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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN P. STUKES,

APPELLANT

APPELLATE CASE NO. 2012-212628

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in charging the jury, over objection, S.C. Code §16-3-657 providing that the testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658 when, under the facts of this particular case involving the defense of consent, the charge confused the jury, improperly bolstered the testimony of the prosecuting witness and constituted an impermissible comment on the facts?

STATEMENT OF THE CASE

In August of 2010, the Richland County Grand Jury indicted Stukes for criminal sexual conduct first degree and burglary first degree, indictments #10-GS-40-2700-2701. On July 24, 2012, Stukes proceeded to jury trial before the Honorable DeAndrea G. Benjamin. Attorneys Tracy E. Pinnock, Brian R. Shealey and Alicia Dyar represented Stukes at trial. Attorneys Kathryn C. Ashton and Daniel R. Goldberg prosecuted the case on behalf of the State. On July 27, 2012, the jury returned verdicts of guilty and Judge Benjamin sentenced Stukes to twenty five years concurrent for each charge. A timely notice of intent to appeal was served on August 1, 2012. This appeal follows.

STATEMENT OF FACTS

Sometime after 9:30 PM on May 10, 2004, Misty Shealy Millender drove from her apartment at the Park Apartments on Longcreek Drive off of Broad River Road to Jacqueline Bruton's house in Hopkins, an approximate thirty minute drive. (R. p. 139, line 24 – p. 140 lines 1-3; p. 184, line 6- p. 185, line 1). Millender told Bruton that she had been sexually assaulted that night. (R. p. 181, line 23 – p. 182, lines 1-19). Bruton convinced Millender to go to hospital. (R. p. 147, line 18 – p. 148, lines 1-9). Bruton and Millender then drove from Hopkins to the Lexington Medical Center where Millender was examined. (R. p. 148, lines 7-14).

Millender testified that about 9:30 PM on May 10, 2004, as she was getting ready for work her doorbell rang and without looking, she opened the door. (R. p. 142, line 1 – p. 143, lines 1-7). According to Millender a man forced his way in, she fell over the side of the couch, blacked out and when she awakened she was being sexually assaulted on the couch. (R. p. 143, line 22 – p. 144, lines 1-16). Sergeant Pearson with the Richland County Sheriff's Department testified that the only information Millender could provide was that the suspect was male. (R. p. 214, lines 4-24). Sergeant Pearson testified that Millender told Deputy Hicks that the assailant grabbed her by the throat with his left hand and hit her in the face with his right hand. (R. p. 216, lines 13- 20). In a written statement to Investigator Branham with the Richland County Sheriff's Department on May 14, 2004, Millender stated that the she believed the assailant grabbed her around the neck with his right hand and punched her with his left hand. (R. p. 325, line 21 – p. 326, lines 1-4). Donna Sharpe, an emergency room nurse a the Lexington Medical Center testified that there was no bleeding bruising or abrasions in the pelvic area but testified that Millender had "a red area

surrounded by bruise to right cheek bone below right orbit, small red area to right lower eyelid, and a red mark to the right side of the neck resembles a hand mark." (R. p. 248, lines 11-14). The report from Deputy Hicks lists no visible injuries to Millender. (R. p. 216, lines 21-25).

Investigator Brian Metz of the Richland County Sheriff's Department went to the Lexington Medical Center at 2:40 AM on May 11, 2004. (R. p. 200, line 2 – p. 201, line 1). Millender told Investigator Metz that she had been sexually assaulted in her apartment. (R. p. 202, lines 8-15). Investigator Stan Richards of the Richland County Sheriff's Department processed Millender's apartment for forensic evidence at 3:15 AM on May 11, 2004. (R. p. 283, lines 3-23).. Based on information given to Investigator Richards about the location of the assault, his investigation focused on the door and the sofa. (R. p. 284, lines 6-10). Investigator Richards testified that he found no usable finger prints on the door and no seminal fluids on and around the couch. (R. p. 295, lines 2- 21) Investigator Richards admitted that he did not collect the sheets from inside the bedroom. (R. p. 296, lines 2-14).

On October 27, 2004, Rhonda Fields, a DNA analyst at the South Carolina Law Enforcement Division developed an unidentified male profile from semen found on Millender's underwear. (R. pp. 404-405). In 2007, the profile developed was found to match the Appellant. (R. p. 406, lines 1-4). In 2010, Fields tested a buccal swab from Appellant and confirmed that the developed male profile from Millender's underwear matched the Appellant. (R. p. 406, lines 5-25).

On March 23, 2010, Investigator Godfrey with the Richland County Sheriff's Department found Millender in the Orangeburg County Detention Center. (R. pp. 414-415). On May 5, 2010, Sergeant Caldwell with the Richland County Sheriff's Department

arrested Appellant at his sister's apartment on Marlboro Street. (R. p. 377, lines 1-10). According to Sergeant Caldwell, when he read the arrest warrant for criminal sexual conduct against Misty Shealy [Millender], Appellant replied that the warrant was a mistake because he did not know Shealy [Millender]. (R. p. 372, lines 16-24).

The same day he was arrested, Appellant voluntarily gave a DNA sample and statement to Investigator Godfrey. (R. p. 429, line 17 – p. 430, 431, lines 1-11; pp. 436-446). Appellant admitted having lived at the Ashton Apartments with his son's mother Quantina Brown. (R. p. 439, line 23 – p. 440, lines 1-4). Investigator Godfrey testified that the Ashton Apartments were close to the Park Apartments where Millender lived in 2004. Investigator Godfrey testified that Appellant lived at the Ashton Apartments in 2004. (R. p. 433, line 21 – p. 434, lines 1-7). Investigator Godfrey showed Appellant a driver's license photo of Millender and Appellant denied knowing her. (R. p. 440, line 15 – p. 441, lines 1-11). Appellant admitted knowing a college student named Christopher who lived in the Park Apartments and a man named Louis who worked at the Exxon on Broad River Road. (R. p. 440, lines 7-14). When asked if he had consensual sex with Misty Shealy [Millender] Appellant responded, "Not to my knowledge." (R. p. 443, lines 8-10). Appellant denied breaking into Misty Shealy's apartment and he denied raping her. (R. p. 443, lines 3-7). When asked why his semen would be located inside Ms. Shealy's body[1], Appellant answered, "It couldn't be no other option. I had sex with her, sir." (R. p. 443, lines 19-22).

At trial Appellant testified that he met Misty Shealy [Millender] at his friend Louis' house. (R. p. 506, lines 1-2). Appellant testified that he and Millender went back to her apartment, she invited him in, they went into her bedroom and had consensual sex on her

[1] The semen was actually found on Millender's underwear. While semen was identified from the vaginal swab submitted from Millender, the DNA analyst was unable to identify the contributor. (Tr. pp. 453-454).

bed. (R. p. 506, lines 2 – p. 507, lines 1-25). Appellant testified that when police questioned him he did not recognize the photo of Millender and did not know her name. (R. p. 513, line 18 – p. 514, lines 1-11). Appellant testified that after he was arrested and talked with police in 2010, he had time to think back to 2004, and he remembered having sex with Millender. (R. p. 514, line 12 – p. 515, lines 1-6). Appellant again denied knowing Millender's name. (R. p. 515, lines 2-6).

ARGUMENT

> The trial judge erred in charging the jury, over objection, S.C. Code §16-3-657 providing that the testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658 when, under the facts of this particular case involving the defense of consent, the charge confused the jury and improperly bolstered the testimony of the prosecuting witness and constituted an impermissible comment on the facts.

The defense in this case was consent. The credibility of the witnesses was a key determination for the jury. Prior to trial Stukes moved to prevent any reference to S.C. Code §16-3-657 providing that the testimony of the victim need not be corroborated. (R. p. 74, lines 7-16). Appellant submitted a written motion and memorandum in support of the motion, marked as Court's Exhibit #1. (R. p. 75, lines 8-9; Court's Exhibit #1, R. p. 654). The State agreed not to reference the statute in opening statements and the judge withheld ruling on the motion until the close of the case but before the charge to the jury. (R. p. 74, line 22 – 75, lines 1-6).

At the close of the case but before the charge to the jury, Appellant objected to any mention of S.C. Code §16-3-657 providing that the testimony of the victim need not be corroborated. (R. p. 544, line 11 – p. 545, 546, 547; pp. 549-552). Appellant argued that the State should be barred from mentioning the law in closing argument. (R. p. 547, lines 10-11). In the alternative, Appellant objected to the judge charging the jury with the law and argued that the standard charge on credibility of the witnesses was sufficient. (R. p. 547, lines 11-19). Appellant specifically argued that constituted an impermissible comment on the facts by the judge. (R. p. 545, lines 1-3). Additionally, Appellant argued that the charge improperly bolstered the testimony of the prosecuting witness, Misty Shealy Millender. (R. p. 546, line 10 – p. 547, lines 1-7). The judge overruled Appellant's objection to charging the jury with S.C. Code §16-3-657, citing State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct.App. 2011). (R. p. 550, line 18 – p. 551, 552, lines 2-4).

In closing argument the State referenced the statute arguing:

> The judge is also going to tell you about the law in this State, 16-3-657 of the South Carolina Code of Laws, and that statute says that the testimony of a victim does not need to be corroborated in a criminal sexual conduct case. That is the law in this state, and what that means in simple terms, if the victim says that she was raped, there doesn't have to be other evidence for you, if you believe her, to find a man guilty of the CSC. It doesn't have to be corroborated. It can be her word versus his and if you take her word, that's all it takes.

(R. p. 581, line 24 – p. 582, lines 1-8).

In charging the jury the judge stated, "The testimony of a victim in a criminal sexual conduct 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." (R. p. 604, lines 4-10). The judge went on to give the general credibility of witnesses charge. (R. p. 604, lines 11-22). Appellant renewed the objection to charging §16-3-657. (R. p. 616, lines 17-20). The State made no objection to the jury charge. (R. p. 616, line 16).

Jury deliberations began at 12:05 PM. (R. p. 618, line 8). The jury returned to the courtroom at 1:25 PM requesting a copy of the law. (R. p. 619, lines 1-4; Court's Exhibit #3, R. p. 688). The judge declined to provide a copy of the charge to the jury but told them if they would like a specific part re-charged, she would do that. (R. p. 619, lines 5-12). The jury requested a recharge on criminal sexual misconduct. (R. p. 619, lines 22-24; Court's Exhibit #5, R. p. 703). The jury returned at 1:30 PM and the judge re-charged the jury in regard to criminal sexual conduct in the first degree. (R. p. 620, line 3 – p. 621 lines 1-3). Shortly after the re-charge the judge realized she had omitted the portion of the charge stating that "If you find that a sexual battery did occur, you must then decide whether the state has proved beyond a reasonable

doubt that – it's 1) the defendant used aggravated force to accomplish the sexual battery. Aggravated force means the use of physical force or violence of a high and aggravated nature to overcome the victim, this includes the use of a deadly weapon." (R. p. 622, lines 2-10). The judge omitted this portion in both the initial charge and the re-charge. (R. p. 611, line 21 – p. 612, lines 1-13; p. 620, line 9 – p. 621, lines 1-3). Appellant moved for a mistrial based on the erroneous instruction. (R. p. 624, lines 2-7). The judge denied the motion and at 2:06 PM re-charged the jury with the full law on criminal sexual conduct first degree. (R. p. 627, line 6 – p. 628, 629, lines 1-10). Appellant renewed the motion for a mistrial and the motion was again denied. (R. p. 629, lines 16-25).

The jury then asked for a definition of aggravated battery. (R. p. 630, lines 4-7; Court's Exhibit 6, R. p. 704). Appellant again asked for a mistrial. (R. pp. 630 – 634). The judge denied the motion and at 2:48 PM re-charged the jury with the full law of criminal sexual conduct first degree. (R. p. 635, lines 7 – p. 636, lines 1-19).

The jury then asked two more questions. The jury first requested to see the defendant's transcript testimony. Second, the jury asked, "The South Carolina that the victim—the South Carolina law that the victim's testimony in CSC – CSE does not have to be corroborated, does the victim – does that law imply that the victim's testimony must be accepted as being true?" (R. p. 637, lines 1-13; Court's Exhibit #7, R. p. 705; Court's Exhibit #8, R. p. 706). The judge told counsel that she would replay the defendant's testimony. (R. p. 637, lines 3-7). In regard to the second question, the judge proposed re-charging the general credibility of witnesses charge. (R. p. 637, lines 14-22). Appellant again moved for a mistrial. (R. p. 638, lines 4-7). The judge denied the motion stating, "Well, I think that – I'll just deny the motion. I think the answer will clarify their question, and if there was ever a question as to whether or not the jurors thought

they had to only consider her testimony, I think by them asking this question that it will definitely be clear that the answer to that is no once I read it to them. So, I will deny the motion for a mistrial." (R. p. 638, lines 8-15). At 4:56 PM the jury returned to the courtroom and the defendant's testimony was replayed. (R. p. 638, line 21 – p. 639, lines 1-11). In response to the jury's second question, the judge failed to instruct the jury that the law does not imply that the victim's testimony must be accepted as being true. Instead, the judge instructed the jury:

> Ladies and gentlemen of the jury, you must determine the credibility of all 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 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 motives in this case. You may also consider the appearance and manner of a witness while on the witness stand.

(R. p. 640, lines 1-16). The jury then returned with verdicts of guilty.

Appellant renewed the objection to charging the jury with S.C. Code §16-3-657. (R. pp. 645 – 648). Again, Appellant argued that the charge was an improper comment on the facts and improperly bolstered the testimony of the prosecuting witness. (R. p. 646, lines 6-11). The judge noted that in response to the jury's question about accepting the victim's testimony as true, she informed the jury that they must determine the credibility of **all** witnesses. (R. p. 648, line 15 – p. 649, lines 1-6). The judge, however, did not tell the jury that the statute does **not** require them to accept the victim's testimony as being true. Despite the trial judge's efforts with inclusion of the word "all", the answer to the jury's question was confusing and misleading and failed to clarify that the prosecuting witness, or victim as referenced in the statute, is a witness for

purposes of determining credibility. As evidenced by the jury's question, instructing the jury that the victim's testimony need not be corroborated confused the jury, improperly bolstered the testimony of the prosecuting witness and constituted an improper comment on the facts of the case.

In State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), Schumpert argued that charging the jury with S.C. Code §16-3-657 was error as an improper charge on the facts. The South Carolina Supreme Court disagreed and wrote:

> The trial judge properly charged the jury it could believe any single witness over several, it was the sole judge of the facts, he had no opinion about those facts, and the State had the burden of proving the offense charged beyond a reasonable doubt. Taking the charge as a whole, we find no reversible error. Accord Lottie v. State, 273 Ind. 529, 406 N.E.2d 632 (1980). Id. 312 S.C. at 509, 435 S.E.2d at 863. The dissent in Schumpert noted:
>
> I would also hold that the "no corroboration" charge based on S.C.Code Ann. § 16–3–657 (1985) was reversible error. It is axiomatic that a trial judge must not indicate an opinion or express a view reasonably calculated to influence the jury in deciding a material issue of fact because such comment is forbidden by S.C. Const. art. V, § 21. State v. Simmons, 209 S.C. 531, 41 S.E.2d 217 (1947). Since the charge specified only that the victim's testimony need not be corroborated, it appears to express an opinion on her credibility. In State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244 (1943), this Court rejected a similar "no corroboration charge" in the context of accomplice testimony. The law found in Section 16–3–657 should not be charged to the jury. S.C. Const. art. V, § 21.
>
> The majority does not discuss the propriety of the "no corroboration" charge itself, but instead holds that the jury charge as a whole did not constitute reversible error. I disagree. We have rejected such analysis in State v. Bagwell, supra. Further, the charge was especially prejudicial in this case because it was the victim's word against the defendant's. I would hold that the giving of this charge was reversible error. Accord, Cox v. State, 44 S.W. 157 (Tex.Crim.Ct.App.1898).

Id. 312 S.C. at 510, 435 S.E.2d at 864.

In State v. Weldon, 89 S.C. 308, 71 S.E.2d 828, 828 (1911), the South Carolina Supreme Court approved the following charge: "The law in this state for a long number of years was declared by our Supreme Court to be that it was unsafe to convict upon the uncorroborated testimony of an accomplice. But our Supreme Court has recently changed that doctrine, and it is not the law now. The law in regard to the testimony of an accomplice is just like it is as to the testimony of any other witness in a case. That is to say, that you are the sole judges of the weight you should give to such testimony." As noted by the dissent in Schumpert, in the same way that it is improper to instruct the jury that it is unsafe to convict based on the uncorroborated testimony of an accomplice, it is improper to instruct the jury that the prosecuting witness' testimony need not be corroborated because in giving such a charge it appears that the judge is commenting on the credibility of the witness.

In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), Rayfied argued that charging the jury with S.C. Code §16-3-657 constitutes an impermissible comment on the facts of the case, improperly emphasizes the testimony of one witness, and carries a strong possibility of unfairly biasing the jury against the defendant. The South Carolina Supreme Court disagreed and wrote:

> 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. 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.

Id. 369 S.C at 117-118, 631 S.E.2d at 250. The dissent in Rayfield noted:

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 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. 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.

I would hold that it is error for a trial court to charge the jury that an alleged victim's testimony needs no corroboration. Although section 16–3–657 contains current and correct law, it is not a proper subject of a jury charge. Section 16–3–657 prevents courts, either on a dispositive motion at the trial level or on appellate review, from finding a lack of sufficient evidence to support a conviction because the alleged victim's testimony is uncorroborated. See James Cranston Gray, Jr., Criminal Law—Rape Reform in South Carolina, 30 S.C. L.Rev. 45, 55–60 (1979) (discussing the no-corroboration rule 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 determing whether the state has proved the charged offense beyond a reasonable doubt. In fact, it "has the potential for creating more problems than solutions," for it might cause confusion when read with the general charge on witness credibility.

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 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 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, 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.

Id., 369 S.C. at 119-121, 631 S.E.2d at 251 - 252 (footnotes omitted).

As noted by the dissent in Rayfied in footnote 4, in Ludy, the Supreme Court of Indiana overturned Lottie v. State, 273, Ind. 529, 406 N.E.2d 632 (1980), the decision relied upon by the Schumpert majority. Ludy 784 N.E.2d 459, 462 and n.2 (Ind. 2003). The Court found that giving the following instruction was an error despite a long history of appellate approval: "A conviction may be solely on the uncorroborated testimony of the alleged victim if such testimony establishes each element of any crime charged beyond a reasonable doubt." Id. at 61. The Ludy court reasoned that "To expressly direct a jury that it may find guilt based on the uncorroborated testimony of a single person is to invite it to violate its obligation to consider all the evidence." Id. at 462. The court also commented on the potential harms that may occur when a jury attributes meaning to the legal term "uncorroborated":

> Jurors may interpret this instruction to mean that baseless testimony should be given credit and that they should ignore inconsistencies, accept without question the witness's testimony, and ignore evidence that conflicts with the witness's version of the events. Use of the word "uncorroborated" without a definition renders this instruction confusing, misleading, and of dubious efficacy.

Id. at 462.

In State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct.App. 2011), Hill argued that the judge erred in allowing the prosecution to unduly emphasize the no-corroboration rule found in S.C. Code §16-3-657 and then the judge further erred in choosing to instruct the jury on the no corroboration rule. The South Carolina Court of Appeals disagreed and wrote, "Accordingly, the single instruction on 'no corroboration,' was not unduly emphasized, and the charge as a whole comported with the law, such that there was no reversible error in the 'no corroboration' charge." Id. 394 S.C. at 299, 715 S.E.2d at 379.

The present case can be distinguished from Schumpert, Rayfied and Hill because the jury's question demonstrates that, despite the charge "as a whole" the jury was still confused when instructed that the victim's testimony need not be corroborated. The jury in the present case asked if S.C. Code §16-3-657 implied that the victim's testimony must be accepted as being true, a clearly erroneous implication. The judge's attempt to answer the jury's question further confused the jury because the judge failed to instruct the jury that the statute does **not** require them to accept the victim's testimony as being true and failed to clarify that the prosecuting witness, or victim as referenced in the statute, is a witness for purposes of determining credibility. The jury's question demonstrates the point made in the dissent in Rayfield that instructing the jury that the victim's testimony need not be corroborated " . . .has the potential for creating more problems than solutions, for it might cause confusion when read with the general charge

on witness credibility." Id. 369 S.C. at 120, 631 S.E.2d at 251, (citing State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980)).

An additional distinction from Schumpert, Rayfied and Hill is that those cases involved minor witnesses. Under the facts of this case, involving a determination of credibility in regard to the defense of consent between two adults, the jury question and the inadequate response from the judge rendered the charge "as a whole" an improper comment on the facts in violation of Article V, §21 of the South Carolina Constitution. The South Carolina Constitution states: "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. Art. V, § 21.

In Grant the South Carolina Supreme Court wrote:

> 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.

Id. 275 S.C. at 408-409, 272 S.E.2d 171-172. The present case demonstrates the confusion created by instructing the jury that the victim's testimony need not be corroborated, especially in a case involving the defense of consent where credibility of the witnesses is crucial. The present case presents an opportunity for the Court to re-visit the holdings in Schumpert, Rayfield and Hill as this case demonstrates that the instruction, despite the charge as a whole, is confusing, places undue emphasis on the testimony of the prosecuting witness/victim creates an improper implication that the jury must accept the prosecuting witness/victim's testimony as true and constitutes an improper comment on the facts. As the Court did in Grant in reference to the instruction

on flight evidence, this Court should find that judges should not instruct the jury that the testimony of the victim need not be corroborated.

In State v. Blurton, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (2002) the South Carolina Supreme Court wrote, "The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)." The charge in the present case pursuant to S.C. Code §16-3-657 that the testimony of the victim need not be corroborated confused and mislead the jury into believing that they had to accept the prosecuting witness's testimony as true. The charge improperly bolstered the testimony of the prosecuting witness. The error was particularly prejudicial under the facts of this case where the defense was consent and the credibility of the witnesses was a critical determination for the jury.

In State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480, (2013), the South Carolina Supreme Court found that instructing the jury that actual knowledge of the presence of a drug is strong evidence of intent to control its disposition and use was improper as an expression of the judge's view of the weight of certain evidence. In Cheeks the court wrote:

> Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt. It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts. For example, it is well-settled that while evidence that a criminal defendant evaded arrest or absconded from the jurisdiction may be admissible as evidence of guilt, and may be argued to the jury as such, it is improper to charge the jury on this evidentiary inference because such a charge places "undue emphasis" on that piece of circumstantial evidence. E.g., State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980). Similarly, charging a jury that "actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use" unduly emphasizes

> that evidence, and deprives the jury of its prerogative both to draw inferences and to weigh evidence.

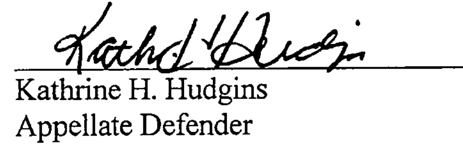
Id. 401 S.C. at 328-329, 737 S.E.2d at 484.

Instructing the jury that the victim's testimony need not be corroborated improperly emphasizes that testimony in the same way the charges in both Grant and Cheeks improperly emphasized certain evidence. The improper instruction was particularly harmful in the present case where the defense was consent and the credibility of the witnesses was a critical determination for the jury. The error was further compounded by the trial judge's failure, in response to the jury's question of whether they had to accept the victim's testimony as true, to instruct the jury that the statute does **not** require them to accept the victim's testimony as being true and the failure to clarify that the prosecuting witness, or victim as referenced in the statute, is a witness for purposes of determining credibility. Unlike Cheeks, the Appellant in the present case was prejudiced by the error in the instruction. This Court should find that instructing the jury that the victim's testimony need not be corroborated is no longer proper and reverse the Appellant's conviction and sentence.

CONCLUSION

Based on the above argument, Stukes' conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

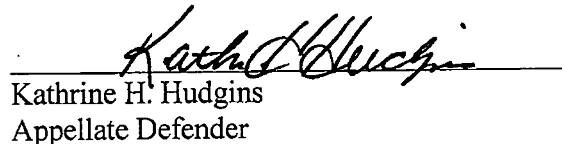
MELVIN P. STUKES,

APPELLANT

APPELLATE CASE NO. 2012-212628

CERTIFICATE OF SERVICE

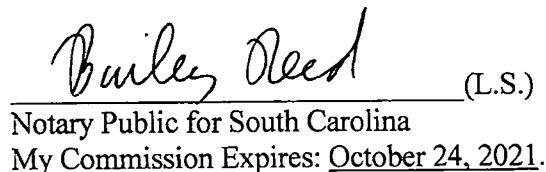
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of April, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of April, 2014.



(L.S.)
Notary Public for South Carolina
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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S.C. Supreme Court

Appeal from Richland County
The Honorable DeAndrea Benjamin., Circuit Court Judge
Appellate Case No. 2012-212628

THE STATE,

RESPONDENT,

vs.

MELVIN P. STUKES

APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not err in charging the jury on S.C. Code §16-3-657. The charge given comports with South Carolina precedent.

STATEMENT OF THE CASE

Melvin Stukes ("Appellant") was indicted in Richland County in August 2010 for Criminal Sexual Conduct ("CSC") 1st Degree (2010-GS-40-2700) and Burglary 1st Degree (2010-GS-40-2701). Appellant was tried by a jury July 24-27, 2012, and was found guilty. On July 27, 2012, the Honorable DeAndrea Benjamin sentenced Appellant to concurrent terms of 25 years each. A Notice of Appeal was served on August 1, 2012. This appeal follows.

STATEMENT OF FACTS

In May 2004 Misty Shealy ("Victim") lived in a one bedroom apartment with her dog on Longcreek Drive in Richland County. (R. p. 141, lines 15-25; p. 310, lines 9-12.) She was employed by Verizon Wireless in technical support, typically working from 10:30 pm until 7:30 am. (R. p. 140, line 4 – p. 141, line 12.) On the evening of May 10, 2004, Victim prepared to leave her apartment for work around 9:30 pm. (R. p. 142, lines 11-15; p. 310, lines 13-21.) She placed her cocker spaniel in his crate, and as she turned off the lights, she heard a knock at the door. (R. p. 142, lines 15-17.)

Victim opened the door. (R. p. 142, line 25 – p. 143, line 1.) She only had time to assess that the person she saw was a male, possibly wearing a hat, and taller than she was such that at 5'4" she had to look up at him. (R. p. 143, lines 3-12; p. 161, line 19 – p. 162, line 2; p. 309, lines 21-24.) Because the only lighting was behind him, she saw the assailant only in silhouette. (R. p. 143, lines 13-17; p. 161, lines 11-13; p. 175, line 21 – p. 176, line 4.) In a "split second," the man grabbed Victim by the throat with a gloved hand and struck her in the face. (R. p. 143, lines 22-23; p. 144, lines 1-3; p. 162, line 11 – p. 164, line 8; p. 175, lines 16-20; p. 180, lines 12-20.) She stumbled backward, falling over her couch, just feet from the door. (R. p. 143, line 24-25; p. 166, lines 9-12; p. 167, lines 4-20.) Victim believed she blacked out at that point as her next recollection was having her face being "shoved into the cushions of [her] couch" and pain in her vaginal area as the man raped her. (R. p. 144, lines 10-16; p. 165, lines 15-25; p. 168, lines 2-13.) Her pants and underwear had been pulled down around her ankles. (R. p. 145, lines 16-20.) Victim recalled feeling the man's weight and the smell of alcohol. (R. p. 144, lines 17-22; p. 237, lines 7-12; p. 309, line 25.) When she tried to scream, he "shoved [her] face into the pillows even harder," and

Victim feared for her life. (R. p. 144, lines 23 – p. 145, line 3.) When she tried to shove him away, he "shoved [her] arm right back down." (R. p. 145, lines 5-7; p. 169, lines 8-15.) Victim again surmised she blacked out because her next memory was awareness that the man was no longer there. (R. p. 145, lines 10-13.) In pain from the event, she dressed, released the dog from his crate, and sat on her couch in "shock and disbelief." (R. p. 146, line 1- p. 147, line 1; p. 170, lines 11-23.)

Victim attempted to telephone a friend, Jacqueline Bruton ("Jackie"). (R. p. 147, lines 4-6; p. 170, line 24 – p. 171, line 19.) Unable to reach her by phone, Victim traveled to Jackie's home. (R. p. 147, lines 6-7; p. 147, lines 18-22; p. 171, lines 20-23.) After Victim tearfully told her friend what happened, Jackie convinced Victim to go to the hospital. (R. p. 143, line 23 – p. 148, line 11; p. 182, line 2 – p. 183, line 2.)

A rape kit was collected at Lexington Memorial Hospital at approximately 4:00 am. (R. p. 148, lines 10-20; p. 233, line 15 – p. 260, line 18.) Witnesses at the hospital variously described Victim as withdrawn, tearful, nervous acting, uncomfortable, sensitive to touch, and anxious (R. p. 201, lines 11-14; p. 232, lines 11-20; p. 233, lines 8-20; p. 238, lines 16-22; p. 246, line 24 – p. 247, line 5.)

Following the attack, Victim immediately moved from the apartment and donated the couch because she "couldn't look at it anymore." (R. p. 149, lines 10-24.) She did not attempt to return to work for three weeks. (R. p. 150, lines 1-2.) Following the assault, she saw counselors and was prescribed various medications. (R. p. 150, line 15 – p. 151, line 21.) As her anxiety and fears persisted, Victim turned to illicit drugs, specifically crack cocaine. (R. p. 152, line 16 – p. 154, line 15.)

In January 2005, SLED reported that a DNA profile was generated from Victim's underwear collected with the rape kit. (R. p. 313, lines 5-9; p. 405, lines 11-16.) At the time of the report, no match had been made to any known individual. (R. p. 313, lines 10-12; p. 405, lines 20-25.) On June 29, 2007, SLED reported that the DNA profile matched Appellant. (R. p. 315, lines 12-20; p. 404, lines 15-17; p. 406, lines 1-4.) Additional swabs taken in 2010 confirmed the DNA match as Appellant with the statistical probability of an unrelated individual having the same DNA approximately 1 in 410 quadrillion. (R. p. 406, line 5 – p. 407, line 21.) Investigation revealed that Appellant lived in a nearby apartment, also on Longcreek Drive, at the time of the crime. (R. p. 316, lines 1-9; p. 433, line 21 – p. 434, line 7.)

Appellant was arrested on May 5, 2010, nearly 6 years after the attack. (R. p. 345, lines 22-25.) When the arresting officer read the warrant, which included Victim's name, to Appellant, Appellant responded along the lines of "that's a mistake or that, that warrant's a mistake. I don't even know her." (R. p. 372, line lines 19-24.) Appellant also indicated he wished to speak to an investigator. (R. p. 374, lines 3-6.)

Investigator Gene Mincey ("Mincey") and Sergeant Brian Godfrey ("Godfrey") then met with Appellant. Mincey, Godfrey, and Appellant drove around the vicinity of Victim's apartment complex, and Appellant pointed out where he had lived at the time of the incident and some apartments of people he knew in the area. (R. p. 384, lines 8-13; p. 431, line 24 – p. 432, line 3.) Appellant noted some apartments in the Park Apartments where he had known people. (R. p. 434, lines 8-11.) Without identifying whose apartment it was, Godfrey also pointed out Victim's apartment. (R. p. 432, lines 3-4.) Appellant denied knowing anyone that lived there or ever being in that apartment. (R. p. 435, lines 4-7.) Appellant also gave a

statement which was reduced to writing. In that statement, after being shown a picture of Victim, Appellant denied knowing Victim. (R. p. 440, line 15 – p. 491, line 11.) Appellant discussed other sexual relationships he had at the time and denied ever having sex with a white female in the Park Apartments.[1] (R. p. 442, lines 1-13.) Appellant specifically stated that he had only had a sexual relationship with two white females, both named Jessica. (R. p. 442, lines 7-13.) Appellant claimed that he would only have sex with someone "if we knew each other on a daily basis." (R. p. 442, lines 15-19.) Appellant specifically denied the attack on Victim and denied ever having consensual sex with her. (R. p. 443, lines 3-10.) The statement continued:

> Q. Why would your semen be located in [Victim's] body?[2]
> A. It couldn't be no other option. I had sex with her, sir.

(R. p. 443, lines 19-22.)

In his trial testimony, Appellant recounted, just as he had in his statement to law enforcement, that he lived in the Ashton Apartments, near Victim's home at Park Apartments. (R. p. 503, line 24 – p. 504, line 6.) However, in contrast to his earlier statement, Appellant testified he actually met Victim once at Park Apartments. (R. p. 505, lines 13-23.) Appellant described meeting Victim, "talking flirty like," walking over to her apartment, and being invited inside. (R. p. 506, line 1 – p. 507, line 2; p. 515, line 23 – p. 516, line 23.) Appellant claimed he had consensual sex with Victim in her bedroom. (R. p. 507, lines 5-24.) Appellant testified that though he did not remember Victim when officers questioned him and showed him her photo, he remembered her later. (R. p. 514, line 12 – p. 515, line 1.)

---

[1] Victim is a white female.

[2] The DNA sample collected from internal swabs was not able to be interpreted. The only DNA sample analyzed was from Victim's underwear. (R. p. 403, line 1 – p. 404, line 6; p. 462, lines 4-6.)

During the years that elapsed between the event and the DNA match, Victim's phone number and address had changed. (R. p. 316, line 13 – p. 317, line 18.) Victim was located in 2010. (R. p. 317, lines 19-23.) Victim was shown a photo lineup at that time. After looking at the photos, Victim identified Appellant as someone who looked familiar to her, but she could not say that with certainty that she knew him. (R. p. 419, lines 8-21.)

ARGUMENT

The trial judge did not err in charging the jury on S.C. Code §16-3-657. The charge given comports with South Carolina precedent.

Generally, a trial court is required to charge only the current and correct law of South Carolina. See Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004). A jury charge is correct if it contains the correct definition of the law when read as a whole. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard, 357 S.C. at 665, 594 S.E.2d at 473; State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006). The trial court's charge in this case comported with our state's precedent in charging S.C. Code §16-3-657 as this single instruction was not unduly emphasized and the charge as a whole comported with the law.

S.C. Code §16-3-657 provides, "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." The referenced statutes prohibit various forms of criminal sexual conduct, including criminal sexual conduct, 1st degree, for which Appellant was charged. See S.C. Code §16-3-652. In State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), the South Carolina Supreme Court found that it was not error to charge §16-3-657 as long as the charge as a whole comports with the law.

Relying on Schumpert, in State v. Rayfield, 369 S.C. at 117-118, 631 S.E.2d at 250, the Supreme Court ruled:

> 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.

Noting Rayfield, in State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011) this Court reviewed a charge on §16-3-657 identical to the one given in this case. In both Hill and the

present case, the court's charge consisted simply of the one sentence statute followed by a charge on credibility. As in Hill, the trial judge charged:

> The testimony of a victim in a criminal sexual conduct prosecution need not be corroborated by other testimony or evidence. Necessarily, you must determine the credibility of witnesses who have testified in this case.

(R. p. 604, lines 4-7.) No further mention was made of the §16-3-657 in the trial court's jury charge.[3] The credibility charge continued as follows:

> 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 a – of the testimony of the witness and rejected the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its

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[3] It may be noted that the only other mention made to the jury regarding §16-3-657 appears in the solicitor's closing argument. The solicitor did not mention §16–3–657 during her opening argument. (R. p. 112 – p. 120, line 9.) In her closing argument, the solicitor briefly stated:

> The judge is also going to tell you about the law in this state, 16–3–657 of the South Carolina Code of Laws, and that statute says that the testimony of a victim does not need to be corroborated in a criminal sexual conduct case. That is the law in this state, and what that means in simple terms, if the victim says that she was raped, there doesn't have to be any other evidence for you, *if you believe her*, to find a man guilty of the CSC. It doesn't have to be corroborated. *It can be her word versus his and if you take her word, that's all it takes.*
>
> But I submit to you in this case, even though that's the law, it has been corroborated. Think about it. ...

[Emphasis supplied.] (R. p. 581, line 24 – p. 582, line 10.) Appellant made no contemporaneous objection to this argument, and the argument is not challenged on appeal.

The solicitor went on to discuss evidence which she felt corroborated Victim's story: her statements consistently reported that she was punched and grabbed and nurses saw marks on her face and neck. (R. p. 582, lines 10-22.) The solicitor also stated in closing that the State carried the burden to prove guilt beyond a reasonable doubt. (R. p. 583, line 12-p. 584, line 4.) The solicitor further discussed the credibility of witnesses, specifically asking the jury whether they believed Victim and whether they believed Appellant. (R. p. 585, line 14 – p. 586, line 16.) She emphasized that the jurors were judges of the facts. (R. p. 586, lines 4-5.) The solicitor's remarks make clear to the jury that they must still determine whether the victim is to be believed; if the jury determines that the victim is credible then they may find the defendant guilty. Even in the solicitor's argument, the law is conveyed such that the Victim's testimony is not favored over that of other witnesses by the "no corroboration" rule. Rather, it is emphasized that *if* the Victim is believed, Appellant is guilty.

> entirety, are you may reject the testimony of a witness in its entirety.
>
> You may consider whether any witness has exhibited to you and interest, bias, prejudice, or other motives in this case. You may also consider the appearance and manner of a witness while on the witness stand.

(R. p. 604, lines 7-22.) The trial judge also instructed that prior statements of witnesses could be used in considering credibility, and Victim was questioned during trial about her prior statements. (R. p. 606, lines 10-23.) Moreover, the trial judge charged the jury both in opening and closing charges that the jury was the sole and exclusive judge of the facts. (R. p. 107, line 6 – p. 108, line 5; p. 602, lines 19-24.) In the closing charge, the trial judge stated,

> ...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 an 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.

(R. p. 602, line 24 – p. 603, line 8.) The jury was also reminded in both opening and closing charges of the State's burden of proof. (R. p. 107, lines 1-5; p. 608, line 5 – p. 610, line 1.) Clearly the trial court's charge in this case comported with our state's precedent in charging S.C. Code §16-3-657 as this single instruction was not unduly emphasized and the charge as a whole comported with the law. State v. Orozco, 392 S.C. 212, 221-225, 708 S.E.2d 227, 232-234 (Ct. App. 2011) (reviewing South Carolina precedent on jury charge on §16-3-657 and noting Court of Appeals bound by Rayfield precedent) (cert. sought and granted only as to issue regarding attempted suicide as evidence of guilt). The same arguments now advanced have been largely raised and ruled upon in Schumpert, Rayfield, Hill, and Orozco.

Appellant argues that the jury's question regarding the charge on §16-3-657 proves that the charge permitted by Schumpert, Rayfield, and Hill is confusing, places undue emphasis on the testimony of the victim, creates an improper implication that the jury must accept the victim's testimony as true, and constitutes an improper comment on the facts. Appellant suggests that the court should have instructed the jury that the statute does not require them to accept the victim's testimony as being true. The State submits that the trial court correctly answered the jury's question by responding with the charge on credibility of *all* witnesses.

The jury posed several questions during deliberations. In addition to asking about the "no corroboration" charge, the jury asked for a copy of the law (the court repeated the section on criminal sexual conduct), asked for clarification of the definition of aggravated battery (the court read the definition), and asked for the defendant's transcript testimony. (R. p. 618, line 10 – p.621, line 12; p. 630, line 4 – p. 636, line 21; p. 636, line 25 – p. 637, line 7; p. 638, line 22 – p. 639, line 11.) The trial judge also recognized that she had made an error in defining criminal sexual conduct and called the jury in to re-charge the offense correctly. (R. p. 621, line 16 – p. 630, line 3.) Appellant argues that the jury's question about §16-3-657 indicates that the jury did not understand the instruction. The jury's note read:

> The SC law that the victim testimony in CSE [sic] does not have to be corroborated
> Does the law imply that the victim's testimony must be accepted as being true?

(R. p. 706, Court's Exhibit 8.) In response, the trial judge repeated the court's instruction on the credibility of *all* witnesses. (R. p. 639, line 24 – p. 640, line 18.) This was the correct resolution of the jury's question, and the response certainly cleared any confusion the jury may have had.

Appellant argues that his case can be differentiated from Schumpert, Rayfield, and Hill in that those cases involved minor victims, not situations between adults. Our precedent lends no basis for delineating the applicability of §16-3-657 based on the age of the victim. The specific language in §16-3-657 which makes it applicable in prosecutions under S.C. Code §§ 16-3-652 through 16-3-658 means that the statute applies equally in cases involving both adult and minor victims.

Further, the "no corroboration" instruction cannot be paralleled with other instructions. The instruction at issue does not state that the jury is required to believe the victim's testimony or that such testimony, if believed, necessarily establishes the defendant's guilt – those determinations are still left to the jury. Comparisons to charges that guilt may be inferred from flight or presence of a drug being are inapposite. Section16-3-657 imparts no instruction that the victim's testimony necessarily establishes guilt.

Section16-3-657 also operates in a unique backdrop. Cases involving sexual violence are unique in some aspects. These crimes are particularly likely to be witnessed by only the victim and perpetrator. For a variety of reasons, forensic evidence often is unavailable. The necessity for the "no corroboration" rule evolved from the historical legal requirements that the alleged victims' accusation *be* corroborated. See generally Vitauts M. Gulbis, Modern Status of Rule Regarding Necessity for Corroboration of Victim's Testimony in Prosecution for Sexual Offense, 31 A.L.R. 4th 120 (1984); Michelle Anderson, Diminishing the Legal Impact of Negative Social Attitudes Toward Acquaintance Rape Victims, 13 New Crim. L. Rev. 644 (2010) (discussing evolution of rape law). S.C. Code §16-3-657 codifies the change from this historical view, informing both trial court and society that under the law the

victim who survived a sexual assault without the "advantage" of physical injuries or corroborative evidence of the assault can still be believed. As recognized in Rayfield,

> 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.

Rayfield, 369 S.C. at 117, 631 S.E.2d at 250. [Emphasis supplied.] In adopting §16-3-657, our Legislature has ensured that both judge and jury understand that such cases may proceed solely on the basis of the victim's testimony despite long-standing beliefs to the contrary.

Finally, in this case Victim's story was corroborated by evidence. At least one witness confirmed marks to Victim's face and neck, corroborating her account of being grabbed by the throat and punched in the face. Forensic evidence in the form of Appellant's DNA being found in Victim's underwear the night of the attack further corroborates that sexual contact occurred. Jackie and law enforcement offered corroboration that Victim complained of a sexual assault. See for example State v. Barrett, 299, S.C. 485, 386 S.E.2d 242 (1989) (when the victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible in corroboration, limited to the time and place of the assault). Victim's account was also corroborated by her decision to immediately move from the apartment where the assault occurred. With this evidence, coupled with Appellant's incredible trial testimony, the outcome of the trial would not have changed had the charge on §16-3-657 not been given. Therefore, even if the charge were deemed to be error, such error would not require reversal.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 13, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable DeAndrea, Circuit Court Judge

Appellate Case No. 2012-212628

THE STATE,

Respondent,

v.

MELVIN P. STUKES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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."

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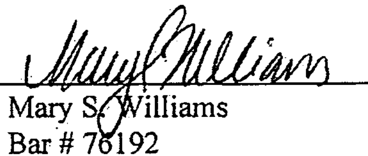
BY: 
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ATTORNEYS FOR RESPONDENT

May 13, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable DeAndrea Benjamin, Circuit Court Judge

Appellate Case No. 2012-212628

THE STATE,

Respondent,

v.

MELVIN STUKES,

Appellant.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Respondent, with proof of service, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 13rd day of May, 2014.

ELLEN DUBOIS
Legal Assistant

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