

RECEIVED

Apr 28 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

Unpublished Opinion No. 2026-UP-019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

Lower Court Case No. 2020-GS-46-03822, 2020-GS-46-03823, 2020-GS-46-03986,

THE STATE,

RESPONDENT,

V.

PHILLIP RYAN LAWSON,

PETITIONER

APPELLATE CASE NO. 2023-001190

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

CERTIFICATE OF COUNSEL1

QUESTION PRESENTED2

STATEMENT OF THE CASE.....3

ARGUMENT

Where this entire sexual abuse case rested on the credibility of the complainants, the Court of Appeals erred in affirming 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 and in also finding that if an error was made, it was harmless.4

CONCLUSION.....16

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 12, 2026. App. 48.

QUESTION PRESENTED

Where this entire sexual abuse case rested on the credibility of the complainants, did the Court of Appeals err in affirming 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, and in also finding that if an error was made, it was harmless?

STATEMENT OF THE CASE

Petitioner was indicted in York County for six charges related to the sexual abuse of two brothers, both minors. R. 19-22. Petitioner 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. Petitioner 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. Petitioner was charged with dissemination of obscene material to a minor related to Older Brother. R. 19-22.

Petitioner 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. Petitioner 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 petitioner. R. 6. Judge McKinnon directed a verdict of acquittal on the dissemination charge. R. 237. The jury acquitted petitioner on all charges related to Older Brother, but convicted him on the three charges related to Younger Brother. R. 325-26. Judge McKinnon sentenced petitioner 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.

On January 21, 2026, after hearing oral argument, a panel of the Court of Appeals consisting of Judges Konduros, Geathers, and Vinson affirmed in an unpublished per curiam Opinion. App. 33. The court denied rehearing and petitioner now seeks certiorari at this Court.

ARGUMENT

Where this entire sexual abuse case rested on the credibility of the complainants, the Court of Appeals erred in affirming 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 and in also finding that if an error was made, it was harmless.

Reasons for Granting Certiorari

Whether the outlier witness credibility instruction given by the trial court is an unconstitutional charge on the facts is a novel question in South Carolina. See Rule 242(b)(1) and (4), SCACR (considerations governing review). The witness credibility charge told the jurors that "a simple mistake does not mean a witness wasn't telling the truth as he or she remembers it." R. 281-82. The Court of Appeals held giving this charge was proper. App. 37-38. The court held the charge "simply reminded the jury of its 'prerogative both to draw inferences and to weigh evidence.'" App. 38 *quoting* State v. Cheeks, 401 S.C. 322, 328-29, 737 S.E.2d 480, 484 (2013). Petitioner contends the charge runs afoul of both the state constitution and this Court's recent jurisprudence on jury charges. Finally, the Court of Appeals' harmless error analysis contains an unusually crafted constraint that confuses an appellate court's ability to recognize contradictions in the evidence with the prohibition on weighing credibility on appeal.

The Conflicting Evidence at Trial

Petitioner 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 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.

The Charge Conference and the Jury's Partial Acquittal

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 not 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).

After the jury deliberated until almost 8:00 PM on the day the trial ended, and again from 9:30 AM until 4:55PM the next day, it acquitted Lawson of all charges related to Older Brother. R. 323-26. It convicted Lawson of three sexual abuse crimes related to Younger Brother. R. 323-26. Judge McKinnon earlier directed a verdict for Lawson on another charge. R. 237. The court sentenced Lawson to life imprisonment. R. 330. R. 342-43; 346-47; 350-51.

The Court of Appeals' Decision

The Court of Appeals held the simple mistakes charge did not violate South Carolina's constitutional prohibition against charging jurors on the facts. App. 37-40. It reasoned that the trial court did not elevate or comment on a particular fact or tell the jury that the brothers made mistakes. App. 37-40. Strangely, in a footnote, the Court said it was prohibited from weighing the brothers' credibility to determine whether they made mistakes, which seemed to acknowledge that a credibility determination by the jury on their discrepancies was required. App. 37-40, n.6.

The court also held that if the charge was error, the error was harmless. App. 40-42. The Court held the charge could have been applied to all witnesses and not just the child witnesses. App. 40-42. The Court said that the jury's acquittal related to Older Brother could have meant that it believed he was intentionally deceptive, but then the Court said it could not speculate about the effect of the charge on the jury's evaluation of Younger Brother's credibility. App. 40-42. The Court wrote in a footnote, "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.” App. 40-42, n.7.

Legal Discussion

The trial court erred in giving this charge and the Court of Appeals erred in affirming. In analyzing this error, it is helpful to ask what purpose this unusual credibility charge serves, especially in a child sexual abuse case. It does not state a principle of law that must be charged to the jury. Refusing to give such a charge would not be error. Instead of explaining a necessary legal concept, the charge impermissibly strayed into telling the jury how to infer and weigh the credibility of the children when such issues should be left for the lawyers to argue in their closings. Even a charge that appears to apply to all witnesses equally can be an unconstitutional charge on the facts when its subject matter is unnecessary. The jury did not need the trial court to tell them how to analyze this specific component of witness credibility and by doing so, the trial court impermissibly put its thumb on the scales.

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 mistakes” 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 molester’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 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.

The Court of Appeals erred in too narrowly interpreting Stukes. The 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 only the victims’ “simple mistakes,” but it did not need to do so to be erroneous or to 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.

This 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) *vacated in part, affirmed in result by* State v. Brown, 443 S.C. 196, 904 S.E.2d 448 (2024) (holding that inferred malice charge was an improper charge on the facts). “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. The “simple mistakes” charge unnecessarily tells the jury what inferences to draw with regard to credibility.

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. Checks, 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); State v. Reyes, 432 S.C. 394, 412, 853 S.E.2d 334, 343 (2020) (Hearn, J., writing in dissent that trial judge finding child sexual abuse victim competent in front of the jury likely would be held an improper charge on the facts had the issue been before the Court).

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 to the jury.

Prior to oral argument, the State sent supplemental authority to the Court of Appeals consisting of two California cases and a case from Oregon. App. 49-50 *citing* People v. Anderson, 61 Cal. Rptr.3d 903, 915 (Cal. Ct. App. 2007); Dodds v. Stellar, 175 P.2d 607, 616 (Cal. Dist. Ct. App. 1946); Cox v. Gustafson, 493 P.2d 52 (Ore. 1972). Each of these cases approves a jury charge similar to the one given by the trial judge. Petitioner countered with a supplemental citation to the California Constitution. App. 51 *citing* Cal. Const. Art. 6, § 10. The difference between the California Constitution and the South Carolina Constitution is stark. The California Constitution states, “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.” Cal. Const. Art. 6, § 10. Perhaps the Attorney General found the origin of this charge that seems unusual to the eyes of South Carolina lawyers: California, where trial judges are encouraged to do the opposite of South Carolina’s judges—intervene in the jury’s assessment of the facts.

“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 Allen¹ charge case, emphasizes that jurors “scrutinize the trial judge’s statements and instructions” and that this scrutiny elevates during deliberations. Id.

The Court of Appeals also applied the wrong harmless error standard. The court attempted to parse the jury’s verdict acquitting petitioner of the charges against Older Brother and convicting on Younger Brother. The court stated the correct principle that appellate courts

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

do not weigh credibility, but interpreted this principle as banning any inquiry into whether the erroneous charge could have played a role in the jury's verdict. The ban on weighing witness credibility on appeal does not mean an appellate court cannot recognize when evidence conflicts or whether a particular witness's credibility is important.

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.”); State v. Perry, 440 S.C. 396, 408, 892 S.E.2d 273, 279 (2023) (using beyond a reasonable doubt standard to evaluate whether a jury charge was harmless). The Court of Appeals inexplicably used 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 is 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 beyond a reasonable doubt.

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 improperly excused any mistakes he made. The jury heard the replay of 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.

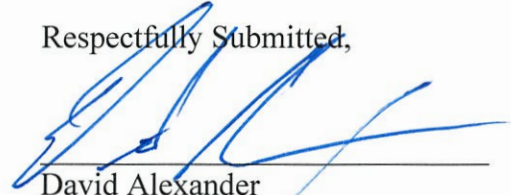
The solicitor ended her rebuttal argument by talking about credibility. R. 315-316. She said, “Credibility of these witnesses, who you choose to believe is so important and you all have your own experiences to take back there with you and I would urge you to do that.” R. 315. She then gave an example 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 and find them more credible than Lawson. 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 for Younger Brother just as he was acquitted of the charges for Older Brother.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse, and remand for a new trial.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 28th day of April, 2026.