

STATE OF SOUTH CAROLINA

In The Court of Appeals

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MAR 16 2015

S.C. Supreme Court

Appeal from Berkeley County

Carmen Mullin, Circuit Court Judge

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MAR 17 2015

SC Court of Appeals

Case No. 13-G5-18-0013

APPELLATE CASE 2014-000620

State,

v

Respondent

Joseph Mack, Jr.

Appellant

PRO SE BRIEF

Pro Se Brief

Joseph Mack, Jr 359321
RCI, SA-12, POB 2039
Ridgeland, SC 29936

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ISSUES

1. DID THE COURT GIVE ERRONEOUS BURDEN SHIFTING JURY INSTRUCTIONS ON REASONABLE DOUBT? S.C. Supreme Court
2. WHETHER THE TRIAL COURT ERRED DENYING DEFENDANT'S MOTION FOR DIRECT VERDICT?

STATEMENT OF THE CASE

Mack adopts and incorporates the statement as set forth therein Counsel L.C. Durant's brief although he was informed by clerk's office to submit the response here in on or about February 2015

I. THE TRIAL COURT GAVE AN ERRONEOUS BURDEN SHIFTING JURY INSTRUCTION ON REASONABLE DOUBT.

Upon the trial judge conducting the charge of the law to the jury, the trial court gave an unconditional burden-shifting charge of law on reasonable doubt contrary to the due process clauses of the State and Federal Constitution to the jury which consisted of, "Ladies and gentlemen, everyone is entitled to justice in this case, both the State and the Defense. You owe no support or sympathy to anyone." (tr. p. 406 11.14-17). More, at the beginning of the jury deliberation, appellant Mack's trial counsel responded when the trial judge inquired:

Are there any additions or objections to the charge from the State? (tr. p. 409 11. 15-16)

Mr. Scwacke pointed, "Your Honor, near the end you made some reference to truth and justice. And my understanding is the using 'truth' has fallen into some disfavor because the jury is actually not on a search for the truth. There are looking for evidence and proof of guilt beyond a reasonable doubt. (tr. p. 409 11. 19-25) The court mentioned.

I'll tell you exactly what I said, "*Everyone is entitle to justice in this case, both the State and the Defendant. You owe no support or sympathy to anyone. The Court is of the confirmed opinion that whatever verdict you reach will represent truth and justice for all parties involved.*" (Tr. p. 410 11. 4-11)

It is important to note all of this occurred outside the presence of the jury and trial counsel argued, "A defendant is presumed innocent obviously of any and all charges. He is not required to prove his innocence. No one is ever required to prove truly what happened. The burden is on the State to prove this man guilty of these offenses beyond a reasonable doubt." (Tr. p. 412 11. 19-25)He stressed further, "So if you could note our objection on the record for that, although we're not requesting a curative instruction. (Tr. p. 414 11. 2-4)

The government's states attorney stressed that he "believes that a curative instruction would be appropriate, something along the lines of nothing in the court's instructions were intended to shift the burden of proof." (Tr. p. 414 11. 19-22) The trial judge declined to follow the State's request. (Tr. p. 415 11. 12-22) Since Mack was convicted of the lesser offenses of armed robbery i.e. (common-law robbery); he asserts the charge could not be harmless. State vs. Daniels 737 S.E. 2d 2/93 (2012) ("Jury instruction that 'whatever verdict you reach will represent truth and justice for all parties that are involved in this case' was improper")

II. THE TRIAL COURT ERRED DENYING DEFENDANT'S MOTION FOR DIRECT VERDICT

The trial court erred when it denied the motion for direct verdict of appellant. Trial counsel made the initial motion for direct verdict at the closing of the government's case where he pointed:

My motion for direct verdict is based upon the testimony of the witnesses and the officers, even in the lack of the evidence that's presented. So for those reasons, I would ask for a direct verdict on the charges. (tr. p. 11. 7-12)

The court ruled, "I do think there is evidence from which this jury could deduce that, in fact" (Tr. p. 276 11. 18-19) The motion was subsequently renewed. (Tr. p 357 11. 3-5) The trial judge denied the motion once again. (Tr. p. 11-. 9-14) State v. Pearson, 764 SE 2d 706, 712 (S.C. App. 2014) (merely raised a suspicion of Pearson's guilt') Pearson also cited State v. Ballenger, 322 S.C 196, 199. 470 SE 2d 851, 853 (1996).

Surely Mack's case is one of circumstantial evidence where there was no actual finding of him being armed with a deadly (firearm) weapon.

CONCLUSION:

Wherefore, Mack should be granted a new trial

CERTIFICATE OF SERVICE

He certifies that he has cause true and correct copies of the Pro Se Brief to be mailed, postage prepaid, to government attorney at P.O. Box 11549, Columbia, South Carolina 29211.

This 12 day of March 2015

Joseph Mack Jr
Signature