

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

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Opinion No. 2020-UP-246 (S.C. Ct. App. Filed August 19, 2020)

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THE STATE,

RESPONDENT,

V.

BRIAN WILLIE BENSON LEWIS,

APPELLANT

APPELLATE CASE NO 2017-000482

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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S.C. SUPREME COURT

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**CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion in this case issued on August 19, 2020, a Petition for Rehearing was filed on September 2, 2020, which was denied by the Court of Appeals on September 16, 2020. App. 5 – 11.

## **QUESTION PRESENTED**

Whether the Court of Appeals erred in finding no reversible error in the trial court's reasonable doubt instruction that "[a] reasonable doubt is that doubt which would make an honest, conscientious juror searching for the truth in a case to hesitate to act" since it directly charged the disfavored "search for the truth" language while defining a reasonable doubt?

## STATEMENT OF THE CASE

On June 28, 2016, the Greenville County grand jury indicted Petitioner for armed robbery, possession of a weapon during the commission of a violent crime, conspiracy, and resisting arrest. R. 489. On February 7 – 9, 2017, Lewis appeared for trial before the Honorable Brian M. Gibbons and a jury. Lewis was represented by William Grove and Michael Martinez, and the State was represented by assistant solicitor Jennifer Tessitore. R. 1.

Petitioner was found guilty on each charge. R. 480. The judge sentenced Petitioner to twenty-seven years imprisonment for armed robbery, a consecutive term of five-years imprisonment for the weapons offense, a concurrent term of five-years imprisonment for conspiracy, and a concurrent term of one-year imprisonment for resisting arrest. R. 484.

On August 19, 2020, the Court of Appeals affirmed Petitioner's conviction and sentence, holding:

As to whether the trial court erred in including "searching for the truth" language in its reasonable doubt charge: *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) ("[J]ury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error."); *id.* ("The standard for review of an ambiguous [or defective] jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution."); *State v. Pradubsri*, 420 S.C. 629, 640-41, 803 S.E.2d 724, 730 (Ct. App. 2017) (finding—upon review of the entire charge—no reversible error despite the trial court's truth-seeking jury instruction, observing the trial court's instructions referenced the "beyond a reasonable doubt" standard at least twenty times); *Todd v. State*, 355 S.C. 396, 402-03, 585 S.E.2d 305, 308-09 (2003) (holding, despite the use of truth-seeking language, there was no reasonable likelihood jurors applied the trial court's instructions in an unconstitutional way because the trial court "used alternative methods of describing the [reasonable doubt] standard," and "the trial [court's] careful and exhaustive articulation of the reasonable doubt and circumstantial evidence standard, when examined in its

entirety, effectively communicated the high burden of proof that the state was required to establish by the Constitution").

State v. Lewis, Op. No. 2020-UP-246 (S.C. Ct. App. Filed August 19, 2020). Petitioner filed a petition for rehearing on September 2, 2020. The Court of Appeals issued an Order denying the petition for rehearing on September 16, 2020.

This petition for writ of certiorari to the South Carolina Court of Appeals follows.

## ARGUMENT

The Court of Appeals erred in finding no reversible error in the trial court's reasonable doubt instruction that "[a] reasonable doubt is that doubt which would make an honest, conscientious juror searching for the truth in a case to hesitate to act" since it directly charged the disfavored "search for the truth" language while defining a reasonable doubt.

### **Relevant Facts**

Petitioner was charged with participating in the armed robbery of a pizza delivery man, including stealing the delivery man's car, with three co-defendants; Donny Campbell, Cordell Lewis, and Robert Jackson. The victim identified Petitioner in a photo line-up two days after the incident and alleged that Petitioner was the person who approached him with a gun. R. 131, l. 3 – 135, l. 10. The victim also made an in-court identification of Petitioner as the person who robbed him. R. 135, l. 11 – 136, l. 2.

Each of Petitioner's co-defendants testified against him at trial after having accepted plea offers to reduced charges in exchange for their testimony.<sup>1</sup> R. 167, l. 17 – 184, l. 25; R. 235, l. 4 – 266, l. 6; R. 318, l. 6 – 334, l. 24. Petitioner denied any involvement in the armed robbery but admitted that he got into the stolen car and was driving it when confronted by police later that night. State's Ex. 53.

During the charge conference, the trial judge said: "I am staying away from saying 'true verdict.' I am aware of [what] *State v. Beat[y]* says about commenting on 'a verdict that speaks the truth.' I don't say that." R. 415, ll. 3-6. However, in his charge on reasonable doubt, the judge instructed:

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<sup>1</sup> Campbell and Lewis had not been sentenced at the time of their testimony. R. 237, ll. 2 – 15; 318, l. 6 – 319, l. 24.

*So what is a reasonable doubt? I've said that word seventeen times. What does that mean? A reasonable doubt is that doubt which would make an honest, conscientious juror searching for the truth in a case 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. Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the Defendant's guilt.

R. 456, l. 20 – 457, l. 7 (emphasis added). Following the charge, defense counsel objected to the judge's reasonable doubt charge, arguing: "You directed a 'search for the truth' language. I believe -- something along the lines of an honest and sincere, conscientious juror in search of the truth, we would object to that language." R. 476, ll. 16-21. The trial judge responded: "Objection overruled." R. 476, l. 22.

## **Discussion**

Nearly two decades ago, in State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998), this Court strongly urged trial judges to avoid using any "seek" language in their charges to the jury. The Court noted that such "in search of the truth" language was unnecessary and ran the risk of unconstitutionally shifting the burden of proof to the defendant. 333 S.C. at 151-56, 508 S.E.2d at 865-68.

In affirming Petitioner's convictions, the Court of Appeals relied on State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) for the proposition that "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 do not constitute reversible error." However, Aleksey dealt with a jury instruction regarding the *credibility of witnesses* in which the judge concluded his remarks by stating: "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.” Aleksey, 343 S.C. at 26, 538 S.E.2d at 251. The Aleksey Court noted that, prior to its instruction on the credibility of witnesses, the “trial court gave a lengthy, complete, and proper instruction on reasonable doubt, the presumption of innocence, and the State’s burden of proof.” Id.

Unlike in Aleksey, the trial judge in this case did not give a “proper instruction on reasonable doubt.” Instead, the trial judge incorrectly defined reasonable doubt as “doubt which would make an honest, conscientious juror searching for the truth in a case to hesitate to act.” R. 456, ll. 20 – 25. That was not the definition of reasonable doubt and it was error for the trial judge to charge it.

The Court of Appeals ignored this Court’s acknowledgement that “[j]ury 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.’” Aleksey, 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. The Court of Appeals also ignored the fact that, unlike in this case, in Aleksey the “seek the truth” language did not appear in the trial court’s reasonable doubt instruction. As the Aleksey Court stated:

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.*

Id. at 28, 538 S.E.2d at 252 (emphasis added). This was exactly the manner in which the trial judge in this case used the “seeking the truth” language. By defining reasonable doubt in this manner, not only did the judge give a legally incorrect definition of reasonable doubt, he also all

but ensured the jury would use this language in an unconstitutional manner – shifting the burden of proof to the defendant.

The Court of Appeals also cited to State v. Pradubsri, 420 S.C. 629, 640-41, 803 S.E.2d 724, 730 (Ct. App. 2017) where the Court found no reversible error because the trial judge’s instructions “referenced the ‘beyond a reasonable doubt’ standard at least twenty times.” Like in Pradubsri, the trial judge in this case made numerous “references” to the beyond a reasonable doubt standard. However, what the Court of Appeals overlooked was that the trial judge only *defined* reasonable doubt once, and incorrectly.

Whether the trial judge said the words “reasonable doubt” one time or one hundred times is immaterial if the judge only defines those words on a single occasion, as the trial judge did here. In fact, the trial judge explicitly acknowledged this: “*So what is reasonable doubt? I’ve said that word seventeen times. What does that mean? A reasonable doubt is that doubt which would make an honest, conscientious juror searching for the truth in a case to hesitate to act.*” R. 456, l. 20 – 457, l. 7 (emphasis added).

By putting the “searching for the truth” language in this context, the trial court was telling the jury that every time he “referenced” the reasonable doubt standard, he meant “searching for the truth.” When viewed in this context, it can more properly be said that on every occasion in which the trial judge made a reference to the term “reasonable doubt,” he was referencing his legally incorrect definition of reasonable doubt and reminding the jury that “reasonable doubt” meant to “search for the truth.”

Finally, the Court of Appeals ignored both and State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018). Twenty years after State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998), the Beaty Court *again* instructed trial judges not to include terms such as “search for the truth,” “find the

true facts,” or any other terms “that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant’s guilt beyond a reasonable doubt.” Beaty, 423 S.C. at 34, 813 S.E.2d at 506. In Beaty, the trial judge’s improper comments came in his opening remarks to the jury, not in his charge on the law at the close of the trial. In addition, the Beaty Court noted that the judge’s improper comments “were not linked to either the reasonable doubt or the circumstantial evidence charges.” Id. Because of this, the Beaty Court found the error harmless. However, the Court clearly reiterated that it is error for trial judges to include “searching for the truth” language in their comments to the jury: “These phrases could 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 the jury believes best serves its perception of justice.” Id.

The trial judge’s imposition of the erroneous “search for the truth” language over the correct “hesitate to act” language at a minimum fostered confusion for the jury as to what a reasonable doubt was. See State v. Manning, 305 S.C. 413, 417, 409 S.E.2d 372, 375 (1991) (holding that the proper jury charge on reasonable doubt is: “A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act”). “The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)

The Court of Appeals’ opinion ignored the specific facts and circumstances of this case, including the context in which the trial judge used the search for the truth language. The trial judge erred when he defined reasonable doubt incorrectly and improperly by couching it in terms of “searching for the truth.” This Court has repeatedly found this to be improper and has

repeatedly instructed trial judges not to do this. The trial judge in this case even acknowledged that the language was improper, stated that he would not use it in his jury charge because of this Court's decision in State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018), and then still proceeded to disregard this Court's precedent by giving an incorrect and improper definition of reasonable doubt. R. 415, ll. 1 – 7.

**CONCLUSION**

Based upon the foregoing, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to the Court of Appeals to allow full briefing on the issues presented.

Respectfully Submitted,

s/Adam Ruffin  
Adam Sinclair Ruffin  
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of October, 2020.