

The State OF South Carolinas

In The Court Of Appeals

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

Christopher Schumpert,

Appellant,

Vs.

The State Of South Carolina,

Respondent,

Dkt# 2023-00568

Appellant Pro Se Brief

Christopher Shumpert
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SC Court of Appeals

Question Presented

Does “ Malice may be inferred from conduct showing a total disregard of human life” constitute as an improper comment on the evidence, if so, does this violate the rule in State v Campbell, and State v Burdett?

Factual Analysis

During charge conference counsel for both sides addressed the courts charge to the jury, defense counsel objected to the court charging the jury that “Malice may be inferred from conduct showing a total disregard of human life”, defense counsel opined that:

Mr. Bell : Just on behalf of the defense, we obviously agree with your determination regarding Burdett. There’s one sentence in your murder charge that sort of a set aside paragraph saying malice may be inferred from conduct showing a total disregard of human life. I think under State v. Campbell and State v Burdett which is , of course heavily relied upon in Belcher that would be improperly invading the factual determination of the jury, and would be an improper statement on the facts.

ROA.Pg. 452; lines 11-20

After the court recessed for lunch, in which the court said it would decide then on counsel argument. The following colloquy took place after lunch recess:

The Court:Oh, as far as the case law you cited to me, we read it, Campbell over lunch, I don’t see where the Campbell case expands the Burdett case about the inference of a gun. You can correct me if I’m wrong but, in fact, it confirms Burdett and I’ve changed my charge to reflect that. I’ll be glad to hear from you on it because I’m inclined to leave my murder charge just like it is.

Mr. Bell: Beg your indulgence. Let me pull that up.

The Court: It says, you know, the old murder charge was you could do inference and it gives an example, inferred malice could be shown by carrying of a gun. Burdett did away with all that.

You can't do that. I think it went through a couple of cases before Burdett. They decided no, we're not going to let you charge that. It comments on the fact, because in that case he did have a gun. So I eliminated that out of my charge. I just don't see where Campbell case expands it to say I need to delete—I don't know where my jury charge is. I think I have it in chambers. Let me just pull it up. To be complete, malice may inferred from conduct showing a total disregard for human life. That's exactly what ,malice is. If I'm wrong I'll be glad to hear from you.

Mr. Bell: Judge, I would just reiterate, Campbell does not specifically expand it , what it does in the general dicta is discussed it, essentially any circumstance where the court ends up through their charges making a comment on the facts, that would be inappropriate. Now, of course, in Burdett and Campbell they are more specifically dealing with there being a firearm and in that case the charge for inference of malice from the use of a deadly weapon was inappropriate. I still think their general dicta though, the court should not invade the province of the jury through the jury charges, is inappropriate. Again, this case, this specific set of---

The Court: Disregard for human life, that involves every murder that I know of.

Mr. Bell: And that's certainly an argument that they can make to the jury. I think its inappropriate for the judge to tell them that that is what the jury charge is from the bench. Again, the State is going to get up during closing and say the number of times that he fired as firearm is a total disregard for human life. I think that where the issue comes in in this particular case so we just rest on State versus Campbell, State versus Burdett.

Ms. Patterson: Your Honor, I don't- I think that is the very definition of malice and also I don't think it's a comment on the facts of this case, Your Honor, so we ask that it remain in your charges.

The Court: Well, you know, the total disregard for human life, I find it interesting because you also want me to charge voluntary. I think that's a jury question on how they want to decide it or not.

Mr. Bell: I think, Your Honor, based on that statement, that's the exact thing we're trying to avoid is the judge invading the province of the jury. If that is a jury question, it's not something that should be elicited from the jury instructions.

The Court: I think I'm gonna leave my charge where it is.

Mr. Bell: Thank you, Judge.

ROA.Pg. 460; lines14-25;Pg.461-62;Pg 463;lines 1-2

Petitioner contends, that the trial court erred its determination that this was not improper for the court to charge the jury on facts are the very facts that was presented to them during the trial. Further, as trial counsel pointed out, that the state was and did in closing arguments address these facts to the jury. About the manner in which the victim was killed, and the state did so by addressing this as follows:

Ms. Patterson: ...Yet on March 27th, 2020 around 7:30 p.m. in his own yard he was confronted, gunned down and brutally murdered by someone he considered to be a friend over \$50.00.

ROA.Pg. 500; lines 18-21

Malice. Malice is defined as ill will or hatred or hostility. It doesn't require ill will toward the individual injured, but rather it signifies a general malignant recklessness toward the life and safety of others....

Pg. 501; lines 5-11

The moment that trigger was pulled if malice existed, we have murder and that trigger was pulled over and over and over to the count of 13 counts by the defendant Christopher Shumpert..

Pg. 501; lines 18-22

The very argument that the defense counsel knew state was going to perpetuate to the jury in such dramatic fashion was on full display during closing arguments. See ROA.Pg 502; lines 1-21; But as noted when the judge charged "Malice may be inferred from conduct showing a total disregard of human life", while it is horn book law that the jury is the finders of fact and the judge is the law. It has also been recognized by this court and others that when the jury instructions charge jury that the verdict is based on an evidentiary fact that has been presented to the jury, and that evidentiary is used as a basis for jury to finding guilt them that invades the province of the jury and the accused has been denied his right to a fair trial.

Appellant avers, that while counsel did request the court charge voluntary manslaughter. The court declined to do so, and whether, this constitutes error of law is a question that this brief does not address. What appellant does contend, is that this case unlike Belcher, Burdett, Campbell, is not one where the court actually charged the jury with lesser included offense. But one in which no lesser included offenses, were charged and the evidentiary facts of the manner in which the victim was killed and presented during trial, in addition to closing state.

Legal Analysis

In *Belcher v State*, 385 S.C. 597 (2009), this court held the trial courts could no longer give the inferred malice from the use of as deadly weapon charge in cases in which evidence was presented that reduce mitigate, excuse, or justify a homicide or an assault and battery with the intent to kill. *Belcher*, id, at 612;

Simply because certain facts may considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that juries should be charged that these facts are probative of guilt. It is always for the jury to determine these facts, and the inferences that are to be drawn from these facts.

For example, it is well-settled that while evidence that a criminal evaded arrest or absconded from the jurisdiction may be admissible as evidence of guilt, and may be argued to the jury as such, it is improper to charge the jury on this evidentiary inference because such charge places “ undue emphasis” on that piece of circumstantial evidence.

The court is now asked to consider whether the permissive inference of “Malice may be inferred from conduct showing a total disregard of human life” may be given in any setting, even those which no evidence is presented. Our appellate court have held inn other settings that it is improper to give examples of the conduct the jury may consider when determining whether the State has proven an element of a crime or when determining whether certain other facts have been proven or disproven. See, *State v Grant*, 275 S.C. 404, 407-08 (1980) (holding it was improper for the trial judge to charge the jury that defendant’s flight may be considered as evidence of guilt.); *State v Hughley*, 339 S.C. 439 (2000) (Holding, in a voluntary manslaughter case, the trial court correct refused the defendant’s request to charge the jury specific examples of conduct that might be considered as evidence of legal provocation, as the giving of such

examples would be an impermissible charge on the facts, overruled on other grounds by *Rosemond v Catoe*, 383 S.C. 320 (2009); *State v Cheeks*, 401 S.C. 322, 328-29 (2013) (holding, in a drug trafficking case, that the trial court must not charge the jury that actual knowledge of the presence of a drug is strong evidence of defendant’s intent to control its disposition or use).

In *Cheeks*, the court noted, “ Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that [the jury] should be charged that these facts are probative of guilt,. It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.” *Cheeks*, id at, 328,.

When the trial court tells the jury it may use evidence of the “conduct showing a total disregard of human life” to establish the existence of malice, a critical element of the charge of murder, the trial court has directly commented upon the facts in evidence, elevated those facts, and emphasized them to the jury. Even telling the jury that it is to give evidence of conduct “showing a total disregard of human life” only the weight the jury determines it should be given does not remove the taint of the trial court’s injection of its commentary upon that evidence. Such an instruction is no different than an instruction that the jury may use evidence of flight as evidence of guilt. A jury instruction “Malice may be inferred from conduct showing a total disregard of human life” is an improper court-sponsored emphasis of a fact in evidence-that the deed was done with a depraved mind-and it should no longer be permitted.

Conclusion

Appellant contends that the trial court instruction was an impermissible comment on an evidentiary fact, and warrants a new trial. Further, this instruction was not a harmless error in

that the instruction allowed the jury to place undue emphasis on the evidence showing a depraved mind.

Wherefore, it is prayed court grant full briefing of this issue.

Date; ___ day of _____, 20 _____,

Respectfully Submitted;

s/ Chris Shumpert

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