STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County
The Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2015-001192

The State, Respondent,

v.

Chad Nelson Strickland,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Edgar L. Clements
Solicitor, Twelfth Judicial Circuit

180 N. Irby St., MSQ-Q
Room 1101
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF ISSUE ON APPEAL

The circuit court's statement to the jury regarding a duty to determine the truth did not improperly shift or dilute the State's burden of proof when the jury charge is considered as a whole, but if the statement was erroneous, it was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The Marion County Grand Jury indicted Appellant Chad Nelson Strickland in May 2013 on one count of murder, one count of possession of a weapon during the commission of a violent crime, and one count of pointing and presenting a firearm, arising from a November 2012 incident resulting in the shooting death of Blake Dozier ("Dozier"). After a hearing, the circuit court ruled Appellant was not entitled to immunity from prosecution. (Hearing Transcript, pp. 1-243; Record on Appeal [R.], pp. _____). The matter was called for a jury trial on May 18, 2014, before the Honorable D. Craig Brown, Circuit Court Judge.

The evidence established Appellant and Dozier were involved with the same woman, Stacy Fowler ("Fowler"). Fowler and Appellant had a small child, and in November 2012, Fowler was pregnant with Dozier's child. During the evening hours of November 3, 2012, into the early morning hours of November 4, 2012, Appellant and Dozier engaged in a continuing argument via telephone and text messages regarding Fowler, including discussion of meeting somewhere to have a fight.

At some point, Appellant and Fowler went to Fowler's home, and Dozier went over to Fowler's house to talk with her. As Dozier drove into the yard, Fowler went outside to talk to Dozier, and told Appellant to stay on the porch. Fowler walked up to Dozier's car, and Dozier stood in the apex of his car door and the car to talk to her. As Dozier and Fowler were talking, Appellant walked into the yard, stood behind Fowler and shot Dozier in the face. Appellant fled, and was arrested at his parents' home later that day. Appellant claimed he acted in self-defense. (Trial Transcript [TT], pp. 117-745, 869-968; R., pp. _____).

The pointing and presenting indictment alleged Appellant pointed the gun at Fowler, and the circuit court directed a verdict of acquittal on that charge. (TT, p. 978; R., p. ____). The jury convicted Appellant of voluntary manslaughter on the murder charge, and of possession of a

weapon during the commission of a violent crime. The circuit court sentenced Appellant to thirty years incarceration on the voluntary manslaughter conviction, and five years consecutive incarceration on the possession conviction. (TT, pp. 1095-1096, 1107; R., pp. _____). This appeal followed.

ARGUMENT

The circuit court's statement to the jury regarding a duty to determine the truth did not improperly shift or dilute the State's burden of proof when the jury charge is considered as a whole, but if the statement was erroneous, it was harmless beyond a reasonable doubt.

Appellant contends the circuit court erred by 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.

(TT, p. 1085; R., p. ____). He argues the jury may have understood the instruction as applying to the earlier charge on reasonable doubt, and it shifted the burden of proof by allowing the jury to decide the case based on the jurors' version of the truth rather than the State's evidence. Appellant's assertions fail to consider the jury instructions as a whole, and overstate the potential impact of the isolated statement in light of the thorough and accurate charges regarding reasonable doubt and the State's burden of proof.

In reviewing jury charges for error, appellate courts must consider the trial court's jury charge as a whole in light of the evidence and issues presented at trial. State v. Pradubsri, Op. No. 2015-000208, 2017 WL 3045809, at *4–5 (S.C. Ct. App. filed July 19, 2017) (*citing* State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 [Ct. App. 2009]). If the charges as a whole are reasonably free from error, contain the correct definitions and adequately cover the law, isolated portions which might be misleading do not constitute reversible error. *Id.*

Appellant cites State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000), State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012), and State v. Beaty, Op. No. 27693, 2016

WL 7474479 (S.C. Sup. Ct., filed December 29, 2016), as support for his contention the challenged jury instruction language constituted reversible error. Careful review of these cases, however, indicates the challenged language does not require reversal in this case.

In Aleksey, while instructing the jury regarding its role to find the facts and determine the credibility of witnesses, the trial court stated the jury's "one single objective" was to seek the truth regardless of the source from which the truth may be derived, and in doing so, the jury "must give the defendant the benefit of every reasonable doubt." The Supreme Court affirmed, noting the trial court gave full and accurate reasonable doubt and burden of proof charges, and did not use the "seek" language disapproved in State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998), in those charges. 538 S.E.2d at 251-252. The Court further found there was no "reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt," because the statements were prefaced by a full instruction on reasonable doubt, and followed by another reminder to bear in mind the State's heavy burden of proof. *Id.* at 252.

In Daniels, the trial court instructed the jury it was the court's "'confirmed opinion'" the verdict would represent "'truth and justice for all parties.'" The Supreme Court affirmed, finding the challenged language was improper, but did not constitute reversible error in light of the jury instructions as a whole, and the substantial evidence of guilt. 737 S.E.2d at 477-478 (Toal, C.J., concurring opinion written for majority).[1]

[1]While the opinion is designated a concurring opinion, four of the five justices joined it. In the concurring opinion, the Court found the jury charge issue was preserved for appellate review.

In Beaty, during preliminary remarks to the jury, the trial court stated the trial was a "search for the truth in an effort to make sure that justice is done," and after hearing the evidence, the jury would "deliberate and render a true and just verdict." The Supreme Court affirmed, noting trial courts should refrain from informing the jury its role is to search for the truth, find the true facts, or render a just verdict, but the entirety of the trial court's comments and the trial record failed to show sufficient prejudice to warrant reversal. 2016 WL 7474479, at *1-2.

In Pradubsri, the circuit court used truth-seeking language almost identical to the challenged language in Needs, but referenced the beyond a reasonable doubt standard at least twenty times during the instructions. In finding the challenged language did not warrant reversal, the Court of Appeals noted:

> [T]he circuit court stated, "The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt." Additionally, the circuit court instructed, "The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant[,] which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt." Thus, our review of the record and the entire charge reveals no prejudice sufficient to warrant reversal.

2017 WL 3045809, at *5.

In this case, the circuit court gave complete and accurate presumption of innocence, burden of proof and reasonable doubt instructions. In the course of twenty-two pages of instructions, the court referenced the State's burden of proof beyond a reasonable doubt eleven times, and gave a complete, accurate reasonable doubt charge. (TT, pp. 1066-1088; R., pp. _____). Even in the challenged portion of the instructions, the court reminded the jury that in

determining the truth through deliberations, Appellant was entitled to "the benefit of every reasonable doubt on each and every issue."[2] (TT, p. 1085; R., p. _____).

After the challenged language, the court again specifically instructed the jury '[i]f the State failed to prove the guilt of the defendant beyond a reasonable doubt, your verdict will be not guilty." (TT, p. 1085; R., p. _____). Then, just before sending the jury to the jury room, the court reminded the jury "that in deciding this case, you are to consider only the sworn testimony from this witness stand and the items of evidence which have been introduced during the course of this trial in **determining whether or not the State has proven beyond a reasonable doubt the offenses for which the defendant has been charged** to you." (TT, pp. 1087-1088; R., pp. _____) (emphasis added). Therefore, the last thing the jury heard before beginning deliberations was an instruction on the State's burden of proof beyond a reasonable doubt.

As in Aleksey, Daniels, Beaty and Pradubsri, when considered in the context of the entire jury instructions, the challenged language at issue in this case was not so prejudicial to Appellant as to warrant reversal and a new trial. There is simply no reasonable likelihood the jury interpreted the very limited language regarding the duty to determine the truth through joint deliberation as allowing the jurors to reach their own version of the facts, or applied it in a manner inconsistent with the State's burden of proof beyond a reasonable doubt. The fact the jury convicted Appellant of voluntary manslaughter rather than murder amply demonstrates the jury understood the State's burden to prove its case beyond a reasonable doubt.

---

[2]Reading the instructions as a whole, it appears the circuit court used the recommended charges contained in the bench book maintained for circuit court judges on the judicial department website. *See* Beaty, at *3 (Few, JJ., concurring in part and dissenting in part) (challenged language trial court used was contained in charges maintained for circuit court judges on the judicial department website).

Finally, even if this Court determines the challenged language was improper, any error was harmless beyond a reasonable doubt. It was undisputed Appellant shot and killed Dozier, who was unarmed and standing in the apex of his car door and his car at the time he was shot. The only dispute was whether Appellant acted in self-defense, and the State presented direct and circumstantial evidence disproving multiple elements of self-defense, including Appellant's fault in bringing on the difficulty, and the availability of alternative actions to avoid the conflict.

Multiple witnesses testified about the ongoing argument between Appellant and Dozier prior to the shooting, during which Appellant taunted Dozier by bragging about having sex with Fowler that day, and he tried to get Dozier to meet him so they could fight. They also testified Dozier did not go to meet Appellant, and he went over to Fowler's house to talk to her because he wanted to continue their relationship. (TT, pp. 162-211, 436-521, 565-745; R., pp. _____).

Fowler testified Appellant was inside the house when Dozier pulled into her driveway, and she told him to stay on the porch while she talked to Dozier. She was talking to Dozier as he got out of the car, when Appellant walked up behind her and shot Dozier over her shoulder. She stated Dozier did not make any movement toward Appellant before Appellant shot him, and she did not think Dozier even saw Appellant walk up because Dozier was blind in one eye and he was looking directly at her, not toward the house. (TT, pp. 663-676; R., pp. _____).

Based on the evidence presented, Appellant was substantially at fault in bringing on the difficulty with Dozier in the hours prior to the shooting. Further, Appellant could have easily avoided the conflict by simply staying inside Fowler's house or on the porch rather than following her into the driveway. Finally, there was no credible evidence Dozier made any threatening movement toward Appellant such that Appellant could have reasonably believed he was in imminent danger of death or great bodily harm when he shot Dozier. To the contrary,

Fowler was standing between Dozier and Appellant, and Appellant shot Dozier over Fowler's shoulder almost as soon as Dozier stepped out of the car to talk to Fowler.

There was overwhelming evidence to support the jury's verdict. Thus, any error associated with the very limited jury instruction language determining the truth was harmless beyond a reasonable doubt. *See* Daniels, 747 S.E.2d at 479 (trial court's erroneous instructions could not have contributed to the jury's verdict in light of the overwhelming evidence of guilt presented at trial).

CONCLUSION

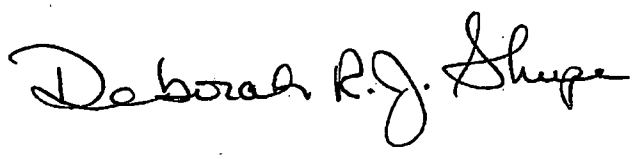
Based on the foregoing reasons, the State respectfully submits Appellant's convictions should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Edgar L. Clements
Solicitor, Twelfth Judicial Circuit



BY:_____
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 25, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County
The Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2015-001192

The State, Respondent,

v.

Chad Nelson Strickland,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Katherine H. Hudgins
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 25th day of August, 2017.

Sally Ellison

SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

August 25, 2017

Kathrine H. Hudgins
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Chad Nelson Strickland
Appellate Case No. 2015-001192

Dear Ms. Hudgins:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

Deborah R.J. Shupe

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services