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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

ANDRE T. HEATLEY, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2023-001526

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Respondent's contention that it is mere speculation as to the stance of the lone juror is without support in the record and further emphasizes the coercive impact of the trial court's decision to recharge the juror on their oath considering *everyone's* knowledge of the stance of the lone juror during deliberations.

Respondent asserts that "whether the non-participating juror had come to a firm conclusion was unclear." Brief of Respondent p. 11. Further, Respondent asserts:

> Contrary to Petitioner's assertion, Respondent cannot locate within the record where the foreperson ever indicated that the juror had actually entered a not guilty vote, and *rather that in discussions, the juror would not explain why she wanted to vote differently than everyone else.*

Brief or Respondent p. 9, fn. 2 (emphasis added).

Finally, in incorrectly summarizing the issue before this Court, Respondent asserts:

> Petitioner's argument is fundamentally based on the unsubstantiated assumption that the non-participating juror was not only neglectful in her duties but also harbored a deeply ingrained belief in the Petitioner's innocence due to perceived insufficient evidence. However, the Petitioner's interpretation of events lacks a clear representation in the record, weakening the overall assertion.

Brief of Respondent p. 11-12.

Respectfully, these factual assertions lack support in the Record before this Court. To the contrary, the record fully supports that a lone juror felt there was not sufficient evidence of guilt, felt threatened by the conduct of the other jurors, and was singled out by the trial court through a coercive re-charge of the oath. Contrary to Respondent's assertion, these facts are fully established in the trial transcript and no other interpretation of the events would be reasonable.

Contrary to Respondent's assertions, a lone juror was singled out for voting not guilty in the initial statement of the foreperson for the jury:

> We feel that one of our jurors is biased, and she has made statements indicating she is biased. She is not taking evidence into consideration. She is reading her book and ignoring the evidence. She stated, You know how these police do these young black men. And that was in quotations. *She has no reasoning why she wants to vote different from everyone else.* She ignores us and won't engage in our conversation.

App. 1247, ll. 10 – 18 (emphasis added). Either this lone juror was the sole vote for guilty, or the sole vote for not guilty. There is no other interpretation possible. Respondent's claim that there is no support in the record for how this lone juror voted ignores this point.

As to which view (guilty or not guilty) this lone juror was taking, there is no need to speculate as the trial court clarified that point with the foreperson during direct questioning in open court:

> THE FOREMAN: She has participated, but she -- when it comes to looking at the evidence, she don't put in her opinion. She writes it down on her pad, as we have already used the blackboard, and we use the stencil thing we had. And she has not – each time we ask her a question about, how do you feel, she is not giving us an answer that makes this thing what it is supposed to be.
>
> THE COURT: All right. But she is giving you an answer?
>
> THE FOREMAN: She has not. *Well, she said she doesn't feel there is enough evidence.*

App. 1248, ll. 2 – 13 (emphasis added).

Petitioner acknowledges whether trial counsel was ineffective in failing to object to the re-charge of the oath and whether the oath was coercive are matters to be addressed by this Court if the petition is granted. However, an assertion that petitioner was "speculating" regarding the vote of the lone juror for not guilty asserted by Respondent lacks merit.

In an attempt to excuse the treatment of the lone juror by the trial court and trial counsel's failure to object, Respondent would have this Court interpret a footnote from State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020) that would effectively approve of a lower court charging the oath in all circumstances in which a lone juror *refuses to vote with the other jurors.* In effect, a system that replaces the fundamental protections afforded by a proper charge under Allen v. United States, 164 U.S. 492 (1896). In this respect, it is important to contrast the protections of a proper Allen charge with the language of the oath itself.

The oath charged by the trial court here is akin to the improper and coercive Allen charge adopted by the trial court in Tucker v. Catoe, 346 S.C. 483, 493, 552 S.E.2d 712, 717 (2001):

> It was never intended that the verdict of the jury should be the view of any one person. On the other hand, the verdict of the jury is the collective reasoning of all of the men and women serving on the panel. That's why we have a jury, so that we may have the benefit of collective thought and of collective reasoning.
>
> Now, it becomes each of your duties as jurors to tell the other jurors how you feel about the case and why you think as you do. It becomes each of your duties to exchange views with the other jurors, and you should listen to each other and give to the other's thought such meaning as you think it should have.

In noting the defects in the choice of words, our Supreme Court noted concern with the "emphasis on a collective result." Id., 346 S.C. at 495, 552 S.E.2d at 718. That concern is equally present in a re-charge of the oath in this case, with everyone's collective knowledge that there was lone juror against a guilty verdict who felt threatened by the actions of the other jurors.

> Do you swear or affirm that you shall well and truly try, and true deliverance make, between the State of South Carolina and the Defendant at bar, whom you shall have in charge, *and a true verdict give, according to the law and the evidence, so help you God?*

> *I remind you that you all took that oath.* I am going to send you back in the room and continue to deliberate. I ask that you be respectful to each other during your deliberations.

App. 1259, ll. 5 – 14 (emphasis added). Rather than emphasis the rights of each juror to their sincerely held beliefs regarding the guilt of the accused, a re-charge of the oath singled out the lone juror and emphasized the collective result. Labeling the re-charge of the oath as not a technical Allen charge ignores the very purpose of safeguards put in place since Allen was decided.

Moreover, the facts in Durant are fundamentally different that the facts in the present case. In Durant, there was both a split in the vote on guilt as well as a juror *who would not vote one way or the other.*[1] The trial court in Durant gave a complete a full Allen charge that informed the jury of the importance of trying to reach a unanimous vote but protected those in the minority by expressly telling the jurors to consider both sides of the issue, and that there was no requirement that they change their minds, and that if a unanimous verdict was not reached the court would respect that decision.[2] Rather than solely recharge the oath itself, the trial court in Durant paraphrased the oath during the Allen charge.[3]

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[1] See ROA 706, l. 1 – 707, l. 6 in *State v. Durant.*
https://ctrack.sccourts.org/public/caseView.do?csIID=62404

[2] See ROA 709, l. 2 – 710, l. 21 in *State v. Durant.*
https://ctrack.sccourts.org/public/caseView.do?csIID=62404

[3] "Everybody that's on this jury right now, essentially, said I can be a fair and impartial juror in this case and that I will make a decision based on what I hear in this courtroom and what you, the judge, tell me the law is." ROA 710, l. 6 – 10 in *State v. Durant.*
https://ctrack.sccourts.org/public/caseView.do?csIID=62404

Here, there was no juror in the present case who would not vote. To the contrary, this lone juror *had participated and voted*, telling the other jurors there was insufficient evidence to support guilt. App. 1248, ll. 12 – 13. For her vote, she was confronted with a threatening and hostile environment, to the point that a note was passed to the trial court:

> And it says that she is starting to feel threatened in the room, that somebody says she had blood on her hands and the room was getting hostile.

App. 1249, ll. 19 – 21. The trial court here was faced with the delicate job of not tipping the scales in favor of the majority view of jurors against the lone juror. Trial counsel was ineffective in failing to object to the coercive charge that emphasized both an oath to God to render a verdict and the need for a collective response. To the extent that the general reference of to the oath by the trial court in Durant was found to not be coercive, it was balanced by an extended admonition that the juror did not have to change their vote and while the jurors should try to reach a unanimous verdict, they were not required that do so. No such protections were provided in the present case.

Had the trial court told the lawyers she intended to provide an Allen charge and read the oath language instead, over objection of trial counsel, would this Court have found the uniquely worded Allen charge coercive? In such a scenario, this Court would have applied the factors outlined by the United States Supreme Court in Lowenfield v. Phelps, 484 U.S. 231 (1988). As noted by our Supreme Court, those factors are:

> (1) Does the charge speak specifically to the minority juror(s)?
> (2) Does the charge include any language such as "You have got to reach a decision in this case"?
> (3) Is there an inquiry into the jury's numerical division, which is generally coercive?
> (4) Does the time between when the charge was given, and when the jury returned a verdict, demonstrate coercion?

State v. Rampey, 438 S.C. 519, 525, 885 S.E.2d 366, 369 (2022). As argued in the *Petition for Certiorari*, the juror oath, in the context of the knowledge by everyone that there is a lone juror that felt threatened by the majority, was coercive thus depriving petitioner of a fair trial. *See* Lowenfield, 484 U.S. at 241 (noting a defendant is "entitled to the uncoerced verdict" of the jury). Since the trial court and everyone else in the courtroom knew the numerical split due to the testimony of the foreperson, the "oath" charge was directed at the lone juror. It included a requirement, under God, to reach a verdict. The numerical division was, as noted, known. After the oath was charged, the jury began deliberations at 3:20 p.m., with a note being sent at 3:21 p.m. and the verdict being announced at 3:59 p.m.[4] The lone juror either relented and voted with the majority within the first minute of deliberations or within the next 39 minutes. This short time frame strongly indicates the coercive nature of the charge. *See* Lowenfield, 484 U.S. at 240 (noting the 30 minutes between the Allen charge and the verdict suggests the possibility of coercion); *see also* Rampey, 438 S.C. at 527, 885 S.E.2d at 370 (holding "our case law suggests the one hour and seventeen minutes of deliberation following the Allen charge weighs in favor of" finding coercion.

Trial counsel was ineffective in failing to object to the coercion exerted on the lone juror who believed the state had failed to produce sufficient evidence of guilt. The PCR court erred in applying the technical label of the coercive charge (the oath rather than an Allen) rather than considering the end result of the improper charge: a deprivation of petitioner's right to an uncoerced verdict of the jury.

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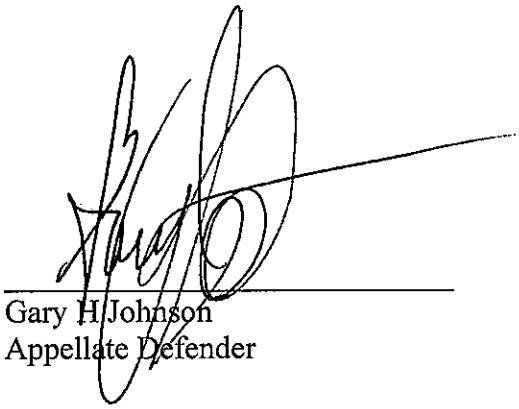
[4] There is no indication in the trial transcript as to the content of the note from the jury from 3:21 p.m. This note was not made a court's exhibit and was not mentioned when the trial court convened to receive the verdict at 3:59 p.m. App. 1259, l. 16 – 1260, l. 7.

CONCLUSION

This Court should grant the Petition for Certiorari for the reasons set forth in the Petition and this Reply and reverse the decision of the PCR court and remand this matter to the Richland County court of general sessions for a new trial.



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This 23rd day of July, 2025.