

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

RECEIVED

JUN 12 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MITCHELL AKEEM HOUSE,

APPELLANT

Appellate Case No. 2011-202529

FINAL BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	11

TABLE OF AUTHORITIES

Cases

<i>Allen v. United States</i> , 164 U.S. 492 (1896)	6
<i>Estelle v. McGuire</i> , 502 U.S. 62 (1991)	7
<i>In re Winship</i> , 397 U.S. 358 (1970)	7
<i>Lowry v. State</i> , 376 S.C. 499, 657 S.E.2d 760 (2008)	10
<i>Sandstrom v. Montana</i> , 442 U.S. 510 (1979)	7
<i>State v. Aleksey</i> , 343 S.C. 20, 538 S.E.2d 248 (2000)	7, 8, 10
<i>State v. Daniels</i> , Op. No. 27180 (S.C. Sup. Ct. filed October 10, 2012) (Shearouse Adv. Sh. No. 36 at 41) (2012 WL 4801526)	8, 10
<i>State v. Needs</i> , 333 S.C. 134, 508 S.E.2d 857 (1998)	8, 9, 10
<i>Todd v. State</i> , 355 S.C. 396, 585 S.E.2d 305 (2003)	7, 10
<i>United States v. Gonzalez-Balderas</i> , 11 F.3d 1218 (5th Cir. 1994)	7, 8
<i>Victor v. Nebraska</i> , 511 U.S. 1 (1994)	5, 7

Other Authorities

50A C.J.S. Juries § 1 (2004)	10
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STATEMENT OF ISSUES ON APPEAL

Did the trial court's jury instructions deprive Appellant of his right to a fair trial by improperly shifting the State's burden of proof where there is a reasonable likelihood the jurors substituted the trial court's repeated concept of determining the truth in this case for the State's constitutional duty to prove Appellant's guilt beyond a reasonable doubt?

STATEMENT OF THE CASE

On October 22, 2010, Appellant Mitchell House was indicted by the Richland County Grand Jury for breaking and entering a motor vehicle and petit larceny. R. 155.

On October 26, 2011, Appellant proceeded to trial before the Honorable Clifton Newman and a jury. R. 1. Appellant was represented by Clarke Newton and Gregory Collins, and the State was represented by Assistant Solicitor Anne Spears-Walsh.

On October 27, 2011, the jury found Appellant guilty of breaking and entering a motor vehicle and not guilty of petit larceny. R. 125, l. 22 – 126, l. 6. The trial court sentenced Appellant to one year imprisonment. R. 134, ll. 19-20.

This appeal follows.

ARGUMENT

The trial court's jury instructions deprived Appellant of his right to a fair trial by improperly shifting the State's burden of proof because there is a reasonable likelihood the jurors substituted the trial court's repeated concept of determining the truth in this case for the State's constitutional duty to prove Appellant's guilt beyond a reasonable doubt.

Relevant Facts

At the close of the evidence, the State requested that the trial court instruct the jury using "*Victor v. Nebraska*¹ as its reasonable doubt charge." R. 99, ll. 1-2. In response, the trial court stated, "All right. That's part of the standard charge, I believe." R. 99, ll. 3-4.

The trial court provided the following charge on reasonable doubt:

The State must prove the defendant guilty beyond a reasonable doubt. So what is a reasonable doubt in the law? *A reasonable doubt is a doubt which makes an honest, sincere juror in search of the truth to hesitate to act.* Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. . . . *It is your duty then in your joint deliberations to determine the truth in this case*, giving the defendant the benefit of every reasonable doubt on each and every issue, and from the facts that you determine to be true you take and apply the law which I have just given you and, thus, *arrive at a verdict which speaks the truth in this case.*

R. 110, l. 7 – 113, l. 18 (emphasis added).

After the trial court finished instructing the jury on the law, defense counsel objected to the reasonable doubt charge "because the jury is determining whether or not the State's met their burden [of proof] . . . [t]hey're not technically in search of the truth."

R. 114, l. 22 – 115, l. 8. The trial court replied, "All right. The objections are noted." R.

¹ *Victor v. Nebraska*, 511 U.S. 1 (1994).

115, ll. 13-14; Court's Exhibit # 3 (jury charge).

During deliberations, the jury sent out the following note:

We have so far reached a verdict on one of the two charges. On the second charge we have not been able to reach a unanimous decision. All jurors have expressed his or her view of the evidence presented and, *each has maintained this held view in spite of a lengthy debate*. What direction or guidance can you provide to aid us in reaching a single, unanimous decision?

Court's Exhibit # 2 (jury note) (emphasis added); R. 117, ll. 1-9. After reading the jury note aloud, the trial court then inquired, "What says the State?" The State responded, "I'm flabbergasted that we're in this position, so I really don't know what to say . . . I would like you to *Allen*² charge them, but I'll be guided by what the Court feels [is necessary]." R. 117, ll. 10-13. Defense counsel agreed that "an *Allen* charge would be appropriate[.]" R. 117, ll. 16-19. The trial court issued an *Allen* charge to the jury. R. 118, l. 12 – 120, l. 19.

After almost five hours of deliberation, the trial court asked the jury foreman, "Mr. Foreman, you all have been deliberating for . . . a little short of five hours . . . Do you want to quit for the day and come back tomorrow morning?" R. 123, ll. 14-17. The jury foreman replied, "Your Honor, yes. I believe that would help us." R. 123, ll. 18-19. The jury deliberated for an additional twenty-three minutes the following morning and found Appellant guilty of breaking and entering a motor vehicle and not guilty of petit larceny. R. 125, l. 4 – 126, l. 6.

Defense counsel subsequently moved for a new trial because the jury was previously deadlocked, the length and break of deliberations, and the split verdict. R. 128, l. 16 – 129.

² *Allen v. United States*, 164 U.S. 492 (1896).

The trial court denied the motion for a new trial. R. 129, l. 13 – 131, l. 25.

Burden Shifting Discussion

In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in way that violates the Constitution. *See Estelle v. McGuire*, 502 U.S. 62, 72 (1991); *accord State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000); *Todd v. State*, 355 S.C. 396, 399–403, 585 S.E.2d 305, 306–309 (2003). “The Due Process Clause requires the government to prove a criminal defendant's guilt beyond a reasonable doubt, and trial courts must avoid defining reasonable doubt so as to lead the jury to convict on a lesser showing than due process requires.” *Victor v. Nebraska*, 511 U.S. 1, 22-23 (1994); *See In re Winship*, 397 U.S. 358, 364 (1970) (holding the Due Process Clause mandates that the government prove every element of the charged offense beyond a reasonable doubt); *see also Sandstrom v. Montana*, 442 U.S. 510, 521 (1979).

In *Aleksey*, our Supreme Court addressed whether a trial court's jury instructions shifted the burden of proof to the defendant. *Aleksey*, 343 S.C. 20, 538 S.E.2d 248. The *Aleksey* Court examined the Fifth Circuit Court of Appeals' decision in *United States v. Gonzalez-Balderas*, 11 F.3d 1218 (5th Cir. 1994), which also analyzed a contested jury charge. In *Gonzalez-Balderas*, the Fifth Circuit Court of Appeals found:

As an abstract concept, “seeking the truth” suggests determining whose version of events is more likely true, the government's or the defendant's, and thereby intimates a preponderance of evidence standard. ***Such an instruction would be error if used in the explanation of the concept of proof beyond a reasonable doubt.*** The district court, however, did not use it in this way. Rather, the trial court began its instructions with a clear definition of the

government's burden of proof in which it repeatedly stated that the defendant could not be convicted unless the jury found that the government had proven him guilty beyond a reasonable doubt.

Gonzalez-Balderas, 11 F.3d at 1223 (emphasis added) (footnote omitted). The *Aleksey* Court found that reversal was not required when the trial court's improper instructions were given in the context of witness credibility and not reasonable doubt. *Id.* at 29, 538 S.E.2d at 252-53. Specifically, the trial court found that it was not reasonably likely that the jury applied the instructions in a manner inconsistent with the notion that the State has the burden of proof beyond a reasonable doubt because the trial court issued complete and proper reasonable doubt and circumstantial evidence charges. *Id.* at 28-29, 538 S.E.2d 252.

However, it is important to note the *Aleksey* Court's caveat: "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.'" *Id.*, 343 S.C. at 26-27, 538 S.E.2d at 251 (quoting *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998) ("We again take this opportunity to strongly urge the trial courts to avoid using any 'seek' language ... when charging jurors on either reasonable doubt or circumstantial evidence"); *See State v. Daniels*, Op. No. 27180 (S.C. Sup. Ct. filed October 10, 2012) (Shearouse Adv. Sh. No. 36 at 41) (2012 WL 4801526) (admonishing "the trial court to restrict his jury instructions to matters of law, and refrain from issuing instructions which run the risk of depriving defendant's of their right to a fair trial") (Toal, C.J., concurring and writing for the majority in a separate opinion).

In *Daniels*, our Supreme Court again found that "the trial court prefaced those [improper] remarks with full and adequate instructions on reasonable doubt" and that "it

is not reasonably likely that the jury acted in contravention of the reasonable doubt standard.” *Daniels*, 2012 WL 4801526 at 5. However, in a concurring opinion and writing for the majority, Chief Justice Toal noted:

It is troubling that the trial court concluded his jury instruction with statements that could have distracted the jury from their core functions: to examine evidence and make factual determinations, weigh credibility, and perhaps most importantly, decide whether the State has proven its case beyond a reasonable doubt. The injection of extraneous language only serves to distract the jury from performing their critical role.

Id. Chief Justice Toal further noted that “the trial court’s inappropriate statements in this case came close to jeopardizing the legitimacy of the trial” and that “[i]t is critical that jurors understand the proper application of the reasonable doubt standard.” *Id.*, 2012 WL 4801526 at 7 (emphasis added).

In this case, the trial court gave an improper charge on reasonable doubt:

The State must prove the defendant guilty beyond a reasonable doubt. So what is a reasonable doubt in the law? ***A reasonable doubt is a doubt which makes an honest, sincere juror in search of the truth to hesitate to act.*** Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. . . . ***It is your duty then in your joint deliberations to determine the truth in this case***, giving the defendant the benefit of every reasonable doubt on each and every issue, and from the facts that you determine to be true you take and apply the law which I have just given you and, thus, ***arrive at a verdict which speaks the truth in this case.***

R. 110, l. 7 – 113, l. 18 (emphasis added); Court’s Exhibit # 3 (jury charge). *See Needs*, 333 S.C. at 155-56, n. 12, 508 S.E.2d at 867-68, n. 12 (identifying two appropriate ways to define reasonable doubt and two appropriate ways to charge circumstantial evidence

and finding “[t]rial courts should rarely find it necessary to deviate from those approved charges.”) (emphasis added).

Unlike in *Aleksey* and *Daniels*, the trial court’s jury instruction deviated from the approved charges listed in footnote 12 of *Needs* and as a whole failed to properly convey the law to the jury because it diluted the reasonable doubt standard and the State’s burden of proof by placing emphasis on the jury’s determination of the truth in this case. *See* 50A C.J.S. Juries § 1 (2004) (providing jurors are sworn to declare the facts of the case as they are *proved from the evidence placed before them*) (emphasis added). Accordingly, the trial court’s jury instructions deprived Appellant of his right to a fair trial by improperly shifting the State’s burden of proof because there is a reasonable likelihood the jurors substituted the trial court’s repeated concept of determining the truth in this case for the State’s constitutional duty to prove Appellant’s guilt beyond a reasonable doubt. *Accord Daniels*, 2012 WL 4801526; *Needs*, 333 S.C. 134, 508 S.E.2d 857; *Aleksey*, 343 S.C. 20, 538 S.E.2d 248; *Todd*, 355 S.C. 396, 585 S.E.2d 305.

Notably, the State did not present overwhelming evidence of Appellant’s guilt to the jury, and the trial court’s erroneous instructions clearly contributed to the guilty verdict. *See Lowry v. State*, 376 S.C. 499, 509, 657 S.E.2d 760, 765 (2008) (“From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must ‘find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.’”) (internal citation omitted). This is illustrated by the following facts: the jury was originally deadlocked; the length of deliberations; and the split verdict. R. 117, l. 1 – 126, l. 6; Court’s Exhibit # 2 (jury note).

CONCLUSION

For the foregoing reasons, Appellant Mitchell House respectfully requests that this Court reverse his conviction and sentence and remand this case to the Richland County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Ganjehsani', is written over a horizontal line.

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of June, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 12th, 2013



Carmen V. Ganjehsani
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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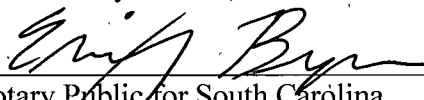
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Columbia, South Carolina 29201, this 12th day of June, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of June, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.