

Supreme Court of South Carolina

(2008) Joseph Lowry vs South Carolina - 376 S.C.499, 657 S.E.2d 760

I, Petitioner Richey Lamont Boyd, (344612)

would like to ammend this case to my Issue of "Malice" and "Intent" in my writ of certoria which I have already filed with this court.

I would like for this Court to also refer to the Law/Analysis from this Case as in reference to the Malice Instructions in my case.

see Also = (Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884)

I, Richey Lamont Boyd (344612), would also like to ammend the "Prosecutor Misconduct Issue no. 12" to the writ of Certoria that I have already filed with this Court.

Richey L. Boyd (344612)

Perry Correct. Inst.

430 Oaklawn R.D.

Pelzer SC, 29669

RECEIVED

NOV 23 2016

S.C. SUPREME COURT

Joseph Lowry vs. State of South Carolina
376 S.C. 499, *; 657 S.E. 2d 760 (2008)

Law / Analysis

Petitioner argues that trial counsel was ineffective for failing, for failing to object to the court's supplemental instruction on felony murder. Specifically, Petitioner argues that the supplemental charge created a mandatory presumption of "malice" that shifted the burden of proof from the prosecution to the defendant, thereby depriving Petitioner of due process of law, "We Agree".

Petitioner's claim arises out of the Due Process Clauses of the Fifth and Fourteenth Amendments, which protects an accused against conviction unless the State supplies proof beyond a reasonable doubt of each element necessary to constitute the crime with which the accused is charged. In re Winship, 397 U.S. 358-64, 90 S.Ct. 1068, 25 L. Ed. 2d 368 (1970)

This principle prohibits the use of evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of proof beyond a reasonable doubt as to every essential element of crime. Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L. Ed. 2d 39 (1979).

Francis vs. Franklin, 471 U.S. 307, 315, 105 S.Ct. 1965, 85 L. Ed. 2d 344 (1985); Todd, 355 S.C. at 402, 585 S.E. 2d 308, A Jury Instruction violates Due Process if it is a reasonably

likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proved certain predicate facts, thereby relieving the States' burden of proof on an element of the offense.

Middleton v McNeil, 541 U.S. 433-37, 124 S.Ct. 1830 L. Ed. 2d 701 (2004) (quoting Estelle, 502 U.S. at 72)

We find that the trial courts supplemental instruction on felony Murder unquestionably shifted the burden of proof for the malice element of murder from the State to Petitioner. Viewed in its entirety, the supplemental Jury Charge contained no permissive language indicating that the jury may infer malice from Petitioner's participation in the armed robbery. Instead, the charge simply provided that if the jury first determined that a killing occurred in the course of the armed robbery, it must find Petitioner guilty of murder. In this way the charge created a "Mandatory Presumption of the malice" element in the crime of murder instead of permitting the jury to find malice upon the States' proof of the element beyond a reasonable doubt. See Bollenbach v. U.S., 326 U.S. 607, 66 S.

Ct. 902-90 L. Ed. 350 (1946). For these reasons, there is a reasonable

likelihood that the jury understood the supplemental charge to create

on Back

a mandatory presumption that required it to find malice if the State proved Petitioners' involvement in the Armed Robbery. Accordingly, we hold that the jury's application of the instruction violated Petitioners' Due Process rights and therefore, that counsel was deficient in failing to object to the charge.

In our opinion, there is no overwhelming evidence tending to establish Petitioners' guilt of murder. More specifically, we find that the probative force of the undisputed facts along with all other evidence purporting to establish Petitioners' central role in the conspiracy do not rise to the level of "malice" such that we may conclude that the mandatory presumption did not play a significant role in the jury's guilty verdict. Therefore, we hold that the unconstitutional presumption of "Malice" articulated in the supplemental jury instruction on felony murder did not constitute harmless error beyond a reasonable doubt. See also *Arnold and Plath*, 309 S.C. at 165, 420 S.E.2d at 838 (noting that the requirement that a constitutional error be harmless beyond a reasonable doubt "embodies a standard requiring reversal if there is a reasonable possibility that the evidence complained of might have contributed to the conviction" (quoting *Pates*, 500 U.S. at 403)),

Richey L. Boyd (394612) - Q3B-124

JMS

Perry Correct. Inst.

430 Oaklawn Rd.

Pelzer SC, 29669

RECEIVED

NOV 17 2016

PCI Mailroom

SCDC

DEC 14 '16

COMMISSARY

The Supreme Court of South
Carolina
Daniel E. Shearouse (Clerk of Court)
P.O. Box 11330
Columbia, SC, 29211

THE DEPARTMENT OF CORRECTIONS HAS
NOT INSPECTED OR CENSORED THIS ITEM.
THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.
PERRY CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS