

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SEP 30 2015
SC Court of Appeals

Appeal from Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in instructing the jury in part of its opening remarks that a trial “is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court,” because such a remark could alter the jury’s perception of the burden of proof and deprive appellant of a fair trial?

STATEMENT OF THE CASE

Appellant was convicted along with a co-defendant of attempted murder, possession of a firearm, and conspiracy after a jury trial held before the Honorable Thomas A. Russo on May 19-21, 2014, in Lexington County. Respective sentences of twelve (12) years, five (5) years, and five (5) years were imposed. David Mauldin, Esq. was trial counsel, Kate W. Usry, Esq., and Gil Bell, Esq. were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in instructing the jury in part of its opening remarks that a trial “is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court,” because such a remark could alter the jury’s perception of the burden of proof and deprive appellant of a fair trial.

Appellant’s indictment for attempted murder read as follows:

That Bilal Sincere Haynesworth, with co-defendants, in Lexington County, South Carolina, on or about January 3, 2013, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: shooting into an occupied dwelling, in violation of §16-03-0029 of the South Carolina Code of Laws 1976, as amended.

JayQuan Bell was the key witness for the State. He lived at the dwelling in question in Swansea on January 3, 2013. He lived there with his Aunt Jennie, Frankie Lawton, Frantia, and his little cousin Tyana. (R. 67, l. 7-16) Earlier in the morning, at the parking lot at Swansea High School appellant and his grandmother were headed toward the grandmother’s car to leave. A Mercedes truck pulled up and appellant’s mother, his brother, and Nehemiah came out of it. Appellant’s brother’s name was Lywone Capers, the co-defendant. Capers said to Bell, “All you niggas are dead.” Then he looked at Bell’s grandmother and said, “Bitch, you dead, too.” (R. 70, l. 8-75, l. 1)

Bell and his grandmother decided to drive back to the residence. The grandmother decided to go to the local Exxon station to get gas. Bell went with her because he did not want her to go alone. When they got to the gas station, the Mercedes truck came by and a green Camaro driven by appellant pulled up. Co-defendant Capers was in the Mercedes truck and Nehemiah Dixon was

driving it. Bell and his grandmother decided that they better go back to the residence. (R. 75, l. 18-81, l. 20)

While at the residence, Bell heard engines roaring like cars were driving by. He opened the door and saw the green Camaro and appellant with his arm out the window with a gun. He closed the door and told everybody to get down. That was when shots were fired. It got quiet so he opened the door again and he saw Capers hanging over the top of the Mercedes truck with his gun. Shots were fired again. (R. 82, l. 8- 84, l. 7)

Prior to any of the above evidence being presented, the trial court instructed the jury in its opening remarks that a trial “is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court.” (R. 11, l. 22-24) Defense counsel objected to this remark to the jury and cited State v. Daniels, 401 S.C. 251, 737 S.E.2nd 473 (2012) where the Court previously told this same judge to remove any remark like this from his general session charges. The trial court, here, denied the motion but noted the objection. (R. 19, l. 7- 21, l. 3) In Daniels the Court wrote:

Such a charge could effectively alter the jury’s perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State’s burden to prove the defendant’s guilt beyond a reasonable doubt. Moreover, to a lay person, the “all parties involved” in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

(401 S.C. at 256, 737 S.E.2nd at 475)

There was no overwhelming evidence in this case. The case rested on the credibility of one eyewitness, JayQuan Bell, who had an up and down relationship with appellant.

CONCLUSION

Because of the improper remarks by the trial court, appellant's convictions should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

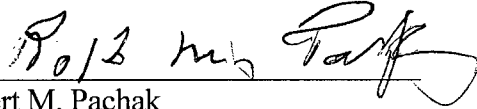
ATTORNEY FOR APPELLANT

This 30th day of September, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 30, 2015



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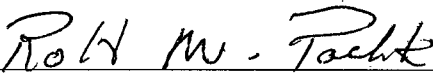
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CERTIFICATE OF SERVICE

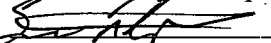
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 , this 30th day of September, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.