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STATE OF SOUTH CAROLINA JUN 04 2015

IN THE COURT OF APPEALS SC Court of Appeals

Appeal from Pickens County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VERNON GLEN EVANS,

APPELLANT

APPELLATE CASE NO. 2014-002747

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in instructing the jury that the victim's testimony did not need any corroboration because it was a comment on the facts and it unduly emphasized the victim's testimony?

STATEMENT OF THE CASE

Appellant was convicted of criminal sexual conduct with a minor in the first degree after a jury trial held before the Honorable Clifton Newman in Pickens County on December 16-18, 2014. A thirty (30) year sentence was imposed. Teal Johnson, Esq. was trial counsel. Sam Tooker, Esq. was the assistant solicitor.

This appeal follows.

## ARGUMENT

The trial court erred in instructing the jury that the victim's testimony did not need any corroboration because it was a comment on the facts and it unduly emphasized the victim's testimony.

The indictment charging appellant with criminal sexual conduct with a minor in the first degree alleged the following:

That VERNON GLEN EVANS did in Pickens County, between the dates of August 4<sup>th</sup>, 2007 and August 4<sup>th</sup>, 2011, while entrusted by the Victim's parents to babysit the Victim, commit a sexual battery on [victim], a minor child, who was less than eleven years of age at the time. This is in violation of § 16-3-655(A)(1) [formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

The victim testified that at the time of the trial she was fourteen years old. Appellant was a family friend. She had known him since she was really small. He would babysit the victim and her younger sister on the weekends. This began when she was around seven. (Tr. p. 94, l. 17- p. 97, l. 7) She said bad things happened there almost every time they went over to appellant's. He would make her put her mouth on his private and he would put his mouth on her private. She said his private was his penis. Her younger sister saw this happen once or twice. (Tr. p. 99, l. 2-24)

The victim's younger sister testified that appellant would make the victim do stuff to him. She saw this once. She saw appellant's private parts. She saw her sister do something to his private parts. (Tr. p. 125, l. 18- p. 126, l. 21)

After the conclusion of all of the evidence, the assistant solicitor requested that the court include in its jury instructions a charge that the victim's testimony in a criminal sexual conduct case need not be corroborated. (Tr. p. 281, l. 17-21)

The trial court complied with the above request by instructing the jury as follows:

You must evaluate the credibility and the testimony of the alleged victim whether or not it is corroborated, understanding that the law does not require corroboration. (Tr. p.333, l. 17-20)

The trial court erred in charging the jury on the no-corroboration rule because it was a comment on the facts and it unduly emphasized the victim's testimony. S.C. Code § 16-3-657 provides:

The testimony of the victim need not be corroborated in prosecutions under SC §16-3-652 through 16-3-658.

In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006) Justice Pleicones wrote:

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 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," 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.

369 S.C. at 119-120, 631 S.E.2d at 251-252. Footnotes deleted.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4<sup>th</sup> day of June, 2015.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Pickens County  
Clifton Newman, Circuit Court Judge

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

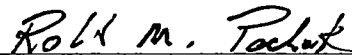
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Counsel for Vernon Glen Evans states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on December 18, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Vernon Glen Evans.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4<sup>th</sup> day of June, 2015.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

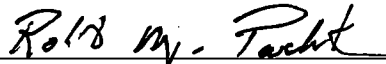
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Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript;
- (2) Indictment
- (3) Sentencing Sheet
- (4) Arrest Warrant Affidavits

I certify that this designation contains no matter which is irrelevant to this appeal.

June 4, 2015



Robert M. Pachak  
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Division of Appellate Defense  
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 4, 2015



Robert M. Pachak  
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter 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; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Vernon Glen Evans, # 362523 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 4<sup>th</sup> day of June, 2015.

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
This 4<sup>th</sup> day of June, 2015.

*Maria Mendez* (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.