

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Thomas A. Russo, Circuit Court Judge

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SC Court of Appeals

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

THE STATE,

RESPONDENT,

V.

BILAL SINCERE HAYNESWORTH,

PETITIONER

APPENDIX

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ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bilal Sincere Haynesworth, Appellant.

Appellate Case No. 2014-001177

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

Unpublished Opinion No. 2016-UP-119
Submitted February 1, 2016 – Filed March 2, 2016

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia; and Solicitor Donald V. Myers, of Lexington,
for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Nesbitt*, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) ("In
criminal cases, the appellate court sits to review errors of law only." (quoting *State*

v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)); *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003) ("In reviewing jury charges for error, we must consider the [trial] court's jury charge as a whole . . ."); *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("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.").

AFFIRMED.¹

SHORT, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

Opinion No. 2016-UP-119

PETITION FOR REHEARING

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.¹ It is well noted that opening remarks set the whole tone of a trial.

¹ The trial judge in Daniels is the same judge who gave the remarks in this case.

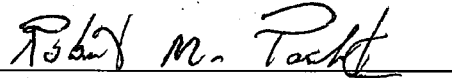
Nevertheless, this Court ruled that it has to consider the jury charge as a whole and that a trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. This cryptic opinion does not explain how the jury charges as a whole 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.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

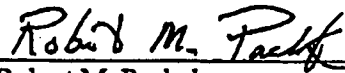
BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

CERTIFICATE OF SERVICE

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.

The South Carolina Court of Appeals

The State, Respondent,

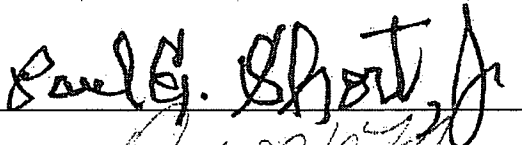
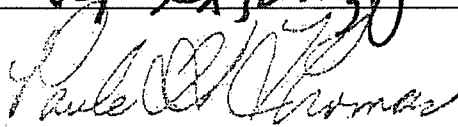
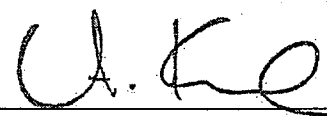
v.

Bilal Sincere Haynesworth, Appellant.

Appellate Case No. 2014-001177

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
~~Robert M. Pachak, Esquire~~
David A. Spencer, Esquire
Donald V. Myers, Esquire
The Honorable Thomas A. Russo

FILED

4/21/16