

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court

Honorable Robin B. Stilwell, Circuit Court Judge

RECEIVED
DEC 18 2017
SC Court of Appeals

Appellate Case No: 2016-001905

State of South Carolina,

Respondent

v.

Charles Brandon Rampey,

Appellant.

AMENDED INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3-4

STATEMENT OF ISSUES ON APPEAL.....5

STATEMENT OF THE CASE.....6

STANDARD OF REVIEW.....7-10

ARGUMENT

I. THE TRIAL COURT ERRED BY REFUSING TO CORRECT A COERCIVE *ALLEN* CHARGE11-13

II. THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION FOR A DIRECTED VERDICT WHEN THE ONLY EVIDENCE AGAINST APPELLANT WAS THE UNRELAIBLE TESTIMONY OF THE ALLEGED VICTIM.....14-15

III. THE TRIAL COURT ERRED IN CONSOLIDATING THE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE CHARGE WITH THE CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE CHARGE.....16-17

IV. STATEMENTS IN THE SOLICITOR’S CLOSING ARGUMENT WERE IMPROPER AND PREJUDICIAL WHERE SHE VOUCHSAFED THE CREDIBILITY OF THE STATE’S WITNESSES, APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY, AND USED AN IMPERMISSABLE “GOLDEN RULE” ARGUMENT.....18-23

V. THE TRIAL COURT ERRED IN IMPOSING AN UNECESSARILY SEVERE SENTENCE ON APPELLANT SINCE APPELLANT RECEIVED THIRTEEN (13) YEARS, ONLY TWO (2) YEARS BELOW THE MAXIMUM OF FIFTEEN (15) YEARS.....24

CONCLUSION.....25

TABLE OF AUTHORITIES

CASES

<i>Brown v. State</i> , 383 S.C. 506, 680 S.E.2d 909 (2009).....	9
<i>Clark v. Cantrell</i> , 339 S.C. 369, 529 S.E.2d 528 (2000).....	10
<i>Dawson v. State</i> , 352 S.C. 15, 572 S.E.2d 445 (2002).....	7
<i>Green v. State</i> , 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002).....	13
<i>Lowenfield v. Phelps</i> , 484 U.S. 231 (1988).....	7
<i>Matthews v. State</i> , 350 S.C. 272, 565 S.E.2d 766 (2002).....	10, 19
<i>State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989).....	8
<i>State v. Harris</i> , 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009).....	9, 18
<i>State v. Lee-Grigg</i> , 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007).....	7
<i>State v. Jennings</i> , 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011).....	20
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	8
<i>State v. Reed</i> , 332 S.C. 35, 503 S.E.2d 747 (1998).....	10
<i>State v. Rice</i> , 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006).....	8, 9, 16
<i>State v. Scates</i> , 212 S.C. 150, 46 S.E.2d 693 (1948).....	10
<i>State v. Sheldon</i> , 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001).....	10
<i>State v. Smith</i> , 276 S.C. 494, 280 S.E.2d 200 (1981).....	10
<i>State v. Smith</i> , 322 S.C. 107, 470 S.E.2d 364 (1996).....	8
<i>State v. Williams</i> , 386 S.C. 503, 512, 690 S.E.2d 62, 66 (2010).....	13
<i>State v. Williams</i> , 344 S.C. 260, 543 S.E.2d 260 (Ct. App. 2001).....	7
<i>Tappeiner v. State</i> , 416 S.C. 239, 785 S.E.2d 471 (2016).....	9, 18, 20-21
<i>Tucker v. Catoe</i> , 346 S.C. 483, 552 S.E.2d 712 (2001).....	7

Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).....9

Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004).....9

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR BY REFUSING TO CORRECT A COERCIVE *ALLEN* CHARGE?
- II. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE ONLY EVIDENCE AGAINST APPELLANT WAS THE UNRELAIBLE TESTIMONY OF THE ALLEGED VICTIM?
- III. DID THE TRIAL COURT ERR IN CONSOLIDATING THE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE CHARGE WITH THE CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE CHARGE?
- IV. WERE STATEMENTS IN THE SOLICITOR'S CLOSING ARGUMENT IMPROPER AND PREJUDICIAL WHERE SHE VOUCHSAFED THE CREDIBILITY OF THE STATE'S WITNESSES, APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY, AND USED AN IMPERMISSABLE "GOLDEN RULE" ARGUMENT?
- V. DID THE TRIAL COURT ERR IN IMPOSING AN UNECESSARILY SEVERE SENTENCE ON APPELLANT SINCE APPELLANT RECEIVED THIRTEEN (13) YEARS, ONLY TWO (2) YEARS BELOW THE MAXIMUM OF FIFTEEN (15) YEARS?

STATEMENT OF THE CASE

On January 2, 2014, Appellant's stepdaughter made allegations that Appellant had been sexually abusing her from November 21, 2012, to December 31, 2013. Appellant was indicted for criminal sexual conduct ("CSC") with a minor in the second degree in February 2014. In July 19, 2016, the State added the charge of CSC with a minor in the third degree. (See Indictment for Criminal Sexual Conduct with a Minor Third Degree dated July 19, 2016). On August 31, 2016, Appellant had a jury trial before the Honorable Robin B. Stillwell, when the jury rendered a verdict of not guilty for the CSC with a minor in the second degree and guilty for the CSC third degree following an *Allen* charge. (Trial Record pg. 236, line 9 - pg. 238, line 9). Appellant was sentenced to thirteen years in prison. This Appeal followed.

STANDARD OF REVIEW

“An *Allen* charge is an instruction advising deadlocked jurors to have deference to each other's views, that they should listen, with a disposition to be convinced, to each other's argument...” *State v. Lee-Grigg*, 374 S.C. 388, 418, 649 S.E.2d 41, 57 (Ct. App. 2007) (internal citations and punctuation omitted). “Whether an *Allen* charge is unconstitutionally coercive must be judged ‘in its context and under all the circumstances.’” *Tucker v. Catoe*, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001) (citing *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)). An *Allen* charge cannot be directed to the minority voters of the jurors, must be even-handed, and must direct both the majority and the minority to consider the other's views. *Dawson v. State*, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002). South Carolina courts have used various factors to determine whether an *Allen* charge was coercive, including 1) whether the charge spoke specifically to the minority jurors; 2) whether the charge included language indicating the jury “must reach a verdict;” 3) whether there was an inquiry into the jury's numerical division; and 4) the length of deliberations before the charge in addition to the amount of time between the *Allen* charge being given and the return of the verdict. *Tucker* at 494, 552 S.E.2d at 718 (citing *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)); *Dawson* at 20, 572 S.E.2d at 447; *State v. Williams*, 344 S.C. 260, 264, 543 S.E.2d 260, 262 (Ct. App. 2001).

On a motion for a directed verdict, the trial court is to consider the existence or nonexistence of evidence rather than its weight. *Lee-Grigg* at 399, 649 S.E.2d at 47. If the State fails to produce evidence of the offense charged, a defendant is entitled to a directed verdict. *Id.* “When reviewing a denial of a directed verdict, an appellate court views evidence and all reasonable inferences in the light most favorable to the State,” *id.*,

and a case is properly submitted to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.” *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (citing *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)). However, when the State’s evidence merely raises a suspicion of a defendant’s guilt, the trial court should grant a directed verdict in the defendant’s favor. *Lee-Grigg* at 399, 649 S.E.2d at 47. “Suspicion” is defined as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *Id.* An appellate court may reverse the trial court’s denial of a directed verdict motion if there is no evidence to support the court’s ruling. *Id.*

A motion to sever is within the discretion of the trial court, and its ruling will not be disturbed on appeal absent an abuse of the discretion. *State v. Rice*, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006). Several factors are used to analyze a trial court’s decision to consolidate charges. *Id.* at 614, 629 S.E.2d at 395. “Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant’s substantive rights would not be prejudiced.” *Id.*; see also *State v. Smith*, 322 S.C. 107, 109, 470 S.E.2d 364, 365 (1996). By contrast, “offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together.” Charges can be joined and tried together when they (1) arise out of a single chain of circumstances; (2) are proved by the same evidence; (3) are of the

same general nature; and (4) no real right of the defendant has been prejudiced. *Rice* at 615, 629 S.E.2d at 395.

As a rule, “solicitors must confine their closing remarks to the record and the reasonable inferences that may be drawn therefrom.” *Tappeiner v. State*, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016). Solicitors must also “tailor their remarks ‘so as not to appeal to the personal biases of the jury’ or ‘arouse the jurors’ passions or prejudices.” *Id* at 250, 785 S.E.2d at 477 (citing *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). To observe this rule, “solicitors should avoid comments that ask jurors to place themselves in the victim’s—or another party’s—shoes, because those types of comments tend to ‘completely destroy all sense of impartiality of the jurors.’” *Tappeiner* at 250–51, 785 S.E.2d at 477 (citing *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009)). This is otherwise known as a “Golden Rule” Argument and is inappropriate because it “[encourages] the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.” *State v. Harris*, 382 S.C. 107, 120, 674 S.E.2d 532, 539 (Ct. App. 2009). When assessing the appropriateness of a solicitor’s closing remarks, “appellate courts must determine ‘whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.’” *Id* at 251, 785 S.E.2d at 477 (citing *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004)). Solicitor’s also may not vouch for a witness’s credibility because “the assessment of witness credibility is within the exclusive province of the jury” and “doing so improperly invades the province of the jury and places the government’s prestige behind the witness.” *Id* at 250, 785 S.E.2d at 476-77 (internal citations omitted). Additionally, “a solicitor may not vouch for the

credibility of a State's witness based on personal knowledge or other information outside the record” because “[v]ouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution which supports conviction.” *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002).

“[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion.” *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). “On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

The appellate court’s task is to determine whether the trial court abused its discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). Sound judicial discretion must be exercised in every case with a thorough regard for what is just and proper under the circumstances. *State v. Scates*, 212 S.C. 150, 156, 46 S.E.2d 693, 695 (1948).

ARGUMENT

I. THE TRIAL COURT ERRED BY REFUSING TO CORRECT A COERCIVE *ALLEN* CHARGE.

Using the three factors from South Carolina case law, the *Allen* charge the trial court gave in Appellant's case was unconstitutionally coercive because it implied that the jury must return a verdict for the parties. For the first factor inquires whether the charge addressed the minority jurors. In this case, the trial court did not single out the minority jurors with his statements. However, the very nature of an *Allen* charge inherently puts substantial pressure on the jury, and especially the minority jurors, to render a unanimous verdict rather than remain hung. Due to the pressure an *Allen* charge brings, it is vital that the trial court should meticulously avoid any semblance of language which would imply that the jurors must or need to give a verdict on the case.

The second factor addresses this issue by analyzing whether the court's language gave the jury the impression that they must or need to give a verdict. Here, rather than adhere to the general rule against "you must return a verdict" language, the trial court told the jury during the *Allen* charge that "...these parties deserve finality and they deserve a decision." (Trial Record, pg. 237, lines 21-22). Later in the charge, the judge repeated that "these parties deserve a verdict." (T.R., pg. 238, lines 6-7). These phrases are coercive because they imply that the jury must return a verdict because the parties "deserve a verdict." This "deserve" language is far too similar to the problematic "must" language that renders an *Allen* charge unconstitutionally coercive.

Additionally, the trial judge stated to the jury: "If you were to *fail* to come to a verdict in this case, then this case would simply have to be tried again" (emphasis added). (T.R., pg. 237, lines 11-13). This language explicitly communicates to the jurors that

they would fail by not reaching a verdict. This was also coercive because it gave the jurors the impression that they must render a verdict or fail in their capacity as jurors.

Finally, the third factor, which looks to the length of deliberations before and after the charge, supports a finding of coercion. From the record, the jury began deliberations at 11:49 AM. (T.R., pg. 233, lines 5-6). Except for a brief three-minute interval where the jury wished to hear the testimony of the witnesses again, (T.R., pg. 233, lines 13-14; T.R., pg. 235, lines 24-25), the jury deliberated until 2:07 PM when it indicated to the judge it was deadlocked and received the *Allen* charge. (T.R., pg. 236, lines 18-19). Following this, the jury deliberated from 2:11 PM until 3:28 PM when it gave a verdict. (T.R., pg. 238, lines 10-11; T.R., pg. 240, lines 15-16).

The coercive impact of the *Allen* charge can be shown by the fact that the jury struggled for over two hours to reach a verdict, asking for permission to review the testimony of the victim, the examining physician, and the police reports as well as inquiring whether the alleged victim would take a lie detector test. (See Court's Exhibit 1). After the charge was given, the jury returned a verdict in a little over an hour acquitting Appellant of CSC in the second degree but convicting him of CSC in the third. This compromised verdict demonstrates that the jury, influenced by the coercive nature of the *Allen* instruction which told it that "the parties deserved a verdict," decided to "split the baby" between the two charges and give Appellant what seemed the lesser of two evils.

Further supporting this conclusion is the fact that the trial judge admitted that his charge may have been coercive. In the record, when defense counsel objects to the *Allen* charge as given, the trial judge states: "And I do understand that the *Allen* charge may

have been coercive, but I think under the law it's designed to be somewhat coercive to provoke the jury to reconsider everyone's perspective positions." (T.R., pg. 239, lines 10-14). The trial court's reasoning in this statement is incorrect. Under the law, an *Allen* charge is meant to encourage the jurors to consider everyone's views, but South Carolina courts have unanimously expressed that the charge is not to be coercive. *See State v. Williams*, 386 S.C. 503, 512, 690 S.E.2d 62, 66 (2010); *see also Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) ("A trial judge has a duty to urge, but not coerce, a jury to reach a verdict"). The fact that the judge believed that an *Allen* charge is meant to be coercive demonstrates that he did not craft his charge with the intent to urge without coercing. Rather, by the court's own statements, the judge's charge was intended to be coercive and compel the jurors to come to a verdict. This fact, coupled with how the judge twice stated that the "parties deserved a verdict" and the jury's compromise verdict, demonstrates that the *Allen* charge was impermissibly coercive. Due to this coercion, Appellant was denied due process in his trial.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE ONLY EVIDENCE AGAINST APPELLANT WAS THE UNRELAIBLE TESTIMONY OF THE ALLEGED VICTIM.

The trial court also erred by denying Appellant's motion for a directed verdict. A trial court should grant a motion for a directed verdict if the evidence amounts to only a suspicion of the defendant's guilt and the State fails to produce any substantial evidence. Here, there was no substantial evidence of Appellant's guilt.

The sole evidence against Appellant was the accusations of the alleged victim, his stepdaughter. Her testimony implicating Appellant became suspect by the admissions of her cousin, who was the stepdaughter's confidant that the stepdaughter planned to falsely accuse Appellant of sexual assault so she could go live with her grandmother. (T.R. pg. 181, line 12 – pg. 182, line 16). Additionally, the stepdaughter at various stages gave different accounts regarding the incidents of sexual assault as indicated by her testimony at trial, (T.R. pg. 83, line 18 – pg. 87, line 15), and in the police reports, (T.R. pg. 168, line 7 – pg. 169, line 1). These facts corroborate her cousin's admissions and severely undermine the stepdaughter's testimony, rendering her statements an inadequate foundation to deny a motion for directed verdict.

Other than the stepdaughter's testimony, the State presented no direct or circumstantial evidence tending to prove Appellant's guilt. There was no physical evidence of any penetration or injuries from the stepdaughter's medical exam (T.R. pg. 113, line 18 – pg. 115, line 9). The rest of the State's evidence was the testimony of the police officers who interviewed the stepdaughter and a general expert on child abuse.

Thus, the entirety of the State's evidence boiled down to the stepdaughter's testimony, which has been called into question by her cousin's admissions and her own

inconsistencies. Even viewed in the light most favorable to the State, the evidence against Appellant was insubstantial because it consisted solely of an unreliable witness's accusations. Therefore, the trial court erred in denying Appellant's motion for a directed verdict.

III. THE TRIAL COURT ERRED IN CONSOLIDATING THE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE CHARGE WITH THE CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE CHARGE.

The trial court abused its discretion by allowing the charges of CSC in the second degree and CSC in the third degree to be tried together, prejudicing Appellant by encouraging the jury to give a compromised verdict. As indicated by *State v. Rice*, charges can be joined when they (1) arise out of a single chain of circumstances; (2) are proved by the same evidence; (3) are of the same general nature; and (4) no real right of the defendant has been prejudiced. *Rice* at 615, 629 S.E.2d at 395.

Here, incidents leading to the CSC second and third were separate events that were not connected by a single chain of circumstances. The stepdaughter stated that the alleged abuse began when Appellant began fondling her. (T.R. pg. 82, line 18 – pg. 83, line 3). This accusation formed the basis for the CSC third charge. The stepdaughter then said that Appellant penetrated her on an unknown number of later occasions varying from one to several. (T.R. pg. 84, line 23 – pg. 85, line 1). These statements were the basis of the CSC second charge. Thus, Appellant was accused of two separate crimes for two separate series of events.

Additionally, the State's timing indicates that it considered the charges were from two separate incidents. Appellant was originally charged with CSC second in February 2014. (T.R. pg. 246, line 6). On July 19, 2016, the State added the charge of CSC third. (See Indictment for Criminal Sexual Conduct with a Minor Third Degree dated July 19, 2016). The temporal separation between these two charges coupled with the distinct nature of each charge indicates that the State considered these charges to apply to separate and independent incidents. Since both the allegations and the charges

demonstrate that the alleged incidents occurred on separate, unrelated occasions, the decision to join the charges fails on the first prong of the test.

The joinder also fails under the fourth prong of the test. Here, Appellant was substantially prejudiced by the trial court's decision to join the charges together. The State added the CSC third as a safety net a few weeks before trial in case it failed to prove the CSC second, which turned out to be the case. The jury clearly struggled regarding the evidence: it asked to have evidence played back for it (T.R. pg. 233, line 13 – pg. 235, line 25); it wanted the minor victim to take a lie detector test (See Court's Exhibit 1); it remained hung after over two hours of deliberation (T.R. pg. 235, lines 24-25; T.R. pg. 236, lines 18-19); it deliberated for over three and a half hours before rendering a verdict (T.R. pg. 233, lines 5-6; T.R. pg. 240, lines 15-16); and in the end, acquitted Appellant of the CSC second but rendered a guilty verdict for CSC third (T.R. pg. 240, line 23 – pg. 241, line 5). Confronted with its struggles and deadlock, the jury decided to "split the baby" and find Appellant guilty of what it considered to be the lesser of two evils. Thus, Appellant was substantially prejudiced by the two charges being consolidated because it allowed the jury to give a compromised verdict. If the charges had been severed, it is likely that the jury would have found Appellant innocent of both CSC second and CSC third. Thus, Appellant's due process rights were prejudiced by the trial court not severing these charges.

IV. STATEMENTS IN THE SOLICITOR'S CLOSING ARGUMENT WERE IMPROPER AND PREJUDICIAL WHERE SHE VOUCHSAFED THE CREDIBILITY OF THE STATE'S WITNESSES, APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY, AND USED AN IMPERMISSABLE "GOLDEN RULE" ARGUMENT

When making closing arguments, solicitors are not to vouchsafe for a witness's credibility, are not to stray into appeals to a jury's passions or prejudices, nor are they to ask the jurors to place themselves in the position of the victim. *See Tappeiner v. State*, 416 S.C. 239, 785 S.E.2d 471 (2016); *State v. Harris*, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009). Here, State's counsel, Ms. Shannon Odom, did all three.

a. Ms. Odom inappropriately vouched for the State's expert witness's credibility and thus impermissibly bolstered the alleged victim's testimony.

In her closing argument, Ms. Odom stated that the child abuse expert, Ms. Galloway-Williams, and her testimony explained generally why children might delay reporting sexual abuse. (T.R. pg. 124, lines 17-20). However, Ms. Odom went on to say that Ms. Galloway-Williams should be believed because "[s]he's an expert. She's testified before. She testified yesterday. She's done her research. She teaches. She knows about these things." (T.R. pg. 267, lines 5 – 8). These statements indicated to the jury that special weight was to be given to Ms. Galloway-Williams's testimony because of her training and expertise. Since Ms. Galloway-Williams's testimony bolstered the alleged victim's testimony by explaining the discrepancies in her story, it was impermissible for Ms. Odom to comment that the expert was to be believed more than other witnesses due to her qualifications. Appellant was prejudiced by these inappropriate statements because it gave the jury the impression that it should accept Ms.

Galloway-Williams's testimony as a sufficient explanation of the alleged victim's inconsistencies solely because she was an expert.

Later in her argument, Ms. Odom again vouched for both Ms. Galloway-Williams and, indirectly, the victim. Ms. Odom stated that:

Captain Nix said, Ms. Galloway-Williams said, there's people who are specially trained to talk to a child. Because what I'm – the answer I'm wanting or what I'm getting at may be different than what the child is thinking. And it's possible for a child to answer one way and you think they're saying something else....So there's special people at the Julie Valentine Center, that talk to children, get the answers without putting anything in their heads, anything like that without misconstruing something. (T.R. pg. 209, lines 11 – 23).

In these statements, Ms. Odom assured the jury that the testimony of “the special people at the Julie Valentine Center,” i.e. Ms. Galloway-Williams and other unidentified employees, is credible to bring out the truth regarding what the alleged victim testified about. However, this is an inaccurate statement of the evidence since Ms. Galloway-Williams never interviewed or even met the alleged victim in this case.

As the court in *Matthews v. State* stated, a solicitor may not vouch for a witness's credibility based on outside materials. *Matthews* at 276, 565 S.E.2d at 768. Here, not only did Ms. Odom's comments impermissibly bolster Ms. Galloway-Williams's general testimony on child abuse, but they convey the impression that the Julie Valentine Center employees believed the alleged victim's story and had other evidence such as the victim's interview that proved Appellant's culpability. Other than Ms. Galloway-

Williams, no one from the Julie Valentine Center testified regarding the alleged victim's case or her forensic interview. No employee of the Julie Valentine Center testified that they believed the alleged victim's story, and in fact, they are not allowed to. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding that the trial court abused its discretion in allowing a forensic interviewer to vouch for a victim's credibility). To imply otherwise impermissibly gave the jury the impression that the "special people" at the Julie Valentine Center believed the alleged victim's story based on evidence that was never entered at trial. Coupled with the inappropriate bolstering of the victim's testimony, these statements placed the State's prestige behind the witnesses and improperly influenced the jury regarding the witnesses' credibility.

The current case is similar to *Tappeiner v. State* where the South Carolina Supreme Court found that a solicitor who had mistakenly asserted that a rape crisis counselor had personally interviewed the sexual assault victim and that the counselor was someone "who can detect when someone is making something up or if there is nothing there" had strayed into impermissible territory. *Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016). In *Tappeiner*, the rape crisis counselor had never personally interviewed the victim herself and only testified to general child abuse dynamics. *Id.* at 251-52, 785 S.E.2d at 477. The Supreme Court held that "the solicitor's statements were clearly improper" and prejudiced the defendant since there was little evidence against the defendant except for the testimony of the State's witnesses. *Id.* at 251-52, 785 S.E.2d at 477-78. Since the case came down to a "credibility determination between the prosecution's witnesses and the defense's witness" and there was little other evidence against the defendant, the Supreme Court found that the outcome of the trial would have

likely been different but for the solicitor's improper comments. *Id* at 253, 785 S.E.2d at 478.

Here, Ms. Odom's statements were nearly identical to those the Supreme Court took issue with in *Tappeiner*. Ms. Odom implied that Ms. Galloway-Williams personally interviewed the alleged victim when Ms. Galloway-Williams had explicitly stated she did not, (T.R. pg. 122, line 22 – pg. 123, line 6) and that these "special people" at the Julie Valentine Center got truthful answers from the alleged victim. Like *Tappeiner*, these statements impermissibly bolstered the alleged victim's credibility by implying that the Julie Valentine Center employees both believed the victim's story and vouched for its veracity. Like *Tappeiner*, this case boiled down to a credibility determination between the Defense's witnesses and the State's, with little other evidence against Appellant, and like *Tappeiner*, but for the solicitor's inappropriate statements, the outcome of the trial would likely have been different.

b. Ms. Odom impermissibly appealed to the passions and prejudices of the jury during her closing argument, prejudicing Appellant.

Ms. Odom also consistently appealed to the passions and prejudices of the jury during her closing arguments. At the beginning of her argument, Ms. Odom stated how excited the alleged victim was that Appellant was going to be her stepfather because she wanted a dad. (T.R. pg. 206, lines 15 – 22). Ms. Odom then stated a little later that, instead of this happy father-daughter relationship, "[t]his little girl is going through a hell of a time all the way around." (T.R. pg. 207, lines 23-24).

She then proceeded to apologize for how she has been making faces throughout the trial because she wanted to "jump up" to refute defense's cross examination. (T.R.

pg. 207, line 25 – pg. 208, line 11). She also said that she has been wanting to get up and say “Is that the best you got?” in reference to the main defense witness’s testimony. (T.R. pg. 211, line 24 – pg. 212, line 3). Additionally, Ms. Odom posed many rhetorical questions to the jury regarding the alleged victim’s story. For instance, at one point she told the jury: “You think [the victim] has gone through three years of having to retell and talk to people over and over again about this? You think that’s pleasant for her to be on the stand?” (T.R. pg. 212, lines 10 – 13). Later she asked the jury: “You think that’s pleasant, going from one home into another one and you get removed again?” (T.R. pg. 215, lines 20 – 22). At another point, Ms. Odom says that the case is “really sad to think about” and how the alleged victim “didn’t have a fighting chance.” (T.R. pg. 216, lines 7 – 14).

Finally, Ms. Odom rounds out her argument by saying that “[The victim]’s the one that’s having to go through this,” (T.R. pg. 219, line 1), and “she got up there and she poured her heart out.” (T.R. pg. 220, line 25 – pg. 221, line 1). Individually, all these statements are inflammatory appeals to the jury’s passions and prejudices. Collectively, they amounted to unfairness that denied Appellant due process.

c. Ms. Odom used an impermissible “Golden Rule” argument during the trial, encouraging the jurors to place themselves into the alleged victim’s shoes.

Finally, Ms. Odom made an impermissible “Golden Rule” argument to the jury. When trying to refute the Defense’s theory of the case, Ms. Odom told the jury: “They [the Defense] made a big deal about how she [the victim] wanted to live with her grandma. *Well, yeah, don’t you think if you were getting bent over, if you were getting*

groped on all the time that you wouldn't want to live there anymore, that you wouldn't want to be there with a person who's sexually assaulting you. That makes perfect sense. Of course, she wants to go live with her grandma. She's not going to get touched on over there." (T.R. pg. 211, lines 2 – 9) (emphasis added).

Here, Ms. Odom asked the jurors to believe the alleged victim's story because if they were in the victim's shoes, they would want to get away from Appellant too. This argument inappropriately encouraged the jury to decide the case based on its personal interest and bias rather than an impartial verdict based on the evidence, denying Appellant a fair trial.

Collectively, Ms. Odom's arguments that vouched for her witnesses' credibility, appealed to the passions and prejudices of the jury, and asked the jurors to put themselves in the victim's shoes were prejudicial to Appellant. The case was a narrow one, the jury struggling throughout its deliberations and in the end giving a compromise verdict. There is a reasonable likelihood that but for these inappropriate arguments from Ms. Odom, the trial would have gone differently.

V. THE TRIAL COURT ERRED IN IMPOSING AN UNECESSARILY SEVERE SENTENCE ON APPELLANT SINCE APPELLANT RECEIVED THIRTEEN (13) YEARS, ONLY TWO (2) YEARS BELOW THE MAXIMUM OF FIFTEEN (15) YEARS.

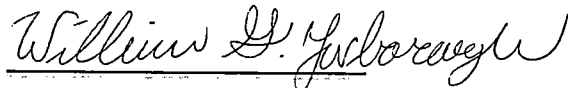
The circuit judge erred in giving Appellant a thirteen (13) year sentence, which was only two (2) years below the maximum of fifteen (15), without taking into account the extenuating circumstances in this case. Prior to this case, Appellant had only two criminal convictions, a public disorderly conduct conviction and a conviction for entering a premises after a warning in a criminal domestic violence charge when he was twenty-one (21). Appellant was a hard-working provider for his family, had recently gained custody of his wife's other children from a previous marriage, and complied with the entire judicial process during the two and a half years this case lasted.

Additionally, Appellant has serious heart issues, so much so that at one point the trial was interrupted when he had chest pains and EMS had to remove him to the hospital. (T.R. pg. 138, line 24 – pg. 140, line 11). The trial court should consider several factors when determining an appropriate sentence for a defendant including the physical condition of the defendant. Here, Appellant has severe medical problems that could be aggravated by an extended stay in prison. Appellant's medical issues, coupled with his lack of criminal history, strong family record, and compliance with the judicial system should have been taken into account when determining his sentence. However, by giving Appellant an unnecessarily severe sentence, the trial court erred by ignoring these mitigating factors and abused its discretion.

CONCLUSION

The trial court erred by refusing to correct its compulsory *Allen* charge and by denying Appellant's directed verdict motion when the state produced no substantial evidence of guilt. Additionally, the trial court erred in by consolidating the CSC second charge with the CSC third charge, encouraging the jury to give a compromised verdict. The solicitor's closing argument was improper by bolstering witnesses, appealing to the jurors' passions and prejudices, and using an impermissible "Golden Rule" argument, prejudicing Appellant. Finally, the trial court erred in not taking into consideration the many mitigating circumstances regarding Appellant's crime and abused its discretion by imposing an unnecessarily severe sentence.

As a result of these errors, Appellant's sentence should be reversed, and the case should be remanded for a new trial.



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RESPECTFULLY SUBMITTED THIS 13th day of December 2017.

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No: 2016-001905

RECEIVED
DEC 18 2017
SC Court of Appeals

State of South Carolina,

Respondent

v.

Charles Brandon Rampey,

Appellant.

PROOF OF SERVICE

I, Sandy Ignacio, certify that on this date, December 14, 2017, I served Appellant's Amended Initial Brief in this action upon: (1) The Honorable Jennie Abbott Kitchings, Clerk of Court of the South Carolina Court of Appeals for filing; (2) William Frederick Schumacher, IV, Assistant Attorney General; (3) Shannon Swords Odom, Assistant Solicitor at Pickens County Solicitor's Office, and (4) Harold P. Welborn, Clerk of Court by depositing it in the U.S. Mail in an envelope with sufficient postage affixed to the following listed addresses:

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Sworn to before me this 14
day of December, 2017

Maui Daulton
Notary Public for South Carolina

My commission expires: 10/9/23

Sandy Igracio

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December 14, 2017

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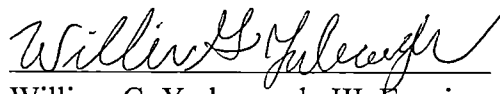
Re: *State v. Charles Brandon Rampey*
(Appellate Case No. 2016-001905)

Dr. Ms. Kitchings,

I am enclosing the Amended Initial Brief of Appellant, which has been redacted according to the *Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E.2d 421 (2014) and pursuant to the Court's order dated December 8, 2017.

Thank you for your attention to this matter. If you should have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

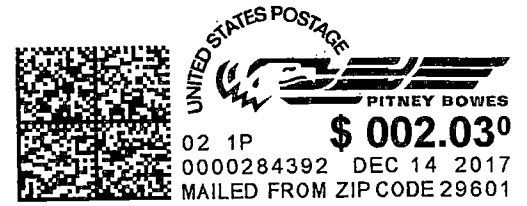

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