

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

Opinion No. 5655 (S.C. Ct. App. Filed June 12, 2019)

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S.C. SUPREME COURT

ORIGINAL

THE STATE,

PETITIONER,

V.

BILLY LEMURCES TAYLOR,

RESPONDENT.

APPELLATE CASE NO 2019-001345

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Court of Appeals err in reversing Taylor's convictions for murder, two counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime, on a challenge to the substance of an Allen charge when that challenge to the substance of the Allen charge was not made to the trial judge and is procedurally barred from review on appeal?

Did the Court of Appeals err in granting relief on the absence of certain language in the Allen charge when the language is not necessary to the charge and the remainder of the charge was not coercive?

COUNTER-QUESTION PRESENTED

Whether the Court of Appeals correctly held that the trial judge erred in not declaring a mistrial after the jurors declared they were at an impasse and, instead, giving a coercive Allen v. United States, 164 U.S. 492 (1896) charge?

STANDARD OF REVIEW

“In reviewing jury charges for error, this Court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial.” State v. Logan, 405 S.C. 83, 90–91, 747 S.E.2d 444, 448 (2013) citing State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011). “A jury charge is correct if, when read as a whole, the charge adequately covers the law.” Id. “A jury charge that is substantially correct and covers the law does not require reversal.” Id. (internal quotations omitted).

STATEMENT OF THE CASE

On March 4, 2016, appellant was indicted by a Greenville County grand jury for murder, two counts of attempted murder, and a weapons charge. R. 530 – 535. On February 29, 2016, appellant was tried before the Honorable Robin B. Stilwell and a jury. R. 1. Mark Moyer represented the State. R. 1. Frank Eppes and Carter Massingill represented appellant. Tr. 1. The jury convicted appellant. R. 507, l. 4 – 508, l. 9. Judge Stilwell sentenced appellant to forty years' imprisonment for murder and concurrent terms of thirty years' imprisonment on the two attempted murder charges and five years' imprisonment on the weapons charge. R. 524, l. 8 – 525, l. 3. The Court of Appeals reversed in a unanimous published opinion, State v. Taylor, 427 S.C. 208, 829 S.E.2d 723 (Ct. App. 2019) authored by Judge Hill and joined in by Judges Williams and Geathers. The State now seeks a writ of certiorari from this Court.

ARGUMENT

The Court of Appeals correctly held that the trial judge erred in not declaring a mistrial after the jurors declared they were at an impasse and, instead, giving a coercive Allen v. United States, 164 U.S. 492 (1896) charge.

The State gives this Court no reason to grant certiorari except its hypertechnical and erroneous interpretation of error preservation rules. The State claims that the issue of a coercive Allen charge was not before the trial court and should not have been reached by the Court of Appeals. The State maintains this claim despite defense counsel Frank Eppes' objection that the charge was "unduly coercive." R. 505, ll. 19 - 21. Defense counsel also objected to the trial judge giving the charge at all, for which he is criticized by the Attorney General. R. 504, ll. 12 – 15. The trial court denied appellant's motions. R. 504, l. 12 – 505, l. 23. The Court of Appeals examined the trial court's charge under this Court's precedent in Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001) and found the charge coercive under Tucker's multi-factor test. State v. Taylor, 427 S.C. 208, 214-19, 829 S.E.2d 723, 727-29 (Ct. App. 2019). The issue is preserved.

The State's hypertechnical issue preservation claim rests wholly on an artificially carved-out portion of the Court of Appeals' reasoning. The court reasoned that part of why the Allen charge was coercive was because it omitted the important language that jurors "should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict, an essential message that sometimes saves borderline charges from crossing the line into coercion." Taylor at 218, 829 S.E.2d at 729. The State claims that the Court of Appeals was barred from using this reasoning in examining the charge because trial counsel made no explicit objection to the omission of this language. State's Pet. Cert. at 13 ("Consequently, the issue the Court of Appeals decided, and granted relief on, was not available for review on the merits.").

The most glaring flaw in the State’s argument is that it ignores the standard of review and the test for determining whether a flawed jury charge is harmless. “In reviewing jury charges for error, this Court considers the trial court’s jury charge **as a whole** and in light of the evidence and issues presented at trial.” State v. Logan, 405 S.C. 83, 90-91, 747 S.E.2d 444, 448 (2013) (emphasis added). “A jury charge that is substantially correct and covers the law does not require reversal.” Id. (internal quotations omitted). Under this standard of review and in reviewing for prejudicial error, the Court of Appeals was required to examine the charge as a whole and determine whether it was substantially correct and covered the law. The court logically followed these steps by comparing the charge given in this case to Allen charges given in other cases. When the court conducted this comparison, it found the charge in appellant’s case sorely lacking.

If accepted, the State’s interpretation of the specificity requirement would hamstring appellate courts from reaching correct decisions. According to the State, the Court of Appeals was barred from comparing the charge given here to other analyses of Allen charges by this Court and other precedent. The State seeks the conversion of a rule of issue preservation into a “magic words” rule that would constrict legal analysis by appellate courts in ways that would lead to incorrect and conflicting results. The specificity requirement is not meant to restrict an appellate court’s reasoning and logic, but exists to ensure trial judges know the argument before them and to require trial lawyers to do more than make general objections.

Furthermore, even if this Court accepted the State’s issue preservation argument, it would still wind up in exactly the same spot as the Court of Appeals because appellant objected to the giving of **any** Allen charge. Whether the giving of any Allen charge was proper in this case is preserved even under the State’s analysis. In deciding that issue, the Court would use the

standard of review and test for prejudice and analyze the charge as a whole—and it would still be lacking when compared to precedent.

The State’s argument also ignores the fact that everyone in the courtroom understood the context of the objection. Defense counsel did not make a general objection, but objected to the charge’s coerciveness given the situation in the courtroom. The lawyers, the judge, and the jury all knew the jury’s vote count. R. 529. R. 502, ll. 17 – 20. At the beginning of the trial judge’s Allen charge, he emphasized to the jury that he knew the vote count. R. 502, ll. 17 – 20. Judge Stilwell told them, “Ladies and gentlemen, I recognize that last night you sent me a note that indicated that you were at an impasse and you told me the division that you had in that note as well.” R. 502, ll. 17 – 20. Defense counsel did not simply state that he objected, but objected on the ground of coercion—which necessarily took into account that the Allen charge was directed at the minority jurors. The trial judge understood the objection, but persisted in giving the charge, which was error.

Buried in the State’s string citation concerning issue preservation is an erroneous description of the procedural bar in Tucker as a general objection to an Allen charge. State’s Pet. Cert. at 15 and n.6. The State’s parenthetical, in describing Tucker, states, “(general objection that ‘*Allen* charge is coercive in nature’ resulted in procedural bar of specific claims on appeal).” State’s Pet. Cert. at 15 and n.6. The procedural bar applied in Tucker was not because of appellant’s objection to an Allen charge as coercive was too general. State v. Tucker, 319 S.C. 425, 427-28, 462 S.E.2d 263, 264-65 (1995). The issue raised on appeal was that “the trial judge should have told the jury not to reveal their vote. . . .” Id. Because the issue raised on appeal was not the coercion issue raised by the trial lawyer, it was held unpreserved. Id. The direct appeal opinion in Tucker does not stand for the proposition that an objection on coerciveness is too general to be considered on appeal.

Without its erroneous analysis of a non-existent procedural bar, the State musters no reason for this Court to grant certiorari. The Court of Appeals followed this Court's precedent in Tucker to analyze the error. It followed this Court's precedent on the standard of review and prejudice and examined the charge as a whole. The Court of Appeals reached the right decision. This Court should deny certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for certiorari.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and somewhat cursive.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

This 14th day of October, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

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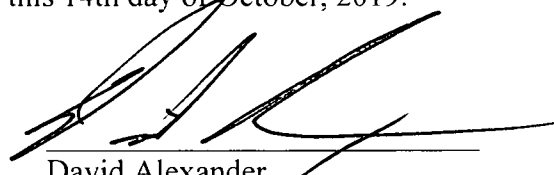
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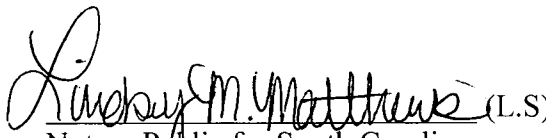
CERTIFICATE OF SERVICE

I certify that a copy of the Return to Petition for Writ of Certiorari in this case has been served on Samuel Bailey, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Billy Lemurces Taylor, #325370, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of October, 2019.



David Alexander
Appellate Defender
ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 14th day of
October, 2019.



Ashley M. Matthews (L.S.)
Notary Public for South Carolina
My Commission Expires: October 22, 2024