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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MELVIN P. STUKES,

APPELLANT

APPELLATE CASE NO. 2012-212628

RECORD ON APPEAL

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1 THE COURT: Something like that.

2 MR. GOLDBERG: Never assault -- there's a prior simple
3 assault conviction that I failed to mention from '98, that
4 sort of thing.

5 THE COURT: All right. Thank you. We're ready for
6 them to come in?

7 MR. SHEALEY: Yes. Just as long as he can get sworn
8 in in front of the jury.

9 THE COURT: Oh, yes, in front of the jury.
10 You can bring them in.

11 (THE JURY ENTERS AT 2:13 P.M.)

12 THE COURT: All right, ladies and gentlemen of the
13 jury, I hope that you enjoyed your lunch. As you all heard
14 earlier, the state has rested and the defense has called
15 their first witness, although I need to swear -- and he's
16 already taken the stand -- Mr. Stukes.

17 Yes, ma'am.

18 MELVIN P. STUKES, BEING DULY
19 SWORN, TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Would you state, state your name for
21 the record?

22 WITNESS: I'm Melvin Stukes.

23 THE COURT: Yes, ma'am.

24 MS. PINNOCK: Thank you, Your Honor. May it please
25 the court?

1 DIRECT EXAMINATION BY MS. PINNOCK:

2 Q. Melvin, how are you doing?

3 A. I'm fine.

4 Q. How old are you?

5 A. I'm thirty-three.

6 Q. Thirty-three. Can you tell the jury a little bit
7 about yourself? Are you from here? You have family here?

8 A. Yes. I'm Melvin Stukes. I stayed in Columbia, South
9 Carolina. I attended Eau Clair High School. My employer,
10 I was a land, landscaper, sanitation worker, and restaurant
11 cook.

12 Q. Let me stop you. You said you grew up here?

13 A. Yes, ma'am.

14 Q. So, your whole family is here?

15 A. Yes, ma'am.

16 Q. Is your family in the courtroom with you today?

17 A. Yes, ma'am.

18 Q. Can you point them out, please?

19 A. That's my mother, Laura Stukes; my sister Tiwana
20 Powell; and my sister Samantha Stukes.

21 Q. And do you have any children, Melvin?

22 A. Yes, ma'am. I do.

23 Q. How many do you have?

24 A. Two.

25 Q. Boys or girls?

M. STUKES - DIRECT EXAMINATION BY MS. PINNOCK

553

1 A. Two boys.

2 Q. And how old are they?

3 A. Eleven and twelve.

4 Q. And they're also here in Columbia?

5 A. Yes, ma'am.

6 Q. Now, Melvin, we're going to get right to it. You know
7 why we're here?

8 A. Yes, ma'am.

9 Q. You've heard all the testimony that's been said today?

10 A. Yes, ma'am.

11 Q. You've seen all the evidence that the solicitor has
12 presented against you, right?

13 A. Yes, ma'am.

14 Q. In 2004, did you rape Misty Shealy?

15 A. No, ma'am. I didn't rape no one.

16 Q. In 2004, did you force your way, force your way into
17 Misty Shealy's apartment?

18 A. No, ma'am. I didn't force my way into Misty Shealy's
19 apartment.

20 Q. Have you had sex with Misty Shealy?

21 A. Yes, I did.

22 Q. Now, in 2004 did you live in the Park Apartments?

23 A. No, ma'am.

24 Q. Where did you live?

25 A. I stayed at Ashtons.

1 Q. The Ashtons? Is that near the Park Apartments?

2 A. Yes. It's a apartment complex next on the road,
3 right-hand side as you're coming down on the right-hand
4 side, I guess.

5 Q. Okay. So, it's fairly close? On the same the street?

6 A. Yes.

7 Q. Okay. At that time, were you living by yourself?

8 A. No, ma'am.

9 Q. Who were you living with?

10 A. I stayed at my son mother.

11 Q. Your son's mother?

12 A. Yes.

13 Q. What was her name?

14 A. Quantina Brown.

15 Q. How long did y'all live there?

16 A. I want to say two or three years.

17 Q. Okay.

18 A. Two.

19 Q. And while you lived in that, in those apartments with
20 Ms. Brown, did you ever go to the Park Apartments?

21 A. Yes. Yeah.

22 Q. Why would you go to the Park Apartments?

23 A. I got friends stay out there, Louis, and times I'd go
24 through, walk to the store, went to the store.

25 Q. Okay, but you did have some friends that lived there?

M. STUKES - DIRECT EXAMINATION BY MS. PINNOCK

555

1 A. Yes.

2 Q. And when you would go to Louis's house, what would
3 y'all do typically?

4 A. We played a game, MBA Live. We was in a -- well, we'd
5 play our seven game series.

6 Q. Okay. How long were you friends with Louis?

7 A. I would say two years.

8 Q. About two years, and you would often go to his house?

9 A. Yeah.

10 Q. Okay, and again, that house was in the Park
11 Apartments?

12 A. Yes, ma'am.

13 Q. Do you remember meeting Misty Shealy?

14 A. Yes, ma'am. I remember meeting her.

15 Q. When you met her, do you remember if you knew what her
16 name was?

17 A. No, ma'am. Didn't know her name.

18 Q. How many times did you meet her?

19 A. One time.

20 Q. One time?

21 A. Yes.

22 Q. Was that in the Park Apartments?

23 A. Yes, ma'am.

24 Q. Tell the jury as far as you can remember what you
25 remember about happening when you met Ms. Shealy.

1 A. I met Misty Shealy, Misty Shealy. I was at my friend
2 Louis house, and she came up. Me and her, we had
3 conversation. We was talking flirty like, and I walked her
4 to her apartment and went inside her apartment. When she
5 invited me in her apartment, I went in.

6 Q. You said you walked her to the apartment?

7 A. Yes. I walked her to her apartment.

8 Q. All right. Did Louis go with you?

9 A. No, ma'am.

10 Q. And I don't think I asked. What, what's the last you
11 heard about Louis? He still, he still around?

12 A. No, ma'am.

13 Q. Where -- what happened to him?

14 A. I heard that Louis moved to New York.

15 Q. Okay. Let's go back to when you met Misty. When you
16 got to her apartment, what happened when you got to her
17 apartment?

18 A. When I got to her apartment, we was outside. She
19 opened the door. She invited me in.

20 Q. She invited you in?

21 A. Yes.

22 Q. Did you force your way in?

23 A. No, ma'am.

24 Q. You didn't grab her keys from her?

25 A. No, ma'am.

M. STUKES - DIRECT EXAMINATION BY MS. PINNOCK

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1 Q. Who opened the door?

2 A. She opened the door.

3 Q. All right. Now, when you got -- when she opened the
4 door and y'all were inside the apartment, where did you go?

5 A. We went in her bedroom and was talking to her flirty
6 like, and sex came up. We start touching. She took her
7 clothes off; I took my clothes off. We had sex on the bed.

8 Q. You said that y'all were talking, and the topic of sex
9 just came up?

10 A. Yeah.

11 Q. And where were you when this topic came up?

12 A. In her bedroom.

13 Q. All right. So, you said you started -- it was a
14 flirty conversation?

15 A. Yes, ma'am.

16 Q. All right, and you just testified that y'all started,
17 in essence, messing around?

18 A. Yes, ma'am.

19 Q. And what happened?

20 A. And we had sex in her bed.

21 Q. In her bed?

22 A. Yes, ma'am.

23 Q. Where is her bed?

24 A. In her bedroom.

25 Q. Okay. Tell the jury what happened. What did you do

1 after you finished having sex with Ms. Shealy?

2 A. After I finished having sex with Ms. Shealy, I put my
3 clothes on. She put her clothes on. I sat on the edge of
4 the bed. We're still talking flighty like, and I glanced
5 at this little light, and it was a computer with seahorses,
6 like, and rainbow, like, type on this computer screen. I
7 was joking with her with that, getting up at the same time,
8 and she walked me to the door. I left.

9 Q. After you finished having sex, Melvin, was she upset?

10 A. No, ma'am.

11 Q. Was she crying?

12 A. No, ma'am.

13 Q. Was she screaming?

14 A. No, ma'am.

15 Q. Did you force yourself on her?

16 A. No, ma'am.

17 Q. She walked you out of the apartment?

18 A. Yes, she did.

19 Q. After you left her apartment, where did you go?

20 A. I went home.

21 Q. To Ms. Brown?

22 A. To my -- yeah, to my son mother.

23 Q. All right. Now, Melvin, after your encounter with Ms.
24 Shealy, did you ever go back to Park Apartments for any
25 reason?

M. STUKES - DIRECT EXAMINATION BY MS. PINNOCK

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1 A. Yes, ma'am.

2 Q. And why would that be?

3 A. I'd either go to Louis house or we'd go to the store.

4 Q. You weren't avoiding the Park Apartments?

5 A. No, ma'am.

6 Q. Now, Melvin, let me ask you. How, how old are you?

7 A. I'm thirty-three.

8 Q. Thirty-three. When's the first time you ever had sex
9 in your life?

10 A. Sixteen.

11 Q. Sixteen years old, and you're thirty-three now?

12 A. Yes, ma'am.

13 Q. Can you please look at this jury and tell them the
14 name of every single woman you've ever had sex with?

15 A. I can't.

16 Q. You can't?

17 A. No, ma'am.

18 Q. You don't remember?

19 A. I don't remember. I mean ---

20 Q. Can you look at them and tell them how many people,
21 how many you've ever had sex with?

22 A. No, ma'am. I can't. I couldn't tell you.

23 Q. That's a long time, sixteen to thirty-three?

24 A. Yes.

25 Q. And we know you were in a committed relationship with

1 Ms. Brown at that time, right?

2 A. Yeah.

3 Q. Is it fair to say you had one-night stands?

4 A. Yes, ma'am.

5 Q. People call them hookups?

6 A. Yes.

7 Q. And you were doing that with Ms. Brown. You were not
8 faithful to Ms. Brown at that time in your life, right?

9 A. No, ma'am.

10 Q. Now, Melvin, I want to fast forward to May 5, 2010.
11 You remember that day?

12 A. Yes, ma'am.

13 Q. What happened on that day?

14 A. I was at my sister house, my sister apartment, and I
15 had came in about a little after 1 a.m., and I fell asleep
16 on her couch, and I heard boom, boom, boom at the door. I
17 was upstairs in the restroom, and I remember she opened the
18 door, and it was the police officers.

19 Q. Okay. What did you do? Did they say they were
20 looking for Melvin Stukes?

21 A. Yes.

22 Q. Okay. Did you tell them who you were?

23 A. Yes, ma'am.

24 Q. You didn't try and deny who you were?

25 A. No, ma'am.

M. STUKES - DIRECT EXAMINATION BY MS. PINNOCK

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1 Q. And at that point, what did they do? They arrest you?

2 A. Yes, ma'am.

3 Q. Where did they take you after you left your sister's
4 house?

5 A. They took me on Huger Street to the warrant division.

6 Q. Okay, at the warrant division, did you talk to any
7 investigators?

8 A. No, ma'am.

9 Q. Well, where did they take you after you left the
10 warrant division?

11 A. The paddy wagon took me to Alvin S. Glenn.

12 Q. They took you to the jail. Now, did ---

13 A. Yes.

14 Q. --- at some you said that you wanted to speak to
15 whatever investigator was on this case, right?

16 A. Yes, ma'am.

17 Q. And you had to wait for them to show up?

18 A. Yes, ma'am.

19 Q. So, at that point, they had already arrested you?

20 A. Yes, ma'am.

21 Q. Did the investigators actually show up?

22 A. Yes, they did.

23 Q. And where did they take you?

24 A. They took me to, took me to headquarters on Two Notch.

25 Q. Okay, and when you got to headquarters, what happened

1 when you got there?

2 A. When I got there, they sat me in this room, and they
3 was questioning me. They was, like -- he was accusing me,
4 like, you know, telling me you raped this female.

5 Q. What did you tell them? What did you tell them when
6 they told you that you raped somebody?

7 A. I told them I didn't rape no one.

8 Q. That's what you told them on May 5th?

9 A. Yes, ma'am.

10 Q. 2010?

11 A. Yes, ma'am.

12 Q. When they were telling you that you raped somebody?

13 A. I told them I didn't rape no one.

14 Q. Did they ask you if you broke into anybody's house?

15 A. Yes, they did.

16 Q. What did you tell them?

17 A. I told them I didn't broke in no one's house.

18 Q. Did they ride around the neighborhood with you?

19 A. Yes, they did.

20 Q. Explain to the jury what happened when they rode
21 around the neighborhood.

22 A. When we rode around the neighborhood, I was telling
23 them what apartments that I know around there and where I
24 stayed with my baby mother, with my son's mother. And
25 after that, we rode to, to the mall.

M. STUKES - DIRECT EXAMINATION BY MS. PINNOCK

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1 Q. You rode to the mall. Is that like another substation
2 or something?

3 A. Yes, ma'am.

4 Q. Okay, and is that where you gave your written
5 statement?

6 A. Well, that's where he typed it up, but really -- but
7 yeah.

8 Q. Okay, and you signed it?

9 A. Yes, ma'am, I did.

10 Q. You're not saying you didn't sign it?

11 A. I signed it.

12 Q. This, this is your signature?

13 A. Yes, ma'am.

14 Q. Okay, and they read this to you?

15 A. Yes, ma'am.

16 Q. After -- before you signed it, right?

17 A. Yes, ma'am.

18 Q. You remember when they were taking your statement,
19 they showed the picture of her face. Remember that?

20 A. Yes, ma'am. They did.

21 Q. What did you tell them? Did you ---

22 A. I told ---

23 Q. --- tell them you knew the person in the picture?

24 A. I told them I didn't know who the, who the person was.

25 Q. Did you recognize that person?

1 A. I, I don't, I don't have no idea.

2 Q. Did they ask you about somebody named Misty Shealy?

3 A. They did.

4 Q. Did you know who Misty Shealy was?

5 A. No, ma'am.

6 Q. Is that what you told them?

7 A. That's what I told them.

8 Q. And that's what you put in your statement in 2010?

9 A. Yes, ma'am.

10 Q. That's what you're telling this jury here today?

11 A. Yes, ma'am.

12 Q. Now, Melvin, the solicitor is going to ask. He's
13 going to ask you why you remember meeting her now.

14 A. Because I ---

15 Q. What was going through your mind at that time?

16 A. When I was accused of being, you know, a rapist -- you
17 raped this female, you broke in this female house, this
18 semen was found -- you know, it was a lot that was going
19 through my mind. I knew I didn't, you know, rape no one.
20 You know, I didn't break in no one's house, you know? And
21 I didn't -- you know, I had all that going. I had time to
22 think, and I start thinking about, you know, back to when
23 it actually, they say it supposed to happen, and I
24 remembered Misty Shealy at my ---

25 Q. Okay.

M. STUKES - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 A. -- you know, while I was at my friend Louis house.

2 Q. And again, you didn't -- you never knew what her name
3 was?

4 A. No idea.

5 Q. You remember if you told her, told her your name?

6 A. I don't remember.

7 Q. About how long was your encounter with Ms. Shealy from
8 start to finish?

9 A. Just that day? About, about thirty minutes.

10 Q. Thirty minutes or so?

11 A. Yeah, thirty minutes or so.

12 MS. PINNOCK: Begging the court's indulgence.

13 (A PAUSE.)

14 MS. PINNOCK: Thank you, Your Honor..

15 Melvin, please answer any questions the state will
16 have for you.

17 WITNESS: Yes, ma'am.

18 THE COURT: Yes, sir, Mr. Goldberg.

19 MR. GOLDBERG: Your Honor.

20 CROSS-EXAMINATION BY MR. GOLDBERG:

21 Q. Mr. Stukes, good afternoon.

22 A. Good afternoon, sir.

23 Q. She just walked on up to you. Is that right? She
24 just came up to you and started talking?

25 A. No, not right offhand, like.

1 Q. That's what you just testified to a minute ago. She
2 walked up to you and started talking, right?

3 A. Well, yes.

4 Q. Okay. How long did you talk? A minute, two minutes,
5 five minutes? You said you were only with her for about
6 thirty minutes total, right?

7 A. Yeah.

8 Q. Thirty minutes from the time she walked up to you to
9 the time you left her apartment. Is that what you're
10 saying?

11 A. Yes, ma'am -- yes, sir.

12 Q. And in that time, you went to her apartment with her,
13 correct?

14 A. Yeah.

15 Q. She invited you in?

16 A. Yes, she did.

17 Q. You had never met her before?

18 A. That was my first time meeting her that day.

19 Q. And you had sex with her in your bedroom -- in her
20 bedroom. That's your testimony today?

21 A. Yes, sir.

22 Q. And then you just left, and that was it?

23 A. Yeah.

24 Q. Thirty minutes. You remember when Sergeant Godfrey
25 advised you of your rights?

M. STUKES - CROSS-EXAMINATION BY MR. GOLDBERG

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1 A. Yes, sir.

2 Q. State's Exhibit Number 1, you recognize that?

3 A. Yes, sir.

4 Q. And that's the form he advised you of your rights?

5 A. Yes, sir.

6 Q. You wanted to talk to Sergeant Godfrey. Isn't that
7 right?

8 A. Yes, sir.

9 Q. You wanted to tell him your story?

10 A. Yes, sir.

11 Q. You wanted to tell him what happened?

12 A. Yeah.

13 Q. And you told him that day that you didn't know Misty
14 Shealy?

15 A. I didn't.

16 Q. You told him that you didn't recognize a picture of
17 her?

18 A. I mean, he was accusing me of rape. I mean, all he
19 was saying is you raped this female.

20 Q. Did you tell him whether or not you knew her?

21 A. I told him I didn't knew her.

22 Q. Okay. You told him that you lived in the Ashton
23 Apartments around that time, right?

24 A. Yes, sir.

25 Q. And that you'd been to the Park Apartments?

1 A. Yes, sir.

2 Q. Several times?

3 A. Yeah.

4 Q. Your friend Louis lived there, right?

5 A. Yes, sir.

6 Q. Another guy named Christopher stayed over there. Is
7 that right?

8 A. Yes, sir.

9 Q. You'd been there many times. That wasn't the first
10 time -- let me back up. You had a sexual relationship with
11 a lady named Shawntee at the Park Apartments, did you not?

12 A. Yeah.

13 Q. You told Investigator Godfrey that?

14 A. Yes, I did.

15 Q. And that she was a black female. Is that right,
16 Shawntee?

17 A. Yeah.

18 Q. You told Investigator Godfrey that you'd only had sex
19 with two white women ever. Isn't that right?

20 A. Yes, I did.

21 Q. And both their names were Jessica is what you told
22 him, correct?

23 A. Yes.

24 Q. And one of them lived in Hammond Village?

25 A. Yes.

M. STUKES - CROSS-EXAMINATION BY MR. GOLDBERG

569

- 1 Q. And one of them lived in the Park Apartments?
- 2 A. No.
- 3 Q. Excuse me, Park Street?
- 4 A. Yes.
- 5 Q. Correct? Jessica?
- 6 A. Yes.
- 7 Q. And those were the only white women you'd ever had sex
- 8 with is what you told them on that day?
- 9 A. Yes, sir.
- 10 Q. You told him that the only time that you would ever
- 11 consider yourself having sex with someone else is if you
- 12 knew them on a daily basis. Isn't that right?
- 13 A. Yes.
- 14 Q. You didn't know Misty Shealy on a daily basis. You'd
- 15 just met her. Isn't that what you just testified to?
- 16 A. Yes, sir.
- 17 Q. You don't have an identical twin, do you?
- 18 A. No.
- 19 Q. You signed the statement that Sergeant Godfrey typed
- 20 up. You signed it, correct?
- 21 A. Yes, sir, I did.
- 22 Q. On the first page here, you signed it twice, right?
- 23 A. Yes, sir, I did.
- 24 Q. Same on the second page?
- 25 A. Yes, sir.

1 Q. And the third page?

2 A. Yes, sir.

3 Q. And the fourth page?

4 A. Yes, sir.

5 Q. Eight signatures, right? Right?

6 A. Yeah.

7 Q. Saying that you understood the statement, you'd
8 reviewed it, and that it was your statement. Is that
9 right?

10 A. Yes, sir.

11 Q. He asked you if you knew her, right?

12 A. Yes, he did.

13 Q. He showed you a picture?

14 A. Yes.

15 Q. He asked you about your prior sexual encounters with
16 women in general, right?

17 A. Yes.

18 Q. And you told him that it was only when you knew
19 someone on a daily basis that you'd have sex with them?

20 A. I mean, yes, sir.

21 Q. He drove you out to the apartment complex, right?

22 A. Yes, he did.

23 Q. Drove you right past her apartment, too, didn't he?

24 A. I wouldn't remember.

25 Q. You didn't point out which apartment was hers, though,

M. STUKES - CROSS-EXAMINATION BY MR. GOLDBERG

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1 did you?

2 A. No, sir.

3 Q. At no time during your -- well, you were with Godfrey
4 for about what, about four hours? Does that sound about
5 right? Is that fair to say?

6 A. Well.

7 Q. Is that about right, give or take a few minutes here
8 or there? At no time did you tell him that you had
9 consensual sex with Misty Shealy. Isn't that right?

10 A. I mean, I didn't understand the question when he asked
11 me that.

12 Q. You didn't understand the question?

13 A. I didn't understand the word, the word consensual.

14 COURT REPORTER: Excuse me. I need the witness to
15 keep his voice up, please.

16 THE COURT: All right, I ask that you speak up, sir,
17 all right?

18 WITNESS: Okay.

19 COURT REPORTER: And repeat the last again.

20 THE COURT: All right, can you ask the question again?

21 MR. GOLDBERG: Sure.

22 BY MR. GOLDBERG:

23 Q. At no time in your four hours with Sergeant Godfrey
24 did you tell him that you had consensual sex with Misty
25 Shealy. Isn't that right?

1 A. I told him not to my knowledge.

2 Q. And he asked you that directly. Isn't that right?

3 A. Yes, sir.

4 Q. He asked you that directly, did he not? He
5 specifically asked you that?

6 A. (NO RESPONSE.)

7 Q. You testified earlier that you didn't rape no one. Is
8 that right?

9 A. Yes, sir.

10 Q. You said that in your statement, too, right?

11 A. Yes, sir.

12 Q. You said you didn't even have sex with Misty Shealy?

13 A. I had sex with Misty Shealy.

14 Q. In 2004 when Sergeant Godfrey spent four hours with
15 you -- excuse me, in 2010 when Sergeant Godfrey spent four
16 hours with you, you never told him that you had sex with
17 Misty Shealy. Isn't that right?

18 A. I mean, no. No, sir.

19 Q. So, it just came to you at some point? Ms. Pinnock
20 already asked you about this. It just came to you when you
21 started thinking about it, and it just arrived in your
22 mind. Is that right?

23 A. I mean, I, I've had time to think about it, sir.

24 Q. Did you want to talk to Investigator Godfrey again
25 once you realized it?

M. STUKES - REDIRECT EXAMINATION BY MS. PINNOCK

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1 MS. PINNOCK: Objection, Your Honor. May we approach?

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 THE COURT: Objection sustained.

4 MS. PINNOCK: Thank you.

5 MR. GOLDBERG: Those are all my questions. Thank you.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION BY MS. PINNOCK:

8 Q. Melvin, the women you told Investigator Godfrey about
9 in 2004 -- well, in 2010 when they took your statement, you
10 had multiple sexual encounters with these women?

11 A. Yes.

12 Q. Is Misty Shealy's apartment, when they rode you around
13 this area -- they're making a big -- I -- a big deal about
14 this apartment. Did you go there more than once?

15 A. Where?

16 Q. To her apartment.

17 A. No.

18 Q. Do you remember the number on the apartment?

19 A. No, I don't.

20 Q. Did you point out Louis's house?

21 A. Yes, I did.

22 Q. Because that's where you frequented?

23 A. Yes.

24 MS. PINNOCK: Thank you.

25 THE COURT: All right, anything else?

1 MR. GOLDBERG: No, ma'am.

2 THE COURT: All right, ladies and, ladies and
3 gentlemen of the jury, there is a matter of law that I need
4 to take up outside of your presence. I'm going to send you
5 all back out briefly, and then I'm going to have you back
6 in. All right, thank you.

7 (THE JURY EXITS AT 2:35 P.M.)

8 THE COURT: All right, you can come down. You may
9 step down, sir.

10 (THE WITNESS EXITS THE STAND.)

11 MR. SHEALEY: Your Honor, we probably need just a
12 moment or two before we determine our next witness.

13 THE COURT: All right.

14 MR. SHEALEY: If that's okay? Just maybe five minutes
15 or more.

16 THE COURT: You think you need more than five minutes?

17 MS. PINNOCK: It shouldn't. It should not. Just very
18 briefly. We weren't expecting to call him until after.

19 THE COURT: Okay.

20 (A PAUSE.)

21 THE COURT: All right, we'll take about five minutes.

22 MS. PINNOCK: Thank you.

23 (OFF THE RECORD.)

24 THE COURT: All right, y'all ready?

25 MS. PINNOCK: Yes, ma'am. Thank you, Your Honor.

L. McNEELY - DIRECT EXAMINATION BY MS. PINNOCK

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1 THE COURT: All right, bring them in.

2 (THE JURY ENTERS AT 2:44 P.M.)

3 THE COURT: All right, thank you.

4 Yes, ma'am. Call your next witness.

5 MS. PINNOCK: Thank you, Your Honor. Defense would
6 call, call Investigator Lawrence McNeely.

7 LAWRENCE McNEELY, BEING DULY
8 SWORN, TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Have a seat in the witness stand,
10 please. State your name for the record.

11 WITNESS: Lawrence McNeely.

12 DIRECT EXAMINATION BY MS. PINNOCK:

13 Q. Investigator McNeely, where do you currently work?

14 A. Richland County Public Defender's Office.

15 Q. Where did you work prior to working for the public
16 defender's office?

17 A. With the sheriff's department for twenty-five years,
18 and then I had my private business for ten years, and
19 the ---

20 Q. Okay. I'm sorry?

21 A. Been with the public defender's office almost ten
22 years.

23 Q. Okay. So, you were at the Richland County Sheriff's
24 Department?

25 A. Yes, ma'am.

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1 Q. Okay, and you've been with the public defender's
2 office about ten years?

3 A. Yes, ma'am.

4 Q. Investigator McNeely, did you have the opportunity to
5 speak to Melvin Stukes?

6 A. I did.

7 Q. Where did you speak with him at?

8 A. Alvin S. Glenn.

9 Q. Do you remember the date you spoke to him?

10 A. April the 12, 2011.

11 Q. And that was at the Alvin S. Glenn Detention Center?

12 A. That's correct.

13 Q. Do you remember what your conversation was about?

14 MR. GOLDBERG: Your Honor, if I --- may we approach?

15 THE COURT: Yes, sir.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 THE COURT: All right, ladies and gentlemen of the
18 jury, I'm going to have to send you all out for a brief
19 moment.

20 (THE JURY EXITS AT 2:47 P.M.)

21 THE COURT: All right, is the question again -- and
22 you want to put the objection on the record, or you want
23 the testimony?

24 MR. GOLDBERG: I guess the objection is hearsay. It's
25 inadmissible, an inadmissible prior statement.

L. McNEELY - PROFFERED EXAMINATION BY MS. PINNOCK

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1 MS. PINNOCK: And my response to the objection was, is
2 that it's not hearsay. It falls under 801, which are
3 hearsay exceptions. It was a prior consistent statement.
4 I believe it's 801(d)(1)(b), I believe, but it's a prior
5 consistent statement offered to rebut an expressed or
6 implied accusation by a party to a recent fabrication. So,
7 it's not hearsay. It is admissible under 801, and we'd be
8 happy to proffer the testimony for the record.

9 (A PAUSE.)

10 THE COURT: All right.

11 MS. PINNOCK: Thank you, Your Honor.

12 *PROFFER*

13 PROFFERED EXAMINATION BY MS. PINNOCK:

14 Q. Did you have a conversation with Mr. Stukes at the
15 jail?

16 A. Yes, ma'am.

17 Q. And do you remember what your conversation was about?

18 A. It was about this incident that he was charged with.

19 Q. About the criminal sexual conduct charge?

20 A. That's correct.

21 Q. Did, did he tell you what he remembered?

22 A. Yes. He said that he had -- didn't really know this
23 lady. That he had just met her that day. They had a
24 conversation. She invited him to her apartment. They went
25 into the bedroom. They had a further conversation, which

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1 led to sexual conversation. They had consensual sex,
2 and he left. He said he was maybe there thirty, forty
3 minutes.

4 Q. Okay, and you think you took that statement in April
5 of 2011?

6 A. Yes, ma'am.

7 Q. Okay, and at that time, he told you that he had
8 consensual sex with Misty Shealy?

9 A. That's correct.

10 MS. PINNOCK: Thank you.

11 Your Honor, that's all we're doing.

12 (A PAUSE.)

13 THE COURT: All right, anything from you on
14 cross-examination?

15 MR. GOLDBERG: No. No, ma'am, not on
16 cross-examination.

17 *END OF PROFFER*

18 THE COURT: I guess my question is when did he talk to
19 the police? April? It was 2010, wasn't it?

20 MR. GOLDBERG: Correct.

21 MS. PINNOCK: Yes, ma'am. He met with Richland County
22 in March -- May, May 2010. He'd been incarcerated since
23 that time. Our investigator interviewed him April 2011.

24 (A PAUSE.)

25 THE COURT: All right, your objection -- she has cited

1 801(d) (1) .

2 MS. PINNOCK: (B) .

3 THE COURT: (B), and your position is that the state
4 is saying that the, I guess, testimony today is fabricated.

5 MS. PINNOCK: Yes, ma'am.

6 THE COURT: And that his statement to him would be
7 admissible under 801(d) (1) (b) ?

8 MS. PINNOCK: Yes, ma'am.

9 THE COURT: Is that what you're saying?

10 MS. PINNOCK: Yes, ma'am.

11 MR. GOLDBERG: The only reference in any way that was
12 made while he was on the witness stand to suggest in any
13 way that his testimony or his statement today was
14 fabricated, arguably the only thing even close to that was
15 the question that I asked when I asked him why he didn't
16 try to contact, or if he any at point tried to contact the
17 sheriff's department or Investigator Godfrey to talk again
18 and tell him that he'd remembered, he just remembered this,
19 and -- but you didn't reach out to anybody. There was an
20 objection. The objection was sustained.

21 It's my position that that doesn't give rise to the
22 level of whatever the language is, an implied charge of
23 recent fabrication. There's, there's a difference between
24 an implied charge of recent fabrication and attempting to
25 impeach the witness with his own prior statement. There's

1 a difference between that.

2 I don't believe the line of questioning was implied
3 recent fabrication. It was an effort to impeach him from
4 the point of view that he was asked about, repeatedly about
5 having consensual sex. Not to my knowledge, things of that
6 nature, all of that line of questioning everybody heard,
7 Your Honor, and that would be my argument as to why this
8 rule does not apply.

9 MS. PINNOCK: And, Judge, if my memory serves me
10 correctly, I, I want to say that the solicitor asked him a
11 question about how he came up with it or coming up with it.
12 It was not limited to the one question that would have been
13 a -- that's a completely separate issue than what we're
14 addressing here. The objection with the not contacting law
15 enforcement again is a, is a ---

16 THE COURT: Well, that's off the table because ---

17 MS. PINNOCK: Yes, ma'am. That's not ---

18 THE COURT: --- I sustained your objection.

19 MS. PINNOCK: --- what this is offered to rebut.
20 There is another line, there's another question in his line
21 of questioning. That's when we sent our law clerk out to
22 tell Mr. McNeely we were going to need him up here. It was
23 before we ever got to that issue. So, that's not the same
24 question that we're talking about.

25 It was earlier on his cross. I did not write down the

1 exact language of it, but he asked a completely separate
2 question about coming up with a story or something along
3 those lines. So, it does fall under the prior consistent
4 statement.

5 MR. GOLDBERG: I think there was a, I think there was
6 a question along those lines that was reiterating the
7 defendant's own testimony on direct that he remembered
8 later. He testified on direct, I believe, that this came
9 up later and that he remembered it later, and that was the
10 purpose of any questions that I asked in regards to that
11 was about coming up with it at some time later.

12 So, in essence it would be -- what would be
13 bolstering, would be my argument, is that he was allowed to
14 testify to it on direct. I asked him about it again on
15 cross, and now they're attempting to put up a witness to
16 bolster that he said the same thing.

17 MS. PINNOCK: Judge, he implied that, that the Mr.
18 Stukes was lying. He implied that he was making it up.

19 THE COURT: And now I need you to tell me where he
20 implied that, all right?

21 MS. PINNOCK: I'm sorry. I mean, I'd ask ---

22 THE COURT: I have the court reporter here, and she
23 can go back and look at it, but I think -- I mean, because
24 it has to be -- he has to imply that the statement, that
25 he, that he made up this whole story. I'm just -- I don't

1 -- I'm not saying that he didn't ask the question. I just
2 don't, I don't ---

3 MS. PINNOCK: If we can have her, have the court
4 reporter look to see if she can find it? I can't remember
5 the exact question, but it was something very close to, so,
6 this all just came to you or you just made all this up. It
7 was very close to that language. I can't state it exactly
8 because I didn't write the question down.

9 MR. GOLDBERG: And again, I don't remember exactly
10 what was said on direct, but I believe that my question was
11 in response to what he had already testified to about that
12 on direct, that he thought of it later or something.

13 THE COURT: Well, I do remember something about when
14 did you realize that, or that this is what they were
15 talking about, and I think he said -- I don't even remember
16 what he said, but that was something that was discussed on
17 direct and on cross.

18 But we have to stop talking if we want the court
19 reporter to pull it back up. So, we'll let her -- we'll
20 stop, and I'm going to look at the rule while she looks and
21 sees if she can find it.

22 (OFF THE RECORD AS DEFENDANT'S TESTIMONY IS REVIEWED
23 WITH THE ATTORNEYS.)

24 THE COURT: All right, I'll be glad to hear from
25 whoever. This is your objection.

1 MR. GOLDBERG: Well, my position is the same in that
2 the line of questioning was not offered as an implied
3 charge of some fabrication. There's no implicit charge of
4 him making something up when he's testified on direct that
5 -- you know, in response to why he remembered now. I
6 started thinking back on it. I had time to think. I go
7 back over it to see what happened. And in response to that
8 on cross-examination, the question was about that very
9 topic.

10 I don't think by, by definition cross-examining about
11 that in the limited manner that I did gives off an
12 inference that he was lying. It was simply asking him when
13 he came up with it, which he'd testified to. That's a -- I
14 mean, it's not, it's not that there was allegations of
15 coaching or anything of that nature. I think one of the
16 cases references some sort of coaching in, in this issue.
17 And as a result, I believe that it's not admissible, and
18 it's improper bolstering and hearsay.

19 (A PAUSE.)

20 THE COURT: And just ---

21 MR. GOLDBERG: And I would actually -- I'm sorry, Your
22 Honor. I just found one other case, *State vs. Fulton*, it
23 looks like, 509 SE 2nd 819. That's a Court of Appeals
24 case. In that case, they reference some other case law
25 that talks about how not every inconsistency developed on

1 cross-examination implies that the witness testimony is
2 perjurious. And they go on to say that:

3 The mere impeachment by proof of an inconsistent
4 statement does not constitute a charge that the
5 witness testimony is a fabrication.

6 So, I guess what it's saying is it's not automatic
7 that if you're trying impeach someone in some way, which I
8 don't even know that's really what was happening in that
9 instance because it was almost a reiteration of what he
10 said on direct. But even if it was an impeachment of
11 sorts, that doesn't automatically mean that the inference
12 that's being given off is that he's recently fabricated it.
13 They're saying that fabrication and impeachment are two
14 different things, if you assume that I was impeaching him
15 and not just questioning him further on what he testified
16 to on direct.

17 MS. PINNOCK: And, Your Honor, the fact that he --
18 it's, it's not an inconsistency that's the issue. It's
19 there was an implied, implied allegation that there was a
20 fabrication of the story.

21 THE COURT: Okay, and what's that implied allegation?
22 What did -- now that you've had a chance to look at the
23 record because the case law says that on cross-examination,
24 you have to -- he has to charge, it has to rise to the
25 level of a charge of fabrication, calling a witness's

1 credibility into question, and simple impeachment does not
2 do that. So, I'm trying to figure out what is it he said
3 that charges your client with fabrication.

4 MS. PINNOCK: Your Honor, it's not, it does not have
5 to be an expressed charge.

6 THE COURT: I haven't said that but ---

7 MS. PINNOCK: But the implication that ---

8 THE COURT: --- it can be implied. What's implied?

9 MS. PINNOCK: The implication of you just came up with
10 this is an implication that he's making it up.

11 THE COURT: So, the form of the question would ---

12 MS. PINNOCK: Yes, ma'am.

13 THE COURT: --- is what you're saying.

14 MS. PINNOCK: Yes. The question itself is the -- is
15 what forms the ---

16 THE COURT: The way he asked it?

17 MS. PINNOCK: Yes.

18 THE COURT: All right.

19 MR. GOLDBERG: My response to that would simply be
20 that he already said it.

21 THE COURT: All right. Well, I'm going to allow,
22 allow them to ask him the question that she just asked
23 based on the form of the way the question -- I guess the
24 delivery of the question. It's not expressed. I guess it
25 could be an implied charge of his awareness of at least a

1 fabrication, but based on the way that I guess it was
2 delivered or said. So, I will allow him to testify to the
3 fact that he told him that. Was it, was it two thousand?

4 MS. PINNOCK: 2004. I'm sorry, did I say '11? Yes,
5 2011.

6 MR. GOLDBERG: Thank you, Your Honor.

7 THE COURT: All right, you can bring them in.

8 (THE JURY ENTERS AT 3:10 P.M.)

9 THE COURT: All right. Yes, ma'am. You may continue.

10 MS. PINNOCK: Thank you, Your Honor.

11 DIRECT EXAMINATION BY BY MS. PINNOCK RESUMES:

12 Q. You said you had the opportunity to speak to Mr.
13 Stukes at the Alvin S. Glenn Detention Center?

14 A. That's correct.

15 Q. Okay, and do you remember the date of that
16 conversation?

17 A. April the 12, 2011.

18 Q. Do you remember why you went down there to talk to
19 him?

20 A. I had just recently been assigned as his investigator,
21 and that's -- went down to interview him.

22 Q. And you interviewed him about the pending criminal
23 sexual conduct and the burglary first charge?

24 A. That's correct.

25 Q. Do you remember, based on your conversation with him,

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1 did he at that point tell you that he remembered having
2 consensual sex with Misty Shealy?

3 A. Yes, he did.

4 Q. And that was again in April of 2011?

5 A. That's correct.

6 MS. PINNOCK: Beg the court's indulgence.

7 (A PAUSE.)

8 MS. PINNOCK: Thank you, Your Honor. No further
9 questions. Thank you.

10 THE COURT: Yes, sir, Mr. Goldberg.

11 CROSS-EXAMINATION BY MR. GOLDBERG:

12 Q. Mr. McNeely, you said you'd been working for the
13 public defender's office about ten years. Is that right?

14 A. That's correct, yes.

15 Q. Is that on a volunteer basis?

16 A. No, sir.

17 MR. GOLDBERG: All right. Thank you, sir.

18 THE COURT: Anything else?

19 MS. PINNOCK: No, Your Honor.

20 THE COURT: All right, sir, you may step down.

21 Any objection to this witness being excused?

22 MS. PINNOCK: No, Your Honor.

23 THE COURT: All right. Then you are free to leave,

24 Mr. McNeely.

25 WITNESS: Thank you.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Call your next witness.

3 MS. PINNOCK: Your Honor, at this time, the defense
4 rests.

5 THE COURT: All right, ladies and gentlemen -- well,
6 let me ask you. Anything from the state on reply?

7 MR. GOLDBERG: One moment, please, Your Honor.

8 (A PAUSE.)

9 MR. GOLDBERG: No, ma'am, nothing from the state.

10 THE COURT: All right, ladies and gentlemen of the
11 jury, at this time the defense has rested. The state has
12 rested. You have heard all of the evidence. It is now
13 time for us to charge you as to the law and closing
14 arguments.

15 I'm going to -- before we do that, there are some
16 matters of law that I have to take up outside your
17 presence. So, I am going to send you back to your jury
18 room for, it's probably going to take about fifteen, twenty
19 minutes or so. I'm going to send you back to your jury
20 room.

21 We're going to probably talk about scheduling because
22 it is about 3:15. If anyone has to leave, let the foreman
23 know. Anyone needs to leave early, just let the foreman
24 know, and you can get me a note or let the bailiffs know.
25 We would appreciate it. All right, thank you.

1 (THE JURY EXITS AT 3:13 P.M.)

2 THE COURT: All right, anything else from the state?
3 Anything from the defense? Any motions? You want to renew
4 your motions?

5 MS. PINNOCK: Yes, ma'am. I would renew again all of
6 our pretrial motions since all of the evidence has
7 concluded at this point. We'd also renew our directed
8 verdict motion.

9 Even viewed in the light most -- viewing the evidence
10 in the most, in the light most favorable to the state, we
11 still, our position is still that there is not enough
12 evidence to submit this to the jury.

13 I don't think it rises above the level of mere
14 suspicion of guilt. It does need to be more than that. I
15 don't think they've met that burden, so we'd renew our
16 directed verdict motion. And at the appropriate time, Your
17 Honor, we will address the pretrial motion that was put off
18 until charges.

19 THE COURT: All right, anything in response?

20 MR. GOLDBERG: Ask you to stand by your previous
21 rulings on all those matters.

22 THE COURT: All right. The motion for directed
23 verdict will be denied as previously stated. As to the
24 other motions, they are preserved for the record.

25 All right, the jury charges. Well, let me ask you

1 this. I don't know how long -- I'm trying -- if we're
2 going to send them home for the day, going to send them
3 home for the day, I'd rather do it now than make them sit
4 back in that room for thirty, forty-five minutes and then
5 send them home, but they seem to be fine with staying late.
6 Nobody's said anything about staying late. It will take,
7 I'm guessing it will take y'all about thirty minutes each,
8 no longer.

9 MR. GOLDBERG: I might be a little longer than that.

10 MS. PINNOCK: I might be a little longer also.

11 THE COURT: Than thirty minutes?

12 MS. PINNOCK: Possibly.

13 MR. SHEALEY: She talks fast, but she has a lot to
14 say.

15 MR. GOLDBERG: I mean, if you want to send them home,
16 I'm fine with that.

17 THE COURT: I'm not going to tell you what a little
18 bird said in the hallway, Mr. Shealey.

19 MR. SHEALEY: What's that? Said that I talk fast,
20 too?

21 THE COURT: No. That's not it.

22 MR. SHEALEY: You can tell me later.

23 THE COURT: So, y'all are thinking about an hour and a
24 half. They probably wouldn't get it until close to 5:00.
25 I'm fine with staying. It's up to y'all. If not, we can

1 start at 9:30 in the morning.

2 I think the -- I mean, I can leave it up to the jury.
3 They don't quite ever understand. I have to explain it. I
4 can leave it up to them, but they think you argue, you
5 charge, and then they deliberate, and they don't realize
6 how long it takes sometimes.

7 MR. GOLDBERG: I'd say if it's going to end up being
8 after 5, which it sounds like it would be, I think it'd
9 probably be a little more prudent to just send them home
10 and start fresh early in the morning.

11 What do you think, Tracy?

12 MS. PINNOCK: I agree. I have no problem with coming
13 back.

14 MR. GOLDBERG: Well, actually, it probably wouldn't be
15 until almost 5 by the time you even started the charge I
16 would think if we each go around forty-five minutes or so.
17 If not ---

18 MS. PINNOCK: Yes. It's already 3:15.

19 MR. GOLDBERG: So.

20 THE COURT: All right. Well, I will -- y'all want me
21 to bring them back in, or you want me to go back there and
22 tell them?

23 MR. GOLDBERG: Whatever you want.

24 THE COURT: You can bring them in.

25 (THE JURY ENTERS AT 3:18 P.M.)

1 THE COURT: All right, ladies and gentlemen of the
2 jury, we were talking about scheduling out here. We have
3 to do closing arguments and a charge on the law. My charge
4 on the law will probably take about forty-five minutes.
5 Closing arguments could potentially take over an hour.

6 It's after 3. It's about 3:20 now. It would be after
7 5:00, maybe even closer to 6:00 before y'all even get the
8 case for deliberation. I'm going to go ahead and send you
9 all home so we won't be here to whatever time tonight, and
10 we will start in the morning. We'll have closing arguments
11 and charge on the law, and then I'll order lunch for you
12 all again. So, we will, yeah, we'll start at 9:30 in the
13 morning, all right? But instead of you all sitting back
14 there while I'm out here handling matters of law, you all
15 can go ahead and go home.

16 Have a good evening, and remember everything that I
17 told you earlier in the week.

18 Yes, ma'am?

19 ALTERNATE JUROR: What time?

20 THE COURT: 9:30.

21 ALTERNATE JUROR: Thank you.

22 THE COURT: And you, and you all still have to come
23 back tomorrow morning at 9:30 a.m., all right? So, we will
24 see you tomorrow morning at 9:30. Y'all have a restful
25 evening.

1 (THE JURY EXITS AT 3:20 P.M.)

2 THE COURT: All right, we can go ahead and go over --
3 have our charge conference. Y'all need a second?

4 MR. GOLDBERG: Just one second, Judge, real quick.

5 (A PAUSE.)

6 THE COURT: I think everything in here is pretty much
7 in the charge now.

8 MR. SHEALEY: And, Your Honor, we just, our position
9 basically is there's nothing crazy in the standard charges
10 you always used. The only issue is going to be the
11 statute.

12 THE COURT: Yes.

13 MR. SHEALEY: And I think Ms. Pinnock will ---

14 MS. PINNOCK: I was going to put that on the record.

15 THE COURT: Yeah, I'll let you make, and I'll let you
16 make your record.

17 MR. SHEALEY: I don't know, but I think it's already
18 been made a part of the record on that.

19 THE COURT: Yeah, and I already have read it, and
20 we've already looked at that earlier.

21 (A PAUSE.)

22 MS. PINNOCK: So, Your Honor is going to use your
23 standard charge?

24 THE COURT: Yeah.

25 MS. PINNOCK: Okay.

1 THE COURT: He, he's printing it out.

2 MS. PINNOCK: Okay.

3 THE COURT: A copy for you all to take a look at.

4 MR. SHEALEY: You're not using theirs? You're using
5 your standard?

6 THE COURT: Yes.

7 MR. SHEALEY: All right.

8 MS. PINNOCK: Would you like me to address the statute
9 now?

10 THE COURT: You can.

11 MS. PINNOCK: Your Honor, as far as the charges that
12 are being presented to the jury, we would object to any
13 mention of Section 16-3-657 as part of Your Honor's charge
14 to the jury on the law. We have handed up a memo in
15 support of our objection.

16 The issue is, Your Honor, that statute is a one-line
17 statute. It says that the victim's testimony in a criminal
18 sexual case need not be corroborated. It's our position
19 that the purpose, legislative intent behind the creation of
20 that statute is to aid higher appellate courts, aid the
21 higher courts in determining whether or not there is enough
22 evidence to possibly uphold a conviction, or at trial level
23 to be able to get the case past the directed verdict motion
24 made, made by the defense.

25 Your Honor, it's our position the legislature never

1 intended on the statute being charged to the jury. It is,
2 we think it is an impermissible comment on the facts by
3 Your Honor to the jury.

4 I will make the comparison, refer Your Honor -- I'm
5 sorry, *State vs. Grant*. It's 7 -- I'm sorry, 275 SC 404.
6 It's a 1980 case, Your Honor. That case dealt with flight
7 evidence. When Mr. Grant's case went to trial, the judge
8 in that case charged the jury on the admissibility of
9 flight evidence and how they could interpret that evidence
10 to, to possibly use it and show somebody's guilty.

11 It, it was a good statute in the books. It was part
12 of South Carolina law, but the Supreme Court, Your Honor,
13 decided that the inclusion of that statute, that was not
14 the purpose of that statute. They did say that mentioning
15 the flight evidence and how you could use flight to infer
16 somebody's guilt was a statement on the facts of a case by
17 the judge, and they did reverse that and did remand that
18 case for a new trial, Your Honor. So, this is a very
19 strong comparison to that.

20 We are not saying it's not a good statute. We
21 understand it's on the, it's on the books here, but any
22 mention of corroboration for a, for a witness's testimony,
23 specifically in a criminal sexual conduct case when dealing
24 with the victim, when there is no other supporting evidence
25 that could lead somebody to determine guilt, that would be

1 in these situations a comment on, on facts.

2 Your Honor, we would also argue that it violates Mr.
3 Stukes's equal, equal protection rights. Because this is a
4 criminal sexual conduct case and because the statute only
5 applies to certain laws in this state, he is being singled
6 out, as is every defendant who is charged with these, with
7 these types of crimes. They're singled out. They're made
8 different than every other person who's ever charged with a
9 criminal offense in the state.

10 Armed robbery, murder, kidnapping, there is never a
11 specific, a detailed charge addressing one witness's
12 testimony over another, and that's what this statute does.
13 It's, it pulls out and it sheds -- it puts more weight on
14 Misty Shealy in this case, Misty Shealy because she is --
15 was, was the victim. And, Your Honor, it would be telling
16 the jury separate from the other witnesses called during
17 this case that they don't need to support her testimony.

18 Your Honor is going to read a charge to the jury that
19 is going to talk about credibility. It talks about
20 witnesses as a whole, and you're going to tell the jury,
21 we're aware that you're going to tell them that they can
22 believe some of what a witness says, none of what they say,
23 or part of what they say.

24 There is no justifiable reason to have one person
25 separated from the group because that, that causes more

1 attention to be called to that witness's testimony, and the
2 jury could be led to believe that there is some special,
3 special standards that they need to hold this person to.
4 So, that does put Mr. Stukes at a disadvantage. He is no
5 longer equal to other people charged with criminal offenses
6 in this state. So, it does violate his legal protection
7 laws -- protection rights as well, Your Honor.

8 So, Judge we'd -- our position on this, we would ask
9 you not to include it in the charge. We would not be
10 saying -- we would like the solicitor to be barred from
11 mentioning it. We do understand they have the right to
12 tell the jury what the law is. So, if Your Honor would not
13 be -- would be inclined to allow them to mention it but not
14 include it, that specific language, in the statute, to use
15 your, your general jury charges on witness credibility, we
16 think that reaches the same -- that covers the same aspect
17 of witness credibility. It explains to the jury what
18 they're required to do when weighing whether or not they
19 believe a witness.

20 We do not feel that it's appropriate to separate Ms.
21 Shealy out from the group of witnesses that were called,
22 and that would be putting Mr. Stukes at a disadvantage in
23 this case with the violation of equal protection. And it
24 also is our position that it is an impermissible comment on
25 the facts.

1 THE COURT: All right. Any response?

2 MR. GOLDBERG: Yes, ma'am. Thank you. Obviously, it
3 is our position that it is appropriate for you to charge to
4 the jury that the testimony of the victim need not be
5 corroborated in these types of prosecutions pursuant to the
6 statute 16-3-657. I will turn your -- and I'm sorry I
7 don't have an extra copy -- to *State vs. Hill*, 397 SC 280.
8 That's a Court of Appeals case out of Richland County. It
9 was decided in 2011 which deals precisely with this issue.
10 In that case, it was charged. The court did uphold the
11 charging of that as being proper.

12 They go through detailed analysis of this issue,
13 citing *State vs. Rayfield*, 369 SC 106, a 2006 case. Again
14 same situation where the issue is whether or not to charge
15 this statute. In their analysis, the court went on to say
16 that the state had the burden of proving the defendant
17 guilty. As long as the judge made it clear in charging
18 this particular statute, that it was the state's burden of
19 proof that the jurors were the sole and exclusive judges of
20 the facts of the case. That the court was not allowed to
21 comment or have an opinion about the facts of the case, and
22 that it was the responsibility of the jurors to assess the
23 credibility of witnesses. That if all of that is done,
24 then it is not impermissible comment on the facts by the
25 judge.

1 They go on to say that the legislature has decided
2 that this is appropriate not only for the judge, but for
3 the jury to be informed of this particular situation, the
4 emphasis added on that comment about not only to the judge
5 but to the jury.

6 But further, the court goes on to say reversible error
7 on its own when the instruction is not unduly emphasized,
8 which obviously if Your Honor read it one time, then put
9 those other caveats about how you're not allowed to comment
10 on the facts, and that's the job of the jury, there is no
11 unduly emphasis on that.

12 And additionally, there would not be -- I know there
13 was concern in that case as to whether the prosecutor put
14 an undue emphasis on it in opening and closing. It wasn't
15 even mentioned in the opening. We didn't even bring it up
16 obviously, and there's not going to be an undue emphasis on
17 it in closing. Yes, it would be mentioned in that we would
18 be informing the jury of the law in this state as it
19 currently stands. But there will not be an undue emphasis
20 on it so that -- so as to draw so much attention to it that
21 it would make it improper. And as a result, we do believe
22 that it is appropriate that you charge it to the jury.

23 MS. PINNOCK: Very briefly. Your Honor?

24 THE COURT: Okay.

25 MS. PINNOCK: Going, going back to the case that the

1 solicitor just mentioned, *State vs. Rayfield* is in our
2 memo. The court did say in that, in that case that you're
3 not required, the trial, the trial judge is not required to
4 charge the statute. Any jury charges are in your
5 discretion as the trial judge in the case, Your Honor.

6 Looking at the -- looking at your, your charge for
7 witness credibility, I mean, the first line in the section
8 talks about witness's testimony -- I mean, the victim's
9 testimony. If that's not -- I mean, it's my position
10 that's drawing attention to it.

11 The solicitor is always going to put up a board with
12 the statute on it. They're going to tell the jury what it
13 is. It'll already be in their minds if you allow them to
14 present it to the jury.

15 Our concern even, you know, with how it is worded as
16 of right now with what Your Honor has provided us, it is
17 unduly influenced in the charge.

18 THE COURT: That was the way that they had it in --
19 that it was in *State vs. Hill*. I, I think it came from the
20 last case, and I took it exactly the way -- and the words
21 are exactly the same as what Judge Childs had in her
22 charge. So, it's -- and this is what they are saying that
23 the -- that it was not unduly, an undue emphasis on it.
24 So, that, I mean, that's where the location of it went.

25 If there's some other place that you want me to --

1 think that we could stick it there and it wouldn't be as, I
2 guess you -- as much emphasis on it, I mean, I can do that
3 also. But I did it exactly as the case law stated, and
4 that was the most recent case law from 2011.

5 MS. PINNOCK: Yes, ma'am, and I would have made the
6 motion in *State vs. Hill* also, but ---

7 THE COURT: Apparently somebody did.

8 MS. PINNOCK: Yes, ma'am.

9 THE COURT: I don't know who tried *State vs. Hill*.
10 Y'all probably do.

11 MS. PINNOCK: Yes, I know.

12 THE COURT: Somebody from your office, probably
13 somebody from yours, but that's what I did. I took it. I
14 mean, I did it just as they stated in there.

15 MS. PINNOCK: Yes, ma'am. I would, we would just ask,
16 based on what we, what we laid out, was included in the
17 memo that I believe was made part of the record ---

18 THE COURT: Yes. Was it made part of the record?
19 Okay.

20 MS. PINNOCK: --- in your discretion as trial judge,
21 you remove it based on all our previous...

22 THE COURT: All right. All right, I'm going to leave
23 it in there, and I'll leave it there where it is. And like
24 I said, I did that the last time as it was stated in the
25 case, in the cases that came down in the court of appeal.

1 (A PAUSE.)

2 THE COURT: But any -- so, I am going to leave it in.
3 I'll leave it right there. Is there anything else in the
4 charge? Y'all want to take a look at it tonight?

5 MS. ASHTON: Your Honor, we would ask you to charge
6 *State vs.* -- and I'm sure I'm to butcher this -- *Kornahrens*
7 as it relates to burglary. They've made a big issue with
8 several witnesses about how there was no forced entry, but
9 forced entry -- or proof of forced entry, but that is not
10 required under the statute should they accept the defendant
11 entered without consent.

12 THE COURT: I think the one in the bench book goes
13 into that. It says that.

14 MS. ASHTON: Yes, it does, Your Honor. It's just in
15 the context about how a small, like the smallest of entry
16 is still -- still constitutes a burglary. So, it's in a
17 different, different context than your charge is. They've
18 just shown the photo of no evidence of forced entry, and
19 that's not the law of burglary in the first. It's just the
20 defendant entered without consent.

21 MR. SHEALEY: And we think your standard charges are
22 more than appropriate on this issue. And to be honest, if
23 they're going to find him not guilty on burglary, they're
24 going to find him not guilty of everything else, too. I
25 don't think the issue of the uniqueness of a burglary issue

1 could be different. And so we would just ask you go along
2 with your normal, standard charges.

3 THE COURT: I'm just going to charge what's in the, in
4 the bench book and leave it at that. Did y'all have a
5 chance to look at the verdict form?

6 MR. SHEALEY: We have it. Unless something comes up,
7 I think it pretty -- it looks fine.

8 THE COURT: All right. All right. So, we will start
9 promptly at 9:30 in the morning.

10 MR. GOLDBERG: Yes, ma'am.

11 (WHEREUPON, THE CASE IS AT EASE.)

12 FRIDAY, JULY 27, 2012

13 (COURT RESUMES AT 9:57 A.M.)

14 THE COURT: We ready to bring them in?

15 MS. PINNOCK: Yes, ma'am.

16 MR. GOLDBERG: And, Your Honor, the state is going to
17 waive opening and just with the facts.

18 THE COURT: Okay.

19 (THE JURY ENTERS AT 10:00 A.M.)

20 THE COURT: All right, good morning, ladies and
21 gentlemen the jury. I trust that you had a restful
22 evening.

23 At this time, we will begin with closing arguments.
24 We will hear first from Ms. Pinnock on behalf of the
25 defendant, and then you will hear from Mr. Goldberg on

1 behalf of the state.

2 I ask that you pay close attention to them and
3 following that, I will give you the jury charges as to the
4 law, and then you will be able to begin your deliberations.

5 All right. Yes, ma'am.

6 MS. PINNOCK: Please the court, Your Honor?

7 Good morning. When I was in school, my mentor, one of
8 my favorite professors, used to tell me that the scariest
9 thing for a young lawyer is that long walk from that table
10 to standing right here. And he would tell us that honestly
11 because he said there's a whole bunch of stuff you can fall
12 over: the microphone cords, your own two feet, nothing at
13 all. It's very long, lonely walk.

14 But today I have disagree. With this case, I have to
15 disagree. I couldn't wait to get up here and have my
16 chance to talk to y'all. I could not wait, and if I wasn't
17 wearing these heels, I probably would have walked a little
18 bit faster. But this is the only chance that I have in
19 this whole week that you sat here to tell y'all why Melvin
20 Stukes did not rape Misty Shealy.

21 The solicitor is going to get the chance to come up
22 after I, after I finish. He is going to have the last
23 word. He is going to try to convince y'all of Melvin's
24 guilt. He's going to go over all this evidence they say
25 they've shown you this week, and he is going to try and

1 convince you of Melvin's guilt.

2 But you are all rational people, and we've been
3 watching you. We know you've been paying attention. You
4 know what you have seen in here; you know what you have
5 heard in here. And even after he gets up here and tries to
6 tell you horrible things about Melvin, you know what you've
7 seen. You know what you've heard. Now you know that, you
8 all know that Melvin's not guilty.

9 Now, I'm not going to go back through every single
10 witness that you heard. I'm not going to go back through
11 every single thing that you heard today -- or this, this
12 past week, but there are very important witnesses in this
13 case.

14 This is a rape trial. It's criminal sexual conduct in
15 the first degree. It's burglary in the first degree. They
16 sound horrific. They are terrible crimes. Single women
17 who live by themselves know that is one of the worst fears
18 is that somebody is going to break into your house and
19 sexually assault you. It's terrifying.

20 But this case, what you heard from Misty Shealy is an
21 insult to our system. It is an insult to the real victims
22 in this state because what you've heard in here are lies.
23 What you've heard in here is a story that was made up to
24 protect herself, to protect whoever she was in a
25 relationship at that time, which we'll get back to. The

1 rape did not happen.

2 Now, my mom always told me the best thing to do in
3 life is tell the truth. Always be honest. Be truthful to
4 your parents, your siblings, your friends, your neighbors,
5 even strangers because telling the truth is the easy part.

6 Lying is wrong for two reasons. First, you shouldn't
7 lie to people. And secondly, when you tell a lie, you've
8 got to remember what you said. That's how people get
9 caught in lies. You change your story, you forget what you
10 said, and that's how you get caught.

11 I'm teaching my two year old to tell the truth. She's
12 two. So, when she's an adult, when she's a teenager, when
13 she is a mother herself, she'll teach her children the same
14 thing: tell the truth because then, honestly, she won't
15 have to remember what she said to keep her story straight.
16 And everybody knows parents always have a way of finding
17 out. You always slip up on something. Tell the truth.

18 Now, Misty got on the stand Tuesday afternoon. She
19 got on the stand. She put her hand on the Bible. She
20 swore under oath that she would tell the truth, the whole
21 truth, and nothing but the truth. And this isn't the first
22 time she had been through her, her recollection of what
23 happened, and y'all saw her. You saw her when she was
24 being questioned by Solicitor Goldberg. She cried. You
25 could barely hear her at times. Very, very, very

1 emotional. Very, very, very sympathetic.

2 But when she was confronted with the details of what
3 did not make sense in what she said, that whole personality
4 changed. It changed because she was confronted with what
5 she said.

6 I'm going to talk to you a little bit about what she
7 did tell you. She told in 2004, May 10, 2004, she was
8 walking around her apartment and getting ready for work.
9 She fixed her hair. She was putzing around. She went to
10 her bedroom. She listened to some music. At that point,
11 she grabbed her keys, turned the lights off, and was
12 heading to the door to go to work. That's what she told
13 you.

14 She told you she then heard a knock at the door.
15 That's what she told you. She grabbed some keys, turned
16 her lights off, and there's a knock at the door. At that
17 point, she said that she opened the door.

18 She tried to explain away because she knew it was an
19 issue. Why didn't you look? You are a single woman living
20 by yourself. It's 10:00 at night. That's a picture of her
21 door, apartment [REDACTED] at Park Apartments. Why didn't you
22 look? She didn't look.

23 A knock at the door in complete darkness. All of her
24 lights were off, and anybody who's ever lived in an
25 apartment or a house, when you come in the front door,

1 there is a light switch. So, you're walking to your door
2 in complete darkness, you bypass the light switch, and you
3 just open the door.

4 And she tried to say something about her friends came
5 over as she was getting ready for work on a regular basis.
6 That doesn't makes sense. If you're going to work, does it
7 make sense that your friends would just always come by when
8 you're getting ready to go to work? So, you didn't think
9 anything of it? That doesn't even make sense.

10 And then she tells you that she can't see who's
11 standing outside the door. It's dark in her apartment.
12 She had turned the outside light off. She was blinded by
13 her neighbor's porch light. That's what she told you,
14 blinded by her neighbor's porch light because her lights
15 outside her door had been turned off.

16 I asked her. She told you that's the hallway leading
17 to her apartment. That light's not on at the neighbor's
18 house. There are no lights to turn off. She didn't turn
19 off her outside light.

20 I showed her a picture of her door. I said Ms.
21 Shealy, show us where the light is that you turned off.
22 She told you she had -- I must have got that wrong.

23 She must have got it wrong. The reason she could not
24 see this person, this large, broad silhouette of a man
25 outside her door at 10:00 at night who forced his way in

1 and sexually assaulted her, she must have got that wrong.
2 She lived in that apartment for at least a year. She
3 didn't get it wrong. She made it up. She made it up.

4 I asked her very clearly. So, you -- she testified
5 that when the door opened, when she opened the door, she
6 was grabbed with her right hand -- with the person's right
7 hand and punched with the left hand. Grabbed with the
8 right, punched with the left. That's what she told you.

9 This is where she starts to really flip flop. You
10 remember. You heard her. May 11, 2004, her statement to
11 Deputy Hicks: He grabbed in the throat with his left hand
12 and hit me with his right hand.

13 That's what she said. At that point, she says she's
14 falling backwards over the couch. Her face is being
15 pushed, her upper body is being pushed down into her couch,
16 feet from the door, feet from the door. This is what she
17 told you. This large, broad silhouette of a man grabbed
18 her with his left hand and hit her with the right hand, and
19 then she blacked out. As her face is being pushed down,
20 her upper body is being pushed into the couch, she blacks
21 out.

22 She came up with the story of being unconscious,
23 unconscious during an assault, a sexual assault where she
24 told Investigator Godfrey and she told you all that the
25 assailant's penis had to be on the larger side because it

1 hurt. It hurt. That's what she said, and she's telling
2 you she's unconscious. She came to, and she realized her
3 pants were down. Nothing about the sexual assault. No
4 details.

5 The only details that she can tell you, she can't even
6 keep straight. It is extremely, it's very convenient to be
7 unconscious while somebody is raping you from behind
8 because then you don't have to tell details.

9 The only thing that she was able to tell you, the only
10 thing she reported in 2004 about her assailant: large,
11 broad silhouette of a man wearing gloves. She noticed the
12 gloves because she felt it on her skin. And he may or may
13 not have been wearing a hat. She looked at him long enough
14 to know he may or may not have been wearing a hat while she
15 was blinded by her neighbor's porch light.

16 At some point, she wakes up. I believe she told you
17 she lay, lay there for a few minutes because she didn't
18 know where this person was. And this is after she's laid
19 out, laid out on the, on the -- over the side of the couch.

20 I asked Ms. Shealy. You said that you reached back
21 with your left hand, with your left hand and tried to push
22 this person off. That's what she told you. There's a
23 reason I asked that question. That's the couch. Big
24 cushions. Somebody is laying on top of you with their full
25 body weight holding your body down with theirs. It's got

1 big cushions on her left side.

2 I asked her where her right arm was. She said he was
3 holding that down, too. So, during the sexual assault,
4 this brutal, vicious sexual assault, somebody's holding her
5 face, holding her upper body, holding her left arm, holding
6 her right arm, and sexually assaulting her at the same time
7 flat out on the couch. That cannot happen; it cannot
8 happen. It's not physically possible.

9 So, she told you after the assault. What's the first
10 thing she did? She let her dog out. After she laid there
11 to make sure the person was gone, she let her dog out.
12 Then she sits on her couch. Doesn't call 911, doesn't call
13 her mom, doesn't call whoever she was in a relationship at
14 that time. Doesn't call any of them. Sits there for at
15 least an hour and then drives thirty, forty minutes to
16 Hopkins, to Hopkins to an acquaintance.

17 I can't even call Jackie Bruton a friend. You heard
18 her. She said she didn't know why Ms. Shealy showed up at
19 her house because they weren't close like that. And when
20 she got to the house, she refused to go to the hospital.
21 She refused to contact law enforcement. Ms. Bruton had to
22 take her.

23 Now, you're viciously and brutally sexually assaulted.
24 You don't know if this person is carrying a disease. You
25 don't know if this person wore a condom. You don't know

1 anything about this person, and you refuse to go to the
2 hospital. You refuse to file a police report. You have to
3 be convinced. This rape did not happen.

4 When Ms. Shealy was finally convinced to go to the
5 hospital, she was seen by Nurse Sharpe. You heard her
6 testify. She did the rape exam on her because of what
7 Misty told her when she got there. That's what she told
8 her when she got there.

9 They did a vaginal exam. They used wet mounts, the
10 Q-tips that they run on slides. They look on the
11 microscope. They check her skin for any sign of sperm of
12 bodily fluid, of anything. There was nothing, not a
13 redness, not a scratch, not an abrasion, no swelling in her
14 vaginal area, and this is a vicious, brutal rape. They
15 found nothing, nothing. That's because it did not happen.

16 These are medical professionals. There was a nurse.
17 She was seen by a doctor. Nobody saw anything, and they
18 looked. They collected her clothes. They sent them to
19 SLED for testing, and guess what? They found semen in her
20 panties. Melvin Stukes's semen was not found in the
21 vaginal canal like they said it was. It was found on the
22 panties.

23 But we told you that from the beginning. We told you
24 that he had had sex with Misty Shealy; we told you that.
25 So, thirteen witnesses later and a DNA expert, you all know

1 that they took this, this stuff from the hospital to SLED.
2 It wasn't contaminated. It wasn't changed. It wasn't
3 altered, and guess what? It matched Melvin. We've told
4 you that they had sex. We told you that. This DNA was
5 never an issue.

6 All these witnesses that are getting paraded in here
7 to testify about touching a box. Well, who did you give
8 the box to? I gave it to this person. It doesn't matter.
9 What matters is this fantastical, unbelievable story that
10 Misty Shealy told in May of 2004. It's almost so perfectly
11 set up, it's unbelievable.

12 Now, Deputy Hicks did take her statement. He took her
13 statement and he filled out a report. He's on military
14 leave. That's fine. They had his superior officer come in
15 and tell you what was in his report. Ms. Dyar asked him.
16 So, these reports are taken so you can refer to them, so
17 you can refresh your memory so when you come to court, you
18 can testify truthfully so you can remember what you
19 observed.

20 You can remember what you were told. He saw nothing.
21 There's a box on that report. You can check yes, you can
22 check no for any visible injuries. He checked no.

23 This is the responding officer, Richland County
24 Sheriff's Department responding to the hospital. The first
25 law enforcement officer to come in contact with Misty

1 Shealy is Deputy Hicks, and he checked no. Are there any
2 complaints of non-visible injuries? He checked no. He
3 talked to her; he looked at her. Law enforcement officer,
4 the first responding officer checked no.

5 But based on what she told him -- all of this comes
6 back to Misty, all of it. Based on what she had told him,
7 he contacted Investigator Richards. Now, Investigator
8 Richards, he is an expert in what he does. He went to this
9 apartment. He was told where this sexual assault happened,
10 and he looked for evidence. That's what he does, and he is
11 good at it.

12 If there was any evidence in this apartment on that
13 couch, on the floor, outside the door, he would have found
14 it. He used the Wood's light, that blue light. He used
15 black powder to look for prints. He looked for shoe
16 impressions. The man knows what he's doing, and if there
17 is anything to find in that apartment, in that area where
18 she says this happened, he would have found it, but he
19 found nothing, nothing.

20 I asked him. Did you go into any other room of the
21 house? It's a one-bedroom apartment. It's a living room,
22 kitchen, bedroom, bathroom. That is the extent of this
23 apartment, typical one-bedroom apartment. Did you go in
24 any other room to process anything, and he answered
25 honestly. He said no because this is where they asked me

1 to look.

2 I'll guarantee you one thing. If he'd went into that
3 bedroom, he would have found something on those sheets. He
4 would have found something on those sheets because that's
5 where they were. Nothing happened on this couch. Nothing
6 happened on this couch. If it did, he would have found
7 something.

8 Now, Investigator Branham was the lead investigator on
9 this case, another important person in this case. He is a
10 lead investigator in 2004. He had the opportunity to speak
11 to Misty. She didn't come to the first appointment, but
12 she came three days later, three days later May 14, 2004.
13 In three days, she's already getting it wrong. Three days,
14 she is getting it wrong. A vicious, brutal attack, three
15 days later she can't keep it straight: May 14, 2004,
16 grabbed throat with right hand and punched with left.
17 That's three days later.

18 You've heard a lot of questions about, oh, you know,
19 there's been a six-year gap between this statement and that
20 statement. There's three days, three days. She can't keep
21 it straight after three days. She can't remember somebody
22 hitting her in three days because the problem with a lie is
23 you got to remember what you said.

24 When Investigator Branham took that statement, he
25 asked some pictures be taken. He ordered pictures from

1 crime scene to be taken of her injuries. I showed you
2 these pictures. We're not running from these pictures.
3 She reported a vicious, brutal rape where she was grabbed
4 and punched. This is what she reported. Investigator
5 Branham wanted pictures. They order -- they, they want
6 pictures of -- this is what they took pictures of.

7 And another issue that cannot be kept straight; I said
8 Misty, where did he hit you? In my face. Misty, what side
9 of your face? Ms. Shealy, what side of your face? This
10 one. I even asked. She went like this. That's the left
11 side.

12 I believe Investigator, Investigator Branham spoke to
13 one person, to one person other than other law enforcement,
14 asking for pictures or going to the scene, which they did.
15 They did what they were asked to do. The only person that
16 he talked was Misty Shealy. The only person he talked to
17 in his investigation of a vicious, brutal rape is Misty
18 Shealy.

19 This assault happened, according to her, within feet,
20 one or two feet from her front door, one or two feet from
21 her front door. Anybody who has lived in an apartment that
22 has hallways knows that you hear everything that happens
23 outside your apartment. If you have neighbors, it echoes.
24 You hear it. It can be 3:00 in the morning, and you're
25 woken up by somebody's door closing. If she says she

1 screamed, why didn't they knock on a door? If she says she
2 was being attacked, why didn't they knock on a door?

3 All he did was talk to her; that's all his
4 investigation was. That's all he did. And then the case
5 went into cold case. I'm not very -- I'm not too much
6 concerned with that, but he didn't ask. He took her word,
7 and now they want you to take her word.

8 But the problem with a lie is you got to remember what
9 you said. You can't change your story, and this was not
10 six years later. This was three days later. Those
11 pictures were not taken six years later. They were taken
12 three days later, and according to her, if you believe her,
13 they just took pictures of the wrong side of her face. But
14 that's not, that's not what happened. They -- we're not
15 blaming law enforcement for messing up on pictures. That's
16 what she told them.

17 Now, Investigator Godfrey gets the case in 2010. He's
18 looking into it, and I give him credit. He talked to more
19 people in the few months he had it in 2010 than Branham did
20 through the six years leading up to that. He talked to her
21 family, trying to find her. He was in contact with SLED.
22 He was in contact with other law enforcement. He talked to
23 more people in those few months when he first got the case
24 than Investigator Branham did when she reported initially.
25 And when he finally found her, he went and talked to her.

1 He found her. She was in the Orangeburg Detention Center.

2 He and another investigator went down there and got a
3 statement, and she gave another statement in 2010. That is
4 six years later. She changed her mind again. 2010, she
5 was grabbed with her left hand, punched with her right
6 hand, hitting her on the left side of her face. She
7 changed her mind again. Problem with a lie is you got to
8 remember what your said.

9 Now in 2010, that's when the profile came up. They
10 figured they were looking for Melvin Stukes, so they went
11 and arrested him. He was at his sister's house. He
12 doesn't put up a fight. He doesn't tell them I'm not
13 Melvin Stukes. You looking for me? Okay. Here I am.
14 What's going on?

15 They tell him that they have arrest warrants for
16 criminal sexual conduct and burglary first from 2004. And
17 the Fugitive Task Force, I can't remember his name. I'm
18 terrible with names. He testified that he read him the
19 warrant. He read him the warrant that said there was a
20 sexual assault on Misty Shealy, and Melvin said he didn't
21 know Misty Shealy. He didn't know a Misty Shealy.

22 They take him to the jail. He asked to speak to
23 investigators. He asked. He asked to see the
24 investigators. So, of course they set it up for him.
25 Investigator Godfrey told you he wanted to give him the

1 chance to explain. He wanted him to have the chance to
2 explain why his semen would be found in somebody's panties,
3 give his side of the story.

4 The problem with that -- I'm sure he was interested in
5 what he had to say, but the problem is they didn't arrest
6 Melvin until May. They had warrants for his arrest in
7 April. The truth is they didn't care what he had to say.
8 They were going to arrest him and charge him regardless of
9 what he said because he told them, he told them in 2010 he
10 did not rape anybody. But guess what? They still took
11 him to jail. In 2010, he told them I didn't break into
12 anybody's house, but they still took him to jail.

13 In Investigator Godfrey's words -- it was very
14 important about what he said. He told them it didn't
15 happen. How important was it to the State of South
16 Carolina that he said he did not do it? It wasn't
17 important because they were going to arrest him anyway. He
18 told them, and he's sitting on trial. His life is on the
19 line. It wasn't that important. They were going to arrest
20 him anyway.

21 They made a big deal, a huge deal. Well, he said he
22 didn't remember her name. He told you he didn't even know
23 her name. She probably didn't know his either. He told
24 you that. Just because you don't know somebody's name
25 doesn't mean that you raped them.

1 He said he didn't recognize the picture. Is it crazy
2 to think, is it crazy to think that after six years, after
3 six years a random hookup -- and it happens. That's part
4 of life. It happens every day. A random hookup, is it
5 crazy to think that he wouldn't recognize somebody's
6 picture as people are sitting there telling you we know you
7 assaulted her. We know you did. Your DNA's there. It had
8 to be you. There's no other explanation. Tell us how it
9 got there if you didn't do this. All that going on, is it
10 crazy to think that you couldn't remember somebody's
11 picture after six years? It's not crazy to think.

12 Investigator Godfrey actually said in his own words
13 when he talks to people, he's had people -- let me get this
14 right. He's had people who remembered things in more
15 detail at a later time. That's what he said. That's what
16 he said because that's the truth.

17 If you sit there, if you think about something, yeah,
18 you can come up with more details. If somebody's telling
19 you you did this, you did this, is it crazy to think that
20 after you're now being accused by two very trained, very
21 well trained investigators, that you have time to think
22 about what happened? Who are they talking about? Who is
23 this person? It's not crazy to think because this six year
24 lapse, made a big deal out of it.

25 Almost every witness, they asked about this six year

1 lapse. It was six years for Ms. Shealy; it was six years
2 for Melvin. So, they want you to crucify him because he
3 could not remember after six years.

4 We even asked, I asked Ms. Shealy on the stand -- and
5 keep in mind after putting her hand on the Bible and
6 telling, promising, swearing to tell you the truth -- if
7 she was in a relationship. I asked her. Nothing to hide.
8 Just asking a simple question. She told you no. She never
9 said that.

10 If that's true, then she's saying Investigator Godfrey
11 made it up. He wouldn't put anything in that report that
12 he made up. He wouldn't have done that. He takes those
13 reports to be accurate. He takes them to be detailed.

14 And something as simple as were you in a relationship,
15 she lied about. That's what she did. She got up here and
16 through all the crying, she starts talking about my life
17 changed after that. I turned to drugs. I ended up getting
18 arrested, making excuses for her criminal record, making
19 excuses for it. I asked her very directly. So, you're
20 saying the first -- when you started using drugs, the first
21 time was in 2005. That would be after May 2004 because
22 that's when she was going through her hard times. She said
23 yes.

24 That is a lie. She told the nurse at the hospital in
25 May of 2004 that she already smoked weed. She lied.

1 Little things. The problem with a lie is you got to
2 remember what you said.

3 Now, Investigator Godfrey testified. He tried to
4 explain away why she wouldn't remember her relationship.
5 That's a relationship. That's not somebody you meet, you
6 hook up with, you have sex with, and you go about your
7 business. She was in a relationship according to their
8 lead investigator. Not according to her, according to the
9 lead investigator because that's what she told him. He
10 said, he told you yesterday, oh, she didn't remember it
11 because it wasn't, it wasn't significant.

12 She didn't remember it because it wasn't a significant
13 relationship. You remember who you're in a relationship
14 with. She can't remember because it wasn't significant,
15 and they want you to crucify Melvin because he couldn't
16 remember.

17 Make all the excuses in the world for not remembering,
18 for changing your story, for things not adding up, but what
19 it comes down to is she can't keep it up. She can't.

20 Six years. The only person whose stance, whose
21 position, whose statement about whether or not this
22 happened, the only person who has said that they did not do
23 anything, I did not rape anybody, is Melvin. From the two
24 of them, the only two people who could tell you if there
25 was a rape, the only one who has never, who has never

1 changed, who's never told a lie about what happened is
2 Melvin Stukes. He said six years later, he said two years
3 ago when they took their statement, and he told
4 Investigator McNeely in 2011 he did not rape anybody. But
5 they didn't care because they were going to arrest him
6 anyway.

7 They planned to do it, and they did it. They did not
8 care. They'd already made their minds up after talking to
9 her. They knew there was no forensic evidence; they knew
10 there was no physical evidence. They knew there was
11 nothing found in her apartment, but she said it happened,
12 and they want you to believe her. The problem with a lie
13 is you got to remember what you said. You have to or it
14 all falls apart.

15 I want y'all to remember the ugly brown box. Mr.
16 Shealey stood up here with the ugly brown box and asked you
17 to put your emotions, your passions, your prejudice in this
18 box. This lid has stayed shut this entire week; the lid is
19 shut and you can't open it until this trial is over. You
20 can't take what's in this box into the jury room with you.
21 You can't be swayed by tears and tissue. You can't be
22 swayed by it. That's not your job.

23 Your job is to listen. Your job is to take what you
24 heard on this stand, take the evidence that you've seen.
25 The solicitor had these pictures, everything else we've

1 showed you already. Take what you can see; take your
2 memories of what you've heard. It's your job, it's your
3 job to decide if they've met their burden. Not on your
4 passions, not on your emotions. Based on what you've heard
5 in this courtroom, what you've seen in this courtroom, and
6 apply it to the law as a judge gives it to you. That's
7 your job.

8 Now, the State of South Carolina, this table, these
9 four corners, everybody who was paraded into this
10 courtroom, they hold the burden of proof. What that means
11 is Melvin is still sitting there. This morning he's still
12 sitting there an innocent man. He is innocent from the
13 time they arrested him up until today. He is still an
14 innocent man. They are the ones that have to present
15 evidence -- not based on your emotions -- evidence to take
16 somebody's innocence away from them. He is still an
17 innocent man.

18 He is an innocent man because what she said was a lie.
19 She told a lie. It has snowballed out of control, and
20 Melvin's life is on the line based on lies.

21 The judge is going to tell you what the definition of
22 reasonable doubt is. The state has to prove their case
23 beyond a reasonable doubt. That is an extremely, extremely
24 high standard. We have that standard, standard because
25 criminal cases, they are special cases. You can't convict

1 somebody because, oh, I think they might be guilty. You
2 can't do that. It's beyond a reasonable doubt, and what
3 that means in simplistic terms is if you don't hesitate.
4 One second's hesitation, if you hesitate for one second,
5 just one when you're deliberating on this case, they have
6 not met their burden, one second of hesitation. You have
7 got to be convinced that with all of the change in the
8 stories, with all the things that just do not make sense,
9 and of the evidence that's not there. They've got to
10 convince you so you don't hesitate to take away Melvin's
11 innocence.

12 Based on what you've heard in here, he's still
13 innocent. He said it from the beginning: I didn't do this.
14 And when you're back there and you're deliberating, you're
15 going to have a pencil. You have to all think about this
16 case individually. You have to discuss it individually,
17 and you meet the conclusion as a group. When you fill out
18 that jury form after you all discuss everything you've
19 heard, everything you've seen, you've gone over the number
20 of different stories that have been told, when you fill out
21 the form, you can't change it. You have to be firmly
22 convinced. No hesitation because when the form is filled
23 out, you can't change it.

24 Now, the solicitor probably going to get up here. I
25 don't know what he's going to say. Melvin gave a

1 statement. I've talked about it a little bit. It's in
2 evidence; you can read it for yourself when you get back
3 there. He gave a statement in 2010 to Investigator
4 Godfrey, and he said he did not do it.

5 They asked him: Do you know the woman, Misty Shealy,
6 in the picture? They've been saying this whole time oh, he
7 said he didn't know her. Said he didn't know her. What he
8 told them, and y'all can read it. Everybody up here,
9 everybody here can read. You can read it for yourself.
10 What he says is: No, I had not seen that woman, that woman
11 before that I remember. He doesn't say no, I'd never seen
12 her before. He said he didn't remember. He said no, as
13 far as he could remember six years later. He doesn't say
14 no. Read it for yourselves.

15 They asked him: Have you ever consensually had sex
16 with Misty Shealy? He said: Not to my knowledge. He
17 didn't say no. He could not remember. It doesn't say no.
18 Read it for yourself. Don't let them get up here and tell
19 that he said no because he didn't.

20 This entire time since May of 2010, he said he did not
21 rape anybody. He told them that, and they didn't care
22 because his statement was so important to the investigators
23 in this case. He told them, and they did not care because
24 they had already had their minds made up.

25 This rape did not happen. People lie for reasons,

1 some reasons that don't make sense to people. Some people
2 lie for no reason at all. Is it crazy to think that
3 somebody that's in a relationship who cheats tries to cover
4 it up so they don't hurt the person that they're with? Is
5 that a crazy thought? It happens every day. People lie to
6 protect themselves. People lie to protect the ones they're
7 in relationships with. You don't have to agree with it,
8 but it happens.

9 Please keep in mind what you were told about this
10 attack, a brutal attack. Ms. Ashton said it herself, a
11 brutal attack in apartment [REDACTED]. There's no evidence of a
12 brutal attack. There's not. There's not.

13 She didn't have bruises. I asked the nurse. Were
14 there any bruises on her arms and her legs because everyone
15 knows it's your animal instinct to fight back. It's
16 instinct to fight back. I refuse to accept that somebody
17 was unconscious during a brutal, vicious attack.

18 We can't even keep the details straight that she came
19 up with because a problem with a lie is you got to remember
20 what she said. She started changing her story three days
21 later.

22 Melvin Stukes did not rape Misty Shealy. He's been
23 tell -- saying that from the beginning. Said that
24 yesterday. He didn't have to get up here and talk to
25 y'all. He didn't have to. He could have sat there because

1 he is not required under the law to testify. But he told
2 them in 2010 he didn't do it. They didn't care, so he got
3 on the stand, and he told y'all yesterday that he didn't do
4 it. Someone needs to listen to him because they didn't
5 care. They were going to arrest him anyway. They took out
6 the warrants a month before they talked to him. They
7 didn't care. He didn't rape her; he did not rape her.

8 Hold them to their burden. Hold them to the evidence
9 that they presented to you. Don't get, don't get lost in
10 all the witnesses they piled in here. DNA, it doesn't
11 matter. 410 quintillion, how many zeros is that? It does
12 not matter. Who touched the panties? It doesn't matter.
13 Only two people who could tell what happened between them
14 is Melvin Stukes and Misty Shealy.

15 DNA was never an issue. Don't get lost in the DNA. I
16 don't care how many zeros and what the probability is that
17 it's somebody else because he told you he had sex with her.
18 He told you that, so fifteen zeros. It's him. They have
19 confirmed what we told you from the beginning. It's him,
20 but he told you. He told them. He told that investigator
21 -- trained, experienced -- that he didn't rape anybody.
22 And from what you've heard today, this week, from what
23 you've heard this week on that stand, it supports that it
24 did not happen. He didn't rape anybody. She lied. Don't
25 forget about the ugly little brown box. The rape didn't

1 happen.

2 THE COURT: Thank you. Is that your board?

3 (A PAUSE.)

4 THE COURT: Thank you.

5 Yes, sir, Mr. Goldberg.

6 MR. GOLDBERG: May it please court?

7 THE COURT: Yes, sir.

8 MR. GOLDBERG: Counsel.

9 No gimmicks, no tricks, no little stories, no life
10 lessons from anybody's grandma, professor. You're not
11 going to hear any of that from me today. All you're going
12 to hear from me today is what I submit the evidence in this
13 case has already shown and what you already know: that
14 Melvin Stukes raped and burglarized Misty Shealy.

15 Misty Shealy is a daughter, a sister, a friend,
16 granddaughter, co-worker, and at one time a responsible and
17 trusted employee, and unfortunately everything changed for
18 her. Her apartment was entered without her consent. Her
19 vagina was penetrated without her consent, and her body was
20 left slumped over the side of the couch like a piece of
21 used garbage. Pants and her underwear pulled down to her
22 ankles, battered, a little bruised, and in and out of
23 consciousness. No gimmicks. No tricks. Just the cold
24 reality of what happened on May 10, 2004.

25 Now, counselor has told you repeatedly to use your

1 common sense as you think about this case. Couldn't agree
2 more. Couldn't agree more. You take all the little pieces
3 of information you've been given; you put it together as a
4 whole. You look at the facts. You look at the evidence,
5 and when you do that, you're going to see what this case is
6 all about, and this case is about holding people
7 responsible. It's about holding Melvin Stukes responsible
8 for his actions.

9 And they were his actions, mind you, his choices and
10 his words to investigators and his words on the witness
11 stand. Do not let yourself get distracted from the facts
12 of this case. He invaded the two most private places in
13 Misty Shealy's world, her home and her body, and he left
14 her there used. He left her there used. Cold, forceful,
15 and intentional.

16 This case isn't about her neighbors and whether or not
17 they were talked, or the lighting in the hallway, or which
18 hand was used to punch her versus which hand was used to
19 grab her. It's not about who she told right away after it
20 happened. It's certainly not about whether she smoked
21 marijuana a couple of weeks before the incident. Y'all
22 heard crack has been her problem since then. This case is
23 about holding Melvin Stukes responsible for his actions on
24 May 10, 2004, when he raped and burglarized Misty Shealy.

25 Now, Ms. Pinnock didn't really talk about the law at

1 all with you, and I just want to talk to you about it for a
2 few minutes. After I'm done, Judge Benjamin's going to
3 tell you what the law is in the State of South Carolina.
4 You take her word over mine if I don't get it right.

5 First charge, you all know: criminal sexual conduct
6 first degree. What are the elements of that? What did we
7 have to show you that that happened beyond a reasonable
8 doubt? Sexual battery with the victim. So, the question
9 is what is sexual battery. Well, that's easy. It's sexual
10 intercourse or any intrusion, however slight, into a part
11 of a person's body. No question there was a sexual battery
12 that took place in this case.

13 In order to be a CSC first, however, that sexual
14 battery has got to be accompanied by aggravated force,
15 which in this instance is physical violence of high and
16 aggravated nature. And I submit to you being grabbed
17 around the throat, being shoved into the couch to the point
18 that you're in and out of consciousness, that's aggravated.
19 That's physical force.

20 But even if you don't think it was, you have another
21 alternative: sexual battery while the victim, while the
22 victim is also the victim of a burglary. And I'll get back
23 to burglary in a minute as to what that means.

24 The judge is also going to tell you about the law in
25 this state, 16-3-657 of the South Carolina Code of Laws,

1 and that statute says that the testimony of a victim does
2 not need to be corroborated in a criminal sexual conduct
3 case. That is the law in this state, and what that means
4 in simple terms, if the victim says that she was raped,
5 there doesn't have to be any other evidence for you, if you
6 believe her, to find a man guilty of the CSC. It doesn't
7 have to be corroborated. It can be her word versus his and
8 if you take her word, that's all it takes.

9 But I submit to you in this case, even though that's
10 the law, it has been corroborated. Think about it. She
11 said from day one in all the different statements that
12 we've gone through that she was punched the grabbed around
13 the neck. Yes, she said was one hand one time, one hand a
14 different time, but she said punched and grabbed.

15 Well, think about the first person that saw her that
16 night and her took to a hospital, Jackie Bruton, and what
17 she said. She saw a hand mark on her neck. She told you
18 that on the witness stand. Donna Sharpe, the nurse who
19 checked her out, and I'll go into her testimony more a
20 little bit later, she corroborated it, too. She said she
21 saw what looked like a hand mark on her neck and bruising
22 on her face.

23 Burglary first degree is the other charge that you are
24 presented. Again, entry into the dwelling. That's entry
25 into someone's home. She lived at apartment [REDACTED]. Without

1 consent. Her testimony was clearly that he was not invited
2 into the apartment. With intent to commit a crime therein.
3 In this case, with the intent to commit a sexual assault.

4 And there has to be an aggravated factor that goes
5 with it, and there's this whole list of things right here,
6 and it can be any one, and the two that would be drawn to
7 your attention when would be causing physical injury to a
8 person who's not a participant. Or in the alternative,
9 that the entering into the residence happened during the
10 nighttime hours. This happened about 9:45 at night. She
11 testified it was dark outside, nighttime hours.}

12 Ms. Pinnock alluded to this already. The burden of
13 proof on the State of South Carolina in regards to proving
14 the charges, proving Mr. Stukes is guilty of these charges
15 is proof beyond a reasonable doubt. The judge will tell
16 you that's proof, as Ms. Pinnock did, that leaves you
17 firmly convinced of the defendant's guilt.

18 There are few things in this world that we know with
19 absolute certainty. In criminal cases, the law doesn't
20 require proof that overcomes every possible doubt. It
21 doesn't have to be proof beyond any doubt or all doubt. It
22 has to be a reasonable doubt.

23 So, if based on your consideration of the evidence,
24 you're firmly convinced that the defendant is guilty, you
25 got to find him guilty. If you think there's a real

1 possibility he's not guilty, you give him the benefit of
2 the doubt, and you find him not guilty. Again, it's not
3 proof beyond any doubt. It's not proof beyond all doubt,
4 but a reasonable doubt, a reasonable doubt.

5 Let me give you an example. A person might doubt that
6 the sun's going to rise in the morning. That's not a
7 reasonable doubt.

8 Judge is going to tell you about direct versus
9 circumstantial evidence, the two kinds of evidence that has
10 been presented. Direct evidence: testimony of a person who
11 claims to have knowledge of a fact like an eyewitness.
12 Circumstantial evidence: proof of a chain of facts and
13 circumstances indicating the existence of a fact. There's
14 not difference between the two. The law treats them the
15 same.

16 The shortest example. Direct evidence, testimony by a
17 witness on the witness stand. Misty Shealy: what she saw,
18 what she observed, what she remembers. Circumstantial
19 evidence, testimony that can corroborate what happened to
20 her. The marks that are noticed on her body, the
21 observations about her demeanor as she's being interviewed
22 by all these people within the coming days, and I'll get
23 back to that. The point is the judge will tell you there's
24 no distinction between the two. Not greater weight of one
25 over other.

1 This whole long board, I'm not even going to go
2 through. It talk about the voluntariness of the
3 defendant's statement. I don't think there's any question
4 in this case that it was a voluntary statement. Nobody's
5 gotten up here and told you that it wasn't voluntary. Mr.
6 Stukes didn't tell you that. He didn't say he was coerced
7 in any way. Ms. Pinnock didn't say he was coerced in any
8 way. Everyone said he was cooperative.

9 He signed the paper ten times, however many it was,
10 and you'll see it on there. He never indicated he wanted
11 anything changed. I don't think there's any question that
12 it was a voluntary statement of what he said, and we'll get
13 back to his statement.

14 One more thing. She's going to charge you a number of
15 things, but one more thing that I want to give you a
16 preview of is the credibility of witnesses. Just another
17 way of talking about believability of witnesses. A couple
18 of things you can ask yourself about the witnesses that you
19 saw on that witness stand. What was their demeanor like
20 when they testified? Were they forthright and
21 straightforward with what they had to say, or did they
22 appear to be hesitant? Was it consistent, or was it
23 corroborated in any way?

24 Again, credibility of witnesses obviously is a key
25 issue in this case. Do you believe what Misty Shealy told

1 you on the stand? Better yet, do you believe what Melvin
2 Stukes told you on the stand? Do you believe their story?
3 And that's your job as the finder and the trier of facts in
4 this case. Judge Benjamin is the judge of the law, but you
5 are the judges of the facts.

6 This isn't anything new. It's nothing that you
7 haven't done in your daily lives. You could be at your
8 job. You could go to the water cooler, have a little
9 conversation with your coworker, and somewhere deep inside
10 of you, you're judging them a little bit. You're trying to
11 decide. Is what my coworker telling me really what he did
12 last night? Or where they went on their vacation, is that
13 really believable? That really happen?

14 You've got experience doing this. You know what you
15 saw, and you know what you believe on that witness stand
16 from those witnesses.

17 Let's talk about the witnesses a little bit. Ms.
18 Pinnock spent a lot of time talking about Misty's testimony
19 and the statements that she's given over the years. She
20 told you that back in 2004, she was a pretty normal
21 twenty-three year old girl. High-school graduate. Grew up
22 in Swansea. Had a good job at Verizon. Got promoted at
23 some point, and things were going well for her. Then she
24 told you about how everything changed in a split second.
25 In a split second, when she opened that door, everything

1 changed.

2 She got a knock at the door. She opened it. She
3 didn't look through the peephole. She had just cut off the
4 lights. She's ready to roll. She's ready to get to work
5 and get to her job. Gets a knock at the door, and she just
6 opened the door, and when she looks out there, she said she
7 saw the silhouette of a man.

8 There was as a lot questions about the lighting. I'll
9 let y'all figure it out. Look at the picture when you go
10 back there. Look at where that light is compared to the
11 door of her apartment. Look at about how high it is.
12 Let's remember she's opened the door. She's about 5-3,
13 5-4. Y'all have seen how tall Mr. Stukes. Is it
14 reasonable to believe that when she was looking out this
15 door with that light in the background behind, about where
16 his head might be, with that light shining around his head
17 and all she could see what a silhouette? Think about it.
18 Think about when you've seen a light like that before.

19 And not only that. Think about how fast it happened.
20 It was a split second. A bunch, a grab. All of a sudden,
21 she's on the couch in and out of consciousness, facing the
22 cushions. Her pants are down.

23 She could feel his weight up against her. She could
24 feel him inside of her. And I asked her how she knew that,
25 and she said pain. She said it hurt.

1 She tried to fight. She told you that, but she
2 couldn't. He was too big, too strong, and he kept her down
3 and she ultimately blacked out again. When she came to
4 come, he was gone.

5 Who's to say what somebody's supposed to do after an
6 act like that? Is there a protocol? Is there a procedure?
7 She pulled up her pants. She didn't change her clothes.
8 Tried to comprehend what just happened, and she went to
9 Jackie Bruton's house, and Jackie Bruton took her to the
10 hospital.

11 She never went back to that apartment. She never
12 slept there again another night. She ever used that couch
13 again. And her life since 2004 has been a disaster. About
14 ten different jobs, bunch of different places to live,
15 convictions for fraud and theft and using other people's
16 cars, and crack cocaine.

17 Crack cocaine became a major problem for her, and I
18 asked why. She didn't want to feel. She didn't want to
19 feel, but she did want to forget.

20 I'm going to go briefly through some of the other
21 witnesses. Jackie Bruton, again you heard her testimony.
22 They weren't the closest of friends, but they did -- they
23 were acquaintances. She took her to the hospital. She
24 told you yeah, I saw a mark on her neck that night, and she
25 was upset. She was crying; she was scared.

1 Donna Sharpe, the nurse, she's got no dog in this
2 fight. Y'all saw her testimony. You can judge her
3 credibility. She took pretty detailed notes, what she saw
4 that night, and she told you there was no bleeding or
5 bruising or abrasions in the vaginal area. But I did find
6 it interesting that the doctor prescribed Misty Vicodin for
7 her pain, Vicodin for someone who wasn't assaulted, who
8 made it up.

9 She collected Misty's clothing, turned it over to law
10 enforcement, and they spent about three and a half hours
11 together that morning. And if you go back in your minds
12 and you think about some of words that Donna Sharpe used
13 when describing Misty's demeanor over that three-and-a-half
14 hour period, think about it. Think about exactly what
15 those words were: withdrawn, emotional, nervous, tearful,
16 sensitive to touch, loss of composure, needed time alone,
17 anxious, hands gripping the bed during.

18 All of those things she documented in her notes,
19 observations she made of Misty Shealy when she examined her
20 in the early-morning hours of May 11th, are those the kinds
21 of words used to describe someone who made up a rape?
22 Better yet, are those the kinds of words that would be used
23 to describe somebody who'd had a consensual quickie with
24 someone that they'd just met? No. No. Those are the
25 words used by someone to describe a person who has been

1 forcibly penetrated hours before.

2 Ms. Pinnock talked about the initial investigation.
3 They could have done more. I can't argue with that; I
4 cannot argue with that. Investigator Metz was the first
5 investigator on the scene. He got some -- at the hospital.
6 He got some information for her. He notes that she was
7 upset when he talked to her. He got her keys so they could
8 go check out the apartment.

9 Hicks and Pearson went to the location. They called
10 in the crime scene unit. They didn't knock on any doors.
11 I believe when he got up there, he told you they should
12 have knocked on some doors, but they didn't. Nothing we
13 can do to change that now.

14 You heard from Stan Richards. Obviously I think we're
15 in agreement he did everything he could do: shoe prints,
16 bodily fluids, hairs, fingerprints. Couldn't find
17 anything. Of course he couldn't find fingerprints because
18 if you recall, the testimony was that the assailant was
19 wearing rubber gloves.

20 The chain witnesses, chain of custody witnesses that
21 were paraded on in here, I know that wasn't fun. I know it
22 wasn't exciting, but it was necessary. The burden of proof
23 is on the State of South Carolina to prove to you all
24 beyond a reasonable doubt that Mr. Stukes committed these
25 offenses, and that's a heavy burden, which is the way it

1 should be. And as a result of that, we had to show you
2 that the proper steps were taken, the proper procedures
3 were done in handling the evidence and having it tested,
4 and they were. They were. So, we sent everybody up there,
5 and they told you what they saw and what they handled.

6 And ultimately it got to the toxicologist, who said
7 she hadn't been drinking that night, and it got to Rhonda
8 Fields who said that she got the swabs, the vaginal swabs
9 from Misty and that there was semen found in the vaginal
10 swabs. There was semen in her vagina. She couldn't
11 develop a DNA profile of who it belonged to. It was too
12 weak to interpret, but there was semen in her vagina.

13 And she told you that she examined the panties, and
14 she found semen on the panties as well and got a DNA
15 profile from that that three years later in 2007 was
16 matched to the defendant. She told you all about that.

17 One interesting thing, though, I think that she did
18 point out is not the number. The interesting thing was
19 when she was asked about the transfer of DNA. She told you
20 that if the panties came in contact with the semen on any
21 part of the body, it could still transfer over to the
22 panties. You can still get DNA off of the panties, which
23 is to say he didn't have to ejaculate inside her in order
24 for the DNA to then end up on her panties. It could have
25 been on her somewhere and transferred to the panties. I

1 just thought that was an interesting point.

2 Sergeant Caldwell told you that he went to arrest Mr.
3 Stukes. He worked in the fugitive team, and he looking for
4 him, and he found him, and he read him the warrants and the
5 allegations. Told him that he was accused of raping Misty
6 Shealy and that there was DNA to show it. And what's the
7 first thing that came out of Mr. Stukes's mouth? I don't
8 even know her. I don't even know who that is. This has to
9 be a mistake. Strange response.

10 He said that he wanted to talk to investigators, so
11 Caldwell called Godfrey and Mincey. Said come get him. He
12 wants to talk. So, they went and they got him, and y'all
13 heard all that. How Godfrey went through his rights.
14 Mincey was there. Again, freely and voluntarily given,
15 willing to talk. I'm not going to go back through all that
16 line of questioning. I think it was pretty clear that he
17 willingly spoke to them. He advised him of his rights
18 three times in about a four-hour period.

19 Now, Godfrey told you that he's got a background in
20 sexual assault cases. He worked those cases for a couple
21 of years before he started on the Cold Case Unit. And he
22 also told you that when he's interviewing a sexual assault
23 suspect, he's not trying to trick them, not trying to
24 coerce them in any way.

25 At the time, Mr. Stukes knew about the DNA. It was in

1 the warrant. All he was doing was giving Melvin Stukes an
2 opportunity to tell him that it was consensual sex. He was
3 giving him an opportunity to provide a reason why his DNA
4 was found on the panties, and he couldn't do it. He never
5 did.

6 He gave him every opportunity to say it was
7 consensual. For over four hours, he showed Mr. Stukes her
8 picture. He told her -- told him her name. He drove him
9 to the apartment complex where she lived, the one that he
10 now all of a sudden remembers walking to. He never said he
11 knew her.

12 He asked him about relationships he had had with white
13 women over the years. Didn't mention it. He asked him
14 about relationships he had had with women in the Park
15 Apartments over the years. Didn't mention it. Mentioned
16 other girls, somebody named Shawntee, a black female that
17 lived in the Park Apartments, and the only white women
18 being a couple of girls named Jessica that lived somewhere
19 else.

20 Never mentioned Misty Shealy's name. Never said that
21 he had consensual sex with Misty Shealy. Over four hours
22 together, never said it. Instead, he denied knowing her.
23 He denied having been to that apartment. He talked about
24 the two white women. He talked about Shawntee.

25 The thing I found most interesting, he denied having

1 sex with anyone that he didn't know on a daily basis. We
2 didn't hear about that question just a few minutes ago, but
3 we heard about it on the witness stand, and you'll see it
4 in the statement. Read it for yourself, but I'll just go
5 ahead and read it once again:

6 Have you ever been accused of rape before? No.
7 Every girl that I have slept with voluntarily
8 gave it up. And the only time I would consider
9 myself having sex with her is if we knew each
10 other on a daily basis.

11 His semen was in her panties. There was semen in her
12 vagina. He was given every opportunity to explain that, to
13 explain how it got there, and he couldn't do it. And now
14 this week on that witness stand, he's going to tell you it
15 was consensual?

16 No. No. He signed his name ten times. No tricks.
17 Just his own words on the paper. Consensual? Now? He had
18 his chances on May 5, 2010, to say it was consensual, and
19 he didn't do it, and why? I asked him or if -- Ms. Pinnock
20 asked him, and he said, well, he had a lot going through
21 his mind during the questioning. I'll bet there was a lot
22 going through his mind. It had been six years since this
23 happened, and now all of a sudden he had to try and explain
24 away a rape that he thought he'd gotten away with.

25 Okay, year later in 2011, he tells the investigator

1 for the public defender's office that, yeah, I had -- I
2 remember. I had consensual sex with her. I remember that.
3 He realized he had to explain how the DNA got in her
4 panties at some point. He hadn't accounted for that yet.
5 It finally dawned on him.

6 Other issues the defense has brought, the issue about
7 neighbors and noise. If you have to scream to show that
8 you were raped, if you have to tell your neighbors that you
9 had just been sexually assaulted in order for you to be
10 found credible as a witness, god help all the women in this
11 world.

12 There's a big issue about who she told or didn't tell
13 right away, right after it happened, why she went to this
14 Jackie Bruton to tell her. There is no script, okay?
15 There is no handbook. There is no training on how to cope
16 or handle a traumatic event such as this one. Sometimes
17 victims tell anybody who will listen. Doctor told you
18 that. Sometimes they'll tell somebody right away;
19 sometimes they won't. Everyone's different.

20 She didn't call the police. Well, she told you. She
21 was ashamed. She was scared. I think she even said that
22 she didn't want to be blamed because she made the stupid
23 mistake of opening her door without looking out the
24 peephole, and she was blaming herself.

25 She didn't want to go to the hospital. Well, she told

1 you again she was humiliated about what had just happened
2 to her. She was embarrassed. She was in disbelief at what
3 had just taken place.

4 She didn't tell her family. Well, she already told
5 you that she didn't have a good relationship with her mom.
6 And besides that, I believe she testified she didn't want
7 them to look at her any differently.

8 There's no guide. No one knows how they're going to
9 handle this kind of situation until they've lived through
10 it. This just happened to be the way that she dealt with
11 it. Doesn't mean she made it up.

12 The injuries, I've already talked about. Jackie
13 Bruton saw it. The nurse saw the hand mark on her. There
14 were no signs of vaginal injury. There was no bruising.
15 There was no abrasions. There was no bleeding. Is it
16 reasonable to think that every time sexual intercourse of
17 some kind takes place that there's going to be abrasions or
18 bleeding or bruising? She told you she'd had sex before.
19 Why would you automatically assume that there were injuries
20 to her vagina and her -- in that area?

21 The other injuries were corroborated: the mark on the
22 neck, the bruising. Yeah, you got these lousy photos that
23 Ray Livingston took three and a half days later of her face
24 that don't show you anything. Got it. It's not helpful.
25 What we do have is the nurse who took notes that night

1 couple of hours later and what she saw and what her
2 observed, and the girl that drove her to the hospital and
3 what she observed.

4 The left hand versus the right hand, how much of an
5 issue has been made of that? Let's go back to her
6 testimony. This happened in a split second, in a split
7 second. Who could honestly recall every single detail of a
8 significant, traumatic event in your life when it happens
9 that fast, every little detail? She couldn't remember
10 which hand was which, but she knows she got hit, she knows
11 she got grabbed, and she knows that she got raped.

12 The biggest one, of course, the biggest theory that
13 has been alluded to here came from Mr. Stukes himself. It
14 was a consensual sexual encounter I believe was the phrase
15 that Mr. Shealey used in his opening.

16 Mr. Stukes said that he remembered meeting Misty one
17 time in the Park Apartments, and it's interesting. There
18 was absolutely no mention this morning of Mr. Stukes's
19 testimony. There was no mention of his version of the
20 events. I wonder why that might be. Didn't talk about
21 that. Didn't talk about his story. Didn't want you to try
22 and use your ability as triers of the facts to examine his
23 credibility and his believability.

24 So, let's talk of his story that he told on the
25 witness stand. That he was in the Park Apartments with his

1 friend Louis. That she just walked up to him. They
2 started talking, and that after they started talking, they
3 went to her apartment. That she invited him in. They went
4 to the bedroom. They sat on the bed and talked. That they
5 started to flirt. Somehow the conversation turned to sex.
6 She took her clothes off. He takes his clothes off. They
7 have sex. He notices something about her computer. She
8 walks him out and he leaves, and that's it, and the whole
9 thing from start to finish took thirty minutes, thirty
10 minutes. Does that make any sense? Is that credible, or
11 is it ridiculous?

12 And while I mention the computer, I thought that was
13 nice. He testified that before he left, he looked down at
14 the computer, and he noticed sea horses and rainbows on the
15 computer screen. That's an interesting detail.

16 Let's think back to Misty's testimony. What was the
17 one item in her testimony that she specifically referenced
18 in her apartment? Her computer. She said before she went
19 to work, she was on her computer downloading music. Well,
20 how about that? The one item that she mentioned during her
21 testimony in this courtroom is the one item in her house
22 that he just so happened to remember specific details about
23 while he was there. He doesn't mention anything about
24 pictures or colors on the walls or rugs or anything. The
25 one item in the whole house that she mentioned in front of

1 him here this week is the one that he used as a point of
2 reference. No. A failed attempt to try to corroborate
3 his own story.

4 He testified that he first had sex when he was sixteen
5 years old, and that he couldn't tell you everyone that he's
6 had sex with over those years. Well, he told Sergeant
7 Godfrey what he remembered. Told him about every woman
8 that he'd ever had sex with at the Park Apartments. This
9 lady named Shawntee, told him about every white woman he
10 had had sex with.

11 And again, I hate to harp on it, but again he said he
12 only had sex if we knew each other on a daily basis. I
13 asked that. I asked him about it on cross-examination,
14 about that question, and he said yeah. That's what I said.
15 That's accurate; that's what I told them. I only have sex
16 if I know them on a daily basis. Didn't dispute it at all,
17 but now he's claiming that he had sex with Misty Shealy
18 within minutes of meeting her. It's weak. It's a weak
19 attempt at explaining how his DNA was found on her panties.
20 It's weak. That's all it is.

21 Let me ask you this question. If they have a
22 consensual sexual encounter as he described it on the
23 witness stand, why would she try to cover that up? Why
24 would she cry rape? What would be her motivation? Because
25 she may have been in a relationship at the time? Nobody

1 walked in on them. There was no testimony from him that
2 they were interrupted by somebody who found Misty and was
3 in a jealous rage, and she would have to say oh, no. It's
4 not what you think. It's not what you think. I'm being
5 raped. It doesn't make sense. Why would she try to cover
6 that up if it was consensual?

7 Well, maybe she's just a drama queen. Maybe that's
8 what it is. Did she look like a drama queen to you when
9 she was on the witness stand? That was raw emotion coming
10 out of her. Did that look rehearsed? Did it look
11 scripted? You can't fake that.

12 Well, maybe she's just got a vendetta against this man
13 who she had a one-night stand with for some reason. She
14 never identified him. If she had a vendetta and she wanted
15 to ruin his life because he had had sex with her
16 consensually one time and never called her again, don't you
17 think at some point she would have told law enforcement
18 Melvin Stukes is the guy who raped me? Wouldn't that have
19 made more sense?

20 I suppose instead she just didn't say anything and
21 knew somehow that his DNA was going to be found on her
22 panties, and that months later there would be a profile
23 developed, and that three years later it would be a match
24 to him, and that six years later he would be asked about it
25 and deny it. She's just that smart. She came up with that

1 plan on her own as a vendetta. It doesn't make any sense.

2 When you go back to the jury room and you start
3 putting these pieces together, I submit to you that there
4 is no doubt -- let alone a reasonable doubt -- but there is
5 no doubt the defendant committed these offenses. He was a
6 stranger on May 10, 2004. As far as Misty Shealy is
7 concerned, he'll always be a stranger. But in this
8 courtroom and this week, he's not a stranger anymore.

9 Mr. Shealey told you about the robe of righteousness
10 the defendant is draped in. Well, that robe has been
11 ripped off of him this week, and you know what's
12 underneath? Truth. The truth is Melvin Stukes was never,
13 never given consent to enter her apartment. Melvin Stukes
14 was never, never given consent to invade her body. Hold
15 Melvin Stukes responsible by finding him guilty of criminal
16 sexual conduct in the first degree and criminal sexual --
17 excuse me, burglary in the first degree. Thank you.

18 *JURY CHARGE*

19 THE COURT: Ladies and gentlemen of the jury, you have
20 heard all the evidence, the arguments of the parties, and
21 now it is my responsibility at this time to instruct you as
22 to the law in this case.

23 I remind you that during this trial, you and I have
24 certain duties to perform. As the trial judge, it is my
25 responsibility to preside over the trial of this case, and

1 I also have the duty to rule on the admissibility of
2 evidence offered during this trial.

3 You are only to consider the competent evidence before
4 you. If there was any testimony ordered stricken from the
5 record in this case during this trial, you must disregard
6 that testimony. You are to consider only the testimony
7 which has been presented from the witness stand, any
8 exhibits which have been made a part of the record in this
9 case, and any stipulations of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I am the
12 sole judge of the law of this case, and it is your duty as
13 jurors to accept and apply the law as I now state it to
14 you. If you already have any idea as to what the law is or
15 what the law ought to be and it does not agree with what I
16 now tell you the law is, you must abandon this idea because
17 you were sworn to accept the law and apply the law exactly
18 as I state it to you.

19 In every case tried in this court before a jury, the
20 jury becomes the sole and exclusive judge of the facts in a
21 case. A trial judge cannot state, comment on, or make any
22 statement to a trial jury about the facts in a case. Since
23 you, the jury, are now the sole judges of the facts in this
24 case, you are not to infer from what I have said during the
25 progress of this trial in ruling upon the admissibility of

1 evidence or otherwise or anything that I say now during the
2 course of this instruction to you that I have an opinion
3 about the facts in this case. The law does not allow me to
4 have an opinion about the facts in this case.

5 This is a matter solely for you, the jury, to
6 determine. As jurors, it is your duty to determine the
7 effect, value, weight, and truth of the evidence presented
8 during this trial.

9 There are two types of evidence which are generally
10 presented during a trial: direct evidence and
11 circumstantial evidence. Direct evidence is the testimony
12 of a person who claims to have actual knowledge of a fact,
13 such as an eyewitness. It is evidence which immediately
14 establishes the main fact to be proved.

15 Circumstantial evidence is proof of a chain of facts
16 and circumstances indicating the existence of a fact. It
17 is evidence which immediately establishes collateral facts
18 from which the main fact may be inferred. Circumstantial
19 evidence is based on inference and not on personal
20 knowledge or observation.

21 The law makes absolutely no distinction between the
22 weight or the value to be given to either direct or
23 circumstantial evidence. Nor is a greater degree of
24 certainty required of circumstantial evidence than of
25 direct evidence. You should weigh all of the evidence in

1 the case. After weighing all of the evidence, if you were
2 not convinced of the guilt of the defendant beyond a
3 reasonable doubt, you must find the defendant not guilty.

4 The testimony of a victim in a criminal sexual conduct
5 prosecution need not be corroborated by other testimony or
6 evidence. Necessarily, you must determine the credibility
7 of witnesses who have testified in this case. Credibility
8 simply means believability. It becomes your duty as jurors
9 to analyze and to evaluate the evidence and determine which
10 evidence convinces you of its truth.

11 In determining the believability of witnesses who have
12 testified in this case, you may believe one witness over
13 several witnesses or several witnesses over one witness.
14 You may believe a part of a -- of the testimony of the
15 witness and reject the remaining part of the testimony of
16 that same witness. You may believe the testimony of a
17 witness in its entirety, or you may reject the testimony of
18 a witness in its entirety.

19 You may consider whether any witness has exhibited to
20 you an interest, bias, prejudice, or other motives in this
21 case. You may also consider the appearance and manner of a
22 witness while on the witness stand.

23 A statement alleged to have been made by the defendant
24 has been admitted into evidence in this case. While the
25 court has determined that the statement is admissible, I

1 instruct you that you make the ultimate decision of whether
2 not the defendant made the statement.

3 If the defendant did make the statement, you must
4 determine whether the statement was made by the defendant
5 voluntarily and of his own free will. This means that the
6 statement was not caused by pressure, force, fear, threat,
7 coercion, or intimidation, or by hope, or a promise of
8 leniency, or a reward of any kind.

9 In determining whether the statement was voluntarily
10 -- voluntary, you should consider both the characteristics
11 of the defendant and the details of the questioning. Some
12 of the factors that you must consider are the age of the
13 defendant, the defendant's education or lack of education,
14 the defendant's mental ability or capacity, the defendant's
15 I.Q. or intelligence, the defendant's background and
16 environment, the place and length of detention, the nature
17 of the questioning, and the advice or lack thereof to the
18 defendant's constitutional rights, including but not
19 limited to the right to remain silent, that any statement
20 could be used against him in a court of law, the right to
21 have a lawyer present. That if he could not afford a
22 lawyer, that a lawyer would be appointed to represent him
23 without any cost to him, and that he could stop making a
24 statement at any time.

25 You must carefully consider all of the resulting

1 circumstances before you give any weight to an alleged
2 statement. And the state has the burden of proving beyond
3 a reasonable doubt that the alleged statement was
4 voluntary. If you determine it was, you may give the
5 statement any further consideration that you deem proper.
6 You must decide what weight, if any, should be given to the
7 alleged statement. If you determine the alleged statement
8 was not the free and voluntary statement of the defendant,
9 you should not consider the statement at all.

10 There has been evidence presented that witnesses have
11 made prior statements which are not consistent with the
12 witness's present testimony. You may use this evidence to
13 decide whether to believe the witness. You may also use
14 the evidence of the earlier contradictory statements to
15 determine the truth of those statements. It is up to you
16 to decide whether to believe the earlier statements or the
17 testimony given at trial.

18 If a witness is shown to have knowingly testified
19 untruthfully concerning any material matter, you may
20 consider this in determining whether to trust a witness's
21 testimony as to other matters. You may reject all the
22 testimony of that witness, or give all or part of the
23 testimony the weight you think it deserves.

24 Expert witnesses. The rules of evidence ordinarily do
25 not permit witnesses to testify to opinions or conclusions.

1 An exception to this rule exists for witnesses we call
2 expert witnesses. A witness who by education and
3 experience has become expert in some art, science,
4 profession, or calling may state an opinion as to relevant
5 and material matter in which the witness claims to be an
6 expert, and may also state the reasons for the opinion.

7 You should consider an expert opinion received in
8 evidence in this case like any other evidence: give it the
9 weight you think it deserves. If you decide that the
10 opinion of an expert witness is not based on sufficient
11 education and experience, or if you conclude that the
12 reasons given in support of the opinion are not sound, or
13 that the opinion is outweighed by other evidence, you may
14 disregard the opinion entirely.

15 An expert witness's testimony is to be given no
16 greater weight than that of other witnesses simply because
17 the witness is an expert. Further, you are not required to
18 accept an expert's opinion even though it is not
19 contradicted.

20 The indictments charge the defendant with burglary
21 first degree and criminal sexual conduct first degree. I
22 remind you the fact the defendant was arrested, charged,
23 and indicted in this case is not evidence in this case and
24 cannot be considered by you as evidence of guilt in this
25 case. Nor does it create any presumption or any inference

1 of guilt. The indictments are the documents, are simply
2 the documents, the formal written instruments which contain
3 the charges made against the defendant. They are the
4 formal documents by which this case is brought into court.

5 The defendant has pled not guilty to these
6 indictments, and that plea puts the burden on the state to
7 prove the defendant guilty. A person charged with
8 committing a criminal offense in South Carolina is never
9 required to prove himself innocent. I charge you that it
10 is an important rule of law that the defendant in a
11 criminal trial, no matter what the seriousness of the
12 charge may be, will always be presumed innocent of the
13 crime for which the indictment was issued unless guilt has
14 been proved, proven by evidence satisfying you of that
15 guilt beyond a reasonable doubt.

16 The presumption of innocence does not end when you
17 begin your deliberations, but it accompanies the defendant
18 throughout the trial until you reach a verdict of guilt
19 based on evidence satisfying you of that guilt beyond a
20 reasonable doubt.

21 The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the defendant
23 which remains with the defendant until it has been stripped
24 from the defendant by evidence satisfying you of the
25 defendant's guilt beyond a reasonable doubt. Presumption

1 of innocence is not mere legal theory; it is not just a
2 legal phrase. It is a substantial right to which every
3 defendant is entitled unless you, the jury, are satisfied
4 from the evidence of the defendant's guilt beyond a
5 reasonable doubt.

6 What is a reasonable doubt in the law? A reasonable
7 doubt is the kind of doubt that would cause a reasonable
8 person to hesitate to act. The state has the burden of
9 proving the defendant guilty beyond a reasonable doubt.
10 Some of you may have served as jurors in civil cases where
11 you were told that it is only necessary to prove that a
12 fact is more likely true than not true, such as by the
13 greater weight or preponderance of the evidence.

14 In criminal cases, the state's proof must be more
15 powerful than that. It must be beyond a reasonable doubt.
16 Proof beyond a reasonable doubt is proof that leaves you
17 firmly convinced of the defendant's guilt. There are very
18 few things in this world that we know with absolute
19 certainty, and in a criminal case, the law does not require
20 proof that overcomes every possible doubt.

21 If, based on your consideration of the evidence, you
22 are firmly convinced that the defendant is guilty of the
23 crimes charged, you must find the defendant guilty. If, on
24 the other hand, you think there is a reasonable possibility
25 that the defendant is not guilty, you must give the

1 defendant the benefit of the doubt and find him not guilty.

2 The defendant is charged with first-degree burglary.
3 The state must first prove beyond a reasonable doubt that
4 the defendant entered a dwelling without consent. A
5 dwelling is a building or a portion of a building in which
6 a person ordinarily sleeps. A building constructed as a
7 dwelling that has never been occupied cannot be considered
8 a dwelling for purposes of a burglary, but a building is a
9 dwelling even if the residents are temporarily absent from
10 the building.

11 In order to prove that the defendant entered the
12 dwelling, the state does not have to show that the
13 defendant's entire body entered the dwelling. The smallest
14 entry is sufficient. It may be any part of the body, such
15 as a hand or foot, or even an instrument such as a hook or
16 other instrument.

17 In addition, the state does not have to prove that
18 force was used to gain entry. If a person enters a
19 building using deception, artifice, tricks, or
20 misrepresentation to get consent to enter, this is entry
21 without consent.

22 Next the state must prove beyond a reasonable doubt
23 that the defendant intended to commit a crime, either a
24 felony or a misdemeanor, at the time of the entry. The
25 mere entry into a dwelling without consent is not a

1 burglary. If the intent to commit a crime is formed after
2 the entry, it is not burglary. On the other hand, if the
3 defendant intended to commit a crime at the time of the
4 entry, it is burglary even if the intent was abandoned
5 after the entry. It does not matter that the intended
6 crime was not completed. Intent may be shown by acts and
7 conduct of the defendant and other circumstances from which
8 you may naturally and reasonably infer intent.

9 Finally, the state must prove beyond a reasonable
10 doubt that: 1) when entering while in the dwelling or when
11 fleeing, the defendant or an accomplice caused physical
12 injury to anyone not participating in the crime; 2) that
13 the defendant entered or remained in the dwelling in the
14 nighttime. Nighttime is the period between sunset and
15 sunrise during which there is not enough daylight to
16 recognize a person's face except by artificial light or
17 moonlight.

18 The defendant is also charged with first-degree
19 criminal sexual conduct under South Carolina code 16-3-652.
20 The defendant is charged with criminal sexual conduct in
21 the first degree. The first element which the state must
22 prove beyond a reasonable doubt is that the defendant
23 engaged in a sexual battery with the victim. A sexual
24 battery is sexual intercourse, cunnilingus, fellatio, anal
25 intercourse, or any intrusion, however slight, or any part

1 of a person's body, or of any object into the genital or
2 anal openings of another person's body except when the
3 intrusion is accomplished for medically recognized
4 treatment or diagnosis -- diagnostic purposes.

5 If you find that the state has not shown beyond a
6 reasonable doubt that a sexual battery occurred, you should
7 stop deliberating, and your verdict would have to be not
8 guilty. If you find that a sexual battery did occur, you
9 must then decide whether the state has proven beyond a
10 reasonable doubt that the victim submitted to sexual
11 battery while the victim was also a victim of forcible
12 confinement, kidnapping, robbery, extortion, burglary,
13 housekeeping, or any other similar act or offense.

14 In order to establish criminal liability, criminal
15 intent is required. For example, the mental state required
16 to be proven by the state for a particular crime might be
17 purpose, intent, knowledge, recklessness, or criminal
18 negligence. Criminal intent must be proven by the state
19 beyond a reasonable doubt.

20 Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation. There is no way to prove intent to a
23 mathematical certainty. There is no way medical science
24 can dissect a person's brain and determine what the person
25 had in mind, so the law says that criminal intent may be

1 inferred from the circumstances shown to have existed.

2 This is how you make a determination of whether or not
3 the element requiring intent was present. It is not
4 necessary to establish intent by direct and positive
5 evidence. But intent may be established by inference in
6 the same way as any other fact by taking into consideration
7 the acts of the party and all the facts and circumstances
8 of this case.

9 Criminal intent is a mental state, conscious
10 wrongdoing. It is up to you to determine what the
11 defendant intended to do based on the circumstances shown
12 to have existed. Criminal intent can arise from action or
13 a failure to act. It may arise from negligence,
14 recklessness, or an indifference to duty, or to the
15 consequences that is considered by the law to be the
16 equivalent of criminal intent.

17 The state and the defendant are entitled to the
18 individual opinion of each juror on the issues of fact in
19 this case. It is the duty of each of you to consider and
20 weigh all the evidence in the case and from such evidence
21 determine, if you can, the question of guilt or innocence
22 of the defendant.

23 There is nothing peculiarly different in the way a
24 jury should consider the evidence in a criminal case from
25 that in which all reasonable persons treat any question,

1 depending upon evidence presented to them. You are
2 expected to use your good sense. Consider the evidence in
3 the case for only the purposes for which it has been
4 admitted, and give it a reasonable and fair construction in
5 the light of your common knowledge of the natural
6 tendencies and inclination of human beings. If the accused
7 be proved guilty beyond a reasonable doubt, say so. If not
8 so proved guilty, say so.

9 Your verdict in this case will be one of two forms.
10 If from the evidence and the law you find that the
11 defendant is not guilty, you will circle not guilty on the
12 verdict form that I will give you, and the foreman will
13 sign his name. If, on the other hand, you find that the
14 defendant is guilty based upon evidence and the law which
15 you have heard, you will circle guilty on the verdict form,
16 and the foreman will sign his name.

17 Your verdict must be unanimous. It must be guilty or
18 not guilty. The law requires that a jury verdict be
19 unanimous, which means that all jurors must agree. The
20 only two forms on the verdict are guilty or not guilty.

21 Mr. Foreman, once the jury reaches a verdict of not
22 guilty or guilty, circle the verdict on the face of the
23 verdict form and sign under the verdict to signify that
24 what you have circled is the verdict of all jurors. Then
25 notify us that you have reached a verdict by knocking on

1 the door.

2 I have in my hand what you will receive back in the
3 jury room, the verdict form. It states:

4 State of South Carolina, County of Richland, in
5 the Court of General Sessions of the Fifth
6 Judicial Circuit. Indictment number
7 2010-GS-40-2700 and indictment number
8 2010-GS-40-2701, the *State of South Carolina vs.*
9 *Melvin Stukes*, defendant.

10 States: Please circle the appropriate verdicts below
11 and follow the accompanying obstructions carefully. First
12 question says:

13 As to the charge of burglary in the first degree,
14 we, the jury, unanimously find the defendant.

15 And you will circle guilty or not guilty, and the
16 second question states:

17 As to the charge of criminal sexual conduct in
18 the first degree, we, the jury, unanimously find
19 the defendant.

20 Guilty or not guilty, you will circle whichever one is
21 your verdict. You will stop and end your deliberations.

22 Mr. Foreman, at that time, you was sign where it
23 states presiding juror. You will date it. You will knock
24 on the door. Inform the bailiff that you all have reached
25 a verdict.

1 I am going to send you back to your room, your jury
2 room, but you cannot begin your deliberations until you
3 receive the verdict form. Once you receive the verdict
4 form and all of the exhibits that have been entered into
5 evidence, you may begin your deliberations.

6 Your lunch is supposed to be here at 12:00. So, it
7 will -- there's a possibility it may be back there when you
8 get back there. You can eat while you all -- you can go
9 ahead and eat while you are deliberating once you receive
10 the verdict form, and the exhibits, and the instruction
11 from the bailiff that you may begin your deliberation. All
12 right, thank you.

13 (THE JURY EXITS AT 11:58 A.M.)

14 THE COURT: All right, any exceptions to the jury
15 charge?

16 MR. GOLDBERG: Nothing from the state.

17 THE COURT: All right, and I know your objections are
18 preserved from earlier for the record as to the jury
19 charge.

20 MR. SHEALEY: Thank you, Your Honor. Nothing new.

21 THE COURT: All right. All right, y'all take a look
22 at the exhibits, make sure everything is there, and here is
23 the verdict form, and then they can begin deliberating.
24 Just give Aaron your cell phone number, and we'll call if
25 they have any questions.

1 (THE ATTORNEYS REVIEW THE EXHIBITS WITH THE COURT
2 REPORTER.)

3 THE COURT: Mr. Hopkins and Ms. Steinberg, I want to
4 thank you all for serving as alternates in this case. All
5 of the jurors, original twelve, I guess, jurors have
6 remained throughout the trial. Had they not, we would have
7 had to use one of you.

8 As my old boss says, it's kind of like being invited
9 to the dance but not being asked to dance. So, I do want
10 to thank you and let you know that we appreciate your
11 service here this week because we did need you here even
12 though we didn't ultimately in the end need you for
13 purposes of deliberation.

14 You may -- the lawyers may want to talk to you. If
15 they do, that is fine. At this point, if you don't want to
16 talk to them, you don't have to talk to them. We're going
17 to still -- your lunch is back there, so you can take your
18 lunch, and if you want to stick around and see what your
19 fellow jurors are going to do with this case, you are more
20 than welcome to do that. But I just wanted to say thank
21 you.

22 (A PAUSE.)

23 THE COURT: The clerk is out there, and she will give
24 you your form excusing you for the week, and you will not
25 have to serve for another -- one year, you won't be able to

1 serve, and another three years unless you choose to do so.
2 Thank you again for your service.

3 (A PAUSE.)

4 MS. ASHTON: I confirm that we went over everything,
5 and everything is confirmed.

6 MS. PINNOCK: Yes, all of the evidence, if it was
7 introduced, and it looks good.

8 (JURY DELIBERATIONS BEGIN AT 12:05 P.M.)

9 (OFF THE RECORD.)

10 COURT: All right, you may be seated. We have a
11 question: Can we have a copy of the law?

12 I don't have a problem if I -- but my policy is
13 usually both sides, I only send it back if both sides
14 agree. I can send the jury charge back. It is what it is.

15 MR. SHEALEY: Defense feels that we wouldn't agree to
16 that.

17 THE COURT: Y'all don't want that? All right, so we
18 need to -- I'll bring them in, and I'll let them know that
19 they can't have the charge, but if they let us know what
20 part they want me to read, read, I will do that.

21 All right, if you will bring them in.

22 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
23 NUMBER 3.)

24 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
25 NUMBER 4.)

1 (THE JURY ENTERS AT 1:25 P.M.)

2 THE COURT: All right, ladies and gentlemen of the
3 jury and Mr. Foreman, I have received a letter from you
4 saying: Can we have a copy of the law?

5 I'm not going to send the jury charge back, but if you
6 all have a question regarding a specific part of the jury
7 charge, or if you'd like me to read it over in its
8 entirety, I will be glad to do that. But I just need you
9 to let me know what part it is that you would like for me
10 to read over, or if you would like me to read the entire
11 thing over, I'll be glad to do so. And y'all don't -- you
12 can go back in the room and talk about it.

13 (THE JURORS CONFER.)

14 THE COURT: Why don't y'all go back in the -- let's do
15 this. I'm going to let y'all go back in the room and
16 discuss it and that way, he can tell me exactly what it is
17 that you want, all right?

18 (THE JURY EXITS AT 1:26 P.M.)

19 THE COURT: All right, we'll wait and see what they
20 say.

21 (OFF THE RECORD.)

22 THE COURT: All right, they'd like for me to read the
23 criminal sexual conduct misconduct charge again. All
24 right, and I'll mark as Court's Exhibit Number 5.

25 All right, you can bring them back in.

1 (JURY CHARGE REQUEST MARKED INTO EVIDENCE AS COURT'S
2 EXHIBIT NUMBER 5.)

3 (THE JURY ENTERS AT 1:30 P.M.)

4 THE COURT: All right, ladies and gentlemen of the
5 jury, it's my understanding that you'd like for me to read
6 the criminal sexual conduct portion of the law under
7 section 16-3-652 of our S.C. Code of Laws and the charge
8 that the accompanies that.

9 It reads as follows. The defendant is charged with
10 criminal sexual conduct in the first degree. The first
11 element which the state must prove beyond a reasonable
12 doubt is that the defendant engaged in a sexual battery
13 with the victim. A sexual battery is sexual intercourse,
14 cunnilingus, fellatio, anal intercourse, or any intrusion,
15 however slight, or any part of a person's body, or of any
16 object into the genital or anal openings of another
17 person's body except when the intrusion is accomplished for
18 medically recognized treatment or diagnosis -- diagnostic
19 purposes.

20 If you find that the state has not shown beyond a
21 reasonable doubt that a sexual battery occurred, you would
22 stop deliberating, and your verdict would have to be not
23 guilty. If you find that a sexual battery did occur, you
24 must then decide whether the state has proven beyond a
25 reasonable doubt that the victim submitted to a sexual

1 battery while the victim was also the victim of forcible
2 confinement, kidnapping, robbery, extortion, burglary,
3 housekeeping, or any other similar act or offense.

4 All right?

5 FOREPERSON: Yes, ma'am.

6 THE COURT: Thank you. I can read it again if anyone
7 wants me to read it again. All right. Thank you.

8 I said -- I'm sorry, my law clerk said that I said
9 housekeeping, and it's housebreaking. I'm sorry.

10 (THE JURY EXITS AT 1:32 P.M.)

11 THE COURT: All right, any exceptions?

12 MR. GOLDBERG: No.

13 MR. SHEALEY: No, Your honor.

14 THE COURT: All right.

15 (OFF THE RECORD.)

16 THE COURT: In reading the statute -- y'all may be
17 seated -- and I, when I read it earlier, for whatever
18 reason and I read it again, the first part of the statute
19 was not, is not in the charge and has not been read. So,
20 what I'm going to do it tell them to disregard what I read
21 in the initial charge and what I just previously read to
22 them. That they are to, the only law that they are to use
23 as to the criminal sexual conduct in the first degree
24 charge is the law that I am about to read to them now.

25 And the portion that is left is the statute, the part

1 that says:

2 If you find that a sexual battery did occur, you
3 must then decide whether the state has proved
4 beyond a reasonable doubt that -- it's 1) the
5 defendant used aggravated force to accomplish the
6 sexual battery. Aggravated force means the use
7 of physical force or physical violence of a high
8 and aggravated nature to overcome the victim.
9 This includes the threat of using a deadly
10 weapon. 2, the victim submitted to a sexual
11 battery while the victim was also the victim of
12 forcible confinement, kidnapping, robbery,
13 extortion, burglary, housebreaking, or any other
14 similar act or offense.

15 I can read the third part about mental capacity if you
16 all want me to, to read, to read it in its entirety, but
17 I'm inclined just to do the first and the second part.

18 MR. GOLDBERG: One thing that I would ask about how
19 you read that is if you read it the way that you just said
20 just now, that gives off the implication that both the
21 aggravated force and the burglary part has to be proven
22 when the statute says if any one or more of the following.
23 It's an or situation. It's the aggravated force or in the
24 commission of a burglary, and I don't want them to be
25 confused that it's both.

1 So, I would ask that you put language in there
2 stating, consistent with the statute, that if you find that
3 there was a sexual battery and any one or more of the
4 following: a) the force; b) the, of course, the burglary.
5 Otherwise, it just implies that you got to prove both, and
6 that's not what the statute says.

7 MS. PINNOCK: Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. PINNOCK: We would at this point, because we had
10 the opportunity to have the charges at 3:00, 3:15
11 yesterday, I think any changing of what the charge on the
12 law was to the jury at this point is going to place undue
13 emphasis on that particular part of the law.

14 They have at this point heard it twice. They asked to
15 come back and hear that specific statute twice. I believe
16 the real issue is it's going to confuse them while they're
17 back there because they've now been instructed to stop
18 deliberating. They've been in there since 12, 12:15 or so.
19 They have heard that particular law twice at this point.

20 THE COURT: The wrong law.

21 MS. PINNOCK: Ma'am?

22 THE COURT: The wrong law.

23 MS. PINNOCK: Yes, Your Honor, but we were provided---

24 THE COURT: Which is -- I will accept full
25 responsibility for that, but it is wrong. It is not the

1 law.

2 MS. PINNOCK: Well, Your Honor, at this point, then I
3 think we, we, we are asking for a mistrial. They've been
4 instructed on the wrong law. They had been deliberating on
5 this. They've since been instructed to stop. It's been
6 two hours. They came back in, specifically asked to hear
7 about that.

8 Placing undue emphasis on that particular part of the,
9 part of the, part of statute is going to potentially
10 suggest to them that there something that they needed to
11 pay attention to about that, some -- the reason why Your
12 Honor is bringing it up at this point when they've heard it
13 twice and it's never been said before.

14 Objections could have been made prior to your charge.
15 You gave both sides the opportunity to do that. No
16 objections were made. This was what was read to the jury
17 on two separate occasions. I think the only appropriate
18 remedy at this point is a mistral because they had been
19 delivering on incorrect, an incorrect law.

20 THE COURT: All right. Well, they came -- I will
21 mention they had been -- two hours, they may have been
22 deliberating two hours. They came back with a question.
23 As soon as I realized it, it was brought to my attention, I
24 asked the bailiffs to immediately ask -- so, they were not
25 back in there five minutes, maybe not even two or three

1 minutes, to begin deliberations after I read the law to
2 them. The bailiffs instructed them -- well, actually the
3 clerk instructed them to stop deliberating at that point,
4 and they have not been. And I asked them to make sure that
5 they are not deliberating, and they have not been
6 deliberating during the time that we were contacting
7 everybody to come back up here.

8 But I will allow you to make your exceptions for the
9 record, but the defendant, nor the state, is prejudiced by
10 me instructing the jurors as to the accurate law, and I
11 will read it from the statute since there's a -- I'll read
12 it, I will read the entire, I will read the entire charge,
13 and then I will read the part that comes from the statute.
14 If you all want me read the third part, I will read that.
15 If not, I will not because the statute says charge only the
16 -- well, the charge says charge only the applicable
17 circumstances below.

18 But it's an accurate statement of the law. It is the
19 law. The jurors are deliberating. I'm not sure they've
20 been deliberating for two hours, but they are, they are --
21 they were told to stop deliberating after they came back
22 and asked the question.

23 MR. SHEALEY: And just while we're addressing this
24 issue, I don't think it's anybody's fault. I support Ms.
25 Pinnock's statement that everyone had it at the same time.

1 We all -- nobody caught this. However, it was read once
2 with parts omitted. The jury had a particular question on
3 this section, and it was read again with again a part
4 omitted. So, now we'll be giving it to them again with
5 parts that were omitted read into it.

6 Because they've heard it twice already, they will
7 certainly know which parts were omitted prior. That puts,
8 whether intended or not, whether fault of anybody or not,
9 puts emphasis on the new portions like you're circling
10 with, with a red marker, and that ---

11 THE COURT: And that's why I said I could read the
12 third, add the third part in there.

13 MR. SHEALEY: Well, then that ---

14 THE COURT: So, it would not be ---

15 MR. SHEALEY: That as well is a circle like a red
16 marker, Your Honor.

17 THE COURT: It would not be as much attention to the
18 second -- the first part, but it is an accurate statement
19 of the law. And I will, I will read, I will read -- and
20 the statute is listed as A, B, and C. I will read all
21 three, but that's -- I will give a curative instruction
22 that they disregard the last two, and that they not
23 consider that in any way, and that this is the law that
24 they are to consider. And that's the purposes of a
25 curative instruction. And based on my research, I can give

1 them a curative instruction even during deliberations.

2 MR. SHEALEY: So, I take it you're denying our motion
3 for mistrial?

4 THE COURT: Yeah, I'm getting there.

5 MR. SHEALEY: Okay.

6 THE COURT: So, I am going to deny the motion for a
7 mistrial. I will read this portion. I will give the
8 curative instruction, and we'll -- and then I will instruct
9 them to begin their deliberations again.

10 MR. GOLDBERG: And just so we're clear, are you going
11 to include the language about ---

12 THE COURT: I'm going to read it straight from the
13 statute.

14 MR. GOLDBERG: Okay. All right. Thank you.

15 THE COURT: All right, you can bring them in.

16 (THE JURY ENTERS AT 2:06 P.M.)

17 THE COURT: Thank you, ladies and gentlemen of the
18 jury. Before you went back in the jury room, there was a
19 -- you had a question, and you asked me to read the
20 criminal sexual conduct first degree statute under section
21 16-3-652.

22 I'm going to ask that you disregard the -- disregard
23 the charge that I gave you the first time and after your
24 questioning. Do not use that statute in your
25 deliberations. I am going to, I am going to read it to

1 you, give you the charge again, and you are to use the
2 charge that I am giving you at this time, all right?

3 All right, the defendant is charged with criminal
4 sexual conduct in the first degree. The first element
5 which the state must prove beyond a reasonable doubt is
6 that the defendant engaged in a sexual battery with the
7 victim. A sexual battery is sexual intercourse,
8 cunnilingus, fellatio, anal intercourse, or any intrusion,
9 however slight, of any part of a person's body or of any
10 object into the genital or anal opening of another person's
11 body except when the intrusion is accomplished for
12 medically recognized treatment or diagnostic purposes.

13 If you find that the state has not shown beyond a
14 reasonable doubt that a sexual battery occurred, you would
15 stop deliberating, and your verdict would have to be not
16 guilty.

17 If you find that a sexual battery did occur, you must
18 then decide whether the state has proven beyond a
19 reasonable doubt one or more of the following
20 circumstances. One, that the actor used aggravated force
21 to accomplish sexual battery. B, that the victim submits
22 to sexual battery by the actor under circumstances where
23 the victim is also the victim of forcible confinement,
24 kidnapping, trafficking in persons, robbery, extortion,
25 burglary, housebreaking, or any other similar offense or

1 act. And C, the actor caused the victim, without the
2 victim's consent, to become mentally incapacitated or
3 physically helpless by administering, distributing,
4 dispensing, delivering, or causing to be administered,
5 distributed, dispensed, or delivered a controlled
6 substance, a controlled substance analogue, or any
7 intoxicating substance.

8 All right, you may begin again your -- I'm going to
9 send you back to the jury room. You may begin your
10 deliberations. Thank you.

11 (THE JURY EXITS AT 2:09 P.M.)

12 THE COURT: All right, and I read exactly from the
13 statute. I think that's what Mr. Goldberg had asked. The
14 desk book has something a little bit different, though, as
15 to the detail, but I read from the statute. All right.

16 MR. SHEALEY: And just one more thing before we get
17 off the record, Your Honor. I would again move for a
18 mistrial. I think by reading them the new law, there
19 wasn't any clarification of why it had to be done. It
20 could -- you know, I don't know what the inference could
21 be, whether it's a problem with the defense, problem with
22 the state. I think it prejudices our client without any
23 kind of explanation. So, for the purposes of the record,
24 again we'll move for a mistrial.

25 THE COURT: All right, and your motion is denied. All

1 right. Thank you.

2 MR. GOLDBERG: Thank you.

3 (OFF THE RECORD.)

4 THE COURT: All right, we have another question. You
5 may be seated. All right, the question is:

6 Can you read the charge again? Can you define
7 what aggravated -- is aggravated battery?

8 We will make this a part of the record, and I will
9 define, read the charge again as I've read it before, and
10 then I will define aggravated, the legal definition of an
11 aggravated battery. I will -- you can make an exception to
12 it for the record if you choose. But there is a legal
13 definition and they've asked for it, and I think -- there
14 is a legal definition, and I have to give it to them.

15 MR. SHEALEY: And, Your Honor, we object to that.
16 This is again what we were -- the defense was anticipating
17 a problem, this part being highlighted without explanation.
18 We object to this. We move for a mistrial again.

19 THE COURT: And I will, I will also place on the
20 record. I think earlier in your argument, you asked that
21 there not be -- that emphasis not be unduly added to it is
22 why I did not point out to the jurors that that was a
23 portion of the charge that was left out is because of your
24 request not that -- undue -- that it be unduly emphasized.
25 If there is something that you would like me to say that

1 would not emphasize the portion of the charge that we left
2 out, I will consider that. But that is the, that is --
3 other than telling them to disregard the previous charge.
4 I didn't point out the part of it that was left out because
5 I did not want to unduly emphasize the part that was left
6 out.

7 MS. PINNOCK: Well, Judge, if I may? I don't think
8 there is anything we can say other than that it has been
9 unduly -- it has been noticed. That's the part they
10 noticed was missing when you read it the first two times.
11 They were paying attention to what you said obviously by
12 the request for a further definition of it.

13 We objected to it being added to the charge because it
14 was left out the previous two times. They're asking for
15 more explanation on that one piece that was left out. I
16 don't think there's anything else we can call it other than
17 undue emphasis at this point.

18 It was not included in the charge. It was not
19 included in your recharge with it included. I mean,
20 they're asking for more details on the piece of your
21 original charge that was left out. The undue emphasis on
22 that section I think is clear. I don't believe that they
23 should be provided the definition of it.

24 If you're going to recharge, we would ask over our
25 previous objection that you read it how you charged it to

1 them the third time, but we would object to any
2 definitions, legal or not. That part is what we are trying
3 to avoid them focusing on as something that was left out,
4 drawing their attention to statements that they hadn't
5 heard before. And obviously that's what they're focused
6 on, based on their question.

7 So, we would object to any definitions. If you choose
8 to recharge it -- I mean, they're asking for a recharge,
9 but we -- providing definition of something is putting an
10 undue emphasis on it, and that's what we were trying to
11 avoid to begin with.

12 THE COURT: Any response from the state?

13 MR. GOLDBERG: Just stand by your previous rulings,
14 ask you to stand by your previous rulings, and ask -- was
15 it aggravated force? Is that what they said? Is that what
16 they asked about?

17 THE COURT: Yes.

18 MR. GOLDBERG: There is a definition of that in the
19 16-3-651.

20 MS. PINNOCK: And, Judge, it's not included in the
21 charge. The definition of these terms that have the old
22 legal definitions are not included in Your Honor's charge.

23 You provided them with what the law is. It's now
24 their job to take what you told them and apply them to what
25 they heard in here. I don't think going more and more and

1 more, explain, explain when it's not included in your
2 charge, I don't think we need to be getting to that level.
3 If they're going to be recharged, we'd ask you read it as
4 you read it to them last time, but we don't -- it would be,
5 it's unduly suggesting that that piece of the statute be
6 focused on, which is again ---

7 THE COURT: Well, they asked the question. It's not
8 that that -- that I'm proposing -- they, the jurors, asked
9 the question, what it was. I'm -- my position is there is
10 a definition.

11 MS. PINNOCK: Yes, ma'am.

12 THE COURT: They can ask, and you, you want me to tell
13 them there's not a definition for aggravated force when
14 there is? That's the law.

15 MS. PINNOCK: Yes, ma'am, and we, I understand there's
16 a definition. There's a definition for every term that's
17 in these charges, that's contained in both of the charges
18 for criminal sexual conduct and burglary. They are not
19 included in your jury charges. That, that's our, that's
20 our point.

21 You charged them on what the law is. If Your Honor
22 had the -- I mean, you have ability to include the charges,
23 the definitions to terms in your charge, but your general
24 charges don't do that.

25 We objected to the piece being added because we argued

1 that that would put an undue emphasis on it in the eyes of
2 the jury because they had not heard it the previous two
3 times. There is no way to say now that that's not what
4 they're focused on, that one part that they had not heard
5 two times before they heard a third time, and now they want
6 further information about it. I think it -- you added it.
7 If you're going to recharge, we'd ask that you recharge as
8 is because that -- it's, it just goes back to exactly what
9 we were trying to avoid, Judge.

10 I don't think there is any other remedy at this point
11 but a mistrial. And we would ask Your Honor, and we know
12 you've ruled. We would ask you to -- at this point, I do
13 think we need to be granted a mistrial.

14 THE COURT: All right, I am going to deny the motion.
15 I do not find there is a manifest necessity or prejudice to
16 your client that would necessitate a mistrial in providing
17 an accurate statement of the law to jurors.

18 It is not uncommon for jurors to have a question as to
19 the law. My job is to instruct them as to the law. It
20 would -- they have asked a question as to what aggravated
21 force is. There is legal definition that is included in
22 the bench book under the charge, under the criminal sexual
23 conduct charge. That is the portion that I will read. I
24 will read the entire criminal sexual conduct statute once
25 again, and then I would define what aggravated force is for

1 the jurors since they asked.

2 All right, you can bring them back in.

3 But your exceptions are noted for the record.

4 MS. PINNOCK: Yes, ma'am.

5 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
6 NUMBER 6.)

7 (THE JURY ENTERS AT 2:48 P.M.)

8 THE COURT: All right, ladies and gentlemen of the
9 jury, I received your question, and it reads:

10 Read the charge again. Can you define what is
11 aggravated battery?

12 And it is signed by the foreman, been marked as
13 Court's Exhibit Number 6.

14 The defendant is charged with criminal sexual conduct
15 in the first degree. The first element which the state
16 must prove beyond a reasonable doubt is that the defendant
17 engaged in sexual battery with the victim, and sexual
18 battery is sexual intercourse, cunnilingus, fellatio, anal
19 intercourse, or any intrusion, however slight, of any part
20 of a person's body, or of any object into the genital or
21 anal openings of another person's body except when the
22 intrusion is accomplished for medically recognized
23 treatment or diagnosis -- diagnostic purposes.

24 If you find that the state has not shown beyond a
25 reasonable doubt that a sexual battery occurred, you would

1 stop your deliberations, and your verdict would have to be
2 not guilty.

3 If you find that a sexual battery did occur, you must
4 then decide whether the state has proven beyond a
5 reasonable doubt one of more of the following circumstances
6 to be proven: that the defendant used aggravated force to
7 accomplish the sexual battery. Aggravated force means the
8 use of physical force or physical violence of a high and
9 aggravated nature to overcome to victim. This includes the
10 threat of using a deadly weapon. Or the victim submitted
11 to sexual battery while the victim was also the victim of
12 forcible confinement, kidnapping, robbery, extortion,
13 burglary, housebreaking, or any other similar act. Or the
14 defendant caused the victim without the victim's consent to
15 become mentally incapacitated or physically helpless by
16 administering, distributing, dispensing, delivering or
17 causing to be administered, distributed, dispensed, or
18 delivered a controlled substance, a controlled substance
19 analogue, or any intoxicating substance.

20 All right. Thank you.

21 (THE JURY EXITS AT 2:50 P.M.)

22 THE COURT: All right.

23 MR. GOLDBERG: Thank you.

24 (OFF THE RECORD.)

25 THE COURT: All right, we have another question. Two,

1 questions, I'm sorry. And first question is: Can we see
2 the defendant's transcript testimony?

3 I'm going to bring them in and tell them that they
4 can't see it. Even though she's sitting over there typing
5 hard away, they can't see it, but that they can listen to
6 it because she's already found the spot, and she'll play
7 all of his testimony.

8 The second question is, it says:

9 The South Carolina that the victim -- the South
10 Carolina law that the victim's testimony in CSC
11 -- CSE does not have to be corroborated, does the
12 victim -- does that law imply that the victim's
13 testimony must be accepted as being true?

14 I intend on reading a portion of not that, but that:

15 You must determine credibility of all witnesses
16 who have testified in this case. Credibility
17 simply means believability. It becomes your duty
18 as jurors -- your jury -- it becomes your duty as
19 jurors to analyze and evaluate the evidence and
20 determine which evidence convinces you of its
21 truth and determine the believability of
22 witnesses who have testified in this case.

23 Any -- I mean, I can read the whole thing, but they --
24 there's no need for me to read the statute again because
25 they're pretty clear on what the statute says. But I think

1 that the answer to the question is that they are to
2 consider the credibility of all witnesses.

3 Any position?

4 MR.: SHEALEY: Our position is that it's probably
5 appropriate we again would, with that line of questioning,
6 renew our motions on that issue and move for a mistrial,
7 given their inclination on that specific issue.

8 THE COURT: Well, I think that -- I'll just deny the
9 motion. I think the answer will clarify their question,
10 and if there was ever a question as to whether or not the
11 jurors thought that they had to only consider her
12 testimony, I think by them asking this question that it
13 will be definitely clear that the answer to that is no once
14 I read it to them. So, I will deny the motion for a
15 mistrial.

16 You can bring them on in.

17 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
18 NUMBER 7.)

19 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
20 NUMBER 8.)

21 (THE JURY ENTERS AT 4:56 P.M.)

22 THE COURT: All right, Mr. Foreman, I have received
23 your questions, and the first one that came out was: Can we
24 see the defendant's transcript testimony?

25 Although you see the court reporter over there working

1 hard and typing her -- typing away, it is not in a format
2 for you all to read. However, we can play back the
3 testimony because she is also recording the testimony. So,
4 we are prepared to play that back for you all at this
5 moment, all right?

6 FOREPERSON: Yes, ma'am.

7 THE COURT: And then I will -- after you listen to
8 that, I can answer the second question, all right?

9 (TESTIMONY OF DEFENDANT IS REPLAYED FOR THE JURY.
10 PORTION OBJECTED TO DURING CROSS-EXAMINATION AND STRUCK BY
11 THE COURT NOT REPLAYED.)

12 THE COURT: All right, ladies and gentlemen of the
13 jury, as to your second, second question, which would be --
14 the first one is Court Exhibit Number?

15 COURT REPORTER: 7.

16 THE COURT: And this would be -- the first one was 7?

17 COURT REPORTER: 7.

18 THE COURT: The second one would be Number 8:

19 The South Carolina law that the victim's
20 testimony in CSE does not have to be
21 corroborated, does the law imply that the
22 victim's testimony must be accepted as being
23 true?

24 I will read you the appropriate part of the charge as
25 to that question.

1 Ladies and gentlemen of the jury, you must determine
2 the credibility of all witnesses who have testified in this
3 case. Credibility simply means believability. It becomes
4 your duty as jurors to analyze and to evaluate the evidence
5 and determine which evidence convinces you of its truth.

6 In determining the believability of witnesses who have
7 testified in this case, you may believe one witness over
8 several witnesses, or several witnesses over one witness.
9 You may believe a part of the testimony of a witness and
10 reject the remaining part of the testimony of that same
11 witness. You may believe the testimony of a witness in its
12 entirety, or reject the testimony of a witness in its
13 entirety. You may consider whether any witness has
14 exhibited to you any interest, bias, prejudice, or other
15 motives in this case. You may also consider the appearance
16 and manner of a witness while on the witness stand.

17 All right, thank you. We'll send you all back to
18 continue your deliberations.

19 (THE JURY EXITS AT 5:20 P.M.)

20 THE COURT: All right, then we'll wait on them.

21 (OFF THE RECORD.)

22 THE COURT: All right, it's my understanding they have
23 reached a verdict. So, we will bring them on in.

24 You can bring them in.

25 (THE JURY ENTERS AT 5:20 P.M.)

1 THE COURT: All right, Mr. Foreman, it's my
2 understanding that you all have reached a verdict. Is that
3 correct?

4 FOREPERSON: Yes, we have, Your Honor.

5 THE COURT: All right, and can you pass that, your
6 verdict form, to the bailiff?

7 FOREPERSON: Yes, ma'am.

8 (A PAUSE.)

9 THE COURT: All right, I'm going to ask the clerk to
10 publish the verdict.

11 VERDICT

12 CLERK OF COURT: In the Court of General Sessions of
13 the Fifth Judicial Circuit, the *State vs. Melvin Stukes*, as
14 to the charge of burglary in the first degree, we, the
15 jury, unanimously find the defendant guilty. As to the
16 charge of criminal sexual conduct in the first degree, we,
17 the jury, unanimously find the defendant guilty. Signed by
18 the foreperson, date 7-27-2012.

19 Mr. Foreman, is this your verdict and the verdict of
20 the entire jury?

21 FOREPERSON: Yes, it is.

22 CLERK OF COURT: Thank you.

23 THE COURT: All right, we'll mark that as Court's
24 Exhibit Number 9.

25 (VERDICT FORM MARKED INTO EVIDENCE AS COURT'S EXHIBIT

1 NUMBER 9.)

2 THE COURT: All right, anything else from the state?

3 MR. GOLDBERG: Nothing from the state, Your Honor.

4 THE COURT: Anything from the defendant?

5 MR. SHEALEY: Yes, Your Honor. We ask to poll the
6 jury.

7 THE COURT: Yes.

8 Madame Clerk.

9 CLERK OF COURT: Yes, Your Honor.

10 THE COURT: Will you poll the jurors?

11 CLERK OF COURT: Mr. Foreman, ladies and gentlemen of
12 the jury, I'm going to call your number and ask each of you
13 two questions. If you would, answer each question.

14 Number 108, was this your verdict?

15 JUROR: Yes, it was.

16 CLERK OF COURT: Is it still your verdict?

17 JUROR: Yes, it is.

18 CLERK OF COURT: Okay, y'all don't have to stand for
19 me. I'm nobody, okay?

20 Number 72, was this your verdict?

21 JUROR: Yes.

22 CLERK OF COURT: Is it still your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Number 226, was this your verdict?

25 JUROR: Yes.

1 CLERK OF COURT: Is it still your verdict?

2 JUROR: Yes.

3 CLERK OF COURT: Number 15, was this your verdict?

4 JUROR: Yes.

5 CLERK OF COURT: Is it still your verdict?

6 JUROR: Yes.

7 CLERK OF COURT: Number 155, was this your verdict?

8 JUROR: Yes.

9 CLERK OF COURT: Is it still your verdict?

10 JUROR: Yes.

11 CLERK OF COURT: Number 48, was this your verdict?

12 JUROR: Yes.

13 CLERK OF COURT: Is it still your verdict?

14 JUROR: Yes.

15 THE COURT: Ma'am, I need to -- we need you to speak
16 up because she has to take it down.

17 JUROR: Yes. Yes.

18 CLERK OF COURT: Number 215, was this your verdict?

19 JUROR: Yes.

20 CLERK OF COURT: Is it still your verdict?

21 JUROR: Yes.

22 CLERK OF COURT: Number 280, was this your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Is it still your verdict?

25 JUROR: Yes.

1 CLERK OF COURT: Number 153, was this your verdict?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: Is it still your verdict?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Number 27, was this your verdict?

6 JUROR: Yes.

7 CLERK OF COURT: Is it still your verdict?

8 JUROR: Yes.

9 CLERK OF COURT: Number 136, was this your verdict?

10 JUROR: Yes.

11 CLERK OF COURT: Is it still your verdict?

12 JUROR: Yes.

13 CLERK OF COURT: Number 75, was this your verdict?

14 JUROR: Yes.

15 CLERK OF COURT: Is it still your verdict?

16 JUROR: Yes.

17 CLERK OF COURT: The jury is polled Your Honor.

18 THE COURT: All right, ladies and gentlemen of the
19 jury, I would like to thank you for your service here this
20 week. I know that it has been a long week here, here in
21 Richland County Judicial Center, but I do want to thank you
22 for your service.

23 There is, there was a case that could not have been
24 resolved without your assistance this week. I do want to
25 thank you on behalf of all of the parties that are here.

1 Thank you for paying attention during this trial.

2 And you will not have to serve, you will not have to,
3 you will not have to serve for another three years unless
4 you choose to do so after two years.

5 You have -- the clerk has some paperwork for you all
6 to -- she has the paperwork for you, to go over with you.
7 So, if you all will meet her back in the jury room, she
8 will give you that paperwork, and I hope that you have an
9 enjoyable weekend.

10 And once again, I'd like to thank you for your service
11 here this week. Thank you.

12 (THE JURY EXITS AT 7:10 P.M.)

13 THE COURT: All right, anything else for the state?

14 MR. GOLDBERG: Not in regards to the...

15 THE COURT: Okay, and from the defense?

16 MR. SHEALEY: Yes, Your Honor. We have some
17 post-trial motions. Your Honor, we had numerous post-trial
18 issues arise. However, at this time I'd like to start with
19 our pre-trial issues, Your Honor. I start by renewing all
20 of our pre-trial motions and objections, Your Honor,
21 including both directed verdict motions.

22 I'd like to start by addressing our motion with
23 reference S.C. Code 16-3-657, which was included in the
24 state's closing argument, as well as a charge to the jury.
25 We've always felt that was inappropriate. We felt it was a

1 comment on the facts. We feel that was exemplified here
2 when the jury asked a question on that issue. Their mind
3 was clear, but that became an issue. We asked for a
4 mistrial when they raised that issue. It was denied, and
5 so we're renewing that again.

6 Your Honor, we feel that for a judge to comment on the
7 facts and to bolster the credibility of one witness over
8 another, it flies in the face of the rest of that
9 credibility charge, and it sets aside an alleged victim in
10 a case like this versus every other criminal defendant.
11 And, Your Honor, we have a brief on that.

12 Your Honor, also we've going to go ahead and renew our
13 motion on your denial of our ability to cross-examine Misty
14 Shealy when she answered a line of cross-examination about
15 her sexual conduct, a specific instance. We felt that was
16 proper, given our legal theory and our ability to present a
17 full and complete defense in this case, Your Honor, and how
18 also that was included in her report to the nurse. We felt
19 that was proper, and that was denied. That's an
20 opportunity.

21 Your Honor, we're also going to renew our objection to
22 the *Riddle* violation, Your Honor. We felt that was
23 improper at the time when she went ahead and said that she
24 had -- was told by her attacker to not say anything. This
25 was never made known to defense before, Your Honor, and we

1 felt in this trial the timing was improper.

2 Also going to renew our *Doyle* violation to Mr.
3 Goldberg's line of questioning to Mr. Stukes about how, you
4 know, he could have had the opportunity to come forward
5 again and said something.

6 The charging issue ---

7 THE COURT: I think I ruled with y'all on that one.

8 The motion was regarding your ---

9 MR. SHEALEY: Thank you, Your Honor. You're correct.

10 THE COURT: I think I allowed him to testify.

11 MR. SHEALEY: Thank you very much.

12 To the charge issues, Your Honor, we felt it was
13 drawing attention by rereading the omitted portions,
14 however correct they may have been, and drawing attention
15 to the CSC statute portions that are missing. The jury
16 then came back with a separate question on further
17 definitions on that statute.

18 There was no clarification from the court as to why it
19 was being -- the prior two readings were being stricken I
20 think led a lot to interpretation for the jury. At that
21 point in time we asked for a mistrial, and that was denied
22 us, Your Honor.

23 And then again, once again when the jury had the
24 question on the statutory provision 16-3-657, and I believe
25 the question presented was do we have to believe the

1 victim's testimony per the statute, we have to find it as
2 true per that statute. And then you reread the credibility
3 aspect of the charge, and we feel that that was the exact
4 reason for all of our pretrial issues on that subject. And
5 we feel it does raise the credibility of one witness over
6 all else and flies in the face of the rest of the charges
7 on credibility.

8 Your Honor, at this time, based on what I've just
9 said, we ask the court to set aside the verdict and grant a
10 new trial.

11 THE COURT: Thank you.

12 Any response?

13 MR. GOLDBERG: We'd just ask you to rely on your
14 previous rulings in regards to each of those matters.

15 THE COURT: All right, just one point as to the last
16 question. I think it was number 7. I guess a point of
17 clarification on that.

18 In reading that charge and answering that question, I
19 actually read the charge and inserted the word all in the
20 charge -- I'm trying to find it -- in answering that
21 question. So, the question was did they have to just -- I
22 think they said do we have to just take what, I guess, what
23 the victim tells us. And I said: You must determine the
24 credibility of all witnesses who have testified. So, I
25 added the word all in there in answering that question,

1 which I believe would cure any concern that you had
2 regarding that statute.

3 Furthermore, under the case of *State vs. Hill* that I
4 have cited, a 2011 case that was recently decided,
5 addresses the issue exactly on point. And the court has
6 complied with the ruling in at that case.

7 I believe the only other thing is the issue I think
8 you brought up regarding Mr. Goldberg's cross-examination.
9 I believe I did rule with you all on that and allowed your
10 investigator to testify to the, to the statement that was
11 given to him in 2011.

12 I am going to respectfully deny the motion for a new
13 trial, but I do -- but your motions are preserved for the
14 record.

15 MR. SHEALEY: Thank you, Your Honor.

16 THE COURT: And your objection.

17 MR. SHEALEY: All right. Thank you.

18 (A PAUSE.)

19 MR. GOLDBERG: Thank you, Your Honor. If it please
20 the court? Very briefly in regards to sentencing, Mr.
21 Stukes's prior record, refresh the court's memory.
22 Possession of cocaine 1998, five years' suspended on three
23 years' probation. 1997, he was charged with assault and
24 battery with intent to kill. It was pled to simple assault
25 and battery. Got thirty days suspended. 2004 conviction

1 for possession of cocaine second, one year and a fine
2 suspended on two years' probation. 2004, entering premises
3 after warning. Got time served, and that looks like a
4 probation violation -- revocation, rather, in 2005 on the
5 coke -- crack second. He got one year.

6 I spoke to the victim, Ms. Shealy. She does not wish
7 to address you. She believes that she said everything she
8 has to say about this case on the witness stand.

9 As far as sentencing, Your Honor has paid close
10 attention. Obviously the facts were presented in this
11 case, and as a result of that, I don't think there's any
12 need to go back through it. We would simply ask you to
13 sentence Mr. Stukes to a sentence that is consistent with
14 his behavior and his actions on May the 10th, 2004.

15 THE COURT: All right. Thank you.

16 Yes, sir. Yes, ma'am.

17 MS. PINNOCK: Please the court, Your Honor? Your
18 Honor, I would like you to take his, take his lack of
19 record into consideration.

20 I'm sorry.

21 I still, I still believe that he is an innocent man.
22 I don't believe that he committed these crimes. He has
23 been adamant from day one that he did not do this.

24 His sisters are here with him. His mother had to
25 leave, but they've been here since I started representing

1 him in this since this past December, and I know they have
2 been by his side since he was put in jail twenty-seven
3 months ago.

4 We understand he has been convicted, but he maintains
5 his innocence. He does not have, he does not have a long,
6 lengthy record, Your Honor. His last conviction was in
7 2004, and it was a drug charge. The only semi violent --
8 and we don't know the facts of the 1997, 1997 conviction,
9 but he pled to a simple assault. He was a very young man
10 in the nineties, and since then he's had two offenses for
11 drugs.

12 Your Honor, I'd just like to ask you to take those
13 into consideration and please not -- we understand there's
14 a minimum, a mandatory minimum that he's also facing. So,
15 we would just ask you to sentence him to the minimum. He
16 understands it's fifteen years. So, we would ask you to
17 strongly consider the minimum sentence that you can give
18 him for the burglary first.

19 (A PAUSE.)

20 *SENTENCE OF THE COURT*

21 THE COURT: All right. All right, on indictment
22 number 2010-GS-40-2700 and 2701, sir, you will be sentenced
23 to the State Department of Corrections for twenty-five
24 years. The sentences will run concurrent, one to another.
25 I believe that's all.

1 Anything else you want to say?
2 MR. GOLDBERG: No, ma'am. Thank you.
3 THE COURT: Anything else from you?
4 MS. PINNOCK: No.
5 THE COURT: Thank you.
6 MR. GOLDBERG: Thank you, Your Honor.
7 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 24TH, 25TH, 26TH, 27TH, DAYS OF JULY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JANUARY 15TH, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

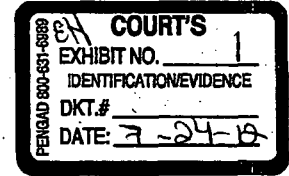
IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2010GS402700,
2010GS402701

The State of South Carolina,

vs.

Melvin Stukes,

Defendant.



**Motion in Limine to
Prevent Reference to
SC. Code § 16-3-657**

Pursuant to Rule 20 of the South Carolina Rules of Criminal Procedure, the Defendant, by and through his attorney, objects to this Court instructing the Jury as to South Carolina Code § 16-3-657, and would request a ruling on this issue pre-trial to prohibit the State from referencing the statute in opening statement and/or closing arguments.

Counsel submits a memorandum in support of its Motion to Prevent Reference to S.C. Code § 16-3-657, herein attached.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Tracy E. Pinnock".

Tracy E. Pinnock
Attorney for Defendant

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 24 day of July, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2010GS402700,
2010GS402071

The State of South Carolina,)
))
))

vs.)

Melvin Stukes,)

Defendant.)

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION IN LIMINE
TO PREVENT REFERENCE TO
S.C. CODE §16-3-657**

Pursuant to Rule 20 of the South Carolina Rules of Criminal Procedure, the Defendant, by and through his attorney, object to this Court instructing the Jury as to South Carolina Code §16-3-657, and would request a ruling on this issue to prohibit the State from referencing the statute during opening statements and closing arguments.

South Carolina Statute §16-3-657 states: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." A charge pursuant to this section that the testimony of the alleged victim need not be corroborated would constitute an impermissible charge on the facts. Such a charge would highlight the testimony of the alleged victim and give the jury the impression that they need not evaluate the victim's credibility which is in direct contradiction to South Carolina case law.

A trial judge has discretion in determining how to instruct the jury regarding the law and what to include in the charges. However, a trial judge must not express an opinion or express a view reasonably calculated to influence the jury in deciding a material factual issue. Article V, § 21 of the South Carolina Constitution specifically provided, "Judges shall not charge juries in respect to

matters of fact, but shall declare the law.” Therefore, trial judges cannot convey to the jury, either expressly or impliedly, their opinion of the force and effect of testimony upon any question of fact at issue. *State v. Campbell*, 297 S.C. 24, 374 S.E. 2d 688 (1998), *State v. Pruitt*, 187 S.C. 58, 196 S.E. 371 (1938). A trial judge may not issue a charge that has the tendency to indicate an opinion as to weight or sufficiency of evidence, credibility of witnesses, guilt of the accused, or any fact in controversy. *State v. Brisbon*, 323 S.C. 324, 474 S.E.2d 433 (1996), *State v. Jackson*, 297 S.C. 523, 377 S.E.2d 570 (1989). A trial judge may not inject into trial an opinion as to truth and veracity of any witness. *State v. Hardee*, 279 S.C. 409, 308 S.E. 2d 521 (1983). Determining the credibility of a witness is a duty that rest solely with the jury.

In *State v. Grant*, 275 S.C. 404 (1980), which involved a robbery, the trial judge instructed the jury that they may consider flight as evidence of a guilty knowledge or intent. The Supreme Court found that by specifically charging the law of flight, the trial court placed undue emphasis on such evidence. Therefore, the South Carolina Supreme Court found the charge improper. Likewise, in the case at bar, a charge specifically addressing § 16-3-657 will place undue emphasis on a single witness’ testimony.

In *State v. Rayfield*, 631 S.E.2d 244 (2006), the trial court used the statutory language in instructing the jury as to the law they should consider during deliberations. The South Carolina Supreme Court stated that, “a trial judge is not required to charge §16-3-657, but when the judge chooses to do so, giving the charge does not constitute reversible error when this single instruction is not *unduly* emphasized and the charge as a whole comports with the law.” (emphasis added) *Id.* at 250. the Defendant objects to a jury charge based on § 16-3-657 or any mention of this statute by the Assistant Solicitor and would request that the Court in its discretion, rule that this statute not be

presented to the jury.

Section 16-3-657 is intended to “prevent 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.” *Id.* at 251 (Pleicones, J., dissenting). See also, *State v. Shumpert*, 312 S.C. 502; 435 S.E.2d 859 (1993) (“Since the charge specified only the victim’s testimony need not be corroborated it appears to express an opinion on her credibility... [t]he law found in *Section 16-3-657* should not be charged to the jury.”) (Finney, A.J. dissenting). It is simply a standard for the Court to use in determining whether the case should proceed past the request for a Directed Verdict, and be given to the jury for deliberation. A contrary interpretation of this statute would serve no purpose other than to place undue emphasis on the alleged victim’s testimony, because corroboration is never required for a witness to testify. Corroboration may or may not assist the juror in assessing credibility, but it is never required. “By specifically charging that the alleged victim’s testimony need not be corroborated, the trial judge singles out the alleged victim and appears to express an opinion on her credibility.” *Id.* at 251 (Pleicones, J., dissenting).

Placing this emphasis on the alleged victim’s testimony through jury instructions is highly prejudicial to the Defendant and would confuse the jurors as to their duty in weighing the evidence. Furthermore, the Court will instruct the jury as to credibility of all witnesses, in general, and that instruction will convey the same information without singling out the victim’s testimony as different.

The State’s specific reference to and use of this statute in their opening or closing statement would also cause the jury to believe that the State of South Carolina holds the credibility of a victim in Criminal Sexual Conduct cases in a higher regard than victims in other cases. The Defendant would not argue that the Solicitor cannot state the proposition that any witness’ testimony need not

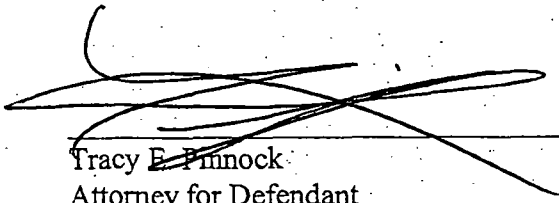
be corroborated, including the victim, but reference directly to the statute would unfairly enhance the alleged victim's credibility. This may allow the jury to believe that they may not need to judge the credibility of the alleged victim themselves, as the State has already deemed it to be trustworthy. Because the juror is encouraged to believe the alleged victim's testimony and not demand more, the effect would be that the burden of proof would be shifted to the Defense and require the Defendant to prove his innocence. This burden shifting would violate the Defendant's due process rights under the Federal and State Constitution.

Additionally, the Defense would assert that improper use of this statute violates the Defendant's right to Equal Protection under Article I section 3 of the South Carolina State Constitution. The introduction of this statute as a jury instruction would put the Defendant at a greater disadvantage than defendants charged with other crimes where all witness testimony is viewed equally. If allowed, Criminal Sexual Conduct crimes would be the only crimes in South Carolina where the Jury is specifically instructed that they may find the Defendant guilty based on the alleged victim's testimony alone. Conversely, the Equal Protection rights of victims may be affected as the alleged victim in a non-Sexual Conduct case are not afforded this statutory assurance that their testimony does not need corroboration for a conviction to occur.

Conclusion

The Court, in exercise of its discretion, should rule that introduction of §16-3-657 to the jury would unfairly enhance the credibility of the victim, and, therefore, the Court should not charge the jury on the Statute and the State should not be allowed to reference the statute when addressing the jury.

IT IS SO MOVED.



Tracy E. Pinnock
Attorney for Defendant

Richland County Public Defender's Office
P.O. Box 192
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(803) 765-2592

Columbia, South Carolina

This 24 day of July, 2012.



LexisNexis®



Analysis

As of: Jul 22, 2012

The STATE, Respondent v. Edward S. CAMPBELL, Appellant**No. 22929****Supreme Court of South Carolina****297 S.C. 24; 374 S.E.2d 668; 1988 S.C. LEXIS 133****September 19, 1988, Heard****December 5, 1988, Decided**

PRIOR HISTORY: [***1] Appeal from Greenwood County, Dan F. Laney, Jr., Judge.

DISPOSITION: Reversed.

COUNSEL: *James D. Jefferies*, Greenwood (Now deceased), *for appellant*.

Atty. Gen. T. Travis Medlock, Asst. Attys. Gen. Harold M. Coombs, Jr., and Amie L. Clifford, Columbia and *Sol. W. Townes Jones, IV*, Greenwood, *for respondent*.

JUDGES: Toal, Justice. Gregory, C.J., and Harwell, Chandler and Finney, JJ., concur.

OPINION BY: TOAL

OPINION

[*25] [**668] Appellant was convicted of distribution of cocaine. He was sentenced to a fifteen year term of imprisonment, suspended upon the service of six years and five years probation. He asserts that the trial judge improperly commented on the evidence and testimony. We agree and reverse.

The testimony reflects that on September 12, 1986, Campbell sold 11.08 grains of cocaine to an undercover agent and a confidential informant for the Greenwood County Sheriff's Department. Campbell offered entrapment as a defense. Since there will be a new trial for reasons hereafter discussed, we refrain from commenting on the evidence in any detail.

Through this appeal, Campbell argues that he is entitled to a new trial because of improper and prejudicial comments by the trial judge.

During the trial, [***2] the trial judge repeatedly injected his opinion by making unsolicited comments to the defense counsel, both in and out of the presence of the jury.

During defense counsel's cross-examination of Lt. McAllister, the supervisor of the undercover drug operation, counsel questioned the witness about the moral character of and relationship between the undercover agent and confidential informant. The trial judge interrupted the cross-examination with comments which implied that there was a lesser relationship between the agent and the informant thereby implying that it was less likely that the agent's moral character was affected by the

297 S.C. 24, *25; 374 S.E.2d 668, **668;
1988 S.C. LEXIS 133, ***2

informant's bad character.

Later in the cross-examination of Lt. McAllister, the trial judge interrupted the examination and made the following comment to defense counsel:

"THE COURT: I know you don't want to call me as a witness, because you'll find out what will happen then."

This statement clearly reflects the judge's opinion as to Campbell's case and amounts as a direct attack upon Campbell's defense.

Article V, § 21 of the South Carolina Constitution provides: [*26] "Judges shall not charge juries in respect to matters of fact, but shall declare the law." [***3] The basis of this constitutional provision is founded upon the concept of our system of justice that every person charged with a crime has the right to a fair and impartial trial and [**669] that such a trial may only be achieved with the neutrality of the trial judge. "It is elementary that in the course of the trial of a criminal case, the trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, as to the controverted facts." *State v. Kennedy*, 272 S.C. 231, 250 S.E. (2d) 338 (1978); *State v. Pruitt*, 187 S.C. 58, 196 S.E. 371 (1938); *South Carolina Constitution, Art. 5, Sec. 17*.

The reasoning for such prohibition was recognized in *Crenshaw v. Southern Railway Company*, 214 S.C. 553, 53 S.E. (2d) 789 (1949). Such prohibition exists because of the ease with which a judge may, even unintentionally, influence a jury:

"It has long been recognized that even a

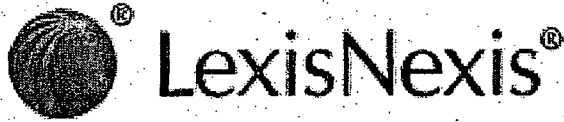
slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury. Vested as the trial judge is, with superior authority, disinterested, [***4] and possessing experience not available to the ordinary layman, jurors, as a rule, are anxious to catch his view, upon which to found this conclusions."

Crenshaw, 214 S.C. at 560, 53 S.E. (2d) at 791-2, citing *Pruitt*, *supra*.

In our view, the trial judge's interruptions and comments were improper and prejudicial to the appellant. The judge's remarks concerning the difference between a brother-in-law and ex-brother-in-law discounted the fact that there was evidence of some type of relationship between the agent and informant. When the judge stated that defense counsel did not want to put the judge on the stand, the judge made it clear to the jury that he felt that Campbell was guilty of the charges.

By making these remarks, the trial judge injected his opinion as to the weight of the evidence against Campbell's [*27] interests. Such remarks are improper. We are convinced these errors were prejudicial and the judgment of conviction should be reversed and a new trial granted. The remaining exceptions raised on appeal are dismissed pursuant to Rule 23.

Reversed.



STATE v. PRUITT

14661

SUPREME COURT OF SOUTH CAROLINA

187 S.C. 58; 196 S.E. 371; 1938 S.C. LEXIS 69

April 8, 1938, Decided

PRIOR HISTORY: [***1] Before JOHNSON, J., Anderson, September, 1937. Judgment reversed and case remanded for a new trial.

Mrs. L. Y. Pruitt was convicted of maintaining a nuisance under the common law, and of maintaining a place where people were permitted to resort for purposes of drinking alcoholic liquors and beverages in violation of statute, and she appeals.

DISPOSITION: Judgment reversed and case remanded.

HEADNOTES

1. CRIMINAL LAW.--A trial Judge is not at liberty, in his charge, to comment on the weight or sufficiency of the evidence. Const. Art. 5, § 26.

2. CRIMINAL LAW.--In the course of the trial of a criminal case, the trial Judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, or as to the controverted facts. Const. Art. 5, § 26.

3. CRIMINAL LAW.--The jury are the sole judges of the facts and the credibility of witnesses.

4. CRIMINAL LAW.--The object of Constitution forbidding Judges from charging juries in respect to

matters of fact is to leave the decision of all questions of fact to the jury exclusively, uninfluenced by any expression of opinion by the Judge, whose position would very naturally add great weight to any opinion which he might express upon questions of fact. Const. Art. 5, § 26.

5. CRIMINAL LAW.--In prosecution for maintaining a liquor nuisance where defendant, who had not retained counsel, was not in Court when trial commenced, Judge's comments, made in an endeavor to acquaint defendant with what had transpired before she appeared, containing statement that some of testimony tended to establish fact that immoral people had been seen in the place, that women of lowest character frequented the place, that noise, cursing and drinking went on there until 3 or 4 o'clock in the morning and that couples were seen dancing there constituted prejudicial error. Code 1932, § 1854; Const. Art. 5, § 26.

6. CRIMINAL LAW.--In prosecution for maintaining a liquor nuisance where Court erroneously commented on evidence, the error was not cured by the general charge informing jury that they were the sole judges of facts and weight and sufficiency of evidence in the case. Code 1932, § 1854; Const. Art. 5, § 26.

COUNSEL: Messrs. A. H. Dagnall and Harold Major, for appellant, cite: As to charge on facts: 181 S.C. 101; 186 S.E. 786; 119 S.C. 134; 112 S.E. 78; 47 S.C. 408; 25 S.E. 797; 50 S.C. 151; 27 S.E. 645; 73 S.C. 379; 53 S.E. 639; 81 S.C. 374; 62 S.E. 438; 84 S.C. 526; 66 S.E. 1042;

187 S.C. 58, *; 196 S.E. 371, **;
1938 S.C. LEXIS 69, ***]

137 A. S. R., 855; 19 Ann. Cas., 1166; 87 S.C. 407; 69 S.E. 883; 99 S.C. 221; 83 S.E. 33; 110 S.C. 137; 96 S.E. 490. Charge: 173 S.C. 183; 133 S.C. 185; 130 S.E. 646; 47 S.C. 507. Nuisance defined: 46 C. J., 676; 155 S.C. 1; 151 S.E. 907; 142 S.C. 334; 140 S.E. 575.

Mr. Rufus Fant, Solicitor, for the State, cites: *Nuisance*: 82 S.C. 181; 63 S.E. 884; 166 S.E. 738; 20 R. C. L., 384. Charge: 159 S.C. 165; 156 S.E. 353; 159 S.C. 185; 156 S.E. 355; 160 S.C. 379; 158 S.E. 729. Request for charge: 159 S.C. 165; 159 S.C. 185; 160 S.C. [***2] 379.

JUDGES: E. L. FISHBURNE, A. J. JOHN G. STABLER, C. J., MILLEDGE L. BONHAM and D. GORDON BAKER, A. Js., concurred. JESSE F. CARTER, A. J., absent.

OPINION BY: FISHBURNE

OPINION

[*59] [***372] The opinion of the Court was delivered by MR. JUSTICE FISHBURNE.

The defendant, Mrs. L. Y. Pruitt, was tried at the September term, 1937, of the Court of General Sessions for Anderson County, upon an indictment containing two counts. The first count charged the maintenance of a nuisance under the common law. The second count charged the maintenance of a place where people were permitted to resort for the purpose of drinking alcoholic liquors and beverages, in violation of Section 1854 of the Code of Laws 1932. She was convicted on both counts, upon which sentence was pronounced [*60] by the Court. She appeals from this judgment upon eleven exceptions.

The first three exceptions raise the issue: Did the trial Judge make himself a participant in the determination of the facts, in violation of Article 5, Section 26, of the Constitution of 1895?

The defendant was not in Court when the trial of the case was entered upon, and did not reach the courtroom until the third witness for the State was [***3] being examined. She had not retained counsel to defend her, but undertook to represent herself. When the solicitor concluded his direct examination of Ralph W. McAlister, who was on the stand when the defendant came into the courtroom, she commenced her cross examination of the witness. After she had directed several questions to this

witness, the trial Judge interrupted her with this statement: "Just a minute. Maybe I had better tell you. Some of the testimony has tended to establish the fact that immoral people have been seen in there, that women of the lowest type--I am just giving you this for your information. Some of the testimony in the case has tended to show that women of low character frequent that place, have been seen there."

And after this witness had been further examined by her, the trial Judge again interrupted the interrogation, and made the following statement: "You know what you are indicted for, Mrs. Pruitt, is what is known as maintaining a nuisance. Now the average person doesn't know what a nuisance is. He ought to know, for the word defines itself, I think. But the law is that a nuisance is anything that works hurt or inconvenience or annoyance to the public [***4] generally. And some of the testimony in this case has been that that noise goes on there until three or four o'clock in the morning, and that there's cursing going on in there, and drinking, and that it's a place where immoral people resort for entertainment. Now that's the nature of some of the testimony that's been taken in your absence."

[*61] And after some colloquy between the defendant and the trial Judge, this statement was made by the Judge: "For your information I will say perhaps that one or more of the witnesses have testified they have seen anywhere from two to four couples dancing in there."

All of these statements were made in the presence of the jury, and during the course of the trial.

Counsel for the defendant insists that these remarks of the trial Judge adversely prejudiced the defendant's case before the jury, and amounted to an intimation of his opinion on the facts.

We think there is substantial merit in the appellant's contention.

It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the Court, have a decided weight in shaping the opinion of the jury. Vested as the trial Judge is, with superior [***5] authority, disinterested, and possessing experience not available to the ordinary layman, jurors, as a rule, are anxious to catch his view, upon which to found their conclusions.

187 S.C. 58, *61; 196 S.E. 371, **372;
1938 S.C. LEXIS 69, ***5

In most jurisdictions the rule prevails, under constitutional limitations, that a trial Judge is not at liberty, in his charge, to comment on the weight or sufficiency of the evidence. As a corollary [**373] to that rule, it is generally held that in the course of the trial of a criminal case, the trial Judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused, or as to the controverted facts, for the jury are the sole judges of the facts and the credibility of the witnesses, and the Constitution expressly prohibits the Judge from charging them as to the facts. *Sumter Trust Co. et al. v. Holman*, 134 S.C. 412, 132 S.E. 811.

In the case of *Thomasson v. Southern Ry.*, 72 S.C. 1, 51 S.E. 443, error was assigned because the trial Judge [*62] charged the jury, that "there is in the case evidence tending to prove that the defendant was guilty of a willful, [***6] intentional, or wanton act."

A majority of the Court held in that case that the remarks of the Judge were directly responsive to the appellant's requests to charge, and that the appellant could not complain if as a matter of fact there was some evidence tending to show a recklessness or a wanton injury. But the Court stated that it would doubtless be the best practice for the trial Judge to simply decline a request involving a charge on the facts, without making reference to the testimony. It further appeared in that case that the Judge, immediately after making the statement quoted, told the jury that it was not his intention to intimate any opinion as to the effect of the testimony.

In the case of *State v. Riley*, 98 S.C. 386, 82 S.E. 621, error was assigned because the trial Judge charged the jury, "The drift of the testimony for the defendant is that the killing was accidental; that her main defense is that this killing was an accident," thereby expressing to the jury his opinion that the defendant's testimony only drifted toward proof of accidental killing. The Court overruled this exception, saying: "Ordinarily it would not be permissible to instruct a jury [***7] that the testimony had a drift; but in this instance the drift indicated was away from guilt."

It seems to us that the word "drift," as used in the above quotation, could mean nothing more nor less than tendency to prove, or tending to establish, which were the expressions used by the trial Judge in this case in the first quotation given above. But aside from this, if his

comments, embraced in the first quotation we have given, did not actually amount to an expression or intimation of opinion, still we think that all of the quoted comments taken together went too far in stating and emphasizing the testimony given by the witnesses for the prosecution; and in so doing, constituted prejudicial error.

[*63] The provision of the Constitution which forbids Judges from charging juries in respect to matters of fact has been so frequently construed and commented on that it would hardly be profitable to enter upon any extended discussion of the subject. We shall, however, refer to a few pertinent cases.

Some of the earlier cases are reviewed in *State v. Johnson*, 85 S.C. 265, 67 S.E. 453, from which we quote:

"In *State v. White*, 15 S. C. [381], 392, [***8] the Court said: 'The real object of this clause of the Constitution is to leave the decision of all questions of fact to the jury exclusively, uninfluenced by any expression of the opinion by the judge, whose position would very naturally add great weight to any opinion he might express upon any question of fact arising in a case.'

"In *State v. Howell*, 28 S. C. [250], 255, 5 S.E. 617, the court said: 'The jury must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammelled by any intimation from the judge as to whether a certain fact at issue has been proved or not.'

"In *Norris v. Clinkscales*, 47 S. C. [488], 513, 25 S.E. 797, the court said: 'A judge violates this provision when he expresses in his charge his own opinion upon the force and effect of the testimony, or any part of it, or intimates his views of the sufficiency or insufficiency of the evidence, in whole or in part.'

"In *China v. Sumter*, 51 S. C. [453], 459, 29 S.E. 206, the court said: 'It must be remembered that the former provision upon this subject in the Constitution of 1868 (section 26, art. 4), allowed greater latitude to [***9] the judges than is now permitted; for then the judge was allowed to state the testimony, but now he is not allowed to do so. In construing this constitutional provision, as declared in the Constitution of 1868, it was said in the [**374] case of *State v. James*, 31 S. C. [218], at page 235, 9 S.E. 844, that, in stating the testimony as then allowed "the judge must be careful to avoid expressing, or even intimating, any opinion as to the [*64] facts, and that if he does so, whether intentionally

187 S.C. 58, *64; 196 S.E. 371, **374;
1938 S.C. LEXIS 69, ***9

or unintentionally, a new trial must be granted. Under our Constitution the jury are the exclusive judges of the facts, and the true meaning and real object of the section of the Constitution above quoted is that they must be left to form their own judgment unbiased by any expressions, or even intimations, of opinion by the judge.""

Practically all of the later cases bearing upon this question are reviewed in *Powers v. Rawls*, 119 S.C. 134, 112 S.E. 78, 83; *Sumter Trust Co. et al. v. Holman*, *supra*, and *Lusk v. State Highway Dept.*, 181 S.C. 101, 186 S.E. 786.

The Court announced in *Sumter Trust Co. et al. v. Holman*, *supra*, [***10] that the following interpretation of Article 5, Section 26, of the Constitution as laid down in *Enlee v. Seaboard Air Line Ry.*, 110 S.C. 137, 146, 96 S.E. 490, 492, would preserve the letter of that provision and at the same time give full effect to its spirit: "The purpose of the section of the Constitution is to prevent the trial judge from intimating to the jury his opinion of the case what weight or credence should be given to the evidence and participating in any manner with the jury's finding of fact. This the judge cannot do."

The orderly conduct of causes on trial, as we have many times had occasion to say, requires that the Court should be extremely cautious not to suggest his opinion on any fact in issue, and this, whether orally during the progress of the trial, or in the form of instructions, when the evidence has all been heard.

We think it quite probable that the remarks of the trial Judge diminished very materially the defendant's chances of acquittal. The testimony to which the trial Judge referred did not deal with admitted facts, but with a material issue in the case. The defendant had made no request for any statement thereabout. However, in [***11] justice to the able and conscientious trial Judge, we should say that the record discloses that the quoted comments were evidently made in an endeavor to acquaint the defendant with [*65] what had transpired in the courtroom in her trial before she appeared.

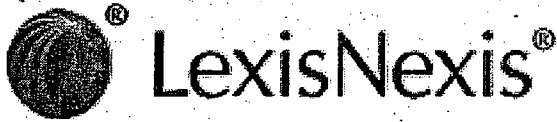
It is argued by the solicitor that if any error was committed, it was cured in the general charge, in which the trial Judge instructed the jury that they were the sole judges of the facts and of the weight and sufficiency of the evidence in the case. But we think that this contention is answered by this further quotation from the case of *China v. Sumter*, *supra*, which is approved in *State v. Johnson*, *supra*: "It is contended, however, that this error was obviated by the fact that the Circuit Judge in several other portions of his charge told the jury that all the questions of fact were exclusively for them. But this view cannot be accepted, for if, as we have seen, the real object of this constitutional provision was to leave all questions to the jury, to be decided according to their own judgment, unbiased by any expression, or even intimations, of opinion from the Judge, it is manifest that [***12] such object would be defeated if a Circuit Judge should be allowed to express his own opinion upon any material question of fact, and then undertake to wipe out the impression made upon the minds of the jury by telling them that all questions of fact were for them. The impression having once been made, it would be very difficult, if not impossible, thus to obliterate it; and the result would be that the jury would be more or less influenced by an opinion coming from so high a source as an intelligent Judge, whose mind had been trained to weigh testimony, and determine its force and effect, and thus the very object of the constitutional provision--to preserve the minds of the jury from being in any way influenced by the opinion of the judge as to a question of fact--would be defeated."

We do not deem it necessary to pass upon the other questions made by the defendant.

Judgment reversed, and case remanded for new trial.

MR. CHIEF JUSTICE STABLER and MESSRS. JUSTICES BONHAM and BAKER concur.

[*66] MR. JUSTICE CARTER did not participate on account of illness.



Positive
As of: Jul 22, 2012

The State, Respondent, v. Johnny Miller Brisbon, Appellant.

Opinion No. 24482

SUPREME COURT OF SOUTH CAROLINA

323 S.C. 324; 474 S.E.2d 433; 1996 S.C. LEXIS 148

**May 7, 1996, Heard
August 19, 1996, Filed**

PRIOR HISTORY: [***1] Appeal From Lexington County. Marc Westbrook, Circuit Court Judge.

DISPOSITION: AFFIRMED

COUNSEL: Assistant Appellate Defender Robert M. Pachak, of South Carolina Office of Appellate Defense, of Columbia, for Appellant.

Attorney General Charles Molony Condon, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Charles F. Reid, all of Columbia; Solicitor Donald V. Myers, of Lexington, all for Respondent.

JUDGES: TOAL, A.C.J. MOORE, WALLER, BURNETT, JJ., and Acting Associate Justice George T. Gregory, Jr., concur.

OPINION BY: TOAL

OPINION

[*325] [**434] **TOAL, A.C.J.:** Johnny Miller Brisbon appeals his conviction for murder. We affirm.

[*326] FACTUAL/PROCEDURAL BACKGROUND

Bertha Mae Grooms ("Victim") was last seen alive the weekend of June 12, 1992. Brisbon had known Victim for approximately twenty-five years and had dated her for a number of years. Brisbon came by Victim's home and picked her up on Friday, June 12, 1992, as was his custom on Friday evenings. She did not return.

On July 15, 1992, hunters came across Victim's skeletal remains in a wooded area of Lee County. Two days [***2] later, an autopsy was performed, which revealed that wounds had been inflicted to Victim's neck and abdomen. The pathologist testified the injuries may have resulted from a sharp weapon, such as a knife or axe, and that the cause of death was the penetrating wounds to the body.

On August 4, 1992, officers searched a storage building at the cemetery where Brisbon worked. They found a blood-stained sofa. Two days later, officers returned to the storage building and discovered an axe. There was blood on the axe head and the axe handle. Brisbon's bloody palm-print was on the handle of the axe.

323 S.C. 324, *326; 474 S.E.2d 433, **434;
1996 S.C. LEXIS 148, ***2

Blood tests were performed on the blood found on the sofa and on the axe. Because of the condition of the blood samples, D.N.A. analysis could not be performed; however, it was possible to conduct Polymerase Chain Reaction testing. This test revealed that the type of blood found on the sofa and the axe excluded 91 percent of the North American [**435] black population. Victim was among the 9 percent of the black population that had the same type of blood as that found on the sofa and the axe.

Brisbon testified in his own defense. He declared he had picked up Victim on Friday, June 12th at approximately [***3] 5:00 p.m. At 11:00 p.m., he took Victim to a diner on Bluff Road. Brisbon further testified that at the diner, Victim said she saw her stepson, with whom she decided to go home. In reply, Victim's stepson testified he was not at the diner on June 12th. Furthermore, the owner of the diner testified he did not see Victim there that day.

The jury convicted Brisbon of the murder of Victim. Brisbon appeals, arguing that the trial court erred in:

1. refusing to grant a directed verdict where the State failed to present any substantial evidence that Brisbon committed [*327] the murder in Lexington County, and in refusing to instruct the jury with Brisbon's proposed charge on venue;

2. refusing to grant a directed verdict where the State failed to present any substantial evidence that Brisbon murdered Victim;

3. refusing to grant a mistrial for instructing the jury that in determining credibility, they could take into account whether defendant was forthright or hesitant;

4. refusing to grant a mistrial where the solicitor demonstrated with an axe in his closing argument before the jury.

LAW/ANALYSIS

A. VENUE: DIRECTED VERDICT AND PROPOSED JURY CHARGE

Brisbon raises two arguments [***4] relating to venue. He argues the trial court erred in not granting a directed verdict where the State failed to present any substantial evidence that Brisbon committed the murder in Lexington County. Further, he contends the court erred in refusing to instruct the jury with the proposed charge

that venue must be proved beyond a reasonable doubt. Because both arguments fundamentally raise the issue of the degree of proof necessary to establish venue, we will address them together.

Although an accused has a right to be tried in the county in which the offense is alleged to have been committed, this right is not jurisdictional. *State v. Evans*, 307 S.C. 477, 415 S.E.2d 816 (1992). Venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred. *State v. Owens*, 293 S.C. 161, 359 S.E.2d 275, cert. denied, 484 U.S. 982, 98 L. Ed. 2d 495, 108 S. Ct. 496 (1987); *State v. Horne*, 282 S.C. 444, 319 S.E.2d 703 (1984); *State v. Varen*, 223 S.C. 34, 74 S.E.2d 223 (1953). Evidence of venue, though slight, is sufficient in the absence of conflicting evidence and may be proved by circumstantial as well as direct evidence. [***5] *State v. Wharton*, 263 S.C. 437, 211 S.E.2d 237 (1975); *State v. Henderson*, 285 S.C. 320, 329 S.E.2d 448 (Ct. App. 1985). Where acts essential to the offense are committed in different counties, the accused may be tried in either county. *State v. McLeod*, 303 S.C. 420, 401 S.E.2d 175 (1991); *Wray v. State*, 288 S.C. 474, 343 S.E.2d 617 (1986); *State v. Allen*, 266 S.C. 468, 224 S.E.2d 881 (1976); *State v. Gasque*, 241 S.C. 316, 128 S.E.2d 154 (1962). [*328] S.C. Code Ann. § 17-21-20 (1976) specifically covers the issue of venue where a person causes injury in one county and death occurs in another:

When any person shall be struck, wounded, poisoned or otherwise injured in one county and dies thereof in another any inquisition or indictment thereon found by jurors of either county shall be as good and effectual in law as if the stroke, wound, poisoning or other injury had been committed and done in the county in which the party shall die. And the person guilty of such striking, wounding, poisoning or other injury and every accessory thereto, either before or after the fact, shall be tried in the county in which such indictment shall be found and, if convicted, punished [***6] in the same mode, manner and form as if the deceased had suffered such striking, wounding, poisoning or other injury and death in the county in which such indictment shall be found.

323 S.C. 324, *328; 474 S.E.2d 433, **435;
1996 S.C. LEXIS 148, ***6

[**436] In *Owens*, we determined that where there were signs of a struggle at the victim's Horry County residence at which he was last seen, and where ransom money was demanded and delivered in Horry County, there was sufficient evidence to establish venue in Horry County. *Owens*, 293 S.C. 161, 359 S.E.2d 275. In *McLeod*, this Court held that venue was proper in either Colleton or Beaufort counties. The victim's clothing and decomposed body were found in Beaufort County. However, she was last seen alive in Colleton County, witnesses saw her there being forced into a car by the defendant, and there were signs of a struggle at her Colleton County residence. *McLeod*, 303 S.C. 420, 401 S.E.2d 175.

Under the low threshold discussed above, there exists sufficient evidence in the present case to find that venue was proper in Lexington County. Brisbon worked in Lexington County; blood that could potentially be Victim's was found on a sofa at Brisbon's workplace; an axe on which were found blood stains [***7] and Brisbon's palm print was likewise found at the same location. Thus, despite the fact that Victim's body was found in Lee County, evidence critical to the commission of the offense was connected to Lexington, thereby rendering it an appropriate venue. Accordingly, the trial court did not err in refusing to grant a directed verdict to [*329] Brisbon on the issue of the State's failure to establish Lexington as a proper venue.

The above recitation of law also makes clear that Brisbon's second argument relating to venue -- that it must be proved beyond a reasonable doubt -- lacks validity. This Court has written:

The rule of our decisions, which requires allegation and proof of the place of death in homicide cases and which was the common law, developed before the advent of paved roads and motor vehicles. . . . Where the record discloses no possibility of prejudice to appellant in his defense, justice requires liberality in the application of the rule. Otherwise, it is easy to conceive of facts under which a murderer could successfully conceal the place of death of his victim with reference to a county line, and escape conviction. Proof

of the place of death would be impossible and, [***8] therefore, conviction impossible and the guilty escape.

State v. Gregg, 230 S.C. 222, 228, 95 S.E.2d 255, 259 (1956). Further,

The purpose of requiring the State to allege and prove the place of the assault and the place of death is (1) to show jurisdiction of the court and (2) to fully inform the defendant of the nature and cause of the accusation. In the application of the foregoing rule, however, it has been held that, where the jurisdiction of the court is established in the county where the fatal assault was committed, the requirement that the place of death must be proved will be applied with liberality when it clearly appears that no prejudice will result to the defendant in his defense.

State v. Bostick, 243 S.C. 14, 17, 131 S.E.2d 841, 842 (1963). Accordingly, we reject Brisbon's argument that the State is required to prove beyond a reasonable doubt the location of death.

B. DIRECTED VERDICT: COMMISSION OF THE CRIME

Brisbon asserts the court erred in refusing to grant a directed verdict where the State failed to present any substantial evidence that Brisbon murdered Victim. [*330] We disagree. In determining whether to send the case to [***9] the jury on circumstantial evidence,

the judge is concerned with the existence or nonexistence of evidence, not its weight; and although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.

State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (quoting *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955)), cert. denied, 493 U.S. 895, 107 L. Ed. 2d 196, 110 S. Ct. 246 (1989).

323 S.C. 324, *330; 474 S.E.2d 433, **436;
1996 S.C. LEXIS 148, ***9

[**437] The following are the major pieces of evidence presented by the State linking Brisbon to the murder of Victim:

a. he and Victim had been dating for a number of years;

b. it was his practice to pick up Victim on Fridays, and she would return home on Sundays;

c. he picked her up on Friday, June 12, 1992, after which she was not seen;

d. at Brisbon's workplace, a sofa was found on which were blood stains indicating a blood type consistent with only nine percent of the North American black population (Victim had this type of blood.);

e. blood was on [***10] an axe found at Brisbon's workplace (The blood, which was found on the axe head and handle, again matched Victim's blood type.);

f. Brisbon's bloody palm print was on the handle of the same axe.

From the above evidence, Brisbon's guilt may be fairly and logically deduced; the evidence went beyond merely raising a suspicion of the accused's guilt. *See id.*

C. MISSTATEMENT IN JURY CHARGE

We next consider Brisbon's argument that the trial court erred in refusing to grant a mistrial when it instructed the jury that in determining credibility, it [*331] should take into account whether the defendant was forthright or hesitant. The following excerpt contains the disputed charge in context:

You are also the judges and the sole judges, the only judges of the credibility or the believability of the witnesses who have testified in this case, and in passing upon their credibility you may take into consideration many things such as -- these are by way of example -- the appearance and manner of the witness on the stand commonly referred to sometimes as the

demeanor of the witness. *Was the defendant forthright or hesitant?* Was the witness's testimony consistent or did [***11] it contain discrepancies? Was the ability of the witness to know -- What was the ability of the witness to know the facts about which he or she testified? Did the witness have a cause or a reason to be biased or prejudiced in favor of the testimony that he or she gave? And was the testimony of the witness corroborated or made stronger by other testimony or was it made weaker by other testimony and evidence?

(emphasis added). Brisbon contends that the reference to "defendant" focused attention on him and his credibility as a witness to the exclusion of the other witnesses. The record is clear that the trial court mistakenly substituted the word "defendant" for "witness." After Brisbon's objection, the court immediately offered a curative instruction, but the defendant refused, arguing that only the granting of a mistrial could correct the error.

It is well established that a trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy. *Sosebee v. Leake*, 293 S.C. 531, 362 S.E.2d 22 (1987); *State v. Smith*, 288 S.C. 329, 342 [***12] S.E.2d 600 (1986). *Sosebee* and *Smith*, however, are easily distinguishable. In *Smith*, during the jury instruction, the judge, after describing what the State had to prove in order for evidence of a breathalyzer exam to be admissible, commented, "You have heard such evidence." *Smith*, 288 S.C. at 331, 342 S.E.2d at 601. In *Sosebee*, after petitioner's counsel objected that certain testimony [*332] was only designed to buttress the victim's testimony, the judge declared:

No sir, it's not necessarily to buttress it in a situation such as this. You have suggested that her story is patently incredible, but within a few moments after reporting back home she told that story. It isn't something she made up between then and now, as you suggested.

Sosebee, 293 S.C. at 533, 362 S.E.2d at 23. On appeal, the Court found this statement to be prejudicial.

323 S.C. 324, *332; 474 S.E.2d 433, **437;
1996 S.C. LEXIS 148, ***12

The comment in the present case in no way compares to the prejudicial comments made by the trial courts in the above cases. The statement here was simply a "slip of the tongue"; it was not an affirmative comment upon the evidence. Moreover, there was arguably no prejudice here, because the jury [**438] charge was not stating [***13] that the defendant was untruthful. The question, "Was the defendant forthright or hesitant," could just as easily be interpreted as emphasizing the defendant's forthrightness, as it does his hesitancy.

D. PROSECUTOR'S AXE DEMONSTRATION

Brisbon argues that the court erred in not granting his motion for a mistrial when the solicitor in closing arguments carried out a prejudicial demonstration using the axe that was the alleged murder weapon. We disagree.

The decision to grant or deny a mistrial is within the discretion of the trial judge. The decision of the trial court

will not be disturbed absent an abuse of discretion which results in prejudice to the defendant. *State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The test of granting a new trial for alleged improper closing argument of counsel is whether the defendant was prejudiced to the extent that he was denied a fair trial. *State v. Durden*, 264 S.C. 86, 212 S.E.2d 587 (1975). We do not find that the trial court abused its discretion in this case. The defendant was not prejudiced to the extent that he was denied a fair trial. Accordingly, we reject Brisbon's argument that the trial court erred in allowing [***14] this demonstration.

CONCLUSION

Based on the foregoing, Brisbon's conviction is **AFFIRMED**.

[*333] MOORE, WALLER, BURNETT, JJ., and
Acting Associate Justice George T. Gregory, Jr., concur.



The STATE, Respondent v. Leon JACKSON, Appellant

No. 22967

Supreme Court of South Carolina

297 S.C. 523; 377 S.E.2d 570; 1989 S.C. LEXIS 29

January 10, 1989, Heard
February 21, 1989, Decided

PRIOR HISTORY: [***1] Appeal from Lexington County, William T. Howell, Judge.

DISPOSITION: Affirmed.

COUNSEL: *David I. Bruck, of Bruck & Blume, Columbia, for appellant.*

Atty. Gen. T. Travis Medlock, Asst. Atty. Gen. Harold M. Coombs, Jr., Staff Atty. Gwendolyn L. Fuller, Columbia, and Sol. Donald V. Myers, Lexington, for respondent.

JUDGES: Toal, Justice. Gregory, C.J., and Harwell, Chandler and Finney, JJ., concur.

OPINION BY: TOAL

OPINION

[*524] [**571] The sole issue on appeal is whether a statement made during the jury instruction constituted an impermissible comment upon the facts by the trial judge.

Jackson was indicted for criminal conspiracy, distribution of crack cocaine, distribution of cocaine, and possession of crack cocaine. The evidence showed that Jackson made two sales of crack cocaine to Alvin James, an informant, on June 9 and 10, 1987. Shortly after the sale, on June 10, 1987, Jackson was stopped in his car. When the car was sniffed by a drug dog, the dog

indicated that drugs were present in the car. A search produced a broken glass vial containing a sugary material and a .32 caliber pistol.

[*525] A SLED chemist testified [***2] that the white rocks involved in the sales to the informant were crack cocaine. In regard to the substance in the vial, however, he stated that he could not determine whether the substance was crack cocaine or just cocaine. The reason for this was that he could not perform one of the tests that differentiates crack from cocaine because of the insufficient amount of the substance in the vial. He testified that there was a sufficient amount of the substance to be analyzed for cocaine. He conducted the analysis and determined that the substance was cocaine.

Prior to submitting the case to the jury, the judge granted a directed verdict of not guilty on the indictment for possession of crack cocaine which involved the glass vial. The court's ruling was based on the chemist's testimony that he could not determine if the substance was crack. The trial judge, however, stated that he would submit the lesser included offense of possession of cocaine.

Thereafter, the trial judge made the following statements in the jury instructions:

"In the next indictment, ladies and gentlemen, the state has charged -- also charged the defendant with possession of crack cocaine, and that indictment I have

297 S.C. 523, *525; 377 S.E.2d 570, **571;
1989 S.C. LEXIS 29, ***3

***3] ruled as a matter of law that the state has not proven that the defendant possessed crack cocaine. That is in the case in which the vial was found. The residue was insufficient according to the uncontroverted testimony of the SLED agent to prove that it contained crack cocaine. *There is enough residue according to the uncontroverted testimony for there to have been an analysis of cocaine.* Therefore under the theory of the greater includes the lesser, I am reducing the charge in this indictment to a charge under the old statute that I have just read to you regarding possession of cocaine." (Emphasis added.)

Defense counsel's motion for directed verdict or a mistrial on that particular indictment because of the above remarks by the trial judge was denied.

[**572] Jackson was convicted of distribution of crack cocaine, distribution of cocaine and possession of cocaine. He was acquitted of the conspiracy charge.

[*526] ISSUE

Whether the trial judge's statement during the jury charge was an impermissible comment on the facts, thereby constituting reversible error.

DISCUSSION

Under South Carolina law, it is a general rule that a trial judge should refrain from all comment which tends to indicate [***4] to the jury his opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused. *State v. Campbell*, 374 S.E. (2d) 668 (S.C. 1988); *State v. Sosebee*, 284 S.C. 411, 326 S.E. (2d) 654, n. 1 (1985) (citing *State v. Pruitt*, 187 S.C. 58, 196 S.E. 371 (1938) and *State v. Kennedy*, 272 S.C. 231, 250 S.E. (2d) 338 (1978); *State v. Smith*, 288 S.C. 329, 342 S.E. (2d) 600 (1986)). Jackson argues that the judge's remark was an impermissible comment on the facts constituting reversible error. We disagree.

We conclude that the judge's remarks were an explanation of his ruling and its consequences rather than a comment on the facts. This statement explained how and why the charge of possession was being reduced from crack cocaine to simple cocaine. According to the chemist's testimony, there was an insufficient amount of the substance to conduct an analysis for crack cocaine. Without any evidence of crack cocaine, Jackson could not be charged with that offense on the indictment in question. In contrast, there was testimony that there was a sufficient amount of the substance to conduct an analysis of cocaine. This explains how Jackson [***5] could be charged with the lesser included offense. The judge did not say that the analysis determined that the substance was cocaine. He merely stated that an analysis was conducted.

Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error. *State v. Thompson*, 278 S.C. 1, 292 S.E. (2d) 581, cert. denied, 456 U.S. 938, 102 S. Ct. 1996, 72 L. Ed. (2d) 458 (1982); *State v. Daniels*, 231 S.C. 176, 97 S.E. (2d) 902 (1957). Here, the jury was instructed several times that it was the sole arbiter of facts and the credibility of witnesses. The jury was also instructed to disregard any statement by the judge [*527] which may be interpreted as an opinion by him as to facts. Although these instructions were given prior to the statement about the analysis for cocaine, they are important when viewing the jury instructions as a whole.

Furthermore, the test is what a reasonable juror would have understood the charge as meaning. *California v. Brown*, 479 U.S. 538, 107 S. Ct. 837, 93 L. Ed. (2d) 934 (1987); *Francis v. Franklin*, 417 U.S. 307, 105 S. Ct. 1965, 85 L. Ed. (2d) 344 (1985); *Sandstrom v. Montana*, 442 U.S. 510, 99 S. Ct. 2450, 61 L. Ed. (2d) 39 (1979). It is unlikely that a reasonable juror would have [***6] singled out this portion of the charge and interpreted it as an opinion on the facts of this case or an instruction as to the weight to be given the evidence.

For the reasons discussed above, the lower court is

Affirmed.



The STATE, Respondent, v. Maderia D. HARDEE, Appellant

No. 21994

Supreme Court of South Carolina

279 S.C. 409; 308 S.E.2d 521; 1983 S.C. LEXIS 364

October 19, 1983

PRIOR HISTORY: [***1] Appeal From Dorchester County, James M. Morris, Judge.

accusation and denies him protection against double jeopardy.

DISPOSITION: Accordingly, appellant's conviction is affirmed.

Section 16-15-140 of the Code provides:

COUNSEL: *Walter Bilbro, Jr., Charleston, for appellant.*

Atty. Gen. T. Travis Medlock, Retired Atty. Gen. Daniel R. McLeod, and Asst. Attys. Gen. Harold M. Coombs, Jr., Martha L. McElveen and Charles H. Richardson, Columbia, and Sol. Norman E. Fogle, Orangeburg, for respondent.

[**524] It shall be unlawful for any person over the age of fourteen years to wilfully and lewdly commit or attempt any lewd or lascivious [***2] act upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child . . .

JUDGES: Gregory, Justice. Lewis, C.J., and Littlejohn, Ness and Gregory, JJ., concur.

OPINION BY: GREGORY.

The disjunctive phrases in this statute are merely descriptive of the offensive act, child molesting; thus, there is no misjoinder of offenses for which appellant might later be charged after acquittal or conviction on the present charge. *See Cole v. State*, 162 Ga. App. 353, 291 S.E. (2d) 427 (1982). Section 16-15-140 clearly gave appellant notice of the accusation against him.

OPINION

[*412] [**523] Appellant Maderia D. Hardee was convicted of committing a lewd act upon a minor, a violation of *S.C. Code Ann. § 16-15-140* (1976). He appeals, asserting numerous errors. We affirm.

Appellant next contends the terms of the statute are vague and overbroad, thus, do not give notice of the conduct required to avoid its penalty.

First, appellant contends § 16-15-140 of the Code and the indictment violate his right to due process because the use therein of the disjunctive term "or" does not give him clear and precise notice of the nature of the

In construing a statute, the language used should be given its plain and ordinary meaning. The terms appellant asserts should be defined -- lewd, lascivious,

279 S.C. 409, *412; 308 S.E.2d 521, **524;
1983 S.C. LEXIS 364, ***2

lust, passions, desires, arousing, appealing, gratifying, and [*413] sexual -- are commonplace terms which are easily found in dictionaries and other source books. This exception is without merit.

Appellant next argues the trial judge erred in failing to [***3] disqualify a prospective juror who was a close friend of the chief investigating officer and captain of the sheriff's department which was handling the case. We disagree.

Upon questioning by the trial judge, the prospective juror stated his close friendship with the officers would not affect his ability to give appellant a fair and impartial trial. Where a juror unequivocally states he is not conscious of any bias or prejudice and he can give the defendant and the state a fair and impartial trial and render a verdict according to the law and evidence, there is no abuse of discretion in the trial court's decision to qualify the juror. *State v. Johnson*, 248 S.C. 153, 149 S.E. (2d) 348 (1966). Moreover, appellant used only four of his five peremptory challenges, thus, is in no position to complain of the court's refusal to disqualify the juror. See *State v. Britt*, 237 S.C. 293, 117 S.E. (2d) 379 (1960).

Appellant argues the trial judge erred in ruling the eight year old victim was competent to testify. Again, we disagree.

The qualification of witnesses rests within the court's discretion, whose decision will not be reversed absent abuse of discretion. *State v. Lambert* [***4], 276 S.C. 398, 279 S.E. (2d) 364 (1981). The trial judge determined the young boy satisfied the "moral accountability" requirement set forth in *State v. Green*, 267 S.C. 599, 230 S.E. (2d) 618 (1976). We find no abuse of discretion.

Appellant argues the trial judge erred in charging § 16-15-140 in its entirety since the indictment only charged him with committing an act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the minor.

An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer and acquittal or conviction to be placed in bar to any subsequent prosecution. *State v. Sweat*, 276 S.C. 448, 279 S.E. (2d) 375 (1981). The indictment clearly charged appellant with a violation of [*414] § 16-15-140 of the Code. The

trial judge would know what judgment to pronounce, the defendant surely would know what he is called upon to answer, and acquittal or conviction would bar any subsequent proceeding. This exception is without merit.

Appellant argues the trial judge erred [***5] in refusing to direct a verdict in his favor based on the insufficiency of evidence to show any act was done with the intent of arousing the sexual desires of the minor. As stated above, the indictment charged appellant with a violation of § 16-15-140 which includes any lewd act done with the intent of arousing the sexual desires of the accused. We are of the opinion there was [***525] sufficient evidence to submit to the jury and the trial judge did not err in refusing to direct a verdict of acquittal.

Next, appellant argues the trial judge erred in refusing to instruct the jurors that they could consider the minor's delayed outcry in favor of appellant.

The minor testified he told his mother approximately three weeks later that appellant had put his hand in the minor's pants and felt his private parts. Appellant asserts the delayed outcry would cast strong suspicion on the truth and veracity of the minor's testimony. It is elementary that a trial judge may not inject into the trial his opinion as to the truth and veracity of any witness. This is a matter for counsel to argue to the jury. We find no error.

Appellant argues the trial judge's definition of reasonable [***6] doubt was insufficient and impliedly shifted the burden of proof to appellant to establish a doubt for which the juror could articulate a reason before he could vote "not guilty."

This Court approved the trial judge's definition of reasonable doubt most recently in *State v. Woomer*, S.C. , 229 S.E. (2d) 317 (1982). This exception is without merit.

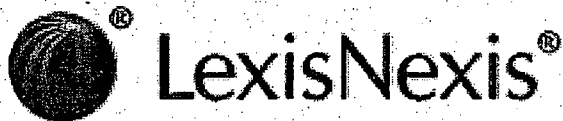
Lastly, appellant argues the trial judge erred in refusing to instruct the jury on the distinction between "not guilty" and "innocent." Appellant asserts he was entitled to an instruction articulately explaining to the jury that its function was not to determine appellant's innocence, but only to determine whether or not the prosecution proved appellant guilty beyond a reasonable doubt.

279 S.C. 409, *414; 308 S.E.2d 521, **525;
1983 S.C. LEXIS 364, ***6

The trial court clearly instructed the jury on the presumption [*415] of innocence and the state's burden to prove appellant guilty beyond a reasonable doubt. To further define "innocent" and "not guilty" as appellant

requested might only confuse and mislead the jury. This exception is meritless.

Accordingly, appellant's conviction is affirmed.



Caution

As of: Jul 22, 2012

The STATE, Respondent, v. Nathaniel Thomas GRANT, Appellant

No. 21321

Supreme Court of South Carolina

275 S.C. 404; 272 S.E.2d 169; 1980 S.C. LEXIS 478

November 10, 1980

PRIOR HISTORY: [***1] Appeal From Charleston County, Clyde A. Eltzroth, Judge.

DISPOSITION: Reversed and remanded.

COUNSEL: *Staff Atty. Vance J. Bettis, of S.C. Comm. of Appellate Defense, Columbia, for appellant.*

Atty. Gen. Daniel R. McLeod and Asst. Attys. Gen. Brian P. Gibbs and Kay G. Crowe, Columbia, and Sol. Capers G. Barr, III, and Asst. Sol. Francis X. McCann, Charleston, for respondent.

JUDGES: Littlejohn, Justice. Lewis, C.J., and Gregory and Harwell, JJ., concur. Ness, J., dissents.

OPINION BY: LITTLEJOHN

OPINION

[*405] [**170] The defendant, Nathaniel Thomas Grant, was convicted by a jury of robbing a citizen in a parking lot at Charleston. He appeals.

The person who committed the act fled the scene.

The victim of the robbery gave a description of the perpetrator of the offense and police officers went to a house in the general vicinity in quest of the culprit. The defendant, who was at the house, saw the officers coming, slammed the door and ran out the back. He was apprehended and subsequently indicted.

After all of the evidence had been submitted, the solicitor requested that the judge charge the jury that: . . . flight can be taken by the jury as evidence [***2] of guilt or knowledge. . . ." [*406] The judge indicated that he would grant the request. Counsel for the defendant objected to the terminology which the judge had indicated he would use. Thereupon, the judge invited counsel for the defendant to prepare a suggested charge while the court recessed overnight. Next morning, instead of presenting a request to charge, defense counsel stated: ". . . we would like to place on the record our objection to that instruction and why." Thereafter, the judge charged the jury as follows:

"In this case the State has claimed flight. Attempts to run away have always been regarded as some evidence of guilty knowledge and intent. Again proof must be beyond a reasonable doubt. . . ."

275 S.C. 404, *406; 272 S.E.2d 169, **170;
1980 S.C. LEXIS 478, ***2

There was no indication as to whether the judge was referring to flight from the scene of the robbery or flight from the police at the house, or both.

After his charge was completed, the judge invited counsel, as required by § 15-27-100, *Code of Laws of South Carolina* (1976), to except to charges already made, or request additional charges. Counsel for the defendant interposed no exceptions or additional requests.

Counsel for the defendant now takes [***3] the position that the charge given was erroneous and prejudicial. Counsel for the State takes the position that the charge was correct and, even if it was not correct, defense counsel waived her objection by failing to object at the end of the charge. While there is imposed upon counsel for a litigant the duty to assist the judge in his charge by pointing out alleged errors, this court has held in *Smith v. City of Greenville*, 229 S.C. 252, 92 S.E. (2d) 639 (1956), that objection need not be interposed if earlier in the proceedings the judge had a fair opportunity to pass upon the issue. This court said:

" [***171] But where a contested issue of law has been argued during the course of the trial and ruled upon by the trial judge, [*407] the statute does not require objection to be made, at the conclusion of his charge, to that portion of it dealing with the same issue in accordance with his previous ruling."

A review of the colloquy between the judge and counsel convinces us that the position of each was made well known prior to the commencement of the charge. We do not think that any further objection was required under these facts in order to preserve the rights [***4] of the defendant.

A charge on flight has been generally approved, or at least tolerated, in most of the jurisdictions. There is little law in this state. In *Town of Hartsville v. Munger*, 93 S.C. 527, 77 S.E. 219 (1913)), this court stated:

"False and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent." (Emphasis added.)

It will be observed that the language used by Justice Fraser in that case is *verbatim* with the language used here by the trial judge. The impression is sometimes gained that any language from an appellate court opinion

is appropriate for a charge to any jury, but this is not always true. Oftentimes a sentence, or sentences, taken from an appellate opinion must be supplemented by additional relevant statements of the law because of the particular factual situation. Here, we think that the naked statement standing alone, though lifted from the opinion, was erroneous.

While an instruction on flight has been acceptable law for some time in most jurisdictions, we are inclined to think that henceforth it is more appropriate for the judge to decline any charge whatsoever on [***5] this issue. We agree with the Court of Appeals of Washington State when it ruled in *State v. Jefferson*, 11 Wash. App. 566, 524 P. (2d) 248 (1974), relative to the law of flight:

"But neither was it required as a proper function of instructing the jury on the applicable principles of law. Instructions [*408] of this ilk, though time honored, should be discarded. At best, they merely sanction the use of circumstantial evidence. At worst, they place undue emphasis upon that evidence. Instructions on circumstantial evidence should be expressed in the abstract. We also agree with the District of Columbia Circuit Court of Appeals that

'evidence of flight tends to be only marginally probative as to the ultimate issue of guilt or innocence. The interest of justice is perhaps best served if this matter is reserved for counsel's argument, with little if any comment by the bench.'"

There is a recent tendency in other courts to follow the rationale of this opinion. *State v. Humboldt*, 1 Kan. App. (2d) 137, 562 P. (2d) 123 (1977); *United States v. Telfaire*, 469 F. (2d) 552 (D.C. Cir. 1972); *United States v. Robinson*, 475 F. (2d) 376 (D.C. Cir. 1973). [***6]

The Supreme Court of Idaho, in *State v. Wrenn*, 99 Idaho 506, 584 P. (2d) 1231 (1978), frowned vigorously upon the charge, holding:

"The issue of the propriety of a 'flight' instruction is one of first impression in Idaho. We are of the opinion that because of the debatable significance of flight as evidence of guilt, an instruction on flight should not ordinarily be given. It should be left to argument to the jury by the parties, unless the trial judge because of the peculiar facts in the particular case feels it is essential to the jury's deliberations."

275 S.C. 404, *408; 272 S.E.2d 169, **171;
1980 S.C. LEXIS 478, ***6

The charge on flight oftentimes has the potential for creating more problems than solutions. While we no longer sanction this charge by the judge, we recognize that evidence of flight remains proper. We also recognize that it is oftentimes appropriate for counsel to argue to the jury the inferences growing out of flight. However, we believe that the "law of flight" in a judge's charge places undue emphasis upon that part of circumstantial evidence and it should not be charged hereafter.

[*409] [**172] Exception has also been taken to the judge's refusal to ask each juror on *Voir Dire* the following question: [***7] "Have any of your close friends or relatives been victims of a crime in the last three years?" In the judge's ruling on this point we find

no error.

A new trial is granted and the case is remanded.

Reversed and remanded.

DISSENT BY: NESS

DISSENT

Ness, Justice (dissenting):

I dissent, believing that the trial judge's charge on flight was proper, and I would affirm.



Positive
As of: Jul 22, 2012

The State, Respondent, v. Bynum Rayfield, Petitioner.

Opinion No. 26155

SUPREME COURT OF SOUTH CAROLINA

369 S.C. 106; 631 S.E.2d 244; 2006 S.C. LEXIS 187

November 3, 2005, Heard
May 30, 2006, Filed

SUBSEQUENT HISTORY: [***1]

Rehearing denied by *State v. Rayfield*, 2006 S.C. LEXIS 242 (S.C., July 7, 2006)

PRIOR HISTORY: Appeal From Chester County.
Paul E. Short, Jr., Circuit Court Judge.
State v. Rayfield, 357 S.C. 497, 593 S.E.2d 486, 2004 S.C. App. LEXIS 10 (S.C. Ct. App., 2004)

DISPOSITION: AFFIRMED.

COUNSEL: Jack B. Swerling, of Columbia, for Petitioner.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Charles H. Richardson, and Senior Assistant Attorney General Harold M. Coombs, Jr., all of Columbia, and Solicitor John R. Justice, of Chester, for Respondent.

JUDGES: JUSTICE BURNETT. TOAL, C.J., and WALLER, J., concur. PLEICONES, J., concurring in part, dissenting in part in a separate opinion in which Acting Justice Stephen S. Bartlett, concurs.

OPINION BY: BURNETT

OPINION

[*109] [**246] ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

JUSTICE BURNETT: We granted a writ of certiorari to review the Court of Appeals' opinion in *State v. Rayfield*, 357 S.C. 497, 593 S.E.2d 486 (Ct. App. 2004). We affirm.

[*110] **FACTUAL AND PROCEDURAL BACKGROUND**

Bynum Rayfield (Petitioner) was convicted of three counts of first-degree criminal sexual conduct (CSC) with a minor, three counts of committing a lewd act upon a child, and one count of contributing [***2] to the delinquency of a minor. Petitioner was sentenced to concurrent terms of imprisonment of thirty years for CSC, fifteen years for lewd acts, and three years for contributing to delinquency.

During the initial jury selection, Petitioner exercised peremptory challenges against five members of the jury

369 S.C. 106, *110; 631 S.E.2d 244, **246;
2006 S.C. LEXIS 187, ***2

venire: five white females, one of whom was a potential alternate, and one white male. The petit jury selected was composed of nine males and three females. The alternates were one male and one female.

After the jury was selected, the State moved the court pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), to find that Petitioner had exercised his peremptory challenges based on gender. The State's main argument was that Petitioner had discriminatorily challenged female jurors, but the State also argued that Petitioner had discriminatorily challenged one male juror, the only male he challenged.

1 Batson actually prohibits only race-based strikes. *J.E.B. v. Alabama*, 511 U.S. 127, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994), is the case prohibiting gender-based strikes. Both types of strikes are popularly referred to as Batson violations.

***3 The trial judge found no Batson violation with respect to the female jurors. The trial judge did find a violation with respect to the one male, Juror # 70; therefore, the judge granted the State's motion and redrew the jury. None of the jurors initially challenged by Petitioner was selected for the second jury. No Batson motion was made, and the second jury served at trial.

Later, during the hearing on requests to charge, Petitioner objected to the trial judge charging the jury that under *South Carolina Code Ann. § 16-3-657* (2003), "the testimony of a victim need not be corroborated in prosecutions" for CSC with a minor. Petitioner argued that the charge improperly implies that the alleged victim's testimony is more credible than [*111] other witnesses' testimony. The trial judge disagreed and gave the charge.

After the jury returned with guilty verdicts, Petitioner moved for a new trial based both on the trial judge's redrawing of the jury and on the charge to the jury. The judge court denied the motion on both grounds.

247 Petitioner appealed the convictions and the Court of Appeals affirmed. The Court of Appeals held that the trial judge had erred in *4 granting the State's Batson motion, because "no gender based discrimination was associated with the striking of" the one male juror. *Rayfield*, 357 S.C. at 503, 593 S.E.2d at 490. The Court of Appeals further held, however, that the

trial judge's error was harmless because none of the jurors whom Petitioner excused from the original jury served on the trial jury. *Id.* at 504, 593 S.E.2d at 490. According to the Court of Appeals, its holding was required under our opinion in *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). *Id.*

With respect to the jury charge, the Court of Appeals held that the trial judge had committed no error. The Court of Appeals noted that the no-corroboration charge withstood appellate scrutiny in *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993). *Rayfield*, 357 S.C. at 505, 593 S.E.2d at 491. The Court of Appeals held that the charge as a whole was proper. *Id.*

ISSUES

I. Did the Court of Appeals err in holding that the trial judge, in granting a groundless Batson motion by the State, committed harmless error in quashing the original jury ***5 and drawing a new one?

II. Did the Court of Appeals err in holding that the trial judge properly charged *Section 16-3-657* to the jury?

LAW AND ANALYSIS

I. BATSON MOTION

Petitioner argues the Court of Appeals erred in holding that, although the trial judge erred in granting the State's groundless Batson motion, Petitioner failed to demonstrate he was prejudiced by the error. Allowing the State to pursue a [*112] meritless Batson motion as a strategic ploy to draw a jury more to its liking is inconsistent with the State's duty to ensure that justice is done even while striving vigorously to obtain a conviction. Petitioner contends he was unfairly prejudiced due to the improper advantage gained by the State and, in any event, he should not be required to demonstrate prejudice in this instance because any remedy short of a new trial rewards the State for using an improper trial tactic.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits

369 S.C. 106, *112; 631 S.E.2d 244, **247;
2006 S.C. LEXIS 187, ***5

the striking of a venire person on the basis of race or gender." *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). "The purposes of Batson [***6] and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." *State v. Haigler*, 334 S.C. 623, 628-29, 515 S.E.2d 88, 90 (1999). Both the State and defendants are prohibited from discriminatorily exercising a peremptory challenge of a prospective juror. *Georgia v. McCollum*, 505 U.S. 42, 58, 112 S. Ct. 2348, 2358-59, 120 L. Ed. 2d 33 (1992).

We set forth the proper procedure for a Batson hearing in *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing *Purkett v. Elem*, 514 U.S. 765, 115 S. Ct. 1769, 131 L. Ed. 2d 834 (1995)). After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. This explanation is not required to be persuasive or even plausible. Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation [***7] is mere pretext, either by showing similarly situated members of another race were seated on the jury or the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. *Adams*, 322 S.C. at 123-24, 470 S.E.2d at 371-72; *Haigler*, 334 S.C. at 629-30, 515 S.E.2d at 90-91.

The Court of Appeals correctly held that the trial judge erred in granting the State's meritless Batson motion and redrawing the jury. The record contains no evidence [*113] Petitioner struck the male juror based on gender. During the Batson hearing, Petitioner [**248] gave a gender-neutral explanation for the strike: the juror had a conservative appearance and was retired. *E.g. State v. Wilder*, 306 S.C. 535, 538, 413 S.E.2d 323, 325 (1991) (party may strike potential juror based on demeanor and disposition); *Haigler*, 334 S.C. 632, 515 S.E.2d at 92 (lack of employment or place of employment may be neutral reason for strike). The record does not reveal a pattern of striking male jurors or any other evidence to support a finding that Petitioner's explanation was a pretext. Petitioner struck [***8] only one out of ten prospective male jurors. As the Court of Appeals observed, the State took a "disjointed and moving-target

approach to its Batson motion." *Rayfield*, 357 S.C. at 503, 593 S.E.2d at 489. We agree with Petitioner that it appears the State willfully made a meritless Batson motion for the sole purpose of seeking a second chance to draw a jury which might look more favorably upon the State's case.

Nevertheless, we conclude the Court of Appeals correctly held the trial judge's error was harmless. In *Adams*, we held that when the trial judge improperly quashes a jury panel, no juror's equal protection rights are violated because no Batson violation has occurred. *Adams*, 322 S.C. at 125-26, 470 S.E.2d at 373. We further held that if the jury which actually serves at trial is not tainted by an erroneous Batson ruling in favor of the prosecution, then the defendant's right to a fair trial is not violated because a defendant does not have a right to be tried by any particular jury. Consequently, we held that the judge's erroneous Batson ruling was harmless error. *Id.* at 126, 470 S.E.2d at 373; see also [***9] *State v. Wright*, 304 S.C. 529, 534, 405 S.E.2d 825, 828 (1991) (concluding there was no prejudice to defendant when, despite earlier erroneous rulings by trial judge, he received what Batson was intended to provide).

We have held that a defendant need not always show actual prejudice for an erroneous Batson ruling to be reversible. Unlike *Adams* and the present case, however, those cases involved erroneous Batson rulings which actually tainted the jury which served at trial. See *State v. Ford*, 334 S.C. 59, 63-66, 512 S.E.2d 500, 503-04 (1999) (defendant was not [*114] required to show actual prejudice stemming from judge's erroneous granting of State's Batson motion because, during selection of second jury, defendant was wrongfully denied the right to exercise a peremptory challenge against one or more jurors he previously had struck for racially neutral reasons); *State v. Short*, 333 S.C. 473, 476-78, 511 S.E.2d 358, 360-61 (1999) (applying same principle under similar facts); *State v. Floyd*, 353 S.C. 55, 58-59, 577 S.E.2d 215 & n. 5 (2003) (defendant was not required to show actual prejudice [***10] stemming from judge's erroneous excusal of juror who refused to take a religious oath). Prejudice is presumed in such cases because there is no way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged. *Short*, 333 S.C. at 476-77, 511 S.E.2d at 360.

In the present case, the second jury was not tainted

369 S.C. 106, *114; 631 S.E.2d 244, **248;
2006 S.C. LEXIS 187, ***10

by the trial judge's erroneous Batson ruling. No juror whom Petitioner challenged in the initial drawing was selected to serve on the trial jury. The Court of Appeals properly held this case is controlled by *Adams*, and Petitioner must show actual prejudice for the trial judge's error to be reversible. Petitioner may not have received the jury he wanted, but as we held in *Adams*, a defendant has no right to a particular jury. For these reasons, we conclude the trial judge's erroneous quashing of the original jury and the drawing of a new one constitutes harmless error.

In reaching our conclusion, we emphasize it is improper for a party to assert a groundless Batson motion as a tactic to gain a second shot at selecting another jury panel which the party believes might look more favorably upon [***11] his case. We admonish counsel for the State that abuses such as the meritless motion in this case are looked upon with disfavor and will not be countenanced in the future. The solicitor and defense counsel are officers of a court of law, and are expected and required to have lawful and reasonable bases for motions presented to the trial judge. Moreover, a solicitor

[**249] should bear in mind that he is an officer of the court, who represents all the people, including [the] accused, and [he] occupies a quasi-judicial position, whose sanctions and traditions he should preserve. It is his duty to see that justice is [*115] done. He must see that no conviction takes place except in strict conformity with the law, and that [the] accused is not deprived of any constitutional rights or privileges. However strong the prosecuting attorney's belief may be of the prisoner's guilt, it is his duty to conduct the trial in such a manner as will be fair and impartial to the rights of the accused, . . . and not say or do anything which might improperly affect or influence the jury or [the] accused's counsel.

State v. King, 222 S.C. 108, 119, 71 S.E.2d 793, 798 (1952). [***12] "This Court, on numerous occasions, has

held that the duty of a solicitor is not to convict a defendant, but to see that justice is done. At the same time, the solicitor should prosecute vigorously." *State v. Durden*, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975); accord *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L. Ed. 1314 (1935) (federal prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done").

II. JURY INSTRUCTION

Petitioner argues the trial judge erred in charging *South Carolina Code Ann. § 16-3-657* (2003) to the jury because the charge constitutes an impermissible comment on the facts of the case, it improperly emphasizes the testimony of one witness, and it carries a strong possibility of unfairly biasing the jury against the defendant. Petitioner contends the Court of Appeals erred in relying on *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993) [***13] to find the instruction was permissible. We disagree and conclude the Court of Appeals properly relied on *Schumpert* in holding the trial judge did not err in charging the jury that the victim's testimony need not be corroborated by other testimony or evidence.

Petitioner was charged with three counts of first-degree criminal sexual conduct with a minor, in violation of *S.C. Code Ann. § 16-3-655* (2003). A related statute, *§ 16-3-657*, provides "[t]he testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." These statutes prohibit various forms of criminal sexual conduct. In [*116] *Schumpert*, we held it was not error to charge *§ 16-3-657* as long as the charge as a whole comports with the law. *Schumpert*, 312 S.C. at 509, 435 S.E.2d at 863.

The trial judge in the present case instructed the jury in accordance with the statute, stating "§ 16-3-657 of our code of laws provides that the testimony of a victim need not be corroborated in prosecutions under this section." The trial judge charged the jury the State had the burden of proving Petitioner was guilty of the charged offenses beyond a reasonable [***14] doubt. The trial judge further instructed the jury:

In every case tried in this court before a

369 S.C. 106, *116; 631 S.E.2d 244, **249;
2006 S.C. LEXIS 187, ***14

jury, the jury becomes the sole and exclusive judges of the facts of the case. You, the ladies and gentlemen of this trial jury, are the sole and exclusive judges of the facts in this case. The constitution of the state of South Carolina has declared that a trial judge shall not intimate, state, comment upon, or make any statement to a trial jury about the facts in a case.

Since you are the sole and exclusive judges of the facts in this case, ladies and gentlemen, you are not to infer anything that I have said during the progress of this trial in ruling upon the admissibility of the evidence or from anything that I now say to you during the course of my charge to you that I have an opinion about the facts in this case. Ladies and gentlemen, the law does not permit me to have an opinion about the facts in this case. That is a matter solely for you, the ladies and gentlemen of the trial jury, to determine.

As jurors, then, it is your duty to determine, as I have stated to you, the effect, the value, the weight, and the truth of the evidence presented during the course of [***15] [**250] this trial. Necessarily, then, ladies and gentlemen, you must assess the credibility of the witnesses who have testified in this case. Credibility is simply a legalistic word which means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and to determine that evidence which convinces you of its truth.

I charge you in determining the question of the credibility or the believability of the witnesses, you may believe one witness as against several witnesses or several witnesses as against one witness. You may believe a part of the testimony [*117] of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or you may reject the testimony of a witness

in its entirety.

You may consider whether any witness has exhibited any interest, any bias, or any prejudice in this case. And, ladies and gentlemen, you may consider the demeanor of a witness, that is, the appearance of the witness on this witness stand during the trial of this case, and you may consider the opportunity for knowledge concerning those things about which a witness has testified.

These considerations you [***16] do not exercise arbitrarily, but if, in your good judgment, there is sound reason in the record of this case for so doing, because your objective, ladies and gentlemen, is to find the truth, whether it come from witness or witnesses for the state of South Carolina or from witness or witnesses for the defendant, and in so doing, in exercising your mental processes and in determining what you consider to be true, ladies and gentlemen, our law simply requires that you exercise your good, common sense; your good judgment, your sense of logic and reason, and your experiences in life.

It is not always necessary, of course, to charge the contents of a current statute. *Section 16-3-657* prevents trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim's testimony is not corroborated. However, § 16-3-657 does much more. In enacting this statute, the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses against the person. In many cases, the only witnesses to a rape or sexual assault are the perpetrator and the victim. An investigation may or may not reveal physical [***17] or forensic evidence identifying a particular perpetrator. The Legislature has decided it is reasonable and appropriate in criminal sexual conduct cases to make abundantly clear - not only to the judge but also to the jury - that a defendant may be convicted solely on the basis of a victim's testimony.

A trial judge is not required to charge § 16-3-657, but when the judge chooses to do so, giving the charge

369 S.C. 106, *117; 631 S.E.2d 244, **250;
2006 S.C. LEXIS 187, ***17

does not [*118] constitute reversible error when this single instruction is not unduly emphasized and the charge as a whole comports with the law. The jury in this case was thoroughly instructed on the State's burden of proof and the jury's duty to find the facts and judge the credibility of witnesses. The trial judge in this case, as shown in the above portions of the charge, fully and properly instructed the jury on these principles.

CONCLUSION

We conclude the Court of Appeals correctly held that the trial judge erred in granting the State's meritless Batson motion and redrawing the jury. While we conclude the error was harmless because the second jury was not tainted by the erroneous Batson ruling, we emphasize it is improper for a party to assert a groundless Batson [***18] motion as a tactic to gain a second shot at selecting another jury panel which the party believes might look more favorably upon his case. We further conclude the Court of Appeals properly held the trial judge did not err in charging the jury that the victim's testimony need not be corroborated by other testimony or evidence.

AFFIRMED.

TOAL, C.J., and WALLER, J., concur.
PLEICONES, J., concurring in part, [**251]
dissenting in part in a separate opinion in which
Acting Justice Stephen S. Bartlett, concurs.

CONCUR BY: PLEICONES (In Part)

DISSENT BY: PLEICONES (In Part)

DISSENT

JUSTICE PLEICONES: I concur in the majority opinion's holding that the circuit court's Batson ruling constituted harmless error under *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). I respectfully dissent from the majority opinion's holding that the circuit court committed no error in charging the jury. In my opinion, the circuit court committed reversible error, and Petitioner is entitled to a new trial.

Petitioner was charged with three counts of first-degree CSC with a minor, in violation of *South Carolina Code section 16-3-655*.² Another statute, *section 16-3-657*,³ [***19] provides that [*119] "[t]he

testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." The circuit court charged the jury the above quoted language of *section 16-3-657*. This was reversible error.

2 S.C. Code Ann. § 16-3-655 (2003).

3 S.C. Code Ann. § 16-3-657 (2003).

"In general, the trial court is required to charge only the current and correct law of South Carolina. ... A jury charge is correct if it contains the correct definition of the law when read as a whole." *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004) (citations omitted). Some principles of law, however, are not to be charged to a jury. See, e.g., *State v. Grant*, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980) (holding that although evidence of a defendant's flight is admissible as circumstantial evidence of guilt, it is improper for the trial judge to instruct the jury on the law of flight, because [***20] such an instruction "oftentimes has the potential for creating more problems than solutions," as it "places undue emphasis upon that part of circumstantial evidence").

Contrary to the majority opinion, we did not hold in *Schumpert* that this no-corroboration charge was proper. Rather, "[t]aking the charge as a whole, we [found] no reversible error." 312 S.C. at 509, 435 S.E.2d at 863.⁴ We observed that the trial judge, in addition to charging the jury under *section 16-3-657*, had charged "the jury it could believe any single witness over several, it was the sole judge of the facts, [the trial judge] had no opinion about those facts, and the State had the burden of proving the offense charged beyond a reasonable doubt." *Id.*

4 We cited *Lottie v. State*, 273 Ind. 529, 406 N.E.2d 632 (Ind. 1980), to support this holding. *Lottie* was recently overruled in *Ludy v. State*, 784 N.E.2d 459, 462 & n.2 (Ind. 2003).

I would hold that it is error for a trial [***21] 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 James Cranston Gray, Jr., *Criminal Law-Rape Reform in South Carolina*, 30 S.C. L. Rev. 45, 55-60 (1979) (discussing the

369 S.C. 106, *119; 631 S.E.2d 244, **251;
2006 S.C. LEXIS 187, ***21

no-corroboration rule [*120] as governing judicial review of the sufficiency of the evidence); cf. *Ludy v. State*, 784 N.E.2d 459, 463 (Ind. 2003) (holding that the no-corroboration rule is a legal standard for a court reviewing a conviction). Charging this rule does not assist the jury in fulfilling its function of deciding the facts and determining whether the state has proved the charged offense beyond a reasonable doubt. In fact, it "has the potential for creating more problems than solutions,"⁵ for it might cause confusion when read with the general charge on witness credibility.⁶

⁵ *Grant*, 275 S.C. at 408, 272 S.E.2d at 171.

[***22]

⁶ According to the majority opinion, the General Assembly "has decided it is reasonable and appropriate" to instruct the jury that an alleged CSC victim's testimony need not be corroborated. I can find no indication in section 16-3-657 or elsewhere that the legislature intended this no-corroboration rule to be charged to the jury.

More important, charging this rule carries a strong possibility of biasing the jury against the defendant. No witness's testimony need be corroborated. By specifically charging that the alleged victim's testimony [**252] need not be corroborated, the trial court singles out the alleged victim and "appears to express an opinion on her credibility." *State v. Schumpert*, 312 S.C. 502, 510, 435 S.E.2d 859, 864 (1993) (Finney, J., dissenting); see also S.C. Const. art. V, § 17 (providing that "[j]udges shall not

charge juries in respect to matters of fact, but shall declare the law"). I would therefore hold that charging a jury on the contents of section 16-3-657 constitutes error.

Further, I would overrule the holding in *Schumpert* that the charge as [***23] a whole can render this no-corroboration charge harmless. Separately instructing the jury that it may believe one witness against many or many against one does not ameliorate or remove the favorable emphasis on the alleged victim's testimony.

Furthermore, this case is different from *Ludy*, *supra*, in which the Supreme Court of Indiana held that although the trial court had erred in giving the no-corroboration charge, the error was harmless because: "[T]he testimony of the victim was not uncorroborated. ... [A]side from the victim's testimony there was substantial probative evidence establishing the elements of the charged offenses." 784 N.E.2d at 463. Here, [*121] the only evidence of Petitioner's committing CSC was the testimony of the alleged victims. The jury had to determine whether it believed the purported victims or Petitioner.

For these reasons, I would hold that the circuit court committed reversible error in charging the jury. I would therefore reverse the decision of the Court of Appeals and remand the case to the circuit court for a new trial.

Acting Justice Stephen S. Bartlett, concurs.

ARREST WARRANT

I-908805

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

THE STATE

04051050-11

against

Melvin Presley Stukes

Last Name: Unknown

Race: B Height: 5 11 Weight: 175

State: SC DL #: 4

Agency ORI #: 04000

Issuing Agency: Richland County Sheriff Department

Issuing Officer: Brian Godfrey - 897

Offense: Sex / Criminal sexual conduct - First degree

Offense Code: 0160

Offense/Ordinance Sec: 16-03-0652

This warrant is CERTIFIED FOR SERVICE in the County/ ☐ Municipality of

The accused

to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

to:

RETURN

A copy of this arrest warrant was delivered to defendant

Melvin Stukes
JF 5-10
A. Caldwell
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Dutch Fork Magistrate
1019 Beatty Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

Personally appeared before me the affiant Brian Godfrey

who

being duly sworn deposes and says that defendant Melvin Presley Stukes

did within this county and state on or about 05/10/2004

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

In the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about May 10, 2004 while at 1601 Longcreek Drive, Apt 196 in the Dutch Fork Magisterial District of Richland County, it is believed that the defendant did commit the crime of Sex / Criminal sexual conduct - First degree because he did enter the dwelling of the victim, Misty Shealy, without consent at night. Once inside the residence, the defendant did engage in both physical and sexual battery with the victim. The victim did provide a sworn written statement stating the same. A DNA profile developed from semen discovered during the analysis of the evidence resulted in a profile match to the defendant in CODIS.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

Affiant's Address 5623 Two Natch Road
Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/10/2004

defendant Melvin Presley Stukes

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Dutch Fork Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/19/2010

Signature of Issuing Judge (L.S.)

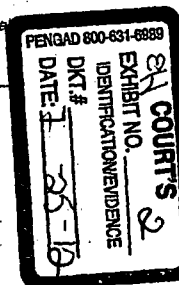
Mel Maurer

Judge Code: 5463

Judge's Address 1019 Beatty Road

Columbia, SC 29210-

Judge's Telephone (803)576-2540

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

686

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT

I-908806

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

THE STATE
against

04051050-11

Melvin Presley Stukes

Address: Unknown

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 11 Weight: 175

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Brian Godfrey - 897

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant M. Stukes
on 5-15-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Dutch Fork Magistrate
1019 Beatty Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

Personally appeared before me the affiant Brian Godfrey whobeing duly sworn deposes and says that defendant Melvin Presley Stukesdid within this county and state on or about 05/10/2004State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Dutch Fork Magistrate)

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degreeI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on or about May 10, 2004 while at 1601 Longcreek Drive, Apt. 196 in the Dutch Fork Magisterial District of Richland County, it is believed that the defendant did commit the crime of Burglary - First degree because he did enter the dwelling of the victim, Misty Shealy, without consent at night. Once inside the residence, the defendant did engage in both physical and sexual battery with the victim. The victim did provide a sworn written statement stating the same. A DNA profile developed from semen discovered during the analysis of the evidence resulted in a profile match to the defendant in CODIS.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dutch Fork Magistrate

Affiant's Address 3629 Two Notch Road
Columbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/10/2004defendant Melvin Presley Stukes

did violate the criminal laws of the State of South Carolina (or ordinance of

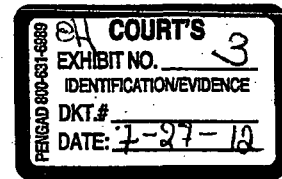
☒ County/ ☐ Municipality of Richland / Dutch Fork Magistrate) as set forth below:DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 04/19/2010Signature of Issuing Judge
Mel MaurerJudge Code: 5463Judge's Address 1019 Beatty RoadColumbia, SC 29210-Judge's Telephone (803)576-2540Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

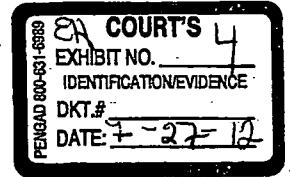
DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY



Can we have a copy
of the law?

Charles E. Gipson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	INDICTMENT NUMBERS: 2010GS402700
	)	2010GS402701
STATE OF SOUTH CAROLINA,	)	
	)	
	)	JURY CHARGES
vs.	)	
	)	
MELVIN STUKES	)	
	)	
DEFENDANT.	)	



DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I

NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

CREDIBILITY OF WITNESSES

THE TESTIMONY OF A VICTIM IN A CRIMINAL SEXUAL ASSAULT PROSECUTION NEED NOT BE CORROBORATED BY OTHER TESTIMONY OR EVIDENCE.

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE

TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

STATEMENT OF DEFENDANT

A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY HOPE OR A PROMISE OF LENIENCY OR A REWARD OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING. SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE: (1) THE AGE OF THE DEFENDANT; (2) THE DEFENDANT'S EDUCATION OR LACK OF EDUCATION; (3) THE DEFENDANT'S MENTAL ABILITY OR CAPACITY; (4) THE DEFENDANT'S I.Q. OR INTELLIGENCE; (5) THE DEFENDANT'S BACKGROUND AND ENVIRONMENT; (6) THE PLACE AND

LENGTH OF DETENTION; (7) THE NATURE OF THE QUESTIONING; AND (8) THE ADVICE, OR LACK THEREOF, TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO REMAIN SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST; AND THAT HE COULD STOP MAKING A STATEMENT AT ANY TIME. YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

PRIOR INCONSISTENT STATEMENTS

THERE HAS BEEN EVIDENCE PRESENTED THAT WITNESSES HAVE MADE PRIOR STATEMENTS WHICH ARE NOT CONSISTENT WITH THE WITNESSES' PRESENT TESTIMONY. YOU MAY USE THIS EVIDENCE TO DECIDE WHETHER TO BELIEVE THE WITNESS. YOU MAY ALSO USE EVIDENCE OF THE EARLIER CONTRADICTORY STATEMENTS TO DETERMINE THE TRUTH OF THOSE

STATEMENTS. IT IS UP TO YOU TO DECIDE WHETHER TO BELIEVE THE EARLIER STATEMENTS OR THE TESTIMONY GIVEN AT TRIAL.

IF A WITNESS IS SHOWN TO HAVE KNOWINGLY TESTIFIED UNTRUTHFULLY CONCERNING ANY MATERIAL MATTER, YOU MAY CONSIDER THIS IN DETERMINING WHETHER TO TRUST THE WITNESS' TESTIMONY AS TO OTHER MATTERS. YOU MAY REJECT ALL TESTIMONY OF THAT WITNESS OR GIVE ALL OR PART OF THE TESTIMONY THE WEIGHT YOU THINK IT DESERVES.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENTS CHARGE THE DEFENDANT WITH BURGLARY 1ST DEGREE AND CRIMINAL SEXUAL CONDUCT 1ST DEGREE. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THESE DOCUMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE DEFENDANT. THEY ARE THE FORMAL DOCUMENTS BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THESE INDICTMENTS, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIMES CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

FIRST DEGREE BURGLARY - § 16-11-311

THE DEFENDANT IS CHARGED WITH FIRST DEGREE BURGLARY. THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENTERED A DWELLING WITHOUT CONSENT.

A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF BURGLARY. BUT, A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE TEMPORARILY ABSENT FROM THE BUILDING.

IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING. THE SMALLEST ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY, SUCH AS A HAND OR FOOT, OR EVEN AN INSTRUMENT,

SUCH AS A HOOK OR OTHER INSTRUMENT. IN ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE WAS USED TO GAIN ENTRY.

IF A PERSON ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICK, OR MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN ENTRY WITHOUT CONSENT.

NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A FELONY OR A MISDEMEANOR, AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY, IT IS A BURGLARY EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.

INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.¹

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT:

1. WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE CAUSED PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN THE CRIME.
2. THE DEFENDANT ENTERED OR REMAINED IN THE DWELLING IN THE NIGHTTIME. NIGHTTIME IS THE PERIOD BETWEEN SUNSET AND SUNRISE

DURING WHICH THERE IS NOT ENOUGH DAYLIGHT TO RECOGNIZE A PERSON'S FACE, EXCEPT BY ARTIFICIAL LIGHT OR MOONLIGHT.

FIRST DEGREE CRIMINAL SEXUAL CONDUCT - § 16-3-652

THE DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

THE FIRST ELEMENT WHICH THE STATE MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM. A SEXUAL BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY, EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

IF YOU FIND THAT THE STATE HAS NOT SHOWN BEYOND A REASONABLE DOUBT THAT A SEXUAL BATTERY OCCURRED, YOU WOULD STOP DELIBERATING AND YOUR VERDICT WOULD HAVE TO BE NOT GUILTY.

IF YOU FIND THAT A SEXUAL BATTERY DID OCCUR, YOU MUST THEN DECIDE WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT:

THE VICTIM SUBMITTED TO SEXUAL BATTERY WHILE THE VICTIM WAS ALSO THE VICTIM OF FORCIBLE CONFINEMENT, KIDNAPPING, ROBBERY, EXTORTION, BURGLARY, HOUSEBREAKING, OR ANY OTHER SIMILAR ACT OR OFFENSE.

INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE

FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS, OR AN INDIFFERENCE TO DUTY OR TO CONSEQUENCES THAT IS CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL INTENT.

INDIVIDUAL OPINION OF EACH JUROR

THE STATE AND THE DEFENDANT ARE ENTITLED TO THE INDIVIDUAL OPINION OF EACH JUROR ON THE ISSUES OF FACT IN THIS CASE. IT IS THE DUTY OF EACH OF YOU TO CONSIDER AND WEIGH ALL THE EVIDENCE IN THE CASE AND, FROM SUCH EVIDENCE TO DETERMINE, IF YOU CAN, THE QUESTION OF THE GUILT OR INNOCENCE OF THE DEFENDANT.

USE COMMON SENSE

THERE IS NOTHING PERCULIARLY DIFFERENT IN THE WAY A JURY SHOULD CONSIDER THE EVIDENCE IN A CRIMINAL CASE, FROM THAT IN WHICH ALL REASONABLE PERSONS TREAT ANY QUESTION DEPENDING UPON EVIDENCE PRESENTED TO THEM. YOU ARE EXPECTED TO USE YOUR GOOD SENSE, CONSIDER THE EVIDENCE IN THE CASE FOR ONLY THOSE PURPOSES FOR WHICH IT HAS BEEN ADMITTED, AND GIVE IT A REASONABLE AND FAIR CONSTRUCTION, IN THE LIGHT OF YOUR COMMON KNOWLEDGE OF THE NATURAL TENDENCIES AND INCLINATIONS OF HUMAN BEINGS.

IF GUILTY SAY SO-IF NOT SAY SO

IF THE ACCUSED BE PROVED GUILTY BEYOND A REASONABLE DOUBT, SAY SO.
IF NOT SO PROVED GUILTY SAY SO.

FORM OF VERDICT

YOUR VERDICT IN THIS CASE WILL BE ONE OF TWO FORMS. IF, FROM THE EVIDENCE AND THE LAW, YOU FIND THAT THE DEFENDANT IS NOT GUILTY, YOU WILL CIRCLE "NOT GUILTY" ON THE VERDICT FORM I WILL GIVE YOU AND THE FOREMAN WILL SIGN HIS NAME. IF, ON THE OTHER HAND, YOU FIND THAT THE

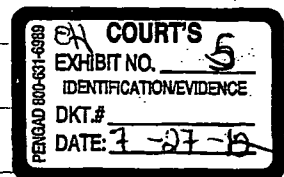
DEFENDANT IS GUILTY, BASED UPON THE EVIDENCE AND THE LAW WHICH YOU HAVE HEARD, YOU WILL CIRCLE "GUILTY" ON THE VERDICT FORM AND THE FOREMAN WILL SIGN HIS NAME. YOUR VERDICT MUST BE UNANIMOUS. IT MUST BE GUILTY OR NOT GUILTY.

UNANIMOUS VERDICT

THE LAW REQUIRES THAT A JURY VERDICT BE UNANIMOUS, WHICH MEANS THAT ALL THE JURORS MUST AGREE. THE ONLY TWO FORMS OF THE VERDICT ARE GUILTY OR NOT GUILTY. MR. FOREMAN, ONCE THE JURY REACHES A VERDICT OF NOT GUILTY OR GUILTY, CIRCLE THE VERDICT ON THE FACE OF THE VERDICT FORM AND SIGN UNDER THE VERDICT TO SIGNIFY THAT WHAT YOU HAVE CIRCLED IS THE VERDICT OF ALL THE JURORS. THEN NOTIFY US THAT YOU HAVE REACHED A VERDICT BY KNOCKING ON THE DOOR.

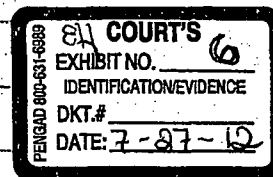
Criminal Sexual Misconduct
Charge read again.

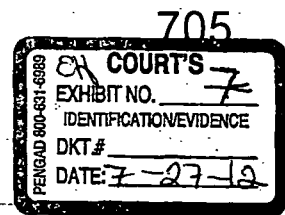
Charles E. Gipson



Hand the charge again
Can you define
What is aggravated battery

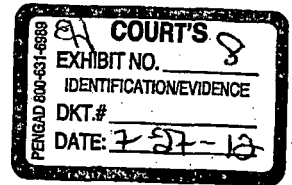
Charles E. Hyman





Can we see the defendant's transcript
testimony

Charles E. Gibson



The SC law that the victim testimony in CSE does not have to be corroborated

Does the law imply that the victim's testimony must be accepted as being true?

Charles E. Hipson

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

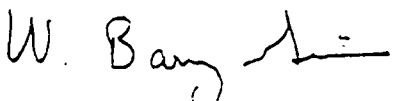
INDICTMENT

At a Court of General Sessions, convened on August 11, 2010, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That Melvin Presley Stukes did in Richland on or about May 10, 2004, engage in sexual battery with the victim, Misty Shealy, and the defendant used aggravated force to accomplish sexual battery and/or while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, in violation of Section 16-03-0652, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

WITNESSES

✓ (S) Brian Godfrey – Richland County Sheriff

ARREST WARRANT NUMBER

1908805

ACTION OF GRAND JURY

TRUE BILL

Justine H. Fields

Foreperson of Grand Jury

Date:

AUG 11 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-40-2700

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2010

74

**THE STATE
vs.**

Melvin Presley Stukes

**Indictment for
CRIMINAL SEXUAL CONDUCT 1ST
DEGREE**

SC Code: 16-03-0652

CDR Code: 0160

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

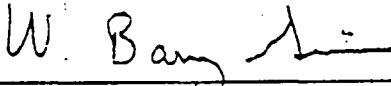
INDICTMENT

At a Court of General Sessions, convened on August 11, 2010, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Melvin Presley Stukes did in Richland County on or about May 10, 2004 willfully and unlawfully enter the dwelling located at 1601 Longcreek Dr., Apt. 196, without consent and with the intent to commit a crime therein and the defendant entered or remained during the hours of darkness and/or was armed with a deadly weapon while therein and/or caused physical injury to the victim, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

WITNESSES

✓ (S) Brian Godfrey – Richland County Sheriff

ARREST WARRANT NUMBER

1908806

ACTION OF GRAND JURY

TRUE BILL

Keslie H. Fields
Foreperson of Grand Jury

Date:

AUG 11 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-2701

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2010

74

**THE STATE
vs.**

Melvin Presley Stukes

**Indictment for
BURGLARY 1ST DEGREE**

SC Code: 16-11-0311
CDR Code: 0079

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

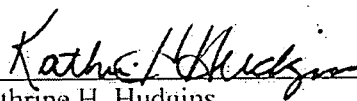
C.C.C. PLS. AND G.S.

710

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 3rd, 2014


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT