STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER TERRELL GILYARD,

APPELLANT

APPELLATE CASE NO. 2014-001714

FINAL BRIEF OF APPELLANT

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1.

Whether, after the jury requested reinstruction on circumstantial evidence, the trial judge erred in refusing appellant's request for a circumstantial evidence charge pursuant to State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) because the judge was "not aware of Logan changing anything in the prevailing law?"

2.

Whether the trial judge erred in charging the Rape Shield Statute to the jury after the jury returned with a question about testimony that the complainant had been involved in another rape allegation?

3.

Whether the trial judge erred in charging the jury that the complainant's testimony did not have to be corroborated, when this charge is error, the charge as a whole contained serious errors, and was unduly emphasized by placing it at the end of the charge and no evidence existed except for complainant's inconsistent allegations?

STATEMENT OF THE CASE

On September 9, 2013, a Charleston County grand jury indicted appellant Christopher Gilyard for Second Degree Criminal Sexual Conduct with a Minor. R. 366. On July 28, 2014, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Shannon Elliott and Debbie Herring-Lash represented the State. R. 1. Charles Cochran and Annie Andrews represented appellant. R. 1. The jury convicted appellant. R. 338, ll. 12 – 19. Judge Jefferson sentenced appellant to thirteen years' imprisonment. R. 356, ll. 19 – 23. This appeal follows.

ARGUMENT

1.

After the jury requested reinstruction on circumstantial evidence, the trial judge erred in refusing appellant's request for a circumstantial evidence charge pursuant to State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) because the judge was "not aware of Logan changing anything in the prevailing law."

Relevant Facts

The Evidence at Trial

Appellant Christopher Gilyard ("Gilyard") was a barber. R. 132, ll. 24 – 25. Gilyard was thirty-one years old when he began working at complainant's mother's beauty salon. R. 133, ll. 8 – 10. The sixteen year old complainant ("Minor") alleged that appellant Christopher Gilyard ("Gilyard") assaulted and raped her during the middle of the afternoon at the beauty salon while her mother was running errands and her cousin was taking a nap in the lobby. R. 50, l. 13 – 56, l. 25.

According to the complainant, on the afternoon of the alleged assault, a Wednesday, complainant's mother ("Mother") was working at another location. R. 51, ll. 1 – 5. Another employee, Angela Fuller ("Fuller"), was not in the salon because "she always leaves early on Wednesdays." R. 51, ll. 1 – 5. Fuller flatly contradicted complainant and testified there was "No particular day" when she left early and that her schedule depended on her clientele. R. 126, ll. 3 – 12. Fuller did not remember a day when she left complainant, her cousin, and Gilyard alone at the shop. R. 127, ll. 17 – 24.

Gilyard helped put complainant's cousin down for a nap. R. 53, ll. 15 – 20. Complainant went to the bathroom. R. 53, ll. 15 – 20. When she came out of the

bathroom, Gilyard was standing in the doorway. R. 53, ll. 15 – 20. Gilyard began touching her and complainant tried to get past him. R. 53, l. 23 – 54, l. 4. Gilyard pushed complainant to the ground, flipped her over, and began removing complainant's clothing. R. 54, ll. 2 – 16. Gilyard "peeped out to see if anybody was trying to come to the store" and then had forcible vaginal intercourse with the complainant. R. 54, l. 21 – 56, l. 4. Complainant believed Gilyard rushed to the bathroom to ejaculate. R. 56, ll. 5 – 9. Gilyard then went back to his station in the salon, packed his stuff, and as he was leaving, told complainant not to tell anyone or he would kill her. R. 56, ll. 14 – 25.

After Gilyard left, complainant's brother and girlfriend arrived at the salon. R. 57, ll. 1 – 7. They brought sandwiches. R. 57, ll. 1 – 4. Complainant did not tell them about the rape she had just experienced moments before. R. 57, ll. 5 – 14. Gilyard came back to work later that evening and continued to work at the salon for a period of time thereafter. R. 57, ll. 15 – 24.

Complainant's brother's girlfriend, Ashley Whaley ("Whaley") remembered the day differently. Contradicting complainant's testimony, when Whaley arrived at the store, Gilyard was still present. R. 195, ll. 5 – 17. She remembered bringing sandwiches. Day 3 Tr. 10, ll. 7 – 16. She brought sandwiches to the shop once. R. 196, l. 17 – 19. Whaley spoke with Gilyard. R. 198, ll. 21 – 25. Gilyard asked complainant's brother to make him a sandwich. R. 198, ll. 21 – 25. The brother told Gilyard to make his own sandwich. R. 198, ll. 21 – 25. Whaley made Gilyard a sandwich "and watched him eat it." R. 198, ll. 21 – 25. Whaley unequivocally testified that Mother was not present while she was at the salon. R.. 199, ll. 14 – 16. This testimony conflicted with complainant's version in which Mother returned while Whaley and her brother were at

the salon. R. 102, ll. 1 – 9. Mother testified that Gilyard was at the salon when she returned, but Whaley was not there. R. 153, ll. 8 – 21.

On cross-examination, complainant testified that Mother was gone for about an hour running errands. R. 82, ll. 16 – 18. Fuller was at the salon for almost the entire time her mother was gone. R. 84, ll. 19 – 21. Complainant claimed that she screamed when Gilyard pushed her down. R. 91, l. 11 – 92, l. 21. She testified that she stopped screaming because Gilyard threatened her. R. 92, ll. 19 – 21. When defense counsel confronted complainant with a prior inconsistent statement to investigators that Gilyard had put his hand over her mouth to keep her from screaming, complainant abruptly jumped up and ran from the courtroom without the trial judge's permission. R. 92, l. 12 – 94, l. 11. Judge Jefferson admonished the complainant for her behavior. R. 95, ll. 2 – 9.

When cross-examination resumed, complainant claimed she suffered no injuries other than the sexual assault even though she had been pushed down. R. 97, ll. 17 – 23. Complainant said she did not remember also telling a counselor that she did not scream was because she did not want to wake up her cousin. R. 116, ll. 15 – 19. The forensic interviewer confirmed that complainant told her "she wanted to scream while she was being assaulted, but that her nephew was sleeping, so she didn't." R. 212, ll. 3 – 12.

At some point after the alleged attack, Gilyard stopped coming to work. R. 57, ll. 20 – 24. Complainant told her mother about the rape while they were in a car on a shopping trip. R. 58, ll. 2 – 24. Mother had been calling Gilyard to find out why he had not been coming to work. R. 104, ll. 9 – 21. Complainant asked her mother why she was worried about whether Gilyard came to work or not. R. 104, l. 22 – 105, l. 1. Her mother then repeatedly asked complainant whether something had happened with Gilyard. R.

104, l. 15 – 105, l. 4. Mother testified she pulled the car into the median and told complainant "you're going to tell me what's going on and you're going to tell me now." R. 139, ll. 15 – 19.

Mother described Gilyard as "an excellent barber." R.. 132, ll. 24 – 25. Mother claimed that Gilyard would let complainant use his phone to access the Internet when her access had been forbidden by her mother. R. 136, ll. 16 – 22. Mother "witnessed them doing a pinky swear" and when she questioned complainant, complainant told her it was because Gilyard was letting her use the phone. R. 136, ll. 16 – 25. During her direct testimony, it was clear that the "pinky swear" occurred before the day of the alleged rape. R. 137, ll. 14 – 25. Complainant also testified about the pinkie swear. R. 48, ll. 3 – 14. Inconsistently, Mother originally told the police that the "pinky promise" happened on the same day as the alleged rape. R. 147, l. 4 – 148, l. 3. A police officer testified that she was under the impression that the "pinky swear" happened on the incident date. R. 224, ll. 10 – 13.

On direct-examination, Mother said that she noticed her daughter's behavior changed after the assault because "she started sitting under the dryer with her headset and with the dryer that over her head." R. 141, ll. 3 – 7. On cross-examination, Mother claimed complainant was "anemic; she always sits under the dryer with the dryer on." R. 165, ll. 20 – 24.

The police questioned Gilyard. R. 226, ll. 18 – 19. Even though the police had no semen from the barbershop, they asked him "if his semen was there, why would it be." R. 227, l. 15 – 228, l. 1. The police officer agreed they were trying to get Gilyard to

admit to a crime. R. 228; ll. 2 – 4. The State produced no evidence that Gilyard ever admitted raping complainant.

The Jury's Deliberations and the Circumstantial Evidence Charge

The trial judge initially gave the following charge on circumstantial evidence:

> Ladies and gentlemen, there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.
>
> Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
>
> The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is there greater degree of certainty required to circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. Conversely, if you are convinced of the guilt of the defendant beyond a reasonable doubt, then you must find him guilty.

R. 289, ll. 7 – 23. The jury began deliberating at 2:02PM. R. 297, ll. 5 – 6.

After sending out its first question which will be addressed in Issue 2 of this brief, the jury then asked at 2:48 PM to listen to complainant's testimony. R. 309, ll. 20 – 23. At 5:25 PM, the jury sent another note that read, "the jury is not unanimous." R. 312, ll. 2 – 3. The trial judge gave the jury an Allen charge. R. 314, l. 2 – 317, l. 24. Following the Allen charge, the jury at 6:12 PM asked for a copy of the court's entire charge. R. 318, ll. 8 – 12. The trial judge refused to give the jury the entire charge and instead told them if there was some specific instruction they needed, she would accommodate their request. R. 318, ll. 13 – 19. At 6:22 PM, the jury sent two notes, first asking whether they could resume deliberations in the morning and also requesting reinstruction "on

circumstantial and direct evidence." R. 319, ll. 5 – 17. The trial judge dismissed the jury for the evening and told them she would reinstruct them the next morning. R. 320, l. 5 – 322, l. 3.

The next morning, the trial judge told the attorneys she would instruct the jury on State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997). R. 326, ll. 8 – 13. The jury returned and Judge Jefferson repeated the same charge previously given. R. 327, ll. 2 – 21. The jury exited and neither the State nor the defense noted any exceptions. R. 329, l. 24 – 330, l. 3. The jury exited at 9:51 AM. R. 329, l. 24.

The court returned from the subsequent recess and defense counsel requested that the trial judge additionally charge the jury on State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). R. 331, ll. 2 – 8. The trial judge first stated that the time to object to her charge had passed. R. 331, l. 9 – 332, l. 5. She stated she reads the advance sheets as soon as they are published and she was unaware "of Logan changing anything in the prevailing law." R. 333, ll. 6 – 13. The trial judge then stated she would go back to her office and review Logan. R. 333, ll. 15 – 24. The court then took a recess. R. 334, l. 3. The times when the court returned from and left the bench for this discussion were not recorded by the court reporter.

The court returned from the recess and stated that she had reviewed Logan. R. 334, ll. 4 – 10. She distinguished Logan because the instant case had eyewitness testimony. R. 334 l. 18 – 335 l. 7. The trial judge stated the eyewitness testimony was "the direct testimony of the victim in this case who was bold enough to articulate what she contends happened to her on this particular incident. So in this case in particular what the jury really is looking at is the creditability and believability of direct evidence;

not substantial circumstantial evidence, which would reasonably tend to prove the defendant's guilt." R 335 ll. 1 – 7. The trial judge further reasoned a Logan charge was not required because the State in the instant case "did not rely solely on circumstantial evidence." R. 335, l. 25 – 336, l. 10. She described Logan as having "some discretionary language that the defense could have requested," but that a Logan charge would be, "almost cumulative to some extent because it just repeats what is repeated at least five or six times in the court's instruction regarding the State's burden of proof." R. 335, l. 25 – 336, l. 5. Judge Jefferson again stated that the request was not timely. R. 336, ll. 11 – 12. She ultimately concluded that her circumstantial evidence charge "says about the same thing." R. 337, ll. 4 – 8. The trial judge then informed the parties that the jury reached a verdict and the jury returned at 10:28 AM. R. 337, ll. 9 – 13.

Discussion

In Logan, the Supreme Court held "that trial courts should provide the following language as a circumstantial evidence charge, in addition to a proper reasonable doubt instruction, when so requested by defendant...." Logan at 99, 747 S.E.2d at 452. The relevant language from Logan that the trial court in this case was required to give, but refused, was, "to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed." Id. This language from Logan adds substantially to a jury's understanding of circumstantial evidence as compared to the charge given by the trial judge. Contrary to

the trial judge's reasoning, there is a difference between the charge required by Logan and the Grippon charge. In fact, this difference is the entire thrust of the Logan opinion.

Nothing in Logan contemplates discretion with the trial judge to avoid giving this charge if direct as well as circumstantial evidence exist in a case. Logan had both direct and circumstantial evidence. The defendant in Logan was accused of attempted rape and strong arm robbery. Id. at 86, 747 S.E.2d at 445 – 46. The complainant gave direct evidence in the form of her testimony. Id. She testified that the defendant entered a restroom in a bar, choked her, punched her, and attempted to sexually assault her. Id. at 86-87, 747 S.E.2d at 445-46. Since direct evidence existed in Logan, the trial judge's reasoning that the existence of direct evidence in this case barred appellant's requested charge is erroneous.

Furthermore, under the circumstances of this case, there was no reason for the trial judge to deny the request for the Logan charge as untimely. The court had already brought the jury back and reinstructed them on circumstantial evidence in response to a question. A short amount of time passed before appellant requested the Logan charge. It would have been a simple matter to provide the requested instruction, but the trial judge refused. Specifically in this case where the circumstantial evidence did not support the State's case, especially considering the inconsistencies in complainant's and her mother's testimony, the jury was rightfully concerned about how to review the circumstantial evidence (or lack thereof). Failure to give the requested charge on the facts of this case and concerning how the issue was raised during deliberations was error and this case should be reversed.

2.

The trial judge erred in charging the Rape Shield Statute to the jury after the jury returned with a question about testimony that the complainant had been involved in another rape allegation.

Relevant Facts

Prior to trial, appellant made an offer of proof concerning prior false allegations of rape made by appellant. R. 9, ll. 2 – 20. The trial judge heard these matters in-camera during complainant's testimony. R. 61, l. 2 – 78, l. 21. The allegation was made in Berkeley County. R. 61, ll. 8 – 12. The case was dismissed. R. 64, ll. 16 – 65, l. 11. Appellant alleged that complainant on Facebook identified someone as her rapist who was not the person against whom she had made the allegation in Berkeley County. R. 68, ll. 9 – 14. The trial judge refused to allow any questioning or evidence to be presented pursuant to South Carolina's Rape Shield Statute. R. 68, l. 15 – 78, l. 21.

Mother later testified on direct-examination that after she learned of the assault, she took complainant to her doctor to have her tested for sexually transmitted diseases. What Mother did not explain on direct-examination, but admitted on cross-examination, was that she did not tell the doctor about complainant's allegation of sexual assault. R 159, l. 20 – 23. The following then occurred:

> Q. And he did not examine her; do a physical examination in that regard because he was not aware of the allegation, correct? Yes or no?
>
> A. No. Permission to speak freely?
>
> THE COURT: Ma'am, you can explain your answer.
>
> A. Okay. **My daughter was statutory raped a year before** while she – a year before an incident happened with her. I was embarrassed. I just felt like because I told him she was uncomfortable

with him playing with her like that being an adult he would understand. But he saw – to me I feel like he saw her as an easy target –

MR. COCHRAN: – Your Honor –

A. – so I was embarrassed to tell my doctor yet again that this happened to her a second time. So no, I did not.

MR. COCHRAN: I believe we have a matter of law, Your Honor.

THE COURT: Approach.

[Whereupon, an off the record bench conference is held]

THE COURT: Continue.

R. 159, l. 24 – 160, l. 19 (emphasis added).

Soon after beginning her charge to the jury, the trial judge said, "You are to consider only the competent evidence that is before you. And you are to disregard and disabuse from your mind any testimony stricken from the record in this case during the progress of this trial, if there has been any." R. 285, ll. 12 – 23. The jury had not even deliberated for thirty minutes when they sent out the following questions: "During [mother's] testimony, she mentioned [complainant] was involved in a statutory rape one year prior; is this statement admissible? … What type of statutory rape?" R. 297, ll. 4 – 12.

Without asking for argument from the attorneys, the trial judge stated she would give the standard charge that "all of the evidence in this case has been presented to you" and the court cannot answer factual questions. R. 297, l. 13 – 298, l. 7. The trial judge then indicated she would "instruct them that pursuant to the South Carolina Code Section 16–3–659.1, which we commonly refer to as the rape shield statute, that they are not to consider evidence of specific instances of the victim's sexual conduct… in their

deliberations and in any manner whatsoever, or on the guilt or innocence of the defendant." R. 298, ll. 8 – 16. Defense counsel objected to the rape shield statute instruction. R. 299, ll. 3 – 4.

The trial judge stated:

> THE COURT: They are clearly considering whether she was raped before as to whether she could in some way – it just can't be considered. **I allowed it in**, although it was spontaneously uttered in response to a question in the way you structured it. You are in some ways the architect of your own dilemma in the way you asked the question of the witness and she provided you an answer which I don't know if the State prepped their witness or not, but she should not have mentioned previous statutory case in Berkeley. But nevertheless, they can consider that on her credibility. And so they can consider her testimony in its totality and give it whatever weight they determine it should have. But I'm not going to leave them with the impression that somehow they can consider whether she was a victim of a statutory rape in Berkeley County, because they can't. Under the law they are prohibited from doing that.

R. 299, ll. 5 – 20. Defense counsel objected that the evidence was admitted and the jury was not told to disregard it. R. 299,l. 21 – 300, l. 1.

When the jury returned, the trial judge first told them they were the finders of facts, that all of the evidence in the case had been presented, and the court cannot answer factual questions. R. 302, l. 14 – 303, l. 12. The trial judge then stated:

> In response to your second question: What type of statutory rape? I instruct you as follows: Under South Carolina law, you cannot consider specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation of the victim's sexual conduct in making a decision in this case and in your deliberation of this matter on the guilt or innocence of the defendant. Under South Carolina law, those matters cannot be considered.

R. 303, ll. 13 – 21.

Discussion

The Rape Shield Statute is a rule of evidence, not a jury charge. S.C. Code Ann. § 16-3-659.1. The statute forbids **a defendant** from introducing evidence of a victim's prior sexual conduct to impugn character. Id. Nothing in the statute forbids a jury from considering any kind of evidence once it has been admitted. The trial judge's charge flatly contradicted itself and certainly confused the jury. Judge Jefferson first told them that they had all of the evidence. It was undisputed that the trial judge admitted Mother's statement about the statutory rape allegation and that it was evidence before the jury. Judge Jefferson then told the jury they could not consider the evidence when she charged them they could not consider evidence which had been admitted. "A jury charge is no place for purposeful ambiguity." State v. Belcher, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009).

Contradictory and confusing jury instructions require reversal. Berberich v. Jack, 392 S.C. 278, 294, 709 S.E.2d 607, 615 (2011). Lowry v. State, 376 S.C. 499, 507, 657 S.E.2d 760, 764 (2008). "It is error to give instructions which may confuse or mislead the jury." State v. Rothell, 301 S.C. 168, 169-70, 391 S.E.2d 228, 229 (1990). The prejudice flowing from this instruction is magnified because it was given in response to the jury's question.

The court's charge prevented the jury from considering the strange circumstances regarding Mother's behavior. It amounted to a charge on the facts. It also bolstered the credibility of Mother and complainant after they had given inconsistent stories and the allegation itself was strained credulity. Further compounding the prejudice is that the fact of a prior allegation (which was dismissed) was evidence before the jury, but the trial

judge's prior ruling prevented the defense from exploring whether that allegation was false. The defense argued that complainant was a liar. R. 277, l. 23 – 278, l. 3. Charging the Rape Shield Statute to the jury therefore amounted to a charge on the facts in this case. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art.V, § 21. For these reasons, the court's charge was error and this case should be reversed.

3.

The trial judge erred in charging the jury that the complainant's testimony did not have to be corroborated, when this charge is error, the charge as a whole contained serious errors, and was unduly emphasized by placing it at the end of the charge and no evidence existed except for complainant's inconsistent allegations.

Without any request by the State, the trial judge informed the parties that she would charge the jury that "the testimony of the victim need not be corroborated." R. 263, ll. 19 – 20. Appellant objected, stating that "reading that statute as an instruction to the jury essentially tells the jury that the State's case is adequate. And in a case like this, that is extremely important." R. 264, ll. 5 – 12. The trial judge overruled the objection, stating that "case law" provides that sections 16-3-657 and 16-3-651 of the South Carolina Code "are accurate statements of law and appropriately instruct them." R. 264, ll. 19 – 22. She further told defense counsel, "I cannot allow you to argue to the jury that there's a lack of corroboration, because it doesn't have to be corroborating under state law. So that would be a misapprehension to the jury. It would be inaccurate." R. 264, l. 22 – 265, l. 1. The last substantive charge the court gave before explaining the verdict form was:

> I further instruct you that South Carolina Code Section 16-3-657 provides that the testimony of the victim need not be corroborated.

> I further instruct you that Code Section 16-3-651 defines victim to mean the person alleging to have been subjected to criminal sexual conduct.

R. 293, ll. 16 – 21.

The giving of this charge has been called "not reversible error," which, of course, implies that giving the charge is error. State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006). The Court in Rayfield stated, "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. Id. The Court recognized the evidentiary function of section 16-3-657 which "prevents trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim's testimony is not corroborated." Id.

The purpose of section 16-3-657 is to prevent a defendant from obtaining a directed verdict when the only evidence is the victim's uncorroborated testimony. Some states, like Georgia, still retain a corroboration requirement. See, e.g., OCGA § 16-6-3(a) ("A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim."). Section 16-3-657 ensures that such chauvinistic legal relics do not exist in South Carolina.

This Court again called the no corroboration charge not "reversible error" in State v. Orozco, 392 S.C. 212, 224, 708 S.E.2d 227, 233 (Ct. App. 2011). See also State v. Hill, 394 S.C. 280, 299-300, 715 S.E.2d 368, 378-79 (Ct. App. 2011). Both Orozco and

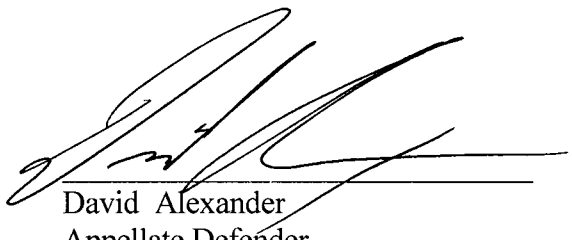
Hill relied on and interpreted Rayfield, but declined to call the charge correct, only calling it not "reversible error." Rayfield, Orozco, and Hill also note as factors on whether the error is reversible whether the charge was unduly emphasized and whether the charge as a whole complied with the law.

As demonstrated in Issues 1 and 2, the court's charge had severe errors and did not comport with existing law. Second, the court unduly emphasized the charge by placing it last so that it was the final substantive point heard by the jury. The solicitor used the charge in her closing. R. 267,ll. 9 – 17. She immediately followed her anticipation of the court's charge by telling the jury that the case "comes down to credibility, the credibility of [Complainant]. R. 267,ll. 14 – 17. Complainant's testimony was not corroborated. No physical evidence existed. The rape was alleged to occur in broad daylight in a place of business with a sleeping child feet away and the complainant's mother likely to return any minute. Complainant and her mother gave inconsistent testimony and appellant never admitted committing any crime despite police trickery. The neutral witnesses, Fuller and Whaley, contradicted important points in complainant's testimony. Since giving this charge is error, the charge as a whole had serious errors, and the no corroboration charge was unduly emphasized, it constitutes reversible error in this case.

CONCLUSION

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

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of September, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

September 30, 2015

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APPELLANT

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 J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 30th day of September , 2015.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2015.

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