STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from York County
William A. McKinnon, Circuit Court Judge

Unpublished Opinion No. 2026-UP-019
(S.C. Ct. App. Heard November 6, 2025-Filed January 21, 2026)

THE STATE,

RESPONDENT,

V.

PHILLIP RYAN LAWSON,

PETITIONER

APPELLATE CASE NO. 2023-001190

APPENDIX

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Where this entire sexual abuse case rested on the credibility of the complainants, did the trial court's witness credibility charge, which included explanations excusing "simple mistake[s]" that the witnesses might make, bolster the credibility of the complainants and violate the constitutional provision against charges on the facts and the evidence?

STATEMENT OF THE CASE

Appellant was indicted in York County for six charges related to the sexual abuse of two brothers, both minors. R. 19-22. Appellant was charged with one count of first-degree criminal sexual conduct ("CSC") with a minor, one count of second-degree CSC with a minor, and one count of third-degree CSC with a minor related to Younger Brother. R. 19-22. Appellant was charged with one count of second-degree CSC with a minor, and one count of third-degree CSC with a minor related to Older Brother. R. 19-22. Appellant was charged with dissemination of obscene material to a minor related to Older Brother. R. 19-22.

Appellant was first brought to trial on October 17, 2022, before the Honorable William McKinnon, but Judge McKinnon declared a mistrial because of inadmissible hearsay during the first witness's testimony. R. 1-4. Appellant was again brought to trial on July 17, 2023, before Judge McKinnon and a jury. R. 6. Jenny Desch and Jessica Russo represented the State. R. 6. Melissa Inzerilo represented appellant. R. 6. Judge McKinnon directed a verdict of acquittal on the dissemination charge. R. 237. The jury acquitted appellant on all charges related to Older Brother, but convicted him on the three charges related to Younger Brother. R. 325-26. Judge McKinnon sentenced appellant to life imprisonment for first-degree CSC, twenty years' imprisonment for second-degree CSC, and fifteen years' imprisonment for third-degree CSC, to be served concurrently. R. 330. R. 342-43; 346-47; 350-51.

STANDARD OF REVIEW

The question of whether a jury charge is an improper charge on the facts is a question of law and should be reviewed *de novo*. Reversal is required if the trial court abused its discretion and the charge as a whole remains prejudicial to the defendant. State v. Brown, 438 S.C. 146, 881 S.E.2d 771 (Ct. App. 2022).

ARGUMENT

Because this entire sexual abuse case rested on the credibility of the complainants, the trial court's witness credibility charge, which included explanations excusing "simple mistake[s]" that the witnesses might make, bolstered the credibility of the complainants and violated the constitutional provision against charges on the facts and the evidence.

After this jury deliberated until almost 8:00PM on the day the trial ended, and again from 9:30AM until 4:55PM the next day, it acquitted appellant of all charges related to Older Brother. R. 323-26. It convicted appellant of three sexual abuse crimes related to Younger Brother. R. 323-26. Judge McKinnon earlier directed a verdict for appellant on another charge. R. 237. In this close case with no physical evidence, the trial court's erroneous jury charge prejudiced appellant and requires a new trial.

Appellant Phillip Lawson ("Lawson"), a former marine, took the stand and denied the State's charges for molesting two brothers who were friends with his own children. R. 242-46. R. 249. The brothers frequently spent the night at Lawson's house. R. 256. Older Brother made friends with Lawson's son on the bus. R. 35. Older Brother's sister made friends with Lawson's daughter ("Daughter"). R. 35-36. The families became close and even went on vacations together. R. 255-56.

Lawson's wife had severe health problems and passed away before the trial. R. 37-38. Her health problems were so severe that she had to sleep on a mattress in the family's living room. R. 37-38. Older Brother testified that when they spent the night at the Lawsons' small house, they would sleep on a mattress on the floor in Lawson's bedroom. R. 39-40. Older Brother said that, like most young boys, he and Lawson's son would "roughhouse during the night and wake people up" and then would be moved to Lawson's room. R. 48. Lawson agreed

in his testimony saying that he would keep Younger Brother in his room "to keep him from bothering my wife when she was sick." R. 256.

During pretrial motions, Judge McKinnon ruled that the substance of Younger Brother's forensic interview was admissible because even though he was over twelve years old when the interview occurred, his cognitive abilities made him much younger. R. 14-16. Looking at a report from the school district, the court stated that Younger Brother's IQ was 63. R. 15. R. 332. Older Brother testified that he first noticed improper behavior by Lawson towards Younger Brother when Lawson would assist Younger Brother in the shower. R. 42-47.

Older Brother also alleged sexual abuse of both of the boys at the same time in Lawson's bedroom. R. 47-48. Lawson supposedly showed the boys his penis, asked them to touch it, and taught them how to masturbate. R. 47-48. Older Brother said he was curious and asked questions about it, which led to Younger Brother's participation. R. 50-51.

The abuse continued and Older Brother claimed Lawson asked the brothers to "do stuff" to each other, but they both refused. R. 52. Older Brother alleged that he and Lawson performed oral sex on each other. R. 55-56. The abuse stopped when Older Brother was approximately fourteen and Lawson took him to a store to buy lube and condoms. Older Brother, anticipating a request for anal sex, told Lawson they needed to stop. R. 56-57.

Older Brother admitted denying any abuse occurred when he was first confronted about it by his parents after Younger Brother claimed Lawson abused him. R. 63-64. R. 74. Older Brother's mother "kept asking" him "for a few days" if any abuse happened and he denied it. R. 71. He said the only person he told was Lawson's son. R. 73-74.

The solicitor asked Older Brother if Lawson had any identifying marks. R. 65-66. Older Brother said Lawson had a scar on his chest and on his left leg, but did not identify any other

unusual things. R. 65-66. Older Brother was nineteen at the time of his testimony. R. 34. Lawson has a ten centimeter mole in his groin "almost the size of a shirt button" that has "been mistaken for a tick ever since" he was a child. R. 244-45. Lawson also has a severe bend in his penis when it is erect because of Peyronie's Disease. R. 244-45.

Younger Brother was fifteen at the time of trial and said the Lawsons had been in his family's life as long as he could remember. R. 92-93. Younger Brother said Lawson "raped and molested my brother and me." R. 95. The abuse started in a car after the bus dropped him off from school. R. 96. Like Older Brother, Younger Brother described manual and oral sex in Lawson's bedroom, often when Older Brother was present. R. 102-112.

Younger Brother said he told his parents about the alleged abuse when his stepfather confronted him about a change in his attitude. R. 114. Younger Brother said he stopped talking to people and "my dad sat me down and said—asked me why my attitude changed." R. 114. Younger Brother described a scar on Lawson's chest, but did not mention the tick-like mole or the Peyronie's Disease. R. 117-118.

Younger Brother admitted not disclosing any abuse when he was first questioned by the police. R. 120-21. Forensic interviewer Dr. Lynn McMillan testified that Younger Brother told her about oral sex. R. 155-56. The camera failed to record the first part of her interview with Younger Brother and the trial court excluded the remainder of the video, but allowed the interviewer to testify from her notes about Younger Brother's claims pursuant to S.C. Code Ann. § 17-23-175(F). R. 151-56.

Lawson's daughter testified for the State. R. 197-98. She said that Older Brother slept in the living room or with her brother and Younger Brother slept in Lawson's room. R. 198. She claimed she confronted her parents about Lawson's behavior with Younger Brother that made

her feel uncomfortable. R. 198-202. She said once Younger Brother was in Lawson's room with the door locked and sometimes would come out of the bedroom sweaty and flushed, but Lawson said it was because they were wrestling. R. 199. Daughter said Lawson told her she was overreacting and she believed him because Lawson had years earlier convinced her that she made up abuse allegations about her brother that caused the children to be taken from the home. R. 201-203.

After denying any abuse, Lawson testified that where abuse allegedly occurred in a car was "directly in the middle of all the trailers" in the trailer park. R. 244. Lawson said he would pick up the children in the daytime and there was always traffic going to and from the trailers. R. 252. The door to his bedroom did not lock. R. 256. The State introduced into evidence rags collected from Lawson's bedroom that contained Lawson's sperm, but contained no DNA evidence from either of the brothers. R. 185-189. When the solicitor could wring no inculpatory admission from Lawson on cross-examination, she asked him if he told the boys why he used rags. R. 260. Lawson told them he used the rags to wipe his nose and to wipe away sweat. R. 260-61. The solicitor ceased her cross-examination after these questions. R. 261.

At the charge conference, defense counsel stated, "Your Honor, I would also note my objection to the Court's standard charge regarding credibility of witnesses and how they can be mistaken. I believe, Your Honor, does charge that every time and I just object." R. 266. Judge McKinnon asked her for specifics and defense counsel noted the portion of the charge that states a simple mistake does not mean a witness is telling the truth. R. 266. She argued, "Your Honor, I think that's more keen in this case because it does come down to ability if they believe the two complaining witnesses or if they believe Mr. Lawson." R. 266. The court said the charge was correct and noted the objection. R. 266.

Judge McKinnon's charge on "Credibility and believability of the witnesses" spans three paragraphs. R. 281-82. The entire charge is set forth below and the objectionable portion is the third paragraph, which is italicized:

> 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 concerning a particular point doesn't necessarily matter.
>
> In deciding whether to believe a witness, I suggest you ask yourself a few questions. Did the [witness] impress you as one who is telling the truth? Did they have any particular reason not to 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 the 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. 281-82 (emphasis added).

The trial court erred in giving this charge. Charges concerning the believability of witnesses in child sexual abuse cases are particularly problematic because these cases almost always turn into a referendum on whether the jury believes the complaining witness. See State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). The "simple mistake" language combined with discussing "innocent lapses" versus "intentional deceptions" inured only to the benefit of the children who claimed they were abused, but gave descriptions that changed and evolved over

time. The children's "innocent lapses" were juxtaposed against the alleged child molestor's "intentional deceptions" about the reasons the children slept in his bedroom, whether his door locked, and the unlikelihood of any abuse taking place in a car in an open area.

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. Art. V, § 21. In Stukes, 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.

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 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.

"Because the trial judge is the authority figure in the courtroom, jurors look to the trial judge for guidance not only on the law, but for matters such as courtroom conduct and protocol, even permission for breaks, meals, and telephone calls." State v. Taylor, 427 S.C. 208, 215-16, 829 S.E.2d 723, 727 (Ct. App. 2019). Taylor, an Allen[1] charge case, emphasizes that jurors "scrutinize the trial judge's statements and instructions" and that this scrutiny elevates during deliberations. Id.

The jury deliberated for a very long time in this case—approximately a day and a half. R. 323-26. Even though both Younger Brother and Older Brother testified that they saw Lawson abuse the other brother, the jury only convicted Lawson of abuse related to Younger Brother. R. 323-26. Because of Younger Brother's cognitive difficulties, the "simple mistakes" language

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

improperly excused any mistakes he made. The jury had the Court replay the testimony of both boys during deliberations. R. 321-322.

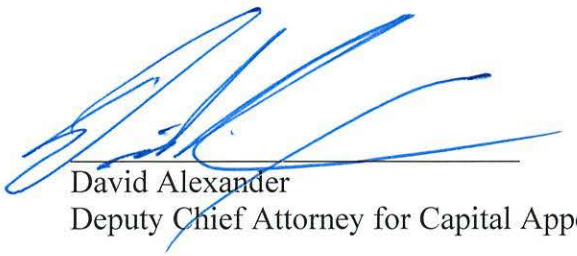
The improper charge helped the State in its closing argument. The solicitor said, "There is no one hour conversation that can distill all the information that these children know into the legally important facts especially when they are just discovering that it's wrong and it's inappropriate." R. 293. The solicitor argued that children would not know that Lawson's misshapen penis was different, but also argued that the complainants, as they got older, would realize that other behavior was wrong. R. 301 *compared with* R. 293-94. Even though the brothers were fifteen and nineteen when they testified, not being able to describe a scarred, bent penis was implied to be a simple mistake.

The solicitor ended her rebuttal argument by talking about credibility. R. 315-316. She said, "Credibility of these witnesses, who you choose to believe is so important and you all have your own experiences to take back there with you and I would urge you to do that." R. 315. She then gave an example about her own inability to recall all of her cases, but that she could recall the few that were most significant. R. 315. She said she might pick different cases from one day to the next as her "funniest case" and "that is truthful and honest and it's not perfect and it never will be." R. 315.

In a case this close, the improper charge is not just a simple mistake that can be excused. The court's charge let the jury excuse mistakes by the complainants. As the solicitor correctly argued, the credibility of the witnesses was the most important factor in this case. Lawson's credibility was pitted against his accusers and, but for the improper charge, Lawson would have been acquitted of the charges about Younger Brother just as he was acquitted of the charges about Older Brother.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.



David Alexander
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This 7th day of January, 2025.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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APPELLANT

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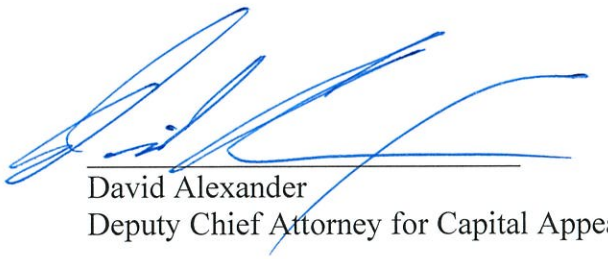
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant 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), this 7th day of January, 2025.



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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. (R.p.5). However, a mistrial was declared due to a witness's testimony which included inadmissible hearsay. (R.p.4).

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. (R.p.39–41). Older Bother 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. (R.p.44). Lawson would peek into Older Brother's shower. (R.p.43).

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. (R.p.48). Later, Lawson taught them to touch his penis. (R.p.53–55). This progressed to oral sex. (R.p.55–56). Older Brother witnessed Younger Brother perform oral sex on Lawson. (R.p.58). Lawson encouraged the brothers to perform sex acts on each other, but they refused. (R.p.59). Lawson showed Older Brother pornography on his phone. (R.p.61). Older Brother testified he refused to participate in anal sex with Lawson, and afterwards the abuse stopped. (R.p.56–57).

Older Brother testified there were occasions when Younger Brother would be alone with Lawson in his bedroom for long periods of time. (R.p.49). However, Lawson typically abused Older Brother at nighttime. Older Brother told Lawson's son about the abuse, but he did not believe him. (R.p.74). When Older Brother was in tenth grade, his parents confronted him about whether Lawson had sexually abused him. (R.p.63).

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. (R.p.65). He testified it was hard to remember because so much time had passed. (R.p.66). He was also

asked whether it was easy "to pull details and specifics from dates and times . . . ." He responded that it was not. (R.p.68).

Younger Brother was around six years old when Lawson began abusing him, initially by touching him over his clothes. (R.p.93, 99). He testified Lawson made him and his brother touch his penis. (R.p.97). He testified he slept in Lawson's room when he stayed over, sometimes in the bed with Lawson. (R.p.103). 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." (R.p.104). He testified anal sex happened one time. (R.p.104). Younger Brother became depressed, and testified he disclosed the abuse to his parents when his stepfather asked why his attitude had changed. (R.p.114). When asked whether he saw Lawson abuse Older Brother, Younger Brother testified "I remember seeing something but I don't know exactly what happened." (R.p.118). He corroborated Older Brother's testimony that Lawson encouraged the brothers to perform sexual acts on each other but they refused. (R.p.118).

Lawson's daughter corroborated the brothers' testimony. She testified the brothers slept in Lawson's room when they stayed over. (R.p.198). On one occasion, she observed Younger Brother in Lawson's room with the door locked. (R.p.198). Younger Brother would leave Lawsons's room "sweaty" and "flushed," but Lawson's daughter was told they were "wrestling." (R.p.199). She was uncomfortable with Younger Brother sleeping in Lawson's room. (R.p.200). Lawson's brother-in-law testified he observed Younger Brother run out of Lawson's room late at night upset and wearing only underwear. (R.p.220–21).

Lawson testified and denied the allegations. He testified he has a mole in his "groin area" the size of a button. (R.p.244). 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." (R.p.245). He testified there is no scar tissue or any outward indication of an injury. (R.p.248). 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.
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> 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.
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> 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.281–82). 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." (R.p.281). 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. (R.p.250, 257). 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." (R.p.65). 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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ATTORNEYS FOR RESPONDENT

January 7, 2025

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Jan 07 2025
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

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 7th day of January 2025.

By: Susan Spencer
Susan Spencer

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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January 7, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Phillip Ryan Lawson, Appellant.

Appellate Case No. 2023-001190

Appeal From York County
William A. McKinnon, Circuit Court Judge

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

AFFIRMED

Deputy Chief Attorney for Capital Appeals David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Joshua Abraham Edwards, both of Columbia; and Solicitor Kevin Scott Brackett, of York, all for Respondent.

PER CURIAM: Appellant Phillip Ryan Lawson appeals his convictions for first-degree criminal sexual conduct (CSC) with a minor, second-degree CSC with a minor, and third-degree CSC with a minor. Lawson argues the trial court erred by

issuing a jury instruction regarding witness credibility that constituted an improper charge on the facts. We affirm.

FACTS

Lawson was indicted in 2021 for charges related to the sexual abuse of two minors, Older Brother and Younger Brother, between the years of 2012 and 2020.

Older Brother, who was nineteen at the time of trial, testified he met Lawson's son on the school bus around sixth grade, and their families became close. The brothers often spent the night at Lawson's house and would sleep on a mattress on the floor in Lawson's room.[1] Older Brother testified the abuse started about a year after he met Lawson. It began by Lawson showing the brothers his penis and explaining "how" to touch it. It eventually progressed to oral sex; Older Brother testified "[h]e had me do it to him and then sometimes he did it to me." He also remembered Lawson performing oral sex on Younger Brother. Older Brother testified that Lawson asked the brothers to perform sexual acts on each other but they refused. He claimed the abuse stopped when he was around fourteen years old after Lawson took him to the store to buy condoms and lubricant, because "I had a general idea where that was headed and . . . I just flat out told him, I don't want to do this."

Younger Brother, who was fifteen at trial, testified the abuse started when he was five or six years old. Younger Brother went to a different school than the other children and remembered Lawson touching him and asking him to touch Lawson while they waited in the car at the bus stop for the other kids. Younger Brother described Lawson asking him to perform oral sex "a lot," Lawson performing oral sex on him, and Lawson showering with him. Younger Brother also testified about one occurrence of anal sex.[2] Like Older Brother, he testified that Lawson asked the brothers to perform sexual acts on each other, but they refused.

[1] Lawson's wife, who passed away before trial, suffered from medical issues and slept on a mattress in the living room.

[2] A forensic interviewer who examined Younger Brother testified from her notes about Younger Brother's descriptions of oral sex and attempted anal sex. Even though Younger Brother was twelve years old at the time of the interview, the trial court found the substance of the interview was admissible because of his cognitive deficiencies. *See* S.C. Code Ann. § 17-23-175 (2014).

The abuse came to light in 2020 when the brothers' parents noticed changes in Younger Brother's demeanor. Younger Brother testified his dad sat him down to ask why his attitude had changed "for the worse," so he told his dad what Lawson had been doing. The parents confronted Older Brother, who was in tenth grade at the time, about whether he knew "any of this was going on." Older Brother denied knowing anything about the alleged abuse but eventually told them what had occurred. Before this point, the only person Older Brother had talked to about the abuse was Lawson's son, who did not believe him.

Lawson's daughter testified that when the brothers would sleep over, Older Brother either slept in the living room or in one of her brothers' rooms and Younger Brother slept in Lawson's room. She remembered occasions when the door to Lawson's room was locked or stuck and she described Younger Brother coming out of the room "sweaty, flushed or red" and being told it was because "they were wrestling." She testified she told her mom it made her uncomfortable that Younger Brother always slept in Lawson's room; she also told this to Lawson, who told her she was "overreacting and over-thinking it."

Lawson testified and denied the allegations. He confirmed that Younger Brother and Older Brother would sleep on mattresses in his room when they spent the night but denied anything sexual occurred, and he stated his bedroom door did not lock. Lawson also testified that he has an "obvious" mole on his groin the size of a shirt button and that he suffers from Peyronie's disease, which causes his penis to bend at a 30- to 40-degree angle when erect. Lawson did not offer any other evidence of this disease and claimed no one could corroborate it. When asked if there was anything identifying about Lawson, Older Brother described a scar across Lawson's chest, and a scar on his left leg. Younger Brother also described a scar on Lawson's chest but did not mention any other distinguishing marks.

During the charge conference, Lawson raised an objection to the trial court's "standard charge regarding credibility of witnesses and how they can be mistaken," noting the trial court "does charge that every time." Specifically, Lawson objected to the final paragraph of the trial court's standard credibility charge which stated,

> 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.

Lawson argued this language was "more keen in this case because it does come down to [credibility] if they believe the two complaining witnesses or if they believe Mr. Lawson." The trial court overruled the objection and issued a credibility instruction that included the challenged language.[3]

[3] The full charge on credibility stated:

> 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 concerning a particular point doesn't necessarily matter.
>
> In deciding whether to believe a witness, I suggest you ask yourself a few questions. Did the [witness] impress you as one who is telling the truth? Did they have any particular reason not to tell the truth, or have a personal interest in the outcome of the case? Did the witness seem to have a good memory? [Did] they have the opportunity and ability to accurately observe the 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.

After deliberating for over a full day, the jury convicted Lawson of the charges related to Younger Brother[4] but acquitted him of the charges related to Older Brother.[5] The trial court sentenced Lawson to life imprisonment for first-degree CSC with a minor, twenty-years' imprisonment for second-degree CSC with a minor, and fifteen-years' imprisonment for third-degree CSC with a minor. This appeal followed.

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) (quoting *State v. Lemire*, 406 S.C. 558, 565, 753 S.E.2d 247, 251 (Ct. App. 2013)). "When reviewing a jury charge for error, an appellate court considers the charge as a whole; the charge must be prejudicial to the appellant to warrant a new trial." *State v. Stukes*, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016).

LAW AND ANALYSIS

"Judges shall not charge juries in respect to matters of fact[] but shall declare the law." S.C. Const. art. V, § 21. "Accordingly, it is not within the province of the court to express an opinion to the jury on its view of the facts." *Stukes*, 416 S.C. at 499, 787 S.E.2d at 483. "[I]t is a general rule that a trial [court] should refrain from all comment which tends to indicate to the jury [its] opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused." *State v. Jackson*, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

A. Merits

Lawson argues that because this entire case "rested on the credibility of the complainants," the trial court erred by issuing a credibility charge that "bolstered the credibility of the complainants and violated the constitutional provision against the charges on the facts and the evidence." We disagree.

[4] One count of first-degree CSC with a minor, one count of second-degree CSC with a minor, and one count of third-degree CSC with a minor.

[5] One count of second-degree CSC with a minor, one count of third-degree CSC with a minor, and the dissemination of obscene material to a minor.

First, the trial court did not emphasize, elevate, or comment on a particular fact in its charge, nor did it instruct the jury about an inference it could make from the facts. *See, e.g.*, *State v. Brown*, 443 S.C. 196, 198–99, 904 S.E.2d 448, 449 (2024) (holding the trial court erred by instructing the jury that malice can be inferred when one kills another during the commission of a felony because it "improperly elevated and commented to the jury upon a particular fact—the commission of a felony"); *State v. Burdette*, 427 S.C. 490, 502–03, 832 S.E.2d 575, 582 (2019) (holding the trial court shall not instruct the jury that it may infer malice from the use of a deadly weapon because, in doing so, "the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury"); *State v. Grant*, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980) (holding trial courts may not charge a jury on a defendant's flight because doing so places undue emphasis on circumstantial evidence); *State v. Cheeks*, 401 S.C. 322, 328–29, 737 S.E.2d 480, 484 (2013) ("[C]harging a jury that 'actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use' unduly emphasizes that evidence[] and deprives the jury of its prerogative both to draw inferences and to weigh evidence.").

Here, the trial court did not reference a particular fact in its charge. While Lawson takes issue with the "simple mistakes" language, the trial court did not state that the brothers—or any other witnesses—made mistakes.[6] Unlike *Brown*, *Burdette*, and *Grant*, in which the improper charges referred to *particular facts in evidence*, the charge in this case included an aphorism that "a simple mistake does not mean a witness wasn't telling the truth." Additionally, the trial court did not instruct the jury to draw a particular inference. Lawson argues the language of the charge "improperly excused" any mistakes made by the brothers. But the trial court did not instruct the jury to excuse mistakes; rather, the trial court instructed the jury that "*if* a witness misstated something," the jury had to "decide whether it was because of an innocent lapse in memory or an intentional deception." If anything, this statement simply reminded the jury of its "prerogative both to draw inferences and to weigh evidence." *Cheeks*, 401 S.C. at 328–29, 737 S.E.2d at 484.

[6] Nor can this court weigh the evidence to determine whether the children made mistakes. Regarding Lawson's Peyronie's disease and other alleged defining characteristics, we cannot know whether the jury believed this testimony. To claim the children were "mistaken" in failing to describe these characteristics would require us to weigh the evidence. Regarding differences or apparent discrepancies in the brothers' testimonies, each brother testified about his own instances of abuse. Describing any discrepancies as "mistakes" or "misstatements" would involve credibility determinations, which we may not make.

Second, the trial court did not express an "opinion on the credibility of the witnesses" nor the weight of their testimony. *Jackson*, 297 S.C. at 526, 377 S.E.2d at 572. Lawson notes "[c]harges concerning the believability of witnesses in child sexual abuse cases are particularly problematic because these cases almost always turn into a referendum on whether the jury believes the complaining witness." As an initial point, we agree that comments about the credibility of witnesses pose a unique risk in cases like this one, when the record contains no physical evidence and the outcome depends on whom the jury chooses to believe. *See State v. Kromah*, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013) (holding a forensic interviewer should not have been allowed to testify about a compelling finding of abuse because it was the equivalent of stating the child was telling the truth); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) ("For an expert to comment on the veracity of a child's accusations of sexual abuse is improper."). However, we cannot construe a charge that neither singles out a particular witness (or category of witnesses) nor references individual credibility as an opinion on the credibility of the witnesses or as a comment on the weight of their testimony.

In *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016), our supreme court held the trial court improperly commented on the facts of the case when it instructed the jury on section 16-3-657 of the South Carolina Code (2015), which provides that "[t]he testimony of the victim need not be corroborated in prosecutions [for criminal sexual conduct]." The court explained,

> 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. 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. Moreover, it is inescapable that this charge confused the jury. Specifying this qualification applies to *one witness* creates the inference the same is not true for the others.

Stukes, 416 S.C. at 499–500, 787 S.E.2d at 483 (emphases added). This reasoning highlights what the charge in the present case did *not* do: comment on the weight of the brothers' testimony compared to Lawson's testimony. Unlike the challenged language of the charge in *Stukes* that expressly applied only to the victim and the forensic interviewers' comments in *Kromah* and *Jennings* that vouched specifically for the children's credibility, the charge in this case applies to all witnesses and does

not reflect an opinion on the credibility of a particular witness or the weight of their testimony.

Further, when considering the credibility charge as a whole, we find it unlikely that the jury applied the instruction to only the brothers' testimony because the credibility charge clearly applied to all witnesses. The trial court instructed the jury to "consider all the evidence" and to "decide whether you believe what *each witness* had to say." (emphasis added). It further charged, "In making those decisions, you may believe or disbelieve *any* witness in whole or in part." (emphasis added). While Lawson argues the jury must have relied on this charge to excuse "simple mistakes" in the brothers' testimony, we are not convinced that a reasonable juror would have interpreted this language as an opinion on only their credibility but not Lawson's.

In sum, we hold the charge was not erroneous because the trial court did not put its finger on the scale by issuing the charge; the trial court did not elevate, emphasize, or comment on a particular fact in evidence or lack thereof, nor did it express an opinion on the credibility of witnesses or weight of the evidence. *See Brown*, 443 S.C. at 198–99, 904 S.E.2d at 449; *Jackson*, 297 S.C. at 526, 377 S.E.2d at 572.

B. Prejudice

Even if the credibility charge was erroneous, we hold it did not prejudice Lawson. *See Stukes*, 416 S.C. at 498, 787 S.E.2d at 482 ("When reviewing a jury charge for error . . . the charge must be prejudicial to the appellant to warrant a new trial."). Lawson argues that "but for the improper charge, Lawson would have been acquitted of the charges about Younger Brother just as he was acquitted of the charges about Older Brother." We disagree.

When conducting a prejudice—or harmless error—analysis, this court must consider "whether the erroneous charge contributed to the verdict rendered." *State v. Brown*, 438 S.C. 146, 151, 881 S.E.2d 771, 773 (Ct. App. 2022) (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998)), *aff'd in part, vacated in part*, 443 S.C. 196, 904 S.E.2d 448 (2024).

We hold the charge did not contribute to the verdict. Lawson argues the credibility charge "inured only to the benefit of the children" because the brothers' "innocent lapses were juxtaposed against the alleged child molester's intentional deceptions." While this may describe the jury's conclusion, the charge in and of itself does not necessitate this inference. The language of the charge applied to

witnesses generally, not exclusively to *children* or *victims*, and we may not invade the jury's domain by ascribing the verdict to one way in which it *may* have weighed the evidence. *See State v. Herndon*, 430 S.C. 367, 373 n.6, 845 S.E.2d 499, 502 n.6 (2020) ("As an appellate court, we must be careful not to weigh the evidence. . . . Fundamental to a jury's role as fact-finder is making credibility determinations, which lie in the sole province of the jury.").

Additionally, Lawson argues the credibility charge "improperly excused any mistakes" made by Younger Brother because of his cognitive difficulties, which he asserts explains why the jury only convicted Lawson of abusing Younger Brother. We find it highly unlikely that the jury would single out the language in the charge as a comment on Younger Brother's credibility. One could similarly reason the charge led the jury to determine Older Brother's testimony included intentional deceptions, which resulted in the acquittal of charges related to Older Brother. Because the credibility charge *itself* did not encourage the jury to believe one witness over others, we must not speculate as to why the jury did so.[7] *See State v. Reyes*, 432 S.C. 394, 404, 853 S.E.2d 334, 339 (2020) ("Credibility is a determination for the jury."); *Tappeiner v. State*, 416 S.C. 239, 250, 785 S.E.2d 471, 476 (2016) (noting that, generally, the determination of a witness's credibility is "within the exclusive province of the jury" (quoting *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012))).

Thus, we hold the credibility charge did not contribute to the verdict and therefore, did not prejudice Lawson. Stated another way, if the court did err by including the challenged language in its credibility charge, the error was harmless. *See Brown*, 438 S.C. at 151, S.E.2d at 773 ("In order to find the error harmless, we must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." (quoting *Kerr*, 330 S.C. at 144–45, 498 S.E.2d at 218)).

CONCLUSION

For the foregoing reasons, the trial court's order is

AFFIRMED.

[7] We can infer from the verdict that the jury believed Younger Brother and not Older Brother, but we do not know why. To hold the charge was reversible error, we would have to determine this was *because* of the charge, which would require credibility determinations of our own.

KONDUROS, GEATHERS, and VINSON, JJ., concur.

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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

South Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR APPELLANT

This 5th day of February, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP RYAN LAWSON,

APPELLANT

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.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

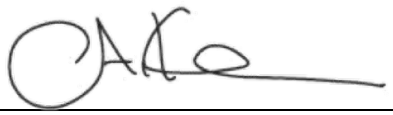
v.

Phillip Ryan Lawson, Appellant.

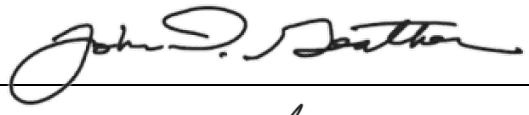
Appellate Case No. 2023-001190

ORDER

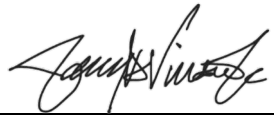
After careful consideration of the petition for rehearing, this court has discovered no material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. *See* Rule 221(a), SCACR. Therefore, the petition for rehearing is denied.



_____ J.



_____ J.



_____ J.

Columbia, South Carolina

cc:
Alan M. Wilson
David Alexander
Joshua A. Edwards
Kevin S. Brackett
The Honorable William A. McKinnon

FILED
Mar 12 2026

ALAN WILSON
ATTORNEY GENERAL

October 9, 2025

VIA electronic mail
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Phillip Lawson
Appellate Case No.: **2023-001190**

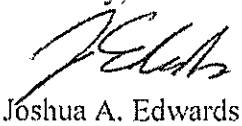
Dear Ms. Kitchings,

Oral argument is scheduled in this case on November 6, 2025, in Courtroom I. Pursuant to Rule 208(b)(7), SCACR, Respondent respectfully wishes to call to the Court's attention the following additional authority:

> People v. Anderson, 61 Cal. Rptr. 3d 903, 915 (Cal. Ct. App. 2007) (approving following model jury instruction: "Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently."); 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"); Cox v. Gustafson, 493 P.2d 52 (Or. 1972) (explaining following instruction was not a comment on the facts: "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.").

By copy of this letter, I am notifying opposing counsel of the submission of this supplemental authority.

Sincerely,



Joshua A. Edwards
Assistant Attorney General
Bar No. 101188

cc: David Alexander, Esq.

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SC Court of Appeals

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Wanda H. Carter, Chief Appellate Defender

November 5, 2025

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Phillip R. Lawson, Appellate Case No. 2023-001190

Dear Ms. Kitchings:

The above-referenced case is scheduled for oral argument tomorrow, Thursday, November 6, 2025, at 10:40 AM in Courtroom One. In response to the State's supplemental authority letter and pursuant to Rule 208(b)(7), SCACR, appellant would direct the Court's attention to Article 6, Section 10 of the California Constitution, which provides in relevant part, "The court may make any comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause." A copy of this provision is attached for the Court's review.

Please let me know if you require further information. I have copied opposing counsel by electronic mail and attached the case.

Sincerely,

David Alexander

c. Joshua A. Edwards, Esq.
Client

Enclosure

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article VI. Judicial (Refs & Annos)

West's Ann.Cal.Const. Art. 6, § 10

§ 10. Jurisdiction; habeas corpus and proceedings for extraordinary relief; original jurisdiction of superior courts; comments on evidence and credibility of witnesses

Currentness

Sec. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

Superior courts have original jurisdiction in all other causes.

The court may make any comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Credits

(Added Nov. 8, 1966. Amended by Stats.1996, Res. c. 36 (S.C.A.4), (Prop. 220, approved June 2, 1998, eff. June 3, 1998); Stats.2002, Res. c. 88 (A.C.A.15), § 5 (Prop. 48, approved Nov. 5, 2002, eff. Nov. 6, 2002).)

West's Ann. Cal. Const. Art. 6, § 10, CA CONST Art. 6, § 10
Current with urgency legislation through Ch. 764 of 2025 Reg.Sess., and Governor's Reorganization Plan No. 1 of 2025. Some statute sections may be more current, see credits for details.

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