ORIGINAL

RECEIVED
JAN 07 2016
SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Donald B. Hocker, Circuit Court Judge

Opinion No. 2015-UP-477 (S.C. Ct. App. filed 10/7/2015)

09-GS-24-543 & 633

THE STATE,

RESPONDENT,

V.

WILLIAM DONALD BOLT,

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR PETITIONER.

INDEX

CERTIFICATE OF COUNSEL

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

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred in affirming petitioner's conviction where statements signed by petitioner, who could not write, and made orally to a private contractor who administered a polygraph examination were admitted in violation of petitioner's Fifth and Sixth Amendment rights when the police conducted a three-phase interrogation violating *Missouri v. Siebert*[1] and failed to administer *Miranda*[2] warnings before the polygraph?

2.

Whether the Court of Appeals erred in affirming petitioner's lewd act conviction because the trial court should have directed a verdict in favor of petitioner under the *corpus delicti* rule because, other than petitioner's extra-judicial statements, no independent evidence existed?

---

[1] Missouri v. Seibert, 542 U.S. 600 (2004).
[2] Miranda v. Arizona, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

On May 8, 2009, a Greenwood County grand jury indicted petitioner William Donald Bolt for lewd act. R. 407. On June 12, 2009, the grand jury indicted petitioner for second degree criminal sexual conduct with a minor. R. 409. On September 3-5, 2013, petitioner was tried before the Honorable Donald B. Hocker and a jury. R. 1. Lance Sheek and Cam Morrow represented the State. R. 1. Janna Nelson and Shane Goranson represented petitioner. R. 1. The jury convicted petitioner on both charges. R. 381, ll. 12 – 20.

On September 10, 2015, a panel of the Court of Appeals consisting of Judges Huff, Williams, and Thomas heard oral argument on petitioner's appeal. App. 1. On October 7, 2015, the Court of Appeals issued an unpublished opinion affirming petitioner's convictions. App. 1. This petition for certiorari follows the Court of Appeals' denial of rehearing. App. 12.

ARGUMENT

1.

The Court of Appeals erred in affirming petitioner's conviction where statements signed by petitioner, who could not write, and made orally to a private contractor who administered a polygraph examination were admitted in violation of petitioner's Fifth and Sixth Amendment rights when the police conducted a three-phase interrogation violating *Missouri v. Siebert*[3] and failed to administer *Miranda*[4] warnings before the polygraph.

Relevant Facts

Over seven years from the date of the alleged incident, Petitioner Donald Bolt ("Bolt") was tried for molesting Minor. R. 406. R. 1. Bolt's stepson was married to Minor's older sister. R. 129, l. 11 – 130, l. 14. Bolt lived in a small home on a lake. R. 136, l. 22 – 137, l. 5. Bolt's home was the site of numerous family gatherings and cookouts. R. 255, ll. 21 – 24. R. 276, l. 22 – 277, l. 9.

Minor was eleven years old at the time of the alleged abuse. R. 128, ll. 22 – 24. She was living in an orphanage. R. 155, l. 21 – 156, l. 9. Minor's mother was an alcoholic, had a prescription drug problem, and had been "in and out of rehab and treatment programs" throughout Minor's life. R. 154, l. 15 – 155, l. 1. Minor's sister had temporary custody of her, but sent Minor to the orphanage because she could not afford to take care of her. R. 156, ll. 11 – 15.

During the summer of 2006, Minor went with her sister and brother-in-law to spend the night at Bolt's house. R. 130, ll. 15 – 25. On this night, Minor claimed that Bolt came into a room where she was pretending to be asleep, pulled down her pajama bottoms, and digitally penetrated

[3] Missouri v. Seibert, 542 U.S. 600 (2004).
[4] Miranda v. Arizona, 384 U.S. 436 (1966).

her vagina. R. 132, l. 2 – 133, l. 7. Bolt supposedly pulled Minor's pants back up and left the room. R. 142, ll. 4 – 8.

Two other people were in the room with Minor at the time, her brother and her niece. R. 144, l. 21 – 145, l. 2. Bolt's wife was in the house. R. 203, ll. 13 – 14. Minor's sister and brother-in-law were in the house. R. 145, ll. 24 – 25. Minor could not remember whether Bolt's sons, Adam and Cody, where there. R. 145, ll. 20 – 23. Minor agreed that "a lot of other people" were in the house that night. R. 145, ll. 12 – 15. None of these people except Bolt's wife testified. The police never interviewed any of the other people in the house that night. R. 205, l. 25 – 206, l. 9.

Minor claimed she and the two kids were asleep in a bed in the back bedroom watching television. R. 132, ll. 9 – 18. R. 146, ll. 10 – 16. Bolt's wife testified the back bedroom only had a bed in it for a brief period in 2007 (a year after the alleged abuse) and had never had a television. R. 310, l. 9 – 311, l. 4. The room did not have a working wall outlet, and for lights, the Bolts had to use an extension cord. R. 311, ll. 5 – 7. When children would sleep in the back room, they slept on pallets, not a bed. R. 310, ll. 9 – 16. Bolt confirmed his wife's description of what he described as a storage room and that it lacked a bed, a television, or power. R. 265, l. 18 – 368, l. 10.

Minor did not report the abuse allegations until over two years later, in September 2008. R. 147, l. 24 – 148, l. 22. A school counselor noticed marks on Minor's arms. R. 147, l. 24 – 149, l. 3. Minor was cutting her arms with tacks. R. 147, l. 24 – 149, l. 3. The school counselor told Minor's mother. R. 147, l. 24 – 149, l. 3. Minor then told her mother that Bolt abused her, and they reported it to the police. R. 134, ll. 7 – 23. At the time of the report, Minor was living with her mother and her mother's boyfriend. R. 134, ll. 7 – 13. Minor's mother's relationship with her boyfriend was physically abusive and the police were sometimes called. R. 160, l. 15 – 161, l. 2. Minor told her counselor that she wanted to get out of that house because it was

difficult to live there. R. 162, l. 18 – 215, l. 2. Even though Minor had counseling at the orphanage for most of the time between the alleged abuse and her report of the abuse two years later, Minor never mentioned these allegations to her counselor. R. 157, l. 21 – 159, l. 1. Minor talked to her counselor at least once a month during this period. R. 158, ll. 6 – 23.

Bolt testified and denied abusing Minor. R. 257, ll. 18 – 25. R. 268, l. 22 – 269, l. 3. No physical evidence of the abuse existed. R. 217, ll. 1 – 7.

Bolt admitted he was "not very smart." R. 253, ll. 19 – 21. He could not remember how far he made it in school but guessed he made it through junior high. R. 253, l. 25 – 254, l. 5. He worked construction. R. 253, ll. 14 – 16. Bolt stated, "I can read very little. I can't write that much at all." R. 281, ll. 21 – 22.

Bolt signed the following statement that was written for him by Investigator Brandon Strickland ("Strickland") of the Greenwood County Sheriff's Office:

> Inv. Strickland is writing this statement for Donald Bolt due to Bolt not being able to write.
>
> I, Donald Bolt did in the night in question go into the bedroom where [Minor] was in bed with her sister [name omitted] and her brother [name omitted]. I sat down beside where she was laying and she appeared to be asleep. I pulled her pajama britches down and touched her private area. I put one finger inside her vagina. This was very quick and I then pulled her pants back up and went to bed.

R. 194, l. 8 – 195, l. 12. The admissibility of this statement and oral statements made to a private polygraph contractor, Darryl Owen ("Owen"), were the subject of a lengthy Jackson v. Denno, 378 U.S. 368 (1964) hearing and argument which the trial judge took under advisement overnight. R. 97, ll. 2 – 10.

The sequence of events leading up to Bolt signing the paper written by Investigator Strickland was as follows. Bolt heard that the police were looking for him so he went to the

sheriff's department. R. 131, ll. 2 – 12. Investigator Strickland originally testified at the Denno hearing that even though he wasn't "positive," he was "pretty sure that we went and got" Bolt, and that he thought they placed Bolt under arrest. R. 18, ll. 19 – 25. On cross-examination at the Denno hearing and during the trial, Investigator Strickland admitted that Bolt came voluntarily to the sheriff's office. R. 32, ll. 10 – 16. R. 210, ll. 1 – 3. Investigator Strickland read Bolt his Miranda rights and Bolt signed a waiver of his rights. R. 19, l. 3 – 20, l. 25. The waiver of rights was signed on December 4, 2008, at 9:40 PM. R. 38, ll. 5 – 10. State's Ex. 1. Bolt denied any wrongdoing and the police put him in jail, where he spent the night. R. 34, ll. 5 – 15. Bolt asked to take a polygraph examination "to prove myself." R. 66, ll. 16 – 19.

Instead of calling SLED and using one of their examiners, the next morning Investigator Strickland summoned private contractor Owen to administer a polygraph test to Bolt. R. 41, l. 24 – 42, l. 9. Owen told Bolt that he failed the polygraph test. R. 44, ll. 7 – 17. Owen described what happened: "I just very casually tell him that he's failed the test. That he needs to explain why the response is there to give a reasonable explanation of why he's failing the test. There's no real heavy interrogation." R. 44, l. 21 – 45, l. 1. Owen claimed Bolt told him that "on the night in question" Minor "sat on his lap and that he experienced an erection." R. 45, ll. 9 – 14. Bolt "also admitted that he put his arm around her upper body and squeezed her breast." R. 45, ll. 9 – 16. Bolt stated "he could've possibly touched [Minor] on the vagina, but denied putting his finger in her vagina." R. 45, ll. 9 – 24. Finally, Owen put in his report that, "all attempts to resolve the reaction resulted in no additional admissions." R. 45, ll. 24 – 25.

Owen admitted that at no point did he ever give Bolt Miranda warnings. R. 59, ll. 12 – 14. Owen had Bolt sign a release before giving him the exam which stated the exam was "for the mutual benefit of myself and Greenwood Sheriff's Office." R. 53, ll. 2 – 5. Defendant's

Exhibit 2. It also stated, "I do hereby authorize Owen Investigative Agency, its officers, employees and/or agents, to disclose both orally and in writing the interview/examination results and opinions to agents of Greenwood Sheriff's Office." Defendant's Ex. 2. R. 53, ll. 12 – 19. Owen did not read the release out loud to Bolt, but claimed he told Bolt that the form authorized him to give the results of the examination to the sheriff's office. R. 53, ll. 12 – 19. Owen stated, "I was not aware that [Bolt] was not a reader." R. 54, ll. 2 – 3.

At the Denno hearing, Bolt testified that by the time he took the polygraph exam, he was "terrified." R. 67, ll. 7 – 10. No one else at his home earned any money. R. 67, ll. 16 – 17. He was supporting his wife, two sons, and his mother-in-law. R. 67, l. 18 – 68, l. 1. Bolt was "worried about getting home and taking care of my family, making money, paying my bills to stay afloat." R. 67, ll. 11 – 15. When the contractor told Bolt he failed the polygraph exam, the thoughts that went through his mind were: "oh, what the heck. I know and God knows I didn't do nothing. Why is this man trying to tell me that I did." R. 68, ll. 5 – 10. Bolt said he finally told Owen, "Whatever y'all want to hear. I just need to go home." R. 68, ll. 20 – 24. Owen was giving Bolt "information about what was happening. I just went on from that." R. 69, ll. 2 – 6. Bolt did not understand that what he discussed with Owen could be used against him in court. R. 69, ll. 17 – 20.

After the polygraph exam, Bolt went back to the jail cell where he stayed until his wife and son paid his bond. R. 70, ll. 9 – 14. Bolt was about to leave the jail when an officer told him he could not leave until Investigator Strickland returned. R 70, ll. 17 – 23.

After Bolt "had to wait and wait and wait," Investigator Strickland returned and took him into a small conference room. R. 71, ll. 8 – 15. He read Bolt his Miranda rights and had him sign another waiver. R. 22, l. 12 – 23, l. 6. State's Ex. 2. Investigator Strickland "started getting

real hateful and stuff." R. 71, ll. 8 – 15. Investigator Strickland told Bolt, "I know you did something. You did something. You're going to tell me what I want to hear or I'm going to put your bond so high you'll never get out." R. 71, ll. 8 – 16. After this threat, Bolt "told him what he wanted to hear," and signed the written statement Investigator Strickland provided him. R. 72, ll. 8 – 22. Bolt believed that Investigator Strickland could get his bond increased. R. 72, ll. 2 – 4. Investigator Strickland claimed that he never threatened Bolt or promised anything to Bolt in exchange for his statement. R. 26, ll. 3 – 8.

After Bolt's testimony, the court heard argument on the admissibility of the statements. R. 85, l. 12 – 97, l. 10. Based on Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), the defense argued the statements were inadmissible because Miranda warnings were not given to Bolt by Owen. R. 86, l. 10 – 97, l. 10. The defense also argued that because of the time lapse between the first warnings the previous night and the polygraph the next morning, the fact that a new person became involved, and no one told Bolt the implications of speaking with the polygrapher, pursuant to Siebert, all the statements were inadmissible. The court took the matter under advisement overnight. R. 97, ll. 2 – 10.

The next morning, the defense called SLED's former chief polygraph examiner, Johnny Hartley ("Hartley") as an expert witness to discuss the polygraph exam given to Bolt. R. 100, ll. 12 – 16. Hartley testified that the polygraph exam given to Bolt was a "pen and ink" polygraph that most agencies quit using in the early 1990s. R. 102, ll. 10 – 21. He described it as an antiquated instrument. R. 104, ll. 15 – 16. Hartley testified that the polygraph examination given to Bolt should have been scored as inconclusive because it was improperly conducted. R. 107, ll. 2 – 11. The police's private contractor failed to allow for adequate time between questions to gauge reactions. R. 107, ll. 6 – 108, l. 14.

Following Hartley's testimony, the trial judge ruled that both the oral statements to Owen and the written statement would be admitted. R. 110, l. 10 – 112, l. 7. The trial judge found that Miranda warnings were not necessary at the time Owen gave the polygraph examination and that the statements made to Owen did not taint the written statement given to Investigator Strickland. R. 110, l. 10 – 112, l. 7. The trial judge did not find that Officer Strickland did not threaten "to jack the bond up," but concluded that because the defendant "had already bonded out prior to the time that threat was allegedly made," it would have "no significance concerning the voluntariness of the confession." R. 111, ll. 3 – 13.

After the trial judge ruled, the defense stated they needed to present evidence concerning the polygraph exam during the trial to explain why Bolt gave the statement. R. 113, l. 4 – 114, l. 1. Judge Hocker expressed skepticism about admitting any evidence concerning a polygraph examination. R. 114, ll. 2 – 14. The solicitor stated he had no objection to admitting evidence concerning the polygraph examinations. R. 114, ll. 15 – 21. Judge Hocker then ruled that since there was an agreement among the parties concerning polygraph evidence that it would be admissible. R. 114, l. 22 – 115, l. 20. Both the solicitor and the defense mentioned the polygraph examination during their opening statements. R. 123, ll. 7 – 17. R. 126, l. 19 – 127, l. 8. Owen and Hartley both testified about the examination given Bolt during the trial.

Discussion

The Court of Appeals erred in holding that the initial Miranda waiver remained valid. App. 2. In Missouri v. Siebert, 542 U.S. 600 (2004), the United States Supreme Court condemned a deliberate practice used in police departments throughout the country meant to circumvent Miranda. Siebert at 610-12 and n.2. The Court cited the Police Law Institute's manual which instructed officers to use a "two-stage interrogation" and not to give Miranda warnings until after

arrestees have confessed. Id. at 610. The Court listed multiple sources advising officers on how to obtain confessions and then curing the failure to give Miranda warnings. Id. at 610 n.2.

The Court called this practice "question-first" and rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-13. "By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content." Id. at 613. "After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset." Id. "Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." Id.

South Carolina recognized the impact of Siebert in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). Kenneth Navy was convicted of suffocating his two year old son. Id. at 296, 688 S.E.2d at 838. EMS responded to Navy's house and found him giving the child CPR. Id. at 297, 688 S.E.2d at 838. Navy gave an unsatisfactory statement to the police at the hospital that night. Id. The police subsequently met with the pathologist who told them that the child died from suffocation. Id.

With this knowledge in hand, the police took Navy from his house to the police station. Id. He was not formally under arrest. He gave a statement that was not incriminating. Id. at 298, 688 S.E.2d at 839. Questioning continued and police confronted Navy with information from the autopsy. Id. at 298, 688 S.E.2d at 839-40. The Court found that "[a]t this juncture, the

nature of the interrogation and respondent's status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." Id. Without giving Miranda warnings, the police ultimately obtained a confession from Navy which they memorialized after having him sign a Miranda waiver. The Court ruled these statements violated Siebert and were inadmissible. Id. at 301-04, 688 S.E.2d at 841-43.

While the police strategy in this case is the same as in Siebert and Navy, the mechanics were slightly changed in an effort to avoid their application. Investigator Strickland gave Bolt Miranda warnings when he first arrived at the station, but then after Bolt denied the allegations, let Bolt spend the night in jail. Bolt was then confronted with a different questioner—the private contractor, Owen—who did not give Bolt Miranda warnings. The police not only switched questioners, they switched the **kind** of interrogation used: from straightforward police questioning to a lie detector test. Switching investigators is relevant to the Miranda inquiry. State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). In Evans, the original interrogators left the room and sent in a female SLED agent, who used a sympathy tactic. Id. The Evans Court found that the police's purpose was important and used the fact that they challenged the defendant's story and switched officers to divine the officers' intent. Id.

The failure to give Miranda warnings before the polygraph examination also departs from established police practice. As early as 1972, courts recognized that "prudent police practice requires that when polygraph examinations are to be given persons in custody under investigation for suspected criminal conduct, they should be given Miranda warnings before the commencement of such examinations." People v. Algien, 501 P.2d 468, 472 (Colo. 1972). Multiple South Carolina decisions state that the polygrapher gave Miranda warnings before the exam. State v. Saltz, 346 S.C. 114, 135, 551 S.E.2d 240, 252 (2001) (noting that defendant was

given Miranda warnings before polygraph exam); State v. Harvin, 345 S.C. 190, 192, 547 S.E.2d 497, 498-99 (2001) (recounting that suspect was administered Miranda warnings immediately before polygraph even though warnings had previously been given); State v. McCray, 332 S.C. 536, 543, 506 S.E.2d 301, 304 (1998) (noting that defendant was given Miranda warnings by a SLED polygrapher—Hartley, Bolt's expert in this case); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 694 (1996) (noting that defendant was given Miranda warnings at SLED before the test was administered); State v. Rochester, 301 S.C. 196, 198, 391 S.E.2d 244, 246 (1990) (noting that in a SLED-administered exam, "Prior to being tested, the polygraph examiner administered the Miranda warnings); State v. Grizzle, 293 S.C. 19, 20, 358 S.E.2d 388, 389 (1987) (noting that SLED polygrapher gave Miranda warnings); State v. Smith, 268 S.C. 349, 353, 234 S.E.2d 19, 20 (1977) (noting that in a SLED-administered exam, the defendant was advised of his rights before the examination and given a written waiver which contained Miranda warnings); State v. Samuel, 400 S.C. 593, 596, 735 S.E.2d 541, 543 (Ct. App. 2012) (stating that polygraph examiner issued Miranda warnings before the exam); State v. Cope, 385 S.C. 274, 291, 684 S.E.2d 177, 186 (Ct. App. 2009) (stating that polygrapher issued Miranda warnings before the exam).

The giving of Miranda warnings during Bolt's first, brief encounter with Investigator Strickland was insufficient under the totality of the circumstances. Rochester at 200, 391 S.E.2d at 246-47 (stating totality of the circumstances test). See also State v. DeWeese, 582 S.E.2d 786, 797-99 (W.Va. 2003) (holding that failure to give Miranda warnings prior to a polygraph examination rendered statements inadmissible despite prior Miranda warning given by police officers). Taking into account the fact that Bolt was functionally illiterate and of limited intelligence, Miranda warnings were required before the polygraph examination. Since these

statements were taken in violation of Bolt's Fifth Amendment rights, the later statement was tainted and inadmissible pursuant to Siebert and Navy. This Court should reverse.

2.

The Court of Appeals erred in affirming petitioner's lewd act conviction because the trial court should have directed a verdict in favor of petitioner under the *corpus delicti* rule because, other than petitioner's extra-judicial statements, no independent evidence existed.

Relevant Facts

The indictment for criminal sexual conduct alleged that the crime occurred "on or about the 1st day of June, 2006." R. 408. The indictment for lewd act alleged the crime occurred between the dates of June 1, 2006 (the date of the criminal sexual conduct) and October 17, 2008. R. 406. During her direct-examination, Minor testified that during the "summer of 2006" Bolt began to touch her in a way that made her feel uncomfortable. R. 131, ll. 1 – 5. She stated that Bolt, "would sit me on his lap and he would rub" her breasts. R. 131, ll. 7 – 14. She then testified about the alleged digital penetration that occurred on one night in June 2006. R. 131, l. 23 – 133, l. 7.

On cross-examination, Minor was much more specific concerning the dates of the abuse. R. 159, ll. 2 – 15. She testified as follows:

> Q. And going back to your testimony again about when this was. You say that the night he came in the room you were sleeping and that was somewhere around June 1 of 2006?
>
> A. Yes, ma'am.
>
> Q. And you mentioned these other incidents where he would have you on his lap and be touching you?
>
> A. Yes, ma'am.
>
> Q. All of those incidents happened before that date, right?

A. Yes, ma'am.

Q. All of them prior to June 1st of 2006?

A. Yes, ma'am.

Q. Nothing after?

A. No, ma'am.

Q. And you said you went – you might have gone there occasionally after that June 1st incident but there – there was never another time that you say he inappropriately touched you; is that correct?

A. Yes, ma'am.

R. 159, ll. 2 – 20. Owen testified that Bolt told him that "on the night in question" Bolt was drunk and squeezed Minor's breast and possibly touched her vagina. R. 175, l. 21 – 173, l. 13.

Following the close of the State's evidence, Bolt moved for a directed verdict on the lewd act charge citing the *corpus delicti* rule. R. 224, l. 22 – 228, l. 24. The defense noted that the indictment for lewd act only covered a time period following the alleged digital penetration and that Minor specifically testified that no lewd acts occurred after June 1, 2006. R. 27 6, l. 22 – 277, l. 23. The defense argued this meant the only evidence in the record about a lewd act were Bolt's statements to Owen, and the statements did not satisfy the *corpus delicti* rule. R. 226, l. 24 – 227, l. 22. The trial judge denied the motion, stating that Minor's testimony was in conflict, but viewing the evidence in the light most favorable to the State he "would have to deny your motion." R228, l. 25 – 229, l. 8.

Discussion

The Court of Appeals erred because it mistakenly construed Minor's statements as contradictory. Minor's statements were not contradictory—her latter specific response on cross-examination unequivocally clarified her earlier vague statement on direct-examination. Bolt was

entitled to a directed verdict on the lewd act claim because the only evidence against him were his statements to Owen. "It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*." State v. Abraham, 408 S.C. 589, 759 S.E.2d 440 (Ct. App. 2014). The corroboration rule applies to statements and confessions. State v. Osborne, 335 S.C. 172, 178, 516 S.E.2d 201, 204 (1999). To satisfy the corroboration rule, the State must provide "sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred." Id. at 180, 516 S.E.2d at 205.

In Abraham, this Court conducted an in-depth analysis of the corroboration rule as described by our Supreme Court in Osborne and held that the State must introduce "substantial independent evidence which would tend to establish the trustworthiness of the statement." Abraham at n.2, citing Opper v. United States, 348 U.S. 84 (1954) (stating that the government must introduce "substantial independent evidence"). No substantial independent evidence exists in this case.

The trial judge based his ruling on what he perceived to be a "conflict" in Minor's testimony: that the lewd act incidents occurred during the "summer of 2006." R. 131, ll. 1 – 5. However, this vague statement does not qualify as "substantial independent evidence" of crimes on or after June 1, 2006, because Minor unequivocally testified that Bolt did not commit any acts that would be a lewd act either on or after that date. R. 159, ll. 2 – 20. Unlike Abraham and Osborne in which the independent evidence consisted of officers' observations of a drunken driver and blood alcohol tests, Minor's fleeting statement about the "summer of 2006"—which was

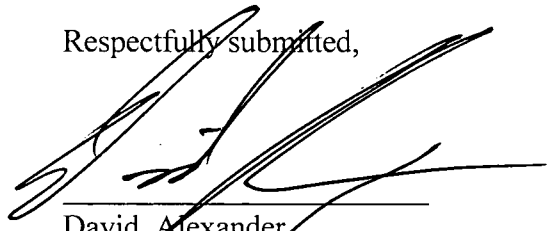
clarified without any doubt or uncertainty during her cross-examination as being before June 1, 2006—does not satisfy the *corpus delicti* rule.

The Court of Appeals also mistakenly adopted the State's argument that time is not an element of the offense. In the case cited by the court, the appellant argued that the indictment should have been quashed because the two-year time frame was overly broad. State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991). This Court rejected this argument. Id. However, nothing in Wade supports the notion that a defendant can be tried for allegations that occur **outside of the time frame alleged in the indictment.** If this were the rule, then the entire concept of notice that is the primary purpose of an indictment would be meaningless. Because the only evidence of a lewd act committed during the time frame in the indictment was Bolt's extrajudicial statement, the Court of Appeals erred in affirming Bolt's conviction and its decision should be reversed.

CONCLUSION

For the foregoing reasons, petitioner's convictions should be reversed and this case remanded for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER.

This 7th day of January, 2016

RECEIVED

JAN 07 2016

SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Donald B. Hocker, Circuit Court Judge

Opinion No. 2015-UP-477 (S.C. Ct. App. filed 10/7/2015)
09-GS-24-543 & 633

THE STATE,

RESPONDENT,

V.

WILLIAM DONALD BOLT,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, William Bolt, #356942, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, and the S.C. Court of Appeals this 7th day of January, 2016.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of January, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.