

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Hon. Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2009-140446

The State,

Respondent,

v.

Christopher Spriggs,

Appellant.

RECEIVED

DEC 11 2013

SC Court of Appeals

PETITION FOR REHEARING

Appellant, Christopher Spriggs, requests rehearing pursuant to Rule 221(a), SCACR, regarding this Court's Opinion filed November 27, 2013.

First, in rejecting appellant's claim that he was denied a fundamentally fair trial guaranteed by South Carolina law and the Due Process Clause, the panel erred in finding that the trial judge's unequivocal statement that she would defer to the defendant on the critical question whether to submit the lesser included offense of voluntary manslaughter was not a promise. The only fair reading of the complete context of the discussion between the trial court and defense counsel indicates that although the trial court initially stated that she did not yet know whether

the evidence would support a manslaughter charge, she ultimately, conclusively and unambiguously assured appellant's trial counsel that she would allow appellant to go "all or nothing" if that was what he desired:

Mr. Butler: Finally, just for the record, I believe Your Honor was in receipt of e-mails from the State indicating that prior to submitting the case to the jury they intend to ask for a manslaughter charge.

The Court: I'm not dealing with any of that.

Mr. Butler: I know. But I just want to put on the record that they have already decided they plan to ask for that and it will become relevant later.

The Court: Well, I haven't read that frankly, and, you know, I'm not going to prepare the jury charge until I've heard all the evidence.

Mr. Butler: I understand.

The Court: And the Court will only charge the applicable law as supported by the facts of the case.

Mr. Butler: Yes, ma'am.

The Court: And I don't know how it's going to develop.

Mr. Butler: Yes, ma'am.

The Court: So I don't know whether any lesser-included is going to be appropriate or whether he's going to request any. **And, frankly, I'm going to defer to what the defendant wants. So if he wants to go all or nothing, I'm going to give it to him. That should resolve that for everybody.**

Mr. Butler: That resolves that perfectly, thank you.

R. p.48, l.3 – p.49, l.2 (emphasis added).

This was not a preliminary discussion. Trial counsel asked the question because it would impact their strategy if the jury would ultimately decide whether their client was guilty of murder (or should be acquitted) or whether the jury would be choosing between murder, manslaughter and not guilty. While the judge was under no obligation to answer trial counsel's question; she did answer it, and appellant's counsel reasonably relied on the trial court's promise and made a number of strategic decisions based upon that reliance. Therefore, the trial court's subsequent change in position rendered appellant's trial fundamentally unfair in violation of the Due Process Clause. *State v. Woomer*, 277 S.C. 170, 173, 284 S.E.2d 357, 358 (1981) (“[o]nce the trial court induced appellant to testify by limiting the scope of the testimony, Woomer had a right to rely on that assurance, and the solicitor's violation of the limited scope of cross examination was fundamentally unfair.”); *see also*, *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (“The *Manning* charge, although not required, is a correct statement of South Carolina law. Appellant reasonably relied upon the judge's representation that he intended to give that charge to the jury. The decision to alter the charge, after the argument, was fundamentally unfair.”). Therefore, because appellant's trial counsel were misled to appellant's detriment, his conviction violates the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution. His conviction must be reversed and the case should be remanded for a new trial.

Second, the panel erred in finding the *Belcher* error harmless, *see State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), because it refused to acknowledge the possibility of a compromise verdict. *See, e.g., Missouri v. Hunter*, 459 U.S. 359, 369 (1983) (Marshall, J. and Stevens, J., dissenting) (“[W]here the prosecution's evidence is weak, its ability to bring multiple charges may substantially enhance the possibility that, even though innocent, the defendant may

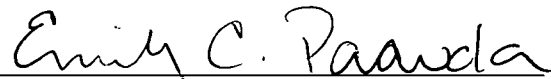
be found guilty on one or more charges as a result of a compromise verdict. The submission of two charges rather than one gives the prosecution ‘the advantage of offering the jury a choice—a situation which is apt to induce a doubtful jury to find the defendant guilty of the less serious offense rather than to continue the debate as to his innocence.’”) (quoting *Cichos v. Indiana*, 385 U.S. 76, 81, 87 S.Ct. 271, 273, 17 L.Ed.2d 175 (1966) (Fortas, J., dissenting from the dismissal of certiorari)).

Here, where appellant offered a compelling case of self-defense and/or defense of others, the *Belcher* error cannot be considered harmless because it is simply impossible to tell what the jurors’ thought processes may have been. In essence, the erroneous instruction is a “wild card” that undermines confidence in the jury’s verdict. *See, e.g., State v. Grunow*, 506 A.2d 708, 715 (N.J. 1986), (holding the argument for harmlessness “assumes that the jury inevitably proceeded on a step-by-step basis to consider murder first, and then aggravated manslaughter.”); *Commonwealth v. Talkowski*, 604 N.E.2d 718, 727 (Mass. 1992) (holding erroneous instruction on first-degree murder was not harmless in manslaughter conviction because the court “cannot determine that the jury found guilt without relying on the unconstitutional presumption”). The panel erred in concluding that the malice instruction had no bearing on the jury’s manslaughter verdict; this conclusion hinges on a number of speculative assumptions about the jury’s deliberations. *See Grunow*, 506 A.2d at 716 (“The tradition of the common law does not permit us to speculate upon the foundations of a jury verdict. An individualized assessment of the reason for a jury verdict would be based either on pure speculation, or would require inquiries into the jury’s deliberations that courts generally will not undertake. This springs from the unique role of the jury in the criminal process.”). Given the evidence in this case, it is simply

impossible to conclude that the improper malice instruction was harmless beyond a reasonable doubt.

For these reasons, rehearing should be granted.

Respectfully submitted,



JOHN H. BLUME

EMILY C. PAAVOLA

900 Elmwood Ave., Suite 101

Columbia, SC 29201

(803) 765-1044

ATTORNEYS FOR APPELLANT

December 10, 2013.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2009-140446

State of South Carolina

Respondent,

v.

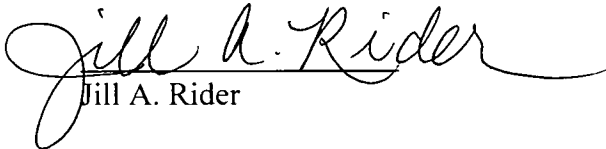
Christopher Spriggs,

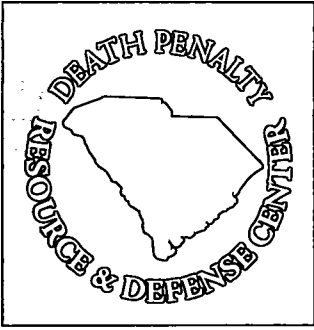
Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petition For Rehearing was served by first class United States mail, postage prepaid, this 10th day of December, 2013, upon the following:

William M. Blich, Jr.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211


Jill A. Rider



December 10, 2013

Jenny Abbot Kitchings
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *State v. Christopher Spriggs*
2009-140446

Dear Ms. Kitchings:

Please find enclosed, with proof of service, the original and seven copies of Appellant's Motion for Rehearing. Please clock in and return the extra copy to me in the self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Jill A. Rider
Paralegal

cc: William Blich, Esq.

RECEIVED
DEC 11 2013
SC Court of Appeals