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SC Court of Appeals

-STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES BOULWARE,

APPELLANT

APPELLATE CASE NO. 2025-001740

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's Sixth Amendment constitutional right to a unanimous verdict was violated where during polling juror 94 hesitated to respond and never verbally agreed on the record that the verdict was still his?

STATEMENT OF THE CASE

On April 26, 2022, a Chester County grand jury indicted appellant for attempted murder, possession of a firearm by a person convicted of a felony, and possession of a weapon during the commission of a violent crime. Indictments. Appellant's case was called to trial on July 21-25, 2025, before the Honorable Robert E. Hood, and a jury.¹ Tr. 1. Twana Burris-Alcide represented appellant. Tr. 1. Candice Lively and Julia Soprano-Cesmat prosecuted for the state. Tr. 1.

At the conclusion of trial, the jury announced a verdict of guilty on all indictments. Tr. 1005, ll. 11-25. On August 25, 2025, Judge Hood heard post-trial motions and sentenced appellant to concurrent terms of fifteen years' imprisonment for attempted murder, five years' imprisonment for possession of a firearm by a person convicted of a felony, and five years' imprisonment for possession of a weapon during the commission of a violent crime. Aug. 25, Tr. 82, l. 17—83, l. 6.

This appeal follows.

¹ Prior to trial, an immunity hearing spanning four days was held before the Honorable Donald B. Hocker. Judge Hocker denied immunity by written order. The transcripts from this hearing and order are not included as they are not relevant to the issue on appeal.

STANDARD OF REVIEW

The appellate courts of South Carolina review questions of law de novo. *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). “We clarify that appellate courts review questions of law de novo, with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 840 (2018).

ARGUMENT

Appellant's Sixth Amendment constitutional right to a unanimous verdict was violated where during polling juror 94 hesitated to respond and never verbally agreed on the record that the verdict was still his.

Relevant facts

The trial court instructed the jury, “[y]our verdict must be unanimous. That means you-all 12 must agree.” Tr. 990, ll. 12-15. The jury began deliberating at 1:25 p.m.² Aug. 25, Tr. 32, ll. 11-12. After an hour, at 2:50 p.m. the jury sent a note asking for the self-defense charge in writing. Tr. 996, ll. 4-7; Aug. 25, Tr. 32, ll. 12-13; Court’s exhibit 5. At 4:35 p.m. the jury sent a second note asking, “when it comes to the self-defense and no other way to avoid danger, do you have to flee or can you stand your ground.” Tr. 997, ll. 2-8; Aug. 25, Tr. 32, ll. 13-14. At 5:22 p.m. the jury sent a third note that said, “We can decide one singular charge of 183 but still can’t come to a unanimous consent on 180.”³ Tr. 999, ll. 6-10; Aug. 25, Tr. 32, ll. 14-16; Court’s exhibit 7.

The solicitor requested the trial court give an *Allen*⁴ charge or at minimum recharge the jury on the law of attempted murder and self-defense. Tr. 999, ll. 19-25. Defense counsel objected to the state’s request for an *Allen* charge contending the jury had plenty of time to arrive

² The trial transcript reflects the time as 1:40 p.m. Tr. 995, ll. 24. However, the trial court listed the timeline of deliberation during post-trial motions and that is the timeline used in this brief because the trial transcripts lacks most of the timestamps. Aug. 25, Tr. 32, ll. 8-18.

³ The transcript and the indictments both reflect that 180 are the last three digits of the attempted murder indictment and 183 are the last three digits of the possession by a felon indictment. Indictments; Tr. 999, ll. 9-10.

⁴ *Allen v. United States*, 164 U.S. 492 (1896).

at a decision and it was deadlocked. Tr. 1000, ll. 5-10. Without explanation the trial court gave a lengthy *Allen* charge. Tr. 1000, l. 11—1003, l. 13.

The jury announced it had returned a verdict at 7:30 p.m. Tr. 1004, ll. 9-12; Aug. 25, Tr. 32, ll. 16-18. The court instructed, “if this is your verdict, please signify by the raising of your right hand.” All jurors responded by raising their hands. Tr. 1006, ll. 1-3. Defense counsel requested polling. Tr. 1006, ll. 7-12. The clerk asked juror 94, “is this your verdict, and do you still assent?” The juror gave a nonverbal response. Tr. 1007, l. 25—1008, l. 2. The court asked the juror if he would like to answer and the juror twice responded, “in private.” Tr. 1008, ll. 2-13. The trial court stated, “you have to answer on the record, sir.” The juror again gave a nonverbal response, and the court declared the juror indicated he agreed. Tr. 1008, ll. 14-17.

Defense counsel inquired regarding the juror’s long hesitation. The court moved on and dismissed the jury without further discussion. Tr. 1009, ll. 4-22. Following the dismissal of the jury the trial court deferred sentencing and post-trial motions to the following month.

After trial defense counsel moved for a new trial on several grounds including the violation of appellant’s Sixth Amendment right to unanimity. During the hearing on post-trial motions defense counsel argued there was not a unanimous verdict because juror 94 did not express his continued assent to the guilty verdict. Aug. 25, Tr. 4, ll. 10-12; 19, ll. 3-16. Defense counsel said juror 94 was present and prepared to testify. The trial court declined to hear juror testimony pursuant to Rule 606(b). Aug. 25, Tr. 11, ll. 16-17; 20, ll. 14-18. The trial court denied appellant’s motion for a new trial and found juror 94 clearly and unequivocally agreed with the verdict on the record, despite what the transcript reflects. Aug. 25, Tr. 22, l. 24—23, l. 2; 30, l. 5—31, l. 13. The court acknowledged the juror’s hand was over his mouth and stated the juror “did not want to say it in front of the entire group.” Tr. 30, ll. 24-25. The court

reasoned that juror 94 did not know his juror number and therefore did not initially respond to the clerk's question. The court went on to say the juror then asked to speak in private and when the court told him that was inappropriate, he assented to the verdict on the record, and no one disputed that at the time. Tr. 30, l. 15—31, l. 5.

Discussion

Appellant's constitutionally guaranteed right to a unanimous verdict was violated where during polling juror 94 hesitated and never verbally confirmed on the record that the verdict announced was still his verdict as is required. *See State v. Wright*, 432 S.C. 365, 852 S.E.2d 468 (Ct. App. 2020) ("If an announced verdict lacks unanimity in fact, then the harm to the integrity and fundamental legitimacy of the entire trial is total.").

The right to a unanimous verdict is guaranteed by both our state and federal constitutions. S.C. Const. art. V, § 22; U.S. Const. amend VI. "These guarantees, along with due process, require that the jury's findings as to each element of a crime must be unanimous." *State v. Adams*, 430 S.C. 420, 432, 845 S.E.2d 217, 223 (Ct. App. 2020); *See Richardson v. United States*, 526 U.S. 813, 817 (1999); *In re Winship*, 397 U.S. 358, 364 (1970) ("[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."). "Because elements of a crime consist of facts, it follows that to comply with the unanimity guarantee the jury must unanimously agree on the facts that comprise each element of the crime." *Adams*, 430 S.C. at 432; 845 S.E.2d at 223 (*citing Richardson*, 526 U.S. at 817–18).

Additionally, polling the jury "safeguards the right to a public trial. If the poll reveals the jury's announced verdict is not in fact unanimous, the verdict cannot stand, and the trial court may, as circumstances warrant, direct further deliberation or declare a mistrial." *State v. Wright*,

432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020), *aff'd*, 439 S.C. 101, 886 S.E.2d 206 (2023) (citing *State v. Kelly*, 372 S.C. 167, 170–71, 641 S.E.2d 468, 470 (Ct. App. 2007)).

While *State v. Wright*, considered whether the denial of a defendant’s request to an individual poll of each juror in open court is reversible error, the Court’s discussion of the right to unanimity is instructive in this case. “[I]ndividual polling supports several other interests of justice. The courtroom air thins when the jury returns to deliver its verdict. No other trial moment demands the solemn clarity individualized inquiry provides. Individual polling promotes finality and accountability of the verdict stage and enhances the integrity of the deliberative process by ensuring no juror was coerced in the jury room.” *Wright*, 432 S.C. at 369, 852 S.E.2d at 470; (citing *Humphries v. District of Columbia*, 174 U.S. 190, 194 (1899)) (observing object of poll “is to ascertain for a certainty that each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent”).

It is clear from the record this jury struggled mightily with this case. The jury asked questions, reviewed the instructions, and deliberated for several hours. The jury questions indicate the jury’s discussion likely centered on self-defense. During deliberation the jury indicated it could only agree as to the felon in possession of a weapon charge. In response the trial court gave a lengthy *Allen* charge over defense counsel’s objection and instructed the jury to continue deliberations.

At 7:30 p.m. after having begun the day at 9:30 a.m. the jury appeared to have returned a verdict. Even in group polling it appeared the jury was unanimous in its verdict. However, our case law emphasizes the importance of *individual* polling, when requested, to ensure protection of the defendant’s right to unanimity and the right to a public trial. *See Wright*, 432 S.C. at 369,

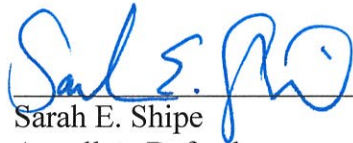
852 S.E.2d at 470. Here, during individual polling juror 94 hesitated to affirm the verdict asking if he could speak with the trial court privately and indicating something nonverbally.

At the post-trial motions hearing the trial court ruled the juror clearly, unequivocally agreed with the verdict and stating the juror “clearly said either I agree or I do.” Tr. 30, l. 21—31, l. 7. However, that is not what the record reflects. The juror’s response was far from clear and unequivocal. This disparity is demonstrated when considering the response of the other eleven jurors. Every other juror clearly and unequivocally agreed with the verdict on the record by verbally responding “I do.” Tr. 1006—1008. The record shows the juror wished to speak to the trial court privately instead of giving a verbal assent in front of everyone. The record shows juror 94 gave a “nonverbal response” two times to the question is this your verdict and do you still assent. Tr. 1008, l. 16. Because his response was “nonverbal” is unknown if juror 94 agreed with the verdict or if he felt coerced to declare a guilty verdict after several hours of deliberation. The final jury question indicates at least one person, perhaps this juror, was not certain.

Contrary to the trial court’s post-trial ruling the response given by juror 94 was neither clear nor unequivocal. This error requires reversal. The trial court should have directed the jury to continue to deliberate or declared a mistrial when juror 94 hesitated and failed to verbally assent to the verdict. *State v. Kelly*, 372 S.C. 167, 641 S.E.2d 468 (Ct. App. 2007); *State v. Singleton*, 319 S.C. 312, 315–16, 460 S.E.2d 573, 575–76 (1995) *State v. Roper*, 274 S.C. 14, 260 S.E.2d 705 (1979). Instead, the jury was dismissed over defense counsel’s objection. This error violated appellant’s Sixth Amendment right to unanimity and requires a new trial.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.



Sarah E. Shipe
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ATTORNEY FOR APPELLANT

This 11th day of September, 2026.