

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ALLENDALE COUNTY

HONORABLE PERRY M. BUCKNER, CIRCUIT COURT JUDGE

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NOV 12 2019
SC Court of Appeals

THE STATE,

RESPONDENT

v

LAPARIS S. FLOWERS,

APPELLANT

APPELLATE CASE NO. 2018-000099

AMENDMENT TO PRO SE BRIEF OF APPELLANT

LA'PARIS S. FLOWERS
APPELLANT PRO SE
LEE CORRECTIONAL INSTITUTION
990 WISACKY HIGHWAY
BISHOPVILLE, SC 29010

TABLE OF AUTHORITIES

- 1) *State v Burdette*, 427 SC 490, 832 SE 2d 575 (July 31, 2019)
- 2) *State v Belcher*, 385 SC 597, 685 SE 2d 802 (October 12, 2009)
- 3) *State v Stanko*, 402 SC at 264, 741 SE 2d at 714 (February 27, 2013)
- 4) *State v Coleman*, 6 SC 185, 1875 WL 5371 (June 4, 1875)

STATEMENT OF ISSUE ON APPEAL

Did the trial Judge abuse his discretion by giving erroneous jury instructions regardless of the evidence presented at trial. Court may not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon, overruling *State v Belcher*, 385 SC 597, 685 SE 2d 802 (October 12, 2009).

STATEMENT OF THE CASE

On January 8, 2018, Appellant proceeded to trial before the Honorable Perry M. Buckner and jury. Tameaka Leggette and Brien Hollen served as the assistant Solicitors and Joshua Knaer Jr. represented Appellant. Following a four-day trial, the jury found Appellant guilty as indicted. Judge Buckner sentenced Appellant to forty-five (45) years incarceration on the murder charge; thirty (30) years on each of the attempted murder charges, and five (5) years on the possession of a weapon charge.

The Appellant has filed a motion to file a supplemental record on appeal. Appellant's motion was granted and a supplemental record on appeal was considered served and filed.

Appellant's counsel filed a brief indicating that appeal is without merit and moves to be relieved as counsel. *Anders v California*, 386 US 738, 87 S Ct 1396, 18 L Ed 2d 493 (1967).

Appellant responds with this Pro Se submission requesting the Court consider the issues below for further briefing.

STANDARD OF REVIEW

In *State v Belcher*, 385 SC 597, 685 SE 2d 802 (October 12, 2009), holding that trial court could no longer give the inferred malice from the use of a deadly weapon charge in cases in which evidence was presented that would reduce, mitigate, excuse or justify a homicide or an assault and battery with the intent to kill.

Courts now consider whether the permissive inference charge may be given in any setting even those in which no evidence is presented that would reduce, mitigate, excuse or justify the commission of an offense containing the element of malice. We have held in other settings that it is an improper to give examples of conduct the jury may consider when determining whether the State has proven an element of a crime or when determining whether certain other facts have been proven or disproven.

This presumption is not applicable when the facts and circumstances attending the homicide case are disclosed in evidence so as to draw a conclusion of malice or want of malice as one fact from evidence. Presumptions of this class are intended as substitutes in the absence of direct proof and are in their nature indirect and constructive. The best evidence of the state of mind attending any act is what was said and done by the person whose motive is sought for. The motive that ampels to the taking of human life is no exception to this rule and the importance of the consequences that depend on the accurate ascertainment of its nature in such cases afford the strongest ground for limiting indirect and constructive proofs to the narrow grounds within which they belong. When the evidence is of such a character it must be presumed to be sufficient to enable the jury to draw from it a conclusion of fact one way or the other. In the present case, defendant is entitled to the benefit of any doubt that may arise and cannot be deprived of such benefit by any presumption of guilt arising by operation of law from the naked fact of homicide. A charge may be erroneous, although the provisions of which it is composed may be severally be conformable to recognized authority, if in its scope and bearing in the case it was likely to lead to a misconception of the law.

ARGUMENT

The trial judge abused his discretion by giving erroneous jury instructions. A jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide.

When considering whether an incorrect jury instruction constitutes harmless error, courts are required to review the trial court's charge to the jury in its entirety. Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions which may be misleading. See *Stanko* at 402. Applicant shows that the claim relies on a new rule of Constitutional law made retroactive to cases on collateral review by the Supreme Court.

State v Burdette, 427 SC 490, 832 SE 2d 575 (July 31, 2019). Regardless of the evidence presented at trial, a trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon.

There is no doubt whatsoever of the isolated proposition that the law presumes malice from the mere fact of homicide but there are cases as made by the proof to which the rule is inapplicable. The Court explained that when all circumstances of the case are fully proved there is no room for presumption. The question becomes one of fact for the jury under the general principle that he who affirms must prove and that every man is presumed innocent until the contrary appears.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction based upon trial court's error instructing the jury that it may infer the existence of malice when the deed was done with a deadly weapon.

Respectfully submitted,

s/ *La'Paris Flowers*
La'Paris Flowers, Pro Se

LAPARIS Ohmel Flowers # 375098
F 2B 1248
910 Wadley Hwy
Mishopville, SC, 27010

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South Carolina Court of Appeals
Jenny ABBOTT KITCHINGS, Clerk
Post office Box 11629
Columbia, S.C. 29211

Legal mail