STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Deadra Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TELLY DARNELL MCCLAM,

Appellant.

Appellate Case No. 2016-0001793

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

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II.

Appellant's sentence was not cruel and unusual punishment where Appellant kidnapped his girlfriend's teenage daughter from her house, raped her, then kidnapped his girlfriend, bound them both with duct tape, and threatened to kill them several times. Appellant was only released from prison a year earlier for his criminal sexual conduct in the second degree conviction before he committed this new crime spree.

III.

The two strikes provision does not violate the separation of powers doctrine.

STATEMENT OF THE CASE

A jury convicted Appellant McClam of every charge: two counts of criminal sexual conduct in the first degree, two counts of kidnapping, burglary in the first degree, possession of a firearm during the commission of a violent crime, and unlawful possession of a firearm by a felon, at the conclusion of his trial on February 29 through March 3, 2016.

The presiding judge, the Honorable Deadra Jefferson, sentenced McClam to life imprisonment for both counts of criminal sexual conduct in the first degree and for burglary in the first degree. Judge Jefferson sentenced McClam to thirty years imprisonment for kidnapping; and five years imprisonment for each weapons conviction.

STATEMENT OF FACTS

There are two victims in this case, McClam's ex-girlfriend (Mother), who had the audacity to ignore him when he wanted attention, and her daughter (Daughter), whom McClam kidnapped in the early morning hours, raped, and used as a hostage to in turn kidnap Mother.

On October 28, 2013, Daughter was living with her grandparents and one of her sisters. She was only seventeen years old. Her sister was not home and her grandparents left for work at about 4:45 a.m. She locked the door behind her grandparents when they left. She went back to bed. Later, McClam appeared in her room holding a gun and a knife. McClam told her he was taking her to her mother. They drove to Pineville through the woods in his car. R. pp. 11-18.

McClam told Daughter he was waiting outside the house since 8 p.m. the night before. R. pp. 18-19. McClam asked rhetorically, "Your mom think I'm playing?" R. p. 19, lines 14-18. They reached Pineville and parked in a secluded area. They exited the vehicle, and McClam told Daughter he would take her to her mom, but first "I want some pussy." R. p. 21. When Daughter refused, McClam replied, "This is where you're going to die then." R. p. 21, lines 14-18.

Daughter attempted to get away, she jumped in the driver side of the car, but the keys were not in the ignition, she could not drive away. McClam pointed the gun at her window, smiled, and told her the doors do not lock as he opened the door behind her. R. p. 21-22. McClam ordered her out of the car. He demanded Daughter take her pants off and hop on the car hood. When she asked why he was making her do these things, he told her he needed to "get some enjoyment out of this." He made her get off the car to perform oral sex and then made her get back on the car and raped her. R. pp. 22-24. Afterwards, because she was menstruating, McClam provided his own clothes, a pair of khaki pants, out of the trunk of his car for her to get dressed. R. pp. 24-25.

McClam next made Daughter text Mother to say McClam had her and wanted to talk with Mother. This was at 5:15 a.m. R. pp. 28-29. Daughter had good reasons, even before that morning, to fear McClam. McClam became violent with Mother in the past six months. He tried to ram his car into Mother's car while Mother was driving and Victim was in the vehicle. He also tried to rape her sister on another occasion. R. pp. 31-32.

Daughter testified McClam drove and picked Mother up, who got in the car. R. p. 31. They rode to Williamsburg to his uncle's cabin and he broke in. He duct-taped Mother and Daughter. McClam told Mother that Daughter had a good pussy and gave good head. R. p. 51. McClam, holding his gun, also told Mother and Daughter he could kill them and nobody would ever know. R. p. 53.

They left the cabin and he drove them through the woods to McClam's sister's house, where the sister provided them food. R. pp. 54-55. Daughter explained they did not run away because "he had a gun in his pocket and he told us to act normal." R. p. 55, lines 18-19. McClam also took them to his aunt's house so he could get gas money from her. He went to a gas station and made Mother go in and pay while he and Daughter remained in the car. He made Mother call Daughter's grandmother and tell her that McClam would bring them home that night and to not call the police. R. p. 55. Eventually, McClam drove by a police cruiser, which turned around and followed them. McClam fled in a high speed chase. R. pp. 58-59.

Daughter was treated by Nurse Karlayne Dufault. Daughter told Nurse Dufault that she was sexually assaulted in Pineville on top of a car at about five to six a.m. R. pp. 270-73. The DNA recovered from the vaginal and rectal swabs from Victim were a one in 2.2 billion match with McClam's DNA. R. p. 349. The serologist who testified immediately before the DNA analyst

testified that p30, a protein consistent with seminal fluid, was found in the vaginal and rectal areas. She further explained that seminal fluid ejaculated inside the vagina will be pulled by gravity and drain in the rectal area, which would explain why semen was likely still present in the rectal area at the time of the swabs. R. p. 329-30.

Daughter's grandmother (Grandmother) testified that she left for work at 4:45 a.m., and Daughter locked the door behind her. While at work, her son called to tell her that McClam had Daughter, which upset Grandmother. She testified when she got home, she could see damage to the door to the house. R. pp. 96-99. On cross examination, Grandmother testified that Mother called to say she was okay, that McClam just wanted to talk to her, but that McClam said to not call the cops. R. p. 100.

Mother's brother, Christopher (Brother) testified that Mother and two of her daughers were living with him and his family. She recently moved out from McClam's house. Brother testified that Daughter called and asked to speak to Mother. She said it was urgent. She did not sound right and he noticed the number Daughter was calling from was McClam's phone number. The call ended immediately when Brother asked if McClam was there. He immediately left work and went home. Later McClam called to try and assure Brother everything was alright, he just wanted to talk to Mother. Brother told McClam to bring them back. Mother later called Brother to say don't call the police. R. pp. 102-06.

Mother testified she lived with McClam until about a week before the kidnappings. When she left McClam, he did not like it. She received numerous texts and phone calls from McClam, but she ignored them. But she could not ignore McClam once he had her daughter. Mother gave in to McClam's demands to get in the car with McClam and her daughter because she was scared for her

daughter. Mother was scared for Daughter because McClam physically harmed Mother before. R. pp. 134-38.

When she got inside the car, McClam claimed he just wanted to talk to her, but his actions told a different story: he pulled his gun from under his right leg and pointed out his knife kept on the driver door panel. R. p. 139. They drove to Williamsburg County, and he broke into a cabin using a hammer. He took the batteries out of her phone based on the belief that her phone could not be tracked. Inside the cabin, he taped her and Daughter up with duct tape. He parked the car across the street so it could not be seen. R. pp. 142-47.

McClam told them he could kill them right now and no one would ever know. He told Mother that Daughter, "got good pussy and good head," which is how she learned that McClam raped her daughter. R. p. 148. Mother testified Daughter was wearing McClam's pants. R. p. 156.

McClam took the duct tape off and they left. They went to his sister's house. Mother explained they did not try to escape at his sister's house because she knew what McClam was capable of doing. R. pp. 149-52. They went to his aunt's house so he could get gas money. It was in a remote area. They went to the gas station next. She did not tell anyone because she was too afraid. R. pp. 153-55.

At one point, McClam and Mother left Daughter and walked into the woods so Mother could talk to him. R. pp. 155-56. McClam pointed the gun at her and said, "This is what I brought you out for." She begged and pleaded for her life, so McClam said he would kill Daughter instead, causing Mother plead for her daughter's life instead. R. p. 156, lines 3-9.

McClam changed plans. He would take Daughter back, but he would take Mother and run. As they drove, McClam's cousin flagged them down and told them an Amber alert was issued for

them. McClam turned around and headed back for the woods when a police car passed them, turned around, and gave chase. Mother testified McClam drove about ninety miles per hour. McClam stopped at the cabin, told them to stop the police, and he ran into the woods. R. pp. 157-61

Mother testified the only reason she got in the car with McClam was because he had her daughter. She never felt free to leave because he hurt her before. R. pp. 165-66. She later testified on redirect she did not feel she had an opportunity to run away, explaining, "No I didn't, because he was only around his family and around a bunch of wooded area. Where was I supposed to go?" R. p. 185, lines 4-11.

Law enforcement found pry marks on the doorway at the grandparents' residence. They also put out an Amber alert for McClam's car. When law enforcement found the car, McClam led them on a high speed chase, abandoned the car and his victims, and fled into the woods. A perimeter was set up to search for McClam. R. pp. 79-83. The victims left behind were upset and crying. R. p. 211.

A deer camera belonging to Kevin Crout captured McClam on camera. He did not have permission to go on Crout's property. R. pp. 187-90. Law enforcement collected duct tape from the cabin. They recovered a knife from McClam's car and duct tape from the trunk. R. pp. 228-29. McClam's fingerprints were on the duct tape. R. p. 387; p. 394.

Some texts on McClam's phone were extracted and published for the jury. They include him ranting about Mother not calling him back and ignoring him. Then another text from McClam's phone consists of the sender identifying herself as Daughter and saying McClam has her and stating, "He said for you not to call the police cause all he wants to do is talk to you." R. pp. 117-19.

Bloodhounds from SLED and other dog units from various agencies were involved in the

manhunt for McClam. Law enforcement picked up a scent at McClam's mother's house, after someone knocked on the window. They closed the perimeter, strategically forcing McClam out of the woods to cross the railroad tracks. They caught him, ordered him to the ground, and he complied. Yet he resisted as they tried to get his arms behind his back. He resisted, perhaps because he did not want to go to jail. R. pp. 238-43; p. 246. It is true, as McClam points out, that the gun was not found on McClam's person – **the gun was found two feet away from where McClam lay** in the remote woods. R. p. 244. The parties stipulated that McClam was previously convicted of a felony. R. p. 448.

ARGUMENT

I.

Because appellant failed to argue grounds at trial to support the motion for directed verdict, the issue should not be reviewed on appeal. Further, Appellant failed to support specific arguments with authority or citation to the record in his brief and therefore, the conclusory arguments should not be reviewed on appeal. Evidence, in the light most favorable to the State, was sufficient to survive the directed verdict motion for each charge.

First, none of the directed verdict arguments are preserved for review because McClam did not provide any grounds to support the motion for a directed verdict. "In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review." State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999). Merely moving for a directed verdict without stating any grounds is insufficient to preserve a directed verdict issue for review. Id. Defense counsel made only a conclusory argument that the State's evidence did not meet its burden beyond a reasonable doubt. R. p. 449, lines 6-17. That argument preserves no issues concerning the denial of the directed verdict motion for this Court's review.

Second, beyond cases cited generally for the directed verdict standard, McClam fails to cite any cases to support his arguments. He further fails to provide this Court with a statement of facts, a factual summary, or citation to a single fact to support his arguments. He paints with the broadest of brushes to claim, "The State's evidence failed to show that Appellant was guilty of each material element of the crimes he was charged with." Br. of App. pp. 7-8. These arguments are far too conclusory for review and the State respectfully submits this Court should decline to do so. Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001)

("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

As to the substantive arguments, when considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).

McClam dedicates two sentences in his brief to the burglary charge, arguing, "The State did not show evidence to establish that Appellant entered a dwelling with an intent to commit a crime therein. The State further failed to adequately establish that any of the aggravating factors required for first degree burglary were present at the time Appellant entered a dwelling." Br. of App. p. 8. No facts are cited in this claim. No authority is provided for this Court to support this position. Accordingly, this Court should not consider this argument on appeal. State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding the argument was so conclusory that it was deemed abandoned on appeal).

As to the merits, ample evidence existed that McClam broke into the house without consent

and with intent to commit a crime therein. A defendant's actions after entering the dwelling may be used to determine his intent to commit a crime in the dwelling. State v. Pickney, 339 S.C. 346, 529 S.E.2d 526 (2000). "Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct." State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971). In Haney, the defendants broke into a school. Haney held evidence of intent to commit a crime was sufficient because the defendant's broke into a room where movie projectors and other visual aids were kept. They took flight upon the arrival of policeman. "[W]hether a defendant possessed the requisite intent at the time the crime was committed is typically a question for jury determination because, without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct." State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012).

The evidence showed that McClam forcefully entered the home without consent. He hid and waited for the grandparents to leave. He came into Daughter's room in the early morning hours holding a knife and a gun. He told her to come with him. R. pp. 16-12. So evidence shows McClam intended to commit a crime therein by the fact that he kidnapped Daughter from her room while armed in the early morning hours after he broke in. Since she was sleeping at the house and lived with three other people, the house was obviously a dwelling. S.C. Code § 16-11-10 (defining a "dwelling" for purposes of the crimes of burglary and arson as "any house . . . in which there sleeps a . . . person who lodges there . . . ."). Evidence also supports that the entry was without consent, because evidence establishes he broke into the residence. State v. Clamp, 225 S.C. 89, 99, 80 S.E.2d 918, 922 (1954) ("A breaking . . . may be any act of physical force, however slight, whereby any obstruction to entering is forcibly removed.").

The second sentence of the two-sentence argument alleges the aggravating circumstances of

first degree burglary were not proven. Under S.C. Code §16-11-311, aggravating circumstances for first degree burglary includes whether "in effecting entry or while in the dwelling" the burglar "is armed with a deadly weapon" or "displays what is or appears to be a knife, pistol, revolver, . . . or other firearm." S.C. Code §16-11-311(A)(1)(a)(d). Daughter testified McClam came into her room with a gun and a knife. She knew this because she saw them. Accordingly, the trial court did not err in denying the directed verdict motion for burglary.

As to the charge of kidnapping, McClam's argument, in its entirety, is as follows: "Furthermore, the State failed to adequately establish that Appellant was guilty of kidnapping when there were several opportunities for the alleged victims to leave had they had the desire to do so." Since McClam fails to cite any authority that the State must prove the victims attempted to escape, this Court should refrain from reviewing the issue. Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

However, there is no such element that a kidnapping victim must attempt to leave confinement. Under S.C. Code §16-3-910: "Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of [kidnapping]." Kidnapping requires proof of an unlawful act that may take the form of seizure, confinement, inveiglement, decoy, kidnapping, abduction, or carrying away. State v. East, 353 S.C. 634, 578 S.E.2d 748 (Ct. App. 2003). Kidnapping is a continuous offense commencing when the victim is wrongly deprived of freedom and continuing until freedom is restored. State v. Tucker, 334 S.C. 1, 13, 512, S.E.2d 99, 105 (1999).

Restraint of a victim during another crime still constitutes kidnapping, even if incidental to the commission of that other crime. State v. Hall, 280 S.C. 74, 77-78, 310 S.E.2d 429, 431 (1983) (finding defendant's restraint of rape victim's liberty during sexual assaults constituted a separate crime of kidnapping). In Hall, the defendant held victim at knife-point, led her to a chair by a pool to force her to perform oral sex, and then led her to a diving board and then an alley for further sexual assaults on the victim. The Supreme Court found evidence showed the defendant restrained the victim through use of a deadly weapon and the kidnapping offense continued until she was released forty-five minutes later. Id. at 78, 310 S.E.2d at 431.

In the instant case, McClam's restraint of daughter began when he led her away while armed from her bedroom, her house, into his car, and continued during the sexual assault when she was forced upon the hood of his car so he could rape her. Contrary to his argument, she attempted to escape but discovered the keys were not left in the ignition. McClam's DNA was found on the rape kit swabs, which corroborates her testimony, not that corroboration was necessary to clear the directed verdict standard. The restraint upon Daughter continued while he further abducted Mother under the pretext of wanting to just talk to Mother. McClam held Daughter hostage to coerce Mother into his car. Mother was abducted herself at this point under the threat of force when McClam showed her his gun. At this point, both Mother and Daughter are simultaneously restrained of their liberty. They were physically restrained when he bound them with duct tape in the cabin. This evidence alone supports both counts of kidnapping. See Tucker at 13-14, 512 S.E.2d at 105 (rejecting argument that the prosecution failed to provide sufficient evidence supporting kidnapping as an aggravating circumstance in death penalty trial: "Here, [the victim] was unquestionably deprived of her freedom once appellant bound her with the duct tape. . . . [W]e have held restraint

constitutes kidnapping within the meaning of section 16-3-910 . . . ."). Their testimony in this regard was corroborated by the fingerprints he left behind on the duct tape. Several times he pointed his gun or threatened their lives to continue this unlawful restraint. It is frankly hard to understand how McClam is earnestly asserting that evidence was insufficient to support the verdict on either charge and his authority-free and fact-free argument fails to illuminate his thoughts.

McClam further argues the State failed to prove he possessed a firearm because "he had no gun on his person when the police arrested him." Br. of App. p. 8. It is true he did not have the gun on his person – it was two feet away on the ground where he lay at the end of his six hour flight through the woods. McClam was convicted of two weapons charges, possession of a firearm or knife during the commission of a violent crime under S.C. Code §16-23-490, and possession of a firearm by a person convicted of a violent offense under S.C. Code § 16-23-500.

A defendant is guilty under section 16-23-490 if the defendant "is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60." Criminal sexual conduct in the first degree, kidnapping, and burglary in the first degree all are violent crimes enumerated in S.C. Code § 16-1-60; however the trial court instructed that kidnapping was qualifying offense and did not instruct the other offenses were likewise violent offenses. R. p. 561. McClam displayed his gun and knife in Daughter's bedroom. He pointed the gun at Daughter to force her out of the car and on to the hood of the car where he raped her. He displayed his gun to Mother as soon as she got in his car. He pointed the gun at them during the kidnapping. He was in possession of the gun as testified to by both Mother and Daughter. When apprehended, the gun was found within two feet of where he lay. Accordingly, he displayed both the

gun and the knife during the commission of a violent crime based on Mother and Daughter's testimony. State v. Buckmon, 347 S.C. 316, 324 n.6, 555 S.E.2d 402, 406 n.6 (2001) (finding the credibility of a witness goes to the weight of the evidence and is not a consideration by the trial court in determining whether to grant a directed verdict). Because Mother and Daughter observed his possession of the gun and testified that he displayed both the gun and the knife, evidence supported the jury's verdict.

Section 16-23-500 proscribes possession of a firearm by a person convicted of a violent crime under section 16-1-60 that is a felony. The parties stipulated that McClam was convicted of a felony under section 16-1-60. R. p. 448. As discussed above, direct evidence was presented that he possessed a firearm because Mother and Daughter testified they observed his actual possession of the firearm. Further, the State presented evidence of his constructive possession of a firearm because of testimony establishing that the gun was found two feet away from McClam when he was arrested in the deep woods. State v. Jennings, 335 S.C. 82, 515 S.E.2d 107 (1999) (finding constructive possession sufficient to prove defendant guilty of possession of a weapon during a violent crime).

McClam does not make any specific arguments that the evidence was insufficient to prove criminal sexual conduct in the first degree. Criminal sexual misconduct in the first degree is committed "if the actor engages in sexual battery with the victim" and the actor either "uses aggravated force to commit the battery" or "[t]he victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, . . . [or] burglary . . . ." S.C. Code §16-3-652 (1)(a)(b). In the instant case, Daughter testified that McClam had intercourse with her and forced her to perform fellatio, both acts meet the definition of a sexual battery. S.C. Code §16-3-651(h). These acts were committed while she was kidnapped and was the

victim of McClam's burglary, providing sufficient evidence of aggravation under section 16-3-652 (1)(b). "Aggravated force" includes the threat of the use of deadly weapon. S.C. Code § 16-3-651(c). Because Daughter testified he pointed the gun at her, demanded she get out of the car, ordered her to take off her pants, get on the car, and then committed the sexual batteries, the evidence is sufficient under section 16-3-652(1)(a) for the determination to be made by the jury.

Accordingly, the trial court did not err in denying the motion for directed verdict as to any of the charges. Therefore, this Court should affirm all the convictions.

II.

Appellant's sentence was not cruel and unusual punishment where Appellant kidnapped his girlfriend's teenage daughter from her house, raped her, then kidnapped his girlfriend, bound them both with duct tape, and threatened to kill them several times. Appellant was only released from prison a year earlier for his criminal sexual conduct in the second degree conviction before he committed this new crime spree.

Appellant is simply unfit for society, and evolving standards of decency, particularly as to this society's increasing intolerance for sexual assaults on women, should require life imprisonment. McClam's prior record includes a most serious offense, criminal sexual conduct in the second degree. Appellant was only released from prison in 2012 before he committed these several crimes in 2013 that would constitute his second most serious offense. He raped his girlfriend's seventeen-year-old daughter after kidnapping her from her grandparent's house. Using the daughter as a hostage, he forced the girlfriend in his vehicle. He later bound both of them and threatened to kill them. It is conjecture at best to hope he would have eventually released them had not the manhunt for this narcissistic terror resulted in a high speed chase, ultimately forcing his subsequent flight into the cover of the woods. The State was willing to offer what seems like a woefully inadequate sentence range for the crimes so the victims would not have to go through the ordeal of a trial and relive the most horrible moments of their lives while facing the scorching criticism of a defense attorney seeking to insinuate the absurd, that the nightmare was made up. However, that prior rejected offer does not make the life sentence that McClam received unconstitutional.

The South Carolina Supreme Court held the two strikes provision on of S.C. Code §17-25-45 did not constitute cruel and unusual punishment in State v. White, 349 S.C. 33, 562 S.E.2d 305 (2002). In that case, the Court noted:

> White has two prior convictions for the most serious offense of armed robbery. Further, notwithstanding the motel room White entered was unoccupied, the crime he committed is first-degree burglary, a most serious offense. Given that a life sentence is possible for even first offense first-degree burglary convictions . . . a life sentence without parole for a recidivist with one or more previous convictions of most serious offenses does not constitute cruel and unusual punishment.

Id. at 37, 562 S.E.2d at 306-07. Because first degree burglary carries a potential life sentence, even for someone with no criminal record, it was not error to sentence the incorrigible appellant in the instant case to life without parole.

McClam's rampage could be broken down into several events that individually are sufficiently egregious in isolation to warrant the life without parole sentence: (1) breaking into a house with gun and knife in hand to kidnap a teenager; (2) raping a teenage girl at gunpoint; (3) and kidnapping not one, but two people, then binding and threatening to kill them while brandishing a gun. Yet he committed all these acts together in the same campaign of terror. Accordingly, the trial court did not err in sentencing McClam to life imprisonment.

III.

The two strikes provision does not violate the separation of powers doctrine.

McClam argues the two strikes provision violates the separation of powers. The trial court ruled the statute does not violate the separation of powers, citing State v. Standard, 351 S.C. 199, 569 S.E.2d 325 (2002). In Standard, the South Carolina Supreme Court rejected the separation of powers argument by the defendant who objected to his life without parole sentence under S.C. Code §17-25-45. The Supreme Court noted that the penalty assessed for a particular offense is legislative prerogative and rejected the claim. Id. at 203, 569 S.E.2d at 327. Because the legislature is empowered to find that someone who commits a second most serious offense deserves life imprisonment; for example, someone who breaks into a teenager's home, rapes her, holds her hostage to kidnap her mother, binds them both, and threatens to kill them, the trial court did not err in finding §17-25-45 was not unconstitutional.

However, this Court should not review this issue because beyond citing the statute itself, McClam fails to cite any authority to support his constitutional claim. State v. Colf, 332 S.C. 313, 332, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory two-paragraph argument citing no authority other than an evidentiary rule was deemed abandoned on appeal).

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

Respectfully submitted,

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January 16, 2018