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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SOSA MANDIEZ CROFT,

APPELLANT

APPELLATE CASE NO. 2022-001771

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by lowering the State's burden of proof in its jury instruction on proof beyond a reasonable doubt?

STATEMENT OF THE CASE

Appellant Sosa Mandiez Croft was indicted by the Greenville County grand jury on November 19, 2019, for murder, armed robbery, and possession of a weapon during the commission of a violent offense. The charges stemmed from an incident occurring the night of January 29, 2019. R. 522-525. Appellant's case proceeded to trial before the Honorable Perry H. Gravely and a jury from December 5th through 8th, 2022. Appellant was represented by Susannah Ross, while the State was represented by Alexa Holloway and Britni McCall. R. 1. After hours of deliberations, the jury found Appellant guilty. R. 496, ll. 24-25; R. 497, ll. 24-25; R. 503, ll. 22-24; R. 505, ll. 2-22. He was sentenced to the following concurrent terms of imprisonment: life without parole for murder; thirty (30) years for armed robbery; and five (5) years for possession of a weapon during commission of a violent offense. R. 520, ll. 7-14.

STANDARD OF REVIEW

"In criminal cases, this Court will review errors of law only." State v. Simmons, 384 S.C. 145, 158, 682 S.E.2d 19, 26 (Ct. App. 2009) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "In reviewing jury charges for error, this Court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial." Id. 384 S.C. at 178, 682 S.E.2d at 36 (citing Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999)). "If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error." Id. "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Id. "To warrant reversal, a circuit court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Id. State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct.App.2006).

STATEMENT OF THE FACTS

On the night of January 29, 2019, Appellant was eighteen years old and living in the Rocky Creek apartment complex with his family. R. 94, ll. 9-21; R. 514, ll. 10-12. Around 8:00 pm to 8:30 pm, Appellant and his acquaintance, Cruz Medero (Medero), were sitting on the steps of the breezeway to one of the apartment buildings smoking marijuana. R. 182, ll. 1-24; R. 185, ll. 3-7; R. 186, ll. 23-25; R. 209, ll. 13-16. While Medero rolled a blunt, Appellant was purportedly texting on his phone and said to Medero that he had "a plug on his jug."[1] Medero took this to mean that Appellant was "going to get over on the guy in some way to get weed." R. 186, ll. 4-6. He did not notice any type of weapon on Appellant. R.187, ll. 14-20.

Sometime after, Appellant stood up on the breezeway steps, and said his "plug" was pulling up. R. 187, ll. 6-13; R. 188, ll. 1-9. The two walked down the stairs and out along a pathway to the end of the neighborhood at a road between the Rocky Creek apartments and the Paddock Club. R. 189, ll. 3-12; R. 190, ll. 1-11. While Medero stopped at the edge of the grass, Appellant continued over to a car that was parked in the road. R. 190, ll. 12-18; R. 191, ll. 13-17. Appellant entered the front passenger door of the white sedan. Shortly after, Medero heard two muffled sounds. When he ran up to the car and looked into the driver side window, he saw Joshua Meeks (Meeks) bleeding. R. 192, ll. 1-25. Appellant "popped up" yelling, "help me, help me, help me." R. 193, ll. 5-6. He opened the driver's door from the inside, and Medero saw Meeks bleeding from his mouth. R. 193, ll. 6-8. Meeks was moved to the back seat, at which

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[1] According to Medero, a "plug" meant a person who sells drugs, and a "jug" could mean several things depending on its use, including: "getting over on somebody;" "paying for something and getting more than what you paid for;" or "robbing somebody." R. 185, ll. 15-23.

point Medero saw a gun in Appellant's possession. R. 194, ll. 9-13; R. 195, ll. 4-9; R. 195, ll. 19-22. When the driver door closed, Appellant left in the car.[2] R. 197, ll.19-23.

Video surveillance footage from Walmart on Woodruff Road from later in the night of January 29th into the 30th, 2019, showed a white four-door sedan in the parking lot. Video footage inside the same Walmart depicted an individual similar to Appellant wearing a blue Vinyard Vines ball cap and clothing with possible blood stains as he was purchasing various cleaning products on two occasions that night. R. 321, ln. 18—R. 327, ln. 4.

Appellant later arrived at the home of his girlfriend, Lyric Lawson (Lawson) in the early hours of January 30, 2019, driving Meeks' car with Meeks still in the back seat. The car had a flat tire, and Appellant was frantic. R. 246, ln. 17—R. 247, ln. 7; R. 249, ln. 10—R. 250, ln. 3. Meeks was removed from the car and placed under some nearby trees. R. 252, ln. 23—R. 254, ln. 5. Afterward, Appellant attempted to clean the car using bleach and other cleaning products. He also tried to fix the flat tire, but without any success.[3] R. 256, ll. 1-23. Appellant then left the parking lot of Lawson, and Lawson went inside. R. 257, ll. 6-13.

Appellant went back to Lawson's the next day, but without Meeks' car. Lawson drove him back to the Rocky Creek apartments in her vehicle, wherepon both saw police had crime scene tape cordoning off Meeks' white car. R. 260, ln. 2—R. 261, ln. 19. Appellant went inside his apartment and obtained a bookbag with sheets and a gun. After briefly speaking with Investigator Chad Maltby in the breezeway, the two left the Rocky Creek apartments and went

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2 Security video from a nearby dentist office depicted a white four-door sedan stop at the same location as the incident at approximately 10:17 pm. R. 339, ll. 1-9; R. 340, ln. 23—R. 342, ln. 11.

3 The flat tire was eventually fixed at approximately 2:10 to 2:15 am at the Rocky Creek apartments where Appellant flagged-down Deputy Daniel Baker, and Dep. Baker changed the tire for Appellant. R. 74, ln. 1-22; R. 82, ln. 20—R. 83, ln. 10.

back to the parking lot of Lawson's home around 3:30 pm to 4:00 pm. R. 262, ln. 4—R. 265, ln. 24.

Once there, Meeks' body was covered with the sheets and moved into Lawson's car. R. 266, ln. 9—R. 267, ln. 11. Lawson then drove Appellant and Meeks' remains to a remote location in Laurens County. R. 108, ll. 1-5; R. 270, ll. 13-17; R. 272, ln. 8—R. 273, ln. 5. Meeks remains were taken from the car and dragged to a location off the side of the dirt road where a sheet and leaves were placed over the body. R. 273, ll. 6-24. Lawson and Appellant left the area, stopped at a Dollar General for gas, and then continued back to the Rocky Creek apartments where Lawson dropped-off Appellant. R. 276, ll. 2-17.

Police executed a search warrant on the apartment of Appellant's family, and detained Appellant. Authorities eventually spoke with both Medero and Lawson soon after; Appellant was formally arrested, and Meeks' remains were recovered. R. 331, ln. 15—R. 332, ln. 18; R. 334, ln. 4—R. 336, ln. 17; R. 337, ln. 20—R. 338, ln. 17.

Appellant's case was tried before a jury from December 5th through 8th. R. 1. As part of its instructions, the trial court defined reasonable doubt as follows:

> What is reasonable doubt? You've heard that phrase thrown around. Let me give some definitions about that. You know, there's nothing in this world that we can know with absolute certainty. And our law does not require The State prove with absolute certainty. But The State's proof must be beyond a reasonable doubt. The kind of doubt that makes a reasonable person hesitate to act.
>
> Now, sometimes, I compare that with a civil case, in case you have been involved in a civil matter, maybe sat on a jury in a civil matter, been involved in a civil case. That is a different standard. That's kind of what we call more likely than not, greater weight of the evidence or preponderance of the evidence. That's a much lower standard. That does not apply here. This is a criminal matter and, therefore, it's beyond a reasonable doubt.

> Reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of The Defendant's guilt.
>
> There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you are firmly convinced The Defendant is guilty of the crimes charged, you must find The Defendant guilty. *But on the other hand, you think there's a real possibility The Defendant is not guilty, you must give The Defendant the benefit of that doubt and find him not guilty. Facts and circumstances that merely place upon The Defendant a grave suspicion of the crimes charged or that merely raise a speculation or conjecture of The Defendant's guilt are not sufficient to authorize a conviction of the accused.*
>
> All right. So that's the definition of—or the charge on reasonable doubt.

R. 498, ln. 5—R. 499, ln. 12 (emphasis added).

Appellant was found guilty on all counts. R. 505, ll. 2-22. After hearing from both parties, including mitigation regarding Appellant's background and mental health, the trial court imposed concurrent sentences upon Appellant of five (5) years for possession of a weapon during commission of a violent offense, thirty (30) years for armed robbery, and life without parole for murder. R. 514, ln. 10—R. 518, ln. 9; R. 520, ll. 7-14.

This appeal follows.

ARGUMENT

The trial court reversibly erred by lowering the State's burden of proof in its jury instruction on proof beyond a reasonable doubt.

The trial court's instruction regarding reasonable doubt injected the lower standard of proof. By conflating these two distinct legal standards, the court erroneously diluted and lowered the highest threshold—proof beyond a reasonable doubt—to one of the lowest—proof beyond "mere suspicion"—which is simply required to pass the "any evidence" standard at the directed verdict phase of trial.

"The government must prove beyond a reasonable doubt every element of a charged offense." Victor v. Nebraska, 511 U.S. 1, 5, 114 S.Ct. 1239, 1242, 127 L.Ed.2d 583 (1994) (citing In re: Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)). The United States Constitution "neither prohibits courts from defining reasonable doubt nor requires them to do so as a matter of course." Id. 511 U.S. at 5, 114 S.Ct. at 1243, 127 L.Ed.2d 583. Rather, "the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof" as long as "the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt." Id. (internal citations omitted).

Article V, section 21 of the South Carolina Constitution not only forbids judges from charging juries "in respect to matters of fact," but also requires them to "declare the law." S.C. Const. Art. V, § 21. "The evidence presented at trial determines the charged jury instruction." State v Blurton, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (citing State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989)). As the South Carolina Supreme Court explained in State v. Durant, 87 S.C. 532, 70 S.E. 306, 307 (1911):

> The requirement of the Constitution that the judge shall declare the law *does not mean that the judge shall tell the jury all about that branch of the criminal law* under which the crime charged in the

> indictment falls; but it means that he shall explain so much of the criminal law as is applicable to the issues made by the evidence adduced on the trial. The purpose of a charge is to enlighten the jury. This purpose is accomplished by a statement of the law which fits the concrete case; *it is defeated by a discourse filled with abstract legal propositions having the effect of confusing the minds of the jury.*

Id. (emphasis added). Simply stated, "[t]he purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987) (citing State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257 (1944)).

In the present case, the trial court's instruction impermissibly conflated and confused two distinct legal thresholds: proof beyond a reasonable doubt, and proof beyond "mere suspicion." It is undisputed that before a person may be convicted, the State must meet the highest level of proof beyond a reasonable doubt as required under Due Process law. See, e.g., Winship, 397 U.S. at 361-63, 90 S.Ct. at 1071-72, 25 L.Ed.2d 368; see also Taylor v. Comm'r of Mental Health & Mental Retardation, 481 A.2d 139, 145 (Me. 1984) ("The State may imprison anyone only on proof of guilt by the highest standard of proof known to the common law."). In other words, the standard by which the jury must weigh the government's evidence is that demanded by long standing Due Process law: proof beyond a reasonable doubt. It is the bar over which the State's evidence must pass before conviction is allowed. To permit application of a lower standard is to violate a defendant's fundamental Due Process rights.

By contrast, a far lower legal standard is proof beyond "mere suspicion." Under South Carolina law, proof beyond "mere suspicion" is part of the rock-bottom threshold for the State to meet when opposing a defendant's motion for directed verdict. Our Supreme Court explained as much in State v. Odems:

> The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. However, if there is *any direct or 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. *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) (internal citations omitted) (emphasis added); see also State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451–52 (1984). In other words, "mere suspicion" is what lies just below the "*any* evidence" standard of proof and is the absolute lowest threshold the State is required to meet before a trial court can permit a jury to even deliberate upon a case.

Here, the trial court conflated these two legal standards, thereby lowering the bar required for the State to meet its burden of proof. Although the trial court told the jury that the "State's proof must be beyond a reasonable doubt," it defined it in part as follows:

> Proof beyond a reasonable doubt is proof that leaves you firmly convinced of The Defendant's guilt. There are very few things, again, with absolute certainty. But if you must find—if you are firmly convinced that The Defendant is guilty of each of these charges, then you must find him guilty. *Well, on the other hand, if you find that there is a reasonable possibility he's not guilty or that the evidence just provides a mere suspicion or conjecture of his guilt, then you are to find him not guilty* and give him the benefit of the doubt.

R. 480, ln. 19—R. 481, ln. 22 (emphasis added). In other words, the Court effectively told the jury that it must convict Appellant if they are firmly convinced of his guilt; however, they can find him not guilty only if there is either a reasonable possibility he is not guilty or if the evidence shows "mere suspicion" or conjecture of guilt. As Counsel argued, such wording in the jury instruction "diminishes the level of proof" below required of the State. R. 495, ll. 4-13. It

effectively lowers the bar the State is required to pass from the heights of proof "beyond a reasonable doubt," to the lowest-depth of proof beyond "mere suspicion" required to satisfy the any evidence standard. Simply stated, rather than enlightening the jury, the trial court's definition of reasonable doubt became "a discourse filled with abstract legal propositions having the effect of confusing the minds of the jury." Durant, 87 S.C. 532, 70 S.E. at 307. Accordingly, the trial court reversibly erred by diluting its definition of reasonable doubt with a far lower standard of proof.

Appellant was also prejudiced by the trial court's erroneous instruction, as the jury specifically examined the definition of reasonable doubt during its deliberations, and the trial court again recharged them with the erroneous instruction. "It is reasonable to assume the jury had, at this point, focused critical attention on the meaning" of the particular jury instructions in its deliberations. State v. Blassingame 271 S.C. 44, 46-47, 244 S.E.2d 528, 530 (1978). "The additional words which the trial judge would relay to the jury would be given special consideration by the jury since they were responses to its own inquiry." Id. 271 S.C. at 47, 244 S.E.2d at 530.

Here, during deliberations, the jury specifically requested "the true definition of reasonable doubt." R. 497, ll. 5-16; R. 521. Thus, it is "reasonable to assume the jury had... focused critical attention on the meaning" of the definition of reasonable doubt as it applies to Appellant's case. Id. 271 S.C. at 46-47, 244 S.E.2d at 530. In response, the trial court recharged the jury with its erroneous instruction that included language conflating burdens of proof.[5] As

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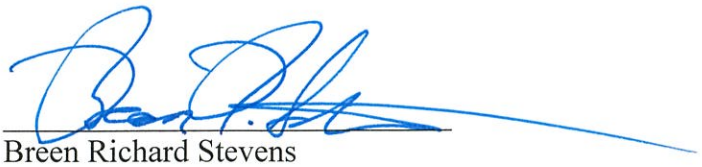
[5] Although Counsel did not object again to the trial court's reasonable doubt instruction, Appellant respectfully submits that the defense had the right to rely upon the court's previous ruling on the matter. See, e.g., State v. Mueller, 319 S.C. 266, 269, 460 S.E.2d 409, 411 (Ct. App. 1995); see also State v. Ross, 272 S.C. 56, 60-61, 249 S.E.2d 159, 161-62 (1978).

such, these words by the judge "would be given special consideration by the jury." Id. 271 S.C. at 47, 244 S.E.2d at 530. Accordingly, Appellant was prejudiced.

CONCLUSION

For the foregoing reasons, Appellant Sosa Mandiez Croft respectfully requests reversal of his convictions and remand for new trial.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of May, 2024.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

May 21, 2024.

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STATE OF SOUTH CAROLINA

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THE STATE,

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SOSA MANDIEZ CROFT,

APPELLANT

APPELLATE CASE NO. 2022-001771

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 21st day of May, 2024.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

From:	Leverett, Scott
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Subject:	Sosa Mandiez Croft - Final Brief of Appellant - Appellate Case No. 2022-001771
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Dear Mr. Maye,

Attached please find Final Brief of Appellant in the above referenced case, as well as the additional copies letter that has been sent to the Court with the requested copies.

-Scott Leverett
Admin. Asst. for Breen Stevens
Appellate Defense