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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from the York County Court of General Sessions
The Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

Respondent,

vs.

PHILLIP RYAN LAWSON,

Petitioner.

APPELLATE CASE NO. 2026-000892

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE 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, which ended in mistrial. (R.p.4–5). 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. Lawson appealed, and the court of appeals affirmed in a unanimous unpublished opinion. State v. Lawson, Op. 2026-UP-019 (S.C. Ct. App. filed January 21, 2026).

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 sleep on a mattress on the floor of Lawson's bedroom. (R.p.39–41). Older Brother 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 was 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).

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 his genitals in Lawson’s car after school. (R.p.93, 99). 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 Lawson’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.

REASONS WHY THE PETITION SHOULD BE DENIED

Rule 242, SCACR, provides that a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring this Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

The State respectfully submits that each of these factors weighs against a grant of certiorari.

STANDARD OF REVIEW

An appellate court will not reverse the trial court's decision regarding jury instructions absent an abuse its discretion and showing of prejudice. State v. Custer, 443 S.C. 172, 179, 903 S.E.2d 237, 240 (Ct. App. 2024).

ARGUMENT

The court of appeals correctly affirmed Lawson's convictions for criminal sexual conduct with a minor. The trial court's jury charge instructing the jurors it was their responsibility to differentiate between witnesses' innocent mistakes and intentional lies did not elevate the testimony of any single witness and applied equally to the minor victim and Lawson, who testified in his own defense.

The trial court properly instructed the jury about their duty to assess the credibility of witnesses. The necessity of distinguishing between mistakes and lies inheres in that duty. The charge did not elevate any particular facts and did not apply exclusively to witnesses associated with either party. Certiorari should be denied.

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.

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.

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.

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 learned trial court decided this instruction would assist the jury in understanding their role and responsibility as jurors. Its decision to give the charge was within its discretion. See James v. Mickey, 26 S.C. 270, 2 S.E. 130, 132 (1887) (explaining requested instruction that “loose and off-hand . . . declarations should not be entitled to the same weight as those earnestly made” would have been proper, but decision whether to give instruction “was a matter of discretion with [the trial court], depending upon the facts, and the character of the declarations admitted”).

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 the jury’s role as factfinder and 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 a witness has any bias and whether they “seem 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 by Lawson. 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.’”). Unlike the Stukes charge, his charge did not bestow “special status” to any particular witness’s testimony or suggest any witness’s testimony should or should not be believed. See Stukes at 499, 787 S.E.2d at 483 n.3 (quoting Gutierrez v. State, 177 So.3d 226, 231–32 (Fla.2015)). The Stukes charge suggested a particular witness’s testimony need not be scrutinized for untrustworthiness or deception. This charge does the opposite.

Likewise, the charge did not single out or place undue emphasis on 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.

In Cox v. Gustafson, 493 P.2d 52 (Or. 1972), the Oregon Supreme Court examined a nearly identical charge and held it was not a comment on the evidence because it did not instruct the jury “on the probative value of the evidence.” Id. at 162 (citing Franks v. Smith, 444 P.2d 954, 957 (Or. 1968)). The court explained:

The instruction given was an attempt to aid the jury in weighing the evidence by elaborating upon the import of the previous instruction concerning a witness found false in one part of his testimony. The instruction is similar in purpose to those set out in ORS 17.250, such as the jury need not find in conformity with the testimony of a number of witnesses who do not sound reasonable as against a lesser number of witnesses whose testimony does sound reasonable, or the evidence is to be weighed according to the evidence which it is in the power of one side to produce and the other to contradict.

Cox at 53–54. The court further explained the instruction was not prejudicial because it merely stated a “truism” that is “obvious to most jurors” Id. (citing Dodds v. Stellar, 175 P.2d 607, 616 (Cal. Dist. Ct. App. 1947)).¹

Lawson argues the charge was improper even though it was not directed at a particular witness or specific testimony because the jury would likely have associated the charge with the victims’ testimony. Specifically, he argues the charge would have led the jurors to forgive the boys’ omission of a description of his bent penis.

The charge was not directed at the lack of testimony describing Lawson’s penis and would not reasonably have been interpreted that way. The absence of such testimony was not a “misstatement.” Further, 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 testimony about Lawson’s penis at all, to give greater scrutiny to the absence of such testimony. Of course, Lawson did not

¹ Lawson argues Dodds is not persuasive because the California Constitution allows trial courts to comment on the facts. But the Dodds court explained the instruction as a whole “left no doubt of the court’s meaning that the jury were exclusively to judge the facts in evidence.”

offer any evidence, other than his own uncorroborated testimony, to show that he in fact suffers from Peyronie's disease or had a mole on his groin. Prejudice cannot derive from a mistake of "fact" which Lawson utterly failed to prove.

Further, the State disagrees that the brothers' descriptions of Lawson's anatomy "changed over time." Neither victim was specifically asked by either party whether Lawson had an irregularly-shaped penis. The only testimony about Lawson's bent penis came during Lawson's testimony, after the State had rested.

The prejudice analysis may be different had Lawson not testified. 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 the victims, but the jury could have just as easily applied the charge 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, it did not elevate the testimony of any single witness and was not a comment on the facts. 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. Stukes at 497, 787 S.E. 2d at 482.

While the State disagrees this charge favored either party, there is always the possibility that a particular instruction could be more relevant to one party's witnesses. But that does not require the trial court to refrain from giving the charge. For example, in this case the trial court gave the standard instruction that one witness's testimony may be believed over the testimony of many, and vice versa. Lawson was the sole defense witness. This charge could only have

benefitted him. Yet the trial court was not required to withhold this proper instruction on the mere possibility that under the facts of this case it was more relevant to one party's testimony.²

Lawson argues the charge was especially prejudicial because witness credibility was central to this case, enhancing the likelihood the jurors would interpret the charge inappropriately to "excuse" mistakes in the victims' testimony. Again, trial courts should not refrain from giving a proper instruction on witness credibility merely because credibility is important in that particular case. On the contrary, it is arguably more important to ensure the jurors appreciate their crucial role in assessing the credibility of each witness in a case where credibility is paramount. As long as the charge is not directed toward only one party's witnesses, it is not a comment on the facts.

Finally, Lawson argues the solicitor exploited the charge by arguing that the victims' omissions or inability to remember certain details did not show intentional deception. But this type of argument happens in every CSC case involving delayed disclosure, especially with child victims. Victims of child sexual abuse don't remember every detail of the abuse, especially years later. This common phenomenon makes a thorough charge on witnesses credibility more important, not less.

Lawson's attempt to portray the charge as targeted towards the victims' testimony is not supported by the record. The charge was a proper exercise of judicial discretion which impressed upon the jurors their duties as factfinders and helped focus their attention on their

² Perhaps it would be better for trial courts to give all witness credibility instructions in their opening remarks to the jury at the outset of trial, rather than in the final charge on the law. This would eliminate any possibility that the court's instructions could be interpreted as expressing an opinion about the facts of a particular case.

responsibility to distinguish between honest mistakes and intentional lies, no matter which witness was testifying. Certiorari should be denied.

CONCLUSION


For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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