STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2016-000621

THE STATE, ...RESPONDENT,

v.

MAURICE MARSHALL HARRIS, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street
Charleston, South Carolina 29401
(843) 985-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Other Authorities:

STATEMENT OF ISSUE ON APPEAL

The trial court's "no-corroboration" charge was harmless error given the evidence corroborating Victim's testimony and the breadth of the jury charge.

STATEMENT OF THE CASE

Appellant was indicted during the July 2014 term of the Charleston County Grand Jury for two counts of criminal sexual conduct (CSC) with a minor – second (*Indictment 2014-GS-1003695, Indictment 2014-GS-10-3684), and the February 2016 term for one count of CSC with a minor – third (*Indictment 2016-GS-10-01320). His case proceeded to jury trial before the Honorable Diane Schafer Goodstein. The jury found Appellant guilty as charged and Judge Goodstein sentenced him to an aggregate of twenty years' imprisonment.

STATEMENT OF FACTS

During the summer of 2013, Victim—who at the time was twelve years old—and her siblings spent a portion of their summer with Appellant at his parents' home. (Tr. March 1–2, 2016, p.9.) Appellant was the father of Victim's younger sister (Little Sister) and younger brother. (Tr. March 1–2, 2016, p.8.) In the fall, Victim disclosed to her mother (Mother) that Appellant inappropriately touched her and Little Sister, and Mother brought her to tell the police. (Tr. March 1–2, 2016, pp.32–33, 90–91.) After investigation, Appellant was arrested and charged with CSC with a minor – third and two counts of CSC with a minor – second. (Tr. February 29, 2016 p.18–19; March 1–2, 2016, pp.107,115.)

At trial, Victim testified that during the summer of 2013, she and some of her siblings often visited Appellant and during those visits they spent the majority of their time in the living room with him watching television. (Tr. March 1–2, 2016 p.10.) Victim described how after watching a movie one day, Appellant placed his hand up her pants leg and began rubbing her vagina, then digitally penetrated her. (Tr. March 1–2, 2016 p.13.) On a subsequent occasion, he touched her vagina and made her perform fellatio on him. (Tr. March 1–2 pp.14–16.) Victim explained Appellant forced her to perform oral sex three times. (Tr. March 1–2 p.16.) Additionally, Little Sister, who was eight years old at the time of the abuse, testified she saw Appellant force Victim to perform oral sex. (Tr. March 1–2 p.52). In both her testimony at trial and the forensic interview entered into evidence, Little Sister explained she saw Appellant touch Victim's private parts with his hand.[1] (Tr. March 1–2 p.56; State's Ex. 2.) The State also entered a jail house phone call into evidence in which Appellant and his mother discussed his incarceration. In regard to the pending allegations, he stated: "And I ain't even touch [Little

[1] At trial, Little Sister stated she saw Appellant touch Victim "[b]etween her legs," but in her forensic interview she more specifically described how Appellant pulled down Victim's pants and touched the bare skin of her "private parts."

Sister]! . . . And as far, um, as the other one go, she started with me. She climbin [sic] all over me. That's another thing. . . . Yup! There's two stories . . . there. . . there's two tales to every story now. Two sides to every story." (Tr. March 1–2, pp. 243, 254; *Court's Ex.1.)

Appellant testified in his own defense and denied any inappropriate behavior. (Tr. March 1–2, p.264–65.) He claimed Victim fabricated these claims because she was jealous of his relationship with Mother, although the two were no longer involved. (Tr. March 1–2 p.280.) After the close of the evidence, the trial court conducted an informal charge conference off the record. (Tr. March 1–2, p.290.) After going back on the record, the trial court told defense counsel to suspend putting his stated objection on the record until after the charge had been given. (Tr. March 1–2, p.291.) After closing arguments, the trial court charged the jury on the burden of proof and the jury's role as sole fact-finders. (Tr. March 1–2, pp.320–23.) Additionally, the trial court charged the jury on credibility, including an extensive portion tailored to witnesses who are children and how a jury must adjudge "whether that testimony is believable." (Tr. March 1–2, p.327.) Specifically, the trial court charged:

> In deciding believability you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember facts, and the child's ability to understand and answer questions.
>
> Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of opinions of a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth.
>
> In addition, young -- these things, ladies and gentlemen, of course you may consider with regards to children. And in addition, young children may be influenced by the way the questions are asked. It is up to you to decide whether the child or children understood the question or questions asked.

(Tr. March 1–2, p.328.)

The trial court additionally charged the jury pursuant to Section 16-3-657 of the South Carolina Code (2015) that the testimony of a victim of the charged offenses need not be corroborated. (Tr. March 1–2, p.329.) When the jury left for deliberations, defense counsel referenced his "earlier objection" to the no-corroboration charge as a comment on the facts and the court noted the exception for the record. (Tr. March 1–2, p.339.) The jury ultimately found Appellant guilty as charged, and the trial court sentenced him to fifteen years' imprisonment for the CSC with a minor – third charge and twenty years' imprisonment for each charge of CSC with a minor – second, all to run concurrently. (Tr. March 1–2, pp.345, 362–63.)

ARGUMENT

The trial court's "no-corroboration" charge was harmless error given the evidence corroborating Victim's testimony and the breadth of the jury charge.

The State acknowledges pursuant to the change in precedent elucidated in *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016), the instruction charging the jury that a victim's testimony "need not be corroborated" was erroneous.[2] However, in this case, given the evidence corroborating Victim's testimony and the extensive jury charge entrusting credibility findings exclusively to the jury, the error was harmless.

In determining whether an error is harmless, the question before the appellate court is not "whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). Accordingly, this finding is not governed by a definite rule of law, but instead the materiality and prejudicial character of the error must be determined from its relationship to the specific case. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). An error is harmless where it reasonably could not have affected the result of the trial. *Tapp*, 398 S.C. at 389, 728 S.E.2d at 475.

In *Stukes*, the Supreme Court overruled precedent condoning use of the no-corroboration charge and held that the charge was a comment on the facts in violation of the South Carolina Constitution, which prohibits a judge from charging the jury "in respect to matters of facts." *Id.* at 499, 787 S.E.2d at 483 (quoting S.C. Const. art. V, § 21). In discussing prejudice, the majority determined the *Stukes* case "hinged on credibility" because the evidence presented merely indicated that "Victim said it was rape; [Stukes] said it was consensual." *Id.* at 500, 787 S.E.2d

[2] This case was tried prior to *Stukes* and therefore the trial court did not have the benefit of its holding and applied the law as it stood at the time of trial.

at 483. It therefore concluded the error could not be deemed harmless. *Id.* Although the entirety of the Court concurred that the charge was error, Justice Kittredge, joined by Acting Justice Moore, would have concluded it was harmless "given the substantial corroborating evidence and the trial court's extensive credibility instructions." *Stukes*, 416 S.C. at 503, 787 S.E.2d at 485 (Kittredge, J., dissenting).

Although Appellant contends his case, like *Stukes*, is no more than "he-said, she-said," his argument mainly focuses on his apparent belief that Victim lacks credibility.[3] Determining whether this error was harmless is not an exercise in fact-finding by the appellate court. The import of the holding in *Stukes* is that a credibility determination, like all factual conclusions, are to be left to the jury unadulterated by any influence from the trial court. *Stukes* in no way encourages an appellate court to make its own credibility determinations as part of the inquiry into whether the charge was reversible error. Although in *Stukes* the majority declined to find the error harmless, this is not indicative that the error is not amenable to a harmlessness analysis. Instead, as evidenced by the analysis in Justice Kittredge's dissent, whether an error is harmless hinges on the presence of corroborating evidence and the entirety of the charge.[4]

---

[3] It is undeniable Victim's story contained changes in detail over the numerous times she had to recount the events, but if anything this would seem to undercut any suggestion that the jury being given the "no-corroboration" charge had a prejudicial effect. *Stukes* was concerned that the charge "invites the jury to believe the victim"; however, there the single question before the jury was whether it was rape or consensual. The act itself was never in question. Here, even if the jury mistook the charge as an assertion it *must* believe Victim, it is unclear what exactly it would have felt forced to believe.

[4] Notably, the disagreement in the majority and the dissent revolves around this disparate perception of the evidence—not the structure of the dissent's analysis. The majority viewed all the supporting evidence as emanating from the credibility of the victim, whereas the dissent concluded the physical evidence and the various testimonies about the victim's demeanor immediately following the alleged attack provided independent evidence for the jury to consider unrelated to the credibility of the victim.

Here, there is evidence corroborating Victim's story. As Appellant acknowledges in his brief: "[L]ittle [S]ister testified that she witnessed [Victim] perform oral sex on [A]ppellant." (Appellant's Br.8.) Again, Appellant's characterization of this testimony as dubious does not negate that it presents evidence of the crime independent of Victim's testimony for the jury to consider. Appellant also fails to acknowledge Little Sister described witnessing Appellant touch Victim's "private parts" both at trial and in her forensic interview. Furthermore, noticeably absent from Appellant's discussion is reference to the damning admission during his jailhouse phone call to his mother in which he discusses the allegations and states "as far, uhm, as far as the other one go, she started with me. She [was] climbing all over me. That's another thing." (Tr.249.) He effectively conceded improprieties occurred, yet incredibly attempts to blame the child for seducing him. Not only is this evidence incriminating, it also demonstrates that despite his focus on Victim's differing recounts and lack of credibility, Appellant's own version of the events is inconsistent. Accordingly, this case is distinguishable from *Stukes* because the jury had more than merely bald accusations of a victim to consider in its deliberations.

Additionally, although Appellant argues the solicitor's references to credibility compounded the error, he ignores the solicitor's clear assertion in her closing that there is evidence to corroborate Victim's allegations. (Tr.315.) Therefore, if anything, the solicitor effectively rendered the no-corroboration charge inapplicable by asserting there was, in fact, corroboration. Moreover, read in the context in which the jury heard them, the solicitor's statements that the testimony of Victim and Little Sister did not require "any other further corroboration to - - - for a conviction" flowed immediately from her argument in response to defense counsel's insinuations that the lack of physical evidence should be determinative of Appellant's innocence. (Tr.307–08.) Notably, the solicitor's statements, which are correct statements of law, were never objected to and nothing in the *Stukes* opinion can be read to

prohibit a solicitor from discussing credibility. These crimes are frequently tried without the benefit of physical evidence. It is untenable to suggest that a defendant may decry an allegation based on the absence of physical evidence but the solicitor cannot respectively assert that such evidence is not required to convict. Here, the solicitor reframed the context of the no-corroboration charge as a clarification that a lack of physical evidence was not dispositive.

Accordingly, Appellant's case presents a similar scenario to *State v. McBride*, 416 S.C. 379, 786 S.E.2d 435 (Ct. App. 2016), *petition for cert. filed*, (S.C. Sup. Ct. Aug. 22, 2016) (Appellate Case No. 2016-001335), where this Court found a no-corroboration charge harmless based on the presence of corroborating evidence. In addition to the victim's testimony, the State presented the victim's mother's testimony that immediately after the incident the victim smelled like men's cologne and had a deodorant stain on her shirt left by McBride. *Id.* at 394, 786 S.E.2d at 442. The victim's aunt also testified that McBride confessed to her and said he did not mean to do it. *Id.* Like *McBride*, here, distinct testimony corroborated Victim and evidence was presented that Appellant admitted improper conduct occurred.

Furthermore, any imbalance created by the no-corroboration charge was ameliorated when evaluated within the entirety of the charge, and therefore, Appellant suffered no prejudice warranting reversal. *See State v. Curry*, 406 S.C. 364, 373, 752 S.E.2d 263, 267 (2013) ("Generally, an alleged error in a portion of a charge must be considered in light of the whole charge, and must be prejudicial to the appellant to warrant a new trial."). The jury charge in this case robustly covered the law on credibility; it emphasized the State's burden and the exclusivity of the jury's fact-finding duty—including a clarification that the trial court is not allowed to have an opinion on the facts. (Tr.323, 325.) More important in assessing the charge as a whole is the troubling admonition given by the trial court concerning the elevated scrutiny with which a jury must analyze the credibility of children. Specifically, the charge suggests juvenile witnesses are

less likely to remember things accurately, to know the difference between a truth and a lie, and to appreciate the seriousness of the proceedings. The charge also indicates children are more easily led by counsel.[5] To the extent the no-corroboration charge suggested the jury must believe a victim, the portion of the charge on children's testimony did the opposite and instructed the jury not to believe allegations of Victim or the corroborating testimony of Little Sister. Considering the entirety of the charge, the boon received by the improper instruction on children undermined any prejudice emanating from the no-corroboration charge and rendered the error harmless.

Although the trial court erroneously charged the jury that Victim's statements need not be corroborated, corroborating evidence—including incriminating statements of Appellant—was presented for the jury to consider. Additionally, the jury heard an extensive charge highlighting the applicable burden and a demonstrably imbalanced charge on the believability of children. Accordingly, the error in giving the no-corroboration charge could not reasonably have affected the result and was therefore harmless beyond a reasonable doubt.

---

[5] Like the no-corroboration charge, this charge similarly constitutes a comment on the facts and unnecessarily highlights concerns which could potentially plague any witness regardless of her age. When considering the erroneous charge in *Stukes*, the Supreme Court noted that "[b]y addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." *Stukes*, 416 S.C. at 499, 787 S.E.2d at 483. Similarly, the lengthier charge addressed solely to child witnesses specifically undermines their testimony by instead instructing the jury that whenever a child speaks, her words are inherently suspect. Accordingly, it is unconstitutional and should likewise be prohibited. *See* S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law.").

CONCLUSION

Based on the foregoing, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: _____
Ranee Saunders
S.C. Bar # 100073

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 27, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
APR 27 2017
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2016-000621

THE STATE, ...RESPONDENT,

v.

MAURICE MARSHALL HARRIS, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 27th day of April, 2017.

ANGELA BENNETT
Administrative Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
APR 27 2017
SC Court of Appeals

April 27, 2017

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Maurice Marshall Harris
Appellate Case No. 2016-000621

Dear Mr. Alexander

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Rance Saunders
Assistant Attorney General
S.C. Bar # 100073

RS/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services