STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC Court of Appeals

Certiorari to Lexington County

Thomas A. Russo, Circuit Court Judge

Opinion No. 2016-UP-119 (S.C. Ct. App. filed March 2, 2016)

THE STATE,

RESPONDENT,

V.

BILAL SINCERE HAYNESWORTH,

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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ATTORNEY FOR PETITIONER

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The Court of Appeals erred in affirming the trial court's opening remarks to the jury 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 petitioner of a fair trial 5

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was filed in the case on March 17, 2016, and was denied on April 21, 2016.

ISSUE PRESENTED

Whether the Court of Appeals erred in affirming the trial court's opening remarks to the jury 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 petitioner of a fair trial?

STATEMENT

Petitioner 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, Esquire was trial counsel, Kate W. Usry, Esquire, and Gil Bell, Esquire were the assistant solicitors.

Petitioner appealed his convictions and a final brief was submitted to the Court of Appeals on September 30, 2015. The Court of Appeals affirmed the convictions on March 2, 2016, in an unpublished opinion. A petition for rehearing was filed on March 17, 2016, and was denied on April 21, 2016.

This petition follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's opening remarks to the jury 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 petitioner of a fair trial.

Petitioner's indictment for attempted murder reads 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, Frank Lawton, Frantia, and his little cousin Tyana. (R. 67, l. 7 – 16) Earlier in the morning, at the parking lot at Swansea High School petitioner and his grandmother were headed toward the grandmother's car to leave. A Mercedes truck pulled up and petitioner's mother, his brother, and Nehemiah came out of it. Petitioner'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 petitioner 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 petitioner 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 the 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 sessions 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 that 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. The 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 petitioner.

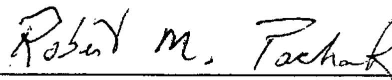
Against this background, the Court of Appeals gave a cryptic ipse dixit opinion which explained nothing other than what cryptic and ipse dixit mean. First, the court says it "sits to review errors of law only." Well, this Court said in State v. Daniels, 401, S.C. 251, 737, S.E.2d 473 (2012) that the trial judge's instruction like the one given in this case was error. Then, the court said it "must consider the [trial} court's charge as a whole..." when reviewing a charge for error. But the court never explained how a review of the charge as a whole corrected the bad instruction it did give. The improper opening remarks given by the trial court stayed with the jury throughout the trial. Petitioner would ask this Court 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.*

CONCLUSION

Petitioner's writ should be granted and his convictions be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of May, 2016.

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TO THE COURT OF APPEALS

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on David Spencer, Esquire and Bilal Sincere Haynesworth at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 20th day of May, 2016.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of May, 2016.

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