

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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THE STATE,

**RECEIVED**  
RESPONDENT,  
MAR 17 2016  
SC Court of Appeals

V.

BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

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Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

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Opinion No. 2016-UP-119

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PETITION FOR REHEARING

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Pursuant to Rule 221, SCACR, appellate counsel petitions this Court for rehearing on the following points that may have been overlooked or misapprehended. The trial judge in this case in his opening remarks to the jury instructed them to consider that justice is done between the parties that appear before the court. This charge was struck down in State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) because it diluted the State's burden of proof and improperly shifted the reasonable doubt burden of proof.<sup>1</sup> It is well noted that opening remarks set the whole tone of a trial.

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<sup>1</sup> The trial judge in Daniels is the same judge who gave the remarks in this case.

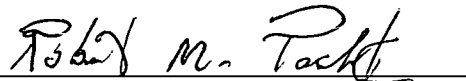
Nevertheless, this Court ruled that it has to consider the jury charge as a whole and that a trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. This cryptic opinion does not explain how the jury charges as a whole cured the error of the trial judge's opening instruction to the jury that they carried with them throughout the trial. This Court is asked to note the following from State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991):

When an incorrect charge is given, the court must withdraw it; "[m]erely superimposing a correct statement of law over an erroneous charge only fosters confusion and prejudice." \*402 *State v. Patrick*, 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986); *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985); *State v. Adams, supra*.

The evidence in this case was not overwhelming. The case rested only on the credibility of one eyewitness, Jay Puan Bell, who had an up and down relationship with appellant.

Wherefore, based on the foregoing points, appellate counsel would request a hearing.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

This 17th day of March, 2016.

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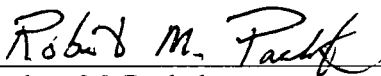
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CERTIFICATE OF SERVICE


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The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Bilal Sincere Haynesworth at the Lee Correctional Institution 990 Wisacky Highway, Bishopville, SC 29010, this 17th day of March, 2016.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 17th day  
of March, 2016.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: March 1, 2026.