

STATE OF SOUTH CAROLINA

In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY

Donald B. Hocker, Circuit Court Judge

TAMARQUIS ANTWAIN WINGATE,

APPELLANT,

- - VS - -

THE STATE,

Respondent.

APPELLATE CASE NO: 2014-002717

APPELLANT'S AMENDED "Pro Se BRIEF"

TAMARQUIS A. WINGATE

South Carolina Department
of Corrections
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC. 29010

APPELLANT, PRO SE

STATEMENT

Appellant moves before this Court, for leave to amend his current "pro se" Brief, filed in the above case, under the analysis of STATE -vs- STUKES, Opinion No: 27633 (May 4, 2016).

Appellant's appeal arose from a judgment of the trial court, in Florence County, before the Honorable Donald B. Hocker, Circuit Court Judge, and a jury. This Court granted appellant a forty-five (45) days to submit a "Pro Se Brief" under the analysis of ANDERS -vs- CALIFORNIA, 386 U.S. 738, to which appellant, through process, was timely filed.

Appellant moves for "leave" from the Court to amend his Pro Se Brief, to include the following claim for relief.

ISSUE PRESENTED

DID THE LOWER TRIAL COURT ERROR BY CHARGING THE JURY THAT A
VICTIM'S TESTIMONY NEED NOT BE CORROBRATED.

LAW/ANALYSIS

Wingate, the appellant, argues the trial court erred in charging the language of §16-3-657 on the basis that a victim's testimony need not be corroborated.

Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct verdict. Regardless of whether the charge is a correct statement of law. Instructions which confuses or misleads a jury are deemed erroneous.

When reviewing a jury charge for error, an appellate court must consider the charge as a whole; in that, the charge must be prejudicial to the appellant to warrant a new trial. STATE -vs- CURRY, 406 S.C. 364, 373, 752 S.E.2d 263, 267 (2013).

In the past our state appellate courts have held that while a trial court is not required to charge the language of §16-3-657; but,... if it does the charge is not reversible error, provided this instruction is not unduly emphasized and the charge as a whole comports with the law.

In STUKES, supra., the court has held the legislative intent

of §16-3-657 is not the proper subject of a charge but merely serves to guide trial and appellate courts in analyzing the sufficiency of evidence.

Additionally the Court held that this charge "has the potential for creating more problems than solutions, for it might cause confusion when read with the general charge on witness credibility, and noted such charged would places emphasis on the victim's testimony appearing to be a comment on the facts by the court. In sum the Court held that:... this charge is confusing and violative of the constitutional provision prohibiting courts from commenting to the jury on the facts of the case. S.C. Const., art. V, §21 ("Judges shall not charge juries in respect to matters of facts, but shall declare the law").

Accordingly, it is not within the province of the court to express an opinion to the jury on its view of the facts, by addressing the veracity of a victim's testimony in its instruction. Therefore, it cannot be said, that any statement by the court that suggests one witnesses' testimony need not be subject to the same tests for weight or credibility as the testimony of others has the unfortunate effect of "bolstering" that witness's testimony by according it special status.

The instruction in appellant's case did just that, which effectively places the judges' thumb on the scale to lend an extra element of weight to the victim's testimony.

IN THE CASE NOW BEFORE THE COURT:

Appellant was charged with CSC with a Minor, and during jury instructions, the trial court charged the jury:

"IN ADDITION, THE TESTIMONY OF THE VICTIM NEED NOT BE CORROBRATED IN A PROSECUTION UNDER §16-3-655"

Id. in:...Appellant Counsel's Appendix, at Trial Transcript page 231, line 25 through page 232, Line 2.

This language in the charge to the jury had the prejudicial effect of "bolstering" the victim's testimony, and cannot be cured by further instruction. Consequently, the court's instruction, such as that here, cannot be harmless, because it is precisely this cumulative effect of comments on the facts, by the trial court, produces an impermissible charge on the facts, by the court, to the jury. STUKES, supra.

CONCLUSION

By reasons of the foregoing, appellant prays this court reverse his conviction and sentence, and remand the case back to the trial court for a new trial.

APPELLANT FOREVER PRAYS:

Respectfully submitted,

Tamarquis Wingate

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APPELLANT, Pro Se.

DATE: May 16, 2016