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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
The Honorable Walton J. McLeod, IV, PCR Judge

Appellate Case No. 2019–001249

BILAL S. HAYNESWORTH,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in instructing the jury in part of its opening remarks that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court," because such a remark could alter the jury's perception of the burden of proof and deprive appellant of a fair trial?

STATEMENT OF THE CASE

Appellant was convicted along with a co-defendant of attempted murder, possession of a firearm, and conspiracy after a jury trial held before the Honorable Thomas A. Russo on May 19-21, 2014, in Lexington County. Respective sentences of twelve (12) years, five (5) years, and five (5) years were imposed. David Mauldin, Esq. was trial counsel, Kate W. Usry, Esq., and Gil Bell, Esq. were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in instructing the jury in part of its opening remarks that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court," because such a remark could alter the jury's perception of the burden of proof and deprive appellant of a fair trial.

Appellant's indictment for attempted murder read as follows:

> That Bilal Sincere Haynesworth, with co-defendants, in Lexington County, South Carolina, on or about January 3, 2013, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: shooting into an occupied dwelling, in violation of §16-03-0029 of the South Carolina Code of Laws 1976, as amended.

JayQuan Bell was the key witness for the State. He lived at the dwelling in question in Swansea on January 3, 2013. He lived there with his Aunt Jennie, Frankie Lawton, Frantia, and his little cousin Tyana. (R. 67, l. 7-16) Earlier in the morning, at the parking lot at Swansea High School appellant and his grandmother were headed toward the grandmother's car to leave. A Mercedes truck pulled up and appellant's mother, his brother, and Nehemiah came out of it. Appellant's brother's name was Lywone Capers, the co-defendant. Capers said to Bell, "All you niggas are dead." Then he looked at Bell's grandmother and said, "Bitch, you dead, too." (R. 70, l. 8-75, l. 1)

Bell and his grandmother decided to drive back to the residence. The grandmother decided to go to the local Exxon station to get gas. Bell went with her because he did not want her to go alone. When they got to the gas station, the Mercedes truck came by and a green Camaro driven by appellant pulled up. Co-defendant Capers was in the Mercedes truck and Nehemiah Dixon was

driving it. Bell and his grandmother decided that they better go back to the residence. (R. 75, l. 18-81, l. 20)

While at the residence, Bell heard engines roaring like cars were driving by. He opened the door and saw the green Camaro and appellant with his arm out the window with a gun. He closed the door and told everybody to get down. That was when shots were fired. It got quiet so he opened the door again and he saw Capers hanging over the top of the Mercedes truck with his gun. Shots were fired again. (R. 82, l. 8- 84, l. 7)

Prior to any of the above evidence being presented, the trail court instructed the jury in its opening remarks that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court." (R. 11, l. 22-24) Defense counsel objected to this remark to the jury and cited State v. Daniels, 401 S.C. 251, 737 S.E.2nd 473 (2012) where the Court previously told this same judge to remove any remark like this from his general session charges. The trial court, here, denied the motion but noted the objection. (R. 19, l. 7- 21, l. 3) In Daniels the Court wrote:

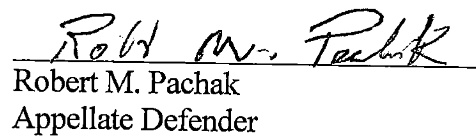
> Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.
>
> (401 S.C. at 256, 737 S.E2nd at 475)

There was no overwhelming evidence in this case. The case rested on the credibility of one eyewitness, JayQuan Bell, who had an up and down relationship with appellant.

CONCLUSION

Because of the improper remarks by the trial court, appellant's convictions should be reversed.

Respectfully submitted,



Robert M. Pachak
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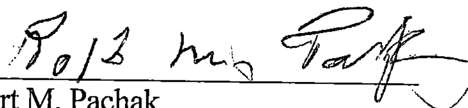
ATTORNEY FOR APPELLANT

This 30th day of September, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 30, 2015



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BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 , this 30th day of September, 2015.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2015.
____________________(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

Respondent,

vs.

BILAL SINCERE HAYNESWORTH,

Appellant.

Appellate Case No. 2014-001177

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STATEMENT OF ISSUE ON APPEAL

The trial court's advice to the jury prior to trial that a trial is a search for the truth did not shift the burden of proof, and any conceivable prejudice was cured by the trial court's extensive instructions that the State bore the burden of proving the allegations beyond a reasonable doubt.

STATEMENT OF THE CASE

Appellant Haynesworth and his brother, Lywone Capers, were jointly tried for attempted murder, possession of a firearm, and conspiracy on May 19-21, 2014. They were found guilty as charged by the jury. The Honorable Thomas A. Russo sentenced Haynesworth to twelve years imprisonment for attempted murder and concurrent sentences of five years imprisonment for the two remaining convictions.

STATEMENT OF FACTS

Bilal Haynesworth and his brother, Lywone Capers, fired into the residence where JayQuan Bell lived as retribution for a series of disrespectful communications between Bell and Haynesorth. Fortunately, no one was hurt.

On January 3, 2013, Clara Williams, Bell's grandmother, picked up Bell from his aunt's house to enroll at Swansea High School. Williams drove him to school in her Ford Focus. They were unable to complete the enrollment without Bell's mother, so they headed back to the car. Williams testified that two young men and a woman approximately in her thirties approached and threatened them. Williams did not know any of these people. Williams testified she felt threatened. Bell told Williams they should just go back to the car and leave, which they did. Williams and Bell drove back to the aunt's house briefly and then

to the Exxon station to fill the car up with gas. ROA. pp. 33-37.

While pumping gas, a Camaro pulled into the station, and the man who cursed at them exited the Camaro and started to point at Bell and Williams. Bell said, "Let's go." They left and returned to the aunt's house. Williams was in the bathroom when she heard gunshots. Williams went into the laundry room and bent down. She heard "lots" of shots. She confirmed that a total of five people were in the house when the shots were fired. ROA. pp. 40-41.

Jennie Childs, the aunt, testified she let Bell live with her while Bell went to school at Swansea. Williams picked Bell up to enroll him at school and was going to also take him grocery shopping. When Bell returned, Childs noticed he was upset. Then she heard gunshots. Everyone got down on the floor. She confirmed that one of the shots entered her daughter's room. ROA. pp. 47-53.

Bell explained he was raised by Williams but was living with his aunt, Childs, for residency purposes because he wanted to enroll for his last semester of high school in Swansea, where he originally started high school. While trying to enroll in the school, Bell and Williams were approached by Haynesworth, Capers, and their mother, Princess. Capers threatened them. Capers said, "All you niggas are dead" and looked at Williams and told her, "Bitch, you dead." ROA. pp. 66-74.

Bell and Williams left the school and returned to Childs' house briefly before they went to the Exxon station. While at Exxon, he saw Princess' Mercedes-Benz truck and Haynesworth's green Camaro. Haynesworth came out of the Camaro and began gesturing for Bell to turn around as Williams and Bell pulled away. Capers exited the truck and made

gestures too. ROA. pp. 74-80.

Bell and Williams went back to the house again, and while inside the house, Bell heard engines outside. He opened the door and saw Haynesworth with his arm hanging out of the window holding a gun. Bell told everyone to get down and then two shots were fired. ROA. pp. 82-83.

Bell looked out the door and saw Nehemiah Dixon (who he also had seen at the school) and Capers, who was holding a gun, in the Mercedes-Benz truck. More shots were fired. Bell also saw a muddy tan Nissan. ROA. pp. 83-84.

The motive apparently was an argument between Bell and Haynesworth over the mother of Bell's child. However, according to Bell, the argument was over. On cross-examination, defense counsel elicited testimony about threatening Facebook messages that suggested an active dispute and helped prove the defendants' motive for the drive-by shooting. This evidence included threats Bell made to Haynesworth over Christmas break. ROA. pp. 93; pp. 100-103; pp. 104-105. No evidence suggesting self-defense was presented to the jury. After the shooting, Bell sent Haynesworth a message complaining they should have fought instead of Haynesworth bringing guns into the dispute. ROA. p. 105. Bell testified he does not own a gun. ROA. p. 118.

Nehemiah Dixon was obviously a reluctant witness for the State. Dixon dates Haynesworth's sister, and he was with them on January 3, 2013. Dixon, Princess, and Capers took Haynesworth to school and dropped him off. They received a text that he was not comfortable there, so they went back to sign him out. Dixon testified he did not see Bell at the school because he stayed in the truck. Dixon admitted he overheard Capers say

something about settling some things. They left Princess at the school, perhaps to complete paperwork, and Haynesworth, Capers, and Dixon went back to the house. Dixon did not recall how they ended up in separate cars, but Dixon recalls he drove the Nissan to Exxon. Haynesworth was in the Camaro. Capers in the Mercedes-Benz truck. Princess was also with them. They saw Bell there with a lady. Bell left the station and Dixon followed him. ROA. pp. 122-132.

Dixon testified that he lost sight of Bell's car. Dixon drove back to the Exxon. The others were still there. Dixon claimed more memory problems in describing whether he spoke with the defendants at the gas station. Dixon claimed he pulled away from the gas station and then heard two shots while driving down the road, followed by two more shots. ROA. pp. 132-134.

Dixon was impeached by the State with his prior statement provided on January 7, 2013. ROA. pp. 139-140. Dixon's statement stated, in part, the following: "I drove back to the Exxon and drove back to the bottom looking for a car, spotted the car and then two shots were fired and two more shots and we drove home." ROA. p. 143, lines 10-12.

Clifton Hayes, the Swansea Chief of Police, testified he responded to the scene of the shooting. Bell was in an excited state. ROA. pp. 149-150. Chief Hayes recovered a freshly discharged shell casing in the driveway. ROA. p. 153. He found a bullet hole in the glass of a window, the bullet went through the walls and rested in the bathroom. ROA. p. 156. No firearm was recovered. ROA. p. 157.

Haynesworth testified on his own behalf. Helping prove an apparent motive for his actions, Haynesworth testified about a nasty, threatening Facebook communication sent to

him by Bell. ROA. pp. 186-188. He confirmed that he, Princess, Dixon, and Capers went to Swansea High School. He confirmed that Princess took him out of school. They went to the Exxon station where, Haynesworth maintained, Bell yelled at him. ROA. pp. 189-192. Hayneswoth claimed they then went to pick up his friend from an alternative school. ROA. p. 194. Haynesworth's "alibi" fell apart with this testimony, because Haynesworth was claiming he picked up his friend from alternative school at the extremely early hour of 9:00 a.m. – 9:30 a.m. ROA. p. 201.

Tammy "Princess" Coleman nonetheless joined in this absurd story, testifying that when they arrived at the alternative school, Haynesworth blew his horn, and when the friend did not come out, Haynesworth told Princess, "Mom, it's too early to get [Haynesworth's friend]." ROA. p. 213, lines 11-14. When asked by defense counsel if she realized it was too early to pick up the friend, Princess testified, "No. With everything that was going on, I didn't even pay it no mind. He used to picking [the friend] up every day." ROA. p. 213, lines 15-18.

During closing argument, the prosecutor pointed out the absurdity that they accidently forgot it was only 9 a.m. and school was not over when they went to pick up this friend. ROA. p. 241, lines 9-21.

ARGUMENT

> **The trial court's advice to the jury prior to trial that a trial is a search for the truth did not shift the burden of proof, and any conceivable prejudice was cured by the trial court's extensive instructions that the State bore the burden of proving the allegations beyond a reasonable doubt.**

Haynesworth complains about the trial court's comments to the jury, prior to swearing the jury, that a trial is a search for the truth. The full context of this comment is as follows:

> Most folks' experience with regards to jury trials are what they've seen on television or read in books or what they've seen in the movies. And as we all know, those trials are always filled with intense action, riveting circumstances, and a lot of drama. That's Hollywood.
>
> Now, during the course of this trial, while any one of those things may occur, what is important for you to understand and to keep in your mind throughout the course of this trial is that this case is not for your entertainment. This trial is a fundamental part of our democracy. **It is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court.** Searching for the truth and making sure that justice is done oftentimes can be slow, deliberate, sometimes it can be repetitive. In other words, it's very different from what you may have seen in the movies, read in books, or seen on television. **This Courtroom is a place of honor. It is dedicated to the protection and to the preservation of citizens' rights** through what many have called the greatest justice system ever created.

ROA. p. 11, line 12 – p. 12, line 7 (emphasis added). The trial court then advised the jury "in just a moment you're going to take an oath to try this case and to reach a fair and a just verdict. And so you are also expected to be professional, reasonable, and ethical in the performance of your duty." ROA. p. 12, lines 15-18.

The jury was sworn and the trial court advised the sworn jurors that the indictments are simply charges and not evidence. The trial court then advised the jury that the State bore the burden of "proving each of the elements of the indictments beyond a reasonable doubt." ROA. p. 13, lines 14-23. Two days later, the parties rested, made their closing summations, and the trial court provided more specific instructions to the jurors before they began the deliberations that led to the verdicts.

The appropriate test for reviewing a jury charge involves determining whether there is a reasonable likelihood the jury applied the charge in a way that violated the Constitution. Estelle v. McGuire, 502 U.S. 62, 71 (1991). Ultimately, "[a] trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").

The irony of Haynesworth's remonstration is that the **central function** of the trial process in both criminal and civil cases is to discover the truth. See Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating "the central function of [a] trial . . . is to discover the truth"); see also State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) ("A trial is a search for the truth[.]"); see, e.g., Carella v. California, 491 U.S. 263, 265 (1989) (explaining that burden-relieving jury instructions "subvert the presumption of innocence accorded to accused persons and also invade **the truth-finding task assigned solely to juries** in criminal cases" (emphasis added)).

As part of the truth-seeking process, the State carries the burden to prove a criminal

defendant's guilt for every element of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); see also Burr v. Florida, 474 U.S. 879, 880 (1985) ("[T]he **beacon of the truth-seeking process** in criminal cases is not absolute certainty, but the 'reasonable doubt' standard[.]" (emphasis added)).

The Supreme Court has cautioned trial judges to avoid using language that instructs the jury to "seek the truth" due to the risk that such language could potentially shift the burden of proof to the defendant in an unconstitutional manner. State v. Aleksey, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000). Additionally, the Supreme Court has advised trial judges not to instruct jurors that their verdicts "would represent truth and justice for the parties" due to the risk that such language could distract the jury from its core functions. State v. Daniels, 401 S.C. 251, 258, 737 S.E.2d 473, 477 (2012) (Toal, C.J., concurring for the majority). However, our Supreme Court specifically declined to hold any mention of "the truth" in jury charges is unconstitutional. See Aleksey, 343 S.C. at 28, n. 2, 538 S.E.2d at 252 ("Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of 'the truth' in jury charges is unconstitutional."); see also State v. Hoffman, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included "in seeking the truth" language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

In the instant case, the "seeking the truth" comment came prior to the jury being sworn and not during a discussion of the State's obligation to prove Haynesworth's guilt beyond a reasonable doubt. The comments were made during an effort by the trial court to

impart to jurors the gravity of their responsibility in advance of the trial that had not yet begun. The comment in this context was not improper.

The jury was sworn on Monday, the trial began, the parties presented their cases and rested, the parties made their closing arguments **and then**, the trial court instructed the jury extensively on reasonable doubt and the state's burden before the jury deliberated and returned a verdict on Wednesday.

Indeed, as shown below, the trial court did an exemplary job of communicating the State's burden of proving the charges beyond a reasonable doubt, so the early isolated comment was not prejudicial to Haynesworth. See State v. Raffaldt, 318 S.C. 110, 115-116, 456 S.E.2d 390, 393 (1995) (finding a jury charge instructing the jury to "seek some reasonable explanation other than the guilt of the accused" was erroneously burden-shifting but determining any error with that instruction was harmless because the charge as a whole properly explained the State had the burden of establishing Raffaldt's guilt beyond a reasonable doubt); see also State v. Needs, 333 S.C. 134, 154, 508 S.E.2d 857, 867 (1998) ("In Manning, the Court pointed to the 'in search of the truth' language contained in the reasonable doubt charge as contributing to its defective nature. However, appellate courts since have seemed to allow the use of the phrase – at least when it is not combined with other offending terms outlined in Manning." (citations omitted)).

In the instant case, the instructions at the close of evidence, two days after the jury was sworn, diminished to negligible any conceivable prejudice from the pretrial comment on the search for the truth. The trial court instructed the jury as follows on the State's burden:

> Now, the defendants have pled not guilty to the

> charges in these indictments, and that plea puts the burden on the State to prove the defendants guilty. A person charged with committing a criminal offense in South Carolina is never required to prove him or herself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charges may be, will always be presumed to be innocent of the crimes for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.
>
> This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendants throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It is not just a legal phrase, but it is a substantial right to which every defendant is entitled. Unless you, the jury, are satisfied by the evidence of the defendant's guilt beyond a reasonable doubt.
>
> Now, the State has the burden of proving a defendant's guilty [sic] beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that; it must be beyond a reasonable doubt.
>
> Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. . . .

ROA. p. 249, line 18 – p. 250, line 23.

The trial court further instructed the jury to only consider the competent evidence presented to them. ROA. p. 251, lines 8-17. The trial judge advised the jury it is the exclusive judge of facts. ROA. p. 252, lines 2-16. When informing the jury it could not draw any conclusions from Capers' decision to not testify, the trial court also reminded the jury again that the State has the burden of proof and the defendant does not have to prove his innocence. ROA. p. 255, lines 2-9.

In discussing the specific offenses, the trial court informed the jury the State had to prove the defendants attempted to murder another person with malice aforethought. ROA. p. 256, lines 15-22. The trial court advised the jury if the jury found the State failed to prove attempted murder beyond a reasonable doubt, then the jury could consider if the State proved Assault and Battery in the First Degree beyond a reasonable doubt. ROA. p. 258, lines 21-25.

The trial court further instructed the jury the State was required to prove beyond a reasonable doubt that the defendants were in possession of a firearm for the jury to convict the defendants of Possession of a Weapon During the Commission of a Violent Crime. ROA. p. 259, lines 9-14. Likewise, the trial court advised the jury the State must prove beyond a reasonable doubt the elements of Conspiracy. ROA. p. 259, line 24 – p. 260, line 3.

The trial court instructed the jury on alibi as follows:

> There is no burden on the defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that the defendant was actually present at the scene of the crime, actually participated in it, and was not somewhere else. In other words, the State has the burden of disproving the defendants' alibi defense.

ROA. p. 261, lines 11-16.

Put in context, the trial court's comments prior to the jury being sworn merely imparted the gravity of the jurors' responsibility to ensure justice is done and citizens' rights are protected. The comments did not create any real danger that two days later the jurors would not follow the trial courts' extensive pre-deliberation instructions on the State's burden of proving the charges beyond a reasonable doubt. See State v. Smith, 315 S.C. 547,

554, 446 S.E.2d 411, 415 (1994) ("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."). Accordingly, the trial court did not err, and Haynesworth was not prejudiced by the perceived error. The convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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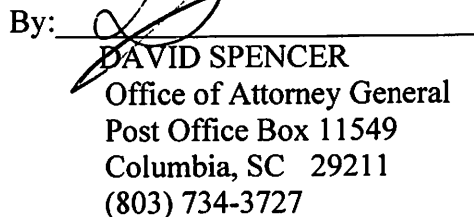

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THE STATE, Respondent,

v.

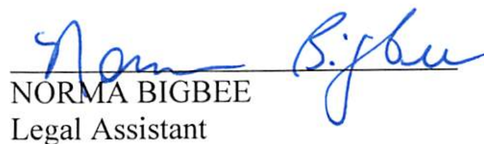
BILAL SINCERE HAYNESWORTH, Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Robert M. Pachak, Esquire, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

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

This 14th day of October, 2015.



NORMA BIGBEE
Legal Assistant

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

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Bilal Sincere Haynesworth, Appellant.

Appellate Case No. 2014-001177

Appeal From Lexington County
Thomas A. Russo, Circuit Court Judge

Unpublished Opinion No. 2016-UP-119
Submitted February 1, 2016 – Filed March 2, 2016

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Deputy Attorney General David A. Spencer, both of Columbia; and Solicitor Donald V. Myers, of Lexington, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Nesbitt*, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) ("In criminal cases, the appellate court sits to review errors of law only." (quoting *State*

v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011))); *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003) ("In reviewing jury charges for error, we must consider the [trial] court's jury charge as a whole . . . ."); *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.").

AFFIRMED.[1]

SHORT, THOMAS, and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

30

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

RECEIVED
MAR 17 2016
SC Court of Appeals

V.

BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

Opinion No. 2016-UP-119

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, appellate counsel petitions this Court for rehearing on the following points that may have been overlooked or misapprehended. The trial judge in this case in his opening remarks to the jury instructed them to consider that justice is done between the parties that appear before the court. This charge was struck down in State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) because it diluted the State's burden of proof and improperly shifted the reasonable doubt burden of proof.[1] It is well noted that opening remarks set the whole tone of a trial.

[1] The trial judge in Daniels is the same judge who gave the remarks in this case.

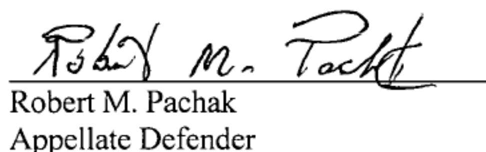
Nevertheless, this Court ruled that it has to consider the jury charge as a whole and that a trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. This cryptic opinion does not explain how the jury charges as a whole cured the error of the trial judge's opening instruction to the jury that they carried with them throughout the trial. This Court is asked to note the following from State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991):

> When an incorrect charge is given, the court must withdraw it; "[m]erely superimposing a correct statement of law over an erroneous charge only fosters confusion and prejudice." *402 *State v. Patrick,* 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986); *State v. Peterson,* 287 S.C. 244, 335 S.E.2d 800 (1985); *State v. Adams, supra.*

The evidence in this case was not overwhelming. The case rested only on the credibility of one eyewitness, Jay Puan Bell, who had an up and down relationship with appellant.

Wherefore, based on the foregoing points, appellate counsel would request a hearing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

This 17th day of March, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

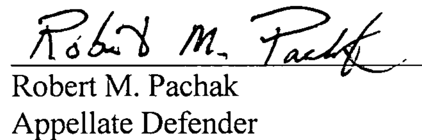
BILAL SINCERE HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2014-001177

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Bilal Sincere Haynesworth at the Lee Correctional Institution 990 Wisacky Highway, Bishopville, SC 29010, this 17th day of March, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 17th day
of March, 2016.

(L.S.)

Notary Public for South Carolina
My Commission Expires: March 1, 2026.

The South Carolina Court of Appeals

The State, Respondent,

v.

Bilal Sincere Haynesworth, Appellant.

Appellate Case No. 2014-001177

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

Paula H. Thomas J.

[illegible] J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Robert M. Pachak, Esquire
David A. Spencer, Esquire
Donald V. Myers, Esquire
The Honorable Thomas A. Russo

FILED
4/21/16

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAY 20 2016

SC SUPREME COURT

Certiorari to Lexington County

Thomas A. Russo, Circuit Court Judge

Opinion No. 2016-UP-119 (S.C. Ct. App. filed March 2, 2016)

THE STATE,

RESPONDENT,

V.

BILAL SINCERE HAYNESWORTH,

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ROBERT M. PACHAK
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ARGUMENT

The Court of Appeals erred in affirming the trial court's opening remarks to the jury that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court," because such a remark could alter the jury's perception of the burden of proof and deprive petitioner of a fair trial 5

CONCLUSION 8

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was filed in the case on March 17, 2016, and was denied on April 21, 2016.

ISSUE PRESENTED

Whether the Court of Appeals erred in affirming the trial court's opening remarks to the jury that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court," because such a remark could alter the jury's perception of the burden of proof and deprive petitioner of a fair trial?

STATEMENT

Petitioner was convicted along with a co-defendant of attempted murder, possession of a firearm, and conspiracy after a jury trial held before the Honorable Thomas A. Russo on May 19 - 21, 2014, in Lexington County. Respective sentences of twelve (12) years, five (5) years, and five (5) years were imposed. David Mauldin, Esquire was trial counsel, Kate W. Usry, Esquire, and Gil Bell, Esquire were the assistant solicitors.

Petitioner appealed his convictions and a final brief was submitted to the Court of Appeals on September 30, 2015. The Court of Appeals affirmed the convictions on March 2, 2016, in an unpublished opinion. A petition for rehearing was filed on March 17, 2016, and was denied on April 21, 2016.

This petition follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's opening remarks to the jury that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court," because such a remark could alter the jury's perception of the burden of proof and deprive petitioner of a fair trial.

Petitioner's indictment for attempted murder reads as follows:

> That Bilal Sincere Haynesworth, with co-defendants, in Lexington County, South Carolina, on or about January 3, 2013, did with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: shooting into an occupied dwelling, in violation of §16-03-0029 of the South Carolina Code of Laws 1976, as amended.

JayQuan Bell was the key witness for the State. He lived at the dwelling in question in Swansea on January 3, 2013. He lived there with his Aunt Jennie, Frank Lawton, Frantia, and his little cousin Tyana. (R. 67, l. 7 – 16) Earlier in the morning, at the parking lot at Swansea High School petitioner and his grandmother were headed toward the grandmother's car to leave. A Mercedes truck pulled up and petitioner's mother, his brother, and Nehemiah came out of it. Petitioner's brother's name was Lywone Capers, the co-defendant. Capers said to Bell, "All you niggas are dead." Then he looked at Bell's grandmother and said, "Bitch, you dead, too." (R. 70, l. 8-75, l. 1)

Bell and his grandmother decided to drive back to the residence. The grandmother decided to go to the local Exxon station to get gas. Bell went with her because he did not want her to go alone. When they got to the gas station, the Mercedes truck came by and a green Camaro driven by petitioner pulled up. Co-defendant Capers was in the Mercedes truck and Nehemiah Dixon was

driving it. Bell and his grandmother decided that they better go back to the residence. (R. 75, l. 18-81, l. 20)

While at the residence, Bell heard engines roaring like cars were driving by. He opened the door and saw the green Camaro and petitioner with his arm out the window with a gun. He closed the door and told everybody to get down. That was when shots were fired. It got quiet so the opened the door again and he saw Capers hanging over the top of the Mercedes truck with his gun. Shots were fired again. (R. 82, l. 8 – 84, l. 7)

Prior to any of the above evidence being presented, the trial court instructed the jury in its opening remarks that a trial "is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court." (R. 11, l. 22 – 24) Defense counsel objected to this remark to the jury and cited State v. Daniels, 401 S.C. 251, 737 S.E. 2nd 473 (2012) where the Court previously told this same judge to remove any remark like this from his general sessions charges. The trial court, here, denied the motion but noted the objection. (R. 19, l. 7 -21, l. 3) In Daniels the Court wrote:

> Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and that State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. The inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.
>
> (401 S.C. at 256, 737 S.E.2nd at 475)

There was no overwhelming evidence in this case. The case rested on the credibility of one eyewitness, JayQuan Bell, who had an up and down relationship with petitioner.

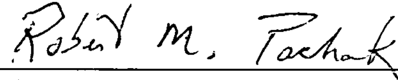
Against this background, the Court of Appeals gave a cryptic ipse dixit opinion which explained nothing other than what cryptic and ipse dixit mean. First, the court says it "sits to review errors of law only." Well, this Court said in State v. Daniels, 401, S.C. 251, 737, S.E.2d 473 (2012) that the trial judge's instruction like the one given in this case was error. Then, the court said it "must consider the [trial} court's charge as a whole..." when reviewing a charge for error. But the court never explained how a review of the charge as a whole corrected the bad instruction it did give. The improper opening remarks given by the trial court stayed with the jury throughout the trial. Petitioner would ask this Court to note the following from State v. Robinson, 306, S.C. 399, 412, S.E.2d 411 (1991):

When an incorrect charge is given, the court must withdraw it; [m]erely superimposing a correct statement of law over an erroneous charge only fosters confusion and prejudice." 402 *State v. Patrick,* 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986); *State v. Peterson,* 287 S.C. 244, 335 S.E.2d 800 (1985); *State v. Adams, supra.*

CONCLUSION

Petitioner's writ should be granted and his convictions be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of May, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Thomas A. Russo, Circuit Court Judge

Opinion No. 2016-UP-119 (S.C. Ct. App. filed March 2, 2016)

THE STATE,

RESPONDENT,

V.

BILAL SINCERE HAYNESWORTH,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on David Spencer, Esquire and Bilal Sincere Haynesworth at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 20th day of May, 2016.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day of May, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.

STATE OF SOUTH CAROLINA

IN THE SUPRMEME COURT

RECEIVED
MAY 25 2016
SC SUPREME COURT

Certiorari to Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

Respondent,

vs.

BILAL SINCERE HAYNESWORTH,

Petitioner.

Case No. 2016-001101

RETURN TO PETITION FOR WRIT OF CERTIOARI

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STATEMENT OF ISSUE ON APPEAL

The trial court's advice to the jury prior to trial that a trial is a search for the truth did not shift the burden of proof, and any conceivable prejudice was cured by the trial court's extensive instructions that the State bore the burden of proving the allegations beyond a reasonable doubt.

STATEMENT OF THE CASE

Appellant Haynesworth and his brother, Lywone Capers, were jointly tried for attempted murder, possession of a firearm, and conspiracy on May 19-21, 2014. They were found guilty as charged by the jury. The Honorable Thomas A. Russo sentenced Haynesworth to twelve years imprisonment for attempted murder and concurrent sentences of five years imprisonment for the two remaining convictions.

Haynesworth appealed his conviction and sentence. The Court of Appeals affirmed in an unpublished Rule 220(b), SCACR, opinion. 2016-UP-119 (S.C. Ct. App. filed March 2, 2016). Haynesworth's subsequent petition for rehearing was denied. Haynesworth petitioned this Court for a grant of certiorari. This return follows.

STATEMENT OF FACTS

Bilal Haynesworth and his brother, Lywone Capers, fired into the residence where JayQuan Bell lived as retribution for a series of disrespectful communications between Bell and Haynesorth. Fortunately, no one was hurt.

On January 3, 2013, Clara Williams, Bell's grandmother, picked up Bell from his aunt's house to enroll at Swansea High School. Williams drove him to school in her Ford Focus. They were unable to complete the enrollment without Bell's mother, so they headed back to the car. Williams testified that two young men and a woman approximately in her thirties approached and threatened them. Williams did not know any of these people. Williams testified she felt threatened. Bell told Williams they should just go back to the car and leave, which they did. Williams and Bell drove back to the aunt's house briefly and then to the Exxon station to fill the car up with gas. ROA. pp. 33-37.

While Bell and Williams were filling the tank with gas, a Camaro pulled into the station, and the man who cursed at them at school exited the Camaro and started to point at Bell and Williams. Bell said, "Let's go." They left and returned to the aunt's house. Williams was in the bathroom when she heard gunshots. Williams went into the laundry room and bent down. She heard "lots" of shots. She confirmed that a total of five people were in the house when the shots were fired. ROA. pp. 40-41.

Jennie Childs, the aunt, testified she let Bell live with her while Bell went to school at Swansea. Williams picked Bell up to enroll him at school and was going to also take him grocery shopping. When Bell returned, Childs noticed he was upset. Then she heard gunshots. Everyone got down on the floor. She confirmed one of the shots entered her

daughter's room. ROA. pp. 47-53.

Bell explained he was raised by Williams but was living with his aunt, Childs, for residency purposes because he wanted to enroll for his last semester of high school in Swansea, where he originally started high school. While trying to enroll in the school, Bell and Williams were approached by Haynesworth, Capers, and their mother, Princess. Capers threatened them. Capers said, "All you niggas are dead" and looked at Williams and told her, "Bitch, you dead." ROA. pp. 66-74.

Bell and Williams left the school and returned to Childs' house briefly before they went to the Exxon station. While at Exxon, he saw Princess' Mercedes-Benz truck and Haynesworth's green Camaro. Haynesworth came out of the Camaro and began gesturing for Bell to turn around as Williams and Bell pulled away. Capers exited the truck and made gestures too. ROA. pp. 74-80.

Bell and Williams went back to the house again, and while inside the house, Bell heard engines outside. He opened the door and saw Haynesworth with his arm hanging out of the window holding a gun. Bell told everyone to get down and then two shots were fired. ROA. pp. 82-83.

Bell looked out the door and saw Nehemiah Dixon (who he also had seen at the school) and Capers, who was holding a gun, in the Mercedes-Benz truck. More shots were fired. Bell also saw a muddy tan Nissan. ROA. pp. 83-84.

The motive apparently was an argument between Bell and Haynesworth over the mother of Bell's child. However, according to Bell, the argument was over. On cross-examination, defense counsel elicited testimony about threatening Facebook messages that

suggested an active dispute and helped prove the defendants' motive for the drive-by shooting. This evidence included threats Bell made to Haynesworth over Christmas break. ROA. pp. 93; pp. 100-103; pp. 104-105. No evidence suggesting self-defense was presented to the jury. After the shooting, Bell sent Haynesworth a message complaining they should have fought instead of Haynesworth bringing guns into the dispute. ROA. p. 105. Bell testified he does not own a gun. ROA. p. 118.

Nehemiah Dixon was obviously a reluctant witness for the State. Dixon dates Haynesworth's sister, and he was with them on January 3, 2013. Dixon, Princess, and Capers took Haynesworth to school and dropped him off. They received a text that he was not comfortable there, so they went back to sign him out. Dixon testified he did not see Bell at the school because he stayed in the truck. Dixon admitted he overheard Capers say something about settling some things. They left Princess at the school, perhaps to complete paperwork, and Haynesworth, Capers, and Dixon went back to the house. Dixon did not recall how they ended up in separate cars, but Dixon recalls he drove the Nissan to Exxon. Haynesworth was in the Camaro. Capers in the Mercedes-Benz truck. Princess was also with them. They saw Bell there with a lady. Bell left the station and Dixon followed him. ROA. pp. 122-132.

Dixon testified he lost sight of Bell's car. Dixon drove back to the Exxon. The others were still there. Dixon claimed more memory problems in describing whether he spoke with the defendants at the gas station. Dixon claimed he pulled away from the gas station and then heard two shots while driving down the road, followed by two more shots. ROA. pp. 132-134.

Dixon was impeached by the State with his prior statement provided on January 7, 2013. ROA. pp. 139-140. Dixon's statement stated, in part, the following: "I drove back to the Exxon and drove back to the bottom looking for a car, spotted the car and then two shots were fired and two more shots and we drove home." ROA. p. 143, lines 10-12.

Clifton Hayes, the Swansea Chief of Police, testified he responded to the scene of the shooting. Bell was in an excited state. ROA. pp. 149-150. Chief Hayes recovered a freshly discharged shell casing in the driveway. ROA. p. 153. He found a bullet hole in the glass of a window, the bullet went through the walls and rested in the bathroom. ROA. p. 156. No firearm was recovered. ROA. p. 157.

Haynesworth testified on his own behalf. Helping prove an apparent motive for his actions, Haynesworth testified about a nasty, threatening Facebook communication sent to him by Bell. ROA. pp. 186-188. He confirmed that he, Princess, Dixon, and Capers went to Swansea High School. He confirmed that Princess took him out of school. They went to the Exxon station where, Haynesworth maintained, Bell yelled at him. ROA. pp. 189-192. Hayneswoth claimed they then went to pick up his friend from an alternative school. ROA. p. 194. Haynesworth's "alibi" fell apart with this testimony, because Haynesworth was claiming he picked up his friend from alternative school at the extremely early hour of 9:00 a.m. – 9:30 a.m. ROA. p. 201.

Tammy "Princess" Coleman nonetheless joined in this absurd story, testifying that when they arrived at the alternative school, Haynesworth blew his horn, and when the friend did not come out, Haynesworth told Princess, "Mom, it's too early to get [Haynesworth's friend]." ROA. p. 213, lines 11-14. When asked by defense counsel if she realized it was

too early to pick up the friend, Princess testified, "No. With everything that was going on, I didn't even pay it no mind. He used to picking [the friend] up every day." ROA. p. 213, lines 15-18.

During closing argument, the prosecutor pointed out the absurdity that they accidently forgot it was only 9 a.m. and school was not over when they went to pick up this friend. ROA. p. 241, lines 9-21.

ARGUMENT

The trial court's advice to the jury prior to trial that a trial is a search for the truth did not shift the burden of proof, and any conceivable prejudice was cured by the trial court's extensive instructions that the State bore the burden of proving the allegations beyond a reasonable doubt.

Haynesworth complains about the trial court's comments to the jury, prior to swearing the jury, that a trial is a search for the truth. The full context of this comment is as follows:

> Most folks' experience with regards to jury trials are what they've seen on television or read in books or what they've seen in the movies. And as we all know, those trials are always filled with intense action, riveting circumstances, and a lot of drama. That's Hollywood.
>
> Now, during the course of this trial, while any one of those things may occur, what is important for you to understand and to keep in your mind throughout the course of this trial is that this case is not for your entertainment. This trial is a fundamental part of our democracy. **It is a search for the truth in an effort to make sure that justice is done between the parties that appear before the Court.** Searching for the truth and making sure that justice is done oftentimes can be slow, deliberate, sometimes it can be repetitive. In other words, it's very different from what you may have seen in the movies, read in books, or seen on television. **This Courtroom is a place of honor. It is dedicated to the protection and to the preservation of citizens' rights** through what many have called the greatest justice system ever created.

ROA. p. 11, line 12 – p. 12, line 7 (emphasis added).[1] The trial court then advised the jury "in just a moment you're going to take an oath to try this case and to reach a fair and a just

---

[1] The trial court noted the language in the trial court's instruction was the one recommended by the Chief Justice Commission on the Profession. ROA. pp. 22-24.

verdict. And so you are also expected to be professional, reasonable, and ethical in the performance of your duty." ROA. p. 12, lines 15-18.

The jury was sworn and the trial court advised the sworn jurors that the indictments are simply charges and not evidence. The trial court then advised the jury that the State bore the burden of "proving each of the elements of the indictments beyond a reasonable doubt." ROA. p. 13, lines 14-23. Two days later, the parties rested, made their closing summations, and the trial court provided more specific instructions to the jurors before they began the deliberations that led to the verdicts.

The appropriate test for reviewing a jury charge involves determining whether there is a reasonable likelihood the jury applied the charge in a way that violated the Constitution. Estelle v. McGuire, 502 U.S. 62, 71 (1991). Ultimately, "[a] trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").[2]

The irony of Haynesworth's remonstration is that the **central function** of the trial process in both criminal and civil cases is to discover the truth. See Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating "the central function of [a] trial . . . is to discover the truth"); see also State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) ("A trial is a

[2] The Court of Appeals' Opinion cited State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003, and State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) for these propositions of law. Accordingly, the Court of Appeals' holding is neither cryptic nor ipse dixit, as Haynesworth alleges.

search for the truth[.]"); see, e.g., Carella v. California, 491 U.S. 263, 265 (1989) (explaining that burden-relieving jury instructions "subvert the presumption of innocence accorded to accused persons and also invade **the truth-finding task assigned solely to juries** in criminal cases" (emphasis added)).

As part of the truth-seeking process, the State carries the burden to prove a criminal defendant's guilt for every element of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); see also Burr v. Florida, 474 U.S. 879, 880 (1985) ("[T]he **beacon of the truth-seeking process** in criminal cases is not absolute certainty, but the 'reasonable doubt' standard[.]" (emphasis added)).

The Supreme Court has cautioned trial judges to avoid using language that instructs the jury to "seek the truth" due to the risk that such language could potentially shift the burden of proof to the defendant in an unconstitutional manner. State v. Aleksey, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000). Additionally, the Supreme Court has advised trial judges not to instruct jurors that their verdicts "would represent truth and justice for the parties" due to the risk that such language could distract the jury from its core functions. State v. Daniels, 401 S.C. 251, 258, 737 S.E.2d 473, 477 (2012) (Toal, C.J., concurring for the majority). However, our Supreme Court specifically declined to hold any mention of "the truth" in jury charges is unconstitutional. See Aleksey, 343 S.C. at 28, n. 2, 538 S.E.2d at 252 ("Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of 'the truth' in jury charges is unconstitutional."); see also State v. Hoffman, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included "in

seeking the truth" language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

In the instant case, the "seeking the truth" comment came prior to the jury being sworn and not during a discussion of the State's obligation to prove Haynesworth's guilt beyond a reasonable doubt. The comments were made during an effort by the trial court to impart to jurors the gravity of their responsibility in advance of the trial that had not yet begun. The comment in this context was not improper.

The jury was sworn on Monday, the trial began, the parties presented their cases and rested, the parties made their closing arguments **and then**, the trial court instructed the jury extensively on reasonable doubt and the state's burden before the jury deliberated and returned a verdict on Wednesday.

Indeed, as shown below, the trial court did an exemplary job of communicating the State's burden of proving the charges beyond a reasonable doubt, so the early isolated comment was not prejudicial to Haynesworth.[3] See State v. Raffaldt, 318 S.C. 110, 115-116, 456 S.E.2d 390, 393 (1995) (finding a jury charge instructing the jury to "seek some reasonable explanation other than the guilt of the accused" was erroneously burden-shifting but determining any error with that instruction was harmless because the charge as a whole properly explained the State had the burden of establishing Raffaldt's guilt beyond a reasonable doubt); see also State v. Needs, 333 S.C. 134, 154, 508 S.E.2d 857, 867 (1998)

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[3] Haynesworth contends the jurors carried the comment with them to deliberations. This assertion is more illustrative of the term "ipse dixit," since the record is devoid of any evidence the jury was influenced to reduce the State's burden based on the introductory remark two days earlier. This claim is based only on Hayneworth's conclusory assertion.

("In Manning, the Court pointed to the 'in search of the truth' language contained in the reasonable doubt charge as contributing to its defective nature. However, appellate courts since have seemed to allow the use of the phrase – at least when it is not combined with other offending terms outlined in Manning." (citations omitted)).

In the instant case, the instructions at the close of evidence, two days after the jury was sworn, diminished to negligible any conceivable prejudice from the pretrial comment on the search for the truth. The trial court instructed the jury as follows on the State's burden:

> Now, the defendants have pled not guilty to the charges in these indictments, and that plea puts the burden on the State to prove the defendants guilty. A person charged with committing a criminal offense in South Carolina is never required to prove him or herself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charges may be, will always be presumed to be innocent of the crimes for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.
>
> This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendants throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It is not just a legal phrase, but it is a substantial right to which every defendant is entitled. Unless you, the jury, are satisfied by the evidence of the defendant's guilt beyond a reasonable doubt.
>
> Now, the State has the burden of proving a defendant's guilty [sic] beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that; it must be beyond a reasonable doubt.
>
> Proof beyond a reasonable doubt is proof that leaves

you firmly convinced of the defendant's guilt. . . .

ROA. p. 249, line 18 – p. 250, line 23.

The trial court further instructed the jury to only consider the competent evidence presented to them. ROA. p. 251, lines 8-17. The trial judge advised the jury it is the exclusive judge of facts. ROA. p. 252, lines 2-16. When informing the jury it could not draw any conclusions from Capers' decision to not testify, the trial court also reminded the jury again that the State has the burden of proof and the defendant does not have to prove his innocence. ROA. p. 255, lines 2-9.

In discussing the specific offenses, the trial court informed the jury the State had to prove the defendants attempted to murder another person with malice aforethought. ROA. p. 256, lines 15-22. The trial court advised the jury if the jury found the State failed to prove attempted murder beyond a reasonable doubt, then the jury could consider if the State proved Assault and Battery in the First Degree beyond a reasonable doubt. ROA. p. 258, lines 21-25.

The trial court further instructed the jury the State was required to prove beyond a reasonable doubt that the defendants were in possession of a firearm for the jury to convict the defendants of Possession of a Weapon During the Commission of a Violent Crime. ROA. p. 259, lines 9-14. Likewise, the trial court advised the jury the State must prove beyond a reasonable doubt the elements of Conspiracy. ROA. p. 259, line 24 – p. 260, line 3.

The trial court instructed the jury on alibi as follows:

> There is no burden on the defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that the defendant was actually present at the scene of the crime,

> actually participated in it, and was not somewhere else. In other words, the State has the burden of disproving the defendants' alibi defense.

ROA. p. 261, lines 11-16.

Put in context, the trial court's comments prior to the jury being sworn merely imparted the gravity of the jurors' responsibility to ensure justice is done and citizens' rights are protected. The comments did not create any real danger that two days later the jurors would not follow the trial courts' extensive pre-deliberation instructions on the State's burden of proving the charges beyond a reasonable doubt. See State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) ("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."). Accordingly, the trial court did not err, and Haynesworth was not prejudiced by the perceived error. The convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied. If this Court should see fit to grant the petition for writ of certiorari, Respondent would respectfully request permission to more fully brief the issues herein.

Respectfully submitted,

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May 25, 2016.

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MAY 25 2016
SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

The Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

BILAL SINCERE HAYNESWORTH,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Robert M. Pachak, Esquire
Appellate Defender
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Division of Appellate Defense
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This 25TH day of May, 2016

NORMA BIGBEE
LEGAL ASSISTANT

The Supreme Court of South Carolina

The State, Respondent,

v.

Bilal Sincere Haynesworth, Petitioner.

Appellate Case No. 2016-001101
Lower Court Case Nos. 2013-GS-32-02373,
2013-GS-32-02374, 2013-GS32023-75

ORDER

Based on the vote of the Court, the petition for writ of certiorari is denied.

FOR THE COURT

BY
CLERK

Columbia, South Carolina

March 8, 2017

cc:
Robert M. Pachak, Esquire
Alan McCrory Wilson, Esquire
David A. Spencer, Esquire
Samuel R. Hubbard, III, Esquire
The Honorable Lisa M. Comer
The Honorable Jenny Abbott Kitchings