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Feb 28 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2025-000342

THE STATE,

Respondent,

vs.

TREMAINE O'KEEFE PRIDE,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

STATEMENT OF ISSUES ON CERTIORARI.....1

COUNTER-STATEMENT OF ISSUES ON CERTIORARI1

STATEMENT OF THE CASE.....2

Procedural History.2

Factual History.2

ARGUMENT.....6

I. The trial judge did not err in allowing Pride’s trial to proceed in his absence because Pride received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order. Furthermore, Pride was notified of his trial date, both orally and in writing, by his trial attorney on three occasions.6

II. The trial judge did not abuse his discretion by allowing the testimony of Lieutenant Whitfield Brooks because Lieutenant Brooks’s testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Pride and how Pride used Lieutenant Brooks’s testimony.11

III. The trial judge did not err by refusing to instruct the jury using Pride’s preferred definition of reasonable doubt because the trial judge was not required to define the term or give a specific definition. Furthermore, the trial judge provided a thorough and correct definition of reasonable doubt that did not prejudice Pride.16

CONCLUSION.....22

STATEMENT OF ISSUES ON CERTIORARI

I.

“Did the trial court err in failing to acknowledge that Tremaine O. Pride had been released on a bond order that cited the arrest warrant number for trafficking cocaine in violation of S.C. Code § 44-53-370(e)(2)(b)(3) when the State had indicted him for trafficking crack cocaine in violation of S.C. Code 44-53-376(C) and, therefore, the Court did not have the right to try him in his absence for a different charge?”

II.

“Did the trial court err in failing to exclude the testimony of a witness that had violated the sequestration order issued by the judge when the state knew the witness would be called at trial to testify and permitted him to sit in the courtroom during the testimony of two other witnesses?”

III.

“Did the trial court err in failing to give a reasonable doubt instruction that included the phrase ‘hesitate to act’ as approved by prior decisions of this court?”

COUNTER-STATEMENT OF ISSUES ON CERTIORARI

I.

Did the trial judge err by allowing Pride’s trial to proceed in his absence when: (1) Pride received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order; and (2) Pride was notified of his trial date, both orally and in writing, by his trial attorney on three occasions?

II.

Did the trial judge abuse his discretion or otherwise err by allowing the testimony of Lieutenant Whitfield Brooks when: (1) Lieutenant Brooks’s testimony was not influenced by the testimony he overheard in violation of the sequestration order; and (2) any error in the admission of the testimony was harmless in light of the evidence against Pride and how Pride used Lieutenant Brooks’s testimony?

III.

Did the trial judge err by refusing to instruct the jury using Pride’s preferred definition of reasonable doubt when the trial judge: (1) was not required to define the term or give a specific definition; and (2) provided a thorough and correct definition of reasonable doubt that did not prejudice Pride?

STATEMENT OF THE CASE

Procedural History

In August of 2018, the Greenwood County Grand Jury indicted Petitioner Tremaine O’Keefe Pride for one count of trafficking in crack cocaine and one count of resisting arrest. On December 11, 2018, Pride’s case was called to trial before a jury in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. However, Pride was not present at that time, and the trial proceeded forward in his absence. At the conclusion of the two-day trial, the jury convicted Pride as indicted. Following the verdict, the trial judge sentenced Pride and sealed the sentence. Subsequently, Pride was apprehended, and, on April 29, 2021, a sentencing hearing was conducted in the Greenwood County Court of General Sessions with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. During the hearing, the sentencing judge unsealed Pride’s sentence and imposed concurrent terms of imprisonment of twenty-five years for trafficking in crack cocaine and one year for resisting arrest. Pride then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing¹—issued an unpublished decision unanimously affirming Pride’s convictions. State v. Pride, Op. No. 2024-UP-389 (S.C. Ct. App. filed Nov. 24, 2024). Thereafter, Pride filed a petition for rehearing, and that petition was denied. Pride then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On April 18, 2018, agents with the City of Greenwood Police Department attempted to serve an active arrest warrant on Pride. (App’x pp. 94-96). As Agent Wesley McClinton,

¹ The State acknowledges the work of former Senior Assistant Deputy Attorney General William M. Blicht, Jr., who previously represented the State in Pride’s appeal and prepared the brief submitted to the Court of Appeals. (App’x pp. 247-269). In its Return to Petition for Writ of Certiorari, the State has now incorporated a substantial portion of that brief.

Lieutenant Whitfield Brooks, and Agent Sammy Evans turned onto Gray Street, they witnessed Pride sitting in a chair leaning against one of the apartment buildings. (App'x pp. 96-97). When Agent McClinton advised Pride he was under arrest, Pride immediately ran behind the apartment building. (App'x p. 97). Agent McClinton attempted to use his taser to subdue Pride but was unsuccessful. (App'x pp. 97-98). Just before Agent Evans was able to catch up to Pride, Pride reached into his sock and pulled out "a golf size bag of narcotics" and threw it. (App'x p. 98). Agent Evans detained Pride while Lieutenant McClinton retrieved the suspected bag of narcotics.² (App'x p. 98). Lieutenant McClinton took the suspected drugs and secured them in Agent Brooks's vehicle. (App'x p. 100). During the arrest, law enforcement also collected a set of digital scales and approximately \$380 in cash off Pride's person. (App'x p. 101; p. 121). Lieutenant McClinton took the suspected drugs back to the police department, weighed them, and did an initial field test which indicated the substance was crack cocaine. (App'x p. 101). Lieutenant McClinton packaged the drugs in a BEST kit and placed the drugs in the evidence locker at the police department. (App'x p. 102).

After the drugs were placed in the evidence locker, they were retrieved the following day by Evidence Technician Kenya Griffin. (App'x p. 135). Griffin took the drugs to SLED on April 27, 2018. (App'x p. 136). Once the drugs were at SLED, Forensic Chemist Shannon Sorrells, an expert drug analyst, weighed and analyzed the substance. (App'x pp. 143-145; pp. 149-151). Based on her analysis, Sorrells opined the substance was 29.06 grams of cocaine base. (App'x p. 151). Griffin received the drugs back from SLED on July 19, 2018. (App'x p. 136).

² Lieutenant McClinton's interaction with Pride was recorded on his body camera, and, later on, it was played for the jury during trial. (App'x p. 106; State's Ex. # 5 (Body Camera Recording); State's Ex. # 6 (Body Camera Recording)).

Ultimately, Pride was indicted for trafficking in crack cocaine and resisting arrest, and his case proceeded forward to trial in his absence. (App'x pp. 17-18; pp. 209-210; pp. 212-213). At the conclusion of trial, the jury—after just under thirty minutes of deliberations—convicted Pride as indicted. (App'x pp. 197-198).

Thereafter, once Pride was eventually apprehended and sentenced, he promptly appealed, arguing the trial judge reversibly erred by: (1) denying defense counsel's motion for a continuance and trying him in absentia; (2) failing to exclude the testimony of a witness who violated a sequestration order; and (3) failing to use the specific reasonable doubt jury instruction defense counsel requested when instructing the jury on the law. (App'x pp. 206-208; pp. 229-246). On appeal, the Court of Appeals affirmed. (App'x pp. 279-282). In affirming, the Court of Appeals first found the trial judge did not err by proceeding forward with the trial in absentia because Pride received adequate and proper notice he would be tried in his absence, including on the charge of trafficking in crack cocaine. (App'x p. 280). Next, although it concluded the trial judge erred by finding the witness did not violate the sequestration order, the Court of Appeals found the trial judge did not abuse his discretion by allowing the witness to testify before the jury because the witness's proffered testimony established he was not influenced by the testimony he heard. (App'x p. 281). Moreover, the Court of Appeals found any conceivable error in the admission of the witness's testimony was harmless because the chain of custody for the drug evidence was established as far as practicable without his testimony and his testimony had no impact on the outcome of the trial. (App'x pp. 281-282). Finally, the Court of Appeals found the trial judge committed no error by declining to give defense counsel's requested instruction on reasonable doubt because the instruction the trial judge elected to present adequately instructed

the jury on reasonable doubt and the decision on how to instruct the jury on the law fell within the judge's—and not defense counsel's—discretion. (App'x p. 282).

ARGUMENT

I.

The trial judge did not err in allowing Pride’s trial to proceed in his absence because Pride received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order. Furthermore, Pride was notified of his trial date, both orally and in writing, by his trial attorney on three occasions.

Standard of Review

“In criminal cases, an appellate court sits to review errors of law only.” State v. Banda, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). “Therefore, an appellate court is bound by the trial court’s factual findings unless they are clearly erroneous.” Id.

Analysis

On certiorari, Pride again argues the trial judge erred by allowing him to be tried in his absence when his bond order³ listed an arrest warrant number, 2018A2420100383, that corresponded with the offense of trafficking in cocaine rather than the offense of trafficking in crack cocaine that he ultimately stood trial for in his absence. Pride frames this issue as a question of “whether a defendant who is released on bond as to one charge can be tried in his absence for a separate charge from that listed in the bond[.]” (Pet. for Cert. p. 5). As an initial matter, the premise that Pride’s argument is based on is fundamentally flawed. Pride was not released on a bond order for trafficking cocaine. Rather, Pride was clearly notified that he faced a charge of trafficking crack cocaine in the text of the bond order, in the body of his arrest

³ Curiously, despite Pride’s bond order being essential to Pride’s argument on appeal and now on certiorari, Pride did *not* designate the bond form or the bail form to be included as part of the record on appeal for consideration by the reviewing court. Appellate Records for State v. Tremaine Okeefe Pride, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=73661>; see State v. Stewart, 435 S.C. 405, 413, 867 S.E.2d 33, 37 (Ct. App. 2021) (holding an appellant has a duty to provide an appellate court with a record sufficient to review the issues on appeal).

warrant, and at his bond hearing. (App’x p. 6; p. 214; p. 218). However, even if this Court accepts the flawed premise upon which Pride’s argument is based, Pride’s framing of the issue obscures the true question that faced the trial judge and faces this Court: did Pride waive his right to be present at trial? The answer to this question is yes. Pride received written notice of his right to be present at trial and was warned he would be tried in his absence should he fail to attend via his bond form and bail form. (App’x p. 217; p. 224). Even if notice via the written bond order was not sufficient to notify Pride he would be tried in his absence, trial counsel stated he gave Pride oral notice of his trial date on two occasions and written notice on a third occasion. Therefore, the trial judge properly determined that Pride waived his right to be present at trial, and the Court of Appeals correctly affirmed that factually-supported determination on appeal. Pride’s petition for a writ of certiorari should be denied.

“It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence.” State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010). However, “before a defendant may be tried in absentia, the trial court must determine a defendant voluntarily waived his right to be present at trial.” State v. Fairey, 374 S.C. 92, 100, 646 S.E.2d 445, 448 (Ct. App. 2007). “The Judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend.” Ravenell, 387 S.C. at 456, 692 S.E.2d at 558; see also Rule 16, SCRCrimP (stating “a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to

attend the court”). “Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present.” City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006). “Further, a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear.” Ravenell, 387 S.C. at 456, 692 S.E.2d at 558.

Pride’s argument fails for three reasons. First and foremost, Pride’s assertion that he was released on a bond order that listed the offense of trafficking cocaine is plainly contradicted by the text of the bond order. (App’x p. 218). The very first page of Pride’s bond order states that he is facing a charge of “Trafficking Crack[.]” (App’x p. 218). Additionally, the body of Pride’s arrest warrant lists “crack cocaine” as the substance that Pride is accused of trafficking and Pride was informed at the very outset of his bond hearing that he was before the court on a motion seeking bond for “a trafficking crack third offense.” (App’x p. 6; p. 214). The trial judge was keenly aware of these facts when he ruled: “And I’m going to deny your motion based upon the fact that the body of the warrant sufficiently states the drug involved was crack cocaine. The— the bond order and the bond hearing all reference crack cocaine.” (App’x pp. 63-64). Therefore, Pride’s assertion that he was released on a bond order for a different offense or that he was somehow unaware of what offense he was being charged with is, respectfully, wholly lacking in credibility.

Second, even if the flawed premise of Pride’s argument is accepted, Pride’s argument still fails because Pride received written notice of his right to be present for trial and was warned that he would be tried in his absence should he fail to attend. Pride’s bail form stated the following: “I understand and have been informed that I have a right and obligation to be present

at trial and should I fail to attend the court, the trial will proceed in my absence.” (App’x p. 217). Pride indicated his consent to this statement by his signature. (App’x p. 217).

Furthermore, Pride’s bond order states “FAILURE TO APPEAR AT TRIAL WILL RESULT IN A TRIAL IN DEFENDANT’S ABSENCE.” (App’x p. 224) (capitalization in original).

Finally, even if the written notice provided in the bail form and bond order were insufficient to advise Pride that he would be tried in his absence, Pride was notified by his trial attorney of his trial date on three separate occasions. When asked by the trial judge, trial counsel for Pride stated: “Your Honor, I had a conversation with my client on October 4th, which I orally notified him of the trial date. Another oral conversation with him on November 26th. And then written communication on November the 28th.” (App’x p. 66). The trial judge appropriately took evidence of the written and verbal notices Pride received of his trial date into consideration and rendered the following ruling:

So, again, I’m going to revisit the two specific findings that I must make under the Wrapp⁴ case, one, did Mr. Pride receive notice of a specific term of court that he needed to be present? I find that he did, based upon [trial counsel’s] oral communication on October 4th and November 26th to Mr. Pride, and his written communication on November 28th.

Secondly, was Mr. Pride sufficiently apprised of the fact that if he did not attend his trial that he would be tried in his absence? And based upon Court’s Exhibit No. 3⁵, he signed an acknowledgement on the second page, which indicates -- I’m just going to quote from the acknowledgement that he signed on September 11th of 2018, I understand and have been informed that I have a right and obligation to be present at trial. And should I fail to attend the Court, the trial will proceed in my absence.

⁴ State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (2017).

⁵ The trial judge seems to be referring to Pride’s bail form, but the transcript does not show when it was marked as Court’s Exhibit #3.

So the motion to continue is denied. And we will proceed forward with a trial in Mr. Pride's absence.

(App'x pp. 66-67). The trial judge did not err by allowing Pride's trial to proceed in his absence, and the Court of Appeals correctly affirmed the trial judge's decision in that regard on appeal.

Pride's petition for a writ of certiorari should be denied.

II.

The trial judge did not abuse his discretion by allowing the testimony of Lieutenant Whitfield Brooks because Lieutenant Brooks's testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Pride and how Pride used Lieutenant Brooks's testimony.

Standard of Review

“Whether a witness should be exempted from a sequestration order is within the trial court’s discretion.” Constant v. Spartanburg Steel Prods. Inc., 316 S.C. 86, 91, 447 S.E.2d 194, 197 (1994). An abuse of discretion occurs when the trial judge’s conclusions 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).

Analysis

On certiorari, Pride next argues the trial judge erred by failing to exclude the testimony of Lieutenant Brooks due to the fact he violated the trial judge’s sequestration order. In support of his argument, Pride asserts: “Here the testimony of the two officers related to the seizure and chain of custody of the seized items. Under such circumstance, prejudice can be and should be presumed.” (Pet. for Cert. p. 9). Pride’s argument fails for two reasons. First, the trial judge did not abuse his discretion in allowing Lieutenant Brooks to testify under the circumstances involved. Before Lieutenant Brooks was allowed to testify, the trial judge allowed Lieutenant Brooks to testify *in camera*. During that proffer, Lieutenant Brooks testified that while he overheard the testimony of two prior witnesses, their testimony had no effect or influence on his testimony. (App’x p. 128). Additionally, Lieutenant Brooks did not handle or move the items after they were placed in his car. (App’x p. 128; p. 132). Therefore, Lieutenant Brooks was not a part of the chain of custody. (App’x p. 226). Second, even if the trial judge admitted

Lieutenant Brooks's testimony in error, any error was entirely harmless. Far from being prejudiced by Lieutenant Brooks's testimony, Pride used it *to his advantage* in closing argument to suggest the absence of Lieutenant Brooks's name from the chain of custody form raised reasonable doubt about the authenticity of the drugs. (App'x p. 181). For both those reasons, the trial judge's decision to allow Lieutenant Brooks to testify was—just as the Court of Appeals correctly recognized—not reversible error. Pride's petition for a writ of certiorari should be denied.

“At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.” Rule 615, SCRE. However, “a party is not entitled to the sequestration of witnesses as a matter of right. The decision to sequester witnesses is left to the sound discretion of the trial judge.” State v. Tisdale, 338 S.C. 607, 616, 527 S.E.2d 389, 394 (Ct. App. 2000). “Whether a witness should be exempted from a sequestration order is within the trial court's sound discretion.” Gattison v. South Carolina State College, 318 S.C. 148, 151, 456 S.E.2d 414, 415 (Ct. App. 1995). “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. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006).

Here, Pride made a motion to sequester witnesses before trial. (App'x p. 74). Prior to Lieutenant Brooks testifying, Pride moved to exclude the lieutenant's testimony because he was present for the testimony of Agent McClinton and Agent Evans. (App'x p. 123). The trial judge appropriately asked Lieutenant Brooks to testify *in camera* to determine the extent to which, if any, the witness's testimony was influenced by his presence during the testimony of the two

agents. During Lieutenant Brooks's in camera testimony, the following exchange with the trial judge occurred:

[Trial Judge]: Officer Brooks, did the drugs ever change location from where Officer McClinton put them in the vehicle?

[Lieutenant Brooks]: No, sir.

[Trial Judge]: Okay. Has any of the testimony from the prior two witnesses had any influence whatsoever on the testimony you've given today?

[Lieutenant Brooks]: No, sir.

(App'x p. 128). As the preceding exchange demonstrates, the trial judge properly determined during the in camera hearing that Lieutenant Brooks was neither part of the chain of custody nor influenced by the testimony he overheard. Under such circumstances, the trial judge did not abuse his discretion by permitting Lieutenant Brooks to testify despite him having heard testimony from other witnesses.

Furthermore, even assuming the trial judge did somehow err by allowing the lieutenant to testify, any error was—just as the Court of Appeals prudently recognized—entirely harmless. Demonstrating that fact, Lieutenant Brooks was not part of the chain of custody, thus his testimony was cumulative to the testimony of the State's other witnesses. (App'x p. 128; p. 132; p. 226). Beyond that, even if Lieutenant Brooks was part of the chain, his testimony was nevertheless not necessary to admit the drugs that Pride discarded from his sock. See State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007) (“Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility.”); see also State v. Taylor, 360 S.C. 18, 26, 598 S.E.2d 735, 738 (Ct. App. 2004) (“If the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent

proof of tampering, bad faith, or ill-motive.”). Thus, because the State did not need Lieutenant Brooks’s testimony to complete the chain of custody in Pride’s case, Pride was not prejudiced by the trial judge’s ruling even assuming it was an erroneous one.

In the end, Lieutenant Brooks’s testimony ultimately had no bearing on the outcome of Pride’s trial. The jury was convinced of Pride’s guilt by the testimony of Agent McClinton and his body camera footage, which showed Pride throwing crack cocaine from his sock as he fled law enforcement, and *not* by Lieutenant Brooks’s limited testimony regarding who had access to his car. (State’s Ex. # 5; State’s Ex. # 6). Furthermore, Pride used Lieutenant Brooks’s testimony to his advantage in the following argument to the jury:

Who’s the next witness that you heard from? Lieutenant Brooks.
And the first question the solicitor was asking him, Did you expect to testify today?

No.

How long have you known you were going to testify?

About 10 minutes.

I submit to you, the State was scrambling around to try to plug that hole in their chain of custody. And I would invite you to look at the paperwork that was submitted to you about the chain of custody. There’s a form here certifying who’s in the physical chain of custody. Lieutenant Brooks’ name is not anywhere on the paperwork. Which then begs the question, you know, is there anybody else that had custody of this that’s no on the paperwork that we don’t know about? I mean, we discovered the one because it happened to be on the video. But, you know, who else’s hands did this go through?

(App’x p. 181).

Because the trial judge determined that Lieutenant Brooks’s testimony was not influenced by the testimony that he overheard, the trial judge did not abuse his discretion in allowing Lieutenant Brooks to testify. And because Brooks’s testimony was not necessary to

establish a chain of custody and was even used to Pride's advantage in closing, any error in its admission is harmless. Therefore, the Court of Appeals correctly affirmed on appeal. Pride's petition for a writ of certiorari should be denied.

III.

The trial judge did not err by refusing to instruct the jury using Pride’s preferred definition of reasonable doubt because the trial judge was not required to define the term or give a specific definition. Furthermore, the trial judge provided a thorough and correct definition of reasonable doubt that did not prejudice Pride.

Standard of Review

On appeal, an appellate court reviewing a trial judge’s jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). Significantly, the appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). Meanwhile, if the jury instructions presented were substantially correct and covered the applicable law, the trial judge’s decision will not be reversed on appeal. State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996); see State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”).

Analysis

On certiorari, Pride finally argues that the trial judge erred by refusing to instruct the jury that a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Because the aforementioned language was not read to the jury, Pride asserts he was “prohibited from making effective arguments[.]” (Pet. for Cert. p. 14). Contrary to Pride’s assertion, the trial judge was not required to give any definition of reasonable doubt, let alone Pride’s preferred definition. And, in Pride’s case, the trial judge gave a thorough definition of reasonable doubt that effectively mirrored a definition of reasonable doubt that has been explicitly approved by this Court. Beyond that, Pride was in no way limited or prohibited from

making an effective argument by the trial judge's jury instruction. Despite the trial judge's ruling, Pride nonetheless argued in closing argument that if the jurors hesitated to convict then they would have a reasonable doubt. (App'x pp. 86-87; p. 183). Thus, the trial judge's instruction was correct and did not hinder Pride's ability to defend himself.

“The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course.” Victor v. Nebraska, 511 U.S. 1, 5 (1994). “Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proven beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof.” Id. “Rather, ‘taken as a whole, the instructions [must] correctly convey the concept of reasonable doubt to the jury.’ ” Id. (quoting Holland v. United States, 348 U.S. 121, 140 (1954)).

“The trial court is required to charge only the current and correct law of South Carolina.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). In South Carolina, a trial judge is not required to instruct the jury on the meaning of reasonable doubt, let alone provide a specific definition for the term. State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 637 (1994). However, if a trial judge chooses to instruct the jury on the meaning of reasonable doubt, our Supreme Court has expressly recognized two appropriate ways for reasonable doubt to be defined. State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 868 (1998).

Under the first accepted jury charge, the trial judge *could* choose to instruct the jury that “[a] reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.” Id. at 155, n.12, 508 S.E.2d at 868. However, under the second accepted jury charge, the trial judge could instruct the jury as follows:

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told [it] is only necessary to prove the fact is more likely true than not, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Ladies and gentlemen, 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. The law doesn't require that.

If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Id. Importantly though, neither of the accepted charges is mandatory, and the decision whether to define reasonable doubt at all rests entirely in each individual trial judge's discretion. Id.

Here, Pride requested the trial judge include the "hesitate to act" language in his instructions to the jury. (App'x p. 168). However, the trial judge declined and instead read the following reasonable doubt instruction to the jury:

The Defendant has pled not guilty to these indictments. And that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is an important rule of the law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

Now, this presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach or unless you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, which remains with the Defendant until or unless it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It's not just a legal phrase. It is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Now, some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

Now, 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. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

(App'x pp. 185-187).

The trial judge's definition of reasonable doubt was nearly identical to the definition explicitly approved by our Supreme Court in Needs. Therefore, the trial judge provided the jury with a thorough and correct definition of reasonable doubt. Just because the trial judge refused to include Pride's preferred language does not mean—just as the Court of Appeals aptly recognized—Pride is entitled to have his conviction reversed. Pride was not entitled to have any definition of reasonable doubt read to the jury, let alone his preferred definition.

Furthermore, Pride was not prejudiced by the trial judge's ruling in any way. Pride asserts his case is similar to this Court's holding in State v. Jones, and that he suffered the same

kind of prejudice from the trial judge's refusal to charge the requested reasonable doubt definition that Jones did. Pride's reliance on Jones is misplaced. In Jones, this Court held the trial court erred in removing "hesitate to act" language after Jones had already made his closing argument. State v. Jones, 343 S.C. 562, 577-578, 541 S.E.2d 813, 821 (2001). This Court found the removal of the language was unfair to Jones because Jones had explicitly told the jury that the trial judge would instruct them that a reasonable doubt is one that causes a reasonable person to hesitate to act. Id. The trial judge's decision to amend his instruction after Jones had already argued had the effect of diminishing his credibility in the eyes of the jury. Id.

Unlike in Jones, the trial judge in Pride's case informed Pride what definition of reasonable doubt he intended to charge *before* the closing arguments were presented. Therefore, Pride was free to tailor his closing argument to adhere to the trial judge's intended instruction. Also, unlike in Jones, the trial judge adhered to his proposed instruction and did not undercut or diminish Pride's credibility with a revised definition that contradicted Pride's closing argument. Pride was not prohibited or hindered from telling the jury that a reasonable doubt is one that causes a reasonable person to hesitate to act. Indeed, both the State and Pride had already told the jury in opening statements that a reasonable doubt is one which would cause a reasonable person to hesitate to act. (App'x p. 83; pp. 86-87). Far from being prohibited from making this argument in closing, Pride essentially repeated his preferred definition when he told the jury: "If you've got that inkling of doubt, if when you go back there and you *hesitate* to convict, that's reasonable doubt talking to you." (App'x p. 183) (emphasis added). Because the trial judge's definition of reasonable doubt was a correct statement of law that did not prejudice Pride, the trial judge committed no conceivable error when instructing the jury on the law of reasonable

doubt, and the Court of Appeals correctly affirmed on appeal. Pride's petition for a writ of certiorari should be denied.

CONCLUSION

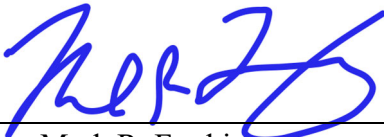
For all the foregoing reasons, it is respectfully submitted Pride’s petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 28, 2025