted that the trial court followed the instructions from *Tucker* and advised the jury not to notify the court of any further specific vote counts in future notes. *Id*.

While *Cottrell* specifically addresses whether the defendant was deprived of an opportunity to be adequately heard before the trial court responded the jury's inquiry, our supreme court also differentiated the facts of *Cottrell* from those in *Tucker*. Specifically, our supreme court noted that unlike in *Tucker*, where the jury sent multiple notes to the trial court over a two day period stating that the jury was "hopelessly deadlocked," the trial court in *Cottrell* acted within its discretion in determining that the jury's note was not an indication of deadlock, especially given that the jury had only been deliberating for two hours at that point. *Id*. Our supreme court stated that the jury note "did not state that it was hopelessly deadlocked. The note simply indicated what the jurors' vote was and inquired as to the next step." *Id*. Without a deadlock, an *Allen* charge would have been inappropriate. *Id*.

B. The trial court's response to the jury note was not an *Allen* charge, which was appropriate.

Here, the facts are significantly closer to *Cottrell* than to *Tucker*. As in *Cottrell*, the trial court received a note with a numerical split and a question of what the next step was *if* the jury

was unable to reach a unanimous decision. (Court's Ex. 8). The trial court received this note approximately three hours into the jury's deliberations. (Tr. 430). The trial court here came to the same conclusion as the trial court in *Cottrell*, namely that the elapse of a mere few hours was not long enough to warrant an *Allen* charge. (Tr. 433-34). *Cottrell*, 421 S.C. at 645, 809 S.E.2d at 436.

To the extent Appellant asserts the trial court erred by declining to add his requested language to the court's answer to the jury's note (which would have made the trial court's response a quasi-*Allen* charge), this argument is without merit. The trial court was well within its discretion to determine that the jury was not *yet* deadlocked based on the language of the note. *See Cottrell*, 421 S.C. at 645, 809 S.E.2d at 436 (stating a trial court was within its discretion in finding a jury had not indicated it was deadlocked by indicating the jury split and asking what was next). Moreover, when a jury asks for an additional charge, a trial court only needs to recharge what is necessary to answer the jury's question, nothing more. *See State v. Perry*, 440 S.C. 396, 406, 892 S.E.2d 273, 278 (2023) ("It is well established in South Carolina that when the jury asks for an additional charge, it is enough for the court to recharge only what is necessary to answer the jury's requests."); *State v. Nichols*, 325 S.C. 111, 118-19, 481 S.E.2d 118, 112 (1997) (holding that when the jury asked the trial court to clarify certain charges, the trial court did not err in declining the defendant's request to also recharge the jury on charges for which the jury did not specifically ask for clarification).

Here, the jury asked what would happen if they could not come to a unanimous decision. (Court's Ex. 8). The trial court responded simply that verdicts must be unanimous and asked the jury to continue deliberating. (Tr. 436). The jury did not ask about the additional charges that Appellant wanted the trial court to include. Therefore, the trial court properly determined that an

Allen charge, including Appellant's requested modified *Allen* charge, would have been premature and appropriately decided not to give one, which is a decision both parties agreed with. (Tr. 433-35).

C. Any argument concerning the trial court's post-smoke break comments is not preserved for appellate review.

To the extent that Appellant asserts the trial court's comment after the jury's smoke break that it "understand[s] at least four of you definitely needed to have a little break outside" was improperly coercive, this argument is not preserved for appellate review because Appellant did not object or otherwise bring this issue to the trial court's attention. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."). Moreover, because the record is entirely lacking of information concerning the number of smokers on the jury and the number of jurors who went outside during the smoke break, any assertion as to who the trial judge was referring to is nothing more than pure speculation.

D. As to Appellant's "compromise verdict" argument.

To the extent that Appellant asserts that the jury finding him guilty of all charges related to Minor 1 but not guilty of all charges related to Minor 2 somehow indicates that the trial court's comments coerced the jury, this argument is also without merit. *See generally United States v. Cornell*, 780 F.3d 616, 627 (4th Cir. 2015) (holding that the defendants' claims of coercion following an *Allen* charge was negated where the jury deliberated for over three hours after the charge and where the jury returned a split verdict, reflecting thoughtful and deliberate action by the jury and not action arising under an impulse of coercion); *United States v. Heath*, 970 F.2d 1397, 1406 (5th Cir.1992) (finding no coercion because the jury's split verdict was "a

discriminating one"); *United States v. West*, 877 F.2d 281, 288 (4th Cir. 1989) (when the verdict is split, "[i]t can be inferred that the jury carefully considered the evidence against each defendant and based its verdict solely upon that evidence"); *United States v. Fermin*, 32 F.3d 674, 680 (2d Cir. 1994) (holding that mixed verdicts "strongly indicate[d]" that the jury paid individual attention to each defendant and to each count and that the jury did not surrender their opinions merely to reach a result); *United States v. Black*, 843 F.2d 1456, 1463-64 (D.C. Cir. 1988) (noting mixed verdicts can indicate a lack of coercion).

Additionally, Appellant's split verdict merely indicates that the jury found Minor 1's more extensive and detailed testimony to be credible beyond a reasonable doubt while simultaneously finding the opposite about Minor 2's less detailed testimony. Moreover, because the jury's note to the trial court did not indicate which of the five charges the jury was split on, the record is devoid of evidence that the charges for which the jury found Appellant guilty were the charges that prompted the jury's note.

[*conclusion and signature block on following page*]

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for one count of first-degree CSC with a minor and two counts of third-degree CSC with a minor, as well as his associated sentences.

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