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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Honorable Robin B. Stilwell, Circuit Court Judge

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Appellate Case No. 2016-001905

THE STATE, ...RESPONDENT,

v.

CHARLES BRANDON RAMPEY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial judge did not err in denying Appellant's request to modify her Allen charge because the instruction was not unconstitutionally coercive and, even if the instruction was improper, any alleged error is harmless because the trial judge polled the jurors to confirm the jurors did not feel coerced into reaching a verdict by compromising their principles or positions.

II. The trial judge properly denied Appellant's motion for a directed verdict because the State provided direct evidence of his guilt.

III. The trial judge properly allowed the State to present evidence of and pursue charges for both criminal sexual conduct in the second degree and criminal sexual conduct in the third degree because Appellant failed to request separate trials for the charges. Regardless, the charges were correctly tried together because the evidence supporting both indicated: they arose out of a single chain of circumstances; were proven by the same evidence; were of the same general nature; and Appellant was not unfairly prejudiced.

IV. Appellant failed to preserve for appellate review any issues concerning the State's alleged improper bolstering, vouching, or alleged "golden rule" violations because he did not object to these comments at trial. Regardless, these statements were not improper comments and were only made because Appellant "opened the door" to these issues by raising them during his closing argument.

V. The trial judge did not abuse her discretion in sentencing Appellant to thirteen years' incarceration where the sentence was within the statutory range, Appellant had prior convictions and pending charges for similar acts, and Appellant was convicted of a serious offense.

STATEMENT OF THE CASE

In February of 2014, the Aiken County Grand Jury indicted Appellant for second-degree criminal sexual conduct (CSC) with a minor. On July 19, 2006, the Grand Jury issued a separate indictment for third-degree CSC with a minor. On August 31, 2016, Appellant proceeded to a jury trial before the Honorable Robin B. Stilwell. Thomas Boggs, Esquire, represented Appellant; assistant solicitor Shannon Odom, Esquire, represented the State. The jury acquitted Appellant of second-degree CSC but found her guilty of the third-degree charge. The trial judge sentenced Appellant to thirteen years' incarceration.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Trial Testimony

On January 2, 2014, Deputy Van Massingill of the Pickens County Sheriff's Office went to Easley Baptist Hospital to investigate a report claiming Victim had been sexually abused by Appellant, her stepfather. Deputy Massingill met with Victim and her grandmother, at which time the former complained of multiple instances of abuse occurring within the previous year at two separate locations in Pickens County. (R.p.44, line 18–R.p.46, lines 10).

Kathryn Hinton, Victim's maternal grandmother, recalled Appellant began dating Victim's mother (Mother) sometime between 2008 and 2009, after which Victim, Mother, and her younger siblings moved in with Appellant and his two children. Victim and her sister often stayed with Hinton while Mother worked, but often Appellant would call Hinton and arrange to pick the children up for the day. On January 2, 2014, Appellant made one such call and arranged with Hinton to pick the children up shortly thereafter. When Hinton informed Victim of the arrangement, Victim started crying and informed her she had been abused by Appellant. (R.p.48, line 25–R.p.53, line 9).

After Victim reported her abuse, she moved in with Hinton and her husband. Victim lived with the couple for "a year or two" before moving in with her sister's grandmother and later a family friend. Hinton had a close relationship with Victim, claiming she "raised" her, and recalled Victim had started asking to move in with her sometime during the fall of 2013. However, Mother refused to agree with such an arrangement. (R.p.53, line 18–R.p.56, line 24).

When Mother and Appellant first started dating, she was excited to have him in her life. Victim had never known her biological father and hoped Appellant could fulfill that role for her. Within a few years, that dynamic changed. Victim testified she was 11 or 12 when the Appellant began abusing her, sometime around her birthday in June of 2013. At that time, she spent most

of her days either with Appellant and her siblings at home or with Hinton at her house. The first incident involved Appellant summoning Victim into a room and forcing her to touch his penis. In another incident, Appellant forced her into a bathroom and forced her to touch his penis with his hands, perform oral sex, and then took her to the bedroom and anally raped her. When Victim told him to stop or tried to scream, Appellant covered her mouth and threatened to isolate her from her grandmother, take her possessions, and insert his penis deeper into her anus. This assault lasted approximately two hours. On another occasion, Appellant pulled down her pants and performed oral sex. (R.p.58, line 14–R.p.67, line 4).

Around autumn of 2013, the family moved to a new home. However, the abuse continued. Victim recalled two specific incidents of abuse around Christmas. During the first instance, the family had just purchased a Christmas tree and Appellant and Victim brought it into the house. When Victim went outside, Appellant followed her to the screened-in porch and forced her to engage in both oral and anal sex. The second assault occurred on Christmas day when Appellant took Victim into the bathroom, put lotion on her hands, and forced her to manually stimulate his penis until he ejaculated. On both occasions, Mother and the other children were elsewhere in or around the home. (R.p.67, line 5–R.p.70, line 2).

Victim recalled reaching her breaking point with the abuse on January 2, 2014 after realizing Appellant would likely abuse her later that day. She remembered speaking to police officers that day and in the following weeks, detailing many of the incidents of abuse which occurred. (R.p.70, line 3–R.p.72, line 18).

On cross-examination, trial counsel questioned Victim about: (1) her smiling in pictures taken around Christmas of 2013; (2) her desire to live with Hinton; (3) Victim's disagreements with Mother; (4) Mother's divided attention among the children living with her; (5) Victim's

friendship with Appellant's young niece (Niece), Victim's best friend at the time she reported the abuse. Trial counsel's questions implied: (1) Victim fabricated the abuse she reported to police to live with Hinton, a less-restrictive parental figure who could provide her with more attention; (2) Victim told Niece she wished to fabricate the charges to live with Hinton; (3) each time Victim met with investigators, she recalled additional instances of abuse; (4) the details of the assaults differed in Victim's trial testimony from what she reported to police, namely that Victim reported penetration of her "privates" (vagina) instead of her anus; (5) Victim's medical exam, performed at the end of January 2014, did not uncover physical evidence of abuse; (6) Appellant dyed her hair, wore different clothes, and stopped interacting with Niece after moving in with Hinton. Victim conceded she may have said "private" instead of "butt" due to her young age and confusion, but definitely intended to communicate she had anal sex, not vaginal sex, with Appellant. Trial counsel also questioned Victim about her meeting with Sarah Davis, a counselor at the Julie Valentine Center. (R.p.73, line 15–R.p.96, line 19).

Dr. Mary Crosswell, the child abuse pediatrician who evaluated Victim for physical indicators of abuse also testified. She failed to find any physical evidence of sexual assault in either Victim's vagina or anus but noted such findings were not uncommon: less than three percent of exams performed on child sexual abuse victims uncover physical evidence of such sexual assault due to the physical resilience and quick healing possessed by children. (R.p.99, line 17–R.p.115, line 13).

Dr. Shauna Galloway-Williams, executive director of the Julie Valentine Center, testified as an expert in child sexual abuse dynamics and disclosure. She explained the Julie Valentine Center is a nonprofit organization providing prevention, education, crisis intervention, advocacy, and therapeutic services for abused children. She clarified she never talked to Victim or

reviewed any of the police reports associated with her case: her sole purpose at the trial was to "provide education and information about the dynamics of child sexual abuse . . . as a blind expert witness." (R.p.116, line 8–R.p.124, line 16).

Dr. Galloway-Williams testified various factors differentiate cases of child sexual abuse from those of adults. She explained the concept of "delayed disclosure," which means children often will not disclose abuse right away, waiting hours, days, weeks, years, or sometimes never disclosing received abuse. Abused children fear the consequences of reporting, often believing they are somehow at fault and will be punished for the abuse. Additionally, reporting is complicated when the abuser often has a close relationship with the abused, because children may have parts of a relationship with the abuser they actually appreciate and enjoy, so they do not want to lose those parts of the relationship or act in a way they feel might hurt the abuser. Abusers are often the individuals who give abused children the most attention and affection they receive from anyone, so loss of such a relationship is a source of great anxiety for those children. If the abuser is a member of the family, the prospect of destroying the family only deepens such anxiety. Finally, children often lack the vocabulary or conceptual understanding of what happened to them or communicate these events to others because they have not been educated about abuse or their reproductive organs. (R.p.125, line 9–R.p.138, line 23).

Dr. Galloway-Williams also explained the potential impacts of abuse on victims. Abused children may act out, or drastically change their appearance and behavior. They may cut ties with friends and family, or become promiscuous because sexual behavior was introduced and normalized at a young age. (R.p.141, line 13–R.p.142, line 9).

On cross-examination, Dr. Galloway-Williams reiterated she never met with Victim or reviewed any reports associated with her case and that her testimony was limited to the general dynamics and behaviors of abused children. (R.p.142, line 14–R.p.143, line 3).

Captain Marvin Nix was an investigator with the special victims unit of the Pickens County Sheriff's Office at the time Victim reported her abuse. During their initial meeting, Victim appeared shy and told him the abuse started when she was 11 years old. The abuse occurred at both homes in which the family resided during that period. Based on this information, Captain Nix referred Victim to the Julie Valentine Center so she could meet with specialists trained to interview and provide services for child victims of sexual abuse. Captain Nix testified he met with Victim on several occasions, but during all their interviews Victim provided information which was fairly consistent throughout. However, Captain Nix did recall that Victim provided some additional information in their subsequent meetings and admitted he may have written in his notes that Victim's recollection was "different" than what she initially provided.[1] (R.p.159, line 1–R.p.169, line 22).

At the conclusion of the State's case, trial counsel moved for a directed verdict based on the State's alleged failure to provide sufficient evidence of guilt. The trial judge denied the motion, finding the State had presented enough evidence of guilt to justify his ruling. (R.p.172, line 13–R.p.173, line 13).

Niece, the sole defense witness, testified she and Victim were very close before the latter reported Appellant's sexual abuse, viewing Victim like a sister. During the fall of 2013, Victim told Niece she wanted to live with Hinton because she believed Hinton would have more lax

[1] On cross-examination, trial counsel claimed Captain Nix wrote in his notes that Victim's initial recollections of the abuse "differ[ed]" from when told him in later meetings. However, trial counsel failed to submit these notes into evidence. See Ex parte Morris, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence.")

rules and she "got everything she wanted" when visiting Hinton. Victim asked Mother whether she could move in with Hinton and Mother rejected the idea. On December 26, 2013, Victim and Niece were playing in the latter's room when Victim stated she "was thinking" of telling a lie about Appellant in order to convince Mother to allow her to move in with Hinton. She believed Victim would go through with the plan because Victim usually did the things she claimed she would but was too scared to tell anyone. Niece did not tell anyone about the conversation until after Appellant was arrested and released on bond. (R.p.176, line 15–R.p.184, line 9).

On cross-examination, Niece stated she was 12 years old and was 9 or 10 at the time Victim reported the crime. She had not seen Victim since the latter reported the abuse, but losing contact with her "sister" did not bother or affect her. She claimed she first told her mother about Victim's December 26, 2013 statements in the summer of 2013. When the State informed Niece summer of 2013 was inconsistent with the date Niece claimed Victim made the statements, she claimed she did not "know when this happened" and did not know when Appellant was released on bond, which the State pointed out was February 26, 2014. Niece never spoke with law enforcement about this information and was unaware her mother spoke with law enforcement numerous times and never informed them of the alleged conversation between Victim and Niece. (R.p.184, line 17–R.p.188, line 16).

Closing Statements

During its closing, the State explained the difference between the second and third degree CSC with a minor charges, stating the latter charge applied to the "touching, groping, [and] fondling" occurring between Appellant and Victim, while the former applied to Appellant's

sexual battery of Victim's body, including the anal intercourse and cunnilingus. (R.p.191, line 16–R.p.194, line 10).

During his closing, trial counsel focused his efforts on discrediting Victim's testimony. He claimed Victim fabricated the reports of assault so she could live with Hinton, whom he claimed was a less-strict parental figure. He supported his allegations by pointing out what he claimed were inconsistencies with Victim's testimony; her gradual reveal of additional incidents of assault over successive police interviews. He also claimed Victim originally reported vaginal penetration but changed her story to anal intercourse over the course of her interviews. Trial counsel continued to discuss other evidence he felt disproved Victim's allegations: (1) Victim appeared joyful in pictures taken on Christmas Day 2013; (2) Victim's medical examination failed to uncover physical evidence of abuse; (3) Niece's testimony. (R.p.194, line 16–R.p.206, line 11).

Eventually, trial counsel discussed Dr. Galloway-Williams's testimony, stating:

> I'm not going to go through the testimony of all the witnesses, but I was a little bit thrown because I never really grasped the last lady that testified yesterday, can't remember her name. I'm not even sure why she was here. [She] never talked to [Victim]. [She] never ready any reports on [Victim]. [She] never [saw] anything related to [Victim]. She gave just a boilerplate testimony. . . .
>
> If that lady - - again, I can't remember her name, I apologize for that. But if she wanted to tie this in, all her dynamics, I think is what she called them, to [Victim], why didn't she interview [Victim]? Why didn't she, at least, read the reports on [Victim]? So I submit her testimony – I mean, it took up about 30 minutes, but other than that, it didn't do anybody any good."

(R.p.202, line 16–R.p.203, line 15).

He also discussed the plausibility of Victim's assaults occurring while other people were in the vicinity of the home, stating:

> The other thing that bothered me so much in [Victim]'s testimony [were] her assertions that on numerous occasions she was sexually assaulted with multiple

> people in the house. Where were your siblings? They were running around. Where was your momma? Oh, she was vacuuming. Common sense. Common sense. Oh, he assaulted me Christmas morning before we went to my aunt's with all these people right there. Do you believe that? Does your common sense tell you to believe that? That's up to you. You can put whatever weight you want to in any of this testimony. Is that common sense? Does the story make sense? No. Does her story support any piece of evidence? [The medical evidence] says no.

(R.p.205, lines 8–20).

In its reply, the State sought to correct trial counsel's misrepresentations and summarize the evidence presented. The State argued trial counsel's closing was not in itself evidence nor based on the evidence presented at trial. It stated:

> One thing I don't want you to get confused about is any of the testimony that came from the stand. Man, oh, man. Let me just go ahead and apologize to you right now. I've been told all my life that whatever I'm thinking is written on my face. So if I made any kind of faces or looked a little flustered during the trial, I'm sorry, because I can't hide anything. . . .
>
> So I'm sorry if I've made any kind of face that offended you, it's been all I could do not to jump up and say that's not what they said. That's not the testimony. No. Listen to it. Play it back if you need to. Anything I say, anything [trial counsel] says, not testimony, not evidence. The [trial] [j]udge told you. When I objected and said he's misstating that, the [trial] [j]udge said anything the attorneys say, not evidence. If you want to listen to it again, you can. But he keeps saying [Victim] said five times in her vagina, five times. No, she didn't. She never said that. Never said that he stuck his penis in her vagina from the very beginning.

(R.p.207, line 25–R.p.208, line 20). She also explained the purpose of Dr. Galloway-Williams's testimony, stating:

> And that last witness yesterday that testified, [trial counsel] said [he didn't] know why she testified . . . . Well, she discussed some things and was able to explain things that normal people may not think about. Because when you think somebody is getting sexually assaulted, somebody is being bent over [and] made to have sex against their will, surely, they're going to go tell somebody right away. Ms. Galloway-Williams said it's not always the case. She's an expert. She's testified before. She testified yesterday. She's done her research. She teaches. She knows about these things. And for a child, it is different for them. It is different for a little girl going through this than it is for a grown woman. A little girl who wants a father, who wants a family, it is so different.

> So she was there to try to explain how things could be different, how a child may not necessarily tell the second something happens. How they're going to be conflicted inside and think well, I kind of want my family to stay together or I don't want my mom to be mad at me. You know, she's got a lot of things going through her head that she doesn't understand. You heard the doctor testify, she's getting ready to go through puberty. . . . This little girl is going through a hell of a time all the way around. Of course, she was confused.
>
> . . . .
>
> 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. Like the perfect example Ms. Galloway-Williams said . . . where did he touch you. Well, that can mean on your body, that can mean in the house, that can mean in the city. So there's special people trained at the . . . Julie Valentine Center, that talk to children, get the answers without putting anything in their heads, anything like that without misconstruing something.

(R.p.206, line 23–R.p.207, line 24; R.p.209, lines 11–23).

The State also addressed Victim's desire to live with her grandmother and her efforts to do so throughout the fall and winter of 2013, arguing:

> They made a big deal about how she 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 live with her grandma. She's not going to get touched on over there.

(R.p.211, lines 2–9).

Jury Instructions

Following closing arguments, the trial judge instructed the jury on the law applicable to the case. Neither party objected to the charges as given. Approximately one hour later, the jury returned and submitted three questions: (1) whether they could review a transcript of Victim's testimony; (2) whether they could review a transcript of Dr. Crosswell's testimony and her

reports; (3) the possibility of submitting Victim to a lie detector test. The trial judge informed the jury transcripts of the testimony were unavailable, but they could listen to the audio recordings of the testimony if they so desired. He also rejected the request for a lie detector test, noting they are "notoriously unreliable" and inadmissible. They jurors returned to the jury room and continued deliberating. Approximately an hour and a half later, the trial judge received a note stating the jurors were deadlocked. The jury returned to the courtroom, where the trial judge provided the following Allen charge:

> All right. Ladies and gentlemen, I've received your note and I sympathize with you. I recognize this is a difficult case and it's difficult to come to a resolution. It's hard enough for two people to agree on anything, so it's particularly difficult, oftentimes, for 12 people who have just met each other and have been thrust into a jury room to deliberate to agree on a verdict in the case. So I sympathize with you in that regard. I sympathize with you because I recognize this is a very difficult decision for each of you to make, both collectively and personally.
>
> But I do want to impress upon you that there have been many resources that'[ve] been brought to bear this week to bring this case to trial. The State of South Carolina, the County of Pickens, the parties to this case have expended substantial and significant resources to bring this case to trial. If you were to fail to come to a verdict in this case, then this case would simply have to be tried again. Twelve other people in the county of Pickens would come ot trial and would hear the same witnesses, the same evidence, same arguments and would be tasked with deliberating on the case. Now, there are no 12 other people in the county of Pickens who are more capable, who are more able, who are more competent to reach a decision in this case than you are.
>
> Now, I recognize that it's a very difficult decision to make, but these parties deserve finality and they deserve a decision. So I would ask you to return to your jury room and continue deliberations. Those of you who may be in the minority, I would ask you to consider the position of the majority. Those of you who are in the majority, I would ask you as well to consider the position of the minority again and see if you can come to some resolution in this case. I know that's not what you wanted to hear when I brought you back out there, but, again, this is important and a lot of resources have been expended to get to this point in time. And these parties deserve a verdict. So I ask you to return to your jury room and attempt to come to a verdict. Thank you very much.

(R.p.221, line 20–R.p.238, line 11).

Following the Allen charge and the jurors returning to their deliberations, trial counsel requested additional language for the charge clarifying jurors were not required to "compromise their position[s]." The trial judge acknowledged trial counsel's concern, admitting the Allen charge "may have been somewhat coercive," but some coerciveness is inherent in every such charge. He believed the charge did not give "any suggestion that anybody had to change their opinion" because it only asked the jurors to consider opposing positions. He further felt that giving the additional instruction would communicate to the jury they did not really have to put effort into reaching a verdict, a message he sought to avoid. Approximately an hour and twenty minutes later, the jury returned with their verdict of guilt for third-degree CSC with a minor. Before releasing the jury, the trial judge, seeking to confirm the Allen charge did not unduly coerce the jurors into reaching a verdict, asked them to raise their hands if any of them felt they "compromised a firmly-held position and simply agreed to go along with the remaining [jurors]" in reaching they verdict. None of the jurors raised their hands. (R.p.238, line 12–R.p.242, line 11).

Post-Trial Motions

Following the verdict, the trial judge asked trial counsel whether he had any post-trial motions. He expressed concern with the guilty verdict, stating he recalled evidence supporting second-degree CSC with a minor but did not recall whether there was evidence of third-degree CSC with a minor. The trial judge informed him such evidence was presented, with him specifically remembering testimony of an instance of abuse in which Victim was forced to touch Appellant's penis and additional instances of "feeling and fondling." Although trial counsel failed to articulate a specific motion, the trial judge denied it. (R.p.242, line 18–R.p.243, line 12).

Sentencing

Before sentencing Appellant, the trial judge asked the State for any additional information relevant to such a determination. The State revealed that in 2009, Appellant pled guilty to public disorderly conduct, originally charged as solicitation of a minor, when he "exposed his penis to a teenager at the Wal-Mart parking lot" in Pickens County. Trial counsel objected, stating the trial judge asked for his criminal record, "not a recitation of the facts . . . ." The trial judge decided to give the State some latitude when reciting Appellant's criminal history. The State also presented a 2009 conviction for entering a premises after warning in a criminal domestic violence charge. At the time of trial, Appellant also had another pending second-degree CSC with a minor charge, for which he was arrested a few months after making bond in the instant case. (R.p.243, line 13–R.p.244, line 14).

Trial counsel argued against a lengthy sentence, claiming it was "readily apparent" the jury reached a "compromised verdict," and the State had added the third-degree CSC with a minor indictment only a month before trial, likely as a "safety net" to ensure the jury convicted Appellant of something. He added Appellant's strong familial relationships, along with his health problems, justified leniency. (R.p.245, line 17–R.p.249, line 13).

The trial judge, recognizing the trauma Victim had suffered, the seriousness of the facts, and noting the jury had denied their verdict was the result of compromise, sentenced Appellant to thirteen years' incarceration—two years shy of the statutory maximum. (R.p.249, line 21–R.p.251, line 8).

ARGUMENT

I.

The trial judge did not err in denying Appellant's request to modify her Allen charge because the instruction was not unconstitutionally coercive and, even if the instruction was improper, any alleged error is harmless because the trial judge polled the jurors to confirm the jurors did not feel coerced into reaching a verdict by compromising their principles or positions.

Appellant argues the trial judge erred in denying trial counsel's request for the modified Allen charge language. The State disagrees. The trial judge gave the jury a charge that reflected the current and correct law in South Carolina, based on the language of Allen and consistent with South Carolina law.

"Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence only if that failure was prejudicial to the defendant. State v. Commander, 396 S.C. 254, 270, 721 S.E.2d 413, 422 (2011).

"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 arguments." State v. Lee-Grigg, 374 S.C. 388, 418 n.1, 649 S.E.2d 41, 57 n.1 (Ct. App. 2007) (internal quotation marks omitted), aff'd 387 S.C. 310, 692 S.E.2d 895 (2010). "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, 490, 552 S.E.2d 712, 716 (2001) (quoting Lowenfield v. Phelps, 484 U.S. 231 (1988)).

"In South Carolina state courts, an Allen charge cannot be directed to the minority voters on the jury panel." Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002). "Instead, an Allen charge should be even-handed, directing both the majority and the minority to consider the other's views." Id. "A trial judge has a duty to urge, but not coerce, a jury to reach a verdict." Id. In Tucker, the Supreme Court of South Carolina adopted the standard established by the United States Supreme Court in Lowenfield to determine whether an Allen charge is unconstitutionally coercive. Those factors are:

> (1) Whether the charge spoke specifically to the minority juror(s);
> (2) The language of the charge, including statements such as "You have [] to reach a decision in this case";
> (3) Whether the trial judge inquired into the jury's numerical division, a question generally considered coercive; and
> (4) Weighing the length of time between the issuance of the Allen charge and the jury's return of a verdict (with verdicts returned "shortly after" the supplemental charge suggesting a possibility of coercion) against trial counsel's failures to object either to the charge itself or an inquiry whether the jurors believed further deliberation would result in a verdict.

Tucker, 346 S.C. at 492, 552 S.E.2d at 716 (citing Lowenfield, 484 U.S. at 237).

Initially, the State would note Appellant argues the trial judge's admission that his charge "may have been somewhat coercive" is not only taken out of context, but also demonstrates Appellant's misunderstanding of the legal requirements for an Allen charge. The trial judge did say he thought the charge was somewhat coercive, but he correctly noted that some degree of coercion is present in every Allen charge. By its very nature, an Allen charge is a request for deadlocked jurors to open themselves up, with a "disposition to be convinced, to each other's arguments." Lee-Grigg, 374 S.C. at 418 n.1, 649 S.E.2d at 57 n.1. An appellate court is only concerned with whether such a charge is unconstitutionally coercive. See Tucker, 346 S.C. at 491, 552 S.E.2d at 716.

On the merits, analyzed under the Lowenfield factors, the trial judge's Allen charge was not unconstitutionally coercive. The trial judge spoke to both the majority and minority jurors, without knowledge of or questioning their numerical division, and asked them to "consider the position" of the other side. He never told the jury they were forced to reach a decision in the case: while he did state the parties "deserve[d] finality," he clearly asserted that he was only asking the jurors to return to the jury room and "attempt" to reach a verdict also informed the jurors that if they failed to reach a verdict, the case would simply be retried.

The final factor, the length of time between the Allen charge and the jury's verdict, also supports its constitutionality. While it is true the jury only deliberated from 2:11 p.m. to 3:28 p.m. after receiving the charge, such a period was very reasonable in that situation. The pre-Allen deliberations occurred from 11:45 a.m. to 12:40 a.m., and 12:43 p.m. to 2:07 p.m., totaling 2 hours, 19 minutes. Over a third of the jury's deliberations occurred after the trial judge issued the charge.

In Tucker, the Supreme Court of South Carolina stated the post-Allen deliberation period, approximately an hour and a half, was a "relatively short period of time" in that case because deliberations in that case began at 1:33 p.m. on the first day of deliberations, the jury became deadlocked around 5:00 p.m. that day, and the jury received an Allen charge around 11:00 a.m. on the second day, returning with a verdict around 12:27 pm. In total, the jury deliberated for approximately eight and a half hours, over half of that deadlocked before receiving the Allen charge. Id. at 485–88, 494, 552 S.E.2d at 713–14, 718. Here, unlike Tucker, the post-Allen discussions constituted a significant portion of the jury's deliberations. Moreover, unlike Tucker, the jurors here spent a minority of the deliberations "deadlocked."

Finally, the most important evidence that the jurors were not coerced are the jurors themselves: after the verdict, the trial judge asked them whether any of them felt they "compromised a firmly-held position and simply agreed to go along with the remaining jur[or]s." The language of the question was nearly identical to that requested by trial counsel in his supplemental charge. More importantly, none of the jurors claimed they felt they compromised their positions, demonstrating they were not unconstitutionally coerced. Accordingly, the trial judge did not err in denying trial counsel's request for a supplemental Allen charge.

II.

The trial judge properly denied Appellant's motion for a directed verdict because the State provided direct evidence of his guilt.

Appellant argues the trial judge erred in denying trial counsel's motion for a directed verdict because the "only evidence" of his guilt was the "unreliable testimony of the alleged Victim. The State disagrees with this allegation of error: the trial judge properly denied the motion because there was direct evidence of Appellant's guilt.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593–94, 606 S.E.2d 475, 477–78 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (emphasis added). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Unsurprisingly, Appellant argues Victim was not a credible witness. Regardless of Appellant's bias towards Victim, her testimony is direct evidence of his guilt. Because there is direct evidence of Appellant's guilt, the trial judge properly denied trial counsel's motion. See Cherry, 361 S.C. at 593–94, 606 S.E.2d at 477–78.

III.

The trial judge properly allowed the State to present evidence of and pursue charges for both criminal sexual conduct in the second degree and criminal sexual conduct in the third degree because Appellant failed to request separate trials for the charges. Regardless, the charges were correctly tried together because the evidence supporting both indicated: they arose out of a single chain of circumstances; were proven by the same evidence; were of the same general nature; and Appellant was not unfairly prejudiced.

Appellant argues the trial judge erred in permitting the State to pursue Appellant's second and third degree CSC with a minor charges simultaneously, "prejudicing Appellant by encouraging the jury to give a compromised verdict." The State disagrees: trial counsel never moved to sever the charges and thus this issue is not preserved for appellate review. Moreover, the charges were properly tried together because: (1) they arose out of a single chain of circumstances; (2) were proved by the same evidence; (3) were of the same general nature; and (4) no real right of Appellant was prejudiced by the combined trial.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). A party need not use the exact name of a legal doctrine to preserve it for review, but it must be clear in the record that the argument was presented on that ground. State v. Russell, 345 S.C. 128, 133, 546 S.E.2d 202, 205 (Ct. App. 2001). Further, "[t]o preserve an issue for appellate review, an objection must be timely made, which usually requires it to be made at the earliest possible opportunity." State v. King, 334 S.C. 504, 510, 514 S.E.2d 578, 581 (1999). "A party may not argue one ground at trial and an alternate ground on appeal." Dunbar, 356 S.C. at 142, 587 S.E.2d at 694.

A motion for severance is addressed to the sound discretion of the trial court, and the trial court's ruling will not be disturbed on appeal absent an abuse of that discretion. State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) (internal citations omitted). Generally, when 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 discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced. State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005); State v. Smith, 322 S.C. 107, 470 S.E.2d 364 (1996); State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974). Criminal charges may be consolidated where 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. State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). "Offenses are considered to be of the same general nature where they are interconnected." State v. Jones, 325 S.C. 310, 315, 479 S.E.2d 517, 519 (Ct. App.1996).

Initially, the State would note this issue is not preserved for appellate review. The trial judge could not have erred in failing to sever the charges because Appellant never requested such action. The closest Appellant came to addressing this issue was after the jury returned its verdict, when trial counsel questioned the propriety of the third degree CSC with a minor charge because he could not recall whether the State presented evidence supporting its inclusion. Not only was evidence supporting this charge presented during the trial (as noted by the trial judge, but this ground, the existence of evidence, is a separate issue from the alleged prejudice of trying the charges. Accordingly, this issue is not preserved for review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693–94.

Even if this issue were preserved for review, Appellant's argument fails on its merits. In his brief, Appellant concedes two of the four factors supporting consolidation: the charges were proved by same evidence and were of the same general nature. Appellant argues the events were not connected by a single chain of circumstances, but this claim is contradicted by the evidence at trial. Victim testified she was subjected to both Appellant fondling her and Appellant forcing her to fondling him throughout the period of abuse. Notably, Victim claimed that on Christmas Day, 2013 Appellant forced her to manually stimulate his penis, an incident separate from the allegations supporting the second degree CSC with a minor charge.

Finally, there is no evidence Appellant was prejudiced by the State trying the charges simultaneously. In State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006), this Court found a defendant was not prejudiced by combined trial for his trafficking in cocaine and murder charges. Notably, the cocaine was found during the traffic stop initiated because they suspected Rice of his victim's murder. Moreover, the State surmised Rice's motive for murder was in part to retrieve cocaine and money which the victim stole from him. The Court found presentation of the cocaine trafficking evidence was "necessary for a full presentation of the case without fragmentation."

Here, the evidence of both the second and third degree CSC with a minor charges were inextricably linked because they were part of the same pattern of abuse. They occurred in the same places, involved the same actors, and together presented the full scope of Appellant's sexual abuse.

Accordingly, the trial judge did not err in allowing the State to prosecute the second and third degree CSC with a minor charges simultaneously.

IV.

Appellant failed to preserve for appellate review any issues concerning the State's alleged improper bolstering, vouching, or alleged "golden rule" violations because he did not object to these comments at trial. Regardless, these statements were not improper comments and were only made because Appellant "opened the door" to these issues by raising them during his closing argument.

Appellant argues the State, in its closing argument: (1) "inappropriately vouched" for Dr. Galloway-Williams which, through a chain of causation, "impermissibly bolstered" Victim's testimony; (2) appealed to the jurors' passions and prejudices; and (3) used an "impermissible 'Golden Rule'" argument, encouraging the jurors to put themselves in Victim's shoes. First and foremost, these issues were not raised at trial and are not preserved for appellate review. Further, even if these issues were preserved, the statements were proper, direct responses to trial counsel's closing designed to appeal to the logic, not emotions, of the jurors. At worst, these statements were invited replies to trial counsel's abusive, victim-shaming comments made during his closing.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Likewise, decisions as to whether to admit or exclude evidence are generally left to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-91, 262 S.E.2d 31, 32 (1980). As a result, an appellate court will not reverse a trial judge's decision to admit or

exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.").

"A solicitor's argument concerning the credibility of the State's witnesses based on the record and its reasonable inferences is not error." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990). "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

However, "[a] solicitor's closing argument must not appeal to the personal biases of the jurors," and further "may not be calculated to arouse the jurors' passions or prejudices." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." Brown v. State, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009). Improper vouching or bolstering "occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).

Further, "[i]mproper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries, 351 S.C. ay 373, 570 S.E.2d at 166. "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. As a result of this inquiry, courts may find conduct that would otherwise be improper may be excused under the "invited reply" doctrine if a party's conduct was an appropriate response to statements or arguments made by the opposing party. United States v. Young, 470 U.S. 1, 13 (1985); Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).

Preservation

In the instant case, trial counsel failed to object to any of the complained statements. Thus, any alleged error is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693–94.

Alleged Bolstering/Vouching

Appellant claims the State's comments regarding Dr. Galloway-Williams's expertise and qualifications constituted improper bolstering. However, the State's comments focused solely on her impeccable credentials, information presented to the jury when she was qualified at trial. A solicitor's comments about a witness based on the record and reasonable inferences therefrom is not improper bolstering. See Caldwell, 300 S.C. at 505, 388 S.E.2d at 822. Thus, it was entirely appropriate for the State to argue the jury should trust the accuracy of her testimony.

Appellant also claims these statements had the impact of indirectly "vouching" for Victim because the State referenced the Julie Valentine Center in its closing, which both employed Dr. Galloway-Williams and interviewed Victim and other employees of the center

were not identified at trial. Appellant complains this statement was meant to confuse the jury and imply Dr. Galloway-Williams met with Victim and believed her testimony. However, these assertions show ignorance of the record. During her testimony, Dr. Galloway-Williams repeatedly stated she never met with Victim and that her testimony was focused on providing information about child sexual abuse dynamics and general issues involving the discovery of such abuse, including delays in disclosure and the gradual reveal of individual incidents of abuse. Further, Dr. Galloway-Williams was not the only employee of the Julie Valentine Center mentioned at trial: Victim testified Sarah Davis was the interviewer whom met with her about her case and the incidents of abuse.

Ironically, the State only discussed Dr. Galloway-Williams's credentials and testimony because trial counsel, in his closing, complained her testimony was a pointless because she never spoke directly with Victim or read any of the reports associated with her case. Under South Carolina law, forensic interviewers are not permitted to testify about a child victim's veracity or believability.[2] The State, in compliance with South Carolina law, provided an expert witness with no direct connection to Victim to explain the nuances of child abuse dynamics. The State's closing only emphasized these points, and that certified counselors, including Davis, understand the nuances of working with child victims. Not only were these comments necessary, but they were an invited reply to trial counsel's careless misrepresentation. See Vaughn, 362 S.C. at 169, 607 S.E.2d at 75. Accordingly, the State's comments did not constitute improper bolstering nor did they indirectly vouch for Victim's veracity.

Alleged Appeals to Passions and Prejudices of Jurors

Appellant argues several of the State's comments improperly appealed to the passions and prejudices of the jurors, including: (1) the State's use of rhetorical questions; (2) comments

[2] See State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013).

that Victim was excited Appellant would be her stepfather because she wanted a dad; (3) pointing out Victim had been through a traumatic time due to the abuse, repeated recounting of abuse, and the constant changes to her living situation; and (4) a violation of the "Golden Rule," the statement," you don't think if you were getting bent over, if you were getting groped all the time, that you wouldn't want to live [in Victim's home] anymore, that you wouldn't want to be there with a person who's sexually assaulting you . . . ."

However, the State's arguments were entirely proper. The State's comments about Victim hoping Appellant would be a father-figure in her life originated in her trial testimony, as did the information regarding: her abuse, her repeated meeting with law enforcement and counselors about the abuse; and the changes in her living situations. Thus, this information was a summary of items already in the record. See Caldwell, 300 S.C. at 505, 388 S.E.2d at 822.

Moreover, the remainder of the State's comments, including the State's alleged "Golden Rule" violation, were made in direct response to trial counsel's closing. Trial counsel's theory of the case was that Victim fabricated the allegations against Appellant to move in with Hinton, where she would live with less rules and do whatever she wished to do. To support this claim, he points to facts such as: (1) Victim's repeated requests throughout the fall and winter of 2013 to move in with Hinton; (2) Victim smiling in a Christmas picture taken the day of one of the assaults; (3) Victim claimed she was abused while other people were in or around the home; and (4) the lack of physical evidence of abuse. In each of these situations, trial counsel appealed to the "common sense" of jurors.

In its reply, the State sought only to rebut trial counsel's "common sense" arguments. The State argued Victim lost much more than she gained by informing police of the abuse and sticking to that story in the intervening years. For example, trial counsel argued Victim's

repeated requests to live with Hinton illustrated her to desire to live with Hinton and her willingness to make up allegations of abuse to do so. The State's "Golden Rule" violation was merely a counterpoint to this argument: logically, if Victim was abused, she would try to move out of Appellant's home and into Hinton's. The State emphasized logic drove this conclusion, pointing out it made "perfect sense" Victim, like any abused child, wanted to move into a home where she would not be abused.

The State's arguments were based on the evidence presented at trial and the logical conclusions derived from said evidence. See Caldwell, 300 S.C. at 505, 388 S.E.2d at 822. Trial counsel invited these statements through his own closing argument. See Vaughn, 362 S.C. at 169, 607 S.E.2d at 75. Accordingly, Appellant was not unfairly prejudiced by the complained statements.

V.

The trial judge did not abuse her discretion in sentencing Appellant to thirteen years' incarceration where the sentence was within the statutory range, Appellant had prior convictions and pending charges for similar acts, and Appellant was convicted of a serious offense.

Appellant argues the trial judge erred in sentencing Appellant to thirteen years' incarceration, just two years shy of the maximum sentence. He contends this sentence was extreme because he: (1) had "only two" prior criminal convictions for public disorderly conduct and entering a premises after a warning in a criminal domestic violence charge; (2) was a hard-working provided for his family; (3) had obtained custody of his wife's other children from a previous marriage; (4) complied with the judicial process in the years subsequent to Victim reporting the abuse; and (5) suffered from "serious heart issues." The State disagrees with this allegation error. The trial judge properly exercised his discretion in awarding Appellant his sentence.

The trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Here, the trial judge's sentence was appropriate, given the seriousness of the crime and Appellant's criminal history. As noted above, Appellant's public disorderly conduct conviction involved him exposing his penis to a teenager in a Wal-Mart parking lot. Combined with his entering a premises after warning in a criminal domestic violence charge and his pending CSC second with a minor charge, the record indicates Appellant was, and is, a dangerous man with a careless disregard for the law, especially at home.

Moreover, Appellant fails to allege his sentence is the result of prejudice, oppression, or corrupt motive from the plea judge. Thus, there is no justifiable basis for this Court to review the merits of Appellant's claim. See State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("[T]his Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the [plea] court, and is not the result of prejudice, oppression[,] or corrupt motive."). Accordingly, this Court should not grant relief on this issue.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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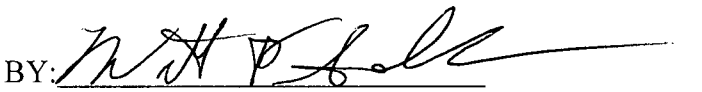
BY: 

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January 26, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2016-001905

THE STATE, ...RESPONDENT,

v.

CHARLES BRANDON RAMPEY,.....APPELLANT.

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."

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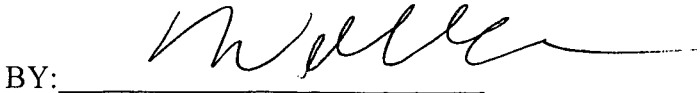
BY: 

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