STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHAD NELSON STRICKLAND,

APPELLANT

APPELLATE CASE NO 2015-001192

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in instructing the jury, "It is your duty by your joint deliberation to determine the truth in this case, giving to the defendant the benefit of every reasonable doubt on each and every issue. Then to the facts which you determine to be true, you should take and apply the law which has been given to you by this court and thus arrive at a verdict which speaks the truth in this case " because the instruction improperly shifts or improperly dilutes the State's burden of proof beyond a reasonable doubt?

STATEMENT OF THE CASE

In May of 2013, the Marion County Grand Jury indicted Appellant Strickland for murder, possession of a weapon during the commission of a violent crime and pointing and presenting a firearm, indictment #2013-GS-33-225. On December 16, 2014, a motions hearing was held before the Honorable C. Craig Brown. Thurmond Brooker represented Appellant at the hearing. Edward L. Clements, III represented the State. During the hearing Appellant argued that he was immune from prosecution pursuant to the Protection of Persons and Property Act or "Stand Your Ground" found in S.C. Code §16-11-440. After hearing testimony, Judge Brown found that Appellant was not entitled to immunity. (R. pp. 239-243).

On May 18, 2016, Appellant proceeded to jury trial before Judge Brown. Thurmond Brooker again represented Appellant. Edward L. Clements, III, and John Holt prosecuted the case. At the close of the State's case Judge Brown directed a verdict of acquittal for pointing and presenting a firearm. At the close of all evidence the jury found Appellant guilty of the lesser included charge of voluntary manslaughter and guilty of the weapons charge. Judge Brown sentenced Appellant to thirty (30) years for voluntary manslaughter and five (5) years consecutive for the weapons charge. A timely notice of intent to appeal was served on May 29, 2015. This appeal follows.

ARGUMENT

The trial judge erred in instructing the jury, "It is your duty by your joint deliberation to determine the truth in this case, giving to the defendant the benefit of every reasonable doubt on each and every issue. Then to the facts which you determine to be true, you should take and apply the law which has been given to you by this court and thus arrive at a verdict which speaks the truth in this case " because the instruction improperly shifts or improperly dilutes the State's burden of proof beyond a reasonable doubt.

The jury found Appellant guilty of voluntary manslaughter in the shooting death of Blake Dozier. Both Appellant and Dozier were involved in relationships with Stacy Fowler. Fowler is the mother of Appellant's child who was three years old at the time of the incident. Fowler was also pregnant with Dozier's child at the time of the incident. In the hours leading up to the shooting, Dozier and Appellant exchanged angry phone calls with threats of fighting. Later, Dozier arrived at Fowler's home. Fowler first approached Dozier's car and then Appellant approached. Appellant testified that Dozier struck him and Appellant shot in self-defense. (R. pp. 1100-1101). The judge instructed the jury with the law on self-defense. (R. pp. 1275-1278).

At the close of the judge's instructions to the jury the judge stated, "It is your duty by your joint deliberation to determine the truth in this case, giving to the defendant the benefit of every reasonable doubt on each and every issue. Then to the facts which you determine to be true, you should take and apply the law which has been given to you by this court and thus arrive at a verdict which speaks the truth in this case " (R. p. 1279, lines 1-8). Appellant objected to the "seek the truth" language contained in the jury instruction. (R. p. 1282, line 18 – p. 1283, lines 1-19; p. 1284, lines 1-17). The judge

overruled the objection stating, "So noted for the record." (R. p. 1284, line 21). The trial judge erred.

In State v. Aleksey, 343 S.C. 20, 26, 538 S.E.2d 248, 251 (2000), the trial judge, at the close of the instruction on determining the credibility of witnesses, told the jury:

> Obviously you do not determine the truth or falsity of a matter by counting up the number of witnesses who may have testified on one side or the other. Ladies and gentlemen, throughout this entire process, you have but one single objective, and that is to seek the truth, to seek the truth regardless of from what source that truth may be derived. Now, all of these things, ladies and gentlemen, you will consider, bearing in mind that you must give the defendant the benefit of every reasonable doubt.

Aleksey challenged the instruction on appeal. The South Carolina Supreme Court in Aleksey wrote, "Jury instructions on reasonable doubt which charge the jury to '**seek** the **truth**' are disfavored because they '[run] the risk of unconstitutionally shifting the burden of proof to a defendant.' State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)." Id, 343 S.C. at 26–27, 538 S.E.2d at 251. The instruction in Aleksey involved credibility of witnesses rather than reasonable doubt. The Court wrote:

> While we have urged trial courts to avoid using any "seek" language when charging jurors on either reasonable doubt or circumstantial evidence (see State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)), the "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper.

State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251–52 (2000). The Court in Aleksey affirmed finding the instruction as a whole properly conveyed the law to the jury and there was not a reasonable likelihood the jury applied the judge's instructions to convict appellant on less than proof beyond a reasonable doubt. In contrast, the judge's instruction in the present case came at the close of the jury instruction as a whole rather

than during the specific instructions on reasonable doubt, circumstantial evidence or credibility of witnesses.

In State v. Daniels, 401 S.C. 251, 254, 737 S.E.2d 473, 474 (2012), the trial judge told the jury, "This court is of the confirmed opinion that whatever verdict you reach will represent truth and justice for all parties that are involved in this case." The South Carolina Supreme Court found that any objection to the judge's statement was not reserved, but wrote:

> Although the issue is not preserved, we instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. 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 the 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. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012). Unlike in Daniels, the objection to the trial judge's instruction in the present case was preserved for appellate review. The judge's instruction in the present case deprived Appellant of his right to a fair trial, as noted by the Court in Daniels.

Recently, the South Carolina Supreme Court decided State v. Beaty, No. 2015-000718, 2016 WL 7474479 (S.C. Dec. 29, 2016), reh'g granted (Mar. 24, 2017). In Beaty the trial judge, in opening remarks to the jury, stated:

> This ... trial ... is a search for the truth in an effort to make sure that justice is done. In searching for the truth and ensuring that justice is done is [sic] often slow, deliberate, and repetitive. [The attorneys] are sworn to uphold the integrity and the fairness of our judicial system and to help you as jurors to search for the truth. [Y]ou also just took an oath to listen to the evidence in this case and reach a fair and just verdict and you are expected

> to be professional, reasonable and ethical. [Y]ou the jurors find [the facts] from the testimony from a witness from the witness stand or any other evidence, and after hearing that evidence you will deliberate and render a true and just verdict under the solemn oath that you just took as jurors. [I]n determining what the true facts are in this case you must decide whether or not the testimony of a witness is believable.[A]fter argument of counsel and the charge on the law by me, you will then be in a position to determine what the true facts are and apply those facts to the law and thus surrender [sic] a true and just verdict.

Beaty, No. 2015-000718, 2016 WL 7474479, at *1. Beaty challenged the comments on appeal. While the South Carolina Supreme Court found error, the Court found that Beaty failed to show prejudice sufficient to warrant reversal. The Court, however, wrote:

> It is true, as the trial judge noted, that the comments here can be distinguished from Aleksey in that his was a "statement" and not a jury charge. Further, the remarks were not linked to either reasonable doubt or circumstantial evidence as was condemned in Aleksey. However, we agree with appellant that a trial court should refrain from informing the jury, whether through comments or through its charge, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases may be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict it believes best serves the jury's perception of justice. We caution trial judges to avoid these terms and any other that may divert the jury from its obligation in a criminal case to determine, based solely on the evidence presented, whether the State has proven the defendant's guilt beyond a reasonable doubt.

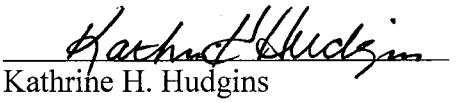
State v. Beaty, No. 2015-000718, 2016 WL 7474479, at *2 (S.C. Dec. 29, 2016), reh'g granted (Mar. 24, 2017).

The challenged instruction in the present case came at the close of the jury instruction as a whole and not in opening remarks to the jury, as in Beaty. The jury may have understood the judge's closing improper instruction as applying to the earlier instruction on reasonable doubt. The error was particularly prejudicial in the present case where the jury was given the very difficult task of determining if the State met its burden

in to prove murder, voluntary manslaughter or disproving self-defense. The improper comments shifted the burden of proof by allowing the jury to decide the case based on their version of the truth rather than what the State proved or disproved. While the Beaty case was decided after appellant's trial, the Needs, Aleksey, and Daniels cases make clear that "seek the truth" or "determine the truth" instructions to the jury are improper. The improper instruction in the present case was prejudicial and warrants reversal of the convictions.

CONCLUSION

Based on the above argument, this Court should reverse the convictions and sentences and remand the case for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of September, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 29th, 2017

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