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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

Respondent,

v.

MELVIN P. STUKES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Other Authorities:

STATEMENT OF ISSUES

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, and the direct appeal perfected. The Court of Appeals affirmed the conviction and the sentence. State v. Stukes, Op. No. 2015-UP-014 (S.C. Ct. App. filed January 14, 2015). A petition for rehearing was filed January 29, 2015, and was denied March 19, 2015. The petition for writ of certiorari followed.

STATEMENT OF THE 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.)

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[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.

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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.

> 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 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. S.C. Code §16-3-657 imparts no instruction that the victim's testimony necessarily establishes guilt.

S.C. Code §16-3-657 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 the reasons discussed above, the State requests that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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April 29, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Honorable DeAndrea Benjamin, Circuit Court Judge

Opinion No. 2015-UP-014 (S.C. Ct. App. filed January 14, 2015)
Appellate Case No. 2012-212628

THE STATE,

Respondent,

v.

MELVIN P. STUKES,

Petitioner.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Return to Petition for Writ of Certiorari 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
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I further certify that all parties required by Rule to be served have been served. This 29th day of April, 2015.

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ALAN WILSON
ATTORNEY GENERAL

April 29, 2015

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Re: The State v. Melvin P. Stukes

Dear Ms. Hudgins:

Enclosed please find two (2) copies of the Return to the Petition for Writ of Certiorari along with proof of service in the above-referenced case.

Sincerely,

Mary W. Leddon

Mary Williams Leddon
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S.C. Bar No: 76192

MWL/aam
Enclosures

cc: The Honorable Daniel E. Shearouse (with original and six (6) copies)
Ms. Trisha Allen (with enclosure)