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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERT - COA
APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Honorable Donald B. Hocker, Circuit Court Judge
Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2025-000342
Lower Case Nos. 2018GS2401480, 2018GS2401481

The State, ... **Respondent,**

vs.

Tremaine O. Pride, ... **Petitioner**

PETITIONER's REPLY TO RESPONDENT'S RETURN

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Argument

Question 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?

Contrary to the claim in the Return of the State (Ret. at 7), Mr. Pride has never argued he was not given notice that he would be tried in his absence if he did not appear. As stated in the Petition, "His failure to comply with the conditions of his bond could not as a matter of law result in his conviction for the crime upon which he was released on bond." Pet. at 5-6. This is the basic argument of Mr. Pride. If one declines to appear as ordered in the bond order, the person can only be tried for what crime was alleged in the bond order. This was the basic holding of this court in *State v. Goode*, 299 S.C. 479, 385 S.E.2d 844 (1989). So, the proper question is upon which charge was Mr. Pride released?

The State is correct that the bond order references "Trafficking Crack 3d." The bond order also references an arrest warrant that is titled, "DRUGS/TRAF-COCAINE 28 G LESS 100G (3RD OFF). While the body of the warrant does state "TRAFFICK CRACK COCAINE" the "DESCRIPTION OF OFFENSE" on the arrest warrant informs him of a different charge. An arrest warrant and a bond order should not be a place of ambiguity as to the charge a defendant is facing. *Cf. State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), extended by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019)(A jury charge is no place for purposeful

ambiguity.). Preparing a bond order or an arrest warrant is not a difficult task. In this case, at the time Mr. Pride was released on bond, the indictment stating trafficking crack cocaine existed. The State elected not to make reference to the indictment. The State made reference to the ambiguous arrest warrant. As a result the State contributed to the confusion and should not be heard now to say the confusion does not matter.

The State has argued, "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." Ret. at 8. Under this argument the following could happen. A defendant could be charged with selling a small amount of marijuana. He is released on bond with the clear understanding that if he does not return for his trial, he will be tried in his absence. The state could then indict him for murder and the fact that he did not show up is of no consequence as he was told he would be tried in his absence. This appears to be the State's argument. This has never been the law in this state.

As to the state's final argument on page 9, again, the fact that Mr. Pride did not receive notice he would be tried in his absence, has never been an argument Mr. Pride has made.

Question 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?

When a judge makes a ruling upon an improper basis, that is an abuse of discretion. "An

abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support." *Burroughs v. Worsham*, 352 S.C. 382, 391, 574 S.E.2d 215, 219 (Ct. App. 2002); "'Abuse of discretion,' as used in this connection, merely means that the trial judge committed an error of law in the circumstances. It has been shown time after time that the term 'abuse of discretion' does not mean any reflection upon the presiding judge, and it is a strict legal term to indicate that the appellate court is simply of the opinion that there was a commission of an error of law in the circumstances." *Bishop v. Bishop*, 164 S.C. 493, 162 S.E. 756, 757 (1932). When, as in this case, the trial judge refused to exclude the witness on an improper basis, there is an abuse of discretion. As noted in the petition, the trial judge allowed the witness to testify because he did not believe the rule applied to a witness discussing the same subject as a previous witness. As noted in the opening petition, the trial judge did not believe the sequestration rule had been violated. These are two reasons to conclude the trial judge abused his discretion as he made his ruling upon an improper legal basis.

The State has further argued that Mr. Pride was not prejudiced. Under the facts of this case the issue of prejudice is impossible to tell. Because Officer Brooks heard the testimony of the other witnesses on the same subject, one will truly never know if his testimony was impacted by the other testimony.

The State has not made to reference to *State v. Washington*, 424 S.C. 374, 409, 818 S.E.2d 459, 477 (Ct. App. 2018), aff'd in part, vacated in part, rev'd in part, 431 S.C. 394, 848 S.E.2d 779 (2020) and how it applies to this case. The State has failed to enlighten this court how one standard is being applied as to the State and another to a defendant when the sequestration rule is violated. The court of appeals failed to show how a double standard is not

being applied. As we have a sequestration rule, it must be applied equally as to both parties. That did not occur in this case. This court should grant the Petition for Writ of Certiorari and apply the sequestion rule equally to both parties.

Question 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?

The essence of the State's argument on this issue is, "Contrary to Pride's assertion, the trial judge was not required to give any definition of reasonable doubt, let alone Pride's preferred definition." Ret. at 16. The more refined argument for Mr. Pride is that when a judge gives a definition of reasonable doubt, the judge should be required to give the accepted definition that defense counsel prefers. No harm to the administration of justice can arise from this rule.

The State agrees the requested charge by defense counsel was a proper statement of the law. The State has not put forward any argument as to why the trial judge should not be required to give the requested correct charge. The State has argued that trial counsel did give "the hesitate to act" argument in his closing. And had the trial judge given the exact same charge, the closing argument would have been more powerful. Learning to use the charge to the jury given by the trial judge is a basic lesson learned in any basic trial advocacy course.

No legal or other valid reason can be given for not requiring the judge to give the correct legal definition given by defense counsel. The State has not urged any, other than to say a judge is not required to give a definition of reasonable doubt. Such a statement simply ignores the fact that this judge elected to give one. The State at a trial is in no position to object to a correct definition of reasonable doubt. If defense counsel believes one definition is preferable to the

other, why should the State be able to stop the preferred definition?

The State has not argued against the principle that in a circumstantial evidence case, this court has given defense counsel the right to request a certain definition of circumstantial evidence. The failure to give the requested charge is a basis for reversal of the conviction. In reversing a manslaughter conviction, this court said, "When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence." *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 501 (2020). No reason exists to apply the same rule to the preferred definition of reasonable doubt. The trial lawyer knows the case best. The trial lawyer knows which version of reasonable doubt would best fit their case. For these reasons this court should grant the Petition for Writ of Certiorari and issue an opinion stating the trial judge is required to give the definition of reasonable doubt that has been approved by this court which trial counsel deems best. Such a rule does no harm to the State.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Petition, this court should grant the Petition for Writ of Certiorari and grant Tremaine O'Keefe Pride a new trial. At the new trial, the testimony of Whitfield Brooks should be excluded.

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