

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Letitia H. Verdin, Circuit Court Judge

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MAR 31 2015

S.C. Supreme Court

Opinion No. 2015-UP-015 (S.C. Ct. App. filed 1/14/2015)
11-GS-23-03885, 11-GS-23-03886

THE STATE,

RESPONDENT,

V.

ALBERT BRANDEBERRY,

PETITIONER.

APPELLATE CASE NO. 2015-000607

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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INDEX

INDEX..... 1

CERTIFICATE OF COUNSEL..... 2

QUESTIONS PRESENTED..... 3

STATEMENT OF FACTS 4

Procedural History..... 4

ARGUMENTS

1. The Court of Appeals erred by finding no abuse of discretion in qualifying Shauna Galloway-Williams as an expert in “child abuse and treatment” so she could testify about “delayed disclosure” and common traits of sexually abused children since her testimony improperly bolstered the child’s testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits. 5

Motion 5

Trial Facts..... 5

“Expert” Testimony 6

Closing Argument..... 9

Court of Appeals..... 9

Rehearing 10

2. The Court of Appeals erred by finding no error in the trial judge instructing the jury that it could convict petitioner based on the alleged victim’s uncorroborated testimony since this instruction improperly emphasized the testimony of one witness, it was a charge on the facts, it was fundamentally unfair and infringed on petitioner’s right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution. 14

Relevant Facts 14

Court of Appeals..... 16

Rehearing 16

Discussion 17

CONCLUSION 19

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on February 19, 2015.

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred by finding no abuse of discretion in qualifying Shauna Galloway-Williams as an expert in “child abuse and treatment” so she could testify about “delayed disclosure” and common traits of sexually abused children since her testimony improperly bolstered the child’s testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits?

2.

Whether the Court of Appeals erred by finding no error in instructing the jury that it could convict petitioner based on the alleged victim’s uncorroborated testimony since this instruction improperly emphasized the testimony of one witness, it was a charge on the facts, it was fundamentally unfair and infringed on petitioner’s right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF FACTS

Procedural history

Petitioner was indicted by the Greenville County Grand Jury for the offenses of criminal sexual conduct with a minor in the first degree, and lewd act upon a minor. R. 459 His case came on for trial on August 6, 2012 before the Honorable Letitia H. Verdin, and a jury. Jim Bannister represented petitioner and Lisa Bentley was the assistant solicitor. R. 1

On August 9, 2012 the jury found petitioner guilty of both offenses. R. 449, l. 21- 450, l. 3. Judge Verdin sentenced petitioner to twenty years imprisonment for criminal sexual conduct with a minor, and fifteen years imprisonment for committing a lewd act upon a minor. R. 451, ll.5-10.

The Court of Appeals affirmed in State v. Albert Brandeberry, 2015-UP-015 (filed January 14, 2015). App. 1-2. A petition for rehearing was filed January 29, 2015. App. 3-10. Rehearing was denied on February 19, 2015. App. 11. This petition for writ of certiorari follows.

ARGUMENT

1.

The Court of Appeals erred by finding no abuse of discretion in qualifying Shauna Galloway-Williams as an expert in “child abuse and treatment” so she could testify about “delayed disclosure” and common traits of sexually abused children since her testimony improperly bolstered the child’s testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits.

Motion

Petitioner filed a “motion to exclude testimony of non-treating expert.” R. 454. Petitioner asserted the testimony of Galloway-Williams¹ should be excluded because the expert was not qualified to render an opinion on this particular subject, the expert’s testimony was not necessary to the trier of fact, and the reliability of the basis for the opinion is not sufficient to support the opinion. Petitioner cited Rule 703, SCRE: State v. Council 335 S.C. 1, 515 S.E.2d 508 (1999) Watson v. Ford Motor Company Inc, 389 S.C. 434, 699 S.E.2d 169 (2010) ; State v. Douglas 380 S.C. 499, 671, S.E.2d 606 (2009); State v White 382 S.C. 265, 676 S.E.2d 684 (2009). R. 454.

Trial Facts

Detective Matthew Tuttle of the Finley, Ohio Police Department testified that Greenville County Sheriff Detective Heather Hubert asked him to interview petitioner at petitioner’s home in Ohio. R. 117, 1.13- 119, 1.21. Tuttle said he explained to petitioner he wanted to talk to him about an investigation in South Carolina. Petitioner readily agreed, and invited Tuttle into his house. The alleged victim in this case was petitioner’s minor niece. Her father, Harold, had confessed to

¹ Galloway-Williams is hereinafter referred to as “Williams” for ease of reference.

Detective Hubert in Greenville that he sexually assaulted his daughter, petitioner's niece. R. 95, 1.20- 96, 1.5.; R. 121, 11.6-10.

Tuttle recalled that petitioner denied he had done anything improper with the alleged victim. R. 122, 11.4-13. Petitioner said the niece was usually "truthful and honest except for this allegation where he said she had lied." R. 122, 11.4-23.

Tuttle maintained that the more he talked to petitioner about the allegations the more upset petitioner became. Tuttle said at one point petitioner started talking "about killing himself" so Tuttle ended the interview. Tuttle testified that he had petitioner talk to a counselor about "his feelings. So that is ultimately what happened." R. 123, 11.1-12

The niece -- and alleged victim -- testified that petitioner came down from Ohio to South Carolina in his truck to visit a few times. She claimed in the summer of 2001 and the summer of 2002 when she was six or seven-years-old that petitioner began touching her improperly. R. 137, 1. 20- 139, 1. 2. She said: "I didn't think there was anything wrong," and she maintained the improper touching continued. R. 139, 1.3- 143, 1.12; R. 145, 1.6- 147, 1.5. However, she stated that she wanted petitioner to continue visiting because "my family loved him and I liked to get toys also." R. 153, 11. 1-11.

"Expert" Testimony

The court heard the testimony from Williams and legal arguments out of the presence of the jury. The solicitor stated that witness would testify that the abuse starts off with "innocuous touching or confusing touching. So just back rubs or massages [that] confused the child to the point that they do not tell. And it could also play a part in the way disclosure...." R. 209, 1. 23- 210, 1. 6.

Defense counsel Bannister noted that the proposed witness, Williams, was not treating the alleged victim, and Williams' proposed testimony was about other sexual assault victims in

generalities. Counsel said her testimony was “implicitly saying that’s what perpetrators typically do in all cases that I am working on.” Counsel said this lumped all perpetrators and victims into one category. “I don’t think it’s necessary for an expert opinion. I’m – it’s a little bit of a pig in a poke.” R. 210, l. 12- 212, l. 4.

The solicitor argued that unlike defense counsel the jurors were “not legal experts. They are not experts of child sexual abuse.” The solicitor argued the testimony was necessary, and the judge said she would review the case law on the subject before ruling. R. 212, ll. 7- 24.

Defense counsel then noted the more recent cases of State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); State v. Tapp, 398 S.C. 376, 728, S.E.2d 468 (2012), as the now controlling case law. R. 212, l.23- 213, l.17.

Williams then testified in camera. Williams admitted she had no personal knowledge about this case. R. 224, ll. 23-25. She said the “time spans” involved in “delayed disclosure” . . . “just varies.” R. 226, l. 1- 227, l. 2. Williams speculated “it could be days. It could be weeks. It could be years before a child may tell.” R. 227, ll. 1-2

On cross-examination Williams said she continues to conduct forensic interviews but admitted: “I don’t conduct research...” R. 234, l. 17- 239, l. 24. Her opinions were “based on my experience and knowledge of the children that I have worked with and the interviews that are being conducted daily in our center that I am aware of.” R. 243, l. 24- 244, l. 12. However, Williams maintained that she did read writings in the area of child abuse. R. 245, l. 12- 249, l. 1.

Williams testified that nondisclosure rates among women range from thirty-three to ninety-two percent “and among men from among forty-two to eighty-five percent.” R. 249, ll. 2-12. The “vast majority” of individuals that “we have seen have been abused by a close family member or a

friend, someone known to the child. There are very few cases we see where the child has been abused by a stranger or someone that is unknown to them.” R.251, ll. 10-18.

When questioned about any follow-up to determine which of the cases ever led to a conviction, Williams could only respond: “We **could** track that. We became accredited in 2007.” R. 253, l. 18- 254, l. 7. (emphasis added). Williams admitted she was not aware of **any statistics** on how many accused people were “indicated for DSS,” had their cases dismissed, or referred to law enforcement. She was also not aware of how many of those accused pled guilty or went to trial. Regarding those that went to trial, she was not sure of any statistics on what verdicts were rendered. R. 254, ll. 14-22.

After hearing the testimony the judge ruled that she would only not allow questioning about whether it was more common for a family member to abuse a child than a stranger. She would also not allow testimony about whether a child who had been victimized was likely to become again become “a victim later.” R. 258, ll. 8-22. It was undisputed that the father of this minor admitted he abused her.

Defense counsel objected that this testimony from Williams constituted improper bolstering of the child’s disclosure. He argued that the “expert” opinion in essence was that the alleged victim in this case “fits into what we understand to be a kind of the common way that children disclose, [therefore] she should be given credibility.” R. 259, l. 4- 260, l .5. The judge ruled she would allow this testimony about “delayed disclosure.” R. 260, ll. 6-11.

Defense counsel then stated that Williams had maintained she did not have time to talk with the defense prior to her testimony. He therefore asked for an opportunity to review her notes. The judge asked Williams to make herself available “over the lunch hour” to talk to defense counsel. R. 260, l. 16- 262, l. 25.

Williams agreed in the presence of the jury that she had never met the alleged victim or her family. She did not know anything about this case. R. 310, ll. 11-19. She was qualified as an expert in “child abuse and treatment” over petitioner’s objection. R. 309, ll. 1-23.

Williams then offered her opinions on the subject. “Children do not tell right away.” She said the delay could be “a day, a week, a year, or months.” “There are many reasons why children don’t tell right away.” R. 311, l. 1- 312, l.9.

Williams maintained that disclosure was “a process,” and that “a lot of times, children are abused by someone that is known, loved, and trusted by them. That may be a family member.” R. 312, l. 10- 314, l. 25. She then testified about how the “proximity that the child has to the perpetrator” could play a part. She added that once the perpetrator was away the child may feel “safer to disclose.” R. 315, l. 1- 316, l. 4.

Williams offered that forty-two percent of children did not delay disclosure but that fifty-eight percent of children did delay telling anyone. R. 330, ll. 15-25.

Closing argument

The solicitor reminded the jury that Williams was an “expert,” that that she testified that “[t]here are a variety of reasons children don’t tell.” “The vast majority, 58% -- according to these numbers, this one study, 58% of children do not tell right away. They just don’t” The solicitor then criticized Defense counsel Bannister’s cross-examination of Williams about the basis of her opinion. R. 422, l. 12 – 425, l. 13.

Court of Appeals

The Court of Appeals (Few, CJ, Konduros and Lockemy, JJ), in a paragraph parenthetical on this issue held that the testimony of Williams was admissible, *citing* State v. Schumpert, 312 S.C.

502, 506, 435 S.E.2d 859, 862 (1993) and State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct.App. 1999). App. 2.

Rehearing

Petitioner wrote: “Petitioner submits this Court may have overlooked the fact that State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct.App.1999) and State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) are no longer good law to the extent they allow bolstering by testifying about common behavioral traits of alleged sexual assault victims.” App. 4.

“Appellant filed a motion to exclude testimony of non-treating expert.” R. 454. Appellant asserted the testimony of Galloway-Williams should be excluded because the expert was not qualified to render an opinion on this particular subject, the expert’s testimony is not necessary to the trier of fact, and the reliability of the basis for the opinion is not sufficient to support the opinion. Appellant cited Rule 703, SCRE: State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999); Watson v. Ford Motor Company Inc., 389 S.C. 434, 699 S.E.2d 169 (2010); State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009); State v White, 382 S.C. 265, 676 S.E.2d 684 (2009). R. 454.” App. 4-5.

Counsel also noted: “Following State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), cases from the 1990’s such as Weaverling and Schumpert can no longer be considered to be good law to the extent they permit “expert” testimony that could not pass a modern day reliability gatekeeping analysis. Further, they are no longer good law to the extent they allow the “expert” to bolster the testimony of the alleged victim through junk science statistics, and unreliable testimony.

In Kromah, our Supreme Court noted that while forensic interviewers may be useful as a tool to aid law enforcement their work is “not appropriate for use in a courtroom.” Appellant understands that in this case Williams was not testifying as a forensic interviewer, although she is one. **Regardless, what occurred in this case was not occurring in a vacuum. The approach for**

the state, given the case law from this Court and the Supreme Court, is to now have the witness, here Williams, not appear as a forensic interviewer but as an expert in “delayed disclosure” or some other “child abuse” expert title. Here, Williams allegedly did not know anything about the case, and had not even interviewed the alleged victim. Nonetheless, **defense counsel here correctly argued this was simply a backdoor attempt to improperly bolster the child’s testimony”** App. 7.

Discussion

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), this Court noted that while forensic interviewers may be useful as a tool to aid law enforcement their work is “not appropriate for use in a courtroom.” Petitioner understands that in this case Williams was not testifying as a forensic interviewer, although she is one. Regardless, as argued in the Court of Appeals what occurred in this case was not occurring in a vacuum. The approach for the state, given the case law from this Court and the Supreme Court, is to now have the witness, here Williams, not appear as a forensic interviewer but as an expert in “delayed disclosure” or some other “child abuse” expert title.

This Court recently in State v. Chavis, Op. No. 27491, Shearouse’s Adv. Sh. #5, at pp. 20-35 (filed February 4, 2015) held that it was error to qualify Ms. Elliott, as an “expert” in the field of “child abuse assessment.” This Court also held that the testimony of the other “expert,” Ms. Griggs improperly bolstered the alleged victim’s credibility. Id at 23.

This Court wrote:

We agree with Appellant that although Mrs. Elliott was sufficiently trained in RATAC protocol, and that she used RATAC protocol during her interviews, there is simply no evidence that her conclusions or impressions taken from these interviews were accurate. During cross examination, when asked if there was any way to discern what her error rate was, she responded “no.” Her

only peer review involved one other interviewer reviewing her work to ensure she was using RATAC protocol. When asked what her quality control procedures were, she responded “I use R[A]TAC protocol every time in the interview room.”

There is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence. [internal citation deleted] However, evidence of mere procedural consistency does not ensure reliability without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies. We find no evidence in this record as to Mrs. Elliott's ability to draw reliable results from the RATAC procedures she consistently follows, and thus find that the threshold reliability requirement of Rule 702 is not met. Accordingly, we hold that the circuit court abused its discretion in allowing Mrs. Elliot to testify as an expert regarding the report by Mrs. Gist.

State v. Chavis, Op. No. 27491, Shearouse's Adv. Sh. #5, at p. 25 (filed February 4, 2015).

Further, in State v. Douglas 380 S.C. 499, 671 S.E.2d 606 (2009), this Court held there was no need for the testifying witness to be qualified as an expert. The Court then noted the impropriety of such a witness testifying that she believed the child.² This Court and the Court of Appeals have warned of “expert” testimony on “a compelling disclosure of abuse.” See State v. Jennings 394 S.C. 473, 716 S.E.2d 91 (2011). See, also, State v. McKerley 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

Williams here testified with the aura of an expert. She largely admitted her conclusions and opinions were based on her own experience. She did, as seen above, claim that statistics showed that 58% of abused children delayed telling anyone. This could be “for a day, months, years.”

Further, as defense counsel correctly argued, the purpose of this testimony was to improperly bolster the credibility of the accusing witness. It was meant to have the jury conclude that the accusing witness in this case fit into a “normal pattern” of an abused person.

² In Douglas, the Supreme Court determined that witness Herod did not convey to the jury that she believed the child was telling the truth.

In State v. Chavis, Op. No. 27491, Shearouse's Adv. Sh. #5, at p. 25 (filed February 4, 2015), this Court also wrote: "Appellant argues that the circuit court erred in qualifying Mrs. Griggs as an expert because there was insufficient evidence of her reliability. Additionally, Appellant contends the circuit court erred when the it found Mrs. Griggs qualified as an expert because this allowed Mrs. Griggs to testify regarding her recommendation that Victim "not be around [Appellant] for any reason," which improperly bolstered the credibility of Victim.

Assuming that there was sufficient evidence of reliability presented for Mrs. Griggs to be qualified as an expert, we find that the circuit court erred in admitting her testimony regarding her recommendation because it was improper bolstering of Victim's credibility."

Qualifying Williams as an expert, and admitting her testimony was highly prejudicial. Petitioner submits that this Court should overrule Schumpert and Weaverling following this Court's opinions in Kromah and Chavis. These cases from the 1990's were determined before the evidentiary predicates of Watson v. Ford Motor Company and State v. White. They are no longer good law, and come from a time when an "expert" was simply someone more familiar with the subject matter than the jury, and before the gatekeeping function of the trial judge on reliability. Petitioner should be granted a new trial. 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). See, also, State v. McKerley 397 S.C. 461, 725 S.E.2d 139 (2012).

2.

The Court of Appeals erred by finding no error in the trial judge instructing the jury that it could convict petitioner based on the alleged victim's uncorroborated testimony since this instruction improperly emphasized the testimony of one witness, it was a charge on the facts, it was fundamentally unfair and infringed on petitioner's right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution.

Relevant Facts

Defense counsel Bannister filed a motion to preclude the court from charging the jury instruction contained in S.C. Code §16-3-657 that the testimony of the alleged victim need not be corroborated. R. 453. Petitioner wrote in the motion that he was aware of State v. Rayfield 369 S.C. 106, 631, S.E.2d 244 (2006) which permitted, but did not require, the court to instruct based on this statute. The motion noted that the alleged victim's allegation was the sole evidence in this case, and that the petitioner is, and has been, impotent since 1996. R. 453.

The defense further argued in the motion that the instruction would be an impermissible comment on the facts, it would improperly emphasize the testimony of one witness, it would unfairly bias the jury against the petitioner and detract from the presumption of innocence and the requirement that the state prove its case beyond a reasonable doubt. This denied petitioner his due process right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution. R. 453.

Defense counsel renewed his objection at trial. He again argued that the "uncorroborated testimony of the alleged victim alone was enough to convict" jury instruction violated petitioner's "substantial rights" including his Sixth Amendment right to a fair trial. Defense counsel argued judge did **not have to instruct** the jury under the statute. R. 335, l. 23- 337, l.1.

Once the judge stated she would charge the statute over petitioner's objection, petitioner asked that the judge include some other language that other evidence did not need to be ignored merely because the statute stated the alleged victim's testimony did not have to be corroborated. The judge did agree to that limited damage control after overruling the objection, inadequate on the facts here. R. 445, ll. 14-25.

As seen above, petitioner's niece testified that petitioner improperly touched her, and had oral sex with her. Petitioner's wife, Noreen Brandeberry, had been married to petitioner since 1983. R. 340, ll.5-20. Mrs. Brandeberry said petitioner never admitted to any abuse and that he ultimately said he wanted nothing more to do with that portion of his family because of the untrue allegation. R. 352, l. 16- 354, l. 11. Mrs. Brandeberry also said that petitioner told the investigator that he did not abuse his niece and "he said he might as well shoot his brains out" because of the untrue allegations. R. 353, ll. 1-10.

Mrs. Brandeberry testified petitioner had been unable to perform sexually since the beginning of their marriage in 1983. R. 341, ll.10-19. Mrs. Brandeberry said they attempted surgery in the mid-1980's but that it caused petitioner a great deal of pain, and the surgery apparently had to be reversed. R. 342, l. 4 - 348, l. 11.

As stated, the judge ruled she was charging South Carolina Code Section 16-3-657 over petitioner's objections. She did add some language that was requested by petitioner if she charged this code section over his objection. R. 365, l. 1 - 369, l. 2; R. 445, ll. 14-25. The judge flatly instructed the jurors "the testimony **need not be corroborated and the defendant can be convicted solely on the basis of the victim's testimony.**" R. 445, ll.12-16. (emphasis added). The judge added that "uncorroborated" does not mean the jury should ignore inconsistencies and testimony or credit baseless testimony. R. 445, ll.12-25.

Court of Appeals

The Court of Appeals, in a one paragraph parenthetical, citing this Court's opinion in State v. Rayfield 369 S.C. 106, 631, S.E.2d 244 (2006) affirmed the trial judge's "need not be corroborated" jury instruction. App. 2.

Rehearing

Petitioner requested rehearing arguing:

"This Court may have overlooked the fact that the "no corroboration" instruction was a charge on the facts, and it was fundamentally unfair and infringed on appellant's right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. The instruction detracted from the presumption of innocence. R. 453. (Issue two of the final brief).

It informed the jury that one witness, the alleged victim, was a special witness where none of the usual rules of ascertaining credibility applied. This was the "her word is her bond" witness.

The "no corroboration" statute was enacted so judges did not think they were compelled to direct a verdict where the only evidence was the alleged victim's uncorroborated testimony or accusation. The same rationale was true for an appellate court considering a directed verdict issue on appeal. See, State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006).

As the dissent explained in Rayfield: "I would hold that it is error for a trial court to charge the jury that an alleged victim's testimony needs no corroboration. **Although section 16-3-657 contains current and correct law, it is not a proper subject of a jury charge. Section 16-3-657 prevents courts, either on a dispositive motion at the trial level or on appellate review, from finding a lack of sufficient evidence to support a conviction because the alleged victim's testimony is uncorroborated.**" See, State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). (emphasis added). See, also, State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244, 249 (1942) (similar instruction on "uncorroborated" statements of accomplices should be received with caution and should be scrutinized by the jury with great caution as a charge on the facts which violated the state constitution).

App. 3-4 (emphasis in rehearing petition)

Discussion

In State v. Rayfield 369 S.C. 106, 631, S.E.2d 244 (2006), this Court held that the judge could, but was not required to charge South Carolina Code Section 16-3-657, that the alleged victim need not be corroborated. Petitioner noted that in Rayfield the defendant had argued the instruction was a charge on the facts, it improperly emphasized the testimony of one witness, and it carried a strong possibility of unfairly biasing the jury against the defendant. See, State v. Hill, 394 S.C. 280, 298, 715 S.E.2d 368, 378 (Ct.App. 2011). The dissenters in State v. Rayfield noted this jury instruction did not assist the jury in fulfilling its function of deciding whether the state had proven the charge beyond a reasonable doubt. In fact, they observed, the instruction created more problems than solutions, and it was confusing as a whole.

Petitioner Brandeberry is not aware of any other jury instruction that favors the testimony of one witness. That is true particularly where the jury is instructed under its oath that it can convict a defendant based merely on the uncorroborated testimony of the alleged victim. It is anathema to our criminal justice system wherein a defendant is presumed innocent and he may only be convicted by evidence beyond a reasonable doubt.

This instruction favors the testimony of a single witness over all others and unfairly prejudices the defendant in the eyes of the jury. It was a charge on the facts and it denied petitioner his Sixth Amendment right to a fair trial. See State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244, 249, (1942) (similar instruction on “uncorroborated” statements of accomplices should be received with caution and should be scrutinized by the jury with great caution was a charge on the facts which violated the state constitution).

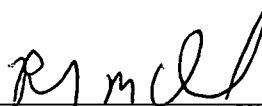
A judge should **not** direct a verdict of acquittal because the alleged victim’s testimony is **not** corroborated, but charging a jury this language denied petitioner a fair trial.

Attorneys handling child sex cases know how difficult it is to receive a fair trial given the extreme emotions involved, and it is intuitive that where people think a child has been harmed someone is going to pay dearly. These cases often arise from dysfunctional families, and what was done, by whom, is often difficult, under the best of circumstances to ascertain. This jury instruction that the word of the alleged victim, standing alone, is enough to convict – that the testimony need not be corroborated is gratuitous, and it denies a defendant a fair trial. It is respectfully time to revisit State v. Rayfield, and petitioner should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari should be issued to allow full briefing on these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. M. Dudek", written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 31st day of March, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 2015-UP-015 (S.C. Ct. App. filed 1/14/2015)
11-GS-23-03885, 11-GS-23-03886

THE STATE,

RESPONDENT,

V.

ALBERT BRANDEBERRY,

PETITIONER

APPELLATE CASE NO. 2015-000607

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on J. Benjamin Aplin, Esquire, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals this 31st day of March, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 31st day
of March, 2015.

Rhonda Demese Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021