

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Matthew Jamie Bryant, Appellant.

Appellate Case No. 2018-000825

Appeal From Pickens County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2021-UP-396
Submitted October 1, 2021 – Filed November 10, 2021

AFFIRMED

Daniel E. Hunt, of Law Offices of Daniel E. Hunt, P.A.,
of Easley; and J. Falkner Wilkes, of Greenville, both for
Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General William M. Blich,
Jr., Assistant Attorney General William Frederick
Schumacher, IV, all of Columbia; and Solicitor William
Walter Wilkins, III, of Greenville, all for Respondent.

PER CURIAM: Matthew Jamie Bryant appeals his conviction for criminal sexual conduct (CSC) in the second degree and sentence of fifteen years' imprisonment. On appeal, Bryant argues the trial court erred in (1) denying his motion for directed verdict and (2) charging the jury on second-degree CSC as a lesser included offense of first-degree CSC.

At trial, Victim testified Bryant entered her residence, grabbed her by the arm, pulled her into a bedroom, and threw her onto the bed. She described Bryant's initial attempt to shove his penis into her mouth and her efforts to clench her jaw to deny him entry. She stated she repeatedly rejected Bryant's advances, but he was unrelenting. According to Victim, when she attempted to escape, Bryant held her down on the bed by placing his hand on her shoulder. Victim explained, "When I realized 'no' wasn't going to stop him, I stopped talking just so I could get it over with" Throughout her testimony, Victim asserted that Bryant raped her. The officers who responded to Victim's 911 call testified Victim was crying and shaking when they arrived at the residence. A sexual assault forensics coordinator testified she found an abrasion and bruising in Victim's vaginal area consistent with sexual assault. Finally, a forensic scientist employed by SLED analyzed the various DNA samples collected in the case and found DNA collected from Victim's sexual assault exam matched Bryant's DNA.

Following the State's case, Bryant unsuccessfully moved for a directed verdict, arguing the State failed to present evidence he used aggravated force to sexually batter Victim. After presenting his defense, he renewed his motion for directed verdict, which the trial court again denied. Bryant also objected to a jury charge on second- and third-degree CSC as lesser included offenses of first-degree CSC, which the trial court overruled. The jury found Bryant guilty of second-degree CSC.

1. We find the trial court did not err in denying Bryant's motion for directed verdict. Victim's testimony, the responding officer's testimony, and the sexual assault forensics coordinator's testimony, viewed in the light most favorable to the State, established evidence of first-degree CSC. *See State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) ("A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged."); S.C. Code Ann. § 16-3-652(1) (2015) ("A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (a) The actor uses aggravated force to accomplish sexual battery [; or] (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary,

housebreaking, or any other similar offense or act."); S.C. Code Ann. § 16-3-651(c) (2015) ("'Aggravated force' means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon."); *State v. Brown*, 360 S.C. 581, 588, 602 S.E.2d 392, 396 (2004) ("To convict a defendant of first-degree CSC, the State must present evidence the defendant committed a sexual battery and *actually used* aggravated force at the time of the assault" (emphasis in original)); *id.* ("The evidence must show the actual use of aggravated force occurred near in time and place to the assault, such that the effect of the aggravated force caused the victim to submit to the assault."); *State v. Lindsey*, 355 S.C. 15, 20-22, 583 S.E.2d 740, 742-43 (2003) (finding the trial court did not err in denying the defendant's motion for a directed verdict because State presented evidence the defendant confined the victim in his automobile, grabbed her hands, and held her down with his body and hands, and the victim testified she fought her attacker.); *cf. State v. Green*, 327 S.C. 581, 588, 491 S.E.2d 263, 266 (Ct. App. 1997) (finding the evidence was not sufficient to submit the issue of first-degree CSC to the jury when the victim "did not testify that [the defendant] held her down or otherwise used any force"). Therefore, we find Victim's testimony, the responding officer's testimony, and the sexual assault forensics coordinator's testimony established enough evidence to overcome Bryant's motion for directed verdict.

2. We find the trial court did not err in charging the jury on second-degree CSC because second-degree CSC is a lesser included offense of first-degree CSC and the evidence presented at trial supported a charge on second-degree CSC. *See State v. Summers*, 276 S.C. 11, 14-15, 274 S.E.2d 427, 429 (1981) (stating that second-degree CSC is a lesser included offense of first-degree CSC and, if the facts warrant, second-degree may be submitted to the jury under a charge of first-degree (*overruled on other grounds by State v. McFadden*, 342 S.C. 629, 539 S.E.2d 387 (2000))); *Brown*, 360 S.C. at 589, 602 S.E.2d at 397 ("[T]he *threat* of the use of force or violence of a high and aggravated nature, either during the assault or in the future, may constitute aggravated coercion and is sufficient to sustain a conviction of second-degree CSC" (emphasis in original)).¹

¹ To the extent Bryant relies on *McFadden* to argue second-degree CSC is no longer a lesser included offense of first-degree CSC, we disagree. *McFadden* addressed a specific section of third-degree CSC and its relation to first-degree CSC. 342 S.C. at 632, 539 S.E.2d at 389. *McFadden* did not address whether second-degree CSC was a lesser included offense of first-degree CSC, leaving intact *Summers's* designation of second-degree CSC as a lesser included offense of first-degree CSC. *See id.* at 632-33, 539 S.E.2d at 389.

AFFIRMED.²

HUFF, THOMAS, and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.