STATE OF SOUTH CAROLINA

IN THE SUPRMEME COURT

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SC SUPREME COURT

Certiorari to Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

Respondent,

vs.

BILAL SINCERE HAYNESWORTH,

Petitioner.

Case No. 2016-001101

RETURN TO PETITION FOR WRIT OF CERTIOARI

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The trial court's advice to the jury prior to trial that a trial is a search for the truth did not shift the burden of proof, and any conceivable prejudice was cured by the trial court's extensive instructions that the State bore the burden of proving the allegations beyond a reasonable doubt.

STATEMENT OF THE CASE

Appellant Haynesworth and his brother, Lywone Capers, were jointly tried for attempted murder, possession of a firearm, and conspiracy on May 19-21, 2014. They were found guilty as charged by the jury. The Honorable Thomas A. Russo sentenced Haynesworth to twelve years imprisonment for attempted murder and concurrent sentences of five years imprisonment for the two remaining convictions.

Haynesworth appealed his conviction and sentence. The Court of Appeals affirmed in an unpublished Rule 220(b), SCACR, opinion. 2016-UP-119 (S.C. Ct. App. filed March 2, 2016). Haynesworth's subsequent petition for rehearing was denied. Haynesworth petitioned this Court for a grant of certiorari. This return follows.

STATEMENT OF FACTS

Bilal Haynesworth and his brother, Lywone Capers, fired into the residence where JayQuan Bell lived as retribution for a series of disrespectful communications between Bell and Haynesorth. Fortunately, no one was hurt.

On January 3, 2013, Clara Williams, Bell's grandmother, picked up Bell from his aunt's house to enroll at Swansea High School. Williams drove him to school in her Ford Focus. They were unable to complete the enrollment without Bell's mother, so they headed back to the car. Williams testified that two young men and a woman approximately in her thirties approached and threatened them. Williams did not know any of these people. Williams testified she felt threatened. Bell told Williams they should just go back to the car and leave, which they did. Williams and Bell drove back to the aunt's house briefly and then to the Exxon station to fill the car up with gas. ROA. pp. 33-37.

While Bell and Williams were filling the tank with gas, a Camaro pulled into the station, and the man who cursed at them at school exited the Camaro and started to point at Bell and Williams. Bell said, "Let's go." They left and returned to the aunt's house. Williams was in the bathroom when she heard gunshots. Williams went into the laundry room and bent down. She heard "lots" of shots. She confirmed that a total of five people were in the house when the shots were fired. ROA. pp. 40-41.

Jennie Childs, the aunt, testified she let Bell live with her while Bell went to school at Swansea. Williams picked Bell up to enroll him at school and was going to also take him grocery shopping. When Bell returned, Childs noticed he was upset. Then she heard gunshots. Everyone got down on the floor. She confirmed one of the shots entered her

daughter's room. ROA. pp. 47-53.

Bell explained he was raised by Williams but was living with his aunt, Childs, for residency purposes because he wanted to enroll for his last semester of high school in Swansea, where he originally started high school. While trying to enroll in the school, Bell and Williams were approached by Haynesworth, Capers, and their mother, Princess. Capers threatened them. Capers said, "All you niggas are dead" and looked at Williams and told her, "Bitch, you dead." ROA. pp. 66-74.

Bell and Williams left the school and returned to Childs' house briefly before they went to the Exxon station. While at Exxon, he saw Princess' Mercedes-Benz truck and Haynesworth's green Camaro. Haynesworth came out of the Camaro and began gesturing for Bell to turn around as Williams and Bell pulled away. Capers exited the truck and made gestures too. ROA. pp. 74-80.

Bell and Williams went back to the house again, and while inside the house, Bell heard engines outside. He opened the door and saw Haynesworth with his arm hanging out of the window holding a gun. Bell told everyone to get down and then two shots were fired. ROA. pp. 82-83.

Bell looked out the door and saw Nehemiah Dixon (who he also had seen at the school) and Capers, who was holding a gun, in the Mercedes-Benz truck. More shots were fired. Bell also saw a muddy tan Nissan. ROA. pp. 83-84.

The motive apparently was an argument between Bell and Haynesworth over the mother of Bell's child. However, according to Bell, the argument was over. On cross-examination, defense counsel elicited testimony about threatening Facebook messages that

suggested an active dispute and helped prove the defendants' motive for the drive-by shooting. This evidence included threats Bell made to Haynesworth over Christmas break. ROA. pp. 93; pp. 100-103; pp. 104-105. No evidence suggesting self-defense was presented to the jury. After the shooting, Bell sent Haynesworth a message complaining they should have fought instead of Haynesworth bringing guns into the dispute. ROA. p. 105. Bell testified he does not own a gun. ROA. p. 118.

Nehemiah Dixon was obviously a reluctant witness for the State. Dixon dates Haynesworth's sister, and he was with them on January 3, 2013. Dixon, Princess, and Capers took Haynesworth to school and dropped him off. They received a text that he was not comfortable there, so they went back to sign him out. Dixon testified he did not see Bell at the school because he stayed in the truck. Dixon admitted he overheard Capers say something about settling some things. They left Princess at the school, perhaps to complete paperwork, and Haynesworth, Capers, and Dixon went back to the house. Dixon did not recall how they ended up in separate cars, but Dixon recalls he drove the Nissan to Exxon. Haynesworth was in the Camaro. Capers in the Mercedes-Benz truck. Princess was also with them. They saw Bell there with a lady. Bell left the station and Dixon followed him. ROA. pp. 122-132.

Dixon testified he lost sight of Bell's car. Dixon drove back to the Exxon. The others were still there. Dixon claimed more memory problems in describing whether he spoke with the defendants at the gas station. Dixon claimed he pulled away from the gas station and then heard two shots while driving down the road, followed by two more shots. ROA. pp. 132-134.

Dixon was impeached by the State with his prior statement provided on January 7, 2013. ROA. pp. 139-140. Dixon's statement stated, in part, the following: "I drove back to the Exxon and drove back to the bottom looking for a car, spotted the car and then two shots were fired and two more shots and we drove home." ROA. p. 143, lines 10-12.

Clifton Hayes, the Swansea Chief of Police, testified he responded to the scene of the shooting. Bell was in an excited state. ROA. pp. 149-150. Chief Hayes recovered a freshly discharged shell casing in the driveway. ROA. p. 153. He found a bullet hole in the glass of a window, the bullet went through the walls and rested in the bathroom. ROA. p. 156. No firearm was recovered. ROA. p. 157.

Haynesworth testified on his own behalf. Helping prove an apparent motive for his actions, Haynesworth testified about a nasty, threatening Facebook communication sent to him by Bell. ROA. pp. 186-188. He confirmed that he, Princess, Dixon, and Capers went to Swansea High School. He confirmed that Princess took him out of school. They went to the Exxon station where, Haynesworth maintained, Bell yelled at him. ROA. pp. 189-192. Hayneswoth claimed they then went to pick up his friend from an alternative school. ROA. p. 194. Haynesworth's "alibi" fell apart with this testimony, because Haynesworth was claiming he picked up his friend from alternative school at the extremely early hour of 9:00 a.m. – 9:30 a.m. ROA. p. 201.

Tammy "Princess" Coleman nonetheless joined in this absurd story, testifying that when they arrived at the alternative school, Haynesworth blew his horn, and when the friend did not come out, Haynesworth told Princess, "Mom, it's too early to get [Haynesworth's friend]." ROA. p. 213, lines 11-14. When asked by defense counsel if she realized it was

too early to pick up the friend, Princess testified, "No. With everything that was going on, I didn't even pay it no mind. He used to picking [the friend] up every day." ROA. p. 213, lines 15-18.

During closing argument, the prosecutor pointed out the absurdity that they accidently forgot it was only 9 a.m. and school was not over when they went to pick up this friend. ROA. p. 241, lines 9-21.

ARGUMENT

The trial court's advice to the jury prior to trial that a trial is a search for the truth did not shift the burden of proof, and any conceivable prejudice was cured by the trial court's extensive instructions that the State bore the burden of proving the allegations beyond a reasonable doubt.

Haynesworth complains about the trial court's comments to the jury, prior to swearing the jury, that a trial is a search for the truth. The full context of this comment is as follows:

> Most folks' experience with regards to jury trials are what they've seen on television or read in books or what they've seen in the movies. And as we all know, those trials are always filled with intense action, riveting circumstances, and a lot of drama. That's Hollywood.
>
> Now, during the course of this trial, while any one of those things may occur, what is important for you to understand and to keep in your mind throughout the course of this trial is that this case is not for your entertainment. This trial is a fundamental part of our democracy. **It is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court.** Searching for the truth and making sure that justice is done oftentimes can be slow, deliberate, sometimes it can be repetitive. In other words, it's very different from what you may have seen in the movies, read in books, or seen on television. **This Courtroom is a place of honor. It is dedicated to the protection and to the preservation of citizens' rights** through what many have called the greatest justice system ever created.

ROA. p. 11, line 12 – p. 12, line 7 (emphasis added).[1] The trial court then advised the jury "in just a moment you're going to take an oath to try this case and to reach a fair and a just

[1] The trial court noted the language in the trial court's instruction was the one recommended by the Chief Justice Commission on the Profession. ROA. pp. 22-24.

verdict. And so you are also expected to be professional, reasonable, and ethical in the performance of your duty." ROA. p. 12, lines 15-18.

The jury was sworn and the trial court advised the sworn jurors that the indictments are simply charges and not evidence. The trial court then advised the jury that the State bore the burden of "proving each of the elements of the indictments beyond a reasonable doubt." ROA. p. 13, lines 14-23. Two days later, the parties rested, made their closing summations, and the trial court provided more specific instructions to the jurors before they began the deliberations that led to the verdicts.

The appropriate test for reviewing a jury charge involves determining whether there is a reasonable likelihood the jury applied the charge in a way that violated the Constitution. Estelle v. McGuire, 502 U.S. 62, 71 (1991). Ultimately, "[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." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").[2]

The irony of Haynesworth's remonstration is that the **central function** of the trial process in both criminal and civil cases is to discover the truth. See Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating "the central function of [a] trial . . . is to discover the truth"); see also State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) ("A trial is a

[2] The Court of Appeals' Opinion cited State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003, and State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) for these propositions of law. Accordingly, the Court of Appeals' holding is neither cryptic nor ipse dixit, as Haynesworth alleges.

search for the truth[.]"); see, e.g., Carella v. California, 491 U.S. 263, 265 (1989) (explaining that burden-relieving jury instructions "subvert the presumption of innocence accorded to accused persons and also invade **the truth-finding task assigned solely to juries** in criminal cases" (emphasis added)).

As part of the truth-seeking process, the State carries the burden to prove a criminal defendant's guilt for every element of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); see also Burr v. Florida, 474 U.S. 879, 880 (1985) ("[T]he **beacon of the truth-seeking process** in criminal cases is not absolute certainty, but the 'reasonable doubt' standard[.]" (emphasis added)).

The Supreme Court has cautioned trial judges to avoid using language that instructs the jury to "seek the truth" due to the risk that such language could potentially shift the burden of proof to the defendant in an unconstitutional manner. State v. Aleksey, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000). Additionally, the Supreme Court has advised trial judges not to instruct jurors that their verdicts "would represent truth and justice for the parties" due to the risk that such language could distract the jury from its core functions. State v. Daniels, 401 S.C. 251, 258, 737 S.E.2d 473, 477 (2012) (Toal, C.J., concurring for the majority). However, our Supreme Court specifically declined to hold any mention of "the truth" in jury charges is unconstitutional. See Aleksey, 343 S.C. at 28, n. 2, 538 S.E.2d at 252 ("Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of 'the truth' in jury charges is unconstitutional."); see also State v. Hoffman, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included "in

seeking the truth" language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

In the instant case, the "seeking the truth" comment came prior to the jury being sworn and not during a discussion of the State's obligation to prove Haynesworth's guilt beyond a reasonable doubt. The comments were made during an effort by the trial court to impart to jurors the gravity of their responsibility in advance of the trial that had not yet begun. The comment in this context was not improper.

The jury was sworn on Monday, the trial began, the parties presented their cases and rested, the parties made their closing arguments **and then**, the trial court instructed the jury extensively on reasonable doubt and the state's burden before the jury deliberated and returned a verdict on Wednesday.

Indeed, as shown below, the trial court did an exemplary job of communicating the State's burden of proving the charges beyond a reasonable doubt, so the early isolated comment was not prejudicial to Haynesworth.[3] See State v. Raffaldt, 318 S.C. 110, 115-116, 456 S.E.2d 390, 393 (1995) (finding a jury charge instructing the jury to "seek some reasonable explanation other than the guilt of the accused" was erroneously burden-shifting but determining any error with that instruction was harmless because the charge as a whole properly explained the State had the burden of establishing Raffaldt's guilt beyond a reasonable doubt); see also State v. Needs, 333 S.C. 134, 154, 508 S.E.2d 857, 867 (1998)

[3] Haynesworth contends the jurors carried the comment with them to deliberations. This assertion is more illustrative of the term "ipse dixit," since the record is devoid of any evidence the jury was influenced to reduce the State's burden based on the introductory remark two days earlier. This claim is based only on Hayneworth's conclusory assertion.

("In Manning, the Court pointed to the 'in search of the truth' language contained in the reasonable doubt charge as contributing to its defective nature. However, appellate courts since have seemed to allow the use of the phrase – at least when it is not combined with other offending terms outlined in Manning." (citations omitted)).

In the instant case, the instructions at the close of evidence, two days after the jury was sworn, diminished to negligible any conceivable prejudice from the pretrial comment on the search for the truth. The trial court instructed the jury as follows on the State's burden:

> Now, the defendants have pled not guilty to the charges in these indictments, and that plea puts the burden on the State to prove the defendants guilty. A person charged with committing a criminal offense in South Carolina is never required to prove him or herself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charges may be, will always be presumed to be innocent of the crimes for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.
>
> This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendants throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It is not just a legal phrase, but it is a substantial right to which every defendant is entitled. Unless you, the jury, are satisfied by the evidence of the defendant's guilt beyond a reasonable doubt.
>
> Now, the State has the burden of proving a defendant's guilty [sic] beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that; it must be beyond a reasonable doubt.
>
> Proof beyond a reasonable doubt is proof that leaves

you firmly convinced of the defendant's guilt. . . .

ROA. p. 249, line 18 – p. 250, line 23.

The trial court further instructed the jury to only consider the competent evidence presented to them. ROA. p. 251, lines 8-17. The trial judge advised the jury it is the exclusive judge of facts. ROA. p. 252, lines 2-16. When informing the jury it could not draw any conclusions from Capers' decision to not testify, the trial court also reminded the jury again that the State has the burden of proof and the defendant does not have to prove his innocence. ROA. p. 255, lines 2-9.

In discussing the specific offenses, the trial court informed the jury the State had to prove the defendants attempted to murder another person with malice aforethought. ROA. p. 256, lines 15-22. The trial court advised the jury if the jury found the State failed to prove attempted murder beyond a reasonable doubt, then the jury could consider if the State proved Assault and Battery in the First Degree beyond a reasonable doubt. ROA. p. 258, lines 21-25.

The trial court further instructed the jury the State was required to prove beyond a reasonable doubt that the defendants were in possession of a firearm for the jury to convict the defendants of Possession of a Weapon During the Commission of a Violent Crime. ROA. p. 259, lines 9-14. Likewise, the trial court advised the jury the State must prove beyond a reasonable doubt the elements of Conspiracy. ROA. p. 259, line 24 – p. 260, line 3.

The trial court instructed the jury on alibi as follows:

> There is no burden on the defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that the defendant was actually present at the scene of the crime,

> actually participated in it, and was not somewhere else. In other words, the State has the burden of disproving the defendants' alibi defense.

ROA. p. 261, lines 11-16.

Put in context, the trial court's comments prior to the jury being sworn merely imparted the gravity of the jurors' responsibility to ensure justice is done and citizens' rights are protected. The comments did not create any real danger that two days later the jurors would not follow the trial courts' extensive pre-deliberation instructions on the State's burden of proving the charges beyond a reasonable doubt. See State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) ("Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error."). Accordingly, the trial court did not err, and Haynesworth was not prejudiced by the perceived error. The convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied. If this Court should see fit to grant the petition for writ of certiorari, Respondent would respectfully request permission to more fully brief the issues herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

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This 25TH day of May, 2016

NORMA BIGBEE
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